NO. 19-7823

IN THE UNITED STATES SUPREME COURT

SETH A. WEAVER

Petitioner

VS.

PEOPLE OF THE STATE OF ILLINOIS

Respondant

ON PETITION FOR WRIT OF CERTIORARI TO THE

FOURTH DISTRICT COURT OF APPEALS OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI

Pro Se' Petitioner

Seth A. Weaver

Taylorville Correctional Center

Reg No: R23304

1144 IL RT 29

Taylorville, IL 62568

PETITION FOR CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

1. Does Illinois ignorance of the law theory as applied to successive post-conviction petitioners deny them relief from constitutionally unsound guilty pleas ?

2. Does State Court rulings that are contrary to well established precedent set by this Court deny due process,violating rights guaranteed by the 5th Amend. ?

3. Does multiple instances of ineffective assistance of counsel by several attorneys throughout entire proceedings violate petitioners right to counsel guaranteed by the 6th Amend ?

4. Can a conviction obtained by an unknowing and unvoluntary plea stand?

LIST OF PARTIES IN COURT BELOW

Seth A. Weaver,Pro Se Petitioner

The People Of The State Of Illinois,Respondants
Represented by

Kwame Raoul, Illinois Attorney General

David Robinson,Deputy Director States Attorney Appellate Prosecutor

Julia Rietz,Champaign County States Attorney

LIST OF PROCEDEINGS

The People of the State of Illinois vs.Seth A. Weaver,No.06-cf-1481

Sixth Judicial Court Champaign County,IL.12/12/2006

The People of the State of Illinois vs. Seth A. Weaver,No. 4-08-0340

State of Illinois Appellate Court Fourth District 12/04/2008

The People of the State of Illinois vs. Seth A. Weaver,No. 4-09-0723

State of Illinois Appellate Court Fourth District 1/18/2011

The People of the State of Illinois vs. Seth A. Weaver,No. 4-17-0462

State of Illinois Appellate Court Fourth District 7/09/2019

The People of the State of Illinois vs. Seth A. Weaver,No.125166

Supreme Court Of Illinois 11/26/2019

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Sixth Circuit Courts Judgement Order Jan.12,2007 (App.1.J)

Sixth Circuit Court Order on Motion To Withdraw Plea Apr.7,2008 (App.1.D)

Fourth District Appellate Court Order Affirming Dec.4,2008 (App.1.E)

Sixth Circuit Court Order Denying Post Conviction Petition Sept.4,2009 (App.1.F)

Fourth District Appellate Court Order Affirming Jan.18,2011 (App.1.G)

Sixth Circuit Court Order Denying Successive Post Conviction Petition Jan.1,2017 (App.1.B)

Fourth District Appellate Court Order Affirming July 9,2019 (App.1.A)

Fourth District Appellate Court Order Denying Rehearing Aug.5,2019 (App.1.H)

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JURISDICTIONAL STATEMENT

The judgement of the Supreme Court of Illinois was entered on Nov. 26,2019. Rehearing was not sought. The jurisdiction of this Court is invoked under 28 USCS§ 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. U.S. Const. 5th Amnd-No Self Incrimination,Due Process
2. U.S. Const. 6th Amnd-Right to Trial,Confrotation Clause
3. U.S. Const.14th Amnd-Due Process,Equal Protection
4. Ill. Const. Art.I,§ 1.- Inherent and Inalienable Rights,Consent of Governed.
5. Ill. Const. Art.1 § 2.- Due Process,Equal Protection
6. Ill. Const. Art. 1,§ 8- Assistance of Counsel,Confrontation Clause, Trial by Jury
7. Ill. Const. Art. 1 § 12- Right to Remedy and Justice
8. 18 USCS § 3438-Pleas--(Rule)
9. 28 USCS § 1257-State Court Certiorari
10. 720 ILCS 5/11-1.30- Aggravated Criminal Sexual Assault
11. 720 ILCS 5/12-3.2-Domestic Battery
12. 725 ILCS 5/113-4- Plea
13. 725 ILCS 5/122-1-Petition in the Trial Court(Post Conviction
14. 730 ILCS 5/5-8-1.- Sentence of Imprisonment for Felony(MSR)
15. USCS Fed. Rule Crim. Proc. Rule 11 Pleas
16. USCS Fed. Rules Crim. Proc. Rule 44-Right to and Appointment of Counsel
17. USCS Fed. Rules Crim. Proc. Rule 52.-Harmless and Plain Error
18. Ill. Sup.Ct Rule 23- Diposition of Cases in the Appellate Court

19. Ill. Sup. Ct. Rule 402.- Pleas of Guilty or Stipulations Sufficient

20. Ill. Sup. Ct. Rule 413 - Disclosure to Prosecution

STATEMENT OF FACTS

On 9/14/2006 the State charged Petitioner with one count of aggravated criminal sexual assault(count I) (App.2.A)(720 ILCS 5/12 14(a)(21)(App.1.O),and domestic battery(count II)(App.2.B)(720 ILCS 5/12-3.2)(App.1.N).

On 12/12/2006 minutes before jury selection Petitioner plead guilty to count I in exchange for the State dismissing count II and recommending no more than 20 years in prison.(App.3.G.pp.6). The court admonished the petitioner as follows:

> [Court]: Possible sentence would be 6 to 30 years in the penitentiary,a fine from one dollar to $25,000,or some combination of time in prison and fine within those ranges.**Any time in prison would be followed by three years of mandatory supervised release,** and a community-based sentence is not an available sentencing option. You understand the possible sentences involved here,sir?
>
> [Petitioner]: Yes,I do,your Honor.(App.3.G.pp.5)(emphasis added throughout).

The trial court accepted Petitioners"open" guilty plea and held a sentencing hearing on 1/12/2007.After the States aggravating evidence and the parties made their arguments,the trial court sentenced Petitioner to 20 years in prison,stating:

> It will be the order of the court that the defendant be sentenced to a term of incarceration in the Illinois Department Of Corrections of 20 years. The court is prepared to give Mr.Weaver the benifit of the bargin that he made with the State's Attorney and not use the other ten years ['] worth of sentence that would be within the court's discretion. I'll limit it to the 20 years that was part of the bargain. I believe any sentence less than that would seriously deprecate the nature of Mr. Weaver's offense,would be inconsistent with the ends of justice,and he is in fact a danger to the community.(App.3.H.pp.35-36)

The trial courts oral pronouncement and order of commitment reflected no term of mandatory supervised release("MSR").(App.1.J)

Petitioner through trial counsel,Scott Schmidt filed a motion to withdraw guilty plea on 2/12/2007,alleging he was pressured and coerced into pleading and believed he would recieve a sentence less than 20 years.(App.2.C).On 2/23/2007 Schmidt filed a motion to withdraw as counsel alleging Petitioner claimed ineffective assistance of counsel["IAC"](App.2.D),and filed the Answer to States Motion for Discovery(App.2.E). The court granted the motion and appointed conflict counsel Walter Ding(App.3.I).

Ding filed a new motion on 7/20/2007 to withdraw guilty plea, alleging prior counsel was ineffective for not discussing the ramifications and consequences of a guilty plea,pressuring petitioner to plead guilty,failing to discuss possible defenses, failing to present mitigation at sentencing,and that Petitioners waiver of right to trial was not voluntary(App.2.F).

Petitioner filed several Pro Se motions(which were not allowed as he was represented by counsel Ding)because Ding refused to acknowledge Schmidts late filing of the Answer to Discovery(App. 2.E).Ding told Petitioner it was a mistake or a misprint and it didn't matter. In an attempt to remedy this,Petitioner wrote a letter to the Chief Presiding Judge informing him of this misconduct (App.2.G).

Ding filed a motion to withdraw as counsel on 12/12/2007, stating there was a conflict of interest and that Petitioner was filing a complaint to the A.R.D.C.(App.2.H). Dings motion was allowed. Despite Petitioners objections as to being forced to proceed Pro Se or being represented by inadequate counsel (App.3.J. pp.4,6,7.App.3.K.pp.7,8,22),

a hearing was conducted on Petitioners motion to withdraw his guilty plea(App.3.K).On 4/7/2008,the court entered it's order on that hearing,finding that Petitioner **was properly admonished**,not coerced, and that trial counsel felt 20 years was a very good agreement(App. 1.D).

Petitioner filed a Notice of Appeal and was appointed counsel (App.2.I.,J). Petitioners conviction was affirmed on appeal. **People vs.Weaver, 4-08-0340(12/4/2008)** (App.1.E)(unpublished Rule 23 order) (App.1.U).

Petitioner filed a Pro Se Post-Conviction petition pursuant to 725 ILCS 5/122-1(App.1.Q),alleging violations of his rights guaranteed by the 5th,6th,8th and 14th amendments of the United States Constitution and the Illinois Constitution claiming(1): I.A.C of trial counsel for using pressure,coercion and intimidation to get Petitioner to plea,having no defense prepared,late filing of Answer to Discovery,and not fully explaining the"deal" in respects to MSR, (2)IAC of appellate counsel for not raising IAC claim against trial counsel,(3) misconduct by the State,and(4) not recieving the "benifit of the bargain" pursuant to PEOPLE vs Whitfield,217 ILL.2d 177(2005) with respect to his MSR(App.2.K.pp.3-5).

The petition was summarily dismissed on 9/4/2009 the court observing that the plea judge admonished Petitioner of a sentence range of 6 to 30 years,followed by 3 years MSR,thus no **"Whitfield"** violation had occured,then went on to note that"Schmidts performance was in no way deficient"(App.1.F). Petitioner filed a Notice of Appeal and was appointed counsel on appeal(App.2.L,M).

The appellate court affirmed the summary dismissal.People vs Weaver,4-09-0723(1/18/2011)(App.1.G)(unpublished Rule 23 order).

The court held that Petitioner was **admonished properly** and there was no IAC(App.1.G).

On 5/18/2017 Petitioner requested leave to file (App.2.N) a successive Post-Conviction petition (App.2.O) pursuant to 725 ILCS 5/122-1(f)(App.1.Q.pp.2). Petitioner stated he was only recently informed orally in December of 2016 and recieved written confrimation on 3/21/2017 by prison staff that his term of MSR was 3 years to life (App.2.P),not just three years as previously been told on multiple occasions by all parties. Petitioner asserted cause for filing the petition as IAC,plain error,and being misinformed raising the constitutional claims of:(1) IAC of all prior attorneys based on an unknowing and involuntary plea,and pursuing claims the record clearly refutes;(2)Violation of his "negotiated plea agreement" that only **3 years of MSR** would be imposed,when a unilateral modification and breach of the agreement has occured resulting in a more onerous sentence;(3) A void plea agreement;(4) Denial of due process and fundamental fairness;(5) Pain error by the respective courts(App.2.N).

In totality,as the records shows,Petitioner claims he has been subjucated to a systematic failure of judicial integrity by Illinois Courts.

Petitioner asserted he "did not agree to" 3 years to life MSR and "would not have done so." Petitioner did not enter into this [n]egotiated [p]lea [a]greement aware of this 3 year's to life MSR attachment. This was law at the time of his[p]lea,yet nobody in all of these proceedings made Petitioner aware of this seemingly massive fact."Had he known he was facing a lifetime MSR,Petitioner alleged he"would have invoked his 6th Amend. right to confront his accuser and raised the [a]ctual [i]nnocense to count I as he had originally

intended to and went to trial"(App.2.O.pp.3.¶14). Petitioner noted the proper remedy was to allow him to withdraw his guilty plea should he choose to do so.

The Circuit Court denied Petitioner,leave to file the Petition:

> The Defendant has filed a request to leave to file a successive Post-Conviction petition. In his request, he claims that he was not properly admonished concerning the appropriate period of mandatory supervised release. The court may grant his request if he can satisfy the cause and prejudice test. The Defendant could have claimed this problem when he filed his inital Post-Conviction petition. Also,the Fourth District Appellate Court decided this same issue in their order filed on the 22nd of February, 2011,People vs. Weaver. The Defendants request is denied. (App.1.B)

Petitioner filed Notice of Appeal and was appointed counsel. (App.2.Q,S).

On appeal,Petitioner argued the Circuit Court errored in denying him leave to file his successive Post-Conviction petition, **People vs. Weaver,2019 Ill. App.(4th) 170462-U**(App.1.A)(unpublished Rule 23 order)(App.1.U). The appellate court affirmed the Circuit Courts ruling and held the Illinois Supreme Court's decision in **People vs. Evans,2013 Il.113471,**meant that a petitioner's failure to discover his term of MSR could never be "cause" justifying the filing of a successive Post-Conviction petition(App.1.A).

The Fourth District Appellate Court acknowledged it's own role in misstating the applicable term of MSR:"in retrospect,we recognize this court should have noted[Petitioner] was arguing the incorrect MSR provision in addressing[Petitioner] contention he was unaware of a "three-year MSR term" when he pleaded guilty"(App.1.A.pp.8,¶21).

Petitioner filed a petition for rehearing that was denied by the appellate court(App.1.H).

Petitioner then filed a petition for leave to appeal(App.2.S) in the Supreme Court of Illinois that was denied on 11/26/2019, **People vs Weaver 2019 Ill Lexis 1205**(App.1.C)

ARGUMENT FOR ALLOWANCE OF WRIT

On it's face this appeal is about Illinois Courts denying Petitioner leave to file a successive Post-Conviction petition, refusing to remedy an invalid,unknowing,unvoluntary plea accompanied by a continuous stream of IAC,contrary to numerous rulings of this Court,violating Petitioners rights guaranteed by the 5th,6th,14th Amends.of the U.S.Const.(App.1.K),Ill.State Const. Art. I-§1,§2,§8, §12(App.1.L),contrary to the laws and safeguards protecting against such:USCS§3438(App.1.M),725 ILCS 5/113-4(c)(App.1.P),USCS Fed. Rules Crim. Proc.-Rule 11(H)(App.1.S),Rule 44(a),Rule 52(b)(App.1.T), Ill. Sup.Ct. Rules 402(a) (2)(App.1.V),Rule 413(d)(App.1.W).

However at it's core lies Illinois"ignorance of the law" theory,systematically applied to successive Post- Conviction Petitioner's ,whose reliance on the application of law and legal conclusions by the Courts,State,and counsel throughout the original Post-Conviction proceedings prevented them knowing that they had been misinformed,misled,and misadvised,denying relief from constitutionally unsound guilty pleas.

I. The Illinois appellate courts are split as to establishing cause for filing a successive Post-Conviction based on misinformation given during the plea proceedings. The Fourth District Appellate Court has decided a Federal question in a way in conflict with applicable decisions of this Court. Review is necessary by this Court to rectify this issue.

The record shows all parties,including the Fourth District Appellate Court,has misinformed Petitioner as to the term of MSR, that is statutorily attached to his sentence,See People vs. Weaver, 4-09-0723(1/18/2011)(unpublished Rule 23 order) (App.1.G),People vs

Weaver,2019 Il App(4th)170462-U(App.1.A),See 730ILCS 5/5-8-1(App.1.R)

After being informed by prison staff orally in December,2016 and then recieving written confirmation on 3/21/2017(App.2.P),of his actual MSR requirement,Petitioner asked leave to file a successive Post-Conviction petition(App.2.N,O).

In affirming the denial of leave to file Petitioners petition the appellate court cited,and gave no other authority for it's holding, People vs. Evans,2013 Il 113471,for the theory that"ignorance of law at the time of the initial Post-Conviction petition can never establish cause for filing a successive petition." In Evans the Illinois Supreme Court held that since"all citizens are charged with knowledge of the law[,]"the defendants subjective ignorance"that MSR was automatically added to his sentence **after jury trial** and finding of guilt was not"an objective factor that impeded"his ability to raise the MSR claim in his initial Post-Conviction petition.Thus, Petitioner can not establish cause.

In this case,Petitioners lack knowledge of his three years to life on MSR was not due to his own,mistake,miscalculation,or ignorance of the law. Petitioner is not asserting"cause as based upon the trial judges"failure to include a term of MSR in a sentencing order",as was the case in Evans,or that he was ignorant of the requirement of MSR,rather,Petitioner alleged(as the State admits and did not contest below) he was affirmatively misled,as to the direct consequences of his guilty plea.

The appellate courts Rule 23 order mistakenly conflates a defendants subjective ignorance of sentencing law after a trial with a situation where the plea judge affirmitively misleads the defendant about the direct consequences he will recieve in exchange for a

guilty plea.See 725 ILCS 5/113-4(c)(App.1.P),USCS Fed Rules Crim. Proc. Rule 11(b)(1)(H)(App.1.S)Ill.Sup.Ct.Rule 402(a)(2)(App.1.V).

The reasoning of EVANS is inappropriately applied. Petitioners plea judge in the presence of trial counsel and the State,affirmatively misled him stating"[a]ny time in prison would be followed by three years[MSR]."(App.3.G.pp.5)when in fact any time would be followed by"three years to life"on MSR. See 730 ILCS 5/5-8-1(7)(d)(4)(App.1.R.pp.3). This misinformation was repeatedly coveyed to petitioner by the courts below. See"Defendant was properly admonished",ORDER(App.1.D)," The trial court admonished defendant in accordance with Supreme Court Rule 402 (a)"(App.1.E. pp.2),"The court found defenant had been properly admonished"(App. 1.E.pp.6),"...followed by a period of three years MSR.",ORDER(App. 1.F),"the trial court properly admonished defendant... the court did not err...,"ORDER,HELD(App.1.G)

This court stated in Price vs. Vincent,123 S.Ct.1848 (2005)

> First we have explained that a decision by a State Court is "contrary to"our clearly established law if it "applies a rule that contradicts the governing law set forth in our cases"or it confronts a set of facts that are materially indistinguishable from a decision of this court and never the less arrives at a result different from our precedent. "Williams vs. Taylor,120 S.Ct.1495(2000).

The courts below have ruled"contrary to"clearly established law,"Williams,Price,on multiple occasions.(App.1.A,B,D,E,F,G)

This court has noted that "cause" under the cause and predjuice test must be something that"cannot" fairly be attributed to him,"Colman vs. Thompson,111S.Ct.2546(1991).[IAC] is cause for procedural default based upon the rationale set forth in Murray vs. Carrier,106S.Ct.2639(1986).Further elaborated in Parkus vs. Delo 33 F.3d 933(CA81994)Finding that"...untrue representation made

either intentionally or unintentionally constituted"some interference by officials[which] made compliance[with the State procedural rule] impractical"Murray,106 S.Ct 2639.

The Fourth District Appellate Courts ruling that "defendant cannot establish cause"(App.1.A.pp.9),thus equates that being misled by at least four attorneys of counsel,three State Attorneys,two judges and four Justices,officers of the court,who had a fiduicary duty to convey truthfuly the direct consequences of a plea,is **not** an "objective factor" and should"fairly be attributed to [Petitioner]." That the failure by counsel to properly inform Petitioner about the actual MSR term,failure to rectify an invalid plea on account of being improperly admonished,failing to raise IAC claims of prior counsel, does **not** amount to IAC for"cause" as in Murray,106 S.Ct 2639. Furthermore,that the State,who's duty is not just to prosecute,but to see that justice is done,not only for the public but for the defendant,failed to do so fraudulently concealing through silence,this misconduct and that the Judges and Justices involved,failure to take judicial notice of the error plain on the face of the record(USCS Fed. Rules Crim. Proc. Rules 52(b))(App.1.T) does **not** constitute as "some interference by officials" triggering Murray,106 S.Ct 2639,is staggering and"contrary to""clearly established law."Williams,120 S.Ct 1495, Price,123 S.Ct 1848.

Petitioner had no reason to question the information and legal conclusions provided by all prior fiduicaries based on the "presumption that State Courts know and follow the law." Woodford vs Visciotti,123 S.Ct 357(2002).

The First District Appellate Court has found that cause has been established in nearly identical situations.See-People vs. Hill,

2014 Ill App (1st) 121320-U. In Hill the First District Appellate Court rejected the States reliance upon Evans and it's ignorance of the law holding,and held that Hill had established cause to file a successive petition due to the misinformation he recieved at his guilty plea hearing by being misadvised by the trial judge.

The Hill decision was based on the First Districts prior decision in People vs. Gutierrez,2011 Ill App(1st) 093499. In Gutierrez the defendant failed to include in his pro se petition the claim that he plead guilty without being advised by counsel and the court of the deportation consequences. The trial court found he did not establish cause ,because the factual assertions which he relied on were available to him when he filed his first petition.

The First District Appellate Court reversed,holding that because neither the plea judge nor trial counsel informed the defendant of the consequences of his guilty plea,he was unaware of the issue and could not raise it in his first Post-Conviction petition.

Other than Evans, the appellate court cited no authority for it's holding.See order(App.1.A). Notably the Fifth District,relying on Evans held that a guilty-plea petitioner could not establish cause based upon trial counsel's misadvice as to the applicable term of MSR (2 years vs 3 to life) where Petitioner was presumptively charged with knowledge of the law at the time he filed his initial Post-Conviction petition in People vs. Smith, 2018 Il. App(5th) 150503-U. In People vs. Baller,2018 Il. App.(3d)160165,the Third Districts Justice Schmidt,J.,dissenting finding cause could not be established because of Evans.

The Supreme Court Of Illinois has by it's authority excused

procedural default under similar facts showing that Evans ignorance of the law does **not** extend to guilty plea proceedings stating that "it would be incongruous" to "place the onus on the defendant" to know about this MSR term since the plea judge had a duty to admonish the defendant about MSR and did not do so. People vs. Whitfield,217 Ill.2d 177 (2005)

II. Petitioner plea has been aquired by deception through misadvise without full knowledge of the direct consequences,contrary to well established law,violating the principles of due process and fundamental fairness set forth by this Court.

This court has long held and emphasised time and time again the importance and care with which courts are to accept a guilty plea. A plea of guilty is itself a conviction,it is conclusive, nothing more is required except for the court to pronounce judgement and sentence. Kercheval vs. United States,47 S.Ct 582(1927).

A guilty plea is in essence a confession,which may be accepted after a "reliable determination on the voluntariness issue which satisfies the constutional rights of the defendant."Jackson vs. Denno,84 S.Ct 1774(1964)

In Boykin vs. Alabama,89 S.Ct 1709(1969) this Court found that"it was error,plain on the face of the record,for the trial judge to accept Petitioners guilty plea without an affirmative showing that it was intelligent and voluntary." Reasoning that "ignorance,incomprehension,coercion,terror,inducements,subtle or blatent threats might be the perfect cover-up of unconstitutionality."

When a plea is entered in a State criminal trial the accused waives the federal constitutional rights against compulsory self-incrimination,trial by jury,and to confront one's accusers.See Mallory vs. Hogan,84 S.Ct 1489(1964),Duncan vs. Louisiana,88 S.Ct 1444(1968),Pointer vs. Texas,85 S.Ct 1065(1965). The waiver of these federal rights in a proceeding is governed by federal standards. Douglas vs. Alabama,85 S.Ct 1074(1965)

The federal standards for such are laid out within the USCS Fed. Rules Crim. Proc. -Rule 11 (b)(1)(H)"any maximum possible penalty including imprisonment,fine and term of supervised release," (App.1.S). Compare with 725 ILCS 5/113-4(c)"...such plea shall not be accepted until...fully explained...the consequences of such plea and the maximum penalty provided by law...which may be imposed... " (App.1.P) and Ill.Sup.Ct.,Rule 402(a)(2)"the minimum and maximum sentence perscribed by law..."(App.1.V)

During Petitioners plea hearing,the trial court misinformed him that"Any time in prison would be followed by three years[MSR] ..."(App.3.G.pp.5).The actual term of MSR was "three to life."See 730 ILCS 5/5-8-1(7)(d)(4)(App.1.R.pp.3). By misleading the Petitioner,the trial judge failed his judicial duty to comply with the Fed. Rules Crim.Proc.,730ILCS 5/5-8-1,Ill.Sup.Ct R.402,ensuring that the plea was intelligently and voluntarily made with full knowledge of the consequences.

McCarthy vs. United States,89 S.Ct 1166(1969) set forth that "Any noncompliance with the Rule constituted a reversable error entitling the defendant to plead anew,"and that if a plea is not equally voluntary an knowing it has been obtained in violation of due process and is therefore void. Aguilty plea"cannot be truly

voluntary unless the defendant possesses an understanding of law in relation to the facts."

[A] plea of guilty can be voluntary only if it is "entered by one fully aware of the direct consequences"of his plea. Brady vs. United States,90 S.Ct 1463 (1970).Petitioner claims as the record shows,he was not"fully aware",due to the trial courts misadmonishment, the States fraudulent offer and silence,and the misadvice of trial counsel.

In this case now before the court,the record undisputedly shows,the Petitioner"bargined for" a reconmendation of no more than 20 years to be followed by "3 years MSR"(App.3.G.pp.5,6),or so he was led to believe. This "breach of agreement"occured when the State offered a unfulfillible promise as incentive to get Petitioner,to plea.

"When a plea rests in any significant degree on a promise or agreement of the prosecutor,so that it can be said to be part of the inducement or consideration,such promise must be fulfilled." Absent of such the interest of justice require that the judgement be vacated and the cause be remanded. Santobello vs. New York,92 S. Ct 495(1978)

Petitioner asserts that misinformation,misleading advise, being improperly admonished,and recieving something other than what was "bargined for" are just nice ways of saying he was tricked and decieved."A guilty plea induced by deception or trick will likely be ruled invalid." Smith vs. O'Grady,61 S.Ct 572(1941), Hawk vs. Olsen,60 S.Ct 116(1945).

Had Petitioner properly been informed of the "3 to life" MSR as required by law,he never would have plead guilty,but

insisted on proceeding to trial as he has always wanted, maintaining that he is actualy innocent of count I (App.2.A) and raised the lesser included offense defense of count II(App.2.B).

In light of what Petitioner shall lat forth in his IAC aspect, Petitioner would have been aquitted of count I,because"...more likely than not any reasonable juror would have reasonable doubt." House vs. Bell,126 S.Ct 2064 (2006)

III. Petitioner was denied effective assistance of counsel throughout the entirety of all prior proceedings.

The 6th Amend. applies to States through the terms of the 14 th Amend. in regards that persons accused shall have assistance of counsel in all criminal proceedings. The right to counsel is the right to effective assistiance of counsel. Strickland vs.Washington, ~~104 S.Ct~~ 2052(1984). It is well settled that the 6th Amend. guarantees a defendant the right of counsel at all"critical stages of the criminal proceedings." Montejo vs. Louisiana,129 S.Ct 2079 (2009)(quoting United States vs.Wade,87 S.Ct 1926 (1967).

The compulsory process clause of the 6th Amend. guarantees the accused the right to present a complete defense. In order to do such,an attorney must be reasonabley competent acting as the accuseds diligent and conscientious advocate. The heart of effective assistance is preparation. Richter vs. Hickman,578 F.3d 944(9th 2009). Counsel has an established duty to investigate pre-trial, Strickland, including an adequate amount of legal research. See Cooks vs. United States,461 F.2d 530,532(5th 1972).

Petitioner states"...not just the discovery process that [Schmidt] failed to conduct, but practically the entire

investigation of the case...[Schmidt] failed to act reasonable professional assistant and that failure to investigate made the adversarial testing process unreliable." Wade vs. Armontrout, 798 F. 2d 304(8th 1998).

"Examination of the record... makes it plain that [Schmidt] did not accord [Petitioner] even a modicum of professional Assistance at any time." See Young vs. Zant,677 F.2d 792(11th 1982).

> "The Supreme Court has repeatedly made clear that there is a duty incumbant on trial counsel to conduct pre trial investigation, it necessary follows that trial counsel can not discharge this duty if he fails to consult with his client. The 6th Amend. guarantees more than a pro forma encounter between the accused and his counsel, and six minutes of counsultations spread over three meetings do not satisfy it's requirements," Mitchell vs. MASON 325 F.3d 732 (6th 2003)

This case is even more compelling,in that Petitioner only recieved a letter,visit,and a phone call from Schmidt prior to trial. See Champaign County Sheriff's Office Jail Information(App.3.A). The letter recieved was of the States original offer of 20 years,note however the open plea with a recommendation of 20 years,which Schmidt got Petitioner to plead to was initaly considered.(App.3.B). During the pre-trial visit,Schmidt only briefly confered the possibility of raising a Mens rea defense,as he stated in the Motion to withdraw Guilty Plea hearing on 2/15/2008(App.3.K.pp.12,14,15).

Mens rea applies to specific intent crimes and has no applicabillity to general intent crimes such as count I (App.2.A). Petitioner told Schmidt that no sexual assualt had occured and this was nothing more than a trumped up domestic battery. Schmidt failed to formulate a proper defense,prepared no defense theory and testified contrary to what Petitioner had told him when asked about "possible defenses",he said"no"(App.3.K.pp.15). Schmidt had failed

to advise Petitioner as to the relevant law pertaining to a lessor included crime defense. Wanntee vs. Ault, 259 F.3d 700(8th 2001)

Instead of being reasonably competent in assisting Petitioner, Schmidt used undue pressure,coercion and intimidation to get Petitioner to plead guilty minutes before trial was to begin by telling him that"he had no defense what so ever,"as the record shows,Schmidts late Answer To Discovery filing(App.2.E). Schmidt never informed Petitioner about a "life time "MSR requirement. Failure to advise[Petitioner] of the relevant law is deficient performance." Hill vs. Lockhart,106 S.Ct 366 (1985).

Schmidt agreed that upon investigating ,the State had sufficiant evidence to sustain this charge at trial(App.3.G.pp.9,10) ,contrary to the record. The only evidence contained in the record is the accusation by Penny,that is refuted by John's eye witness testimony and Petitioners denial of such.

"It is[Schmidts] job to be an avocate not to be the prosecutors lackey" Duarte vs. US 81 F.3d 75(7th 1996)and constructive denial will be found when[Schmidt]"fails to subject the prosecutions case to meaningful adversarial testing..."United States vs. Cronic,104 S.Ct 2039 (1984).

Schmidt failed to file a motion to supress or object to the introduction of the Peoples Exhibits 1-40,photographs of the scene (App.3.H.pp.3). The majority of such were of blood everywhere, which if a blood/serology test had been done,See Driscoll vs. Delo, 71 F.3d 701(8th 1995), Toney vs. Gammon, 79 F.3d 693 (8th 1996), Jones vs. Wood, 144 F.3d 1002(9th 1999),it would have shown that most of the blood used as an aggravating factor,was in fact the Petitioners blood,as the record affirms. See:"some of the blood on her

was[Petitioners] blood."(App.3.C.pp.3),"... that was all [Petitioners] blood..."(App.3.C.pp.7),"...his face was covered in blood...bleeding from a cut on his forehead and his nose."(App.3.E. pp.2),"[Petitioners] forehead was bleeding...had blood on his chest and all over the front of his ... shorts."(App.3.F.).See also"... my shirt was soaked in blood."(App.3.H.pp.25) in combination with" ...no puncture wound."(App.3.F). Johns shirt was soaked with the Petitioners blood.

Had Schmidt been a proper advocate and motioned to supress or object,which he had no informed or tactical reason not to, Petitioner would not have been sentenced so harshly. Had Schmidt been a reasonable advocate he would have used Penny's medical records to impeach,demonstrating that[her] memory concerning the assault was faulty, **Tucker vs. Prelesnik,181 F.3d 747(6th 1999),** due to her level of intoxication.See"did not remember...,"does not remember..."(App.3.C.pp.6).

A Proper pre-trial investigation by Schmidt would have revealed John's eyewitness account,describing the same events as Penny and Officer Difanis described,except for the sexual assault element. Compare(App.3.C.pp6) and(App.3.H.pp.12,14,15) to(App.3.H. pp.20-22)

> The guilty plea can not have been knowing and voluntary, however if [Petitioner] does not recieve reasonably effective assistance of counsel in connection with the decision to plead guilty,because the plea does not then represent an informed choice.**Mason vs. Balcom,531 F.2d 717.**[Schmidt] must be familiar with the facts and the law in order to advise[Petitioner] of the options available. **Bradbury vs. Wainwright 658 F.2d 1083,1087(5th 1989).**the guilty plea does not relieve[Schmidt] of the responsibility to investigate the potential defenses so that[Petitioner] can make an informed decision[ommitted].
>
> If[Petitioner] had proceed to trial...[Schmidt] would have been constitutionaly ineffective.

> It is clear that [Schmidt] did not channel his investigation on the basis of an informed professional assessment of[Petitioners] potential defenses. He simply failed,for no apparent reason related to [Petitioner] case to investigate the facts.[Schmidt] unfamiliarity with the facts and the law relevant to [Petitioners] case made him so ineffective that[Petitioners] guilty plea was not knowingly and voluntarly entered. Scott vs. Wainwright,698 F.2d 427(11th 1983)

If petition had a competent dilligent advocate he would have insisted on trial as he wanted and been aquitted of count I because "...more likely than not any reasonable juror would have reasonable doubt." House vs. Bell, 126 S.Ct 2064(2006)

Only after Petitioner indicated he wanted to withdraw his plea due to IAC,did Schmidt file the State,the Answer to Discovery (App.2.E),proof that Schmidt had no intentions of going to trial as Petitioner wanted. This late filing was an attempt to cover up the denial of Petitioners Compulsory Process Right to present a complete defense, evidence of Schmidts ineffectiveness.

Petitioners notified conflict counsel Ding about this matter multiple times. Ding made no attempt to act on this information, telling Petitioner that it was a type-o and mistake by the clerk and it didn't matter. Ding failed to inform Petitioner about,let alone correct,his unconstitutionally aquired plea. Another State "lackey,"Duarte,81 F.3d 75,providing Petitioner with IAC. Strickland ,104 S.Ct 2052,Hill,106 S.Ct 366,Cooks,461 F.2d 530.

On appeal,Evitts vs.Lucey,105 S.Ct 830(1985),Strickland, Appellate counsel"failed to raise a significant and obvious issue [s],the failure could be viewed as deficient performance. If an issue which was not raised may have resulted in a reversal of the conviction,or an order for a new trial,the failure was prejudicial." Gray vs. Greer,778 F.2d 350(7th 1985). The"significant and obvious

issue[s]"being an unknowing,unvoluntary plea, and IAC of Schmidt and Ding,instead Appellate counsel argued a issue refuted by the record.

[A] possible cause for [Appellate counsels] failure to raise the [IAC] issues on direct appeal may be that Appellate counsel were themselves ineffective. See **Velarde vs. United States,972 F.2d 826 (7th 1999)**. Appellate advocate may deliver deficient performance and prejudice a defendant by omitting a "dead bang winner," even though counsel may have presented strong but unsuccessfull claims on apppeal. **Page vs. United States,884 F.2d 300(7th 1989).**

In this case,Appellate counsel argues something clearly refuted by the record,which begs the question,did Appellate counsel even review the record. If counsel had been competent and argued the relevant significant issues,Petitioner would have been allowed to withdraw his plea and proceed to trial.

Petitioner filed a Post-Convicition petition(App.2.K)claiming that he didn't recieve the "benifit of the bargin," as he had been led to believe by Schmidt and the State,and IAC of Schmidt(App.2.K. pp.4,5,¶ 9) and of appellate court.

On appeal of trial courts denial of Post-Conviction petition, finding that Petitioner was properly admonished and Schmidt was not ineffective,therefore Appellate counsel was not ineffective(App.1. F),Appellate counsel, **Evitts,105 S.Ct 830, Strickland,104 S.Ct 2052,** once again failed to argue and raise the facts that Petitioners plea was unconstitutionally aquired in light of the actual"lifetime" MSR requirement,and prior attorneys IAC: Schmidts obvious incompetence, Dings failure to adequetley represent Petitioner and previous Appellate counsels failure to address such. Thus rendering themselves

ineffective, Evitts,105 S.Ct 830,Strickland,104 S.Ct 2052,Page,884 F.2d 300, Velarde,972 F.2d 826,not only by failing to raise all of those issues,but by arguing something that was clearly refuted by the record.

CONCLUSION

The appellate courts of Illinois are split as to the application of misinformation given during the acceptance of a guilty plea to determine cause for filing a successive post-conviction petition. Petitioners who relied on the legal conclusions of the respective officers of the court, throughout the initial post-conviction proceedings, are systematicly denied relief under a ignorance of the law theory. Review by this Court is necessary to rectify this split and remedy this injustice. The Fourth District Appellate Court of Illinois has ruled contrary to and departed from the well established law set forth by this Court, pertaining to Petitioners leave to file a successive petition and failed to address Petitioners unconstitutionally aquired conviction.

This petition for a writ of certiorari should, therefore, be granted.

Dated: 2-20-2020

Respectfully submitted,

/s/ _____

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