ORIGINAL

No. 19-5433

IN THE SUPREME COURT OF THE UNITED STATES

In re: Steven Bleau

ON PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

OR/ IN THE ALTERNATIVE

COMMON LAW WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED FOR REVIEW

This petition presents the following three questions:

1) Under circumstances involving a second collateral petition presenting an actual innocence claim; is Bleau deprived of his Constitutional Rights protected by the:

a) Due Process Clause of the Fourteenth Amendment when his "newly presented" exculpatory evidence (i.e. evidence known but not presentd to the jury), is not considered "newly discovered" exculpatory evidence in the context of a Sixth Amendment violation claim of ineffective assistance of trial counsel for failing to independently investigate, interview, and present a known alibi witness with corroborating documentary evidence in a death penalty trial?;

b) Sixth Amendment when trial counsel failed to independently investigate, interview, and present a known alibi witness with corroborating documentary evidence in a death penalty trial?;

c) Due Process Clause of the Fourteenth Amendment when the ***Martinez*** exception is not considered in the evaluation of whether to provide a gateway to federal review?

II. LIST OF PARTIES

All parties DO NOT appear in the caption of the case cover page. The parties to this proceeding whose judgment is the subject of this petition are:

1) Kevin Ransom (Superintendent of State Correctional Institution Dallas "SCI")

2) The Commonwealth of Pennsylvania

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PENNSYLVAIA STATE

NO. _____

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V. JURISDICTIONAL STATEMENT

The jurisdiction of this court is invoked under:

28 U.S.C. 1651(a): "The Supreme Court and all courts established by act of Congress may issue all Writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"; and

28 U.S.C. 2254(a): "Writs of Habeas Corpus may be granted by the Supreme Court, any justice thereof, the district courts and any Circuit Judge within their respective jurisdictions."

Bleau's last judgment of the Pennsylvania Superior Court (appeal as of right) was entered on February 5, 2018.[1] Bleau did not seek appeal from the Pennsylvania Supreme Court due to the following Order below: The exhaustion Order reads:

> AND NOW, this 9th day of May, 2000, we hereby recognize that the Superior Court of Pennsylvania reviews criminal as well as civil appeals. Further, review of a final order of the Superior Court is not a matter of right, but of sound judicial discretion, and an appeal to this court will not only be allowed when there are special and important reasons thereof. Pa.R.A.P.1114. Further, we hereby recognize that criminal and post-conviction relief litigants have petitioned and do routinely petition this Court for Allowance of Appeal upon the Superior Court's denial of relief in order to exhaust all available State remedies for purposes of federal habeas corpus relief.
>
> In recognition of the above, we hereby declare that in all appeals from criminal convictions or post-conviction relief matters, ***a litigant shall not be required to petition for rehearing or allowance of appeal following an adverse decision by the Superior Court in order to be deemed to have exhausted all available state remedies respecting a claim of error. When a claim has been presented to the Superior Court, or to the Supreme Court of Pennsylvania, and relief has been denied in a final order, the litigant shall be deemed to have exhausted all available state remedies for purposes of federal habeas corpus relief. This order shall be effective immediately."*** **In re: Bruno, 627 Pa.505 (2013), footnote # 19. Emphasis added.**

[1] This court in **In re: Davis, 557 U.S. 952, 130 S.Ct. 1, 174 L.Ed.2d. 614, 2009 US LEXIS 5037**, this honorable court stated:

> "The substantial risk of putting an innocent man in prison provides adequate justification for holding an evidentiary hearing. Simply put, the case is sufficiently 'exceptional' to warrant utilization of this court's rule 20.4(a), 28 USC 2241(b) and our original habeas corpus jurisdiction. **See: Byrnes v. Walker, 371 U.S. 937, 83 S.Ct. 322, 9 L.Ed.2d.277 (1962); Chapel v. Cochran, 369 U.S. 869, 82 S.Ct. 1143, 8 L.Ed.2d. 284 (1962).**

VI. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides:

"The accused in a criminal trial has the right to a speedy trial by an impartial jury, to be informed of the charges against him or her, to be confronted with witnesses against him or her, to have compulsory process for obtaining witnesses in his or her favor, and to have effective assistance of counsel." U.S. Constitution, Amendment VI.

The Eighth Amendment to the United States Constitution provides, in pertinent part:

"Excessive bail shall not be required, nor excessive fines imposed, nor Cruel and Unusual Punishment inflicted. U.S. Constitution, Amendment VIII.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

"Nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Constitution, Amendment XIV, 1.

VII STATEMENT OF THE CASE

EVENTS LEADING TO ARREST AND CONVICTION

On Sunday, November 29, 1987, 22 year old Gregory Ferguson called his cousin 23 year old business student at ITT tech, and small business owner, Steven Bleau, who was home babysitting his daughter. Ferguson asked if he could borrow Bleau's car, but Bleau declined and offered to drive them himself. Ferguson offered Bleau $250.00 to drive him and his friend's, victim George Montgomery and victim Mabel Toledo to Coatesville, Pennsylvania for drug business. Trial Transcript 12/6/88, 819-821; 12/7/88, 1018,1019. (hereinafter Tr._____). Bleau just got back from a Florida trip and still had his 1987 Buick Somerset rental car. Bleau subsequently dropped his daughter off at his sister house and proceeded to drive the group from New York City to Coatesville, Pennsylvania. The group arrived in Coatesville, Pennsylvania that evening where the group met with Arthur "Moe" Jackson and his girlfriend Trina Rooks. After driving around town to several locations, they stopped at a Kentucy fried chicken, where Moe suggested the group stay overnight and conclude business in the morning. Moe suggested the group stay at a house he had up for sale in the valley township area, while he stay at his girlfriend apartment across town. Tr. N.T. 12/3/88, 454; 12/6/88, 1035,1041. The next morning Moe Jackson went to the police and told them he just discovered two dead bodies he doesn't know who they are or how they got into his home. Moe was subsequently arrested for lying to the police when they found out Moe really knew the victims. However, the case was nolle pros.

On December 2, 1987, Pennsylvania detectives went to the home of Gregory Ferguson to question him. A search of his home revealed bloody cloths and sneakers under his bathroom sink, and dis-assembled rifle parts under the stairs in a box. Ferguson was taken to the police station and questioned further about the story he told victim Montgomery's brother; "that some Jamaicans stormed the house and killed Mongomery and Toledo" However, when the detectives told Ferguson that his thumb print was matched to a bloody thumb print on the wall at the crime scene, Ferguson changed his story. Ferguson at six feet, five inches and two-hundred and fifty pounds, stated that Bleau at five feet seven inches and one-hundred and sixty five pounds, killed the victims, because they would not pay him the money owed for driving them to Pennsylvania, and he couldn't stop it from happening. Thereafter, he drove back to New York city with Bleau and they arrived back between 5:30a.m.-6:00a.m. on the morning of November 30, 1987. Tr.N.T. 12/6/88, 981.[2]

2 _____
Ferguson plead guilty on September of 1988, to two counts of second degree murder as an accompice and was sentenced to two concurrent life sentences. with a condition that he testify against Bleau

On December 7, 1987, Bleau turned himself in to New York Authorities to be questioned by the Pennsylvania detectives. Bleau admitted driving the group to Coatesville, Pennsylvania, but they stayed overnight and he returned to New York City after making a 1:00.a.m., phone call home, arriving close to 4:00a.m., on the morning of November 30, 1987. Bleau felt staying overight should have been discussed prior to leaving New York city, and insisted on returning home. Thereafter Moe Jackson assured the group that he would drive them to the Amtrak in the morning. Tr.N.T. 12/7/88, 1041,1042,1050,1051. After arriving home (i.e. his mother-in-laws) in East Flatbush Brooklyn, New York, Bleau went to a local 24 hour grocery store. Tr.N.T., 12/7/88, 1066-1070. Bleau testified that Ferguson arrived at his home later that morning alone bleeding from his finger and with rifles under his full length coat. After attempt to get him a cab was unsuccessful, Bleau subsequently drove him home. Tr.N.T. 12/7/88, 1061. Despite Bleau's denial's he was subsequently arrested. However, New York mistakenly released Bleau, but he turned himself in for a second time a week later. Tr.N.T. 12/7/88, 1071-1073. Bleau was subsequently charged with two counts of first degree murder, two counts of robbery and two counts of conspiracy. Late November of 1988, Bleau was tried by jury of a capital crime and faced the death penalty.

Bleau set out to prove and alibi defense. Trial counsel presented no alibi witnesses or evidence, dispite knowing there was an alibi witness avavilable. At the core of the commonwealth's case is timing. Ferguson is the commonwealth's primary witness who places Bleau at the crime scene when the crime was occurring. Aside from Ferguson, There is no physical or forensic evidence that places Bleau at the crime scene in Pennsylvania, when the crime was occurring.

Evidence that discredits Ferguson's testimony was particularly crucial to the outcome of the trial. Without a doubt, Bleau was prejudiced due to trial counsels failure to independently investigate, interview and present the testimony of alibi witness, grocery store owner Frank Fayz. The defense strategy was rooted in Bleau's alibi that he was either enroute home to Brooklyn, New York, or actually home, during the time the crime was being committed in Coatesville, Pennsylvania. Discrediting Ferguson was a crucial corrolary to proving Bleau's innocence/alibi defense. Trial counsel's failure to present Mr. Fayz and the corroborating time-dated grocery store receipt made the prosecutions key witness, who provided the sole testimony contradicting Bleau's alibi, unassailable.

APPELLATE HISTORY

DIRECT APPEAL

On December 9, 1988, appellant. Steven Bleau was convicted of two counts of homicide and conspiracy and one count of Robbery, and was sentenced on February 14, 1992, to an aggregated term of mandatory life, plus 10-20 years. He was sentenced by New York City Private Attorney, George E. Hairston Esq., who handled trial and direct appeal. A direct appeal was filed and denied by the trial Court of Common Pleas of Chester County Pennsylvania on November 26, 1991. The Pennsylvania Superior Court affirmed the denial of fifteen claims on May 17, 1993 (431 Pa.Super.614 A.2d.210,No.01079 Phlia.1992 Unpublished) The following claims were presented for review:

1) The evidence was insufficient to sustain the verdict of criminal homicide, robbery, and conspiracy.
2) The trial court erred in finding Edwin Jackson unavailable and permitting the use of his un-redacted preliminary hearing testimony.
3) The Commonwealth engaged in misconduct by knowingly presenting false testimony by Edwin Jackson.
4) The trial court erred in allowing Edwin Jackson to testify at trial.
5) Commonwealth engaged in misconduct by misleading the jury regarding John Snow.
6) The trial court erred in declaring Gwen Jacobs a hostile witness.
7) Denial of due process because the jury did not deliberate.
8) The trial court erred in denying Bleau's request to voir dire and/or discharge a juror for cause.
9) The trial court erred in not declaring a mistrial when Ferguson said Bleau had an "open case".
10) Bleau was prejudiced by numerous inflammatory and improper remarks.
11) The commonwealth engaged in misconduct by using preemptory challenges to remove black juror's solely because of their race.
12) The verdict was against the weight of the evidence.
13) The prosecutor's closing argument was prejudicial.
14) Newly discovered evidence established prosecutorial misconduct; and
15) The trial court erred in not granting witness Gary Mamenko immunity during Bleau's post-

trial hearing.

On May 17, 1993, the Superior Court affirmed the judgment of sentence. Commonwealth v. Bleau, 631 A.2d. 210 (Pa.Super.1993); No.1079 Phila.1992 (unpubished). After trial counsel abandoned appellant, he sought Nunc Pro Tunc review Pro Se from the Pennsylvania Supreme Court, which was denied on November 24, 1993.

INITIAL PRO SE POST CONVICTION RELIEF ACT (PCRA) PETITION. On March 30, 1994, appellant filed his first PCRA petition, raising seven claims for review, five of which pertained to ineffective assistance of trial counsel. On July 14, 1998, after an inordinate delay of four years and three months without activity, court appointed counsel William Noll motioned the PCRA court to withdraw from the case. On July 17, 1998, counsel's motion was granted and appellant was ordered to represent himself. See: Appendix-1, Motion and Order. Appellant's PCRA petition was denied on June 22, 2000. On September 26, 2000, appellant appealed to the Pennsylvania Superior Court. The follwing claims were presented for review:

1) The PCRA Court violated his due process right's by allowing counsel to withdraw and making Bleau represent himself.
2) After discovered evidence establish that Bleau was prejudiced and denied due process as a result of his co-defendant being erroneously advised he could apply for parole in the future by entering a guilty plea in exchange for a life sentence.
3) Trial counsel provided ineffective assistance and Bleau was denied his due process rights when trial counsel failed to continue Bleau's direct appeal claim that the prosecutor did not disclose all promises made to his co-defendant.
4) The prosecutor knowingly failed to correct co-defendant Ferguson's perjured statements and trial counsel provided ineffective assistance by failing to continue Bleau's direct appeal claim that his co-defendant commited perjury concerning his expectation of leniency.
5) Trial counsel provided ineffective assistance by failing to object, move to suppress, or appeal incriminating statements elicited through an agent of the state.
6) Trial counsel provide ineffective assistance by faling to call or interview character witness; and
7) Trial counsel provided ineffective assistance by failing to object, ask for a curative or cautionary instruction or mistrial when the prosecutor interjected his personal opinion, and vouched for Bleau's co-defendant's credibility during closing arguments.

They were denied on August 14, 2001 and on August 27, 2001, appellant filed for reconsideration with the Superior Court, which was denied on October 15, 2001 (Commonwealth v. Bleau, No. 2652 EDA 2000, 785 A.2d. 1024(2001) (Unpublished).

INITIAL PRO SE 2254 HABEAS CORPUS PETITION. On November 13, 2001, appellant filed his first 2254 petition in the Federal District Court in the Eastern District of Pennsylvania. The following claims were presented for review:

1) After discovered evidence established that Bleau was prejudiced and denied due process as a result of his co-defendant being erroneously advised he could apply for parole in the future by entering a guilty plea in exchange for a life sentence.
2) Direct appellate counsel was ineffective for abandoning the claim that the prosecutor failed to disclose all promises made to his co-defendant and failed to correct allegedly perjured statements made by his co-defendant.
3) Trial counsel provided ineffective assistance by faling to call or interview Character witnesses.
4) Trial counsel provided ineffective assistance by faling to object, ask for a curative or cautionary instruction or mistrial when the prosecutor interjected his personal opinion, and vouched for Bleau's co-defendant's credibility during closing arguments.
5) He was denied his due process rights and prejudiced by numerous inflammatory, and improper remarks.
6) The trial court erred in not declaring a mistrial when Ferguson said Bleau had an "open case".
7) The trial court erred in initially finding Edwin Jackson unavailable, permitting the use of his un-redacted preliminary hearing testimony, and then allowing Edwin Jackson to testify at trial.
8) Newly discovered evidence established that the testimony of Gary Mamenko was false and perjured, and that the commonwealth engaged in prosecutorial misconduct.
9) The trial court erred in not granting Gary Mamenko immunity.
10) The trial court erred in denying Bleau's request to voir dire and/or discharge a juror for cause, and
11) The cumulative effect of the error's at his trial resulted in a denial of due process.

They were denied on January 26, 2004, Bleau v. Vaughn, 02-cv-0893 unpublished). On September 20, 2004, the Third Circuit Court of Appeals denied appellants request for a Certificate of Appealability (COA) (Bleau v. Vaughn, 04-1421 Unpublished). [1]

[1] On September 7, 2011, sentencing Judge Charles B. Smith issued a new sentencing Order/ Judgment giving Bleau time credit from December 18, 1987 thru February 14, 1992 (i.e. 4 yrs & 54 days)

SECOND PCRA APPEAL: On May 23, 2012, appellant filed his second PCRA petition pro se and it was dismissed as untimely on October 19, 2012. On November 15, 2012, appellant filed a pro se notice of appeal with the Pennsylvania Superior Court, and the appeal was denied on November 19, 2013. On May 20, 2014, appellant filed a pro se 2244(b) application with the Third Circuit Court of Appeals for permission to file a 2254 habeas corpus petition with the Federal District Court for the Eastern District of Pennsylvania, and it was denied on June 23, 2014. (C.A.No.14-2852). The following claims were raised for review:

1) Did appellant offer a viable exception under 42 Pa.C.S.A. 9545 (b)(1)(ii), that excused all issues in his second PCRA petition as untimely.

2) Did newly discovered evidence reveal that mandatory life without parole terms for individuals ages 18-25 violate state and federal equal protection clauses, and article 1, section 13 of the Pennsylvania Constitution.

3) Did newly discovered evidence reveal that the Commonwealth committed prosecutorial misconduct by violating Brady via, not disclosing that co-defendant was given a psychological and psychiatric interview/evaluation, and two different polygraph test.

4) Did newly discovered evidence reveal that a corrupt district justice erroneously denied appellant his Sixth amendment right to paid counsel of his choice at the Preliminary hearing.

5) Did newly discovered evidence reveal that a court appointed counsel was ineffective for not disclosing his conflict of interest via his dual representation of appellant and his co-defendant and revealing evidence prematurely.

6) Did newly discovered evidence reveal that trial counsel was ineffective for failing to strike jury foreman for having a personal friendship with the court sheriff.

THIRD PCRA APPEAL: On March 23, 2015, appellant filed his third PCRA petition and it was dismissed as untimely on June 25, 2015. The Pensylvania Superior Court denied appellant's pro se appeal on May 23, 2016. The following claims were raised for review:

1) Did Bleau exercise due diligence in obtaining newly discovered recantation evidence from the commonwealth's sole witness (i.e. Ferguson) and timely present it with strong prima facie showing of miscarriage of justice and innocence under commonwealth v. Lawson, 549 A.2d. 107 (Pa.2007) standard sufficiently to override the waiver and final litigation requirements of 42 Pa.C.S.A. 9541-9551.

2) Did PCRA court abuse it's discretion by not considering the admisssibility of Ferguson's declaration under the excited utterance, state of mind and declaration against penal interest exceptions to the hearsay rule.

3) Does newly discovered recantation evidence from the commonwealth's sole witness

Ferguson establish Bleau's innocence; violation of his Fourteenth Amendment rights to Due Process and Eighth Amendment right against Cruel and Unusual Punishment under the United States Constitution; Article 1, section 9 and Article 1, section 13 under the Pennsylvania Constitution.

FOURTH PCRA APPEAL: On March 13, 2017, appellant filed his fourth PCRA petition. On May 1. 2017, appellant filed and amended PCRA petition. On June 20, 2017, the PCRA court dismissed appellant's PCRA petition as untimely. On July 24, 2017, appellant filed his pro se appeal to the Superior Court of Pennsylvania, which was denied on February 5. 2018. The following claims were raised for review:

1) Did the PCRA court abuse it's discretion by: (a) ruling appellant lacked due diligence and presented newly discovered exculpatory evidence untimely; (b) Not considering newly discovered exculpatory evidence proffered; (c) Not considering newly discovered exculpatory evidence as separate 9545 (b)(1)(ii) triggering dates to the PCRA; (d) denying pro se appellant's motion for 90 day extention and funds to hire an investigator to locate a critical alibi witness at the crux of his innocence and ineffective assistance of counsel claim; and (e) denying an evidentiary hearing on these genuine issues of material facts.

2) Did newly discovered exculpatory evidence establish a genuine issue of material fact that appellant's actually innocent and trial counsel was ineffective for failing to independently interview, investigate and call known alibi witnesses at trial who place appellant in Brooklyn, New York during the time the crime took place in Pennsylvania; violating his Sixth & Fourteenth Amendment rights under the U.S. Constitution and Article 1, section IX under the Pennsylvania Constitution.

3) Did newly discovered exculpatory evidence establish a genuine issue of material fact of Prosecutorial misconduct via suborning perjury and fraud upon the court; violating appellant's constitutional right's under the U.S. and PA Constitution.

VIII. REASONS FOR NOT MAKING APPLICATION TO THE FEDERAL DISTRICT COURT OF PENNSYLVANIA

Pusuant to 28 U.S.C. 2242, Bleau states the following:

After the denial of Bleau's appeal to the Pennsylvania Superior Court on February 5, 2018, he believed permission was needed from the Third Circuit Court pursuant to 28 U.S.C. 2244(b), in order to file his second Habeas Corpus petition in the Federal District Court of Pennsylvania. The same actual innocent claims in the context of an ineffective assistance of trial counsel claim, was presented to the Third Circuit Court.

On April 26, 2018, Bleau filed a 2244 Application with the Third Circuit ourt of Appeals requesting permission to file a second Habeas Corpus petition in the Federal District Court of Pennsylvania (i.e. No. 18-1983), and it was denied on June 7, 2018. Bleau motioned the court for reconsideration/rehearing en banc, and it was denied on July 23, 2018.

On February 22, 2019, Bleau filed another 2244(b) application with the Third Circuit Court of Appeals as a result of their recent ruling in Reeves v. Sci, 897 F.3d. 154;2018 U.S. App.LEXIS 20364, No.17-1043 (3rd Cir.2018), and it was denied on April 12, 2019 (i.e.No. 19-1448).

The denial of any type of judicial review of Bleau's actual innocence claim on their merits, deprived him of Due Process of Law and any other avenue.

IX. REASONS FOR GRANTING THE WRIT

Bleau relies on the following case law in reference to the questions presented supra.

a) In **McQuiggin v. Perkins, 133 S.Ct. 1924 (2013)**, this Honorable Supreme Court held that:

> "To avoid a fundamental miscarriage of justice, "new" reliable evidence presented in an actual innocence claim, provides a gateway to federal review, whether the impediment is a procedural bar, as it was in ***Schlup***, or as in ***McQuiggin***, the expiration of the AEDPA Statute of limitations."

However, there is a conflict amongst the federal courts on this question. This court has not explicitly defined whether "new" evidence presented must be "newly discovered" evidence or is "newly presented" evidence (i.e. evidence "known" at trial but was not "presented" to the jury), sufficient to provide a gateway to federal review of a second habeas petition presenting an actual / factual innocence claim in the context of an ineffective assistance of trial counsel claim for failing to independently investigate, interview and present a known alibi witness with corroborating evidence in a death penalty trial.

b) In ***Strickland v. Washington*, 466 U.S. 668,104 S.Ct.2052,80 L.Ed.2d.674,687 (1984),** this Honorable Supreme Court said in order to overturn a conviction based upon a claim of ineffective assistance of trial counsel:

> "First, defendant must show that counsel's performance was deficient. Second, the defendant must show that the deficient performance prejudiced the defense."

The lower court's rulings are contrary to ***Strickland***.

c) In **Martinez v. Ryan, 132 S.Ct. 1309 (2012)**, this Honorable Supreme Court held that:

> "Where under State law, claims of ineffective assistance of trial counsel must be raised in an initial review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance of trial counsel if, in the initial review collateral proceeding, ***there was no counsel or counsel was ineffective***." Emphasis added.

This Honorable Supreme Court has not dealt with this question of first impression of whether it's Constitutional for ***Martinez*** to be excluded from evaluation of whether to provide the gateway to federal review of a second habeas petition presenting an actual / factual innocence claim in the context of an ineffective assistance of trial counsel claim.

An Extraordinary Writ is respectfully sought to review Pennsylvania's lower court rulings, denying review on the merits, Bleau's actual innocence claim in the context of an ineffective assistance of trial counsel claim for failing to independently investigate, interview and present a known alibi witness in a death penalty trial. While Bleau knew of the alibi witness prior to trial, he was taken completely by surprise when he recently found out the poilce interviewed the alibi witness who gave corroborating exculpatory statements that was memorialized in police reports, and that trial counsel knew and never told Bleau nor did he independently investigate and interview the alibi witness.

Bleau could not, by any reasonable diligence have discovered these facts prior to trial, direct appeal and PCRA appeals, because at trial, counsel lied to Bleau about interviewing the alibi witness. Bleau assume the alibi witness didn't remember him on the morning in question. Under the law's of the State of Pennsylvania, the State court's decline appellate jurisdiction to review Bleau's claims of actual innocence on the merits, overturn Bleau's conviction and release him from his unlawful imprisonment and deprivation of liberty.

By the State court's of Pennsylvania denying Bleau appellate review whereby he could be freed from his wrongful conviction, after reviewing his evidence of innocence, Bleau was deprived of his liberty without Due Process of Law, in violation of his Fourteenth Amendment rights under the United States Constitution. With no recourse to appellate review by those inferior courts in Pennsylvania, this is the appellate court of last resort. Furthermore, as will be argued more specifically hereinafter, State and Federal Courts of Pennsylvania has decided an important question of federal law that conflicts with other federal courts on the same important matter, and so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's Supervisory power. Finally, they have decided an important question of federal law that has not been, but should be, settled by this court and has done so in a way that conflicts with relevant decision's of this Honorable Supreme Court.

THE DECISION BELOW IS CONTRARY TO DECISIONS OF THIS COURT AND THERE IS A CONFLICT AMONGST THE FEDERAL COURTS ON THIS IMPORTANT ISSUE AFFECTING FEDERAL CONSTITUTIONAL RIGHTS.

There is a square conflict amongst the federal courts regarding the questions presented. That conflict is starkly illuminated by the fact that Bleau is asserting his innocence. This sharply different treatment of similarly situated defendants create an intolerable conflict and servere unfairness that this court should resolve. Review by this court is urgently needed. ***Schlup*** and ***McQuiggin*** does not forclose review of Bleau's second habeas petition claiming actual innocence in the context of an ineffective assistance of trial counsel claim.

At the very least, the conflicting federal decisions below will create inconsistency and confusion in the lower courts on this very important claim for years to come, as will be demonstrated by the contrast between the federal court cases on this issue. Thus, it's essential that this court intervene now to provide a definitive interpretation of whether "newly presented" exculpatory evidence (i.e. evidence known but not presented to the jury) can be considered "newly discovered" exculpatory evidence in the context of an ineffective assistance of trial counsel claim presented in a second habeas petition.

This square conflict amongst the lower courts means that until this Honorable Supreme Court resolves this issue, some actual innocence defendants claims will be heard on their merits by some federal courts and other federal courts won't hear defendants actual innocent claims. It's critically important for lower courts and litigants to know what federal decisions are constitutionally wrong or right. If Pennsylvania's District court's are wrong, but it's rulings remain unreviewed by this court, the decisions will unjustifiably leave many innocent litigants without federal recourse. This court should clarify the governing standard of "newly presented" evidence of actual innocence, because it will affect tens of thousands of litigants trying to prove their innocence.

In **McQuiggin**, the Supreme Court stated that:

> "... A credible showing of actual innocence may allow a prisoner to pursue his constitutional claims (here ineffective assistance of counsel) on the merits notwithstanding the existence of a procedral bar of relief. This rule or fundamental miscarriage of justice exception is grounded in the equitable discretion of habeas courts to see that federal constitutional error's do not result in the incarceration of innocent persons." **Id.**

Trial counsel's incompetence in a death penalty trial had a direct impact on the verdict and is a travesty of justice.

THE WRIT WILL BE IN AID OF THIS COURTS APPELLATE JURISDICTION:

These claims are urgent ones entitled to preference. Upholding the fundamental safe guards of human dignity and social decency embeded in the United States Constitution ensures public interest that innocent people will not stay wrongfully incarcerated. The lower court's refusal to review these claims of factual/actual innocence on their merits poison's public confidence in the judicial process. This Supreme Court's Extraordinary Writ, if granted, will unify the lower courts as an institution and restore the public's confidence in the appellate process within the court's of equity. Furthermore, this Honorable Supreme Court's acceptance of these questions and issuance of it's Extraordinary Writ will ensure the public that arbitrary judicial rulings, the founders of the United States Constitution sought to protect American citizens from, will not be tolerated. The denial of the judicial process by which Bleau's newly presented exculpatory evidence can be heard and considered by any court of equity goes against fundamental fairness the Honorable Supreme Court is guided by in the Fourteenth Amendments Due Process Clause in the United States Constitution.

The unconstitutional deprivation of Bleau's Due Process rights, gives this Honorable Supreme Court the opportunity to secure and maintain uniformity amongst the inferior courts. This Honorable Supreme Court's appellate jurisdiction will also uphold three bedrock principles in our criminal justice system. One, that all defendents has a Constitutional right to effective assistance of trial counsel; two, a fair tribunal is essential to Due Process of Law; and three, it's far worse to convict an innocent man, than to let ten guilty men go free.

EXCEPTIONAL CIRCUMSTANCES WARRANT THIE EXERCISE OF THIS COURT'S DISCRETIONARY POWER'S:

As will be argued more specifically, Bleau produced a strong prima facie showing that a miscarriage of justice would continue if Bleau, an innocent man, continues to remain imprisoned on a wrongful conviction without atleast one review of his actual innocence claims on the merits in a federal court of equity. This is an exceptional circumstance that warrants the exercise of this court's discretionary powers of issuing an Extraordinary Writ.

ADEQUATE RELIEF CAN NOT BE OBTAINED IN ANY OTHER FORM OR ANY OTHER COURT:

Bleau continues to be deprived of his liberty by the State of Pennsylvania, because of thier denial of any judicial process by which Bleau can have his claim of actual innocence heard on the merits, after discovery and proof that his imprisonment, and restraint are based upon a wrongful judgment of conviction. Bleau aver that his discovery of this newly presented exculpatory evidence, could not by reasonable diligence have been previously discovered subsequent to his direct appeal and prior (PCRA) Post Conviction Relief appeals. The exculpatory evidence, hereinafter more specifically referred to, impeaches and exposes perjury by the Commonwealth of Pennsylvania's sole witness, co-defendant Ferguson. If this exculpatory evidence had been presented at trial, it would have prevented a guilty verdict.

The lower court's refusal to obtain appellate jurisdiction denied Bleau further recourse to those courts, as well as, timely filing to this court. A timely Petition for Writ of Certiorari is closed to Bleau. The exercise of this court's appellate jurisdiction to grant an Extraordinary Writ, is the only recourse available to Bleau. The lower court's refusal to review these claims on their merits requires them to ignore critically important and relevant information that sit's squarely in front of them when deciding whether to consider "newly presented" evidence as "newly discovered" evidence. This peculiar approach inconsistent with the language, history and purpose of the Due Process Clause and this court's rulings in ***Strickland***, ***Schlup***, ***McQuigin*** and ***Martinez***.

The ***Schlup*** case is even more identical to Bleau's case. Llyod Schlup was convicted of first degree murder in 1985 based primarily on the testimony of key witnesses Flowers and Maylee. On March of 1992, Schlup filed a counseled second habeas corpus petition presenting, actual innocence and trial counsel's ineffectiveness for failing to interview alibi witnesses, supported by affidavit's from inmates attesting to Schlup's innocence. Like Bleau's case, the ***State produced no physical evidence connecting Schlup to the crime.*** The U.S. Supreme Court reversed the lower court denial. **Schlup v. Delo, 513 U.S.298,115 S.Ct.851 (1995).**

There isn't much that distinquishes Bleau from ***McQuiggin*** and ***Schlup***. Bleau's case evolved from a 1988 capital murder trial, in which the jury found Bleau guilty, based primarily on the testimony of the prosecutions key witness, Gregory Ferguson. **The State produced no Physical or Forensic Evidence Connecting Bleau to the Crime When It Occurred.** The jury was unable to reach a verdict of death, and Bleau was sentenced to two life terms of imprisonment. Bleau presents a claim of factual/actual innocence in the context of a claim of ineffective assistance of trial counsel for failing to independently investigate, interview, and present a "known" alibi witness and corroborating exculpatory documentary evidence at a death penalty trial. Three important similarities between Bleau, *Schlup* and *McQuiggin* cases is that they all claim actual innocence in the context of an ineffective assistance of trial counsel claim; the case against them is weak; and the State produced no physical, or forensic evidence connecting them to the crime when it occurred. In order for this Honorable Court to fully understand how critical this alibi evidence was to Bleau proving his innocence, the totality of the prosecutions case in chief and the defense case in chief, compared with the omitted newly presented exculpatory evidence of factual/actual innocence is presented.

2. THE TOTALITY OF THE PROSECUTIONS CASE IN CHIEF

It can not be over emphasized that the Commonwealth of Pennsylvania's evidence was not over-whelming against Bleau. Instead, their case was weakly supported by the incredible testimony of the prosecutions witnesses. A quick review of Ferguson's contradictory testimony reveals internal problems that already made his testimony questionable. When Ferguson was first questioned by the police he told them that he went to Pennsylvania with "Dave", not Bleau. He admitted that he did not tell them Bleau, because they would have questioned him, and found out that Bleau came back to New york alone. 12/6/88, Trial transcript, pg. 851-852 (hereinafter named Tr._____).

Ferguson only told them about Bleau after his girlfriend told the police, first, that he did go to Pennsylvania with Bleau. He also didn't say Bleau shot the victims until the police told him that his finger print in blood matched a bloody print on the wall at the crime scene. 12/6/88. T.r. 846,847. Ferguson also admitted using drugs. 12/6/88, T.r. 773,774. Ferguson also admitted to stealing all the equipment from his fathers bar and forging thousands of dollars from his fathers bank account, just weeks before the murders in Pennsylvania. He also expressed disdain for his father. 12/6/88,Tr.820,821. See: exhibit "A(1)-A(3) affidavits. Ferguson was six feet-five inches tall, over two hundred and fifty pounds, a huge man compared to Bleau, who was five-seven inches tall, one hundred and fifty pounds in 1987. Ferguson certainly had the ability and wherewithal to carry out the murder's in the way that he discribed Bleau as doing. Ferguson stated that there were no guns in the car when they drove down to Pennsylvania. 12/6/88,Tr.822. He stated that Bleau was right behind him as he was talking to victim Montgomery outside of the bedroom door, when Montgomery was shot. 12/6/88,Tr.776-777.

Bleau, at his height, could not have shot Montgomery while Ferguson, at the height of 6'-5", was standing between them. Fergusons's statement to the police on December 2, 1987, stated that Bleau had rifles under his coat and he did not see it. 12/6/88, Tr.858. He testified that his trial testimony changed because he realized that Bleau had a jacket on.

During the defense cross examination of Ferguson at trial, he was asked whether he had expectations of having his time cut as a result of his testimony. Fergusons answer was, no. 12/6/88, Tr. 885. During Bleau's initial PCRA hearing the following testimony occurred:

FERGUSON ON DIRECT EXAMINATION BY BLEAU PRO SE:

Q. Is it true that aside from that initial agreement, it was further discussed during that time that you would be possibly able to get a time cut of 10-20 years in the near future after conviction of defendant?

A. No. That's not how it was discussed.

Q. Could you explain how it was discussed?

A. It was discussed, the arresting officers and D.A., on my case told me if I ever go up for parole before my time, that they would come to the penitentiary and represent me in my behalf to get out before my time. 4/6/99, PCRA. N.T. 30,32.

* * *

Q. So at the time of testimony in the trial of commonwealth versus Bleau, in your mind, you had the expectation that it would be some sort of benefit from the district attorney as a result of your testimony, which would result in you being free on parole in the future?

A. Help, yeah.

Q. So in other owrds, you did not have the intentions that you was going to spend the rest of your life in prison when you took a plea bargain?

A. No, I didn't. I never--or I never would have took it. 4/6/99, PCRA N.T 33,34.

FERGUSON ON CROSS EXAMINATION BY THE PROSECUTOR CASENTA:

Q. O'kay. I'll ask you another question. This is from the district attorney John Crane, and this is three questions and answers. He's talking to you.

And when you finish this trial, no matter what happens, where are you going to go? Answer, I guess back to graterford. Question, and serve a life sentence? Answer, um-hum. Question, and have there been, by me or anybody else, any promise of you serving less than that time? Answer, no there hasn't. Was that a lie or was that the truth?

A. That was a lie.

Q. And so you are saying under oath, in a death penalty--

A. Under oath.

Q. --that your cousin was facing the death penalty, you committed perjury?

A. I committed perjury if I said all that. It was a lie. 11/23/99. PCRA. N.T. 168,169.

FERGUSON RE-DIRECT EXAMINATION BY BLEAU PRO SE:

Q. At the time that you stated, as he quoted in there, that you would go back to graterford and receive and do a life sentence, were you under the impression that life was life in the State of Pennsylvania, or was you under the impression that life meant, that you would be eligible for parole at that time?

A. The way my lawyer explained it to me when he came to me with this deal, life did not mean life, meaning you die in prison, and you stay in prison for the rest of your life. His interpretation of life in the penitentiary was it was the D.A.'s discretion. In other words, if you help him, they will help you. He told me the possibility that I would get out in 18 years. He don't know for sure. But if I took that deal, and stopped playing wih my life, it was the only hope of having any type of future. Other than that, they knew I wouldn't have took no deal like that, if I knew they wasn't going to help me. 11/23/99, PCRA N.T. 169,170. [5]

The PCRA testimony of Ferguson finally reveals the truth, and makes clear that Bleau was nothing more than a convienent scape-goat. The Prosecution didn't seek the truth of why and who did the crime, they only sought a conviction by all cost. Ferguson commited perjury at trial in an attempt to save himself from the death penalty.

As Judge McKee stated in his concurring opinion in **Reeves**:

> "I do not suggest that evidence of actual innocence must alway's be as strong as we have on this record before relief is available under **Schlup V. Delo**... Although the bar set by Schlup is a high one, it should not be raised so high that it becomes impossible to clear it. Nothing in Schlup leads me to conclude that the court intended the interest of justice advanced by that case to be illusory in all but the most outrageous and extreme cases or that the accused must be able to prove actual innocence to a near mathematical certainty." **See: Id. footnote 31.**

Withrow v. Williams, 507 U.S. 680,700, 113 S.Ct. 1745 (1993), held: "It is difficult to image a stronger equitable claim for keeping the courthouse doors open than one of actual innocence where the ultimate equity is on the prisoner's side." **Rivas v. Fisher, 687 F.3d. 514 (2d Cir.2012)** held that: "Claims of actual innocence are not barred by procedural rules including AEDPA'S time bar, because ***it is never too late to be innocent.***" Emphasis added.

5 It should be noted that Ferguson would not have gotten married in the D.A.'s office, if he thought he was going to spend the rest of his life in prison. See: Exhibit "R".

Ferguson's testimony that he did not struggle with victim Toledo, but simply pushed her onto the bed after she hit him in the head with the telephone, was contradicted by the testimony of Dr. Keith. Dr. Keith hypothesized that the amount of blood on Toledo's body was either the result of her sitting down or standing after she was shot or the result of a struggle after she was shot. 12/5/88,Tr.605. Dr. Keith agreed that blood would have went everywhere if Toledo had a struggle after she was shot. Id. There was absolutely no proof that blood evidence from the victims was found on Bleau's clothing, the drivers side of Bleau's car where he sat, or the liner of the car's trunk.Not even gross conjecture can explain away such a anomaly, if as Ferguson testified, Bleau had equal amount of blood on his hands literally and figeratively. On the other hand, Ferguson bloody finger print was found on the wall at the crime scene and evidence shows blood was also on his cloths and shoes. This indicates that Toledo struggled with her killer and her killer wasn't Bleau. 12/6/88,Tr.861-863.

The commonwealth presented no evidence that Bleau's car was washed before the police processed it. Small blood smudges were located on the passenger side door and a tooth pick box, which was consistent with Bleau's testimony that he drove Ferguson home after he came to his home on the mornng of the crime bleeding from his finger. 12/7/88,Tr.1056-1061. Ferguson also admitted that his finger was lacerated and bleeding when he arrived in New York. 12/6/88,Tr.787. Ferguson's testimony that Bleau slept over Lavon Dunn's apartment the night before he was arrested and brought the guns over was contradicted by Lavon Dunn's testimony that she opened the door for Ferguson and Bleau on the morning of November 30, 1987; that Bleau brought nothing into her apartment and Bleau left about 10:00a.m. 12/6/88,Tr.917,918. Ferguson's testimony that Bleau took the property of the victims was also contradicted by the evidence which revealed that the victims rings and watches were found in the possession of Ferguson, not Bleau.

Finally, Ferguson testified essentially that he did not know victim Toledo. 12/6/88,Tr.823.

Ferguson told detective Campbell that he met her for the first time on the Thursday before the trip. 12/7/88,Tr.1159. The record contradicts Ferguson and indicates that he knew Toledo quite well and even had a motive to kill her. (See: The defense case in chief, infra). Ferguson also admitted that he called victim Toledo on her pager the night before going to Pennsylvania. 12/6/88,Tr.833,1149. While at Moe Jackson's home, Ferguson and Toledo went to the store alone and left the others. Id. at 834. It is submiotted that Ferguson's testimony was so contradictory that it required speculation and conjecture to reconcile it.

The commonwealth also presented the incredible testimony of Gary Mamenko (jailhouse informant). The most damning testimony Mamenko gave was that Bleau confessed to him about killing the victims and robbing victim Montgomery. 12/6/88,Tr.707-716. However, the jury found Bleau not guilty of robbing victim Montgomery as Mamenko testified to.

It can be inferred by the not guilty verdict on the robbery charge, that the jury didn't believe Mamenko's testimony. The fact that Mamenko was lying is clear from the record. For instance, during his testimony, he insisted that he had received no promises of consideration for his testimony, despite the prosecutor's efforts to indicate the commonwealth would help him with parole. 12/6/88, Tr. 728,729. Mamenko testified that Bleau confessed begining of February of 1988 thru the 22nd., while housed on the D-block unit of the Chester county prison. 12/6/88, tr. 710,726,727. However, prison record indicate that he was not housed with Bleau on D-block during February of 1988. See: exhibit 'B' prison housing locator. Contradictions and inconsistencies regarding conversations he claim to have had with Bleau are apprarent on the face of the record. Mamenko testified that Bleau told him he got the "guns" from the trunk of his car, when the evidence showed the "rifles" (not guns) were already in Moe Jackson's home (i.e. the crime scene).

The prosecutor knew Mamenko was a professional informant, who was totally unreliable for the truth, but they suborned perjury anyway. The prosecution even went so far as to use a motion from defense counsel requesting a continuance, to give credence to Mamenko's testimony. Mamenko testified that Bleau showed him the motion requesting a continuance, because of a case in China. 12/6/88, Tr. 713. The commonwealth even exploited the issue of the motion when Bleau testified at trial. 12/7/88, Tr. 1080-1082. However, during Bleau's initial PCRA hearing defense counsel testified that he would not have any reason to put a motion together in the month of February, to be filed in April. That he does motions for continuance when they are actually needed. 11/23/99, Initial PCRA hearing, N.T. 194.

It is clear from defense counsel's PCRA testimony that Bleau did not have possession of the motion at the time Mamenko claimed to have seen it, and could not have showed Mamenko it. Therefore, that leaves the prosecutor as the only other source who could have shown Mamenko that motion. This kind of prosecutorial misconduct has tainted the entire truth determining process. Finally, on January 25, 1991, the trial court held an evidentiary hearing on post verdict motions concerning specifically a sworn affidavit from Gary Mamenko submitted on April 18, 1990. See: exhibit C Mamenko affidavit. While Mamenko's affidavit didn't exculpate Bleau, it does establish violation of his Fourteenth Amendment right under the United States Constitution, because of prosecutorial misconduct. The affidavit describes how Mamenko came to testify, reluctantly under threats and coercion from the lead Detective John Campbell, who supplied him with information and coached him as a witness. See: Exhibit C at 3-5.

More disturbingly, Mamenko's affidavit describes racial prejudices against Bleau. See: exhibit C at 5 line 19. The prosecution also failed to disclose that Mamenko was a paid professional informant for the FBI prior. See 1999 PCRA hearing exhibits D1-D4 entered into the record. Finally, at the 1991 evidentiary hearing Mamenko voluntarily came to court to testify as a free man no longer in prison. However, the prosecutor threatened and intimidated Mamenko by indicating to the court they would prosecute for perjury if he confirmed his affidavit.

The court requested the assistance of the public defenders office, who advised Mamenko to plead the Fifth Amendment, which he did to every question asked by defense counsel. 1/25/91 hearing N.T. 13-21. Mamenko requested prosecutorial immunity in order to testify truthfully, and the prosecutor denied that request. 1/25/91 hearing N.T. 7. After a series of questions by the defense, and the introduction of certain documentary evidence, defense counsel requested the court grant judicial immunity so Mamenko could testify truthfully without fear of prosecution. 1/25/91 hearing N.T. 21. The court declined, stating that it was without authority to do so. 1/25/91 hearing, N.T. 25.

Lastly, the commonwealth presented the incredible testimony of Edwin Jackson (crack addict & Ms. Jacobs nephew). Jackson's unredacted , preliminary hearing testimony was read to the jury, in which he testified that no one had threatened him. 12/7/88, Tr. 1007. Jackson also testified that his aunts friend told him to copy a note recanting his statement to the police. 12/7/88. Tr. 1012-1014. The record is absolutely silent as to Bleau or any family and friend ever being involved in threats to Mr. Jackson or the production of the note in question.

Jackson subsequently testified live the next day during Bleau's case in chief that he thought he heard Bleau say what about the people we killed in Pennsylvania, while on the telephone with someone. He allegedly heard this over a loud radio and T.V. playing in the background. He also claimed to see rifles on the floor in Bleau's bedroom. Tr. 12/8/88, Tr. 1178,179. However, Bleau admitted that Ferguson came into his home later that morning in question, with rifles under his full length coat, when he was first questioned by the police and testified to the same facts at trial. 12/7/88, Tr. 1061.

3. THE TOTALITY OF THE DEFENSE CASE IN CHIEF;

Aside from Bleau's testimony that he was not at the crime scene when the crime occurred in Pennsylvania, the defense presented testimony of Geraldine Catlin. Ms. Catlin testified that "she use to live with Moe Jackson and victim Toledo in Pennsylvania." See: 12/8/88, Tr. 1137. That she once overheard Ferguson over speaker phone when he called Toledo, and they argued about victim Montgomery. Ferguson said if he couldn't have Toledo, nobody could. He couldn't share her. 12/8/88, Tr. 1244. Ferguson also told victim Toledo that he has an uzi with her name on it." 12/8/88, Tr. 1245.

4. NEWLY PRESENTED EXCULPATORY EVIDENCE AND WHAT LEAD TO IT'S DISCOVERY: **Alibi witness Frank Fayz:** On November 27, 2016, Bleau's cousin. Professor Pamela Stevens died at her Connecticut home. Professor Stevens was the person who hired trial counsel and assisted him on occasion. On January 8, 2017, Bleau's sister Ms. Sarita Fann, cleared out Professor Stevens Florida home and came across a box labeled "Steven", which turned out to contain, inter alia, Bleau's missing wallet and legal documents pertaining to this case. (See: exhibit 'D' Ms. Sarita Fanns affidavit).

Ms. Fann is available and prepared to testify. Amongst the documents were two police reports of investigative interviews with Mr. Frank Fayz, a Brooklyn, New York 24 hour Grocery Store owner, who was also Bleau's alibi witness. Mr. Fayz statement was taken 8 days after the crime occurred, i.e. 12/8/87 & 12/9/87. Mr Fayz' statement confirms "Bleau did come into his store on the morning of November 30, 1987; that Bleau hung around for a half hour; that he was alone, and didn't look nervous or as if anything was wrong; that he left after he told him he was closing in 45 minutes. Mr.Fayz closed his store at 5:00a.m., on the morning of November 30, 1987. (See: exhibit 'E" Police Reports of Mr. Fayz interview). Upon discovering these reports, Bleau made several diligent attempts to locate Mr. Fayz. Bleau even motioned the PCRA court for Fund To Hire A private Investigator, to locate Mr. Fayz, which the court denied. See: Appendix(1)Motion,Order,Opinion Bleau was subsequently able to get his

brothers friend, a New York City Police Officer, to locate, interview and obtain an affidavit from Mr.Fayz. (See: exhibit "F" Mr. Fayz Affidavit). Mr Fayz is available and prepared to testify.

Store receipt: Also found was Bleau's wallet, which was declared lost during the chaos of Bleau's arrest. It contains his school Id and various bank and store receipts. Amongst those receipts was a receipt of purchase from Mr. Fayz' 24 hour grocery store time-date recorded as 11/30/87 at 0348 hundred hours. (See: exhibit "G Store receipt & School Id).

5. DUE DILIGENCE:

After Ms Fann discovered the police report(s) on January 2017, Bleau's family immediately tried locate Mr. Fayz. Bleau's family couldn't afford a private investigater, so his sister searched the internet for contact information, and Bleau's younger brother, Morrius Bleau went to the locations Ms. Fann found, to no avail. (See:Exhibit N Morrius Bleau affidavit) Bleau even tried to obtain contact information from prior business licenses through the freedom of information Act, but was unsuccessful. (See: Exhibit "O FOIA responses). Bleau went further by filing an "ex parte motion for funds to hire private investigater" with the PCRA court on 3/22/17, which was denied on 3/29/17, and also filed a "motion for reconsideration" on 4/26/17, which was denied on 5/3/17. Finally, Bleau's oldest brother, Sylvester Bleau was able to get his friend, a New York City police officer, to locate and obtain an affidavit from Mr. Fayz.

Mr. Fayz has stated that nobody from Bleau's defense team has ever contacted him for an interview or testimony, and if they would have, he would have came to testify at trial. Exhibit "F"

Bleau aver that during trial, counsel told him "he would not be calling Mr. Fayz to testify, because he has nothing helpful for the defense". Bleau believed trial counsel interviewed Mr. Fayz and Mr. Fayz didn't remember Bleau coming into his store on the morning of November 30, 1987. That was the last time they discussed Mr. Fayz. Bleau had no idea trial counsel never interviewed Mr. Fayz, and had no reason to doubt what counsel told him. Trial counsel never told Bleau the police interviewed Mr. Fayz and an investigative report of that interview was transcribed. Based on what Bleau was told by trial counsel, he had no expectation of any favorable statements from Mr. Fayz or any reason to pursue him for appellate purposes.

6. NO REASONABLE JUROR WOULD HAVE CONVICTED BLEAU IN LIGHT OF THIS EXCULPATORY EVIDENCE:

Timing has always been at the heart of this trial. At the core of an Alibi defense is, of course, consistency between the date and time of the crime and that of the defendant's alibi. This is what makes trial counsel's failure to interview and call Alibi witness Frank Fayz so crucial to the outcome of the trial.

crucial timelines at the core of Bleau's innocence is outlined by the below trial testimony.

1) The Coroner Dr. Keith testified that the estimated time of death for the victims would have been 6-12 hours from the time the body temperature was taken, which was taken at 3:45a.m., on the morning of November 30, 1987. Using 3:45a.m., as a reference point and the 12 hours as the maximum time, the estimated time of death is around 3:00a.m.-3:45a.m., on the morning of November 30, 1987. Tr.N.T. 12/5/88,591-593.

2) Co-defendant, Gregory Ferguson testified that after appellant committed the crime they both left for New York City together, arriving between 5:30a.m.-6:00a.m., on the morning of November 30, 1987. Tr.N.T. 12/5/88, 981.

3) Bleau testified that he left Pennsylvania alone, after making a 1:00a.m. phone call home and he arrived back home close to 4:00a.m., on the morning of November 30, 1987. Tr.N.T. 12/7/88, 1051.

4) Ms. Gwen Jacobs (Bleau's mother-in-law) testified that Bleau came home between 3:30a.m.-4:00a.m., on the morning of November 30, 1987, and she heard Ferguson's voice later that morning around 7:30a.m., that same morning. Tr.N.T. 12/6/88, 928,929,934.[3]

3 _____

Trial counsel did not interview or call Ms. Jacobs to testify at trial. Instead, he allowed her to be called by the prosecution, who had her declared a hostile witness. Counsel did not even cross examine Ms. Jacobs in order to rehabilitate her testimony. In any case, given the fact that she was appellants mother in law, her testimony probably fell on death ears.

. Mr. Frank Fayz gave the police a statement eight days after the crime occurred and revealed that: (a) Bleau came into his 24 hour grocery store alone on the mornning of November 30, 1987; (b) Bleau hung around for about a half hour (1/2 hr) then left after Mr. Fayz told him he was closing in forty-five minutes (45 mins). Mr. Fayz closed his store that morning at his usual time of 5:00a.m., that morning. See: exhibit "E" police reports of Mr. Fayz interview and exhibit "F" Mr. Fayz affidavit.

Subtracting forty-five minutes (45 mins) from the closing time of 5:00a.m., has Bleau departing his store at 4:15a.m. Subtracting a half hour (1/2hr) from the 4:15a.m., departure time, has Bleau arriving at Mr. Fayz store around 3:45a.m., on the morning of November 30, 1987. This is consistent with the corroborating exculpatory documentary evidence (i.e. time/dated store receipt), which reveals Bleau made his purchase on 11-30-87 at 0348 hundred hours. See: exhibit "G" store receipt. Below are three known routes with estimated travel time Bleau could have taken from the crime scene in Coatesville, Pennsylvania -to- his home in the East Flatbush section of Brooklyn, New York, then subsequently walking to Mr. Fayz' 24 hour grocery store.

(1) VERROZANAL BRIDGE: TWO HOURS AND ELEVEN MINUTES DRIVE HOME (2HRS & 11 MINS) (133 MILES) SEE: EXHIBIT "H" GOOGLE TRAVEL TIME MAP; AND TWENTY MINUTE WALK (0.9 MILE) TO MR. FAYZ 24 HOUR STORE. SEE: EXHIBIT "I" GOOGLE TRAVEL TIME MAP.

Departure time at the estimated time of death:

LEAVING PENNSYLVANIA	- ARRIVING IN BROOKLYN	- STORE ARRIVAL TIME
3:00A.M.	5:11A.M.	5:31A.M.
3:45.A.M.	5:56A.M.	6:16A.M

Bleau's departure time after making his 1:00a.m., phone call home:

1:00A.M.	3:11A.M.	3:31A.M.
* 1:15A.M.	* 3:26A.M.	* 3:46A.M.

(2) HOLLAND TUNNEL ROUTE #1: TWO HOURS AND TWENTY-THREE MINUTES (2HRS & 23 MINS) (137 MILES) SEE: EXHIBIT "J" GOOGLE TRAVEL TIME MAP; AND TWENTY MINUTE WALK (0.9 MILE) TO MR. FAYZ 24 HOUR STORE. SEE: EXHIBIT "I" GOOGLE TRAVEL TIME MAP.

Departure time at the estimated time of death:

LEAVING PENNSYLVANIA -	ARRIVING IN BROOKLYN -	STORE ARRIVAL TIME
3:00A.M.	5:23A.M.	5:43A.M.
3:45.A.M.	6:08A.M.	6:28A.M

Bleau's departure time after making his 1:00a.m., phone call home:

* 1:00A.M.	* 3:23A.M.	* 3:43A.M.
1:15A.M.	3:38A.M.	3:58A.M.

(3) HOLLAND TUNNEL ROUTE #2: THREE HOURS AND TWO MINUTES (3HRS & 2 MINS) (144 MILES) SEE: EXHIBIT "K"; AND TWENTY MINUTE WALK (0.9 MILES) TO MR. FAYZ 24 HOUR STORE. SEE: EXHIBIT "I" GOOGLE TRAVEL TIME MAP.

Departure time at the estimated time of death:

LEAVING PENNSYLVANIA -	ARRIVING IN BROOKLYN -	STORE ARRIVAL TIME
3:00A.M.	6:02A.M.	6:22A.M.
3:45A.M.	6:47A.M.	7:07A.M.

Bleau's departure time after making his 1:00a.m., phone call home:

1:00A.M.	4:02A.M.	4:22A.M.
1:15A.M.	4:17A.M.	4:37A.M.

As this honorable court can see from the above estimated timelines. It's physically impossible for Bleau to have did the crime in Pennsylvania at the time of death of 3:00a.m.-3:45a.m., and arrive back home in Brooklyn, New York as early as 3:11a.m.; the lastest 4:17a.m; or be in Mr. Fayz' 24 hour grocery store in Brooklyn during the corroborating receipt time of 0348 hundred hours, leaving 4:15a.m., according to the owner Mr. Fayz statement. This is clear and convincing proof of Bleau's factual innocence. These time-lines are consistent with the phone records of Bleau leaving after making a phone call home around 1:00a.m., and consistent with Ms Jacobs testimony that Bleau came home between 3:30a.m.-4:00a.m.. Most importantly, it's inconsistent with Ferguson's testimony that after the crime, he and Bleau drove back to New York together and arrived between 5:30a.m.-6:00a.m., November 30, 1987.

To satisfy the ***Schlup*** and ***McQuiggin*** actual innocence gateway standard a petitioner must first present "new" reliable evidence and second, show by a preponderance of the evidence that it is more likely than not that no reasonable juror would have convicted him in light of the "new evidence". The United States Supreme Court opinions addressing the actual innocence gateway claim do not explicitly define "new evidence" and the Federal Circuit Courts are split on whether the evidence must be "newly discovered" or if the evidence was "never presented" to the jury , that evidence is sufficient and can be viewed as newly discovered. The Eighth Circuit Court of Appeals was the first to address the issue. They held that "evidence is new" only if it was not available at trial and could not have been discovered earlier through the exercise of due diligence. **Amrine v. Bowersox, 238 F.3d. 1023,1028 (8th Cir.2001)** (internal citation and quotation marks omitted).

Thereafter, the Courts of Appeals for the Seventh and Ninth Circuits concluded that petitioners can satisfy the actual innocence standard's "new evidence" requirement by offering "newly presented" exculpatory evidence, meaning evidence not presented to the jury at trial. **See: Gomez v. Jaimet, 350 F.3d. 673, 679-80 (7th Cir.2003); Griffin v. Johnson, 350 F.3d. 956,963 (9th Cir.2003).**

More recently, the Courts of Appeals for the First, Second and Sixth Circuits have held that actual innocence can be shown by relying on "newly presented" -not just- "newly discovered" evidence of actual innocence. **See: Riva v. Ficco, 803 F.3d.77,84 (1st Cir.2015); Rivas v. Fisher, 687 F.3d. 514,543,546-47 (2nd Cir. 2012); Cleveland v. Bradshaw, 693 F.3d. 626,633 (6th Cir. 2012).** The Courts of Appeals for the Fifth and Eleventh Circuits did not weigh in on the conflict amongst the Circuits. **Fratta v. Davis, 889 F.3d.225,232 (5th Cir. 2018); See also: Rozzelle v. Sec'y Fla Dept of Corr, 672 F. 3d. 1000, 1018, n.21 (11th Cir. 2012).** (refraining from reaching issue of whether petitioner's evidence that was available at trial, but was not presented should be considered "new" for purposes of *Schlup).* Furthremore, the Fourth and Tenth Circuits also declined to constitute "newly available" evidence as "newly discovered" evidence.

The court's who defined "new evidence" to include evidence "not presented" found support in *Schlup.* Most recently the Court of Appeals for the Third Circuit joined the 7th, 9th, 1st, 2nd, and 6th Circuit Courts and held: "We now hold that when a petitioner asserts ineffective assistance of counsel based on counsel's failure to discover or "present" to the fact finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constituites "new evidence" for purposes of the *Schlup* actual innocence gateway. **Reeves v. Sci, 897 F.3d. 154; 2018 U.S. App.LEXIS 20364, No.17-1043 (2018).**

However, since it was ***Reeves*** first habeas corpus 2254 petition, the District Courts of Pennsylvania has not recognized the ***Reeves*** holding as being applicable to a second and successive 2254 habeas corpus petition. This leaves an innocent man like Bleau in a dilemma. Due to Bleau's trial attorney failing to investigate, interview and present a known exculpatory alibi witness to the jury, Bleau is denied not only his Sixth Amendment right to effective assistance of trial counsel, but also his Fourteenth Amendment rights to Due Process. To not allow the very evidence that can set Bleau free, to be reviewed in Federal court, is not in line with the United States Supreme Courts explication in *Schlup* and *McQuiggin.*

The Reeves case mirror's appellant Bleau's case. Jerry Reeves was convicted of second degree murder, robbery and firearms offenses. He was sentenced to life in prison due to, inter alia, his confession to the crime. In 2014 Reeves filed a counseled federal habeas corpus petition, presenting trial counsel's ineffectiveness for failing to investigate and present exculpatory evidence of actual innocence, supported by various hearsay statements implicating others as the perpetrators of the crime. **The State produced no physical evidence connecting Reeves to the crime.** The district court denied the petition as untimely, holding that the evidence concerning alternative suspects was not new evidence, because it was available at trial. The Third Circuit Court reversed that ruling as outlilned above.

Due Process requires an objective inquiry into whether this new evidence would change the outcome of trial. A fair tribunal is essential to due process. **See: In re: Munchinson, 349 U.S. 133,136 (1955).** This principle helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or law and preserves both the appearance and reality of fairness." **Marshall v. Jerrico, Inc., 466 U.S. 238, 242 (1982).** "Evidence is material if there is a reasonable probability that pre-trial disclosure would have produced a different result at trial." **Kyles v. Whitley, 514 U.S. 419, 115 S.Ct.1555,131 L.Ed.2d.490 (1995).**

Particularly, in the case at bar, where Bleau's underlying claim is the ineffective assistance of trial counsel premised on a failure to present evidence, a requirement that new evidence be unknown to the defense at the time of trial would operate as a roadblock to the actual innocence gateway. It's only equitable that if the evidence was known but not presented to the jury, due to trial counsels ineffective assistance, and the evidence is the bases for the claim, Bleau should be allow to file the claim in a second 2254 habeas corpus petition.

B. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

The United States Supreme Court has established the legal principle governing Sixth Amendment claims of ineffective assistance of trial counsel in ***Strickland v. Washington***, which setforth a two part test:

> "First, defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the counsel guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's error's were so serious as to deprive the defendant of a fair trial whose result is unreliable." **466 U.S. 668,104 S.Ct.2052,80LEd.2d.674,687 (1984).**

The first prong of ***Strickland*** Bleau meets. For trial counsel to not present Mr. Fayz, a known alibi witness, with corroborating exculpatory documentary evidence in a death penalty trial, where the primary defense was "Bleau was not there when the crime was happening", is so egregious he was not functioning as Bleau's attorney. It is a travesty of justice.

The second prong Bleau also meets. Trial counsel was so deficient in his representation of Bleau that he literally assisted in a miscarriage of justice which no society should tolerate. Considering there was no over-whelming evidence of guilt in this case, as outlined above. The alibi witness and corroborating document (i.e. store receipt) was of paramount importance to the case. Counsel's error not to employ the alibi evidence undermined Bleau's chances of instilling reasonable doubt in the minds of the jury, and resulted in prejudice to Bleau.

A defining feature of our adversarial system of justice is the effective assistance of counsel. An attorney representing his client in a death penalty case is one of the most solemon and important cases he or she will have in their career, because the death penalty is extremely different from other punishments in kind, rather than degree. Bleau's attorney who did not conduct an independent factual evidentiary and legal investigation himself, relied on the prosecutions files, and did Bleau, who asserts his innocence, a disservice.[4]

[4] Trial counsel also failed to investigate alternative suspects and theories setforth in the original Probable Cause Complaint. See: Exhibit "Q"

"An alibi is a defense that places the defendant at the relevant time, in a different place than the crime scene involved, and so removed therefrom as to render it impossible for him to be the guilty party." **Commonwealth v. Rainey, 593 Pa. 67,928 A.2d. 215,234 (Pa.2007); Commonwealth v. Roxberry, 529 Pa.160,602 A.2d.826,827 (Pa.1992).**

In the case at bar, alibi witness Fayz and corroborating receipt was critical to Bleau's defense, as can be observed by the trial court's alibi instruction to the jury:

"In this case---and I must instruct you because the defendant has raised the defense of alibi;, having by reason of phone logs and travel time, suggest that he was not in the area when this crime took place. Obviously the defendant can not be guilty unless he was at the scene of the alleged crime. This is not withstanding the accomplish theory, I tell you he can be. This has to do with the alibi portion. The defendant can not be guilty unless he was at the alleged crime.

The defendant has testified that he was not present at the crime or rather was enroute home or home. You should consider this evidence along with all other evidence in this case in determining whether the commonwealth has met it's burden of proving beyond a reasonable doubt, that the crime was commited and that the defendant himself commited or took part in commiting it.

The defendants evidence that he was not present, either by itself or together with other evidence may be sufficient to raise a reasonable doubt to his guilt in your minds. If you have a reasonable doubt, obviously you must aquit. If you entertain no such reasonable doubt then, of course, there be no impediment to a finding of guilt." **Tr. 1312,1313.**

It's of no moment that trial counsel knew of the existence of Mr. Fayz and possibly his statements to the police. What's important is that he did nothing with Mr. Fayz' information, which in turn is ineffective assistance . A violation of Bleau's Sixth Amendment Rights under the United States Constitution. Furthermore, evidence not presented to the jury should be considered new evidence in the context of this ineffective assistance of trial counsel claim. The following federal cases support overturning Bleau's conviction based on counsel's ineffectiveness.

U.S. v. Gray, 878 F.2d. 702,711 (3d Cir.1989) (Counsel failed to conduct any defense investigation before trial); **Workman v. Tate, 957 F.3d. 1339 (6th Cir.1991)** (Counsel failed to interview two witnesses that were with the defendant at the time of the events that lead up to arrest); **Bryant v. Scott, 28 F.3d. 1411 (5th Cir.1994)** (Counsel's ineffective for failing to interview alibi witness);

Trial counsel has recently submitted an affidavit admitting he did not independently interview or investigate Mr. Fayz during trial and is available and prepared to testify at a hearing. See: exhibit "M" trial counsels affidavit. Evidence also proves trtial counsel's inaction was not sound trategy in Bleau's best interest. Relying solely on the prosecutions files without independently investigating and interviewing Mr. Fayz is ineffective assistance. See: exhibit "N" trial counsels letter. This is a violation of **Strickland v. Washington, 466 U.S. at 691.** (Counsel has a duty to make reasonable investigations or to make reasonable decisions that make investigations unnecessary).

"Several courts have specifically held that unprofessional attorney conduct may in certain circumstances prove egregious and can be extraordinary." **Spitsym, 345 F.3d. at 800-802.** "Petitioner's allegations would suffice to establish extraordinary circumstances beyond his control. Common sense dictate that a litigant can not be held constructively responsible for the conduct of his attorney who is not operating as his agent in any meaningful sense of the word." **Coleman v. Thompson, 501 U.S. 722-756,757, 111 S.Ct. 2546 (1991).**

Under Pennsylvania law, Bleau meets the requirements that warrants his conviction being overturned. (1) Mr. Fayz existed eight days after the crime (See: exhibit "E"); (2) Mr Fayz was available to testify for Bleau's defense. (See: exhibit "F"); (3) Trial counsel knew Mr. Fayz existed (See: exhibit "L"); (4) Mr. Fayz was willing to testify for Bleau's defense and is willing to do so to date (See: exhibit "F"); (5) Mr Fayz' absence deprived bleau of the opportunity to obtain an aquittal which created a miscarriage of justice.

"In weighing the evidence, the court's function is not to make an independent factual determination about what likely occurred, but rather to assess the likely impact of the evidence on reasonable juror's. The actual innocence standard does not require absolute certainty about the petitioner's guilt or innocence. **Reeves, at 161**. See also: **House, 547 U.S. at 538.**

NEWLY PRESENTED FACTS/EVIDENCE UPON WHICH THESE CLAIMS ARE PREDICATED THAT WERE UNKNOWN TO BLEAU

Bleau did not know until 2017 that (1) the police interviewed Mr. Frank Fayz on December 8th & 9th of 1987, and he made exculpatory statements that were memorialized in police reports; (2) that trial counsel never independently interviewed Mr. Fayz; (3) that Professor Stevens also had possession of the police reports and Bleau's missing wallet with corroborating grocery store receipts. See: exhibit "P" Steven Bleau's affidavit.

EXTRAORDINARY CIRCUMSTANCES

Extraordinary circumstances prevented Bleau from discovering the police reports of Mr. Fayz' interview and the knowledge that Mr. Fayz was interviewed by the police. This was due to trial counsel lying to Bleau at trial when he told Bleau that Mr. Fayz wasn't helpful. Trial counsel mislead Bleau into thinking that he independently interviewed Mr. Fayz, and Mr. Fayz just didn't remember Bleau coming into his store on the morning or November 30, 1987. Furthermore, Professor Stevens had copies of the reports and the receipt and never told Bleau she had them. However, extraordinary circumstances occurred when Ms. Fann recognized Professor Stevens was a hoarder, after cleaning out her Florida home. See: exhibit "D" Ms. Fann' affidavit As a result, Professor Stevens probably didn't realize she still had the documents in her possession and never turned them over to Bleau.

THE FACTUAL PREDICATES OF THIS CLAIM COULD NOT HAVE BEEN DISCOVERED PREVIOUSLY THROUGH THE EXERCISE OF DUE DILIGENCE

The extraordinary actions of trial counsel coupled with the actions of Professor Stevens, impeded Bleau from gaining the knowledge and possession of the exculpatory evidence/facts. This also deprived Bleau of his constitutional right's to present this exculpatory evidence to the jury, and impeded him from proving his innocence for over 25 years of pro se litigating his post conviction relief appeals. The United States Supreme Court has stated that:

"A petitioner is entitled to equitable tolling if he shows (1) that he has been pursuing his rights diligently and (2) that some extraordinary circumstance stood in his way and prevented him from timely filing." **Pace v. Diguglielmo, 544 U.S. 408,418, 125 S.Ct.**

MARTINEZ:

C. Does the Constitution permit a court of equity to allow Bleau, who had no attorney in his intial review collateral proceeding, to file an untimely second habeas corpus 2254 petition in federal court involving a claim of factual / actual innocence in the context of an ineffective assistance of trial counsel for failing to independently investigate, interview, and present a known alibi witness during a death penalty trial?

counsels actions created *facts* upon which this claim is predictaed, to be *unknown to* Bleau depite what trial counsel knew and chose not to share with Bleau or present to the jury. Furthermore, for the lower court to say Bleau did not prove he recently found out about the Fayz police reports, in essence is saying, without a hearing, that Ms.Fann's affidavit stating when she found the documents and where she found them, is not credible. Ms.Fann's candid affidavit also states that she is an officer of the Palm Beach County Court in the state of Florida. To suggest she isn't credible based solely on her affidavit is saying her oath of office means nothing to her or the court. This is totally contrary to the United States Supreme Court explications on making credibility determinations.

The lower court's refusal to review these claims of factual/actual innocence, on their merits, poisons the public confidence in the judicial process. It doesn't just violate Bleau's right to Due Process, but also the law as an institution; the community at large; and the democratic ideas reflected in the appellate process within the court's of equity. These are the kind of arbitrary judicial actions the founders of the Constitution sought to protect American citizens from, when they implemented the Due Process Clause of the Fourteenth Amendment, the Sixth Amendment right to effective assistance of counsel and the Eighth Amendments prohibition against Cruel and Unusual Punishment. The rules in ***Martinez*** and **McQuiggin** was critically crafted by the United States Supreme Court to ensure that fundamental Constitutional claims receive review from atleast one court of equity. A miscarriage of justice has occurred, because Bleau's Constutitional claims has been time barred from review throughout the entire Pennsylvania appellate system. This is literally the court of last resort for Bleau.

The explications of ***Martinez*** applies similarily to Bleau's situation too. Justice Breyer dissenting opinion in **Davila v. Davis**, with whom Justices Ginsburg, Sotomayor and Kagan joined, layed out four features of the claim of ineffective assistance of trial counsel that lead the ***Martinez*** court to it's conclusion:

> "First, the court stressed the importance of the underlying Constitutional right to effective assistance of trial counsel, describing it as a bedrock principle in our justice system. **566 U.S. at 12, 132 S.Ct.1309, 182 L.Ed.2d.272**. Our cases make clear that the Constitutional right to effective assistance of appellate counsel is also critically important. The court wrote in **Douglas v. Californa, 372 U.S.353, 357, 83 S.Ct.814, 9 L.Ed.2d.811(1963),** that where the merits of the one and only appeal... as of right are decided without benefit of counsel we think an unconstitutional line has been drawn between rich and poor. The court held in **Evitts** that a first appeal as of right... is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney. **469 U.S. at 396,105 S.Ct.830,83 L.Ed.2d.821.**
>
> Second, we pointed out in ***Martinez*** that the initial State collateral review proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial. **566 U.S. at 11, 132 S.Ct.1309, 182 L.Ed.2d.272.** We added that it is in many ways the equivalent of a prisoner's direct appeal as to the ineffective assistance claim... Ibid.
>
> Thrid, ***Martinez*** pointed out that, unless counsel's error's in an initial review collateral proceeding establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner's claims. **Id. at 10-11 (majority opinion).**
>
> Fourth, the ***Martinez*** court believed that it's decision would not... put a significant strain on State resources. **Id. 566 at 15.** That is because ***Martinez*** imposed limiting conditions: It excuse only those defaults that (1) occur at the initial review collateral proceeding; (2) Where prisoner had no counsel or ineffective counsel, in that proceeding; and (3) where the underlying claim of ineffective assistance is substantial, i.e. has some merit. **Id. at 14-16.** Finally, there is no evidence before us that ***Martinez*** has produced a greater-than expected increase in court's workload, even though ***Martinez*** applies... in most States..." **137 S.Ct. 2058 (2017).**

There will be no increase in cost or the court's workload by allowing Bleau an equitable chance to have his second habeas corpus petition heard on it's merits in federal court pursuant to the ***Martinez*** holding. The Constitution should not be concerned.if thousand of meritless cases pass through, if just one case of factual innocence is heard in the inerest of justice. The interest involved in adjudicating Bleau's actual innocence claim are weighty. His claims are premised upon one of the most fundamental safe guards of human dignity and social decency. Ensuring that Bleau's death by incarceration does not violate his Sixth and Fourteenth Amendment rights,

implicates not only Bleau's fundamental right's, but also the public interest in ensuring that an innocent man does not stay incarcerated. The ***Martinez*** court also explained that:

> "Allowing a federal habeas court to hear a claim of ineffective assistance of trial counsel *when an attorney's error's or absence,* caused a procedural default in an initial review collateral proceeding, if under taken *without counsel or with ineffective counsel*, may not have been sufficient to ensure that proper consideration was given to a substantial claim." **132 S.Ct. 1309,1319 (2012). Emphasis added.**

At no time did Bleau knowingly and intelligently waive his right to PCRA counsel in his initial review collateral proceeding and initial review habeas corpus proceeding. The PCRA court's July 14, 1998 Order that Bleau represent himself is a misrepresentation of the facts. See: Appendix-E Motion & Order. The following exchange occurred in pertinent part, at the PCRA hearing concerning PCRA counsel's withdrawal.

> MR. NOLL: Yes, your honor. I have handed up and given counsel a petition captioned a petition to withdraw as counsel. I requested this hearing to bring that matter to your attention. I was appointed to represent Mr. Bleau back in 1997, March, and to give you alittle background on this case, this was quite a long homicide case. Unfortunately, Mr. Bleau was convicted and sentenced to two life terms of imprisonment. I was assigned after about a PCRA had been sitting for approximately two years... PCRA hearing Transcript 7/14/98, pg.2. (hereinafter named N.T.___).
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> * * *
>
> Your honor, the reason I have requested this hearing. I received many letters from Mr. Bleau indicating his dissatisfaction with my representation of him, his disagreement with the way in which I have proceeded to handle his case. On at least two separate occassions he's asked me to withdraw as counsel... I see one issue of merit remaining out of about fifteen that he has raised. *And I have not yet had the opportunity to speak with the witness who is involved in that. And have not had an opportunity to do a review of the law with reference to that issue.* I can tell you that Mr. Bleau has reported me to the disciplinary board for failing to respond to his repeated requests. My request to this court is to either instruct Mr. Bleau to accept my representation in the way in which I can handle this case, taking into account I have got numerous PCRA's, numerous PCRA clients, along with private practice, and accept my advice or that he represent himself pro se... N.T. 7/14/98,pgs 304. Emphasis added.

It's important to take note that attorney Noll had Bleau's case for approximately sixteen months, and as he indicated above, he never spoke with any witnesses and never even reviewed the law in reference to the only issue he claimed was of merit. He didn't even explain what the issue of merit was. Furthermore, attorney Noll was ineffective in his representation. If it was up to him, this claim would have never been raised, as well as any of the claims Bleau

raised in his initial review collateral petition, nor would these claims have reached this honorable court for review. Attorney Noll didn't even know Bleau's initial review collateral PCRA petition sat inordinately for three years, not two years as he stated above. See: Appellate history, supra. The following exchange continued:

> THE COURT: Okay, Mr. Bleau, do you have anything to tell me?
> STEVEN BLEAU: Yeah, Well, my problem with Mr. Noll wasn't, you know, the only problem I have with this. I don't care if a six months graduate of law school represent me, as long as they're going to hear me out and work with me, not shut me down. I got a life sentence. This is far from a light hit. This is no robbery of a grocery store. This is a life sentence, your Honor. I got a mother that's on her death bed... The way the court's are tightening up on those convictions, these things, its getting harder and harder to get-this is like a one shot deal for me. It's either unload now or forever hold your peace... These things are getting very difficult with these post convictions. I don't have the time to be conflicting with attorney's, what he feels might not-I don't think the judge is going to go for this. I don't think thats -- okay, fine, we can reason with it, we can talk about it. But don't say this is the way it's going to be, this is final, that if you don't want to deal with it, get another attorney. I don't need to hear that, I got a life sentence. I don't need to hear that. I don't need no conversation from -- if he is working on my issues, if we can discuss an issue, let me understand your point of view. N.T. 7/14/98,pgs. 4-5.
> THE COURT: ... It might behoove you to listen to him somewhat. He's the lawyer. His responsibilities are to discuss the facts and the law with you and give you his opinion. You may take it or reject it. But *you have a choice. Either you continue with Mr. Noll as your lawyer, or in the alternative, you represent yourself.*
> STEVEN BLEAU: Well, if I'm going to represent myself, I mean, so I get standby counsel?
> THE COURT: No.
> STEVEN BLEAU: Do I get the same thing?
> THE COURT: *No, you have a choice. Either Mr. Noll represent you or you represent yourself...*
> STEVEN BLEAU: What do I have? Will I have standby counsel?
> THE COURT: Mr. Noll is a lawyer. I am not going to insult him by appointing him as standby counsel. Okay? He's the lawyer... N.T. 7/14/98,pgs. 7-8
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> * * *
>
> THE COURT: Very well. Mr. Bleau, this is the choice you have. Mr. Noll has made it clear, in his professional judgment, and in the exercise of diligence and protecting your rights, and protecting your life, he feels, of the issues you raised, only one has arguable merit? Do you understand that?
> STEVEN BLEAU: I understand that. I don't agree with it.
>
> * * *
>
> THE COURT: If you insist, and you are going to insist, and you are going to take steps to report Mr. Noll to the disciplinary board and make his life miserable, then I am going to discharge him and you can raise any issue you want before the court. But you are going to have to do it yourself, because in my view, you are not entitled to a lawyer of your choice. In my view, you are not entitled to dictate what a lawyer ought to do in his professional opinion and file frivolous issues with the court. Do you understand that?

STEVEN BLEAU: This case has been sitting since 1994?
THE COURT: Sir, do you want to represent yourself then, is that it?
STEVEN BLEAU: I'll have amended Post Conviction filed in 10 days, your honor.
THE COURT: Very well. Mr Casenta, any--
STEVEN BLEAU: I am not waiving my rights.

* * *

THE COURT: Mr. Casenta, in view of the discussion with the defendant, I'm going to discharge Mr. Noll as Mr. Bleau's attorney. He can raise any issue he wants. But he is going to have to do it pro se. Any problems with that?
MR. CASENTA: No, your honor.
THE COURT: Very well. PCRA 7/14/88, N.T. pgs. 15-17.

* * *

Bleau's lack of investigative resources and experience in litigating such complex issues made it impossible for him to discover these claims and raise them in his initial review PCRA appeal, and initial 2254 Habeas Corpus Petition. Attoney Noll did not provide the PCRA court with a brief, as required by *Anders*, infra. Instead he only filed a petition to withdraw. Counsel did not advert his own review of the record or reveal anything in the record that he himself saw as having some chance of prevailing on appeal. Under *Anders*, the right to counsel is vindicated by counsels examination and assessment of the record and counsel's reference to anything in the record that arguably supports the appeal or don't support the appeal. **Anders v. California, 386 U.S. 738, 744, 18 L.Ed.2d. 493, 87 S.Ct.1396 (1967).**

CONCLUSION

WHEREFORE, petitioner Bleau pray this Honorable Supreme Court issue an Extraordinary Common Law Writ of Certiorari and set this case for briefing and argument, or in the alternative, remand this case to the federal district court of Pennsylvania with orders to conduct an evidentiary hearing and review the evidence on the merits and make a determination, or this Honorable Supreme Court issue an Extraordinary Writ of Habeas Corpus directing Bleau be discharged forthwith, in the interest of justice.

Date: 7/28/19

Respectfully submitted,
S/ Steven Bleau
Steven Bleau, Pro Se