19-7185

No. 19-1100

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Stanley Brewer — PETITIONER
(Your Name)

vs.

William Lee — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 2nd Cir
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stanley Brewer
(Your Name)

Fishkill Corr. Fac.
(Address)

P.O.B. 1245 Beacon, N.Y. 12508
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

(1) The judgment of the United States District Court has violated long standing precedent of the United States Supreme Court and the United States Court of Appeals. This court has complete jurisdiction to hear cases that involves violation of Title 28 USC§ 2254 (d) (2), (e) (1), and misapplication and misapprehension of the facts and evidence that was presented by petitioner that is debatable among jurist of reasons. That this court should see that the district court upholds the letter of the law.

LIST OF PARTIES

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

Brewer v. Lee

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STATUTES AND RULES:

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OPINIONS BELOW

For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix-T, is unpublished.

The opinion of the United States District Court appears at Appendix-U is reported at United States District Court E.D. New York May 26 2019; 2019 WL 1384074

For cases from the state court:

There is no opinion of the highest state court to review the merits of petitioner's claim on a 440.10 motion.

The opinion of the lower state court appears at unreported at 2007 WL 2814018, N.Y. Aug. 03, 2007.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was on November 11, 2019. Appendix-T

No petition for rehearing was timely filed in my case.

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

For cases from state courts:

The Date which the highest state court decided my case was the New York Appellate Division, decision appears at Appendix-S.

The date the County Court decided my case appears at Appendix-C, and Appendix-D.

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

(1) The United States District Court Southern district denied petitioner's petition. The United States Court Appeals Second Circuit denied petitioner COA, against the rule announced by the United States Supreme Court ruling in Miller El v. Cockrell, 537 U.S. 346, (2003), *Slack v. McDaniel* 529 U.S. 473, at 484, (2000); 28 USCA §2253, § 2254 § 2241 (c) and the 6th and 14th Amendment.

STATEMENT OF THE CASE

(1) This case involves the violation of the petitioner rights to an effective assistant of counsel where counsel has given the defendant/petitioner improper advice to take a plea without counsel doing any investigation of the illegal stop of the defendant/petitioner's vehicle for a moving violation of running a stop sign or traffic light that does not exist on the corners of Beverly Rd. and Westminster Rd.

(2) The petitioner also raises prosecutorial misconduct, where the prosecution should of knew or should have known or should have been aware that there are no traffic light or stop sign on the corners of Beverly Rd. and Westminster Rd.

(3) The petitioner raise judicial misconduct where the State Court and the District Court misstate the facts of the record rendering their fact finding process unreasonable.

REASONS FOR GRANTING THE PETITION

(1) The petitioner's Federal Constitutional Rights has been violated and offended by the District Court and Second Circuit Court of Appeals. Based on the petitioner's inherent right to the Constitution of the United States, 6th and 14th Amendment. Claims founded on prosecutorial misconduct, judicial misconduct and ineffective assistance of counsel. The petitioner has shown that the case at hand is riddled with Federal Constitutional violations, which cannot be denied by procedural bars and procedural grounds.

ACTUAL BACKGROUND

(1) On December 31, 2002, the defendant/petitioner was illegally stop for a so-called traffic violation for running a stop sign or traffic light that don't exist on the corners of *Beverley and Westminster Road*, in the County of Kings New York. On October 16th, 2003, petitioner pleaded guilty to three counts of burglary in the second degree. Petitioner was sentence on October 30th, 2003 to concurrent term of five years and five years post-supervision, under indictment 58/03. While serving his sentence petitioner was arrested on new charges of 23 counts of burglary and was sentenced to a new term of sentence on August 2nd 2007 under Indictment 06/222.

(2) In 2006, before petitioner was sentenced under Ind. 06/222, petitioner filed a 440.20 motion to vacate his predicate status sentence, which was granted on August 2nd 2007. In 2013, petitioner filed his motion under CPL 440.10 raising that the stop of the petitioner/defendant was unconstitutional and the fruits thereof should have been suppressed as a matter of law, under indictment 58/03. Based on the submission of the Certified and Official Documents from the Department of Transportation, in the defendant/petitioner's CPL 440.10 sub. (b) (c) (d) (h) motion stating that the corners of "*Beverly Road' and Westminster Road*" in Kings County New York have never been controlled by any traffic signals or stop signs.

(3) The district court has totally ignored the petitioner's "**Continuous Stream of Custody**" under the consecutive sentences for the purposes of federal habeas corpus" and "Equitable Tolling" based on the renewal of AEDPA, beginning from petitioner's 2007-2015 post-conviction Decision Orders. This violation constitutes an unreasonable determination of the facts in light of the evidence presented in the state court, and the clear and convincing evidence in the petitioner's Show Cause Order, and application for COA that is debatable among jurists of reason.

POINT ONE

THE DISTRICT COURT PREJUDICED THE PETITIONER BY DENYING HIM RELIEF UNDER THE CONTINUOUS STREAM OF CUSTODY AND EQUITABLE TOLLING.

(1) The district court has totally ignored the petitioner's Show Cause Order under the "**Continuous Stream of Custody**", and the "**Equitable Tolling**", and the unreasonable determination of the facts in light of the evidence presented in the state court, 28 USC § 2254 (d) (2), in connection with the clear and convincing evidence under 28 USC § 2254 (e) (1), See COA at Appendix-A. In the Show Cause Order, Appendix B. Petitioner has invoked the continuous stream of custody as announced in *Garlotte v. Fordice,* 515 U.S. 39, 41, (1995) and , and misapplied the standard announced in *Miller El v. Cockrell,* 537 U.S. 322, 346, (2003).

(2) The district court failed its obligation by misapplying the "**Continuous Stream of Custody**" in which petitioner showed in the "**Show Cause Order**" in the violation of petitioner's 4th, 6th, 14th Amendment that it is debatable among jurists of reasons. *Slack v. McDaniel,* 529 U.S. 473, 484 (2000). The defendant/petitioner Stanley Brewer, Din #03R5744, was declared an Absconder on January 8th, 2006 10:00 p.m., failing to return from Furlough to Edgecombe Work-Release Facility. On January 19th, 2006, petitioner was arrested on new charges of Burglary in the

Second Degree that culminated in a conviction under indictment 06/222. The sentence was enhanced to a Second Violent Felony Offender Status, based on the previous conviction under Ind. 58/03. *Smith v. McGinnis,* 208 F. 3d 13 (2000).

(3) Thus, the sentence under indictment #58/03 was interrupted on January 8th, 2006, and the remaining time owed under Ind. #58/03, was 716 days. As the operation of law, under New York Penal Law § 70.25, subdivision 4, any undischarged Sentence, meaning the 716 days under # 58/03, runs consecutively to the new 15 years determinate sentence under indictment 06/222. The new sentence under indictment 06/222 has already been served, and as of date, the petitioner is still in custody and subjected to the "**continuous stream of custody**" of the remaining time owed on indictment #5803. *Garlotte v. Fordice* 515 U.S. 39, 41, (1995). **See Exhibit-B. Show Cause Order.**

(4) The district court improperly concluded in its judgment that petitioner has not made any efforts between his 2003 and 2006 convictions, *Brewer v. Lee,* 2019 WL 1384074, at 3. This assertion is debatable among jurists of reason, *Slack v. McDaniel, supra.* The petitioner was sentenced under indictment 58/03 on October 30th, 2003 as a predicate felony offender, with an enhanced sentence based on his

prior federal conviction of September 15th, (1992). The defendant, pursuant to indictment 58/03, was declared an absconder from work-release on January 8th, 2006, a total of 11 days elapsed due to petitioner's arrest on January 19th, based on new charges.

(5) The record holds that petitioner's C.P.L. 440.20 motion to vacate the predicate status of indictment/judgment 58/03 was granted on August 3, 2007, thus, rendering a new judgment in 2007, as announced by the United States Supreme Court in *Marmolejos* v. U.S. 789 F.3d 66, 70-71, (2015), *Magwood v. Patterson,* 561 U.S. 320, 331-333 (2010).

(6) This new judgment has closed the gap of the due diligence requirement and the equitable tolling between 2003 and 2007, the AEDPA has been renewed in 2007. The defendant/petitioner under Indictment 06/222, was sentenced on August 2nd, 2007, to predicate violent felony offender, and his sentence was enhanced based on indictment #58/03 of October 30th, 2003. From 2007 petitioner has with due diligence worked pursuant to both consecutive sentences, by way of challenging indictment 06/222 and Indictment 58/03 that are interconnected because petitioner is legally in custody of the two consecutive sentences, pursuant to P. L. 70.25[4]. 28 USCA § 2254 (a), *Garlotte v. Fordice at 41 supra.*

(7) Another date that has renewed the AEDPA for the petitioner, is January 23, 2015. On this date, **Judge Carolyn E. Demarest** denied petitioner's 440.10 motion indictment #58/03, by stating *New Facts* in reference to petitioner's 2007 440.20 motion, Ind. #58/03, by stating,

"The defendant subsequently moved to vacate his sentence pursuant to CPL§ 440.20, on the grounds that he was erroneously adjudicated a second felony offender. On August 3, 2007, that motion was denied (Demarest)."

See Appendix-C.

In fact, defendant/petitioner's 440.20 motion Ind. #58/03 was granted, **"Accordingly, Defendant's adjudication as a second felony is vacated"** See Decision Order of 58/03 August 3rd, 2007, Appendix-D.

(8) **Judge Carolyn E. Demarest's** reference to petitioner's 440.20 motion, is "new facts" that has triggered and renewed the one year statute of limitations period in which petitioner seeks collateral review" paraphrasing *Johnson v. U.S. 544 U.S. 295, 302,* (2005). The new facts are, **Judge Carolyn E. Demarest** is now prevaricating her prior judgment of petitioner's 440.20 motion of 2007, in her *2015 Decision Order* of the petitioner's 440.10 motion, of January 23, 2015. Petitioner timely filed and exhausted this issue in his Certificate Granting to Leave to New York Appellate Court Second Department Pg. 3-4, of the denial of his 440.10 Motion, See Appendix-E. The New York State Appellate Court Decision Appendix-S, *"affirmed"*

the **(Equivocation)** of the new facts on July 8th, 2015 of the Decision Order of January 23, 2015, See Appendix-D. Also, Appendix-F the **(Habeas Petition, Addendum at 6)**, and Appendix-B, Show Cause Order at 3-7.

(9) Petitioner is still in legal custody of both judgment when he filed the instant petition, 28 U.S.C. § 2254 (a). The district court's judgment of the denial of petitioner's equitable tolling is debatable among jurists of reason, *Slack v. McDaniel, supra.* In *Peyton v. Rowe* 391 U.S. 54, 67, (1968), it was announced that prisoner serving consecutive sentence is in "**custody**" under any one of them under 28 USC § 2241 (c) (3) "**is constituent with the statutory language and with the purpose of the writ of habeas corpus in federal courts**" *Peyton v. Rowe supra.* The continuous stream of custody passes through the AEDPA to the petitioner's prosecutorial and judicial misconduct and the ineffective assistance of counsel claim, in which counsel failed to investigate the illegal stop, *Rompilla v. Beard,* 342 U.S. 374, 387, (2005), based on the Certified and Official Document from the Department of Transportation. That has been established by the petitioner, which constitutes a requisite showing by the petitioner that a reasonable jurists could find debatable that the petitioner has presented his "**continuous stream of custody**" that deserves encouragement to proceed further *Miller El v. Cockrell,* 537 U.S. 322, 336, (2003).

POINT TWO
THE DISTRICT COURT HAS TOTALLY IGNORED AND FAILED TO RULE ON THE PETITIONER'S "INEFFECTIVE ASSISTANCE OF COUNSEL" CLAIM THAT A JURISTS OF REASON WOULD FIND DEBATABLE

(10) The District Court has failed to apply the standard *of Slack v. McDaniel,* 529 U.S. 473, 484, in which jurists of reason could find debatable in the violation of the petitioner's 4th, 6th and 14th Amendment Rights announced in *Kimmelman v. Morrison,* 477 U.S. 365, 372-375, (1986), See **Appendix-F, Habeas Petition (Addendum pgs. 1-4)**, the defendant/petitioner was denied his 6th Amendment Right to Counsel when given the advice by counsel to plead guilty without counsel taking any steps of investigation. The defendant/petitioner raised that counsel was ineffective in violation *of Strickland v. Washington, 466 U.S. 668 (1984) and Hill v. Lockhart,* 474 U.S. 52, 55-57, (1985). **See Appendix-E, 440.10 motion**. Also, ineffective of counsel, where counsel failed to raise (Prosecutorial Misconduct), that the prosecutor knew or should have known or been aware of, that the stop was fabricated **(False)**, and **(Arbitrary)** *Shih Wei Su v. Filion,* 355 F.3d 119, 127-128 (2003).

(11) Counsel failed to raise that the procurement of the conviction **(Judgment)**, under C.P.L 440.10 (b), (c), (d) See **(Appendix-G, Leave Application pg. 3, Sub Paragraph 4)**, that the Material Evidence Seized was known by the prosecution and Court at the time of the **(Plea Agreement and Sentence)**. The standard announced by the United State

Supreme Court, in *Kimmelman v. Morrison,* 477 U.S. 365, 372-375, (1986), is applied here to petitioner's right under the 6th Amendmen that counsel failed to raise, that the possession of a **(Forge License and Possession of Stolen Property)**, was a direct consequence of the unlawful stop of the vehicle, against petitioner's 4th Amendment Right, see *Kimmelman v. Morrison, at 372-375, People v. Pope,* 190 Misc. 2d 508, at 516, (2002), and a **(Fruit of a Poisonous Tree)**, *People v. Ingle,* 36 N.Y. 2d 413, 419, (1975). **See Appendix-G.**

(12) The defendant/petitioner did not won't to enter a plea at first, it was the unprofessional advice from counsel to the petitioner to plead guilty, Appendix-H, pg. 8-9, without counsel investigating the illegal stop. The investigation was vital to the defendant/petitioner's defense that the probable cause for the stop was fabricated. Record has it that counsel visits the corners in question, and stated, erroneously, that there is a **"traffic control light at Beverly Road."** Affidavit of Stephen Terry Appendix-H, pg. 8. The Certified and Official Document from the Department of Transportation refutes his so-called investigation. Appendix-I. Counsel, Mr. Stephen Terry, basically lied to the court concerning his so-called investigation, the defendant/petitioner would never had pleaded guilty and would have considered going to trial where the out-come would have been different, *Gonzalez v. U.S.* 722 F.3d 118, 127-128 (2013).

(13) Because there never was a Traffic Light or Stop Sign on "Beverly Road" and Westminster Road, **Google Map 1179**, Appendix-J. This is what the district court failed to view and considered under the clear and convincing evidence of the state court's judgment, *Miller El v. Cockrell*, at 323-324, that is debatable among jurists of reason, *Slack v. McDaniel,* 529 U.S. 473, 484 (2000), See Appendix-F, Habeas Petition (Addendum pg. 5-9. The petitioner has request an expansion of the record under Rule 7, in in his Habeas Petition, *Harris v. Nelson* 394 U.S. 286, 300 (1969), *Williams v. Schriro,* 423 F. Supp. 2d 994, 1003, (2006), to the habeas court to include GOOGLE MAPS, see Appendix-F (Addendum at 9-10).

(14) The Visual Documents from Google Maps, that supports the the Certified Document form the Department of Transportation, that there are no (Traffic Lights or Stop Signs on the Corners of Beverly Road and Westminster Road). See (Appendix-J Visional Google Maps 1179 Beverly Rd.), is consistent with the Certified and Official Written Document from the Department of Transportation in Appendix-I. The vehicle in the picture of Appendix-J, is identical to the petitioner driven eastbound on Beverly Rd, as stated in the People's Affirmation in Opposition Appendix-K, page 2, to the Petitioner's C.P.L. Motion to Vacate the Judgment, Appendix-E.

(15) The picture in Appendix-L, unquestionably shows Westminster Rd., where the Stop Sign exist, that supports the petitioner's argument in his **Reply Motion pages 5-7**, Appendix-M. The Certified Documents from the Department of Transportation states, that Westminster Rd. runs one-way, **North to South**, Appendix-N. Which is the not the direction of the petitioner's Route, according to the Opposition to Vacate the Judgment, Appendix-L. By viewing (Appendix-O, **Google Maps of 189**), (Appendix-P, **Google 197**) and Appendix-Q, **Google Maps of 200 Westminster Rd.**) From these view points, of Westminster Rd. shows no Stop Sign or Traffic Lights, on Beverly Rd. that the petitioner could have ran.

(16) The Prosecution should of knew or should have known or should of been aware of, *Shih Wei Su v. Filion* 355 F. 3d 119,127-129 (2003), that there was no Traffic Light or Stop Sign on Beverly Rd. at its intersection which is Westminster Rd. At the time of the Plea Agreement and Sentence which makes the procurement of the conviction (Judgment), CPL 440.10 (b) (c) (d), in violation of the petitioner's 4th 6th and 14th Amendment that The defendant/petitioner has presented in his 440.10 motion a mixed claim, based on Certified and Official Document from the Department of Transportation, See Appendix-I, used was was off-the-record, in relation to the ineffective assistance of counsel claim, *People v. Maxwell* 89 AD3d 1108, 1109-1110, (2011). **Judge Carolyn E. Demarest**

and the District Court denied the petition without an evidentiary hearing, in violation of petitioner's 14th Amendment. Jurists of reason would find debatable that the petitioner did not run a stop sign or a Traffic Light.

POINT THREE

THE DISTRICT COURT HAS IGNORED AND PREJUDICED THE PETITIONER BY FAILING TO APPLY THE STANDARD OF THE FRUIT OF A POISONOUS TREE RAISED BY THE PETITIONER IN HIS CLAIM OF JUDICIAL MISCONDUCT CLAIM

(17) The district court has "prejudged the issue of the non-existing stop sign or stop light", by stating in its order,

"Even the court were to stretch the information about the intersection enough to consider it "critical physical evidence" it was not the type of evidence that would be "presented at trial" and it is hardly "compelling" ... i.e., more likely than not to raise reasonable doubt in a reasonable juror"

The above view from the district court is in violation of the long held federal precedents, that were decided in the law of the land and in the State New York under the Federal Constitution, the petitioner has raised **(Fruit of a Poisonous Tree)** under prosecutorial misconduct 440.10 (1) (b), (c), (d) that the stop and arrest was a violation of petitioner's 14th Amendment under Duress, Misrepresentation, Fraud and deceit due to the illegal seizure of evidence, in which petitioner raised in his petitioner's 440.10 motion at Appendix-E at 5-6, Reply motion pg. 4,

Appendix-N, 3-7, and Appendix-G, Leave application pg. 3, and Appendix.-F, Petition for Habeas Corpus (Addendum pgs. 2-4), as *announced* in *Napue v. Illinois,* 360 U.S. 264, 269, (1959).

(18) *United States v. Valentine* 591 F. Supp. 2d 238, 242, (2008), states, **"It is well-settled that evidence obtain pursuant to an unlawful seizure or search must be suppressed as the fruit of a poisonous tree"**

New *York v. Harris,* 495 U.S. 14, 18, (1990), states,

"Indirect fruits of an illegal search or arrest should be suppressed when they bear a sufficient close relationship to the underlying Illegality...the challenged evidence is in some sense product of illegal government activity."

(19) *Wong Sun,* 371 U.S. 471, 484-485, (1963), states,

"This doctrine precludes the admission of primary, second or derivative evidence."

People v. Pope, 190 Misc. 2d 508, at 516, (2002), where it states,

"I find...at bar...unconstitutional...and therefore, grant defendant's Pope's motion to suppress the alleged forged license...as the direct consequence of the unlawful stop of her vehicle."

People v. Ingle N.Y. 2d 67 (1975); People v. Robertson 74 N.Y. 2d 773 (1989); *People v. Roman* 30 Misc, 3d 1218(A) at 1224, (2011); *People v. Rizwan,* 165 Misc. 2d 985, 986, (1995). Jurists of reason could find the district court judgment debatable, *Slack v. McDaniel's, supra.*

(20) Judicial misconduct that has been committed by the district court and **Judge Carolyn E. Demarest,** by misapplying the standard and

misstating the facts of the record in relation to defendant/petitioner's 440.10 motion in regards to the ineffective assistance of counsel claim, and prosecutorial misconduct, due to **Judge Carolyn E. Demarest** *Prevarication* of the decision order of January 23, 2015, in which the district court failed to review rendering the fact process unreasonable in violation of *Miller El v. Cockrell,* 537 U.S. at 346, supra, *Taylor v. Maddox* 366 F.3d 992 (9th Cir. (2004), *Harris v. Kuhlman* 346 F.3d 350-351, 2nd Cir. (2003).

POINT FOUR

THE DISTRICT COURT HAS IGNORED AND FAILED RULE ON THE PETITIONER'S PROSECUTORIAL MISCONDUCT CLAIM WHERE THE PROSECUTION SHOULD HAVE KNOWN OR SHOULD HAVE KNEW OR SHOULD HAVE BEEN AWARE OF ALL THE FACTS CONCERNING THE POLICE MISCONDUCT OF THE ILLEGAL STOP, ARREST OF THE PETITIONER RIGHTS UNDER THE 14TH AMENDMENT

(21) The petitioner has raised prosecutorial misconduct that prosecution knew or should have known or should have been aware that there was no *traffic light or stop sign* on **"Beverly Road"** and Westminster Road, and that the stop was fabricated by the arresting officers, *Giglio v. U.S. 405 U.S. 150, 154-155, (1972), Shih Wei Su v. Fillion* 355 F.3d 119, 128-129 (2003). The language in C.P.L. 440.10 (c), the judgment was false and was prior to the entry of judgment 'plea' known by the Prosecutor. In *People v. Bermudez* states,

"Thus, both the first and second department have acknowledge that C.P.L 440.10 1 (c) encompasses both actual knowledge and situation where the

prosecutor should have known of false testimony, a judgment of conviction must be vacated"

People v. Bermudez Misc. 3d 1226 (A) (2009).

(22) The defendant/petitioner has argued that the stop of was (Arbitrary), See Appendix-R. Solely based on detective Florenci Arquer authority to stop the defendant/petitioner without probable cause of a moving violation. **"Thus an arbitrary stop of a single automobile for a purportedly 'routine traffic check is impermissible unless the police officer reasonably suspect a violation of the Vehicle and Traffic Law"** *People v. Ingle,* 36 N.Y. 2d 413, 419, (1975). That the Rule announced from the Ingle court, this conduct by detective cannot not be considered, by law, a (pretext stop). A pretext stop is valid only when a traffic violation has occurred.

"Hence, the stop was an illegal seizure of the defendant's automobile and the evidence obtained by that seizure may not be used as evidence against him" Ingle supra.

People v. Robertson, 97 N.Y. 2d 341 (2001), where it states,

"But the officer's authority to stop a vehicle is circumscribed by the requirement of a violation of a duly enacted law. In other words, it is the violation of a statute that both triggers the officer's authority to make the stop and limits the officer's discretion"

See *People v. Lopez,* 20 Misc. 3d 737, 741, (2008).

See Appendix-E and Appendix-G.

(23) The prosecution in this case has violated the defendant/petitioner's right under the 14 Amendment, and has prejudiced the defendant/petitioner with prosecutorial misconduct. The prosecution should have known or should have been aware of based on the Certified Document from the Department of Transportation stating that there is no *traffic light or stop sign* on the corners of "**Beverly Road**" and Westminster Road. The Police has violated the defendant/petitioner's rights by the illegal stop, arrest, and seizure of property. In which the prosecution should have known or should been aware of before the entry of the defendant's plea/sentence (Judgment). C.P.L 440.10 (b) (c). Appendix-E.

(24) This fact cannot be ignored by the prosecution who serves as an investigative unite within the judicial system. And the New York Police Department is merely an extension of the Prosecution's Office, the Prosecution has turned a blind eye to the petitioner's The Certified Doc uments from the Department of Transportation, Appendix-I. The articulated facts cannot be met by the NYPD Detective or Police Officers, based on the Department of Transportation Certified and Official Documents that the corners in question has never been controlled by any traffic light or stop signs. The People of the State of New York, has ***failed, waived*** and is ***procedural barred*** from any opposition of *Inevitable, Attenuation and Independent Exception Rule,* to the

defendant/petitioner's claim of ineffective assistance of counsel under the 6th Amendment by failing to argue or investigate the violation of the defendant/petitioner's 4th Amendment right against the illegal stop search and seizure.

(25) The People of the State of New York has *waived its* opposition the defendant/petitioner's claims using the *Inevitable, Attenuation and Independent Exception Rule and is* ***procedurally barred.*** Defendant/petitioner's claim of Prosecutorial Misconduct claim of Misrepresentation, fraud and deceit. Based on the violation the defendant/petitioner's 4th, 6th and 14th Amendment Right against the illegal stop search and seizure. This court should grant petitioner' Certiorari. Jurists of reason could find that the prosecution should have known or should have knew or should have been aware of that there was no Traffic Light or Stop Sign on the corners of Beverly Rd., at its intersection which is Westminster Rd.

CONCLUSION: The petition for a writ of certiorari should be granted because of the District Court's Judgment Unreasonable and is Contrary to a Federal Application

Respectfully submitted,

_____

Dated _____