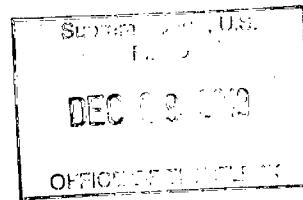


19-6978 ORIGINAL  
IN THE SUPREME COURT OF THE UNITED STATES

NO. 19-1561



ISAAC NARANJO,

Petitioner,

vs.

SUPERINTENDENT FAYETTE SCI, ET AL.,

Respondents.

(E.D. PA.CIV.NO. 2-13-CV-07383)

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT OF PENNSYLVANIA

ISAAC NARANJO, DOC# FJ-4369

SCI-ROCKVIEW

P.O. BOX- A

BELLEFONTE, PA 16823

QUESTIONS PRESENTED

(1) WHETHER TO MAKE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT A HABEAS APPLICANT FOR A C.O.A. NEED NOT SHOW THAT HE WILL PREVAIL ON THE MERITS. HE HAS ALREADY FAILED IN THE ENDEAVOR, BUT MUST "DEMONSTRATE THAT THE ISSUES ARE DEBATABLE AMONG JURISTS OF REASON; THAT A COURT COULD RESOLVE THE ISSUES [IN A DIFFERENT MANNER]; OR THAT THE QUESTIONS ARE "ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER".

(2) WHETHER A STATE PRISONER UNDER MARTINEZ MAY OVERCOME A PROCEDURALLY DEFAULTED CLAIM BY SHOWING CAUSE FOR THE DEFAULT AND PREJUDICE.

(3) WHETHER UNDER STRICKLAND, COUNSEL HAS A DUTY TO MAKE REASONABLE INVESTIGATIONS, OR MAKE A REASONABLE DECISION THAT MAKES PARTICULAR INVESTIGATIONS UNNECESSARY.

(4) WHETHER UNDER MARTINEZ A STATE PRISONER MAY OVERCOME A PROCEDURALLY DEFAULTED CLAIM BY SHOWING THAT POST-CONVICTION COUNSEL WAS INEFFECTIVE IN FAILING TO RAISE THE INEFFECTIVE-ASSISTANCE OF TRIAL COUNSEL CLAIM IN THE FIRST-COLLATERAL REVIEW PROCEEDING.

(5) WHETHER THE RIGHT TO NOTICE OF A CHARGE IS BASIC AND THE MOST  
CLEARLY ESTABLISHED DUE PROCESS RIGHT OF AN ACCUSED IN A CRIMINAL  
PROCEEDING.

(6) WHETHER A PERSON CAN NOT BE CONVICTED OF AN OFFENSE NOT CHARGED  
AGAINST HIM BY INDICTMENT OR INFORMATION AND DUE PROCESS OF LAW  
REQUIRES NOTICE OF CHARGES.

(7) WHETHER THE RIGHT TO FORMAL NOTICE OF CHARGES TO AN ACCUSED AND  
TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST  
HIM IT IS WELL ESTABLISHED.

## PARTIES

The Petitioner is Isaac naranjo, a prisoner at SCI-Rockview. The Respondents are Superintendent Fayette SCI, and the Attorney General of the State of Pennsylvania, et al. .

## TABLE OF CONTENTS

Decisions Below.....	1
Jurisdiction.....	9
Constitutional and Statutory Provision Involved.....	10
Statement of the Case.....	11-16
Reasons for Granting the Writ.....	17-19
A. Conflicts with Decisions of this Court and other Courts.....	17
B. Importance of the Questions presented.....	17-18
C. To Encourage Granting the Writ.....	19-25
Conclusion.....	25

## INDEX TO APPENDENCIES

APPENDIX A.

APPENDIX B.

APPENDIX C.

APPENDIX D.

APPENDIX E.

APPENDIX F.

TABLE OF AUTHORITIES CITED

Barefoot v. Estelle, 463 U.S. 880, 893 (1983).....	17-19
Miller-El v. Cockrell, 537 U.S. 322, 338 (2003).....	17-19
Gardner v. Pogue, 558 F.2d 548 (9 <sup>th</sup> Cir. 1977).....	17
Flieger v. Delo, 15 F.3d 878, 883 (8 <sup>th</sup> Cir. 1994).....	17
Fuller v. Johnson, 114 F.3d 491, 495 (5 <sup>th</sup> Cir. 1997).....	19
Buxton v. Collins, 925 F.2d 816, 819 (5 <sup>th</sup> Cir. 1991).....	19
Buie v. McAdony, 322 F.3d 980 (7 <sup>th</sup> Cir. 2003).....	19
Deck v. Missouri, 544 U.S. 622, 629 (2005).....	17,20
United States v. Brantley, 342 Fed. Appx. 762, 767-770 (3d Cir. 2009).....	20
Martinez v. Ryan, 132 S.Ct. 1309, 1315, 182 L.Ed.2d 272 (2012).....	17,20-21
Strickland v. Washington, 466 U.S. 668, 691 L.Ed.2d 674 (1984).....	17,20-21
Blackburn v. Foltz, 828 F.2d 1177, 1187 (6 <sup>th</sup> Cir. 1987).....	21
Massaro v. United States, 538 U.S. 500, 505, 123 S.Ct. 1690, 155 L.Ed.2d 1714 (2003).....	21
Re Gault, 387 U.S. 1, 33-34, 87 S.Ct. 1428, 1446-1447 (1967).....	21,23-25
Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948).....	21,23-25
Gray v. Raines, 662 F.2d 569 (9 <sup>th</sup> Cir. 1981).....	23,22,21
Watson v. Jago, 558 F.2d 330 (6 <sup>th</sup> Cir. 1977).....	22
Re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed. 682 (1948).....	21,24
Pemberthy v. Beyer, 19 F.3d 857, 864 (3d Cir.).....	22
Purkett v. Elem, 131 L.Ed.2d 834, 115 S.Ct. 1769, 1771 (1995).....	22
Sumner v. Mata, 455 U.S. 591, 598, 71 L.Ed.2d 480, 102 S.Ct. 1303 (1982).....	22

Marshall v. Lonberger, 459 U.S. 422, 432, 74 L.Ed.2d 646, 103 S.Ct. 843 (1983).....	22
Hubbard v. Jeffes, 653 F.2d 99, 102 (3d Cir. 1981).....	22
Richmond v. Rickell, 779 F.2d 957 (9 <sup>th</sup> Cir. 1985).....	23-25
United States v. Cotton, 535 U.S. 625, 152 L.Ed.2d 860, 1225 S.Ct. 1781 (2002).....	23
Custis v. U.S., 511 U.S. 485 (1994).....	23
Neifeld v. Steinberg, 438 F.2d 423 (3d Cir. 1971).....	23-25
Albrecht v. United States, 273 U.S. 1, 71 L.Ed. 505, 47 S.Ct. 250 (1927).....	23-25
Com. v. Jones, 929 A.2d 205, 209 (Pa. 2007).....	24
Jones v. Wood, 114 F.3d 1002 (9 <sup>th</sup> Cir. 1997).....	16
Vicks v. Bunnell, 875 F.2d 258 (9 <sup>th</sup> Cir. 1989).....	16
Lincion v. Sunn, 807 F.2d 805 (9 <sup>th</sup> Cir. 1987).....	16
Meyer v. Gills, 93 F.3d 1147 (3d Cir. 1996).....	16

#### Statutes

28 U.S.C. Section 1251(1).....	9
28 U.S.C. Section 1257(a).....	9
28 U.S.C. Section 2254.....	
28 U.S.C. Section 2253.....	18

#### Rules

Fed. R. 6.G.S. 2254.....	17,21-25
State R.C.P. 544(A).....	24

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.

DECISIONS BELOW

The Decision of the United States Court of appeals for the Third Circuit is unpublished and a copy is attached as Appendix A to this petition.

The Order of the United States Court of appeals for the Third Circuit denying rehearing is unpublished and a copy is attached as Appendix B to this petition.

The Decision of the United States District Court is unpublished and a copy is attached as Appendix C to this petition.

The Opinions of the highest State Court to review the merits appears at appendix D and E reported at commonwealth v. Naranjo, 889 A.2d 116 (Pa. Super. 2005) and Commonwealth v. Naranjo, 81 A.3d 1002 (Pa. Super. 2013).

The Opinion of the PCRA Court is unpublished and a copy is attached as appendix F.

## JURISDICTION

The date on which the United States Court of appeals ruled on my application for a C.O.A. was August 20, 2019 and a copy is attached as Appendix A. A timely petition for rehearing was denied by the United States Court of Appeals on the following date; October 1, 2019 and a copy is attached as Appendix B t. The Jurisdiction of this Court is invoked under 28 U.S.C. Section 1251(1).

The date on which the highest State Court decided my case was October 19, 2005 and May 23, 2013 and copies of those decisions are attached as Appendix D and E. The Jurisdiction of this Court is invoked under 28 U.S.C. section 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides:

Section 1. all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

The petitioner's federal habeas petition primarily alleged that on March 5, 2003, a jury selection commenced regarding to his supposed crimes, and before the jury panel or he was brought into the courtroom. Petitioner trial attorney David Santee was pressuring him into the pleading guilty on the cell to the back to the courtroom. Mr. Santee then informed the court that the petitioner wanted him removed and a new attorney appointed. The court denied that request. Petitioner was then brought into the courtroom for the first time and sought and was permitted to address the court directly. He asked again to have assistant defender Santee replaced. Complaining both that he had only met him recently and that counsel was attempted to pressure him into pleading guilty. Petitioner also complain that Mr. Santee was refusing to provide him with discovery material. The court then instructed defense counsel Mr. Santee not to provide Mr. Naranjo with discovery and falsely indicated that the interpreter relayed to him that petitioner which is a Afrolatin American and a non-speaking english said you fucking Nigger, and order the Sheriffs to gag and use shackles on petitioner.

Petitioner direct appeal, which described this unprofessional conduct by the trial court was denied by the Superior Court, the disctrict court rejected this claim the first claim in petitioner federal habeas petition indicating that the Superior Court's decision in review of the trial court unprofessional conduct did not deprived petitoner of a fair trial and was not "contrary to" the "clearly established" federal law, as determined by this court.

The Court of Appeals denied a timely application for a Certificate of Appealability indicating that petitioner failed to make a substantial showing of the denial or a constitutional right with respect to this due process violation also a timely petition for a rehearing.

Further, the petitioner's federal habeas petition alleged that he was deprived of adequate assistance of post-conviction counsel when the PCRA counsel Elayne C. Bryn abandoned a claim that trial counsel was ineffective for (a) not interviewing petitioner prior to trial, (b) not investigating or discussing defense options, (c) not preparing for trial, and (d) being inexperienced, without address the claim in a Finley-letter as required by state law.

Petitioner raised in his motion in opposition to PCRA counsel Finley-letter and motion to withdraw as counsel, PCRA counsel ineffectiveness in abandoning the claim and the PCRA court did not grant PCRA counsel Elayne C. Bryn permission to withdraw as counsel until several months later after that dismissed petitioner's PCRA petition without address petitioner PCRA counsel ineffectiveness claim and without review the record as required by state law before dismissal a PCRA petition. It also alleged that he was impeded by the state court to comply with the state procedural rule the district court rejected this habeas claim based on the Magistrate Judge incorrect conclusion that PCRA counsel addressed said claim in a Finley-letter, ignoring petitioner's objections to the Magistrate Judge R.R. where he proved that the Magistrate Judge was incorrect. However the District Court endorsed the fact that PCRA counsel did not address the claim in a Finley-letter, and that the state court impeded petitioner to comply with the state procedural rule.

The Court of Appeals denied a timely application for a certificate of appealability indicating that this claim is inexcusably procedurally defaulted consequently a petition for a rehearing . Further the petitioner's federal habeas petition alleged that during petitioner testimony at trial, he presented his own alibi evidence that at the time alleged crime he was not in Philadelphia, but in Lancaster, Pennsylvania staying with a friend Alberto Cruz Sanchez. He further testified his attorney has medical records from a Lancaster Hospital proving he was there

prior to trial. Petitioner Isaac Naranjo gave defense counsel alibi witness Alberto Cruz's phone number, the district attorney also questioned Mr. Naranjo about alibi witness, Alberto Cruz wanted to testify as a alibi witness placing petitioner at the relevant time in Lancaster, Pennsylvania. Defense counsel Mr. Santee did not make any type of adequate investigation or attempt to locate petitioner's alibi witness Alberto Cruz, and failed to file a timely notice of alibi.

Then after all witnesses testified, stated falsely, that Attorney Andrew Gay, an attorney who was not petitioner's attorney, and was not he, (David Santee), attempted to locate alibi witness Alberto Cruz, but because the phone number this supposed attorney Gay could not contact Alberto Cruz.

Petitioner raised these claim in his PCRA petition. On the PCRA petition, petitioner attached an affidavit from Alberto Cruz, two letters from Douglas P. Earl (petitioner's direct appeal counsel), several copies of medical records from a Lancaster, PA hospital, including medical records from the Philadelphia County Jails. Elayne C. Bryn PCRA counsel was appointed to represent petitioner in his PCRA proceedings. Almost three years after her appointment, counsel Bryn filed a turned Finley "no-merit" letter claiming that she reviewed the record and could not find any issues of arguable merit. She explained that she wrote to Mr. Alberto Cruz and other witness at last known address and that the witnesses could not be found. Furthermore, that petitioner did not provide any affidavit to support their alibi testimony. Petitioner then appealed to the Superior Court, attached to his brief was Alberto Cruz's affidavit, including the above indicated documented evidence of alibi.

Specifically, the Superior Court rejected these claims based in that PCRA counsel falsely indicated in a Finley-no-merit letter that she wrote to Mr. Cruz and other witness at their last addresses and neither of them could not be found and that petitioner did not provide any affidavit

to support their potential alibi testimony. Petitioner also in his federal habeas petition alleged that at all time when he asked PCRA counsel Elayne C. Bryn to contact Mr. Cruz and Mr. Jose Rodriguez both these men were incarcerated in state prison.

Petitioner appeal to the Superior Court, which described the trial counsel failure to make any type of adequate investigation or attempt to locate petitioner alibi witnesses including Alberto Cruz, was denied by the Pennsylvania Superior Court intentionally, without providing the petitioner with a opportunity to rebut the PCRA counsel false contention there never was a hearing which could have determined whether or not what the PCRA counsel said was truth. Pursuant to the Third Circuit rule petitioner filed objections to the Magistrate Judge R.R. where he proved that the Magistrate Judge conclusion was incorrect, and was unsupported by the record. However, the district court endorsed an unreasonable application of law and unreasonably determined facts.

The Court of Appeals denied a timely application for an certificate of appealability indicating: Appellant failed to make a substantial showing of the denial of a constitutional right with respect to his ineffective assistance of counsel claims.

Further, the petitioner's habeas petition alleged that he received ineffective assistance of post-conviction counsel in the initial-review collateral proceeding when PCRA counsel failed to raise a claim that the trial judge's jury instructions on aggravated assault, attempted murder, and recklessly endangering another person denied him due process. It further alleged that he was impeded to comply with the state's procedural rule when the PCRA court even failed to review the record and the Superior Court intentionally did not remanded the case to the PCRA court. The District Court rejected this habeas claim five, based in the Magistrate Judge incorrect conclusion that petitioner pursuant to a state procedural rule waived the claim ignoring the fact

that the petitioner proved in his objection to the magistrate Judge R.R. that PCRA counsel was who was required to uncover and present the claim before the PCRA court and that the state court impeded petitioner to comply with the state procedural rule.

The Court of Appeals denied a timely application for a certificate of appealability indicating that this claim is inexcusably procedurally defaulted. Consequently a petition for a rehearing. Further, the petitioner's federal habeas petition alleged that he was charged in two criminal complaints with identical charges by Philadelphia local state police officials, burglary, simple assault, PIC, stalking, criminal trespassing, contempt of court, REAP, and threats. It further alleged that in a subsequent and improper criminal complaint he was charged with burglary and apparently aggravated assault et. al. And that nor the initial and third criminal complaint did not charge nor aver the offense of attempted murder. Also alleged that in a preliminary hearing case MC: 0111-5522 in which the Commonwealth claim occurred, the alleged incident was dismissed for lack of evidence, and that the presiding judge illegally held him for trial on charges of aggravated assault, (REAP) (PIC) and criminal trespassing. This is because he was not formally charged with aggravated assault in the initial complaint and pursuant to the state rule of criminal procedure the Commonwealth failed to reinstate the dismissed charges as required by Pa.R.Crim.P. 544(a) after dismissal.

Petitioner alleged that he never said preliminary hearing was held for trial on attempted murder and that the Commonwealth unlawfully and without adequate notice amended the criminal information. He also allaged that the trial court added the attempted murder charge to the information and that did not have jurisdiction to try him on attempted murder and aggravated assault.

Petitioner raised these claims on collateral appeal to the Superior Court. The Superior Court primarily rejected petitioner attempted murder claims indicating that the attempted murder was not added to petitioner's criminal information. Instead, the attempted murder charge was added at petitioner's preliminary hearing, despite of the petitioner present to the court clear and convincing evidence which clearly show that that never occurred.

Secondly, the Superior Court rejected petitioner claim that case MC: 0111-5522 in which the Commonwealth claim occurred.. The alleged incident was dismissed for lack of evidence in a preliminary hearing, and the Commonwealth failed to reinstate the charges, and that such failure deprived the trial court of jurisdiction to try him on aggravated assault as duplicative of issue.

The District Court did not conduct an independently examine of the state court record of petitioner's preliminary hearing notes of testimony of those proceeding to ascertain whether the presumption of correctness should have attached to the state court's factual finding as required by federal law. See, Jones v. Wood, 114 F.3d 1002 (9<sup>th</sup> Cir. 1997); Richmond v. Rickett, 774 F.2d 957 (9<sup>th</sup> Cir. 1985); Vicks v. Bunnell, 875 F.2d 258 (9<sup>th</sup>. Cir. 1989); Lincion v. Sunn, 807 F.2d 805 (9<sup>th</sup> Cir. 1987); Meyers v. Gills, 93 F.3d 1147 (3d Cir. 1996); and ignored petitioner repeatedly discovery request pursuant to Rule 6.G.S. 2254 and 3355. Instead, rejected these claims for the same false contention stated by the Superior court.

The Court of Appeals denied a timely application for a certificate of appealability indicating that these claims are not cognizable under 28 U.S.C. Section 2254 and a petition for a rehearing.

## REASONS FOR GRANTING THE WRIT

### A. CONFLICTS WITH DECISIONS OF THIS COURT AND OTHER COURTS.

the united states court of appeals for the third circuit of pennsylvania denial of a COA in the instant matter indicating that the petitioner failed

to make a substantial showing of the denial of a constitutional right, and

that some of the petitioner federal habeas claims are either not cognizable under 28 u.s.c. section 2254 or are inexcusably procedurally defaulted is directly contrary to this court holding in Barefoot v. estelle, 463 u.s. 880,893 (1983);miller-EL v. cockrell, 537 u.s. 322, 338 (2003); Deck v. missori, 544 u.s. 622, 629 (2005);stricklad v. washington, 466 u.s. 668, 687-89 (1984);martinez v. Ryan,132 s.ct.1309,1315,182 L.Ed.2d 272 (2012).

### B. IMPORTANCE OF THE QUESTION PRESENTED

this case primarily presents a fundamental question of the interpretation of this court's announced standar in Barefoot v. Estelle, 463 u.s. 880,103 s.ct.3383,77 L.Ed.2d 1090 (1983). the question presented is of great public importance Because concern private and public parties in all 50 states, including thousand of pro se prisoners

litigant through the prison system which believe in the u.s. constitution and laws established by the supreme court of the land, and affects their

ability to receive fair decisions in proceedings that may result in months or years.

(a) THE ISSUE'S IMPORTANCE IS ENHANCED BY THE FACT THAT THE COURT OF APPEALS IN THIS CASE HAVE PRIMARILY AND SERIOUSLY MISINTERPRETED THIS COURT'S ANNOUNCED STANDARD IN Barefoot.

this court held in Barefoot that in order to a habeas COA applicant obtain a COA must make a "substantial showing of the denial of a constitutional right" 28 u.s.c. section 2253 (c)(2). to make a substantial showing." obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor "Barefoot v. Estelle, 463 u.s. 880, 893, 77 L.Ed.2d 1090 (1983). Rather, the petitioner need only show that the petition contains an issue (1) that is "debatable among jurists of reason"(2) that a court could resolve in a different manner"(3) That is adequate to deserve encouragement to proceed further,"(4) that is not"squarely foreclosed by statute, rule, or authoritative court decision, or {that is not} lacking any factual basis in the record" Id. at 893 n.4 and 894 (internal quotations and citations omitted). see also. Gardener v. pogue, 558 f.2d 548 (9th cir. 1977); flieger v. Delo, 16 f.3d 878, 883 (8th cir. 1994).

this standard does not require the petitioner to show that he is

entitled to relief.

we do not require petitioner to prove... that some jurists would grant the petition for habeas corpus, indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration,

miller-El v. cockrell, 537 u.s. 322, 338 (2003).

therefore, doubts as to whether to issue a COA should be resolved in favor of the appellant,fuller v. johnson,114 f.3d 491, 495 (5th cir. 1997);see Buxton v. collins, 925 f.2d 816, 819 (5th cir.1991);Bui v. mcadony,322 f.3d 980 (7th cir.2003).

thus the court of appeals seriously misinterpreted Barefoot by failing to adhere this court well established and announced stanard in. the court should reverse the erroneous judgment of the court of appeals and remand for further and appropriate proceeding.vacate the illegal conviction and discharge petitioner, or remand for a new trial.

C to encourage Granting the writ petitioner provides the following:

the court of appeals in reaching their conclusion misinterpreted seriously the holding of the courts below:

(b) 2. The decision of the court of appeals indicating that the petitioner's failed to make a substantial showing of the denial of a constitutional right with respect to his federal habeas claim one due process claim is directly contrary to the holding of this court. See *Deck v. Missouri*, 544 U.S. 622, 629 (2005). In *Deck*, this court held that trial courts must have particular reasons to justify their use of restraint in order to satisfy due process and have suggested that before such restraints are implemented, there should be a hearing where the courts should consider alternatives and scrupulous findings of fact and conclusions of law, specific to the case, before finding restraints are necessary. See e.g., *United States v. Brantley*, 342 Fed. Appx. 762, 767-770 (3<sup>rd</sup> Cir. 2009).

(c) 3. The decision of the court of appeals indicating that petitioner's federal habeas claim three is inexcusably procedurally defaulted is directly contrary to the holding of this court. See, *Martinez v. Ryan*, 132 S. Ct. 1309, 1315, 182 L.ed. 272 (2012).

(d) 4. The decision of the court of appeals indicating that petitioner's failed to make a substantial showing of the denial of a constitutional right with respect to his federal habeas claim four ineffective assistance of counsel claim is directly contrary to the holding of this court, See *Strickland v. washington*, 466 U.S. 668, 687-89 (1984), to prevail on his challenge to his conviction based on the claim of ineffective assistance of counsel. *Strickland* only required that petitioner demonstrate that his Attorney's representation was constitutionally deficient and that but for counsel's ineffective assistance there is a reasonable probability that the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 687, 694, 104 S.Ct. 2052, 801 L.Ed. 2D 674 (1984). a petitioner can meet this standard by showing that counsel failed to

conduct adequate pretrial investigation. See, Grooms v. Solem, 923 F.2d 88, 90 (8<sup>th</sup> Cir. 1991) held that once a defendant identifies potential alibi witnesses, it is unreasonable not to make some effort to contact them. Strickland v. Washington, 466 U.S. at 688; Tosh v. Lockhart, 897 F.2d 412, 413 (8<sup>th</sup> Cir. 1989); Blackburn v. Foltz, 828 F.2d 1177, 1187 (6<sup>th</sup> Cir. 1987). Or file a timely notice of alibi. In addition, this court held that direct appeals without evidentiary hearing may not be as effective as other proceedings for developing the factual basis of a claim. Massaro v. United States, 538 U.S. 500, 505, 123 S.Ct. 1690, 155 L.Ed.2d 714 (2003).

(e) 4. The decision of the court of appeals indicating that the petitioner's claim five is inexcusably procedurally defaulted is directly contrary to the holding of this court. See, Martinez v. Ryan, 132 S.Ct. 1309, 1315, 182 L.Ed.2d 272 (2012).

(f) 5. The decision of the courts of appeals indicating that petitioner's federal habeas claim seven is not cognizable is directly contrary to 28 U.S.C. Section 2254 and violates this court's well established due process right of an accused to receive fair notice of charge in a criminal proceeding under the 6<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments to the United States Constitution. See, *Re Gault*, 387 U.S. 1. 33-34, 87 S.Ct. 1428, 1446-1447 (1967); *Cole v. Arkansas*, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948); *Re Oliver*, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed 682 (1948). The right to notice of a charge is basic and the most clearly established due process right of an accused in a criminal proceeding and must be given sufficiently in advance of schedule court proceedings so that reasonable opportunity to prepare will be afforded..." Due process of law requires notice which would be constitutionally adequate in a criminal proceeding. *Re Gault*,

387 U.S. 1, 33-34, 87 S.Ct. 1428, 1446-1447 (1967); Gray v. Raines, 662 F.2d 569 (9<sup>th</sup> Cir. 1981); Watson v. Jago, 558 F.2d 330 (6<sup>th</sup> Cir. 1977).

In his federal habeas petition the petitioner alleged that he presented this claim to and rejected by the PA Superior Court, specifically because according to said court the charge of attempted murder was added at the preliminary hearing, not with an amendment to the information despite of petitioner present clear and convincing evidence to that court which clearly show that that never occurred.

Under 28 U.S.C. Section 2254 (d)(8) the state court's factual determinations generally "must be 'presumed to be correct' unless [they are] not 'fairly supported by the record'". Pemberthy v. Beyer, 19 F.3d 857, 864 (3d. Cir.) quoting 28 U.S.C. Sect. 2254 (d)(8) cert. denied, 130 L.Ed.2d 350, 115 S.Ct. 439 (1994); See also, Purkett v. Elem, 131 L.Ed.2d 834, 115 S. Ct. 1769, 1771 (1995) ("in habeas proceedings in federal courts, the factual findings of state courts are presumed to be correct and may be set aside, absent procedural error, only if they are 'not fairly supported by the record'"). (quoting 28 U.S.C. Section 2254 (d)(8), the statute "requires the federal courts to show a high measure of deference to the fact findings made by the state courts." Sumner v. Mata, 455 U.S. 591, 598, 71 L.Ed.2d 480, 102 S.Ct. 1303 (1982). Thus, the question in a federal habeas proceeding is not whether the federal courts agree with the state court's factual finding, but whether that finding is fairly supported by the record. e.g., Marshall v. Lonberger, 459 U.S. 422, 432, 74 L.Ed.2d 646, 103 S.Ct. 843 (1983). If the state court's find is fairly supported by the record, then the petitioner must "establish by convincing evidence that the factual determination by the state court was erroneous". 28 U.S.C. Sec. 2254 (d); Hubbard v. Jeffes, 653 F.2d 99, 102 (ed Cir. 1981).

The Magistrate Judge did not adhere to the command of 28 U.S.C. Section 2254 (d)(8), and the District Judge endorsed an unreasonable application of law and unreasonably determined facts. When also ignored Petitioner's request in the alternative for discovery, and/or an evidentiary hearing pursuant to Rule 6.G.S. 2254 and 2255. In addition the record in a habeas corpus proceeding must show that the district court examined all relevant parts of the state record. Richmond v. Rickett, 774 F.2d 957 (9<sup>th</sup> Cir. 1985).

(g) 6. The decision of the court of appeals indicating that petitioner's federal habeas claim eight is not cognizable is directly contray to 28 U.S.C. Section 2254 and violates this court well established due process right of an accused to receive fair notice of a charge in a criminal proceeding under the 6<sup>th</sup>, 14<sup>th</sup> and 15th Amendments to the United States Constitution. See, Re Gault, 387 U.S. 1. 33-34, 87 S.ct. 1428, 1446-1447 (1967); Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948); Re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed 682 (1948).

A conviction of a defendant of a crime not charged in an criminal information require a reversal of that conviction. Gray v. Raines, 662 F.2d 569 (9<sup>th</sup> Cir. 1981). In addition, a court is without jurisdiction to try a defendant in an offense not charged in an criminal information. United States v. Cotton, 535 U.S. 625, 152 L.Ed.2d 860, 1225 S.ct. 11781 (2002); Custis v. United States, 511 U.S. 485 (1994); Neifeld v. Steinberg, 438 F.2d 423 (3d. Cir. 1971); Albrech v. United States, 273 U.S. 1, 71 L.ed. 505, 47 S.Ct. 250 (1927).

For the same above-stated reason in (e) 5. the Superior Court rejected this claim, because according to said court the attempted Murder was not added to the petitioner's criminal information. Instead, the attempted murder charge was added at petitioner's preliminary hearing,

as stated above, the petitioner presented to the court, clear and convincing evidence that he was not charged nor held for court on attempted murder. The Magistrate Judge did not adhere to the command of 28 U.S.C. Section 2254 (d)(8) and the district judge endorsed an unreasonable application of law and unreasonably determined facts, when also ignored petitioner's request in the alternative for discovery and/or an evidentiary hearing pursuant to Rule 6.G.S. 2254 and 2255. In addition, the record in a habeas corpus proceeding must show that the district court examined all relevant parts of the state record. Richmond v. Rickett, 774 F.2d 957 (9<sup>th</sup> Cir. 1985).

(J) 7. The decision of the court of appeals indicating that the petitioner's federal habeas claim nine is not cognizable is directly contrary to 28 U.S.C. Section 2254 and violates this court's well established due process right of an accused to receive fair notice of charges and to be informed of the nature and the cause of the accusation. See, Re Gault, 387 U.S. 1, 33-34, 87 S.Ct. 1428, 1446-1447 (1967); Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948); Re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed 682 (1948); Neifeld v. Steinberg, 438 F.2d 423 (3d. Cir. 1971); Albrecht v. United States, 273 U.S. 1, 71 L.Ed. 505, 47 S.Ct. 250 (1927).

In his federal habeas petition the petitioner alleged that the commonwealth unlawfully brought him to trial, after that case Number MC: 0111-5522 in which the commonwealth claim occurred, the alleged incident was dismissed at a preliminary hearing for lack of evidence and the commonwealth failed to reinstate primarily the trespassing charge pursuant to Pa.R.C.P. 544(a), and that the commonwealth fails to do so deprived the trial court of Jurisdiction because the criminal information was improperly filed, the commonwealth was required to seeks to reinstate primarily the trespassing charge by re-filing a second complaint under Pa.R.C.P. 544 (a). See, Com. V Jones, 929 A.2d 205, 209 (pa. 2007), which contain constitutional's provision,

the commonwealth action violated the 6<sup>th</sup>, 14<sup>th</sup> and 5<sup>th</sup> Amendment to the United States Constitution. Cole v. Arkansas, 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948); Re Oliver, 333 U.S. 257, 273, 68 S.Ct. 499, 507, 92 L.Ed 682 (1948); Re Gault, 387 U.S. 1. 33-34, 87 S.ct. 1428, 1446-1447 (1967); Neifeld v. Steinberg, 438 F.2d 423 (3d. Cir. 1971); Albrecht v. United States, 273 U.S. 1, 71 L.Ed. 505, 47 S.Ct. 250 (1927).

The Magistrate Judge failed to adhere to the command of 28 U.S.C. Section 2254 (d)(8) and was required to examine the state court record of petitioner's preliminary hearing notes of testimony of those proceedings to ascertain whether the presumption of correctness should have attached to the state court's factual determination. Richmond v. Rickett, 774 F.2d 957 (9<sup>th</sup> Cir. 1985). Because the state court factual determination are "not fairly supported by the record" and the district judge endorsed an unreasonable application of law and unreasonably determined facts. When also ignored petitioner's request in the alternative for discovery and/or an evidentiary hearing, pursuant to Rule 6 of Rules Governing Section 2254 and 2255?

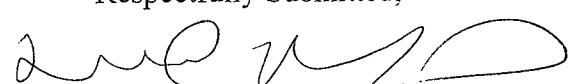
## CONCLUSION

For the foregoing reasons, Certiorari should be granted in this case.

Respectfully Submitted,

Dated: 12-10-19

CC:



ISAAC NARANJO, DOC# FJ-4369

SCI-ROCKVIEW

P.O. BOX- A

BELLEFONTE, PA 16823