No. 19-5914 ORIGINAL

FILED
DEC 12 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

lena lashen — PETITIONER
(Your Name)

vs.

Roger Stavis, Esq, etal — RESPONDENT(S)

ON PETITION FOR ~~A WRIT OF CERTIORARI~~ the Reheaning TO

United States Court of Appeals for the Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR ~~WRIT OF CERTIORARI~~ the Reheaning

lena lashen
(Your Name)

16 Patton St.
(Address)

High Bridge NJ 08829
(City, State, Zip Code)

908-447-4484
(Phone Number)

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SUPREME COURT, U.S.

Petition for the Rehearing

QUESTIONS

1. Should a civil action be granted to proceed to address Ineffective assistance of appellate counsel when they did not appeal judicial violation of the **EX POST FACTO Clause law**.

A. the District Court ILLEGALLY placed NON – controlled substances into a controlled substances class. She further made up her own rule via making up her own phrase "highly addictive pain medications" (there is no such phrase in pharmacy law; the phrase "addictive pain meds" does NOT exist in any classification of drugs), to INVENT a federal jurisdiction, to prejudice and profile the Petitioner. For instance:

Due to the fact the pharmacies **never** carried butalbital, the District Court:

(1). Constructively amended the superseding indictment, calling Fioricet, "butalbital". The Government's prosecution was only possible because the District Court allowed Fioricet to be called "butalbital."

At trial the Government switch butalbital, a powder, for Fioricet, a tablet, therefore causing a defective indictment whereby confirming the judicial Court lacked of subject matter jurisdiction over this case. The Indictment must be dismissed as defective since it charges a crime based on the dispensing of an entirely different substance (Fioricet) that is not a powder, in addition to not constituting "butalbital," is also not controlled.

(2). Deliberate suppression of the exculpatory evidence to impeach that testimony constituted a denial of Petitioner's due process of law as well as an usurpation of power. Giglio v. U.S. 150, 154 (1992) Napue, 360.S. At 271. "Such a contrivance...to procure the conviction ... is inconsistent with the rudimentary demands of justice. Brady v. Maryland 373 U.S. 83, 10 **L Ed 215, 83 S Ct 1194, 1963.**

(3). Indicted, convicted, and sentenced the Petitioner for the dispensing of a "controlled substance" tramadol; however, **Tramadol was NOT a controlled substances at the time of dispensing,** a violation of the **EX POST FACTO CLAUSE LAW,** but the only misbranding alleged about Tramadol is only applicable to controlled substances (Valid Prescription standard)

In this rehearing, the Petitioner sets forth the evidence and facts which prove Appellate counsel fail to appeal the fact that the Court knowingly and deliberately allowed the aforementioned to occur in "her" courtroom, with consciously planned and carefully executed scheme participated in by the Court and the attorneys to defraud, harm, and destroy the Petitioner. The Court and prosecutors, with carefully constructed false evidence and non-official laws, created a jurisdiction where none existed via the Court's usurpation of judicial power as well as her outrageous judicial and discriminatory misconduct.

2. Should a civil action be granted to proceed to address ineffectiveness of appellate counsel when they did not raise the objection of the best evidence rule with regard to suppressed and withheld exculpatory video recordings?

A. The Government committed Brady's violation of the Petitioner's constitutional rights by suppressing exculpatory video recordings evidence, that showed the Petitioner was not present and did not

initiate nor cause the criminal offense wrongful asserted in the criminal case established by the government and it's conviction. Brady requires that the government disclose material evidence favorable to a criminal defendant. United States v. Rivas, 377 F.3d 195, 199 (2d Cir. 2004). Evidence is favorable if it is either exculpatory or impeaching, Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L.Ed. 2d 286 (1999), and it is material if "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Youngblood v. West Virginia, 547 U.S. 867, 870, 126 S. Ct. 2188, 165 L.Ed. 2D 269 (2006). "A conviction must be reversed" upon a showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." id.

> The Petitioner subpoenaed the aforementioned items to show that the testimonies of the government and its witnesses were perjured. "**Prosecutors who knowingly present perjured witness testimony or fail to correct it violate a defendant's right to a fair trial**", the U.S. Court of Appeals for the Third Circuit ruled (Haskell v. Superintendent Greene SCI, 2017 BL 266640, 3d Cir., No. 15-3427, 8/1/17). "A root is how can a defendant possibly enjoy his right to a fair trial when the" government "is willing to present (or fails to correct) lies told by its own witness and then vouches for and relies on that witness' supposed honesty" in its closing argument? Circuit Judge Thomas L. Ambro asked in writing for the court that tossed a murder conviction Aug. 1 (2017). He answered that question by quoting the U.S. Supreme Court in Napue v. Illinois. "A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth," he said. (T.1736, 1938, 1941, 1951, 1953, 1861).

Instead of using the video recording to exonerate the Defendant, the government suppressed the video recordings; thus a Brady violation has occurred due to the fact the information was SUPPRESSED, TAMPERED with, and is still EXCULPATORY. They also referred to it as if it were in evidence and as if it showed guilt!

Most disturbingly, the District Court deliberately allowed the prosecutors to refer repeatedly to video recordings evidence but **denied the Petitioner's subpoena of that video recordings evidence**.

PETITION FOR the Rehearing to prevent miscarriage of justice

This civil action is about the Defendants' ineffective assistance of counsel. The defendants' incompetence and negligence affirmed the Plaintiff's wrongful conviction; Legal malpractice cause of actions in this case were based on the Defendant's negligence, fraud, and misrepresentation. In fact, the Defendants disregarded all of the plaintiff's evidence affirming her actual and factual innocence, focusing solely on work they previously did on an unrelated case for their client Michael Bindy, recycling that work and misapplying it to this Plaintiff's case even after they lost with Bindy. They failed to perform the basic prerequisite tasks required to understand the Plaintiff's case, as detailed throughout this Petition for the Rehearing.

In this complaint, the Plaintiff asserts claims for malpractice and negligence. The Plaintiff alleges, including but not limited to:

(1) That Defendants made various legal mistakes, including **failure to address the ex post facto clause law**

(2) **That Defendants failed to obtain the suppressed exculpatory video recordings which would have exonerated the Plaintiff**

(3) That Defendants failed to raise the objection of the Best Evidence Rule. In every instance, any claim made by the government and their witnesses had a refutation available by way of suppressed, withheld or redacted physical evidence. The Plaintiff made sure the Defendants were aware of these, but they chose to ignore it all. It is not an exaggeration to say that the objection of the best evidence rule should have been raised for physical evidence that contradict every single one of the government's witnesses.

(4) That Defendants failed to raise matters of her actual and factual innocence, as relayed to them in writing, verbally and via emails. The Defendants simply ignored every issue the Plaintiff raised with regard to withheld and suppressed exculpatory evidence, defects in the indictment, and other pertinent issues detailed below and as indicated in her 2255 Motion, her Recall to Mandate, and her Rebuttal to Government's Memorandum of Law of the United States of America in Opposition to the Motion of Lena Lasher Under 28 U.S.C. 2255 to Vacate, Set Aside, or Correct Her Sentence and in Opposition to her Supplementary Motions. In fact, the Defendants disregarded all of the plaintiff's evidence to affirm her actual and factual innocence; they **ignored exhibits that showed the Plaintiff's innocence.**

(5) That **Defendants admitted in an email dated 8/22/2016 that they did not review any of the exhibits.**

Such a review would show that the government had possession of video recordings evidence that they suppressed. A review of the trial transcripts shows the government speaking of video evidence to the Jury that they never showed to the jury. It has always been the Plaintiff's contention that video evidence can only exonerate her and never implicate her in any wrong doing. The Defendants' laziness in this regard is a complete disregard of their professional responsibilities and indicative of their negligence and incompetence. That Defendants did not review all the documents they promised to review,

(6) **that Defendants inadequately argued for bail pending appeal;** Attorney Roger Stavis and Attorney Adam M. Felsenstein failed to appeal the trial judge's bail pending appeal ruling in spite of the fact that the **trial judge was incorrect in her stated reasons for denying bail. The Judge very incorrectly stated that all the drugs the plaintiff dispensed were controlled substances when in fact, none of them were classified** "controlled substances" at the time of being dispensed via the fulfillment pharmacies. As will be shown below, none of the drugs mentioned could even fall into the fake category the Judge and Prosecutors made up, "**addictive pain meds**", if such a category existed.

(7) that **Defendants failed to make certain legal or factual arguments on appeal.**

(8) That Defendants failed to address the Court's, executive officials and its witnesses perjured testimony and other deceptions perpetrated against the Jury and the Court as evidenced below in Section I. Substantive Due Process Violations. The government's entire case was built without physical evidence and entirely on testimony that was perjured or deceptive. Ignoring this is negligence and a failure to provide effective assistance of counsel.

Thus, the aforementioned amount to "omissions of material issues of facts which is now legally a fabrications of evidence Morse v. Fusto No. 07–CV–4793, 2013 WL 4647603, at *7, 2013 U.S. Dist. LEXIS 123823, at *18 (E.D.N.Y. Aug. 29, 2013)

The Defendants' incompetence is demonstrated by their not going through the discovery materials, and other materials the Plaintiff provided. They would have been able to confirm the plaintiff's actual and factual innocence if they had gone through the evidence, including the pharmacy records, read the transcripts of the trial and pretrial motions, and had they even tried to obtain the suppressed exculpatory video recording evidence that contradicts the government's case. The case for innocence is presented below, because the Plaintiff does not want

to leave it as mere conjecture that if they had done due diligence that the wrongfulness of the conviction would become clear. Rather, the Plaintiff feels it is important to demonstrate her actual and factual innocence at every opportunity and in no uncertain terms.

It is important that this civil action proceed because the Plaintiff's Constitutional rights were violated: pretrial, at trial, sentencing, post sentencing, and most importantly because the Plaintiff can demonstrate her actual and factual innocence. "A defendant who claims to have been denied effective assistance must show both that counsel performed deficiently and that counsel's deficient performance caused him prejudice." This Plaintiff satisfied both prongs of this test. First, her attorney clearly performed atrociously, given that it's difficult to think of a worse idea than **failing to attain and review the suppressed exculpatory video recording, a Brady violation, while leaving the Plaintiff incarcerated and ignoring her emails, to help her demonstrate her actual and factual innocence**. Secondly, counsel's deficient performance very likely prejudiced the Appellate Court against the Plaintiff as demonstrated below in Section I. Substantive Due Process Violations. Buck v. Davis, 580 U.S. ___ (2017) Supreme Court, Foster v. Chatman, 578 U.S. ___ (2016) Supreme Court

Further, the Plaintiff's substantial due process was violated and the Defendants failed to address them, thus the injustice she suffered was so egregious in the Defendants' hands that her complaint must proceed, as indicated below.

> "**Society views the conviction of an innocent person as** perhaps the most grievous mistake our judicial system can commit. Reflecting the gravity of such an affront to liberty, the "fundamental miscarriage of justice" exception has evolved to allow habeas corpus petitioners to litigate their constitutional claims despite certain procedural bars if the petitioner can make a credible showing of actual innocence." PAUL SATTERFIELD, v. DISTRICT ATTORNEY PHILADELPHIA, et al, Further, The Supreme Court "has established that considerations of finality and comity must yield to the fundamental right not to be wrongfully convicted." See Housev. Bell, 547 U.S. 518, 536–37 (2006); Schlup, 513 U.S. at 320–21 (citing Murray, 477 U.S. at 496); cf.Calderon v. Thompson, 523 U.S. 538, 557 (1998)

PROCEDURAL HISTORY

1. Because the Plaintiff's trial was rigged by the District Court, On September 2, 2016, the Circuit Court wrongfully affirmed her conviction of May 15, 2015 in violation of:

> 18 U.S.C. 371 (Count I); introducing misbranded drugs into interstate commerce in violation of 21 U.S.C. 331(a) and 333(a)(2) (Count II); conspiracy to commit mail and wire fraud in violation of 18 U.S.C.1349(Count III); and mail and wire fraud in violation of 18 U.S.C.1341 and 1343 (Counts IV and V). She was sentenced to 36 months' imprisonment, for:

a. dispensing "butalbital" which **NEVER** existed in the pharmacies,

b. the dispensing of tramadol which was **NOT a controlled substances at the time of dispensing** but the only misbranding alleged about Tramadol is only applicable to controlled substances (Valid Prescription standard),

c. the dispensing of "highly addictive pain meds" which is a term that **does not exist** in law nor in the health care industries and used only to deceive the jury by creating standards that do not exist under the law, which both the District and Appellate Court failed to mention ONE name of the "highly addictive pain meds" that was dispensed, because there were NONE. In fact, the Plaintiff has filed motion(s) requesting the District AND Circuit Courts for an EVIDENTIARY HEARING to:

> **Name ONE "addictive pain med" that was dispensed by the Plaintiff**; and to date, both the District AND Circuit Courts failed to name one "addictive pain med". Instead, the District Court denied "each of the supplementary motions" (Page 2 of 8/20/18 Memorandum and Order") by NOT answering them, because **the Plaintiff NEVER dispensed One "butalbital tablet" nor an "addictive pain med" NOR a "pain med" via the "internet". If trial and appellate counsels had done their due diligence, they would know that the aforementioned statement was flawed and is NOT found in the law.**

Plaintiff now moves for a PETITION FOR the Rehearing, to affirm her actual innocence and appellate counsel's ineffectiveness of assistance. In addition, the Plaintiff will point out the following:

1. The conviction came about through a deliberate deceit of the jury by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew it was perjured testimonies, except for the jury. Without these deceptions, they have no actual physical evidence that would have even associated the Plaintiff with any crime. Morse v. Fusto, No. 13-4074 (2d Cir. 2015)

2. the District Court and the Government violated the Plaintiff's right to due process as well as judicial and prosecutorial misconduct via suppression/withholding of exculpatory evidence, a Brady's violation, including to but not limited to the suppressed video recording, which she viewed for the first time on August 31, 2017.

3. Ineffective assistance from both trial and appellate counsel.

The District Court created a jurisdiction when none exists by treating drugs that are not Federally controlled as controlled substances, and **applying the food drug cosmetics act onto the Plaintiff as if it were the "controlled substances act"**. This is an **usurpation of administrative power the District Court does not have, and it is proof her recusal is necessary**.

As has been detailed in previous filings over these matters, and as will be detailed below, Fioricet is not a federally controlled substance, **only the Attorney General** has the power to make drugs controlled substances,

judges to not have the power nor expertise to assess or schedule drugs, a drug is an entity under the law not an assemblage of components for a judge to dissect and assess as if it were one of its components, and the law itself is clear on all of this both in the way "**drug**" and "**fixed-combination drug**" is **defined under the law** and in how the Controlled Substances Act is written. Further evidence of just how wrong this trial court is on this matter can be found in West Virginia Board of Pharmacy News from September 2014, where they state on page one: "**Fioricet is not federally scheduled**" (W V Vol 34, No. 1). This evidence came into existence prior to the Plaintiff's trial and after her indictment, and it clearly adds to proof of the **incompetence of Plaintiff's trial lawyers**. More importantly it adds to the proof that the Plaintiff's constitutional right was violated by the District Court, as evidenced in this Petition and as in many other previous motions filed against the District Court. The injustice suffered by the Plaintiff at the hands of the trial Court's judge that this complaint must proceed, as indicated below.

ARGUMENTS

I. Substantive Due Process Violations

"To establish a violation of substantive due process rights by an executive official, a plaintiff must show (1) that the official violated one or more fundamental constitutional rights and (2) that the conduct of the executive official was shocking to the contemporary conscience." Truong v. Hassan, 829 F.3d 627, 631 (8th City 2016) (internal quotations and citations omitted). "To be conscience shocking, the government action must be 'truly irrational, that is, something more than ... arbitrary, capricious, or in violation of state law." Draper v. City of Festus, 782 F.3d 948, 953 (8th Cir. 2015) (quoting Weiler v. Purkett 137 F.3d 1047, 105 (8th Cir. 1998) (en banc)).

Here, the Defendants' actions rise to the "conscience shocking" level by their deviation of standard of care by failing to defend the Plaintiff as she requested. That the Plaintiff can demonstrate her actual and factual innocence, and that the Defendants chose not to, is very pertinent here, because everything needed to **show her innocence was provided by her to the Defendants orally, in writing by hand, and via email.**

"Actual innocence, if proved, can overcome procedural hurdles", the Supreme Court held in McQuiggin v. Perkins, 569 U.S. 383 (2013), As in that case, this Plaintiff's lawyer, Attorney Stavis, was ineffective. In this case, the video recordings show the Petitioner's actual innocence in that she followed the law, did not commit any crimes, and the Plaintiff's wrongful conviction was wrongfully affirmed due to the Attorney's

malpractice and negligence, as stated in the "Amended Complaint and Jury Demand".

Thus, due to the Defendant's negligence, relief must be granted; the Plaintiff has adequately pled a cause of action for legal malpractice and negligence, as stated in her "AMENDED COMPLAINT AND JURY DEMAND". The Plaintiff has every right to move forward with this malpractice and negligence complaint, and present proofs of the attorneys malpractice and negligence, with evidence of the violation of the **EX POST FACTO CLAUSE LAW,** trial transcripts, witnesses, pharmacy paper trail, and suppressed video recordings. The Appellate Court must allow her Complaint to proceed, to protect the integrity of the Court's processes and in preventing injustice.

A. The District Court usurped legislative and administrative powers when **she held the Plaintiff responsible for others self – confessed crimes** in the absence of any actual evidence or laws cited that would hold the Plaintiff responsible for those crimes, and for treating Tramadol and Fioricet as controlled substances and holding the Plaintiff to legal standards that are not applicable, and for making up **fake legal standards such as "highly addictive pain meds"** in order to avoid the actual legal standards and **to deceive the jury**. She is also protecting her place as a judge which she has proven **she is not fit for** because:

1) She can't accept the fact that the law is quite clear in giving the Attorney General and nobody else the ability to make a drug a controlled substance;
2) She can't accept that the law is quite clear in that it requires the Attorney General to make controlled substances on the record;
3) and that she violated the governing pharmacy laws which is not in conflict with any federal law that prevents pharmacists from blaming their own crimes on others.

To reiterate, the Plaintiff's conviction was directly due to misconduct, bias and fraud by Judge Buchwald that: started early in the pretrial phase, persists through today, and is self-evident. Her motivation was to intimidate the Plaintiff into a plea deal or secure a guilty verdict to protect nine guilty pleas to false charges alleging a "narcotics conspiracy" which could become invalid if the Plaintiff had a fair trial. Some glaring examples are:

1. Using dismissable misleading and ambiguous indictments to ensure convictions;
2. Creating a jurisdiction for Tramadol under the Controlled Substance Act 21 (twenty-one) months before it became a federally controlled substance, long after the Plaintiff's indictment, a violation of the **ex post facto clause law.**
3. Changing the legal definition of "Drug" and ignoring laws that govern how drugs become controlled substances;
4. Exceeding her power by inventing and ignoring laws, usurping administrative and legislative power.
5 Allowing both the known use of perjured testimony and the suppression and withholding of multiple pieces of physical evidence directly contradicting that knowingly used perjured testimony;
6. Further withholding and allowing suppression of exculpatory evidence contradicting the Prosecutors, their witnesses, and the Judge's own handwriting analysis expert testimony.

Judge Buchwald's extra-judicial actions, detailed in this Petition for the Rehearing, by design impeded proper functioning of the court, subjecting the Plaintiff to harassment and intimidation.

As shown in this Petition for the Rehearing, Judge Buchwald acknowledged Tramadol was **not a controlled substance** pretrial, but chose not to address the matter. Clearly **Judge Buchwald violated the Ex Post Facto Clause Law**. The only acceptable manner would be to dismiss the charge. Instead she claimed it was only there as background information. This was done to intimidate the Plaintiff into accepting a plea deal as the other defendants had done. However, Judge Buchwald showed herself to be duplicitous by claiming at trial that all the drugs dispensed were controlled substances.

Judge Buchwald shows more brazen duplicity with regard to defects in the indictments concerning Fioricet, which she chose to call Butalbital. She ignored significant portions of the law and common sense to deceive the Jury by calling Fioricet, which is not a federally controlled substance, by the name of only one of its components: Butalbital. That a drug is not merely its most salacious component is already decided by the law. **"Drug" is defined under 21 US Code Section 321 (g) (1)**. The relevant portion is:

> (A) articles recognized in the official United States Pharmacopoeia, ... or official National Formulary, or any supplement to any of them; and (B) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease ... (C) articles ... intended to affect the structure or any function of the body...(D) articles intended for use as a component of any article specified in clause (A), (B), or (C).

A component of a drug may be another drug, but in such cases it is just a component and not the drug. Renaming a drug to make it appear to be a controlled substance is no innocent mistake, but an intentional deception meant to confuse anyone reading trial transcripts into thinking Butalbital, not Fioricet, was dispensed. It intentionally rendered the MURP Reports, one of the few exculpatory piece of evidence not suppressed, unintelligible.

II. VIOLATION of the EX POST FACTO CLAUSE LAW

Defendants failed to appeal the fact that the claims of misbranding were supported by no physical evidence, and were presented to the jury in intentionally confusing ways meant to create a conviction out of nothing. As discussed below, it is only becoming more and more obvious that the judge does not understand what "bonafide" or "valid" means when it comes to prescriptions, nor does the judge understand what those standards obligate pharmacists to do under the law. What is also clear from the trial transcripts that the two standards were conflated into a "bonafide face to face" standard and presented to the jury as such even though

no such thing exists in the health care professions nor in the law. The Judge is also proving more conclusively that she has not read nor understood either the Controlled Substances Act nor the Food Drug and Cosmetics Act, nor did she bother to familiarize herself with the matters the criminal proceedings were about. When she says the Plaintiff dispensed "Opioids" via the fulfillment pharmacy she is lying to slander the plaintiff and prejudice anyone reading her words. She has not heard nor seen any evidence of that notion, no one at trial or otherwise made such an accusation, and it never happened. The fact remains that the Judge is applying a standard applicable only to controlled substances, when no controlled substances were dispensed via the fulfillment pharmacy. The fact also remains that this standard was presented to the jury through a number of deceptions: calling Fioricet by the name of one of its components, calling the drugs "highly addictive pain meds" when such a phrase does not exist under the law nor in the health care professions in order to avoid the term "controlled substances", and the above mentioned conflation of bonafide and valid prescriptions. She also ignores the laws that make pharmacists responsible legal for their own actions when she holds the Plaintiff responsible for acts confessed to by prosecution witnesses, which is discussed below. Neither the Judge nor the prosecutors have explained how they are holding the Plaintiff responsible for the prescription standard for controlled substances for prescriptions dispensed for **Tramadol 21 months before** it became a controlled substance, a violation of the **EX POST FACTO CLAUSE LAW**. How they got away with it is clear, the trial was all **innuendo**, **lies**, and **fake** standards not found in the law. "The scope of the indictment goes to the existence of the trial court's subject-matter jurisdiction". Stirone, 361 U.S. at 213;Ex parte Bain, 121 U.S. At 12-13.

The judge and the prosecutors want to have it both ways. They want to pretend they are not using the Controlled Substances Act against the Plaintiff but they also want to use the standards for valid prescriptions only found in the Controlled Substances Act and only applicable to Controlled Substances. What they are doing is holding the Plaintiff to the CSA's valid prescriptions standards for drugs that are not controlled substances; they did this by confusing the jury and conflating the valid prescriptions standards and the bonafide standards. The only applicable standards for any of the drugs dispensed through the fulfillment pharmacies is the bonafide standards, and this standards does not require the pharmacists to access or have any knowledge regarding the doctor-patient relationship. Quite simply: if a face to face relationship between a doctor and a patient is required for a prescription, then that prescription can only be for a controlled substances. But very importantly, if the

Plaintiff violated this requirement, it would not be in violation of the FDC Act but the Plaintiff did not violate this requirement because NONE of the drugs dispensed via the fulfillment pharmacies were controlled substances. By hiding behind the weasel-words of saying they did not charge the Plaintiff under the Controlled Substances Act they are continuing their deception because that is the standard they applied, and they presented it in an intentionally confusing way to the Jury. They may have not charged the Plaintiff under the Controlled Substances Act in the superseding indictment, the original charges did cite alleged violations of the Controlled Substances Act, even though the drugs named were not controlled substances, Fioricet nor Tramadol.

The judge would have you believe that the Plaintiff violated the bonafide legal standards, but the judge obviously has not read the law because pharmacist are not required to ascertain anything regarding the doctor-patient relationship when the prescription is not for a controlled substances. It is important to note that no doctor testified at the trial claimed to have written for any controlled substances at all, so whether or not they have a face to face relationship with the patient or deceived the Plaintiff is totally moot; the Plaintiff did nothing wrong.

The judge and the Prosecution do not understand the requirement in the law that a drug has to have and establishes a potential for abuse in order to be a controlled substance; they don't understand the difference between a drug, as defined by law (Fioricet) and a component (butalbital). They're arguments make it seem that they've never read the law. The law is actually very easy to understand. Fioricet is not a controlled substance, and this is spelled out very clearly below where large portions, where nothing relevant is left out, of sections 811 and 812 of the controlled substances act are quoted, along with important definitions that clarify the matter.

There is no dispute that **Butalbital, a drug the Plaintiff was indicted with, NEVER existed in the pharmacies** and that **Tramadol,** the other drug named in the indictment, was **not a controlled substance at the time of dispensing,** a violation of the **EX POST FACTO CLAUSE LAW**

III. Defendants failed to show EVIDENCE of Judicial BIAS

1. The Plaintiff's conviction came about through a **deliberate deceit of the jury** by presenting a made up legal standards that does not exist under the law and by presenting perjured testimonies to the jury that everyone knew was perjured testimonies except for the jury.

If Fioricet is a controlled substance, as the District Court **FALSELY** states, **all the Trial Judge and the Government would have to do and all they should do is point to the Federal Register to show where**

and when the Attorney General made it a controlled substance. The Judge does not make an argument as to why Fioricet is, in her view, a controlled substance nor does she make an argument as how or when it became one. She just makes an unsupported and unsubstantiated statement that it is. As shown below, the prosecutors cherry-picked a few lines from section 812 of the Controlled Substances Act that show criteria for scheduling **IF** a drug is found to require scheduling, but they ignore the **requirements** specified within section 812 itself as well as section 811 that specify what findings are required for a drug to be made a controlled substance and the fact that those **findings must be made on the record**. They also ignored the definition of the "**Drug**" and "**Fixed-Combination Drug**" which prevent the misnaming of Fioricet that was engaged in in the indictments and during the trial and the sentencing, and that also prevent the kind of confusion between Fioricet and any of its components. The deception of the jury over the **drugs name** that the Judge and the prosecutors engaged in is a clear indication that the certainty the judge is expressing about Fioricet now is more about her getting away with the deception than about her confidence in her statements about Fioricet. The Judge's duplicity about Fioricet's name is rather brazen, but a review of these criminal proceedings will reveal more duplicity with regard to **Tramadol** and other deceptions.

2. During trial, the Petitioner was **framed by the Prosecutors and its witnesses** via false testimonies and planting, tampering, deliberate and intentional withholding and suppression of actual physical evidence in order to obtain a conviction, as well as District Court's invention of "laws"; conviction on testimony and fabricated laws known to prosecution and the District Court to be perjured as denial of due process thus warrant an evidentiary hearing. Therefore, the aforementioned items are evidential for the defense of this case. Instead of using pharmacy business records, withheld/suppressed phone/fax/prescription records, emails, unredacted employees' write-ups in accordance with the best evidence rule and the governing pharmacy law(PA 27.12(b)(2), prosecutors used the perjured testimony of their witnesses to contradict the Petitioner's testimony to secure a wrongful conviction, a denial of Petitioner's due process of law (Mooney v. Holohan, 294 U.S. 103 (1935). Giglio v. U.S. 405 U.S. 150, 154 (1992) Napue, 360 U.S. at 271. The conviction must be due to a violation of law, not due to Government and its witnesses' opinions and false testimonies.

During the trial the Prosecution orally referred to video recordings they claimed would prove the petitioner's guilt but they never presented any video recordings as evidence. When the defense asked for that

evidence the prosecution suppressed that evidence and the Court withheld that evidence yet the claims made about the contents of that evidence remained in the record and presented to the jury orally but not materially. It must be noted that trial counsel, Mr. Freeman NEVER examined or cross – examined anyone who mentioned the video recordings. Mr. Freeman's malpractice contributed to the Petitioner's wrongful conviction.

The suppression and withholding of this evidence violates due process where the evidence is material and showed the Petitioner did not commit the "crime". As this Court held, in Brady v. Maryland 10 LEd 2d 215, 373 US 83, suppression or withholding of evidence by prosecution in criminal case as vitiating conviction; conviction on testimony know to prosecution to be perjured as denial of due process of law. The withholding and suppression of this evidence contradicting the government and its witnesses' credibility violates due process and justifies a new trial. This exculpatory evidence exonerates her and is a clear violation of Brady as well as a violation of Petitioner's 5th Amendment Right (Due Process).

> The issue now before the Court arose on the Petitioner's motion for a new trial based on newly discovered evidence. Whether the Petitioner should be denied due process due to the prosecutors' suppression of the video recording, the best evidence, which depicted her actual innocence, Brady v. Maryland 373 US 87, 10 L Ed 2d at 218
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> In fact, the **best evidence rule** (Evidence SS424-documents contradicting testimony) rests on the fact that a document is a more reliable, complete, and a more accurate source of information as to its contents and meaning than anyone's description; this is no less true as to the extent and circumstances of a contradiction, contained in the document, to a witness' testimony, where the alleged contradiction relates not to collateral matters but to the incrimination of a defendant in a criminal case.
>
> "We hold that the accused is entitled to the application of that rule, not merely because it will emphasize the contradiction to the jury, but because it will best inform them as to the document's impeachment weight and significance...the alleged contradiction to this witness' testimony relate not to collateral matters but to the very incrimination of petitioners. Except the testimony of this witness be believed, (pg.455) this conviction probably could not have been had. Gordon v. United States 97 LED 447, 344 US 414.
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> "If the petitioner asserts his actual innocence of the underlying crime, he must show "it is more likely than not that no reasonable juror would have convicted him in light of the new evidence presented in his petition." Calderon v. Thompson, supra, 523 U.S. at 559. Here the Petitioner has met this burden.

"As professionals, attorneys are held to certain standards. Among these are duties for ethical behavior and professional competence." Here, the Defendants violate these standards and they are subject to discipline.

Most importantly, due to the Defendants' professional misconduct, it is essential for this civil action to proceed.

The Petition for the Rehearing is an essential element to show cause as to the Defendants' Ineffective assistance of counsel.

REASON FOR GRANTING THE Rehearing:

This Petition for the rehearing must be granted for the following reasons:

I. To resolve questions regarding appellate Counsels' Ineffectiveness of Assistance for ignoring obvious violation of the EX POST FACTO Clause law committed by both the prosecutors and the District Judge. The Plaintiff was arrested for allegedly violating the Controlled Substances Act for dispensing two drug. The first of the named drugs was "butalbital", but this is a drug that never existed in the pharmacy and no evidence of the drug was presented to support any of the charges. When this issue was raised and the defense pointed out that the drug in question was Fioricet which is not a controlled substance, both the prosecutors and the District Judge engaged in repeated instances of **post facto** rationalizations to justify their treating Fioricet as if it were butalbital. In so doing they amended federal law with regard to the way **the terms Drug and Fixed-Combination Drug are defined,** and **they amended the CSA so eliminate the requirement that for a drug to be a Controlled substance it must be declared so on the record by the Attorney General.** The prosecutor's selective quoting from the law where they try to show that fioricet is a Controlled substance shows how they amended federal law on their own without legislative authority, and the judge endorses this usurpation of legislative authority when she ruled in agreement with the prosecutors that Fioricet was in her court room a Controlled Substance. This is **post facto reasoning. The judge also refused the plaintiff's request to call the drug by its proper name which represents an additional instance of post facto reasoning by them as well as an additional usurpation of legislative powers because she ignored or deleted the definition found in the law where a drug is a separate entity from its individual components.** The judge all on her own stopped calling the drug butalbital and started calling the drug by an appropriate name, fioricet, ater sentencing and since. **This represents more post facto reasoning by the judge because she is acknowledging the drug is fioricet but she is relying on the twisting of the law that allowed her and the prosecutors to pretend Fioricet is the same as butalbital. The law is clear that fioricet is not butalbital and that it was not a controlled substance, but to justify the arrest and to justify the prosecution and the already obtained plea deals with other defendants, the judge and prosecutors relied on each other's post facto rationalizations.** That the conviction relied on these rationalizations is clear from the trial transcripts and the judge's responses to recent appeals where she repeats the deception that the prosecutors had shown that fioricet was a controlled substance.

The other drug was Tramadol which was not a controlled substance at the time of dispensing, clearly a violation of the **EX POST FACTO Clause law.** When this fact was raised in a motion to dismiss the charges, the prosecutors and judge had already accepted plea deals that ignored this fact. The judge responded to the Plaintiff's motion to dismiss by claiming that it was not the time to address this issue. It was the time, but there was no way to properly address the issue without admitting the charges represented an usurpation of administrative authority. The superseding charges were then brought with no evidence at all to back them up because their whole series of events were obvious **examples of post facto reasoning.**

All the accusations made at trial, even though they were absent of evidence, were accusations that only apply to controlled substances. Even though the prosecutors claimed in the superseding charges that the Plaintiff violated the FD&C act by misbranding the prescriptions, the acts alleged were only violations if the drugs were controlled substances. **A competent attorney would have recognized these many cases of post facto rationalizations and addressed them. Here, Defendants addressed none of them partly because, as Stavis admitted, he did not read any of the material the Plaintiff provided but primarily because he chose to act incompetently.**

> **"The Constitution vests legislative power only in Congress, which never enacted the exception the Court creates today. That inconvenient truth resolves this case."McQuiggin v. Perkins, 133 S. Ct. 1924 SC 2013**

II. To resolve the existence of multiple conflicts between the decision of which review is sought and a decision of the second appellate court on the same issue, *including but not limited to,* **the EX POST FACTO Clause law.**

An important function of the Supreme Court is to resolve disagreements among lower courts about specific legal questions. "The Supreme Court has held that part of the right to counsel is a right to effective assistance of counsel. Proving that their lawyer was ineffective at trial is a way for convicts to get their convictions overturned, and therefore ineffective assistance is a common heabus corpus claim. To prove ineffective assistance, a defendant must show (1) that their trial lawyer's performance fell below an "objective standard of reasonableness" and (2) "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland v. Washington, 466 U.S. 668 (1984)."

Ex post facto reasoning is one thing the Defendants overlooked. They also overlooked the

1. Absolute lack of any physical evidence including the prescriptions the agents received.

2. Fact that the prosecutors violated the law by changing the drugs name

3. Fact that the judge ignored the law when she allowed them to change the name and when she chose to use the wrong name all through the pretrial phase and the trial and she only used the right name after sentencing and since.

Defendant Stavis chose to conduct himself in an obviously incompetent manner, all of which stem from his failure to read the material provided by the Plaintiff. His choice to fail to even read the material he was provided led him to overlook many instances of **post facto rationalizations** on the part of the prosecutors and the judge, and many instances of usurpation of legislative and administrative powers. He also ignored the fact that the judge allowed the prosecutors to prosecute the Plaintiff without any physical evidence. He overlooked many instances of misconduct by the judge which were designed to ensure a conviction, because he took no interest doing the work he was paid to do.

It is important that this civil action proceed because the Plaintiff's Constitutional rights were violated: "A defendant who claims to have been denied effective assistance must show both that counsel performed deficiently and that counsel's deficient performance caused him prejudice." This Plaintiff satisfied both prongs of this test.

CONCLUSION The petition for the Rehearing should be granted.

CERTIFICATE I certified that this rehearing is restricted to the grounds specified in Rule 44.2 and that it is presented in good faith and not for delay.

Respectfully submitted, Lena Lasher, Pro – Se lenalasher December 12, 2019