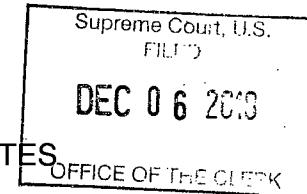


18-8952

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



BORIS C. MURPHY — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

BORIS C. MURPHY

(Your Name)

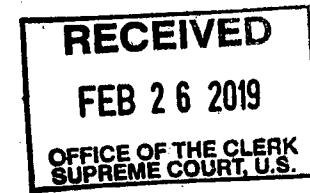
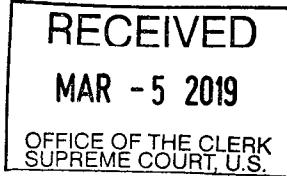
FEDERAL CORRECTIONAL INSTITUTION McDOWELL

(Address)

P.O. BOX 1009. WELCH WEST VIRGINIA, 24801

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Did the Fourth Circuit review the District Courts error in denying petitioners 28 U.S.C. 2255 claim de novo that was based on conflict of interest and deficient performance in reference to counsels direct involvement in seeking State Death Penalty and failure to for direct appeal.

Was it a violation of U.S. Constitution 5th & 6th Amendments, where district court's abuse of discretion prejudice petitioner by not admonishing petitioner of appellate rights in violation of due process and 6th Amendment trial rights, with counselor records coersion resulted in the plea being accepted unknowingly, involuntarily, and unintelligently.

K-C

LIST OF PARTIES

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

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

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STATUTES AND RULES

OTHER

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 B 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.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

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

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

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

A-C

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 2-11-2010.

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

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

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

The petitioner endeavours with historical occurrences of the attorney of record DOUGLAS CORKHILL representation fell far below the prevailing of which constituted deficient performance where the counsel of record (hereinafter CORKHILL). CORKHILL demonstrated conflict of interests and deficient performance with the listing of such set out as follows;

On October 21 1998 Petitioner Murphy was sentenced to life plus 300 months. Petitioner Murphy (hereinafter Murphy) was represented by attorney Douglas Corkhill. Corkhill led Murphy to believe that he would be sentenced to 25 years.

The UNITED STATES DISTRICT JUDGE sentenced Murphy to life plus 300 months. When Murphy inquired as to the reasoning of the excessive sentencing, the attorney responded that he would come to the back and communicate with Murphy. Corkhill did not come and speak to the petitioner Murphy. This was the initial conflict of interests where the counsel of record actions seemingly minute was not by the ramifications and effect of the excessive sentencing. see, UNITED STATES V MIGLIACCIO 34 F3d 1517, 1526(10 CIR. 1994) (DEFENSE COUNSEL'S PERFORMANCE IS ADVERSELY BY AN ACTUAL CONFLICT OF INTEREST IF A SPECIFIC AND SEEMINGLY VALID OR GENUINE ALTERNATIVE STRATEGY WAS AVAILABLE TO DEFENSE COUNSEL, BUT WAS INHERENTLY IN CONFLICT WITH HIS DUTIES TO OTHERS OR TO HIS OWN PERSONAL INTERESTS")

All attempts to contact Corkhill was futile resulting in Murphy contacting the State bar association, upon which they instructed Corkhill to respond to the letters and communication made by Murphy. The date of which was NOVEMBER 22, 2002. Murphy had made numerous attempts to contact and call corkhill from as far back as APRIL 16 2002.

Petitioner Murphy would like to bring to this Court's attention how District Court Judge Britt constant denial "without an order" made understandingly the law difficult to capture for challenge, and respond too.

Around January 2018 Petitioner Murphy filed a motion for reconsideration from the District Court Judge 2005 "stamped" hand signature upon petitioner's original drafted motion. The denial was never known to (me) petitioner until Oct. 2017. During the month of Oct. 2017 (I) Petitioner started paying for certain motion dealing with my case.

Petitioner Murphy would like to make known to this Honorable Court and Justice's, that for the last past 20 years the things that transpired throughout my legal proceeding is totally shocking. Every piece of legal document that I was entitled to during pre-trial stages I never received. For example: Petitioner's Indictment, Motion of Discovery (1,000 pgs. total) and Bill of Particular.

I, Boris Murphy do not prefer to take up to much of this Honorable Court's time dealing with the contesting of my timelines. Acting in pro-se (I) petitioner fully agree that I'm time-barred, but through the exercise of Due Diligence and the showing of cause will relay that an evidentiary hearing is needed and a Certificate of Appealability is warranted. Petitioner Murphy only disagrees with the District Court for not analyzing the facts which caused him to be out of time, and the Court's refusal to hold an evidentiary hearing.

* Summary of the Case *

Aug. 1997 petitioner was arrested and appointed counsel, Douglas Corkhill (private practice) by the District Court. Petitioner's case was joined with (3) other co-defendants whom were all related. While awaiting trial, petitioner Murphy was prescribed an anti-depressant medication called Zoloft. While awaiting trial, known and unknown of the charges that I faced by grand jury indictment, Atty. Corkhill never went over the charges with petitioner nor gave him copies of the indictment or discovery. 4/11/2000 (payment of indictment).

July 1998, petitioner Murphy was asked by Atty. Corkhill his decision for the A.U.S.A. (prosecutor) trial or plea. I instantly said trial. Atty. Corkhill told petitioner that he loves trying cases, but this case we cannot win. Atty. Corkhill gave me time to make a clean decision. The next following day (Friday) petitioner had his sister Mrs. Jasina Battle call attorney Corkhill and find the location to send her brother's clothes for trial. That next week (Monday) morning Atty. Corkhill was back at the jail screaming asking me *What are you doing,* telling me we can't win. Then saying, "Willie is going to tell on you, Antonio is going to tell on you and T.J. (Thomas Jermaine) is going to tell on you." I'm looking at attorney Corkhill puzzled wondering what made him say that. Atty. Corkhill then tells petitioner if he went to trial he'll get a Life Sentence, but if petitioner took the govt.'s plea offer, petitioner would likely get 25 yrs. Petitioner Murphy states to Attorney Corkhill that 25 yrs is a

life sentence and that he'll be better off going to trial.

Attorney Corkhill then replied by saying *Boris you're 26 yrs old, you'll be around the age of fifty when you get out, I want you to be able to play with your grandkids one day.* That statement there by Atty. Corkhill was what made me sign that plea which at that moment was (a single sheet of paper). I, petitioner Murphy, truthfully admit that (I) never seen or read this plea package that I purchased and possess today.

Dec. 21, 1998, (I) Petitioner Murphy was sentenced to Life plus 25 yrs on a plea bargain. After the Judge sentenced me, I asked Atty. Corkhill what happened, and Attorney said he'll be back to the holding tank to talk to me. Attorney Corkhill never showed-up. The next following day petitioner Murphy called Mr. Corkwell and asked him what happened. Atty. Corkhill stipulated that the Judge sentenced me for the Murder. Atty. Corkhill and I talked about appealing my case, he also reminded me that an appeal can take 2 to 3 years for any results.

Nov. 2002, petitioner Murphy reached out to the *North Carolina State Bar* in reference to Mr. Corkhill not answering petitioner's call nor responding to petitioner's letters concerning the outcome of his appeal. The State Bar had attorney Corkhill respond to petitioner's complaint. Mr. Corkhill responded *you plead guilty both federal and state (1), there was nothing to

(1) Petitioner Murphy was indicted by the state grand jury and also represented by attorney Corkhill in a one-day setting (Dec. 23, 1998)

appeal.* With death of his father, Oct 1st 2002, and denial from that moment, petitioner was lost and felt betrayed because this was his only hope. This same Attorney, petitioner allowed to deceive him into signing a plea for a life sentence, when petitioner stressed the urge of going to trial. Now since the N.C. State Bar opened the communication, petitioner Murphy continued to write/draft letters to Atty. Corkhill, stressing the fact how he wanted trial and how attorney mislead him. Petitioner pleaded with (his) attorney Corkhill to file a motion with the Court so he can have an opportunity at a new trial, see: (Exhibit of letters in petitioner's §2255 motion).

May 2003, petitioner had just found out through the 4th Cir. Court of Appeals that no appeal was on file. Petitioner Murphy then reached out to District Court by motion, in reference of obtaining copies of his plea and sentencing transcript, in order to help file his §2255 motion. Petitioner was denied by Order (6/20 /2003) for those copies that attorney Corkhill insisted on me retrieving from the District Court. In that Order of Denial Judge Britt made petitioner aware of by stipulating this: As a final matter, the Courts point defendant's attention to the fact that his plea agreement, he waived all rights to appeal and to contest his conviction or sentence pursuant to 28 U.S.C. §2255, except his "rights to appeal based upon grounds of ineffective assistance of counsel and prosecutorial misconduct not known to the defendant at the time of the defendant's guilty plea." Petitioner Murphy would like to point out to this Honorable Court, not once did the District Judge point out to him a

timetable of filing his appeal based on newly discovered facts,
28 U.S.C. §2255(f)(4).

Denial of Transcript 6/20/2003

After the District Court denied petitioner Murphy of his transcript, petitioner began taking a Legal Research Class and also purchased (2) N.C. Federal and State Law books from "Starlight Inc.," out of St. Petersburg, Florida (See: Response to Judge's Order) stipulating the same.

* Response to Judge's Order to Show Cause *

On Oct. 1st 2003 petitioner Murphy entered Special Housing Unit and was released on Nov. 10th 2003. On Oct. 2nd 2003 petitioner's property was reviewed with him in the presence of Officer Jessmer (Property Officer for S.H.U. inmates) who was working at that time. Petitioner stipulated to Officer Jessmer that his legal papers and legal books was missing. C.O. Jessmer made note of this on potitioner's property form, in which petitioner later made as an Exhibit in his §2255 motion as evidential facts.

On 10/07/2003, petitioner was met by U.D.C. (Unit Disciplinary Committee) which he stipulated to his Unit Manager the loss of his legal material. As evidential facts petitioner Murphy also showed verification of "Counselor Dole's" signature through a BP-5148.055(inmate request form to staff) confirming the ups and

downs that the petitioner went through to find his legal material with Unit Manager Mr. Roy, (See: Exhibit §2255).

28 U.S.C. §2255 Motion Submitted

On Oct. 2004, petitioner finally submitted his 2255 motion with the help of another inmate legal counseling (J. Carter). Petitioner still admits today(2018) that this was a well legalized motion drafted up, truthfully. Petitioner's Ineffective Assistance of Counsel claim was established and backed up with helpful known and unknown case law.

* Judge's Order for Petitioner to Show Cause *

On Dec. 16th 2004, Judge Britt ordered petitioner Murphy an opportunity to show that his petition is timely or that the circumstances warrant equitable tolling (See: Petitioner's Response to Show Cause).

On March 1st 2005, response to the Court's order Dec. 16th 2004 order dismissed as untimely. This order by Judge Britt stipulated that in petitioner's response, petitioner attempts to explain his circumstances from the time period of Oct. 2003 to April 2004. The very next paragraph the Judge stipulated "**without deciding**" whether such circumstances would justify equitable tolling of §2255's one-year limitation period, the Court found the Plaintiff had ample time to file the petition from May 8th 2003.

Petitioner finds Judge Britt's statement to be without reason and contrary to the fact to show cause, an order given to the petitioner for opportunity. But instead **without deciding**, the Judge denies it.

*** New Discovered Evidence ***

On Oct. 2017, twelve plus years later, petitioner Murphy wrote the District Court Clerk and inquired about obtaining certain motions in his criminal court docket. Instruction was given along with the amount needed to retreive case file from the Federal Reserve out of Atlanta GA. Petitioner then went ahead and sent the Clerk Office \$100.00. Petitioner have always been curious of what actually happened in his case and why attorney Corkhill didn't want to take his case to trial (See: page 32 of **Supplimental Brief Exhibit at 4th Cir. Court of Appeals**). Counsel for petitioner failed to file for discovery which consisted of 1,000 pages. Counsel knew that petitioner Murphy faced at the **"bare minimum" Life plus 25 yrs. based off a Guilty Plea** (See: **Docket #38**) with attorney Corkhill's signature. Atty. Corkhill let lead counsel for petitioner's co-defendant do all the work as he just signed off when asked and needed.

On numerous occassions the gov't. filed motions without petitioner's attorney's consent in agreement with petitioner's co-defendant's attorneys. Petitioner's attorney failed to ask for investigative fee when petitioner's co-defendant's counsel was awarded \$3,000.00 in total. Also, a motion for continuance

was filed (See: Docket #38) by undersigned Atty. Boyce within agreement attorney Corkhill for petitioner and the other attorneys for co-defendants. This motion asking Judge Britt to continue petitioner Murphy's case/trial because the (state district attorney) indicated he will seek the death penalty for each defendant. Judge Britt took 5 months to give an order and deny Attorney's motion for continuance.

Around Nov. 1997, Atty. Corkhill along with other Atty.'s (after only being in federal custody for 3 months) reached out to petitioner Murphy's (State Clerk of Beaufort County) requesting to be the defendant's attorney for representation whenever petitioner gets indicted by the state grand jury for the Death Penalty. (See: App. ()).

On Nov. 2017, petitioner writes Judge Britt and sent him a copy of the memo, along with a personal question, asking him about his knowledge of the memo drafted to Mr. Thomas Payne (State Deputy Clerk) by petitioner's attorney and others. Concerning the representation of petitioner for the death penalty whenever the grand jury decides to indict petitioner. Petitioner also let it be known that for 13 months he was unaware of such pending charges.

On Jan 2018, petitioner Murphy then filed a motion for re-consideration to Judge Britt regarding the 2005 denial in hope he'll view things different.

On April 2018, petitioner received a memo via text denying petitioner's motion for re-consideration.

On May 2018, petitioner filed his Informal Brief with 4th Cir. Court of Appeals without knowledge of showing cause for the

District Court denial, costly mistake.

On Sept. 11th 2018, 4th Cir. Court of Appeals denied petitioner's motion based off of Judge Britt's ruling in 2005, failure to show cause (Sept. 11th 2018).

*** Issues Presented for Review ***
and Arguments

- 1) Did the 4th Cir. Court of Appeals review how the District Court erred in denying petitioner's §2255 claim based on counsel's ineffective assistance, this claim is valid (?)

"Supporting Facts"

When considering the denial of a 28 U.S.C. §2255 motion to vacate, the government is to review the legal conclusion DE NOVO. See (U.S. v. Nicholson, 475 F.3d 241, 248(4th Cir. 200) Id. at 244. Petitioner ask this court to review for abuse of discretion for not considering to grant an evidentiary hearing to resolve an issue presented in a §2255 motion. See (Gordon v. Braxton, 780 F.3d 196, 1204(4th Cir. 2015)).

- 2) Did the 4th Cir. Court of Appeal's failure to recognize the District Court's abuse of it's discretion by clearly not addressing petitioner's 5th and 6th Amendment claims of Due Process violation and Ineffective Assistance of Counsel claim which commits error law(?) By petitioner expressly requesting counsel to file Notice of Appeal clearly shows the lack of

adequate legal advice to take a plea for *Life imprisonment* without completely explaining the pro's and cons of going to trial, and afterwards coercing petitioner into the plea negotiation upon conviction tells petitioner there was nothing to appeal.

3) Why didn't the 4th Cir. recognize the appropriateness of a Certificate of Appealability, for a claim that violated the rights of Due Process and Effective Counsel.

"Supporting Facts"

Despite petitioner's asserting his Constitutional Rights, petitioner was deprived of life and liberty without any consideration! Any reasonable jurist would have found it debatable whether such claim stated a valid claim for denial of a Constitutional Right, and jurist of reason would have found the question of cognizability debatable in the circumstances presented here.

4) Counsel was Constitutionally Ineffective for failing to appeal petitioner's sentence, and that an evidentiary hearing is necessary to determine whether appeal was requested.

"Supporting Facts"

Due Process warrants that a hearing be held with actual proof be introduced by the government that the relevant facts/contents disqualifies petitioner from receiving a Certificate of

appealability. Petitioner's motion for re-consideration was denied without full disclosure or reason stating denial or why evidentiary was needed.

Relief Requested

In consideration of the foregoing, petitioner Murphy, urges this Court (Supreme Court) grant this appeal in regards to a C.O.A. and all other relief that's necessary, especially an evidentiary hearing coupled with the facts that relief is warranted.

* Memorandum in Support Motion *
filed on behalf of Boris Murphy
Case File # 4:97-CR-000252-BR

Pursuant to the Court's Order of March 8, 2018 and Sept. 11th 2018, petitioner respectfully submits this motion of memorandum of facts and law ***TO SHOW CAUSE*** for a Certificate of Appealability regaerding the 28 U.S.C. §2255 motion (D.E. #167) in order to clearly establish the validity of petitioner's motion and to ***show cause*** why petitioner's 28 U.S.C. §2255 is not time barred. A jurist of reason would and have found it debatable whether such claim states a valid claim for denial of constitutional right. Rule 59(e) permits a court to alter or amend a judgement. The decision whether to alter or amend a judgement pursuant to Rule 59(e)(2) states that further action after a non-jury trial. After a non-jury trial the court may on motion amend finding for opening of new judgement.

In light of (Jones v. U.S., 143 L.Ed.2d 311, 526 U.S. 277) it is necessary to resolve all ambiguities in federal criminal states in such fashion as to avoid violation of the priciple that is unconstitutional. Petitioner Murphy asserts that right, a right that was denied by the District Court, 4th Cir. Court of Appeals. The Solicitor General has agreed to summary grants of certiorari in at least three cases (Story and Snipes) 6th Cir. 2014. See: (Ian Puraud v. United States, No. 13-6435) to remand the cases back to the appellate court for further reviewing in light of the position set forth in the Solicitor General's

Response. In each of these cases, responses, the government has asked that the cases be remanded to consider the waiver of timeliness challenges.

The assessment of fact(s) that alter the congressional doctrine of Judicial Procedure to deprive a "living man from life and liberty without sufficient evidentiary hearing to determine the weightiness of the facts that provide relief that is warranted." Due Process warrants that (a) hearing be held with actual proof introduced by the government that the relevant content disqualifies petitioner for receiving a Certificate of Appealability. Petitioner Murphy's motion for a (C.O.A.) was erroneously denied without full disclosure or any reason for the denial of petitioner securing (Certificate of Appealability) or evidentiary hearing.

Strickland v. Washington, 466 U.S. 668, provides the proper framework for evaluating a claim that counsel was constitutionally ineffective for failing to file a notice of appeal. A defendant in a criminal case therefore has a Sixth Amendment Right to effective assistance of counsel on direct-appeal. See: Evitts v. Lucey, 469 U.S. 387, 406, 83 L.Ed.2d 821, 105 S.Ct. 830 (1985); Douglas v. California, 372 U.S. 353, 83 S.Ct. 814 (1963)(an accused is entitled to assistance of counsel in an appeal as a matter of right): Bell v. Jarvis, 236 F.3d 149, 164(4th Cir. 2000).

In the instant case subjudice, petitioner Murphy's counsel never crossed the requested avenue of filing a notice of appeal, although petitioner Murphy directly and specifically instructed counsel to do so.

*At that time when petitioner was within appellate proper

timeframe,* the Supreme Court had recently touched basis with claims such as the instant claim asserted by petitioner Murphy. Although these claims have been encountered by the Supreme Court, none have reached the caliber of prejudice evidenced in this case, that petitioner Murphy seeks to get vacated.

In Roe v. Lucio Flore-Ortega, No. 98-1441, decided February 23, 2000 the United States Supreme Court allowed Justice O'Connor, J. to deliver the opinion, with all other Justices concurring in the majority. The Court specifically noted:

As we have previously noted, "(no) particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel." Id. at 688-689. Rather, courts must "judge the unreasonableness of counsel's conduct on the facts of the particular case, viewed as of the time of counsel's conduct," Id. at 690...We have long held that a lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professional unreasonable." See Rodriguez v. United States, 395 U.S. 327 (1969); cf. Figuero v. United States, 526 U.S. 23, 28 (1999) ("When counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have had merit").

The Court felt this was a necessary ruling because a defendant who instructs counsel to initiate an appeal reasonably relies upon counsel to file the necessary notice. For this very important reason it is this appellant's position that counsel must definately should have filed the notice of appeal upon petitioner's direct

and specific instruction. Even without instructions from the petitioner, a plea resulting in a Life Sentence should always be followed by an appeal challenging the voluntariness of the plea when the offense charged is not punishable by Death. This Life sentence was imposed upon a guilty plea of the petitioner where counsel advised petitioner such a plea would yield a 25 year sentence. It is feasible to now assert, "there is nothing to appeal"(?) Petitioner Murphy asserts it is not! This Honorable Court will also agree that such is not feasible as well (today). An appeal is warranted.

Petitioner Murphy's plea was involuntary and unintelligent made on the sole condition of counsel's affirmative misadvice. It is fair to contend that counsel did not file the notice of appeal because the ineffective assistance of counsel claim would only "highlight" counsel's deficient performance during plea-forumed negotiations, however, an attorney cannot "sacrifice the evident prejudice of a client to spare such attorney's good standing with the Bar Association."

The Blackstonian Curriculum specializes in the product of responsibility for attorneys. Affirmative misadvice of counsel should be brought to the attention of the courts when counsel is solely responsible for the affirmative misadvice.

In Cronic, penson, and Robbins, the United States Supreme Court held that the complete denial of counsel during a critical stage of a judicial proceeding mandates a presumption of prejudice because the "adversary process itself" has been rendered "presumably unreliable." Cronic, supra, at 659. Id. Cronic, 466

U.S. 648 (1984); Penson, 488 U.S. 75 (1988); and Robbins, 528 U.S.---(2000).

* Petitioner attempts to show cause,* regarding 28 U.S.C. §2255 timeliness claims. 28 U.S.C. §2255(f)(4) allows a prisoner the opportunity to file a §2255 motion within one year of the date on which the facts supporting the exercise of Due Diligence. Petitioner Murphy supported this claim based off of true facts that District Court Judge declined to review...Ledeza-Rodriguez, 423 F.3d at 836. An Appellate Court reviews the District Court's decision not to hold an evidentiary hearing for an abuse of discretion. That standard was misleading in petitioner's review of facts by the 4th Cir. Court of Appeals. To be entitled to invoke the ~~statute~~ of limitations contained in 28 U.S.C. §2255(f)(4), a petitioner must show existence of a new fact, while also demonstrating that he has acted with diligence to discover the new fact.

Petitioner Murphy demonstrated his newly discovered facts then (2004) and (2017) to the Appealant Court, showing many reasons for attorney Corkhill's failure to file direct-appeal based off his known ineffective assistance of counsel.

Based off of proof of record, petitioner Murphy pointed out to Appealant Court that the District Judge's bias or prejudice decision to withhold an order for five months so the state of North Carolina can indict petitioner for the Death penalty. The denial of petitioner's §2255 motion was done in less than 20 days (by order) by Judge Britt, the district court judge, without equitable tolling and evidentiary hearing.

* Equity Demands Review of Petitioner's Case *

In Holland v. Florida, 130 S.Ct. 2549, 2562(2010). the Supreme Court recognized that Equitable tolling survived the enactment of (A.E.D.P.A.). The decision whether to permit equitable tolling is not rigid inquiry. The flexibility inherent in equitable procedures enables courts to meet new situations that demand equitable intervention and to accord all relief necessary to correct particular injustices. See: Jones v. United States, 689 F.3d 621, 627(6th Cir. 2012). In Jones, the 6th Cir. noted how difficult it is for incarcerated inmates to follow rapidly changing Supreme Court cases and law, and found that the petitioner diligently once made aware of favorable laws and facts detrimental to the case, Id. at 628. Here the petitioner filed his motion within a year (with equitable tolling) of being made aware of counsel failing to file for notice of appeal...Solomon v. U.S., 467 F.3d 928, 933-35(6th Cir.)(Equitable tolling allowed if petitioner lacked notice and constructive knowledge of deadline and respondent prejudiced by delay.

Petitioner Murphy constantly asserts that lack of constructive knowledge for delay, that's why petitioner enrolled in a legal research class at *USP #1, Coleman Federal Penitentiary.* See: Certificate for Completion of Class. (Aug. 17, 2003).

U.S. v. Gabaldon, 522 F.3d 1121, 1126(10th Cir. 2008). (Equitable tolling permitted because complete confiscation of petitioner's legal material shortly prior to filing deadline is extraordinary circumstance. See: Petitioner's Response (District

court judge's order) to show cause motion. Complaint of missing legal material. Petitioner was diligent and did not sit on his rights, moreover, when considering equitable principles, this Honorable Court may consider that the petitioner does not seek to vacate the conviction itself. The government has not been harmed in any fashion by petitioner Murphy's "extraordinary circumstances" that prevented him from adequately and timely filing his 28 U.S.C. §2255 within the confines of the statute set forth. Petitioner however was harmed by his ignorance of legal developments and attorney's ineffectiveness. See: "Reluctance to Resentence": Courts, Congress and Collateral Review, Sarah French Russell, J.D. 91 N.C. L. Rev. 79. pgs. 141-158(2012)(arguing interest finality should not be paramount in remanding, correction cases.)

Through no fault of my own, petitioner's opportunity for such review did not arise until after the period inwhich to file a direct-appeal had lapsed. Petitioner Murphy shall not be punished by doing extra federal prison time which the law does not countenance for this fact by the government. Acknowledging that a defendant would likely be entitled to relief on direct-appeal but not on timely filed Habeas Corpus motion, simply due to the timing of the 4th Cir. Court of Appeals decisions, contributes to the conclusion that denial of review operates a complete miscarriage of justice.

The 4th Cir. Court of Appeals failed to recognize that they previously held that the futility of a petitioner's claim does not constitute a circumstance external of my control, in light of (Minter v. Beck, 230 F.3d 663-666(4th Cir. 2000)). However, the

decision in Minter preceeded the Supreme Court's decisions in (Holland v. Florida, 130 S.Ct. 2549, 2562(2010)). Without prejudice intent, petitioner Murphy enlightens on the fact that the 4th Cir. agrees that principles of equitable tolling are consistent with the (A.E.D.P.A.'s) basic purpose of eliminating delays without undermining basic Habeas Corpus principles and harmonizing the statute with prior law, under which a petitioner's timeliness was always determined under equitable principles. Petitioner Murphy determines that right more than so and by no faults of his own petitioner looks forward to the Supreme Court to uphold the 4th Cir. accountable.

Petitioner avers that his inability to adequately asses the means of proceeding forward in litigation due to deficient performance of counsel as well as legal advice pursuant to legal developments which is an extraordinary circumstance that warrants some flexibility on this court's (Highest Court in the Land) behalf in order to accord all the relief necessary to correct this particular injustice.

*** Conclusion ***

In consideration of the foregoing, petitioner Murphy urges this Honorable Court, the Supreme Court of the United States to grant Habeas Corpus relief to administer an evidentiary hearing to couple the facts of the records that concisely shows that Certificate of Appealability is warranted.

REASONS FOR GRANTING THE PETITION

The petitioner although be it so he is not an attorney the fundamental aspects of the aforementioned case stands at the threshold of review ,where the issues independent of the courts timeframes and procedural parameters must be adhered to, but where the court fully recognizes that the unconstitutional application of the representation of Corkhill illuminates the violation of the same procedural parameters in place to avoid the very same issues presented within the Certiorari of which now comes before this court. Where the simple failure to withdraw plea was deficient performance that falls below the prevailing norm. In light of the excessive sentencing of life plus 300 months, the failure to file notice of appeal, as of APRIL 2003,also verified within the courts order of the 28 U.S.C. 2255 motion of OCTOBER 1,2003. Both the abovemention issues constitutes deficient performance;see;UNITED STATES V ALVEREZ_TAUTIMEZ 160 F3d 573 (9th cir 1998) (COUNSEL FAILURE TO MOVE FOR WITHDRAWAL OF PLEA WAS INEFFECTIVE ASSISTANCE WHERE PLEA WAS NOT ACCEPTED UNTIL THE DAY OF SENTENCING.PLEA COULD HAVE BEEN WITHDRAWN WITHOUT A SHOWING OF A FAIR AND JUST REASON.) The coercion of CORKHILL caused Murphy to accept the plea agreement with the statement of you cant win and you are 26 and I want you be able to play with your grandkids. Corkhill's animated, loud and pushy style only furthered the threat that trial would result in.Corkhill closed with that if you go to trial then you will receive life. Ultimately coercing Murphy to plea to the very same sentence and 300 months. see;BOYKIN V ALABAMA 395 U.S. 238,242 89 S.CT

CONT : REASONS FOR GRANTING THE PETITION

1709 25 Led 2d 274 (1969) (The plea was entered involuntarily, and made without knowledge of the circumstances of sentencing.)

This violates the rules of criminal procedure (Rule 11(c)(1)(f) Where the mandatory minimum and the maximum of sentencing penalty is to be provided, including the effect of any special parole or supervised release. This admonishment must be verbally given by court prior to the acceptance of the plea.

This inaction of the court and the coercion of the attorney record constitutes the waiving of the tolling issue and mandates this court to vacate plea and /or grant evidentiary hearing in review of the totality of the surrounding ineffective assistance of counsel issues. see; STRICKLAND V WASHINGTON 466 U.S. 668 S.C.T. (1984).

(COERSION OF THE ACCEPTANCE OF PLEA AGREEMENT, DEFICIENT PERFORMANCE, FALLING BELOW THE PRVAILING NORM, AND CONFLICT OF INTEREST.)

On NOVEMBER 4th 1997 it was apparent that CORKHILL WAS inherently involved within the DEATH PENALTY process, it now well known that Corkhill was definately involved further illuminates the conflict of interest. see; STRICKLAND V WASHINGTON 466 U.S. 668 S.C.T (1984)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Boris Murphy

Date: 2/19/2019