

No. **20-5611**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ANDY BUXTON — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED

AUG 28 2020

OFFICE OF THE CLERK

vs.
SCI-MERCER and THE ATTORNEY GENERAL OF THE STATE OF
PENNSYLVANIA, DA'S ALLEGHY COUNTY — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDY BUXTON

(Your Name)

MS#1885 801 BUTLER PIKE

(Address)

MERCER, PA 16137

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Based on the UNITED STATES COURT of Appeals which entered a decision in conflict with the decision of another UNITED STATES Court of Appeals on the same important matter be denied a request for a certificate of appealability?
see (Workman v. Superintendent Albion SCI, 908 F.3d 896 16-1969 (3rd Cir. 2018)) (28 USC § 2253(c)(2))

Whether claims of ineffective assistance of post-conviction relief counsel could serve as cause to excuse the procedural default of a claim of trial counsel's ineffectiveness?

Based on subsequent opinion and judgment issued by third circuit judges: Ambro, Restrepo, and Fuentes (908 F.3d 899) Can a convicted state criminal defendant show a federal habeas Court that his conviction rests upon a violation of United State Constitution. Can he obtain a writ of habeas corpus?

Whether a Habeas corpus petition prepared by a prisoner without legal assistance be skillfully drawn and not be read generously?

Whether the United States Court of Appeals has so departed from the accepted and usual Court of judicial proceedings in petitioner's certificate of appealability? In which this court On Certiorari reversed and remanded see (Opinion O'Connor, J., joined by Rehnquist, Ch. Justice Kennedy, J.) and joined in pertinent part by Scalia and Thomas, J.J., Souter, J., joined by Stevens and Ginsburg, J.J. dissenting. Whether the decision to the important federal question in way that clearly conflicts with relevant decisions of this Court? (28 USC § 2253(c)(2))

Whether petitioner be denied meaningful review based on the same matters in which the United States Court of Appeals decided to rule in favor of certain individuals?

- Whether the procedural bar was not adequate to support the judgement? (Fay v. Noor, 372 US 391, 9 LEd 2d 837 83 S Ct 822 (1963)) (28 USC § 2253(c)(2))

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:
-

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
MARTINEZ v. RYAN, 566 U.S. 1 (2012)	4
Trevino v. Thaler, 133 S.Ct. 1911, 1918 (2013).	4
Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 87 Ed. 2d 674 (1984)	4
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Griffin v. United States, 502 U.S. 33, 112 S.Ct. 466, 116 L.Ed. 2d 371 (1991)	4,
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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 C.A. No. 20-1562; 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 W.D. Pa. Civ. No. 2-17-CV-00594; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

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

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 July 21, 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: August 21, 2020, and a copy of the order denying rehearing appears at Appendix VC1.

☐ 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 _____.
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

THE Sixth Amendment to the United States Constitution provides: "In all criminal prosecutions, the accused shall be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and have the Assistance of Counsel for his defense."

THE Cornerstone of Our American Legal System rests on this recognition of the Constitution as the Supreme law of the Land, and the paramount duty of the Federal Judiciary is to uphold the Law. The compelling reasons set forth within the United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter, has decided an important federal question in a way that conflicts with a decision by this Court, as to call for an exercise of this Court's supervisory power. After the Constitutional Violations found to exist, after a State/Federal Government official repeatedly failed to meet Constitutionally Mandated Requirements.

The Fourteenth Amendment to the constitution of the United States: "No state shall make, enforce any law which shall abridge the privileges or immunity of a citizen of the United States, nor shall a state deprive any person of life, liberty, without due process of law nor deny any person within jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

In the R&R filed on 10-30-2019 petitioner's raised several substantial issues in which proceeding pro se asking for appointment of counsel in which led to his habeas corpus petition inartfully raising ineffective assistance of counsel as to his trial, appellate, and pcra counsel. The evidence was insufficient to prove aggravated assault *Griffin v. United States*,

In which petitioner meets the ambit of *Martinez* which clearly serve as a cause to excuse the procedural default of a claim of trial counsel's ineffectiveness. Based on the cases *Strickland v. Washington*, *Miller-El v. Cockrell*, *Black v. McDaniel*, *Martinez v. Kham*, *Trenn v. Thaler*. Jurists of reason could clearly debate these issues. Therefore this court should grant the certiorari reverse and remand based on the claims and his procedural default of Sixth Amendment ineffective of trial counsel claims especially the appointment of counsel. On 2-25-20 the order was issued and petitioner didn't get a meaningful review based on the materially claims being raised. In which clearly conflicts with the United States Third Circuit court of appeals decisions. In which petitioner submitted a certificate of appealability which was denied 8-21-20. (28 USC § 2253(c)(2))

REASONS FOR GRANTING THE PETITION

This petition should be granted based on the compelling reasons set forth in this case. Its clear based on the record the United States Court of Appeal for the third Circuit has entered a decision in conflict with the decision of the United States court of appeals in *Workman v. Superintendent Albion SCI*, 908 F.3d 896-899, 16-1969 (3rd Circuit 2018), *Larkin Sec'y, Dept of Cor*, 645 F.3d 596, 614 (3rd Cir. 2011) on the same important matter. Also jurists of reason would debate petitioner's challenge to the sufficiency of evidence succeeds on the merits. The fact petitioner proceeding prose after several requests for appointment of counsel inartfully raised ineffective of counsel which are procedurally defaulted based on the record clearly has a basis to overcome the default and should be afforded the opportunity in which this courts accepts and is usual course of the judicial proceedings. Therefore the United States Court of appeals has decided very important federal questions in petitioner's case in a way that conflicts with relevant decisions of this Court. In general, ita convicted state criminal defendant who show a federal habeas court that his conviction rests upon a violation of United States Constitution, he may well obtain a writ of habeas corpus. (Breyer, J., joined by Kennedy, Ginsburg, Sotomayor, and Kagan, JJ.). Counsel overlooked errors in which subsequent opinion and judgement issued by this court third circuit judges, Ambro, Restrepo, and Fuentes opinion of the Court Fuentes, Circuit judge. Review of this writ of certiorari is not a matter of right, but of judicial discretion should be reversed and remanded for the compelling reasons in accord with the United States Court of Appeals. The Federal District Court should have properly exercised § 2254(ii) jurisdiction because the judge in petitioner's case made reference to the DUI conviction. The third Circuit remanded, agreeing that District Court had jurisdiction. (*Lac Kawanua Gg. Dist. Atty v. Cross*, 532 U.S. 394, 402 (2001). Based on the pro se status of petitioner the § 2254 petition can be and should have been construed as asserting a challenge to the current serving, enhanced by the allegedly invalid DUI conviction. *Malone v. Cook*, 490 U.S. 488, 493, 104 L.Ed.2d 549, 109 S.Ct 1923. On certiorari, the United States Supreme Court reversed and remanded. In an opinion by O'Connor J., joined by Rehnquist, Chief Justice and Kennedy, J., and joined in part by Scalia and Thomas, J.J., Souter, J. joined by Stevens and Ginsburg, JJ. dissenting. In which the Supreme Court failed to appoint counsel. (*Gideon v. Wainwright*, 372 U.S. 335 (1963))

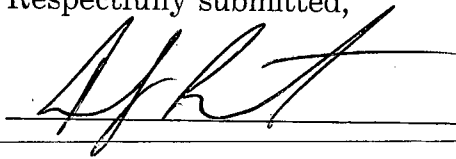
This Court meaningful review is very much needed. During this pandemic it's very difficult to find counsel over to do the proper research, inevitably mistakes. A certificate of appealability should be granted because jurist of reason would find the foregoing debatable based on prior Court rulings in which are clearly in conflict. These questions to a reasonable jury creates a debatable environment based on United States Supreme Court petitioner claims at least need to be reviewed and his claims reviewed and be construed liberally. Based on the United States Court of Appeals which have decided the important federal questions in petitioner's case a call for an exercise of this Court's supervisory power is very much warranted and needed.

CONCLUSION

therefore the certificate of appealability should be granted based on this Court's judicial discretion.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 8-26-20