

No. \_\_\_\_\_

19-6612IN THE  
SUPREME COURT OF THE UNITED STATES

JEROME A. SMALL

— PETITIONER

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

(Your Name)

FILED  
OCT 28 2019vs.  
COMMONWEALTH OF PENNSYLVANIA  
— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NONE

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jerome A. Small # HF-6068

(Your Name)

1100 Pike Street

(Address)

Huntingdon, Pa 16654-1115

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Is there four (4) prongs to establishing a **Brady** claim ?

Is the burden on the defense to scavage for **Brady** material to show due diligence ?

Is a **Brady** violation one of timeliness ?

If a prosecuting attorney agrees to dismiss remaining charges with a star witness that is apart of a plea agreement, do they have to turn that information over ?

If a prosecuting attorney agrees to dismiss remaining charges should that information be within the frame work of the plea agreement ?

Did the PCRA Court Abuse it's disscression when they failed to address the issue raised before them ?

Did the Appellate Court Abuse it's disscression when they ruled that they would not remand to the PCRA Court for correction, and when they ruled that the issue was previously litigated ?

Is a issue that was raised, but the merits of the claim was never ruled upon, is it deemed previously litigated ?

## **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:

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5-8
CONCLUSION.....	9

## INDEX TO APPENDICES

**APPENDIX A**      Opinion 7/6/18

**APPENDIX B**      Memorandum

**APPENDIX C**      After Discovered Evidence

**APPENDIX D**      Opinion 11/2/09, pages 7-8

**APPENDIX E**      Plea Agreement

**APPENDIX F**      Sentencing N.T. 10/18/05, pages 27-28

**APPENDIX G**      Copy of Rule 585

**APPENDIX H**      State Supreme Court Order

**APPENDIX I**      Trial N.T. 10/4/05, Key witness, page 247

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Commonwealth v. Burton, 158 A.3d 618 (Pa. 2017) .....	4
Harshman v. Superintendent, State Corr. Inst., ..... 2018 U.S. Dist. Lexis 119991 (M.D. Pa. July 17, 2018)	5
Dennis v. Secretary Pa. Department of Corrections, .... 2016 U.S. App. Lexis 15434 (3d Cir. 2016)	5
Commonwealth v. Coades, 311 A.2d 896 (Pa. 1973) .....	6
Commonwealth v. Strong, 761 A.2d 1167 (Pa. 2000) .....	6
Giglio v. United States, 92 S.Ct. 763 (1972) .....	6
Brady v. Maryland, 83 S.Ct. 1194 (1963) .....	6-7
Commonwealth v. Stark, 658 A.2d 816, 819 ..... (Pa. Super. 1995)	8

### STATUTES AND RULES

42 Pa. C.S. § 573 Discovery and Inspection
42 Pa. C.S. § 585 Nolle Prosssequi
42 Pa. C.S. § 9544 (a)(2)(3) Previously Litigated

### OTHER

Letter for Extension of time granted by  
Justice Alito, who on July 31st, 2019, extended  
the time to and including October 31st, 2019

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 B \_\_\_\_\_ 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 PCRA Court court 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.

## 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).

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

The date on which the highest state court decided my case was 12/28/18. A copy of that decision appears at Appendix B.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[x] An extension of time to file the petition for a writ of certiorari was granted to and including 7/31/19 (date) on 10/31/19 (date) in Application No. 19 A 128.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The petitioner 14th Const. Amend. right to a fair trial was violated and the prosecution withholding evidence.

The prosecuting attorney for the commonwealth violated the Rules of Discovery and Inspection pursuant to 42 Pa. C.S. § 573 Discovery and Inspection.

The prosecuting attorney for the commonwealth has to motion for a Nolle Prosssequi pursuant to 42 Pa. C.S. § 585, this motion was never turned over to the defense.

The Appellate Court's Abused it's Discretion by Ruling that the petitioners issue was previously litigated pursuant to 42 Pa. C.S. § 9544 (a)

## STATEMENT OF THE CASE

The petitioner filed a timely PCRA, that was denied and after the PCRA was denied the petitioner got a investigation office to do some investigating and they uncovered; charges was Nolle Prossed, which the prosecution never turned this over or made it available to the defense, the petitioner then filed a second PCRA and the lower Court then applied a fourth (4th) prong to the **Brady** prongs, that fourth (4th) prong being diligence by the defense, and denied the petition as untimely without a hearing. Then came the State Supreme Court ruling in Commonwealth v. Burton, decided March 28, 2017, which held that the presumption of known public records does not apply to a pro se prisoner petitioner, wherefore, the petitioner filed for a state writ of habeas corpus and leave to file the original process, then the petitioner filed the current PCRA that is the matter in question, an the PCRA Court failed to address the issue and the Appellate Court's also failed to address the merits of the claim.

## REASONS FOR GRANTING THE PETITION

It is of national importance for the Supreme Court to decide this case and give it's ruling on the quetions presented herein.

The PCRA Court's as well as the Appellate Court's continue to misapply the standards of the U.S. Supreme Court ruling in **BRADY**. Misapplying the Brady standards is not only in conflict with the U.S. Supreme Court, but it's also in conflict with other Court ruling's as well. The Court's in *Harshman v. Superintendent, State Corr. Inst.*, 2018 U.S. Dist. LEXIS 119991 (M.D. Pa. July 17, 2018), also see *Dennis v. Secretary Pa. Department of Corrections*, 2016 U.S. App. Lexis 15434 (3d Cir. 2016). The states key witness in this case gave testimony that she did not get nothing in exchange for her to testify, the prosecution never corrected her, allowed her testimony to go uncorrected as she misrepresented the facts, and she did not get the remaining charges dismissed until after her testimony, thus not allowing the defense the chance to introduce to the jury the witnessess own biasness, interest and corrupt motives. The petitioner had to get the services a private

**REASONS FOR GRANTING THE PETITION CONTINUES**

investigation office. They uncovered that the remaining charges where nolle prossed, see Appendix "C", as soon as the petitioner got that information it was submitted within 60 days pursuant to 42 Pa. C.S. § 9545 (2), the PCRA Court dismissed that PCRA as untimely, never addressing the merits of the claim. While the PCRA Court dismissed the petition, they also conveyed that the prosecution did withhold the information that is in question and that it did not become available until after the petitioner's trial, see Appendix "D", the Court's held in Commonwealth v. Coades, 311 A.2d 896 (Pa. 1973), that the defense should have been permitted to impeach the co-indictee by establishing facts from which the jury could have inferred that [he] was a biased witness, and the jury should of been privy to the fact that the more serious felony charges would be Nolle Prossed in exchange for his testimony. Other Court's that has held that any evidence that was suppressed of a co-defendant receiving something in exchange for there testimony, prejudices a defendant to a fair trial, see Commonwealth v. Strong, 761 A.2d 1167 (Pa. 2000), also see Giglio v. United States, 92 S.Ct. 763 (1972) also see Brady

**REASONS FOR GRANTING THE PETITION CONTINUES**

v. Maryland, 83 S.Ct. 1194 (1963). The witness was vital to the arrest and prosecution of the petitioner, see Appendix "E" and "F". The prosecution has to motion to the Court's for a Nolle Prosequi, pursuant to 42 Pa. C.S. § 585, also termed Nolle Prossse for this to happen the attorney for the commonwealth has to motion for it, see Appendix "G". Then came Ruling in Commonwealth v. Burton, 158 A.3d 618 (Pa. 2017), the petitioner then petition for a state writ of habeas corpus and leave to file the original process, see Appendix "H", Then the petitioner filed a PCRA, the PCRA Court "never" addressed the issue that was submitted to them see Appendix "A" and the Appellate Court's then Abused it's Discretion when they failed to addressed the merits of the claim and when they failed to remand for corrects and for ruling that the issue was previ!usly litigated pursuant to 42 Pa. C.S. § 9544 (a)(2)(3);

an issue has been previously litigated if; (1) Deleted; (2) The highest Appellate Court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or (3) It has been raised and decided in a proceeding collaterally attacking the conviction or sentence.

**REASONS FOR GRANTING THE PETITION CONTINUES**

The Court's held in Commonwealth v. Stark, 658 A.2d 816, 819 (Pa.Super. 1995), where a defendant attempts to file an appeal, but the appeal is dismissed as untimely, the dismissal is not a "Ruling on the Merits of the Issue" and, therefore, the issue has not been previously litigated pursuant to 42 Pa. C.S. § 9544 (a)(2)(3) of the Act. The petitioner defense at trial was alibi, there was a witness who testified for the petitioner's whereabouts. The petitioner was prejudice to a fair trial when the prosecution withheld key portion of the plea agreement, in violation of **Brady**, the way the prosecution enters into a plea deal needs to be banded as it prevents the defense from showing a witness biasesness if they don't make impeachment evidence available prior to trial or during trial.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JEROME A. SMALL

Date: 10-27-19