ORIGINAL

No: 19-6894

IN THE SUPREME COURT OF THE UNITED STATES

Vamsidhar Vurimindi, Petitioner

vs.

Commonwealth of Pennsylvania, Respondent

On Petition For Writ of Certiorari
To The Superior Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

Vamsidhar Vurimindi,
A # 096-689-764,
Petitioner, Pro Se
Adams County Detention Center,
P. O. Box # 1600,
Washington, MS-39190.

QUESTIONS PRESENTED

1. Whether State prosecuting an accused under pretense of successive prosecution based upon temporally distinct conduct from prior prosecution, and compounding charges and evidence from prior prosecution for same offense, issues and claims resolved in accused favor, violate *Blockburger v. United States*, *Ashe v. Swenson*, *Brown v. Ohio and Fifth Amendment's Double Jeopardy Clause?*

2. Whether State forfeiting *pro se* criminal appellant's constitutional right to appeal for raising multitude of errors on appeal, while State defaulted in appointing standby counsel to assist *pro se* in the process of winnowing issues on appeal, denying permission to amend brief and declining to appoint counsel after *Farretta* waiver to file amended brief, violate *U.S. Const. Fourteenth Amendment's* Due Process and Equal Protection Clauses?

LIST OF PARTIES

1. Vamsidhar Vurimindi,
   A # 096-689-764,Adams County Detention Center,
   P. O. Box # 1600, Washington, MS-39190.
   Petitioner
2. Commonwealth of Pennsylvania,
   C/o. Philadelphia District Attorney's Office,
   Three South Penn Square,
   Philadelphia, PA 19107.
   Respondent

RELATED CASES

1. *Commonwealth v. Vurimindi*, No: CP-51-CR-00080-22-2012, Court of Common Pleas, Philadelphia. Judgment entered on April 25, 2014; Reconsideration denied on June 27, 2017.
2. *Commonwealth v. Vurimindi*, No: 2140-EDA-2017, Superior Court of Pennsylvania. Judgment entered December 14, 2018. Reargument denied on February 6, 2019.
3. *Commonwealth v. Vurimindi*, No:121-EAL-2019, Supreme Court of Pennsylvania. Judgment entered September 04, 2019. Reconsideration denied on October 9, 2019.

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DOUBLE JEOPARDY JURISPRUDENCE

FORFEITURE OF CONSTITUTIONAL RIGHT TO APPEAL, DUE PROCESS AND EQUAL PROTECTION JURISPRUDENCE

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

The opinion of the highest state court (Superior Court of Pennsylvania) to review the merits appears at **APPENDIX-A** to the petition and is reported at *Commonwealth v. Vurimindi*, 200 A.3d 1031 (Pa. Super. 2018).

The opinion of the Court of Common Pleas, Philadelphia and February 07, 2014 Notes of Trial Testimony in *Commonwealth v. Vurimindi*, No: CP-51-CR-00080-22-2012 appears at **APPENDIX-B** to the petition and is unpublished.

JURISDICTION

The date on which the highest court (Supreme Court of Pennsylvania denying Petition for Allowance of Appeal) decided my case was September 04, 2019. A copy of that decision appears at **APPENDIX-E**. A timely petition for rehearing was thereafter denied on the following date: October 9, 2019, and a copy of the order denying rehearing appears at **APPENDIX-F**. The jurisdiction of this Court is invoked under 28 U.S.C.A § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. *U.S. Const. Fifth Amendment*

> *"Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."*

2. *U.S. Const. Sixth Amendment*

> *"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."*

3. *U.S. Const. Fourteenth Amendment, Section 1*

> *"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 laws."*

4. *Pa. Const. Art I § 9*

> *"In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself."*

5. *Pa. Const. Art V § 9*

"There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law."

6. *Pa.R.A.P.1925.* See **APPENDIX-G**

7. *Pa.R.Crim.P.121.* See **APPENDIX-G**

8. *Phila. M.C.R. Crim. P. 850 & 860. See* ***APPENDIX-G***

9. *18 Pa.C.S.A. § 110(1)(ii).* See **APPENDIX-G**

STATEMENT OF THE CASE

This case is about State forfeiting *pro se* criminal appellant's constitutional right to appeal by waving all issues (including nonwaivable double jeopardy[1] and illegal sentence claims), and by its implication further forfeited statutory right relief under *Post-Conviction Relief Act* (*42* Pa.C.S.A § 9701 et seq) and *AEDPA* (*28 U.S.C.A § 2254*), because he filed lengthy statement of errors complained on appeal and brief, while state defaulted in appointing requested "standby counsel" to assist him in the process of winnowing out weaker arguments on appeal and declined to reappointing counsel after *Faretta* waiver, where *pro se* criminal appellant lacked appellate advocacy and concise writing skills.

1) Violation of U.S. Const. Fifth Amendment's Double Jeopardy Clause, Blockburger v. United States and Ashe v. Swenson:

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1 Commonwealth prosecuted Petitioner in four successive prosecutions - (1) *Commonwealth v. Vurimindi,* No: CR-10-09-15-9559, Philadelphia Municipal Court, ("***Case-1***") for Harassment (*18 Pa.C.S.A § 2709(a)(4))* and Stalking(*18 Pa.C.S.A § 2709.1(a)(1))*; (2) *Commonwealth v. Vurimindi,* No: MC-51-CR-9000095-2011, Philadelphia Municipal Court, ("***Case-2***") for Harassment (*§ 2709(a)(4))* and Stalking(*§ 2709.1(a)(1))*; (3) *Commonwealth v. Vurimindi*, No: MC-51-CR-0005022-2012, Philadelphia Municipal Court, ("***Case-3***") for Disorderly conduct (*18 Pa.C.S.A § 5503(a)(4))*; and (4) *Commonwealth v. Vurimindi*, No: CP-51-CR-00080-22-2012, Court of Common Pleas, Philadelphia, ("***Case-4***") for Stalking (*§ 2709.1(a)(1))* and Disorderly conduct (*§ 5503(a)(4))* - in which *Case-1* terminated in Petitioner's favor, and *Case-2* was withdrawn, and *Case-3* is merged with *Case-4*, resulted in Petitioner's conviction for two counts of stalking and one count of disorderly conduct under *§ 2709.1(a)(1)* and *§ 5503(a)(4)*, respectively.

A) Case-1 Terminated in Petitioner's Favor:

Petitioner Vamsidhar Vurimindi, ("Petitioner"), Allison Borowski, ("Borowski") and Rajani Pattinson, ("Pattinson") are immediate neighbors in a Condominium. Petitioner's relations with neighbors strained, after he filed noise complaints against them;[2] and Petitioner corresponded with Borowski to ameliorate escalating hostilities; and when he failed, a peephole security-camera was installed to monitor common corridor in-front of Petitioner, Borowski and Pattinson's condos to deter and capture neighbors criminal behavior. On September 05, 2010, Borowski filed private criminal complaint before Philadelphia District Attorney accusing Petitioner harassing and stalking based upon Petitioner's innocuous communications (written and verbal) with her and third parties (Pattinson, Nicholas Palmer, Anthony Vizzachero and others) and peephole security-camera. On September 15, 2010, Commonwealth indicted Petitioner under *18 Pa.C.S.A § 2709* (Harassment) and *18 Pa.C.S.A § 2709.1* (Stalking) statues in *Case-1*. (See **APPENDIX-H**, pp.203-204).[3] On October 18, 2010, Philadelphia Municipal Court

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2 Strained relations refers to conduct engaged by Borowski et al, including but not limited to eavesdropping across party-wall, intercepting text-messages, searching trash bags, hijacking USPS Mail and read without consent, make disappear delivered parcels, directing domestic dogs defecate on delivered newspapers, playing loud music, slamming doors, angry stares, verbal & physical assaults, and filing false police complaints.

3 The issue in Case-1 is: Whether Petitioner's communications (verbal & written) with Borowski and third-parties (Pattinson, Nicholas Palmer, Anthony Vizzachero and others), and his conduct of installation of peephole security-camera, knocking doors, sending flowers & gifts, alleged attempt to enter into Borowski's condo and mouth battle is committed with an intention to annoy, harass, cause substantial emotional

arbitrated *Case-1* under *Phila. M.C.R. Crim. P. 850(A)(2)*,[4] and dismissed harassment and stalking charges;[5] and issued mutual stay-away order between Petitioner and Borowski. (*Id.* pp.208-211).[6] Therefore, Petitioner had a legitimate expectation in the finality of the issues or claims decided by the arbitrator on October 18, 2010 in *Case-1*.

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distress or cause reasonable fear of bodily injury upon Borowski?

4 On October 18, 2010, Borowski elected to arbitrate *Case-1* under *Rule 850(A)(2) in a forum non conveniens* to Petitioner; and Municipal Court railroaded Petitioner's demand for trial under *Rule 850(A)(3)* and with threat of arrest compelled him to participate in arbitration. On October 18, 2010, Petitioner and Borowski signed arbitration agreement and agreed that the decision of the arbitrator shall have the same binding force as a Court Order and there is no appeal from the arbitrators order. *Id.* pp.229-232).

5 On October 18, 2010, arbitrator concluded that Petitioner did not communicated or engaged in any conduct with intent to annoy, harass, cause substantial emotional distress or cause reasonable fear of bodily injury upon Borowski. Therefore, re-prosecution for the conduct that formed basis for *Case-1* to re-establish that Petitioner's intent to annoy, harass, cause substantial emotional distress or cause reasonable fear of bodily injury upon Borowski is barred by *Fifth Amendment's Double Jeopardy Clause, Blockburger v. United States,* 284 U.S. 299 (1932), and *Ashe v. Swenson,*397 U.S. 436 (1970).

6 On October 18, 2010, arbitrator permitted Petitioner to continue use security-camera and proceed civilly against Borowski for abuse of process and related cause of actions. (*Id.* pp.229-232). Therefore, re-prosecution for Petitioner's conduct of installing security-camera and engaging in pre-suit investigation, filing & serving civil complaint, serving subpoenas - to establish that Petitioner's intent to annoy, harass, cause substantial emotional distress or cause reasonable fear of bodily injury upon Borowski or Pattinson is barred by *Fifth Amendment's Double Jeopardy Clause* and

B) Subsequent Prosecution to Re-litigate Issues and Claims Resolved in Petitioner's Favor in Case-1:

On January 18, 2011, Petitioner filed civil complaint - *Vurimindi v. Borowski et al,* No: 110102212, Court of Common Pleas, Philadelphia, and served upon Borowski and Pattinson et al. Immediately, Borowski et al enter into unlawful agreement to file police complaints against Petitioner "until police lock-him-up", (*Id.* pp.267-268) and within hours, Borowski and Pattinson begins to file false police complaints. (*Id.* pp.269-282). On March 30, 2011, Borowski filed complaint for violation of stay-away order, (*Id.* pp.212-218), and on 04-11-2011, Commonwealth commenced *Case-2*, (*Id.* pp.219-224), to determine alleged violation of mutual stay-away order under *Phila. M.C.R. Crim. P. 860,* but never determined alleged violations. (Perhaps Commonwealth was unable to establish Petitioner's intent to disobey or resist lawful mandate of court).[7]

On July 09, 2012, (at preliminary hearing), Commonwealth, withdraw Borowski's March 30, 2011, private criminal complaint for violation of stay-away order, which is the

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*Ashe v. Swenson,*397 U.S. 436 (1970).

7 In April 2012, Commonwealth entered into agreement to *nolle prosequi Case-2* and *Case-3*, in-exchange for Petitioner selling his real-estate properties and move-out of Condominium. Petitioner met his end of bargain by entering into distress sale agreements. But, Commonwealth unilaterally rescind agreement, because on May 06, 2012, Petitioner filed his opposition to Borowski's preliminary objections in *Vurimindi v. Borowski, et al* where withdrawing civil claim is not part of agreement to *nolle prosequi*; and retaliated Petitioner by amending charges on June 13, 2012 to bring additional and more serious charges based upon Pattinson (anew complaining witness) allegations that state knew during prosecution of *Case-1*. (*Id.* pp.250-269 about agreement to *nolle prosequi Case-2* and *Case-3*).

basis for *Case-2*, and commenced new criminal prosecution in *Case-4*,[8] to prosecute Petitioner allegedly based upon temporally distinct conduct that formed or could have formed basis for *Case-1*, and introduced Borowski and Pattinson as complaining witnesses to bring two counts of indictment under *18 Pa.C.S.A § 2709.1(a)(1)* (Stalking) statue; and over Petitioner's objections, elicited Borowski and Pattinson testimony about allegations that formed basis or could have formed the basis for *Case-1* to establish prima facie case in *Case-4*.

C) Double Jeopardy Clause Bar Guilty Verdict and Sentence in Case-4:

On February 07, 2014, (at trial)[9] Commonwealth again elicited Borowski,

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8 *Case-3*, arise out-of Borowski's February 04, 2012 complaint under *18 Pa.C.S.A § 5503(a)(4)* (Disorderly Conduct) is also merged with *Case-4*.

9 At trial after complaining witness sworn in, trila-court and Commonwealth together ambushed Petitioner by constructively amending August 17, 2012, criminal information of two counts stalking under *18 Pa.C.S.A. § 2709.1(a)(1)*, to include both *18 Pa.C.S.A. § 2709.1(a)(1)* and *18 Pa.C.S.A. § 2709.1(a)(2)*, in each count of stalking, stating *§ 2709.1(a)(2)* is more broader than *§ 2709.1(a)(1)* as follows:

THE COURT:	Sequester witnesses.
MR. ROUSE:	They are sequestered.
THE CRIER:	State your full name for the record
THE WITNESS:	Allison Borowski. Witness, Sworn.
	DIRECT EXAMINATION
BY MR. ROUSE:	
	Q. Fair to say you live out of state now?
	A. That's Correct.
THE COURT:	Are we good with bill of information?
MR. ROUSE:	They have been amended several times. Let me put it on record. Way back in MC, Mr. Diamondstein agreed we were going to do this as one transcript essentially. It is two counts of stalking, harassment. One applies to Ms. Borowski. One applies to Rejani Pattinson. She is also here, she'll be testifying. She's the other

Pattinson, Nicholas Palmer, and Anthony Vizzachero's testimony about allegations that formed basis or could have formed the basis for *Case-1*, including but not limited to Petitioner's communications (verbal & written) with Borowski and third-parties (Pattinson, Nicholas Palmer, Anthony Vizzachero and others), and his conduct of installation of security-camera, knocking doors, sending flowers & gifts and mouth battle

	complainant in this. And those are the charges.
MR. GAMBONE:	That's Correct, Your Honor.
THE COURT:	2709.1 subsection A1. Because it's very specific and I want to make sure I'm looking at the right stats.
MR. ROUSE:	Your Honor, I believe it should be A1. The only difference is A1 includes about following another person without permission. Frankly, I think A1 and A2, they both apply in this case. However, A2 is more broad. This isn't specifically related.
THE COURT:	So you want to with 1 and 2?
MR. ROUSE:	Yes. Obviously, it's one count but it would be 1 and 2. They are M1s. (See APPENDIX-C, pp.4-5).
	.....
THE COURT:	Mr. Vurimindi, I find you guilty hof four charges that the Commonwealth has charged against beyond reasonable doubt. I don't remember what the bail situation is, but but the bail is revoked. We are going to order a mental health evaluation. Order PSI. What else can we order? I want to make sure I have a full.
Mr. ROUSE:	I believe that it. In addition to that, I have reports I can get you, backdated reports.
THE COURT:	Fair enough.
MR. ROUSE:	No disorderly conduct, I agree to that. (*Id.*, pp.100).

This constructive amendment is made to convict Petitioner in *Case-4* for the conduct that formed basis or could have formed the basis for *Case-1*. Furthermore, the amendment changed the description of the charges from repeatedly commits acts to repeatedly communicates to another person under circumstances which demonstrate or communicate & repeatedly commits acts, and added new facts previously unknown to Petitioner which were not developed during the preliminary hearing on July 09, 2012. See Motion for New Trial in *Case-4* for list of impressible variances between preliminary hearing (pleading) and trial testimony (proofs) and new facts that were added first-time at trial. This impermissible variance between

and reintroduced Petitioner's written communications as *Commonwealth Exhibits – C1 to C23* from *Case-1* in *Case-4*, to re-establish that Petitioner's intent to cause substantial emotional distress or cause reasonable fear of bodily injury upon Borowski; and establish Petitioner's intent to cause substantial emotional distress or cause reasonable fear of bodily injury upon Pattinson. (See **APPENDIX-C**, pp.05-33; pp.51-56; pp.59-60; pp.61-72 for the testimony that formed basis for *Case-1*). At trial, at no time, Commonwealth told trial-court that it is eliciting the allegations (producing evidence) that formed basis or could have formed the basis for *Case-1* as evidence of prior bad acts as necessary to fulfill the course of conduct element of a stalking statute (had this occurred would have been a double jeopardy violation), or for identification purposes allowed by this Court in *Dowling v. United States*, 493 U.S. 342 (1990)(allowing admittance of evidence of other crimes, wrongs, or acts against accused for purposes other than character evidence under Fed.R.Evid.404(b)).

At trial, trial-court heard merits of *Case-1* as *de novo,* in violation of *Phila. M.C.R. Crim. Rule. 860*[10], *U.S. Const. Fifth Amendment's Double Jeopardy Clause,*

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pleading and proof had destroyed Petitioner's substantial right to be tried only on charges presented in the August 17, 2012 amended information, because the constructive amendment from much narrower scope to more broad scope for two counts stalking, deprived Petitioner's basic right to notice of charges that he must defend, is far too serious to be treated as nothing more than a variance and then dismissed as harmless error. In addition, the amendment at trial, required change in defense strategy and Petitioner do not have time to prepare.

10 Phila. M.C.R. Crim. P 860 *states that,* "Parties who have agreed to submit their case to arbitration shall be bound to the award of the Arbitrator. Upon petition, a Municipal Court judge may conduct contempt proceedings to compel enforcement of the

Blockburger v. United States and *Ashe v. Swenson* and considered facts (evidence) that formed basis for *Case-1* to evaluate multiple courses of conducts corresponding to two counts of stalking charges in *Case-4,* and redetermined issues and claims terminated in Petitioner's favor in *Case-1.*

D) Trial-court Opinion:

Trial-court detailed facts that formed or could have formed basis for *Case-1* (which terminated in Petitioner's favor) to justify guilty verdict for two counts of stalking and imposition of excessive sentence in *Case-4,* in which trial-court redetermined issues and claims resolved in Petitioner's favor in *Case-1.* (See **APPENDIX-B**). Trial-court is silent about October 18, 2010 arbitration in *Case-1*, which terminated in Petitioner's favor, (See **APPENDIX-H**, pp.171-173 for list of favorable facts suppressed by trial-court to prejudice Petitioner); and made-up anew fact to defeat issue/claim preclusion by stating, "*Ms.Pattinson then noticed that Appellant had a camera installed in his peephole and a camera in the hallway, turned towards their doors,*" (See **APPENDIX-B**, pp.09), where Pattinson did not testify "*and a camera in the hallway, turned towards their doors.*" (See **APPENDIX-C**, pp.69-70).

E) Superior Court Opinion:

Superior Court in its opinion stated that:

> *"The first victim testified about all of Vurimindi's actions, the original incidents starting in 2010 and the later incident resulting in the new charges in February 2012. N.T.2/7/14 at 41. The date of the offenses for which he was convicted is listed on the trial disposition form as February 4, 2012. Thus contrary to Vurimindi's suggestion, the trial in this matter was not held and he was not convicted on the same actions complained in municipal court, but rather on new charges resulting from his actions after the arbitration. As such, there was no*

Arbitrators award. The court shall not hear the merits of the case *de novo*."

violation of Phila. M.C.R. Crim. P. 860 or a double jeopardy violation regarding the earlier 2010 charges", (See **APPENDIX-A**, pp.2, f.n.3), and waived this claim. Id., pp.22-23.

F) Supreme Court Denied Petition for Allowance of Appeal:

In Petition for Allowance of Appeal, Petitioner raised a question - Whether under pretense of successive prosecution upon temporally distinct conduct, Commonwealth compounding charges and evidence by re-prosecuting Appellant for same conduct that has been or could have been prosecuted in prior prosecutions:(1) in Municipal Court under *Phila. M.C.R. Crim. P. 850(A)(2);* and (2) for violation of stay-away order, violate *18 Pa.C.S.A §§ 109(1)* and *110(1)(ii)*, *Double Jeopardy Clause*, and *Phila. M.C.R. Crim. P. 860*? (See **APPENDIX**-I).

In his petition, Petitioner asserted that Superior Court made monumental error, because double jeopardy analysis do not depend upon date listed in disposition form, but depend upon whether prior and subsequent prosecutions are for same offense and issues or claims in prior prosecution terminated in accused's favor; and a claim of double jeopardy is nonwaivable.[11] A comparison of Notes of Trial Testimony in *Case-4*, (See **APPENDIX-C**, pp.05-33; pp.51-56; pp.59-60; pp.61-72 for the testimony that formed basis for *Case-1*), and *Case-1* artifacts (See Infra), unequivocally establish that Commonwealth burdened Petitioner to defend against the conduct that formed basis of *Case-1* (terminated in Petitioner's favor) by re-prosecuting him in *Case-4 and* obtained

11 This Court held that there is no jurisdiction to impose second sentence in violation of *U.S. Const. Fifth Amendment*'s Double Jeopardy Clause, *Ex parte Lange*, 85 U.S. 163 (1874), and that this jurisdictional challenge cannot be waived, and can be raised anytime. *Ex parte Siebold*, 100 U.S. 371 (1880).

conviction for the same conduct (issues and claims) that formed basis of *Case-1.* Significantly, on February 07, 2014, trial-court redetermined issues and claims that resolved in Petitioner's favor on October 18, 2010 in *Case-1* and used *Case-1* facts to found Petitioner guilty of two counts of stalking and to impose grossly excessive sentence of 120 months by deviating forty-times higher than the standard range sentence of three months probation. Furthermore, trial-court opinion (See APPENDIX-B), unequivocally establish that it considered the conduct, issues and claims that formed or could have formed basis for *Case-1* (terminated in Petitioner's favor) to evaluate multiple course of conduct elements corresponding to two counts of stalking charges in *Case-4 and* found Petitioner is guilty for two counts of stalking in *Case-4,* which is an evil that *Fifth Amendment*'s *Double Jeopardy Clause* is designed to protect accused from being twice put in jeopardy for punishment.

Furthermore, Superior Court ignored violation of *18 Pa.C.S.A. § 110(1)(ii)*, (compulsory joinder rule), where all four factors of Pennsylvania compulsory joinder rule bar subsequent prosecution in *Case-4*, because: (1) Petitioner was acquitted for harassment and stalking in *Case-1*; (2) *Case-4* is based on the same criminal conduct or arose from the same criminal episode as the *Case-1*; (3) On October 18, 2010, Commonwealth knew existence of additional complaining witness (Rajani Pattinson) and witnesses' (Nicholas Palmer, and Anthony Vizzachero) accusations and had full opportunity to prosecute in *Case-1*, but did not prosecuted; and (4) *Case-1* and *Case-4* are within same jurisdiction. See **APPENDIX-G** for *18 Pa.C.S.A. § 110(1)(ii)*, (compulsory joinder rule). Nevertheless, Supreme Court of Pennsylvania did not grant

the petition and allowed constitutional injury go uncorrected. (See **APPENDIX-E** & **F**).

2) Under Doctrine of Unconstitutional Conditions, Forfeiting Petitioner's Constitutional Right to Appeal Is Unconstitutional:

A) State Refused to Appoint Standby Counsel to Assist Petitioner in the Process of Winnowing Out Weaker Arguments:

Petitioner (like many *pro se* appellants), is not an attorney, lack appellate advocacy, concise writing skills and mental capacity to prioritize errors, through which he can identify allegations of errors in clear and concise manner. Trial-court knew Petitioner's conviction is riddled with numerous due process and fair trial right violations, because earlier Petitioner filed 789 page *pro se* Memorandum of Law in Support of *PCRA* Petition, raising every error as it relates to every act of state, defense counsels and complaining witnesses, that cut against him or appears to be deviating from state and federal constitution, Pennsylvania Rules of Evidence and Criminal Procedure, which reflects Petitioner's lack of experience and his honest belief that to avoid waiver, he must raise all errors under *PCRA* and *AEDPA*. Therefore, trial-court knew Petitioner do not know that listing every colorable issue in *Rule 1925(b)* statement, runs the risk of burying good issues and he needs assistance of "standby counsel" to assist him in the "process of winnowing" out weaker arguments on appeal. Importantly, trial-court knew that, Petitioner suffered from debilitating paranoia, which was amplified by trial-court's disparate treatment of Petitioner, caused feelings of fear, resentment, hostility, and mistrust of trial-court and its appointed counsel destroying his autonomy.

Naturally, on June 27, 2017 (immediately after trial-court restored his direct appeal right), Petitioner requested trial-court to appoint "standby counsel" to assist him

in preparation of *Rule 1925(b)* statement. But, trial-court denied the request stating appointment of "standby counsel" constitute "hybrid representation", where in *Ellis* Pennsylvania Supreme Court approved appointment of "standby counsel" to give legal advice to defendant. On July 25, 2017, Petitioner voluntarily filed 53 pages *pro se Rule 1925(b)* statement (containing 132 numbered errors) and supporting 789 page Memorandum of Law, which again reflects his lack of appellate advocacy skills and honest belief that he must raise every error, to avoid waiver under *Rule 1925*, *PCRA* and *AEDPA*.

On August 30, 2017, trial-court conducted *Grazier/Faretta* waiver colloquy, and told Petitioner that none of the errors listed in his *pro se Rule 1925(b)* statement warrants relief. Immediately, Petitioner renewed his request to appoint "standby counsel" to assist him in the "process of winnowing" out weaker arguments on appeal. In response, trial-court provided binary option that Petitioner can either proceed *pro se* without "standby counsel" or forfeit his right to proceed pro se and accept court appointed counsel. On August 30, 2017, Petitioner elected to proceed *pro se*, and trial-court abused its discretion and denied to appoint "standby counsel" and directed Petitioner to file concise *Rule 1925(b)* statement, despite trial-court knew that Petitioner lack mental capacity to engage in the "process of winnowing" out weaker arguments on appeal and focusing on those more likely to prevail.[12]

12 State did not provide copies of June 27, 2017 and August 30, 2017 Notes of Testimony to attach with this Petition.

B) ***Trial-court Advocating to Quash Appeal and Refusing to Accept Amended Rule 1925(b) Statement is Unconstitutional:***

On September 10, 2017, Petitioner filed supplemental *Rule 1925(b)* statement and unable to file concise *Rule 1925(b)* statement. Immediately, trial-court advocated to quash appeal. (See **APPENDIX-B**). Immediately, Petitioner amended *Rule 1925(b)* statement by listing claims appropriate fr direct appeal only and re-filed concise *Rule 1925(b)* statement, but trial-court did not accept amended *Rule 1925(b)* statement, despite permitting Petitioner to file a curative amendment neither inequitable or futile; and in *Tucker v. Tours*, 977 A.2d 1170 (Pa. 2009), Pennsylvania Supreme Court held that, when trial-court confronted with a non-concise *Rule 1925(b)* statement, a trial-court has the discretion to sua sponte direct an appellant to file a second *Rule 1925(b)* statement. *Id.*

C) ***Denying to Appoint Counsel to File Amended Brief on Appeal is Unconstitutional:***

On April 25, 2018, with great difficulty, Petitioner condensed 758 pages *pro se* Memorandum of Law filed in support of *Rule 1925(b)* Statement into 250 pages and filed Opening Brief raising 192 sub-issues in Superior Court of Pennsylvania. Immediately, Superior Court strike the brief and asked to re-file conforming brief. On July 30, 2018, Petitioner refiled amended brief by raising nine(9) questions appropriate for direct appeal and divided argument section into nine(9) parts, corresponding to statement of questions – and further divided argument section with separate sub-headings for fifty-one(51) sub-issues, developing concise and coherent arguments with synopsis of evidence, and references to trial-court record, (See **APPENDIX-H**, pp.74-161), duly supported by case laws, Statutes, Rules of Evidence, Rules of Criminal and

Appellate Procedures. (Id. pp.23-53). In all respects, except for length, Petitioner's brief substantially comply with Pennsylvania Rules of Appellate Procedure. However, Petitioner expressed his inability to further prioritize errors and requested Court to appoint counsel to file conforming brief. Even so, Superior Court without appointing counsel to file conforming brief, accepted 108 page brief. Later on, Commonwealth filed response and asked Court to quash appeal. In response, Petitioner filed reply, (Id. pp.164-311) and emphasized that 108 page brief is the product of his inability to further prioritize errors and write concise documents, and requested the Court to appoint counsel to file conforming brief. (Id. pp.197-198). But, on December 14, 2018, Superior Court dismissed the appeal, stating, "***we already struck his first non-conforming brief and gave him second opportunity to file conforming brief", and "he cannot ask for another chance to have new counsel appointed at this late stage to file a third brief...and concluded that the only appropriate remedy is waiver of all issues"*** (See **APPENDIX-A**, pp.22-23), despite counseled amended brief would have cured any and all purported defects.

D) Denying to Appoint Counsel to File Petition for Allowance of Appeal in Supreme Court of Pennsylvania is Unconstitutional:

Petitioner filed Application to Appoint Counsel to file Petition for Allowance of Appeal in Supreme Court of Pennsylvania,[13] (See **APPENDIX-K**), because he was

13 In Pennsylvania, there is a rule-based right to counsel on discretionary direct appeals. *Commonwealth v. Liebel*, 825 A.2d 630, 633 (Pa. 2003)(citing *Pa.R.Crim.P.122*). Accord *Ross v. Moffitt*, 417 U.S. 600 (1974)(We do not mean by this opinion to in any way discourage those States which have, as a matter of legislative choice, made counsel available to convicted defendants at all stages of

unsuccessful in self-representation on appeal and Superior Court refused to appoint counsel to file amended brief. Immediately, Commonwealth opposed appointment of counsel after *Faretta/Grazier* waiver. At impending expiration of thirty(30) days time to file Petition for Allowance of Appeal, Petitioner mailed his *pro se* Petition for Allowance of Appeal to Supreme Court of Pennsylvania, and immediately, without opinion, Supreme Court of Pennsylvania denied to appoint counsel, where a counseled petition would have resulted in positive outcome.[14]

E) Right to Re-appoint Counsel after Grazier/Faretta Waiver:

Since trial-court's *Grazier/Faretta* inquiry on August 30, 2017, the circumstances have sufficiently changed and can no longer Petitioner be considered to have knowingly and intelligently waived the right to counsel, because he expressly asked appellate courts to appoint counsel to file amended brief, because he alone cannot engage in the "process of winnowing" out weaker arguments on appeal. Even so, appellate courts did not conduct renewed *Grazier/Faretta* inquiry to reappoint counsel to file conforming *Rule 1925(b)* statement and brief in Superior Court and Petition for Allowance of Appeal in Supreme Court, where counseled amended brief would cure purported defects. Furthermore, appellate court insisted Petitioner to continue representing himself out of some punitive notion that he waived his right to appellate counsel, and should reap the consequences. This refusal deprived Petitioner of his constitutional right to be

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judicial review but the Fourteenth Amendment leaves these choices to the State. *Ross*, 417 U.S. at 618).

14 Supreme Court of Pennsylvania returned Application to Appoint Counsel to file this Petition for Writ of Certiorari. (See **APPENDIX-L**).

represented during his direct appeal, which is protected by Due Process Clause. *Evitts*, 469 U.S. At 394-396.

In *Marshall v. Rodgers*, 569 U.S. 58 (2013), this Court suggested that the claim that state court violated *U.S. Const. Sixth Amendment's* right to counsel by declining to appoint attorney to assist in filing new-trial motion, after three prior waivers of right, if presented on direct review, is substantial. Including, Ninth Circuit Court, five federal circuits have interpreted this Court's *Sixth Amendment* jurisprudence "to mean that the right to counsel is so integral to the fair administration of our justice system that a defendant who has waived his right to counsel may nonetheless re-assert" it; no circuit court has ruled to the contrary. See, e.g., *United States v. Taylor*, 933 F.2d 307, 311 (5th Cir. 1991); *United States v. Fazzini*, 871 F.2d 635, 643 (7th Cir. 1989); *United States v. Holmen*, 586 F.2d 322, 324 (4th Cir. 1978); *Davis v. United States*, 226 F.2d 834, 840 (8th Cir. 1955).

F) ***Petitioner's Conduct Is Not Inconsistent With Assertion of Right to Appeal:***

In Pennsylvania an accused has constitutional right to a direct appeal, right to counsel on direct appeal and appellate procedures are designed to review the validity of that conviction. Naturally, when Petitioner realized that he cannot prosecute appeal as *pro se*, he requested to appoint "standby counsel" or "counsel", which is reasonable under the circumstances. Moreover, Petitioner's lengthy 1925(b) statement and brief is the result of his lack of mental capacity to engage in the "process of winnowing" out weaker arguments on appeal. Consequently, his inability to confirm to Rules of Appellate Procedures is involuntary and unintentional. Therefore, appellate and trial-

courts could have averted this constitutional injury by simply appointing "standby counsel" or terminate Petitioner's self-representation and allow "standby counsel" to take-over appellate process of filing *Rule 1925(b)* statement and briefs, instead of raising procedural impediments to disposition on the merits, and disposes of the case on that ground and forfeiting Petitioner's constitutional right to appellate review.

Waiver is the intentional relinquishment or abandonment of a known right. *Kontrick v. Ryan*, 540 U.S. 443 (2004) (quoting *United States v. Olano*, 507 U.S. 725 (1993)). Courts indulge every reasonable presumption against waiver of fundamental constitutional rights. *Aetna Ins. Co. v. Kennedy ex rel. Bogash*, 301 U.S. 389 (1937). See also *Ohio Bell Telephone Co. v. Public Util. Comm'n of Ohio*, 301 U.S. 292 (1937) (we "do not presume acquiescence in the loss of fundamental rights"). This Court has found "waiver by conduct" only where a defendant has engaged in "conduct inconsistent with the assertion of the right." *Pierce Oil Corp. v. Phoenix Refining Co.*, 259 U.S. 125 (1922). See e.g., *Illinois v. Allen*, 397 U.S. 337 (1970)(A defendant who is disruptive in courtroom waives his right to be present); *Taylor v. United States*, 414 U.S. 17 (1973)(A defendant who "voluntarily absents himself" from trial waives his *Sixth Amendment* right to be present); *Davis v. Washington*, 547 U.S. 813 (2006)(A defendant who "obtains the absence of a witness by wrongdoing" may "forfeit" or "waive" his Sixth Amendment right to confront the absent witness). Where, however, a defendant takes no action inconsistent with the assertion of a right, the defendant will not be found to have waived the right.

G) ***Under Doctrine of Unconstitutional Conditions, Forfeiting Petitioner's Right to Appeal Is Unconstitutional:***

Under Doctrine of Unconstitutional Conditions, state forfeiting Petitioner's constitutional right to appeal, without appointing "standby counsel" to assist him in the "process of winnowing" out weaker arguments to coerce Petitioner into giving-up his constitutional right to proceed *pro se* or without accepting amended Rule 1925(b) statement or without allowing Petitioner to file amended brief or without appointing counsel to file amended brief, is unconstitutional. In analogous circumstances, this Court held that "the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution." *United States v. Chicago,* 282 U.S. 311 (1931); See *Frost Trucking Co. v. Railroad Comm'n,* 271 U.S. 583 (1926)(This Court emphasized that, "If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence"). This unconstitutional conditions doctrine applies even when the government threatens to withhold a gratuitous benefit. See *United States v. American Library Assn. Inc.,* 539 U.S. 194 (2003); *Koontz v. St. Johns River Water Mgmt. Dist.,* 570 U.S. 595 (2013).

H) ***Trial-court Opinion:***

Trial-court opinioned that Petitioner filed lengthy Rule 1925(b) Statement in bad faith, and therefore he should be deprived of his constitutional right to appeal. (See **APPENDIX-B**).

I) ***Superior Court Opinion:***

Superior Court opinioned that Petitioner should be deprived of his constitutional right to appeal stating:

> *In short, Vurimindi choose to represent himself in this matter. He chose to risk filing voluminous documents and addressing inappropriate issues despite being warned multiple times against such actions. He chose not to use the assistance of counsel in preparing the documents on this appeal, i.e. his 1925(b) statements, his appellate briefs, and his numerous so-called "emergency" applications for relief. He cannot now complaint about the result or ask for another chance to have new counsel appointed at this late state to file third brief. See Reply Brief at 27-28. This is not a complex case where lengthy list of issues is warranted in good faith. This is a case where appellant deliberately chose to overwhelm the court system. Instead of focusing on a few key issues and filing an appropriate 1925(b) statement with a brief that complied with Chapter 21, Vurimindi raised a multitude of issues too numerous and too remote for us to address them all. A criminal defendant is entitled to a fair trial, not a perfect one. Delaware v. Van Arsdall, 475 U.S. 673, 681 (1986); Commonwealth v. Wright, 961 A.2d 119 (Pa. 2008). By ignoring the rules, and claiming errors at every turn, Vurimindi has thwarted appellate review. As such, we conclude that the only appropriate remedy is waiver of all issues."* (See **APPENDIX-A**).

J) ***Supreme Court Denied Petition for Allowance of Appeal:***

In Petition for Allowance of Appeal, Petitioner raised questions - Whether Superior Court dismissing appeal upon flawed belief that fifty-one errors can't occur, while Commonwealth across $8^1/_2$ years wearing-down Appellant through series of mini-trials and trial. And *Commonwealth v. Ellis*, 626 A.2d 1137 (Pa. 1993) and *Tucker v. Tours*, 977 A.2d 1170 (Pa. 2009) respectively eliminated Trial Court authority to appoint advisory counsel to prepare and accept Amended *Pa.R.A.P.1925(b)* Statement, violate *Pa.R.A.P.105(a)*, *Pa.R.A.P.2101* and *Eiser v. Brown & Williamson Tobacco Corp.*, 938 A.2d 417 (Pa. 2007)? AND Whether Superior Court without vacating sentence and remanded for proceedings of record, and waiving discretionary aspects and nonwaivable claims of illegal sentence, without benefit of sentence hearing transcript

(unavailable through no fault of Appellant), violate *Commonwealth v. Fields*, 387 A.2d 83 (Pa. 1978) and *Commonwealth v. Shields*, 383 A.2d 844 (Pa. 1978)? AND Whether Superior Court dismissing appeal based upon hasty conclusion, that Appellant's multiple applications to secure relevant transcripts and trial court record is an obstruction of meaningful appellate review, was wrong as a matter of law? (See **APPENDIX-I**);

In his petition, Petitioner asserted that, Superior Court unconstitutionally deprived his constitutional right to appeal, because trial-court withheld appointment of "standby counsel" to assist him in the "process of winnowing" out weaker arguments on appeal, and made right to proceed *pro se* on appeal costly, by requiring him to make difficult choice, to give up one constitutional right to secure another, by forfeiting assistance of counsel - to discourage Petitioner from exercising his constitutional right to proceed *pro se*. Additionally asserted that, both Superior Court and trial-court failed to conduct renewed Grazier/Faretta inquiry to reappoint counsel to file conforming *Rule 1925(b)* statement and brief, despite Petitioner expressly asked to appoint appellate counsel to file amended brief, and he no longer be considered to have knowingly and intelligently waived the right to appellate counsel. Additionally asserted that, counseled amended brief would have cured any and all purported defects, and Superior Court disregarded United States Supreme Court's directive to liberally construe *pro se* pleadings, and freely grant leave to amend pleadings, when justice so requires and ensure an opportunity for *pro se* to test his claim on its merits. See *Haines v. Kerner*, 404 U.S. 519 (1972)(per curiam); *Foman v. Davis*, 371 U.S 178 (1962)(citing *Conley v. Gibson*, 355 U.S. 41 (1957)). Nevertheless, on September 4, 2019 and October 9, 2019 respectively,

Supreme Court of Pennsylvania, without opinion denied Petition for Allowance of Appeal and Application for Reconsideration. (See **APPENDIX-E** & **F**).

REASONS FOR GRANTING THE PETITION

1) *Petitioner's Conviction Violate U.S. Const. Fifth Amendment's Double Jeopardy Clause, Blockburger v. United States and Ashe v. Swenson:*

A) *Double Jeopardy Jurisprudence:*

Fifth Amendment's Double Jeopardy clause applies where there is a legitimate expectation of finality and defendant has been acquitted of the charges against him. In *North Carolina v. Pearce*, 395 U.S. 711 (1969), this Court has recognized three constitutional protections under the Double Jeopardy Clause: (1) "it protects against a second prosecution for the same offense after acquittal;" (2) "it protects against a second prosecution for the same offense after conviction;" and, (3) "it protects against multiple punishments for the same offense." Id., 395 U.S. at 717. Under *Blockburger v. United States*, 284 U.S. 299 (1932), to prevent a second trial on a new charge, the defendant must show an identity of statutory elements between the two charges against him; it's not enough that "a substantial overlap exists in the proof offered to establish the crimes." *Iannelli v. United States*, 420 U.S. 770, n. 17 (1975). In *Ashe v. Swenson*, 397 U.S. 436 (1970), this Court improved *Blockburger* and held that, "When an issue of ultimate fact has once been determined by a valid and final judgment of acquittal, it cannot again be litigated in a second trial for a separate offense." *Id.* Nonetheless, this Court in *Currier v. Virginia*, _US_, 138 S. Ct. 2144 (2018) (citing, *Jeffers v. United States*, 432 U.S. 137 (1977) and *United States v. Dinitz*, 424

U.S. 600 (1976)), held that, double jeopardy clause do not a bar re-litigation of issues or evidence, when the defendant elects to have the offenses tried separately and persuades the trial court to honor his election. *Id.*, 138 S. Ct. at 2153. Thus far, this ruling did not alter - *Blockburger v. United States* (same offense), *Ashe v. Swenson* (issue preclusion based on acquittals), and *Brown v. Ohio* (claim preclusion based on conviction of lesser included offense) - time honored laws of double jeopardy jurisprudence, when State unilaterally re-litigate issues or evidence or claims from prior prosecution.

Under *Fifth* Amendment, jeopardy attaches, once defendant put to trial before the trier of facts, *Serfass v. United States*, 420 U.S. 377 (1975), or in a jury trial, when the jury is empaneled and sworn. *Crist v. Bretz*, 437 U.S. 28 (1978). In series of cases before and after *Ashe v. Swenson*, this Court held that *Fifth Amendment's Double Jeopardy Clause* bar retrial of accused after trial-court's either acquit or convict accused.[15]

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15 See *Sealfon v. United States*, 332 U.S. 575 (1948)(Jury's acquittal in the earlier conspiracy trial constituted a determination favorable to the defendant of facts essential to conviction on the substantive offense); *Green v. United States*, 355 U.S. 184 (1957)(Double jeopardy clause bar second trial for the same offense, where jury discharged defendant, without returning any express verdict on that charge and without defendant's consent); *Fong Foo v. United States*, 369 U.S. 141 (1962)(Retrial following a court-decreed acquittal is barred, even if the acquittal is "based upon an egregiously erroneous foundation"); *Downum v. United States*, 372 U.S. 734 (1963)(Double Jeopardy Clause prevented a second prosecution of a defendant whose first trial had ended just after the jury had been sworn and before any testimony had been taken); *Waller v. Florida*, 397 U.S. 387 (1970)(Double

B) ***Stalking and Harassment Is A Nationwide Problem:***

Stalking and harassment is a nationwide problem, in that harassment is lesser included offense of stalking and same conduct which amount to harassment, if committed repeatedly with intent to place victim in reasonable fear of bodily injury or death or cause substantial emotional distress, would rise to the level of stalking.

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jeopardy clause bar state felony charge based on the same acts as the earlier municipal court conviction for the lesser included offenses); *Price v. Georgia*, 398 U.S. 323 (1970)(State retrial for murder, after reversal of conviction on lesser-included offense of voluntary manslaughter was barred by double jeopardy); *Harris v. Washington*, 404 U.S. 55 (1971)(Collateral estoppel in criminal trials was an integral part of the constitutional guaranty against double jeopardy); *Simpson v. Florida*, 403 U.S. 384 (1971)(the court below had erred in rejecting the accused's claim of collateral estoppel and double jeopardy without examining the record of the second trial); *United States v. Jorn*, 400 U.S. 470 (1971)(District Court's dismissal of criminal information on ground of former jeopardy, based on court's earlier discharge of jury and declaration of mistrial, was proper); *Turner v. Arkansas*, 407 U.S. 366 (1972)(State is collaterally estopped from re-litigating those issues already determined by jury in Turner's favor and acquitted him by founding that he is not present at the scene of the murder and robbery); *Breed v. Jones*, 421 U.S. 519 (1975)(Prosecution of the youth in the Superior Court, after the adjudicatory proceeding in the Juvenile Court, violated the double jeopardy clause); *Menna v. New York*, 423 U.S. 61 (1975)(State was precluded by the double jeopardy clause from haling a defendant into court on a charge, federal law required that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty); *United States v. Martin Linen Supply Co.*, 430 U.S. 564 (1977)(Double jeopardy clause barred appeals from valid judgments of acquittal, because judgments of acquittal in case at bar were "acquittals" in substance as well as form); *Brown v. Ohio*, 432 U.S. 161 (1977)(Double jeopardy clause barred

However, stalkers are often acting out delusional personal beliefs and so they lack specific intent to harass, frighten, intimidate, or to cause substantial emotional distress or to cause reasonable fear of bodily injury or death. (See **APPENDIX-H**, pp.288-306 where expert psychologist concurring Court appointed psychiatrist that the crimes Petitioner is charged with is committed as consequence of his paranoia and psychotic

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prosecution and punishment for felony of auto theft following defendant's conviction for misdemeanor of taking or operating same vehicle without owner's consent, where under Ohio law, latter "joyriding" offense was lesser included offense of former offense); *Arizona v. Washington*, 434 U.S. 497 (1978)(Although containing no express finding of manifest necessity by state trial court for its declaring mistrial for defense counsel's improper opening statement, was sufficient to bar double jeopardy plea); *Burks v. United States*, 437 U.S. 1 (1978)(Double jeopardy clause precluded second trial once reviewing court found evidence legally insufficient, and only "just remedy" available in such case was entry of judgment of acquittal); *Sanabria v. United States*, 437 U.S. 54 (1978) (Once defendant acquitted, double jeopardy clause absolute bar to prosecution despite trial court's erroneous rulings); *Illinois v. Vitale*, 447 U.S. 410 (1980)(Double jeopardy clause bar manslaughter prosecution by prior conviction for failure to reduce speed); *Thigpen v. Roberts*, 468 U.S. 27 (1984)(Prosecution of defendant for felony, following invocation of his statutory right to appeal his misdemeanor convictions for trial de novo, held unconstitutional); *Smalis v. Pennsylvania*, 476 U.S. 140 (1986) (State trial judge's ruling on defendant's demurrer holding evidence insufficient to establish factual guilt constitutes an acquittal, and double jeopardy clause bars retrial); *Grady v. Corbin*, 495 U.S. 508 (1990)(Double jeopardy clause bar subsequent New York prosecution for homicide and assault where, to establish essential element of offense, prosecutor will prove conduct constituting previously prosecuted traffic offense); *United States v. Dixon*, 509 U.S. 688 (1993)(Double jeopardy clause bar prosecutions, subsequent to criminal contempt proceedings, for narcotics possession and simple assault, but

thinking which resulted in his lacking the substantial capacity at the time of the incidents, to appreciate the criminality of his conduct and confirm his conduct to the requirements of the law. Yet, state court convicted Petitioner). Across state and federal stalking statutes, there exists differences between subjective and objective consequences of the defendants stalking conduct;[16] however, there is unanimity in requiring proof of repetitive conduct to establish course of conduct element of stalking statute, in which juries need not be unanimously agreed to, as to which acts make up the course of conduct and mentes reae requirement of stalking statutes. In practice the language of stalking statutes leaves to the imaginary powers of victims and state actors to cast wide net to collate and coalesce a series of acts over broad period of time as relevant acts to establish course of conduct element of stalking statutes.[17] Furthermore,

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not for (1) threatening to injure, and (2) assault with intent to kill); *Yeager v. United States*, 557 U.S. 110 (2009)(holding that apparent inconsistency between jury's verdict of acquittal on some counts and its failure to return verdict on other counts did not affect preclusive force of acquittals under double jeopardy clause); *Evans v. Michigan*, 568 U.S. 313 (2013)(Double jeopardy clause barred retrial of accused after trial judge (1) allegedly erroneously held particular item to be element of offense; and (2) granted midtrial directed verdict of acquittal, allegedly because of failure to prove item); *Martinez v. Illinois*, 572 U.S. 833 (2014)(Double jeopardy clause barred retrial of accused after trial judge granted accused's motion for directed verdict after jury was empaneled and sworn).

16 Even so, state and federal stalking statutes uniformly and unconstitutionally permit courts to assess accused liability upon victims subjective reactions or sensibilities.

17 In *United States v. Lee*, 790 F.3d 12 (1st Cir. 2015)(citing United States v. Walker, 665 F.3d 212 (1st Cir. 2011)), in the context of interstate stalking, the Court held that the conduct causing reasonable fear "as a result of" interstate travel must be "viewed

in practice, application of stalking statute sweeps broadly and criminalize speech acts, including the speech acts that were ordinarily protected by *First Amendment*. For example, in the underlying stalking prosecution, Commonwealth criminalized Petitioner's conduct of religious prayers and pre-suit & pre-trial investigations, filing and serving civil complaints and subpoenas, (which is intimately intertwined with right to access courts) and typically afforded *First Amendment* protection. (See **APPENDIX-H**, pp.119-128).[18] As in this case and elsewhere, after initial conviction or acquittal of stalking charge, victims often complain that accused continued stalking behavior, resulting filing new charges, tempting victims and state actors include accused conduct from prior prosecution or the conduct that could have been prosecuted in prior prosecution to establish anew course of conduct element of stalking in anew prosecution for stalking. If victims and state actors could not be able to put together two or more new acts, they resort to establish a course of conduct element by concatenating one new act with prior acts that were prosecuted earlier, creating numerous double jeopardy challenges across states resulted in asymmetrical results.[19] Although, in

in the historical perspective of previous events," and admitting prior prior bad acts between Year 1970 and Year 2012 (approximately over forty years period) as relevant to the reasonableness of the fears of victims. *Id.*

18 In general, when an act is committed, it is either criminal or not; and subsequent act cannot make earlier act criminal, when it is not criminal when that act is done. But, in stalking prosecution, victims and state actors be able to convert non-criminal acts (when they were done) into criminal acts (later when needed), even after a court in prior prosecution held those acts are not criminal.

19 See *Mims v. State*, 816 So. 2d 509, 2001 Ala. Crim. App. LEXIS 61 (Ala. Crim. App. 2001)(The court rejected the appellants double jeopardy argument alleging that the same facts that were supposedly used to prosecute him for prior misdemeanors for harassing his former wife or trespassing upon her premises were subsequently used

Petitioner's case, constitutional guaranty of double jeopardy bar under same offense and collateral estoppel, preclude successive prosecution in *Case-4*, (irrespective of whether the arbitrator considered all relevant evidence in deciding *Case-1*, and irrespective of the good faith of the state in bringing successive prosecution in *Case-4),* Pennsylvania Courts are unwilling to correct violation of *Double Jeopardy Clause,*

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to establish an element of the stalking charge, i.e., that the accused had intentionally and repeatedly followed or harassed the victim and held that the evidence of the appellants prior bad acts even those for which he might have already been prosecuted was properly admitted and was necessary to establish a course of conduct by the appellant);

State v. Jones, 678 So.2d 1336, 1996 Fla. App. LEXIS 7036 (Fla. 5th DCA 1996)(Where defendant, who was acquitted of a charge that, on April 30, 1995, he knowingly, willfully, maliciously and repeatedly followed or harassed a woman, was subsequently charged with aggravated stalking of the same woman between May 1 and May 16, 1995, the fact that letters defendant sent to the victim after May 1 were introduced in the prior prosecution did not mean that double jeopardy principles precluded prosecution on the second charge; although aggravated stalking requires repeated acts, those acts could constitute separate and distinct factual events that would support multiple prosecutions and convictions);

State v. Jacks, 978 So.2d 922, 2007 La.App. LEXIS 2055 (La.App. 1 Cir. 2007) (Defendant was convicted of stalking a fellow student and her family; in a subsequent incident, defendant sought to quash the indictment, alleging that charging defendant again with stalking violated the prohibition against double jeopardy. Nevertheless, the offense of stalking, by its very nature, was a cumulative crime, and defendants conviction for the subsequent incident did not violate double jeopardy);

State v. Fox, 216 N.C. App. 144, 721 S.E.2d 673 (2011)(Evidence presented in support of a 2010 indictment for felony stalking amounted to double jeopardy

Blockburger v. United States and Ashe v. Swenson and established a bad precedent. Because, as stated above this petition presents following circumstances: (1) The need to establish a precedent construing the meaning of *Double Jeopardy Clause, Blockburger v. United States and Ashe v. Swenson*, in the context of state and federal stalking statutes; (2) The need to review Pennsylvania Courts decision that is not in conformity with this Courts *Double Jeopardy Jurisprudence*; (3) The need to resolve a controversy of major national importance; and (4) The need to review Pennsylvania Courts ruling on a important federal question about *Double Jeopardy Clause, Blockburger v. United States and Ashe v. Swenson* that conflicts with relevant decisions of this Courts *Double Jeopardy Jurisprudence* - Petitioner respectfully request this Honorable Court to grant this Petition for a Writ of Certiorari.

2) Under Doctrine of Unconstitutional Conditions, Forfeiting Petitioner's Constitutional Right to Appeal Is Unconstitutional:

A) State Constitutional Right to Appeal:

Although, there is no federal constitutional right to appeal, *McKane v. Durston*, 153 U.S. 768 (1894), *Pa. Const. Art. V § 9* guarantee an accused right to a direct appeal, and Due Process Clause protects the right to direct appeal when that right is guaranteed by the state, even though United States Constitution does not require states to grant that right. See *Evitts v. Lucey*, 469 U.S. 387 (1985). Due process requires that a right to appeal be a right to an "adequate and effective appeal" which is "more than a meaningless ritual." *Id.* at 393, 394 (quoting *Griffin v. Illinois*, 351 U.S. 12 (1956), and

because the indictment was the same in law as a 2009 indictment, in that the time periods of the "course of conduct" for both indictments overlapped and thus the same acts could have resulted in a conviction under either indictment).

Douglas v. California, 372 U.S. 353 (1963)). Due process further protects not only the right "to obtain a favorable decision," but also the right "to obtain a decision at all on the merits of the case." *Evitts*, 469 U.S. at 395 n.6 (emphasis in original). Furthermore, this Court has been clear in its reasons for extending the meaningful procedural protections of due process to appeals as of right. By deciding that an appeal is so important that it must be available as a matter of right, a state has "made the appeal the final step in the adjudication of guilt or innocence of the individual." *Id.* at 404 (citing *Griffin*, 351 U.S. at 18). The state itself recognizes that an appeal as of right plays such a crucial role that "the State could not decide the appeal arbitrarily" or otherwise deny an appellant "fair procedure," *Evitts*, 469 U.S. at 404.

B) Right to Counsel on First Direct Appeal:

In *Evitts v. Lucey*, 469 U.S. 387 (1985), this Court held that there is a constitutional right to effective assistance of counsel on a first appeal as of right. Id., at 396. This holding is based on the combination of two lines of prior decisions. One line of cases held that *U.S. Const. Fourteenth Amendment* guarantees a criminal defendant pursuing a first appeal as of right certain minimum safeguards necessary to make that appeal adequate and effective, including the right to counsel. See *Griffin v. Illinois*, 351 U.S. 12 (1956); *Douglas v. California*, 372 U.S. 353 (1963). The second line of cases held that the *U.S. Const. Sixth Amendment* right to counsel at trial comprehended the right to effective assistance of counsel. See *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Cuyler v Sullivan*, 446 U.S. 335 (1980). These two lines of cases justified the Court's conclusion that a criminal defendant has a right to effective assistance of

counsel on a first appeal as of right. *Evitts*, 469 U.S. At 394-396.[20]

C) Right to Proceed as pro se on Appeal:

There is no federal constitutional right to self-representation on direct appeal from a criminal conviction. *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152 (2000) (citing, *Price v. Johnston*, 334 U.S. 266 (1948)). But, this Court in *Martinez*, did not preclude states from recognizing a constitutional right to appellate self-representation

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20 The following Supreme Court cases support the rule that an accused has the right, under various provisions of the Federal Constitution, to the assistance of counsel on the accused's initial appeal as of right from his or her conviction: *Ellis v. United States*, 356 U.S. 674 (1958)(*Sixth Amendment*); *Swenson v. Bosler*, 386 U.S. 258 (1967) (Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Anders v. California* 386 U.S. 738 (1967)(*Sixth Amendment* and Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Entsminger v. Iowa,* 386 U.S. 748 (1967) (Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *McConnell v. Rhay*, 393 U.S. 2 (1968)(Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Arsenault v. Massachusetts,* 393 U.S. 5 (1968)(Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Ross v. Moffitt*, 417 U.S. 600 (1974)(Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Bounds v. Smith,* 430 U.S. 817 (1977)(Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Smith v Murray*, 477 U.S. 527 (1986) (*Sixth Amendment*); *McCoy v Court of Appeals*, 486 U.S. 429 (1988)(*Sixth Amendment*); *Penson v. Ohio*, 488 U.S. 75 (1988)(Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Murray v. Giarratano*, 492 U.S. 1 (1989)(*Sixth Amendment* and Due Process and Equal Protection Clauses of *Fourteenth Amendment*); *Martinez v. Court of Appeal of Cal.*, 528 U.S. 152 (2000) (Due Process and Equal Protection Clauses of *Fourteenth Amendment*); and *Halbert v. Michigan*, 545 U.S. 605 (2005)(Due Process and Equal Protection Clauses of *Fourteenth Amendment*).

under their own constitutions. *Id.*, 528 U.S. at 163. In Pennsylvania accused's has constitutional right to self-representation at trial, appellate and post-conviction stages. *Commonwealth v. Grazier*, 713 A.2d 81 (Pa. 1998)(citing *Faretta v. California*, 422 U.S. 806 (1975)). Subsequently, in the wake of *Martinez*, in *Commonwealth v. Staton*, 12 A.3d 277 (Pa. 2010), Pennsylvania Supreme Court assumed the existence of such a right for purposes of decision in *Staton*, because *Pa. Const. Art. V § 9* guarantee accused an absolute right to a direct appeal.

D) Right to Standby Counsel on Appeal:

Faretta left open the question - If a defendant has elected to exercise his right to proceed *pro se*, does he still have a constitutional right to assistance of standby counsel? Id., 422 US at 852. Subsequently, in *Mckaskle v. Wiggins*, 465 U.S. 168 (1984), this Court ruled that a state may appoint a "standby counsel", even over objection by the accused, to aid the accused, if and when the accused requests help, and also to be available to represent the accused in the event that termination of the accused's self-representation is necessary, when the *accused* "deliberately engages in serious and obstructionist misconduct." *Faretta*, 422 U.S. at 834 n.46 (citing *Illinois v. Allen*, 397 U.S. 337 (1970)).[21] Subsequently, in *Commonwealth v. Ellis*, 626 A.2d 1137 (Pa. 1993), Supreme Court of Pennsylvania approved appointment of "standby counsel"

21 Across circuit courts there is unanimity regarding appointment of standby counsel is within the discretion of the trial-court, and there is no federal constitution right to standby counsel. However, Third Circuit held that when standby counsel is appointed s/he had the obligation to act as counsel at the petitioner's competency hearing by subjecting the state's evidence of competency to "meaningful adversarial testing". See *Appel v. Horn,* 250 F.3d 203 (3d Cir 2001).

to give legal advice to defendant stating appointment of standby counsel does not imply or authorize some sort of hybrid representation; and this rule is codified in *Pa.R.Crim.P.121(D).*[22] Later on, Pennsylvania Supreme Court clarified that, when defendant elects to proceed *pro se*, the defendant, and not "standby counsel" is in fact counsel of record and is responsible for trying the case, and thereby appointment of "standby counsel" does not imply or authorize some sort of hybrid representation. *Commonwealth v. Spotz*, 47 A.3d 63 (Pa. 2012). Therefore, Pennsylvania Courts use their discretion and appoint "standby counsel", where defendants proceed *pro se* in appellate proceedings. See *Commonwealth v. Ray*, 134 A.3d 1109 (Pa. Super 2016) (Superior Court criticizing *pro se* Appellant, for not asking to appoint "standby counsel" to assist him with the preparation of a *Pa.R.A.P.1925(b)* statement).

E) Need for Assistance of Counsel in the Process of Winnowing Out Weaker Arguments On Appeal:

In Pennsylvania the "process of winnowing" out weaker arguments on appeal begins with filing "*Concise Statement of the Errors Complained of on Appeal*" under

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22 In *Ellis* Pennsylvania Supreme Court also ruled that - "*there is no right of self-representation together with counseled representation (hybrid representation)*", which contradicts with *Pa. Const. Art I § 9, because Pa. Const. Art I § 9* states, "*In all criminal prosecutions the accused hath* ***a right to be heard by himself and his counsel***", and language of the constitution itself reads in the conjunctive and authorizes both self-representation together with counseled representation. Across United States, there are at-least six states provide the accused the right to defend either by himself, by counsel, or both: Ala Const, Art 1, § 6; Fla Const, Art 1, § 16; Me Const, Art 1, § 6; Miss Const, Art 3, § 26; SC Const, Art 1, § 14; Tex Const, Art 1, § 10.

Pa.R.A.P.1925(b).[23] This *Rule 1925(b)* exists to provide information to the judges and the opposing party, and its purpose is "to aid trial judges in identifying and focusing upon those issues that the parties plan to raise on appeal." *Id.* See *Commonwealth v. Hill*, 16 A.3d 484 (Pa. 2011) (Pennsylvania "jurisprudence is clear and well-settled, and firmly establishes that: Rule 1925(b) sets out a simple bright-line rule, which obligates an appellant to file and serve a Rule 1925(b) statement, when so ordered and any issues not raised in a Rule 1925(b) statement will be deemed waived."). Moreover, preserved issues by way of a timely filing notice of appeal and *Rule 1925(b)* statement, still be treated as abandoned those issues on appeal by not raising them in his brief to appellate court. *Pa. R.A.P. 2119(a)*; See *Commonwealth v. Clayton*, 816 A.2d 217 (Pa. 2002)("It is a well settled principle of appellate jurisprudence that undeveloped claims are waived and unreviewable on appeal"). Moreover, in order to be eligible for federal habeas corpus relief under *AEDPA*, Petitioner must present claims to the state courts;[24] and if claims individually do not warrant habeas relief may do so when combined. See *Albrecht v. Horn*, 485 F.3d 103, 139 (3d Cir. 2007). Therefore, these intricate rules of waiver in *Rule 1925(b)*, *PCRA* and *AEDPA*, required assistance of counsel in the process of winnowing out weaker arguments on appeal.

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23 See *Smith v. Murray*, 477 U.S. 527 (1986) (quoting *Jones v. Barnes*, 463 U.S. 745 (1983))(The "process of winnowing out weaker arguments on appeal and focusing on those more likely to prevail, is the hallmark of effective appellate advocacy.")

24 See *Vasquez v. Hillery*, 474 U.S. 254 (1986)(Federal Habeas Corpus petitioner satisfies the exhaustion requirement if petitioner presents the federal claim to the state courts in the manner required by state law, thereby affording the state courts meaningful opportunity to consider the allegations of legal error).

F) ***State Could Not Decide The Appeal Arbitrarily:***

The key purpose of appellate review is to determine whether or not the trial-court applied the proper law to the facts and to relieve criminal defendant of harmful erroneous trial-court orders; and to give a recourse to another judicial authority in the event of bias by the trial judge. Therefore, arbitrary denial of appellate review may generate frustration and hostility toward courts among the most numerous consumers of justice. *Mayer v. Chicago,* 404 U.S. 189 (1971). However, Pennsylvania Courts often threaten to quash or dismiss appeals prosecuted by indigent *pro se* appellants for failure to file concise *Rule 1925(b)* statement or brief, because of their illiteracy, lack of appellate advocacy and concise writing skills; and frequently carry out those threats. In criminal matters, few appellants choose to proceed as *pro se* on appeal, because State provide counsel for indigent appellants, despite public defenders are overworked, underpaid, and render less effective the basic right the *Sixth* and *Fourteenth Amendment* seeks to protect. Additionally, an indigent cannot insist on representation by an attorney he cannot afford and cannot complain about the adequacy of public defenders or court appointed counsels. Even, if they complain, very seldom courts agree with indigent appellants, despite, state pay very minimum to appointed counsels, and often did not allocate required time to read trial-court record and uncover meritorious issues that warrant relief.

Although, trial-court has discretion to appoint "standby counsel" and accept amended *Rule 1925(b)* statement, trial-court denied to appoint "standby counsel" to assist *pro se* Petitioner in the process of winnowing issues on appeal; and refused to accept amended *Rule 1925(b)* statement, and recommended to quash appeal for filing

lengthy *Rule 1925(b)* statement. Even more, despite appellate court is authorized to review few claims including illegal sentence claims that are fairly presented to them, appellate court forfeited *pro se* Petitioner's state constitutional right to appeal by waiving all issues (including nonwaivable double jeopardy and illegal sentence claims), and by its implication further forfeited statutory right relief under *Post-Conviction Relief Act* and *AEDPA*, by declining to appoint counsel after *Farretta* waiver to file amended brief and denying permission to amend brief to present few issues. In Pennsylvania, trial and appellate courts frequently forfeit *pro se* indigent criminal appellant's (specifically minorities) state constitutional right to appeal under *Rule 1925(b),* without appointing "standby counsel" to assist them in the process of winnowing issues on appeal.

If States make a rule based practice to appoint "standby counsel" for indigent criminal appellants who are proceeding as *pro se* spend time to research and use "standby counsel" as expert to verify prospects of issues they uncover. This process minimize the lay minority indigent criminal appellants hostility toward courts and generate a sense of feeling that they are not ignored by the criminal justice system and courts gain more respect even though courts deprive their life and liberty. Additionally, there is no reason for States not to grant ample opportunities to amend *pro se* appellants briefs, where criminal appellants has already been convicted and locked-up in prisons and few months delay in allowing amended briefs do not injure states interests. Because, as stated above this petition presents following circumstances: (1) The need to establish a precedent construing the meaning of *Fourteenth Amendment's Due Process Clause,* in the context of state constitutional right to appeal and appointing

"standby counsel" for indigent *pro se criminal* appellants; (2) The need to review Pennsylvania Courts decision denying to appoint "standby counsel" or counsel that is not in conformity with this Courts *Fourteenth Amendment's Equal Protection Clause Jurisprudence*; (3) The need to resolve a controversy of major national importance; and (4) The need to review Pennsylvania Courts ruling on a important federal question about *Fourteenth Amendment's Due Process and Equal Protection Clauses* that conflicts with relevant decisions pertaining to indigent *pro se criminal* appellants - Petitioner respectfully request this Honorable Court to grant this Petition for a Writ of Certiorari.

CONCLUSION

Pro Se Petitioner Vamsidhar Vurimindi respectfully request this Honorable Court to grant this Petition for a Writ of Certiorari.

Date: December 2, 2019

Respectfully Submitted,
Vamsidhar Vurimindi
Vamsidhar Vurimindi,
A#096-689-764,
Petitioner, Pro Se
Adams County Detention Center,
P. O. Box # 1600,
Washington, MS-39190.