NUMBER: 20-1126

20-6118

2-16-CV-06273

IN THE

SUPREME COURT OF THE UNITED STATES



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RAMON WALLS,
Petitioner

vs.

SUPERINTENDENT MELISSA R. HAINSWORTH,
SCI-LAUREL HIGHLANDS, et al,
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

# PETITION FOR WRIT OF CERTIORARI

RAMON WALL [DOC NUMBER: LB-2316]
PETITIONER, PRO-SE
SCI-LAUREL HIGHLANDS
5706 GLADES PIKE P.O BOX 631
SOMERSET PENNSYLVANIA 15501-0631

## QUESTIONS PRESENTED

Did Trial Counsel's serial ineffectiveness prejudice Petitioner, creating a miscarriage of justice, that demands his conviction be vacated?

Did the harmful procedural and statutory errors committed during the legal proceedings against Petitioner violate his constitutional Due Process and Equal Rights, that demands his conviction be vacated?

Was Petitioner's Guilty Plea illegally induced, rending the plea invalid, demanding that Petitioner's Plea Agreement be invalidated and vacated?

Was Petitioner victimized by layered ineffective assistance of counsel, that demands his conviction be vacated?

Did the District Attorney's Office Of Philadelphia County commit misconduct violating Petitioner's constitutionally protected State and Federal Rights, that demands his conviction be vacated?

Did the Judicial abuse of discretion, harmful errors, personal prejudice and bias during the legal proceedings, violating Petitioner's Due Process, wrongfully convicting an innocent man and invoking an excessive sentence; create a miscarriage that demands Petitioner's conviction be vacated?

Does Petitioner's claims of Actual Innocence negate ALL waivers and issues of untimeliness?

## LIST OF PARTIES

All Parties DO NOT appear in the Caption Of The Case on the cover page. A list of ALL Parties tothe proceedings in the Court whose judgement is the subject of this Petition is as follows:

Philadelphia County Court Of Common Pleas, District Attorney and Public Defenders Offices; Plea Agreement and Court Appointed PCRA Attorneys (Geoffrey M. Kilroy, John P. Cotter and Sharon R. Miesler).

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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 be issued to reveiw the judgement below.

## OPINIONS BELOW

For cases from Federal Courts:

The United States Court Of Appeals Opinion appears at Appendix A to the Petition and is unpublished.

The United States District Court Opinion appears at Appendix B to the Petition and is unpublished.

For cases from State Courts:

The highest State Court Opinion to review Petioner's merits appears at Appendix C to the Petition and is unpublished.

## JURISDICTION

For cases from Federal Courts:

The date on which the United States Court of Appeals' decision was made on 07-01-2020. No Petition for Rehearing was timely filed.

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 Court decided Petitioner's case was made on 11-30-2018. A copy of that decision appears at Appendix D.

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

II: BACKGROUND:

On July 24th 2012, *Ramon Wall* ["Plaintiff"] entered a negotiated plea agreement for one (1) count of stalking his former paramour, Chemyra Johnson ["Victim"], a 3rd Degree Felony, pursuant Title 18 PA.C.S. §2701, and was sentenced to a term of six (6) months to twenty three (23) months in prison, followed by three (3) years of consecutive probation.

On March 2nd 2013, Plaintiff was accused and arrested for repeatedly striking and choking the same Victim. Then, while in custody, Plaintiff sent the Victim a letter threatening her physical safety. On June 10th 2013, Plaintiff appeared before Philadelphia County Court of Common Pleas Judge Genece Brinkley, pleading guilty to Title 18 PA.C.S. § 2702, § § A1, a 1st Degree Felony. Judge Brinkley sentenced Plaintiff to five (5) to ten (10) years of incarceration, plus five (5) years of consecutive probation. On June 13th 2013, the Commonwealth lodged a Motion for Revocation of Plaintiff's probation on the Stalking Charge, which was granted by the Philadelphia County Court of Common Pleas on July 11th 2013. Plaintiff was re-sentenced to three (3) to six (6) years in prison, to run consecutive to Judge Brinkley's sentence.

On December 3rd 2013, Plaintiff filed identical PCRA Petitions in Philadelphia County Court of Common Pleas, before Judges Denis P. Cohen and Genece Brinkley, alleging that Jeffrey Kilroy, Esquire, trial counsel's ineffectiveness improperly induced him to plead to an illegal plea agreement. John Cotter, Esquire, was appointed by the Court as PCRA Counsel on January 13th 2015, And, on March 19th ~~2015~~, Attorney Cotter filed a ***Finley No-Merit Letter*** with Judge Brinkley, who dismissed Plaintiff's PCRA Petition on June 3rd 2015.

On January 11th 2016, Plaintiff filed an amended PCRA Petition with Judge Cohen, alleging that Attorney Kilroy was ineffective for failing to inform the Plaintiff that his Motion For Sentence Reconsideration has been dismissed by that Court. On April 27th 2018, Attorney Cotter appeared in Judge Cohen's Courtroom and made oral arguments against the claims of ineffectiveness relating to his alleged failure to file an appeal on Plaintiff;s behalf.

On November 30th 2018, Judge Cohen held an Evidentiary Hearing on the issue of ineffectiveness. At the Hearing Attorney Kilroy testified that his failure to file an appeal on behalf of the Plaintiff was based upon discusions on strategy with the Plaintiff. The Plaintiff, who favored the filing of the Motion For reconsideration, ultimately endorsed Attorney Kilroy's strategy.

The Plaintiff testified that Attorney Kilroy did not discuss any post-trial strategies with him. However, the Court ultimately found that Attorney Kilroy's testimony was moe credible than the Plaintiff's, concerning the nature of the strategic discussions for post-conviction, and denied the Plaintiff's PCRA, declining to re-instate Plaintiff's appellate rights *Nunc Pro tunc*.

## *III: FACTUAL HISTORY:*

After Plaintiff was released from the Philadelphia County Jail on probation on his conviction stalking, he was contacted by Chemyra Johnson, who wanted to meet and discuss rekindling their romance. Over the course of a series of telephone conversations and face-to-face rendezvous, Plaintiff and Chemyra Johnson decided to follow through on their intention to get married, scheduling a date to apply for a Marriage License at the Magistrate's Office.

Plaintiff met Miss Johnson after she completed her shift, and they went to her apartment for consentual sexual intercourse. Prior to taking a her shower Miss Johnson asked Plaintiff if he would like to stay the night, and he declined. Upset at Plaintiff's decision, while he was showering Miss Johnson called the police from the bathroom and falsely accused Plaintiff of physicaly and sexually assaulting her. Furthermore, she stated that the Plaintiff was there in violation of active Protection From Abuse ("PFA") Order.

When the Police arrived at the apartment, they claimed to have knocked but received no response. Then, despite there being no evidence that a domestic dispute had taken place, including but not limited to, any indication that anyone was in imminent danger, duress or being held hostage; no sign or report of screaming, hollering or arguing, the Police Officers had the landlord unlock the door without probable cause, consent or a valid search warrant.

After the Police unlawfully entered the apartment they discovered both the Plaintiff and Miss Johnson wearing nothing towels. The Officers witnessed no evidence that a physical struggle had taken place. There was no indication Miss Johnson was being illegally restraint against her will, threatened, or in any type of physical or mental danger. Also, The Officers found no bruising, bleeding or other signs that an assault had taken place. There was no probable cause or reason to place Plaintiff under arrest--accept the unsupported retaliatory and vindictive false claim of being physically and sexually assaulted by him.

On February 28th 2013, Chemyra J. Johnson filed a Petition seeking an Order for emergency Protection From Abuse against Plaintiff. However, he was never served notice of that complaint, nor did Miss Johnson advise Plaintiff of her actions to obtain a PFA Order when she invited him to her apartment for consenual sexual intercourse. See: Police Memo, dated 03-01-2013 and Emergency PFA Affidavit Form, 02-28-2013, Page DV518. Plaintiff, had no knowledge of the Court Order, therefore did not know of any potential violation.

On March 1st 2013, Plaintiff was immediately arrested by the Police based upon the false statements made by Miss Johnson, without an search and/or arrest warrant, or permission to be in the residence. Police also failed to advise Plaintiff of his Miranda Rights.

When they arrived at the Police Department's "Roundhouse," Plaintiff was processed. At that time, Plaintiff discovered he was facing numerous charges ranging from simple and aggravated assault to several sexually based offenses. Plaintiff was not questioned by any Police Officer, nor did he participate in an investigative interview with any Detective concerning the alleged allegations; denying him the opportunity to tell his "side" of the story.

Miss Johnson didn't appear to be upset or frightened, and had no visible injuries. Nor did the Police transport her to the hospital for a rape test or to be examined by a nurse, doctor or other medical personnel for injuries resulting from Plaintiff's alleged assaults upon her.

On March 5th 2013, Plaintiff telephoned Miss Johnson from Philadelphia County Jail, inquiring about the details of the charges pending against him. Miss Johnson claimed that she never made any accusations of being physically or sexually assaulted, leading to Plaintiff's arrest; and that she unwillingly accompannied Police to the "Roundhouse," after being informed she "had to go to the station with" them because she was "naked." She further stated that she never called the Police, and that she didn't know did call them.

Plaintiff asked Miss Johnson "did we have any problems?" When she said nothing, Plaintiff said, "The Police charged me with assaulting and raping you—did I do that?" Miss Johnson responded, "I didn't say anything like that to the Police. I don't know why they locked you up..." Then, they continued discussing the alleged incident.

Afterward, Plaintiff telephoned his brother, ***Robert Wall,*** who informed him that he had spoken with Miss Johnson. In that conversation, Miss Johnson stated that when the Police asked her if she had been sexually of physically threatened or assaulted, she "denied it." The conversations between the Plaintiff and Miss Johnson, as well as the one between he and his brother, were recorded by the Philadelphia County Jail, per policy.

On March 18th 2013, Plaintiff sent a letter to his appointed Trial Counsel, informing counsel of his telephone converstions with Miss Johnson and Robert Wall, requesting that counsel get transcripts of those conversations from the Philadelphia County Jail to use in aiding Plaintiff's defense. Also, that counsel interview Miss Johnson, performing a thorough invesigation into the alleged incidents and to effectively represent him in the proceedings. Also, Plaintiff sent correspondence to the Philadephia Defender's Association, requesting they insured that trial counsel conducted a thorough investigation of the false allegations. Howevr, Trial Counsel never acknowledged Plaintiff's request, nor did he present, on record, the results of any investigation, during any preceedings where he respresented Plaintiff.

On April 4th 2013, the Philadelphia County's District Attorneys claimed to have filed a Motion containing the alleged facts that Plaintiff tried to intimidate Miss Johnson's testimony. The District Attorney failed to attach these "facts" to their Motion to substantiate their claim of witness intimidation, pursuant PA.R.Crim.P. 556.2(A)(1). Also, it is required that their Motion be presented to the President Judge, or the Judge assigned the case, for determination of Probable Cause concerning witness intimidation. See PA.R.Crim.P. 556.2(A)(3).

When the issuing Authority received the Motion, if it's executed by the appropriate Judge, the issuing Authority must cancel the Preliminary Hearing, PA.R.Crim.P. 556.2(A)(3)(a). Then, the Order and the Motion must be sealed. PA.R.Crim.P. 556.2(A)(4); and the District Attorney must file the sealed Order and Motion with the Clerk Of Courts. PA.R.Crim.P. 556.2(A)(5). The Plaintiff was never served proof of this Order and Motion. It was not contained in his Pre-Trial Discovery, nor is there a record that the sealed Order and Motion was ever filed with the Clerk Of Courts Office, as required by the law.

On April 8th 2013, a status hearing was held before Judge Charles A. Erhich regarding the indictment against the Plaintiff. However, Plaintiff was never transported to the Court, nor advised of the results of the proceeding by the Court or his attorney. On April 9th 2013, Plaintiff's Trial Attorney visited him at Curran-Fromhold Correctional Facility ("CFCF"), to inform him that the District Attorney requested a continuence for another Status Hearing on April 22nd 2013. Counsel advised Plaintiff that Miss Johnson did not appear at the Hearing, and that Counsel had failed to make a Motion to Quash the indictment; which was a critical error at this stage of the pre-trial proceedings.

On April 18th 2013, the Grand jury Foreperson and the Assistant District Attorney ("ADA") executed the indictment, accepting the account in its entirety. However, Plaintiff's Trial Counsel never examined the indictment, therefby failing to discover that the document was defective for not including a Statement Of Compliance, and because the ADA failed to present any evidence before the indicting Grand Jury to support the alleged accusations.

On April 22nd 2013, Judge Charles A. Erhich approved the defective indictment. Trial Counsel failed to object to the acceptance of the defective indictment, and to Court's ruling to hold Plaintiff over for trial on the charges submitted by the ADA, without any evidence or witnesses to support the charges. Plaintiff should have been afforded a Preliminary Hearing. On April 25th 2013, the Information was filed. However, it too was defective for failing to contain a Certificate Of Compliance to validate the form. See PA.R.Crim.P. 560(A)(7).

On April 22, 2013 Judge Charles A. Erlich stated during the Formal Arraignment that the "next Court will be in just a few minutes, we will have it out of the computer for arraignment in 1104. It's a Scheduling Conference." Plaintiff's Formal arraignment, which was originally scheduled for April 24, 2013, was cancelled, and rescheduled for May 13, 2013. According to the Docketing Statement, the Common Pleas case was "unknown". However, Plaintiff was "held for Court on April 24, 2013, despite the cancellation.

Prior to the alleged Arraignment Hearing that was scheduled for May 13, 2013, Plaintiff was housed in Philadelphia's CFCF, during the time of the original Arraignment date, April 24, 2013, and the rescheduled Arraignment date May 13, 2013. Pursuant to PA.R.Crim.P. 570(A), "The Arraignment shall not be delayed ***unless*** [Plaintiff] is ***unavailable*** within the 10-Day limitation."

Since Plaintiff was being housed in the Philadelphia County Jail during the time period of both scheduled arraignments, he should have been present as Judge Charles A. Erlich ordered; however, he was never transported to either proceeding by the Philadelphia County Sheriff's Department. Due to his absence from these proceedings Plaintiff was never informed by any Judge of his Constitutional Rights, nor was he officially "held over" for Court for the charges in the indictment against him.

On June 3, 2013, a Pre-Trial Conference was conducted. During this hearing the District Attorney offered a plea deal for five (5) to ten (10) years imprisonment, followed by five (5) years of consecutive probation for the aggravated assault charge, which Defense Counsel agreed to. Afterward, a "continuance for non-trial disposition" was requested.

On June 10, 2013, Plaintiff accepted a negotiated guilty plea. However, that acceptance was unintelligently, unknowingly, and involuntarily made due to evidence withheld by the District Attorney and Trial Counsel. Also, according to the Sentencing Guidelines, Plaintiff's Prior Record Score ("PRS") was two points with a sentencing range of thirty-six (36) to forty-eight (48) months for aggravated assault. But the District Attorney's offer was for forty-eight (48) months to sixty (60) months, as if Plaintiff's PRS was four points, illegally aggravating Plaintiff's gravity score to 10. No Pre-Sentencing Investigation was ordered.

*IV:* ***ARGUMENT:***

*[1] Ineffective Assistance Of Counsel:*

(a) Prior to acceptance of Plaintiff's negotiated plea agreement, Trial Counsel failed to conduct an investigation concerning the alleged Protection From Abuse ("PFA") Order. The PFA was defective and had not been properly served upon Plaintiff, resulting in the charge that led to Plaintiff's illegal arrest. See Police Memo, dated March 1, 2013.

Furthermore, Miss Johnson, who filed for an Emergency PFA Order, never notified Plaintiff of the pending PFA when she invited him to her apartment for consentual sexual intercourse. Miss Johnson's failure to advise Plaintiff of the PFA denied him of the knowledge of the Court Order; which means he could not have intentionally violated the PFA. In fact, Miss Johnson was the one in violation of the PFA when she invited Plaintiff to her residence.

In th absence of a PFA Order, police had no probable cause to arrest Plaintiff; therefore, he was victimized by Counsel's ineffectiveness when Counsel failed to proffer this evidence to the Court. See Police Memo, dated March 1, 2013.; Police Investigative Interview Report, dated March 2, 2013; Emergency PFA Affidavit Form, dated February 28, 2013; ***Commonwealth v. Padden***, 782 A.2d 299 (PA.Super. 2001)(Citing and quoting ***Commonwealth v. Pierce***, 515 PA 153 (19870; ***Lesko v. Lesko***, 833 A.2d 790 (PA.Super. 2003); ***Burkhalter v. Burkhalter***, 959 A.2d 1260 (PA.Super. 2008).

(b) Police arrived at Miss Johnson's residence, allegedly based on a phone call from her; claiming to have knocked on the door and received no response. Despite there being no evidence of an earlier domestic disturbance, or that one was in progress, no noise complaints from neighbors, nor any indication that anyone in the apartment was in imminent danger, in duress or being held hostage; and instead of knocking again or recalling the number recorded from the received call, the Officers had the Landlord open the door without probable cause, consent, or a valid search warrant, illegally intering the residence.

After unlawfully entering the residence they discovered Miss Johnson and the Plaintiff clad only in towels. The Officers witnessed no evidence of a physical struggle, or signs that Miss Johnson was being illegally restrained against her will, being threatened or in physical danger. Also, the police found no bruising, bleeding or any proof an assault had taken place. See Police Memo, dated March 1, 2013.

The Officers immediately arrested Plaintiff without an arrest warrant, supposedly based upon statements made to them that Plaintiff had viciously beat and choked her. Plaintiff never recieved his Miranda Warning, nor was advised why he had been arrested. Only after being fingerprinted did the Plaintiff discover that he had been charged with numerous allegations of physical and sexual assaults against Miss Johnson.

Since there were no signs of physical injuries, the Police never took Miss Johnson to a hospital to be examined; nor was an examination or "Rape Test" performed. No investigation to support Miss Johnson's accusations was conducted, including the opportunity for Plaintiff to give his version of the events of that evening. See Police Incident Report, March 1, 2013. Counsel was ineffective for persuading Plaintiff to take a deal, despite never reviewing or considering this evidence, which falls below the effectiveness threshold.

(c) Counsel failed to interview any witnesses, including but not limited to the Officers on the scene, the landlord, neighbors, or Miss Johnson. Based on this evidence, there were considrable doubt any assaults took place. Counsel also failed to present character witnesses and to examine Miss Johnson's criminal history, which revealed she possessed a pattern of lying and had been convicted of perjury. Such evidence could have been used for impeachment purposes. Counsel's performance was not in the best interest of Plaintiff, nor stategically viable; demonstrating his incompetence and ineffectiveness.

(d) Plaintiff made several telephone calls to his brother, ***Robert Wall*** and Chemyra J. Johnson, the aleged victim. During these telephone conversations, which were made from, and recorded by the Philadelphia County Jail where Plaintiff was housed, Miss Johnson told Plaintiff she never told the Police he had sexually or physically assaulted her, and that she vehemently denied it during their questioning. She also told Plaintiff that she did not voluntarily accompany the Officers to the Police Department, but was told that she had to go because she "was naked". Also, she denied calling the Police, stating that it was "probably the landlord" who made the call.

Plaintiff's Brother, Robert Wall, claimed to have spoken with Miss Johnson. Robert relayed to the Plaintiff, that during their telephone conversations made from, and recorded by the Philadelphia County Jail, that Miss Johnson told him she "*NEVER*" told the Police that Plaintiff "raped her," and that she continually denied that he had physically or sexually assaulted her. Plaintiff advised his attorney of these telephone calls, and that they were recorded and maintained by the Philadelphia County Jail, per law. He requested Counsel to contact the County Jail Of Philadelphia and to obtain copies and/or transcripts of these telephone calls in order to use them in his defense. See Letter To Trial Counsel, dated March 18, 2013, which is also included in this Memorandum Of Law as an exhibit.

His lawyer never acknowledged receiving his letter, nor followed up the requests from Plaintiff to obtain the phone records.. Instead, he failed to seek evidence which contained statements that supported his claims of actual innocence, and which could have been used to impeach Miss Johnson's credibility with prior out of court statements, directly contradicting what the police claimed she told them; and creating doubt against the veracity of her false accusations. This falls below the standard of competence and ineffective assistance of counsel.

(e) "Lawyers in criminal cases are ***NECESSITIES*** not ***LUXURIES***. Their presence is essential because they are the means through which other rights of the person on trial are secured. Without [effective] Counsel, the [legal proceedings] itself would be of little avail. Of all the rights an accused person has, the right to be represented by [competent] counsel by far is the most pervasive, for it affects the Defendant's ability to assert other rights he may have. See ***United States v. Cronic***, 466 U.S. 648 (1984).

On April 22, 2013 Judge Charles A. Erlich stated during the Formal Arraignment that the "next Court will be in just a few minutes, we will have it out of the computer for arraignment in 1104. It's a Scheduling Conference." Plaintiff's Formal arraignment, which was originally scheduled for April 24, 2013, was cancelled, and rescheduled for May 13, 2013. According to the Docketing Statement, the Common Pleas case was "unknown". However, Plaintiff was "held for Court on April 24, 2013, despite the cancellation.

Prior to the alleged Arraignment Hearing that was scheduled for May 13, 2013, Plaintiff was housed in Philadelphia's CFCF, during the time of the original Arraignment date, April 24, 2013, and the rescheduled Arraignment date May 13, 2013. Pursuant to PA.R.Crim.P. 570(A), "The Arraignment shall not be delayed ***unless*** [Plaintiff] is ***unavailable*** within the 10-Day limitation."

Since Plaintiff was being housed in the Philadelphia County Jail during the time period of both scheduled arraignments, he should have been present as Judge Charles A. Erlich ordered; however, he was never transported to either proceeding by the Philadelphia County Sheriff's Department. Due to his absence from these proceedings Plaintiff was never informed by any Judge of his Constitutional Rights, nor was he officially "held over" for Court for the charges in the indictment against him.

On June 3, 2013, a Pre-Trial Conference was conducted. During this hearing the District Attorney offered a plea deal for five (5) to ten (10) years imprisonment, followed by five (5) years of consecutive probation for the aggravated assault charge, which Defense Counsel agreed to. Afterward, a "continuance for non-trial disposition" was requested.

Instead of "being the guiding hand [that protected] an innocent Defendant..." ***Powell v. Alabama***, 287 U.S. 45, 69 (1932), Counsel abdicated his duties and responsibilities, causing Plaintiff "to lose his freedom [because] he didn't know how to establish his freedom." **ID**. Trial Counsel failed to ***zealously*** represent Plaintiff by not communicating with or keeping him informed of the legal proceedings; acting more like an adversary instead of an advocate. From the genesis of their relationship, Counsel's sole focus was to persuade Plaintiff to accept a plea, which was a bargain for the Commonwealth but not for the Plaintiff. He failed to insure Plaintiff was present during any of the proceedings, depriving him of due process and ineffective assistance of counsel, as well as the opportunity to be stand before the Judge and be told what his appellate rights were.

"Unless the Accused receives effective assistance of counsel, a serious risk of injustice infects the criminal process itself," ***Cuyler v. Sullivan***, 446 U.S. 335, 343 (1980); as was the case here. Counsel went through the motions, attending the scheduled court dates, but never kept Plaintiff informed, and rarely insured that Plaintiff was in the Court. He claimed he explained to Plaintiff the legal options of plea verses jury or judge trial, yet never challenged the District Attorney's sentence recommendation, inquired why no "PSI" Report was ordered, verified the evidence supporting the charge of aggravated assault or the erroneous point's grading that unjustly aggravated Plaintiff's sentence.

When Plaintiff inquired about "fighting his case in Court," Counsel built a bleak picture of the evidence stacked against him, warning him to accept a deal or spend "a long time int prison" because the Commonwealth would charge him with multiple crimes, to run consecutive, sending him away for a long time. Counsel said that "everything would be just like the last" time he took a plea agreement. But it wasn't! Now Plaintiff was being charged with an aggravated assault, not a simple one; despite there being no medical records or injuries to sustain such a conviction for aggravated assault.

Counsel failed to advise Plaintiff that by "accepting a plea" he would forfeit his rights to challenge the constitutional violations and misconduct perpetrated against him at the hands of the District Attorney's Office and Police Department; impeach the lies claimed by Miss Johnson; or attack the abuse of discretion, bias and errors committed by the Judge. He failed to explain to Plaintiff that by accepting the plea, he accepted the lies as the truth and would never be able to have his day in Court to tell his side of the story. Nor that once he "took the deal," he would be sentenced in the aggravated range for the feloneous aggravated assault, "lose the time" served on the simple assault, and be resentenced as a parole violator, resulting in the long sentence in a State Prison, that he was accepting the plea to avoid.

It all had the appearance of being legal, but it wasn't. And since Plaintiff was misled into taking an plea, none of it could be challenged. However, since "Due Process does require fundamental justice, a mere formal correctness or procedural regularity cannot satisfy it. ***Foster v. Illinois***, 332 U.S. 132 (1947).

*[2] Procedural and Statutory Errors Resulting In Violations of Plaintiff's Constitutional Due Process And Equal Protection Rights*

Prior to his arrest and subsequent indictment, at the invitation of Miss Chemyra J. Johnson, Plaintiff accompanied his prior paramour to her residence for consentual sex. Angry that he refused to spend the night, unbeknownst to him while he showered, she telephoned the police and claimed he was in violation of a PFA Order that never existed.

When the Police realized no valid PFA Order existed; knowing he was on probation, Miss Johnson falsely accused Plaintiff of physically and sexually assaulting her, leading to his arrest. Had procedures been properly followed, Plaintiff would never have been arrested without proable cause or an arrest warrant; resulting in the coerced guilty plea of an innocent man. See PA.R.Crim.P. 120(B)(2); PA.R.Crim.P. 122(B)(2); PA.R.Crim.P. 1206, pursuant to § 62A09(d); PA.C.S.A. §6110(2)(ii); and Pennsylvania Constitution, Article I, §9.

Then, on April 4, 2013, the District Attorney's Office filed a Motion alleging that Plaintiff attempted to intimidate Miss Johnson. Criminal Docket Number: MC-51-CR-0008630-2013, dated July 27, 2015. Pennsylvania's Rules of Criminal Procedure required the alleged facts to be attached to motions claiming witness intimidaton at the time of filing. PA.R.Crim.P. 556.2(A)(1). It is also required the motion be presented to the President Judge, or the judge assigned to the case, PA.R.Crim.P. 556.2(A)(2), who must determine probable cause for witness intimidation prior to signing motion, PA.R.Crim.P. 556.2(A)(3).

When the issuing authority receives the motion, and if it is executed by the judge, the issuing authority must cancel the Preliminary Hearing. PA.R.Crim.P. 556.2(A)(3)(a). The Order and Motion must then be sealed, PA.R.Crim.P. 556.2(A)(4), and the District Attorney must file the sealed Order and Motion with the Clerk Of Courts. PA.R.Crim.P. 556.2(A)(5).

The Plaintiff was never served a copy of the Order or the Motion. And, upon receipt of his pre-trial discovery materials, Plaintiff realized not only was the alleged Order and Motion concerning witness intimidation never received by him, but that it had never been filed with the Clerk Of Courts' Office, as required by law. See Discovery Control Record, Criminal Docket Number: CP-51-CR-0005311-2013, dated May 23, 2013.

On April 8, 2013, a Status Hearing was held before Judge Erlich, concerning pending indictment against Plaintiff. Since he had not been transported to the hearing by the Sheriff, and his attorney never advised him was happened, Plaintiff was denied his right to be present at the hearing and informed of its results.

On April 9, 2013, Plaintiff's attorney visited him at C.F.C.F., informing him that the District Attorney had requested another Status Hearing for April 22, 2013, but failed to inform him it was because Miss Johnson had failed to appear for the original scheduled hearing; for which he could have filed a Motion To Quash the inditment.

This critical error by the Plaintiff's attorney permitted the States indictment to proceed when there was a possibility that, based on the questionable PFA Order, illegal entrance into the residence without an search warrant, arrest of Plaintiff without an arrest warrant, no medical or physical evidence to support Mis Johnson's false allegations of physical and sexual assualt as wellas her history of lying and conviction for perjury, that the indictment could have been quash. Instead, Counsel remained silent, permitting the defective case to proceed. See: Trial Defense Counsel's Investigatory File, pursuant Plaintiff's Case Numbers MC-51-CR-0008630-2013 and CP-51-CR-0005311-2013.

On April 18th 2013, the Foreperson of the Grandjury, along with the Assistant District Attorney executed the questionable indictment on all accounts. See Indictment Records, date April 18, 2013. However, this indictment was also defective because it [1] did not possess a Statement of Compliance, see Indictment Records, date April 18, 2013, and [2] The Assistant District Attorney failed to present any evidence to the indicting Grandjury that supported the allegations in the indictment. See Hearing, Volume One, April 22, 2013, Page 3. Furthermore, the Assistant District Attorney failed to present any witnesses, including Miss Johnson the accuser, to testify before the Grandjury concerning the allegations in the indictment. See: Hearing, Volume One, April 22, 2013, Pages 2-4.

Despite the lack of evidence and witness testimony, on April 22, 2013, Judge Charles A. Erlich, approved the defective indictment. See: Hearing, Volume One, April 22, 2013, Page 4. During the Status Hearing, April 22, 2013, Plaintiff's Defense Counsel had legitimate reasons to object to the Judge's ruling to hold Plaintiff's case over for trial concerning the charges in the indictment, based on the Assistant District Attorney's failure to present evidence to establish a prima facia case to the Judge. See Hearing, Volume One, April 22, 2013, Page 4.

Based upon other evidentiary and procedural insufficencies, defects and errors, the Plaintiff should have been given a Preliminary Hearing. A Magistrate Judge should have allowed to review the physical and medical evidence, as well as witness testimony to determine if the evidence presented establish in the indictment established the necessary prima facia showing to warrant the case being bound over for trial. Refer to Petitioner's Quarter Session File and the Grandjury Hearing Notes, Volume One, April 22, 2013.

On April 25, 2013, the "Information" was filed against Plaintiff. See Criminal Docket Number CP-51-CR-0005311-2013, dated June 5, 2014, Page 3. Unfortunately, this document also has proven to be defective for lacking to contain a Certificate of Compliance to the form, making the document invalid and insufficient. See PA.R.Crim.P. 560(A)(7) and the "Information" Document, April 25, 2013, Counsel's Investigation File, listed in Plaintiff's Case Docketing, Numbers MC-51-CR-0008630-2013 and CP-51-CR-0005311-2013.

On April 22, 2013, Judge Erlich presided over Plaintiff's Formal Arraignment. During that proceeding he announced that "the next Court [Session] will be [held] in just a few minutes... for Arraignment in 1104." See Hearing, Volume One, April 22, 2013, Page 4. The Judge also stated this will be "A Scheduling Conference in the designated zone [that] will come back here. It skips the Smart Room. The [Plaintiff] will be brought down." See Hearing, Volume One, April 22, 2013, Page 5. Then the Hearing concluded.

This "Formal Arraignment" was originally scheduled for April 24, 2013, but was cancelled. The record shows the status for the created Common Pleas Case was "unknown". The records also indicated that Plaintiff's Arraignment had been rescheduled from April 24, 2013, to May 13, 2013. See Criminal Docket Number MC-51-CR-0008630-2013, Page 5. Despite this "cancellation and rescheduling" entry, Plaintiff was "held for Court on April 24, 2013, according to Criminal Docket Number CP-51-CR-0005311-2013, Page 5, dated June 5, 2014, ***PRIOR*** to the alleged Arraignment Hearing on May 13, 2013. See ***Supra*** Page 1.

Plaintiff was in custody at Philadelphia's CFCF on the April 24, 2013, the original Arraignment date, as well as on May 13, 2013, the rescheduled Arraignment date. Therefore, pursuant PA.R.Crim.P.R. Rule 570(A), "the Arraignment ***SHALL NOT*** be delayed ***UNLESS*** [Plaintiff] is unavailable within the 10-day limitation." Since Plaintiff was available why was the Arraignment rescheduled? Also, why was Plaintiff not transported by the Sheriff to either Arraignment Proceeding as ordered by the Court? See: Hearing, Volume One, April 22, 2013; Criminal Docket Numbers MC-51-CR-0008630-2013 and CP-51-CR-0005311-2013.

Because the Plantiff was never present, he was never informed by ***ANY*** judge of his State Constitutional Rights, nor was he ever officially held over in person for trial on any of the alleged charges. Arraignment Hearing, Volume One, April 24, 2013 and May 13, 2013. Counsel's failure to perform his duties, unreasonable conduct and unprofessionalism rendered Plaintiff without counsel, falling well below the standard of effective assistance of counsel required by the U.S. Constitution. See Trial Counsel's Investigation Files, under Plaintiff's Criminal Docket Numbers MC-51-CR-0008630-2013 and CP-51-CR-0005311-2013.

On June 3, 2013, the Pre-Trial Conference was held. See the Criminal Docket Number CP-51-CR-0005311-2013, dated June 5, 2014, Page 6. During this Conference the District Attorney made a Plea offer of Five (5) to Ten (10) years of imprisonment, followed a Five (5) years of probation, to be served consecutive to the prison term, for the charge of Aggravated Assault, which Plaintiff's Attorney was agreeable with. After the Conference a continuance for "Non-Trial Disoposition" was requested. See: Trial Counsel's Correspondence, Dated September 8, 2015; and Criminal Docket Numbers CP-51-CR-0005311-2013, Page 6.

Although the District Attorney's Office had provided Plaintiff's Attorney Pre-Trial Discovery Materials, See Guilty Plea Record, Volume One, June 10, 2013, Counsel failed to review these materials with the Plaintiff. There were no strategic discussions concerning the discovery material or any of the information Plaintiff had previously provided. Historically, the Pre-Trial Conference is where Defense Counsel uses the discovery material to challenge the Commonwealth's Case and/or object to the witnesses and allegations.

However, Counsel was intent on negotiating a plea agreement, and had no desire to take the matter to trial, despite the Plaintiff's assertions of actual innocence. Therefore, he did not bother to even review the evidence, which included the relevant Police Report stating they saw no physical evidence that an assault had occurred and that they never transported the alleged victim to the hospital for medical attention or performance of a rape evaluation.

Instead of zealously representing his client, which included reviewing evidence and insuring that all the procedures were adhered to Counsel simply requested a non-trial disposition, and focused his efforts on persuading Plaintiff to accept some form of negotiated plea agreement, in violation of PA.R.Crim.P. Rule 122(B)(2). Criminal Docket Case Number CP-51-0005311-2013, dated June 5, 2014, Page 6.

"Truth is best discovered by powerful statements on both sides of the question. This dictum describes the unique strength of our system of criminal justice. The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." See *Herring v. New York*, 422 U.S. 853, 862 (1975).

Unfortunately, the only partisan advocacy that took place in the case against the Plaintiff was a total ignoring of the Rules and Procedures set in place to insure fairness in the legal process. No one--not the Plaintiff's Attorney, the State's District Attorney, the Common Pleas' Judge, nor the County's Clerk of Courts bothered to make sure the Commonwealth's Rules and Procedures were followed. No one cared that the legal process derailed. In the end, the only person victimized by this derailment of procedural process was the Plaintiff. So much for the adage it's better that ten guilty men go free than one innocent man go to prison.

### *[3] Plaintiff's Guilty Plea Was Illegally Induced And Is Invalid*

On June 10th 2013, Plaintiff was unduly persuaded by ***HIS*** Attorney to accept a negotiated plea agreement that was ***NOT*** knowingly, intelligently or voluntarily made. The Plaintiff's plea agreement is illegal and invalid, and therefore should be set aside and his sentence vacated by the Court.

Counsel not only coerce the acceptance of a plea that was unknowing, unintelligent and involuntary by misleading Plaintiff into believing that the Commonwealth possessed an insurmountable mountain of evidence against him, he conspired with the District Attorney to withold exculpatory evidence that supported Plaintiff's proclamation of innoncence.

When Plaintiff inquired about "fighting" his case in Court, his Attorney told him that if he took his case to trial, that the District Attorney would seek an indictment that held multiple charges, asking the Court to "run every charge consecutively," insuring that Plaintiff would spend the best years of his life serving a "long sentence in a state prison."

The reality was that the State did not have any evidence that a physical or sexual assault occurred; the Police Report stated there was no visible evidence to support the alleged victim's claims of being choked and struck multiple times, so they never bothered transporting her to the hospital; nor was there any medical evidence that the alleged victim was sexually assaulted so she never spoke to a Counselor about "rape trauma", was never examined by Doctor for evidence of rape, nor was ever administered a rape "test".

Plaintiff was arrested for violating a PFA Order that was not in effect, nor had he been notified that one could be pending by the alleged victim, who had contacted Plaintiff and invited him to her residence for consentual sex. Technically, if a PFA Order existed, the alleged victim was in violation of it, not the Plaintiff.

The Police, who claimed they were telephoned by the alleged victim, arrived at her residence to find no evidence of a domestic domestic or that any other type of assault had happened. There were no noise complaints by neighbors or the landlord. The Police heard no noise coming from the residence. There was no indication of imminent danger or duress, or that anyone was being held against their will in the residence. When they knocked, no one screamed out for help. In fact, their knock went unanswered. So, without probable cause or an search warant, they contacted the landlord, and ordered him to open the door.

When they entered, the alleged victim and the Plaintiff wearing only towels, after having just finished showering. She didn't appear scared, and there were no visible evidence that she had been kicked, struck or choked--and all she had on was a towel. The truth is, angered Plaintiff declined her invitation to stay the night, she retaliated by calling the Police while Plaintiff showered, claiming he was there in violation of a PFA Order, knowing Plaintiff would be arrested because he was on parole.

Forced to go the Police Station because she was "naked". They claimed she said she had been raped. However, just a few days later she told the Plaintiff she never made such claims of being raped, and that she vehemently denied such accusations when asked by the Police in a telephone conversation with him while he was detained at CFCF. She also made similar statements to Plaintiff's Brother when she spoke with him. These conversations were recorded by prison officials. Yet, Counsel never obtained the phone records. Why?

The alleged victim never appeared before a Judge to testify that she made the call to the Police; that she told them she had been held against her will, beaten, kicked, and raped by Plaintiff because it was all a fabrication, and the District Attorney knew it! So, through manipulation of the Court's Rules and Procedures, the District Attorney's Office was able to insure Plaintiff would be bound for trial on lies, without having to prove them before a Magistrate Judge during an Preliminary Hearing--because one was never held.

All this smoke and mirror, slight of hands deceitfulness that robbed Plaintiff of his rights to a just and equitable legal proceeding took place while Counsel for the ***DEFENSE*** stood by and did nothing to protect the rights of his client. Once they had Plaintiff confused, scared and backed into a corner, they chipped at his resolve, coercing him to make a deal or grow old in prison; never again to see his friends and family outside a prison visiting room.

They Commonwealth had no insurmountable mountain of evidence. What they had was a case riddled with constitutional holes, a vindictive "victim" with a history of lying and a conviction of perjury who wasn't going to appear in Court and testify; and an Attorney who was more loyal to friends in the Philadelphia legal community than he was to his oath to zealously represent a client he had no allegiance to, or compassion for. So, Counsel abdicated his call to duty, abandoned his client, and coerced the Plaintiff to accept an invalid plea.

Not only was the deal illegal, so was the sentence. Not only did the District Attorney bamboozle the Plaintiff into taking an invalid plea, she used the wrong Sentencing Guidelines and Offense Gravity Score ("OGS") to calculate Plaintiff's sentence. Instead of using the Sentencing Guidlines in effect at the time the Plaintiff was supposed to have committed his offense, Sentencing Guidelines Implementation Manual: 7th Edition, Effective December 28, 2012; the District Attorney used the September 27, 2013, 7th Edition, which was in effect when the illegal and invalid "deal" was mustered.

According to the Guidelines used by the District Attorney, Plaintiff's Prior Record Score ("PRS") of 2-points had a setencing range of Thirty-Six (36) to Forty-Eight (48) for an aggravated assault, while the correct guidelines offered a sentencing range of Nine (9) to Eighteen (18) Months, or Boot-Camp. But it did not matter to the District Attorney because her "deal" was for Forty-Eight (48) Months to Sixty Months (60), which was based on a PRS of ***4-points***, not the Plaintiff's PRS of 2-points! This error illegally aggravated Plaintiff's OGS to a "10," not the "3" in the correct Sentencing Guidelines. Nor was a Pre-Sentencing Investigation Report ordered by the Court to assist in it's final determination of Plaintiff's sentence.

The Defense Attorney claimed to have provided the Plaintiff with strategic counseling, but it did not included the potential sentences based on the correct guidelines, nor any valid options of accepting a plea agreement verses having a jury or judge-only trial, because he was interested in obtaining a plea agreement that would waive all Plaintiff's constitutional and legal challenges. Nor did Counsel advise his client that this would be the consequence of accepting a plea. Can such a deal be "intelligent" or "voluntary"?

The Commonwealth's entire case boiled down to Miss Chemyra J. Johnson's word versus that of the Plaintiff's. There was no overwhelming evidence of guilt, as Counsel had mislead Plaintiff to believe in coercing him to accept a plea when he desired to "fight in Court." Counsel was aware of the prosecution's "proof issues" but never advised the Plaintiff of the possibility of conditional, negotiated plea agreements.

Instead, Counsel erroneously advised Plaintiff that it would be "just like the last time," when he took a deal that resulted in a few months in the county jail before being paroled. The fact that Plaintiff would become a parole/probation violator, subjected to resentencing was never discussed: Nor did Counsel mention the possibility that the Judge could sentence Plaintiff to multiple consecutive terms, resulting in an extensive prison sentence in a state prison as a "convicted parole violator". If not for Counsel's fraud and ineffectiveness, Plaintiff would never have accepted a plea. He took the deal only because Counsel said it was the only way to avoid a long prison sentence in a state prison.

However, when Plaintiff accepted Counsel's advice and took the "deal" it ***guaranteed*** Plaintiff would receive a long prison sentence, not avoid it. Plaintiff would have never sacrified his innocence and knowingly waive his appeal rights to challenge the misconduct by the Police and District Attorney, if not mislead by his lawyer. After realizing he agreed to an open plea, not a negotiate one that was "just like the last time," Plaintiff asked Counsel to file an appeal. However, Counsel filed a sentence modification after the Judged "cooled" down.

The Constitution requires that Plaintiff's plea be made voluntarily, ***Brady v. U.S.***, 397 U.S. 742, 750 (1970)(State may not induce guilty plea through "actual or threatened physical harm or by mental coercion overbearing the will of the Defendant"). Plaintiff's Counsel, virtually acting as a second District Attorney, mislead Plaintiff with false information that overcame his will, coercing a plea that was not knowingly, intelligently or voluntarily.

Furthermore, a guilty plea may be set aside if the Plaintiff can establish prejudice resulting from prosecutorial misconduct. ***Ferrara v. U.S.***, 456 F.3d 278, 297-298 (2006). The Commonwealth's case was infected with proof issues. There was no probable cause for the police to enter Miss Johnson's residence without a search warrant or to arrest Plaintiff without an arrest warrant. The Police Report showed there was no evidence of a physical assault; no medical examination was performed to corroborate existence of physical injuries or that a sexual assault had taken place; the alleged victim had a history of lying as well as a conviction for perjury, and had not appeared in Court to testify at any of the proceedings.

The District Attorney could not prove ***EVERY*** element for either aggravated assault or rape beyond a reasonable doubt, as required pursuant the Due Process Clause of the U.S. Constitution's 5th Amendment. Such failure by the Commonwealth to meet its burden of proof would have resulted in Plaintiff's acquital, so the state's focus from the start was to induce a plea agreement by any means necessary; which it did through the assistance of a Counsel that abdicated his duty to zealously represent his client. This Plea is illegal and invalid and should be set aside to correct a miscarriage of justice.

*[4] Ineffective And Layered Assistance Of Counsel*

The United States Supreme Court has determined that an Accused Person is most entitled to the effective assistance of counsel during perhaps "the ***most critical*** period of the proceeding"—from the time of arraignment until the beginning of trial, when consultation, thorough on-going investigation, and preparation are ***"vitally important"***. See: ***Powell v. Alabama***, 287 U.S. 45, 47 (1932). The ineffectiveness of trial counsel has been previously discussed, but other subsequent attorneys played a role in the perpetuation of the miscarriage of justice inflicted upon the Plaintiff. There were several PCRA Attorneys appointed to assist Plaintiff, who failed to perform their duties to amend Petitioner's pro-se PCRA Application, choosing to forgo any investigation, reviewing of the entire court records and transcripts, or even speaking with previous attorneys, witnesses, police officers, or state employees involved in the proceedings against Plaintiff.

Although these attorneys realized that Plaintiff needed their assistance in navigating the legal labyrinth before him, they simple abandoned him. One attorney was so inept she chose to leave the practice of law, becoming a waitress. It is obvious these attorneys never spoke with Plaintiff about the law, legal strategies or Plaintiff's legal options. For, if they had, some of Plaintiff's issues would have made it before the Court to review for their merit, or lack of it. However, every attorney chose to abdicate their responsibility, opting for the easy path of "Finleying" Plaintiff, who is unlettered, unlearned, untrained in the law to face the Commonwealth alone, like the lone soldier throwing rocks at tanks, praying for victory.

The Commonwealth's case, despite the proclamations of the District Attorney, was simply a "he say; she say" controversy. However, instead of impeaching the alleged victim's credibility or presenting character witness evidence in Petitioner's behalf, they did nothing; absolutely nothing! To establish that counsel was ineffective for failing to investigate or call witnesses, Plaintiff must [1] identify alleged witness; [2] demonstrate that counsel knew such witnesses existed prior to trial; [3] demonstrate that witness would have provided material evidence at time of trial; and [4] establish manner in which witness would have been helpful to case. See: ***Commonwealth v. Poindexter***, 646 A.2d 1211 (PA.Super. 1994).

The evidence of good character is to be regarded as evidence of substantive fact just as any other evidence used to establish innocence and mat be considered by a jury in connection with all other evidence presented in the on general issue of guilt or innocence. See: **Commonwealth v. Luther**, 463 A.2d 1073 (PA.Super. 1983). For, in cases "where virtually the only issue is credibility of state's witnesses versus the [Plaintiff], the failure to explore all available alternative assuring the [fact finder] hears the testimony of *ALL KNOWN* witnesses that might be capable of casting a shadow of doubt on the state's witnesses' truthfulness is ineffective assistance of counsel. ***Commonwealth v. Twiggs***, 331 A.2d 440.

Plaintiff's Brother, ***Robert Wall,*** had conversations with the alleged victim, **Chemyra J. Johnson**, in which she stated that his Brother, ***Ramon Wall,*** did not physically assault or rape her, and that she denied these allegations when questioned by the Police Officers. These statements by ***Robert Wall*** and **Chemyra J. Johnson**, were recorded during conversations with the Plaintiff during his confinement at Philadelphia's CFCF.

Also, the Police Officer's Report stated that there was no visible evidence of any physical assaults against alleged victims, who was not transported to the hospital for any medical examination; nor was a test to verify "rape" performed by any medical personnel. Yet, none of this relevant evidence was presented in Plaintiff's defense, because he was unduly coerced to accept a plea by his trial attorney; nor was the evidence presented by *ANY* of Plaintiff's attorneys during any of the legal proceeding against Plaintiff.

Plaintiff had a right to a fair trial to determine his guilt or innocence. Furthermore, it is incumbent on the Courts to assure that attorneys defending people accused of crimes, in all criminal cases, maintain the proper standards of performance. ***McMann v. Richardson***, 297 U.S. 759, 771. Plaintiff is entitled to effective assistance of competent counsel at every critical stage of prosecution. See: ***Wade v. U.S.***, 504 U.S. 181, 185-186 (1992). Also, "Where the record fails to demonstrate meaningful participation by counsel appointed to represent an indigent Petitioner filing his first Post-Conviction Petition, Superior Court will remand for appointment of new counsel. 42 P.A.C.S.A. 9541-9546.

The standards for deterimining claims of ineffective assistance of counsel are well settled: The Plaintiff is required to demonstrate: [1] that the underlying claim is of arguable merit; [2] that counsel's action or inaction was not grounded on any reasonable basis designed to effectuate his client's interests; and [3] that ***BUT FOR*** that error or omission, there is a reasonable probability that the outcome of the proceeding would have been different. See: ***Commonwealth v. Abu-Jamal***, 720 A.2d 79, 88 (PA 1998)(Citing ***Commonwealth v. Pierce***, 527 A.2d 973 (1987)); and ***Strickland v. Washington***, 466 U.S. 688 (1984).

There is no need to address the first two prongs of the ineffectiveness standard *IF* the Plaintiff fails to meet the "prejudice" requirement. Also, Pennsylvania's Supreme Court has equated the "no reliable adjudication" language of the P.C.R.A. with "reasonable probability" language of ***Stickland***, supra. However, where the Plaintiff "demonstrates that Counsel's ineffectiveness has created a *reasonable probability* that the outcome of the proceedings would have been different, then no reliable adjudication of guilt or innocence would have taken place." See: ***Commonwealth v. Kimball***, 724 A.2d 326, 333 (PA 1999).

Where claims of Trial Counsel's ineffectiveness have already been, or could have been previously litigated, the only way that the Plaintiff can successfully mount a challenge to the ineffectiveness of Counsel is to assert a ***layered*** claim of ineffectiveness, establishing first that Appellate Counsel was ineffective for not challenging the effectiveness of Trial Counsel, which requires Counsel in the first instance to have been ineffective for a ***"layered ineffectiveness"*** claim to prevail. See: ***Commonwealth v. Mason***, 130 A.3d 601 (PA 2015).

Plaintiff has previously demonstrated the ineffectiveness of Counsel's assistance in depth, establishing that claims against Counsel [1] has merit; [2] that Counsel's actions and inactions in failing to challenge the physical and sexual assault charges, defective PFA Order, lack of probable cause and not confronting and/or impeaching the alleged victim; choosing instead, to coerce Plaintiff into accepting an illegal and invalid plea agreement for aggravated assault, "***was not grounded on any reasonable basis designed to effectuate***" Plaintiff's interest.

And that the [3] the outcome of Plaintiff's legal proceedings would have been different had Counsel zealously represented him and fought for him at a trial, instead of misleading him. If not for Plaintiff's misplaced trust in Counsel's advice, who had created a astmosphere of total dependence, fear and doubt, he ***NEVER*** would have sacrificed his innocence, nor forfeited his constitutional rights to challenge the charges against him, to accept a plea.

Plaintiff's first opportunity to challenge Counsel's ineffectiveness and his invalid plea was during his P.C.R.A. proceedings. But those attorneys failed to investigate the merits of his claims, choosing instead to abandon him by claiming no meritorious issues existed. Every one of Plaintiff's appellate attorneys refused to challenge his original attorney's ineffective stewardship. They simply passed Plaintiff back and forth between each other, and when they tired of playing hot potato, they simply abandoned him.

It was Defense Counsel's obligation to be prepared to represent Plaintiff in every phase of Plaintiff's legal process. See *Commonwealth v. Marcene*, 410 A.2d 759 (1980). Also, Counsel was required to engage in a reasonable amount of pre-trial investigation and "at minimum... they must interview potential witnesses and make an independent investigation of the facts and circumstances of the case." *Commonwealth v. Neely*, 764 A.2d 1177. Plaintiff's Defense Counsel obviously failed to exhibit even a minimum level of preparation, which would explain why he focused so aggressively to persuade him to accept a plea over a trial.

Why didn't Counsel examine validity of the PFA Order and ask Miss Johnson why she invited Plaintiff to her house for consentual sex instead of serving him with a copy of the PFA Order; igniting the spark of lies that burst into a bonfire of injustice?

Why didn't Counsel speak with the alleged victim's landlord or neighbors to find out if any of them heard any screaming, hollering or any other sounds of fighting coming from her residence that would indicate that Miss Johnson was in danger or being held captive; or see if any of them called the police to report a potential domestic disturbance?

Why didn't Counsel talk with any of the Officers at the scene, who heard no noise, detected no signs of duress, or had knowledge of anyone being held hostage in the residence, decide to order the landlord to let them into the residence with his master key, without probable cause, consent or a search warrant?

Why didn't Counsel inquire of the Detectives who interviewed the alleged victim, to determine why they charged Plaintiff with aggravated assault despite witnessing no evidence of bruising, bleeding or other physical injuries or why he was charged with rape when they didn't even transport her to the hospital for a medical examination or rape testing protocol?

Why didn't Counsel request transcripts or copies of the telephone recordings of the phone conversations between the Plaintiff and the alleged victim, where she denied calling the police, accusing him of physically or sexually assaulting her, denying these things ever happened when the police asked her; or interview Robert Wall, Plaintiff's Brother who Miss Johnson denied voluntarily going to the police station and denied the claims the police made?

Why did Counsel permit an abundance of violations of Court Rules and Procedures that denied Plaintiff's Due Process Rights to go unchallenged, including the Plaintiff's right to an Arraignment and his right to confront his accuser, who failed to appear and give her testimony to any judge during any of the proceedings?

Why didn't Counsel review the Sentencing Guidelines used by the District Attorney to verify they were the correct edition in effect when Plaintiff allegedly committed the offenses, and that offense gravity scores, prior conviction points and sentence ranges recommended to the Court were appropriate; or inquire why no Pre-Sentence Investigation was order?

These errors alone demonstrate that Defense Counsel representation was ineffective, and that his recommendation for Plainftiff to accept a "deal" based upon his misalleged facts invalidates Plaintiff's plea agreement as unknowing, unintelligent and unvoluntary; paving the way for the claim of layered ineffective assistance of counsel. See *Mason*; *Abu-Jamal*; *Pierce*; *Strickland*; and *Kimball*, supra.

When there has been an "actual or constructive denial of assistance of counsel" where counsel is burdened by conflict of interest, or if there are "various kinds of state interference with counsel's assistance," prejudice is so likely to occur that a case-by-case inquiry by Court is unnecessary. Prejudice is presumed that the Defendant has been deprived of fairness in the legal process, and the result is unreliable. See *Strickland* and *Cuyler*, supra.

The Due process Clause of the Fourteenth Amendment guarantees a right to effective assistance of counsel on first appeal. *Evitts v. Lucey*, 469 U.S. 387, 396-399 (2000). The "purpose of the effective assistance of counsel guarantee by the Sixth Amendment is... to insure that Defendants receive fair legal proceedings. *ID* at 689. The layered ineffectiveness of Plaintiff's attorneys were deficient and prejudicial resulting in an unfair outcome of the legal proceedings against him; warranting, at least, granting of a new trial. *Strickland*, supra.

Defense Counsel's failure to conduct a prompt investigation; contact or interview or prepare is unexcusable, greatly prejudicing Plaintiff, and violating his right to competent counsel. *Commonwealth v. Smith*, 675 A.2d 1221. Each and every subsequent attorney who failed to investigate and report defense counsel's ineffectiveness, were just as negligent and considered ***layered ineffectiveness*** for their stewardship. *Commonwealth v. Wims*, 782 A.2d 517, 525-526 (2000) and *Commonwealth v. Edmiston*, 851 A.2d 883 (PA 2004).

*[5] **Prosecutorial Misconduct:***

The Prosecutor's duty in criminal prosecution is to seek justice. *Berger v. U.S.*, 295 U.S. 78, 88 (1935). Therefore, the Prosecutor is required to "prosecute with earnest and vigor" but may not use "improper methods caculated to produce a wrongful conviction." *ID*. Where prosecutorial misconduct is demonstrated, the Court is justified in reversing a convictions "so infected with unfairness as to make the resulting conviction a denial of due process." See *Darden v. Wainwright*, 477 U.S. 168, 188 (1986)(Quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974) and *U.S. v Berrios*, 676 F.3d 118, 135-136 (3rd Cir. 2012).

The Prosecutor may not prosecute a Defendant for vindictive reasons. See: *Blackledge v. Perry*, 417 U.S. 21, 28-29 (1974). The Prosecutor may not knowingly present false evidence and has a duty to correct testimony known to be false. *Napue v. Illinois*, 360 U.S. 264, 269 (1959). Nor can the Prosecutor make material misstatements of law, *Lesko v. Lehman*, 925 F.2d 1527, 1545 (3rd Cir. 1991), or fact, *Marshall v. Hendricks*, 307 F.3d 36, 65 (3rd Cir. 2002).

On March 1st 2013, Plaintiff was invited to the residence of his former paramour, Chemyra J. Johnson, where they engaged in consentual sex. Afterward, she invited him to stay the night, but he declined the invitation. The couple showered, and when they exited the bathroom clothed only in towels, they found themselves surrounded by armed police. The Plaintiff was immediately cuffed and transported to the Police Station. He was not read his Miranda Rights, interviewed by any Police Officers, nor advised why he was being detained.

Supposedly, the police were alerted by telephone that Miss Johnson was being held against her will by Plaintiff, who was in violation of a PFA Order. The Police, after knocking, entered the residence by having the landlord open the door with a master key, without probabable cause, consent, or a warrant despite no evidence of duress or imminent danger; and arrested the Plaintiff despite not having an arrest warrant or being provoked.

Although Miss Johnson had filed for an emergency PFA Order, she invited Plaintiff to her residence but did not advise him of the Order she had filed for, nor served him with this Order which she possessed. Therefore, IF there was an existing PFA, she was the one in violation of that Order, not the Plaintiff, who had no knowledge of the Order's existence.

While Plaintiff was being detained in Philadelphia's CFCF pending disposition of the charges against him, he spoke with the alleged victim over the telephone. She denied ever making the claims, and had vehemently denied being held against her will, calling the police, or being physically or sexually assaulted by him. These conversations, pursuant policy, were recorded by the institution. Miss Johnson also made the same statements to Robert Wall, Plaintiff's Brother. Mr. Robert Wall, discussed his conversations with the alleged victim with his Brother, the Plaintiff, over the phone. These conversations were also recorded by CFCF.

The District Attorneys Office was aware of the recorded phone calls, as was Plaintiff's attorney. These telephone calls occured between March 5, 2013 through April 20, 2013. See Discovery Control Record, May 23, 2013; Criminal Docket Number MC-51-CR-0008630-2013, July 27, 2015, Page 5. Despite the multiple charges filed against Plaintiff, the District Attorney had issues of proof needed to sustain convictions. The Fifth Amendment's Due Process Clause, requires the Prosecution to prove ***EVERY*** element of the crimes that Plaintiff was charged with, beyond a reasonable doubt. See *In Re Winship*, 397 U.S. 358 (1970)(government must prove "every fact necessary to constitute the crime beyond a reasonable doubt").

The reasonable doubt requirement applies to elements that distinguish the more serious crimes from the less serious ones, as well as those elements that distinguish criminal conduct from non-criminal conduct. See *Apprendi v New Jersey*, 530 U.S. 466, 488-492 (2000). The State's failure to meet its burden of proof would result in the Plaintiff's acquitall at trial or the reversal of the conviction on appeal. *Winship* at 363.

The District Attorney, who is a quasi-judicial officer, has a duty is to act impartially, *ALWAYS* in the interest of justice, and *NEVER* vindictively or motivated by personal intent. See *Commonwealth ex rel. Kerekes v. Maroney*, 223 A.2d 699 (1965). Also, as a quasi-judicial officer, the District Attorney is "necessarily invested with a large [amount of] discretion, which may be exercise, subject *ONLY* to the supervision of the Court." See *Commonwealth ex rel. Balles v. Weber*, 66 Montgomery County 256 (PA.O. & T 1950).

Although Due Process prohibits the District Attorney from punishing a criminal Defendant in retaliation for that Defendant's decision to exercise a Constitutional Right, See U.S. Constitution, Amendments Five and Fourteen, and *Commonwealth v. Butler*, 601 A.2d 268 (PA 1998), after reviewing the Police Report, phone converstions between Plaintiff, His Brother and Miss Johnson, made available by Philadelphia's CFCF, and evaluating the questionable validity of the PFA Order, lack of medical evidence to substantiate aggravate assault and no rape test results, the District Attorney realized she didn't possess the evidence to prove every element "beyond a reasonable doubt" to insure a conviction in a trial, and began her personal vendetta to insure Plaintiff *paid* for his crimes.

It was then that the District Attorney changed her strategy, and refocused her efforts to coerce and intimidate Plaintiff from forgoing his desire to go to trial and accept a plea offer. The Prosecutor began a calculated scheme to manipulated the Rules and Regulations of the Court, infringing on Plaintiff's right to confront and cross-examine "adverse" witnesses, including but not limited to the officers involved in the investigation and the alleged victim.

On April 4, 2013, the District Attorney filed a Motion claiming that Plaintiff attempted to intimidate Miss Johnson's testimony. However, no facts substantiating the claim of witness intimidation were ever attached to the State's Motion, nor was this Motion presented to either the President Judge, or the Judge assigned to the case, for determination of probable cause, in violation of PA.R.Crim.P. Rules 556.2, sections (A)(1) and (A)(3).

*When* an Issuing Authority receives a Motion claiming potential Witness Intimidation, and *IF* that Motion is executed by the appropriate Judge, the Issuing Authority *MUST* cancel the Preliminary Hearing, PA.R.Crim.P. Rules 556.2(A)(3)(a). Then the Order and Motion must be sealed, PA.R.Crim.P. Rules 556.2(A)(4), and the District Attorney must file both the sealed Order and Motion with the County's Clerk of Courts, PA.R.Crim.P. Rules 556.2(A)(5).

Plaintiff never received service of that Order or Motion. These documents were not in the Plaintiff's Pre-Trial Discovery, nor is there a record of them ever being filed with the Clerk of Courts, as required by law. Yet, his Preliminary Hearing was canceled, violating Plaintiff of his right to confront his accusers and andverse witnesses. *Butler*, supra. Also, see Discovery Control Record, Court Docketing Number: CP-51-CR-0005311-2013, dated May 23, 2013.

On April 8, 2013, a Status Hearing was held before Judge Erlich concerning Plaintiff's pending indictment. But he was not present because the Sheriff's failed to transported him, depite an Order from the Judge. The Next day, April 9, 2013, Plaintiff's Attorney visited him at CFCF, advising him the District Attorney requested another Status Hearing for April 22, 2013; however, he failed to inform Plaintiff it was because the alleged victim failed to appear.

This critical error permitted the District Attorney to continue the case, when the questionable PFA Order; illegal entrance into Miss Johnson's residence and subsequent illegal arrest of Plaintiff; absence of hospital visit and no verification of injuries or rape testing; historical pattern of alleged victim's lying and conviction for perjury, were all meritorious grounds to have the indictment dismissed. But, instead of making a Motion to Quash The Indictment, he did nothing. He remained silent, allowing the defective indictment. See Status Hearing Notes, Volume One, April 8, 2013; Trial Counsel's Investigation Files.

On April 18, 2013, the Grandjury Foreperson and the Disrtict Attorney executed the Indictment on all accounts. However the Indictment was defective because [1] it did not have a Statement of Compliance (Indictment Records, April 18, 2013); [2] the District Attorney failed to present any witnesses or evidence to the Grandjury to support the Indictment's allegations (Hearing Records, Volume One, April 22, 2013, Page 3); [3] And, the alleged victim failed to appear and testify before the Grandjury. Hearing, Volume 1, April 22, 2013, Pages 2- 3).

On April 22, 2013, an Indictment Hearing was held before Judge Erlich, presiding Judge, in lieu of erroneously dismissed Preliminary Hearing before an impartial Magistrate. Judge Erlich approved the defective indictment despite the lack of evidence or appearance of witnesses, including alleged victim, to support allegations. The District Attorney's failure to establish a prima facia case should have led to dismissal. Hearing, Volume 1, April 22, 2013. This Case should never have been bound ove for trial. Refer to Plaintiff's Quarter Session File and the Grand Jury's Hearing Notes, Volume One, April 22, 2013.

On April 25, 2013, the District Attorney filed an Information. Court Docket Number CP-51-CR-0005311-2013, June 5, 2014, Page 3. The "Information" was also defective for failing to contain Certification of Compliance, making it invalid based on PA.R.Crim.P. 560(A)(7); the "Information" Document, April 25, 2013; Trial Counsel's Investigation Files; and Court Docket Numbers MC-51-CR-0008630-2013 and CP-51-CR-0005311-2013.

On June 3, 2013, a Pre-Trial Conference was held. See Court Docket Numbers CP-51-CR-0005311-2013, June 5, 2014, Page 6. During this Conference the District Attorney made a plea offer of five (5) to ten (10) years in prison, followed by five (5) years of consecutive proabation, for the charge of Aggravated Assault; for which there was not enough evidence to prove every element beyond a reasonable doubt. However, instead of challenging or countering, Plaintiff's Attorney agreed; filing a continuance for "Non-Trial Disposition". Trial Counsel's Correspondence, September 8, 2015; Court Docket CP-51-CR-0005311-2013, Page 6.

On June 10, 2013, Plaintiff was unduly coerced by ***HIS*** attorney to accept the offer, or District Attorney would enter an indictment containing all the charges, recommending they be served consecutively ; resulting in a long prison term if he went to trial. Although he was not guilty, he was scared; accepting the "deal" only because his lawyer assured him it would be just like the "last time" he accepted a plea agreement.

Not only was Plaintiff's Plea invalid, the sentence was illegal. The District Attorney used the incorrect Sentencing Guidelines (Guidelines") as well as the wrong Offense Gravity Score ("OGS"), when calculating Plaintiff's recommended sentence term. Instead of utilizing the Guideline in effect when the crimes were supposed to have happpened, Sentencing Guidelines Implemation Manual, 7th Edition, effective December 28, 2012; she used the Sentencing Guidelines became effective September 27, 2013.

According to those incorrect Guidelines, Plaintiff's Prior record Score ("PRS") of two (2) points, with a sentencing range of thirty-six (36) months to forty-eight (48) months for an aggravated assault, while the appropriate Guidlenes offered a range of nine (9) to eighteen (18) months OR Boot-Camp. But it didn't matter, because the District Attorney's "deal" was forty-eight (48) to sixty (60) months, which, according to the Sentencing Guidelines was based on a PRS of ***FOUR (4) POINTS***, not the Plaintiff's score of ***TWO (2) POINTS!*** This "error" illegally aggravated Plaintiff's OGS to ten (10) instead of his actual score of Three (3), as noted in the correct Sentencing Guidelines.

It is the District Attorney's duty to act impartially, not vindictively or driven by ones's personal sense of justice. ***Maroney***, supra. The Prosecutor is a quasi-judicial officer with the duty to seek justice, not convictions. Our advocacy system demands that defense cousel's diligently protect their clients from the prejudice that can be caused by prosecutorial over-reaching. See ***Commonwealth v. Pfaff***, 384 A.2d 1179, 1182.

Despite being "invested with a large [amount of] discretion, which they may exercise," ***Weber***, supra, the District Attorney is subjected to the Court. ***ID***. And are prohibited from seeking punishment against a Defendant who desires to exercise their constitutional rights. U.S. Constitution, Amendments Five and Fourteen; and ***Butler***, supra. Prosecutorial misconduct must not be allowed to run unchecked, and the Court has a duty to keep the District Attorney from abusing its authority. Plaintiff's plea is invalid and his sentence is illegal and only the Court can correct this miscarriage of justice by setting both the invalid plea agreement and its subsequent illegal sentence aside.

*[6] Judicial Abuse Of Discretion, Bias, Error And Personal Prejudice*

Trial Judges are responsible for insuring that the accused receives fairness during the legal proceedings before him. See: ***Nebraska v. Press Association v. Stuart***, 427 U.S. 539, 555 (1976). The United States Constitution, Fifth and Fourteenth Amendments, requires a Judge possess neither actual or apparent bias. ***In Re Community Bank Of North Virginia***, 418 F.3d 227, 320 (3rd Cir. 2005)(Whether "a reasonable man, were he to know all the circumstances, would harbor doubts about the judge's impartiality")(Quoting ***U.S. v. Antar***, 53 F.3d 568, 574 (3rd Cir. 1995)). And, the U.S. Supreme Court has ruled that ***Habeas*** relief for Constitutional trial errors may be granted if the error "***had substantial and injurious effect or influence***" on the Court's determination. ***Brecht v. Abrahamson***, 507 U.S. 619, 637 (1993).

On July 24, 2012, Plaintiff entered a Negotiated Plea Agreement to a single count of 3rd Degree Stalking, pursuant Title 18 PA.C.S. §2709.1§§ A1, against his former paramour, Chemyra J. Johnson, and was sentenced to a of six (6) to twenty-three (23) term of prison followed by three (3) years of consecutive probation.

Plaintiff was released from Philadelphia's County Jail on November 15, 2012. And, on March 2, 2013, Plaintiff was re-arrested based on claims by Miss Johnson that he was in her residence in violation of a PFA Order. When the police realized no valid PFA Order existed, Miss Johnson accused Plaintiff of phyically and sexually assaulting her.

On April 4, 2013, the District Attorney's Office filed a Motion for Witness Intimidation on Plaintiff based on a letter he mailed to Miss Johnson. See Court Docket Number: MC-51-CR-0008630, July 27, 2015. But, this Motion was invalid based upon numerous violations of PA.R.Crim.P. 556.2. Including not being filed in the Clerk of Courts' Office, nor being served upon the Plaintiff. Then, based on this defective and void document, the Plaintiff's right to a Preliminary Hearing was canceled. See Court Docket Number: CP-51-CR-0005311.

On April 8, 2013, Plaintiff was not present at his Status Hearing before Judge Erlich, which was rescheduled to April 22, 2013, because the alleged victim never appeared . On April 9, 2013, Plaintiff's attorney visited him at CFCF to advise him of the continuation. On April 18, 2013, the District Attorney, along with the foreperson of the Grandjury approved all charges in its defective Indictment, despite the lack of presentation of evidence or testimony from Miss Johnson to support the accusation alleged in the Indictment. See: Court Docket Numbers: MC-51-CR-0008630 and CP-51-CR-0005311; and Hearing Volume 1, April 22, 2013.

The District Attorney is subject to the supervision of the Court, ***Weber***, supra, and must correct any prosecutorial misconduct or over reaching, ***ID***. Yet despite the lack of presentation of any evidence or witness testimony resulting in the State's failure to establish a prima facia case, numerous procedural violations of the Court's rules, and ineffective assistance of counsel, the Court erroneously held the case for trial on April 22, 2013.

The "Indictment" and "Grand-Jury" hearings were held in lieu of the Preliminary Hearing that Plaintiff was entitled to, whereby an impartial Magistrate Judge would have had the opportunity to evaluate the Commonwealth's evidence and witnesses' testimony to determine if a prima facia case and/or "controversy" had been established that needed to be decided by a judge and trier of facts. Then either bound for court or dismiss the charges.

Instead, the Preliminary Hearing was defaulted based upon the defective Motion of Witness Intimidation, that was never filed with the Clerk of Courts or served upon the Plaintiff, manipulating the Court's procedures and rules, permitting the Plaintiff's case to be bound for trial without the presentation of any corroborating medical or rape evidence, or testimony from the police and the alleged victim to support the acccusations. Nor was the Plaintiff present for these proceedings. Case Docketing Statements MC-51-CR-0008630-2013 and CP-51-CR-0005311-2013; Petitioner's Quarter Session Files; Trial Counsel's Investigation Files; Hearing: Volume One, April 8, 2013 and April 22, 2013; Indictment File, April 8, 2013.

Plaintiff had a Contistutional Right to be present at these proceedings, and to face his accusers. However, his alleged victim, Miss Chemyra J. Johnson, never testified before any Judge, nor was she ever present at any of the legal proceedings. The Judge, intentionally or negligently, allowed the manipulation of the Courts Procedures and Rules, and defective Motions and Hearings to "bound" Plaintff for Court, subsequently leading to his coerced plea.

On April 25, 2013, an "Information," which was also defective, was filed. On June 3, 2013, a Pre-Trial Conference was held. Then, afterward, the Plaintiff's Attorney filed a continuation for "Non-Trial Disposition". On June 10, 2013, Plaintiff was coerced by his attorney to accept a plea that was based upon the incorrect Sentencing Guidelines, sentence ranges, gravity scores and prior conviction points, instead of challenging the erroneous data.

The Plaintiff, who had no history of physical violence, but exhibited erratic, passive-aggressive behavior, including fantods of loud emotional outbursts; nervous irratability; non-coherent ranting and raving; and objectionable verbal aggression, where he often spoke out loud but not directly to anyone. Plaintiff was unpredictable, problematic and difficult to deal with. Despite these behaviors, the Court ordered no Pre-Sentence Investigation Report nor a Competency Evaluation. No mitigating circumstances were presented at the Guilty Plea Hearing, nor was Plaintiff permitted to address the Court prior to being sentenced.

Counsel mislead Plaintiff, telling him that this plea deal would be just like His "other one" but failed to advise him that he would be a convicted parole violator, subject to a term that could be greater than his original three (3) year probation, and which could be ran consecutive to the sentence he received for the plea. He sacrificed his innocence on the lie that he would avoid a long sentence in a state correctional institution.

On June 10, 2013, Plaintiff was sentenced to five (5) to ten (10) years for aggravated assault, despite the Police Report of no visible evidence of bruising, bleeding or injuries and the absence of medical evidence to support that offense, and a sentence that far exceeded the Sentencing Guidline recommendations; without a sufficient statement on the record from the Court to support the harsh, extreme departutre. On July 11, 2013, Plaintiff was sentenced to three (3) to six (6) years in prison, to be served consecutive to his plea "bargain" for an aggregated sentence of eight (8) to sixteen (16) years of incarceration.

Title 18 PA.C.S. §2702(A)(1) states that "A person is guilty of aggavated assault if he: attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly ***under circumstances manifesting extreme indifference to the value of human life.***" The Sentencing Guidleines Implementation Manual: 7th Edition, Effective December 28, 2012; which were the guidelines in effect when the Plaintiff allegedly physically and sexually assaulted the alleged victim in her residence, states a person with a Prior Record Score of Two (2), such as the Plaintiff should receive a minimum sentence of 36-48 months.

There was no medical evidence or police evaluation of ***serious bodily injury***and no evidence that an assault occurred "***under circumstances manifesting extreme indifference to the value of human life.***" What, in the most extreme instance should have been a parole violation for violating a PFA Order, turned in to a full fledged aggravated assault in which no victim testified before any court, nor was there any medical evidence or police corroboration.

Counsel filed a Motion To Reconsider Sentence, which was denied by law–the Court did not even to bother responding to the Motion. Why? Because the Judge needed to "cool down" indicating there was anger, bias, personal prejudice, and an abuse of discretion. Then, instead of filing an appeal pursuant 2119(f) for abuse of discretion for the aggravated sentence outside the Sentencing Guideline recommendation, the attorney simply abandoned the Plaintiff, who was unlettered, unlearned, and inexperienced in the law.

The Attorney stated that an appeal has little chance to suceed, but so did the Motion To Reconsider Sentence because the judge was prejudiced against the Plaintiff, who violated his parole. The Judge's behavior exhibited bias and personal embroilment against Plaintiff–which is a violation of Due Process Clause of the U.S. Constitution.

Counsel filed a boilerplate Motion For Reconsideration for Plaintiff, attaching a letter mailed to Miss Johnson by Plaintiff while he was in custody, stating, "I am going to hunt you down like a lion. I am going to break your hands." Superior Court Opinion, August 12, 2019, Page 5. Counsel's strategy for "Reconsideration" over "Appeal" was based on his "belief that this Court, after having time to reflect on this letter and Defendant's temporary anger when writing it, would perhaps be more willing to [reconsider Plaintiff's sentence]. ***ID***. If this was true, why would Counsel attach a letter that ***would perhaps*** anger the Court, instead of attaching phone transcripts of conversations from CFCF between Plaintiff and Miss Johnson and/or an Affidavit from Plaintiff's Brother, where she denied the assault ever happened?

On December 3, 2013, Plaintiff filed identical, timely P.C.R.A. Petitions before Judge Brinkley, who presided over the proceedings leading up to the Plea, and Judge Cohen, who sentenced Plaintiff consecutively to the Plea for probation revocation. On January 13, 2015, one year, one month and ten days ***AFTER*** filing his P.C.R.A. Petition, he was appointed Counsel. And, March 19, 2015, two months and six days ***LATER*** P.C.R.A. Counsel filed a Finley "No-Merit" letter with Judge Brinkley, who dismissed Plaintiff's Pro-Se Petition three month's later without a hearing. Superior Court Opinion, Page 2.

On January 11, 2016, Plaintiff filed an amended Petition with Judge Cohen, against his Trial Attorney for failing to notify him the Court had denied the Motion For Reconsideration by the operation of law. On April 27, 2018, P.C.R.A. Counsel, John Cotter, Esquire, appeared before Judge Cohen "and made oral arguments on the issue of ineffectiveness related to failure to file the Appeal." ***ID.***

On November 30, 2018, Judge Cohen held an Evidentiary Hearing, where Trial Counsel, Geoffrey Marc Kilroy, Esquire, testified Plaintiff "ultimately endorsed" his strategy "which favored filing the Motion For Reconsideration." Plaintiff argued that he accepted the strategy to file the Motion For Reconsideration, but also expected an appeal to be filed. Of Course, the Court "ultimately found [Attorney] Kilroy's testimony" more credible over the Plaintiff's; denying his P.C.R.A. and "declining" to reinstate his appellate rights ***Nunc Pro Tunc,*** despite the fact that Counsel never notified him that the Motion had been denied. ***ID.***

The atmosphere created during Plaintiff's legal proceeding in the lower court was one of unfairness, bias, prejudice, and a total disregard to the Court's Rules and Procedures. It was an atmosphere void of Due Process. Plaintiff complained, but his attorneys did nothing to to defend him or protect his Constitutional Rights. The Standard for Judicial Misconduct is not whether the Judge is actually bias, but whether--***EVEN IF*** bias or prejusdice is lacking--the conduct of the Court raises "an ***APPEARANCE*** of impropriety." See ***Reilly v. Southeastern Pennsylvania Transportation Authority,*** 498 A.2d 1291, 3000 (PA 1985).

The Code Of Judicial Conduct, Canon 3(c) states that "a judge should disqualify self in a proceeding in which his impartiality ***MIGHT*** reasonably be questioned." Judge Brinkley's embroidered conduct exhibited a "substantial doubt" of his ability of presiding impartially. As did Judge Cohen's during the Probation Revocation Proceedings. A jurist's impartiality is called into question when "doubts as to his ability to preside objectively and fairly over the proceedings or where there exists factors or circumstances that may ***REASONABLY*** question the jurist's impartiality." The Code Of Judicial Conduct, Canon 3(C)(1)(a).

The touchstone of Due Process analysis in cases of alleged misconduct is fairness of the proceeding, not its culpability. ***Marshall v. Hendricks,*** 307 F.3d 36, 64 (3rd Cir. 2002). When the power of the government is to be used against an individual, there is such a right to a fair procedure to determine the basis for, and legality of, such action. ***ID.***

The Lower Court's rulings, as well as its oversight of the very procedural regulations and rules governing its proper function, demonstrated its discretionary abuse, prejudice and bias toward Plaintiff throughout the entire legal proceedings. Judge Brinkley's reference to the "*Accuser*" as a "*Victim*" conveyed his opinion that a crime had occurred and that the *Accuser* was in fact an aggrieved person, further demonstrating his bias and prejudice.

It is a basic tenant of our law that, in criminal cases, there is a continuing ***Presumption of Innocence***. ***Commonwealth v. Bonomo***, 151 A.2d 441 (1959); ***Commonwealth v. Crockford***, 660 A.2d 1326 (PA.Super. 1995). The mere usage of this language by the Court denied Plaintiff's Presumption of Innocence, which is guaranteed by both the Pennsylvania and the United States Constitutions. It is the Commonwealth's burden to prove the Defendant's guilt, ***Commonwealth v. Loccisano***, 366 A.2d 276, 283 (PA.Super. 1976). The Court's conduct leading up to, and contributing to, Plaintiff's invalid plea, reflected a pattern of partiality and bias against Plaintiff and recusal was warranted. Code Of Judicial Conduct, Canon 3(C)(1)(a).

Due Process requires that a judge possess neither ***actual*** or ***apparent*** bias. See ***In Re Murchinson***, 349 U.S. 133, 136-139 (1995)(Due Process violated because judge could not free self from influence of personal knowledge of what occurred in Grand Jury Session); ***U.S. v. Edwardo-Franco***, 885 F.2d 1002, 1005-1007 (1989)(Due Process violated because Judge made prejudicial remarks about Defendant); ***U.S. v. Whitman***, 209 F.3d 619, 625 (2000)(Due Process violated because judge's repeated actions gave impression of partiality); ***Gardiner v. A.H. Robins Company***, 747 U.S. 1180, 1191-1192 (1984)(Due Process violated because judge stated before trial his belief in victim's accusations, affirming his prejudice against Defendant).

The standard for Appellate Review of certain misconduct is whether conduct actually was improper; or whether the misonduct, taken in context of the [legal proceedings] as a whole, violated Petitioner's Due Process Rights. See ***Flaharty*** supra. This Court has the authority to set aside Plaintiff's conviction because his detention is impermissibly based upon the Court's ***OWN*** belief of the value of retribution. ***Commonwealth v. Kostka***, 419 A.2d 566 (PA.Super. 1980). Plaintiff's ***Actual Innocence*** is supported by arguments presented herein. See ***Bousley v. U.S.***, 523 U.S. 614, 118 S.Ct. 1604; ***Commonwealth v. Jette***, 23 A.3d 1032 (2011).

Plaintiff's conviction as a probation violator is based soley upon his invalid, illegally coerced plea agreement. Therefore, both ***convictions*** need to be vacated. "The dignity of the United States Government ***WILL NOT*** permit the conviction of any person based upon tainted evidence. See: ***Mesareosh v. United States***, 352 U.S. 1 (1956).

The Judges involved in these proceedings were in error, tainting the convictions. "No man in this Country is so high that he is ***ABOVE THE LAW.*** No officer of the law may set that law at defiance, with impunity. All the offices of the Government, from the highest to the lowest are creatures of the law and are bound to obey it." ***United States v. George W.P. Lee***, 106 U.S. 196 (1882).

*[7]* ***Actual Inocence***

In ***McQuiggin v. Perkins***, 133 S.Ct. 1924 (2013), the United States Supreme Court held that "***actual innocence,***" if proven, "is a ***gateway*** through which a Habeas Petitioner can make it into Federal Court." ***McQuiggin*** is important because it opens the door to the Federal Courthouse for Prisoners, like the Plaintiff, who maintain their innocence.

Plaintiff was invited to the residence of his former paramour, Chemyra J. Johnson, for consensual sexual intercourse. Unbeknownst to him, she had filed an emergency PFA Order against him, but failed to notified him of that fact when she invited him to her apartment. Nor did she serve him with a copy of it, although she possessed one.

After Plaintiff declined her invitation to stay the night and while he was in the shower, she allegedly telephoned the Police of his presence in her residence, in violation of the PFA. The Police, who claimed to have knocked and received no answer, solicited the Landlord to open the door with his master key, without proabable cause, consent or a warrant.

Once the Police found cause to question the validity of the PFA Order, Miss Johnson claimed she had been physically and sexually assaulted by the Plaintiff. According to Police Records, there was no evidence of a struggle, or any visible signs that she had been assaulted. So, they never transported her to the hospital for treatment of any injuries, nor was any rape testing by medical staff performed.

Also, while Plaintiff was detained in CFCF, he had a telephone conversation with his alleged victim, where she stated that she never told the Police she had been raped or beaten. Miss Johnson also made similar statements to Plaintiff's Brother, who relayed these facts to him over the telephone. These conversations were recorded by CFCF.

Plaintiff steadfastly maintained his innocence. However, he was coerced into accepting a negotiated plea. His attorney told him that if he went to trial the District Attorney was going to indict him on multiple charges and ask the Court to run the sentences consecutively, insuring he spent many years in prison. Scared of that possibility, and under assumption if he agreed the sentence would be minor, and spent at in a County Facility, Plaintiff sacrificed his innocence, and his right to "fight his case" in court.

However, instead of avoiding a long term by accepting a "deal," Plaintiff's acceptance guaranteed he would go to prison for a very long time--despite his cooperation and sacrifice; and forfeit of his right to challenge the legal violations and lies against him. The District Attorney proffered an harsh, illegal sentence for crimes she could not prove. Plaintiff asked Counsel to file an appeal, but he filed a Motion For Reconsideration; then abandoned him.

The "***victim***" never testified before any judge, during any of Plaintiff's proceedings. Nor was a prima facia case ever established. Plaintiff's attorney behaved more like a prosecutor, not an advocate. Despite Plaintiff's many proclamations of innocence, Counsel never intended on defending him at trial; continually pushing him to take a plea, not a trial.

The Habeas Corpus Review is essentially an examination of the process employed by the state courts, resulting in Plaintiff's wrongful conviction. 28 U.S.C.A. §2254; ***Hunt v. Tucker*** 875 F.Supp. 1487, affirmed 93 F.3d 735. ***Actual Innocence*** is not just a ***gateway*** to the federal court; when innocence allegations are placed in the context of valid fedearal claims, such as ineffective assistance of counsel or prosecutorial misconduct they are key issues for review. See 28 U.S.C.A. Sixth Amendment; ***Bean v. Calderon***, 106 F.R.D. 452; ***O'Dell v. Netherland***, 95 F.3d 214, as stated and amended as 117 S.Ct. 630, 519 U.S. 1049.

Habeas Petitioner is "***actually innocent***" for purposes of AEDPA limitation provisions, if it is more probable than not that no reasonable juror would find Plaintiff guilty beyond a reaonable doubt in light of the evidence. The District Court's Habeas Corpus enterprise inquiry into ***actual innocence*** claim is necessarily fact-intensive. 28 U.S.C.A. §2254; ***Lambert v. Blackwell***, 962 F.Supp. 1521, Stay denied; 116 F.3d 468 Vacated, 134 F.3d 506.

In extraordinary cases, a Federal Court may grant a Writ of Habeas Corpus ***WITHOUT*** a showing of cause or prejudice to correct a fundamental miscarriage of justice. ***Hill v. Jones***, 81 F.3d 1015, Rehearing and suggestion of rehearing denied, 121 S.Ct. 1353, 532 U.S. 919. The Sixth Amendment guarantees the Acussed the opportunity for a jury to decide innocence or guilt, and a necessary corollary is the right to have one's guilt determined only upon proof beyond a reasonable doubt of every fact necessary to constitute a crime. See United States Constitution, Sixth Amendment.

The Commonwealth could not sustain its burden of proof, so it created a systematic schemed to frustrate the truth determining process, usurping the Court's Procedures and Rules to manipulate the legal process, while placing Plaintiff in an enviroment of anxiety and fear that overcame his will to go to trial and fight the charges against him; coercing him to accept a plea. There was no substantial evidence consistent with Plaintiff's alleged guilt and inconsistent with every reasonable hypothesis of his innocence. ***Commonwealth v. Burkowitz*** 641 A.2d 1163 ; ***Commonwealth v. Smolko***, 666 A.2d 672, 675.

Nor was there any supporting testimony from the alleged victim. In fact, the evidence favored the Plaintiff, not his accuser. The District Attorney's evidence was insufficient to establish the existence of every element of the offenses charged. ***ID***. Remove the misalleged facts and the lies, and the case boiled down to the alleged victim's word against the Plaintiff's word. And she had a history of lying, and a conviction for perjury.

The District Attorney could not win her case ***UNLESS the*** Plaintiff was manipulated and terrorized into accepting a negotiated plea, that was never actually negotiated by his attorney. The Prosecutor's misconduct wa intended to deprive Plaintiff of a fair trial, and so, double jeapordy is triggered. ***Commonwealth v. Daidone***, 684 A.2d 179. She deliberately tried to destroy the objectivity of the fact-finding process such that the unavoidable effect was the creation of hostility toward, and fear of the Plaintiff. ***Commonwealth v. Miles***, 681 A.2d 1295.

In questions of bias, the Court may grant a new trial. ***U.S. v. Hall***, 85 F.3d 367 (1996). And, if a fact-finding body concludes that a witness deliberately lied or falsified testimony on a material point, such could be taken into consideration in determining what credance should be given to balance of testimony. ***Commonwealth v. Parente***, 133 A.2d 561 (1957).

Plaitiff is innocent of the charges, and has been victimized by a chain of layered ineffective asstistance of counsel, who either negligently or intentionally, chose to maintain a false sense of loyalty to the Philadelphia County legal community, instead of the truth or their duty. This choice was not just unethical, it is illegal. Furthermore, it is a violation of Constitutional standards for defense lawyers to deprive their clients through their ineffectiveness and incompetence. They never explored evidence or defenses that would have exonerated Plaintiff. ***Lewis v. Mazurkiewicz***, 915 F.2d 106 (3rd Circuit 1990).

*Conclusion:*

Plaintiff is guaranteed the right to effective assistance of counsel. See United States Constitution, Sixth Amendment; ***Strickland*** and ***Pierce***, Supra; ***Commonwealth v. Collins***, 888 A.2d 564 (PA 2005). Counsel's ineffectiveness is prejudicial where there is a reasonable probability that, ***but for*** Counsel's ineffectiveness, the result would have been favorable to the Defendant. See: ***Commonwealth v. Daniels***, 104 A.3d 267, 285 (PA 2014).

The District Attorney's duty in a criminal prosecution is to seek ***JUSTICE***, not ***CONVICTIONS***. ***Berger***, Supra. The Prosecutor ***"CAN NOT*** use improper methods calculated to produce a wrongful conviction." ***ID***. If the use of any improper method infects the legal process "with unfairness and makes the resulting conviction a denial of Due Process," it justifies a mistrial or reversal of conviction. ***Darden v. Wainwright***, 477 U.S. 168, 181 (1985).

Petitioner's right to confront his accuser extends to state prosecutions through the Due Process Clause of the Fourteenth Amendment. ***Pointer v. Texas***, 380 U.S. 400, 403 (1965). This Clause provides the Plaintiff with the right to directly encounter adverse witnesses, including his alleged victim. ***Maryland v. Craig***, 497 U.S. 836, 846 (1990)("Face-to-face confrontations enhances the accuracy of fact-finding" function); ***Coy v. Iowa***, 487 U.S. 1012, 1019 (1989)("It is ***ALWAYS*** more difficult to tell a lie to one's face than behind their back.").

The Plaintiff had the right to cross-examine ***ALL*** adverse witnesses and the right to be present at ***EVERY*** stage of his legal proceedings, that would have enabled him to effectively cross-examine those adverse witnesses. ***Kentucky v. Stincer***, 482 U.S. 730, 737 (1989)("The Confrontation Right was designed to promote truth-finding function...."); ***U.S. v. Watson***, 76 F.3d 4, 9 (1996)(The Confrontation Right gives Plaintiff "full and fair opportunity to probe.").

Lawyers in criminal proceedings are ***NECESSITIESS***, not ***LUXURIES***. Their presence is essential because they are the means through which other rights are secured. Without Counsel, the legal process itself would of little avail. Of ***ALL*** the rights that an Accusd Person has, the right to be represented by zealous, effective counsel is by far the most pervasive, for it affects his accessability to other rights he may have. ***U.S. v. Cronic***, 466 U.S. 648 (1984).

"Whether a man is innocent cannot be determined from a [legal process] in which the denial of effective assistance of Counsel made it impossible to conclude with any satisfactory degree of certainty the Accused was adequately represented." ***Betts v. Brady***, 316 U.S. 455, 476 (1942). Our advocacy system ***DEMANDS*** Attorneys diligently protect their clients from ***ANY*** prejudice caused by improper prosecutorial over-reaching. It is Counsel's ***DUTY*** to properly and effectively represent his client. ***Commowealth v. Pfaff***, 384 A.2d 1179, 1182.

The withholding of exculpatory evidence by Prosecutors infringes on Defendant's Due Process Rights; their intentions for doing so are irrelevant. This prejudice upon the right to a fair trial is even more palpable when a Prosecutor has not only withheld evidence, but has knowingly introduced and argued false evidence. See ***Brown v. Borg***, 951 F.2d 1011 (1991).

"In cases where virtually the only issue is credibility of the Commonwealth's witnesses versus that of Defendant's, the failure to explore *ALL* alternatives of strategies and evidence available to assure the fact-finder hears *ALL* the testimony and reviews *ALL* the evidence which might be capable of casting shadow upon the Commonwealth's witnesses' truthfulness is ineffective assistance of counsel. ***Commonwealth v. McCaskill***, 468 A.2d 472, 477 (1983).

The "truth is best discovered by powerful statements on *BOTH* sides of the question. This dictum best describes the unique strength of our adversary criminal justice system. The very premise of our justice system is that *PARTISAN* advocacy on *BOTH* sides of a case will best promote the ultimate objective--that the guilty get convicted and the innocent go free." ***Herring v. New York***, 422 U.S. 853, 862 (1980).

Prosecutorial misconduct in the state criminal proceedings will be grounds for Writ Of Habeas Corpus. ***Borg***, Supra. The standard of Appellate Review is "Whether the Prosecutor's conduct was actually improper; or whether the misconduct, taken in context of the legal proceedings as a whole, violated Plaintiff's Due Process Rights. See ***U.S. v. Flaharty***, 295 F.3d 182, 202 (2002).

Due Process requires that a judges possesses neither actual or apparent bias. See ***In Re Murchison***, Supra. Pennsylvania's Super Court has stated that where the Lower Court failed to monitor the District Attorney's discretionary power and the Defense Counsel's stewardship, the Judge's "method of *protecting* rights" of Plaintiff were inadequate. ***Matter Of Pittsburgh***, Supra. The Plaintiff was denied "an effective means of challenging the evidence against him by testing the recollection and probing of the conscience of adverse witnesses. All relevant material enhances the truth-seeking process. And, the search for truth and the "quest for every man's evidence " is plainly the basis of the Sixth Amendment. ***ID***.

A Federal Court can review a state procedural default, absent the showing of cause and prejudice, if the failing to do so would result in a fundamental miscarriage of Justice. See ***Murray v. Carrier***, 477 U.S. 478, 495-496 (1986). The most notable fundamental miscarriage of justice is where a "Constitutional violation has probably resulted in the conviction of one who is actually innocent." ***ID***. Plaintiff has satisfied the standard "that it is more likely than not that no reasonable juror would have convicted him in the light of..." the evidence. ***Schlup v. Delo***, 115 S.Ct. 851, 867 (1995). Therefore, his Petition For A Cerificate Of Appealabilty should be grantedby this Honorable Court.

Ramon Wall

Ramon Wall, Plaintiff, Pro-Se

10-13-20

Date Executed: