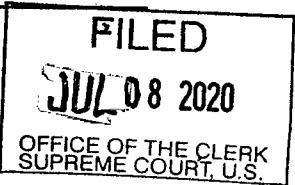


20-5281

SUPREME COURT OF THE UNITED STATES

IN.RE: STEVEN ROBINSON A/K/A MICHAEL MOORE



PETITIONER,

v

ORIGINAL

UNITED STATES OF AMERICA

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

"BRIEF FOR PETITIONER"

STEVEN ROBINSON A/K/A/ MICHAEL MOORE

PRO -SE

MICHAEL MOORE # 08088-007

RIVERS CORRECTIONAL INSTITUTION

P.O. BOX 630

WINTON, NC 27986

QUESTION PRESENTED

- I. WAS PETITIONER'S FIFTH AMENDMENT COMPULSORY SELF INCRIMINATION WAS VIOLATED BECAUSE THE PROSECUTING ATTORNEYS GLENN KIRSCHNER AND NIHAR MOHANTY THREATEN TO PROSECUTE PETITIONER'S BABY'S MOTHER [NASTASHA HENDERSON] FOR OBSTRUCTION OF JUSTICE, IF PETITIONER DID NOT ADMIT GUILT TO: SECOND DEGREE MURDER WHILE ARMED AND OBSTRUCTION OF JUSTICE?
- II. WAS PETITIONER DENIED SIXTH AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL BY HIS ATTORNEY PAUL SIGNET FOR FAILING TO INVESTIGATE THE CIRCUMSTANCES OF PETITIONER'S PLEA AGREEMENT BEFORE HE PROVIDED PETITIONER MANIFESTLY INCORRECT INFORMATION AND ADVISED PETITIONER TO ENTER A PLEA OF GUILTY TO SAVE HIS BABY'S MOTHER?
- III. WAS PETITIONER DENIED FOURTEENTH AMENDMENT PROCEDURAL DUE PROCESS WHEN HE TRIED TO BRING HIS FACTUAL CONSTITUTION CLAIMS TO THE COURT'S ATTENTION AND THEY REJECT HIS CLAIMS, EVIDENCE AND CONSIDERED HIS CLAIMS PROCEDURALLY BARRED?

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SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA,  
RESPONDENT.

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~~PETITION FOR WRIT OF CERTIORARI~~ PETITION FOR WRIT OF CERTIORARI

Steven Robinson (herein Petitioner) petition for a Writ of Certiorari to review the Judgment of the District of Columbia Court of Appeals affirming the District of Columbia Superior Court denying petitioner's D.C. Code § 23-110 motion to vacate, set aside or correct sentence, alternative, to withdraw a guilty plea after sentence to correct 'manifest injustice'.

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OPINIONS BELOW

The opinions of the Court of Appeals are (App.# 1A - 2A) and the Superior Court are (1B - 10B)

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JURISDICTION

The Judgment from the Court of Appeals was entered on April 30, 2020, and is invoked pursuant to Rule 10 (c) of this Court

## TABLE OF AUTHORITIES

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## CONSTITUTIONAL AND STATUTORY PROVISIONS

**Fifth Amendment Compulsory Self-Incrimination:** any form of coercion, physical or psychological which renders a confession of crime or an admission involuntary is in violation of the Fifth Amendment and due process clause of the 14th Amendment. Such practices contravene the very basis to our criminal jurisprudence which is accusatorial, not inquisitorial.

**Sixth Amendment Ineffective Assistance of Counsel:** the sixth amendment imposes on counsel a duty to investigate because reasonable effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options.

**Fourteenth Amendment Procedural Due Process:** for the guarantees of procedural due process to apply, it must first be shown that a deprivation of a significant life, liberty, or property interest has occurred. This is necessary to bring the Due Process Clause into play. Minimal procedural due process is that parties whose rights are to be affected are entitled to be heard and in order that they enjoy that right they must be notified.

### D.C. Code Statute:

22 D.C. Code, see 1805(a)

22 D.C. Code, see 2101, 4502

22 D.C. Code. see 4504(b) (3)

## CONSTITUTIONAL AND STATUTORY PROVISIONS

22 D.C. Code, sec.3215

22 D.C. Code, sec.4504(a)(2001 ed.)

D.C. Code § 23-110 'manifest injustice'  
standard; alternatively, D.C. Superior Court Rule 32(e) motion  
to withdraw a guilty plea.

D.C. Code §22 - 4131 (7)(A)

### Parties

Paul Signet, trial/plea proceeding Attorney

Archie Nichols, §23-110 Hearing Attorney

Kevin McCants, retain appellate Attorney

Erik Chirstian, plea/motion proceeding Judge

Gleen Kirschner, plea proceeding prosecutor

Nihar Mohanty, plea proceeding prosecutor

Elizabeth Trasman, appellate prosecutor

### STATEMENT OF CASE

John Allen, Jr., was shot and killed on December 31, 2005; petitioner was arrested in connection with Mr. Allen's murder on February 14, 2006.

On September 12, 2006 petitioner was indicted on five (5) counts: 22-1805(a); Carrying a Pistol Without a License, 22-2101, 4502- Conspiracy, §22-4504(b)-First-Degree Murder While Armed(premeditated), §22-3215-Possession of a Firearm During Crime of Violence or Dangerous Offense, and §22-4504(a)(2001.ed)

STATEMENT OF CASE

**Unauthorized Use of Vehicle.**

On August 16, 2007 petitioner plead guilty to:second degree murder while armed and obstruction of justice.

On August 21, 2007 petitioner attempted to withdraw his guilty plea,asserting that (1) the government coerced him into pleading guilty by threatening to prosecute his baby's mother [Nastasha Henderson].

On October 19, 2007 the court, Judge Erik Christian, denied petitioner's D.C. Super.Ct.Crim.R.32(e) motion to withdraw his plea and sentence him to thirty-five (35) years imprisonment.

On February 12, 2008 petitioner filed a motion to withdraw his guilty plea (pro-se) asserting (1) he was coerced into pleading guilty by the government threatening to prosecute his baby's mother, that motion was denied on July 31, 2008.

On October 9, 2008 petitioner filed a motion pursuant to D.C. Code§ 23-110 ,alternative,D.C.Super.Ct.Crim.R.32(e). The court concluded that it was necessary to hold a hearing and appointed Attorney Archie Nichols to represent petitioner.

On September 10, 2009 the court held an evidentiary hearing and on December 30, 2009 the court denied petitioner's § 23-110 motion for being unsupportive.

STATEMENT OF CASE

On January 1, 2010 petitioner filed a notice of appeal from the denial of his § 23-110 motion, the Court of Appeals affirmed on June 22, 2011; appeal no. 10-CO-277.

On April 23, 2012 petitioner filed a motion to recall the mandate against his retain appellate Attorney Kevin McCants. The Court of Appeals denied on November 14, 2012.

On May 7, 2012 petitioner filed another § 23-110 motion against his post-conviction appellate Attorney Mr. Nichols, the court denied that motion on August 20, 2012.

On September 11, 2012 petitioner filed a notice of appeal from the denial of his § 23-110 motion, the Court of Appeals affirmed on July 16, 2013; appeal no. 12-CO-1619.

On October 17, 2013 petitioner filed a motion for reconsideration, the court denied that motion on October 23, 2013.

On January 8, 2014 petitioner filed a motion for writ of error coram nobis, the court denied on March 24, 2014.

On July 25, 2014 petitioner filed another § 23-110 motion, the court denied that motion on November 30, 2015.

STATEMENT OF CASE

On December 15, 2015 petitioner filed a notice of appeal, the Court of Appeals affirmed on November 7, 2016.

On August 17, 2017 petitioner filed a Application Seeking Leave to File a §23-110 motion, the court denied that Application on June 13, 2018.

On June 26, 2018 petitioner filed a Application Pursuant to the Court Order Seeking Leave to File a notice of Appeal, the court granted that Application on June 20, 2019.

On October 11, 2019 petitioner filed his appeal brief, the Court of Appeals affirmed on April 30, 2020.

REASONS FOR GRANTING THE PETITION

Petitioner's factual allegations raise substantive Constitutional questions: the extent to which prosecutors in plea bargaining may utilize threats against third persons as a negotiating tactic. The Supreme Court has expressly reserved judgment on this issue. See Bordenkircher v. Hayes, 434 U.S. 357, 364 n.8, 98 S.Ct. 663, 54 L.Ed.2d 604 (1978). There seems to be a general consensus, with which the Supreme Court concur, that guilty pleas made in consideration of lenient treatment as against third persons pose a greater danger of coercion than purely bilateral plea bargaining, and that, accordingly, "special care must be taken to ascertain the voluntariness of" guilty pleas entered in such circumstances.

REASONS FOR GRANTING THE PETITION

On the present record, the District of Columbia Superior Court and the Court of Appeals cannot say whether the prosecutors' threat to prosecute petitioner's baby's mother [Nastasha Henderson] for obstruction of justice, if he did not admit guilt to: second degree murder while armed and obstruction of justice; were made in good faith or otherwise. There is no evidence indicating that [Ms.Henderson] was an accomplice to petitioner's allege criminal conduct, or implicated in any other that would justified her prosecution.

The trial court declination to hear petitioner's claim in this regard consequently was not harmless error. Petitioner must be afforded a hearing on whether the threat to prosecute his baby's mother were found in good faith upon probable cause, if not, petitioner must be given an opportunity to re-plea.

Most federal courts have held that, to act in good faith; prosecutors must have probable cause to indict the third person at the time they offer lenity or communicate the promise. See United States v. Pollard, 959 F.2d 1011,1022(D.C. Cir.1992)(' Once the government had probable cause to rposecute Mre.Pollard and had a valid indictment, it was entitled despite her illness, to prosecute her fully or offer lenience for her in exchange for Pollard'splea'); See United States v.Marruez, 909 F.2d 738,742 (2nd Cir.1990)(' Where the plea is entered after the prosecutors threaten prosecution of a third party, courts have afford the defendant an opportunity to show that probable cause for the prosecution was lacking when the threat was made'); cert.denied, 498 U.S.1084, 112 L.Ed.2d 1045,111 S.Ct.957 (1991).

REASONS FOR GRANTING THE PETITION

See Martin v.Kemp,760 F.2d 1244,1247-48 (11th Cir.1985)(' holding that defendant demonstrated that the government did not observe a 'high standard of good faith' based upon probable cause to believe that the third party had committed a crime."); See United States v.Diaz,733 F.2d 371 375 (5th Cir.1984)('Good faith is establish when the prosecutors has probable cause to bring charge'); See United States v.Nuckols,606 F.2d 566,569 (5th Cir.1979)and Harman v.Mohn, 683 F.2d 834,837 (4th Cir.1982)('stating that"absent probable cause to believe that the third person has committed a crime," offering concessions as to him or her constitutes a species of fraud.')(quoting Nuckols,606 F.2d at 569).

On August 14,2007 petitioner's case was call for jury selection until the prosecuting Attorneys Gleen Kirschner and Nihar Mohanty introduce a obstruction of justice accusation against petitioner. Defense Attorney Paul Signet request the court for a continuance, the court granted Attorney Signet a two day continuance.

On Aug.15,2007 Attorney Signet scheduled a plea negotiation meeting with the Prosecutors Kirshner and Mohanty without petitioner's consent. During the meeting the prosecutors offered petitioner a guilty plea to: second degree murder while armed and obstruction of justice,petitioner reject the plea offer.

On Aug.16,2007 petitioner case was recalled for jury selection, the court ask the prosecutors" What was the plea offer that was rejected?" Prosecutor Kirshner stated" Your Honor,second degree murder while armed and obstruction of justice.It also involved the promise not to prosecute petitioner's baby's

REASONS FOR GRANTING THE PETITION

mother for obstruction of justice." See (Pet.Ex.# 1) at pg.2-3

The prosecutors implication of petitioner's baby's mother was the first time petitioner heard of such accusation against his baby's mother.

Petitioner was adamant to proceed to trial, until he heard the involvement of his baby's mother. The court informed Attorney Signet" Well you all can talk amongst yourselves as to those opportunities. We're going to go forward at this time. Your client has indicated that he does not wish to enter a plea." Attorney Signet stated " I have no indication of the plea agreement, but." Id at 8.

During a brief recess, petitioner was in the back of the courtroom, holding cell, changing into civilian clothes to prepare for jury selection. Attorney Signet entered the holding cell area and petitioner ask Attorney Signet" What is the circumstances of the obstruction of justcie accusation and the involvement of his baby's mother?"

On Aug.16,2007 Attorney Signet advised petitioner" the government had come into possession of numerous letters allegedly written by you to one of the codefendants Mr.Robert Kelsey. Mr.Kelsey had pled guilty and became a cooperator. As a result of the letters, the government indicated that they would charge you with several counts of obstruction of justice and would also be charging your baby's mother with obstruction of justice for her separate conduct relating to the case." See (Pet.Ex.# 6).

REASONS FOR GRANTING THE PETITION

Petitioner relied on Attorney Signet's advice and characterize the prosecutors plea offer as a package plea deal and entered a plea of guilty on August 16, 2007.

Petitioner waived indictment for obstruction of justice, and admitted guilt in open court" his plea was voluntarily entered" because he was deceived by the prosecutors and his Attorney Signet's misleading advice that the prosecutors' had probable cause to prosecute his baby's mother for obstruction of justice.

During petitioner's D.C.Superior Court Rule Criminal Procedure 11 colloquy on Aug.16,2007;see (Pet.Ex.# 1) at pg.10-18, the trial court inquire petitioner Attorney Signet and the prosecutors as follow.....

The Court: Mr Signet,what is the plea agreement that's been reached in connection with your client in this case?"

Mr.Signet: Your Honor,if Mr.Moore pleads guilty to murder in the second degree while armed and one count of obstruction of justice,the governement will dismiss all the other charges in this case. They will notbring any further charges of obstruction that are related to this case,nor will they charge his girlfriend, wife and mother of his child with any charges of obstruction in connection with this case,they'll reserve papers,reserve step back and reserve allocution."

The Court: Is that correct,Mr.Mohanty?

Mr.Mohanty, It is,Your Honor.

REASONS FOR GRANTING THE PETITION

**The Court:** Mr. Robinson, I have before me several documents, a waiver of trial by jury in the Court, a guilty plea form and information setting forth the charge of obstruction of justice in which you are informed of, a waiver of indictment and a plea letter dated the 14th of August 2007 which includes a waiver of DNA testing and acknowledgment and acceptance of this plea agreement. Have you received all of the provisions and signed in the appropriate spaces acknowledging the contents of those forms?

**The Defendant:** Yes.

**The Court:** Specifically with respect to the waiver form, have you carefully received the form and signed in the space marked defendant acknowledging the understanding of the contents of that form?

**The Defendant:** Yes.

**The Court:** Other than what's been stated in court today you will plead guilty to second degree murder while armed and obstruction of justice, has there been any other promises made to you?

**The Defendant:** No.

The trial court, Erik Christian's conclusion for denying petitioner's Application Seeking Leave to File a motion under D.C. Code § 23-110 to withdraw a guilty

REASONS FOR GRANTING THE PETITION

plea after sentence has been impose to coorrect manifest injustice, 'see Morrison v. United States, 579 A.2d 686,689 (D.C.1990);(quoting McClurkin v. United States, 472 A.2d 1348,1352 (D.C.),cert.denied,469 U.S.838,105 S.Ct.136,83 L.Ed.2d 76 (1984), and also, if defendant's conviction was imposed in violation of the United States Constitution on June 13,2018;was clearly erroneous.

A evidentiary hearing is necessary, in this instant case; base upon the fact that there was relevant information that was not disclose during petitioner's plea proceeding or in his plea agreement,see (Pet.Ex.# 2).

This relevant information " that the prosecutors intended to prosecute petitioner and his baby's mother for obstruction of justice in a subsequent case;" was not disclose during petitioner's plea proceeding, and should have been considered 'new evidence' pursuant to D.C. Code § 22-4131 (7)(A).

I. Was petitioner 's Fifth Amendment Compulsory Self Incrimination was violated because the prosecuting Attorneys Glenn Kirschner and Nihar Mohanty threaten to prosecute petitioner's baby's mother [Nastasha Henderson] for obstruction of justice, if petitioner did not admit guilt to: second degree murder while armed and obstruction of justice?

A evidentiary hearing would have allow petitioner to develop a complete record, present additional evidence and demonstrate before the trial court that the 'new evidence' would have made a difference had it been disclose. Because the necessary question is: whether the prosecutors' promise not to prosecute petitioner's baby's mother for obstruction of justice, if petitioner did not

REASONS FOR GRANTING THE PETITION

admit guilt to: second degree murder while armed and obstruction of justice; were in good faith based on probable cause?

The fact that [Ms.Henderson] was never charge with any crimes related to petitioner's case; establish the prosecutors was lacking probable cause to believe that she committed any criminal acts.

The prosecuting Attorneys Kirschner and Mohanty allege that [Ms.Henderson] visit Damon Thomas at D.C. Jail,Through instructions by petitioner, to persuade Mr.Thomas into not implicating petitioner's name involved with an on going murder investigation that Mr.Thomas and petitioner was already being accused of committing.

The prosecutors' allegation of [Ms.Henderson's] attempt to persuade Mr.Thomas into saying something that is not ture is contradicted by Mr.Thomas' affidavit, which he is willing to come to court and testify to.See (Pet.Ex.# 8).

According to Arrington v. United States,804 A.2d 1068 (D.C.2002)('Where defendant provided an affidavit from an alleged participant in the crime for which defendant was convicted in which it was alleged that defendant did not participate, the trial court should have conducted a hearing to determine the credibility of the affidavit declaration.)

The fact that petitioner entered a plea of guilty to save his baby's mother; pursuant to Pollard,959 F.2d 1011, supra, and quothing Nuckols,606 F.2d 566, supra, (Appellant must be afforded a hearing on whether the alleged threat to prosecute

REASONS FOR GRANTING THE PETITION

his baby's mother were founded in good faith upon probable cause, if not, petitioner must be given an opportunity to re-plea.) Id at 570.

This relevant information" that the prosecutors intended to prosecute petitioner and his baby's mother for obstruction of justice in a subsequent case" would have allow petitioner to raise and demonstrate on direct appeal that probable cause was lacking to prosecute Ms.Henderson; when the prosecutors made their threat to prosecute her.

The prosecuting Attorneys Glenn Kirschner and Nihar Mohanty, and also, Attorney Signet withheld the relevant information that establish probable cause did not exist to prosecute Ms.Henderson; when they use her to generate additional leverage over petitioner into entering a plea of guilty, was a violation of his Compulsory Self Incrimination right under the Fifth Amendment of the U.S. Constitution.

The prejudice result was, had the relevant information been disclose to petitioner before his direct appeal, petitioner would have been able to raise his fifth amendment compulsory self-incrimination claim on appeal, petitioner would ahve been able to demonstrate the prosecutors was lacking probable cause to prosecute Ms.Henderson, and petitioner would have been able to re-plea.

Petitioner had demonstrated to the trial court during his § 23-110 Hearing that he was prevented from raising his constitution calims on direct appeal because the Prosecutors Kirschner and Mohanty, and also, Attorney Signet fail to provide

REASONS FOR GRANTING THE PETITION

petitioner with any documents that contain the relevant information, above, before his direct appeal. See Washington v. United States, 834 A.2d 899 (D.C. 2003).

A defendant must demonstrate that" some objective factor external to the defense impeded counsel's efforts" to raise the claim on direct appeal. *Id* at 903 (citing United States v. Frady, 456 U.S. 152, 167-68, 71 L.Ed.2d 816, 102 S.Ct. 1584 (1982))( Once cause is shown, petitioner must then" shoulder the burden of showing, not merely that the errors at his trial created a possibility of prejudice, but that they worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions.) *id* at 170.

Petitioner had shown the trial court that on May 27, 2009 during a status hearing he received documentary evidence that contain the relevant information.

On May 27, 2009 petitioner received government exhibit # 9...which was an affidavit from prosecuting Attorney Kirschner; dated May 4, 2009, and also, government exhibit # 10...which was an affidavit from Attorney Signet; dated May 1, 2009.

Government exhibits # 9 and # 10 were the only documents that ever contain the relevant information that was never disclose during petitioner's plea proceeding, sentencing proceeding or provided to petitioner for direct appeal. Frady, 456 U.S. at 170.

REASONS FOR GRANTING THE PETITION

Also, petitioner demonstrated to the trial court during his § 23-110 Hearing that Attorney Signet was ineffective assistance of counsel....as shown below;

II. Was petitioner denied Sixth Amendment effective assistance of counsel by his Attorney Paul Signet for failing to investigate the circumstances of petitioner's plea agreement before he provided petitioner manifestly incorrect information and advised petitioner to enter a plea of guilty to save his baby's mother?

The trial court could not have made a reasonable determination that Attorney Signet's representation was 'thorough and effective' according to Strickland v. Washington, 466 U.S. 668, 687-88, 104 S.Ct. 2052, 2064-65, 80 L.Ed.2d 674, 693-94 (1984) because petitioner had demonstrated he was constitutional ineffective.

Petitioner's trial/plea proceeding transcript on August 16, 2007 is evidence at best that show Attorney Signet's deficient representantion. See (Pet.Tran.)

On Aug.14, 2007 petitioner case was called for jury selection, until the Prosecutors Kirschner and Mohanty introduce a obstruction of justice accusation against petitioner. Attorney Signet request the court for a continuance, the court granted Attorney Signet a two (2) day continuance.

On Aug.15, 2007 Attorney Signet scheduled a plea negotiation meeting with the prosecutors without petitioner's consent. During the meeting the prosecutors offered petitioner a guilty plea to: second degree murder while armed and

REASONS FOR GRANTING THE PETITION

obstruction of justice, petitioner reject the plea offer.

On Aug.16,2007 petitioner's case was recalled for jury selection, the court ask the prosecutors" What was the plea offer that was rejected?" Prosecutor Kirschner stated" Your Honor, second degree murder while armed and obstruction of justice. It also involved the promise no to prosecute petitioner's baby's mother [Natasha Henderson] for obstruction of justice."See (Pet.tran.at 2-3)

The prosecutors implication of petitioner's baby's mother was the first time petitioner heard of such accusation against his baby's mother.

Petitioner was adamant to proceed to trial, until he heard the involvement of his baby's mother. The court informed Attorney Signet" Well you all can talk amongst yourselves as to those opportunities. We're going to go forward at this time. Your client has indicated that he dose not wish enter a plea." Attorney Signet stated" I have no indication of the plea agreement, but." Id at 8.

On Aug.16,2007 moments later, Attorney Signet advised petitioner" the government had come into possession of numerous letters allegedly written by you to one of the codefendants Mr.Robert Kelsey. Mr.Kelsey had pled guilty and become a cooperator. As a result of the letters, the government indicated that they would charge you with several counts of obstruction of justice and would also be charging your baby's mother with obstruction of justice for her separate conduct related to the case." See (Petitioner's evidence # 6).

REASONS FOR GRANTING THE PETITION

Petitioner entered a plea of guilty to: second degree murder while armed and obstruction of justice; base on Attorney Signet's advice on August 16, 2007.

On Aug.16,2007 during the Rule 11 inquiry the court ask Attorney Signet" What is the plea agreement that's been reached in connection with your client in this case." See (Pet.Tran. at 10)

Attorney Signet stated" Your Honor,if Mr.Moore pleads guilty to murder in the second degree while armed and obstruction of justice, the government will dismiss all the other charges in this case. They will not bring any further charges of obstruction that are related to this case, nor will they charge his girl-friend,wife and mother of child with any charges of obstruction in connection with this case, they'll reserve papers,reserve step back and reserve allocution." Id.

On May 1,2009 Attorney Signet submitted an affidavit almost two (2) years after petitioner entered a plea of guilty base on his misleading advice on August 16, 2007,see affidavit. Attorney Signet declared in his affidavit that" during the plea negotiation meeting on August 15,2007 the prosecutors informed petitioner 'that they intended to prosecute him and his baby's mother for obstruction of justice in a subsequent case.' " Id at 2.

Attorney Signet's declaration in his affidavit is contradicted by his statement on the record on Aug.16,2007 when he admitted " I have no indication of the plea agreement,but; and also, his misleading advice in his memorandum that petitioner presented to the court during his § 23-110 Hearing. See (Pet.ev.# 6)

### REASONS FOR GRANTING THE PETITION

The trial court could not have considered these facts and overwhelming evidence and found Attorney Signet's representation to be 'thorough and effective' or found petitioner's plea of guilty to be voluntarily and knowingly entered.

Attorney Signet's advice on Aug.16,2007 was not reasonable advice received from a competent demanded attorney in criminal cases (Strickland,466 U.S. at 688) because Attorney Signet fail to investigate the prosecutors' plea offer and fail to become informed of the full details of petitioner's plea agreement, before he acted as a 'conduit' by misrepresenting to petitioner that the prosecutors would also be charging your baby's mother with obstruction of justice.

Attorney Signet's acts and omissions can not be considered as harmless error because a reasonable competent attorney would have advised petitioner" according to Pollard,959 F.2d 1011(' Once the prosecutors have probable cause to prosecute your baby's mother and have obtain a valid indictment, they can prosecute her full or offer lenience for her in exchange for your plea');and also,a reasonable competent attorney would have advised petitioner" the fact that your baby's mother is not charge at this moment indicate the prosecutors does not have probable cause to prosecute her."

Attorney Signet deprive petitioner of effective assistance of counsel that is guaranteed by the Sixth Amendment of the U.S. Constitution because Attorney Signet knew or should have known that the prosecutors did not have probable cause to prosecute petitioner's baby's mother, but Attorney Signet still advised petitioner to waive indictment for obstruction of justice, and enter

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a plea of guilty to one charge he was not charge for and another charge he did not commit; in order to save his baby's mother, was prejudice.

There is a reasonable probability that, had Attorney Signet investigated the full details of the prosecutors' plea agreement, Attorney Signet would have learnt" the prosecutors intended to prosecute petitioner and his baby's mother for obstruction of justice in a subsequent case," Attorney Signet would have inform petitioner of the full details of the prosecutors' plea agreement, petitioner would not have entered a plea of guilty, and would have insisted on going to trial.Hill v.Lockhart, 474 U.S.52,56,88 L.Ed.2d 203,106 S.Ct.366 (1985).

Petitioner had argue his Fifth and Sixth Amendment Constitution claims and presented sufficient evidence to support both of his Constitution claims during his § 23-110 hearing on September 10, 2009.

III. Was petitioner denied Fourteenth Amendment procedural due process when he tried to bring his factual Constitution claims to the court's attention and they rejected his claims, evidence and consider his claims waived and abandoned?

The trial court's order on August 20, 2012 establish petitioner's Constitution claims was argue on Sept.10, 2009, as the order held that" Defendant believes his guilty plea was coerced and, therefore, ineffective because of a Rule 11 violation, and that Attorney Nichols failed to present evidence of this coer-

REASONS FOR GRANTING THE PETITION

cion to the Court at his § 23-110 Hearing. This Court has found on multiple occasions that Defendant may not revoke his guilty plea, and that there was no Rule 11 violation (Order, July 31, 2008) (Oral Order, Oct. 19, 2007). The Court considered evidence of coercion and believed it insufficient to find the plea ineffective. The Court of Appeals also found that Defendant waived his right to challenge his guilty plea. Robinson v. United States, No. 10-CO-277 (D.C. June 22, 2011). The Court found that his claim was barred because he failed to raise them in direct appeal of his sentence, and that he failed to challenge the plea deal in his first § 23-110 proceeding. *Id.* Therefore, it would have been improbable, and likely impossible, for Attorney Nichols to succeed on this claim. " *Id.* at 5.

"furthermore, the Court considered this argument, heard evidence and findings presented, and ultimately rejected this theory on prior occasions. Defendant fails to present any new evidence which Attorney Nichols could have presented at the § 23-110 Hearing that would have affected the outcome." *Id.*

"Second, Defendant believes that Attorney Nichols failed to present evidence showing Attorney Signet was ineffective. In particular, Defendant argues that this evidence would show that Attorney Signet improperly encouraged Defendant to plead guilty by telling him (a) his wife would be prosecuted for obstruction of justice, and (b) Kelsey would testify against him as part of Kelsey's plea agreement. However, these are conclusory claims that were already considered and rejected by the Court." *Id.* at 6.

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"Defendant fails to present any additional evidence which the Court could consider that was not already before the Court. Attorney Nichols presented to the Court allegation that Attorney Signet was ineffective during the plea negotiation, and the Court rejected Attorney Nichols argument. (Order, Dec. 30, 2009) The Court found that Attorney Signet had been 'thorough and effective', and that the plea was not coerced. (id) Defendant offered no new evidence to support his theory. Attorney Nichols could not be ineffective in presenting evidence when Defendant himself cannot present any new evidence which would show Attorney Signet's ineffectiveness. The Court finds that Attorney Nichols was not deficient because he presented evidence of Attorney Signet's ineffectiveness at the § 23-110 Hearing." Id at 6.

The trial court's order on August 20, 2012 establish petitioner argue his Fifth and Sixth Amendment Constitution claims during his § 23-110 Hearing, this show the trial court committed **reversal error** for not given notice of those facts in its order on December 30, 2009.

The facts and overwhelming evidence petitioner presented in this petition for certiorari establish **manifest injustice**; a tenable basis for relief because petitioner shown his plea of guilty was not voluntarily or knowingly entered in violation of his Fifth Amendment Compulsory Self Incrimination right and in violation of his Sixth Amendment Effective Assistance of Counsel right.

Furthermore, the trial court's reversal error worked to petitioner's actual

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and substantial disadvantage cause the Court of Appeals to consider his Constitution claims and evidence waived and abandoned in appeal no.10-Co-277 and every other appeal thereafter.

Because of the trial court's error petitioner was denied Procedural due process under the Fourteenth Amendment from having the Court of Appeals to consider his Constitution claims and evidence on the merits in appeal no.10-Co-277 to determine whether the trial court abused its discretion for rejecting petitioner's evidence and Constitution claims during his § 23-110 Hearing on Sept.10,2009,denied petitioner the right to have his plea withdrawn because of the Constitution claims and evidence, was ~~the~~ prejudice result.

The Court of Appeals reason for affirming petitioner's appeal no.19-CO-547 on April 30,2020;is clearly wrong.

The Court of Appeals' Judgment on April 30,2020;held that" Appellant fails to establish a tenable basis for relief. This court has previously considered and rejected all of the arguemnts appellant raises in his brief and motin for summary reversal. Where the original motion was denied on the merits, and affirmed by this court on appeal...all the claims [appellant] raised in his first motion, including ineffective assistance of counsel, cannot be raised again in a second (or third or fourth) motion). " See Judgment attach

CONCLUSION

Petitioner should be afforded the right to have his Constitution claims and

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evidence considered and heard on the merits by the Court of Appeals because of the trial court's reversal error denying petitioner Procedural due process under the Fourteenth Amendment in petitioner's original §23-110 motion and his initial appeal no.10-CO-277

THEREFORE, petitioner pray that the Supreme Court grant his petition for certiorari.



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