No. _____

18-9067

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

SHARMA ROSS
_____ — PETITIONER
(Your Name)

vs.

CHRISTOPHER MILLER
_____ — RESPONDENT(S)

FILED
APR 18 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sharma Ross
(Your Name)

Wende Correctional Facility, Wende Rd, PO Box 1187
(Address)

Alden, NY 14004
(City, State, Zip Code)

NA
(Phone Number)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

QUESTIONS PRESENTED

WAS PETITIONER DENIED HIS DUE PROCESS RIGHTS AS ENUMERATED UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION, WHEN THE TRIAL COURT ADMITTED TWO STATEMENTS WHICH WERE ADMITTED AGAINST HIM AT TRIAL WHICH WERE INVOLUNTARILY OBTAINED?

This questioned should be answered Yes.

WAS PETITIONER DENIED HIS DUE PROCESS RIGHTS AS ENUMERATED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION, WHEN HE WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL?

This question should be answered Yes.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the coverpage.

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

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For Cases from federal courts:
The opinion of the United States court of appeals appears at Appendix A to the petition and is

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[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

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[X] is unpublished.

[ ] For Cases from state courts:
The opinion of the highest state court to review the merits appear 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[ ] is unpublished.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 intermediate appellate court appears at Appendix ____ to the petition and is

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[ ] is unpublished.

JURISDICTION

[X] For cases from federal courts:
The date on which the United States Court of Appeals decided my case was February 22, 2019
[X] 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 a writ of certiorari was granted to and including _____ (date) on _____ (date) in Appication No. A-_____.

The jurisdiction of this Court is involved 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 writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A-_____.

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

CONSTITUTIONAL PROVISIONS

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

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

Fourteenth Amendment of the United States Constitution:
"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The case before the Court stems from the untimely and unfortunate death of Jovan Davis on August 23, 2001. After a jury trial in this matter Petitioner was convicted of one count of second degree murder and one count of third degree criminal possession of a weapon.

On August 22, 2001 Petitioner was at the McKinley Projects at 731 East 161st Street in the Bronx visiting his girlfriend Shannon Bailey. At around midnight Petitioner was "horsing around" with a man named "Boobie" which turned into a fight with two others, "Shawn" and an unidentified individual, coming to the aid of Boobie. After the fight broke up Damon Nesmith, Tacarra Williams and Amanda Wright claim to have heard Petitioner state he would be back.

A few hours later, between 4:30am and 5am, Williams claimed to have seen Petitioner walking towards the building entrance, but never saw him enter the building. Nesmith claimed that while he, Boobie and Shawn were waiting for the elevator Davis came out of a 1st Floor apartment and that Petitioner allegedly entered the building, looked at all of them, lifted his shirt and showed then a gun. Nesmith, Boobie and Shawn then got on the elevator and allegedly heard gunshots on the way up. Williams and Wright also heard gunshots, went into the hallway, saw that Davis had been shot and called the police.

The facts, according to the People, show that no one ever witnessed the Petitioner talk to or shoot Davis. In fact, the only individuals the People produced who claimed Petitioner was in the building with a gun at the time Davis was killed was an

associate of two of the men who were fighting the Petitioner earlier that night.

The Petitioner's testimony largely mirrored the People's theory up to and including the fight. It is after this point that the Petitioner's testimony veered sharply away from the People's theory. The Petitioner testified that after the fight between he, Boobie, Shawn and another person, he went to his wife's apartment in Harlem. He and his wife had a rocky relationship so he had to knock on the door because he did not have a key; this was at about 1am. After his wife tended to his wounds Petitioner went to sleep and did not awake until 8am. The Petitioner's testimony was supported by his wife Lateisha, his brother-in-law Johnathan Kyte, and Ms. Simone Elley who is Mrs. Ross' cousin. Kyte and Elley testified that they were sleeping in the living room and would have awoken if Petitioner tried to leave. Kyte specifically testified that the dogs would have started to bark as they did anytime someone entered or left. Mrs. Ross testified that between 4:30am and 5am when she awake to feed her baby Petitioner was still sleeping.

The People produced an associate of the individuals Petitioner was recently in a fight with to alleged the Petitioner was in the building with a gun. Although the Petitioner brought forth three alibi witnesses who had no reason to testify on his behalf other than doing the right thing. The Petitioner and his wife had a contentious relationship and yet it was her family who provided his alibi.

On the early morning of August 25 Petitioner was arrested on an unrelated bench warrant and taken first to the 52nd

Precinct and then a few hours later to the 42nd Precinct. Petitioner was then brought to an interrogation room where he remained for approximately the next 15 hours. Petitioner was never brought before the court which issued the bench warrant without unecessary delay as required by N.Y. C.P.L. 120.90. Therefore, it is reasonable to believe that he was only detained in order to be questioned about the Davis murder.

Detective Raymond Byrne alleged in his testimony that he introduced himself to Petitioner at 11:30am, offered him coffee or cigarettes, and then left the room. He claimed that when he returned at between 12:30pm and 1pm Petitioner stated that he was willing to speak with him so Det. Byrne read him his Miranda rights which Petitioner signed. During the interrogation Det. Byrne alleges that he told the Petitioner that Mr. Davis had been killed and others placed him at the scene with a gun. Petitioner requested to speak with his wife and Det. Byrne said no. Petitioner then allegedly recounted the events of that night, would not write out a statement at Det. Byrne's request, but allowed Det. Byrne to write out a statement whic Petitioner read, made changes to and then signed at 11:05pm. Petitioner was then allowed to speak with his wife at the station. At approximately 12:46am Petitioner then provided a videotaped statement effectively repeating the written statement. Essentially, Petitioner stated that he returned to the McKinley Projects to pick up some money he had left at his girlfriends apartment between 4:30am and 5am. Upon entering the lobby he saw Davis who lifted his shirt and showed a gun. Petitioner lunged at Davis in order to protect himself when a struggle ensued during which the gun went off

multiple times without Petitioner intending it to.

Det. Byrne would have it believed that while the interrogation was a marathon, nearly 15 hours, he was able to elicit a voluntary statement from the Petitioner and a videotaped statement as well. Det. Byrne would have everyone believe he accomplished these tasks while never violating the Petitioner's constitutional rights. The Petitioner's testimony showed that a much different chain of events lead to the statements.

Petitioner testified that he was never given anything to eat or drink. When Petitioner asked to speak with someone from the Bronx Defenders Office, Det. Byrne refused his request for counsel and continued questioning him. Petitioner attempted to leave when Det. Byrne told him he was technically not under arrest, Det. Byrne's response was to assault Petitioner and other officers threw Petitioner over a chair. Later that evening Petitioner was shown his wife through a window of his interrogation room and told if he did not cooperate his wife would be charged and ACS would take his child. Det. Byrne then gave Petitioner a written statement and demanded he sign it. With no other choices available to him, Petitioner reluctantly signed the statement after making some changes, in order to save his wife and child. After being forced to sign the statement Petitioner was allowed to see his wife and child. At approximately 12:45am Petitioner was coerced to give a 45-minute long videotaped statement to an A.D.A wherein he restated his coerced signed statement.

Prior to trial a hearing was held to determine the admissibility of Petitioner's statements. The People called the arresting officer, Det. Curtin, and Det. Byrne who conducted the

majority of the interrogation. Det. Lange who was involved in a portion of the interrogation did not testify. Trial Counsel did not call any witnesses. The trial court denied suppression and credited the testimony elicited by the People. The trial court agreed that after Petitioner was arrested and brought to the 42nd Precinct he waived his Miranda rights and was interrogated for several hours. That initially Det. Byrne and Lange interrogated Petitioner, but Det. Lange left after Det. Byrne decided Lange's methods did not coincide with his. Regardless, Lange interrogated Petitioner later when Byrne was not there and Lange claimed Petitioner told him a member of the Bloods gang killed Davis. Byrne did not believe this claim of Petitioner and continued the interrogation. Petitioner eventually signed a written statement after making changes and ultimately gave a videotaped statement after being re-Mirandized. The trial court held that Petitioner did not request an attorney, was provided with food and drink and the length of the interrogation was not coercive.

Petitioner filed a direct appeal where his conviction was affirmed, People v. Ross , 99 A.D.3d 483 (1st Dept 2012), lv. denied 20 N.Y.3d 1014 (2013). The trial court denied Petitioner's C.P.L. 440 motion on June 16, 2011 and leave to appeal to the First Department was denied.

Petitioner filed a writ of habeas corpus on April 14, 2014, On June 14, 2014 Petitioner filed for relief under a writ of error coram nobis which was denied by the First Department on December 9, 2014. On January 11, 2015 Petitioner requested a stay in the District Court so that he could fully exhaust his coram nobis claims and then move to amend his habeas petition.

On March 17, 2015 Petitioner requested the District Court to consider those issues raised in his C.P.L. 440 motion. The N.Y.S. Court of Appeals denied leave to appeal his coram nobis on July 2, 2015. The District Court addressed two of the six claimes from the 440 motion, but none from the coram nobis petition.

The Magistrate Judge recommended the District Court deny the petition. After receiving additional time to do so Petitioner filed objections on May 16, 2016. On November 16, 2016 Petitioner filed a motion for leave to file additional objections which the District Court granted. On August 16, 2016 Petitioner filed a motion to stay the habeas proceeding to return to state court and exhaust any unexhausted claims. On November 29, 2016 Petitioner filed a motion for leave to file an amended request to stay which the District Court granted. On January 31, 2017 the Petitioner filed a letter response to Petitioner's amended objections. On February 24, 2017 Petitioner filed a response to that letter. On August 28, 2018 the District Court denied habeas relief, as well as, the motion to stay.

On October , 2018 Petitioner requested a Certificate of Appealability from the Second Circuit Court of Appeals which was denied on February 22, 2019.

REASONS FOR GRANTING THE WRIT

GROUND ONE: PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS AS ENUMERATED UNDER THE FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS OF THE U.S. CONSTITUTION, WHEN THE TRIAL COURT ADMITTED TWO STATEMENTS WHICH WERE ADMITTED AGAINST HIM AT TRIAL WHICH WERE INVOLUNTARILY OBTAINED.

This Court has long held that in order to be admissible in court a statement must be voluntarily obtained. See generally: Bram v. US, 168 U.S. 532 (1897) and Miranda v. Arizona, 384 U.S. 436 (1966). There are numerous reasons why the trial court should have suppressed the Petitioner's statements, but due directly to the failure of the police to electronically record both interrogations the statements were admitted and an innocent man has spent nearly 20 years in prison for a crime he did not commit.

A. The Petitioner's Arrest.

In order to fully explore the voluntariness of the Petitioner's statements we must go to the very beginning.

Petitioner was arrested on an unrelated bench warrant and taken to the 52nd Precinct, then brought to the 42nd Precinct and taken into an interrogation room. It is black letter law that upon arrest on a warrant an individual is to be brought before the judge who issued the warrant without undue delay. See generally: C.P.L. 120.90 and Federal Rules of Criminal Procedure, Rule 5, 18 U.S.C. While it can be assumed that the arresting officer, Det. Curtin knew of this statutory rule he intentionally chose to violate this rule and bring him to an entirely different Precinct to an interrogation room.

This was just the beginning of the misconduct of the police

committed in order to obtain a statement from the Petitioner. From the very first moment of contact the police broke the rules. This was the attitude the police presented to the Petitioner upon his arrest and him being brought to the interrogation room, "you are going to give us a statement and we are willing to break the rules to get it."

B. The Petitioner requested Counsel.

Once the Petitioner realized that he was being questioned about the Davis murder he requested to speak with the Bronx Defenders Office. Det. Byrne though said no and considering the Petitioner was in the middle of a police station surrounded by officers what could he do about it? Nothing. The police knew that the Petitioner at least had previous contact with the Bronx Defenders as he had the business card of Ms. Suzanne Jennifer Kronenfeld, Esq., in his pocket who worked with the Bronx Defenders. Ms. Kronenfeld even provided the Petitioner with an affidavit which was provided to the District Court wherein she stated she was willing to testify at a hearing that she told the Petitioner to contact her anytime he needed an attorney. Being questioned by detectives about involvement in a murder would certainly merit a conversation with Ms. Kronenfeld. See generally: Arizona v. Roberson, 486 U.S. 675 (1988).

C. Det. Lange does what he wants.

Det. Byrne specifically asked Det. Lange to leave the interrogation as their techniques were in conflict. Regardless, Det. Lange entered the interrogation room when Det. Byrne left and miraculously the Petitioner decided to say members of the

Bloods gang killed Davis. The Petitioner had not confessed or said he knew anything about the murder of Davis, yet after Det. Lange entered in violation of Det. Byrne's direction suddenly this new revelation about the Blood's gangmembers involvement.

This is simply another instance of the police willing to do whatever it took to get information and a statement from the Petitioner. What happened in that room? No one outside that room can ever really know which is a serious problem.

D. The Petitioner was assaulted by Officers and his family was threatened.

Coercion comes in many shapes and sizes, but in the case at bar the police stuck to the old and reliable ones. When the Petitioner attempted to leave after Det. Byrne told him he was not technically under arrest, the Petitioner was punched by Det. Byrne and then thrown over a chair by other officers. Later on the Petitioner was shown his wife and child in the police station and was told if he did not provide a statement his wife would be arrested and his child taken away by ACS. The Petitioner could not know if his family came voluntarily or had been brought to the station by force. What would any reasonable person believe happened? Considering the Petitioner asked to speak to his wife earlier and Det. Byrne refused to let him and that the police's attitude was to do whatever it took in order to get a confession, it is reasonable to believe the Petitioner thought his family was in danger. Any self-respecting parent who had already been assaulted by the police would bend to their will in order to

protect their family, wouldn't you? See generally: Arizona v. Fulminante, 499 U.S. 279 (1991).

E. The videotaped statement.

Simply because a 45-minute statement was obtained after nearly 15 hours of interrogation should not indicate to this Court that the Petitioner's statements were voluntarily given, especially considering the videotaped statement basically reiterated the written one. This Court has examined this "cat out of the bag" method and held that statements procured in that way are not voluntary, Missouri v. Seibert, 542 U.S. 600 (2004).

The Government will claim that the "cat out of the bag" method was not used since the Petitioner signed a Miranda waiver prior to the initial interrogation. This claim should fail. The first contact with the police led to misconduct and the misconduct just snowballed from there. There is no reason to believe that the first Miranda waiver was not the product of police misconduct as the rest of the 15 hours of nearly continual interrogation was.

F. Custodial Interrogations should be Electronically Recorded.

Nearly everyday in this Country multiple suppression motions are being drafted concerning purported statements for criminal defendants. For a variety of reasons counsel will request that the statements should be suppressed. In nearly every instance it will be a credibility issue for the judge to determine, between the credibility of a law enforcement official and a criminal defendant. This is a process which takes up precious court resources which could be better utilized.

Numerous state legislatures and courts have enacted rules which mandate the electronic recording of custodial interrogations. These rules vary from state to state and unfortunately some states do not require any electronic recording. See generally: Stephen v. State, 711 P.2d 1156 (Alaska 1985); Illinois Statute 5/103-2.1; Indiana State Court Rules, Rule 617; State v. Scales, 518 N.W.2d 587 (Minnesota 1994); New Jersey Rules of Court, Rule 3:17; New Mexico Statute 29-1-16; New York Criminal Proecure Law 60.45(3) (added 2017); Texas Code of Criminal Procedure 38.22; In re Jerrell C.J., 283 Wis.2d 145 (Wisconsin 2005).

This Court has established rules in the past which revolutionaized the criminal justice system before, Miranda, Brady, and Strickland just to name a few. It is time now that this Court should establish a rule that all custodial interrogations should be electronically recorded and that failure to do so should result in either their suppression or an instruction to the jury regarding their reliability.

Like the Court's decision in Miranda this rule would benefit the Government, the criminal defendant, the courts and society as a whole. It would help ensure that false claims of voluntariness or coercion were not made, as well as, save judicial resources by greatly limiting time spent determining suppression motion, it would also protect society from the few bad apples in the law enforcement community. Unfortunately, it would not resolve all issues. A lot of things can occur between the time a suspect is detained and when the custodial interrogation begins, although a rule mandating police worn body camera would go a long way to

resolving that issue.

Had electronic recording of custodial interrogations been mandated when the Petitioner was interrogated there is every likelihood that his statements would have been suppressed and he would not have been convicted.

G. Conclusion.

For all of the foregoing reasons, this Court should grant the relief requested herein, grant the Petitioner a writ and establish a rule mandating the electronic recording of custodial interrogation and the wearing of body cameras by all law enforcement officers while on duty.

GROUND TWO: PETITIONER WAS DENIED HIS DUE PROCESS RIGHTS AS ENUMERATED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS OF THE U.S. CONSTITUTION, WHEN HE WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL.

This Court has ruled consistently that criminal defendant's have the constitutional right to the effective assistance of counsel during the pre-trial, trial and sentencing phases, Strickland v. Washington, 466 U.S. 668 (1984), and during the first appeal as of right, Evitts v. Lucey, 469 U.S. 387 (1985). While a look at the totality of the circumstances shows that Petitioner was denied the effective assistance of counsel throughout the proceedings, the District Court chose to look at the individual nature of the violations of Petitioner's constitutional guarantee and rule against him. Petitioner will briefly discuss the issues before the District Court below.

A. Trial Counsel's Stipulation.

Trial Counsel stipulated that Petitioner had been provided with clear copies of the police reports more than two weeks ago which directly contradicted testimony that he had given mere moments ago, thus making his attorney a witness against him. See generally: A.B.A. Model Code, Rule 3.7. The District Court ruled that this was a minor matter and could not have possibly effected the juries verdict. The District Court clearly failed to recognize the significance of Trial Counsel's prejudicial conduct.

This was a wholly circumstantial case. The only individual who testified to allegedly seeing the Petitioner with a gun that night was an associate of at least two of the individuals whom the Petitioner had been in a fight with on the night in question.

The other man evidence against the Petitioner were his alleged statements, and for the reasons stated above, they should have been suppressed. For these reasons the credibility of the Petitioner was paramount. Due to Trial COunsel effectively calling him a liar in front of the jury relating to a relatively simple matter, how was the jury to judge his credibility when it came to more important issues such as his whereabouts at the time Davis was killed or the voluntariness of his statements? Compounding Trial COunsel's misconduct was the People's Summation where they made sure to take advantage of Trial Counsel basically calling the Petitioner a liar.

B. Trial Counsel's failure to call Det. Lange.

As stated above in Ground 1, Det. Lange entered the interrogation room after being asked to leave by Det. Byner. During this time Petitioner allegedly made statements to the effect that it was a member of the Bloods gang that killed Davis. Considering all of the other police misconduct surrounding the Petitioner's statements Trial Counsel should have called Det. Lange to flesh out what occurred surrounding his misconduct in entering the interrogation room. Even if Det. Lange did not admit to coercing the Petitioner, he would have had to admit his misconduct in entering the interrogation room. See generally: Strickland v. Washington, supra.

C. The Alibi Jury Charge.

In this purely circumstantial case the credibility of the Petitioner and his alibi witnesses were crucial to his defense. As stated above, Trial Counsel destroyed his crediblity and as a

by-product tarnished his alibi witnesses. That being said, Trial Counsel's failure to object to the trial courts inadequate jury charge was prejudicial to the Petitioner.

While it is generally common knowledge that the People have the burden of proving a criminal defendant is guilty beyond a reasonable doubt, what is not so common knowledge is that the People also have the burden to disprove a defendant's alibi. The juries knowledge as to the proper burdens, definitions and procedures of the facets of a trial should not be assumed. This is the reason for jury instructions, to make sure the jury is aware of everything they need to be in order to make a proper finding of guilt or innocence. When the trial court failed to properly instruct the jury itr was incumbent on Trial Counsel to object and inform the court. See generally: Waddington v. Sarausad, 555 U.S. 179 (2009).

D. The People's Summation.

While the People are allowed to make fair comment on the trial during their summation, Trial Counsel is required to make sure their comments do not cross the line into prejudicial statements not based on the evidence produced at trial. This is yet another issue where Trial Counsel's deficient performance prejudiced the Petitioner. One instance was described above concerning Trial COunsel's stipulation. Trial Counsel just sat by silent and watched without comment while the People far exceeded fair comment on the events that transpired. See generally: US v. Young, 470 U.S. 1 (1985)(unlike in Young, the People's remarks were not invited by improper remarks by Trial Counsel).

E. Those Issues Not Reviewed.

There were three issues that were procedurally defaulted, three issues from his C.P.L. 440 motion which did not relate back, and his coram nobis which did not relate back. These issues were not ruled on by the District Court as they were not properly presented in his direct appeal by appellate counsel, and/or not properly raised in his habeas petition due to his ignorance of the law, as well as, applicable rules and procedures of numerous post-conviction collateral attacks.

The reason the unpreserved issues were not properly preserved for appellate review was Trial Counsel and Appellate Counsel's ineffective assistance. Petitioner continues to be prejudiced by this procedural default as the merits of these arguments are not being determined.

As it relates to those issues raised in his coram nobis and 440 motions which did not relate back, those were not reviewed by the District Court as a direct result of Petitioner's pro se status. Petitioner is completely uneducated in the law and as it concerns his habeas petition he was completely dependent on another prisoner, similarly uneducated in the law, to draft it. Unfortunately, it goes further than the uneducated law clerks, but also the poor resources of the prison law library system as a whole in New York State.

Up until a few years ago, prisoners in N.Y.S. only had books to research law with. We only recently were granted access to computers with which to help with research. As you can see from this petition, most facility law library's still use typewritters

to draft pleadings. This is 2019, how many years do you think you would have to go back in order to find an attorney who learned to do research without computers, or used a typewritter to draft a pleading?

As it currently stands this Court does not recognize the constitutional right to the assistance of counsel in post-conviction collateral attacks, Pennsylvania v. Finley, 481 U.S. 551 (1987). Petitioner is asking this Court to change its stance in the interest of judicial economy and fundamental fairness.

Attorney's go through at least 6 years of law school, pass the Bar exam, earn continuing legal education credits, and meet strict qualifications in order to practice before specific courts, such as this one. This is being mentioned because as a result of the Court's current stance on the assistance of counsel in post-conviction collateral attacks the vast majority of pleadings before appellate courts in this Country have been drafted by pro se prisoners with no more than a high school diploma or GED, if they are lucky enough to have that.

Not only do the vast majority of those incarcerated not have the knowledge or access to resources in order to properly prosecute a post-conviction collateral attack, but they do not have access to the funds in order to retain counsel for those matters. As a result, numerous pleadings are filed in courts improperly, and even through they have merit, they will not be heard. How can this Court consider this fundamentally fair? It should not.

The hurdles an incarcerated individual has to overcome in order to attack his or her conviction are already legion, but then to say they are not constitutionally entitled to meaningful assistance in drafting those pleadings is completely demoralizing. It is unfortunate that often times those who have been wrongfully convicted, at least the lucky ones, spend decades of their lives in prison prior to regaining their freedom. This Court can help change that by mandating that criminal defendants are entitled to the effective assistance of counsel in post-conviction collateral attacks. Mabey that would ensure that the previously unlucky ones did not die in prison for crimes they did not commit.

F. Conclusion.

For all of the foregoing reasons, this Court should grant the relief requested herein, grant the Petitioner a writ and establish a rule making the assistance of counsel constitutionally guaranteed to all criminal defendants in post-conviction collateral attacks.

CONCLUSION

WHEREFORE, the Petitioner humbly prays that this petition for a writ of certiorari be granted, that the Court appoint an attorney to assist him in perfecting this appeal, and for such other and further relief as this Honorable Court may deem just and proper.

Dated: April 17, 2019
Alden, NY 14004

Repsectfully Submitted,

Sharma Ross 05A1901
Petitioner, Pro Se

I declare under the penalty of perjury that the foregoing is true and correct. Executed on this the 17 day of April, 2019.

Sharma Ross 05A1901
Petitioner, Pro Se