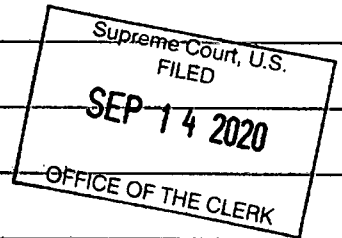


No. 20-5803

ORIGINAL

In The Supreme Court
of The United States

Raymond Brown - Petitioner



vs.

Commonwealth of - Respondent(s)
Pennsylvania

On Petition For A Writ of Certiorari TO
Pennsylvania Supreme Court

"Primary"

Raymond Brown LT6439

SCI-Mercer 801 Bulter Pike

Mercer Pa 16137

"Secondary"

Raymond Brown

45 Liberty Lane

Cleveland GA 30528

Question(s) Presented

- 1) Did Pennsylvania Supreme Court decided an important Federal question that conflicts with the decisions of another State Court and the Supreme Court Rule 13. of the United States?
- 2) Was Pennsylvania Supreme Court with authority to over rule the United States Supreme Court rule 13 making Commonwealth v. Walker, 145 A.3d 969, 977, June 4, 2018, mandate, rather than mandated August 9, 2018.
- 3) Did the State Courts of Pennsylvania violate Petitioner's due process under the United States Constitution, where they quash Petitioner's appeal.

Suggested Answer(s)

Yes!

List of Parties

Petitioner: Raymond Brown LT6439, pro se.
801 Bulter Pike
Mercer Pa 16137

Respondent District Attorney
3 South Penn Squ
Phila Pa 19107

For the Commonwealth of Pennsylvania

Table of Contents

	Pages
Opinions Below,	1
Jurisdiction,	2
Constitutional and	
Statutory Provisions Involved,	3
Statement of The Case,	4-5
Reasons For Granting The Writ,	6-13
Conclusion,	13

Index To Appendices

- Appendix A Pennsylvania Supreme Court
Order June 30, 2020
- Appendix B Pennsylvania Superior Court
Opinion December 14, 2019
- Appendix C Lower Court Order dismiss
PCRA Petition.

Table of Cited Authorities

"Rules"

	Page(s)
Supreme Court Rule 13	3, 6, 7
Pa. Cri. R. P Rule 647	4

"Status"

18 Pa.C.S. § 2701 A	4, 10, 11
18 Pa.C.S. § 2702 A1	4, 10
18 Pa.C.S. § 2702 A34	4, 10, 11
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1257(a)	2
28 U.S.C. § 1651(a)	2

"U.S. Constitutions"

1 st Amendment	3, 6, 7
14 th Amendment	3, 6, 7

"Authorities Cited"

Commonwealth v.

• Walker 145 A.3d 969, 977 (6-1-18)	4, 6, 7
• Rodriguez, 2019 Pa. Lexis 3164 (2799EDA2019)	, 7
• Howard, 587 Pa 441 (8-27-08)	, 7
• Sistrunk, 2019 Pa Super (CP51-CR-02 67622-1971 (10-3-19)	, 7
• Ware, 2019 Pa Sup (13EDA2019) Lexis 3012 (4-9-19)	, 7
• Stansburg 219 A.3d 157 (2019 Pa Super)	, 7
• Blackstone (2020 Pa Super) 130MDA2019 (5-8-20)	, 7
• Lutz, 424 A.2d 1302-05 (Pa 1981)	, 8
• Edwards, 642 A.2d 1077-79 (Pa Super 1992)	, 8
• Travaglia 661 A.2d 553 (1996)	, 8
• Barbosa, 819 A.2d 81-85 (Pa Sup 2003)	, 8

In the United States Supreme Court Petition for
Writ of Certiorari

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

Opinion(s) Below

For case from State Court at 33 EDL 2620
no opinion, order in appendix A, and at
1985 FDA 2018 opinion attach in appendix B.

Jurisdiction

For case from State Court;

On June 30, 2020 the Pennsylvania Supreme Court denied Petition of Allowance of Appeal 33 EDL 2020.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a), 28 U.S.C. § 1254(1) and 28 U.S.C. § 1651(a).

Constitutional and Statutory Provision Involved, Table of Authorities Cited

United States Constitutional Rights

- 1st Amendment - No congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, of press, or right to peaceably assemble, and to petition the government for a redress of grievance.
- 14th Amendment - All person born or naturalized in the United States, and subject to the jurisdiction, are citizens of the United States and of the State wherein they reside, no State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process, nor deny to any person within it's jurisdiction equal protection.
- United States Supreme Court Rule 13
a petition for writ of certiorari to review any judgment in any case civil or criminal entered by a state or court of last resort and of a lower state court that is subject to discretionary review by the state court of last resort is timely when filed with the clerk within 90 days after entry of order denying discretionary review.

Statement of The Case

Petitioner was convicted of aggravated assault May 4, 2014. On direct appeal the Superior Court affirm Petitioner's conviction stating that when Petitioner pointed a firearm at the victim, issued a threats, and touch the victim head on the right side, with the firearm, 3378 EDA 2014, constituted the aggravated assault, March 31, 2016, and Petitioner sentence was vacated and resentence on January 23, 2017. January 31, 2017 Petitioner filed a PCRA petition with claims that trial Counsel was ineffective for failing to request jury instructions, under Pa. R. Cr. P. 1647, Aggravated assault 2702 A4, and Simple assault 2701 A3, where the evidence could have supported a conviction of a lesser offense, rather the aggravated assault 2702 A1. PCRA Court incorrect dismiss the PCRA petition as meritless, stating it was litigated in 3378 EDA 2014, June 29, 2018. Petitioner counsel, file one notice of appeal with three docket number July 19, 2018. December 18, 2019 the Superior Court quash Petitioner's PCRA appeal for violating Commonwealth v. Walker, 145, A.3d 908, 977, June 1, 2018. January 2020 a Petition, 1995 EDA 2018. January 2020 a Petition for Allowance of

Appeal was filed to the Pennsylvania Supreme Court. June 30, 2020 the petition was denied with no opinion, 33 EDL 2020.

Reasons For Granting Petition

"The Pennsylvania Supreme Court, State Court, decided on an important Federal question that conflicts with other States Court, the United States Supreme Court Rule 13, thus over ruling the United States Supreme Court Rules (13) and violated Petitioner's United States Constitutions."

The Pennsylvania Supreme court decided an important question of Federal nature in Commonwealth v. Walker, 135 A.3d 969 977, June 1, 2018. This decision was in conflict with other state courts and Supreme Court Rule 13. The ruling in Walker was issued on June 1, 2018, but not final until August 9, 2018. The Pa Supreme court issue a rule mandating the Walker case applies prospectively to appeals filed after the date of Walker decision. This decision is in conflict with other states courts, where other state court apply 90 day to continue discretionary review. The Walker decision over rules the United States Supreme Court rule 13. The Walker case should have been mandated August 9, 2018 at the expiration of Sup R. Ct R 13 90 days. Here Petitioner, notice of appeal was filed July 19, 2018 before the Walker case was final, August 9, 2018. A petition of writ of certiorari seeking review of a Judgment of lower state court that is subject to

discretionary review by a state court of last resort is timely when it is filed within 90 days of the order denying discretionary review. *Commonwealth v. Rodriguez* 2019 Pa (Lexis 31645) (2799 EDA 2019) August 19, 2019. In all [state courts] an appellant has 90 days from the date of a state Supreme Court decision, apply to [Walker, on Appeal] to file a petition for writ of certiorari with the United States Supreme Court, Sup. Ct. R. 13. *Commonwealth v. Howard* 587, Pa 901 (August 27, 2001). The judgment, decision, in *Walker* (a) became final at the conclusion of review to ~~include~~ include discretionary review to the United States Supreme Court. *Commonwealth v. Sistrunk* 2019 Pa Super CP-51-CR-0007672-1971 (Oct 3, 2019) *Commonwealth v. Ware*, 2019 Pa Sup (13 EDA 2019) Lexis 3012, August 9, 2019. The Pa Supreme Court in *Walker* decision mandating it's ruling was misinformed and amounted to a "breakdown of" in the court system, where a court provide misinformation it is a breakdown in the court system thus one is excused for lack of compliance. *Commonwealth v. Stansbury* 219, A.3d 157 (2019 Pa Super) *Commonwealth v. Blackstone* (2020 Pa Super) 130MDA 2019 May 8, 2020.

The State Court of Pennsylvania violated Petitioner's United States Constitution under the 1st and 14 Amendment where trial counsel was ineffective for failing to request jury instructions.

II. THE PCRA COURT ERRED IN DENYING AN EVIDENTIARY HEARING

This Court's review from a grant or denial of post-conviction relief is limited to examining whether the evidence of record supports the lower court's determination and whether it is free from legal error. Commonwealth v. Lutz, 424 A.2d 1302, 1305 (Pa. 1981). An Petitioner, to be eligible for relief under the Post Conviction Relief Act ("PCRA"), must plead and prove by a preponderance of the evidence that his conviction or sentence arose from one of the errors listed under 42 Pa. Cons. Stat. § 9544 (a)(2) (1998); see also Commonwealth v. Edwards, 642 A.2d 1077, 1079 (Pa. Super 1992). Moreover, to be eligible for post-conviction relief, an Petitioner must prove that the issues raised on appeal have not been previously litigated. Commonwealth v. Travaglia, 661 A.2d 553, 356 (Pa. 1996). This is defined as occurring when "the highest appellate court in which the Petitioner could have had review as a matter of right has ruled on the merits of the issue." 42 Pa. Cons. Stat. § 9544(a)(2). Furthermore, an Petitioner is entitled to PCRA relief if "the ineffectiveness of counsel, which, in circumstances of the particular case, so undermined the truth determining process that no reliable adjudication of guilt or innocence could have taken place." 42 Pa. Cons. Stat. § 9544(a)(2)(ii).

The PCRA Court erred by not granting an evidentiary hearing on the issues raised in Petitioner's amended PCRA petition. Although the right to an evidentiary hearing is not absolute, a court may not summarily dismiss a PCRA Petition when the facts alleged in the petition, if proven, would entitle the Petitioner to relief. Commonwealth v. Barbosa, 819 A.2d 81, 85 (Pa. Super. 2003). A hearing should be held on any issue that the PCRA Court is not certain lacks merit. Commonwealth v. Early, 546 A.2d 1236, 1240 (Pa. Super. 1988) (citing

Commonwealth v. Heck, 467 A.2d 896 (Pa. Super. 1983)). Furthermore, it is the responsibility of the reviewing court on appeal to examine each issue raised in the PCRA petition in light of the record certified before it in order to determine if the PCRA court erred in its determination that there were no genuine issues of material fact in controversy and in denying relief without conducting an evidentiary hearing. Commonwealth v. Hardcastle, 701 A.2d 541, 542-43 (Pa. 1997).

Therefore, the PCRA Court should have granted an evidentiary hearing to provide the forum to demonstrate such manifest injustice. Commonwealth v. Leonhardt, 517 A.2d 1342 (Pa. Super. 1986).

II. THE PCRA COURT WAS IN ERROR IN NOT GRANTING RELIEF ON THE ISSUE THAT COUNSEL WAS INEFFECTIVE.

In order to prevail on a claim of ineffective assistance of counsel, defendant is required to plead and prove by a preponderance of the evidence that the conviction of sentence resulted from ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that not reliable adjudication of guilt or innocence could have taken place. Commonwealth v. Robinson, 877 A.2d 433, 439 (Pa. 2005) (citing Commonwealth v. McGill, 832 A.2d 1014, 1020 (Pa. 2003). See also 42 Pa.C.S. §9543 (a)(2)(ii).

The defendant must show (1) that his underlying claim is of arguable merit, (2) that counsel's chosen course of action had no basis designed to serve his client's interests, and (3) that the defendant was prejudiced by counsel's ineffectiveness. Commonwealth v. Blount, 647 A.3d 199, 203 (1994); Commonwealth v. Paoello, 665 A.2d 439 (Pa. 1995). Such prejudice

may be established by showing that "there is reasonable possibility that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability of sufficient to undermine confidence in the outcome." Strickland v. Washington, 104 S. Ct. 2052, 2069 (1984). "A failure to satisfy any prong of the test for ineffectiveness will require rejection of the claim." Commonwealth v. Hudson, 820 A.2d 720, 726 (Pa. Super. 2003).

COUNSEL WAS INEFFECTIVE FOR FAILING TO REQUEST CORRECT JURY INSTRUCTIONS.

Trial counsel was ineffective for failing to request jury instructions for aggravated assault 2702 A (4) and Simple assault A (1.2.3) where the undisputed evidence was capable of more than one rational inference and could have supported convictions of a lesser offense.

The PCRA Court in its judicial opinion argues that this claim is waived as it was raised previously in the Superior Court. However, the claim here is ineffective assistance of counsel for counsel's failure to request proper jury instructions.

The court inquired if there were any additional instructions to the jury that counsel wanted. Petitioner was charged with aggravated assault 2701 A(1), attempt to cause serious bodily injury to another, or cause such injury intentionally, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life.

As to simple assault, Petitioner was charged with (1) attempt to cause or intentionally, knowingly, or recklessly cause bodily injury to another, (2) negligently cause bodily injury to

another with a deadly weapon, (3) and attempt by physical menace to put another in fear of serious bodily injury.

The Commonwealth presented evidence that the Petitioner pointed a firearm at the victim, made threats to kill the victim, and touched the firearm to the victims head to support the conviction for aggravated assault.

In a similar case, the Superior Court held that holding a gun to a victim's head and threatening to blow the head off is sufficient for aggravated assault A (4), attempt to cause or intentionally or knowingly causing bodily injury with a deadly weapon. See Commonwealth v. Sanders, 426 Pa. Super 362, 627 A.2d 183 (1993). In Commonwealth v. Little, 418 Pa. Super. 558 (1992), the Court held that carrying a shotgun shouting and advancing on a victim from a porch is sufficient for simple assault (2701 A 3) attempting by physical menace to put another in fear of imminent serious bodily injury. In Commonwealth v. Repko, 2003 Pa. Super. 54 , the Court held that pointing a gun at another person is sufficient for simple assault 2701 A3 , by physical menace to put another in fear of imminent serious bodily injury. In Commonwealth v. Saccomandi, 2016 Pa. Super. Unpub, Lexis 4313, 437 EDA 2016, the defendant pointed a gun at the victim and his family, threatened to kill them, and discharged a shot just a few feet from them. The Court found 2701 A 3 by physical menace to put another in fear of imminent serious bodily injury.

The evidence in this case is indisputable and could have supported a conviction of the lesser offenses and an acquittal of the more serious offenses.

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The Supreme Court has ruled that in a criminal case an erroneous jury instruction is identical to an instruction held to be unconstitutional by the United States Supreme Court. Sullivan v. Louisiana, 508 U.S. 275, 124 L. Ed. 2d 182, 113 S. Ct. 2078 (1993); Sandstrom v. Montana, 442 U.S. 510, 520 (1979) ("a deficient reasonable doubt instruction vitiates all the jury's factual findings"); Commonwealth v. Nichols, 692 A.2d 181 (1997) (the trial court failed to instruct the jury correctly on issues of malice and intentional or knowing conduct associated with aggravated assault.)

The United States Court of Appeal for the Third Circuit had announced in Bronshtein v. Horn, 404 F.3d 700 at 725 (3d Cir. 2005), that State Courts must be put on notice that Federal Claims are being asserted. Thusly, the only basis for federal collateral relief for instructional error is that the infirm instruction or the lack of instruction by itself so infected the entire trial that the resulting conviction violates due process. Estelle, 502 U.S. at 72; Capp v. Naughten, 414 U.S. 141, 147, 94 S.Ct. 396, 38 L. Ed. 2d 368 (1973); see Donnelly v. DeChristoforo, 416 U.S. 637, 643, 94 S. Ct. 1868, 40 L. Ed.2d 431 (1974) (noting that it must be established not merely that the instruction was undesirable, erroneous or even universally condemned, but that it violated some right guaranteed to the defendant by the Fourteenth Amendment).

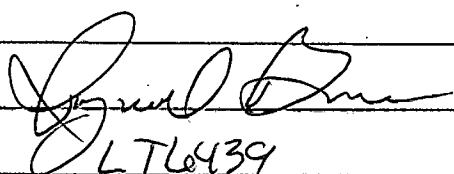
In Sullivan v. Louisiana, 508 U.S. 275, 113 S. Ct. 2078 (1993), the United States Supreme Court held that giving a deficient reasonable doubt jury instruction was constitutional error that required reversal of the conviction rather than being one amenable to harmless error

analysis. The court also held that an erroneous jury instruction was essentially identical to an instruction held unconstitutional in previous United States Supreme Court decision. It was ineffective assistance of counsel for trial counsel failing to request correct jury instructions. Secondly, there were no "reasonable basis" for counsel not to request these instructions. Finally, the Petitioner suffered actual prejudice as a result of trial counsel's failure to raise this issue. It is likely (highly) Petitioner would not have been convicted of the more serious offenses, if the instructions been properly given.

Conclusion

This court should issue a writ of certioraris on the Pennsylvania Courts 1) Vacating Petitioner conviction remand for new trial, 2) vacate Walker 145. A.3d 969, 977, June 1, 2019 to be mandate after August 9, 2019, 3) Grant Petitioner a PCRA hearing and 4) Issue an order that Pa Supreme Court system was broken down.

The Petition should be granted.

~~8-5-20~~
 7-28-20 9-14-20
 LT6439

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