

20-5663  
IN THE  
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

ANTHONY THOMAS BUONAIUTO, III,  
(Petitioner)

VS.

No.



THE STATE OF PENNSYLVANIA  
(COMMONWEALTH)  
(Respondent)

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted,

*Anthony Buonaiuto*  
Anthony T. Buonaiuto  
Pa D.O.C # LT-8967  
S.C.I Waymart  
Pro-se Petitioner

Dated:

i.

## **QUESTIONS PRESENTED FOR REVIEW**

Petitioner, has been incarcerated since 2014. Petitioner is serving a Sentence for a Violation of the Registration Requirements of the Pennsylvania Sexual Offender Registration and Notification Act, also known as (S.O.R.N.A) 42.Pa.Cs.9799.10-9799.41, (Subchapter H).

Whether, Federal Law Renders the Supreme Court of Pennsylvania in Legal Error, where the Supreme Court of Pennsylvania Committed Legal Error by failing to grant review to adjudge the Substantive Nature and Retroactive Applicability of it's holding in **Commonwealth vs. Muniz**; 164 A.3d 1189 Pa. 2017—(Cert Denied **Pennsylvania vs. Muniz**; 925 S.Ct (2018), for the purposes of adopting the language set forth by the Supreme Court of the United States in **Montgomery vs. Louisiana**; 136 S.Ct 718; 193 L. Ed. 2d 599 (2016), regarding Substantive Rules of Constitutional Law and the Retroactive Effect they have in a Criminal Proceeding, to allow the Petitioner's Untimely P.C.R.A succeed as a Timely Petition pursuant to the Jurisdictional Timeliness Exceptions to the Pennsylvania Post-Conviction Relief Act Time-Bar Exception set forth at 42.Pa.Cs.9545(B)(1)(iii) & (2)?

## **PARTIES OF THE PROCEEDING**

The parties to the proceeding are:

Anthony Thomas Buoniauto, an individual  
incarcerated in the Commonwealth of Pennsylvania.

Commonwealth of Pennsylvania, through the Wayne  
County Pennsylvania, District Attorney's Office.

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I. Muniz, Creates a New Substantive Rule of Constitutional Law, that is Retroactively Applicable to a Final Conviction under both State and Federal Law, thus the Pennsylvania Supreme Court is in Error for Failing to Recognize the Substantive Nature and Retroactive Applicability of it's holding in <u>Muniz</u> , for the purposes of granting the petitioner State Collateral Relief from his Conviction and Sentence for Pennsylvania Consolidated Statute	
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**COURT OF COMMON PLEAS OF WAYNE COUNTY  
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1.

## **OPINIONS BELOW**

The Superior Court's ruling denying the Petitioner Collateral Relief, is attached as Appendix 1., The Order of the Supreme Court of Pennsylvania Denying Review of the Petitioner's State Post-Conviction Collateral Claims, is attached as Appendix 2.

## **JURISDICTION**

The Supreme Court of Pennsylvania denied the petitioner Review of his State Post-Conviction Collateral Claims on April 28<sup>th</sup> 2020. The Honorable Court has Jurisdiction pursuant to 28.U.S.C 1257(a).

## RELEVANT CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: “ No State shall... deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of law”.

Article 1 Section 10, of the United States Constitution provides, in pertinent part: “ No State shall enter into any Treaty, Alliance or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold or silver coin a tender in payment of debts; pass any bill of attainer, **Ex-Post Facto Law**, or impairing the obligation of Contracts, or grant any title of nobility.

## STATEMENT OF CASE

In August 2003, petitioner was convicted of a Sexual Offense in the State of Florida, thus triggering the application of a (10) Ten Year Sexual Offender Registration Requirement and Applicability in that State.

In 2012, the petitioner was notified by the Pennsylvania State Police upon his moving that he was now required to Register as a Sexual Offender for the remainder of his (Life) pursuant to the Subsequently Enacted Pennsylvania Sexual Offender Registration and Notification Act (S.O.R.N.A) **See: Pennsylvania Consolidated Statue 42.Pa.Cs.9799.10-9799.41, (Subchapter H).**

In 2014, the Petitioner, failed to Register and Verify his Address and or Photograph as required under Pennsylvania (S.O.R.N.A). Petitioner, was Subsequently Arrested by the Pennsylvania State Police and charged with a Violation of Pennsylvania S.O.R.N.A pursuant to Pennsylvania Consolidated Statue 18.Pa.Cs.4915.1

Subsequently, thereafter the petitioner entered into a Plea of guilty and was Sentenced to a term of Confinement in the Pennsylvania Department of Corrections.

On the 19<sup>th</sup> day of July 2017, the Pennsylvania Supreme Court decided the case of **Commonwealth vs. Muniz; 164 A.3d 1189 Pa. 2017,**

which held that the Registration Provisions of the subsequently enacted Sorna were Punitive and therefore Retroactive Application of those Requirements to a person who committed there Sexual Offense prior to Sorna's Enactment date of December 20<sup>th</sup> of 2012, violated the State and Federal Ex-Post Facto Clause.

Subsequently, thereafter the petition sought State Collateral Review of his Conviction and Sentence as Violating both the State and Federal Constitution and that based on **Muniz**, his Conviction was Null and Void and therefore he was entitled to Post-Conviction Relief.

The Lower Court, denied relief, the petitioner, appealed to the Superior Court of Pennsylvania, where as the intermediate court affirmed the order of the lower court.

The petitioner than appealed to the Supreme Court of Pennsylvania, and on the 28<sup>th</sup> day of April 2020, with-out review or Opinion the Pennsylvania Supreme Court denied the petitioner's request for review.

## ARGUMENT

**(A)- The Pennsylvania Supreme Court Committed Legal Error in failing to Adopt the language set forth in Montgomery and Teague, as set forth by United States Supreme Court in regards to Substantive Rules of Constitutional Law, and the Retroactive Effect those Rules have in a Post-Conviction Collateral Relief Proceeding, for the purposes of applying the Substantive Nature and Retroactive Effect to the petitioner's Post-Conviction Relief Act Petition, based on the Holding by that Court in Commonwealth vs. Muniz; 164 A.3d 1189 Pa. 2017, in order to find the petitioner's Conviction and Judgment of Sentence illegal and Unconstitutional.**

In the Commonwealth of Pennsylvania, All P.C.R.A Petition's must be filed with-in (1) One year of the date the petitioner's Judgment of Sentence becomes final. See: 42.Pa.Cs.9545(B). However, this statue does provide exception's to that General Rule as long as the Petition Pleads and the Petitioner can Prove one of the (3) Exceptions set forth with-in the Pennsylvania Post-Conviction Relief Act Statue 42.Pa.Cs.9545(B)(1)(i)(ii)&(iii).

**Section 9545 Reads as Follows:**

**(i)- Interference by Government Officials with the Presentation of the claim in Violation of the Constitution of this Commonwealth or the Constitution or Laws of the United States**

**(ii)- The Facts Upon which the Claim is Predicated could not have been Ascertained by the Exercise of Due-Dilligence; or**

**(iii)- The Right Asserted was a Constitutional Right Recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania, after the time period provided in this Section and has been (Held) to apply Retroactively.**

Additionally, any claim to any of the (3) Three above Exceptions must be raised with-in (60) Sixty Days of the date the claim could have been presented.

The Language with-in the Exceptions' disregards the Retroactive Effect Substantive Rules of Constitutional Law have in a Collateral Review Proceeding, thus making this Statue Unconstitutional.

Petitioner, avers in 2016, this Honorable Court in **Montgomery vs. Louisiana**; 136 S.Ct 718; 193 L. Ed 2d 599 (2016), provided a framework for Retroactivity in State Collateral Review proceeding's. This Honorable Court Opted the language contained in **Teague vs Lane**; 489 U.S 288 (1989), by applying that the Teague standard found in a Federal Collateral Review Proceeding regarding Retroactive Effect of Substantive Rules of Constitutional Law, that effect the out-come of a Criminal Proceeding must apply in State Collateral Review Proceedings.

Generally, new Constitutional rules of criminal procedure do not retroactively apply to convictions which were final when the new rules were announced. **Montgomery vs Louisiana**; 136 S.Ct 718, 193 L. Ed. 2d (2016). Procedural rules regulate the manner of determining the defendants culpability and are designed to enhance the accuracy of a conviction or sentence.

In contrast, newly announced substantive rules are an exception to the retroactivity bar and include rules, which forbid criminal punishment of certain primary conduct or prohibit a certain category of punishment for a class of defendants because of there status or offense. **Commonwealth vs. Secreti**; 134 A.3d 77, 81 (Pa. Super 2016)—(Quoting **Montgomery Supra**, “When a State Enforces a Constitutionally Barred Penalty, the resulting conviction or sentence is unlawful. (**Montgomery**

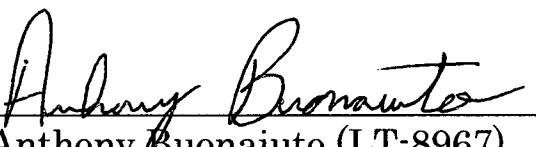
**Supra.** The United States Constitution requires State Collateral Review Courts to give Retroactive Effect to New Substantive Rules of Constitutional Law, which control the outcome of a criminal proceeding.

Instantly, the recent holding in **Commonwealth vs. Muinz; 164 A.3d 1189 Pa. 2017---(Cert Denied Pennsylvania vs. Muniz; 925 S.Ct (2018)-(Decided January 22<sup>nd</sup> 2018)**, created a new substantive rule of constitutional law that applies Retroactively in the State Collateral Context based of the Due process Clause of the United States Constitution because S.O.R.N.A, punishes a Class Defendant's due to there Status as Sexual Offenders, and creates a significant risk of punishment that the law cannot impose.

The predicate legal challenge for Cert review is based on the Failure to Comply with an Unconstitutional Law, and then later being Punished for not Complying with the Unconstitutional Law. Section 18.Pa.Cs.4915.1 is the Criminal Statute that is use in Pennsylvania to Prosecute an Offender for failing to comply with S.O.R.N.A Subchapter (H), the same law that the Pennsylvania Supreme Court found to be Unconstitutional to Offender's like the petitioner, as such application Violated the State and Federal Ex-Post Facto Clause, thus petitioner avers he should have never been Convicted for a violation of Section 4915.1, and that the petitioner's Conviction and Sentence is Void and the petitioner should be discharged, Thus the Petitioner, avers in this

## CONCLUSION

Petitioner, based on the forgoing set forth above, requests this Honorable Court Grant a Writ of Certiorari to review the Judgment of the Supreme Court of Pennsylvania.

Respectfully Submitted,   
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Dated: July 23<sup>rd</sup> 2020