18-9289

NUMBER #_____

IN THE SUPREME COURT OF THE UNITED STATES

IN RE : MICHAEL LEON HALEY SR.,
pro se,

PETITIONER

- vs -

SUPERINTENDENT, STATE CORRECTIONAL INSTITUTION AT FOREST, POST OFFICE BOX 945, MARIENVILLE, PENNSYLVANIA 16239

RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS

FOR THE PETITIONER :

Michael Leon Haley, Sr., GE-1586
c/o SCI-Forest
Post Office Box 945
Marienville, Pennsylvania 16239

ORIGINAL

J U R I S D I C T I O N

This Court has exclusive jurisdiction over the herein matter by virtue of Article III §2 of the Constitution of the United States which holds that "[T]he judicial power [of the Supreme Court] shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States,. . .to contraversies . . .between citizens of the same state. . . . In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

Additional jurisdiction is invoked under Article I §9 of the Constitution of the United States which holds that "[T]he privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

REASON(S) FOR GRANTING WRIT OF HABEAS CORPUS

This Court has a duty to interpret and to enforce the Constitution of the United States as it pertains to the rights of citizens and criminal defendants, including criminal proceedings dealing with convictions and sentences imposed through the usage of fraudulent, misleading and false testimony which compromised the fair and impartial intregrity of those proceedings in violation of the Eighth and Fourteenth Amendments of that Constitution.

This Court has a further duty and obligation to insure, protect and provide to citizens the remedy of habeas corpus, unimpaired, as provided under the Constitution, when convictions and sentences which violate the provisions of that Constitution are presented and demonstrated to this forum which require immediate correction and relief to that citizen seeking the remedy as the Constitution affords to that citizen and which additionally imposes upon this Court the inescapable duty to review, assess and determine whether a violation occured, and, if so, bestow that relief upon the affected citizen as both the Constitution and precedent emanating from this Court has asserted would occur. To do otherwise would be cause for the command of that Constitution to ring hollow and be no more than a perfunctory ritual.

CONSTITUTIONAL PROVISIONS

Amendment VI - - "In all criminal prosecutions, the accused shall enjoy the right. . .to have the assistance of counsel for his defense."

Amendment XIV - - "No state shall. . .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."

QUESTIONS FOR REVIEW

I. WHETHER PETITIONER IS ACTUALLY INNOCENT OF BEING ELIGIBLE FOR A THIRD-STRIKE SENTENCE UNDER 42 PA. C. S. §9714(g) ?

II. WHETHER PETITIONER'S SENTENCING WAS THE RESULT OF FALSE, FRAUDULENT AND INACCURATE TESTIMONY BY THE PROSECUTOR AND HIS WITNESSES AT SENTENCING ?

III. WHETHER THE FACTS PRESENTED IN PETITIONER'S HABEAS CORPUS PETITION BEFORE THIS COURT MEET THE "MISCARRIAGE OF JUSTICE" EXCEPTION WARRANTING RELIEF ?

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STATEMENT OF THE CASE

Petitioner, on April 8th, 2005, was sentenced as a third-strike offender to a term of 25-50 years. At sentencing, the prosecutor presented a witness who submittedfalse testimony, asserting Petitioner's prior convictions being violent to qualify him as a third-strike offender [See Appendix, Exhibit # 1 , pgs. 50-53]; additionally, the prosecutor testified the prior crimes were "robberies with a gun and both spelled out on the back" when he had knowledge that the truth was (a) both prior convictions were robbery charges of savings and loans, precluding them from mandatory sentencing; (b) both convictions do not list a firearm/handgun being involved in the crimes, precluding them from mandatory sentencing; and (c) Petitioner had never been sentenced as a second-strike offender under the statute, precluding his being sentenced as a third-strike offender under the statute. [See Appendix, Exhibit #1 , pgs. 35-46]; id.

Petitioner received notice of being sentenced as such after conviction and not prior to trial. Also, he was adjudicated by a judge, not a jury, and by a preponderance of evidence and not beyond a reasonable doubt. [See Appendix, Exhibit #1 , pgs. 47-58; Id.]. Petitioner's State-appointed counsel failed to object to this conduct at sentencing or point out the errors conflicting with the statute and language thereof; Additionally, direct appellate counsel, also State-appointed, failed to challenge or present the fact of

the prosecutor using clearly false, fraudulent and misleading information to sentencing court as "facts" that unlawfully influenced sentencing court to impose a third-strike mandatory sentence to the State appellate court for review or correction, rendering deficient performance at that stage in advocating Petitioner's best interests./[1] On that direct appeal taken, Pennsylvania's Superior Court affirmed the sentence September 15th, 2006.

On May 22nd, 2007, Petitioner filed a pro se Post-Conviction Collateral Relief Act petition [hereinafter, "PCRA"] in his sentencing court, presenting several claims of trial counsel ineffectiveness, including the instant claim. That Court appointed Albert V.F. Nelthropp, Esq., [Hereinafter, Nelthropp"] to advocate Petitioner's claims. Nelthropp amended Petitioner's petition November 24th, 2008. At the evidentiary hearing held March 4th, 2009, Nelthropp presented the

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1. Sentencing transcripts at pg. 8 specifically indicates this actual false testimony at its commencement as the attached Exhibits point out the errors in Petitioner's sentencing in vivid detail. See Exhibit #1, pgs. 50-53, Id. Additionally, at no time did counsel object to the prosecutor submitting fraudulent & false testimony as to a handgun having been part of the charges and convictions in that no firearms charges were lodged against Petitioner at any time; nor for that matter, did counsel seek preserving this claim for direct appellate review or seek correction by the prosecutor as to this clearly false, fraudulent testimony. In a re-

several claims for addressing, including the herein claim. However, Nelthropp failed to present or in any manner challenge the prosecutor's usage of false fraudulent and misleading information of a handgun being used in Petitioner's convictions or the fact that Petitioner was given a third-strike term in the total absence of ever having been sentenced as a mandatory second-strike term, in violation with clearly-existing [PA] Supreme Court precedent [See Commonwealth v. Shiffler, 879 A.2d 185 (PA 2004)(We see nothing in the carefully graduated structure of Section 9714 to suggest that the General Assembly intended to require a sentencing court to simply skip a defendant's second-strike and proceed to "call him out" by applying three strikes)(Shiffler at 879 A.2d 195, Id.)].

On June 26th, 2009, PCRA court denied relief. Appeal of that decision was taken by Nelthropp on Petitioner's behalf to the Superior Court of Pennsylvania, which upheld the denial of relief by PCRA court.

Petitioner sought federal habeas corpus relief in the United States District Court for the Eastern District of Pennsylvania, which his pro se petition containing his claims and others was re-filed at number 10-cv-5061 after removal from suspense. Petitioner amended his petition in compliance with that court's

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1., Cont'd.
cent Third Circuit case remanded from this Court, the circuit court held that, In Pennsylvania, the post-sentencing motions stage is a critical stage at which a criminal defendant is entitled to the effective assistance of counsel. See Richardson v. Supt., Coal Township SCI, No. #15-4105 (decided October 2nd, 2018), Id.

March 15th, 2011 Order, raising all exhausted claims, including this claim. Respondents filed answer, asserting having "no objections to the timeliness of the issues presented by Petitioner."

On July 31st, 2012, the Magistrate Judge recommended denying relief on all claims, asserting this claim as "untimely." Petitioner filed objections to that recommendation, pointing out at pg. 55 of his objections that his instant claim was timely. On January 10th, 2013, that court upheld the Magistrate Judge, denying relief.

Petitioner began his exhaustive crusade to acquire copies of his certified records to review for substantiating his exemption as a third-strike offender. On February 25th, 2013, this Court decided McQuiggin v. Perkins, 133 S. Ct. 1924, 1928 (2013), holding that a credible showing of actual innocence provides an equitable exception to the AEDPA's statute of limitations.

Petitioner's task consumed ten years, with his success of acquiring his certified records under his State's Right-To-Know-Law. Petitioner, after getting his documents, filed with the District Court his Motion under Rule 60(b)(6), seeking review of his sentencing, asserting his actual innocence to his sentencing, citing this Court's holding in McQuiggin, supra, and clearly demonstrating his actual innocence via documentation recently acquired.

On April 27th, 2018, the District Court denied Petitioner's October 15th, 2017 Rule 60(b)(6) motion, asserting "lack of jurisdiction" and refusing to apply any proper standard of review as set forth by this Court. Petitioner appealed for certificate of appealability to the Third Circuit court of appeals, seeking review of the district court's denial and assertingthat the district court failed to apply the McQuiggin standard of actual innocence to his claim, that he is actually innocent as his documents and relevant legal authority clearly demonstrate, and that the district court had proper jurisdiction of his Rule 60 (b)(6) motion.

The Circuit court denied Petitioner certificate of appealability August 8th, 2018, failing to utilize the McQuiggin standard or apply any standard of review as to certificate of appealability. Petitioner sought rehearing en banc on August 18th, 2018, which that court denied.

Petitioner, by the above-said facts, is now seeking federal habeas corpus as invoked under Article I § 9 of this Constitution. This Court, having judicial power to all cases in law and equity arising under this Constitution, is required by the authority of Article III § 2 thereof to review Petitioner's questions of whether he is actually innocent of having a third-strike

sentence imposed upon him under Pa. C.S. § 9714(g), whether he has demonstrated his being actually innocent of that statute being enforced upon him as a third-strike offender and whether he has demonstrated a grave miscarriage of justice imposed upon him by which federal habeas corpus relief is entitled him.

In Taylor v. U.S., 495 U.S. 575, 600-601 (1990), this Court adopted a "formal categorical approach" for determining whether a defendant's past conviction is for one of the crimes that qualify as a violent felony. The Court held that sentencing courts may look only to the statuatory definitions, i.e., the elements of a defendant's prior offenses and not to the particular facts underlying those convictions. [But] if the statute sweeps more broadly than the generic crime, a conviction cannot count. . ."even if the defendant actually committed the offense in its generic form." The key, this Court emphasized, "is elements, not facts." Additionally, this Court held that, because a statute is "divisible," i.e., comprises multiple alternative versions of the crime, a later sentencing court cannot tell without reviewing something more if the defendant's conviction was for the generic. . .or non-generic. . . form of [the crime]. Hence, Taylor permitted sentencing courts, as a tool for implementing the categorical approach, to examine a limited class of documents to determine which of a statute's alternative elements formed

the basis of the defendant's prior conviction.

In Shepard v. U.S., 125 S.Ct. 1254 (2005), this Court first confirmed that Taylor's catagorical approach applies not just to jury verdicts, but also to plea agreements. That meant that a conviction based on a guilty plea can qualify as a predicate felony. . ."only if the defendant necessarily admitted the elements of a generic offense." Accordingly, the Court again authorized sentencing courts to scrutinize a restricted set of materials- -e.g., the terms of the plea agreement or transcript of colloquy between the judge and the defendant- -to determine if the defendant pleaded guilty to a specific criminal offense or offenses.The Court again underscored the narrow scope of that review, holding that "[T]he state court was not to determine what the defendant and the state judge understood as the factual basis of the plea, but only to assess whether the plea was to the version of the state crime that corresponded to the generic offense." By reviewing the extra-statuatory materials approved in those cases, courts can determine which statuatory phrase, contained within a statute listing several different crimes, covers a prior conviction. Also, this Court distinguished elements from facts when utilizing the categorical approach, holding that "elements" are the constituent parts of a crime's legal definition, which must be proved beyond a reasonable doubt, whereas "facts" are to be ignored by the courts utilizing the categorical approach. This Court reaffirmed this holding in Mathis v. U. S., 579 U.S. ___, 195 L. Ed. 2d 604 (2016), quoting Shepard, supra.

Petitioner, at his sentencing, was presented by witnesses the prosecutor sought to demonstrate eligibility for sentencing enhancement. Documents pertinent to those convictions were presented. However, the documents list those prior convictions as "general" offenses and not qualifying for enhancement under the statute. See 42 Pa. C.S. §9714(g), which specifically states :

> "Present conviction for murder in the third voluntary manslaughter, aggravated assault as defined in 18 Pa. C.S. §2702(a)(1) or (2)(relating to aggravated assault), arson as defined in 18 Pa. C.S. §3301(a)(relating to arson and related offenses), kidnapping, burglary of a structure adapted for overnight accomodation in which at the time of the offense any person is present, robbery as defined in 18 Pa. C.S. §3701(a)(1)(i), (ii) or (iii)(relating to robbery), . . ." See Appendix, Exhibit #6, pg. 112, Id.

Petitioner's documents as shown to this Court [See Appendix, Exhibit #1 , pgs. 35-46 , Id.], unmistakably list the convictions being "general" offenses, containing no subsections or sections specifically identified in §9714(g), supra. This absence was to preclude sentencing enhancement of Petitioner, clearly demonstrating Petitioner not qualifying as a candidate for an enhancement of sentence. Based on the record presented to sentencing court, the very same documents certified as those by the very same witness testifying at sentencing who referred to them, it is clearly presented and established that the facts pertinent to Petitioner's prior convictions (which that court was to have ignored by the categorical approach employed) contains no references to any use of a handgun in the commission of those prior crimes resulting in those convictions.

However, as the sentencing transcripts clearly reveal, the prosecutor repeatedly stated the prior convictions being crimes which a handgun was used. Both he and his witnesses fraudulently presented sentencing court the false statements and testimony having knowledge that the testimony and statements were both false and not substantiated by the record. As the certified record is clearly absent any predicate supporting the enhanced sentence imposed by Petitioner, it can only be gleaned that this testimony and these statements were the sole motivation for the court's imposition of Petitioner's enhanced term now under challenge.

In reviewing §9714(g), the only offenses for enhancement of sentence for the crime of robbery is solely and strictly violations of 18 Pa. C.S. §3701(a)(1)(i), (ii) or (iii). Petitioner's certified documents clearly demonstreate his "general" crimes not complying with these specific provisions precluding Petitioner's eligibility for the statute applying to him. Thus, being ineligible for an enhancement of his term under §9714(g) would qualify him as being "actually innocent" as to the statute applying to him. Petitioner's claim was presented to his State courts for resolution and correction; however, counsel abandoned this claim on direct appellate review and counsel at the collateral stage/initial review stage rendered ineffectiveness in failing to properly raise the claim, causing those reviewing forums

to uphold the sentence. Petitioner's presentation of this claim to the federal forum was ruled "untimely" by both the district and Circuit courts, who disregarded the facts pertinent to this claim, and, who refused to employ the proper and correct standard as recommended by this instant Court as to both "actual innocence" and "miscarriage of justice" exceptions to the default of a claim.

This Court has repeatedly held that a Petitioner's claim "may still be reviewed in this collateral proceeding if he can establish that the constitutional error [. .] has probably resulted in the conviction of one who is actually innocent.'" Bousley v. U.S., 523 U.S. 614, 140 L. Ed. 2d 828, at 523 U.S. 623, 140 L. Ed. 2d at 840 [quoting Murray v. Carrier, 477 U.S. 478], Id. This means that, "'in light of all the evidence,'" "it is more likely than not that no reasonable juror would have convicted him." Bousley, supra,[citing Schlup v. Delo, 513 U.S. 298, 130 L. Ed. 2d 808 (1995)], Id. Reviewing the facts presented in both federal district and Circuit courts, his claim was properly presented and supported by valid documents demonstrating his compliance with this Court's requirements. However, both the district and Circuit courts refused to employ this Court's requirements in reviewing Petitioner's claim, denying the holding of evidentiary proceedings to meaningfully decide the claim.

QUESTION ONE

PETITIONER IS ACTUALLY INNOCENT OF BEING ELIGIBLE FOR A THIRD-STRIKE SENTENCE UNDER 42 PA. C. S. § 9714(g)

Pennsylvania's mandatory sentencing statute governing repeat offenders requires those courts to impose such sentences when the criteria set forth in that statute are met and qualify the offender to be sentenced under the statute. Petitioner's prior convictions were for robbery charges listed as "general" and which dealt with financial institutions. See Appendix, Exhibit #1 , pgs. 35-46 , Id. §9714(g) only qualify"[robberies] as defined in 18 Pa. C.S. §3701(a)(1)(i), (a)(1)(ii) or (a)(1)(iii)(relating to robbery)." Additionally, robberies of financial institutions do not qualify as crimes invoking the above-said statute, as Petitioner's State Courts have held. See Commonwealth v. Greene, 25 A.3d 359 (Pa. Super. 2011) at 362, Id.

This Court has held that, to determine whether a prior conviction is one of those listed crimes invoking mandatory sentencing, courts [are to] apply the'categorical approach'- -they ask whether the elements of the offense forming the basis for the conviction sufficiently match the elements of the generic (or commonly understood) version of the enumerated crime. Mathis v. U.S., 579 U. S.____, 195 L. Ed. 2d 604 (2016)[citing Taylor v. U.S., 495 U.S. 575, 600-601 (1990)], at 195 L. Ed. 2d 607, Id. Thus, for determining the applicability of a mandatory sentencing scheme, the key focus, this Court emphasized, is "elements" and not facts.

Reviewing Petitioner's State sentencing statute, it explicitly highlights the only robberies meeting the criteria for enhancement are those under 18 Pa. C.S. §3701 (a)(1)(i), (a)(1)(ii) or (a)(1)(iii), and, precludes any financial institution. However, Petitioner's certified records specifically categorize his robbery charges as "general" and not including any of those specified categories under the statute qualifying for enhancement. Additionally,the penal provision of §3701 pertaining to robbery is divisible, i.e., comprising multiple alternative versions of the crime. Further, these same documents, acquired by Petitioner through his State's Right-To-Know-Law after a ten-year task of acquiring them, and, which were used by his sentencing court as set forth in the herein-attached Appendix to the instant petition, are those limited class of documents from the record of which that court reviewed prior to sentencing, depict his prior convictions under the standard set by this Court as not qualifying under §9714(g) and should not have been considered by that court for imposing an enhanced sentence. See Mathis, supra, at 195 L. Ed. 2d 608 (citing Shepard v. U.S., 544 U.S. 13, 26, 125 S. Ct. 1254 (2005)), Id.

Petitioner's sentencing statute has been determined by his State's Supreme Court as "reflecting a recidivist philosophy and should be construed to allow for heightened punishment for repeat offenders only where their convictions for crimes of violence and corresponding terms of incarceration are sequential and each is se-

parated by an intervening opportunity to reform." See Commonwealth v. Shiffler, 879 A.2d 185 (Pa. 2004). In Shiffler, supra, which parallels Petitioner's case, that defendant challenged having been given a mandatory third-strike term in the absence of ever being sentenced as a mandatory second-strike offender. That Court reviewed the statute and determined that "[W]e do not believe that such a result was intended by the General Assembly in adopting the graduated scheme of recidivist sentencing which is reflected in Section 9714." Shiffler, supra at 879 A.2d 194. Further, the holding in Shiffler has been reaffirmed in the case of Commonwealth v. Armstrong, 74 A.3d 228 (Pa. Super. 2013)[See at 239, citing Shiffler, supra], where Petitioner's State Superior Court disallowed and reversed a defendant's having been sentenced as a third strike offender in the absence of ever receiving a second strike sentence.

Assessing these facts from the standard set forth in both Taylor and Mathis, supra, it is clear that the district court did not employ this standard in assessing Petitioner's claim. Also, the fact that the appeals court failed to apply this standard in determining whether the district court's decision was properly rendered indicates an abdication of the court's duty to utilize the "de novo" review of a claim never having been adjudicated on the merits in determining whether an evidentiary hearing was required or appropriate. Bousley, supra, at 523 U.S. 624 [To establish actual innocence, petitioner must demonstrate that,

"'in light of all the evidence,' it is more likely than not that no reasonable juror would have convicted him" (citing Schlup v. Delo, 513 U.S. 298, 327-328 (1995)), Id.

The record pertinent to Petitioner's claim demonstrates the clear "unreasonable application" by both the district court and appeals court. Both forums, as the record reflects, identify the correct governing legal principle from this Court's decisions, but, unreasonably applied the principle to the facts of Petitioner's case. Had those forums done so, the determination of Petitioner's sentencing not being in compliance with §9714(g) would've been made thereby and a different decision would have been rendered. See Williams v. Taylor, 529 U.S. 362 (2000)[Federal courts must make as the starting point of their analysis the state court's determination of fact, including that aspect of a "mixed question" that rests on a finding of fact], Id.

II. PETITIONER'S SENTENCE WAS THE RESULT OF FALSE, FRAUDULENT AND INACCURATE TESTIMONY BY THE PROSECUTOR AND HIS WITNESSES AT SENTENCING.

As Petitioner has demonstrated, supra, the sentencing statute disallows his being eligible for a mandatory third-strike sentence unlawfully imposed upon him and now under challenge by him. The facts upon which this sentence was imposed are clearly demonstrated in his

sentencing transcripts, as the prosecutor presented false, fraudulent and misleading testimony which unlawfully influenced and induced the sentencing court to impose his sentence. See Appendix, Exhibit #1, pgs. 50-53 , Id. At the proceedings, the first prosecutor's witness testified that, pertaining to Petitioner's past two convictions, "[I]n November of 1995. . . [Petitioner] pled guilty to theft by unlawful taking, theft by receicing stolen property, instrument of a crime, being a handgun. Actually, six counts against him. Unlawful to possess instrument of a crime, weapon concealed, possess instrument of a crime, weapon concealed and robbery.". . .[Falsely depicting one conviction]."Once again, another certified copy regarding another robbery and conviction. . . .This is from 1988. . .Also from a bank ? Yes. That record adequately reflects the conviction that [Petitioner] was convicted of ? Yes." [See Appendix, attached document (S.T. pgs. 8-line 1 to 10-line 10, Id.]. The prosecutor even presented testimony as to Petitioner's prior convictions by stating, "[Y]our Honor, the only thing I'd like to add is the recitation of facts in both of these- -both of these cases, and they are robberies with a gun and spelled out on the back. I think the Commonwealth more than met its burden." [See Appendix, supra, pg. 53, lines 6-18, Id.]. Petitioner's counsel at this proceeding failed to object to the fraudulent, false and misleading testimony. As a result, Petitioner was given a 25-50 year term under the statute which disallows his prior convictions from being used as enhancement inducers.

Reviewing the attached certified records, there is clearly nothing warranting Petitioner's sentencing except the false, fraudulent and misleading testimony presented by the prosecutor. Additionally, Petitioner points out that many of the alleged "convictions" asserted by the prosecutor have since been redacted from Petitioner's criminal record, which would not be possible if they were, in fact, convictions. In both State and Federal forums, as his attached documents demonstrates, Petitioner has asserted being both unlawfully sentenced and the victim of a fraudulently acquired punishment implicating both a clear and grave miscarriage of justice as well as actually innocent to receiving such a term. The State repeatedly ignored this claim, even in light of valid State law supporting Petitioner's claim. The district court and Circuit court also have turned the deaf ear to his plight. His attached documents clearly demonstrate this fact. All courts, in doing so, unreasonably applied clearly established law insuring against the unlawful sentencing of criminal defendants.

This Court was confronted by a situation where the state's habitual felony offender enhancement statute was unlawfuly utilized in punishing a criminal defendant. The aspects of that case parallel that of Petitioner's with both prosecutor and witnesses abusing the facts relating to the application of that statute to that defendant. A majority of this Court, in condemning that action, granted that defendant relief,

holding that that defendant had been denied due process because no factual basis existed for the sentencing as an habitual offender. Additionally, the dissenting portion of this Court did so solely due to their belief that the failure to, sua sponte, grant relief "needlessly postponed final adjudication of the accused's claim and perversely prolonged the very injustice that the cause-and-prejudice standard was designed to correct." See Dretke v. Haley, 514 U.S. 386, 124 S. Ct. 1847 (2004), Id.

Petitioner asserts that this case clearly existed prior to his sentencing; and, as the record demonstrates, the record in Petitioner's case clearly provides facts of his sentencing imposed being outside the guidelines of §9714(g), disqualifying his sentence as validly imposed, meeting the "cause-and-prejudice" standard and showing him a victim of fundamental "miscarriage of justice" by his State, violating the U.S. Constitution.

This Court has repeatedly held that the presentation of known false and/or misleading evidence to a judge or jury in effort to convict is prohibited. Moreover, such conduct by a prosecutor and/or police deprives an accused due process of law. Compare U.S. v. Agurs, 427 U.S. 97, 103 (1976), also see Giglio v. U.S., 405 U. S. 150, 155 (1972)[citing Napue v. Illinois, 360 U.S. 264, 269 (1959)]. Due process is violated when the states, although not soliciting false evidence, allows it to go uncorrected when it appears. Moreover, in Berger v. U.S., 295 U.S. 78, 55 S. Ct. 629 (1935), this Court held the prosecutor is a representative of a sovereignty whose interest in a criminal prosecution is not that it shall win a case, but that justice shall be done.

Reviewing the record of both State and Federal forums from the standard as set forth in Napue, Berger, Giglio, and Agurs, supra, as well as Dretke standard, these standards were clearly ignored and absent mention in any decision-making in Petitioner's case presented them. Furthermore, although he presented the holdings in McQuiggin, supra and Rule 60(b)(6) in his attempts to require the district court and Court of appeals to properly address his claim of actually being innocent of a habitual offender sentencing enhancement, both courts refused to employ or utilize these standards in assessing his claim, asserting Petitioner took too long in providing proof of his actual innocence claim, which conflicts with McQuiggin's rejection of the notionthat habeas petitioner's asserting convincing actual-innocence claims must prove due diligence to cross a federal court's threshold. See McQuiggin, supra, at 1935, Id. Because of this, the district court and Court of appeals failed to reasonably apply this precedent to the Petitioner's claim even though the evidence clearly establishes his actual innocence as to being sentenced as a habitual offender. And, the sole motivation for his sentencing is and was the false, fraudulent testimony as presented by the prosecutor and his witness of a non-existing handgun having been involved in those prior convictions, as the record clearly and undisputedly demonstrates. As the attached documents clearly indicate, these charges of receiving stolen

property, theft by unlawful taking, aggravated assault and recklessly endangering were nolle prossed, indicating that no conviction had occured as to these offenses. However, at sentencing, the prosecutor, having knowledge that this occured, allowed for the witness to testify to these nolle prossed charges as having been convictions as well as allowing his witnesses to assert a handgun having been involved and that a conviction for that offense existed, absent seeking to correct this false and fraudulent testimony by his witness. This clearly-existing error in the record is such that depicts (a) Petitioner's counsel at that stage being ineffective for failing to challenge this conduct or object to the same to prevent Petitioner's being unlawfully sentenced and (b) an error which would indicate to the reviewing federal forum the need to delve further into the error for determining the effect of it having been a denial of a valid constitutional right which the [U.S.] Constitution prohibits. Compare McQuiggin, supra, also see Harrington v. Richter, 562 U.S. 86, 131 S. Ct. 770(2011)[When there is no reasoned state-court decision on the merits, the federal court "must determine what arguments or theories. . .could have supported the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those theories or arguments are inconsistent with the holding in a prior decision of this Court."].

Based on this failure by both federal forums to apply the McQuiggin standard, both federal forums ' decision-making is clearly erroneous and in need of correction by this Court. Additionally, the Dretke standard, also ignored and not applied in his claim presented, would entitle Petitioner to relief as to his unlawfully-imposed sentence. Further, any reasonable jurist reviewing the facts and existing record pertaining to Petitioner's claim would find it clearly debatable that either the district court or Court of appeals' decision to deny relief was valid and/or should remain undisturbed. Dretke, supra, Id.

Note further that, at no stage of presentation to either the district court or Court of appeals has the merits of Petitioner's unlawful sentencing claim ever been addressed thereby. Review of the record clearly expresses and establishes this undisputed fact. However, in light of no review of the claim upon review of the record by either federal district court or Court of appeals, denial of relief to Petitioner by these forums occured. And, by this refusal to address the claim undisputedly adds credence to the error by those forums in that nothing exists in those courts' decision-making indicating that they properly applied or employed any standard established by this Court, including the McQuiggin or Dretke standard, prior to denying Petitioner federal habeas corpus relief. Because of this error, the instant Court has both the authority and duty to correct or otherwise rectify

those errors in reviewing Petitioner's claim and remanding to the Court of appeals with directions to issue remand to the district court for evidentiary hearing on this claim.

III. THE FACTS PRESENTED IN PETITIONER'S PETITION MEET THE "MISCARRIAGE OF JUSTICE" EXCEPTION, WARRANTING HIM RELIEF.

Petitioner's claim and supporting evidence specifically presented in Sections I and II above demonstrates that he has undisputedly shown he being the victim of an unlawfully-imposed sentence clearly exceeding the statuatory parameters of his State's mandatory sentencing guidelines, 42 Pa. C. S. §9714(g), supra. Additionally, he has provided undisputed proof of his sentencing having been imposed solely based on false, fraudulent and misleading testimony by both the prosecutor and his witnesses. Nothing else exists in the state court records to substantiate any reason for his sentencing being imposed. The certified records referred to by that court during sentencing (which took Petitioner a decade to acquire therefrom) hold no evidentiary validity justifying this sentence imposed. Furthermore, Petitioner's counsel at this stage and at collateral stage/initial review failed to render effective assistance in challenging the false and fraudulent testimony as the sole motiviation for this sentence.

Petitioner presented this claim to both the district court and Court of appeals in his habeas petitions, Rule 60(b)(6) motion and certificate of appealability with neither court addressing the merits of it as required under any standard as set forth in this Court's precedent, but, unreasonably applying those standards in denying Petitioner federal review or relief. Because of this, no deference to any State determination exists. To the contrary, no meaningful review has ever been afforded Petitioner, nor any record of State proceedings exists to attempt to assert any deference by which the federal forums can point to for their inexplicable refusal(s) to correct the unlawful sentence. All these exhausted courts have been deaf to hearing the merits of Petitioner's claim. And, the federal forums, in doing so, ignored and abandoned the standard to be utilized in determining the merit of his claim.

When, as here, there is no reasoned state-court decision on the merits, the federal court "must determine what arguments or theories. . .could have supported the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding of a prior decision of this Court." See Sexton v. Beaudreaux, 201 L. Ed. 2d 986, 138 S. Ct. 2555 (2018)[citing Harrington v. Richter, 562 S. Ct. 86, 178 L. Ed. 2d 624 (2011)], Id. This failure to apply this standard in Petitioner's case is unmistakably undisputed.Not one decision by any federal forum

Petitioner presented his claim has indicated in any manner that it either lacks merit or that the State's decisions in ignoring his claim was validly based on facts in the record in those state proceedings which would preclude that forum from reviewing or correctingthe errors Petitioner pointed out. Additionally, those forums never addressed Petitioner's claim of ineffective assistance of counsel in failing to point out or cite the prosecutor presenting false, fraudulent and misleading testimony in seeking an enhanced sentence at either the direct appellate stage, initial review/collateral stage or appeal therefrom. This failure to do so by those federal forums are and continue to be "fundamental errors that this Court has repeatedlyadmonished courts to correct." Sexton, supra, [per curiam], Id.

The state court records pertinent to Petitioner's sentencing clearly and unmistakably depict his sentence being imposed based on false, fraudulent and misleading testimony by the prosecutor and his witnesses asserting that a fictitious handgun had been used in the prior convictions used to seek an enhanced sentence upon him. The state sentencing statute [42 Pa. C.S. §9714(g)] only qualifies convictions for robbery as violent as those listed under 18 Pa. C.S. §3701(a)(1)(i), (a)(1)(ii) or (a)(1)(iii). Petitioner's prior convictions list his crimes as "general" and only as §3701 with no subsections, as well as involving financial institutions, further disqualifying them from

consideration for sentencing enhancement. See Commonwealth v. Greene, 25 A.3d 359 (Pa. Super. 2011) at 25 A.3d 362 [robbery of financial institution is not to be considered as "violent" crime under 42 Pa. C.S. §9714(g) for mandatory sentencing purposes], Id. Neither of Petitioner's prior convictions list any firearms violation for possession, carrying or as an instrument of a part of that crime which Petitioner was convicted. Lastly, nothing in the record except the false, fraudulent and misleading testimony by both the prosecutor and his witnessesby which it can be asserted by any reviewing forum was utilized to impose Petitioner's enhanced sentence. Perhaps the best question requiring an answer would be "[W]hat facts did the district court and Court of appeals use to deny Petitioner federal habeas relief as to his claim presented them ?" The record clearly fails to reveal them.

Additionally, Petitioner's counsel at sentencing, direct appeal and collateral stage/initial review failed to properly object to, oppose, challenge or specifically point out the prosecutor's or his witnesses' testimony being false, fraudulent and misleading pertinent to the facts sought by the prosecutor to enhance Petitioner's sentence to a mandatory third-strike term. Nor, for that matter, did Petitioner's counsel at any stage object to the third-strike term being sought when Petitioner had never been given or was otherwise subjected to a second-strike mandatory term.

Petitioner has extensively presented his unlawful sentencing claim in all of his federal petitions seeking relief, including his Rule 60(b)(6) request; and, at no time, has any federal forum addressed the merits of his claim for determination of whether a constitutional violation occured. No references whatsoever by any federal forum as to his claim can be pointed to whereby the merits of his claim can be shown as either lacking merit or frivolous. This is even though those forums quote an alleged usage of the McQuiggin standard in denying Petitioner relief. The fact is, however, that those forums clearly misapplied that standard in that McQuiggin asserts that an actual innocence exception coupled with other factors demonstrate "exceptional circumstances" warranting a reviewing forum to excuse procedural defaults and address the claims under the actual innocence exception. Reviewing the record in Petitioner's case presented this Court, it is clearly demonstrated by him that he has proved his "actual innocence" claim as to his sentencing and the courts reviewing his filings have refused to allow him to pass through this gateway, as this Court has mandated he be allowed to do upon proving this exception. Simply stated, Petitioner asserts the district court and Court of appeals have clearly misapplied the law as specifically set forth in this Court's McQuiggin decision, as set forth above.

Additionally, Petitioner, by these facts, has clearly presented, proven and demonstrated a miscar-

riage of justice exception as well. It is clearly presented by the facts that he was unlawfully sentenced as a third-strike offender in the absence of valid facts/evidence warranting that term; that his sentence is solely based on false, fraudulent and misleading testimony by both prosecutor and his witnesses who assert a non-existing handgun involved in his prior convictions to bolster the convictions in order to justify its unlawful imposition; and that, absent this testimony, Petitioner would not have received that term he now challenges by the herein petition before this Court for review.

This Court was presented a similar case whereby the very same abuse by the State occured and federal forums declined granting relief. Addressing that matter, it held that, where "[t]hese mitigating elements seem to have played no role in [that petitioner's] case... . '[e]xecutive discretion and clemenncy can inspire little confidence if officials sworn to fight injustice choose to ignore it'. . . In a society devoted to the rule of law, the difference between violating or not violating a criminal statute cannot be shrugged aside as a minor detail." Dretke, supra, at 541 U.S. 399-400, Id.

WHEREFORE, Petitioner, MICHAEL LEON HALEY, SR., respectfully requests that this Court grant him relief by way of habeas corpus as the Constitution mandates, requiring the following action to occur in his case before this Court, including but not limited to :

(a) This Court issuing an Order requiring Respondent to submit and serve upon this Court the record of Petitioner's case pertinent to all filings in both the State and federal forums thereby to allow this Court de novo review of Petitioner's claim presented in his instant habeas petition he seeks review hereby;
(b) This Court requiring Respondent, in complying with the Order sought in (a), supra, to file an answer to the instant habeas petition and claims contained herein, specifically addressing those reasons by which Petitioner is not and would not be entitled to relief upon his presented claims;
(c) This Court, after de novo review of the record in Petitioner's case warranting his herein filing, issuing an Order holding that Petitioner's rights as to be afforded and protected him by the State and government were violated by the conduct set forth in Petitioner's herein filing, violating the above-stated provisions of the Constitution of the United States;
(d) Issuance of an Order holding that the district court and Court of appeals were in error in failing to properly apply the established standard(s) as set forth by this Court pertinent to Petitioner's claims;
(e) Issuance of an Order from this Court REVERSING the decision(s) of the federal district court and Court of appeals with a requirement for the Court of appeals to REMAND Petitioner's case to the district court for holding of evidentiary proceedings for review of Petitioner's federal habeas claim presented this Court;

(f) Such other and further relief as this Court shal deem proper, just and equitable.

DATED: April 21 th, 2019

Respectfully Submitted,

/S/ _____, pro. se
Michael Leon Haley, Sr.
GE-1586
c/o State Correctional
Institution at Forest
Post Office Box 945
Marienville, Pennsylvania 16239

V E R I F I C A T I O N

STATE OF PENNSYLVANIA

COUNTY OF FOREST

I, MICHAEL LEON HALEY, SR., GE-1586, declare under provisions set forth in 28 U.S.C. §1746 that all facts, statements and legal authority as set forth in my above Petition For Writ of Habeas Corpus are both true and correct and made upon my personal knowledge, information and belief.

DATED: April 21 th, 2019

/S/ _____
Michael Leon Haley, Sr.
GE-1586

IN THE SUPREME COURT OF THE UNITED STATES

N U M B E R #_____

IN RE : MICHAEL LEON HALEY, SR.

PETITIONER

- vs -

SUPERINTENDENT, STATE
CORRECTIONAL INSTITUTION
AT FOREST, POST OFFICE
BOX 945, MARIENVILLE,
PENNSYLVANIA 16239

RESPONDENT

PETITIONER'S MOTION IN COMPLIANCE WITH RULE 20 RULES OF THE SUPREME COURT OF THE UNITED STATES.

TO THE ABOVE COURT :

Petitioner, MICHAEL LEON HALEY, SR., pro se, now motions this Court that, in compliance with Rule 20 of this Court, that adequate relief cannot be sought or obtained in any other form or from any other court, and, that exceptional circumstances warrant the exercise of this Court's discretionary powers. The facts in the record of Petitioner's case now presented this Court show that he sought relief in his State court(s) via his available Post-Conviction Collateral Relief Act [See 42 Pa. C. S. §9541 et seq.] and with his State forum(s) denying him relief at the lower court stage and appeal from

that lower court stage of his state proceedings, March 19th, 2009.

Petitioner sought federal relief via habeas corpus in his District Court for the Eastern District of Pennsylvania at numbers #08-cv-4844 and #10-cv-5061, with that District Court failing to address his claim and denying him relief on January 10th, 2013.

Petitioner sought relief via Rule 60(b)(6) motion, with that Court again denying relief April 27th, 2018. Petitioner's appeal to the Third Circuit court of appeals affirmed the denial by the district court in both of his appeals from the denials of habeas relief by the district court via certificate of appealability and rehearing en banc, which is detailed in his below habeas corpus petition now before this Court for assessment and determination.

Existing legal authority precludes Petitioner from seeking a second or successive petition for federal habeas relief challenging the same claim and existing legal precedent emanating from this Court prohibits any federal forum from not adhering to the provisions of that existing legal authority, causing Petitioner to be subjected to serve an unlawfully-imposed and unconstitutional sentence in the absence of any corrective remedy at law to address his situation, which the federal Constitution would disallow.

Additionally, Petitioner asserts that the granting of Petitioner's writ shall be in aid of this Court's appellate jurisdiction in that, in the absence of any available remedy as points out by Petitioner, supra, and in his below habeas petition, a similarly-situated citizen shall not be condemned to undergo an unconstitutionally imposed conviction or sentence based to the lack of corrective remedy, as the U. S. Constitution would prohibit; and, as this Court, in its duty to insure, protect and enforce the dictates of that Constitution, stands as a bulwark against any transgression(s) of that document that ingrains the fabric of this Country's credence to its citizens that every statement the Constitution contains reflects the aspects of our forefathers and present citizenry that the belief of freedom(s) provided thereby shall not in any manner be diminished except in the manner the document specifically defines.

DATED: May 8th, 2019

Respectfully Submitted,

/S/ _____

Michael Leon Haley, Sr.
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