

20-6598

No. 19-2800

1:16-CV-02478

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
WASHINGTON D.C.

Stephen F. Baker, Jr. -PETITIONER

VS.

Jay Lane RESPONDENTS(S)

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PA

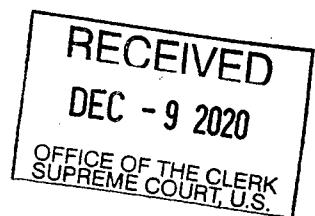
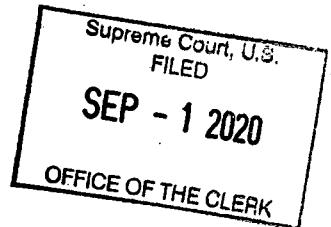
THIRD CIRCUIT COURT OF APPEALS

Stephen F. Baker, Jr.

PO BOX 6500 8837

2500 Lisburn Road

CAMP HILL, PENNSYLVANIA 17001



QUESTION(S) PRESENTED

1. Whether the petitioner is entitled to step through the gateway of equitable tolling?
2. Whether state courts determinations of trial counsels effectiveness was an unreasonable application of the state standard of review for violations of the petitioners Sixth amendment rights to effective assistance of counsel ?
3. Whether the petitioners guilty plea entered was knowingly, intelligently, and voluntary guaranteed by the Fifth and Fourteenth amendments?
4. Whether the petitioners counsel withheld specific discovery from the petitioner during crucial key points of pre-trial and penalty phase?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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

JAY LANE is the only party mentioned on the cover page.

List of parties that do not appear in the caption on the cover page is as follows:

1. Pannella, J., Wecht, J., and Strassburger, J.* Superior Court
2. Amy Dreibelbis, Deputy Prothonotary Supreme Court
3. Carlson, J. Magistrate Judge United States Middle District Court
4. Yvette Kane, District Judge, United States District Court Middle District of Pennsylvania

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[] For cases from federal Courts:

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

[] reported at _____; or,

[] had been designated for publication but is not yet reported; or,

[] is unpublished.

[] Then opinion of the United States district court appears at Appendix D to the petition and is

[] reported at _____; or,

[] had been designated for publication but is not yet reported; or,

[] is unpublished.

[] For cases from State Courts:

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

[] reported at Commonwealth v. Barker No. 984 MAL 2015; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

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

[] reported at COMMONWEALTH v. BAKER NO. 476 MDA 2015; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

JURISDICTION

For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was August 9, 2019.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following Date: _____, and a copy of the order denying rehearing appears at Appendix ____.

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

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

For cases from State Courts:

The date on which the highest state court decided my case was April 6, 2016. A copy of that decision appears at Appendix A.

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

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

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

STATEMENT OF CASE

PROCEDURAL HISTORY:

On December 30, 2004 the Pennsylvania state police filed a criminal complaint charging the petitioner with two counts of criminal homicide; (first, second, and third degree; and voluntary manslaughter); Robbery; Possession of an instrument of a crime; Crimes committed with a firearm; and firearm not to be carried without a license.

The next day, the trial court appointed Thomas K. Hooper Esq. and David G. Smith Esq. to represent the petitioner. On February 11, 2005, the Commonwealth filed a 16 count information and notice of intent to seek the death penalty.

On May 23, 2005, hearings were held regarding the petitioner's omnibus pre-trial motions.

On September 11, 2006, jury selection began in this matter at the Huntingdon county court of Common Pleas. At this time, the petitioner was advised by counsel that they did not wish to try this case and began discussing entering a guilty plea to two counts of second degree murder.

On September 20, 2006, the petitioner was sentenced to two life concurrent sentences, in accordance with the terms of the negotiated plea agreement.

On September 20, 2006, Attorney Hooper and Smith filed a post sentence motion with the lower court, requesting that the petitioner be permitted to withdraw his guilty plea. Although a hearing was set for November 30, 2006, no hearing was ever held in the lower court regarding the petitioner's request to withdraw his guilty plea.

On April 4, 2007, the Huntingdon county Clerk of Courts entered an order dismissing the petitioner's post sentence motion by operation of law, pursuant to PA.R.Crim.P. 720 (B) (3).

On April 25, 2007, an appeal was filed in the Superior court raising numerous issues, including trial counsels ineffectiveness raising Six amendment claims.

On February 12, 2008, an opinion was issued by the Superior court stating that the issues raised should be addressed in a PCRA petition, and not on direct appeal.

On January 16, 2009, the petitioner's first PCRA was filed with the court. A hearing was held on the petitioner's first PCRA on April 19, 2009, which was subsequently dismissed by the lower court on November 19, 2009.

On February 2, 2010, the petitioner filed his second PCRA with the lower court. On March 18, 2010 Attorney Bill Tressler Esq. was appointed to represent the petitioner.

On July 15, 2013, the petitioner requested a change in counsel for abandonment issues on his second PCRA and the lower court granted this on September 24, 2014, by appointing attorney Ray Ganer Esq. to represent the petitioner and would later learn that he had a conflict of interest with this case and on November 7, 2014, the lower court appointed Attorney Lance T. marshall Esq. to represent the petitioner.

On December 16, 2014, The petitioner filed his thrid PCRA petition with the lower court. On February 25, 2015, the lower court entered and order reinstating the petitioners appellate rights Nunce pro tunc. As a result, the petitioner was allowed to appeal the denial of his First PCRA petition, which was filed to the Superior court on August 10, 2015.

On November 30, 2015, the Superior court affirmed the lower courts denial of the petitioners first PCRA petition.

On December 28, 2015, the petitioner filed his petition for allowance of appeal with the Supreme court of Pennsylvania, which was subsequently denied on April 6, 2016.

The petitioner next filed his Habeas corpus petiton with the third circuit. The Third circuit sent the petitioners Habeas Corpus back to the District Magistrate court over seen by Magistrate Judge Carlson J. The petitioner then filed a motion for an extention of time which was Granted by the court.

On May 22, 2019, The Magistrate Judge Carlsons report and recommendation (Doc. No. 25) was adopted and that the petitioners petition for Habeas Corpus was Dismissed by the court.

On July 17 2019, the petitioner entered into the court a motion of Objections to the Honorable Judge Calsons dicison to dismiss the petitioners Habeas Corpus (Doc. No. 27) which was OVERRULED by Judge Carlson. The petition now affirmed is denied and a Certificate of Appealability not to issue; The Judge ordered the Clerk of Court to close this case.

On August 23, 2019 the petitioner received a statement by the Attorney general Josh Shapiro stating that the appellees will not file an answer to the appellenats application for a Certificate of Appealability. The Appellees refer this court to the report and recommendation by Magistrate Judge Carlson Filed on May 22, 2019.

The petitioner now files this appeal with the Supreme Court of Washington D.C. as follows:

ARGUMENT

1. The AEDPA'S one year statute of limitations is subject both to statutory and equitable tolling under 28 U.S.C. § 2244(D). Enumerating statutory tolling provisions, Merrit v. Blain 326 F.3d 157 (3rd cir) holding, "AEDPA'S time limit is subject to the doctrine of equitable tolling, "A judicially crafted exception." As such, the instant petitioner for Ferderal habeas corpus relief was filed within the statutory time limits imposed by 28 U.S.C. § 2244. "the time limit clause is subject to due process violations under the Fifth and Fourteenth amendments requirements that the petitioners still had time to protect with his 28 U.S.C. § 2254 habeas corpus petition and did meet the standard of equitable tolling."

2. The one year limitations shall apply to an application for writ of habeas corpus by a person in custody pursuant to the judgment of the state court. The limitations shall run from the latest of:

A. The date onwhich the judgement became final by a conclusion of direct review of the expiration of the time seeking the review; or,

B. The date onwhich judgment became final on the impedment to filing an application created by state action in violation of the constitution or laws of the United States is removed, if the application was prevented from filing a state action; or,

C. The date onwhich the constitutional rights asserted was initially recognized by the Supreme Court and the Federal Middle District Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral attack and review; or,

D. The time during a properly filed application for post conviction relief or other collateral attack with respect to the pertinent judgment or claim is pending "shall not be counted" toward any time period of limitation under this subsection. The proof will show that the habeas corpus petition is timely and that this court granted relief with regards to the appellants case on the merits and not equitable tolling. The petitioner never had a motion entered into the court for ineffectiveness of counsel for abandonment issues under 28 U.S.C. § 2244 inwhich was the case of Heard v. United States 93-464. In this case of "Accual

Innocents" the appellant was at the mercy of counsels ineffectiveness a **Sixth amendment violation**. Generally, the Federal courts will only grant habeas corpus relief to a state prisoner if available state remedies have been concluded and exhausted, under **28 U.S.C. § 2254 (B)**. Under these exceptional circumstances the appellant has provided in detail for the state courts to correct the alleged violations to his rights without disruption to the Federal courts. Rose v. Lundy 455 U.S. 509 (1982). In Ex parte Royal, 117 U.S. 241 S.ct (1886). The exhaustion doctrine existed long before it's codification by congress in 1948. This court wrote that as a matter of comity, Federal court should not consider a claim on habeas corpus petition until after the state courts have had an opportunity to act. " **The injunction to hear the case summary, and thereupon to dispose of the party as law and justice require 'does not deprive the court of discretion as to the time mode inwhich it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing, under out system of government, between the judicial tribunals of the union and of the states, and in recognition of the fact that the public good requires that the relations will not be disturbed by unnecessary conflict between courts equally bound to guard and protect rights secured by the constitution.**" The petitioner however did exhaust his claims and his constitutional rights were denied by the "**State Supreme Court of Pennsylvania**." The petitioner avers that the limitations period for the instant petition should be tolled for the time during which a properly filed application for state post conviction or other collateral attack is pending. See **28 U.S.C. 2244 § (D) (2); Lovasz v. Vaughn** 134 F.3d 146 (3rd cir 1998). The limitation period will equitably tolled when the principles of equity would make the ridged application of limitation period unfair. Satterfield v. Johnson 434 F.3d 185 (3rd cir 2006); Jones v. Morton 195 F.3rd 153 (3rd cir 1999). The petitioner avers that the lower courts records will reflect that he exercised reasonable dilligence in investigating and raising the claims asserted by tolling Merrit, Supra 326 F.3d at 168 Citing Fahy v. Horn 240 F.3d 239 (3rd cir 2001). The petitioners petition for allowance of appeal in the Supreme court of Pennsylvania was entered in the court on **December 28, 2015**. which subsequently was denied on **April 6, 2016**. The petitioner had one year from the denial of his appeal from the state Supreme court of Pennsylvania from **April 6, 2016** til **April 6, 2017**. The Federal habeas corpus was submitted to the federal court on **November 14, 2016** well within the the one year statutory limitations to file the habeas corpus. the federal district court denied his habeas corpus due to equitable tolling, with no issuing of a Certificate of appealability because in Judge Carlsons opinion, this case should not reopen because of the impact it would have on the victims families which violated the petitioners due process rights under the Fifth and Fourteenth amendments to move his case foward on the merrits alone.

As in Lovasz v. Vaughn 134 F.3d 146 (1998). The District Court dismissed the habeas corpus petition as time-barred under **28 U.S.C. § 2244 (D) (2)**, which mandates a one-year time limit for filing a writ of habeas corpus by a person convicted in a state court. The appellant challenged the dismissal and requested a certificate of appealability. The court reversed, holding, that the appellants habeas corpus petition was timely filed pursuant to the tolling clause of **28 U.S.C. § 2244 (D) (2)**, which excluded from the period of limitation the time during which a properly filed application for State - post conviction petition was pending. The appellant's petition was pending before the State Supreme Court until **September 26, 1996**, thus, the **one-year time limitation period** did not expire til **September 26, 1997**.

3. This case mimics this petitioners case with respects to it as a whole but, the difference being that this litigant was not allowed to pass through the gateway of equitable tolling due to biasness from **Judge Carlson, J. the Magistrate Judge form the United States Middle District Court** and the deprivation of the petitioners rights to "Due Process" under the **Fifth and Fourteenth amendments**, for not allowing the petitioner to have his petition litigated on appeal by denying the petitioner his rights to have a **certificate of appealability** issued because he did not want the case to be opened because of the family of the victims. See **Exhibit "A" Judge Carlson, J. decision and opinion of the case.**

4. If a claim was "not" adjudicated on the "merits" in state court, we in the Federal Court will review legal questions and mixed questions of law and fact "de novo" Cone 556 U.S. at 472 Citing Rompilla v. Beard 545 U.S. 374 (2005).

5. In the **United States Supreme Court** reversed. It was held that in failing to examine the trial court's prior conviction file on the accused, the accused's trial counsel had **fallen below the standard** of reasonable competence required of defense counsel under **Federal constitutions Sixth amendment** that even when a Capital defendant and the defendants family members had suggested that [no] mitigating circumstantial evidence was available, the defendants counsel was required to make reasonable efforts to obtain and review evidence that counsel knew the prosecution would probably rely on as aggravating evidence at the sentencing phase of trial.

6. Federal habeas corpus practice and procedure. a (FHCPP § 26.4) "Actual innocents" makes it through the time - bar limitations under 28 U.S.C. § 2254 (D), failure to apply for habeas corpus relief will then be time-barred. In this case the petitioner timely filed his habeas corpus petition and should have been allowed relief on the merits. In Schup v. Delgato 513 U.S. 298 at 326-27 sharply distinguishes the petitioners first habeas corpus petition and that the dismissal denies the petitioner protections of the (Great Writ) entirely, risking injury to an important interest in human liberty. Actual innocence can be used as a gateway to Federal court for a claim that would otherwise be barred by some procedural default. For example, a claim that would be barred by the [AEDPA] statute of limitations, will be considered on the merits of the case which the appellants actual innocence is shown and the prisoner has not "unreasonably delayed" in bringing that claim to Federal Court. To receive relief, theres more in additional to meeting the very demanding test for actual innocence. The appellant must establish and demonstarte a seperate constitutional violation, apart form his actual innocence which probably caused the guilty plea. This later principle was applied and explained in a recent case of Jenkins v. Hutton 137 S.ct 1769 (2017). In *Jenkins*, the appellant filed a habeas corpus petition alleging a claim that the petitioner could have brought upon direct appeal. Avoiding a miscarriage of justice requires that a showing by clear and convincing evidence that but for clear constitutional error, no reasonable juror would have found the petitioner guilty under the applicable state law. Now the Supreme courts decision which talks about special circumstances that can excuse the a failure to bring the claim of direct appeal and one of these exceptions is where the habeas corpus petition contains something of "**substance**" that was not on the record on direct appeal.

7. In the petitioners first [PCRA], defense **counsel** Kling called to the witness stand **Thomas Hooper** original trial counsel for the defendant. On Exhibit "B" N.T. pg 1 Ins 9-22 states that, Thomas Hooper was ineffective for not having made a motion to sever the charge of a **Felon not to possess a firearm** in the petitioners trial, and that defense counsel Kling made notation on court record that it was ineffectiveness assistance of counsel due to the "requirement" that the commonwealth must prove that a felony was committed by the defendant. On Exhibit "C" N.T. pg 2 In 10 Kling counsel for the defendant states on court record that it is ineffectiveness because the motion was never filed. This is a **Sixth amendment violation** and special circumstances with substance. Jenkins v. Hutton 137 S.ct 1769 (2017).

8. On Exhibit "D" N.T. pg 26 Ins 19-25 states that, original trial counsel Thomas Hooper and David Smith sucessfully petitioned for two private investigators and one mitigation expert. The expert in mitigation was **Doctor Mark Tabikman**. Now on Exhibit "E" N.T. pg 28 Ins 8-21

states, the mitigating circumstances were never used at pre-trial suppression phase and that if it would have been offered, it would have been on record that the petitioner has a tragic fall several years prior to his arrest and that the petitioner suffered just debilitating injuries and brain damage on the left frontal lobe. Trial counsels never offered the expert testimony at pre-trial from the mitigation expert Dr. Tabikman, thereby causing ineffectiveness of counsel a ***Sixth amendment violation*** for not allowing the court to know that the petitioner has severe "mental diminished capacity" in which counsel concealed.

9. **Under § 3:10 Ineffectiveness assistance claims based upon lawyers incompetence:**

A. Prior to the Supreme courts 1984 ruling in Strickland v. Washington 466 U.S. 668, states, lower courts have been divided on several issues bearing on those ineffectiveness assistance claims that were grounded on the allegedly incompetent performance of counsel. Some courts have adopted specific guidelines for judging defense counsel's performances (typically borrowed from the ABA standards), with a departure from a guideline consulting per se "incompetency," others eschewed guidelines and stressed a fact-sensitive analysis that looked to all circumstances of the case. Among courts that focused on the totality of the circumstances, some applied the traditional test of whether a counsel's deficiencies were so great as to have rendered the proceedings a "**Farce**" or "**Mockery of Justice**," while others looked to whether counsel's performance fell below that of a "**reasonably competent attorney.**" Most courts further required for reversal, a defense showing that counsel's incompetence has a prejudicial impact upon the outcome. Even the defendants challenge in Strickland was to the performance of counsel in a capitol case sentencing proceeding. After discussing the role of counsel in the adversary adjudication of guilt, the court noted that the same principles applied to a capitol sentencing proceeding as it was "**sufficiently like a trial in its adversarial format and in the existence of standards for decisions.**" Citing Hill v. Lockhart 474 U.S. 52 (1985), prejudice surrounding attorney's failure to investigate further or to discover exculpatory evidence, especially in this case with the petitioners mental health issues and diminished capacity to under the the case and to be able to consult his lawyer with a degree of competence and understanding. The petitioners original trial counsel fell well below the standards set forth in Strickland by not having the mitigation expert to investigate even further into the petitioners background from when he was a child and, when he was being seen by mental health physicians. Citing People v. Jenkins 68 N.Y. 2d 896 508 NYS 2d 937 501 N.E 2d 586 (1986), Failure to use crucial evidence, if due solely to attorney's erroneous assumption of its inadmissibility, may be so prejudicial as to be ineffective assistance of counsel.

The petitioner avers that the lower court record will prove that trial counsel's performance was constitutionally ineffective in his duty to investigate mitigating and mental illness circumstances of the case and all avenues that were relevant to the case's merit. Wiggins v. Smith 539 U.S. 510 (2003). Congress codified this competency standard in 18 U.S.C. § 4241 (D), requiring that a criminal defendant to be competent has a modest aim: It seeks to ensure that the petitioner has the capacity to understand the proceedings and to assist counsel. Citing Godinez v. Moran 509 U.S. 389 (1993). The court may consider the prejudice prong because counsel's presumption applicable, when counsel did not fully investigate mitigating circumstances involving evidence before the sentencing phase. Eley v. Bagley 604 F.3d 958 (2010). Citing Strickland v. Washington 466 U.S. 668 (1984). A defendant who alleges a failure to investigate on the part of his counsel, must allege with specification to what the investigation would have revealed and how it would have effected the outcome. Nelson v. Hargett 989 F.2d 847. Mitigating circumstances surrounding the petitioner's mental state on the night of the murders would have proved that the outcome would have been different on his court case. The petitioner maintained his actual innocence throughout every court proceeding.

Mitigating circumstances shall include the following:

- A. The defendant was under the influence of extreme mental or emotional disturbance; or,**
- B. The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under 18 Pa C.S. § 309 (relating to duress) or acted under the substantial domination of another person.**

The petitioner never had possession of the murder weapon on the night of the murders, Crystal Frederick had possession of the murder weapon and the petitioner was under the domination of another due to his mental illnesses from his brain damage. Even under Rule 703 the bases for an expert witness testimony, an expert may base an opinion on the facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on the subject, they need not to be admissible for the opinion to be admitted. Dr. Tabikman mitigation expert for the defense was not allowed by defense counsel to admit any evidence of the defendant's mental illnesses, which would have raised the mitigation opinion of the doctor relevant to this case, which now raises the **ineffectiveness of counsel** claim by the defendant a **Sixth amendment violation of the defendant's rights**.

10. Under Rule of profession conduct § 804 (C), states, "it is professional misconduct for a lawyer to engage in conduct involving dishonesty; fraud; deceit; or, misrepresentation." Office of Disicplinary counsel v. Anonymous Attorney A. 552 Pa 223 (1988). In the insaid case, the concealing of mitigating circumstances surrounding the petitioner revealed dishonesty and fraud by trial counsels Hooper and Smith. Under § 3.5 Wests Criminal Law states, "defense counsel stands in a fiduciary relationship with the client and is obligated to protect the client's confidences and secrets, counsel may not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and disclosures otherwise required or permitted by the rules of professional conduct." See **Rules of Professional Conduct § 1.6.** The duty not to reveal information about the representation of a client continues after the attorney client relationship has terminated. See **Rule of Professional Conduct § 1.6 (D).** See **Exhibit "F" Index to witnesses for the Commonwealth, Thomas Hooper for the petitioners first [PCRA] hearing.** Thomad Hooper should have invoked his Fifth amendment right to remain silent, instaed, he divuldged key moments of his representation and strategy by being a witness for the Commonwealth and against the petitioner. See **Exhibit "G" N.T. pg 30 PCRA hearing Ins 15-21** which states, " the strategy that was discussed between the petitioner and Thomas Hooper and David Smith." Now attorney Kling and Jackson never "Objected" to Hoopers testimony and the petitioner now raises this claim of ineffectiveness of counsels, a **Sixth amendment violation** of the petitioners rights to effective assistance of counsel in this **Writ of Certiorari.**

11. Rights to assistance of counsel includes necessary right to have adequate time for preperation of the case by counsel. Williams v. Washington 59 F.3d 673 (1995). The petitioner was deprived of effective assistance of counsel in his criminal proceedings and trial, where counsels lack of knowledge and farmiliarity with the case, and failure to investigate and provide the petitioner with a trial significantly different that the petitioner might have received if represented by competent attorney's. Counsels Hooper and Smiths performance fell short of the objective standard of reasonableness under prevailing professional norms. Prejudice will be presumed in accordance with United States v. Cronic 466 U.S. 648 (1984), and need not to be alleged or proven in the following situations:

A. Counsel could be found to be ineffective in not filing an appeal even though the defendant did not request the appeal; or,

B. Where counsel fails to consult with the defendant with the advantages and

disadvantages of an appeal; or,

C. where there is reason to think that the defendant woould want an appeal.

See Commonwealth v. Bath 907 A.2d 619 (2006), or failure to request an appeal Commonwealth v. Commonwealth v. Lantzy 558 Pa 214, 736 A.2d 564 (1998). In the insaid case , the petitioner did request from his counsel to appeal the Judges decision within a very specific time of **Six to Seven days** after the imposition of sentence. Even though the petitioner did ask his counsels to appeal, there was never a hearing set or held on this issue rendering ineffectiveness of counsel another **Sixth amendment violation**.

12. In pleading guilty to a charge of murder **generally**, a defendant does not waive his rights to object to the admission of improper evidence which will bear the degree of guilt and the punishment to be imposed. Commonwealth v. Myers 481, Pa 217 (1978); Commonwealth v. Marsh 440 Pa 590 (1970). Thus, unlike guilty pleas to non- murder offenses an accused who pleads guilty to murder generally may still object to the admissibility of an illegally obtained confession and seek its exclusion from the "**degree of guilty hearing**." Commonwealth v. Marsh 440 Pa 590 (1970); Commonwealth v. Garret 425 Pa 594 (1967); and Commonwealth ex rel Sanders v. Maroney 417 Pa 380 (1965). The petitioner had accepted a plea of guilty to an illegally induced guilty plea and colloquy, trial counsels Hooper and Smith never "**objected**" to the illegally induced confession of the petitioner at his guilty plea hearing. The petitioner never received information regarding a "**degree of guilt hearing**." **The petitioner was never given this opportunity and this is a due process violation of his Fifth and Fourteenth amendments.** Commonwealth v. weakland 521 pa 353 (1989). Even the inducements by the prosecution at the time of the guilty plea hearing for the petitioner used a sysystem that has developed in his county and depends not upon such statutory inducements but rather upon inducements frequently placed foward by prosecution in individual cases like in this case with the petitioner.

13. In Brady v. U.S. upholding as voluntary and intelligent a guilty plea entered under the statutory scheme, was found unconstitutional even in "Jackson," the court cast it's decision in terms that appeared calculated to lend support to some forms of the plea bargain which is illegal were Judges cannot impose sentence based upon a bargain between prosecution and the defendant, **that is a Fifth and Fourteenth amendments rights violations of due process.** The court is obligated to issue sentencing based off of statutory terms of the crimes codes and not the plea bargain.

14. Due process guarantees that a defendant's plea be voluntary and intelligent. Bousley v. United States 523 U.S. 614 (1998). The voluntariness of a plea presents a question of law. Marshall v. Lanberger 459 U.S. 422 (1983).

15. The petitioner avers that the state courts considered its determinations concerning the validity of his plea represents "a decision that was based upon an unreasonable determination of the facts in light of the evidence presented in the state court proceedings." 28 U.S.C. § (D) (2); citing Hartzog v. Brooks 2006 U.S. dist. lexis 21620 (2006).

16. A guilty plea is considered to be voluntary if the accused understands the nature of the charges against him and the constitutional standards and protections he is waiving. Henderson v. Morgan 426 U.S. 637 (1976); Further, the plea cannot be induced by threats or misrepresentations. Hartzog, Supra.

17. The petitioner avers that the guilty plea colloquy in this matter is constitutionally invalid were ineffectiveness of counsel rendered the proceedings fundamentally unfair to the petitioner for failing to consider the petitioners cognitive impairment and his inability to properly understand his rights. Boikin v. Alabama 395 U.S. 238 (1969). "The federal court must decide whether the state court's application of federal law, when evaluated on the merits, resulted in an outcome that cannot reasonably be justified under the existing Supreme court precedent." Salaam v. Dep't of Corr 2005 U.S. Dist. Lexis 15277 (2005). Consequently, a guilty plea that is induced divests the plea of its voluntariness character rendering it void as a matter of law. Zilich v. Reid 36 F.3d 317 (1994).

18. The federal rules that courts cannot fairly adopt a standard that would exclude, without examination, all the possibilities that the defendants averments at the time of the guilty plea were the product of misunderstanding, duress, and or misrepresentaion by counsel as it was in this case. The pennsylvania standard is congruent with Federal law in this regard. Our law does not establish a per se rule that maybe applied ridigly with no consideration of the nature of the averments made in the guilty plea comparison to the claims that would have been raised on appeal. In Gold, Supra, (permitting a withdrawal of a plea upon recognition that counsel provided ineffective representation which induced the plea thereby demonstrating that the defendant's actions was unintelligent and rendering the plea involuntary and unknowingly. Commonwealth v. Barbosa 819 A.2d 81 (2003). Holds," if a defendant was unaware of or was misled about the penalty to which he is subject, he must be pertmitted to withdraw his gulty plea, even if a lack of knowledge or mistaking belief was infact material to his decision to enter a plea.

19. At the pretrial conference and suppression hearing Dr. Arbitell who is a licensed Clinical Psychologist was called to the witness stand as the Commonwealths witness, who was Judge appointed. She performed a series of test on the defendant. As a result of those test she confirmed and diagnosed the defendant with as suffering from a verbal learning disorder and disibility. *She found that the defendant who had a full scale range of intelligence of 87 meaning low average and an I.Q. of 78 meaning borderline retarded.* See Exhibit "H."

20. On September 11, 2006 the colloquy for the guilty ple awas held for the petitioner which was induced by the petioners two counsels Thomas Hooper and david Smith. The petitioner never understood of the guilty plea colloquy. See Exhibit "I" and Exhibit "J" pgs 65 and 66. Also See Exhibit "K" N.T. pg 72 lns 12-14 which states that, " Hooper actually filled out the guilty plea colloquy for the defendant." This illegal action caused the petitioner to waive all of his or most of his constitutional rights which was under ineffectiveness of counsel a Sixth amendment violation. See Wests Criminal Law 3:4 which states, "counsel for the accused is bound by the eithical and legal duty of attorney to client." Counsel should represent the client zelously within the bounds of law, and unfettered by compromising influences. Attorneys Hooper and Smith for the petitioner could have been convicted for direct criminal contemp pursuant to 42 Pa C.S.A. § 4132 (2), which provides, Courts may inflict summary offenses for criminal contemp for disobedience or neglect by parties to the lawful process of the court. Commonwealth v. Zacher 455 pa Super 594 (1997). For special circumstances such as filing out the guilty plea colloquy questionair in private for the petitioner and not infront of the court on record provided by R.CRIM.P. RULE 590 (A) (1) Holds, in addition, nothing in this rule will proclude the use of a waiver colloquy that is read, completed, signed by the defendant, and made part of the record in the plea proceeding, "Not In Private." The petitioner did not understand what the guilty plea colloquy was and what it stood for due to his trial counsels ineffectiveness to completely explain the ramifications of what he was pleading out too. Hooper and Smith never intened to go to trial for the petitioner and that is why they induced the petitioner to take the plea in which he was told was in his best interest but wasn't. The petitioner as a result of wanting to claim his innocents was threatened to take the plea or death will become him for the deaths of Dixon and Wills. This was a Sixth amendment violation and a Fifth and fourteenth amendments violations to due process. The petitioners counsels new from the clinical psychologist Dr. Arbitells opinion on the witness stand that a mental health practitioner/psychiatrist should have conducted a full and complete competency evaluation on the petitioner on an out patient bases at the correction institution pursuant to 50 P.S. § 7402 (E). This was another miscarriage of justice on behalf of the court and the lawyers representing their client Hopper and Smith. Ineffedctiveness of counsel.

21. Intent had been defined as a specific awareness of what one wants to do and what one wants to accomplish. **18 Pa C.S.A. § 302 (B) (1) (i), (ii).** Commonwealth v. Mikulan 504 Pa 244, 470 A.2d 1339 (1983).

22. When the accused is charged with a crime in which requires specific intent to commit some act, a defense would be that the accused lacked the mental capacity to form the specific intent required for guilt. However, counsel must be sure that they properly notify the Commonwealth of the intent to assert a diminished capacity defense and to provide the Commonwealth with details of any mental infirmity or the defendant will be precluded from asserting the defense. **PA.R.CRIM.P. 573 (C) (1) (B)** concerning a defenses duty to disclose the notice of mental infirmity defense, which counsel for the petitioner did not provide the Commonwealth with on his behalf, if they did, a *Bi-furcated trial* would have had to have taken place by a mental health Judge first before a regular trial Judge would have been able to have adjudicated over the insaid case. This was a ***Fourteenth amendment rights violation for due process and ineffectiveness of counsel a Sixth amendment violation.***

23. A defendant who alleges diminished capacity attempts to demonstrate that, although the surrounding circumstances may lead the trier of the fact to infer that he acted with specific intent, his psychological makeup "*in fact*" prevented the foundation of specific intent in this particular instance of this case. Commonwealth v. Cain 349 Pa Super 500 (1986).

24. Due to the defendants mental illnesses he did not receive his "*discovery*" due to his mental illnesses from his original trial counsel Hooper and Smith, which claim that they did not give him proper discovery because he could not read or write. See Exhibit " L" Counsel failed to adequately review and explain the importance of the materials obtained in the discovery.

25. When a prosecution fails to disclose discovery information of which defense becomes aware of before or during trial phase, a short continuance for the defense to assimilate the motions are more of a remedy for a mistrial or dismissal of charges. Commonwealth v. Woodell 344 Pa Super 487, 496 A.2d 1210 (1985). **THE PROSECUTION AND DEFENSE COUNSELS ARE GROUNDED IN ITS DUTIES TO DISCLOSE EXCULPATORY EVIDENCE TO THE DEFENDANT INCLUDING, BALLISTICS REPORTS; AUTOPSY REPORTS; AND PHOTOS OF THE CRIME SCENE; BULLET CASINGS FOUND AT THE SCENE; FINGERPRINTS FOUND AND OR ANYOTHER MATERIAL EVIDENCE THAT SHOULD BE DISCLOSED TO THE DEFENDANT.** Brady v. Maryland 373 U.S 83 (1963). Counsel for the defendant never disclosed any information with him pre- trial phase, this caused a "*Miscarriage of Justice*" to occur. A sixth amendment violation for ineffective assistance of counsel.

26. Upon Crystal Fredericks statements to police implicating the defendant for both murders of the victims, during this process, she asked the police officer Sneath if she could go to the car and when she was allowed, she took a whole bottle of pills (**SOMAS**) sleeping pills, the police officer stopped her in the middle of this action and then took her back into the police barracks where after a while she gave the police a second statement implicating the defendant as the murderer. This statement was very different from the first statement to the police. She was high on drugs from trying to commit suicide and the police then transported her to the **J.C. Blair Memorial Hospital and she was committed on a 302**. See Exhibit "M" which states, "attorney Hooper testified that he did obtain records of Crystal Fredericks commitment to the J.C. Blair Memorial Hospital where she was 302'd. The petitioner ascertains that he never went over any information about the medical hospital records of Crystal Fredericks with counsel about her suicide attempt at the police barracks and that the hospital had withdrawn blood samples from her to obtain toxicology reports as well. This would have proven that the petitioner was not the murderer and that she was so high that she falsified reports to the police during her questioning at the barracks because she was high on "**Crack Cocaine; Somas; and a high amount of alcohol.**" The petitioner still to this day claims his actual innocence and that Crystal Fredericks committed the murders of Dixon and Wills. **NON- Disclosure of discovery broke the PA.R.CRIM.P. 573 and rendered ineffectiveness of counsel under the Sixth amendment and a Fourteenth amendment violation to due process for not receiving this pertinent information that could have exonerated the petitioner for the crimes of murder.**

27. When someone is formally charged accused of a crime, they are entitled to certain information and evidence disclosure meaning that defendants have the right to "discovery" including police reports; interviews; recordings of interviews; photos; and any other material evidence used against the accused. **However, the defendants who are the victims of paralell construction are unable to discover and challenge evidence used against them in a trial if the evidence and the investigative methods of gathering that evidence was concealed or never formally reported. Therefore, the use of paralell construction interferes with defendants rights to evidence disclosure and the right to a fair trial, which violates the constitutional rights to due process under the Fifth and Fourteenth amendments.**

28. Although in **Brady** it does not clearly state that a specific request favorable evidence was a prerequisite to triggering a prosecutors duty to disclosure, the significance of a focused request was underscored in subsequent decisions, in **Moore v. Illinois** 408 U.S. 786 (1972). In **United States v. Agurs** 427 U.S. 97 (1976) the court determined that no distinction should be drawn between requests phrased in general terms and situations such as **Agurs** when no request is made. When the evidence is obviously exculpatory, "**or so clearly supportive of a**

claim of innocence, the duty to respond arises not from the nature of the request but from the character of the evidence." Moreover, "there are situations in which evidence is obviously of such exculpatory value to the defense that elementary fairness requires it to be disclosed even without specific request. Agurs, Supra, "the court hypothesized, is a case where the prosecutor possessed finger print evidence proving that the defendant could not have fired the fatal shot.

29. The rough interview notes that were never released to the petitioner during the pre-trial hearings were withheld from the petitioner by the Commonwealth and his own defense team attorney's Hooper and Smith. The discovery packet was never introduced by the defendants lawyers due to what they say was his mental illnessess that they would not even raise as an issue to the court that he had infact suffered from brain damage from a high fall some years eralier which is a matter of record at the hopital. The notations that they took on the night of the interrigations should have been held by the **Commonwealth** and handed over to the **defense team** for **proper disclosure**. Under **Brady v. Maryland** 373 U.S. 83 (1963), requiring, " disclosure of exculpatory evidence of the Jenks Act." Under the **Unites States v. Abdallah** 911 F.3d 2001, 218 (2018), Holds, "this court recognized that the officers drafting notes must be disclosed under the **Brady Rule** when the defendant makes the appropriate demonstration that the material sought would be exculpatory." All of the hand written notes must be produced, a fortioro of must recordings of interviews should be produced. Furthermore, it is not necessarily true that the petitioner knows what he told the police officers on the night of his arrerst due to his Paranoia from being heavily on mind altering drugs at that point or even from the mental illnessess and brain damage on the left frontal lobe that had occurred to him at a younger age. It would be impossible for him to understand at this point now the things that were stated. It is also impossible for him to replicate in this [PCRA] petition word for word, every question the officers propounded to him and every answer he gave. Under the circumstances, at this point the petitioner did not even know what the **Brady Rule** was at the begining of his trial or even up till now thats why he has a jailhouse lawyer helping him so that his rights will be intact under this [PCRA] petition.

30. Thomas Hooper and David Smith treated the petitioner as a retard because of his evaluation from **Dr. Arbitell** and her reports made about the petitioner and his low I.Q score of 78. Hooper and Smith both pryd on the defendants family to induce them to make sure that the petitioner did not go to trial because they did not want to try the case. This is one of the reasons that he did not recieve discovery from his attorneys, they blamed it on his mental illnessess. So they used big words on him when speaking to him about his situations with going to trial. They made sure to induce him into taking the plea bargain. Two life sentences running

concurrent is not a bargain. Even at the police station fatigue from giving the officers three statements wore him down and they even induced him to confess to a crime that he did not committ. This is a **Sixth amendment violation** ineffectiveness of counsel.

31. *Brady* implies a duty to keep and not destroy records of the defendants statements because it imposes a duty to produce them, especially for murder cases, and the Commonwealth cannot produce them if agents / officers destroy them illegally. People v. Hayes 950 N.E. 2d 118, 122 (N.Y. 2011). The protection of the "*Brady Rule*" extends to the discoverable evidence gathered by the prosecution. In *Kelly* 62 J.N.Y. 2d at 520 "seeks to ensure disclosure, or prevent the destruction of exculpatory evidence and information already in the peoples possession." Citing U.S. v. Moussaoui 591, F.3d 263 (2010) Holds, "for the proposition that because "*Brady right*" is a trial right, it is within the scope of the rule that a guilty plea essentially waives a "*Brady claim*" when a defendant plead guilty." However, Moussaoui pleaed guilty with no plea agreement and the courts inquiry was whether the *Brady* right was similar to the other trial rights preceding the guilty plea that are waived when the accused decides to plead guilty. In cases like Moussaoui the defendant seeks to withdraw his guilty plea and tried to use the *Brady violation* as a basis for the court to allow the defendant to withdraw his guilty plea or in another was have rescission of his plea. He simply wants to have a re-trial based upon the *Brady violation*. This is the case with the petitioner, he asks this court to consider the fact that he did try to withdraw his plea but counsel failed to withdraw it and pretended like he never asked the court to do so. This was brought up at the post- sentence motion phase but the Judge and his counsel never even decided what to do because he wanted to withdraw his plea. This was done on time. The petitioner raised this claim within the proper time allowed by the court, *which was ten days after the imposition of the petitioners sentence.*

32. The plea agreements are governed by rules pertaining to contracts (*except that defendants can sometimes have greater rights than under commercial contracts due to the fact that constitutional rights are being bargained away.*) Wright v. Commonwealth 275 Va. 77, 82 655 S.E. 2d 7 (2008). "*General principles of contract law apply to plea agreements.*" Looking to the precedents cited in support of such proposition of the opinion, we see that which asserts that ambiguity must be resolved against the Government. See U.S. v. Crimino 381, F.3d 124 (2004). "*In general, plea agreements are subject to ordinary contract law principles, except that any ambiguity is resolved strictly against the Government.*" Such proposition is firmly established in U.S. v. Rivera 357, F.3d 290 (2004); United States v. Cooke 668 F.2d 317 (1982). Thus, the petitioner says the first issue must be whether the plea agreement was ambiguous as to whether the *Brady Claim* is a trial right that he waived within the scope of the agreement, or instead not a trial right, and hence one that he did not waive

under the plea agreement and whether an agreement is ambiguous to law. Langman v. Alumi Ass'n of the Univ. of Va 247, Va 291 (1994). Contracts are construe as written, without adding in terms that were not included by the parties. Amchem v. Newport Cir Court 264 Va. 89 563 S.E. 2d 739 (2002). If the agreement is not ambiguous, the the court adheres to the "**plain meaning rule**": Additionally, it is well stated and established that when the terms of a contract are clear and unambiguous, a court must give them their "**plain meaning**."

33. The petitioner contends that words "trial rights" in the agreement are ambiguous were they could be understood either as not embracing a brady right or as embracing a Brady right.

The reasons are as follows:

1. The trial rights expressly stated in the agrrement namely;
2. The right to a jury trial;
3. The right to confront and cross-examine witnesses against him; and
4. The right to remain silent under the Fifth amendment, are all rights expressly stated in the Federal and State Bill of Rights.

However, the Brady right is not so expressly stated; it arises from case law. This factor cuts in favor of interpeting the Brady not a trial right where under the Doctrine, "expressio unis est exclusio alterius," "if a written "*instrument*" covers particular or express matters, the intention may be inferred to exclude other subjects which in general words of the "*instrument*" may otherwise have been sufficient to include." Yukon Pocahontas Coal Co. v. Ratliff 181 Va 195 (1943). Which still holds to this very day to [EVEN TO] todays standards. Furthermore, the enumerated, "trial rights" are literally asserted at trial. The Brady right is not. In deed, a formal request, usually made at pre- trial is not required to invoke the obligation of the commonwealth to turn over exculpatory evidence. Counter to their arguments, one could argue that is a trial right were it is not a "*jurisdictional right*" and therefore, is like the 3 enumerated trial rights. Or, one could argue that the Brady Right grows out of the "*Due process Clause*" and that such a clause is expressly stated in the "*Bill of Rights*." The upshot is that arguments can be made Pro, and Con, and hence that words "*Trial Rights*" are ambiguous as to whether such an embrace a Brday right; thus, the ambiguity must be construed against the Commonwealth. Baker thus, not having waived his right to assert a "*Brady Claim*," this Honorable Court not only may recognize it, but must, recognize it because Baker in entitled to the benefit of his contractual bargain, with the Commonwealth for his plea

deal.

34. When the defendant enters a plea bargain and the plea of guilty, in reliance on an agreement will be compelled. Watkin v. Commonwealth 25 Va. App 646 (1997). *It must occur.* Baker is entitled to assert a *Brady Claim Violation* because his right under Brady is not a right he expressly agreed to waive. *Exculpatory evidence; statements; ballistics; DNA; all retrievable evidence and notes and recordings that officers collected against the defendant should be handed over for further litigation on whether it be a new trial or this litigation as it stands currently in this Honorable court.*

Wherefore, The petitioner prays that the Supreme court will allow these Fourteenth amendment due process violations of the petitioners rights to be corrected and reversed and remand and vacate the petitioners sentence and to grant either a new trial of actual innocence or to be released on time served for the malice of injustices that occurred during the trial and appeals processes due to ineffectiveness of counsels and Sixth amendment violations and to allow the petitioner to pass through the gateway of equitable tollings time bar.

Date 8/31/20

RESPECTFULLY SUBMITTED,

Stephen Baker