

ORIGINAL

NO. 19-8140

Supreme Court, U.S.  
FILED

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Benjamin Dennerlein,

Petitioner

V.

Superintendent, State Correctional Institution at  
Rockview, Et. Al.,

Respondent

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**PETITION FOR WRIT OF CERTIORARI**

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Petition for Writ of Certiorari from the Order of the United States Court of Appeals for the Third Circuit, at docket number 19-2241 affirming the decision of the United States District Court of the Western District of Pennsylvania at Docket Number 2:16-cv-00780-MPK denying a Petition for Writ of Habeas Corpus pursuant to **28 U.S.C. § 2254**.

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Benjamin Dennerlein, JT1142  
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## **QUESTIONS PRESENTED FOR REVIEW**

**Ground I.** Does Strickland v. Washington, 466 U.S. 668 (1984) prejudice threshold condone the actions of Counsel, Thomas Kurt Fuchel, Sr., Esq. when Counsel assaults his client pre-trial, covered up said assault defrauding the Trial Court, thereby creating an extremely hostile environment in which Counsel is incapable of operating within the fundamental fairness of the proceeding where the P.C.R.A. Court acquiesces to Counsel's failure to investigate along with the lack of presentation of valid impeachment evidence?

(Proposed Answer in the Positive)

**Ground II.** Does the prejudice under Strickland as demonstrated within Ground I show that the United States Court of Appeals failed to adequately apply said standard to the initial grounds challenging the validity/veracity of the Court failing to rule on in-court ineffective assistance of counsel claims brought by Mr. Dennerlein regarding the authorized access to the alleged victim's bank account during a five (5) month period, prior to the murder, undermining the fundamental fairness of the entire trial proceeding along with Counsel failing to object to two (2) of the prosecution's witnesses testimony regarding prior incarcerations of Mr. Dennerlein?

(Proposed Answer in the Positive)

## PARTIES

The Petitioner in the above captioned matter is Mr. Benjamin Dennerlein, (Mr. Dennerlein), *Pro Se*, who resides at the State Correctional Institution at Rockview, 1 Rockview Place, Box A. Bellefonte, PA 16823.

Respondent in the above captioned matter is the Commonwealth of Pennsylvania represented by a District Attorney, whose office is located within the Beaver County District Attorney's Office, Beaver County Courthouse, 810 Third Street, Beaver, PA 15009.

Mark Garman is represented by Theron Richard Perez, Esq., Chief Counsel of the Department of Corrections, whose office is located at 1920 Technology Parkway, Mechanicsburg, PA 17050.

## **CONCISE STATEMENT OF THE CASE**

This is a Petition for Writ of Certiorari by Benjamin Dennerlein, (Mr. Dennerlein), from the denial of the United States Court of Appeals of the Third Circuit, at Docket Number 19-2241.

On June 17, 2009, Mr. Dennerlein was charged with criminal homicide at information number CP-04-CR-0001592-2009. The charge stemmed from an incident that occurred in Freedom Borough, Beaver County, Pennsylvania, in either the late evening hours of May 12 or early morning hours of May 13, 2009. The alleged victim, Elizabeth Grosskopf, (Ms. Grosskopf), was found dead in her residence at 1475 Fifth Avenue, Freedom Borough, Beaver County, Pennsylvania. An autopsy determined that Ms. Grosskopf died due to multiple stab wounds to the head and neck areas. After an investigation by the Freedom Borough Police and the Beaver County Detective's Bureau, Mr. Dennerlein was charged with Criminal Homicide on June 17, 2009. On July 26, 2010, a jury trial was scheduled before the Honorable John Dohanich. Mr. Dennerlein was represented by Thomas Kurt Fuchel, Sr., Esq., (Mr. Fuchel), Assistant Public Defender for trial proceedings.

After a jury trial, Mr. Dennerlein was convicted of first degree murder on August 4, 2010.<sup>1</sup>

On September 29, 2010, at a sentencing hearing before the Honorable John Dohanich, Mr. Dennerlein, represented by Thomas Kurt Fuchel, Sr., Esq., was sentenced to a term of life imprisonment without the possibility of parole<sup>2</sup>. No post sentence motions were filed, but a timely notice of appeal was filed *Pro Se* with the Superior Court of Pennsylvania Western District on October 27, 2010. During proceedings at the Superior Court, pursuant to an Order entered on August 8, 2011, Mr. Dennerlein was appointed new Counsel, Mitchell P. Shahen, Esq., (Mr. Shahen) after Trial Counsel, Mr. Fuchel, failed to file Appellant's Brief.

The Superior Court of Pennsylvania Western District affirmed the judgment of sentence at Docket Number 1671 MDA 2010 on April 2, 2012. The Supreme Court of Pennsylvania Western District denied Petition for Allowance of Appeal, (Allocatur), at Docket Number 202 WAL 2012 on October 22, 2012.

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<sup>1</sup> 18 Pa.C.S.A. § 2501.

<sup>2</sup> 18 Pa.C.S.A. § 1102(a)(1).

Mr. Dennerlein filed a timely *Pro Se* Post Conviction Relief Act<sup>3</sup>, (PCRA), Petition at information number CP-04-CR-0001592-2009 on September 22, 2013. On October 7, 2013, Mr. Dennerlein was assigned Counsel, Mr. Shahen, who represented Mr. Dennerlein during the PCRA proceedings. On April 2, 2014, Mr. Shahen requested a *nunc pro tunc* extension within which to file the amended *counseled*, PCRA petition. Mr. Dennerlein's amended PCRA petition was filed April 7, 2014.

On May 4, 2014, the Honorable James J. Ross, issued an Order for the Commonwealth to file a response in opposition to an Amended PCRA filed on behalf of Mr. Dennerlein. On May 20, 2014, it was ordered that counsel for the Commonwealth and Counsel for Mr. Dennerlein appear on May 27, 2014, before the Honorable James J. Ross, at which time the Commonwealth shall establish cause why the relief should not be granted, or that sanctions should not be imposed against the Commonwealth for failure to comply with the Order dated May 1, 2014.

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<sup>3</sup> 42 Pa.C.S.A. § 9541, et seq.

On May 22, 2014, Counsel for the Commonwealth filed an answer to Mr. Dennerlein's amended PCRA, requesting all motions be denied in their entirety and without hearing. On June 6, 2014, upon consideration of all materials presented, the Court ordered a hearing on Mr. Dennerlein's Amended PCRA scheduled for August 4, 2014. After briefing, the hearing was conducted on August 4, 6, & 8, 2014. On November 18, 2014, the Honorable James J. Ross issued a Memorandum Opinion and Order denying Mr. Dennerlein's Amended PCRA Petition.

On December 18, 2014, Mr. Shahen filed a Notice of Appeal with the Superior Court of Pennsylvania Western District, at Docket Number 2065 WDA 2014. On November 16, 2015, the Superior Court of Pennsylvania Western District issued an Opinion where the Court adopted the entirety of the Trial Court's opinion denying Mr. Dennerlein's PCRA Petition. On December 16, 2015, Mr. Dennerlein through Counsel, Mr. Shahen, filed an Allocatur with the Supreme Court of Pennsylvania Western District at Docket Number 494 WAL 2015. On March 24, 2016, the Supreme Court of Pennsylvania Western District, denied the Petition for Allocatur.

On June 1, 2016<sup>4</sup>, Mr. Dennerlein filed a Petition for Writ of Habeas Corpus with the United States District Court for the Western District of Pennsylvania at Docket Number 2:16-cv-00780-MPK. Honorable Magistrate Judge Maureen P. Kelly was assigned to the matter based upon consent from all parties to the exercise of plenary jurisdiction. On May 16, 2019, the Honorable Magistrate Judge Maureen P. Kelly issued an Opinion and Order in the matter, denying the Petition for Writ of Habeas Corpus and denying issuance of a Certificate of Appealability. Mr. Dennerlein filed a Notice of Appeal on May 21, 2019. Mr. Dennerlein filed an Application for Certificate of Appealability on June 10, 2019. After review the United States Court of Appeals for the Third Circuit denied review at Docket Number: 19-2241. Mr. Dennerlein filed an Application for Rehearing to the United States Court of Appeals for the Third Circuit on December 16, 2019. After review the United States Court of Appeals for the Third Circuit denied review on January 13, 2020 leading to this instant appeal.

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<sup>4</sup> Petition was filed with the Court, through the United States Clerk on June 16, 2016, however, utilizing **Prisoner's Mailbox Rule**, Mr. Dennerlein's Petition for Writ of Habeas Corpus was docketed on June 1, 2016.

**REFERENCE TO THE OPINIONS**  
**DELIVERED IN THE COURTS BELOW**

The Order of the United States Court of Appeals for the Third Circuit is reproduced in its entirety at Appendix A. The Order of the United States District Court of the Western District of Pennsylvania is reproduced at Appendix B.

## CONCISE STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court applies to Mr. Dennerlein's instant appeal based on the Constitutional jurisdiction granted to the United States Supreme Court by the founding fathers in Article III § 2 of the United States Constitution which states in relevant part:

"The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; - to all cases affecting Ambassadors, other public Ministers and Consuls; - to all cases of admiralty and maritime jurisdiction; - to controversies to which the United States shall be a party; - to controversies between two or more states; - between a State and citizens of another State; - between citizens of different states; - between citizens of the same state claiming lands under the grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

In the case sub judice, this Honorable Court retains appellate jurisdiction upon the collateral review challenge to multiple instances of Ineffective assistance of counsel during the representation of Counsel,

Mr. Thomas Kurt Fuchel, Sr., Esq., (Mr. Fuchel), challenging the judgment of sentence imposed upon him in the Beaver County Court of Common Pleas, Beaver County, Pennsylvania.

## **REASONS RELIED UPON FOR WRIT OF CERTIORARI**

**Ground I.** Does Strickland v. Washington, 466 U.S. 668 (1984) prejudice threshold condone the actions of Counsel, Thomas Kurt Fuchel, Sr., Esq. when Counsel assaults his client pre-trial, covered up said assault defrauding the Trial Court, thereby creating an extremely "hostile" environment in which Counsel is incapable of operating within the fundamental fairness of the proceeding where the P.C.R.A. Court acquiesces to Counsel's failure to investigate along with the lack of presentation of valid impeachment evidence?

Recently, an Eleventh Circuit District Court described the prejudice prong of Strickland in scrupulous detail within their decision in Broadnax, v. Dunn, 2019 U.S. Dist. LEXIS 214851 (2019), as the Court opined:

"A petitioner's burden of establishing that his lawyer's deficient performance prejudiced his case is also high." "It is not enough for the [habeas petitioner] to show that the errors had some conceivable effect on the outcome of the proceeding." ("The likelihood of a different result must be substantial, not just conceivable."). Instead, the habeas petitioner "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome...' To satisfy this high standard, a petitioner must present competent evidence proving "that trial counsel's deficient performance deprived him of 'a trial whose result is reliable.' In other words, '[a] finding of prejudice requires proof of unprofessional errors so egregious that the trial was rendered unfair and the verdict rendered suspect."

(Broadnax, 2019 U.S. Dist. LEXIS at 25)(citing Strickland, 466 U.S. at 693, 694, 695; Harrington v. Richter, 562 U.S. 86 (2011) ; Van Poyck v. Florida Department of Corrections, 290 F.3d 1318, 1322 (11th Cir. 2002); Brown v. Jones, 255 F.3d 1273, 1278 (11th Cir. 2001); Johnson v. Alabama, 256 F.3d 1156, 1177 (11th Cir. 2001); and Stewart v. Secretary, Department of Corrections, 476 F.3d 1193, 1209 (11th Cir. 2007)).

With the Broadnax Court's explanation in mind, Mr. Dennerlein presents the fact that the conduct of Thomas Kurt Fuchel, Sr., Esq., (Mr. Fuchel), meets the "egregious"<sup>5</sup> nature of Strickland's prejudice requirement. Mr. Fuchel's assault of Mr. Dennerlein during a pre-trial interview with his paralegal, Ms. Dionna Steele, (Ms. Steele), present, over a simple dispute initiating over discovery was not only a violation of reasonable attorney conduct principles, but further, a direct violation of Mr. Dennerlein's right to be safe and secure in his person.<sup>6</sup>

Mr. Dennerlein contends that the nefarious pre-trial actions of Mr. Fuchel severely hampered any further representation that could have been rendered throughout the tribunal.

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<sup>5</sup> **Id at 25.**

<sup>6</sup> **Amendment 4, (U.S. Const.)** states that: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

In the matter *sub judice*, Mr. Fuchel, when pressed about his ineffectiveness for failure to impeach Commonwealth witnesses went so far as to accuse Mr. Dennerlein of physically assaulting Mr. Fuchel and Ms. Steele about a month before trial during an interview at the Beaver County Jail. This issue was addressed at the P.C.R.A. hearing and in the P.C.R.A. Court's Opinion.<sup>7</sup>

Mr. Dennerlein then testified that it was Mr. Fuchel himself who was the aggressor, assaulting Mr. Dennerlein by slamming his hands down on the table and leaping across the table at Mr. Dennerlein knocking over Ms. Steele in the process.<sup>8</sup> Certain that Mr. Fuchel's version of events was the truth, the Commonwealth called Ms. Steele as a witness to confirm Mr. Fuchel's version of events. To the Commonwealth's surprise, as well as Judge Ross' surprise, Ms. Steele confirmed Mr. Dennerlein's version of events "to the letter," saying Mr. Fuchel was the "instigator" and Mr. Dennerlein was never anything but a perfect gentleman during her interaction with Mr. Dennerlein. Ms Steele went on to describe the attorney/client relationship as "hostile"<sup>9</sup>

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<sup>7</sup> P.C.R.A. Transcript, Volume I, pgs 2599-2602.

<sup>8</sup> P.C.R.A. Transcript, Volume I, pgs 2754-2762.

<sup>9</sup> P.C.R.A. Transcript, Volume III, pgs 2920-2934.

The P.C.R.A. Court ruled the events “troubling,” stunned that Ms. Steele’s testimony matched Mr. Dennerlein’s “to the letter,” but yet failed to give Mr. Dennerlein relief through the P.C.R.A. for this outrageous, unethical, unprofessional, and criminal conduct *prior-to-trial* by Mr. Fuchel.<sup>10</sup>

Neither the United States Court of Appeals for the Third Circuit nor the United States District Court for the Western District of Pennsylvania gave weight or consideration to Fuchel’s pre-trial assault of Mr. Dennerlein in their opinion denying Mr. Dennerlein Habeas relief.

At this time, through relevant research, Mr. Dennerlein has been unable to ascertain any applicable *stare decisis* as when Counsel assaults his/her client. However, in distinguishment, when determining a defendant’s assault on an attorney, the Circuits are split on the overall understanding of an assault on an attorney, yet the Circuit’s concur in the method of Amendment 6, (U.S. Const.) application. Within the Second Circuit’s decision in Wilkerson v.

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<sup>10</sup> P.C.R.A. Memorandum Opinion, Judge James Ross, pgs. 2999-3000, adopted in its entirety by the Superior Court of Pennsylvania.

Burge, 2005 U.S. Dist. LEXIS 14679 (2<sup>nd</sup> Cir. July 20, 2005) the Court opined that:

"[T]he defendant is unable to afford counsel, the state is required to provide counsel at its expense, "unless the right is competently and intelligently waived..." Here, the state does not argue that Wilkerson waived his right to counsel. Rather it asserts that, by reason of his conduct, he forfeited his right to counsel. Applying the underpinnings of Illinois v. Allen, 397 U.S. 337 (1970) that "a defendant who misbehaves in the courtroom may forfeit his constitutional right to be present at trial," the Eleventh Circuit held that "a defendant who is abusive toward his attorney may forfeit his right to counsel." United States v. McLeod, 53 F.3d 322, 325 (11th Cir. 1995) (upholding a finding of forfeiture of counsel based upon the defendant's verbal abuse, repeated threats of lawsuits, and requests that his counsel engage in unethical conduct.)."

(Wilkerson, 2005 U.S. Dist. LEXIS at 13)

The Third Circuit within United States v. Leggett, 162 F.3d 237, 250 (3d Cir. 1998) that "unprovoked physical battery" causes "forfeiture" of Counsel, where the Court opined:

"Forfeiture, on the other hand, does not require the knowing and intentional relinquishment of a known right. Rather, forfeiture 'results in the loss of a right regardless of the defendant's knowledge thereof and irrespective of whether the defendant intended to relinquish the right...' To forfeit the right to legal representation, a defendant must engage in 'extremely serious misconduct...' For example, in McLeod, a defendant's attorney testified that the defendant was 'verbally abusive'; had 'threatened to harm[the attorney]'; had threatened to sue the attorney; and had tried to

persuade the attorney to engage in unethical conduct... The district court concluded that the defendant's behavior was so egregious as to constitute a forfeiture of the right to counsel - and the court of appeals for the Eleventh Circuit agreed by affirming that decision... Leggett's conduct was even more extreme than that of the defendant in McLeod. Whereas the McLeod defendant's abuse of his attorney was verbal in nature, Leggett's abuse was an unprovoked physical battery. We do not hesitate to conclude that such an attack qualifies as the sort of "extremely serious misconduct" that amounts to the forfeiture of the right to counsel.. Certainly, it would be difficult to quantify a death threat as any more or less offensive to the sensibilities of civilized society than, say, an actual physical assault. Both acts are reprehensible... We concluded that a forfeiture ruling could not be based entirely on evidence presented at an *ex parte* hearing...No such evidentiary problem exists in this case. An evidentiary hearing was not necessary because Leggett assaulted [the attorney] in full view of the district court... In sum, we conclude that the district court did not err in determining that, by physically attacking his attorney, Leggett forfeited his right to counsel at the sentencing hearing."

**(Leggett, 162 F.3d at 250)(citing McLeod, 53 F.3d at 322, 325 n.6; and United States v. Goldberg, 67 F.3d 1092, 1100, 1102 (3d Cir. 1995))**

The instant matter is clearly set apart from the *stare decisis supra*, as Mr. Dennerlein was attacked instead by Counsel, Mr. Fuchel. It stands to reason that while its "difficult to quantify [the 'unprovoked physical battery' by a defendant] as any more or less offensive to the

sensibilities of civilized society,”<sup>11</sup> such actions by Counsel as the “perpetrator,” is far more “egregious”<sup>12</sup>

In fact, throughout American jurisprudence, “[as] a practicing attorney, [Mr. Fuchel] was held to a higher standard and was bound to act as a prudent attorney [ ] under the circumstances. By failing to take steps appropriate to an attorney... [Mr. Fuchel] breached his duties and caused harm to [Mr. Dennerlein].<sup>13</sup> Within Leggett and Wilkerson, the penalty for the defendant assaulting the attorney was that of removal of counsel. Mr. Dennerlein contends that similar relief should be extended in the matter toward Mr. Fuchel.

A reasonable person would be at the least, exceedingly reluctant to do business with any person, who had assaulted him. Nevertheless, Mr. Dennerlein was in a position of dire need, a criminally accused individual charged with a murder, facing the death penalty, then the only attorney within Beaver County available to represent him as a “death penalty qualified attorney,”<sup>14</sup> assaulted him. It should be noted,

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<sup>11</sup> Leggett, 162 F.3d at 250.

<sup>12</sup> Broadnax, 2019 U.S. Dist. LEXIS at 25.

<sup>13</sup> The Estate of Thomas Brawner Sr., 2016 Phila. Ct. Com. Pl. LEXIS 238 (July 21, 2016).

<sup>14</sup> Pa.R.Crim.P. Rule 801 (Qualifications for Defense Counsel in Capital Cases) (“In all cases in which the attorney for the Commonwealth has filed a Notice of

that while Mr. Fuchel was “death penalty qualified,” prior to trial, the death penalty was removed as a prosecution option, eliminating Mr. Fuchel as the sole option for representation.

Mr. Fuchel created such a fear-provoking environment with Mr. Dennerlein, that likening to a “battered wife,”<sup>15</sup> or a survivor of war Mr. Dennerlein was unable to terminate Counsel’s representation without extreme fear of repercussion or elimination. In fact, at one point within the proceedings, Mr. Dennerlein actually tried to terminate Counsel, only to be forced to continue representation with Mr. Fuchel by the Court. Moreover, Mr. Fuchel told Mr. Dennerlein in their last pre-trial meeting after Mr. Fuchel was ordered to continue to represent Mr. Dennerlein, “You’ve embarrassed me in front of my colleagues. My investigation of this case is over. We’re going to trial with what we got here. You’re going to burn. Have a nice life.”<sup>16</sup> This is proof Mr. Fuchel

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Aggravating Circumstances pursuant to Rule 802, before an attorney may participate in any stage of the case either as retained or appointed counsel, the attorney must meet the educational and experiential criteria set forth in this rule...”)

<sup>15</sup> Commonwealth v. Stonehouse, 555 A.2d 772, 783 (describing “[a] battered woman [as] a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights...’ Battered women have been compared to hostages, prisoners of war, and concentration camp victims”)

<sup>16</sup> P.C.R.A. Transcript Volume # 2, pgs 2761-2762.

never even intended to investigate, or even knew, about impeachment evidence at the time of trial.

Pennsylvania Rules of Professional Conduct is very clear on the definition of professional misconduct where the Rules state within **Pa.R.Prof.Cond. Rule 8.4** that:

**“Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

- (a)** violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b)** commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c)** engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d)** engage in conduct that is prejudicial to the administration of justice;
- (e)** state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f)** knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.”

Mr. Fuchel's conduct, proven through testimony of Ms. Steele, (a Commonwealth Witness); Mr. Dennerlein; and the blatant disregard of

Pennsylvania Rules of Professional conduct of Mr. Fuchel in violating **Pa.R.Prof.Cond. Rule(s) 8.4(a), (b), (c), (d), and (f)** solidifying the prejudice threshold within the foundation of the **Strickland**.

“There is a ‘strong presumption’ that an attorney’s representation falls within ‘the wide range of reasonable professional assistance.’”<sup>17</sup> “The presumption is overcome only when an attorney error was so egregious that counsel’s representation ultimately ‘amounted to incompetence’ under ‘prevailing professional norms.’”<sup>18</sup> In fact, *stare decisis* requires that “attorney performance [is] “deficient” where errors are ‘so serious’ that [the] attorney ‘no longer functions as ‘counsel’ contemplated by the **Sixth Amendment19**

While it was true that Mr. Fuchel was not “incompetent” as required by the **Richter** Court’s interpretation of **Strickland**, *supra*, Mr. Fuchel’s conduct of assaulting his client evidently surges toward actions “so serious” that [the] attorney ‘no longer functions as ‘counsel.’”<sup>20</sup> Such clearly outweighs the presumption of an attorney’s representation is reasonable. Mr. Dennerlein contends that Mr.

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<sup>17</sup> **Richter, 562 U.S. at 104**

<sup>18</sup> **Richter, 562 U.S. at 105**

<sup>19</sup> **Maryland v. Kulbicki, 136 S. Ct. 2, 3, (2015) (per curiam)**

<sup>20</sup> **Kulbicki, 136 S. Ct. at 2, 3**

Fuchel's "deficient performance deprived him of 'a trial whose result is reliable.'"<sup>21</sup>

It is apparent from the language of **Strickland**, along with other associated *stare decisis* presented *supra*, that Mr. Dennerlein has shown that this Honorable Court did not yield to **Strickland** condoning, supporting, or permitting conduct in a nature that is unbecoming or degrading of the legal profession, or allows for the appearance of impropriety in said profession.

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<sup>21</sup> Broadnax, 2019 U.S. Dist. LEXIS at 25

**Ground II.** Does the prejudice under Strickland as demonstrated within Ground I show that the United States Court of Appeals failed to adequately apply said standard to the initial grounds challenging the validity/veracity of the Court failing to rule on in-court ineffective assistance of counsel claims brought by Mr. Dennerlein regarding the authorized access to the alleged victim's bank account during a five (5) month period, prior to the murder, undermining the fundamental fairness of the entire trial proceeding along with Counsel failing to object to two (2) of the prosecution's witnesses testimony regarding prior incarcerations of Mr. Dennerlein?

Trial Counsel, the P.C.R.A. Court, and the Pennsylvania Superior Court by adopting the P.C.R.A. Court's Opinion as it's own, completely failed to give any weight to Mr. Dennerlein's lawful, authorized access to the victim's bank account. After allowing evidence and testimony to be presented proving Mr. Dennerlein's access was authorized, the P.C.R.A. Court simply ignored this evidence/testimony in it's Opinion denying relief based on Mr. Fuchel's ineffectiveness at trial, relying instead on how this evidence was presented at trial; as unauthorized theft and as the sole motive to commit murder.

Now, the United States District Court and that of the United States Court of Appeals further ignore the totality of this evidence by claiming that because one Commonwealth witness, Laura Rankin, (Ms. Rankin), made mention during her trial testimony that Mr. Dennerlein

had used the victim's debit card on previous occasions in her presence,<sup>22</sup> that should somehow be sufficient to challenge the Commonwealth's theory of motive to commit 1<sup>st</sup> degree murder?<sup>23</sup>

Contrary to the Court's position that Mr. Dennerlein is attempting to achieve Federal Habeas relief for errors made in collateral proceedings.<sup>24</sup> Mr. Dennerlein is actually claiming that the error was made by trial counsel, then the proof of trial counsel's errors was presented during the collateral proceedings, then the P.C.R.A. Court failed to give weight to it, as now is the United States District Court.

Put simply, the error is the trial counsel's alone, and after proof of Mr. Dennerlein's authorized access to the victim's bank account was presented at the P.C.R.A. hearing, the P.C.R.A. Court, the Pennsylvania Appellate Courts, and now the United States District Court have all failed to give weight to the proof of trial counsel's failure that was presented as an ineffective claim at the P.C.R.A. hearing. The Court goes further to state: "[E]ven if we were to review [Mr. Dennerlein's] Ground 2 [and Ground 3] de novo, we would find for the

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<sup>22</sup> Trail Transcript, Vol. IV, pp 340-41

<sup>23</sup> Opinion at 24-6

<sup>24</sup> Opinion at 24; See Lambert v. Blackwell, 387 F.3d 210, 247 (3<sup>rd</sup> Cir. 2004).

same reasons that [Mr. Dennerlein] fails to establish prejudice under Ground One.”<sup>25</sup>

Prejudice under **Strickland** as to Ground One has been demonstrated in this Petition for Writ of Certiorari, and if this Court agrees the prejudice prong under Ground One has been met, then prejudice has been proven to Ground Two and Three of Mr. Dennerlein’s Writ of Habeas Corpus Petition also.

Lastly, the Court concedes as to Mr. Dennerlein’s Ground Three in his Petition for Writ of Habeas Corpus that “we fail to see [how trial counsel wanting or permitting the evidence of [Mr. Dennerlein’s] incarceration to come before the jury] provides a reasonable ground for his trial counsel not seeking a limiting instruction [or, curative] instructions as to how the jury should consider the evidence of [Mr. Dennerlein’s] incarceration, a claim of ineffectiveness that [Mr. Dennerlein] also makes.”<sup>26</sup>

Again, based on the Court’s own words and if this Court feels prejudice as to Ground One has been demonstrated by Mr. Dennerlein,

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<sup>25</sup> Opinion at 26, 29.

<sup>26</sup> Opinion at 28, n. 2

then prejudice has been proven as to Mr. Dennerlein's Ground Three in his Petition for Writ of Habeas Corpus.

## CONCLUSION

Strickland's prejudice threshold fails to condone the actions of Counsel, Thomas Kurt Fuchel, Sr., Esq. when he assaults Mr. Dennerlein pre-trial, covered up said assault through defrauding the Court, creating an extremely hostile, almost abusive environment in which Mr. Fuchel was incapable of operating within the fundamental fairness of the proceeding.

Mr. Dennerlein contends that the prejudice under Strickland as demonstrated within Ground I show that the United States Court of Appeals failed to adequately apply the prejudice threshold to the initial grounds challenging the validity/veracity of the Court failing to rule on in-court ineffective assistance of counsel claims brought by Mr. Dennerlein regarding the authorized access to the alleged victim's bank account during a five (5) month period, prior to the murder, undermined the fundamental fairness of the entire trial proceeding.

**WHEREFORE**, for the reasons, *supra*, Mr. Benjamin Dennerlein, *Pro Se*, Appellant in the above captioned case, prays this Honorable Court vacate the judgment of sentence by the Beaver County Court of Common Pleas, recommend Mr. Fuchel for censure in accordance with

applicable requirements of law and/or any other prudent relief this Honorable Court deems appropriate.

Respectfully Submitted,



(signature)

Benjamin Dennerlein, JT1142  
*Pro Se*, Petitioner  
S.C.I. Rockview  
1 Rockview Place/Box A  
Bellefonte, PA 16823-0820

Date: March 17, 2020

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IN THE  
SUPREME COURT OF THE UNITED STATES

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Benjamin Dennerlein, ) No: \_\_\_\_\_  
Petitioner )  
VS. ) (U.S. Crt. of Appeals No: 19-  
 ) 2241 )  
 ) (U.S. Dist. Crt. West. Dist. Pa.  
 ) No: 2:16-cv-00780-MPK )  
Superintendent, State Correctional )  
Institution at Rockview, Et. Al., ) PETITION FOR WRIT OF  
Respondents ) CERTIORARI

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**CERTIFICATE OF COMPLIANCE**

1. This brief complies with both the page limit along with the type-volume limitation of Supreme Court Rule 33 due to the following:

(a) This brief contains less than forty (40) pages, inclusive of four thousand six hundred ninety four, (4,694) words, or thirty thousand eighty-four (30,084) characters including spaces excluding the parts of the brief excluded by Supreme Court Rule 33.2

2. This brief complies with the typeface and the type style requirements of Supreme Court Rule 33 due to the following:

(a) This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2002 SP3, Version 10.6612.6626 in Century Schoolbook, with a font size of 14.

Respectfully Submitted,



(signature)

Date: March 17, 2020

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S.C.I. Rockview  
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Bellefonte, PA 16823-0820

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Respondents ) (U.S. Dist. Crt. West. Dist. Pa.  
 ) No: 2:16-cv-00780-MPK)  
 ) **PETITION FOR WRIT OF**  
 ) **CERTIORARI**

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**CERTIFICATE OF SERVICE**

I, Benjamin Dennerlein, pro se, Petitioner in the above captioned matter, do hereby aver that copies of the attached/enclosed Petition for Writ of Certiorari have been mailed to the below listed person(s) by First Class Mail, postage paid, on this 17<sup>th</sup> day of March, 2020, in compliance with **Supreme Court Rule 29**.

This service also satisfies the applicable requirements of the **Prisoner's Mailbox Rule**, outlined in **Houston v. Lack, 108 S.Ct. 2379 (1988)**; and its Pennsylvania progeny in **Commonwealth v.**

**Jones, 700 A.2d 423 (1997); and under penalty of perjury (28 U.S.C. § 1746).**

**Service by First Class Mail:**

Scott S. Harris, Clerk  
Supreme Court of the  
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1 1<sup>st</sup> Street, NE  
Washington, DC 20543-0001

**Service by First Class Mail:**

Jennifer Popovich, Esq.  
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Chief Counsel  
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Respectfully Submitted,



(signature)

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Bellefonte, PA 16823-0820

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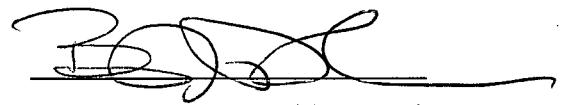
**UNSWORN DECLARATION**

The facts set forth in the foregoing Petition for Writ of Certiorari are true and correct to the best of the Mr. Dennerlein's knowledge, information, and belief and are verified subject to the penalties for unsworn falsification to authorities under the United States Code (28 U.S.C. § 1746).

No Notary  
Required

Respectfully Submitted,

Date: March 17, 2020



(signature)

Benjamin Dennerlein, JT1142  
*Pro Se*, Petitioner  
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1 Rockview Place/Box A  
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