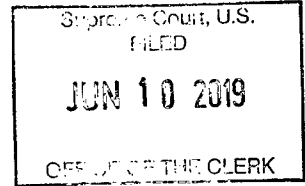


18-9825 ORIGINAL

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



SHEPELL ORR – PETITIONER,

VS.

RONALD NEAL – WARDEN – ISP – RESPONDENT,

ON A PETITION FOR A WRIT OF CERTIORARI TO:

THE UNITED STATES COURT OF APPEALS in and for the 7th CIRCUIT

CASE NO: 18:3110

DECIDED: MAY 08, 2019

PETITION FOR WRIT OF CERTIORARI

Pg. 1-34

Shepell Orr

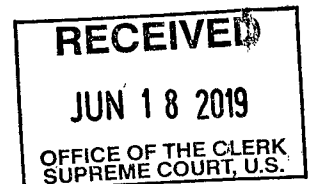
SHEPELL ORR # 219660/IN-210

C/O One Park Row

Michigan City, Indiana [46360]

Petitioner 'Pro Se'.

Done under necessity.



QUESTION(S) PRESENTED

(Supreme Court Rule 10 et seq.)

- 1) Whether or not the 7th Circuit Court of Appeals has entered a decision (May 08, 2019) in conflict with another decision previously made in the United States Court of Appeals in and for the 7th Circuit¹ on an important matter; [and] has decided an important federal question in a way that conflicts with a decision by a State Court of last resort (i.e. the Indiana State Supreme Court) and has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such a departure by the lower court(s) in this matter in a way that conflicts with relevant decisions of this United States Supreme Court as to call for an exercise of this Court's supervisory power and Judicial Review.

- 2) Whether or not the Petitioner was seized illegally and held in violation of the 4th amendment to the *United States Constitution* and the denial of a fair and impartial trial by jury in violation of the 5th, 6th and 14th amendment(s) to the *United States Constitution*. in relation to claim(s) made in any and all the following Cause Number(s);

¹ Note **Brown v. Brown*, Slip. Op. 16-1014 pg. 13/14 ¶ 5-6 dissenting opinion of Circuit Judge Diane Sykes (Decided: February 01, 2017) 847 F. 3d. 502, with re: to Petitioner's Cause as violation(s) under United States Constitutional Law. (4th, 5th, 6th, 8th and 14th amendment(s) of the *United States Constitution*. (The 8th amendment having application for the unlawful and unjust loss of liberty that the Petitioner is currently enduring).

STATE OF INDIANA (Plaintiff) v. SHEPELL ORR (Defendant)
45G01-1001-MR-01; Lake County, Indiana Trial Cause;

(Specifically that the Petitioner Shepell Orr at trial suffered undue and unfair prejudice when trial counsel failed to challenge the instructions re: voluntary manslaughter as codified under Indiana Code § 35-42-1-3 subsection (a) (1); “A person who knowingly or intentionally kills another human being. . . . while acting under *sudden heat* commits voluntary manslaughter, a Level 2 felony (formerly a Class ‘A’ felony as applies to the Petitioner under the Indiana ‘*savings clause*’ noted in *Indiana Code* § 1 et seq.), and that relative to *Indiana Code* § 35-42-1-3 subsection (b), the existence of *sudden heat* is a mitigating factor that *reduces* what otherwise would be murder under *Indiana Code* § 35-42-1-1(1) of this chapter to voluntary manslaughter.” As applies to Petitioner formerly under *Indiana Public Law No. 261-1997* § 1, and has been subsequently amended under *Indiana Public Law No(s)* 158-2013 § 413; 203-2018 § 2 (Emphasis provided by the Petitioner for brevity).

SHEPELL ORR (Appellant) v. STATE OF INDIANA (Appellee)
45A03-1107-CR-308; Direct Review; Indiana Court of Appeals

(Specifically that the Petitioner Shepell Orr on direct review suffered undue and unfair prejudice when appellate counsel failed to raise the issue(s) and to actively challenge the instructions re: voluntary manslaughter as codified under *Indiana Code* § 35-42-1-3 subsection (a) (1); that; (A person who knowingly or intentionally kills another human being. . . . while acting

under *sudden heat* commits voluntary manslaughter, a Level 2 felony (formerly a Class 'A' felony as applies to the Petitioner under the Indiana 'savings clause' noted in *Indiana Code* § 1 et seq.), and that relative to *Indiana Code* § 35-42-1-3 subsection (b) , the existence of *sudden heat* is a mitigating factor that *reduces* what otherwise would be murder under *Indiana Code* § 35-42-1-1(1) of this chapter to voluntary manslaughter." As applies to Petitioner formerly under *Indiana Public Law No. 261-1997* § 1, and has been subsequently amended under *Indiana Public Law No(s)*, 158-2013 § 413; 203-2018 § 2 (Emphasis provided by the Petitioner for brevity).

SHEPELL ORR (Petitioner) v. STATE OF INDIANA (Respondent)
45G02-1302-PC-01; Collateral Review; Lake County, Indiana Trial Court

SHEPELL ORR (Appellant) v. STATE OF INDIANA (Appellee)
45A04-1503-PC-87; Collateral Review Appeal; Indiana Court of Appeals

SHEPELL ORR (Petitioner) v. RONALD NEAL (Warden –ISP)
Cause No: 2:16-CV-039-TLS; Habeas Corpus under 28 USC § 2254;
United States District Court/Hammond, Indiana

SHEPELL ORR (Appellant) v. RONALD NEAL (Warden –ISP)
Appellate Cause: 18-3110; Denial of ability to appeal 28 USC § 2253(c)(2); by both the *United States District Court/Hammond, Indiana* and the *United States Court of Appeals in and for the 7th Circuit* sitting at Chicago, Illinois under Title 28 USC §§ 41, 43 et seq. respectively.

- 3) By any and all abuse(s) of discretion by either the Lake County, Indiana Superior Court (45G01), the Indiana Court of Appeal(s) (Division(s) Three

(3) and/or Four respectively) on either both direct and/or collateral review appellate processes); or the Indiana State Supreme Court.

4) By the ineffective assistance of any and all counsel(s) conducting the Petitioner Shepell Orr's trial, direct appeal, and post-conviction collateral review (i.e. post-conviction relief) in violation of the 5th, 6th and 14th amendment(s) to the *United States Constitution*. (See) *Strickland v. Washington*, 466 US 668, 104 S.Ct. 2052 (1984) and the recent ruling made in *Brown v. Brown*, Slip. Op. 16-1014 pg. 13/14 ¶ 5 – 6 ; dissenting opinion of Circuit Judge Diane Sykes (Decided: February 01, 2017) (See) 847 F. 3d. 502.

5) Whether or not Petitioner was unduly prejudiced when the Lake County Superior Court #1 improperly admitted extrinsic evidence of a witness's prior inconsistent statement(s) of LaTonya Burnett under *Indiana Rule of Evidence* 613 . That the trial court erroneously allowed a witness named Michelle Jones to provide testimony that LaTonya Burnett implicated Orr as the shooter ² [ECF No. 20 @ 10]. As to the quoted *Id.* ¶ 6; "state courts are the principal forum for asserting constitutional challenges to state convictions."

² This was a blatant abuse of discretion in violation of the 'Hearsay Rule' (*Indiana Rule of Evidence* 801).

Richter, 562 US @ 103. That will no longer be true in Indiana for at least some '*Strickland*' claim(s). The decision made in '*Brown*' 847 F.3d 502 (7th Cir. 2017) S.Ct 17-887 Denied Certiorari; (April 16, 2018) [shall make], the *federal courts*, not state courts the primary forum for more constitutional challenges to state convictions." That if the state court(s) deny petitioner's application for review (done in good faith) then the federal venue shall be appropriate for the attainment of remedy to any and all U.S. constitutional violations, based on the equitable doctrine of '*Stare Decisis*'. The trial and/or appellate counsel(s) failure(s) to preserve any and all legitimate 'free-standing' claim(s) should not be attributable to the Petitioner Orr where it shows any clear constitutional error(s) 'prima facie'.

- 6) Whether or not the United States District Court denied the Petitioner's claim(s) erroneously although the 7th Circuit Court of Appeals had stipulated to the rule re: a '*narrow exception*' standard previously expounded in this Court's ruling in *Coleman v. Thompson*, 501 US 722 @ 750 (1991);

That the "[d]octrine barring procedurally defaulted claims from being heard is not without exceptions. A prisoner may obtain federal review of a defaulted claim by showing cause for the default and prejudice from a violation of federal law."

(See) *Brown v. Brown*, Slip. Op. 16-1014 pg. 13/14 ¶ 5-6 – dissenting opinion of Circuit Judge Diane Sykes (Decided: February 01, 2017) 847 F. 3d. 502 with re: to any and all defaulted ‘Strickland’ claim(s). This relates to the specific claim(s) as raised in the Petitioner’s previous ‘habeas corpus’ filing under Cause No: 2:16-CV-039-TLS; that the Petitioner was defaulted through no fault of his own when both his trial and appellate counsel(s) failed to adequately impeach witness Antonio Foster.

LIST OF PARTIES

- (i) Shepell Orr – Petitioner;
- (ii) Ronald Neal – Warden – Indiana State Prison – Respondent;
- (iii) THE STATE OF INDIANA – (An Entity/Corporation) Co-Respondent;

All parties do not appear in the caption of the case on the cover page. Additionally, parties answerable herein are represented as THE STATE OF INDIANA, either known as Plaintiff, Appellee and/or Respondent to the action(s) listed herein.

TABLE OF CONTENTS

Questions Presented on Certiorari (S.Ct. 10 et seq.)	-2-7-
List of Parties	-8-
Table of Contents	-9-
References to Opinion(s)	-10-
Table of Authorities/Page Index	-11-12-
Jurisdiction	-13-
Constitutional and Statutory Provisions Involved	-14-15-
Statement of the Case-Petitioner Assessment	-15-31-
Reasons for Granting of Petition	-32-
Conclusion	-32-
Proof of Service	-33-
Certificate of Compliance – Word Count	-34-

REFERENCES TO OPINION(S)

The Petitioner respectfully requests that Judicial Notice be taken in accordance with *Federal Rule of Evidence* 201(d) to review the matters as relate to all of the following Cause Number(s) in their entirety;

- (i) STATE OF INDIANA (Plaintiff) v. SHEPELL ORR (Defendant)
45G01-1001-MR-01; Lake County, Indiana Trial Cause;
 - (ii) SHEPELL ORR (Appellant) v. STATE OF INDIANA (Appellee)
45A03-1107-CR-308; Direct Review; Indiana Court of Appeals
 - (iii) SHEPELL ORR (Petitioner) v. STATE OF INDIANA (Respondent)
45G02-1302-PC-01; Collateral Review; Lake County, Indiana Trial Court
 - (iv) SHEPELL ORR (Appellant) v. STATE OF INDIANA (Appellee)
45A04-1503-PC-87; Collateral Review Appeal; Indiana Court of Appeals
 - (v) SHEPELL ORR (Petitioner) v. RONALD NEAL (Warden –ISP)
Cause No: 2:16-CV-039-TLS; Habeas Corpus under 28 USC § 2254;
United States District Court/Hammond, Indiana
 - (vi) SHEPELL ORR (Appellant) v. RONALD NEAL (Warden –ISP)
Appellate Cause: 18-3110; Denial of ability to appeal 28 USC § 2253(c)(2); by both the *United States District Court/Hammond, Indiana* and the *United States Court of Appeals in and for the 7th Circuit* sitting at Chicago, Illinois under Title 28 USC §§ 41, 43 et seq. respectively.
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TABLE OF AUTHORITIES/Page Index

Rule(s)

S.Ct. Rule 10; 2,

S.Ct. Rule 13.1; 13,

S.Ct. Rule 29; 33,

S.Ct. Rule 33.1 (d); 34

S.Ct. Rule 33.2 (h); 34

Rule(s) Indiana

Indiana Admission and Discipline Rule 22; 30

Indiana Appellate Rule 22; 19

Indiana Appellate Rule 32(A); 17,

Indiana Appellate Rule 46(A) (8) (a); 19,

Indiana Post-Conviction Rule 1§1(7); 17,

Indiana Rule of Evidence 403; 21, 29,

Indiana Rule of Evidence 404 & 404(a) (2); 21, 22,

Indiana Rule of Evidence 405; 21,

Indiana Rule of Evidence 613; 5,

Indiana Rule of Evidence 616; 29,

Indiana Rule of Evidence 801; 6,

Indiana Rule of Professional Conduct No. 1.4; 16,

Rules (United States)

Federal Habeas Corpus Rule No(s) 7, 8; 18,

Federal Rule of Evidence 201(d); 10,

Federal Rule of Evidence 403; 21,

Statute(s) (United States)

Title 28 USC § § 41, 43, 1251, 1254(1), (2), 1257, 1746 (1), 2244, 2254, 2253(c) (2), (e) (1); 4, 10, 13, 15, 30, 32,

Statute(s) (Indiana)

Indiana Code § 1 et seq., re: 'savings clause'; 3, 4, 15,

Indiana Code § 1-1-2-2; 25,

Indiana Code § 35-34-1-2(d); 26,

Indiana Code § 35-42-1-1(1); 3, 4, 16, 21,

Indiana Code § 35-42-1-3; 3, 4, 15, 24,

Cases (United States)

Brown v. Brown, Slip. Op. 16-1014 pg. 13/14 ¶ 5-6
(Decided: February 01, 2017) 847 F. 3d. 502; 2, 5, 6, 7, 17, 18, 30,
Coleman v. Thompson, 501 US 722 @ 750 (1991); 7, 13,
Douglas v. California, 372 US 353, 357-58 (1963); 13,
Driscoll v. Delo, 71 F.3d. 701 (8th Cir. 1995); 28,
Evitts v. Lucey, 469 US 387, 396 (1985); 13,
Haines v. Kerner, 404 US 519, 92 S.Ct. 594; rehearing denied, 405 US 948, 92 S.Ct. 963 (1972); 32,
Martinez v. Ryan, 132 S.Ct. 1309 (2012); 17, 18, 30,
Richter, 562 US @ 103; 6,
Slack v. McDaniel, 529 US 473, 484 (2000); 31,
Strickland v. Washington, 466 US 668, 104 S.Ct. 2052 (1984); 5, 20, 30,
Trevino v. Thaler, 133 S.Ct. 1911 (2013); 18, 30,
United States v. Cronin, 466 US 648, 104 S.Ct. 2039 (1984); 30,
United States v. Rogers, 118 F.3d. 466, 470-71 (6th Cir. 1997); 19,

Cases (Indiana)

Brooks v. State of Indiana, 683 NE 2d 574 (Ind. 1997); 22,
Daniels v. State of Indiana, 683 NE 2d 557 (Ind. 1997); 21,
Dorsey v. State of Indiana, 260 NE 2d. 800 (1970); 26,
Flores v. State of Indiana, 485 NE 2d. 890 (Ind. 1985); 25,
Garcia v. State of Indiana, 433 NE 2d. 1207 (Ind. App. 1982); 25,
Griffin v. State of Indiana, 439 NE 2d. 169 (Ind. 1982); 26,
Johnson v. State of Indiana, 722 NE 2d @ 384 (Ind. Ct. App. 2000); 20,
Jordan v. State of Indiana, 502 NE 2d. 910 (Ind. 1987); 26,
Koo v. State of Indiana, 640 NE 2d 95 (Ind. App. 1994); 29,
Lawrence v. State of Indiana, 464 NE 2d @ 1294 (Ind. 1984); 20,
Niemeyer v. McCarty, 221 Ind. 688, 51 NE 2d 365 (Ind. 1943); 22, 24,
Pinegar v. State of Indiana, 553 NE 2d 525 (Ind. 1990); 22,
Thompson v. State of Indiana, 259 Ind. 587, 592, 290 NE 2d. 724, 727 (1972); 26,
Thompson v. State of Indiana, 270 Ind. 677, 389 NE 2d 274 (Ind. 1979); 32,
Wardlaw v. State of Indiana, 286 NE 2d 649 (Ind. 1972); 22, 23,
Williams v. State of Indiana, 690 NE 2d 162 (Ind. 1997); 21,
Wilson v. State of Indiana, 468 NE 2d. 1375, 1377 (Ind. 1984); 25,

Other Authorities

4th, 5th, 6th 8th and 14th amendment(s) of the *United States Constitution*; 2, 5, 14, 28,

JURISDICTION

Under United States Supreme Court Rule 13.1 and Title 28 USC § § 1251, 1254(1), (2), 1257, this Honorable Court has jurisdiction by certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the United States Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy. The Petitioner Shepell Orr has been procedurally defaulted by no fault of his own and has been prevented from exhausting any and all remedies in the Indiana State Court(s) due to ineffectiveness of his appellate counsel on direct review. (See) *Coleman v. Thompson*, 501 US 722 @ 754 (1991).; “[f]or if the attorney appointed by the State to pursue direct appeal is ineffective, *the prisoner has been denied fair process and the opportunity to comply with the State’s procedures and obtain an adjudication on the merits of his claims.* (See) additionally, *Evitts v. Lucey*, 469 US 387, 396 (1985); *Douglas v. California*, 372 US 353, 357-58 (1963) (holding States must appoint counsel on a prisoner’s first appeal). (Emphasis-Petitioner). The Petitioner Shepell Orr has complied with any and all applications timely made in both the United States District Court in and for the Northern District of Indiana/Hammond Division and the United States Court of Appeals in and for the 7th Circuit sitting @ Chicago, Illinois. The Petitioner now seeks relief herein to the unlawful conviction and sentence in trial cause: State of Indiana, County of Lake, Superior Court No: 45G01-1001-MR-01 that is in violation of federal constitutional law.

CONSTITUTIONAL AND STATUTORY PROVISION(S) INVOLVED

The Petitioner is invoking federal review for violation(s) for the following under the laws of the United States:

- 1) Violation(s) under the 4th amendment to the U.S. Constitution of unlawful seizure of the body.
- 2) Violation(s) under the 5th amendment to the United States Constitution of the denial of due process of law.
- 3) Violation(s) under the 6th amendment to the United States Constitution of the denial of (i) a right to a fair and impartial trial by jury; (ii) the right to effective counsel for defense; (iii) the denial of access to compulsory process to obtain witnesses in his favor; (iv) for the trial counsel(s) failure(s) to properly challenge any and all prior inconsistent statement(s) made by witness's; (v) for failure(s) to employ proper trial strategy for impeachment purposes, and (vi) for any and all counsel(s) failure(s) to proffer proper affirmative defenses for mitigation purposes.
- 4) Violation(s) under the 8th amendment of unlawful restraint of liberty done with malice and 'ill-will' inflicting cruel and unusual punishment against the petitioner.
- 5) Violation(s) under the 14th amendment to the United States Constitution as applies to the State's (i.e. denial of the equal protection clause) re: the laws of the United States. (Note* proper application of both the 5th , 6th amendment(s)). Denial of the Petitioner's appellate process to invoke full

federal judicial review unlawfully, and falsely asserting claim(s) under Title 28 USC §2253(c) (2) that no federal constitutional violation exists.

STATEMENT OF THE CASE

The Petitioner Shepell Orr challenges his conviction(s) for murder in trial cause number: 45G01-1001-MR-01 and his subsequent sentence of imprisonment of 110 years in the aggregate under Title 28 USC § 2254 et seq. Due to procedural default through no fault of the Petitioner. The facts in the case should not be presumed as correct. In contrast to the District Court's assertion under Title 28 USC § 2254(e)(1). The Petitioner invokes the following;

Trial Counsel failed to communicate with the petitioner while confined, failed to investigate and present evidence on client's behalf and to properly prepare for trial or to give proper notice of an alibi defense, failed to subpoena proper alibi witnesses, failure(s) to object to the State's usage of defective and erroneous charging information for Knowing and Intentional Murder instead of invoking that the elements and the results of the offenses only met the statutory elements of the charge of voluntary manslaughter as codified under *Indiana Code* § 35-42-1-3 subsection (a) (1); that: (A person who knowingly or intentionally kills another human being. . . . while acting under *sudden heat* commits voluntary manslaughter, a Level 2 felony (formerly a Class 'A' felony as applies to the Petitioner under the Indiana '*savings clause*' noted in *Indiana Code* § 1 et seq.), and that relative to *Indiana Code* § 35-42-1-3 subsection (b) , the existence of *sudden*

heat is a mitigating factor that *reduces* what otherwise would be murder under *Indiana Code* § 35-42-1-1(1) of this chapter to voluntary manslaughter.”

The Petitioner Shepell Orr’s trial counsel and his subsequent direct appeal counsel’s failure(s) to either object and/or to ask for an admonishment to all fundamentally flawed jury instructions, or to properly raise the issue on direct review, specifically re: the failure to challenge the voluntary manslaughter jury instruction(s) (*supra*) did result in both violations of the due process and equal protection clauses of the U.S. and Indiana Constitutions. Additionally, trial counsel and his subsequent direct appeal counsel’s failure(s) to object and/or ask for admonishment of State Witness testimony re: prior inconsistent statement(s) and failure(s) to adequately impeach witness Antonio Foster or to properly raise the issue(s) on direct review resulted in undue and unfair prejudice and denied the Petitioner Shepell Orr a fair and impartial trial by jury.

The Petitioner Shepell Orr is specifically invoking the following subject matter for the court to take notice of a generally accepted practice all to commonplace in the Indiana Court(s) and specifically with respect to the Petitioner’s conviction(s) and sentence(s) as imposed in 45G01-1001-MR-01 The Petitioner is referring to numerous ethical and legal violation(s) as re: *Indiana Rules of Professional Conduct* Rule 1.4 – ‘lack of communication’ and the numerous failure(s) for all the above named counsel(s) to either consult, counsel or give any consideration to either as an Appellant (when on Direct Review) and/or as a Petitioner (when in Post-Conviction Collateral Review Proceeding(s)) when it is

critical that the one (i.e. who will be the one forced to have to suffer any and all consequences of Counsel error(s)) should at the very least be afforded the opportunity to modify and/or correct the record³ where necessary before the Appellate 'Briefing Process' has been completed. For once the Appellate Briefing Process is closed, for all time forward, this will be what will be documented as the 'true and correct' record, and any variances or error(s) that were documented will 'never' be subject to change, alteration and/or abstraction.⁴ *As applied to* the Petitioner's Original Trial Cause: 45G01-1001-MR-01, additionally, the same premise would apply to any and all evidentiary hearing transcript(s) taken in the Petitioner' subsequent post-conviction collateral proceeding(s) and for Appellate purposes under Indiana Post-Conviction Rule 1§1(7).

It is [a] generally accepted common practice for Appellate Counsel(s) (as relates to indigent Appellant(s)) to simply withdraw the record as certified by the trial court(s) clerk and reporter and 'run with it', without consultation with the Appellant, who (as previously reiterated) ultimately has to suffer the error of the appointed counsel(s) action(s). (See) Ruling in '*Brown v. Brown*, 847 F.3d 502 (7th Cir. 2017) S.Ct. 17-887 Denied Certiorari; (April 16, 2018) *Martinez v. Ryan*, 566 US, Slip Op. 10-1001 – March 22, 2012;

"[A] procedural default will not bar a federal habeas court for hearing a substantial claim of ineffective assistance of trial counsel (if in the initial review collateral proceeding) (i.e. direct appeal) if there was no counsel or counsel(s) was ineffective."

³(See) *Indiana Appellate Rule* 32(A);

⁴ This particularly applies to the facts as stated in the Petitioner's Original Trial Cause: 45G01-1001-MR-01.

The doctrine elicited as '*Martinez-Trevino*' has application currently in Indiana. Petitioner Shepell Orr therefore has an inherent right to a granting of the habeas corpus petition in order to hold a proper evidentiary hearing under Rule 7 and 8 respectively of the Federal Rules governing habeas corpus so that the Petitioner Orr could properly develop the record to substantiate his claim(s) for relief. This would have open[ed] the door and provide review '*de novo*' of any and all substantial claim(s) of Ineffective Assistance of Counsel where;

- (1) Counsel at any stage of the proceeding(s) were deficient and the petitioner was procedurally defaulted; and
- (2) That the underlying claim(s) are substantial.

That; "All answers in the affirmative [would] open the door for full federal review barring AEDPA'S Deferential Standard of Review. Noting * *Dissenting Opinion*; Circuit Judge Diane Sykes – '*Brown*' 16-1014 Pg. 13/14 ¶ 5-6 (7th Cir. 02/01/2017). Both Petitioner Orr's trial and direct appellate counsel(s) would have been additionally subject to compulsory process under subpoena in order for the Petitioner to have the proper ability to develop the record for any and all evidentiary hearing processes in order for the Petitioner to substantiate any and all of his ineffective assistance of counsel claim(s) with re: to habeas corpus. Including additional claim(s) that are apparent on the face of the record, and where the

Indiana Appellate Court 'sua sponte' could acknowledge that in essence that the Petitioner's direct appellate counsel violated his rights of due process during the Petitioner's Direct Appeal. Where appellate counsel(s) fail to raise substantive claim(s) that are apparent 'prima facie'. The Court will fail to rule on any and all claim(s) that are not adequately supported by cogent argument. (See) Indiana Appellate Rule 46(A) (8) (a); with regards to this premise;

Argument; (a) The argument must contain the contentions of the appellant on the issues presented, *supported by cogent reasoning*. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with App. R. 22.

This will consistently apply to counsel(s) failure to preserve an appellant's appellate remedial process, noting Petitioner Orr's direct appeal counsel's failure to apply for a Petition for Transfer to the Indiana Supreme Court as relates to Appellate Cause No: 45A03-1107-CR-308; (See) [ECF No. 8.2] in 2:16-CV-39-TLS. This error was significant and extremely prejudicial to the Petitioner, and his Appellate Counsel was required to effectively argue all matter(s), even though not objected to by the Petitioner's Trial Counsel. Indiana's '*fundamental error*' rule sometimes affords relief to claimants who *did not preserve an issue before the trial court and seek to raise it for the first time on appeal*. As is similar to the federal '*plain error*' doctrine; "[w]ith respect to [a] forfeited claim when [an] intervening case opinion establishes a new rule, "[w]e must apply the 'plain error' doctrine to analyze the failure to submit the question of materiality to the jury." (See) *United States v. Rogers*, 118 F.3d. 466, 470-71 (6th Cir. 1997). In addition, for the reasons

set forth above, the issue re: the procedural default and [i.e. the trial counsel's error of not objecting to the flawed jury instruction re: voluntary manslaughter or the prior inconsistent statement(s)/counsel's failure to impeach witness Antonio Foster and the subsequent 'waiver' of the issue(s).] were clearly stronger than the issue(s) that were actually raised. (See) *Johnson v. State of Indiana*, 722 NE 2d @ 384 (Ind. Ct. App. 2000). Therefore, had appellate counsel raised these issue(s) adequately there is a reasonable likelihood that the Indiana Court of Appeals would have reversed and remanded for re-trial. The Petitioner, therefore, received ineffective assistance of appellate counsel. *Id.*, *Strickland v. Washington*, 466 US 668 @ 681, 694; 104 S.Ct. 2052 (1984); and *Lawrence v. State of Indiana*, 464 NE 2d @ 1294 (Ind. 1984).

PETITIONER'S ASSESSMENT

The Petitioner's Direct Appellate Counsel failed to raise any and all 'free standing' claim(s) amounting to procedural default and would amount to 'cause' excusing petitioner's failure to raise any and all constitutional claim(s) that violate federal law and where post-conviction relief remedy was the 1st opportunity to develop the record for substantiation. The criteria for the charge of knowing and intentional murder under *Indiana Code* § 35-42-1-1(1) relates to the specific element of 'intent'. The element of 'sudden heat' should have applied in relation to the true facts of the case. The Petitioner's case should have been premised on a[n] affirmative 'self defense' claim. Any evidence of a 'gang dispute' and/or gang activity would have been highly prejudicial to the Petitioner, and its presumption and admission would be in violation of *Indiana Rules of Evidence* No. 403⁵ unless it clearly [had] significant probative value on a contested issue. (See) *Daniels v. State of Indiana*, 683 NE 2d 557 (Ind. 1997). The most common legitimate issue is when 'gang membership' [would] provide a motive for gang violence. (See) *Williams v. State of Indiana* 690 NE 2d 162 (Ind. 1997). Character evidence under *Indiana Rule of Evidence* 404 states that "evidence of a person's character" and exceptions to the rule permit the accused in a criminal case to place a pertinent trait of the victim's character in evidence as 'admissible'. *Indiana Rule of Evidence* No. 405 says; that "proof may be made by testimony in the form of an opinion." Additionally, character

⁵ *F.R.E.* 403; "The Court may exclude relevant evidence if its probative value is substantially outweighed by the danger of one or more of the following; (i) unfair prejudice; (ii) confusing the issue(s); (iii) misleading the jury; (iv) wasting time; or (v) needlessly presenting cumulative evidence."

may be proven by reputation. (As the general opinion of people in [a] community as to [a] particular person's attributes, a person's *reputation is evidence of the true measure of their character.*) Where self-defense (or sudden heat) had been pleaded, the character of the victim for aggressiveness and the defendant for peacefulness may be offered to show whether or not the victim was the aggressor. (See) *Niemeyer v. McCarty*, 221 Ind. 688, 51 NE 2d 365 (Ind. 1943). Indiana Rule of Evidence 404 (a) (2); provides that the accused may have offered evidence of a pertinent trait of character of the victim, e.g., of [a] victim's propensity for violence in support of a self-defense claim. *Brooks v. State of Indiana*, 683 NE 2d 574 (Ind. 1997).

The Petitioner wishes to speak plainly on this matter to the Justice(s) herein, and not to be vexatious or abusive. When one is engaged in an altercation (where one's life might be at stake) the affirmative defense known as 'sudden heat' is one most invoked. One minute two men may be conversing, the next they are combative. The fact that court(s) tend to claim that the Petitioner failed to provide any evidence of the victim's propensity for violence [cannot] be held as valid in such a situation. *Niemeyer v. McCarty, Id.*, (Emphasis-Petitioner).

The Petitioner was denied the full and unfettered opportunity to present a self-defense of 'sudden heat' by his trial counsel. The court knew of these premises and deliberately denied the Petitioner's opportunity to have a fair and impartial trial. *Pinegar v. State of Indiana*, 553 NE 2d 525 (Ind. 1990) (self-defense is not inconsistent with claim of sudden heat). *Wardlaw v. State of Indiana*, 286 NE 2d

649 (*Ind. 1972*) (a person may act upon appearances that seem to be threatening his life, even though he may actually be mistaken.)

It should be further noted that for any and all State Court Justice(s) responsible for rendering the opinion in re: to *Orr v. State of Indiana*, 45A03-1107-CR-308; by those [Justice(s)] who have no experience being brought up in a 'gang environment'. The misnomer that the Petitioner "[m]ust present evidence that he knew about any specific bad acts in question before he killed the victim[s]." [i.e. was mandated to create a supposed 'narrative' re: the prior bad acts of the victim(s) Steven Williams and Joshua Hayward]. It was plainly apparent that during the Petitioner's initial trial, the issue(s) re: 'propensity for gang violence in East Chicago, Indiana should have been discussed by trial counsel to the Court and the Jury. The Justice(s) regularly cite case opinion(s) that bolster the premise to severely limit interpretations of pertinent and/or relevant evidence that [may be] outside the trial record only. That any attempts by individual(s) to introduce material evidence where [a] victim may be considered part of a 'gang membership' are disfavored as the court(s) tend to assert the premise that doing this 're-victimizes' the victim(s) and that any declaration of particular narratives/exploits would tend only to be 'self-serving' to those sitting as defendant(s), which the court(s) generally in Indiana do not find credible. Yet, the court then generally reverses course by shifting the burden of proof in such matters stating that it is usually the Defendant's (i.e. the Petitioner Orr's) responsibility to create a so-called

'narrative' of [a] victim's past history for violence. Noting again as contrary to the ruling in *Niemeyer v. McCarty, Id. (Supra)*.

The word construction specifically involves 'intent' meaning; "What was the Petitioner's state of mind when he allegedly entered the 'building'?" The Petitioner's alleged 'intent' was to confront the individual(s) (Williams and Heywood) for supposedly disrespecting the Petitioner? The elements and results of the offense could only meet the criteria under *Indiana Code* § 35-42-1-3 (voluntary manslaughter) as there was no clear eyewitness(es) as LaTonya Burnett ran outside of the building and Tyree Tolbert was already outside the building. They both then ran to a friend's apartment inside a nearby building. Therefore, they had no direct first-hand knowledge of what the details of the shooting were. As Tolbert claimed to have only heard multiple gunshots from the building where he had left Orr and the others. (See) Background section of the Opinion and Order filed on August 27, 2018 in 2:16-CV-0039-TLS Pg. 1-2. The Court had therefore committed an abuse of discretion by choosing to ignore actual facts. The fact that the Indiana Court of Appeals stated the giving of the instructions were erroneous was highly prejudicial, where the claim that the Petitioner was not entitled to them, although the lack of eyewitness(es) to the actual shooting(s) was a definitive and significant evidentiary dispute, and the Petitioner should have been allowed to correct the Instruction and to preserve and not invade the trier(s) of fact province. These facts alone show that the Petitioner was prejudiced by the Indiana Court of Appeals denial of relief, where it was shown that counsel's error subsequently led to the Appellate Court's

denial of relief. Had a proper objection been raised and an admonishment/correction been given, it is highly probable that the jury would have only convicted the Petitioner of the lesser included offense of 'voluntary manslaughter', and the outcome of the Petitioner's conviction and sentence would have been different.

As is stated; "[t]he [Indiana] constitutional provision requires. . . . that the information sufficiently informs the accused of the nature of the charge(s) against him, so that s/he may anticipate the state's proof and prepare a defense in advance of trial." *Flores v. State of Indiana*, 485 NE 2d. 890 (Ind. 1985). "Information . . . must charge and direct in unmistakable terms the offense with which the defendant is accused. If there is a reasonable doubt as to what offenses are set forth, that doubt should be resolved in favor of the defendant." *Garcia v. State of Indiana*, 433 NE 2d. 1207 (Ind. App. 1982). In the discrepancy re: knowing and intentional murder [based solely on an alleged statement, however where there is no direct eyewitness testimony] "Due process prohibits bringing information for offenses where the statute defining [an] offense is 'void for vagueness'. Vagueness means that; a person of common intelligence, reading the statute, would not know what conduct was prohibited." *Wilson v. State of Indiana*, 468 NE 2d. 1375, 1377 (Ind. 1984). *Indiana Code* § 1-1-2-2 states the following;

"[c]rimes shall be defined and punishment therefore fixed by statutes of this state and not otherwise."

The foregoing specific statute means that a charge [as written] and the ambiguity as related to the previous ruling noted in '*Garcia*' *Id.* @ 1207 should be resolved in favor of the petitioner. As the evidence and results of the offense(s) were

to be shown and drafted only under *Indiana Code* § 35-42-1-3 re: “[t]he nature and elements of the offense charged in plain and concise language”, were not followed. The requirement of the essential facts constituting the offense [as] charged were defective under *Indiana Code* § 35-34-1-2(d); “In determining whether the information states the offense with sufficient clarity, words must be construed in the manner in which they are commonly or ordinarily accepted. Reasonable doubt as to [what] the offense is charged should be resolved in favor of the [petitioner].” *Dorsey v. State of Indiana*, 260 NE 2d. 800 (1970). “Where there is a conflict between headings and text, language of the text controls.” *Jordan v. State of Indiana*, 502 NE 2d. 910 (Ind. 1987). Claim(s) re: error(s) in re: to charging information rise to a level of fundamental error, that requires reversal even when the errors are not objected to at trial. (See) *Griffin v. State of Indiana*, 439 NE 2d. 169 (Ind. 1982). Specifically re: the error re: the Jury Instruction [as given] was re: the charge of voluntary manslaughter in the Petitioner’s trial cause: 45G01-1001-MR-01. It should be noted that the Indiana Supreme Court “[r]equiring that the facts giving rise to [the offense of knowing and intentional murder] must be “independently supportable, separate and distinct.” (See) *Thompson v. State*, 259 Ind. 587, 592, 290 NE 2d. 724, 727 (1972). (Emphasis-Petitioner) The fact that the State never did conclusively disprove that ‘*sudden heat*’ was not a factor in the shooting(s). Defined as;

([a] mental state which results from provocation sufficient to excite the mind of the defendant such emotions as anger, rage, sudden resentment, jealousy or terror sufficient to obscure the reason of an ordinary person and as such prevents

deliberation and premeditation, excludes malice and renders the defendant incapable of cool reflection prior to acting.)

The jury instruction as given was erroneous and thereby prejudiced the petitioner. The conviction for murder should be reversed and vacated for fundamental error. This case should be examined with re: to particular facts and circumstances and that once examination is completed, that this Honorable Supreme Court of the United States may grant review and vacate the previous district court(s) judgment(s) in 2:16-CV-039-TLS and allow the habeas corpus appeal filed in Case No: 18-3110 (7th Circuit Court of Appeals (US)) to proceed forward and to have the Petitioner's claim(s) properly adjudicated on the merit(s).

Petitioner Claim: The fact that the Indiana Court(s) reasonably found that the Petitioner's trial counsel was not ineffective for the way she impeached the State's witness Antonio Foster was erroneous and violated the Petitioner's rights to due process of law and to the guarantee under the 14th amendment as applies to the State(s) of equal protection of the laws. The Petitioner's trial counsel had an inherent right to confront any and all adverse witnesses adequately and to demonstrate effectiveness in the questioning of trial witnesses in accordance with the 6th amendment to the *United States Constitution*.

Where a person testifies against a defendant in exchange for any and all deal(s)/plea(s)/reduction(s) in sentence it is imperative that the State discloses any and all agreement(s) whether written or unwritten. (Note) *Driscoll v. Delo*, 71 F.3d. 701 (8th Cir. 1995) where; "Trial Counsel's failure to properly utilize witnesses' prior inconsistent statements for impeachment purposes constitutes ineffective assistance." Asserting that there was an underlying motive for Antonio Foster's statements that were given, and the Petitioner Orr wanted it rooted out.

The Petitioner's trial counsel already had foreknowledge that there existed a bias, interest and/or motive for Antonio Foster to testify falsely, due to a specific fact that was obfuscated and then subsequently was never made completely clear. The fact was that the witness Antonio Foster had brokered for a plea deal

for giving testimony against the Petitioner, and the obvious fact that Foster was facing in his own case a possible range of sentencing if convicted of One Hundred (100) years should have been disclosed to the trier(s) of fact for [a] substantive assessment with re: to witness credibility of both the Petitioner Shepell Orr or Witness Antonio Foster. If the Petitioner's trial counsel had shown the witness bias under Indiana Rule of Evidence No. 616, it is quite likely that the outcome of the Petitioner's trial would have been different. It should additionally be noted that any and all bias of important witnesses is to be considered a significant issue of high probative value and is thus is generally considered admissible over Indiana Rules of Evidence 403 objections. Note that "A witness may be impeached by showing that he or she has a financial interest or *stands to profit from outcome of the case*; *Koo v. State of Indiana, 640 NE 2d 95 (Ind. App. 1994)*

It is further demonstrative of ineffectiveness of trial and appellate counsel(s) where they denied the Petitioner the ability to be able to impeach Antonio Foster to show an implicit bias. It is reversible constitutional error to prevent Appellant in his criminal action under 45G01-1001-MR-01 from fully impeaching important state witnesses by showing their personal biases or motives to assist the prosecution.

The Petitioner(s) Counsel(s) inaction(s) are nothing short of a complete violation of their oath pursuant to Indiana Admission and Discipline Rule 22, and are violation(s) under both the U.S. Supreme Court's established Standard(s) of Review having application as relates to both *Strickland v. Washington*, 466 US 668 (1984); and *United States v. Cronin*, 466 US 648 (1984) respectively. That their conduct fell below a reasonable standard by doing nothing effective to advocate for Mr. Orr's claim of 'sudden heat', and; that their deficient performance caused prejudice and the resulting conviction and sentence as well as the affirmation of the Petitioner's direct appeal in both 45G01-1001-MR-01 & 45A03-1107-CR-308 respectively.

The Petitioner relies on the recent ruling in *Brown v. Brown*, 847 F.3d. 502 (7th Cir. 2017) (S.Ct. 17-887 *Denied Certiorari* April 16, 2018) that when a procedural default has occurred through no fault of the petitioner then the equitable ruling(s) in *Martinez v. Ryan*, 132 S.Ct. 1309 (2012) and *Trevino v. Thaler*, 133 S.Ct. 1911 (2013) have proper application in § 2254 cases in Indiana so that [petitioner] may try to overcome the procedural default of his claim(s) for Ineffective Assistance of Trial Counsel. ⁶ As the claim(s) made were never properly reviewed by the United States Court of Appeals in and for the 7th Circuit, but were summarily dismissed and subsequently denied to even have the opportunity to proceed, even though the

⁶ The '*Brown*' analysis found that the Indiana procedures governing Ineffective Assistance of Counsel at trial fall into the category the Supreme Court addressed in '*Trevino*'. (See) Slip. Op. 16-1014 pg. 3/14 II *Analysis* A. Stating that the *Martinez-Trevino* Doctrine Applies in Indiana 02/01/2017 Cir. Judge David Hamilton for the Court.

claim(s) herein rise to both [a] knowing of constitutional error(s) that are untenable under federal law, and cannot stand, but must be afforded relief. The Petitioner' Shepell Orr's habeas corpus filing under 2:16-CV-0039-TLS should have been [and should be] resolved in a different manner. (See) United States Supreme Court ruling in *Slack v. McDaniel*, 529 US 473, 484 (2000).

Petitioner believes that a factual predicate for the claim(s) stated herein have been established and that a proper remand back to the United States District Court would provide the Petitioner an opportunity to have a proper and complete evidentiary hearing, which could provide [a] full and unfettered expansion of the record and would substantiate the constitutional error(s) committed with re: to both 45G01-1001-MR-001; which the Indiana State Court(s) should remedy in favor of the Petitioner. That the facts, [when] proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact-finder would have found the Petitioner Shepell Orr guilty of the crime of 'knowing and intentional murder' had there been no constitutional error(s).

REASONS FOR GRANTING THE PETITION

The Petitioner has suffered an unlawful conviction and sentence of constitutional magnitude. This matter is unconscionable in the annal(s) of American Constitutional Law, and is in need of this highest Court's scrutiny for any and all appropriate relief to be provided to the Petitioner Shepell Orr. (See) *Thompson v. State of Indiana*, 270 Ind. 677, 389 NE 2d 274 (Ind. 1979); that, “[f]undamental constitutional guarantees are [to be] absolute, and are outside the discretion of any court to ignore or deny.” (Emphasis Petitioner).

CONCLUSION

WHEREFORE, the Petitioner herein tenders this Petition for Certiorari in good faith for review of any and all issue(s) of newly discovered evidence not previously presented or heard. Petitioner asks that this pleading be construed liberally as he is a ‘pro se’ prisoner making this application under necessity to gain relief. (See) *Haines v. Kerner*, 404 US 519, 92 S.Ct. 594 *rehearing denied*, 405 US 948, 92 S.Ct. 963 (1972). The Petitioner believes he is entitled to relief. This is done under necessity, and the Petitioner requests that this Petition for a writ of certiorari be granted in the interests of fundamental fairness and justice. SWORN to under Title 28 USC § 1746(1).

RESPECTFULLY SUBMITTED,



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