No. _____

19-7146

IN THE

SUPREME COURT OF THE UNITED STATES

David Rapoport - PETITIONER, Pro se

v.

Superintendent Robert Gilmore, *et al.* - RESPONDENT;

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Decided June 7, 2019

PETITION FOR WRIT OF CERTIORARI

David Rapoport
KH - 3567
S.C.I. Greene
175 Progress Drive
Waynesburg, PA 15370

Petitioner, *pro se*

QUESTIONS PRESENTED

1. Was the petitioner's counsel ineffective in pre-trial stages?

2. Was the petitioner's counsel ineffective during the plea-bargaining process?

3. Do trial counsels' ineffective assistance and the trial Court's failure to conduct an on-the-record colloquy render petitioner's waiver of appeal rights unknowing, unintelligent, and involuntary?

4. Does trial counsel's ineffective assistance render the petitioner's guilty plea agreement unknowing, unintelligent, and involuntary?

5. Is a sentence of life without parole (and an unknowing, unintelligent, and involutary waiver of all appeal rights) and all the relevant consequences of a sentence of life without parole a lesser punishment than a death penalty and all the relevant consequences?

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The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari to review the judgement below.

OPINIONS BELOW

The opinion of the United States District Court for the Eastern District of Pennsylvania appears at **Appendix A**, is reported by the Honorable Nitza I. Quiñones Alejandro in the Order dated January 30, 2019, and is unpublished.

The Report and Recommendation of the United States District Court for the Eastern District of Pennsylvania appears at **Appendix B**, is reported by the Honorable Carol Sandra Moore Wells, United States Magistrate Judge in the opinion dated November 27, 2018, and is published at 2018 U.S. Dist. LEXIS 201418

The order by the United States Court of Appeals for the Third Circuit in its denial or a petition for certificate of appealability and its denial of a petition for rehearing by the panel and by the Court en banc appears at **Appendix C** and is reported by the Honorable David J. Porter, Circuit Judge in the orders dated June 7, 2019 and July 16, 2019. These orders are unpublished.

The opinion of the Superior Court of Pennsylvania appears at **Appendix D** and is reportedby the Honorable J.J. Strassburger in memorandum dated March 6, 2014 , and is unpublished.

The opinion of the Court of Common Pleas of Lehigh County Pennsylvania, Criminal Division appears at **Appendix E**, is reported by the Honorable Robert L. Steinberg on September 20, 2013, and is published at 2013 Pa. Dist. & Cunty. Dec. LEXIS 1193.

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

JURISDICTION

For cases from the **federal courts**:

The date on which the United States Court of Appeals decided my case was June 7, 2019 in a denial of Petitioner's request for certificate of appealibity. A copy of that order appears at Appendix C

A petition for rehearing by the panel and by the Court en banc was timely filed and was denied by the United States Court of Appeals on **July 16, 2019**. A copy of that order appears at Appendix C.

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

TABLE OF AUTHORITIES

Cases:

Statutes and Rules:

Other bibliographic sources cited:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The **Sixth Amendment** provides that "[i]n all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." **U.S. Constitution, Amendment VI.** The Sixth Amendment right to Counsel applies to all federal and state criminal prosecutions. See **Gideon v. Wainwright,** 372 U.S. 355, 342 (1963) (Sixth Amendment right to counsel in criminal proceedings applies to states through the **Fourteenth Amendment**); see also **Johnson v. Zerbst,** 304 U.S. 458, 467 (1938) ("Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel; compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty.")

The **Fourteenth Amendment** to the U.S. Constitution holds that: All persons born 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 the 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 law.** (emphasis added)

It is well established that a guilty plea may be set aside as involuntary if the defendant can establish prejudice resulting form ineffective assistance of counsel. See **Tollett v. Henderson, 411 U.S. 258, 266 (1973).** To demonstrate that a guilty plea was involuntary or unknowing for ineffective assistance of counsel, a defendant must show that (1) counsel's performance was deficient, **Hill v.**

Lockhart, 474 U.S. 56-58 (1985) applying the two-prong ineffective assistance of counsel test from **Strickland v. Washington**, 466 U.S. 688 (1984), to plea bargain context; see also **Missouri v. Frye** 566 U.S. 134 (2012) (ineffective assistance of counsel test extends to counsel's conduct during plea negotiations) and **Lafler v. Coopoer**, 566 U.S. 156 (2012) (deficiency prong of ineffective assistance of counsel test requires a "defendant to show that counsel's representation fell below an objective standard of reasonableness") and (2) the "deficient performance prejudiced the defense. See **Strickland, 466 U.S. at** 687, see also **Frye**, 566 U.S. **at** 148-149 (prejudice established where the "result of the proceeding would have been different"); **Lafler**, 566 U.S. 156 (2012); **U.S. v. Cronic**, 466 U.S. 648, 659-60 (2008) (presumption of prejudice exists where the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial").

The **Eighth Amendment** to the U.S. Constitution holds that: Excessive bail shall not be required, nor excessive fines imposed, **nor cruel and unusual punishments inflicted.** (emphasis added)

STATEMENT OF THE CASE

The petitioner was questioned by Detective Gregory O'Neill, a Pennsylvania State Trooper and the affiant on the criminal complaint, and by Detective MacGuire on Thursday March 16, 2011. This interrogation took place outside the petitioner's home. Petitioner asked several times to leave, but he was not permitted to drive away or walk away from the encounter. The two detectives confined him between two parked cars and their bodies in front of and in back of the petitioner. Petitioner felt he was being confined illegally, but he did not want the situation to escalate unnecessarily. He cooperatd in this interrogation merely as acquiesence to their lawful authority, not by his voluntary consent. The detectives forced a warrantless and consentless search of the petitioner's vehicle, with neither probable cause nor reasonable suspicion. They seized the petitioner's cell phone, wallet, backpack, check book, forms of identification, and car keys. Petitioner explained that he had prior engagements and asked to leave, but he was not allowed. Petitioner explained he wanted to drive to the grocery store and purchase groceries. He asked for his identifcation and check book, but the detectives refused. Petitioner asked to see a warrant or for them to obtain a warrant, but they explained they did not need a warrant to sieze his property and his vehicle. Despite the petitioner's objections, Troopers O'Neill and MacGuire, put his aformentioned property in their vehicle, called for a tow truck, removed his vehicle from the premises, and left the petitioner on the street.

The petitioner retained the legal service of Mr. Gregory Pagono, Esq., a criminal defense attorney from Philadelphia, Pennsylvania. The petitioner was arrested on Tuesday March, 21, 2011 and was arraigned in Lehigh County, PA at Lehigh County Prison. On the day of his arrest, Mr. Pagano visited the petition. Mr. Pagano reported having a meeting with Lehigh County District Attorney, Mr. James Martin, Esq. after D.A. Martin held a press conference announcing the petitioner's arrest and the decision to seek the death penalty against the petitioner. Mr.

Pagano returned to Lehigh County Prison two weeks later after another conference with District Attorney Martin and Assistant District Attorney Steven Luksa. Mr. Pagano explained that he had negotiated a guilty plea agreement with Mr. Martin, in which, the petitioner would plea guilty to two counts of criminal homocide and agree to serve two sentences of life imprisonment, concurrently, in order to avoid the death penalty. This agreement was negotiated two weeks after the petitioner's arrest. Mr. Pagano and Mr. Martin reached this hasty agreement prior to any arraignment, prior to any preliminary hearing, prior to any pre-trial conferences, prior to any discovery, prior to any mental health or competency evaluation, and prior to any due process.

The petitioner's parents were frightened that the process was moving too quickly and retained the legal service of Mr. John J. Griffin of Philadelphia, PA, and Mr. John Waldron of Allentown PA. Mr. Griffin and Mr. Waldron provided legal counsel to the petitioner from April 2011 until December 2011. Upon the recommendation of counsel and despite his reluctance, petitioner followed counsel's advice and waived his preliminary hearing, losing the opportunity to challenge evidence to be used against him, the probable cause to conduct a warrantless search, investigatory techniques, and testimony against him, as well as losing the opportunity to initiate the process of valuable pretrial motions. Upon the recommendation of counsel and despite his reluctance, petitioner followed counsel's advice and waived his pre-trial hearing to submit pre-trials motions for suppression of evidence and pre-trial motions for discovery, losing the opportunity to challenge evidence to be used against him, the probable cause to conduct a warrantless search, and the illegally obtained evidence - fruit of the poisonous tree.

The Honorable Robert L. Steinberg, Judge for Lehigh County Court of Common Pleas Criminal Division, scheduled trial for September 2011 (a murder trial six months after the petitioner's arrest). Trial was continued until January 2012. In December 2011, before the approaching trial, counsel for the petitioner insisted that he should accept a guilty plea agreement

in order to avoid the death penalty. The petitioner questioned this course of action. He did not see any of his discovery material, but counsel responded that this was not necessary for him to do so. The petitioner had spoken to mental health professionals for evaluation. He asked for the opportunity to discuss his mental health evaluation and for the opportunity to consider how mental health findings could be used in his defense. Defense counsel said this was not necessary. Defense counsel did not allow petitioner to challenge an unlawful detention, a warrantless search and seizure, interrogative techniques by the police, or disparaging statements made by alleged witnesses. Counsel said it was not worth attempting to submit a Motion for Suppression of Evidence obtained after an unlawful and unreasonable search and seizure. This put the petitioner at a great disadvantage. Defense counsel did not allow the petitioner to challenge statements made by police officers, even though petitioner can offer contradictory evidence to their claims. Counsel offered the opinion that, whether fair or not, judges and juries believe police and prosecutors over anything inmates claim. This put the petitioner at a great disadvantage. Defense counsel did not allow the petitioner to see any of his discovery material, thus depriving him of the opportunity to participate in his own defense. The petitioner asked Mr. Waldron's paralegal about seeing this dicovery and having an opportunity to analyze it, to which she responded that in the near future, her employer would show the petitioner all of that and that he would go through it with "a fine-toothed comb" to the point of fatigue. That never happened. Petitioner asked counsel about this comment and demanded to see his discovery. Counsel dismissed the peitioner's demand; however, he responded that during the previous weekend of inclement weather, counsel remained indoors and went through boxes and boxes of discovery again and again, "with a fine-toothed comb." Counsel concluded that despite the petitioner's request, the petitioner did not need to look over any discovery material.

During petitioner's pretrial confinement, he saw Mr. Martin on the local news and in the

Lehigh Valley newspaper promising to seek the death penalty against the petitioner. The petitioner had no understanding of the law or capital punishment; he relied on defense counsel for adequate guidance, advice, and information. Defense counsel was dereclict in their duty to provide these. The petitioner and his family were terrified of the death penalty and the likelihood of execution. Defense counsel did not present information about capital punishment in a fair manner. Despite the petitioner's reluctance, they persuaded him into a guilty plea agreement in which he was forced to waive all future forms of appeal rights and all future forms of relief for the remainder of his natural life. The petitioner's participation in this guilty plea agreement was out of fear, without the sound legal advice from defense counsel, without accurent information regarding the death penalty, without a knowing explanation of the legal process, and without an intelligent understanding of defense counsel's obligations. Hence, without effective assistance of counsel in the pretrial stage (the negotiation of a guilty plea agreement), the petitioner has maintained that his agreement was involutary, in addition to unknowing and unintelligent.

The petitioner was convicted on December 8, 2011 on pleas of guilty. The plea was entered under an agreement in which the Commonwealth agreed to withdaw its notice of aggravating circumstances and to forego the possibility of a death penalty. Petitioner executed a waiver of all of his appeal rights. The Court explained that included a waiver of any right to seek a pardon or commutation. The Court dispensed two life sentences served consecutively, a worse sentence than Mr. Pagano's and Mr. Martin's agreement for concurrent sentences.

The petitioner filed a timely PCRA petition in which he avered inaffective assistance of counsel to a degree which, in the circumstances of this particular case, so undermined the truth-determinine process that no reliable adjudication of guilt or innnocence could have taken place. His attorneys deprived him of due process and the right to particpate in his own defense. His attorneys gave him inaccurate information about the death penalty, thus making his motivation to

avoid the death penalty uninformed and mute. He claimed his guilty plea agreement and the waiver of appeal rights was unknowing, unintelligent, and involuntary. Prior to a PCRA hearing, at a conference between the Court and counsel (but excluding the petitioner), it was decided that the only issue to be raised was whether the petitioner had entered into a knowing and voluntary waiver of his appeal rights. The trial Court upheld the waiver, enforced the stipulation of the waiver that the petitioner had no right to file for post-conviction relief, dismissed the PCRA petition, and entered an order denying relief. On March 6, 2014, the Superior Court of Pennsylvania affirmed the PCRA Court's denial of relief. On September 10, 2014, the Supreme Court of Pennsylvania denied his petition for allowance of appeal. The petitioner filed the instant habeas petition on or about July 16, 2018 in the United States District Court for the Eastern District of Pennsylvania. On August 3, 2018, the Honorable Nitza I. Quiñones Alejandro referred the instant habeas petitioner to the Honorable Carol Sandra Moore Wells, United States Magistrate Judge for a Report and Recommendations. The Honorable Nitza I. Quiñones Alejandro, approved and adopted the Report and Recommendations and dismissed the Petition for Writ of Habeas Corpus without an evidentiary hearing. Because Judge Alejandro believed the petitioner failed to show a denial of a federal constitutional right, she denied the petitioner a certificate of appealability. In 2019, the petitioner filed a timely Application for Certificate of Appealability in the United States Court of Appeals for the Third Circuit. The United States Court of Appeals denied a Certificate of Appealability in June 2019. Petitioner filed for rehearing by the panel and en banc. Petitioner's filing for rehearing was denied on July 16, 2019.

REASONS FOR GRANTING THE WRIT

Petitioner pled guilty to two counts of first-degree murder. His plea was part of an agreement in which the Commonwealth agreed to withdraw its Notice of Aggravating Circumstances and remove the death penalty from consideration. In addition to his plea of guilty, the petitioner had to sign a waiver of his appeal rights, including his right to direct appeals, his PCRA rights, his Federal rights to habeas courpus relief, and his right to seek a pardon or commutation from the governor. On December 8, 2011, he pled guilty and was immediately sentence (without any presentence investigation or presentence report) to two consecutive sentences of life without parole. Thereafter, on December 6, 2012, the petitioner filed a timely petition for postconviction collateral relief under the Post Conviction Relief Act. Counsel was appointed, counsel filed an amended PCRA petition, and the court scheduled an evidentiary hearing on July 30, 2013 for the sole purpose of determining whether the waiver of appeal rights was entered into knowingly and voluntarily. The court found that the waiver of appeal rights was knowing and voluntary, and on that basis dismissed the PCRA petition.

When the petitioner submitted his timely motion for relief up the Post Conviction Relief Act (PCRA), he prayed for the opportunity to present evidence regarding extensive ineffective assistance of counsel. Although the petitioner was granted an evidenciary hearing, the scope of the hearing was unfortunately limited to the waiver of appeal rights as part of the guilty plea agreement; the hearing did not allow for the submission of evidence regarding counsels' ineffective performance.

Nevertheless, the petitioner believes the PRCA court errored in its judgment to enforce the waiver of appeal rights and consequently its judgment to dismiss the PCRA petition. This will be the first discussion in the *reasons for granting the writ*. Furthermore, the petitioner believes this honorable court should consider the elements which made counsel's assistance so drastically in effective. This will be the second discussion in the *reasons for granting the writ*.

Petitioner believes the court erred in denying PCRA relief based on the waiver of appeal rights. Petitioner believes the court erred in denying PCRA relief based on the waiver of appeal rights where there was no colloquy on the record to determine whether the waiver was knowing, intelligent, and voluntary. Petitioner believes the court erred in denying PCRA relief based on the waiver of appeal rights where there was no explanation of the rights being waived and no determination by the court that the petitioner understood the rights he was giving up. Petitioner believes the court erred in denying PCRA relief based on the waiver of appeal rights where there was only a bare mention on the form signed by the petitioner with no determination by the court as to whether the waiver was knowing, intelligent, and voluntary. The court erred in enforcing the waiver of appeal rights where there was no judicial determination at the time the waiver was made that the waiver was knowing, intelligent, and voluntary.

THE COURT ERRED IN THE DISMISSAL OF THE PETITIONER'S PCRA PETITION BASED ON A WAIVER OF PCRA RIGHTS THAT WAS NOT KNOWING, WILLING, INTELLIGENT, OR VOLUNTARY

Prior to pleading guilty, the petitioner met with both of his counsel who had reviewed the waiver of appeal rights colloquy prepared by the Commonwealth, and Attorney Griffin

testified that both he and Attorney Waldron had explained the colloquy to the petitioner. At the guilty plea and sentencing hearing, the colloquy was referred to and was explained in general terms, with the exception of the right to seek a pardon or commutation from the governor, which was explained in detail by the court. Thereafter, the petitioner filed a timely petitioner for postconviction collateral relief. Counsel was appointed, an amended PCRA petition was filed, and hearing date was set. Prior to the hearing date, PCRA counsel and counsel for the Commonwealth met with the court to discuss the matters to be addressed at the hearing. The petitioner was excluded from this meeting. It was decided that the only question to be brought before the court at that time was whether there was an effective waiver of rights to file a PCRA by the petitioner.

At the hearing, PCRA counsel moved for an admission of the transcript of the guilty plea and sentencing hearing and then rested. The Commonwealth attempted to call the petitioner as its first witness which was objected to on grounds of relevence. After a discussion with the court, counsel for the Commonwealth chose not to call the petitioner, and instead called Attorney John Griffin, lead trial counsel. Again, PCRA counsel objected on grounds of relevance, which objection was overruled and Attorney Griffin then testified as to the efforts of counsel for the petitioner. Attorney Griffin's testimony of his efforts provided nothing more than vagueness and generalizations (such as, "we stopped everthing," "made this case a priority," "conducted reasearch," and "spoke to defense experts.") rather than any specifics of the assistance of counsel. The court did not question these generalities.

It was PCRA counsel's position that for the purposes of the hearing, the only relevant

information was found in the trranscript of the guilty plea and sentencing hearing. The only case cited by counsel both at the hearing and on appeal to the Superior Court of Pennsylvania provided that,

> a defendant must participate in an **on-the-record colloquy**, which ensures the defendant is aware of the rights being waived, *i.e.*, the "essential ingredients" of PCRA review. This includes, but is not limited to, an explanation of (1) the eligibility requirements for PCRA relief; (2) the right to be represented by counsel for a first PCRA petition; (3) the types of issues that could be raised pursuant to the PCRA that are now being given up; and (4) the PCRA is the sole means of obtaining nearly all types of collateral relief. The trial court must also ensure the defendant has made the decision to waive his right to PCRA review after consulting with counsel (if any) and in consideration of his rights as thay have been explained in the colloquy.

Commonwealth v. Baker, 72 A.3d 652 (Pa. Super. 2013). Citation omitted. Emphasis added.

In the instant case, trial counsel made it clear that they had met with the petitioner and explained the waiver to him. The trial court then simply asked him if he understood the waiver, to which he indicated in the affirmative. The trial court, in its opinion, suggests that Baker is not applicable in this case because in Baker, the defendant was given an explanation of his rights which was a total misstatement of the law. This was certainly a basis for deteriming that Mr. Baker's waiver was not knowing, intelligent, and voluntary. In the instant case, the petitioner was given no explanation of the law by the court. The Superior Court stated that the trial court must ensure that the waiver of right to PCRA review is made after consulting with counsel **and** in consideration of those rights as explained by the court in the colloquy. Both the trial court and the Superior Court of Pennsylvania attempted to distinguish Baker from the present case on the basis of their facts, and there can be no dispute the the factual basis for

the two cases is different. While the facts of these cases are different, the law is not, and the Superior Court did not say that based only on the facts of Baker does this constitute a knowing, intelligent, and voluntary waiver of PCRA rights.

At the petitioner's PCRA hearing, the Commonwealth argued that the explanation by defense counsel should be sufficient. The PCRA court and Superior Court appear to have adopted this position. **The fallacy of this position is the inherent conflict that arises when the typical target of a PCRA ineffectiveness claim is the very person who is advising the client to waive his right.** This is why it is essential that the unbiased court undertake the **on-the-record colloquy** explaining the rights that are being wavied (as mentioned above in Baker). As with each person who pleads guilty, it is the responsibility of defense counsel to review and explain the written guilty plea colloquy, explaining the rights that the person has and the rights they give up by pleading guilty, the court still engages in a colloquy to explain those rights to the defendant and sure that the defendant understands those rights that he is giving up.

The Superior Court described the petitioner's argument as facile, but totally ignored the argument that trial counsel cannot give advice and counsel with regard to the waiver of PCRA rights. Trial counsel is the target of most PCRA petitions, thus giving rise to what appears to be a direct conflict of interest, or at the very least, the appearance of a conflict of interest between counsel and client. While many defense counsel have been the target of a PCRA petition, few have represented clients in a petition for postconviction collateral relief, and are not, therefore, qualified to "ensure the defendant is aware of the rights being waived, *i.e.*, the 'essential ingredients' of PCRA review." Counsel for the Commonwealth argued that the

petitioner, a veterinary medical doctor, was highly intelligent and had read the written colloquy and therefore understood it, and this position was adopted by the trial court and the Superior Court. The Superior Court incorporated relevant portions of that written colloquy in its opinion, however, nowhere does the colloquy explain the eligibility requirements for PCRA relief; the right to be represented by counsel for a first PCRA petition; the types of issues that could be raised pusuant to the PCRA that are now being given up; and the PCRA is the sole means of obtaining nearly all types of collateral relief. Hence the need for the unbiased court to undertake an **on-the-record** colloquy and explain to the defendant the rights being waived and ensure the defendant understands that waiver.

The commonweath also made a point that the petitioner completed an undergraduate degree at Muhlenberg College and received a professional degree from the University of Pennsylvania School of Veterinary Medicine and was therefore an "incredibly intelligent person". No matter how intelligent he may be, he was never exposed to the law of post conviction collateral relief. This was his first experience with the criminal justice system. As brilliant and talented as defense counsel are, both of who have undergraduate degrees and professional degrees from fine institutions of higher learning, it is quite unlikely that they were well based in the law of post conviction collateral relief, as there exposure is mostly as targets. As brilliant and talented as the counsel for the Commonwealth is, he too has an undergraduate degree and professional degree from a fine institution of higher learning, he had the expert on post conviction collateral relief from the Office of the District Attorney at his side throughout the hearing.

Even if counsel is familiar with the law of post conviction collateral relief, he should not be placed in the position of giving advise and counsel to someone asked to waive those important rights which are typically pursued against that very advise-giving counsel. Thus it is essential that the court, as the unbiased and impartial party, explain the essentials of PCRA review before there can be an effective waiver of these important rights. In the instant case a waiver of appeal rights is part of the guilty plea agreement. However, if there is not an effective waiver of these important rights, consequently, there cannot be a guilty plea agreement considered adequatly knowing, intelligent, and voluntary.

The United States Supreme Court decision in **Strickland v. Washington, U.S. (1984)** outlines the requirements for a claim of inaffective assistance of counsel. Specifically, assistance of counsel shall be deemed ineffective when that counsel's assistance falls below an established and accepted professional standard and when that below-standard representation causes prejudice. When the outcome of a case or when the decisions made by a defendant would have been different but for the below-standard representation of counsel, the defendant received ineffective assistance.

The United States Supreme Court expanded this claim in the companion cases **Lafler v. Cooper, 566 U.S. 156 (2012)** and **Missouri v. Frye, 566 U.S. 134 (2012)**. In these cases, the Supreme Court provided that effective assistance of counsel is applicable to the plea bargaining phase. In those cases, the defendants were given bad advice which resulted in them refusing otherwise favorable plea bargains. The argument that a fair trial corrects pre-trial errors is invalid. Despite a fair trial or other fair phases of the process, defendants are entitled to effective assistance of counsel during the plea-bargaining phase. If assistance in pursuit of a plea bargain falls below a professional standard and if the outcome would have been different but for the below-standard representation of counsel, the defendant received ineffective assistance of counsel during the plea bargain and is entitled to appropriate remedy.

The petitioner believes he deserves consideration and relief as a result of the decisions in **Lafler** and **Frye**; defendants are entitled to effective assistance of counsel during the plea bargaining phase, and the petitioner believes and therefore avers that he did not receive this requisite assistance during his particular plea bargaining experience. In the instant case, the

situation is reversed. The petitioner was induced into a guilty plea after receiving assistance of counsel which falls below the professional standard. But for counsels' errors, the petitioner would have rejected the guilty plea agreement and insisted on proceeding to trial. If this course of action had been pursued by the petitioner, the outcome would have been drastically different.

The petitioner was induced to accept a guilty plea agreement and waiver of all appeal rights because of counsels' inaccurate and incomplete legal advice. The petitioner was fearful of execution and counsel gave the petitioner an inaccurate picture of the execution process. The petitioner was fearful of the living conditions on a Capital Case Condemnee, and counsel gave the petitioner an inaccurate and incomplete picture of the conditions of confinement on a Capital Case Unit and the General Prison Population.

Furthermore, the appeals process for one convicted and sentenced to death is extensive. The Pennsylvania Supreme Court recognizes the undeniable fact that a death penalty appeal is different in quality and kind...[with] substantial safeguards not available in other criminal matters. **Commonwealth v. Freeman, 827 A.2d 385, 402 (Pa. 2003)**.

The Petitioner was pushed to engage in a guilty plea agreement and waive his extensive appeal rights. If he had known more about the sustantial safeguards afforded a death penalty appeal, that knowlege would have changed his view of the guilty plea agreement. Also, instead of having the automatic legal appeal rights of a death penalty case, the petitioner was pushed to waive his appeal rights, thus placing him at a disadvantage.

The U.S. Supreme Court has held "that the **Eighth Amendment** bars not only those punishments that are 'barbaric' but also those that are 'excessive' in relation to the crime committed. **Corker v. Georgia, 433 U.S. 584, 592 (1977)** The two most important decisions made in every death penalty case - whether to seek the death penalty, and whether to offer a plea bargain - are completely in the hands of prosecutors. They are unregulated and subject to no judicial review. There are many prosecutors who never seek the death penalty, others who seldom seek it, and others who seek it in every case in which it could be imposed. The use of the death penalty charge to induce a murder defendant to plead guilty or waive a jury trial has come under attack in the legal academy and by other observers, largely on the ground that the threat of the death penalty is likely to coerce defendants (innocent or otherwise) to hastily plead guilty. In the instant case, the petitioner's ineffective assistance of counsel coerced him to hastily plead guilty out of fear, irrationality, and inaccurate and incomplete legal advice about the death penalty, the appeals process, and the outcome of executions.

The U.S. Supreme Court has conditionally authorized plea bargains, both in general and in death penalty cases. Plea bargains are analyzed as a waiver issue and pass constitutional muster if the waiver is voluntary and informed.

> That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so - hence the minimum requirement that his plea be the voluntary expression of his own choice. But the plea is more than an admission of past conduct; it is the defendant's consent that judgment of conviction may be entered without a trial - a waiver of his right to trial before a jury or a judge. **Waivers of constitutional rights not only must be voluntary but must be knowing, intelligents acts done with sufficient**

awareness of the relevant circumstances and likely consequenses...The issue we deal with is inherent in the criminal law and its administration because guilty pleas are not constitutionally forbidden, because the criminal law characteristically extends to judge or jury a range of choice in setting the sentence in individual cases, and because both the State and the defendant often find it advantageous to preclude the possibility of the maximum penalty authorized by law. For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious - his exposure is reduced, the correctional process can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages - the more promptly imposed punishment after an admission of guilty may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judical and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilty or in which there is substantial doubt that the State can sustain its burden of proof. It is this mutuality of advantage that perhaps explains that...criminal convictions in this country rest on pleas of guilty, a great many of them no doubt motivated at least in part by the hope or assurance of a lesser penalty that might be imposed if there were a guilty verdict after a trial to judge or jury. **Brady v. U.S., 397 U.S.742, 748, 751-51 (1970)**

In the words of Shakespeare, "Ay, there's the rub." The petitioner does not contest the validity of guilty pleas. However, the petitioner does question whether life imprisonment without parole in general population is a "lesser penalty" than a death penalty conviction, the constitutionally and statutorily mandated appeal rights and substantial safeguard protections which accompany a death penalty conviction, and the conditions of confinement of a capital case condemnee. In the instant case, the petitioner believes and therefore avers that he was misinformed and inadequately informed before following counsel's encouragement to enter into a guilty plea agreement and waiver of all subsequent appeal rights; he did not have "sufficient awareness of the relevant circumstances and likely consequences," as mentioned in **Brady v. U.S.** Furthermore, it was the responsibility of defense counsel to assure that the petitioner had a full command of these "relevent circumstances and likely consequences" of

the death penalty before a aguilty plea agreement could be a "knowing, intelligent act." They (defense counsel) did not make this assurance and did not perform their duty to effective assistance of counsel.

If a reasonable mind can agree that a death penalty conviction and its consequences have veritable benefits that a life without parole in general population does not, than it may not be a "lesser penalty." Likewise, when a petitioner enters into a plea agreement but does not arguably receive a "lesser penalty" then he or she does not benefit from the "mutually advantageous" plea bargain. The State receives advantages: the more promptly imposed punishment, the avoidance of trial, and the scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilty or in which there is substantial doubt that the State can sustain its burden of proof. In other words, the State benefits and saves scarce financial resources at the expense of the petitioner's liberty and dignity.

Pennsylvania law is similar to federal law in that a guilty plea to first-degree murder is constitutionally valid if it is "knowingly, voluntarily, and intelligently entered." **Commonwealth v. Fears, 836 A.2d 52, 62 (Pa. 2003)** It has been argued that plea bargaining with the death penalty results in a sentencing procedure that creates a substantial risk that the death penalty will be inflicted in an arbitrary and capricious manner, in violation of **Gregg v. Georgia, 428 U.S. 153, 188 (1976)**. To critics, an accused who receives the death penalty does so as much for insisting on exercising his or her right to a jury trial as for the underlying crime. Plea bargaining a death penalty case seems contrary to the policy underlying the penalty.

So it becomes critical to examine the relevant circumstances and likely consequences of a death penalty conviction. Along with a death penalty comes free and extensive legal defense that other criminal cases are not afforded, substantial safeguards to protect against judicial and prosecutorial error that other criminal cases are not afforded, an undeniable reality of the rare prevelance of executions, an undeniable prevalence of overturned death sentences on appeals, and a certain likelihood of receiving life imprisonment or a lesser sentence on appeal. If a defendant gives up the extensive legal defense and substantial safeguards while giving up his appeal rights for certain conditions of confinement on a capital case unit, without receiving this vital information before entering into a guilty plea agreement, he was unknowingly coerced into the worse possible sentence, not one which gives him the advantageous incumbent in the underpinnings of guilty plea bargains.

In June 2018, the Joint State Government Commission for the General Assembly of the Commonwealth of Pennsylvania published **CAPITAL PUNISHMENT IN PENNSYLVANIA: The Report of the Task Force and Advisory Committee.** The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral reasearch and policy development agency for the General Assembly of Pennsylvania. This Joint State Govenment Commission has a task force and an advisory committee, which includes leadership from both the House of Representatives and the Senate, members of the law enforcement profession, a former representative from the Office of the Victim Advocate, university professors, sociologists and criminologists, District Attorneys, defense attorneys, Federal Public Defenders, and Honorable Judges from the Court of Common Pleas. The June 2018 report researched, analyzed, presented findings, drew conclusions, and made recommendations regarding: cost, bias and unfairness, proportionality, mental illness, juries, state appeals and postconvictions, clemency, penological intent, innocence, alternatives, counsel, conditions of confinement on death row, lethal injection and public opinion - as these categories pertain to the use of capital punishment.

The petitioner calls the Court's attention to several data pulled from the Joint State Government Commission Report. Capital punishment is currently authorized in 31 states, by the federal government and the U.S. military. **Nat'l Conf. of State Legiss., States & Capital Punishment (June 1, 2018)** The Commonwealth of Pennsylvania is one of these 31 states. **42 Pa. C.S. §9711** During the last 56 years, the Commonwealth has executed three condemnees even though it has had a death penalty for approximately 50 of those years. (Keith

Zettlemoyer and Leon Moser were executed in 1995; Gary Heidnik was executed in 1999.) These three condemnees, who had psychiatric problems, waived their appeals, which dates the last involuntary execution in the commonwealth back to 1962. [This was Elmo Smith. **Associated Press, "Pa. Execution 1st Since '62," *N.Y. Times* (May 3, 1995)**] Since 1985, at least 466 warrants of execution were issued in the Commonwealth, which resulted in those three executions. Since 1987, approximately 35 inmates died while on death row while still under a sentence of execution (but not from being executed). **Kristofer B. Bucklen, Ph.D., Dir of Research & Statistics, Pa. Dep't of Corrections (May 3, 1995)** Since the death penalty was reinstated in 1978, the subsequent judicial dispositions of the Commonwealth's condemnees' convictions and sentences resulted in more than 97% of them being resentenced to life imprisonment or less. **Dunham, Robert, B., Pa. Capital Post-conviction Reversals and Subsequent Dispositions (Death Penalty Information Center 2018)** Also since 1978, the number of the commonwealth's inmates under a sentence of death peaked at 243 in 2002. As of June 2018, the number of the commonwealth's inmates under a sentence of death had been reduced to 150. Finally, during that same time frame, six condemnees were fully exonerated of the crime(s) for which they were convicted and sentenced to death.

Taken as a whole, the above summary shows that the death penalty is becoming less common, that executions are extremely rare, that involutary executions are a thing of the past (the last being 1962), and that there is a high rate of postconviction sentence reductions or exonerations (the rate being 97%). The petitioner will explain some of the reasons for the above conclusions, but first he will explain his state of mind before becoming aware of this

information.

The petitioner is a fan of popular movies and entertainment. When the petitioner was threatened with the death penalty and the threat of execution was used to force him into an involuntary, unknowing, and unintelligent guilty plea agreement with the requisite waiver of all future appeal rights, his mind was clouded by intense fear because of the way popular movies and entertainment have portrayed the death penalty. Based on these sensationalized depictions of the death penalty and executions, the petitioner thought that one way or another heartless barbarians representing the Commonwealth of Pennsylvania would muscle him into a death apparatus and kill him. That may have been strapping him into an electric chair, strapping him into a gas chamber, strapping him into a gallows, or strapping him onto a lethal injection table.

The petitioner prays the Court agrees with him that this fictional depictions are extreme and false. Nevertheless, the petitioner was a layperson, this was his understanding, and these were his fears. He did not know the truth. It was the responsibility of his defense counsel to *counsel* him for a better understanding of the truth before he could intelligently make a decision regarding the death penalty and its relevant consequences, especially before waiving appeal rights of such primary constitutional magnitude. Defense counsel was derelict in fulfilling this responsibility. Counsel never explained the rarity of executions in Pennsylvania. Counsel never explained the 1962 was the last time an execution took place without the condemnee first consenting to be executed. Counsel never explained that statutes provide for automatic judicial review of death penalties to correct errors at trial. Counsel never explained

that there is a statutorily-mandated review of the sufficiency of the evidence. Counsel never explained that death row condemnees are appointed free legal defense teams to fight on their behalf through their guaranteed appeals process, and counsel never explained that, while it may seem counterintuitive, the conditions of confinement on Capital Case Units (demanding a single cell) are conducive to fighting these multidimensional appeals.

The petitioner unknowingly was forced into a plea bargain he believed was necessary to avoid execution, without knowing how rarely executions took place. He unknowingly was forced into a plea bargain he believed was necessary to avoid the finality of a death penalty conviction, without knowing that conviction is not final without mandated appeals and judicial reviews to challange the finality of conviction. He waived his right to safeguards of which he was unaware. He waived his right to appeals, without knowing what those rights were. He successfully avoided a death penalty conviction, but he was unaware that a death penalty conviction mandates a free legal defense team, multi-leveled appeals procedures, and a single cell which facilitates the greatest opportunity to fight a legal battle. (Having a single cell may seem trivial, but the petitioner hopes to shortly explain why that particular situation as well as the general conditions of confinement and their significance should not be overlooked by the Court.)

The Joint State Commision- Government Commission undertook an epic task to investigate the death penalty. In addition to researching critical issues suchs as bias and unfairness, morality, mental illness, juries, impact on victim services, and public opinion, the task force and the advisory committee were naturally concerned with cost. A death penalty

conviction mandates an extensive appeals process, which necessitates a high financial burden. This financial burden is unfortuately placed on the government and its taxpayers, but these financial resources are a gift to the death row condemnee mounting a legal battle.

It seems as though the consensus of developed nations is that the punishment of execution should be abolished. European Union nations have abolished capital punishment. The petitioner does not intend to challange capital punishment in the United States, but he highlights the efforts that are required to thoroughly appeal a death penalty. The United States insists on captial punishment, but fortunately it also insists on extensive appellate safeguards. He was unaware of these efforts and these expensive services, but had he know they were provided to death row condemnees, he would not have waived his appeal rights.

Certainly, the death penalty is much more expensive than sentences life imprisonment without parole because of the long and complex process for capital cases. Capital punishment is an inefficient, bloated program that has bogged down law enforcement, delayed justice for victim's families, and devoured millions of crime-fighting resources that could save lives and protect the public. More than a dozen states have tried to capture the cost of death penalty cases and found evidence that they are up to 10 times more expensive than other comparable cases. In California, a 2011 study showed death penalty cases are 20 times more expensive. that state has spent over $4 billion on the death penalty since 1978. Many of the extra costs are legally mandated to reduce the risk of executing an innocent person, and even these safeguards are not enough. At least 160 people have been completely exonerated from death row after waiting years for the truth to come out, and there must be more cases in which

exculpatory DNA evidence no longer exists. Streamlining the process would virtually guarantee the execution of an innocent person. With its many appeals, the death penalty is an expensive way to deal with violent crime. The lengthy trial and appeal procedures and the cost of maintaining maximum security on death row have led to prohibitive expenses in an already burdened and underfunded criminal justice system. The appeal process costs taxpayers millions of dollars which could have been better spent on more effective crime control.

In California, state and federal taxpayers spent $4 billion to administer that state's death penalty from 1978 to 2011, with an additional $619 million to be spent on *federal habeas corpus* petitions. Of those whose petitions for federal habeas corpus relief had been reviewed, nearly 70% had been granted relief. There reasons for California's great finacial demand simply to implement a death penalty are (1) pre-trail and trial costs, (2) costs related to direct appeals and state habeas corpus petitions, (3) costs related to federal habeas corpus petitions, and (4) costs of incarceration. Average cost estimates for federal habeaus corpus proceedings worked out to be $1,107,142.85 *per* petition in federal court. **Cal. Comm'n on the Fair Admin of Justice, *Final Report* 144 (2008)**

The petitioner was unaware of the costly but grand-scaled appeal apparatus he would have had at his disposal. When he was forced into a guilty plea agreement, his counsel did not explain that federal habeas corpus petitions from a death row condemnee is a $1,107,142.85 legal battle that would be fought on the petitioner's behalf before he would ever be asked to concede to an execution.

In Maryland, a capital case in which prosecutors unsuccessfully sough the death penalty

cost $700,000 more than a case in which the death penalty was not sought. An average capital case resulting in the death penalty cost $1,900,000 more than a case where the death penalty was not sought.

In Nebraska, during the 41 years between 1973 and 2014, 1.1% of murder convictions resulted in execution. Maintainence of the death penalty cost the state approximately $14,600,000 annually and each additional death penalty arraignment costs the state almost $1,500,000. **Goss & Assoc. Econ Solutions, The Economic Impact of the Death Penalty on the Stateof Neb.: A Taxpayer Burden? (2016)**

In Nevada, the average for trial and appellate case costs of the death penalty was triple that of non-death panelty cases. The death penalty process involves a longer jury slection, bifurcated trials, a complexé appeals process for both conviction and sentence, and a legal defense team of multiple lawyers; paralegals; clerks; experts; consultants; supplemental technologies; and investigators is provided to defend an individual facing the death penalty. **Nev. Legis. Auditor, Perf. Audit (2014)**

Clearly, seeking the death penalty is a meticulously thorough and deliberate process. Adjudicating death penalty cases takes vastly more time and resources compared to murder cases where the death penalty sentence is not pursued. It is expensive to implement special due-process protections accorded to all capital defendants. Cases are more complex, more agencies and people are involved in the adjudication, both the prosecution and defense spend more time in preparation, the appellate process has more steps, and capital defendants are guarenteed a free legal defense team. The petitioner did not know how meticulous and careful

it was. Had he know, he would have had more confidence and less fear. His defense counsel failed to prepare him and supply him with adequate information before entering into a guilty plea agreement to save the government money. Had he know what financial resources would be invested and the legal defense team provided to him and at his disposal during his appeal process, he would not have entered into a guilty plea agreement which waived all of his appeal rights. It's great that the government could save a million bucks, but it has cost the petitioner his life. Purely financial motivation to pursue one punishment or another would be improper and can create unjust results.

Counsel for the petitioner failed to give him accurate facts about the death penalty, the appellate process, and the consequences of a death penalty conviction in Pennsylvania. The Commonwealth has executed three condemnees during the last 56 years, and all three of them relinquished their appeals. The practical reality is that more than 97% of post-conviction reversals disposing of death sentences in Pennsylvania since 1978 have subsequently resulted in a sentence of life impisonement or less. As of May 2018, 150 Pennsylvania deth row inmates sentenced to death under Pennsylvania's 1978 death penalty statues have had their convictions of sentences overturned on the basis of ineffective assistance of counsel. **Dunham, Robert B., Pa. Capital Convictions & Death Sentences Reversed as a Result of Ineffective Assistance of Counsel (Death Penalty Information Center (2018)**

In **Lafler v. Cooper, 566 U.S. 156 (2012)**, the Supreme Court insisted that defendants have a sixth Amendment right to counsel, a right that extends to the plea-bargaining process. Sixth Amendment protections are not designed simply to protect the trial; these protections are constitutional guarantees applied to pretrial critical stages that are part of the whole course of a criminal proceeding, a proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice. During plea negotiations, defendants are entitled to the effective assistance of competent counsel. A two-part test applies to challenges to guilty pleas based on ineffective assistance of counsel. The performance prong of the test requires a defendant to show that counsel's representation fell below an objective standard of reasonableness. To establish prejudice from deficient performance of counsel, a defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. In the context of pleas, a defendant must show the outcome of the plea process would have been different with competent advice. The fact that a defendant is guilty does not mean he was not entitled by the Sixth Amendment to effective assistance or that he suffered no prejudice from his attorney's deficient performance during plea bargaining. In the instant case, the petitioner received deficient advice and was encouraged to make an unknowing, unintelligent, and involuntary guilty plea agreement. Petitioner seeks relief from counsel's failure to meet a valid legal standard. He lost benefits he would have received by for his counsels' constitutionally ineffective assistance.

The final piece of counsels' constitutionally ineffective assistance which petitioner must discuss, is counsels' performance describing the relevant consequences of facing a capital case

and the conditions of confinement on a Captial Case Unit. The petitioner has already explained that he was afraid of being executed, and it was counsels' solemn duty to explain to the petitioner the reality of how infrequent executions take place as well as the vast procedural appellate safeguards which take place before an execution poses a reasonable threat. The petitioner was also afraid of the conditions of confinement on a Capital Case Unit, because his counsel gave him professionally inaccurate and false descriptions of Capital Case Units. They contrasted a Capital Case Unit as dark and dungeonous, and portrayed general population living conditions as summer camp. One important difference, is that Capital Case condemnees have a single cell; in many ways, this can be the most humane living condition, as forcing a person to live with another convict in uncomfortably close quarters deprives them of human dignity. In a single cell, one still has a little human dignity.

According to the Department of Corrections Innmate Handbook, inmates have the following privileges: three meals a day (two of them hot), purchase of goods from the commissary, including TV and radio, access to a law library, purchase of books and magazines, visitation (including limited contact visitation), telephone, recreation and yard. Capital Case Units offer the same privileges: meals, purchase of goods from commissary (including TV and radios), books and magazines, law library, visitation, telephone, and recreation.

Counsel for the petitioner told him he would be locked in a cell for 23 hours a day with no recreation. This is false! Capital Case Units have yards, blockouts, day rooms, TVs, tables for playing cards; chess; and games, and places to play musical instruments...just like in general population. Counsel for the petitoner told him we would never have a visit with his family and

never be able to hug his mother again. This is false! Capital Case condemnees have contact visits in the same visiting room and the same visiting privileges as the petitioner enjoys in general population. Counsel for the petitioner told him he couldn't have a fulfillling job. This is false! Capital Case condemnees have jobs on their unit: block workers, janitors, legal aids, peer specialists, and chaplain assistants. Counsel for the petitioner told him he could pray on his own, but he could never practice a group, organized religion. This is false! Capital Case Units have begun holding groups and services such as Muslim Jumah prayer, Native American Circles, and Christian services. [N.B. Petitioner admits that at the time of completing this petition, there are no Jewish services allowed at his particular institution's Capital Unit]

Both Capital Case and general population inmates are restricted. Both can earn 19 to 42 cents *per* hour at a limited number of jobs. Both can use earnings for commissary purchases, but both are subject to 20% deducts to defray court costs, fines, and restitution obligations. Both are often reliant on money deposited into their accounts by family members. Both can purchase TV sets, radios, musical instruments, books, magazines, typewriters, and art supplies, but both are equally restricted regarding how much and what kinds of personal property they may own. Their personal effects are frequently searched for contraband. Personal property, such as a TV set, despite an inmate's financial ownership of that property, is subject to confiscation for certain types of misbehavior. Clearly both capital case and general population inmates have some privileges as well as a laundry list of limitations. Counsel for petitioner did a terrible job of giving an accurate portrayal of the conditions of confinement in general population and on Capital Case Units. Their inaccuracy induced an unknowning,

one charged with crime to the assistance of counsel; compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty.")

It is well established that a guilty plea may be set aside as involuntary if the defendant can establish prejudice resulting from ineffective assistance of counsel. See **Tollett v. Henderson, 411 U.S. 258, 266-67 (1973).** To demonstrate that a guilty plea was involuntary or unknowing for ineffective assistance of counsel, a defendant must show that (1) counsel's performace was deficient, **Hill v. Lockhart, 474 U.S. 56-58 (1985)** applying two-prong ineffective assistance of counsel test from **Strickland v. Washington, 466 U.S. 688 (1984)**, to plea bargain context; see also **Missouri v. Frye 566 U.S. 134 (2019)** (ineffective assistance of counsel test extends to counsel's conduct during plea nogotionations) and **Lafler v. Cooper, 566 U.S. 156 (2012)** (deficiency prong of ineffective assistance of counsel test requires a "defendant to show that counsel's representation fell below an objective standard of reasonableness") and (2) the "deficient performance prejudiced the defense. See **Strickland, 466 U.S. at 687**; see also **Frye, 566 U.S. at 148-149** (prejudice established where "the result of the proceeding would have been different"); **Lafler, 566 U.S. 156 (2012); U.S. v. Cronic, 466 U.S. 648, 659-60 (2008)** (presumption of prejudice exists where "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial").

Based upon the certified record of this case, it is beyond debate that the error is of constitutional magnitude and the Third Circuit Court of Appeals entered a decision in conflict

with the above stated decisions of this Court, thus, calling for an exercise of this Court's supervisory powers.

CONCLUSION

For the aforementioned reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

David Rapoport

David Rapoport

October 6, 2019

Date