

11/01/2019

19-7010
No. 18-3602

Supreme Court, U.S.
FILED

OCT 22 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Omar S. Folk — PETITIONER
(Your Name)

vs.

PRIME CARE MEDICAL, et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Omar S. Folk

(Your Name)

FCI Allenwood Medium

(Address)

P.O. Box. 2000 White Deer, PA. 17887

(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1.) Whether Third Circuit Court of Appeal Judge's apply the Standard Under Timely 60(C)(1) from the Doc. 115 Jan. 26, 2018 District Court Opinion. See(Doc. 129 I-4 and 18-21.
- 2). Whether Third Circuit Court of Appeal Judge's Abuse of Discretion For Not Staying Mandate on Doc. 82 Filed 1/27/17 page 5. Doc. 200 is pending in District Court on this issue under "McCoy v. Louisiana, No. 16-8255". Crim. No. 1:11-CR-292 and Doc. 129 at 15 and 17.
- 3). Whether Third Circuit of Appeal Judge's Erred by Not Addressing Doc. 130 District Court Opinion Nov. 19, 2018 page 1-2 and Doc. 129 page 15 "Discovery".
- 4). Whether Third Circuit Court of Appeal Judge's Erred by Not Addressing Doc. 134 Under Fine and Cost on No. 18-1352 and 18-3602 Double Jeopardy Theory. See(Rutledge v. US)
- 5). Whether Question Before Supreme Court Under Banister v. Davis,(No. 18-6943), granted Cert. June 24, 2019, Whether A Rule 59(e) Motion In A § 2255 proceeding is subject to the Second or Successive Rules of the Gonzalez v. Crosby, Now Petitioner Question at 1-2. See(Folk v. Prime Care Medical; 771 Fed. Appx. 141; 2019 U.S. App. Lexis 18293 No. 18-3602 June 18, 2019) and Petition For Rehearing Denied on 7/30/19.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

PRIME CARE MEDICAL; DAUPHIN COUNTY PRISON; PERRY COUNTY PRISON; ATTORNEY GENERAL OF PENNSYLVANIA; DAVID E. YEINGST; DOMINICK DEROSE; PA-C TANYA SCHISLER; LPN TOM TOOLAN; DR. MATTHEW LEGEL; LARRY TWIGG LT.; KELLER R. SGT.; THOMAS LONG; DAUPHIN COUNTY; C.O. CHARLES DONBAUGH; DR WILLIAM YOUNG MD; BOARD CHAIRMAN; PERRY COUNTY PRISON; CHAD CHENET; PERRY COUNTY PRISON BOARD

RELATED CASES

Banister v. Davis, (No. 18-6943), Granted Cert.
June 24, 2019, Whether A Rule 59(e) Motion under
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Successive Rules of the Gonzalez v. Crosby.

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APPENDIX B On November 19, 2018 Doc. 130 Denied District Court.

APPENDIX C On July 30, 2019 Petition For Rehearing with suggestion by the Panel and was denied.

APPENDIX D On November 30, 2018, a timely notice of appeal was filed.

APPENDIX E On March 18, 2019 Doc. 135 District Court without power to consolidate cases number on the United States Court of Appeals For The Third Circuit's docket.

APPENDIX F

TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

- Rule 26(a)(1)
- Fed Civ. R. 15(c)(1)(B)
- Rule 37(a)-(c)(1)
- 42 U.S.C. § 1983
- 60(c)(1)
- Fed. R. Civ. P. 12(b)(6)
- Supreme Court 28 U.S.C. § 2101(c)
- Supreme Court Rule 13
- 60(b)
- 28 U.S.C. § 2255(f)(1)
- Fed. Civ. Rule 20(a)(2)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at 771 Fed. Appx. 141; U.S. No. 118-3602; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
[] has been designated for publication but is not yet reported; or,
 is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 18, 2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 30, 2019, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

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

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

8th Amendment, 1st Amendment and Fourteenth Amendment Right's were violated when the facts Folk new exactly what was wrong a deprive of that right when at this Reconsider petition Doc. 129 4-17.

11/01/2019

STATEMENT OF THE CASE

See Attachment Page 1-11

STATEMENT OF CASE

On November 19, 2018 Doc. 130, District Court Denied Reconsideration/Amend Complaint and Compell Discovery filed at Doc. 129 under Civil Action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Middle District of Pennsylvania, Central Division, challenging the 8th Amendment, 1st Amendment and Fourteenth Amendment.(Dkt. No. 130). Appellant bring forth his rights to move the Third Circuit Court of Appeals when its clear Appellant was never afforded the right to file a leave an Amend under Fed. R. 15(c)(1)(B) and Discovery under Rule 26(a)(1) or Fed. R. 37(a)-(c)(1). See(Appendix B). See(28 U.S.C. § 2101(c) (90-day deadline) Supreme Court R. 13).

On Novemeber 30, 2018, a timely Notice of Appeal was filed. See(Appendix D).

On June 18, 2019 the Judgment was Affirmed by the Court of Appeals For The Third Circuit.(Dkt. 003113267279). Which was addressed base upon Appellant stating "Medication" hinder his ability to challenge the allegations during the five years and while on his previous appeal. See(Appendix A).

On March 18, 2019 Doc. 135 District Court stated he was without power to consolidate cases number on the United States Court of Appeals For The Third Circuit's docket. See(Appendix E).

On July 30, 2019 Petition For Rehearing with suggestion by the Panel and was denied. See(Appendix C).

WHETHER THIRD CIRCUIT COURT OF APPEAL
JUDGE'S APPLY THE STANDARD UNDER
TIMELY 60(C)(1) FROM THE DOC. 115
JAN. 26, 2018 DISTRICT COURT OPINION

This Court should turn to *Pioneer Inv. Servs. v., Brunswick Assocs., Ltd. P'ship*, 507 U.S. 380, 395, 113 S.Ct. 1489, 123 L.Ed. 2d 74(1993)(The Supreme Court has identified four factors, "without limitation," for courts to consider: (1) "the danger of prejudice," (2) "the length of the delay and its potential impact on judicial proceedings," (3) "the reason for the delay, including whether it was within the reasonable control of the movant," and (4) "whether the movant acted in good faith."). While district court have discretion in determining whether to grant a Rule 60(c)(1) motion, that discretion is bounded by reasonableness and precedent, and as such here in the Circuit Court Judge's denying Appellant petition for Rehearing. They should have owe Appellant a "duty of explanation" before making a decision.

The District Court committed reversible error denying 60(c)(1) base under reconsideration motion instead of amend petition after judgment became final. This approach was not addressed by Circuit Court Judge's in *Per Curiam* but was mention as to rely upon some sort of reason for Petitioner claims, being denied due to him not raising Doc. 129 in District Court.

Now this panel Circuit Court Judge's rely on abuse of discretion. See(*Max's Seafood Cafe ex rel. Lou-Ann, Inc, v. Quinteros*, 176 F.3d 669, 673(3d Cir. 1999)). Furthermore this was not the question before as each previous reconsideration motion which Circuit Court Judge's

relied on, stem from reconsideration at lower court Doc. 85-86.

Now upon these decision Doc. 112 Filed 1-17-18 and Doc. 126 Filed 5/11/18, and District Court camedown with ruling base on the Prime Care Medical Defendant's.

Therefore at this point when Petitioner raise this challenge to have all filing converted into one challenge base on 60(c)(1) it should have been addressed fully because Petitioner was within one year toll.

With this said just as petitioner mention at Doc. 129 at 1-4 and 18-21, it was clear Petitioner suffer from high dosage of mental health medication. Then the facts upon discovery and the Honorable District Court erred in not accepting Petitioner version of events as true. This will be address the same in Eleventh Circuit opinion. See(Sears v. Roberts, 2019 U.S. Appx. Lexis 12190; No. 15-15080 11 Cir. April 24, 2019)(The District Court erred in not accepting the inmate's version of event as true for summary judgment).

Then also which is clear Petitioner never was afford the right to clear up the record of previous Circuit Court judgment that was decided under "Vague" Doc. 1 Filed Feb. 21, 2013 and thereafter resulted into Doc. 128-2 page 5. Which was addressed by Judge Mariani in Doc. 130 Filed 11-19-2019 page 1-2.

At this time the Supreme Court Judge's should be aware this type of structure under 60(c)(1) is develope for this sole reason under 60(b)(1) the need to correct, clear error, or prevent manifest injustice. Moreover, "a motion for reconsideration is not

properly grounded on a request that a court consider repetitive arguments that have been fully examined by the court. This approach is not met in Folk case when he was not afford the right to challenge 60(c)(1) after a final order even after Folk was under his timely filing within 60(c)(1) petition.

Petitioner rely on other circuit court ruling which address the same relief. See(Mirkin v. Xoom Energy, LLC, 2019 U.S. App. Lexis 22285 No. 18-3738 2d Cir. July 26, 2019)(District Court erred in dismissing complaint under Fed. R. Civ. P. 12(b)(6) because, in holding complaint insufficient and motion to file proposed amended complaint futile, the district court failed to accept plausible allegations as true).

Petitioner will now point to his propose amend complaint at this time Doc. 129 at 19, when the facts are turn to, the Supreme Court Rule 13 states clear Petitioner has 90 days deadline to Petition for Cert., as Petitioner Rehearing Enbanc was denied on 8-28-18 under No. 18-1352; upon this Petitioner had 90 days to petition for Cert. to Supreme Court deadline 11-28-18.

Petitioner further filed Doc. 129 Filed Sept. 18, 2018 within the period of the original pleading Doc. 1 Filed 2/19/13, that further was decided at Doc. 130 Filed 11/19/18 and Notice of Appeal Filed 11/20/18 all under the mail box rule.

Therefore Petitioner is still under original pleading base on the new No. 18-3602, which turn under the same No. 18-1352 upon the Supreme Court 28 U.S.C. § 2101(c) (90-day deadline) under Supreme Court R. 13). Now with applying Third Circuit Court

of Appeals new decision. See (US v. Santarelli, Nos. 16-4114 & 18-1362, 2019 WL 2896613, at *7-8 (3d Cir. July 5, 2019); Now under this caselaw and the facts Petitioner Doc. 129 petition can be construed as still under original pleading Doc. 1, that will be developed for to be amended under 60(c)(1) and 15(c)(1)(B) petition Doc. 129.

Petitioner subsequent petition which was denied Doc. 311-3267279 Filed 6/18/19; Case No. 18-3602. Petitioner further move the circuit court to address his "Sur Petition For Panel Rehearing" which was denied Doc. 3113306283 Filed 7/30/19. Thereafter Petitioner has to 10/30/19 to submit his writ of cert. to the Supreme Court.

Now this approach, Petitioner shows he meets each requirement when the facts 60(c)(1) was timely filed in one year toll from the date of Doc. 115 Filed Jan. 26, 2018 to Jan. 26, 2019. Then applying Supreme Court Rule 13; 28 U.S.C. § 2101(c)(90 day deadline).

Petitioner further encourage the Supreme Court Judges to grant cert. when the Third Circuit Judge's ruling was not clear if Petitioner claims should have been addressed under one single pleading under Supreme Court Rule 13; 28 U.S.C. § 2101(c)(90 days deadline). Therefore leave an amend at lower court stage and showing of discovery to compell Fed. R. Civ. 37(c)(1) after and before at Doc. 104 Filed 8-31-17. See (Green v. Burkhart, 2019 U.S. App. Lexis 10458 No. 17-2632 3d Cir. April 9, 2019) (Amend Petition) See (Mullin v. Balicki, 875 F.3d 140; 2017 U.S. App. Lexis 22119;

No. 16-2896 3d Cir. Nov. 6, 2017). Then the facts also it appear at the Third Circuit Court of Appeals, a caselaw that points to Rule 60(c)(1) to be construed as post-judgment motions to amend to have been filed as 60(b) motions. See(Ahmed, 297 F.3d at 209. Then further see the same at Doc. 129 at 3, upon this clear error and the facts it also clear Petitioner relief should follow under the Supreme Court Rule 13 under both filing number 18-1352 and 18-3602 to apply under one filing of the original pleading of 42 U.S.C. § 1983.

Wherefore Petitioner Mr. Folk is requesting this Court to Reverse and Remand 3rd Circuit Court of Appeals at Doc. 3113306-283 Filed 7/30/19 pointing to Doc. 3113267279 Filed 6/18/19, which Doc. 129, was timely under 60(c)(1) or 15(c)(1)(B) and the 28 U.S.C. § 2101(c)(90-day deadline); Supreme Court R. 13(same) would move the Court to grant certioriari.

WHETHER THIRD CIRCUIT COURT OF APPEAL
JUDGE'S ABUSE OF DISCRETION FOR NOT
STAYING MANDATE ON DOC.82 FILED ON
1/27/17 PAGE 5., DISTRICT COURT DOC.
200 IS PENDING AT DOC. 129 at 17

Petitioner will further address this Court to order a Stay of Mandate on Doc. 82 Filed on 1/27/17 at page 5. When the facts District Court Judge Conaboy stated clear if Petitioner "Conviction" or sentence invalid, has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. See(Heck v.

Humphrey, 512 U.S. 477(1994). Now base upon this and Petitioner relying on "McCoy v. Louisiana, No. 16-8255 Filed May 14, 2018", which is under Crim. No. 1:11-CR-292,28 U.S.C. § 2255(f)(1) at Doc. 200 Filed 8/15/18. Therefore Third Circuit Court of Appeal Judge's should have granted stay of the mandate and further applied the Supreme Court rule 13; (28 U.S.C. § 2101(c)(90 day deadline), then if the Court would apply the new Third Circuit Court of Appeal decision. See (US v. Santarelli, Nos. 16-4114 & 18-1362, 2019 WL 2896613, at *7-8(3d Cir. July 5, 2019), at this time it should be develope under the record and mandate back to the lower court should be granted.(Doc. 129 at 4,6 an 15).

Wherefore Petitioner Mr. Folk is requesting this Court to order Stay Mandate back to 3rd Circuit Court Of Appeals upon McCoy v. Louisiana, No. 16-8255 turning to Doc. 200 under Crim. No. 1:11-CR-292. Therefore Doc. 82 Filed 1/27/17 Civ. No. 18-3602 Doc. 3113306283 Filed 7/30/19.(Crim. No. 1:11-CR-292 Doc. 209).

WHETHER THIRD CIRCUIT COURT OF APPEAL
JUDGE'S ERRED BY NOT ADDRESSING DOC. 130
DISTRICT COURT OPINION NOV. 19, 2018 PAGE 1-2

Petitioner addressed the facts when the Circuit Court Judge's did erred in not addressing the lower court Doc. 130 page 1-2, upon the facts at Doc. 129 page 15 turning to the Prime Care Medical Inc. "Policy and Custom". Then the facts previous District Court Judge Richard P. Conaboy never decided Petitioner Doc. 104 Filed 8-28-17 and Doc. 71 Filed 9-26-16 "Exhibits".

Then if the Court move forward to other Doc. 77 Filed 11/18/16

and Doc. 78 Filed 11/21/16, then Petitioner filed Reply Brief Doc. 81 Filed 12/8/16, is actually for Doc. 78 Filed 11/21/16 and Doc. 80 Filed 12/8/16, is actually for Doc. 77 Filed 11/18/16. Furthermore if the Court agree and apply there Supreme Court Rule 13; See(28 U.S.C. § 2101(c)(90-day deadline), this issue should addressed in lower court upon this Supreme Court Rule 13.

When the factual basis in law is develope at Doc. 129 page 4-17. The facts which also be clear in support of these contention it was never a conclusion to why this would resolve the record below under the previous lower court "Vagueness" conclusion.

Now upon this Petitioner will further comeforth and apply this standard under another caselaw from appeals courts. See(Hill v. Banacle, 2018 U.S. App. Lexis 25944; Fed. Appx. No. 17-2448 3d Cir. Sept. 13, 2018)(2018 U.S. App. Lexis at 4-5).

Then Petitioner will further move forward to show the facts under clear error approach if these contentions was met during the early stage and upon the first challenge to the entire judgement on Jan. 26, 2018, Doc. 115. Which Petitioner further explain under another circuit court opinion. See(Sears v. Roberts, 2019 U.S. Appx. Lexis 12190; No. 15-15080 11 Cir. April 24, 2019) (District Court erred in not accepting the inmate's version of event as true for summary judgement). See(Riles v. Sempler, 2019 U.S. App. Lexis 5834 18-327-pr 2d Cir. Feb. 27, 2019)(Fed. Civ. Rule 20(a)(2)).

Wherefore Petitioner Mr. Folk is requesting this Court to order a Compell Discovery under[Doc. 129 at 15], back to 3rd

Circuit Court of Appeals to be further address upon Doc. 130
District Court Opinion Nov. 19, 2018 page 1-2. Which will
Vacate and Remand order in on June 19, 2019 in the Circuit
Court, and on July 30, 2019, Rehearing denial opinion.

WHETHER THIRD CIRCUIT COURT OF APPEAL
JUDGE'S ERRED BY NOT ADDRESSING DOC.
134 UNDER FINE AND COST ON No. 18-1352
AND No. 18-3602[DOUBLE JEOPARDY]

Petitioner follows under the Supreme Court Rule 13 and
See(28 U.S.C. § 2101(c)(90-day deadline)(same). With this
theory it should be addressed that each number under the
Third Circuit Court of Appeals stemming from this district
court order's are to be address as one actual filing.

Now upon the fact finding Petitioner has never preceded
outside of his initial filing No. 3:13-cv-0474. Therefore its
obvious and plain Third Circuit Court of Appeal Judge's did
not rely on the factual basis when determining the wrong
conclusion.

Petitioner further show also if the Court turn to a recent
decision out of Third Circuit, See(US v. Santarelli, Nos. 16-4114
& 18-1362, 2019 WL 2896613, at *7-8(3d Cir. July 5, 2019). This
conclusion would be further develope on the facts that are clear
Petitioner filed a reconsideration to challenge previous judgement
under "Vague" contentions. Which show that Petitioner would make
clear he would be able to cure that deficient claims and further
move to Leave an Amend the Complaint at Doc. 1 Filed 2-21-13 and

tie the discovery to, the complaint. Base upon this it would be clear each filing at 3:13-cv-0474, that Petitioner is now being punish for two fine's for two appeals number No. 18-1352 and No. 18-3602 which is only a part of one single district number 3:13-cv-0474 Filed 2-21-13.

Now it is clear upon the facts each filing under Civil Action under 42 U.S.C. § 1983 only one district court filing was addressed therefore Supreme Court Decision in Rutledge v. United States, 577 U.S. 292 116 S.Ct. 1241(1996), should carry the day for why the "Fine and Cost" is subject under one 505.00\$ dollars filing fee.

Therefore Petitioner turns to Supreme Court Rule 13 and See(28 U.S.C. § 2101(c)(90-day deadline)(same). Thereafter also upon Third Circuit ruling, See(US v. Santarelli, Nos. 16-4114 & 18-1362, at *7-8(3d Cir. July 5, 2019)(Leave an Amend under Fed. Civ. R. 15(c)(1)(B)). With this approach it was clear Petitioner cannot be subject to two filing fee's under one single civil action under No. 3:13-cv-0474 Filed 2/21/13.

Wherefore Petitioner Mr. Folk is requesting this Court to order 3rd Cir. Circuit Court of Appeals to Re-Inburst filing fee of 505.00\$ back to Petitioner Inmate Account upon Supreme Court Rule 13 and 28 U.S.C. § 2101(c)(90-day deadline)(same).

WHETHER QUESTION BEFORE SUPREME COURT
UNDER Banister v. Davis, No. 18-1643,
granted Cert. June 24, 2019,
WHETHER A RULE 59(e) MOTION IN A § 2255
IS SUBJECT TO THE SECOND OR SUCCESSIVE

Petitioner rely on the question at Doc. 130 page 1-2, that which was concluded on Petitioner appeal. See (*Folk v. Prime Care Medical*; 771 Fed. Appx. 141; 2019 U.S. App. Lexis 18293 No. 18-3602 June 18, 2019) and Petition For Rehearing Denied on 7/30/19 Doc. 3113306283.

Furthermore Petitioner will ask, if the Court due to apply this pending grant in front of the Supreme Court to hold a question under a matter of subject jurisdiction to apply to Petitioner claims before them, then Petitioner would agree to Hold In Abeyance this caselaw [*Banister v. Davis*], until Supreme Court further come forth with a decision. See (Crim. No. 1:11-CR-292, Doc. 209, 59(e) motion).

Whether Petitioner Mr. Folk is requesting this Court to either Hold in Abeyance [*Banister v. Davis*], or further address merits upon this court and turn to Supreme Court Rule 13 and 28 U.S.C. § 2101(c)(90-day deadline) (same).

In Conclusion Petitioner Mr. Folk is requesting this Court to GVR his back to the 3rd Circuit Court of Appeals in light of Five issue's or in the alternative to Grant Certioriari.

X 

REASONS FOR GRANTING THE PETITION

Petitioner was violated under his Fourteenth Amendment Rights when the Third Circuit Court of Appeals Judge's construed his 60(c)(1) petition as out of time and further abuse there discretion under Supreme Court Rule 13 and 28 U.S.C. § 2101(c)(90-day deadline), when these petitions were raise during relevanat time frame Appendix (D), Wherefore The Supreme Court Judge's should Reverse and Remand Petitioner's 42 U.S.C. § 1983 petition back to the Third Circuit Court of Appeals.

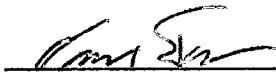
11/01/2019

Wherefore Mr. Folk prays Honorable Supreme Judges
Reverse and Remand Judgement of Petitioner's Lower Court
Ruling under wrong standard of law. See (Haines v. Kerner,
404 U.S. 519, 520, 92 S.Ct. 594(1972).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Omar Folk#70338-067

Date: 10-21-19