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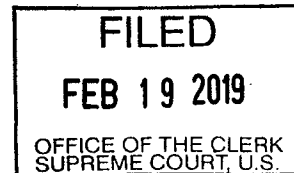
18-8495

IN THE SUPREME COURT OF  
THE UNITED STATES

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LEROY SCOTT, JR.,  
PETITIONER,

v



UNITED STATES OF AMERICA  
RESPONDENT.

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

PETITION FOR LEAVE TO FILE EXCESSIVE PAGE(S)  
PURSUANT TO RULE 33.2

TO THE HONORABLE JUDGES OF THE SUPREME COURT:

COMES NOW, LEROY SCOTT JR., THE PETITIONER, PROCEEDING IN PRO SE, and respectfully moves this Honorable Court for a[n] **ORDER GRANTING** him permission to exceed the page limitation, set forth within Rule 33.2(b), which exceeds the page limit set by such Rule by 21 additional pages.

The Petitioner will show this Honorable Court as follows:

¶1) Petitioner's proceeding Pro Se and has had no training in the field of law and needs the additional 21 pages to properly litigate his claims.

¶2) The complexity of the facts and issues invloved in this Petition for Certiorari, warrant granting permission to exceed the page limitation.

¶3) Under discrete facts and circumstances, it would be unfair and unreasonable **NOT** to grant the Petitioner permission to exceed the page limitation.

¶4) Due to the Petitioner being incarcerated within a federal correctional institution, he, therefore, is subjected to random 'lock-downs' and/or institutional 'lock-downs' which, in such instant, constituted the Petitioner to complete said petition **by HAND**.

¶5) Petitioner makes this petition in the interest of justice and **NOT** meant to delay the proceedings.

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### QUESTIONS PRESENTED

- (1) WHETHER COUNSEL'S INEFFECTIVENESS CONFLICTS WITH THE HOLDING IN MISSOURI v FRYE, FOR FAILING TO ADVISE PETITIONER OF THE MEANS TO SET FORTH IN THE DEATH PENALTY PROTOCOL WHERE THE PLEA AGREEMENT ESSENTIALLY MISTAKEN HIS EXPOSURE TO THE DEATH PENALTY.
- (2) WHETHER THE LOWER COURT'S REJECTION OF THE PETITIONER'S REQUEST FOR A COA ON HIS CLAIM THAT HIS ATTORNEY LABORED UNDER A CONFLICT OF INTEREST, BASED ON HIS PRIOR REPRESENTATION OF A(N) ALLEGED CO-CONSPIRATOR.
- (3) WHETHER THE GOVERNMENT'S EGREGIOUS CONDUCT CONFLICT'S WITH THE HOLDING IN UNITED STATES v BRADY, WHERE PETITIONER WAS MISINFORMED AS TO A CRUCIAL ASPECT OF HIS PLEA.
- (4) WHETHER PETITIONER'S SECOND ATTORNEY NON-APPEARANCE DURING PLEA PROCESS WAS EQUIVALENT TO THE CONSTRUCTIVE DENIAL OF THE RIGHT TO COUNSEL, WHEN THE APPLICATION OF 18 USC § 3005 ENTITLES PETITIONER TO THE ASSISTANCE OF TWO ATTORNEYS UPON INDICTMENT WHERE PETITIONER WAS CHARGED WITH A CAPITAL CRIME?

ALL PARTIES APPEAR IN THE CAPTION COVER PAGE

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## **JURISDICTION**

This Court has jurisdiction over this matter, pursuant to 28 USC § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 USC §§ 924(c), 924(;) )

(;) a person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, **shall** --

(1) if the killing is a murder (as defined in section 1111 [18 USCS § 1111]), be punished by death or by imprisonment for any term of years or for life, and

(2) if the killing is manslaughter..., be punished as provided in that section.

18 USC § 3005

Whoever is indicted for treason or other capital crimes, **shall**, be allowed to make his full defense by counsel...**shall** promptly, upon the defendants request, assign 2 such counsel, of whom at least 1 **shall** be learned in the law applicable to capital cases...



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## REASON[S] FOR GRANTING THE WRIT

¶1) The lower court's rejection of the Petitioner's request for COA on his claim, that Trial Attorney, JAMES O BROCCOLETTI, was ineffective, conflicts with the holding in Missouri v Frye, for failing to advise him, of the 'means' set forth in the Death Penalty Protocol, where the written agreement has 'essentially mistaken' his exposure to the Death Penalty, if convicted after trial, is debatable amongst jurists of reason and therefore, deserving of Certiorari Review, where U.S. v Fisher, 711 F3d 460 (4th Cir 2013), 'egregious conduct,' stands for the proposition that a quality plea is involuntary where a defendant has been misinformed, of the 'crucial aspect,' of a plea offer. See Slack v McDaniel, 529 U.S. 473 (2000).

¶2) Whether the lower court's rejection of the Petitioner's request for a COA on his claim that his attorney labored under a 'conflict of interest,' based on this prior representation of alleged co-conspirator, BERNICE GWALTNEY, is debatable among jurists of reason and therefore, deserving of Certiorari Review, where United States v Nicholson, 611 F3d 191 (4th Cir 2009) ... stands for the proposition that a 'conflict of interest' exists where counsel previously represented a[n] alleged co-conspirator. See Slack, Id.

¶3) The lower court's rejection of Petitioner's request for

COA, on his claim that his guilty plea was rendered involuntary based on the Government's 'egregious conduct,' conflicts with the holding in United States v Brady, where the plea agreement 'essentially mistaken' that the Petitioner faced the Death Penalty, if he 'rejected' the Government's plea offer is debatable amongst jurists of reason and therefore, deserving Certiorari Review, where United States v Fisher, United States v Brady ... supra, stands for the proposition that a guilty plea is involuntary where a Defendant has been misinformed as to a crucial aspect of the plea. See Buck v Davis, \_\_\_\_\_ U.S. \_\_\_\_\_ (2017).

¶4) The lower court's rejection of the Petitioner's request for a COA on his claim that his guilty plea was rendered involuntary by the absence of his second lawyer from the guilty plea hearing is debatable amongst jurists of reason and therefore deserving of Certiorari Review, where United States v Boone, 245 F3d 352, 358 (4th Cir 200), stands for the proposition that 18 USC § 3005, guaranteed the Petitioner the added protection of representation by [2] two lawyer[s]. See Slack, Id.

## STATEMENT OF THE CASE

In early 2013, a Grand Jury returned a [5] five count indictment charging LEROY SCOTT, JR., with the following: Conspiracy to Tamper with a Witness/Informant in violation of 18 USC § 1512(A); Conspiracy to Retaliate Against a Witness/Informant in violation of 18 USC § 1512(A)(1)(A) and (A)(3)(A); Retaliation Against a Witness/Informant in violation of 18 USC § 1513(A)(1)(B) and (A)(2)(A); and Use of a Firearm, Resulting in Death, in violation of 18 USC § 924(c), § 924(;); Because of the nature of the charges, the death penalty was a[n] available punishment for the indicted offense.

However, within several months of the indictment, the Dept of Justice ('DOJ') elected NOT to seek the death penalty against LEROY SCOTT, JR.

A few months after the DOJ's decision NOT to seek the death penalty in SCOTT's case, Defense Counsel, JAMES A BROCCOLETTI, who's previously filed an affidavit of his experience in criminal law, does NOT mention any learned law in Capital Cases.

However, Defense Attorney JAME A BROCCOLETTI, without the assistance of second defense counsel, as required by Federal Death Penalty Act, 18 USC § 3005, presented Petitioner SCOTT with a written Plea Agreement, drafted by the Government that SCOTT would agree to a binding plea Fed R Crim P 11(c)(1)(c) to a LIFE SENTENCE on Counts [1] through [4] and a consecutive

LIFE SENTENCE on Count [5].

In exchange, the Government agreed NOT to seek the Death Penalty, even though the Government, months previously before the plea offer, elected NOT to seek the Death Penalty.

Through prompting of Defense Counsel, Petitioner SCOTT, via plea agreement, pled guilty to the charges in the indictment and was sentenced to LIFE in prison.

Petitioner LEROY SCOTT, JR., filed a motion to vacate his sentence, pursuant to 28 USC § 2255, raising the following claims:

- (1) That the plea was involuntary because Petitioner was misled by the language of the Government's Plea Agreement;
- (2) Counsel was ineffective during plea negotiations where Counsel advised Petitioner to sign the agreement under false pretense(s), that if the plea was 'rejected,' the Death Penalty would be reconsidered; and,
- (3) The Plea is involuntary because Petitioner was deprived of a[n] absolute statutory right to the assistance of [2] two attorneys during a critical stage of the proceeding.

After holding a[n] evidentiary hearing, the District Court ruled that the Petitioner had NOT met either of the prongs in Strickland, for ineffective assistance of counsel, being that



the Death Penalty was removed.

But the District Court acknowledged that it could NOT fathom why Petitioner SCOTT, would commit to multiple binding terms of LIFE in prison, once the Death Penalty was removed.

Petitioner, LEROY SCOTT, JR., filed a[n] appeal within the United States Court of Appeals for the Fourth Circuit. Whom of which affirmed the District Court's decision.

- I. THE FOURTH CIRCUIT COURT OF APPEALS **ERRED** BY DETERMINING THAT SCOTT'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS DID **NOT** MEET THE STANDARDS SET FORTH BY THE COURT IN STRICKLAND AND HILL, WHERE HIS PLEA WAS INVOLUNTARY AS MISINFORMED TO A CRUCIAL ASPECT OF THE PLEA

It is well settled, that Counsel owes their client a duty of loyalty, a duty to avoid conflicts of interest, and when representing a criminal defendant, Counsel's role is to assist defendant in his defense with the permissible rule of law. See Strickland v Washington, 466 U.S. 688, 104 SCt 2052, 80 LEd 2d 674 (1984).

Such assistance includes the duty to advocate defendant's cause, to consult with the accused on ALL matters of importance and to apprise the defendant of important development in the course of the prosecution. Id. at 688.

The Sixth Amendment to the United States Constitution, 'guarantees a Defendant the right to have Counsel present at ALL 'critical' stages of the criminal proceeding,' Montejo v Louisiana, 556 U.S. 778, 786 129 SCt 2079, 173 LEd 2d 955 (2009)(quoting United States v Wadge, 38 U.S. 218, 227-228, 87 SCt 1926, 18 LEd 2d 1149 (1967), which includes the entry of a guilty plea. See Lee v United States, 137 SCt 1958, 1964 198 LEd 476 (2017).

Although, the Supreme Court has **NOT** elaborated in detail on the "duty and responsibilities of defense counsel in the plea bargain process." Missouri v Frye, 566 U.S. 134, 132 SCt 1399, 1408, 182 LEd 2d 379 (2012), See Lafler v Cooper, 566

U.S. 156, 132 Sct 1376, 1384, 182 LEd 2d 398 (2012).

In the instant case, during the May 17, 2013 Status Conference the Prosecutor, MS EVERHART, led Petitioner SCOTT to believe that, "we [Department of Justices](hereinafter, DOJ), are NOT seeking the Death Penalty in this case. See Exhibit A - Status Conference Trans, Pg 3 at 10-11).

Three months after the May Status Conference the Government through Counsel BROCCOLETTI introduced Petitioner SCOTT, with a binding Plea Agreement. The District Court's responsibility during a Rule 11(b)(1) hearing is to 'explain' the meaning of those terms, NOT to misinform those terms.

Here because of Trial Counsel BROCCOLETTI'S ineffectiveness in negotiating the Government's misleading disparagement interpretation in the Plea Agreement. Unfortunately, the District Court embarked into such a misadventure during Petitioner SCOTT'S August 16, 2013 Rule 11 Plea Hearing.

When the District Court explained to Petitioner SCOTT, in return for his plea of guilty, and his agreement to a LIFE sentence of imprisonment, the Government agrees NOT to seek the Death Penalty. See (Exhibit - B Plea Agreement).

Obviously, Petitioner SCOTT was mislead through NO fault of his own, that the District Court falsely assured him that with the acceptance of his plea, he would avoid the Death Penalty.

The record is undisputed that the Department of Justice

had reviewed and decided NOT to seek the Death Penalty in Petitioner SCOTT'S case. It is also undisputed, that Petitioner SCOTT believed that the Death Penalty had been initially 'declined,' by the 'DOJ.'

It is also undisputed that Petitioner's SCOTT'S Final Plea Agreement included a provision that 'claimed' that Petitioner SCOTT agreed to plead guilty to avoid the Death Penalty.

It is further undisputed, that the Statement of Reasons drafted by the District Court and the Addendum to the Presentence Report by the Government, ALL recites a provision, that Petitioner SCOTT agrees to plead guilty to avoid the Death Penalty. See (Exhibit - C Statement of Reason and Addendum PSI).

Moreover, it is also undisputed that the procedures set forth in the 'DOJ,' Death Penalty Protocol states very clearly, "the Death Penalty may NOT be sought, and NO Attorney from the Governemnt, may threaten to seek it solely for the purpose of obtaining a more desirable negotiating position. Absent the authorization of the Attorney General..." 9-10.120. See (Exhibit - D Death Penalty Protocol, Title 9-10.000 to 9-10.200).

In this case, egregious conduct are the types of promises or threats, which deprive a plea of it's voluntary character, are NOT susceptible of 'comprehensive definition...' See Lassiter v Turner, 423 F2d 897 (4th Cir 1990) at 900 (Prosecutor's threat "to do what the law will NOT permit, if it mo-

tivates a Defendant ignorance, of the impossibility, renders the plea involuntary)."

Misrepresentation potentially meriting withdrawal of a guilty plea are NOT limited to promises intended to induce a guilty plea; plain and inexcusable misrepresentations NOT anchored to any permissible litigation strategy" may amount to egregious conduct. See United States v Fisher, 711 F3d 460 (4th Cir 2013) quoting Ferrara v United States, 456 F3d 278 (1st Cir 2006) at 283.

While such promises or statements were made in 'good faith,' like here, it does NOT preclude a finding of egregious conduct. Id at 467 (citing United States v Hammermen, 528 F2d 326 (4th Cir 1995)).

In tracing the origin of the Fisher case, "egregiously impermissible conduct" requirement from Brady v United States, 397 U.S. 742, 755 90 SCt 1463, 25 LEd 2d 747 (1970)(quoting Shelton v United States, 246 F2d 571 (5th Cir 1957) where Judge TUTTLE had been concerned with situations in which Defendant's were misled by "promise of leniency" similar to Petitioner SCOTT, for example, when a Defendant had been promised by a[n] Officer in one State, that if he pled guilty to charges in that State, he would NOT be prosecuted by Law Officials in another State<sup>17</sup> or when a Prosecutor improperly promise[s] a lenient sentence. <sup>18</sup>.

Here, the Government improperly promised Petitioner SCOTT

leniency, "in return for Petitioner SCOTT'S plea of guilty... to a sentence of LIFE...The United States agrees NOT to seek the Death Penalty."

Although, the Death Penalty was allegedly taken off the table, Petitioner SCOTT was prejudice, relying on the highly uncommon fact[s] of the Government's essential mistakes in his Plea Agreement, the heart of the Government's case. See Fisher Id at 466. 15 and Ferrara, 456 F3d at 281-86, finding egregious conduct.

Clearly the failure of Trial Attorney BROCCOLETTI, researching and investigating into the egregious conduct and the Death Penalty Protocols, fell below the minimum standard of representation demands of attorneys in criminal cases. "The Sixth Amendment guarantees a Defendant the effective assistance of counsel, at ALL critical stages of criminal proceedings, including the entry of a guilty plea and sentencing." See Mempa v Rhay, 389 U.S. 128, 88 S Ct 254, 19 LEd 2d 336 (1967).

Counsel must conduct adequate factual and legal investigations to determine if defense[s] can be developed. See Coles v Peyton, 389 F2d 224 (4th Cir 1968). Had Trial Counsel, JAMES O BROCCOLETTI investigated the obvious, he would have found that the Government violated their own 'means' set forth in the 2013 Death Penalty Protocol.

As to making such determination(s), "in return for Petitioner SCOTT'S plea of guilty and his agreement to a LIFE

sentence...the Government agree NOT to seek the Death Penalty." See Exhibit - D 9-10.120.

Nevertheless, in DENYING Petitioner SCOTT RELIEF, the District Court relied heavily on the "Government earlier in Court Statements [made at the May 17, 2013 Status Conference] and Defense Counsel's consistent and accurate advice."

The Court found "Petitioner was full aware at the time of his plea that the Government was NOT pursuing the Death Penalty." See Exhibit - F, Page 9.

To show that the District Court above fact-finding is misleading and erroneous. Petitioner SCOTT points to when the District Court questioned Trial Attorney JAMES O BROCCOLETTI during the November 20, 2017, Evidentiary Hearing, about whether the Government was precluded from coming back and changing their minds and seeking the Death Penalty, and whether there was benefit in having the Death Penalty language in the Plea Agreement.

The Court: Before you move on from that issue about the Death Penalty discussion, after the Status Conference when the Government indicated that they were not going to seek the Death Penalty was it your view that the Government was precluded from ever coming back in that case and changing it's mind and seeking the Death Penalty?

BROCCOLETTI: No, I think their report to the Court at that time at the Status Conference that they would not seek the Death Penalty, I don't think its necessarily absolute and binding for ever and

ever. I think if things had changed, if there had been potentially some new information or some new evidence that developed, potentially that could cause them to change their mind; I assume.

The Court: So was there benefit to having it in the agreement?

BROCCOLETTI: Well, the benefit to the agreement is that, once and for all, it foreclosed them from pursuing it.

See Exhibit - E Evidentiary Hearing, Page 43 at 12-25 and Page 44 at 1-5.

These above allegation[s] made by Trial Attorney BROCCOLETTI, are to much of a[n] 'if,' and NO more than a[n] educational guess. The District Court should have '**erred on the side of caution,**' before ruling that Defense Counsel did NOT perform deficiently by '**failing**' to challenge the Government unartful inclusion of '**quid pro pro,**' language in the written Plea Agreement..." See Exhibit F - (December 21, 2017 Opinion and Order, Page 10).

Had Trial Counsel JAMES O BROCCOLETTI properly researched and investigated when questioned by the District Court on whether the Government are precluded from coming back and changing their minds, in seeking the Death Penalty and whether there is benefit for having it in the Plea Agreement, Trial Counsel, JAMES O BROCCOLETTI, would have known through research-



ching, that the 'DOJ,' 2013 Death Penalty Protocol, set forth 'means' for making such determination[s] under Title 9-10.000 to 9-10.200, for example, 9-10.120, Conditional Plea Agreements states:

"The Death Penalty may not be sought, and no Attorney for the Government may threaten to seek it, solely for the purpose of obtaining a more desirable negotiating position. Absent the Authorization of the Attorney General, may not enter into a binding Plea Agreement that precludes the United States from seeking the Death Penalty with respect to any Defendant falling within the 'scope' of this chapter."

"...at ALL times, the United States Attorney of Assistant Attorney General, must make clear to ALL parties that the Conditional Plea don't represent a binding agreement, but is conditional on the authorization of The Attorney General."

Had Trial Counsel, JAMES O BROCCOLETTI, properly researched and explained to SCOTT, the 'DOJ' 2013 Death Penalty Protocol set forth 'means' into making such determination[s] Attorney BROCCOLETTI and Petitioner LEROY SCOTT, would have known that the Attorney General is the ONLY person who has the 'power' to promise the Petitioner, during a binding Plea Agreement Negotiation, that he or she 'WILL NOT' be seeking the Death Penalty.

Thus, the United States Attorney and AUSA 'DO NOT' have such power and the Attorney General has 'NOT' delegated such

power to the U.S. Attorney or AUSA's 'by the way' of the United States Manual 9-10.130 and 9-10.160.

A good example of the Government's above 'promise,' see United States v Jackson, 554 Fed Appx 156 (4th Cir 2014), the dissent by Circuit Judge WILKINSON at 165, Exhibit - G; notably too, the 'promise' in ¶ 1,4, and 11 of Petitioner SCOTT'S binding written Plea Agreement, which states that it constitutes "the complete plea agreement" between the United States, the Defendant and the Defendant's Counsel.

Nevertheless, Defense Counsel JAMES O BROCCOLETTI, admitted at the November 20, 2017 Evidentiary Hearing and in his Motion of Declaration, that he did NOT know what the language 'purporting' to remove the Death Penalty was 'even' included in the Plea Agreement. See Exhibit - E, Page 40 and Exhibit - H Motion of Declaration, Page 2 at 5.

It is obvious, that Defense Counsel BROCCOLETTI did NOT research or investigate the Death Penalty Protocol makes clear, "...NO Attorney for the Government may threaten to seek it, solely for the purpose of obtaining a more desirable negotiating position.

Therefore, the Prosecutor in this case, 'DID NOT' have such 'power' to seek or NOT too seek the Death Penalty, nor to negotiate a binding Plea Agreement, but conditional on the Authorization of the Attorney General, who has NOT 'delegated' such 'power' to the Prosecutor in this case, by the way of

the United States Manual 9-10.00 to 9-10.200. See Exhibit - G.

Petitioner SCOTT was prejudiced for Defense Counsel, JAMES O BROCCOLETTI'S 'failure' to explain and NOT adequately researching and investigating the egregious impermissible conduct by the Prosecutor and the 'means' set forth in the Death Penalty Protocol, fell below a[n] Objective Standard of Reasonableness.

This may have induced a guilty plea, that would NOT have been forthcoming if SCOTT had been correctly told the truth about about his 'exposure,' to the Death Penalty and the ... 'means,' set forth in the Death Penalty Protocol. See United States v Hammond, 528 F2d 15 (1975).

Defense Counsel BROCCOLETTI'S allegation[s] NOT 'ONLY' affected Petitioner SCOTT, it misled and confused the District Court's fact-finding, into believing that the Government could 're-instate' the Death Penalty, if there was new evidence or new information. See Exhibit - E, Page 43 at 12-25 and Page 52 at 15-25.

Defense Counsel BROCCOLETTI'S allegation[s] are conflicting to the text set forth in 9-10.160, which states once the 'DOJ' has already withdrawn, their NOTICE to seek the Death Penalty. The 'means' set forth in the Death Penalty Protocol, 9-10.160, 'explicitly' states, generally, withdrawal will be GRANTED [in cases like Petitioner's] if there are material changes in the facts and circumstances of the case

which would have resulted in a decision NOT to seek the Death Penalty, if they had been know at the time of the initial determination. Id at 9-10.160. This is clearly in opposite as to Trial Attorney JAMES O BROCCOLETTI allegation made to the District Court. See Exhibit - E, Pages 43 and 52.

It is undeniable, that MR BROCCOLETTI misled and confused the District Court into a[n] erroneous 'fact finding' when question, MR BROCCOLETTI about whether the Government was precluded from coming back and changing their minds, to seek the Death Penalty, and whether there was benefit for having it in the Plea Agreement. Fisher, Id at 466, and Ferrara, 456 F3d at 281-86, finding egregious conduct.

Petitioner, LEROY SCOTT submits, if it was NO for Trial Attorney BROCCOLETTI'S ineffectiveness, for 'failing' to explain and adequately investigate the 'means' set forth in the Death Penalty Protocol, the Government's egregious conduct, and for being misled in his Plea Agreement, that the Government was still seeking the Death Penalty, up until the time he entered his guilty plea; he would NOT have pled guilty and would have insisted on going to trial. Strickland v Washington. See also Fisher, Id at 468-469.

Whether Petitioner SCOTT pled guilty or was convicted after trial, he had something to gain and nothing to lose by proceeding to trial. Such a choice would have been rational, Lee at 1969 and the Court cannot conclude that a reasonable

Defendant in Petitioner SCOTT'S shoes, would have acted differently.

II. THE FOURTH CIRCUIT COURT OF APPEALS **ERRED** BY DETERMINING THAT PETITIONER SCOTT'S ATTORNEY CONFLICT OF INTEREST CLAIMS DID **NOT** MEET THE STANDARD SET FORTH BY THE COURT IN NICHOLSON AND CUYLER V SULLIVAN

The District Court ruled that Petitioner SCOTT has **NOT** demonstrated that Counsel labored under a 'Conflict of Interest,' based on his prior representation of alleged co-conspirator, BERNICE GWALTNEY.

Petitioner SCOTT testified at the November 20, 2017 Evidentiary Hearing, that he asked JAMES O BROCCOLETTI, "could BERNICE GWALTNEY be a witness." See Exhibit - E, Page 10 at 15.

This was said in that manner, because MR SARTWELL, Petitioner SCOTT'S Evidentiary Hearing Attorney, advised him **NOT** to mention GWALTNEY as his defense witness, for strategic reason[s]. SCOTT submits, if it was **NOT** for Attorney SARTWELL ineffective strategical technique[s], he would have called MS GWALTNEY as his defense witness.

BERNICE GWALTNEY previously told LEROY SCOTT, that she would testify on his behalf, because she knew who had actually called the 'hit' on the witness inquestion and could confirm the Petitioner LEROY SCOTT JR., was **NOT** involved.

Had Petitioner SCOTT called BERNICE GWALTNEY (BROCCOLETTI'S

priot client) as a defense witness, to testify as to the identity of the actual guilty party, she would have potentially admitted that she was part of the Conspiracy to Murder.

Trial Attorney JAMES O BROCCOLETTI would have been placed in the position of having to serve [2] two masters, a scenario that would have adversely affected his performance. See United States v Nicholson, 611 F3d 191 (4th Cir 2009)(finding conflict of interest under similar circumstances).

Thus, BERNICE GWALTNEY was a witness BROCCOLETTI could NOT call, but a witness Petitioner SCOTT should have called, if it was NOT for his Evidentiary Hearing Attorney MR SARTWELL'S ineffectiveness.

Petitioner SCOTT did not realize this potential conflict as he DID NOT understand that if BERNICE GWALTNEY admitted to knowing the 'true killer,' she would have potentially implicated herself.

Petitioner SCOTT maintain[s] that this is the reason that Trial Attorney BROCCOLETTI was so 'intent' in having him to plead guilty, to [2] two LIFE sentences and to avoid a virtually non-existent Death Penalty while preserving Appellate Rights, Petitioner SCOTT would have preserved, had he gone to trial.

Trial Attorney BROCCOLETTI thought this plea would save him from 'confronting' the real conflict. In sum, BROCCOLETTI suffered from a[n] actual conflict and it resulted in adverse

action against Petitioner LEROY SCOTT JR., - namely the encouragement to enter into a binding Plea, to a[n] otherwise ridiculous sentence.

"In order to establish a violation of the Sixth Amendment, a Defendant who raised NO objection at a trial, must demonstrate that a[n] actual conflict of interest adversely affected his lawyer's performance." Cuyler v Sullivan, 446 U.S. 335, 348, (1980).

The Court established a [3] three part standard in Mickens v Taylor, 240 F3d 348, 361 (4th Cir 2001)(En Banc), Aff'd without consideration on this point, 535 U.S. 162 (2002). "He must first of all, identify a plausible alternative, strategy or tactic, that his defense counsel might have pursued." United States v Nicholson, citing Mickens at 361.

"Second, he must establish that the alternative strategy or tactic was objectively reasonable under the facts of the case, known to the Attorney at the time of the Attorney's tactical decision." Id. "In order to satisfy this second prong, the Petitioner must show that the alternative strategy of tactic was clearly suggested by the circumstance." Id.

"And lastly, he must show that the Defense Counsel's 'failure' to pursue that strategy or tactic would have been successful, but only that it would have been objectively reasonable." Id.

Had Petitioner SCOTT called BERNICE GWALTNEY to testify.

on his behalf, which would have benn to her extreme detriment. These interests were in total opposition to each other.

Here, LEROY SCOTT JR., the Petitioner, have and had obvious and plausible alternative strategies, to try his odds at trial rather than agreeing to multiple 'consecutive LIFE sentence[s]' especially since the Death Penalty was allegedly taken off the table.

Second, this alternative strategy was certainly 'objectively reasonable.' The Court has determined although the second prong requires "findings of fact," known to the lawyer at the time of his tactical decision, the ultimate question involves a conclusion of law reached under an objective standard: whether, considering the facts known to the lawyer, the alternative defense strategy was objectively reasonable." Id at 206-7.

Petitioner SCOTT knew of a witness that could exonerate him and Trial Attorney JAMES O BROCCOLETTI should have called her at trial, under the circumstances, this would have been a tactic and objectively reasonable, than to entering a plea to multiple 'LIFE sentences,' and a non-existent Death Penalty.

Third, this 'failure' to recommend that Petitioner SCOTT to proceed to trial and instead concede to multiple 'LIFE sentences' was surely linked to the conflict.

Here, Trial Attorney JAMES O BROCCOLLETTI, 'claims' he did NOT consider this a 'viable' strategy, because he had asked the Government if they were going to call BERNICE GWALTNEY, as a



witness.

Here, Trial Counsel JAMES O BROCCOLETTI, misses the point, Petitioner SCOTT would have wanted BERNICE GWALTNEY to testify for him, NOT the Government.

The Fourth Circuit Court in Nicholson, adopted a [2] two part test, where the Defendant may prove a 'link' to the conflict, by either of [2] two ways: [1] by establishing that the alternative defense was inherently in conflict with...the attorney's other loyalties or interest... or [2] by otherwise showing that the alternative defense was NOT undertaken due to those other loyalties or interests. 611 F3d at 212.

In simple terms, a[n] alternative defense and the lawyer's other loyalties or interest[s] are 'inherently in conflict,' if they are 'inconsistent' with each other. Id at 213.

Attorney BROCCOLETTI'S conflict is easily to establish here because the conflict is 'inherent.' There can be little doubt that when a[n] Attorney represent's one client, who can 'exonerate' another client, by their testimony, but that testimony implicates his [other] client in the crim, the interest's are 'inconsisten' with each other.

The District Court Judge ruled that there was NO conflict because Attorney JAMES O BROCCOLETTI contacted the Government and was informed them that his 'former' client, would NOT be a witness for the Government. See Exhibit - F, Page 13.

Clearly the Court and BROCCOLETTI misses the point, that

Petitioner SCOTT would have wanted BERNICE GWALTNEY to testify on his behalf, if it was NOT for Trial Attorney JAMES O BROCCOLETTI and the November 20, 2017 Evidentiary Hearing Attorney, MR SARTWELL'S ineffectiveness, BERNICE GWALTNEY, would have been called as a witness.

The District Court further engaged in a[n] 'improper' prejudice analysis, by stating that "while Counsel could have obtained a better result on the 'consecutive sentence,' on Count 5 it is speculative to assert, that the Government would have ... agreed to a lesser sentence, on Count 5." See Exhibit - F, Page 14.

Again, the District Court is missing the point, according to the Supreme Court in Lee v United States, it's NOT whether the Governemnt would have agreed to a lesser sentence, for Count 5. It's whether it would have been 'rational' for Petitioner LEROY SCOTT JR., as a 'plausible' alternative strategy, to go to trial and have BERNICE GWALTNEY to 'testify' on his behalf, while on the other hand, 'argue' for a lesser sentence on Count 5.

The Court in United States v Swaby, 855 F3d 233 (4th Cir 2017), stated, to show prejudice, Petitioner SCOTT, don't have to show that going to trial would have been the best objective strategy or even a[n] attractive option.

It merely requires the Defendant to show a 'reasonable' likelihood that a person in his shoes would have chosen to go

to trial, the decision DOES NOT need to be 'optimal,' and DOES NOT need to ensure acquittal; it only needs to be rational.

Clearly, it would have been rational for Petitioner SCOTT to have BERNICE GWALTNEY to testify on his behalf, while argue for a lesser sentence. Than to accept a 'binding plea agreement,' to a mandatory LIFE sentence, on Count 5. Especially, when Count 5, carries a Mandatory Minimum of 10 years up to LIFE, 'but not a Mandatory LIFE, Petitioner SCOTT would have received ANY term of year[s].

Under the circumstances, it's a reasonable likelihood, that Petitioner SCOTT would have 'negotiated' for a lesser sentence on Count 5, other than LIFE. Given the Government's 'flexibility' to Petitioner SCOTT, other aimed requests, "not to cooperation and his right to appeal," it is reasonably likely that the Government may have agreed to a lesser sentence on Count 5.

Petitioner SCOTT submits, if it was NOT for Trial Attorney BROCCOLETTI'S ineffectiveness, he would NOT have pled guilty and would have insisted on going to trial. Hill and Strickland.

Whether Petitioner SCOTT pled guilty or was convicted after trial, he had something to 'gain,' and nothing to 'lose.' by going to trial. Such a choice is 'rational,' and this Court **cannot** conclude that a reasonable Defendant in SCOTT'S shoes, would've acted any differently.

III. THE FOURTH CIRCUIT COURT OF APPEALS **ERRED** IN AFFIRMING MR LEROY SCOTT JR'S CONVICTION, WHERE THE GOVERNMENT PLEA AGREEMENT, MISLED HIS EXPOSURE TO THE DEATH PENALTY

When construing a plea agreement, the Courts are to 'rely' on General Contract Law Principles. See United States v Harvey, 791 F2d 294 (4th Cir 1986). But given the context-- the waiver of a Defendant's constitutional right to trial and the implication[s] for "public confidence in the Fair Administration of Justice," the Court **must** analyze plea agreements with special ... scrutiny. Id (quoting United States v Carter, 454 F2d 426, (4th Cir 1972), holding that the law governing the interpretation of the plea agreement, is a "Amalgam of Constitutional, Supervisory and Private [contract] law concerns. "Id. These concerns" require holding the Governemnt to a greater degree of responsibility than the Defendant, "for any..." See United States v Jordan, 509 F3d 191 (4th Cir 2007), egregiously impermissible conduct like "...promises or threats, which deprive a plea of it's voluntary character are **NOT** susceptible of comprehensive definition..." Lassiter v Turner, 423 F2d 897 (4th Cir 1970) at 900 (prosecutor's threat, "to do what the law will **NOT** permit, if it motivates a Defendant ignorant of the impossibility, renders the plea involuntary)."

Misrepresentation, potentially meriting withdrawal of a guilty plea, are **NOT** limited to promises intended to induce a guilty plea; plain and inexcusable misrepresentation[s] **NOT**

anchored to any permissible litigation strategy" may amount to egregious conduct. Fisher v United States, 711 F3d 460 (4th Cir 2013) at 456 (quoting Ferrara v United States, 456 F3d 278 (1st Cir 2006) at 293 (internal quotation marks and alterations omitted)).

Although, promises or statement were made in 'good faith' does NOT 'preclude' a finding of egregious conduct. Id at 467 (citing United States v Hammerman, 528 F2d 326, 331-32 (4th Cir 1975)).

It is well established, plea colloquies conducted under Fed R Crim P 11, are intended "to flush out and resolve ALL such issue[s] ... like any procedural mechanism, it's exercise is neither always perfect nor uniformly invulnerable to subsequent challenge." Fontaine v United States, 411 U.S. 213, 215 93 Sct 1462, 36 LEd 2d 169 (1973; United States v White, 628 Fed Appx 848 (4th Cir 2015)(vacated and remanded because the parties had NOT mutually manifested their assent to the same understanding of a[n] essential term, there was NO valid plea agreement to be enforced.

One of the contract law's fundamental doctrine is that there can be NO agreement unless there is a "meeting of the minds." Charbonnages de France v Smith, 597 F2d 406 (4th Cir 1979); See Restatement (Second) of Contracts ¶¶ 17, 20 (1981).

In other words, the parties must have mutually assented to the most essential term of their bargain. Where 'substan-

tial confusion,' call into question whether there has been such a meeting of the minds, over a plea bargain, there is NO valid agreement to be enforced. Houomis v United States, 558 F2d 182 (3rd Cir 1977)(vacating sentence pursuant to guilty plea in face of "doubt, whether any 'meeting of the minds,' ever resulted from plea negotiation)."

The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice, among the alternative courses of action open to the Defendant." Hill v Lockhart, 474 U.S. 52, 59, 106 S Ct 366, 88 LEd 2d 203 (1985) citations and quotation marks omitted).

The Supreme Court has outlined the following standard as to the voluntariness of guilty pleas:

'A plea of guilty entered by one fully aware of the direct consequences, including the actual value of any commitments made to him by the Court, Prosecutor, or his own counsel, must stand, unless induced by threats (or promises to discontinue improper harassment) misrepresentations (including unfulfilled or unfulfillable promises) or perhaps by promises that are by their nature improper as having no proper relationship to the Prosecutor's business (eg, bribes).'

In the case at bar, on May 17, 2013, a Status was held, the Prosecutor MS EVERHART led Petitioner SCOTT to believe, "that we [Dept of Justice][hereinafter - DOJ] are NOT seeking the Death Penalty in this case." See Exhibit - A, Page 3 at 10.

Three months after the Status Conference, the Government through Trial Attorney, JAMES O BROCCOLETTI, provided Petitioner LEROY SCOTT JR., with a 'binding plea agreement,' which stated:

"In return for the Defendant's pleas of guilty and Defendant's agreement to a sentence of LIFE imprisonment for the offense[s] charged in Count[s] [1] one, [2] two, [3], three, [4] four and [5] five, the United States agrees NOT to seek the Death Penalty for these offense[s] ..."

The agreement then stated the following to re-emphasize the point:

"Notwithstanding, the foregoing, and pursuant to Rule 11(c)(1)(c) of the Federal Rules of Criminal Procedure, the parties agree that in return for the Defendant's plea of guilty to the charges in the Indictment, and the agreement of the United States NOT to seek the Death Penalty for the offense[s] charged in Counts [1] one, [2] two, [3] three, [4] four a sentence of LIFE imprisonment is the appropriate disposition for each of the offense[s] charged in Count[s] [1] one, [2] two, [3] three, [4] four and [5] five."

See Exhibit - B ¶¶ 1 and 4

Misrepresentation made by the Government deem Petitioner SCOTT'S guilty plea involuntary, when egregiously impermissible conduct proceed the signing of the plea agreement, were the decision to plead was formed based on the impermissible conduct.

Here, Petitioner SCOTT was 'misled' through NO fault of his own, that Government disparagement interpretation in the

plea agreement, the Addendum to the presentence report by the Government and the Statement of Reason, drafted by the District Court, falsely assuring him the acceptance of the plea agreement was to **avoid** the Death Penalty.

A good example of the above egregious Government conduct is in the origin of Fisher, egregiously impermissible conduct requirement from Brady v United , 397 U.S. 742, 755 90 SCt 1463, 25 LEd 2d 747 (1970)(quoting Shelton v United States, 246 F2d 571571 (5th Cir 1957). Where Judge TUTTLE'S opinion in Shelton 1, is 'clear' that TUTTLE had been concerned with situation[s] in which Defendant's were 'misled' by promises of leniency, "for example, a Defendant has been promised [similar to SCOTT] by a[n] officer in one State, that if he pled guilty to the charges in that State, he would **NOT** be prosecuted by officials in another State, 17 or when a Prosecutor improperly promised a lenient sentence.

Clearly, the Prosecutor egregiously impermissible conduct in SCOTT case, is unquestionable, where the Government 'falsely' and 'improperly' promise him in the plea agreement, " in return for LIFE ... the United States agrees **NOT** to seek the Death Penalty ..." When the Death Penalty was allegedly taken off the table. (Prosecutor's treat "to do what the law will **NOT** permit, if it 'motivate[s]' a Defendant ignorant of the impossibility, renders the plea involuntary"). Lassiter at 900 (whether that promise[s] or statement[s] were made in 'good



faith' DOES NOT preclude a finding of egregious conduct. Id at 467 (citing United States v Hammerman, 528 F2d 326, 331-32 (4th Cir 1975)).

Furthermore, had Trial Attorney JAMES O BROCCOLETTI, properly researched and explained to Petitioner SCOTT, that the 'DOJ' 2013 Death Penalty Protocol, set forth 'means' into making determination on how the 'DOJ,' procedure[s] applies to his case, pursuant to Title 9-10.000 to 9-10.200.

For a[n] example, Petitioner LEROY SCOTT would have known 9-10.120, Conditional Plea Agreement states:

"The Death Penalty may NOT be sought, and NO attorney for the Government may threaten to seek it, for the sole purpose of obtaining a more [d]esirable negotiating position. Absent the Authorization of the Attorney General may NOT enter into a binding agreement that precludes the United States from seeking the Death Penalty with respect to any Defendant falling within the scopr of this chapter."

"...at all time, the United States Attorney or Assistant Attorney General, must make clear to ALL parties that the Conditional Plea don't represent a binding agreement, but is conditioned on the Authorization of The Attorney General."

See Exhibit - D

Had it NOT been for Trial Attorney, JAMES O BROCCOLETTI'S ineffectiveness and the Government 'egregiously impermissible conduct,' Petitioner SCOTT would NOT have pled guilty and would have insisted on going to trial. SCOTT would have known that the Prosecutor in this case DID NOT have such power to negoti-

ate a 'binding plea agreement,' solely for the purpose of obtaining a more desireable negotiating position. Nor, 'to seek or NOT to seek' the Death Penalty, but conditional on the Authorization of the Attorney General, who has NOT 'delegated' such power to the Prosecutor in this case by the way of the United States Manual 9-10.000 to 9-10.200.

A good illustration, see Exhibit - G, United States v Jackson, 554 Fed. Appx. 156 (4th Cir 2014), the dissent by Circuit Judge WILKINSON at 165.

It also should be noted, once the Attorney General submits to withdraw a Notice of Seeking the Death Penalty, "the death penalty may NOT be sought, and NO Attorney for the Government may threaten to seek it, solely for the purpose of obtaining a more desirable negotiating position. Id 9-10.120.

This is based on, generally, withdrawal, "like in Petitioner SCOTT'S case," will only be granted, if there are material changes in the fact[s] and circumstance[s] of the case which would have resulted in a decision at the time of the initial determination. Id 9-10.120 to 9-10.160.

Notably, as well, the egregiously promise in ¶ 11 of the Petitioner's binding written plea agreement, which states, "that it constitutes the complete plea agreement between the United States, the Defendant and the Defendant's counsel. See Exhibit - B.

The promises in ¶ 1, 4, and 11 of Petitioner LEROY SCOTT'S

plea agreement, " ... must NOT have been induced by promise[s] or threat[s], which deprive it of the character of a voluntary act, Lassiter, 423 F2d at 900.

The truth of Petitioner SCOTT's plea agreement, went to the heart of the prosecution's case, unfulfillable promise[s] were made in his plea agreement. This may have induced a guilty plea that would have NOT have been forthcoming if it was NOT for the Prosecution's egregiously impermissible conduct. See United States v Hammond, 528 F2d 15 (1975).

Where the Supreme Court in Brady, states that the Defendant's plea is involuntary when the misrepresentation for which the Defendant based his agreement on, could not NOT be fulfilled.

"It is well established that the interpretation of plea agreement[s] is 'rooted' in contract law, and that each party should receive the benefit of its bargain." See United States v Dawson, 587 F3d 640 (4th Cir 2009).

Here, Petitioner SCOTT clearly did NOT receive the benefit of his bargain, as he was NEVER exposed to the Death Penalty. The decision whether to plead guilty or to go to trial, involves assessing the respective consequences of a conviction after trial and a conviction based on a plea. See Lee v United States, 137 SCt 1958, 1966 , 198 LEd 2d 476 (2017).

When those consequences are, from the Defendant's perspective, similarly dire, even the smallest chance of success at trial may look attractive. Id.

When [Petitioner SCOTT] claims that [the Government egregiously plea agreement] was the basis for his decision to either plead guilty or go to trial, the 'focus' must be on the Defendant's decision - making. Id at 1966-7.

Petitioner SCOTT submits, but for the egregiously impermissible conduct in the plea agreement and for being 'misled' during the Rule 11 proceedings, that the Government was still seeking the Death Penalty, up until the time he entered his guilty plea.

Petitioner SCOTT would NOT have plead guilty and would've insisted on going to trial. Id Fisher at 467 and Ferrara, 456 F3d at 294. Whether SCOTT plead guilty or was convicted after trial, he had something to 'gain,' and nothing to 'lose,' by going to trial. Such a choice is rational, Lee at 1969, and the Court cannot conclude that a reasonable defendant in MR SCOTT's [Petitioner] shoes, would have acted differently.

IV. THE COURT OF APPEAL ERRED IN AFFIRMING SCOTT'S CONVICTION ON SECOND-ATTORNEY DURING RULE 11PROCESS WAS EQUIVALENT TO CONSTRUCTIVE DENIAL OF THE RIGHT TO COUNSEL.

Also exceptional circumstances exist where Petitioner LEROY SCOTT ask[s] this Court to answer the sole question of whether MR SCOTT's second attorney's non-appearance during plea hearing was equivalent to the Constructive DENIAL of the right to counsel in violation of the United States Constitution Sixth Amendment, when the application of 18 USC § 3005, entitles Petitioner

the assistance of two [2] attorney's upon indictment, where the Petitioner, LEROY SCOTT was charged in federal court for Capital Crime[s] under 18 USC § 924(c) § 924(;;).

The lower court's decision **DENYING** Habeas Relief, stating that Petitioner's SCOTT's second attorney's non-appearance during plea hearing **DID NOT** result in prejudice is constrary to this Court's precedent in United States v Cronic, 466 U.S. 648 (1984).

The circumstance(s) surrounding Petitioner SCOTT's case amount[s] to the 'Constructive Denial' of the right to the assistance of [2] two attorney's under § 3005. Also, the Court's decision is contrary to Circuit Court precedent, in United States v Watson, 496 F2d 1125, 1130 (4th Cir 1973) and United States v Boone, 245 F3d 352, 358 (4th Cir 2001), which established that the application of 18 USC § 3005 creates a[n] absolute right to [2] two attorney's in case[s] where the Death Penalty may be imposed, even where the Government **DOES NOT**, in fact seek the Death Penalty.

The Fourth Circuit's interpretation of the provision in § 3005, applies upon indictment, for a Capital Crime. Therefore, this Court should answer whether the [2] two attorneys provision, § 3005, required the appearance of a second attorney in Petitioner SCOTT's case, during a critical stage of the proceeding, namely, the plea process.

This Court should settle the exceptionally important ques-

tion of whether Petitioner's second attorney's non-appearance during plea hearing stage[s], was equivalent to the 'Constructive Denial,' of the right of counsel, in violation of the United States Constitution Sixth Amendment, when the application of 18 USC § 3005 'entitles' Petitioner, the assistance of [2] two attorney's upon indictment, where the Petitioner, LEROY SCOTT, JR., was charged with a Capital Crime.

This Court's precedent in United States v Cronic, 466 U.S. 648, 654 (1984), stated: 'a[n] 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 [other rights] of the person on trial are secured.

Without counsel, the right to a trial itself would be 'of little avail.' as this Court recognized repeatedly. "Of **ALL** the rights that a[n] accused person has, the right to be represented by counsel, is by far the most persuasive for it grants his ability to assert any other rights he may have." Id at 466 U.S. 655.

The circumstances surrounding Petitioner SCOTT's case, was equivalent to the 'Constructive Denial' of the Right to Counsel in violation, of the United States Constitution Sixth Amendment, and this Court's precedent in Cronic. Id.

The lower court's decision denying Habeas Relief, stating:

"SCOTT's second attorney's non-appearance during plea hearing did NOT result in prejudice," is contrary to the Fourth Circuit Court of Appeals precedent in United States v Watson, 496 F2d 1125, 1130 (4th Cir 1973); United States v Boone, and the application of 18 USC § 3005, which creates a[n] absolute right to [2] two attorneys in case[s] where the Death Penalty may be imposed, even when the Government DOES NOT, in fact, seek the Death Penalty.

Petitioner SCOTT asserts that Congress first created a right to [2] two attorney's in a Capital Case, in 1790. See 1 Stat. 118 - 119; see also Watson, 496 F2d § 1130 (Murray, J. dissenting)(noting history of passage of two-attorney requirements).

Congress codified the [2] two attorney requirement for Capital Case[s] in § 3005 in 1948. See 62 Stat. 814, prior to 1994, 18 USC § 3005 provide[d], "whoever is indicted for a ... Capital Crime, shall be allowed to make his full defense by Counsel learned in the law," and upon the Defendant's request, the District Court shall "assign to him such counsel, NOT exceeding [2] tow, as he may desire.." 18 USC § 3005 (1986).

In 1994, Congress amended § 3005, contemporaneously, with the passage of the Federal Death Penalty Act of 1994, 18 USC §§ 3591 - 3598 (108 Stat. 1959 - 1968) Section 3005 currently provides in pertinent part:

'whoever is indicted for treason or other Capital Crime, shall be allowed to make his full defense by Counsel; and the Court before which the Defendant is to be tried, or a Judge thereof, shall promptly, upon the Defendant's request assign [2] such counsel, of whom at least 1 shall be learned in the law applicable to Capital Case[s].

18 USC § 3005 (108 Stat. 1982)

Petitioner SCOTT asserts that 18 USC § 3005 creates a[n] absolute right to [2] two attorneys, in case[s] where the Death Penalty may be imposed; the interpretation of § 3005 applies upon indictment and the second attorney's appearance is a requirement, during every stage of the proceedings.

Petitioner SCOTT asserts that 18 USC § 3005, creates a[n] absolute right to [2] two attorney's in cases where the Death may be imposed, even when the Government **DOES NOT**, in fact, seek the Death Penalty.

The lower court, in contrast, denyin Habeas Relief, stated that Petitioner SCOTT, did NOT have a right to second attorney during the plea hearing, which is equivalent to Petitioner's trial, to make adequately informed choices.

The 1994 Amendment added the phrase, 'Applicable to Capital Case[s],' to the "learned in the law, " Congress' intent was to provide additional counsel in which on counsel for the Petitioner's defense, shall be "learned in the law" of Capital Case[s]. The Affidavit submitted during the 28 USC § 2255 proceedings, in this case at bar, demonstrates that defense



counsel, JAMES O BROCCOLETTI, does NOT have any experience in Capital Law, which such circumstance[s] amounts to a denial of 'Constructive Right' to Counsel, during a critical stage of the proceedings.

It should be clearly noted, that the Petitioner, LEROY SCOTT JR., DID NOT have the assistance of a second attorney, during the plea hearing process, as required under § 3005.

Petitioner SCOTT was indicted under 18 USC §§ 924(c), 924 (;) which provides that the use of a firearm, resulting in death is subjected to IMPRISONMENT for ANY term of years, or to the Death Penalty, or to LIFE imprisonment." 18 USC § 924(;) ... because the maximum punishment available by statute is death, § 924(;) is, by definition, a Capital Crime.

Thus, § 3005 applied to Petitioner LEROY SCOTT, JR., in this case at bar, requiring the appearance of second attorney during plea process.

The dispute surrounds the triggering event for application of § 3005 -- in ALL case[s] where the death penalty could be imposed, because the enabling statute defines it as a Capital Crime, or only in those case[s] where the Death Penalty is actually sought, by the Government.

To determine the 'scope' of a statute, interpretation begins with it's plain text. See United States v Wells, 519 U.S. 482, 483 (1997)(stating that the "first criterion in the interpretative hierarchy, is a natural reading of the full text)."

In this case, the current language of § 3005 is clear -- the requirement of [2] two attorneys is 'triggered' upon indictment. The statute begins with the 'phrase' "whoever is indicted ... for Capital Crime ..." 18 USC § 3005.

This language provides the statutory 'trigger' for the section, and the text is clear that the statute becomes applicable upon indictment for a Capital Crime, and NOT upon the later decision by the Government to seek or NOT to seek the Death Penalty.

As discussed above, § 924(;) qualifies as a Capital Crime because the Death Penalty is the maximum sentence that could be imposed on the Petitioner, LEROY SCOTT, JR.,. If Congress wished to limit the [2] two attorney requirement to case[s] in which the Death Penalty is actually sought, it could have easily done so. See United States v Hood, 343 U.S. 148, 151 (1962)("we should NOT read such laws so as to put in what is NOT readily found here)."

Given the exceptional circumstance[s] of the Petitioner LEROY SCOTT JR.'s, case at bar, Certiorari is warranted to resolve the 'sole question,' of whether Petitioner SCOTT's second attorney's, non-appearance during the plea process, was equivalent to the 'Constructive Denial' of the right to counsel, in violation of the United States Constitution Sixth Amendment.

When the application of 18 USC § 3005 entitled Petitioner

SCOTT to the assistance of [2] two attorney's upon indictment, including one attorney "learned in law applicable to Capital Case[s]" where Petitioner LEROY SCOTT, JR., was charged with a Capital Crime.

The denial of a second-attorney during a 'critical stage' of the proceeding[s] as required by § 3005.

Thus, requires **REVERSAL**.

#### CONCLUSION

PETITIONER, LEROY SCOTT, JR., has been deprived of basic fundamental rights, guaranteed by the Fifth and Sixth Amendment[s] of the United States Consitution and to seek **RELIEF** in this Court, to restore those rights.

Based on the argument[s] and authorities presented herein, Petitioner's guilty plea was sustained in violation of Due Process and NOT voluntarily or intelligently entered due to the fact, he DID NOT understand the consequences of his plea.

Petitioner was deprived of his right to effective assistance of counsel, in the District Court and Appellate Court.

This Petition should also be **GRANTED** on the authority of Buck and Slack.

Petitioner, LEROY SCOTT JR., PRAYS this Honorable Court will [i]ssue a Writ of Certiorari and **REVERSE** the Judgment of the Fourth Circuit Court of Appeals<sup>2</sup>.

The Petitioner for a Writ of Certiorari should be **GRANTED**.

Respectfully submitted on this 19th day of February 2019.

/s/ Leroy Scott  
LEROY SCOTT JR

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<sup>2</sup>If this Court elects **NOT** to address these [i]ssues presented in this petition at this time, it is requested that the Writ [i]ssue and the matter be **REMANDED** to the Fourth Circuit Court of Appeals for **RECONSIDERATION** in light of this Court's opinion in Strickland, Hill, Missouri, Buck and Slack, all Supra.