No. 20-5445

ORIGINAL

Supreme Court, U.S.
FILED
AUG 11 2020
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JELANI WALKER — PETITIONER
(Your Name)

vs.

ED SHELDON, WARDEN, — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JELANI WALKER # 729-780
(Your Name) Pro-Se

Mansfield Correctional Institution P.O. BOX 788
(Address)

Mansfield, Ohio 44901
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

QUESTION 1

~~Does a superseding indictment's charge that changes the original charge's~~ defense cause prejudice, due to inadequate notice? If so, is it bad faith for a conscious prosecutor to seek this outcome?

QUESTION 2

Does a Federal Court's default apply, where the State Court had the opportunity, but instead ruled on the merits without any saction?

LIST OF PARTIES

[V] 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:

RELATED CASES

Walker v. Sheldon, No. 19-4275, U.S. Court of Appeals for the Sixth Circuit. Judgment entered June 02, 2020

Walker v. Warden, No. 2:19-cv-01740, District Court for the Southern District of Ohio. Judgment entered Nov. 15, 2019

Walker v. Warden, No. 2:19-cv-01740, District Court for the Southern District of of Ohio. Judgment entered Oct. 28, 2019

State v. Walker, No. 2018-0801, Ohio Supreme Court. Judgment entered Sep. 26 2018

State v. Walker, No. 2017-1804, Ohio Supreme Court. Judgment entered April, 25 2018

State v. Walker, No. 16CA26, Court of Appeals of Ohio Fourth District. Judgment entered April 27, 2018

State v. Walker, No. 16CA26, Court of Appeals of Ohio Fourth District. Judgment entered April 25, 2017

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TABLE OF AUTHORITIES CITED

CASES

STATUTES AND RULES

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[✓] For cases from **federal courts:**

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

[✓] reported at 2020 U.S. App. LEXIS 17400; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[✓] reported at 2019 U.S. Dist. LEXIS 198198; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:** N/A

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

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

JURISDICTION

[√] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 06/02/2020.

[√] 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: N/A, and a copy of the order denying rehearing appears at Appendix ____.

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

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

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

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix ____.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT V Due Process of Law

AMENDMENT VI To be informed of the Nature and Cause of the accusation

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AMENDMENT XIV Due Process of Law

28 USCS § 2254 (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim —

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly establised Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

On 03/28/2016 petitioner was charged with a three count indictment. Count 1. Trafficking in Heroin R.C. 2925.03 (A)(1) F1, Count 2. Possession of Heroin R.C. 2925.11 (A) F1, and Count 3. Possession of Cocaine R.C. 2925.11 (A) F5 (Appendix O).

After scientific testing revealing that no Heroin was involved, it was "Staged" that a 2 count superseding indictment was obtained (see Appendix I pg. 22-24, Appendix T pg. 1, also Appendix P, and Q) charging petitioner with Aggravated Trafficking in Drug R.C. 2925.03 (A)(1) F2, as Count 1, and Possession of Cocaine R.C. 2925.11 (A) F5, as Count 2, on 06/06/2016. On 06/07/2016 the State moved to amend subsection (A)(1) of Count 1. to (A)(2) (Appendix K). Counsel opposed, expressing his conserns of the State's continuous altering theries on 06/09/2016 (Appendix L), and the court OVERRULED the State's proposal on 06/10/2016 (Appendix E).

A second superseding indictment was filed on 06/13/2016, charging petitioner with 3 counts, Count 1. Aggravated Trafficking in Drug R.C. 2925.03 (A)(2) F2, Count 2. Aggravated Possession of Drug R.C. 2925.11 (A) F2, Count 3. Possession of Cocaine R.C. 2925.11 (A) F5 (Appendix R).

On 06/14/2016 a Motion to Dismiss Indictment was filed by counsel, where counsel expressed his burden due to the changes of charges via both superseding indictments (Appendix N). The State did not oppose, and the Motion to Dismiss Indictment was DENIED on 06/14/2016 (Appendix F). The court also ordered a Sua Sponta Continuance the same day.

The case proceeded to a two day trial, and petitioner was found guilty of Count 1 and Count 2, but acquitted of Count 3. (Note that no Nolle Prosequi was ever entered to any of the previous indictments or charges, these indictments are still pending, see Trial Court Docket Appendix S).

At sentencing, Count 2 was merged into Count 1, and petitioner was sentenced to 5 mandatory years for Aggravated Trafficking in Drug R.C. 2925.03 (A)(2) F2.

Direct Appeal was had, where appellate counsel raised Manifest Weight of Evidence, Insufficent Evidence, and Ineffective Assistance of Counsel (as to failure of trial counsel to request waiver of fines) as errors (Appendix D). The 4th Dist. affirmed on 04/25/2017. A timely filing for jurisdictional acceptance to the Ohio Supreme Court was submitted on 12/22/2017, and DENIED on 04/25/2018. Shortly after, a timely 26(b) Application for Reopening was filed on,

02 /05 /20 , where petitioner first registered his claims that are now before this Court (Appedix J). The Application for Reopening was DENIED on 04 /27 /2018 (Appendix C). A timely filing for jurisdictional acceptance to the Ohio Supreme Court followed on 06 /11 /2018, and was DENIED on 09 /26 /2018.

Subsequently, a timely Habeas Corpus Petition 2254 was filed to the Southern District Federal Court on 04 /27 /2019 (Appendix I), and was DENIED on 11 /15 /2019, after an Answer by Respondent, a Traverse by petitioner, a Report and Recomendation by the Magistrate, and an Objection by petitioner (Appendix B). Petitioner filed a timely Notice of Appeal, along with an Application for COA to the 6th Cir. Appeals Court via Southern District Federal Court on 12 /13 /2020 (Appendix G). This COA Application was never transfured to the 6th Cir. Appeals Court. Subseqently, petitioner filed an Amended Application for COA (Appendix H) directly to the 6th Cir. on 01 /13 /2020. An ORDER came down from the 6th Cir. Court Clerk, demanding that petitioner show proof that Notice of Appeal was filed timely. Petitioner provided adequate proof and the order was lifted on 02 /26 /2020. Petitioner's Amended Application for COA was DENIED on 06 /02/2020 (Appendix A).

Now before this Honorable Court is petitioner's timely filed request to proceed In Forma Pauperis and Petition for Writ of Certiorari submitted on / /2020.

REASON FOR GRANTING THE PETITION (A-F)

A. QUESTION (1)

Does a superseding indictment's charge that changes the original charge's defense cause prejudice, due to inadequate notice? If so, is it bad faith for a conscious prosecutor to seek this outcome?

This question stems from a vauge 6th Cir. Application for COA Decision (Appendix A), which mirrors the 4th Dist. 26(b) Application for Reopening Decision (Appendix C), where the Court held that petitioner's Prosecutorial Misconduct claim was meritless because the subsequent charges were obtained via superseding indictment and not through court amendment.

Petitioner was originally indicted on a three count indictment, Count 1. Trafficking in Heroin R.C. 2925.03 (A)(1) F1, Count 2. Possession of Heroin R.C. 2925.11 (A) F1, Count 3. Possession of Cocaine R.C. 2925.11 (A) F5 (Appendix O). After scientific testing, revealing that no Heroin was involved, but instead Pentylone, it was "Staged" that a two count indictment was obtained (see Appendix I pg. 22-24, Appendix T pg. 1, also Appendix P, and Q) charging petitioner with Aggravated Trafficking in Drug R.C. 2925.03 (A)(1) F2 as Count 1., and Possession of Cocaine R.C. 2925.11 (A) F5 as Count 2. Here, a substantial amendment has occured. The former Heroin charges are

now Aggravated Pentylone charges. Heroin and Pentylone require two distinguisably different evidence defenses. The original indictment gives no notice to Pentylone charges, and petitioner's defense to Heroin charges has been destroyed. ("Proper notice is given where the defendent is fairly informed of the charge against which he must defend, and where the indictment" enables him to plead acquittal or conviction in bar of future prosecutions for the same offense.") United States v. Taniguchi, 49 Fed. Appx. 506, 520 (6th Cir. 2002) citing United States v. Mohney, 949 F.2d 899, 903-904 (6th Cir. 1991); (an indictment returned by a grand jury preserves three constitutional rights held by the accused: (1) the right to fair notice of the charges, (2) the protection against double jeopardy, and (3) the right to have grand jury find probable cause for felony charges.") Russell v. United States, 369 U.S. 749, 763-770 82 S. Ct. 1038, 8L. Ed. 2d 240 (1962).

After this superseding indictment, and the State realizing its amended charges still will not support a favorable prosecution, the State moved for a Motion to Amend (Appendix K) the (A)(1) subsection of Count 1 to (A)(2). Following an OVERRULED motion (where the court made the State awear of the error in such a proposal) (Appendix E) a second superseding indictment was obtained charging petitioner with three counts, Count 1. Aggravated Trafficking in Drug R.C. 2925.03 (A)(2) F2, Count 2. Aggravated Possession of Drug R.C. 2925.11

(A) F2, Count 3. Possession of Cocaine R.C. 2925.11 (A) F5. (Appendix R)

Here, the (A)(1) subsection of Count 1 has been amended to (A)(2) via superseding indictment. A trafficking charge under an (A)(1) subsection charges that a "sell or offer to sell" a controlled substance has occured, while only proof that one "had knowledge that a controlled substance was intended to sell" is sufficient to convict under (A)(2). Count 1 of the previous indictment, and the original indictment are of (A)(1) subsections, and only give notice to a "sell or offer to sell" Pentylone. A superseding indictment that changes the subsection to (A)(2) prejudices petitioner's defense, and for the second time, deprives petitioner of adequit notice by broaden the original charges, which gives birth to charges that do not relate back to the original offenses. United States v. Salmonese, 352 F.3d 608, 622 (2d Cir. 2003) (discusing broadening) see also U.S. v. Zvi, 168 F.3d 49, 55 (2d Cir. 1999) (where money laundering counts of superseding indictment prejudicial and dismissed because defendant had no notice of new charges not in original indictment).

Also, in Rojas-Contreras, as to prejudice, this Court held that on the particular fact that only the time frame ("on or about December 17, 1981" to "on or about December 7, 1981") was amended via superseding indictment, and the original charges were unchaged, no prejudice resulted. United States v. Rojas-Contreras, 474 U.S. 231, 237 (1985), to the contrary, in the instant case the original charging terms were altered to

the prejudice of petitioner. ("An unconstitutional amendment of the indictment occurs when the charging terms are altered, either literally or contructively.") United States v. Hassan, 578 F.3d 108, 133 (1st Cir 2009).

Also, for the State to seek superseding indictments that it knows would alter the original charges to the prejudice of petitioner is an act of bad faith and Prosecutorial Misconduct. ("Improper prosecutorial misconduct rise to the level of consitutional error when the impact of the misconduct is to destract the trier of fact and thus raise doubts as to the fairness of the trial.") United States v. Morena, 547 F.3d 191, 194. (Note that petitioner's first two indictments are still pending)

At the end of the day, petitioner has demonstrated prejudice to his original defense due to the changes of charges via both superseding indictments, which violated petitioner's 5th and 14th Amendment Due Process rights, and petitioner's 6th Amendment right to the Nature and Cause of the accusation. If petitioner would have proceed to trial on the original indictment, with the obtained lab evidence that the substance was not Heroin, and no evidence ever put forth of a "sell or offer to sell", petitioner would have won his case. ("A subtantial right is affected only when the defendent establishes prejudice in his ability to defend himself or to the overall fairness of the trial.") United States v. Prince, 214 F.3d. 740, 757 (6th Cir. 2000) qouting United States v. Manning, 142 F.3d 336, 339 (6th Cir. 1998).

Further, petitioner's COA APPLICATION was adjudicated and

DENIED by the 6th Cir. Appeals Court without any determination of if the prior decisions were inconsistant with a holding of this Court. ("Under § 2254 (d), a habeas court must determine what arguments or theories supported or could have supported the state court's decision and then it must ask whether it is possible fairmind jurist could disagree that those arguments or theories are inconsistant with the holding in a prior decision of [the Supreme Court].") Harrington v. Richter, 562 U.S. 86, 102 (2011). Though the 6th Circuit's COA decision holds that petitioner has failed to make a substantial showing of the denial of a constitutional right, the Court does not cite any U.S. Supreme Court authoriy to support its holding. (Appendix A). The 6th Cir. COA Application Decision, as to showing the denile of a substantial constitutional right, was erroneous.

B. QUESTION (2)

Does a Federal Court's default apply, where the State Court had the opportunity, but instead ruled on the merits without any saction?

This question spawn from the 6th Cir. Application for COA Decision, where the Court held that petitioner is procedurally defaulted by Ohio's res judicata proceduarl rule, due to failuare to raise Prosecutorial Misconduct as a direct appeal claim.

State record will reveal (Appendix D) that Prosecutorial Misconduct was not raised by counsel in petitioner's direct appeal.

State record will also reveal that petitioner first registered this claim via 26(b) Application to Reopen, where petitioner claimed appellate counsel was ineffective for not raising Prosecutorial Misconduct in direct appeal. Lastly, but most important to petitioner's second question before this Honorable Court, State record (Appendix C) will reveal that in the 4th Dist. Application for Reopening Decision, the Court ruled on the Ineffective Assistance of Counsel merits without mention of any procedual default or sanction.

Here, as to a res judicata barring, due to failure to raise the Prosectorial Misconduct claim on direct appeal, the 4th Dist. had open opportunity to sanction petitioner, but made no plain or indirect statement to a default at all. One can only assume the 4th Dist. saw no default applicable. This assumption is strenghtened by the fact that the prosecutor proposed this res judicata barring and the Court ignored the State. Regaurdless of the State's contention, no "plain statement" was made. ("a procedural default does not bar consideration of a federal claim on either direct or habeas review unless the last state court rendering a judgment in the case "clearly and expressly" states that its judgment rest on state procedural bar.") Harris v. Reed, 489 U.S. 255, 263 (1989) citing Caldwell v. Mississippi, 472 U.S. 320, 327 (1985), quoting Mich. v. Long, 463 U.S. 1032, 1041 (1983). Also, according to the 6th Circuit's Maupin Test, prong two of the four-

part test is not satisfied. Maupin v. Smith, 785 F.2d 135, 138 (6th Cir. 1986); see Scuba v. Brigano 259 F. App'x 713, 718 (6th Cir. 2007) (following the four-part analysis of Maupin); see also Ross v. Parker, 304 Fed. Appx. 655, 660 (10th Cir. 2008) (enforcing "plain statement" rule).

In the case at bar, the 6th Cir. COA Application Decision ruling that reasonable jurist could not debate the district court's conclusion that petitioner's claim was procedurally defaulted was clearly erroneous.

C. INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner's appellate counsel was ineffective by failing to raise Prosecutorial Misconduct and demonstrate a violation of Due Process and denial of a fair trial, due to improper amendments caused by superseding indictment charges, which were sought in bad faith by the State. The trial court record supports these claims to an extent that counsel could have presented a prima facie case of prejudice, which would have resulted in a successful appeal. Instead, counsel ignored these claims and chose to raise weaker claims that were subject to a weighing of evidence and determination of the sufficiency of evidence. Failure to raise Prosecutorial Misconduct prejudiced the appeal. Bigelow v. Haviland, 576 F.3d 284, 287 (6th Cir. 2009) (quoting Strictland, 466 U.S. at-689).

The stictland test applies to appellate counsel. Smith v. Robins, 528

U.S. 259, 285, 120 S. Ct. 746, 145 L. Ed. 2d 756 (2000); Burger v. Kemp, 483 U.S. 776, 107 S. Ct. 3114, 97 L. Ed. 2d 638 (1987). . . . Counsel's failure to raise an issue on appeal amount to ineffective assistance only if a reasonable probability exist that inclusion of the issue would have changed the results of the appeal. Id.; ("Experinced avdocates since time beyond memory have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues.") Jones v. Barnes, 463 U.S. 745, 751-752, 103 S. Ct. 3308, 77 L. Ed. 2d 987 (1983).

Even if a procedual default was applicable in the instant case, petitioner would be excused by his showing of "cause" via ineffective assistance of counsel, and "prejudice" which is demonstrated supra and consistant with Edwards v. Carpenter, 529 U.S. 446, 453 (2000).

D. CIRCUIT COURT CONFLICTS

Petitioner will now show a conflict between the 6th Cir. COA Decision and 2nd Cir. Appeals Court decision, addressing changes of original charges via superseding indictment.

In the 6th Cir. COA Decision, addressing the metioned issue, and Ineffective Assistance of Counsel, the Court reiterated the 4th Dist. State Court Appeals opinion holding that: "the new charges were obtained by superseding indictments after presentment to a grand jury, which did not offened any state or federal consitutional provisions"; and that: "the Ohio Court of Appeals rejected his ineffective assistance claim because counsel could not be ineffective for failing to raise a

meritless claim (Appendix A). The 6th Cir. Court also rejected two of petitioner's case citings asserting that: "these cases generally pertains to impermissable contructive amendments to an indictment, not a new superseding indictments obtained through a grand jury." (though petitioner also cited a superseding indictment case from this Court U.S. v. Rojas-Contreras, 474 at-237, along with Russell v. United States, 369 at-763 and Stirone v. U.S., 361 at-217) (indicating trivial and innocuous amendments acceptable). Regaurdless, the 2d Circuit's Grady case, cited below, relyed on cases dealing with variances between indictments issued by a grand jury and later amendments of indictments permitted by trial courts to assess whether a superseding indictment impermissibly charged the original charges. United States v. Grady, 544 F.2d 598, 602-603 (1976). The Grady Court held that: "the superseding and superseded indictments were in all respects substantially the same, and the defendants were placed fully upon notice of the crimes with which they were charged in the superseding indictment by virtue of the superseded indictment", while in petitioner's case, the original indictment's charges gave no notice to the superseding indictment's charges.

In U.S. v. Zvi, 168 F.3d 49, 55 (2d Cir. 1999), 14 of the Zvi's money laundering charges, which were obtained via superseding indictment after grand jury concurrence, were held to have prejudiced

the Zvis because notice to money laundering was not afforded via original indictment's charges. These money laundering charges were DISMISSED.

Though these 2d Cir. cases were of statute of limitations ~~conserns, the question due to a positive or negitive ruling was exactly~~ the same as petitioner's, which is, Did the original indictment's charges give notice to the superseding indictment's charges? ("The issue then is whether the original indictment failed to provide the defendant with timely notice of the charge that were later added by the superseding indictment.") Zvi, 168 F.3d - at 55. Petitioner's original charging terms were altered to the prejudice of petitioner via superseding indictment. ("An unconstitutional amendment occurs when the charging terms are altered, either literally or constructively.") United States v. Hassan, 578 F.3d 108, 133 (1st Cir. 2009).

In Grady, Zvi, and Hassan, the meat of each Court's decision was a question of prejudice by the change of charges. Each Court recognized inadequte notice when original charges give no notice to subsequently changed charges. A conflict exist between the 6th Cir. COA Application Decision and the mentioned 2d Cir. Appeals Court Decisions.

Petitioner will now show a conflict between the 6th Cir. Decision and a 10th Cir. COA Decision, addressing procedural Default.

In the instant case, the 6th Cir. based its default decision on the fact that petitioner did not raise his Prosecutorial Misconduct claim in his direct appeal. The Court held: "Reasonable jurist could not debate the district court's conclusion that Walker's claim was procedurally defaulted. Walker's did not raise his claim in his direct appeal. Under Ohio's res judicata doctrine a petitioner cannot raise a claim that he could have raised in an earlier proceeding but did not. See State v. Perry, 226 N.E. 2d 104, 108 (Ohio 1967)."

Here, the Court came to its conclusion without any determination to if the state Court procedurally sactioned petitioner, even though the Court (Appendix A pg.2) admitted to petitioner presenting this arguement before it. As argued supra and to the 6th Cir., the state court had the opportunity to saction, but did not. The 6th Circuit implies that a plain statement does not apply by its holding.

In Ross v. Parker, 304 Fed. Appx. 655, 660 (10th Cir. 2008), Mr. Ross raised a ineffective assistance of counsel claim that he did not raise on direct appeal. As to this issue, the Court held: "The OCCA apparently determined that review of this Sixth Amendment claim was barred either by res judicata or the appellate court's procedural bar rule, but it is unclear which it thought applied. The OCCA's decision lacks a "plain statement" that its decision rest upon

adequate and independent state grounds." The Court then cites Harris v. Reed, 489 U.S. 255, 263 n.9 (1989) and Michigan v. Long, 463 U.S. 1032, 1042 (1983), before resuming: "Accordingly, we evaluate the merits of Mr. Ross's ineffective assistance of counsel claim." Here, the state court made an indication to a barring of Ross's Sixth Amendment claim, but never made a plain statement of such. In petitioner's case, the state court did not give any indication of a barring, or a plain statement of such. In the 6th Cir. COA Decision, the Court smiply ignores this Court's Long Rule.

Another 10th Cir. Appeals Court decision is adjudicated under the same default premise in Scoggin v. Kaiser, 186 F.3d 1203, 1206 (10th Cir. 1999) (addressing plain statement).

As to the plain statement rule of Long, a clear conflict exist between the 6th Cir. COA Decision and the 10th Cir. COA Decision.

E. RES JUDICATA

Concerning petitioner's Ineffective Assistance of Counsel or Prosecutorial Misconduct claims, res judicata prevents the Respondent from rebutting. ("Under res judicata, a final judgement on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.") Allen v. McCurry,

449 U.S. 90, 94 (1980).

State court record (Appendix M) will reveal that petitioner's 26(b) Application to Reopen (which is the first chance the State had to rebut petitioner's claims) the State was silent to the merits of the claims, and only asserted that Ohio's res judicata barring applied because petitioner did not raise the claims in his direct appeal. State court record (Appendix C) will also reveal that the court rendered a final judgment on the merits in the mentioned proceeding.

Res Judicata now bars the Respondent from arguing against petitioner's Prosecutorial Misconduct claim or his Ineffective Assistance of Counsel claim.

F. QUESTION OF NATIONAL IMPORTANCE

Petitioner will first state that "QUESTION (1)" that petitioner presents to this Honorable Court has not been answered via any published opinions. The closest application exist in United States v. Rojas-Contreras, 474 U.S. 231, 237 (1985), where this Court determinded that the offense date change ("Dec. 17, 1981") to ("Dec. 7, 1981") via superseding indictment did not prejudice the defendent, though the question at hand was if a superseding indictment activates the 30 day

trial preperation protections of 3161 (c)(2). Without an answer to petitioner's question by this Court's discretionary powers, petitioners similarly situated will have no direct grounds for vindication through U.S. Supreme Court athority, on the contrast, prosecutors will have no boundries conserning superseding indictments, which would render the 5th and 14th Amendment rights to Due Process, and the 6th Amendment right to the Nature and Cause of an offense useless. As a result, athirst prosecutors can and will use unethical unfair trial strategies that will obliterate an accused's defence. For example, one could be arrested after being suspect to a fist fight that occured. The prosecutor could recieve this information, but though "bad faith" decide to seek an indictment charging Aggravated Assult. If the indictment is obtained and the accused is notified to an Aggravated Assult charge (in which the police report would vindicate him), the prosecutor could simply seek a superseding indictment charging an Assult offence that is consistant with the police report, two days before trial. In this situation (as in petitioner's), the accused's defense would be shattered in a manner where any length of continuence could not repair it.

Strategies as the metioned will be supported by citings to each decision in petitioner's case, where the court's rulings imply that grand jury concurrence cures any prejudice caused by

changes of original charges via superseding indictment. Outside of voidable issues, and per se violations, Prejudice is the chief determining factor in every reversable error in american jurisprudence. Though petitioner has asserted, and demonstrated substantial prejudice in every proceeding thus far, the Courts have refused a determination of prejudice, or to even utilize the term.

Petitioner thoroughly understands that any form of reversal or dismissal of indictment by reason of Prosecutorial Misconduct is not favorable by any Court, and such sanction is reserved for "very limited and extreme circumstances." United States v. McCord, 509 F. 2d 334, 350 (D.C. Cir. 1974). Petitioner argues that his issues are extraordinary and can not be cured by any lesser sanction (see Appendix I "Memorandum" pg. 37-39). This pleader urges this Court to enforce proper prosectorial standards by executing its own discretionary powers, and grasp the fact that if this Court agrees with petitioner, a remand to a inferior court who was silent to prejudice would resemble throwing petitioner back into the lion's den.

The integrity of Ohio's and the United State's

tribunals will be abolished if such ideology as the 6th Cir. Appeals Court Decision or the lower court's decisions are adopted.

With the upmost respect to each seat, petitioner reminds this Honorable Court that this is not a case of innocents or guilt, but a case of procedual issues which rendered a trial unfair. Petitioner prays that upholding impartial trials are the greater consern.

CONCLUSION

The petition for a writ of Certiorari should be granted.

Respectfully submitted,

JELANI WALKER # 729-780
Pro-Se

/ /2020