

19-7858

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

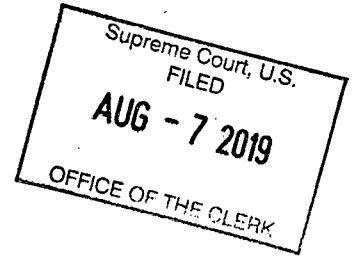
TODD DARRELL BALLARD

Petitioner,

vs.

JOHN E. WETZEL, et al.,

Respondent(s)



ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Todd Ballard [HK-0416] (Petitioner)

SCI- Phoenix, 1200 Mokychic Drive

Collegeville, PA. 19426

QUESTIONS PRESENTED

Whether the Act of the General Assembly [42 Pa.C.S. § 9543 and 9544] is in violation of Appellant's substantive and procedural rights; and whether said statute permits any **intentional waiver** of (non-ineffective assistance of trial counsel) by post-sentencing counsel, under the Amendment VI and XIV to the United States Constitution?

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- 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:

[Additional Joint-Parties] unsigned: Thomas A. Scott [KD- 9349]

Shataan Adams

Timothy Anderson [KM- 7993]

Jamie Cruz, Jr.

* See: Attached Sworn Affidavits (Appendix)

* All Parties are currently confined at State Correctional Institute of **Albion** (Pennsylvania)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	Vii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	Viii
STATEMENT OF THE CASE	IX
REASONS FOR GRANTING THE WRIT	X
CONCLUSION	XI

INDEX TO APPENDICES

APPENDIX A- Decision of the State District Court

APPENDIX B- Decision of the State Superior Court

APPENDIX C- Decision and Opinion of the State Lower Court

APPENDIX D- Petitioner's Sworn Affidavit; Appellate Counsel's Correspondence

APPENDIX E- Additional Parties' Affidavits; Appellate Counsel Correspondence

APPENDIX F- Decision of the U.S. Court of Appeals & Civil Docket Listing

TABLE OF AUTHORITES CITED

CASES	PAGE NUMBER
<u>Griggs v. Provident Consumer Disc. Co.</u> , 459 U.S. 56, 58 (1982)	10
<u>Iowa v. Tovar</u> , 541 U.S. 77, 80-81 (2004)	9
<u>Lafler v. Cooper</u> , 566 U.S. 156, 165 (2012)	9
<u>Neill v. Gibson</u> , 287 F.3d 1044, 1057 n.5 (10th Cir. 2001)	10
<u>Nguyen v. Curry</u> , 736 F.3d 1287, 1293-96 (9th Cir. 2013)	9
<u>Pursell v. Horn</u> , 187 F. Supp. 2d 260 (W.D. Pa. 2002)	3
<u>Richardson v. Superintendent SCI Coal Twp.</u> , No. 15-4105 (3rd Cir. 2018)....	11
<u>Workman v. Superintendent SCI Albion</u> , No. 16-1969 (3rd Cir. 2018)	11
STATUTES AND RULES	
<u>Federal Rules of Evidence Rule 201</u>	1
<u>28 U.S.C. § 2101(e)</u>	N/A
<u>28 U.S.C. § 2254(b)</u>	3
<u>42 Pa. C.S. § 9543</u>	8
<u>42 Pa. C.S. § 9544</u>	5
<u>42 Pa. C.S. § 1925</u>	11
OTHER	
<u>Article vi § 3</u> [United States Constitution]	1
<u>Article I § 10, cl. 1</u> [United States Constitution]	1
<u>Article VI § 2</u> [United States Constitution]	2
<u>Article VI 3</u> [Pennsylvania Constitution]	1
<u>Article 1 § 17</u> [Pennsylvania Constitution]	1

RELEVANT ADJUDICATIVE AND LEGISLATIVE FACTS

1. The Petitioner (Todd Ballard) has attached exhibits of evidence in reference to the issue(s) presented herein. Certain type of documentary evidence (appendixed) bears either signatures and/or official seals on their face. The Petitioner request this Honorable Supreme Court Panel to judicially recognize these documents in accordance to Fed.R.Evid. Rule 201, concerning the facts set forth.
2. the Petitioner avers that amongst the exhibits are correspondence admissions by individuals (including: Suzanne Swan ID # 46183; Charles Pass; William Wismer ID # 39220; Emily Merski ID # 310909; John Ciroli; and MaryJean Glick; esq.[s]); all appointed appellate counsels. Said individuals have sworn and subscribed an Oath to defend both the United States and Pennsylvania Constitutions; and to discharge of their duties with **fidility** [against acts of dishonesty], pursuant to both Article VI § 3 of the U.S. Constitution, and Article VI § 3 "Public Officers" of the Pennsylvania Constitutions. Such person(s) entered into contracts under oath, and are **bound** by obligation to obey mandates of the U.S. Constitution and its Amendments.
3. In addition, Article 1 § 10, cl. 1 of the U.S. Constitution, specifically mandates that "...No State shall enter into any...Law impairing the obligation of contracts."; and Article 1 § 17 of the Pennsylvania Constituion also provides that "No...Law impairing the obligation of contracts...shall be passed." The Petitioner avers that while representing him during post-sentencing and direct appeal (Mrs

Swan) and during state-habeas review (Charles Pass) both subscribed an oath to provide effective assistance of counsel [Amendment VI]; as they entered appearance on behalf of Todd Ballard, as he petitioned for redress of grievances [Amendment I].

4. Moreover, in Article VI § 2 of the U.S. Constitution provides that the Constitution and Laws of the United States... shall be the **Supreme Law of the Land**; and judges (including judicial officers) in every State shall be **bound** thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding. Thus, under the 'Supremacy Clause' [highest form of law] all State officials are required to uphold the U.S. Constitution; even if the State laws or constitution conflict with it.

5. The Petitioner asserts that during both the criminal and **appellate** proceedings, the constitutional amendments are also established to ensure that both the substantive [content of the law] and procedural rights of appellants are protected, against the "Power of the State". Accordingly, the government (legislative, judicial, and executive) examine the content of the law or rule, and follow fair procedures that safeguard an individual. Due process, equal protection, and assistance of counsel for 'Defense Clauses', extend throughout both the trial and appellate process.

LEGAL AUTHORITIES AND FACTS IN SUPPORT

6. Many courts confuse procedural default and exhaustion all the time. It is extremely common for a court to describe failure to exhaust as a procedural de-

fault. In this matter, the Petitioner presented his claims [for review] before the Common Pleas, Superior, and Supreme Courts of Pennsylvania. By doing so, the Petitioner properly exhausted his claims for review [on the merits] before the State courts. Therefore, the exhaustion requirement is satisfied [28 U.S.C. § 2254(b)]. In Pursell v. Horn, 187 F.Supp. 2d. 260 (W.D. Pa. 2002), it is held that "Even if the state court *refuses* to hear a claim presented because it is time-barred or waived, claim is still exhausted, for purposes of federal habeas action, as long as the state court was given an opportunity to address it."

7. On or about October 10, 2007; Todd Darrell Ballard was (wrongfully) convicted of criminal homicide by a trial court judge whom openly admitted [on record] to '*daydreaming*', during this non-jury trial. On or about January 7, 2008; the trial court judge pronounced an illegal sentence upon Mr. Ballard, without conducting the required 'penalty-phase jury' to deliberate the elements in this case [Commonwealth v. Ballard, No. CP-02-CR-0001382-2006]. Subsequently on January 10, 2008; Mr. Ballard filed an [pro se] post-sentencing motion appealing his conviction and sentence. Said motion presented his claims of: (a) trial court errors; (b) prosecutorial misconduct(s); and (c) trial counsel ineffective assistance.

8. On January 14, 2008; an Suzanne Swan [ID 46183] was appointed by the trial court as counsel for Mr. Ballard, during both the post-sentencing and direct appeal review. Even though the Petitioner's [pro se] filing of record, Mrs. Swan again requested to know his claims. Over the course of months, Mr. Ballard sent

multiple correspondence asking his counsel to *re-iterate* the issues in his original filing. However, **every** claims that Mr. Ballard sought (for review), his appellate counsel refused to present. Moreover, Mrs. Swan *ill-advised* (erroneously) that on direct appeal, they could **only** use what is recorded in transcript; and cannot base arguments that do not appear on record. In addition, she also advised that claims involving the prosecutor cannot be proven on direct appeal; an investigation and hearing can **only** be done through an PCRA.

* See: Appendix D - "Letter Responses" [5/9/08; 7/18/08]

9. The Petitioner contends that his counsel's advisement is **not** true. Post-sentencing counsel should have presented Mr. Ballard's newly presented and discovered evidence. On April 1, 2008; appellate counsel filed her '*supplemental*' post-sentence motion, not re-iterating Mr. Ballard's original issues (in his pro se motion); but she only presented her **sole** claim [that the verdict was against the weight of the evidence presented at trial]. The Petitioner expressed his dis-satisfaction with his appellate counsel's *lies* and out-right refusal to present and preserve his claims in her filings. The Petitioner even filed an *complaint* against Mrs. Swan to the Disciplinary Board of Pennsylvania Supreme Court [Complaint No. C4-08-1234].

10. On or about May 9, 2008; appellate counsel informed Mr. Ballard that the trial court "...denied his post-sentencing motions" [also referring to his pro se filing]. However, before the Petitioner could respond back, Mrs. Swan deliberately filed her Notice of Appeal; which did **not** include any of the requested

claims. As a result, on July 29, 2008; the trial court filed its [1925(a)] 'Opinion in Support of his Order' (which is based on evidence that does **not** exist), and further failed to address any of Mr. Ballard's issues [pro se] filing.

11. Not only did appellate counsel provide ineffective assistance (by precluding Mr. Ballard's claims from review); she actually **lied** by advising him that "...be assured that she raised the **only** argument that was cognizable on appeal...if unsuccessful, [Petitioner] can raise **any** and **all** other issues taht were not raised on direct appeal in a PCRA petition." By this admission, Mrs. Swan intentionally violates her Constitutional Oath of Admission.

* **Appendix D -"Letter Responses" [11/28/08]**

12. Following counsel's instruction, Mr. Ballard filed claims of merit within an timely PCRA and Memorandum of Law Petition [including exhibits of evidence] on or about April 12, 2011. However, the Petitioner's appointed PCRA counsel (Mr. Charles Pass) also **refused** to present and preserve these issues; by filing a motion to withdraw, after receiving his payment. Moreover, Mr. Charles Pass did **not** establish contact with Mr. Ballard, before he withdrew as PCRA counsel. Subsequently, both the PCRA (trial) and Superior Courts of Pennsylvania made procedural rulings deeming the Petitioner's issues **waived**. Contrary to his post-sentencing counsel's advisement, the mandates of the Act of 1988, April 13, P.L. 336, No. 47 [42 Pa.C.S.§ 9544(b)]; which provides "...an issue is **waived** if the petitioner could have raised it but **failed** to do so...during **unitary review** on appeal." **Appendix B -" State Superior Court Decision" [8/27/13], pgs. 3,4, and 7**

Appendix D -"PCRA Counsel's Letters" [1/20/12 and 2/3/12]

13. On or about August 28, 2014; Mr. Ballard's 'Petition for Writ of Habeas Corpus Relief' [**28 U.S.C. § 2254**) was filed before the District Courts of Pennsylvania [Case No. **2:14-cv-04815**]; transferred over to [Case No. **2:14-cv-01453**]. Again, the Petitioner re-iterated his exhausted claims, that were presented before the State courts on state habeas review (PCRA). After over **70** filings of document entries, the district court denied said petition; also deeming multiple claims waived in conjunction with the Pennsylvania State Courts (December 12, 2018). On or about December 22, 2018; Mr. Ballard also filed 'Petition for Relief From Judgment' [**Fed.R.Civ.P. Rule 60(b)**] challenging these procedural rulings of his exhausted claims as a question of public importance. However, on or about January 8, 2019; again the district court denied reconsideration of Mr. Ballard's Rule 60(b) Motion.

* Appendix A- "State District Court Decision(s)" [1/8/19]

Additional Parties Also Affected

14. This matter is pending before the United States Court of Appeals for the Third Circuit [**Ballard v. Superintendent SCI-Albion, No. 19-1143**]. However, Mr. Ballard recently discovered the same claims from other Appellant's (in Pennsylvania), that are being precluded from review on the merits; as their appellate counsel(s) have also intentionally 'waived' their issues in state courts. On or about January 24, 2019; **Shataan Adams** (Delaware County in Pennsylvania) filed a 'Sworn Affidavit' detailing how his appellate counsel (William Wismer, ID 39220) has waived his [non-IATC] issues for review. Mr. Adam declares that Mr. Wismer *rebutted* his requested claims (during his post-

sentencing and direct appeal); which are now waived pursuant to 42 Pa.C.S. § 9544(b) during his state habeas review.

* Appendix E- "Affidavit" (1/24/19) [Case No. CP-23-CR-0002312-2008]

15. On or about January 31, 2019; **Thomas Scott** [Case No. 20113918], in Allegheny County, Pennsylvania; filed an 'Sworn Affidavit' asserting that both his appellate counsel's (Jessica Herdon and John Ciroli, ID 80422) ignored his requested claims. Moreover, Mr. Ciroli also ill-advised Mr. Scott (during post-sentencing and direct appeal) that he can generally "...bring up any issue that was not disposed of in [direct] appeal...in a PCRA after appeal is final." As a result, Mr. Scott's [non-IATC] issues are now 'waived' from review [42 Pa.C.S. § 9544(b)].

*Appendix E- "Affidavit" (1/31/19); "John Ciroli's Letters" (11/15 -

12/27/19)

16. On or about January 31, 2019; **Timothy Anderson** (Lancaster County) filed a 'Declaration of Facts' asserting that both his appointed counsel(s) [Douglas Conrad and MaryJean Glick] *refused* to present and preserve **four** requested claims [including mistaken identity] during post-sentencing and direct appeal. Furthermore, Mrs. Glick also ill-advised him that "...only issues raised before the trial court may be raised on [direct] appeal"; and "Any issues [he] believe should have been raised on appeal...may be raised in a PCRA if you choose." However, when Mr. Anderson filed his (pro se) PCRA petition [presenting the four claims]; were deemed waived [42 Pa.C.S. § 9544(b)] during state habeas review. * Appendix E- "Declaration" (1/25/19); [Case No. CP-36-CR-0005069-2009]; "Mrs. Glick's Letter" (4/18/12)

17. In addition, Jamie Cruz [Case. No. 1801 WDA 2018, Erie County] also filed an 'Sworn Declaration' on 2/8/19; asserting that his appellate counsel (Emily Merski, ID 310909) *refused* to present his requested claims for review. What is more interesting is that Mrs. Merski filed an "no-merit" [Anders/McClendon brief], while the Declarant is *still* within his post-sentencing/direct appeal stage. Such action by Mrs. Merski will ultimately lead to an 'waiver' of Mr. Cruz's claims [**42 Pa.C.S. § 9544(b)**], unless stopped. * **Appendix E- "Sworn Affidavit"** (2/8/19)

18. The Petitioner avers that ineffectiveness and ill-advisement [by appellate counsel(s)] seems to be the normal practice in the States (including Pennsylvania). When appellate counsel(s) *intentionally* refuses to present and preserve genuine issues; the state courts 'routinely' deem those issues 'waived'; relying on **42 Pa.C.S. § 9544(b)** and **§ 9543** statutes. Counsel(s)' intentional 'waivers' are demonstrated by their correspondence; which all give the same erroneous instructions. Their clients can file " any and all claims (counsel failed to do so during the post-sentencing [direct appeal] in a PCRA petition." However, counsel(s) [whom knew or should have known] that their ill-advice would preclude any review of non- IATC claims [**42 Pa.C.S. § 9544(b)**] during state habeas review.

19. Defendants have a right to protect them from over-punishment and wrongful convictions. That right protects more than just verdicts too. The Sixth Amendment also guarantees a "...right to counsel at all critical stages of criminal

process."; Iowa v. Tovar, 541 U.S. 77, 80-81 (2004). That right extends beyond trial to sentencing proceedings; Lafler v. Cooper, 566 U.S. 156, 165 (2012). Without the aid of an competent and effective counsel, layperson(s) are left with the impossible task of navigating through the appellate process. Thus, counsel must be an effective advocate in their actions.

20. In Pennsylvania (and nationwide), the post-sentencing and pre-appeal motions are a critical stage. Not only the Petitioner's counsel, but the 'Additional Parties' appellate counsel(s) have caused the 'waiver' of their claims in these cases and appeals. The Petitioner is prejudiced as he is still being denied a fair and full opportunity to litigate these (non-IATC) claims from both the State and district courts of Pennsylvania. However, the Sixth Amendment applies equally to both the trial and direct appeal counsel; as held in Nguyen v. Curry, 736 F.3d 1287, 1293-96 (9th Cir. 2013).

21. When counsel(s) [on post-sentencing and direct appeals] *intentionally* 'waive' appellate review of [non-ineffective assistance of trial counsel claims]; there are no safeguard(s) in place, to protect an appellant's substantive and procedural rights. The mandates of the statutes 42 Pa.C.S. § 9543 and §9544(b) (PCRA Act), are unconstitutional without exceptions. Whenever an *inconsistent* rule is applied in a State court to bar review, appellants have an legitimate contention that there is no adequate state procedural rule to correct this. When an attorney errs at the initial-review (and collateral) proceedings, it is likely that no State court (at any level) will hear the prisoner's claims.

22. The 'Notice of Appeal' marks the line between the trial and the appeals process. Until the trial court disposes of the post-sentencing motion, or time for doing so passes; there is not yet a final judgment. This Supreme Court of the United States has long ago distinguished that fact. In Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982); this Honorable Panel held "...the filing of a Notice of Appeal is an event of jurisdictional significance, it confers jurisdiction on the court of appeals, and divests the district court of its control over the aspects of the case involved in the appeal." However, with both the state and district courts of Pennsylvania in agreement with the afore-mentioned counsel(s) action(s); and the provision(s) of 42 Pa.C.S. § 9544(b); there is the uncertainty and legal importance of this legal question.

23. Appellant's have a Sixth Amendment right to effective counsel during the post-sentencing/direct review stages. To exhibit that right does *not* depend on the claim itself; as held in Neill v. Gibson, 278 F.3d 1044, 1057 n.5 (10th Cir. 2001) [holding that omission of a 'dead bang winner' (claim) is *not* necessary to prevail on a claim that an attorney was ineffective for failing to raise an issue on appeal]. Without this Honorable Court Panel making a rule in uniformity; the appellate process (in Pennsylvania) will continue to impede procedural rights of individuals seeking review on the merits of their claims, during the post-sentencing and direct appeals.

24. The Petitioner avers that there is also a conflict of decisions between both the district courts of Pennsylvania and the United States Court of Appeals for

the Third Circuit. It is held in Richardson v. Superintendent Coal Twp. SCI, No. 15-4105 (Oct. 2, 2018); the Third Circuit ruled " We now hold that in Pennsylvania State Court, post-sentencing motions are a critical stage under the Sixth Amendment...So defendants have a right to counsel at that stage." [Id at pg. 23]. Furthermore, the Third Circuit Court of Appeals has also extended that Sixth Amendment right during the PCRA [state habeas] proceedings; when [PCRA] counsel fails to recognize ineffectiveness on behalf of the post-sentencing counsel during initial appellate review; (See: Workman v. Superintendent Albion SCI, No. 16-1969 (Sept. 11, 2018), [Id at pgs. 5-6]. However, even though the post-sentencing counsel qualifies as trial counsel, the district courts are **not** applying these recent rulings in their procedural rulings in Pennsylvania. * Appendix A- "Decision of the State District Court" (1/8/19)

25. Moreover, these claims are not procedurally defaulted [waived]. Whenever a defendant is tried in an **non-jury** trial proceeding; the 'Opinion in Support of the [guilty] Order' [1925(a)], is **not** part of the trial court record or transcripts. Therefore, the trial court's opinion was not filed until after counsel had to present their 'supplemental' post-sentence motion and Notice of Appeal. The Petitioner could **not** present the claim until the state habeas [PCRA] proceedings. Mr. Ballard had no way of knowing why he was convicted (during the post-sentencing and direct appeal; but, once he received a copy of the opinion, he exhausted these claims before both the state and district courts.

This Supreme Court upheld the decision in Duncan v. Owens, 136 S.Ct. 651 (2016)

26. The Petitioner respectfully asserts that this matter involves issues of substantial public importance. In addition, publication of a decision in uniformity [addressing these matters] is necessary when dealing with; cases of the first impression; clarity in a rule of law; attention to existing law or practices; resolution of apparent conflict in decisions within the circuits; and reversal of a published decision. Todd Ballard submits this petition for a writ of certiorari seeking review of this matter of imperative import; an immediate determination is required as his constitutional rights [and appellant's nationwide] are being impeded in this most serious matter. Mr. Ballard respectfully urges that this petition for a writ of certiorari be granted by this Honorable Supreme Court Panel.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X] For cases from the **federal courts:**

The opinion of the United States court of appeals at Appendix F to the petition and is

reported at Ballard v. Superintendent SCI Albion, No. 19-1143 (still not received); or
[] has been designated for publication but is not yet reported; or, **C.O.A. denial**
[X] is unpublished.

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

reported at Ballard v. Wenerowicz, et al. No. 2:14-CV-01453; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[X] For cases from the **state courts:**

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

reported at Cmwth. v. Ballard, No. 608 WDA 2012; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Allegheny County- Common Pleas court appears at Appendix C to the petition and is

reported at Cmwth. v. Ballard, No. 200601382; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was on
June 21, 2019 (still ~~not in~~ receipt to the Petitioner)
(just discovered on docket sheet)

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: July 10, 2019, and a copy of the order denying said
rehearing appears at Appendix F.

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

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

[X] For cases from state courts:

The date on which the highest state court decided my case was August 27, 2013. A copy
of that decision appears at Appendix B.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

	Page
Amendment VI to the United States Constitution	2
Amendment XIV to the United States Constitution	2
Article 1 § 10, Clause 1 ("No State shall enter into any...law impairing the obligation of contracts.")	1
Article VI § 2 (This Constitution provides that the Constitution and Laws of the United States ...shall be the Suprme Law of the Land.)	2
Article VI § 3 (all executive and judicial officers both of the United States and of the several states, shall be bound by oath or affirmation to support this Constitution.)	1
Article 1 § 17 (No ex post facto law, nor any law impairing the obligation of contracts...shall be passed.)	1
Article VI § 3 ("Public Officers") and ("oath of Office")	1
Act of 1988, April 13, P.L. 336, No. 47 (Post-Conviction relief Act)	5
42. Pa. C.S. § 9544(b) ("...an issue is <u>waived</u> if the petitioner could have raised it, but failed to do so...during unitary review on appeal")	5
42 Pa. C.S. § 9543	8
42 Pa. C.S. § 1925(a) (Opinion in Support of Order)	11

STATEMENT OF THE CASE

The Petitioner advances this cause of action on behalf of himself and listed additional parties in Pennsylvania. Mr. Ballard respectfully contends that (without any safeguards) the provisions of 42 Pa. C.S. § 9544 & 43 are unconstitutional, and said statutes [enacted by the general assembly of Pennsylvania] permits post-sentencing/ direct appellate counsel(s) to intentionally waive claims of merit concerning (non-ineffective assistance of trial counsel) issues.

The Petitioner filed his post-sentencing motion (which presented meritorious claims of trial court error, prosecutorial violations, and trial counsel ineffectiveness) "pro se", on or about January 10, 2008, (following his sentencing proceeding). On or about January 14, 2008; an Suzanne Swan [ID # 46183] was appointed as his post-sentencing/ direct appellate counsel. Mrs. Swan filed her "supplemental" post-sentence motion presenting the sole claim (the verdict was against the weight of the evidence presented at trial); and refused to re-iterate the Petitioner's original and requested claims, also during the direct appeal proceedings.

Moreover, said counsel lied and ill-advised the Petitioner that he could present any and all claims (not presented during direct appeal) in a PCRA [state habeas] petition. However, after following his counsel's instructions; Mr. Ballard (and the additional parties) have learned that the provisions of 42 Pa. C.S. § 9544(b) prohibits review of non-IATC issues not presented during the appeal stage. Subsequently, both the state appellate and district court have held this issues waived in Pennsylvania, conflicting the Third Circuit Appeal Court.

Mr. Ballard presents this Petition for Writ of Certiorari 28 U.S.C. § 2101(e) seeking reviewing review and resolution of this important question of law that has a substantial resolve of public importance; and require an immediate determination to solve the conflict of the State and district courts of Pennsylvania, with the recent ruling of Richardson v. Superintendent SCI- Coal Twp., No. 15-4105 (October 2, 2018).

REASONS FOR GRANTING THE PETITION

The Petitioner (and additional parties) have experienced that ignorance of the law is **no** excuse; especially when there is information [regarding law and procedure] made available to the public and counsel(s). However, when a novel issue (of the first impression) and/or question of the constitutionality of a law is being presented; there must be sound authoritatives which would serve as a guideline to be adhered to. When appellate procedures' constitutionality is "**The question of law involving an issue of substantial importance to the public**"; it is imperative that a resolution be determined to protect substantive rights, in accordance to the safeguards of the United States Constitution and its Amendments.

This particular matter has very distinguishing factors involved: (1) The Petitioner presented claims of merit in a [pro se] post-sentencing motion; (2) The sole jurist (non-jury trial) filed its 'Opinion in Support of His Order (verdict)' [42 Pa. C.S. § 1925(a)] after concluding the post-sentencing motion and Notice of Appeal filings; (3) The Opinion is based on evidence that does not exist; (4) The opinion was not part of the trial court record (during post-sentencing proceedings), and the Petitioner could not have presented such claim as appellate counsel refused to present it [amongst other claims]; and (5) The Petitioner's issues were deemed waived by both the State and District Courts of Pennsylvania [pursuant to 42 Pa. C.S. § 9544(b)]; which is in conflict with the recent rulings of Richardson v. Superintendent SCI Coal Twp., No. 15-4105, (October 2, 2018).

Other issues involved in this case concern: (1) The sole jurist' admission to **DAYDREAMING** during trial proceedings (on record); (2) Presented claims (the non-disclosure of forensic, firearm, and seriology test results during trial proceedings) are **intentionally** being ignored and not addressed, by both the State and District Courts of Pennsylvania to continue sanctioned practices in appellate review(s).

The Petitioner seeks this Honorable Supreme Court Panel's attention to these [questionable] statutes and unethical practices. Without an uniformed resolution by this Panel, there remains a conflict of decisions within both the district courts and their respective circuit courts of appeal. This matter affects not just the Petitioner (and additional parties listed herein), but the **national** class of appellants whose claims are being **intentionally waived** by appellate counsels. Therefore, this petition is presented as a public question of law/procedure to protect due process vested in a fair and full opportunity for appellants to obtain meaningful adjudication of claims state and nationwide.

CONCLUSION

WHEREFORE, for the aforesaid reasons, the Petitioner respectfully moves this Honorable Supreme Court Panel that this petition for a writ of certiorari be granted in this matter.

Respectfully submitted;

Todd B. Mard

Date: February 25, 2020
Re-Submitted