No. 19-6823

ORIGINAL

Supreme Court, U.S.
FILED
OCT 11 2019
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Taffaro — PETITIONER
(Your Name)

vs.

State of New Jersey — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of New Jersey
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Taffaro
(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

1. WHETHER A DECISION AFFIRMING EXCLUSION OF EVIDENCE, IN THIS CASE A TRANSCRIPT, CAN BE CORRECT IF UNINFORMED AS TO THE TRANSCRIPT'S ACTUAL CONTENTS, AND SO WITH NO BASIS ON WHICH TO ASSESS THE MERITS OF DEFENDANT'S UNDISPUTED ASSERTION THAT THIS EVIDENCE EXPOSES THE TESTIMONY OF THE STATE'S SOLE WITNESS AS COMPLETE PERJURY

2. WHETHER A DECISION AFFIRMING EXCLUSION OF EVIDENCE CAN BE CORRECT WITHOUT ACTUALLY ADDRESSING THE UNREFUTED ASSERTION THAT IT WAS EXCLUDED ON PLAINLY ERRONEOUS GROUNDS AND WAS IN FACT ADMISSIBLE

3. WHEN AN ISSUE WAS RAISED ON APPEAL, WHETHER RULE 3:22-5 IS TO BE APPLIED TO AUTOMATICALLY BAR A POST CONVICTION RELIEF CLAIM THAT IT HAD BEEN RAISED IN AN INEFFECTIVE MANNER

4. IN A CASE WHERE A PCR PETITION PRESENTED FOR THE FIRST TIME (POST-TRIAL) EVIDENCE THAT HE CLAIMS ESTABLISHES THAT HIS CONVICTION WAS BASED ON PERJURY, WHETHER THE INTEREST OF JUSTICE CALLS FOR RELAXATION OF R. 3:22-5 IN ORDER TO CONSIDER THE MERITS OF THE SAID CLAIM

LIST OF PARTIES

[√] 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:

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OTHER

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[ ] is unpublished.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.

[✓] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix A 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 _____ 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.

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 July 16, 2019. A copy of that decision appears at Appendix C.

[ ] A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Strickland, 466 U.S. at 687-88, 104 S.Ct. at 2064-65; State v. Fritz, 105 N.J. 42, 58 (1987). Defendant must also overcome the "strong presumption" that counsel's actions "might be considered sound trial strategy." Id. at 689, 104 S.Ct. at 2065. The defendant must demonstrate that but for counsel's error there exists a "reasonable probability" that the outcome would have been different, which exists if it is "sufficient to undermine confidence in the outcome" of the proceedings. Strickland, supra, 466 U.S., at 696. This standard applies to appellate counsel as well as trial counsel.

In the Appendix, the "Strickland Standard" is on page 4 in Point III but the Appellate Division completely ignored the issue.

STATEMENT OF THE CASE

This Petition challenges the propriety of the Judicial System's most important component - "***TRUTH***". The United States Supreme Court states in Rule #10 that a petition for a Writ of Certiorari will be granted only for compelling reasons including a decision "which has so far departed from the accepted and usual course of judicial proceedings; or which conflicts with the decision of another state court of last resort, a United States court of appeals or relevant decisions of the United States Supreme Court". This case involves the unconstitutional denial of an Evidentiary Hearing to overturn a wrongful conviction due to the felony perjury of a sole witness which testified against me during three jury trials. The courts illegally excluded my exculpatory evidence consisting of several unrefuted tape-recorded confessions of the State's witness taking sole responsibility while proving my innocence. My attorney has clearly explained these Constitutional issues in detail in his brief to the New Jersey Supreme Court.

Truth is the foundation of the Judicial process. To allow an unjust conviction to stand based on felony perjury where there is undeniable exculpatory evidence would be a mockery of justice, undermining the integrity of the entire Judicial System and proving detrimental to all United States citizens. My argument, in the words of my attorney, is as follows:

The Petitioner Michael Taffaro was convicted in 2011, after a third trial, for the posting of a scurrilous Craigslist Advertisement ("the Ad") concerning his sister, Susan Taffaro. However, the defendant had surreptitiously taped conversations irrefutably proving that, unlikely though it was, the offensive act was actually a malicious prank pulled by the State's sole witness, Daniel Ng. This evidence, in the form of a transcript, was excluded by the trial court.

This exclusion was based on the purported grounds that the tape transcript was a choreographed, self-serving statement[s]. However, these grounds are plainly erroneous, because any objective consideration shows that there are no conceivable circumstances under which anyone could be choreographed into making them, unless they were true; and being true, they show irrefutably that Ng's testimony, the sole basis of the conviction, to be complete perjury. And while the tape was certainly born of sell-interest, in relevant part the transcript consists of questions from the defendant, not declarations, self-serving or otherwise. So, the exclusion was reflexive, ill-

founded, and proved fatal to the aim of achieving a just outcome.

The issue of the erroneous exclusion of the transcript as affirmative evidence and its concomitant probative value, was not raised on appeal. Rather, appellate counsel made a tertiary, cursory point that trial counsel should have been permitted to mention in opening a miniscule [in effect one- page] portion of the one-hundred-and sixty-page transcript, and to refer to that in cross examination. There was nothing in the appeal about the transcript's remaining one-hundred-and-fifty-nine pages, and it was by no means asserted that they expose Ng's testimony, and so the conviction resulting from it to have been a literal mockery of justice in every way. The transcript, the evidence itself, was not even included in the record brought to the Appellate Division. In turn, in his post-conviction-relief application the defendant claimed that he was denied the right to effective assistance of appellate counsel concerning the manner in which this issue was raised.

The actual issue is so far greater in scope and emphasis that the two issues are in a sense only nominally

connected; in any case, they are not identical or substantially equivalent.

However, the PCR court found that the issue had been raised and expressly adjudicated on appeal, and so R. 3:22-5 barred a claim on PCR concerning the effectiveness with which it had been raised.

On appeal of the denial of the PCR, the Appellate Division summarily affirmed the PCR court's application of the Rule, and ruled that no grounds whatsoever existed for relaxation of the Rule in the interest of justice.

(Pa 2).[1]

QUESTIONS PRESENTED

1. WHETHER A DECISION AFFIRMING EXCLUSION OF EVIDENCE, IN THIS CASE A TRANSCRIPT, CAN BE CORRECT IF UNINFORMED AS TO THE TRANSCRIPT'S ACTUAL CONTENTS, AND SO WITH NO BASIS ON WHICH TO ASSESS THE MERITS OF DEFENDANT'S UNDISPUTED ASSERTION THAT THIS EVIDENCE EXPOSES THE TESTIMONY OF THE STATE'S SOLE WITNESS AS COMPLETE PERJURY

2. WHETHER A DECISION AFFIRMING EXCLUSION OF EVIDENCE CAN BE CORRECT WITHOUT ACTUALLY ADDRESSING THE UNREFUTED ASSERTION THAT IT WAS EXCLUDED ON PLAINLY ERRONEOUS GROUNDS AND WAS IN FACT ADMISSIBLE

3. WHEN AN ISSUE WAS RAISED ON APPEAL, WHETHER RULE 3:22-5 IS TO BE APPLIED TO AUTOMATICALLY BAR A PCR CLAIM THAT IT HAD BEEN RAISED IN AN INEFFECTIVE MANNER

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[1] Pa signifies Petitioner's appendix

4. IN A CASE WHERE A PCR PETITIONER PRESENTED FOR THE FIRST TIME (POST-TRIAL) EVIDENCE THAT HE CLAIMS ESTABLISHES THAT HIS CONVICTION WAS BASED ON PERJURY, WHETHER THE INTEREST OF JUSTICE CALLS FOR RELAXATION OF R. 3:22-5 IN ORDER TO CONSIDER THE MERITS OF THE SAID CLAIM

ERRORS COMPLAINED OF

A. THE APPELLATE DIVISION'S DECISION AFFIRMING APPLICATION OF R. 3:22-5 TO BAR A PCR CLAIM THAT AN ISSUE HAD BEEN INEFFECTIVELY RAISED ON APPEAL, FOR THE REASON THAT IT HAD BEEN PREVIOUSLY ADJUDICATED; THIS JUDGMENT BEGGED RATHER THAN ADDRESSED THE QUESTION BEFORE THE COURT: WHETHER THE ISSUE HAD BEEN RAISED IN A CONSTITUTIONALLY INADEQUATE MANNER

The Appellate Division ruled that "Defendant's first three points... all essentially restate defendant's position that the taped telephone conversation should have been admitted, and that its admission would have entirely exonerated him. Clearly, this issue has been previously addressed." Pa2. Surprisingly, this is inaccurate; defendant's appellate counsel made no such forthright comprehensive claim, and so nor was it ruled on. The partial, cursory, nominally related claim was made without even

including the evidence in the record. Therefore, to the extent that the Appellate Division decision is to be construed as relating to the validity of the grounds for excluding the evidence, the potential prejudice resulting from exclusion, and the sufficiency of the measures taken to mitigate the potential prejudice, it was made without any actual information concerning the evidence. It is precisely the failure to make the comprehensive, full-bore declaration made on PCR, that the conviction is really a fraud upon the Court, that is the very identity of the PCR claim of ineffective assistance of Appellate Counsel. This claim was never so much as cognized, let alone considered in accordance with the long-established standard, which applies to appellate as well as trial counsel. I

In order to prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient as measured by "an objective standard of reasonableness" under prevailing professional norms, and that defendant was prejudiced thereby. Strickland, 466 U.S. at 687-88, 104 S.Ct. at 2064-65; State v. Fritz, 105 N.J. 42, 58 (1987). Defendant must also overcome the "strong presumption" that counsel's actions "might be considered sound trial strategy." Id. at 689, 104 S.Ct. at 2065. The defendant must demonstrate that but for counsel's error there exists a

"reasonable probability" that the outcome would have been different, which exists if it is "sufficient to undermine confidence in the outcome" of the proceedings. Strickland, supra, 466 U.S., at 696. This standard applies to appellate counsel as well as trial counsel. See State v. Morrison, 215 N.J. Super, 540, 546 (cert den. 107 N.J. 642 (1987).

However, the ruling here would mean that whenever the Appellate Division has ruled on an issue concerning exclusion of evidence, which had been put before it in a cursory, partial and pro forms way, without even including the evidence to enable an informed analysis, that R. 3:22-5 automatically or by discretion bars a PCR claim of ineffective assistance of appellate counsel on the point. That is what has occurred in the instant case. This is likely a routine way to dispose of PCR claims, and so the patent unfairness of it does not just harm the defendant, but many others throughout the State. This is certainly so when the issue goes directly to the integrity of the conviction, even though the stakes in any given case are not as high, or the error of counsel so glaring as in the leading case in this area, State v. McQuaid, N.J., 147 N.J. 464 (1997). In that case, this Court reversed the Appellate Division decision affirming the PCR Court's application R.

3:22-5 to bar the petition. The PCR petition claimed ineffective assistance of counsel for failure to inform the defendant-petitioner that he was death-penalty eligible. The Appellate Division had affirmed the PCR court's decision to apply the bar, because ineffective assistance of counsel had been raised as an issue on direct appeal, and the Appellate Division had expressly adjudicated that claim on its merits. Defendant, however, contended that Rule 3:22-5 did not bar his PCR claim of ineffective assistance of counsel because that claim differed from the one he made on direct appeal. He asserted that the contention he was seeking to advance through PCR proceedings – that he suffered ineffective assistance of counsel because his counsel failed to inform him that he was not death-eligible – was not raised or previously adjudicated on direct appeal. He contended that on direct appeal his counsel failed to make the argument that defendant was not death-eligible. This argument was accepted by the New Jersey Supreme Court, which reversed, holding that the two claims were not "identical or substantially equivalent," id., at 484 (citing standard established in Picard v. Connor 404 U.S. 270, 276-277 (1971), and applied in State v. Bontempo, 170 N.J. Super. 220, 234 (Law Div. 1979) (certif. denied 87 N.J. 317 (1981)

McQuaid's holding applies squarely to the case at bar, in which Mr. Taffaro's PCR claim was that the tape he surreptitiously made, and transcript thereof, would have precluded or exposed the perjury of the State's sole witness against him, and the exclusion from evidence of the tape transcript resulted in a conviction based solely on that perjury. On the appeal, his counsel tacked on as the third point in the appellate brief a perfunctory, nonspecific, although nominally related argument: that Defendant's trial counsel should have been permitted to utilize in effect one page of the 160-page transcript to impeach the witness. Thus, the PCR court's ruling, that the said actual issue had been previously adjudicated, invoking the bar of R. 3:22-5, and had been raised effectively according to the Strickland standard, was plain error on both counts. The Court in McQuaid found that defendant's failure to raise the specific contention on direct appeal or in his first PCR application "undoubtedly [was] attributable to counsels' failure to recognize the potential significance of the question." id., at 496. The Court went on to cite an earlier landmark New Jersey case, while noting the difference in context: "[defendants] should not pay the exacting price for state procedural forfeitures that result from the ignorance or inadvertence of their counsel – regardless of whether counsel's error violates

constitutional standards." State v. Preciose 129 N.J. 451, 477 (1992). Here, Defendant from the outset realized his only hope of overcoming the presumption that must exist regarding his culpability for this offense lay in surreptitiously recording conversations with the actual perpetrator[s].

However, the argument made on the appeal was that counsel should have been permitted to read a three-page portion[2] of the 160-page transcript, and to refer to it in cross examination. The trial judge had ruled that the defense could ask five discrete questions, and would "have to live with the answers." Da40. The slight expansion in scope requested on appeal was hardly "identical or substantially equivalent" to a full-bore emphasis on the transcript's weight and dispositive quality, or its demonstrable in-toto admissibility. See State v. McQuaid, 147 N.J. 464, 484 (1997) (citing standard established in Picard v. Connor 404 U.S. 270, 276-277 (1971). It is as though the defendant on PCR claimed that the defense was totally hamstrung by the exclusion of the evidence, and that this was not cured by the slight measures effected in the trial court; on the direct appeal counsel had argued inter alia that the defendant had been somewhat hampered and the measures employed should have been

[2] Only one page of which was actually relevant.

expanded to some degree. Then, the Appellate Division rubber stamped the lower court's bar of the claim, ruling that the defendant's claims in this regard are a "thinly veiled reiteration" (Pa2) of the previously raised, expressly adjudicated claim. In reality, though, the PCR was the first time he made the claim in anything remotely approaching the foursquare assertion that his defense was completely hamstrung; the trivial measures employed did not prevent rank perjury making a mockery of justice. As in McQuaid, the failure to apprise the Appellate Division of the issue was contrary to defendant's wishes and to his interest, and was, "undoubtedly attributable to counsel['s] failure to recognize the potential significance of the question." McQauid, supra., 147 N.J. at 496.

Thus, the Appellate Division's characterization that on the initial appeal also the defendant's counsel claimed that the transcript [in toto] was erroneously excluded and that it "would have entirely exonerated him" (Pa4), is erroneous. This is precisely what appellate counsel failed to do; at least, that is the precise claim asserted on PCR, and by any standard it is at least a colorable claim. Yet that claim was not cognized, but was nullified, R. 3:22-5 misapplied through a reflexive, inaccurate assumption of equivalence.

B. **THE INTEREST OF JUSTICE WOULD REQUIRE RELAXATION OF A PROCEDURAL BAR TO CONSIDERATON OF A CLAIM THAT EVIDENCE PRESENTED FOR THE FIRST TIME POST-TRIAL SHOWS THE CONVICTION TO HAVE BEEN BASED ENTIRELY ON PERJURY, TO TEST THE MERITS OF SUCH A CLAIM**

The PCR court in applying R. 3:22-5, ruled, "The Appellate Court decided that the transcript was hearsay and therefore would not have permitted the entire transcript to be read to the Court." DA225

On its face this reading of the Appellate Division opinion seemed be erroneous, as it did not seem conceivable that the Appellate Division could have intended to find that the transcript was hearsay without having seen it. However, the PCR court's judgment, being summarily affirmed, the application of the bar upheld.

Nevertheless, it goes without saying that a conviction based on demonstrable perjury is fundamentally unjust. And the interest of justice dictates that a defendant proffering evidence purporting to show his conviction to have been so based should not be barred from consideration of his claim - from an informed judgement with actual reference to the evidence in question. As stated in the Rules of Court, "[u]nless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice." R. 1:1-2(a) Although the interests in

achieving and maintaining finality on adjudicated issues are undoubtedly important, the application of Rule 3:22-5 "is not an inflexible command." State v. Franklin, 184 N.J. 516, 528 (2005) Courts may consider procedurally non-compliant motions for PCR when the "constitutional problem presented is of sufficient import to call for relaxation of the rules so that we may consider the question on its merits." State v. Johns, 111 N.J. Super. 574, 576 (App. Div. 1970), certif. Denied, 60 N.J. 467, cert. denied, 409 U.S. 1026 (1972)

In its decision affirming the PCR decision on this point the Appellate Division ruled that:

> Defendant further contends that the application of Rule 3:22-5 should be relaxed in this case in the interest of justice. We simply do not agree. It is clear that Judge Austin's decision to allow for cross-examination based on the transcript permitted defendant to develop his third-party culpability defense to the jury. Thus, no reason at all, much less a compelling reason, has been presented which would warrant the relaxation of the rule in this case.
> PA4

But with no way of knowing what the transcript in its entirety would have shown, on what basis did the Court gauge the adequacy of the permitted "develop[ment] of his third party culpability defense..." (Id.) The defendant respectfully submits that it was a small, unspecified, constrained degree of development which was permitted,

assumed by judicial edict to be adequate to countervail the impact of the excluded evidence, which he claims to be of unassailable, dispositive probative value; and this without ever cognizing the excluded evidence or its potential impact.

By this reasoning, if a defendant in a murder trial were permitted to introduce evidence that an acquaintance had actually bought the murder weapon, the interest of justice would not be evoked by exclusion of video footage showing the acquaintance plunging the knife into the victim, since the former after all permitted the defendant to develop a third-party culpability defense. If that acquaintance was the State's sole witness against the defendant, and the State obviously aware of the footage, the parallel to the instant case is closer still.

In a case which directly concerned the time bar of R.3:22-12, the New Jersey Supreme Court held, "[A]s with all of our Rules, where the interests of justice so require, the Rule will be relaxed." State v. Mitchell, 126 N.J. 565, 579 (1992). Where the deficient representation of counsel affected "a determination of guilt or otherwise wrought a miscarriage of justice," a procedural rule otherwise barring post-conviction relief may be overlooked to avoid a fundamental injustice. See State v. Nash, 212 N.J. 518, 546 (2013)(quoting Mitchell, supra,

126 N.J. at 587. However, to succeed on a claim of fundamental injustice, the petitioner must show that the error "played a role in the determination of guilt." Ibid. These rulings all apply fully to the instant case, and so R. 3:22-5 should not be applied to bar his cause.

REASONS FOR GRANTING CERTIFICATION

Certification is warranted under R. 2:12-4 because this case presents several questions of great public importance: 1) whether it is contrary to fundamental fairness and constitutes a fundamental injustice to allow a conviction to stand when evidence irrefutably showing it to be wrongful has been presented by defendant but ignored by the courts due to erroneous application of a procedural bar; 2) whether a reviewing court can validly rule on questions surrounding the exclusion of certain evidence, without reference to, or any consideration of the specific nature and qualities of the same evidence; 3) whether it is circular reasoning and contrary to established law to conclude that when an issue has been adjudicated by the Appellate Division, Rule 3:22-5 bars a PCR claim of ineffective assistance of appellate counsel for the cursory, pro forma, manner in which the

(nominally connected) issue was presented, sans record, to the Appellate Division for adjudication.

COMMENTS WITH RESPECT TO THE APPELLATE DIVISION OPINION

In its initial decision, followed by the PCR court, and in turn summarily affirmed by itself, the Appellate Division made its ruling without reference to the evidence, which had not been provided to it at the time of the direct appeal. Throughout, the Courts relied on the "facts" as presented in what is the demonstrably false testimony of Ng, and declined to cognize the evidence demonstrating its falsity, even when available, or to consider the argument that the failure to provide that evidence on appeal was in itself, and inter alia, grounds for a PCR claim of ineffective assistance of counsel. By any standard this claim was at least colorable and entitled to have its merits considered.

As an example of the "facts" relied on, the Appellate Division stated,

> D.N. [Ng] and R.P. [his friend Rednor Portella] went into the kitchen ... while defendant stayed in the computer room. [He] was thoroughly and repeatedly cross-examined on the subject, but remained adamant *** Some twenty minutes later, defendant entered the kitchen and abruptly told [them] they had to leave as he had things to do. On cross-examination, D.N. admitted that a criminal conviction would make his pending admission to the California bar difficult. (slip op. at 2)

However, in the taped conversations, some twenty or thirty exchanges comprise Ng or Portella informing the defendant concerning the details of actions that they, Ng and Portella, were taking while he, Taffaro, was in another room; the actions in question were the formulating and the posting of the Ad, for no other motive than infantile malicious hilarity.

Defendant's question on PCR, not raised by Appellate Counsel, not refuted by any prosecutor, nor cognized by either court is: "Under what conceivable circumstances could Ng tell Taffaro what he, Ng was doing in the computer room while Taffaro was elsewhere, if in fact it was Taffaro in the computer room doing, while Ng was elsewhere?" It can only be inferred that it was Ng in the computer room doing the action, i.e., the offensive post for which Taffaro was convicted.

The Appellate Division addressed the limited question put before it, on the essentially non-existent record before it. It found that Petitioner had suffered no harm because his trial counsel had been permitted to ask Ng five questions raised by the tape, although he could not use the tape transcript to impeach Ng, and was not permitted to ask any follow-up questions, and the transcript could not be

used to impeach Ng. One of the five questions was the just-cited one about a conviction potentially impacting his bar admission.

Further, according to the PCR court's reading of the Appellate decision, in turn affirmed without comment by the Appellate Division, it ruled that "the Appellate Division decided the transcript was hearsay and therefore would not have permitted the entire transcript to be read to the court." [*sic*] However, this ruling was made without having seen the transcript. Therefore, it is respectfully submitted that it can only be uninformed and is in fact in plain error. This holds equally for the more limited ruling that Petitioner's "self-serving statements" were correctly excluded, being inadmissible under any exception to the hearsay rule (DA218). The Court had no way of knowing what statements if any contained on the transcript were self-serving declarations, or whether they could have been redacted.

And the Appellate Division ruled that Petitioner's cause does not involve fundamental injustice to the slightest degree whatsoever. However, he respectfully maintains that unrefuted, irrefutable proof that a conviction based on the State-sponsored perjury of the State's sole witness is an intolerable violation of Justice. This would be so, and would make his cause one

deserving of Certification by this Court, even if the perjury was not literally brazenly mocking in nature.

CONCLUSION AND CERTIFICATION

Petitioner respectfully urges that the within Petition for Certification be granted in the interest of justice in order to correct the erroneous judgment of the Appellate Division. In the event that the Petition is granted, the Petitioner reserves the right to seek leave to file a subsequent brief pursuant to R. 2:12-1. This application is made in good faith, presents substantial questions, and is not brought for purposes of delay.

Respectfully submitted

/S/Robert McGuigan
Robert H. McGuigan, 009441994
Designated Counsel

Dated: March 8, 2019

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because it is **UNCONSTITUTIONAL** to allow a wrongful conviction to stand in a Post Conviction Relief Petition **WITHOUT AN EVIDENTIARY HEARING** in order to examine the numerous tape-recorded and transcribed confessions against brazen felony perjury. The State's sole witness committed perjury while testifying to protect himself during three jury trials despite previously admitting to the crime in numerous taped conversations. Truth is the foundation of the Justice System and all citizens are severely affected if felony perjury is allowed. An **Evidentiary Hearing** is all I am seeking.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Caffaro

Date: 10/10/19