No. 19-5546

IN THE

SUPREME COURT OF THE UNITED STATES

Kevin Lyndell Yates Pro Se — PETITIONER
(Your Name)

vs.

Amy M.Harper — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin Lyndell Yates Pro Se
(Your Name)

12352 Coffeewood Drive,P.O.Box 500
(Address)

Mitchells,VA 22729
(City, State, Zip Code)

N/A
(Phone Number)

In The
Supreme Court of The United States
Office of The Clerk

(In the Light of Justice Motion for Tolerance)
Motion
For Recognition upon
FRCP 8
"A"

Petitioner,

In humble posture,in light of Justice,claims Pro Se Plaintiffs are generally given more leeway than parties represented by counsel.

Stone-v-Warfield
(1999 D.C. Md..) 184 FRD 553

In Light of Justice Motion For Tolerance.

[X]

QUESTION(S) PRESENTED

1. Does a defendant who has been handcuffed,informed that there is a indictment for his arrest,questioned by the arresting officer,asked by the arresting officer if the defendant would like to help them out and work for them,and help himself by helping them,have a Constitutional Right to be read or advised of his Miranda Warnings?(the law states that a defendant is to be advised of his Miranda Warnings before any questioning and when the defendant has been handcuffed and is not free to leave and before defendant is interrogated).

2. Does a defendant have the right to be served with the Search Warrant on the night that said motel room is searched,and does the defendant or the motel manger have to give consent to search the motel room,and is the defendant by law suppose to be given a a copy of what was seized from the motel room,on the night that the motel room was searched?

3. Is it counsel for the defenses job to serve the defendant with a copy of the search warrant,and an invertory of what was seized from the motel room on the night of the arrest,or is it the officer's job to server the search warrant and a copy of what was seized on the defendant?(Mr.Yates informed his attorney Amy M.Harper that he had not been served with a copy of the search warrant,and had not been served with a copy of what was seized from the motel room,and the motel room was searched in March of 2013,and here it was June of 2013 and the defendant still had not been served with the search warrant,and had not seen a copy of what was seized).

4. If the plea agreement was accepted because of the time that was being offered in the sentencing guidelines of the oral plea agreement,is the defendant entitled to said plea agreement?

5. If the Asst.Commonwealth's Attorney makes a statement in open court at the sentencing,that if he had known that the defendant's sentencing guidelines were so low he never would have made the deal,and this statement was made after the plea agreement was signed,isn't that statement made by the Asst.Commonwealth's Attorney violating the plea agreement that was offered to the defendant so that the defendant would plead guilty?

6. Isn't it ineffective assistance when counsel does not get said plea agreement reduced to writing or on camera,so that defendant right to Due Process are protected,and is it effective assistance of counsel for counsel to bully,intimindate,make threats,in order to get the defendant to sign a blank plea agreement,that was not reduced to writing because defense counsel stated that she . . . couldn't get it in writing?

7. Is it effective assistance of counsel for defense counsel to ignore the facts that the indigent defendant's Constitutional Rights,Civil Rights,and the Right to Due Process have been violated,and intimindates the defendant into siging a plea agreement that was not reduced to writing or in front of a camera?

8. The Sixth Amendment states that the defendant is to have effective assistance of counsel throughout defendant's trial, or the plea bargaing process,sentencing,and if there is one the appeal process(counsel should have at least one meeting with the defendant to discuss the arguments that can be presented on the appeal)is it effective assistance of counsel for defense counsel to state to the appeals court that they see no merits for an appeal,and withdraw as counsel and never talks to the defendant about the appeal,and is this type of represtation that an indigent defendant is suppose to get in the Court Rooms of the United States,would a paying defendant received the same type of representation?

9. If the defendant had done anything to violate the plea agreement the plea would have been withdrawn and the defendant would have been taken to trial on all charges,and the defendant would have been sentenced by the judge,then how come when the Asst. Commonwealth's Attorney violated the oral plea agreement,the counsel for the defendant(Amy M.Harper)stated that there was nothing that could be done about the violation of the plea?

10.Is it effective assistance of counsel when counsel,after asking the defendant would he be willing to talk and help the police,and after the defendant says no,counsel makes the statement that there is no arguing this case,and the best thing for the defendnat is to accept the plea agreement,is this effective assistance of counsel for an indigent person in any court room?

LIST OF PARTIES

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

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

Kevin Lyndell Yates
pro se Petitioner

-against-

Amy M.Harper
Attorney of Law Defendant

Amy M.Harper
Attorney at Law
Higginbotham & Bowman,P.L.C.
Attorneys and Counsellors at Law
102 W.Main Street
P.O.Box 391
Orange,Virginia 22960-0229
Telephone 540-672-2531
Fax 540-672-9067

This is the Law Firm that Attorney Amy M.Harper was an attorney when she was asingned to Mr.Yates as a Pro Bono Attorney.

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deadline.The Correctional Center will not allow the inmates to have the orignal envelopes that the legal mail arrives in,they photo copy the front of the envelope,I have the photo copy if the Clerk of the Court wishes to see it.

APPENDIX H: United States Court of Appeals Fourth Circuit: A Mandate order,took effect on December 27,2018 which is a typo because its 2019 when I received this Mandate,and again I have this if the Clerk of the Court wishes to review this paper work.

APPENDIX I: The Supreme Court of The United States:Filed for extension of time for my Writs of Certiorari,asked due to the time that is allowed at Coffeewood Correctional Center Law Library,and lock downs.

APPENDIX J: The Supreme Court Of The United States:Filed the Writ of Certiorari,asked for second extension due to couldn't get the Writ copied,due to staff leaving earley,and did not sign all of the Writ.

TABLE OF AUTHORITIES CITED

STATUTES AND RULES:

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts**:

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

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

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

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

[x] For cases from **state courts**:

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

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

The opinion of the United States Court of Appeals court appears at Appendix G to the petition and is

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

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[ ] No petition for rehearing was timely filed in my case.

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

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

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was 12/27/19. A copy of that decision appears at Appendix H.

[ ] A timely petition for rehearing was thereafter denied on the following date: no petition filed, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. ___A_____.

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

I received the court order 19 days after the dead line and I was only giving 14 days to file the petition for rehearing.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Miranda Rights violated:The Fourteenth Amendment guarantees an accused in a state court the protection of the Fifth Amendment's privilege against self-incrimination,prohibited admitting any statements given by a suspect without warning during custodial interrogation,that is,during questionong initated by law enforcement officers after a person has been taken into custody-requires that the doctrine be enforced strickley,and without the Miranda Warnings the doctrine of the"fruit of the poisonous tree,"which excludes evidence derived from information gained in an illegal search,applies to information obtained by s post-Miranda police interrogation in violation of the Miranda rules.Generally,the "fruit of the poisonous tree"doctrine is discussed in an annotation at 43 ALR 3d 385.See also,Miranda Without Warning:Derivative Evidence as Forbidden Fruit,41 Brooklyn L Rev 325.

Forth Amendment violated:Any evidence seized from defendant in criminal case in violation of Forth Amendment is inadmissible and fruits od such evidence are inadmissible as well,as a matter federal Constitutional Law,evidence obtained by a search and seazure in violation of the Forth Amendment is not admissible,and the Fourteenth Amendment prohibits state criminal conviction obtained by knowing use of false evidence.

The validty of a search warrant obtained by state officers is to be tested by the requirements of the Forth Amendment of the U.S. Constitution,not bt state law standards,when the admissibility of evidence is at issue.It is improper to consider a subject's assertion of Constitutional Rights-such as the right to remain silent or refusal of consent to search.Fed.R.Cr.P.41 (d) provides in pertient part:the officer taking property under a search warrant shall give to the person from whom or from whose permises the property was taken a copy of the warrant and a receipt for the property or evidence taken or seized.Failure to serve copy of warrant and receipt for items seized are ministerial violation,requiring suppression(when asked about seeing the search warrant,was told by Sgt.Healy that they didn't have to show the search warrant to the suspect)suppression required under Rule 41 where agents deliberately and prejudicially refused

to serve warrant upon person present at search,and good-faith exception had no applicabilty since error was soley in provence of officers conducting search,Forth Amendment rights violated.

Hotel Mangers are prohibited from giving effective consent to search a guest's room,search of motel room without consent of guest was unlawful though conducted with consent of motel clerk.The expectation of privacy associated with a person's home applies with rqual force to a properly rented motel room during the rental period.The right of the people to be secure in thier houses,motel room,persons,papers,and effects,against unreasonable searches and seizures shall not be violated.

Evidence which has been seized by government officials or thier agents in violation of the Fourth Amendment is not admissible into evidence.The purpose of the rule is to deter misconduct by officers and government officers.The substantial costs of excluding probative evidence are recognized.Accordingly,it is appropriate to argue costs and benefits when exclusion is at issue.Weighty here is the fact that the rule is designed to protect the Federal Constitution of the United States.Evidence that flows from the original taint"with no discernible break in the chain of causation"are fruit of the poisonous tree and equally excludable.Evidence may be tainted by violation of any Constitutionally protected right,though most cases involve either the Fourth or Fifth Amendment.The tainted product of such violations may be physical or oral evidence and it will be found inadmissible.Chief Judge James P.Jones,decidng an appeal from a magistrate's application of the Exclusionary Rule,admitted to the personal opinion that Herring expressed the view of the Supreme Court of the United States that"evidence should be excluded only in instances where the Fourth Amendment has been deliberatly violated or recklessly disregarded."Virginia's search and seizure statutes are said to contain the same requirements as the Fourth Amendment.

Sixth Amendment violation:Federal Constitution Sixth Amendment requires effective assistance of counsel at critical stages of criminal proceeding,including plea bargaining.The Sixth Amendment right to effective assistance of counsel does not only involve errors in accepting a plea agreement.There are many ways

for counsel to be ineffective,example,courts have found counsel ineffective for bad advice:(1)maximum possible sentence,(2) the possibilty of appealing an issue;(3)the possible defense,counsel ineffective by supplying faulty advice about elements of possible defense.It was held that the Sixth Amendment right to counsel was made obligatory upon the states by the Fourteenth Amendment.

The right to an attorney embraces effective representation throughout all stages,and where the representation is os such low caliber as to amount to no representation,the guarntee of Due Process has been violated.

Right of defense includes aid of counsel in perfecting an appeal.Failure to assist an indigent defendant in making an appeal,is a denial of equal protection and due process guaranteed to him under the Federal Constitution and the Virginia Bill of Rights.The due process clause of the Fourteenth Amendment was held to guarantee a criminal defendant the effective assistance of counsel on a first appeal as of right.It is held that the fourteenth Amendment guarantees a criminal appellant pursuing a first appeal as of right certain minimum safeguards necessary to make that appeal adequate and effective,including the right to counsel.

Violation of the plea agreement:A majority of criminal cases are resolved by pleas,safeguards surrounding the taking of pleas are crucial to the intergrity of the entire criminal system.Rule 11,Fed.R.Crim.P.,the fairness and adequacy of the procedures on on acceptence of pleas of guilty are of vital importance in according equal justice,need for a public record indicating that a plea was knowingly made.A record of the plea-taking process must be made so that an appellant court can determine the sufficiency of the plea,factual basis for the plea must appear in the record,a guilty plea is invalid if the promise that induced the plea were not kept,The Supreme Court ruled that promise made as part of a plea agreemet must be kept and if they are not, the court has the power to permit a withdrawal of the plea,where State defaulted on plea agreement,reviewing court has disertion to order specific performance or provide opportuinty for defendant to withdraw his plea agreement.

STATEMENT OF THE CASE

Amy M.Harper was the third attorney appointed for this case, the first was a Public Defender,Kevin Garity,he knew I wanted to take this case to trial but due to conflict of interest he had to withdraw as counsel.

The second Attorney was John C.Clark he was appointed Pro Buno,but Mr.Clark didn't want me to proceed to trial he stated that I should accept the plea agreement being offered,I said no and then I filed a Motion for a new attorney.

The third Attorney appointed was Amy M.Harper she was also Pro Buno,the first meeting Ms.Harper asked how come I didn't accept the plea deal that was on the table,I informed Ms.Harper that I wanted to proceed to trial with this case,the second question from Ms.Harper was,would I be willing to talk,and work with the Fauquier County Sheriff's Office,I stated no,Ms.Harper made the comment the best thing for me was to take the plea,and she would get in touch with the Asst.Commonwealth's Attorney and see if the plea was still on the table.

At this time Ms.Harper is pushing for a plea that she didn't even know how much time was involved,the plea was if I plead guilty I would be sentenced inside of my sentencing guidelines, I stated to Ms.Harper that I had a good case to go to trial,and Ms.Harper asked what defense did I have? This was the first meeting and when I stated that I wasn't trying to work for the Fauquier County Sheriffs Office setting people up(confindintal informant)Ms.Harper didn't want to talk about a defense,she stated that the best thing for me was to take the plea.

The first reason for wanting to go to trial was on the night that I was arrested,the Fauquier County Sheriffs Officers broke down the motel room door where my fiancee and I were staying and stated that they had a search warrant,at this time I asked Sgt. Healy where was the search warrant,The Sgt. stated that he didn't have to show me the search warrant,I stated that the warrant had to be served on me,Sgt.Healy at this time stated that he didn't have to show me nothing and stated that who was the Judge going to believe me or him.It was at this time that Attorney Harper the statement that the search warrant was served to the motel manger and that the motel manger consented to the motel room being serched.This is in June of 2013 that this meeting is taking

place,the motel room door was broken down and searched in March of 2013,and at this time I still had not seen the search warrant, nor did I know what was seized from the motel room.

Attorney Ms.Harper stated to me the defendnt that the Search Warrant was served to the motel manger and that the motel manger consented to the search,I asked Ms.Harper how could this be right it was at this time that Attorney Harper made the statement,that I know how Fouquier County is.

Law:The rights protected by the Fourth Amendment,said the court,are not to be eroded by strained applications of the law of agency or by unrealistic doctrines of"apparent auotority." It was the accused's Constitutional Right rather than the clerk's or the Motel's Manger which was at stake,and therefore that right be waived only by the accused,either directly or through an agent.Although the motel manger clearly consented to the search, noted the court,there was nothing to indicate that he had been authorized by the accused to permit the search.Stoner v. California(1964)376 US 483,84 S.Ct. 889,11 L.Ed.2d 856,1964.

According to the court in Georgia v.Randolph(2006)547 US 103, 126 S.Ct. 1515,164 L.Ed.2d 208,2006 U.S. LEXIS 2498,for purposes of determing whether a search is consensual,and thus reasonable under the Fourth Amendment,a person on the scene who identifies himself or herself as a motel manger calls up no customary understanding of authority to admit guest without the consent of the current occupant,as(1)a motel room's current occupant customarily has no reason to expect the manger to allow anyone but the manger's employees into the room;and(2)in these circumstances, neither state-law property rights,nor common contracyual arrangements,nor any other source points to a common understanding of authority to admit third parties generally without consent of a person occupying the premises.

When a law enforcment officer claims authority to search a motel room under a warrant,said the court,the officer announces in effect that the occupant has no right to resist the search. such a situation,said the court,is imbued with coercion,and under such circumstances there cannot be consent.Bumper v.North Carolina(1968)391 US 543,88 S.Ct. 1788,20 L.Ed.2d 797,1968 U.S. LEXIS 1470.

The Fauquier County Sheriffs Office's never served me with

the search warrant or what was seized from the motel room on the night I was arrested,I informed Ms.Harper that we could use this for a defense when we went to trial,the only thing Ms.Harper did was she got a copy of the search warrant and what was seized and Ms.Harper served them to me when I went to court,she just made the statement,here's your copies of the search warrant and a copy of what was seized,I stated that I was under the impersion that the Fauquier County Sheriff's officer's had to serve me this information not my defense attorney,Ms.Harper was helping the Asst.Commonwealth more then the defendant.

The second reason I stated to Ms.Harper that I wanted to proceed to trial,was because on the night that I was arrested,I was questioned,and the Officer's kept trying to get me to answer my cell phone and tell who was calling to come to the motel room and they would be there waiting on them,they asked me at least three times would I be willing to help myself by helping them,and I was questioned about where was the drugs at,during all of this I was handcuffed,the officer's have allready stated that they had a search warrant,but during this they never advised me of my Miranda Warnings,they took me to jail and I was never advised of any Miranda Warnings,I stated to Ms.Harper that this was a good defense to proceed to trial,Ms.Harper just stated that she would check into it,but that I needed to accept the plea that was being offered,and that she was going to see if the plea was still on the table,I informed Ms.Harper that I wanted to go to trial,she stated that I know how Fauquier County is,she stated that I was facing a 10 year mandatory sentence,and by accepting the plea we could get the Asst.Commonwealth's Attorney away from the 10 year mandatory and get sentenced inside of my sentencing guidelines, so I asked well what are the guidelines,Ms.Harper stated that she had to see what they were,Attorney Harper was pushing a plea agreement that she didn't even know how much time I was looking at,she just kept stating over and over that I didn't want to go in Fauquier County Court with thoes charges,and facing 10 years. I felt that my defense attorney was intimindating me and making me feel threatend instead of puting on a defense of the defendant

Law:Fidelity to the doctrine announced in Miranda v.Arizona (1966)384 US 436,16 L.Ed.2d 694,86 S.Ct. 1602,10 ALR 3d 974- which held that the Federal Constitutions Fifth Amendment

privilege against self-incrimination prohibited admitting any statements given by a suspect without warning during custodial interrogation,that is during questioning initated by law enforcement officers after a person has been taken into custody-requires that the doctrine be enforced strickly.

Miranda safeguards come into play whenever person in custody is subjected to either express questioning,or its functional equivalent;term"interrogation"under Miranda refers not only to express questionong,but also to any words or actions on part of police,other than those normally attendant to arrest and custody, that police should know are reasonably likely to elicit incriminating response from suspect.

The doctrine of the"fruit of the poisonous tree,"which excludes evidence derived from information gained in an illegal search,applies to information obtained by a post-Miranda police interrogation in violation of the Miranda rules.

The "fruit of the poisonous tree"doctrine is discussed in an annotation at 43 ALR 3d 385.See also Note,Miranda Without Warning:Derivative Evidence as Forbidden Fruit,41 Brooklyn L Rev325.

Any evidence sezied from defendant in criminal case in violation of Forth Amendment is inadmissible at trial,and fruits of such evidence are inadmissible as well.Alderman v.United States,394 US 165,22 L.Ed.2d 176,89 S.Ct.961.

The question can presently be answered by stating that,as a matter of Federal Constitutional Law,evidence obtained by a search and seizure in violation of the Fourth Amendment is not admissible in a criminal trial,whether this is Conducted in a Federal or in a State Court.

I knew that I had a defense in this case and that's why I informed Ms.Harper that I wanted to proceed to trial.Ms.Harper only wanted to talk about the plea not the Constititutional Laws that were violated,to this Ms.Harper just stated that I know how Fauquier County is.I knew that by the Sheriffs Officer's not giving me a copy of the search warrant and a receipt of what was seized from the motal room could be used to get some if not all of this evidence suppressed if we proceed to trial,because Fed.R. Cr.P. 41(d) provides in pertinent part:the officer taking property under a search warrant shall give to the person from whom or from whose premises the property was taken a copy of

the warrant and a receipt for the property taken or shall leave the copy and the receipt at the place from which the property was taken.

I knew that I had a chance when I went to trial,I was denied being advised of my Miranda Warnings,I didn't consent to the search of the motel room,in fact Ms.Harper informed me who consented to the search,I was arrested in March of 2013 and by June of 2013 I still had not seen the search warrant or a receipt of what was seized from the motel room,fact the Fauquier County Sheriffs Officer never served the search warrant or a copy of what was seized,when I informed Attorney Harper of this she got copies of the search warrant and a copy of what was seized and she served them to me,instead of helping the defendant's defense Ms.Harper in fact helped the Asst.Commonwealth's Atorney Mr.Rabb, and she helped the Fauquier County Sheriffs Office because they didn't server the search warrant or a copy of what was seized Ms. Harper served it on the defendant.I don't believe that this is effective assistance of counsel.This could have been evidence used in the defense of this case,but Ms.Harper chose to take this violation out of play for the defense.

Ms.Harper informed me that she had spoken to the Asst. Commonwealth's Attorney Mr.Rabb and that the plea agreement was still on the table,I asked Ms.Harper at this time about going to trial,Ms.Harper made the statement that I didn't want to go to court in Fauquier County with the drug charges that I had,facing a 10 year mandatory sentence,Ms.Harper was intimindating me into accepting this plea agreement,and making threats that I didn't want to go to court in Fauquier County in front of Judge Parker with these type of drug charges.Ms.Harper just kept saying we wanted to get Mr.Rabb away from the 10 year mandatory sentence, and the only way to do so was accept the plea agreement.I aked Ms.Harper what were my sentencing guidelines and she stated at that time that she didn't know what my sentencing guidelones were.I was told that she would be in touch,and that there was going to be someone in contact with me to do a presentencing report,the PO that did the presentencing report was the person who informed me what my sentencing guidelines were,they were for 5 years 2 months and this was the high end,at this time I got in touch with Ms.Harper and informed her that I knew what my guide-

lines were,she wanted to know how I found out,I told her that the probation officer who did my presentencing report told me what my guidelines were,at this time Ms.Harper was upset and made the statement that the probation ifficer had no right to inform me of the sentencing guidelines,I stated that if were not taking this to trial she had to get the plea agreement in writing,Ms.Harper stated that she would try but she didn't think that Mr.Rabb would put it in writing.

A few days later Ms.Harper sent me a plea agreement to sign and the plea agreement was blank,so I refused to sign it,when we arrived in court Ms.Harper asked me where was the plea,I stated that I was not confortable siging a blank plea agreement,and at this time Ms.Harper started with the threats,stating that I was facing 10 years and this was the only way to get away from the 10 years,I felt intimindated into accepting this plea agreement.

I signed the plea agreement because Ms.Harper stated to me in that court room that the Asst.Commonwealth's Attorney Mr.Rabb was going with the oral plea agreement,and two minutes after the plea was signed Mr.Rabb stood up in the court room and stated that if he had known that Mr.Yates's sentencing guidelines were so low he never would have made the plea deal with Mr.Yates,he stated to the court that he thought my sentencing guidelines were going to be anywhere between 15 to 20 years,I stated to Ms.Harper at this time that Mr.Rabb had just violated the plea agreement,and Ms. Harper informed me that Mr.Rabb did not violate the plea.

I was sentenced to 42 years Judge Parker stated that he was going to do me a favor and suspend 30 years of this sentence and I was going to prison for the next 12 years,I stated to Ms.Harper that she had to do something,she stated that there was nothing to be done,I informed Ms.Harper that I wanted to appeal the sentence because Mr.Rabb violated the plea agreement,Ms.Harper stated at this time that I did good with the 12 years that I got,I said I was facing 10 years and got 12 how is that better,Ms.Harper stated that there was know way to appeal this and know way to withdraw the plea agreement,but that she would be in touch to discuss if we had any grounds for an appeal,that was the last time I talked with Ms.Harper,I received a letter a month later stating that she filed the appeal and stated in the appeal that

she saw no merit for an appeal,and she also had filed a motion to be removed from the case,and she sent me a bill for her attorney fees,she was asigned Pro Buno in this case.

In McQueen,108 F.3d at 64-66,the government and the defendant entered an oral plea agreement during jury deliberations,which was never put in writing.The essence of the agreement was that the defendant would plead guilty and the government would:(1) recommend a sentence of no more than 63 months,and(2)recommend the defendant receive a two-level reduction for accepting responsibility.

Although the defendant plead guilty,keeping his part of the bargain,at sentencing the government made neither of the promised recommendations.In its defense,the government explained that once the district court determined the defendant was not entitled to a reduction for acceptance of responsibility it concluded that there was no basis for downward departing to 63 months.The gonernment also contended that,because the agreement was not reduced to writing and there was no transcript of the Rule 11 hearing(where the terms of the oral agreement were recited)," the Assistant United States Attorney(AUSA)was unable to recall the exact terms"Id.at 66.(this is almost what happened to me, but the Asst.Commonwealth's Attorney Mr.Rabb stated in open court that if he had known that Mr.Yates's Guidelines were so low he never would have made the deal)(Attorney Harper knew that Mr.Rabb had violated the oral plea agreement).

Because the defendant raised the government's breach of the plea agreement for the first time on appeal,the Fourth Circuit had to find"plain error"in order to vacate and remand-which it did.Id.at 65-66,citing United States v.Fant,974 F.2d 559,565(4th Cir.1993)(Attorney Harper knew that I had a chance of getting the plea agreement over turned on appeal,thats why when she filed the appeal,she never talked to me about it and she filed that she saw no merits for an appeal,and then she filed a motion to be removed from the case).

In rather stronge language from a Circuit Judge not known to be anti-government or pro-defendant(the late Judge Russell),the Court sharply criticized the government's explanation of its non-feasance:This court will not tolerate such excuses,particularly when the record...reveals that the same AUSA who bargained

for the plea agreement was present at both the guilty plea heraing and the sentencing hearing.(Ms.Harper stated that she had to talk with Mr.Rabb to see if the plea agreement was still on the table,Asst.Commonwealth's Attorney Russell L.Rabb was the only Commonwealth's Attorney who had anything to do with the oral plea agreement).The Government's failure to argue the terms of the oral plea agreement to the district court at the sentencing hearing Constituted a breach of the plea agreement.And because violations of plea agreements on the part of the government serve not only to violate the Constitutional Rights of the defendant, but directly involve the honor of the government,public confidence in the fair administration of Justice,and the effective administration of justice in a federal scheme of government,we hold that the government's breach constituted plain error.

In addition to vacating this defendant's sentence,the Fourth Circuit also took opportuinty to criticize oral plea agreements generally."When a defendant's fundamental and Constitutional rights hang in the balance,we hold that justice requires and common sense dictates memorializing the terms of the plea agreement.Because the government bears a greater responsibility than the defendant for inaccuries and ambiguities in a plea agreement, we believe it behooves the government to reduce all oral pleas to writing.Accordingly we suggest that lower courts require all future plea agreements be reduced to writing."(Attorney Harper informed me that the plea agreement wasn't going to be put in writing,even when I informed Ms.Harper that I was not comfortable signing a blank plea agreement,this is when Ms.Harper statred with the threats,that I didn't want to go in Fauquier County facing 10 years mandatory,she stated that this was the only way to get away from the 10 years,and when I was giving 12 years,Ms. Harper and ststed that I did good with getting the 12 years).

Law:Guilty pleas induced by coercion,whether by threats or promises,are void.Gibson v.Boles,288 F.Supp.472(N.D. W.Va.1968). A plea of guilty is void when induced by promises or threats which deprive it of its voluntariness.Raines v. United States, 423 F.2d 526(4th Cir.1970).When a defendant alleges that his guilty plea was induced by a threat or promise specifically

directed to him through his attorney,the defendant's honest belief that such a threat or promise was made is oridinarily sufficient to render the plea invalid.Towns v.Peyton,404 F.2d 456(4th Cir.1968)(Attorney Harper intimindated me by stating I was going to get 10 years if I didn't accept the oral plea, and then made threats that if I didn't accept the oral plea I didn't want to go in Fauquier County Court with thoes charges,I was affarid if I didn't accept the plea I was going to get 10 years or more,I took the plea and was expecting to get 5 years 2 months,I got 12 years and my attorney made the statement that I did good with the time I got.

Law:Where it is apparent from the totality of circumstances that the entry of a guilty plea by a defendant was induced by a belief that certain promises had been made by the Asst.Commonwealth's Attorney,which promises inured to the benefit of the defendant and the state,when in fact,such promises were not made or were not fulfilled,such plea was involuntary and viod.State ex rel.Clancy v.Coiner,154 W.Va.857,179 S.E.2d 726(1971).

The plea was giving by Mr.Rabb the Asst.Commonwealth's Attorney,fact as soon as the blank plea agreement was signed Mr. Rabb breached the plea agreement by making the statement that if he had known that Mr.Yates's guidelines were so low he never would have made the deal,Mr.Rabb made this statement in court at the plea signing and sentencing.

Law:A breach of a plea agreement may occur where the state, after having agreed to remain netural to the sentence imposed, fails to do so.Duncil v.Kaufman,183 W.Va.175,394 S.E.2d 870(1990) A plea of guilty will be rendered void if it is induced by misrepresentation,including an unfulfilled promis,State ex rel. Clancy v.Coiner,154 W.Va. 857,179 S.E.2d 726(1971).The Commonwealth violated the terms of its plea agreement with the petitioner when the Commonwealth's Attorney failed adequately to advocat the agreed sentencing recommendation before the trial judge.Massie v.Blankenship,469 F.Supp.686(E.D. W.Va.1979),When a plea rests in any significant degree on a promise or agreement of the prosecutor,so that it can be said to be part of the inducment or consideration,such promis must be fulfilled.United

States v.Moore,931 F.2d 245(4th Cir.1991).When the government fails to adhere to the plea agreement in any way,the sentence must be vacated and remanded to the district court either to allow the appellant to withdraw his plea or grant specific performance of the plea agreement.

Certainy,guilty pleas induced by promises are always suspect, and where the promises are not kept,as for example,in the subsequent change of a sentence for a definite term to an indeterminate sentence,a conviction based there on cannot pass the Constitutional test of Due Process.Wolfe v.Commonwealth,1 Va. App.498,339 S.E.2d 913(1986).

When the plea was violated by the Asst.Commonwealth's Attorney,I stated that I wanted to appeal the violation,and was there any way to withdraw the plea,I was informed by Ms. Harper that there was nothing we could do and she would be in touch,I never talked to Ms.Harper again,she filed the appeal stating she saw no merit for an appeal and filed a motion to be removed from the case.Ms.Harper made it seem that the plea agreement was binding no matter what and that there was nothing that she could do or I could do about the plea,and that the plea was legal and binding.

Law:The Supreme Court has long recognized the involuntary nature of a guilty plea obtained by subjecting a criminal defendant to some form of coercion,(such as threats see infra §5[b]),certain types of promises(see infra §5[c]),and deception (see infra §5[d])frequently expressing this recognition by a holding that a guilty plea abtained in such a manner is invalid as violating the defendants Constitutional Rights.Kercheval v. United States(1927)274 US 220,71 L.Ed.1009,47 S.Ct.582).In United States v.Jackson(1968)390 US 570,20 L.Ed.2d 138,88 S.Ct.1209, the court said that Due Process forbids convicting a defendant on the basis of a coerced guilty plea.

Nevertheless,Due Process requires that the promises of a Commonwealth's Attorney that induce a guilty plea must be kept, and if they are not,then the defendant is entitled either to WITHDRAW his plea or to be afforded specific performance of the bargain;the percise relief available depends upon the circum

stances of the case.Lambur v. Slayton,356 F.Supp.747(E.D.Va. 1973).Attorney Harper stated that there was nothing I could do about the breached plea agreement because there was no breach.

Attorney Harper did nothing to get the plea reduced to writing,and she did nothing to get the terms of the oral plea agreement heard in open court.

Law:The plea bargaining process is tantamount to the "settling"of criminal cases by the Commonwealth's promise to recommend a specific sentence,the dismissal or reduction of a charge,or other relief in return for a plea of guilty.This process has been legitimatized with the adoption of Rule 11. (Legitimizing plea-bargaining process.Fed.R.Crim.P.11(c)(e).) Rule 11 provides specific procedures for plea agreements that include,among other things,the disclosure of the entire agreement in open court,the discretionary acceptance of the agreement by the trial judge,and safeguards to prevent absue of plea discussions and agreements.A plea may not be accepted until the statutory provisions have been satisfied;that is,a plea of guilty and the ensuring conviction must include all of the factual and legal elements necessary to suatain a binding,final judgment of guilt and a lawful sentence.

The parties must disclose the plea agreement in open court when the plea is offered,unless the court for good cause allows the parties to disclose the plea agreement in camera.Fed.R.Crim. P.11(c)(2).The terms of the agreement must be disclosed(1)to prevent subsequent protestations by the defendant(or the government)that the actual conditions of the plea were not complied with,and(2)to enable a court that is asked to review an application to withdraw or vacate the plea to have access to a record that sets forth all of the terms of the plea,so that an accurate determination may be made as to whether any of the conditions have been breached.See United States v.Bundy,392 F.3d 641(4th Cir.2004)(to be enforcable,specific conditions must be explicity included in plea agreement,or at least clearly seen on record.Where a plea agreement was based on a representation by the prosecutor that it would recommend to the court a certain sentence.

When I informed my attorney that the plea was violated and no good,I was informed by Ms.Harper that the plea was binding.I wanted to take my case to trial but Attorney Harper stated that I didn't want to go in the court room in Fauquier County facing 10 years mandatory,she then made the threat that if I went to trial I would get that 10 years.

Law:The line between the promise of a particular sentence(if the defendant will plead guilty)and the threat of a particular sentence(if the defendant goes to trial)is,at best,indistinct. What is certain is that a plea induced by a judicial threat of a specific and harsher punishment if the defendant proceeds to trial renders the plea involuntary.See United States v.Braxton, 2015 U.S. App. LEXIS 6990,at 8-12(4th Cir.April 28,2015.The test for determining the validity of a plea is that a"guilty plea, if induced by promises or threats which deprive it of the character of a voluntary act,is viod.A conviction based upon such a plea is open to collateral attack."Daniel v.Cockrell,283 F.3d 697(5th Cir.).

Attorney Harper for the defense knew I had a good defense to proceed to trial,and she intimindated and made threats to get the defendant to plead to an oral plea agreement,and when the plea was violated,and the defendant wanted to file an appeal,Ms. Harper stated that there was no way for an appeal and that the plea couldn't be withdrawn,and fact she filed an appeal,and at the same time filed a motion stating that she saw no merit for an appeal,and withdrew from the case.

Law:A plea agreement is fundamentally a contract,see United States v.Frazier,340 F.3d 5(1st Cir.2003)(as in all contracts,plea agreements are accompained by implied obligation of good faith,and fair dealing)see also United States v.Moure-Ortiz,184 F.3d 1,3-4(1st Cir.1999)(treating pleas as contracts protects both Constitutional Rights and Integrity of criminal process).See also United States v.Holbrook,368 F.3d 415(4th Cir. 2004),vacated on other grounds,545 U.S. 1125(2005)(plea agreements groverned by contract law).See also Brown v.Poole,337 F.3d 1155(9th Cir.2003)(plea agreements are contracts and are assessed using standard associated with contract law;oral plea agreements,

like oral contracts are enforcable but are discouraged).See also United States v.Escamilla,975 f.2d 568,5719(th Cir.1992)(contract law applies to interpreting plea agreements and determining remedy for breach,while Rule 11 governs decision whether valid agreement even formed)and is,therefore,a legally enforeable exchange of promise that if breached affords a legal remedy.See Santobello v.New York,404 U.S. 257,262-263,92 S.Ct. 495,30 L.Ed. 2d 427(1971)see,United States v.Williams,510 F.3d 416,422-428(3d Cir.2007)(defendant's seeking downward departure,despite plea agreement,constituted breach and warranted remand)see also United States v.Heredia,768 F.3d 1220,1232-1234(9th Cir.2014)(government breached plea agreement by making"repeated and inflammatory references"to defendant's criminal history in sentencing memorandum,despite its express promis not to"seek,argue,or suggest in any way"that district court impose a"sentence other than what has been stipulated to by the parties herein").See also United States v.Cachucha,484 F.3d 1266,1270-1271(10th Cir.2007)(prosecutor undermined governments promise by arguing that there were problems with a guidelines based sentence and that such a sentence was"way too low".(The Asst.Commonwealth's Attorney made the statement that if he had known that Mr.Yates's sentencing guidelines were so low,he never would have made the deal,thus breaching the oral plea agreement).

In the past,plea discussions and agreements have occurred in in an informal and largely invisible manner.Enker,Perspectives on Plea Bargaining,in President's Commission Law Enforcement and Administration of Justice,Task Force Report:The Courts 108,115 (1967).There has often been a ritual of denial that any promises have been made,a riyual in which judges,prosecutors,and defense counsel have participated,ABA Standards Relating to Pleas of Guilty §3.1,Commentary at 60-69(Approved Draft 1968);Task Force Report:The Courts 9.Consequently,there has been a lack of effective judicial review of the propriety of the agreements,thus increasing the risk of real or apparent unfairness.See ABA Standards Relating to Pleas of Guilty §3.1.Commentary at 60 et seq;Task Force Report:The Courts 9-13.

To show Ineffective Assistance of counsel I have to prove

Strickland v.Washington:For Strickland's first prong,a petitioner must show"that counsel made errors so serious that counsel was not functioning as the'counsel'guaranteed the defendant by the Sixth Amendment."Strickland,446 U.S.at 687.The question is whether an attorney's representation amounted to incompetence under prevailing professional norms,not whether it deviated from best practices or most common custom."Harrington,562 U.S.at 105 (quoting Strickland,466 U.S.at690).

First Prong:Attorney Harper ignored the fact that Mr.Yates was never advised of his Miranda Warning's before or after he was questioned by the Fauquier County Sheriff's Officer's that were there the night of the arrest.Fact that Ms.Harper ignored that Mr.Yates didn't consent to the search of the Motel Room,fact Ms. Harper stated that the Motel manger was the one who consented to the search,fact Ms.Harper ignored the fact that Mr.Yates was was never shown the search warrant on the nitht of the search and arrest,which occured in March of 2013,and in June of 2013 Mr. Yates had still not seen the search warrant nor had Mr.Yates received a copy of what was seized from the motel room,and that Sgt.Healy of the Fauquier County Sheriff's Office made the statemant that they didn't have to show Mr.Yates any thing,and who was the judge going to believe.Law:An officer present during the execution of the warrant must prepare and verify an inventory of any property or evidence seized.The officer must do so in the presence of another officer and the person from whom,or from whose premises,the property and evidence was taken.The officer executing the warrant must give a copy of the warrant and a receipt for the property and evidence taken to the person from whome,or from whose or from whose premises the property and evidence was taken,Rule 41(f)(3)requires that the officer executing the warrant give the person a copy of the warrant and a receipt for the property and evidence that was seized.Fed.R. Crim.P.41(f)(3)(A).The Fauquier County Sheriffs Office never served the defendant with the search warrant not even a copy,or a copy of the receipt of what was seized from the motel room,Ms. Harper was informend that this was one of the arguments that could be used for a defense in going to trial,fact Ms.Harper went

and got copies of the search warrant and a receipt of what was seized from the motel room and Ms.Harper served them on the defendant.Fact that Ms.Harper would only intimindate the defendant and make threats about the 10 years that he was facing and not discuss a defense and instead of defending the defendant only made the comment that Mr.Yates knows how Fauquier County operates and intimindate the defendant into signing an oral plea agreement refusing to have the plea agreement reduced to writing,and when the plea was breached by the Asst.Commonwealth's Attorney,stating there was no breach and that there was no way to withdraw the plea and no way to appeal the violation of the plea agreement, fact that Ms.Harper when she did file the apeal stated that she saw no merit for an appeal,and this was done and Ms.Harper had never meet with or talked with the defendant about the appeal.

This was a clear violation of Mr.Yates's Sixth Amendmnet right to be represented by effective and competent counsel throuh -out the trial,and plea bargining process,and through the first appeal,and this is also the first prong of Strickland,the errors that counsel made were so serious that counsel was not functioning as counsel,it was as if the defendant had no counsel at all, a clear violation of the defendnant's Sixth Amendment.

For the second prong,a petitioner must demonstrate that there is a"reasonable proability that,but for counsel's unprofessional errors,the result of the proceeding would have been different."Strickland,466 U.S. at 694."A reasonable probability is a probability sufficient to undermine confidence in the outcome."

The second prong:If Attorney Harper had argued the fact that Mr.Yates was never advised of his Miranda Warnings before he was interrogated,and was never advised of his Miranda warnings,Ms. Harper could have argued that any statements,or evidenve seized in the apsence of Miranda that evidence seized when the motel room was searched was"fruit of the poisnous tree"because the doctrine of the"fruit of the poisonous tree,"which excludes evidence derived from information gained in an illegal search, applies to information and evidence obtained by a post-Miranda police interrogation in violation of the Miranda rules.

The fact that Mr.Yates was never shown the search warrant

on the night of the arrest and search of the motel room,and the fact that Mr.Yates never consented to the search,and was informed by Sgt.Healy of the Fauquier County Sheriffs Office that he did not have to serve Mr.Yates with the search warrant,in fact Ms. Harper was the person who informed me that the search warrant was served to the motel manger and the motel manger was the one who consented to the search,Ms.Harper knew that any evidence seized that night could have been surppresed if she filed a motion that Mr.Yates had not received or seen a copy of the search warrant, and the fact that the defendant did not consent to the search,and the fact that the motel manger consented to the search all that evidence was"fruit of the poisonous tree"and could have been surppresed and not used in this case.

The fact that Mr.Yates 3 months later still had not been served the search warrant,or received a copy of what was seized from the motel room the night of the arrest and search,Ms.Harper instead retrived copys and she served the copies on the defendant the Fauquier County Sheriffs Officer's who performed the search and made the arrest were suppose the serve the search warrant on the accused and give the accused a copy of what was seized the night that this actions took place,it was not the Attorney for the defense's job to server the defendant with the search warrant and a copy of what was seized from the motel room.Law: An officer present during the execution of the warrant must prepare and verify an inventory of any property,or evidence seized.The officer must do so in the presence of another officer and the person from whom,or from whose premises,the property was taken.

The officer executing the warrant must give a copy of the warrant and a receipt for the property,or evidence taken to the person from whome,or from where or from whose premises,the property,or evidence was taken.(The law states the the arresting officer has to serve the search warrant,and a copy of what was seized on the night of the arrest,not 3 months latter the counsel for the defense is to serve the defendant with the copy of the search warrant,and a copy of what was seized)Attorney Harper underminded the defense in this case a violation of the defendants Sixth Amendment right.

Law:Suppression required under Rule 41 where agents deliberately and prejudicially refused to serve warrant upon person present at search.The detailed provisions of Rule 41(f)

(3)are only indirectly relevant to suppression.For example,the failure to deliver a copy of a search warrant to the party whose premises were searched has been deemed a ministerial violation of the Rule that,in the absence of prejudice to the defndant. Failure to leave copy of warrant and receipt for items seized are ministerial violations,requiring suppression of evidence.

Attorney Harper chose to ignore this and she served the search warrant and a copy of what was seized on the defendant 3 months later,fact with this action Ms.Harper took away part of the defense in this case.

The fact that Ms.Harper intimindated the defendant in this case to accept an oral plea agreement,and made threats that if the defendant went to trial he was going to get the 10 years mandatory sentence that he was facing,I informed Ms.Harper that I was not comfortable signing a plea that didn't have any time written on it,and again I was informed that the plea deal was accepted and that I needed to sign this deal if I was'nt trying to spend the next 10 years in prison.

The fact that when the Asst.Commonwealth's attorney Mr.Rabb violated the oral plea agreement,when he made the statement that if he had known that the sentencing guidelines for Mr.Yates were so low he never would have made the deal,the Asst.Commonwealth waited until after the blank plea agreement was signed before he made these statements,a clear violation of the plea agreement, that he would recommend that the defendant be sentenced inside of his sentencing guidelines.

Fact when I stated that the oral plea agreement was violated Attorney Harper stated that it was not violated,I stated that I wanted to file an appeal on the violation of the plea,Ms.Harper stated that there was no way to appeal this,and no way to withdraw the plea.When Ms.Harper left the court room,she stated that she would be intouch to discuss the appeal,fact Ms.Harper never got intouch,she filed the appeal and stated in the appeal that she saw no merit of an appeal,and then filed a motion to removed from the case.

The Second prong of Strickland states that a pititioner must demonstrate that there is a"reasonable probability that,but for counsel's unprofessional errors,the result of the proceeding would have been different."

This case would have had a different outcome if Attorney

Harper had filed a motion to suppress the evidence because it was derived from an illigel search,and it was"fruit of the poisonous tree"and the fact that Mr.Yates was never advised of his Miranda Warnings,making any statements that were made and any evidenc seized"fruit of the poisonous tree"in the violation of the Miranda rules,the fact that Ms.Harper intimindated the defendant into thinking that he had a plea agreement that she said wasn't going to be reduced to writing,and made threats that if he didn't accept the plea he was going to spend the next 10 years in prison and when the plea was violated by the Asst.Commonwealth Mr.Rabb, Atorney Harper stated that there was no violation and no way to appeal and no way to withdraw the plea agreement,or what the defendant believed was a plea agreement.

If Attorney Harper had filed a motion this case would have been different,if Attorney Harper had been effective counsel,this case would have been different,if Attorney Harper had chose to be a defense attorney this case would have been different,I've shown the second prong of Strickland.

Attorney Harper choose to ignore the law in this case,she with her actions said that the defendant had no right to a defense,and the Sixth Amendment guarantees a defendant the right to counsel present at all"critical"stages of the criminial proceedings.The Sixth Amendment right to effective assistance of counsel also extends to the plea negotiations context.Id at 1405-09;Lafler v.Cooper,566 U.S. 156,132 S.Ct. 1376,1384,182 L.Ed.2d 398(2012).The Strickland Framework thus applies to advice regarding whether to plead guilty.Hill v.Lockhart,474 U.S. 52, 58-59,106 S.Ct.366,370-71,88L.Ed.2d 203(1985).In this context, the analysis of the performance prong is the same,but the prejudice componet"focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process" and not on the fairness of the trial.It is well-settled that the first part of the Strickland test asks whether"counsel's assistance was reasonable considering all the circumstances" 466 U.S. at 688.Of course,an attorney has a duty to advise a defendant,who is considering a guilty plea,of the available options and possible sentencing consequences.The Law requires counsel to research the relevant law,and facts to make informed decisions regarding the fruitfulness of various avenues.Did Ms. Harper do this as she was suupose to by the Law,no she did not.

REASONS FOR GRANTING THE PETITION

First,I'm not an attorney I'm filing this Pro Se and Pro Se pleadings are entitled to a generous reading.See Haines v.Kerner, 404 U.S. 519,520-21,92 S.Ct.594,30 L.Ed.2d 652(1972)(explaining that Pro Se pleadings are held to less stringent standards than formal pleadings drafted by lawyers).

The first question Ms.Harper asked me was,would I be willing to talk and work with the Fauquier County Sheriffs Officer's,I could help my self,I respoded no,then the second question was,how come I didn't take the plea that was offered,to be sentenced inside of my sentincing guidelines,I stated that I wanted to take my case to trial,because I was never advised of my Miranda Rights when I was arrested and interrogated,the fact that I had not been served the search warrant nor had I seen the search warrant,and I informed Ms.Harper of the statement that was made by Sgt.Healy on the night of the arrest,and I informed Ms.Harper that I did not consent to the search,at this time Ms.Harper stated that the search warrant was served to the motel manger and that the motel manger consented to the search.It was at this time Ms.Harper made the statement that if I wasn't willing to talk to the Sheriffs Officer the best thing for me was to accept the plea.

I'm not an attorney but I know that I have Rights,with the actions of Ms.Harper she basically said that I have no rights and the only thing for me is a plea agreement.Ms.Harper stated that I didn't want to go in the court room facing 10 years,she stated that the best way was to accept the plea and get the Asst. Commonwealth Mr.Rabb away from that 10 years,because I didn't want to spend the next 10 years in prison.I informed Ms.Harper that I had a real good defense and I wanted to go to trial she threat that if I went to trial I would get 10 years.Ms.Harper was intimindating me into accepting this plea agreement.I stated that if the plea was put into writing that I would consider the plea,Ms.Harper stated that the plea wasn't going to be put in writing but I needed to accept the plea(which was an oral agreement that I only heard from Ms.Harper).

The Supreme Court has long recognized the involuntary nature of a guilty plea obtained by subjecting a criminal defendant to some form of coercion,(such as threats,see infra§5[b]),certain

types of promises(see infra§5[c],and deception(see infra§5[d]), frequently expressing this recognition by holding that a guilty plea obtained in such a manner is invalid as violating the defendants Constitutional Rights.Kercheval v.United States(1927) 274 US 220,71 L.Ed.1009,47 S.Ct.582.In Machibroda v.United States (1962)386 US 487,7 L.Ed.2d 473,82 S.Ct.510,the court held that a guilty plea,if induced by promises or threats which deprive it of the character of a voluntary act,is void.(The only thing Ms. Harper talked about was how I didn't want to go in the court room facing 10 years,I didn.t want to go in front of Judge Parker with the drug charges that I had).In United States v.Jackson(1968)390 US 570,20 L.Ed.2d 138,88 S.Ct.1209,the court said that Due Process forbids convicting a defendant on the basis of a coerced guilty plea.And in Brady v.United States(1970)397 US 742,25 L.Ed. 2d 747,90 S.Ct.1463,the court pointed out that the agents of the state may not produce a plea by actual or threatened physical harm or by mental coercion overbaring the will of the defendant.

Attorney Harper Intimindated me,made threats that I was going to prison for the next 10 years if I didn't take the oral plea agreement that I was being offered.

Ms.Harper with her actions said that I didn't have the right to be advised of my Miranda before I was interrogated and after I was arrested,this is a Constitutional Right in the United States but not in this case.

The Federal Constitutions Sixth Amendment requires effective assistance of counsel at all critical stages of criminal proceedings,including plea bargaining.There exists right to counsel during sentencing in both noncapital and capital cases,as even though sentencing does not concern guilt or innocence,ineffective assistance during sentencing hearing can result in prejudice.(The oral plea agreement was violated by the Asst.Commonwealth Mr.Rabb when he made the statement that if he had known that Mr.Yates's sentencing guidelines were so low he never would have made the deal,Ms.Harper knew that Mr.Rabb had violated the oral plea agree -ment at the sentencing hearing,and when I informed Ms.Harper that the plea was violated,I was informed by her that the plea was not violated,the plea that was told to me was that the Asst. Commonwealth would state that the defendant be sentenced inside his sentencing guidelines which were 5 years 2 months,and when

Mr.Rabb made that statement that if he had known the guidelines were so low he never would have made the deal he violated the plea agreement)but at this time Ms.Harper stated to the defendant that the plea was not violated,and when I stated that I wanted to file an appeal on the violation of the plea,I was told by Ms. Harper that there was no way to appeal,and no way to withdraw the plea.

It is well settled that the interpretation of plea agreemenys is rooted in contract law,and that each party should receive the benefit of its bargain.It is fundmental that the government must be required to honor promises made to a defendant in a plea agreement.See United States v.Harvey,791 F.2d 294 ,300-01(4th Cir.1986)(broken government promise implicates due process by impairing voluntary and intelligent nature of plea,as well as undermining honor of thr government and public confidence in the fair administration of justice.And a breach of a plea agreement may occur where the state,after having agreed to remain neutral to the sentence to be imposed,fails to do so.A plea of guilty will be rendered void if it is induced by misrepresentation,including an unfulfilled promise,State ex rel. Clancy v. Coiner,154 W.Va. 857,179 S.E.2d 726(1971).The Commonwealth violated the terms of its plea agreement with the petitioner when the Commonwealth's Attorney failed adequately to advocate the agreed sentencing recommendation before the trial judge. Massie v.Blankenship,469 F.Supp.868(E.D. Va.1979).When a plea rests in any significant degree on a promise or agreement of the prosecutor,so that it can be said to be part of the inducement or consideration,such promise must be fulfilled.When the government fails to adhere to the plea agreement in any way, the sentence must be vacated and remanded to the district court either to allow the appellant to withdraw his plea or grant specific performance of the plea agreement.The government is bound to fulfill any promise it makes in exchange for a defendant's guilty plea.Miller v.Commonwealth,29 Va. App.47,509 S.E. 2d 532(1999)(Ms.Harper stated that there was no way to withdraw the plea agreement after it was violated and nothing could be done and no appeal could be filed.

I asked Ms.Harper to file an appeal,when she finnally filed the appeal she stated in the appeal that she saw no merit for an appeal.Counsels failure to pursue a basis for appeal by reason of

a mere misapplication of the liklihood of success...constitute constitutionally ineffective representation.United States v. Mikalajunas,186 F.3d 490,493(4th Cir.1999).An attorneys failure to file an appeal,when requested by her client to do so,is per se ineffective assistance of counsel-irrespective of the merits of the appeal.See.e.g.,Evitts v.Lucey,469 U.S. 387,391-405(1985); Jones v.Barnes,463 U.S. 745,751(1983)(noting that"fundamental decision"of whether to appeal rests not with counsel,but with the defendant);Anders v.California,386 U.S. 738,744(1967)(defendant has right to pursue direct appeal,even if frivolous,which counsel must assist"an active advocate in behalf of her client")(Ms. Harper eventually filed the appeal,after she filed for a 30 day extension,and instead of an appeal Attorney Harper underminded the appeal by stateing that she saw no merit for an appeal,and Ms.Harper never had one meeting with the defendant to discuss the issues that could be raised on the appeal).In United States v. Poindexter,492 F.3d 263(4th Cir.2007),the Forth Circuit joined all other circuits which have addressed the issue in holding "that an attorney renders Constitutionall Ineffectice Assistance of Counsel if she fails to follow her client's unequivocal instruction to file a timely notice of appeal even though the defendant may have waived his right to challenge his conviction and sentence in the plea agreement".Mooreover,the court noted that an attorney may also have a"duty to consult with the client regarding whether to appeal under Flores-Ortega".See Hudson v. Hunt,235 F.3d 892,894-96(4th Cir.2000)(failure to consult regarding appeal held Constitutionally Deficient,remanding to determine whether defendant was prejudiced);and United States v. Whitherspoon,231 F.3d 923,926-27(4th Cir.2000)(discussing when failure to consult with client regarding appeal Constitutes ineffective assistance).

Under the Sixth Amendment to the Counstitution,a person accused of a crime has the right to have the assistance of counsel for his defense;(The Sixth Amendment provides in relevant part:In all criminal prosecutions,the accused shall enjoy the right to have the assistance of counsel for his defense)and the right to counsel has also been declared to be obligatory upon the states through Due Process clause of the Forteenth Amendment.It has been held,however,that the right to counsel must be more than just the right to have some attorney

physically present with the accused at criminal proceedings, as that in itself is insufficient to protect the accused's rights; such a limited view would render the Sixth Amendment an empty formality.Instead,the right to counsel is regarded as implying a right to effective assistance by competent defense counsel ;and if counsel's performance at a given proceeding is not up to reasonable professional standards,then the accused may have grounds for relief from a conviction,sentence,or other adverse decision which results from the proceedings.

I'm not an Attorney,but I know that I have certain rights and thoes rights were violated by Attorney Harper,the actions of Ms.Harper and the Asst.Commonwealth Mr.Rabb are that I had no Constitutional Rights,I've shown both prongs of Strickland,I've shown that the counsel that I had was Ineffective Counsel,Ms. Harper intimindated me and made threats in order for me to beleave that I had an oral plea agreement,Ms.Harper intimindated me into signing a blank plea agreement,stating that I didn't want to spend the next 10 years in prison,and the only way was for me to accept that oral plea,Ms.Harper ignored the fact that I was never advised of my Miranda Warnings after I was arrested and interrogated,Ms.Harper ignored the fact that I was not shown the search warrant on the night of the arrest,and she ignored the fact that I did not consent to the search of the motel room,in-fact,Ms.Harper was the one who informed me that the search warrant was served to the motel manger,and that the motel manger was the one who consented to the search,Ms.Harper ignored the fact that the Fauquier County Sheriff's Officer's never served the search warrant on me,or served me with a copy of what was seized from the motel room,3 months later,Ms.Harper was the one who served the search warrant and a copy of what was seized from the motel room,she underminded the defense of this case, Ms.Harper refused to put up any defense in this case.Ms.Harper stated that I didn't want to spend the next 10 years in prison and the only way to avoid that was to accept the plea,and when the plea was violated and I was sentenced to 12 years in prison Ms.Harper stated to me that I did good with the time that I got and when I said that the plea was violated,she stated that there was no violation,and when I stated that I wanted to appeal the violation,she stated that there was no way to appeal,or with-

draw the appeal,fact when Ms.Harper did file the appeal she underminded the appeal by stating that she saw no merits of this appeal,Ms.Harper underminded this entire case,she was never effective in this case,she by her actions said that I had no right to a defense,and no right to an appeal.

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

Attorney Harper did more work to help the Asst.Commonwealth then she did for the defense and the defendant in this case.And if two or more persons conspire to injure,oppress,threatne,or intimidate any person in any State,Territory,Commonwealth, Possession,or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or Laws of the United States.Right or privilege to be guarded by predecessor to 18 USCS §241,punishing conspiracy to injure,oppress,threaten, or intimidate any citizen in free exercise or enjoyment of any right or privilege secured to him by Constitution or Laws of the United States is definite personal one,capable of enforcement by court,and not political,non-judicial one,common to all,that public shall be protected against harmful acts.United States v. Bathgate(1918)246 US 220,38 S.Ct.269,62 L.Ed.676(criticized in United States v.Wadena(1998,CA8 Minn.)152 F.3d 831,98-2 USTC 50849,82 AFTR 2d 6049).

The heading states:REASONS FOR GRANTING THE PETITION,the question I want to ask,If any of the United States Supreme Court Justices had the kind of representation that the defendant had in this case would they fell they had effectice assistance of counesl? The Sixth Amendment states the defendant is to have effective assistance of counsel throughout the entire proceedings even through plea barganing,and the appeal process,and counsel for the defense is suppose to investigate any defense that can be had in the case,and defense counsel is not suppose to over look any violations of the defendant's Constitutional Rights.If the defendant had violated the plea agreement the plea would have

been withdrawn by the Asst.Commonwealth and the case would have proceeded to trial.How come the defendant in this case was not allowed the same when the Asst.Commonwealth Mr.Rabb violated the plea agreement.The Attorney in this case Ms.Harper never wanted to discuss a defense and did everything to make sure the defendant didnt take this case to trial.Ms.Harper stated that the defendant was facing 10 years mandator in prison and that he did not want to spend the next 10 years in prison,and the way to avoid that was to accept an oral plea agreement that was never presented to the court and one that she said the Asst.Commonwealth would not put in writing,when Ms.Harper was informed that I didn't feel comfortable with this,she stated that this was the only way to avoid spending the next 10 years in prison,and when Mr.Rabb violated the oral plea agreement,Ms.Harper stated that there was no violation,I was facing 10 years,I signed what my attorney,intimindated,and made suttle threats,what I truly believed was a binding plea agreement,and when I signed the plea I believed that I was going to be sentenced inside of my sentencing guidelines which were 5 years 2 months,and after the plea was violated by the Asst.Commonwealth and I was giving 12 years in prison Attorney Harper made the statement that I did good with the time I received,I went from 10 years to 12 years and my attorney stated that the only way to avoid spending the next 10 years in prison was to accept the oral plea agreement,I did an instead of 10 years I receiced 12.

Ms.Harper did everthing to make sure I didn't take this case to trial,Im begging the United States Supreme Court to stop Ms.Harper from doing this to someone else she feels doesn't deserve a defense,to someone else who can't afford to pay an attorney to protect their rights and privilegs secured to them by the Constitution or Laws of the United States of America,to be represented by competent counsel not counsel that just stands in the court room and does nothing.I'm not an attorney but I know the rights that were violated,I didn't go to Law school like Attorney Harper,but I know I didn't have my Sixth Amendment right to effective assistance of counsel in thid case,and again I ask the Justices would they feel they had effective Assiatance of counsel if they had been the defendant in this case.Please stop Attorney Amy M.Harper from representing anyone like this again.Stop treating people like they don't deserve a defense,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kevin L Yoo

Date: July 31, 2019