

No. _____

19-7690

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

DEVELL SHORT, In Propria Per. — PETITIONER

(Your Name)

vs.

MELINDA ADAMS, Superintendent/Et.al RESPONDENT(S)

ORIGINAL

FILED

FEB 06 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE
THIRD CIRCUIT No. 18-3405

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Devell Short, BN-6679

(Your Name)

DOC/SCI-Mercer. N/A- 43-1. 801 Butler Pike Road

(Address)

Mercer, Pennsylvania 16137

(City, State, Zip Code)

N/A.

(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER A MISCARRIAGE OF JUSTICE OCCURRED, DUE TO A MISTAKE AND BECAUSE OF A BREAKDOWN IN THE JUDICIAL OPERATION OF THE FEDERAL COURTS, WHEN IT FAILED TO ~~ISSUE ANY NOTICE TO MR. SHORT OF ITS ORDER DENYING HIS AMENDED WRIT OF HABEAS~~ CORPUS, AND THE FAILURE TO ISSUE A COA, HAS CAUSED PREJUDICE TO HIS RIGHT TO PERFECT A TIMELY APPEAL?
- II. WAS PETITIONER DENIED DUE PROCESS VIA JUDICIAL MISCONDUCT BECAUSE IT ABUSED ITS DISCRETION, AND ALLOWED AN OFFICER OF THE COURT TO INVADE THE PROVINCE OF THE JURY?
- III. WAS MR. SHORT DENIED A FAIR TRIAL WHEN THE TRIAL JUDGE ALLOWED A RUN-AWAY JURY MEMBER TO CONTAMINATE THE REST OF THE SEATED JURY MEMBERS WITH OUT-OF-COURT INFORMATION, WHEN IT ALLOWED A BIAS INFLUENCE TO ENTER THE JURY ROOM DURING THEIR DELIBERATION VIOLATING SHORT'S CONSTITUTIONAL RIGHTS?
- IV. WAS PETITIONER UNJUSTLY DENIED HIS REQUESTED DEFENSE OF THE CASTLE DOCTRINE, SINCE THE PETITIONER DID NOT POSSESS THE ELEMENTS NEEDED TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT?
- V. WHETHER THE JURY'S VERDICT IS NOT WORTHY OF CONFIDENCE TO STAND?

LIST OF PARTIES

*The Petitioner is Devell Short, He is a wrongfully incarcerated person at DOC/SCI-Mercer.

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

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

****The Respondents Are:**

Melinda Adams, Superintendent, in lieu of Joseph Mazurkiewicz.

Stephen A. Zappala, District Attorney of Allegheny County, Pennsylvania.

Josh Shapiro, Attorney General of Pennsylvania.

D. Brooks Smith, Chief Judge.

Joseph A. Greenaway, Jr., Judge.

Lisa P. Lenihan, United States District Court/Magistrate Judge.

Randall Todd, Judge of the Court of Common Pleas, Allegheny County/PCRA Judge.

Raymond A. Novak, Trial Judge, Court of Common Pleas, Allegheny County.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☒ reported at 2019 U.S. App. LEXIS 13571 /C.A. 18-3405; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☒ reported at 2019 U.S. DIST. LEXIS 110960 W.D./September 24, 2019; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

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

☒ reported at 131A.3d491 (2016)/No. 448 WAL 2015; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Court of Common Pleas and Sentencing/PCRA court appears at Appendix -B1-6- to the petition and is

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

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case

was March 29, 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 22, 2019, and a copy of the order denying rehearing appears at Appendix - A - .

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Feb. 2, 2016.
A copy of that decision appears at Appendix F-1-4.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

BE INFORMED THAT PETITIONER/SHORT WAS DENIED FUNDAMENTAL FAIRNESS IN VIOLATION OF:

The Fourteenth Amendment to the Constitution of the United States ... That "No State shall make, enforce any law which shall abridge the privileges or immunity of a citizen of the United States, nor shall a State deprive any person of life, liberty, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws."

The Fifth Amendment to the United States Constitution provides in relevant part: "No person shall be held to answer for a infamous crime, nor shall he be compelled in any criminal case to be a witness against himself, nor he be deprived of life, liberty, without due process of law."

The Sixth Amendment to the United States Constitution provides "In all criminal prosecutions the accused shall be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and have the Assistance of Counsel for his defense."

The Seventh Amendment to the Constitution of the United States provides in relevant part: That "The right of trial by jury shall be preserved." ... sic.

*Judicial Notice is given that, The Above Constitutional and Statutory provisions are invoked herein because: The Cornerstone of Our American Legal System rest upon the recognition of the constitution as the Supreme Law of the Land, and that the paramount duty of the Federal Judiciary is to uphold that law. Thus, Herein, The Supreme Court shall be invoked in the petitioner's behalf sua sponte, Nunc Pro Tunc, By Restoring the protections, Fundamental rights, and entitlement still due him. Especially because herein when its found that a breakdown in both the State Judicial System and inferior U.S. Appellate and the U.S. District Courts has occurred, and because there is a need to prevent a miscarriage of justice from occurring; This Court must act under the circumstances hereafter presented pursuant to "Supreme Court Rule 10(a). - (c). the Supreme Court's Powers to reinstate rights unknowingly lost shall now rehabilitate or correct the complained of Constitutional Violations found to exist after a State Appellate Court has repeatedly failed to meet or enforce their Constitutionally Mandated Requirements of Fundamental Fairness." Finally, The Supreme Court's Jurisdiction is invoked pursuant to Article III. "Because it is the solemn duty of this Court to assure the inferior Courts compliance with the Spirit and Letter of the United States Constitution." Especially, Since in this case the petitioner was denied rights and entitlements pursuant to Article VII. "The Right to Jury Trial." Also see Article VI. Section 2. Petitioner/Mr. Devell Short from the outset was denied "Protection of the United States Constitution and the Law of the Land" sic... the Judgments of the Supreme Court shall be the Law of the Land; and has a sworn duty to enforce them upon every Judge in every State to be bound thereby, anything in the United States Constitution or Over-rule any Laws of the Commonwealth of Pennsylvania found to be contrary.... not withstanding.

STATEMENT OF THE CASE

We only recite a brief summary of the facts necessary to explain just what has occurred over the past thirty (30) years and history of this litigation, which forms the basis for the requested "Enforcement of the Petitioner's United States Constitutional Rights" and the "Demand for Protection via the U.S. Supreme Court's Historical Orders," and "Precedental Judicial Decisions" still due him to date. Thus, Do hereafter, Find stated all the substantive facts that are now necessary for this Reviewing Court to make a fair determination, in order to vacate and to correct the current "Manifest Injustice" based upon the denial of (Mr. Devell Short's) "Petitioner's Original Timely (good faith) Request for a Writ of Habeas Corpus/Petition in the Alternative to Vacate/Alter the Judgment and to Remand this Case for Cause," Nunc Pro Tunc. Judicial Notice is given, That He/Devell Short, ("Petitioner") is a State Prisoner who is currently held in custody illegally by the Commonwealth (DOC) of Pennsylvania, in violation of the Constitution of the United States and therefore, It Is Hereby Requested that an ORDER be Issued, It be Adjudged and DECREED that, a "Writ of Certiorari" be issued releasing him/Short from the Judgment of the United States Court of Appeals for the Third Circuit, pursuant to a November 22, 2019 erroneous decision to affirm a Violation of the Suspension Clause, concerning the unjust denial of a good faith Writ of Habeas Corpus by the United States District Court of Western Pennsylvania. ... To-wit, On 04-11-2017 and 10-19-2010, In bad faith, Affirming of a "Manifest Injustice," as well as, to date. ... the failure to correct the State and Appellate Court's denying Petitioner the same Fundamental Fairness and Due Process/Compulsory Process of a Material Witness during his contaminated Jury Trial, and Deliberation. Thus, Violating the Retroactive Applications of Kyles v. Whitley, 115 S.Ct. 1555, 1566 (1995); Appendi v. N.J., 530 U.S. 466, 490 (2000), and McQuiggin v. Perkins, 569 U.S. 383, 393-394 (2013); Schlup v. Delo, 513 U.S. 298, 324, 327-329 (1995), Calderon v. Thompson, 523 U.S. 538, 558 (1998). ... Especially, Since the Record is Silent as to why the offending lawyer's Identity was not disclosed and him not call as a witness. ... Further, To date The Lower Court's Failure to hear these claims have resulted in a miscarriage of justice, that only this Reviewing Court can grant the needed relief under the Constitution. Instantly, On March 29, 2019, September 24, 2019 and November 22, 2019, the U.S. Third Circuit Court of Appeals, as well as, U.S. District Court for the Western District of Pennsylvania did on April 11, 2017 and October 19, 2010 both committed a "Substantive Error when each failed to Obey the United States Constitutional Mandates, Its Dictates of the Applications of the Law of the Land; Herein, All of the Courts involve failed to enforce the current Orders of Our U.S. Supreme Court. ... Instantly, It is Petitioner's Complaint that after a proven manifest injustice that occurred during his trial, the Court's of Pennsylvania State and Federal have unconstitutionally Closed All Doors to Good Faith Redress during the appellate process by denying him/the petitioner, (Devell Short) any meaningful rights and access to court to date.

Moreover, Further on November 22, 2019, The U.S. Court of Appeals did in bad faith deny a "Motion To Reopen the Time to Appeal ...sic... Out of Time, while at the same time denying him the full benefits of his "Petition For Enbanc/Rehearing"" because on November 22, 2019 THE ORDER BY THE COURT was issued without any wisdom or input from Nine (9) Senior Circuit Judges whose Precedental Opinions and Court Decisions were cited by the petitioner to lend support to the Reason For Granting the Petition and Redress Requested. ... Namely, Senior Judges: Vanaskie, Stapleton, Greenburg, Scirica, Cowen, Roth, Randell, Fuentes and Fisher. Accord Appendix A-1. The Aforesaid prejudicial effects were compounded by the fact of the matter that the Court Clerk has failed to date to give the petitioner/Mr. Short any Notification, nor Personally Serve a Copy of the ORDER of March 29, 2019, or Notice of the Judgment. See Appendix A-23, Which is a Court Docket Sheet: Dated 9-30-2019/10-4-2019, as an Offer of Proof. ... This Court has the Jurisdiction to Correct the current manifest injustice pursuant to Hill v. Hawes, 320 U.S. 520, 523-524 (1944), and per. Dorsett v. United States, 2019 U.S. Dist. LEXIS 42667. But failed to "Vacate the Judgment of March 29, 2019, or Reopen the Time to Appeal." This Reviewing Court has long held that, "In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest may of their own motion, (Sua sponte) Notice (Plain) Errors to which no exception has been taken if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of the judicial proceedings." Accord United States v. Atkinson, 55 S.Ct. 391, 392 (1936), United States v. Clark, 274 F.3d 1325, 1326 (2001), United States, v. Ward, 626 F.3d 179, 185 (2010). Therefore, Your Petitioner Avers that, This Reviewing Court be "More Informed" that He/Devell Short is currently held in Unconstitutional State Custody pursuant to a "manifest injustice" that occurred during an "invasion of the province of the jury," I.e., Via the erroneous judgment entered by a State Court that was not fairly adjudicated on , or based on the merits of the claims proffered by the pro se. petitioner. Thus, On Appeal and pursuant to a "Writ of Certiorari to the United States Court of Appeals for the Third Circuit," This Court is asked to agree that both the Appellate Courts of the Commonwealth of Pennsylvania, as well as, both the Inferior-U.S. Court of Appeals and U.S. District Courts decisions resulted in Judgments that were contrary to the Constitution; (1). "Involved an Unreasonable Application of Clearly Established Federal Law, as have already been determined by the Supreme Court of the United States." ... (2). That to date the Reviewing Courts decisions are based on unreasonable determinations of facts in light of the evidence that was never found "worthy of confidence" yet presented in the State Court proceedings. Accord 28 U.S.C §2254(d). Therein, The Phrase "Clearly Established Federal Law" has already been determined by the Supreme Court of the United States""means "The holdings, as opposed to the dicta, of [the Supreme Court's] decisions as of the time relevant, state-court decision." Williams v. Taylor, 529 U.S. 362, 405, 412 (2000). See also Frazer v. South Carolina, 430 F.3d 696, 703 (2005). *Finally, (3). Petitioner avers that from the outset, He was denied a fair trial, and that his case suffered from a serve lack of input

of Title 18 Pa. C.S.A. §505(a). and §502 "The Castle Doctrine" his requested "Justification/Use of Force," "Self-defense" as well as, Missing Material Witnesses Testimony, and that his case suffered the effects from "Withheld Exculpatory Evidence. (4). Petitioner avers that on February 18, 1990, the death of Mr. Tierenzo Morton occurred only as the result of Morton's unprovoked attack' upon him/Mr. Short, while he/petitioner was standing by his own automobile, on a public street; Located in the City of Duquesne, Pennsylvania. I.e., That After-discovery Case Records disclosed that Mr. Morton, (The Decedent) was on a continuous Crime Spree' between February 17, 1990 through February 18, 1990. ... That He/Mr. Morton instantly during this encounter, did act with further criminal-intent, motives and aggressive behavior-impromptu was then in the process of trying to sneak/creep-up on Mr. Short from behind, as well as, upon those persons in his company who were about to enter Short's Vehicle; That when He/Mr. Short heard someone on the street (yell) shout that He/Morton had a gun in his hand. See Trial Transcripts T.T. 1350:14-15; 23;/T.T. 1351:1-10. **Instantly, Judicial Notice is given that, the afore-said was addressed to the Inferior Courts below, (Court of Appeals/District and to the Pa. State Appellate Courts) to be then considered as part of his "Motion to Vacate/Amend/Alter the Judgment" pursuant to the "Relate Back Doctrine" and per. "His Original Habeas Corpus Claims." Accord United States v. Santarelli, 929 F.3d 95, 98-102, 103-105, 106-107 (2019). Appellate Jurisdiction is conferred on this Court. (5). Herein, Petitioner logically fearing that the decedent/Mr. Morton was going to the seriously injure him or perhaps even would kill him. ... Further, That it was only then did Petitioner draw his own weapon and fire in self-defense. Thus, As a result of attempting to protect/defend himself during the attack from Mr. Morton. ... Not-with-standing these facts, The petition for a writ of habeas corpus originally filed in this matter should have been granted, And that his conviction for aggravated first degree murder should have been vacated and the judgment of sentence set aside. Accord Harris by & Through Ramseyer v. Blodgett, 853 F. Supp. 1239, 1247-1248 (1994). (6). Petitioner avers that in this case, During a Miscarriage of Justice his Trial suffered the prejudicial effects of Reversible Error, I.e., from a Contaminated Jury ... and from a Denial of Due Process; Lack of Compulsory Process when the "Trial Judge abused the discretion of the court by allowing both the jury foreman and an UnNamed still Undetified-Attorney/Officer of the Court "Not to be Confronted/Compelled to Appear in Court/to Testify or Be Cross-Examined," after they Invaded the Province of the Jury" during their deliberation with out of court information. T.T. 1852:10-25. That beyond dispute, The Trial Judge failed to allow Mr. Short's Defense to call this missing-material-witness's in-court testimony in violation of this Court's holding, that petitioner had a enforceable right to compel. Accord Crawford v. Washington, 541 U.S. 36, 42, 68-69 (2004). The Sixth Amendment's Confrontation Clause provides that, "[I]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the (missing) witness involved in this matter ... Even to the extent the "right to compel the UnNamed; still Un-Identified-Attorney/An Officer of the Court," who Invaded the Province of Short's Jury Trial." With emphasis added. Instantly the current Record

is silent as to why the offending Lawyer's Identity was not disclosed. ... Failure to hear these claims is tantamount to a miscarriage of justice. Accord Kuhlmann v. Wilson, 477 U.S. 436, 444-449 (1986). ... Further, The "Ends of Justice" now requires this Court to consider the Constitutional Violations hereafter raised in this Writ of Certiorari.

REASONS FOR GRANTING AN EXTRAORDINARY WRIT

Because at all times concerned the complained of Constitutional Violations and Erroneously Decisions made by the inferior appellate courts below were tantamount to a manifest injustice a decision that conflicts with the defendant's/appellant's rights to a fundamentally fair Jury Trial, and until corrected remains a miscarriage of justice. Accord 28 U.S.C. §1651(a).

Therefore, This Case presents (5) five fundamental questions of interpretations of this Court's decisions in Short v. Supt. of Greensburg, 2019 U.S. App. LEXIS 13571; As Presented Herein: I. Whether a miscarriage of justice occurred, due to a mistake and because of a breakdown in the judicial operation of the federal courts, when it failed to issue any notice to Mr. Short of its Order denying his Amended Writ of Habeas Corpus, And the failure to issue a COA? Has caused prejudice to his right to perfect a timely appeal? II. Was Petitioner denied due process via judicial misconduct because it abused its discretion, And allowed an Officer of the Court to Invade the Province of the Jury? III. Was Mr. Short denied a Fair Trial when the Trial Judge allowed a Run-away Jury Member to Contaminate the rest of the Seated Jury Members with Out-of-Court Information, when it allowed a Bias Influence to Enter the Jury Room during their deliberation violating Short's Constitutional Rights? IV. Was Petitioner Unjustly Denied his requested defense of the "Castle Doctrine," since the Petitioner did not process the elements needed to prove him guilty beyond a reasonable doubt? V. Whether the Jury's Verdict is Not Worthy of Confidence to stand? *Respectfully Submitted.

WHEREFORE, The Questions Presented herein are of "great public importance" because they affect the due process rights/entitlements for a petitioner to receive a fair Jury and Trial, Not only in the Courts of the Commonwealth of Pennsylvania, But also in all other (49) forty-nine states. Judicial Notice is given that, In view of the large amount of complaints and the relitigation over claims of "invasion of the province of the jury," "self-defense" and denial of material witnesses for defense, guidance on the questions presented sub judice are also of great importance to the Unified Judiciary. Plus Instantly the questions presented are of great importance to prisoners like Devell Short, who are currently held in custody in violation of the United States Constitution, because this reviewing court's answers applied to the questions asked will hereafter affect their ability to receive fair decisions in future proceedings, that may result in extended months or years of added incarceration, or harsh and unjust confinement. ***Further, Judicial Notice is given that the aforesaid, "Motion to Reopen the Time to Appeal ... Nunc Pro Tunc; Petitioner's Informal Brief; Petition for COA; Motion to Vacate/Amend/Alter the Judgment for Cause Shown; and the Original Petition for a Writ of Habeas Corpus" Are all incorporated herein as if, they were each set forth both whole and in part.

REASONS FOR GRANTING THE PETITION

- I. A MISCARRIAGE OF JUSTICE OCCURRED DUE TO A MISTAKE AND BECAUSE OF A BREAKDOWN IN THE JUDICIAL OPERATION OF THE DISTRICT COURT, WHEN IT FAILED TO ISSUE ANY NOTICE TO MR. SHORT OF ITS ORDER DENYING HIS WRIT FOR HABEAS CORPUS, WHICH CAUSED PREJUDICE TO HIS RIGHT TO PERFECT A TIMELY APPEAL.
- II. PETITIONER WAS DENIED DUE PROCESS VIA JUDICIAL MISCONDUCT BECAUSE IT ABUSE ITS DISCRETION, AND ALLOWED AN OFFICER OF THE COURT TO INVADE THE PROVINCE OF THE JURY.
- III. MR. SHORT WAS DENIED A FAIR TRIAL WHEN THE JUDGE ALLOWED A RUN-AWAY JURY MEMBER TO CONTAMINATE THE REST OF THE SEATED JURY MEMBERS WITH OUT OF COURT INFORMATION, WHEN IT ALLOWED A BIAS INFLUENCE TO ENTER THE JURY ROOM DURING THEIR DELIBERATION VIOLATING SHORT'S CONSTITUTIONAL RIGHTS.
- IV. PETITIONER WAS UNJUSTLY DENIED HIS REQUESTED DEFENSE OF THE CASTLE DOCTRINE, SINCE THE PETITIONER DID NOT POSSESS THE ELEMENTS NEEDED TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.
- V. THE JURY'S VERDICT IS NOT WORTHY OF CONFIDENCE TO STAND.

I. A MISCARRIAGE OF JUSTICE OCCURRED, DUE TO A MISTAKE AND BECAUSE OF BREAKDOWN IN THE JUDICIAL OPERATION OF THE FEDERAL COURTS, WHEN IT FAILED TO ISSUE ANY NOTICE TO MR. SHORT OF ITS ORDER DENYING HIS AMENDED WRIT FOR HABEAS CORPUS AND THE FAILURE TO ISSUE A COA, HAS CAUSED PREJUDICE TO HIS RIGHT TO PERFECT A TIMELY APPEAL..

We Note, Per. United States v. Smith, 962 F.2d 923, 935 (1992) Our Federal Courts have held that, ~~in exceptional circumstances, especially in criminal cases, appellate courts, in the public interest,~~ may, of their own Motion, Notice errors to which no exception has been taken if the errors are obvious, or if they otherwise seriously affect the fairness, integrity, or public reputation of judicial proceedings. Accord United States v. Atkinson, 56 S.Ct. 391, 392 (1936). Instantly, Your Petitioner/Mr. Devell Short, avers that and this Honorable Court shall agree that, The concept "Notice" Means: "A Notice in its legal sense may be defined as information concerning a fact actually communicated to a person by an authorized person, or a Notice actually derived by them/him from a proper source." Moreover, That a "Notice is regarded in law as actually (occurring) when the person sought to be affected by it knows thereby of the existence of the particular fact in question." Accord: 66 C.J.S. Notice, see 2. pp. 635, 637, In this case both Court of Appeals and the U.S. District Court for the Western District of Pennsylvania unjustly denied Mr. Short, (Petitioner) a formal opportunity to make a timely Objection/Appeal from its Orders of April 11, 2017/June 18, 2014/October 19, 2010 and February 11, 2010 involving both his "First Writ of Habeas Corpus" and the "Motion to Amend or Alter Judgment." However, the purpose and History of the Writ demonstrates that barring in this case Mr. Short's first petition as untimely would violate the Suspension Clause. So therefore, On various occasions, the United States Supreme Court has ruled that the Lower Courts were obliged to hear habeas corpus petitions, even when they were filed many years after a prisoner's conviction became final. See Uveges v Pennsylvania, 335 U.S. 437, 438-439 (1948) (Petition filed Seven Years after conviction); Palmer v. Ashe, 342 U.S. 134, 137 (1951) (Eight Years after conviction); Herman v. Claudy, 350 U.S. 116, 123 (1956); (Accepted when Filed Eighteen Years After the Conviction).

Petitioner avers that this Reviewing Court, when faced with a situation such as this one sub judice; See: In Chessman v. Teets, 354 U.S. 156, 165 (1957), the Court concluded that the passage of "seven years" between conviction and application for the writ did not bar federal habeas corpus relief. The Court stated:

"The overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist....We must be deaf to all suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, because courts, including this Court, were not earlier able to enforce what the U.S. Constitution demands. See also Herman, 350 U.S. at 123 ("The sound premise upon which these holdings rested is that men incarcerated in flagrant violation of their constitutional rights have remedy.") Therefore, Logically "To apply a statute of limitations ... despite the instant complained of Constitution Violations and Judicial Interferences to petitioner's first habeas corpus would violate the principle underlying the writ -- that it is never too late to discover the truth which would release a person confined either for a cause for which no person should be restrained or by a process by which no person should be convicted." (internal quotation marks and citation omitted.) Accord Rosa v. Senkowski, 1997 U.S. Dist. LEXIS 11177, 148 F.3d 134, 135-136 (1998), and United States v. Agubata, 1998 U.S. Dist. LEXIS 22127.

Moving Forward, The United States Supreme Court has indicated that restrictions on an initial federal habeas petitions, such as the restriction at issue here, may invoke closer scrutiny than

restriction on subsequent petitions. In Lonchar v. Thomas, 134 L. E. 2d 440, 116 S. Ct. 1293, 1298 (1996), *The Court stated that "dismissal of a first federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of 28 U.S.C. §2241 Et seq., "The Great Writ" entirely, risking injury to an important interest in human liberty." 116 S.Ct. at 1299. Given the practical limitations on the United States Supreme Court's Certiorari Jurisdiction, the application of a limitations period to bar a first federal habeas corpus petition deprives (Deve" Short) a State Prisoner of what is likely to be his only federal forum in which to raise a federal constitutional challenge to his incarceration. Here-to-for, Petitioner brings this claim because of the U.S. Appeals/District Court's failure to issue its Judgment to All Parties; I.e., The failure of the Petitioner to never personally receiving both a Notice and Final Order. Moreover, That Due to an obstacle-"Breakdown in the Clerk's Office/of the Court's Judicial System" He/Short was never given a fair opportunity to file a timely good faith Notice of Appeal. The application of the time-limit to Short's first federal habeas petition effectively deprives him of his ability to obtain any collateral review in a federal court on the merits of his claim that his confinement violates his constitutional rights. ...That such a deprivation constitutes an unconstitutional "suspension" of the writ of habeas corpus. Thus, It is the Petitioner's claim that a "Breakdown in both U.S. Appeals and District Court's Judicial Notification System" has beyond dispute caused him/the Petitioner a Denial of Due Process. This very type of Judicial Negligence complained about herein, constitutes a extraordinary circumstances sufficient to warrant equitable tolling. ... In that context a Circuit Court of Appeals concluded: "That if the misconduct/negligence by the Officer of the Court is sufficiently egregious, that it may constitute the sort of "extraordinary circumstances", that would justify the application of equitable tolling of the one year limitations period of AEDPA/28 USCA §2244." ... Despite (Short's) the petitioner's first pro se filing was ultimately filed on 2-11-2010, 12 - months late; Yet We Note, That the Unified Circuit Courts of Appeals have vacated a dismissal of the first habeas corpus petition and remanded the case to the district court for further proceedings aimed at determining whether petitioner acted with reasonable diligence, and whether the stated extraordinary circumstances caused his filing to be untimely. Thus, Accord Baldyague v. United States, 338 F.3d 145, 152-153 (2003) Emphasis added. Also, The United States Courts of Appeals also held that the Court retains jurisdiction to correct clerical errors even after appeals is filed. United States v. McGee, 981 F.2d 271, 272-273 (1992). Similarly, Therefore this reviewing court is asked to conclude, that the Misconduct/Judicial Negligence, I.e., "Failure to Issue the petitioner (Mr. Short) Any Official Notice was sufficiently egregious enough in this case to justify equitable tolling of the one year limitations period under the AEDPA." Yet Instantly, There's the Federal Court's inactions of April 11, 2017, October 19, 2010, and on 3-29-2019 since then has failed to officially provide Mr. Short/petitioner any Fundamental Fairness; And at all times herein concern, Beyond dispute both the Judge and the Clerk of Court failed to provide the petitioner any information concerning the facts that an Official Denial, or Final Judicial Order was issued denying his timely filed first "Petition for Writ of Habeas Corpus" therein the alternative "Motion to Vacate/ Amend or Alter the Judgment"...Yet in good faith the record reveals that Short after an inordinate delayed process, ask the Court to allowed this matter to proceed, "So Justice may have its fair turn, and that Right may be given another opportunity to prevail." Commonwealth v. Barnhart, 434 A.2d 191, 192 (1981). Nonetheless, Judicial Notice was given to the U.S. District Court, August 18, 2018 In Propria Personam; That He/Short has never officially/ever received any "Notice of [the Court's Ruling], of its existence, nor personally given a Official Copy of the Court's Order from the 4-11-17/3-29-19 Decisions;" And as a matter of fact, He has only on 8-8-18 & 10-4-19, just received an 'Unofficial Notification from an outside source (family relative). Furthermore, Other than the above said contact as of this date in time there has never actually been any Official Contact/Communication with Short (from the court) by Certified Mail, or pursuant to FRCP Rule 5.(b)(2)(B)...Herein, "Petitioner was prevented from filing an otherwise Timely Notice of Appeal because of a

breakdown-Failure by the Clerk to inform a party that a judgment was entered by the Court."

He/Short was unjustly prejudiced because of a Government (Clerk's) Interference, Error, or Omission By Failure to Issue him Notice. Therefore, a Petitioner for Cause shall be allowed to proceed pursuant to FRAP Rule 4.(a)(5)(A)(ii). "Appeal as of Right..." when they show excusable neglect and good cause for reopening time to file appeal because of failure of Appellant-Petitioner to receive "Notice" from the Court Clerk... per FRCP Rule 4(a)(6)(B); (b)(4). That He shall be Granted Extension of Time for Good Cause, Thus, When we accord FRAP Rule 5(a)(3); This Reviewing Court shall hold in this case, that logically He/Mr. Short was prevented from filing any meaningful appeal until he personally was served an "Official Court Order," And, Not given Notice for the Appeal Run Date. Finally, Because of the aforesaid, Herein, This Court is asked in good faith to first consider, and then rule on Whether both the trial, and now the Appellate Court has improperly dismissed Mr. Short's First Request for Appeal, as Untimely under his current documented claims and supports found on the face of the record? And then Whether the District Court's Order is otherwise free of legal error? Furthermore, Whether this Court can discern the claims raised on this appeal? See "Original Petition for Writ of Habeas Corpus/Motion to Amend or Alter the Original Judgment" filed Nunc Pro Tunc; It will allow a review pursuant to the "Relate-Back-Doctrine" as an extension of Mr. Short's/petitioner's first timely (PCRA) appellate review. Especially since petitioner gave timely "Judicial Notice, that he suffered prejudicial effect from an Unconstitutional Miscarriage of Justice," Invasion of the Province of His Right to a Fair Jury Trial; And by the Trial Court allowing his appeal to suffer because of "a suppressed unnamed lawyer/Officer of the Court," and from the inherent prejudicial actions of the Runaway Jury Foreman. ... Moreover, That Nunc Pro Tunc, this Court Sua sponte, shall take Judicial Notice' that He/Short, while unlearned in the science of law at all times concerned during this request for meaningful appeal "did all that he could do on his own" despite his lack of discovery-disclosure, While then being abandon by counsel of record...during the post-trial appeal procedures/during the time (Tolling) period of March 16, 1995 through February 2, 2016, the total time period in which He/Short was appropriately pursuing and diligently exhausting his state remedies, including intervals between dispositions of state court/appellate court petitions and filing of successive PCRA petitions at each next state appellate level. Nino v. Galaza, 183 F.3d 1003, 1003-1007 (1999), Nara v. Frank, 264 F.3d 310, 316 (2001), Wenger v. Frank, 266 F.3d 218, 220, 224-225 (2001).

Therefore, The Court shall based upon the aforesaid, consider this matter timely filed and was equitable tolled...Thus, He be Allowed to Proceed. Further it shall be the ruling of this Court that under the circumstances presented in the petitioner's habeas claims that would otherwise be deemed procedurally defaulted, may now be entertained. Thus, Petitioner may proceed because he has shown "cause" and "prejudice" to allow the excusing of the procedural default. Furthermore, The Court agree that a "fundamental miscarriage of justice" would result should we fail to entertain his claim. Edwards v. Carpenter, 529 U.S. 446, 451 (2000). Instantly, Mr. Short, in Bad Faith, has been deprived and to date was Unconstitutionally denied any "Official on Record Notice" from any Court personnel, or from an authorized person, And "but for" his obtaining Notice that the Court had entered an unpublished order via a copy of the Docket Statement, uncovered by his family members...He would still be in the dark...Further, That even as to date, He has not ever been informed by a proper source E.g., Informed by the Judge, the Clerk of Court, nor about the Court Orders of 3-29-19/4-11-17. To-wit, Dismissing the timely filed "Motion to Amend or Alter Judgment," Although he should have been (as a real party) informed by a proper person/timely personally given a Notice of the Court's Proceedings. per. United States v. Tuteur, 215 F.2d 415, 418 (1954). At all times concern, Despite the fact Him/Mr. Short being an indispensable party..."In this case he never was listed on the Court's Orders or Proof of Service," Nor was he/Mr. Short named in the Official

Court Docket Sheet (although a real party) as being issued or was to receive a certified copy of the court's order stating their decision. Further Judicial Notice is given that instantly, Mr. Short because of a mistake occurring or that in bad faith He has been deprived of receiving a personal copy of the proper official notice, nor given personal knowledge that a official judicial decision made by the district court had been handed down. Thus it is his complaint, he was deprived of any meaningful/rightful knowledge of when to timely invoke or seek his rights to appellate review. Herein, Mr. Short (the petitioner) was denied His right to exercise His U.S. Constitutional Rights due to a lack of personal notice or because of a denial of enforcement of 28 U.S.C. §2242. "Someone filing on his behalf;" And now pursuant to FRAP Rule 77(d). the Court shall Sua sponte, Grant Relief from a Judgment and Order, "because of Clerical Mistakes, Inadvertence, Excusable Neglect, Newly Discovered Evidence."

WHEREFORE, Accordingly, Petitioner pray that, It is the Judgment of the Reviewing Court that the erroneously dismissal of Mr. Short's claims for failure to file his pro se petition within allotted time under the circumstances presented would violate the Suspension Clause.

II. PETITIONER WAS DENIED DUE PROCESS VIA JUDICIAL MISCONDUCT BECAUSE IT ABUSE ITS DISCRETION, AND ALLOWED AN OFFICER OF THE COURT TO INVADE THE PROVINCE OF THE JURY.

Petitioner was denied his Constitutional Protected Rights, and his entitlement to have a Fair Jury Trial, "Because the trial Judge Raymond Novak, committed an Abuse of Discretion," when he allowed an unnamed Officer of the Court to commit a Prejudicial Error. ... Especially, Since, The Fifth Amendment to the United States Constitution provides that [no person "shall be deprived of life, or liberty, without due process of law;"] This phrase pursuant to the "Due Process Rights" secured by the U.S. Constitution were made applicable to the State of Pennsylvania with the adoption of the Fourteenth Amendment, Section 1, which states that: "Nor shall any state deprive any person of life, liberty without due process of the law." Yet, Instantly He/Devell Short, the petitioner was unconstitutionally denied the Right to a Fair Trial and a Uncontaminated Jury. ... The Case Record is Silent as to why the Offending Lawyer's Identity was not disclosed! Failure to (hear) consider this claim would result in a fundamental miscarriage of justice. ... The Ends of Justice so require a Habeas Corpus Review. Schlup v. Delo, 513 U.S. 298, 301-323, 324 -328 (1995).

At all times concern, In the United States, Mr. Short's right to have a fair jury trial is guaranteed by Article III., the Sixth, Seventh, and Fourteenth Amendments to the United States Constitution ... Yet, Beyond dispute, Mr. Short, In this case was denied "Due Process" due him via "Judicial Misconduct, because the State Court Judges' abused their discretion when they each allowed (a still unidentified Attorney) "an Officer of the Court to Invade the Province of the Jury." Thus, Herein, It is the Petitioner's position that pursuant to the Sixth Amendment he had a U.S. Constitutional "right to put on the stand a witness (the unnamed Lawyer-Officer of the Court) who [is] relevant and material to his defense." Accord Washington v. Texas, 388 U.S. 14, 23 (1967). Therefore, Petitioner avers that in this case the Reviewing Court is asked to vacate, and remand this case after determining whether because of the following; Petitioner suffered from effects of "Judicial Misconduct because of an Abuse of Discretion" when the trial judge failed to disclose to the petitioner, His Attorney, or publish Said Name on the Official Trial Record, I.e., the "Name of the Officer of the Court, who had the unauthorized contact with a Seated Jury Member," which

constituted "a conflict of interest." Especially, Since the undisclosed lawyer's First duty is to the Courts. Therefore, Mr. Short's Appeal shall be granted for the following reasons: "The Jury's Verdict is Not Worthy of Confidence." ... Because prejudicial facts occurred that are not of record, Namely that "a sitting juror during deliberation had ex parte contacts with an Officer of the Court," who beyond dispute was an unrelated outside attorney. See Trial Transcript (T.T.) T.T. 1852:10-25 ... A Substantive Error has occurred, Neither - the interfering attorney nor was any of the remaining members of the jury were examined. (As seen on the face of the record.) Herein, Said Run-away jury member Robert Milliken, after consulting with this unnamed attorney, improperly brought to the other jurors attention extraneous information that was not a product of the evidence produced in open court; That came from a corrupted outside sources. Logically, The inherent bias influences caused by the contamination complained of, concerned information illegally transmitted by a third person such as the juror making the unauthorized contact with the outside attorney, seeking his interpretation of the meanings and definitions of legal terms, (without the approval of the seated judge then presiding over the case,) then He/juror Milliken exposed and read the contaminated extraneous informations to the other jurors. Herein, The State Court Judges Abused their Discretion when failing to find that both the UnNamed-Attorney/Officer of the Court and Jury-Foreman's Misconduct , was an Invasion of the Province of the Jury, and Caused Mr. Short to be Denied his Right to Due Process. Moreover, The State Court and Respondents shall concede that the above reported judicial misconduct was condoned in violation of Pa. R. Crim. Proc. Rule 646 (B)(4). Which states; That said Complained about "Materials were not Permitted in Possession of the Jury Member." Accord Commonwealth v. Karaffa, 709 A.2d 887, 889-890 (1998). Thus, The Complained of Judicial Misconduct was Prejudicial Denial of Fair Jury Trial, and was tantamount to Reversible Error. Further, It is this Petitioner's Complaint that a "substantive error" occurred because when, "[such] a breach, of observance by the complained of outside counsel, and the State Judiciary as occurred in this situation; It requires this Reviewing Court to enforce the rudimentary demands of justice, the United States Constitution, the Professional Rules of Court Conduct for Bar Membership, and thus, Enforce the applicable laws needed to impress upon (State Court Judges) the instant unnamed (Counsel) Officer of the Court; that violations of laws, practice or custom as the ones complained of herein, is intolerable; That the failure to correct the instant breach of Mr. Short's Right to a Fair Jury Trial' before now in time is indefensible, even criminal.

Further, That this kind of abuse of discretion must end. ... Therefore, Once again Judicial Notice is given, "That its time for this Court to Enforce the Mandate for Protection of Rights and to Recall both Members of the Judiciary and Attorneys of the Bar back to a keen sense of their duties and obligations voluntarily assumed." Nunc Pro Tunc, Less We Forget, They must remember that, "They, too, are Officers of the Court, administrators of justice, are oath-bound servants of society; that their First duty is not to their Clients, as many supposed, but is to the administration of justice ... sic ... that their conduct ought to and must be scrupulously observant of law and ethics; and to the extent that they failed therein, they injure themselves, wrong their brothers at the bar, bring the reproach upon an honorable profession, betray the Constitution, the Courts, and defeat justice." In re Kelly, et al., 243 F. 696, 705 (1917) 1917 U.S. Dist. LEXIS 1157, Page 1, 26. And Accord United States v. Ford, 9 F.2d 990, 992 (1925) See also United States v. Frank et al., 53 F.2d 128, 129 (1931) emphasis added.

Sua sponte, **This Court must take Judicial Notice**, That in pursuit of justice...In this case both the Reviewing Court and the Attorney for the Commonwealth shall concede the aforesaid, as indisputable fact, that the absence of this Unnamed Officer of the Court's, in court testimony was presumptively prejudicial to Mr. Short's Meaningful Defense, and a denial of due process.

This being so, It is Beyond Dispute, An "Officer of the Court" Is "[a] person who is charged with upholding the law and administering the judicial system...that instantly...the term applies to a lawyer, who is obliged to obey court rules and who Owes a Duty of Candor to the Court." Black's Law Dictionary Deluxe Eighth Edition 2004.

It is further stipulated that, As an "Officer of the Court," a lawyer is subject disciplinary action by the court. Courts have long recognized an inherent authority to suspend, (discipline) or disbar lawyers. Ex parte Garland, 4 Wall 333, 378-379 (1867); Ex parte Barr, 9 Wheat 529, 531 (1824). This inherent power derives from the lawyer's role as an officer of the court which granted admission. Theard v. United States, 354 U.S. 278, 281 (1957). The standard for disciplining attorneys practicing before the courts (such as the Court of Appeals for the Third Circuit) is set forth in the Federal Rules of Appellate Procedure 46(b)(1)(B). When it is shown to the court that a member of its bar, has been guilty of conduct unbecoming a member of the bar of the court...sic...The phrase "conduct unbecoming a member of the bar" must be read in light of the "complex code of behavior" to which attorneys are subject. We note the equivalent of foregoing is located in the Pennsylvania State Court and Bar is found at: Pa. Rules of Professional Responsibility 8.4 (d)., (a)., (b)., (c).; Code of Civility, Article II. (10).; DR 1-102 (A)(5). Therefore, Because of the foregoing reasons, Petitioner in this case continue to in good faith, ask this Reviewing Court to agree that: "The license granted by the court requires Members of the Bar to conduct themselves in a manner compatible with the role of court in the administration of justice." In re. Snyder, 472 U.S. at 645 supra. Thus, In the case at bar petitioner avers that the complained of counsel's invasion of the province of his Criminal Trial Jury created a violation of his substantive right to due process and that the effects/results having done so effectively denied him/Mr. Short a Constitutionally Fair Jury Trial ... free of fraud, misconduct, concealment of discoverable evidence, and especially from an unnamed attorney's unauthorized involvement that constitutes "conduct unbecoming a member of the bar." Moreover, In the Commonwealth of Pennsylvania; It is beyond dispute that "An Attorney/Lawyer has the duty to observe the Rules of Civil Procedures...Instantly to self report a conflict of conduct that is tantamount" to misconduct of unbecoming a member of the bar, In re. Schofield, 66 A.2d 675, 677, 680 (1949), Emphasis added. Especially, Since Said Member had a Duty to Self-Report; As here where the record presents substantial questions as to whether counsel has properly discharged his professional responsibilities? Thus, Instantly today this reviewing court can no longer ignore answering such questions. Lappas v. Brown, 483 A.2d. 979, 981, 985 (1984) Citation omitted.

Herein, Not only was the complaint of misconduct allowed to occur, But thereafter the denial of Mr. Short's right to trial with uncontaminated jury, has to date been condoned despite said attorney being a member of the Bar ... An Officer of the Court has an implied responsibility to uphold and enforce the Constitution, Rules of Court and Professional Code of Ethics...I.E. Because during petitioner's (Mr. Short's) Jury Trial, the Jury Foreman (Robert Milliken) despite receiving the Judge's Instructions became a "Run-away Juror" during the deliberation, when He on his own conducted an improper/Unauthorized Out of Court Investigation into the meanings, terms, definitions of Murder, Manslaughter, Malice. He/Milliken next asked a lawyer to define the elements and different degrees of homicide; Without the full jury being present, He while alone sought answers to questions at the very heart of this case. These violations by Milliken, at all times concern involved a cover-up of a "invasion of the province of the petitioner's jury" by the unnamed-attorney, and the hidden Intent by this juror member in making contact with a lawyer friend; I.e., A still Unnamed Officer of the Court, was a Denial of Due Process. Especially, Since He/Milliken conducted further independent research by using an Encyclopedia. But yet! To date the Courts of Pennsylvania, have failed to inquire for the record, the Name of said "Officer of the Court" involved, And said lawyer failed to

disclose his secret involvement to the Judiciary or to uphold his oath/duty owed to the profession per. Pa. Rules of Professional Responsibility, Rules: 1.16. (a)(1); (b)(2); (3) concerning a "Duty to Decline Prejudicial Representation." And Rules: 3.3. (a)(2); (b); (c). Concerning "Candor Toward the Tribunal" ... A Lawyer shall not knowingly failed to obey any of the above stated Rules; Herein, They are incorporated as if same was set forth both whole and in part.

Petitioner avers that what is at the heart of this Appeal, is the Claims of Whether the Jury Deliberating his verdict was Incompetent and as a result thereof he was the victim of Denial of Constitutional Protection, Due Process; Denied a fair trial without the residual prejudicial effects from a contaminated jury trial, and "A Jury Verdict thats Worthy of Confidence." Therefore, The verdict, conviction and judgments shall be rendered void...because the evidence is in dispute and abundantly proves the allegations jury contamination by an Officer of the Court are true, and the constitutional violations remain uncorrected. To date both the Trial Court and State Appellate Court's bad faith answer/noncorrective strategy is tantamount to Judicial Abuse of Discretion, and Unconstitutional Obstruction of Justice...Denial of Due Process.

WHEREFORE, Accordingly, Petitioner prays that, It is Adjudged and Decreed by the Reviewing Court that, Petitioner was Denied His Entitlement to Due Process via Judicial Misconduct and because it abuse its discretion, Especially, When the Trial Judge Allowed an 'Unauthorized Officer of the Court to Invade the Province of Mr. Short's Jury. ... Which occurred during their "deadlock deliberation" and caused him prejudice.

III. MR. SHORT WAS DENIED A FAIR TRIAL WHEN THE JUDGE ALLOWED A RUN-AWAY JURY MEMBER TO CONTAMINATE THE REST OF THE SEATED JURY MEMBERS WITH OUT OF COURT INFORMATION, WHEN IT ALLOWED A BIAS INFLUENCE TO ENTER THE JURY ROOM DURING THEIR DELIBERATION VIOLATING SHORT'S CONSTITUTIONAL RIGHTS.

There are limited circumstances in which a jury verdict can be set aside because of misconduct or undue influence in the jury deliberations. And that, Generally Jurors are not competent to testify to what occurred in the jury deliberation; But is permitted as to how it affected their own judgment is allowed. Accord Carter by Carter v. U.S. Steel Corp., 506 U.S. 864, (1992). The subject of post-verdict testimony by jurors has been extensively discussed in other opinions of this Court and does not require prolonged discussion here. So the Petitioner proffers that, Briefly stated, the need to ensure fair trials, free from improper influences must be balanced with the need for finality and for protecting the sanctity of the jury room. ... For a parallel overview, Accord Pa. R. Crim. P. Rule 223.2(b)(7). Jurors shall not take their notes out of the Courtroom ... and then include the content of the relating note: "The only notes you may use during the deliberations are the notes you write in the courtroom, during the proceedings on the materials distributed by the Court Staff." Compare Pa. R. Crim. P. Rule 644 ... concerning: Note Taking by Jurors. But More-to-the-point, The "Rule" in Pennsylvania, as well as in a majority of jurisdictions, is that a "juror is incompetent to testify to what occurred during deliberations." Citation ommitted. Yet, This Rule is often referred to as the "no impeachment" rule. However, in order to accommodate the competing policies in this area, a narrow exception has been recognized. The exception permits "post trial testimony of extraneous influences which might have affected [prejudiced] the jury during deliberation. Sub jucie, This

Reviewing Court is asked to invoke under this exception, the juror may testify only as to the existence of the outside influence, but not as to the effect this outside influence may have had on deliberations. Instantly the Appellant/Petitioner argues that the misconduct of a lawyer/third party, (An Officer of the Court) caused prejudicial information to reach the jury. Thus, Only in clear cases of improper conduct by jurors, evidenced by competent testimony, should a verdict which is fully supported by the evidence be set aside and a new trial granted. ... In fact, the Court has ruled that testimony of (Robert Milliken) the prejudicial juror's misconduct was found to be admissible in the present case and matter sub judice; As herein, the Appellant/Petitioner when objecting to the verdict can prove a reasonable likelihood of prejudice by demonstrating that the extraneous influence related to a central issue in this case, (the invasion of the province of the seated jury during their deliberation) And That Someone provided information not presented at trial, and it was emotional or inflammatory in nature. We Note,, Courts of the United States as well as, Courts in the Commonwealth of Pennsylvania, hold that a juror may testify concerning whether prejudicial facts not of record, and beyond common knowledge and experience, were improperly brought to the jury's attention or whether any outside influence was brought to bear on any juror, see Pa. R.E. 606(b). Any extraneous influence-information not provided in open court or common knowledge-may provide a basis for a challenge to the jury's verdict. This will include for example ex parte contacts or input/information transmitted by a third person, such as a "court officer" or a juror making an unauthorized research/contact or a juror introducing to the other jurors a definition of an important legal term gleaned from a law book. (See Commonwealth v. Price, 463 Pa. 200, (1975). Therefore, "In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, (sua sponte) Notice errors to which no exception has been taken if the errors are obvious, or if they otherwise seriously affect the fairness integrity, or public reputation of judicial proceedings. "Accord United States v. Atkinson, 56 S.Ct. 391, 392 (1936).

Herein, Judicial Notice is given that He/Raymond A. Novak, Judge of the Court of Common Pleas of Allegheny County, Pennsylvania during a Criminal/Jury Trial committed prejudicial reversible errors that undermined the integrity of the adjudicative process, such as: "Allowed an Officer of the Court to Invade the Province of a Seated Jury, And/or Communicate with a Juror Member During His Deliberation; Yet Herein, The absence of the trial judge calling to the stand, the Unnamed-Officer of the Court to testify before the Court, is presumptively prejudicial to Mr. Short having a Fair Jury and Constitutionally Protected Trial. For Reference and Guidance See: Pennsylvania Rule of Civil Procedures Rule 228. "Testimony as to Misconduct of a Juror....In such case, Whenever in the course of a trial, testimony is taken of a juror or other person as to alleged misconduct of a juror, or as to tampering with or an attempt to tamper with a juror, such testimony shall become a part of the record of the case. Such testimony shall be taken out of the hearing of the jury. Jurors may be interrogated in regard to such alleged misconduct or attempted tampering." Moreover, Especially here when said Judge failed to allow the petitioner's defense to view any of the bias and offending information in this case that was introduced from outside the Courthouse. I.e., The Judge failed to allowed Mr. Short's Defense to Call Witnesses or Review the Offending-Materials, that in this case were transmitted into the deliberating jury room by Robert Milliken, via With help from his unnamed/still undisclosed lawyer friend. And Finally He/Judge Novak failed to allow meaningful discovery, or any mandated disclosure of the source of the contaminating information. The Above points become paramount herein, Especially, Since He/Milliken, and the complained of Juror member's acts violated the rudimentary demands of Pa. Rules of Court, Rule 646(B).(4). "Materials Not Permitted in Possession of the Jury Member." See Commonwealth v. Karaffa, 709 A.2d 887, 889-890 (1998). The Complained of Acts were tantamount to the Trial Court Committing Reversible Error.

Further, Petitioner aver that at all times concerned He was Denied Judicial Enforcement of Due Process, and the Constitutional Protections of a Fair Trial, free from a Contaminated Jury ... In this case it is beyond dispute, that once Mr. Short's Defense and/or Counsel learned of the (Officer of the Court's Unauthorized Contact with a seated-juror member) documented misconduct through Testimony of Juror #1 Robert Milliken, (Also named as the jury-foreman) that was illegally committed during the Trial...T.T.1857:1-25 through T.T.1858:1-25 ... Defense diligently brought their objection to the court's attention, (see Motion for a Mistrial) Thereafter, The Trial Judge committed judicial misconduct when he failed to examine a majority of the other individual members of the seated Jury; Namely, Nancy A. McDavitt, Bernadette Blair, Colleen A. Miller, Pamela Prescott, Nancy J. Gamble, James S. Held, Frank Evanovich, in which to make a determination of whether an Adverse Influence existed that caused substantive prejudice to the petitioner. Accord Pennsylvania Rules of Criminal Procedures Rule 641. at A(2); (B)(6). The Petitioner had the right to agree to be Tried by Fewer than Twelve Jurors. Trial Court instantly failed to apply this judicial fact.

Herein, Logically under the above circumstances presented, Each of the remaining Jury Members should have been interviewed, (by the Judge, with the Prosecutor and Defense in attendance). Especially, since the petitioner suffered from the residual/ill-effects of the inherent prejudice because on the Face of the Official Trial Record ... the Self-serving Statements of Juror #1., are not clear-cut of there not being Substantive Contamination to the rest of the seated jury members, without the Trial/Judge, conducting individual examinations of each juror for the effects of contamination, adverse-influences, inherent cause and prejudice.

WHEREFORE, Accordingly, Petitioner prays that, The Reviewing Court Agrees that the Petitioner was Denied Due Process via State Judicial Misconduct because it abused its discretion, When it allowed an Unauthorized Officer of the Court to Invade the Province of the Trial Jury.

IV. PETITIONER WAS UNJUSTLY DENIED HIS REQUESTED DEFENSE OF THE CASTLE DOCTRINE, SINCE THE PETITIONER DID NOT POSSESS THE ELEMENTS NEEDED TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.

In the case at Bar, Petitioner Devell Short, avers that beyond dispute, He was unjustly denied the constitutional protections and judicial benefits due him, during the Case-in-Chief his requested defense of "justification protection of another person," As well as, See Title 18 Pa. C.S.A. §506 (b)(1)(2)(3). And the "justified usage of force for self-protection" pursuant to §502(a). Better Yet, He/Mr. Short, The Petitioner was unjustly denied the required/requested defense he asked to be invoked during his complained of defective Jury Trial. Therefore, The Petitioner avers that the Pennsylvania Statute reflects a legislative determination that a "Self-defense-Justification" (Castle Doctrine) gave him legal justification for the use of deadly force in prescribed circumstances which encompass an applied defense in the matter sub judice. Herein, Lies the Heart of Mr. Short's instant Complaint. ... Namely, That He/petitioner continues to unjustly suffer from the Trial Court's Misapplication of Title: 18 Pa. C.S.A. §502 ... Since in any prosecution based on conduct which is justifiable under this chapter, "Justification" is a defense. The Court is now asked to consider the Castle Doctrine Defense," and then agree that the Court's failure to apply its application in this case resulted in a deprivation "without due process of law." Especially, Since Sub judice pursuant to Title 18 Pa. C.S.A. §505(a). ... "The use of force upon or towards another person is justified when the actor believes that such force is immediately necessary for the purpose of protecting himself

against the use of unlawful force by such other person ... As should had been applied on the present occasion. Further, This Reviewing Court is asked to now consider the totality of the facts concerned with the trial courts failure to invoke the protection of the "Castle Doctrine" petitioner's requested defense in light of what the Material Witnesses themselves reported about the events of February 18, 1990; Including the fact that "He/Mr. Short/the Petitioner was the happenstance victim of and impromptu or planned attack by Mr. Tierenzo Morton," who then and there, as a result of his failed attack upon Mr. Short, beyond dispute died...thereafter, As a result from one of his criminal acts. ... But not before, He/Mr. Morton was involved in and/or involved with a "Crime Spree of Continuous Bad Criminal Acts," against both other citizens and property that occurred between the dates of February 17, 1990 through February 18, 1990; Which was the precursor of events that occurred before He/Morton had the final encounter with the petitioner. Instantly, despite the above stated facts, He/Mr. Short, proffers that under law, both Federal and State Criminal Statues, as of to date, he under the Constitution has not been proven guilty beyond a reasonable doubt. He avers that the needed "Constituent and Elements of the Offense" Charged are absent ... This Court shall agree that in a similar situation the Supreme Court of the United States Ruled in its decisions of Garner v. Louisiana, 368 U.S. 157, 163 (1961) and Thompson v. Louisville, 362 U.S. 199, 206 (1960), The Questions presented by such a charge, in the words of Thompson v. City of Louisville, at: page 206, supra. ... "Is whether "the charges ... were so totally devoid of evidentiary support as to render [the] conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment. Further, The Court Ruled that the Decision of the question before this Court turns not on the sufficiency of the evidence, but on whether [the] conviction rests upon any evidence at all?" Herein, Petitioner/Mr. Short contends that his current conviction is so lacking in evidentiary support as to constitute a denial of due process of law. Thus, The True Issue before us is, Whether Mr. Short being denied his Requested Defense of "The Castle Doctrine" was Prejudicial; Contrary to the rudimentary demands of justice, and was a denial of due process, ... And Now, stands as a proper basis for impeaching the jury's verdict? Especially because Mr. Short's Prosecution and Conviction both lacked proof certain, that he committed all of the "Elements needed to prove him guilty beyond a reasonable doubt," for the crimes charged in the indictment. This Court shall agree in the matter sub judice, That From the outset, the crucial elements were lacking to convict him, under the Laws of Pennsylvania in the State Court; Reversible Error has occurred. At this juncture the Reviewing Court is asked to consider whether the petitioner's conviction resulted from a Violation of Due Process? Furthermore, Whether after his trial the results became a foregone conclusion, that the Prosecutor's Case-in-Chief did not possess the constiuence of the elements needed to prove him guilty beyond a reasonable doubt, while at the same time being; He/Short, was being denied both the enforcement and protections he is entitled to per. the United States Constitution? Definitely, Since what has occurred in both cases, was that the elements of the crime charged and needed, that form the basis of their convictions was not supported by the evidence, And does not comport with due process of law; Which is exactly the very same thing ... As what has occurred in the instant case, where the evidence used against the accused fails to prove all the element of the charge ... Especially when the crime charged at 18 Pa. C.S.A. §2502, is viewed with the application of Mr. Short's missing, but requested defense of: 18 Pa. C.S.A. §502, "Justification under the Castle Doctrine." [He/Mr. Short would have been acquitted.] Moreover, We find that the Attorney for the Commonwealth failed to prove Mr. Short guilty beyond a reasonable doubt, via the "Constituent of all of the Elements needed to support the conviction." ... Therefore, His current conviction is not supported by the evidence, in which event the Jury's Verdict must be Reversed/the Conviction and Sentence be Vacated, Because the Judgment it does not comport with due process of law. Thus, This Reviewing Court shall agree, that in this case the Commonwealth's Attorney has failed to prove malice, aforethought, criminal intent, or his true state of mind, which was essential to constitute murder ... which is when one either Knowingly or intentionally kills another human being!

Herein, Petitioner's actions lacked any of the aforesaid "Elements" needed to convict him of the charge of murder of the first degree. ... Since His actions were contrary/were one-hundred-eighty degrees from the accusations that form the content of the - element needed to support the charged. ... And Instantly, Since the Supreme Court Under the Laws and Constitution of the Commonwealth of Pennsylvania Held: "The killing of an assailant is Justifiable if it is committed to protect oneself from death or serious bodily injury, or under circumstances where it is reasonable to assume that death or serious bodily harm will result unless the assailant is killed." Accord Commonwealth v. Capalla, 322 Pa. 200, 204 (1936). Here-to-fore, since Mr. Short/petitioner was not the aggressor, (See T.T. 1333:1-6. Also accord T.T. 1333:16-25, The Court: Q. Didn't you give me a case? T.T. 1334:1-7; T.T. 1336:8-16 Mr. Gettleman: A. Commonwealth v. Amos, 445 Pa. 297, 303-304 (1971). ... Citing Jones v. United States, 385 F.2.d 296, 298 n. 2. (1967) "A Court of Appeals has held that the Criminal Record of a deceased would be admissible so long as it could be shown that the specific criminal acts are/were relevant." See Marshall v. United States, 45 App. D.C. 373, 383 (1916).). Herein, He/Short had a resonable fear of (his) imminent death would occur, and He did not violate a duty to retreat. Thus, Beyond dispute the Petitioner's actions were consistent with the dictates of the "Castle Doctrine's Self-defense/Justification Protocols." In this regard, (See T.T. 1332:5-10.) Since He/Mr. Morton, On the day in question was under the disposition, and the results of a current Indictment found in the Common Pleas Court of Allegheny County; I.e., Based on a Court Ordered Disposition, his Criminal Arrest and Charges on 12/9/1988, initiated at OTN: C278511-2 by the Pittsburgh Police Department, pursuant to Title 18 Pa. C.S.A. §2701, §6106, §3925; And followed by a subsequent arrest on 5/25/1989 at OTN: C308072-2 by the Pennsylvania State Police Beaver Falls, with Title 18 Pa. C.S.A. §3925(a)., for which the Court of Common Pleas of Beaver County, Pennsylvania, Sentenced Him/Mr. Morton the 2 years of ARD. Which had an effective date of 8/3/1989, and a Maximum Date of 8/3/1991... We note, Mr. Morton's last Arrest was on January 24, 1990 at OTN: C390452-6 by the Pittsburgh Police Department and charged with Title 18 Pa C.S.A §3925; §3928; Also accord T.T. 1332:5-10. Attorney Mr. Gettleman: "I think that I am permitted to show that this individual had a reputation for violence, ... [It] deals with reputation as to character..." We further note that the aforesaid additional criminal arrests occurred only 25 days before February 18, 1990, His fatal encounter with the petitioner. In which we shall address Per. §503 "Justification Defense" pursuant to the Castle doctrine. Nonetheless, It accurately reflects "the law" on self-defense and therefore concludes that the Trial Court/Judge erroneously failed to accord the petitioner even the pre-Castle Doctrine Protections due him, under: §502 et seq., that were established in the 1972 "Justification" Statutes. Here-to-fore, Since Hindsight is twenty-twenty, As Then and Now, This Reviewing Court shall agree now that, at the time of the fatal encounter between petitioner and Mr. Morton, and because under the circumstances presented; he/Mr. Short believed that the use of force was immediately necessary for the purpose of protecting himself to counter against the usage of unlawful force by another person, namely because of Mr. Morton's known criminal motives, and aggressive behavior then being directed towards him, without there first being any provocation...actions on the part of Mr. Short towards Morton, and He/ Mr. Short logically believed on February 18, 1990, that there was a substantial risk that He/Morton would cause his death, or cause very serious bodily injury/harm to him, had He/ Mr. Short delayed his own self defense against Morton's unprovoked attack. All things considered, on February 18, 1990, He believed He/Himself would have been deceased instead. In this case, under the laws of the Commonwealth of Pennsylvania the Trial Judge and Prosecutor both failed to conclude that He/ Short had a legitimate and/or fundamental interest in preserving his own life. Finally the Petitioner avers that the Pennsylvania statute concern, reflects a legislative determination that a Self-defense-Justification, (namely the Castle Doctrine) gave justification for the use of deadly force in prescribed circumstances (such as this) which encompass an applied

defense in the matter sub judice.

WHEREFORE, Petitioner prays that, The Reviewing Court Agrees that the Petitioner was Denied the application of His requested defense of: 18 Pa. C.S.A. §502, "Justification/Self-defense" and §505 "Justification of Deadly Force" under the Castle Doctrine," We find that the Attorney for the Commonwealth failed to prove beyond a reasonable doubt the Constituent of all of the Elements needed to support the conviction. ... that the Court's failure to apply its application in this case resulted in a deprivation "without due process of law." Especially, Since Sub judice pursuant to Title 18 Pa. C.S.A. §505(a). ... "The use of force upon or towards another person is justified when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person. Therefore, Since the current conviction is not supported by the evidence, in which event it must be reversed/vacated because it does not comport with due process of law. Further that the Trial Court/Judge erroneously failed to accord the petitioner even the pre-Castle Doctrine Protections due him, under: §502 et seq., that were established in the 1972 "Justification" Statutes.

V. THE JURY'S VERDICT IS NOT WORTHY OF CONFIDENCE TO STAND.

Petitioner submits this "Informal Brief, In Propria Personam/Nunc Pro Tunc" to Strike the U.S. Magistrate's Orders of April 11, 2017, October 19, 2010 and the Order of June 4, 1991, Issued by the Sentencing Court Judge; because both courts failed to meet their burden of demonstrating that there are no disputed claim(s) related to any material facts. herein, Devell Short, the Petitioner avers that because the state courts committed Reversible and Factual Errors, Therefore, "The Verdict is Not Worthy of Confidence" Especially since from the outset He/Petitioner was denied his requested "Défense of Justification" pursuant to Title 18 Pa.C.S.A. §503/§502 under the "Castle Doctrine" despite the fact that on February 18, 1990, He/Mr. Short was attacked impromptu (while on a public street) by a Mr. Tierenzo Morton, without there first being any provocation beforehand.

Instantly, Petitioner reasonably assumed at that moment in time, that his own death would have resulted, and/or he logically believed that he would be seriously bodily harmed unless the assailant was killed. Accord Commonwealth v. Capalla, 322 Pa. 200, 204 (1936). Herein, since Mr. Short/petitioner was not the aggressor, (See T.T. 1333:1-6. Mr. Gettleman: It goes to him (Tierenzo) being the aggressor. And it's admissible to show that purpose. My Client (Mr. Short) doesn't have to know about it. Furthermore, The Court Held in an overview of Amos, supra. "[it] says he (Short) doesn't have to know that ... the victim was the aggressor in the situation, ... further "[it's not required that (Mr. Short) the defendant know either what his (Mr. Tierenzo) reputation is or he know of prior events. And as to character, it says that a person's character is admissible because it shows if he/Tierenzo acts in one way generally, he will probably continue to act in that way. And herein, it goes to show that he was the aggressor...") Thus, the following is admissible. He had a resonable fear of (his) imminent death would occur, Thus, It is indisputeable that he/Mr. Short, believed that under the circumstances presented the use of force was immediately necessary for the purpose of profecting himself, to counter against the usage of unlawful force by Mr. Morton during his unprovoked attack. Yet, In this case the petitioner was entitled to have it, but was denied the benefits of the "Justification for Usage of Force and Self-defense." Per. §503 "Justification Defense" persuant to the Castle Doctrine. Nonetheless, Mr. Short was unjustly denied in this matter during his trial, "the law of the case doctrine" or how it accurately reflects the law of self-defense...further This Reviewing Court shall conclude that the Trial Court/Judge erroneously

failed to accord the petitioner even the application of the pre-Castle Doctrine Protections due him, under §502 et seq. that were established in the "1972 Justification Statutes." Here-to fore, Mr. Short feared injury, harm or death, from Mr. Morton as a clear and present danger, he was forced to act in self-defense of self and other. Petitioner further avers that at trial he was unjustly denied due process via judicial misconduct/abuse of discretion when the Trial Judge allowed an unnamed/undidentified (attorney) officer of the Court during a Jury Trial to Contaminate and Invade the Province of the Jury, And that thereafter, the rest of petitioner's seated jury was prejudice with out of court information, and that the Judge allowed the contaminating residual effects of said bias to influence the Jury's deliberation. Accord T.T. 1851:16-20 through T.T. 1852: 17-25; T.T. 1855: 10-15; T.T. 1858: 4-19.

Therefore, He/Devell Short, Petitioner appeals as of right, and do so Nunc Pro Tunc from his Convictions of Title 18 Pa.C.S.A §2502 "Murder in the First Degree," and under 18 Pa.C.S.A §6106 VUFA..."Firearm not to be carried without a License." Instantly, After a defective Jury Trial, The Petitioner was sentenced to life without parole for the murder conviction, followed by a one (1) to five (5) years of imprisonment for the firearm conviction. Thus, Because of the aforesaid and following reasons and cause of action he asks this Reviewing Court to agree hereafter, to vacate the judgement, sentence and conviction of first degree murder and will remand this case for entry of a conviction of 18 Pa.C.S.A §2504(a). ... And that he be resentenced on that offense.

He/Petitioner first declare on appeal that there was insufficient evidence to support his conviction of first degree murder...and that the verdict of the (contaminated jury) Court was against the weight of evidence...Thus, The Court is asked to agree because of the forgoing and following reasons to vacate the unconstitutional decision of the Lower Court and remand this case back to the trial court, to grant him a New Trial on the ground that the verdict is not worthy of confidence.

Logically, This Reviewing Court when ascertaining whether sufficient evidence was presented at his original jury trial to support the resulting conviction, this court must herein first view the recorded evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the offense charged...Because Instantly the Attorney for the Commonwealth and the Trial Court Judge both failed to hold that, Mr. Short's Conviction for first-degree murder occurred as the result of an unprovoked attack (upon him) by the victim Tierenzo Morton on a public street, located in the City of Duquesne, Pennsylvania, on February 18, 1990...from the outset, The Case Record discloses that Mr.Morton, the decedent while on a continuous Crime Spree between February 17, 1990 through February 18, 1990; He/Mr. Morton did act with further criminal motives and aggressive behavior impromptu was in the process of trying to creep/sneak up on Mr. Short (the Petitioner) from behind and upon those persons in his company who were entering his vehicle; When Mr. Short heard someone on the street (yell out) shout that He/Morton has a gun. See T.T.1350:14-15; 23./T.T.1351:7-10. Thus, logically Petitioner/ Mr. Short fearing that the decedent/Mr. Morton was going to then seriously injure or perhaps even kill him...Petitioner drew his own weapon and fired in self-defense...As a negative result of attempting to protect/defend himself during the attack from Mr. Morton, Petitioner accidentally fatally shot the decedent in the course of self-defense, (by firing one shot with his eyes closed) Not-with-standing these facts, the jury found the petitioner guilty of first-degree murder. ... Despite Mr. Short instantly self-defending himself against what He/Short perceived to be a clear and present danger to his life, health, welfare, and to those persons in his company who were entering his vehicle, from Mr. Morton who was approaching with a gun.

WHEREFORE, Petitioner prays that the Court would grant him the requested relief, and that based on the above evidence of judicial abuse of discretion, this Reviewing Court shall determine that no reasonable factfinder, when properly instructed, could find Petitioner guilty of murder of the first degree, but for the constitutional errors, complained of in this case. As such, Petitioner shall prevail in his gateway claim of innocence, and it is proper to grant the writ of Habeas Corpus.

Further, Because the Court beyond dispute find that the trial court's verdict lacks the proven elements of premeditation, malice, aforethought, criminal intent, or his true state of mind, which are essential to constitute murder ... And the petitioner was denied a fair trial or deliberation by a uncontaminated jury, or that crime charged was not established beyond a reasonable doubt; Thus, Reviewing Court is asked to vacate Mr. Short's conviction of first-degree murder and shall remand the case for entry of judgment of conviction of 18 Pa.C.S.A §2504(a). ... And that he be resented on that offense.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darrell Short

Date:

2/5/20