19-7272

ORIGINAL

Kenyatta Quinn Mitchell
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United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

IN THE
SUPREME COURT OF THE UNITED STATES

KENYATTA QUINN MITCHELL, Petitioner	9th Cir. No. 19-55108
	D.C. No. 3:18-CV-00697-WQH-BLM
V.	SCN. 362476
THE PEOPLE OF THE STATE OF CALIFORNIA; CDCR; DIRECTOR, Respondents	**PETITION FOR WRIT OF CERTIORARI** Rules 10-14

Date: 1/2/2020 Time: 8:00am

Comes now and respectfully before the court Kenyatta Quinn Mitchell, seeking relief by petition of writ of Certiorari, after denial of certificate of appealability by the Ninth Circuit Court of Appeals, on December 23, 2019. The petitioner on April 6, 2018 sought to challenge his conviction in United States District Court, Southern Division, District One under 28 U.S.C 2254 Fed. R. App. P. (7), (8) a writ of habeas Corpus. The petitioner was denied relief on September 28, 2018. On January 10, 2019 the petitioner Filed a Notice of Appeal, From that decision with the Ninth Circuit Court of Appeals. All the petitioner's claims have been exhausted to this level. The petitioner's claims involve multiple violations of his right to Due Process and the Complusory Process, Under the 6th Amendment, as well as the petitioner's right to a Fair trial under the 14th Amendment. The petitioner's 8th Amendment Claims also has merit, because the petitioner recieved his sentence without due process of law and recieved restitution beyond his ability to pay. The presumption of correctness used by both courts is clearly erroneous. Both courts have ignored Clearly established law and the constitutional provisions afforded to a defendant in a criminal trial. Constitutional Law 840.3 - the due process clause of the Federal constitution prohibits the criminal conviction of any person except upon proof of guilt beyond a reasonable doubt; Constitutional Law 831.5, 840.3 - A person can not incur the lost of liberty For a criminal offense, without notice and a meaningful opportunity to defend, and such opportunity, if not the right to trial itself, presumes as well that a total want of evidence to Support a charge will conclude the case in Favor of the accused; The rule that no person consistently with due process, may be convicted of a crime except upon proof of guilt beyond a reasonable doubt requires also that the FactFinder will rationally apply that standard to the Facts in evidence, a reasonable doubt being at a minimum one based upon reason.) It must appear that reasonable jurists could find the assessment of the petitioners claims debatable or wrong. (Slack v. McDaniel 529 U.S. 473, 484 (2000) The district court has overlooked the petitioner's constitutional claims, and the wrong standard of review has been applied. On Oct. 15, 2018 the petitioner filed objections to the Report and Recommendation. The district court reaffirmed it's decision and no C.O.A. was issued even though one should have been. A Writ of Certiorari by the petitioner is now necessary, in order for the petitioner to obtain relief.

— Questions Presented —

1. Whether no reasonable juror would have convicted the appellant as constitutional error resulted in the conviction of one who is actually innocent.
Trial court answers: No
Appellant answers: Yes

2. Did the petitioner recieve constitutional effective assistance, that was requested by him in the trial court.
Trial Court answers: Yes
Appellant answers: No

3. Did the appellant's constitutional rights to due process and the complusory process get violated in the Pre-Trial proceedings.

Trial Court answers: No

Appellant answers: yes

4. Did the petitioner recieve a Fair trial that was Fundamentally correct, without prejudice.

Trial Court answers: yes

Appellant answers: No

5. Can the appellant with the evidence in question raise a reasonable doubt with jurors of reasonable purdence.

Trial Court answers: No

Appellant answers: yes

6. Is the record sufficent for the district court to make a disposition, without holding an evidentiary hearing.

Trial Court answers: yes

Appellant answers: No

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The opinion of the United States district court appears at Appendix-B- to the petition and is designated for publication.

For State Cases:

The opinion of the highest State-court to review the merits appears at Appendix-C- to the petition and is designated for publication

The opinion of the Fourth Appellate District Division One Court appears at Appendix-D- to the petition and is designated for publication.

JURISDICTION

For cases From the Federal Court:

The date on which the United States Court of Appeals decided my case December 23, 2019

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

For cases From the State Court:

The date on which the highest state court decided my case was March 14, 2018. A copy of that decision appears in Appendix-C

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

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STATEMENT OF CASE

In the petitioner's Writ of habeas corpus proceedings, the petitioner had Four definitive Claims. The First claim the petitioner claims his 6th Amendment right to due process and the Complusory process were violated. A Key witness For the defense had been improperly Subpoenaed, due to lack of due diligence on behalf of the private investigator designated to serve that subpoenaed. That witness was anticipated to give testimony that was exculpatory in nature, but never showed up to Preliminary. An additional Subpoenaed was also requested by the defense For personal telephone records that were also exculpatory. None of these subpoena's were quashed until the latter part of the proceedings. That First claim was also situated around a denial of a continuance requested by the defense prior to Preliminary, in order to secure the attendance of the exculpatory witness. The Second claim made by the petitioner was his Right to a Fair Trial & to be treated equally Under the 14th Amendment. Many of the errors in the Pre-Trial proceedings carried over to the trial itself and had prejudiced the petitioner substantially. Any information that may exonerate the defendant, the defendant has a right to prepare that information For his defense, and the jury has a right to hear that information at the time of trial as it is prepared by the defense, For the defense of the accussed. The Third Claim made by the petitioner is the defendants right to effective assistance of counsel under the 6th Amendment. Even though the defendant in the early proceedings requested to represent hiself, counsel was requested at the time of arraignment. Counsell Failed to investigate any of the exculpatory evidence, that could have raised a reasonable doubt with the jury. Evidence the defendant informed them about, an counsel Failed to produce For their client's best interest. Counsel had no Strategy and their Commmon-defense was wrong, this the defendant realized created a conflict of interest. That conflict prompted the defendant to request a Marsden Hearing. The Fourth Claim the petitioner made was his Right to be Free From Cruel and Unusal punishment under the 8th Amendment. The petitioner claims his sentence was excessive and without due process of law. This also included Fines beyond the petitioner's ability to pay. All of these claims have been exhausted all the way to this level.

The district court has used the wrong Standard of review and relied on the same FactFinder as the State-court, it's decision is clearly erroneous. (Chapman v. California 17 L.Ed 2d. 705, 386, U.S. 18, 824, 17 L. Ed 2d. (1967); Harrington v. California 23 L. Ed. 2d 284, U.S. 250[before an error that is Federally constitutional can be held harmless, the court must declare it was harmless beyond a reasonable doubt.] The district court errored in their presumption of correctness to the state-court factfindings that should have been found unreasonable. The district court stated in it's disposition that some of the merits were not warranted by the AEDPA, however none of the clearly established law arised under it's precedence. The petitioner objects to this on all fronts. (Rhines v. Weber 544 U.S. 269, 274-77 (2005); Even if that were a distinction which the justices admit to considering, it falls noticeably short of a useful guidepost for federal habeas review of state-court decision making.) The petitioner needs de novo review of the district courts decision because it is clearly erroneous. Without an evidentiary hearing there is no way the district court could have decided on the merits. The petitioner is entitled to a full and fair hearing, he has not recieved one at this point in time. The record needs to be supplemented under Fed R. App. P 10(b)(3), so the court can review the exculpatory evidence in question. Along with a statement of the evidence to quantativly assess it's value to the defense. The petitioner has requested this procedure with the Ninth Circuit Court of Appeals. The silent denial by the Ninth Circuit has been done with a record that is insufficient, and they have not independently analyzed any of the petitioner's specific claims involving violations of his constitutional rights. No reference was made either to the petitioner's objections filed in district court. The petitioner's claims remain unadjudicated, he is now seeking relief with the Supreme Court.

The petitioner's Superior Court case involved a 2nd Robbery PC211 that occurred at a transit center. At the time of the alledged crime, the petitioner was intimatly involved with a woman who had a restraining order on her ex-boyfriend. The petitioner had no previous knowledge of the ex-boyfriend prior to this relationship. The ex-boyfriend on multiple occassions violated the restraining order, in particular at the transit center, the same place as the alledged crime. The ex-boyfriend also sent threatening text messages to the petitioner's personal cellphone, threatening to harm him and the girlfriend. After recieving the threats, the petitioner and the girlfriend were confronted by the ex-boyfriend at the transit center, where he assaulted both of them on different occassions. After these assaults the petitioner urged the girlfriend to contact the authorities, which the girlfriend did after the petitioner pleaded with her. The girlfriend left a voicemail, in a call made from the petitioner's phone to the ex-boyfriend's parole officer. Nothing was ever heard back from the parole officer, even though they had an obligation to check into this. With imminent danger to the petitioner's safety and the girlfriend, the petitioner took a near-by pedestrians phone to contact the authorities at the transit. That person was uninjuried and later identified the petitioner in the alledged robbery. The girlfriend is a key witness in this case because she was in the area. She was also present when the petitioner was arrested. The petitioner chose to remain silent at his arrest. The girlfriend gave only a limited statement.

There are many inconsistencies in the state-courts opinion several aspects of the petitioner's claims have been misinterpertated. The first one I will bring up is the state-courts reference to the girlfriend not being an exculpatory witness. Both the district court and the state-court decided this without analyzing the violations of the petitioner's constitutional rights to due process and the complusory process under the 6th Amendment. (Higgins v. Renico 362 F. Supp. 2d. 904; Maples v. Stegall 340 F. 3d 433 (6th Cir 2003) - Where state-court did not assess the merits of a claim properly raised in a habeas petition the deference due under AEDPA does not apply. The AEDPA by it's own terms is applicable only to habeas corpus claims that were adjudicated on in state-court.) The defense's key witness had been subpoenaed to come to court during Preliminary, but failed to show up due to lack of due diligence on behalf of the private investigator to quash it. The petitioner was incarcerated and had no way to serve it himself. That witness was in court on both the originally scheduled Preliminary hearing set for Sept. 22, 2016 and the rescheduled date set for Sept. 26, 2016. There is no justified reason for the private investigator not to have served the subpoena. Especially when the witness is in the courtroom. The defendant found out prior to the newly scheduled preliminary that the witness had not been subpoenaed correctly. When the defendant returned to court on Sept. 26, 2016, the defendant requested a continuance as a General Remedy. That took place in the Readiness Dept. Prior to Preliminary scheduled for that day. That Readiness information is not included in the appeal's transcript record. That information may be contained in a minute order, detailing this proceeding. The request for a continuance was denied and the defense went straight to Preliminary without a key witness. What happened at that time was plain error by the court. The petitioner's right to due process and the compulsory process under the 6th Amendment were violated at that time. As far as a continuance is concerned in the State-Courts disposition, that continuance is not the same continuance the petitioner had made reference to in his initial appeal, in which the petitioner submitted a Supplemental Brief on his own behalf. The continuance the State-court was referring to was made by the people, not the defendant on Sept. 22, 2016. That continuance is on record.

In regards to the petitioner's ineffective assistance of counsel claim, it was incorrectly analyzed by the State-court. The petitioner has a 6th Amendment right to effective assistance of counsel. During their appointment to the defendant they failed to adequately perform at a reasonable level. Counsel's lack of performance did prejudice the defendant in a substantial way, because the defendant went to trial afterwards. The reasonable assistance as outlined by Strickland, the district court agreeded that only one of the two prongs were adjudicated on. Counsel did not provide reasonable assistance by failing to investigate exculpatory evidence that could have exonerated the defendant. The district-court is clearly erroneous because they've used the same fact-finder as the State-court. Instead of doing a substantial evidence review, the district court conducted a de novo review without the evidence needed to raise a reasonable doubt. The district court should have held an evidentiary hearing to identify the evidence that was excluded due to the Pre-Trial errors, and find out where the constitutional violations occurred. [Rules Governing Section 2254 Rule 7 & 8 in Supra 21-1 - An evidentiary hearing is mandatory if 3 conditions is met; 1) a petitioner alledges facts that if proved entitle him to relief; 2) the petitioner's factual allegations survive summary dissmissal because they are not papably incredible or patently frivolous or false; 3) For reasons beyond the petitioner and the petitioner's attorney (assuming the attorney rendered constitutionally satisfactory assistance,) the factual issues were not previously the subject of a Full and Fair hearing in State courts or if a Full and Fair hearing in State-Court was held, the hearing did not result in fact-finding that resolved all the factual disputes.)

REASONS FOR GRANTING WRIT

An evidentiary hearing is one of the most important process during the appellate procedure, in order to Fairly analyze all matters pertaining to evidence, that have merit to the petitioner's habeas Corpus claims. The petitioner has not recieved a Full and Fair hearing at anytime. The wrong standard of review has been used leaving many questions of mixed law and Fact unresolved. Those mixed questions involved constitutional violation of the petitioners rights, under the 6th and 14th Amendments. Niether courts weighed any of of the petitioner's claims, against the Constitutional violations that occurred. (Federal Rules of Court-Criminal Law and Procedure; Exceptions to the rule of deference apply when the legal issues at stake are sufficiently new, unformed, or in need of appellate elaboration that a greater than usual appellate rule in the application of Fact to law require; the fact finding is predicated on a misunderstanding of the governing rule of law; or in arriving at the Fact

Finding the district court considered improper evidence ignored, or erroneously excluded material evidence, or otherwise tired the Facts in an incomplete or unfair manner; IF the district court exercised it's discretion to rehear Facts and thereafter made the same Fact determination that the State-court previously made the clearly erroneous rule and it's exception apply.) No evidentiary hearing was held in the district court even though it is necessary in this case. An evident-iary hearing would have been necessary to appropriatly address the claims involving excluded evidence. The district court in using the same FactFinder did not identify where the violations of due process and the complusory process occured. For example the district court did not reasonably conclude in it's disposition the value to the defense of the girlfriend as a key witness. The courts did not reasonably conclude that when the witness did not recieve the subpoena, it was a violation of the right to cross-examine. On Sept. 22, 2016 in Dept. 5 the defendant appeared in court for the originally scheduled Preliminary hearing. The defense's witness was in court on that day, but did not recieve the subpoena. That was lack of due diligence on behalf of the private investigator who said they could not locate the witness. On that same day the defendant waived his right to Preliminary so it could be rescheduled for the 26th of Sept. 2016. That was because the people needed a continuance because one of their witnesses was out of town. When the defendant came back to court on Sept. 26, 2016 the defense requested a continuance of their own. The defense had found out prior to this appearance the witness did not recieve the subpoena. The court at that time denied the continuance and sent the defendant straight to preliminary, without the key witness. The witness was anticipated to give testimony that was exculpatory in nature. (Dickerson v. Alabama 667 F.2d. 1364 (11th Cir) 459, U.S. 878, 103 S. Ct. 173, 74 L. Ed. 2d 142 (1982); A Federal court is not bound by a state-appellate courts determination of a question of law or a mixed question of law and fact, whether certain statements are sufficiently definite to constitute a request for a continuance is at the least a mixed question of law and facts. A trial judge's discretionary power to deny a motion for a continuance is necessarily limited by the constitution Amendment 6 right to the complusory process and any denial of an accussed's attempt to present testimony in his behalf must be weighed against that right. The determination whether the denial was such as an abuse of discretion as to violate an accussed's U.S. Constitution Amendment 6 right is a question of law.) As a result of the witness not being at preliminary several key components in the petitioner's defense were undeveloped. The private investigator had multiple opportunities to serve the subpoena, but did not. The defendant was incarcerated and had no opportunity to serve it himself. (Washington v. Texas 388, U.S. 14, 18 L. Ed. 2d 1019, 87 S Ct. 1920 (1967); It was held that the accused's Sixth Amendment right to have the compulsory process for obtaining witnesses in his favor is so fundamental that it can be considered incorporated in the due process clause of the Fourteenth Amendment, and the defendant was denied such a right in the instant case; the right to offer testimony of such witnesses and compel their attendance, if necessary is in plain terms the right to present a defense, the right to present the defendants version of facts.) Both the defendant and the girlfriend were together on the day of the alledged crime. The girlfriend is a material witness because she contained knowledge about the restraining order and the individual's violent history. The girlfriend also knew about the threatening text messages sent to the defendants phone. The girlfriend was also present when the defendant was assaulted by that individual at the transit. The defendant and the girlfriend were also together when it was reported to that individual's parole officer. A voicemail was left for the parole officer nothing was heard back That information contradicts the D.A.'s cross-examination of the defendant that no effort had been made to alert the authorities, Everything the petitioner testified to is contained in the preliminary report. The defendants duress was real and actual

The inconsistencies in the police report, the video surveillance, testimonies made by police during the Preliminary, and the 911 call prove the petitioner had not attacked the victim as initially believed. The Criminal Threats and the Dissuading a witness charges were hearsay and later dropped. There was no motive or mens rea requirement for the defendant in this situation. Only that defendant reasonably believe his life was in danger, as well as the girlfriend. The Exclusion of this evidence did prejudice the petitioner, because it can raise a reasonable doubt. (Oliver 333 U.S. 257, 273 (1946); in all criminal prosecutions, the accused shall enjoy the right to have the complusory process for obtaining witnesses in his favor; The United States Supreme Court held that the right to offer testimony was a basic ingredient of due process law; the right to offer testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendants verison of Facts.) The petitioner was prejudiced by the errors commited by the court, because he went to trial afterwards. No reasonable juror of predence would have found the petitioner guilt in light of the totalitiy of circumstances. The instructions to the jury in regards to Intent, Reasonable Doubt, Evidence, and witnesses were fundamentally incorrect. All of those instructions involve some kind of due process, and therefore it made the trial unfair. These structural errors require automatic reversal of the defendants conviction because they infect the entire trial process. The jury was also fundamentally bias against the defendant because he was in self-representation. During Voir Dire many of the jurors stated their contention with this case based on the defendants position. These pre-concieved notions and the possibility of guilt to them prejudiced the defendant substantially. (Davis v. Straub 421 F. 3d 365 (2005) - Constitutional Law - Fundamental Rights; The United States Supreme Court has established the sixth Amendment right to present a defense. The right to offer testimony of witnesses and to compel their attendance if necessary, is in plain terms the right to present a defense, the right to present the defendants version of the facts as well as the prosecution to the jury, so it may decide where the truth lies. Just as the accused has the right to confront the prosecutions witnesses for the purposes of challenging their testimony, he has the right to present his own witnesses to establish a defense, the right is a fundamental element of due process law. The Supreme Court has held that a defendant denied his right to the Complusory Process if the state arbitarily denies him the right to put on the stand a witness who is physically and mentally capable of testifying to events that he has personally observed and whose testimony is relevant and material to the defense.) Had the petitioner's rights to due process not been violated majority of the evidence in question could have been submitted to evidence and used at trial. This is the cause and prejudice side of the petitioners claim. Clearly established law has been ignored and the lower courts have went by their own state litigation practice. Going to trial without the defenses exculpatory evidence improperly influenced the jury to believe only one side of the case against the defendant. The defense with the enforcement of proper procedures could definitly raised a reasonable doubt in the mind of debatable jurors of reason. (Slovik v. Yates 556, F. 3d 747, 755 (9th Cir 2001); Improper curtailment of defense cross-examination by applying state-rules not constitutional; Constittutional Law-Criminal Process-The United States Supreme Court has emphasized at the Focus of the Confrontational Clause is on the individual witness and the Focus of the prejudice inquiry in determining whether the confrontation right has been violated must be on a particular witness, not on the outcome of the entire trial; a criminal defendant states a violation of the Confrontational Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on part of the witness. Accordingly the defendant has met his burden when he has shown that a reasonably juror might have recieved a significantly different impression of a witness credibility had the defense been premitted to pursue their purposed line of cross-examination.)

In the disposition of the state-court, there was no discrepancy about the defenses request to file a 1538.5 motion to suppress evidence. The defense did agree to have this motion heard after Preliminary. It was never the defenses intention to file a 995 motion as the court had suggested, because the evidence the defense sought to suppress was insufficient to charge the defendant. The continuance the state-court is referring to was requested by the people not the defendant. That was on Sept. 22, 2016 in Dept. 5 in Superior Court. That is the same day the defendant waived his rights to the Preliminary hearing. When the defendant came back on Sept. 26, 2016, the defense also requested a continuance of their own. That request was a verbal request, in the Readiness Dept. 5. The witness was also in court again, the defense knew the witness had not been properly subpoenaed. The minute order from that appearance on Sept. 26, 2016 needs to be reviewed, as well as the subpoenas the defendant submitted on Sept. 6, 2016 to the Office of Assigned Counsel. This Office is normally assigned to Pro Per defendants, which the defendant had been in at that time. The denial of the subpoenas the private investigator did not serve were provided in a receipt to the defendant. All of that information is contained in records at their office. That includes the name of the private investigator and phone number to reach them, and the method they used to serve the subpoena. The lack of due diligence by the private investigator, violated the defendants rights.

The private investigator had verifable addresses, phone numbers, the name of the person. The defendant was also recieving visits, and the witness was in court prior to Preliminary there is no reason why the witness did not recieve it. The private investigator never came to the jail to tell the defendant he could not locate the witness. They never came to the courthouse when the defendant was ordered to appear, to see if they could find the witness. It is overly prejudice for the people to recieve a continuance and the defense not to recieve their own. Both continuance request involved the presence of a witness. There was no logical reason for the defense to go to Preliminary without their witness. (Jennings v. Ragan 276 U.S. 358, 296, L. Ed. 2d 3; the district court denied the petition without making any examination of the record proceedings in state courts, simply on facts and conclusions stated in the Supreme Court of illinois affirming the conviction; It was error for the district court to dismiss the habeas corpus petition without a hearing when it had not satisfied itself after examination of the state court record, of the appropriateness of such a dismissal; (Brown v. Allen 344. U.S. 443, 463-465, 506, 97 L. Ed. 469, 492, 514, 795 S. Ct. 397; Rogers v. Richmond 357 U.S. 220, 2 L. Ed 1361, 78 S. Ct. 1365) The petitioner's third claim was based on ineffective assistance of counsel. On Oct. 11, 2016 the defendant was to be arraigned on the charges, during that time the defendant requested counsel. The petitioner had every right to ask for a lawyer under the 6th Amendment. From Oct. 11, 2016 to Nov. 21, 2016 the petitioner was represented by counsel, until the defendant requested a Marsden Hearing. The reason the petitioner requested a Marsden Hearing was not to resume self-representation, but because counsel had created a conflict of interest. Counsel had no strategy did not investigate any of the exculpatory evidence so it could be used at trial. Counsel continuously tired to get the defendant to plead guilty when more than likly he could have been found innocent. Even though the defendant had been in self-representation, the moment the defendant requested counsel he is entitled to effective representation. That assistance has to at least be reasonable. Ajudication of the third claim in state-court was only half-way adjudicated on according to the district court, under the two-prong Strickland standard. None of the claim was analyzed with the exculpatory evidence and applied directly to this claim. (Johnson v. Bagley 544 F. 3d 592, 602, (6th Cir 2008); The state-court of appeals unreasonably applied Strickland when it held otherwise in determining that Johnsons counsel was constitutionally adequate, the court principally concluded that counsel had discovered the relevant evidence, as shown by the fact that most of the additional evidence could be found in some form either in the testimony or in the documents, admitted at the mitigation hearing; Babbit v. Calderon 115 F. 3d. 1170 (1998). During the Marsden Hearing the defendant stated what complications he was having in regards to gathering certain exculpatory evidence (including the testimony) and the subpoenas. These were Pre-Trial discrepancies that the defendant had asked counsel to follow up on. However counsel did not do any of this and the defendant requested a Marsden Hearing. Their lack of performance definitly prejudiced the defendant when he could have been found innocent. The defendant was scheduled to go to trial 2 weeks later. Prior to the Marsden Hearing counsel called the defendant while he was in jail and insinuated his guiltiness. Counsel then proceeded to tell the defendant he would never win at trial, and that the jury would find him guilty. Counsel never came to the jail to discuss what was in the discovery, with the defendant, that was important because counsel should have been preparing a defense. The defendant explained to counsel that he was innocent and did not want to sign any plea bargain. After this counsel continued to try and negotiate, even when the D.A. said it was not inclined to negotiate anymore. (Strickland v. Washington 466 U.S. 668, 687, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); a petitioner who seeks to overturn his conviction on grounds of ineffective assistance of counsel must prove his entitlement to relief by a Preponderance of evidence; Effective counsel must conduct a reasonable amount of pre-trial investigation; When a defense counsel fails to investigate his clients only possible defense although requested by him to do so it can hardly be said the defendant has had effective assistance of counsel; the petitioner has the burden of persuasion to demonstrate that the ineffectiveness created not only a possibility of prejudice, but that it worked to his actual and substantial disadvantage. If he successfully satisfies this burden, the habeas corpus must be granted, Unless the state proves that counsels ineffectiveness was harmless beyond a reasonable doubt.) Counsels choice not to investigate did irreparable harm to the defenses case. The defendant was left in a vunerable position, to defend himself, and to do this without the exculpatory evidence defied all reason. The only evidence reviewed by counsel was the evidence the prosecution had, none of that involved the defense exculpatory evidence to contradict the prosecutions case. Telling a client to plea guilty when the total want of evidence points to his innocence. (Johnson v. Bagley 54 F. 3d. 592, 602 (6th Cir 2008); the petitioners counsel was not in a position to make reasonable strategic choices because the investigation supporting their choices was unreasonable; Wiggins 539 U.S. 536; In the Johnson case - competent counsel could have put on evidence that differed in a substantial way in strength and matter.) The district courts review de novo of the two prong Strickland standard without applying the value of the excul-

patory evidence to determine counsels unreasonableness is clearly erroneous. Counsel's lack of performance contribute to major errors in the Pre-Trial proceedings that violated the defendants 6th and 14th Amendment rights. (Powell v. Alabama 77 L. Ed. 158, 287 U.S. 45 (1982); Criminal Law - U.S. Supreme Court Digest Lawyers Edition - One charge with a crime is as much entitled to assistance of counsel in preparing for trial, as the trial itself - In any, event the circum stances lends emphasis to the conclusion that prehaps during the most critical period of the proceedings against these defendants that is to say from the time of their arraignment, until the beginning of their trial, when consultation, through-going investigation, and preparation were vitally important, the defendants did not have the aid of counsel in any real sense. Although they were entitled to such aid during that period as the trial itself; People ex rel. Burgess v. Risley 66 How. P. 67; Batchelor v. State 189, Ind 69, 76, 125 N.E 773) The trial court committed plain error by not requiring counsel to investigate. (Jackson v. Virginia 443 U.S. 307, 61 L. Ed (566-564), 99 S. Ct. 2781; Appeal & Error 77 Trial 299-321, Even if the evidence of guilt is overwhelming this power does not include a power to enter an unreasonable verdict of guilty, the application of the beyond a reasonable doubt standard to evidence not being irretrivable commited to jury discretion)
The Marsden Hearing judge after questioning counsel

Was able to gain some Understanding of what the Case entails. The judge at that time made no inquiry into what could be an exculpatory defense for the defendant. Nor did the judge assess the evidence to determine why it was valuable to the defense. Nor did the Judge ask counsel what they were doing in regards to that evidence to help the defendant, and apply it to counsel's duty to perform effectivly. (Avery v. Prelesnik 548 F. 3d. 434, 435, 439 (6th Cir 2009); the petitioner is arguing that his counsel's efforts to investigate potential alibi witnesses in preparation for trial were deficient. While counsel made at least some attempt to contact alibi witnesses. The Federal Court of Appeals believed the investigation was far less than complete. The potential alibi witnesses, coupled with an otherwise weak case, rendered the failure to investigate the testimony sufficient to undermine confidence in the outcome of the jury verdict. The jury was deprived of the right to hear testimony that could have supplied a reasonable doubt.) According to the Marsden hearing transcript, the petitioner realized counsels unreasonableness and the conflict it created in the defense. So the first prong of the Strickland in a general sense, meaning counsel made some appearances, and did some negotiation, was part of counsels obligation. That does not mean that counsel didn't render ineffective assistance while in representation. The Second prong applys more directly to the petitioner's claim, because with effective assistance of counsel, the petitioner might have been found innocent. The state court did not understand how the exculpatory evidence in question applied to this case. The record was insufficient because of the due process violations. That same record is the one the state court used to make it's determination. The district court also erred in it's decision because it used the same fact finder. The petitioner never recieved an evidentiary hearing on the evidence, that counsel did not investigate. (Townsend v. Sain 372. 293 U.S. 28 U.S.C. 2254(d) 83 S. Ct. 745, 9 L.Ed. 2d; the States determination of facts not binding in Federal Habeas Corpus proceedings if not based on full and fair fact finding procedures; The Supreme Court in Townsend held, that where findings of fact are in dispute, an evidentiary hearing must be held by the district court if the habeas applicant did not recieve a full and fair hearing in state court.) The petitioner did reserve the right to effective counsel, and to be defended until provin guilty. For the state court and the district court to determine that the exculpatory evidence had no relevancy in the outcome is clearly erroneous. (Chapman v. California 17 L.Ed 2d. 705, 386, U.S. 18, 824, 17 L.Ed 705 (1967); Alternatly when counsel is faulted for his failure to develope and present a certain line of evidence, application of the Chapman rule would require the state to prove that the failure to produce certain evidence was harmless beyond a reasonable doubt, even though the evidence is more readily available to the petitioner. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgement under Strickland, trial counsel has a duty to investigate a case, this includes the obligation, to investigate all witnesses who may have information concerning his or hers client's guilt or innocence.) Once counsel was relieved the petitioner was left with no other option but to resume self-representation. The trial court abused it's discretion for not probing the conflict of interest challenge and holding counsel responsible for their failure to investigate. Even after the defendants contention in regards to counsel, counsel remained in representation for 2 more days. On Nov. 22, 2016 the defendant appeared again in court, but never spoke to counsel who the defendant had been informed of was going to meet with the defendant. On Nov. 23, 2016 the defendant again came to court for a Readiness conference with counsel still in representation. Once again the counsel tired to get the defendant to plead guilty. Counsel knew the defendant did not want them in representation anymore. That was due to the fact counsel did no investigation or gathering of exculpatory evidence. Counsel did not appear again after those proceedings and the petitioner went to trial.

Mickens v. Taylor 538 U.S. 168, 170; rejecting habeas Corpus petitioners argument where trial judge neglects duty to inquire into potential conflict, the defendant in order to obtain reversal of the judgement, need only show that his lawyer was subject to the conflict of interest and need not show that the conflict adversely affected counsel's performance.) Both Courts have ignored clearly established law and failed to recognize the infringements of the petitioners rights. The trial was fundamentally incorrect and violated the petitioners 14th Amendment right to a fair trial. The presumption of correctness used ~~and~~ is clearly erroneous many structural errors occurred. (Robertson v. Cain 324 F. 3d. 297, 301 (5th Cir 2003); The United States Supreme Court recognizes two categories of constitutional violations, trial errors, and structural errors, Trial errors occur during the presentation of the case to the jury and is amendable to the harmless. error analysis because it may be quantitativly assessed in the context of other evidence presented in order to determine whether it's admission was harmless, On the otherhand structural defects defy analysis by the harmless error standards and require automatic reversal of the conviction because they affect the constitutional mechanism of the trial and therefore the entire trial.) The Fourth Claim brought by the petitioner is his Right to be Free From Cruel and Unusal punishment. That includ es but is not limited to Excessive Fines and Punishments. That includes, but is not limited to Excessive Fines and Punishment. The petitioner contends that his Sentence 17yrs. in prison is excessive because of the Enhancements Used. and implemented without due process. of law. The petitioner also recieved a $5,100.00 Fine which is beyond his ability to pay. This is the Petitioners Final Claim.

CONCLUSION

The petitioner's constitutional rights to the Compulsory Process, Due Process, and a Fair Trial were violated under the 6th and 14th Amendments. Under the 8th Amendment the petitioner recieved both excessive punishment and Fine. The sentence given to the defendant was stipulated in enhancements, that gave the defendant more time. The Fine the defendant recieved was beyond his ability to pay. The district Court has used the wrong standard of review. Special deference needs to be used because the district court is clearly erroneous. The district court did not hold an evidentiary hearing. The defenses case was far stronger than the state and district courts were led to believe. Without negligence on the defendants part tremendous amounts of exculpatory evidence was omitted from the record. The trial itself contained many structural defects and was. Fundamentally incorrect. (Poindexter v. Booker 301 Fed. Appx. 522, 524, 531, 2005 U.S. (6th Cir 2008); state appellate court unreasonably applied the Strickland v. Washington in rejecting ineffective assistance challenge to counsel who Failed to investigate and present alibi testimony.) The lack of performance by counsel definitly prejudiced the defendant. The petitioner's case needs to be remanded back to the district court for an evidentiary hearing. The petitioner has not recieved an evidentiary hearing a Full and Fair hearing is required. (Keeney V. Tamayo-Reyes 504 U.S. 1, 118 L. Ed. 2d 318, 112 S. Ct. 1715 (1992); State must afford the petitioner a Full and Fair hearing on his Federal Claim, or else Federal rehearing on the Fact is required; Stone V. Powell 428 U.S. 465, 494-495 n.37 (1967). The petition For certiorari should be granted. There still exist mixed questions of law and Fact that have been unanswered. The petitioner's rights have been violated and review by this Court is needed.

Date: 1/2/2020 Kenyatta Quinn Mitchell
Time: 8:00 am in ProSe

X Kenyatta Mitchell