No. 20-6901

IN THE

SUPREME COURT OF THE UNITED STATES

Mr. Antonio Sierra, Ph.D. –Pro Se PETITIONER

VS.

COMMONWEALTH OF PENNSYLVANIA, et al –RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO

SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

, Ph.D., Pro—Se

Antonio Sierra, ID# DV-0686

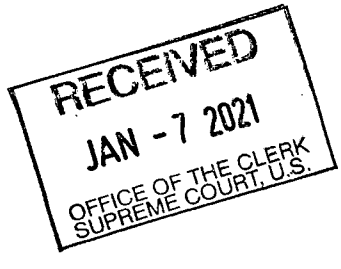
10745 State Route 18

Albion, PA 16475

QUESTION PRESENTED

Whether petitioner sufficiently asserted federal rights in the case being heard by state courts who defeated by rules of court, in error, petitioner's case and sanctioned respondents' unreasonable seizure of evidence?

Suggested Response: Before the Court



LIST OF PARTIES

Mr. Josh Shapiro, Attorney General of the Commonwealth of Pennsylvania. His office is in the Department of Justice, 16th Floor, Strawberry Square, Harrisburg, PA 17120

Mr. Samuel A. Kline is an Associate Judge of the Court of Common Pleas Lebanon County, Pennsylvania. His office is in the Court of Common Pleas, 400 South 8th Street, Lebanon, PA 17042

Mr. Jack Daneri is the District Attorney of Erie County Pennsylvania. His office is in the Erie County Courthouse, 140 West 6th Street, Room 506, Erie, PA 16501

Mr. Michael Clark is the Superintendent of SCI –Albion. His office is in SCI – Albion, 10745 State Route 18, Albion, PA 1475

Ms. Tammy White is the Mailroom Supervisor of SCI –Albion. Her office is in SCI – Albion, 10745 State Route 18, Albion, PA 16475

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TABLE OF CITATIONS

NOTABLE AUTHORITIES

42 Pa. C.S. Section 9545

Penna. Rules of Appellate Procedure

Rule 2101

2116

2119

STATEMENT OF FACTS AND PROCEDURAL HISTORY

(A) – 1998 to 2000

Antonio Sierra, a resident Of the State of New York, city of the Bronx, who has been incarcerated since 1997. As petitioner without benefit of counsel, he has been serving a State sentence of 34 to 64 years for the alleged crime of Attempt Third Degree Murder, for three men in Pennsylvania, allegedly committed when petitioner was 21 years of age.

Petitioner pleaded not guilty to the original charge—Criminal Attempt to Commit Criminal Homicide (or "Attempt Murder") brought by Commonwealth Prosecutors Mr. Charles and Mr. Arnold. On September 8-11, 1998, a jury trial began in the Court of Common Pleas Lebanon County before Judge Samuel A. Kline.

Prior to the conclusion of trial, Judge Kline convened with both prosecutors and Public Defenders Mr. Kelsey, Mr. Wynne, and Mr. Jones to address the constitutionality of the State's main charge "Attempt Murder," in which Counsel Kelsey objected to the existence of the charge, stating "it did not exist," and wanted something on the record. This appears as Appendix App. G.2-4.

In response, prosecutors did not agree with either Judge Kline and Kelsey's assessment of the charge as they understood it, and instead, the Prosecutors proposed a jury instruction for the charge Attempt Third Degree Murder, Id. App. G.4-5.

Judge Kline subsequently agreed with the prosecutors on the new charge, requesting that counsel Wynne stipulate which he did not; Meanwhile, counsel Kelsey began to change the charge on the information to call for Attempt Third Degree Murder, instead of Attempt Murder; Id. App. G.5-6.

Judge Kline then gave the jury the erroneous charge in Attempt Third Degree Murder, and the jury pronounced petitioner guilty in 1998. Id.

The Pennsylvania Superior Court issued an Order on October 13, 1999 dismissing counsel Wynne's appeal due to his failure to file a brief, No. 111 MDA 1999. Nevertheless, that matter became immaterial after Judge Kline took the liberty as trial court judge to place "Attempt Murder" back on the record in his Opinion to the Superior Court, Id. App. G.8.

On February 16, 2000, petitioner filed his first Post Collateral Relief Act petition (PCRA), and the trial court allowed an appeal nunc pro tunc to be filed with Public Defender Mr. Buchiano. Prosecutor Arnold filed his brief on November 21, 2000 after Mr. Buchiano's Anders Brief was filed on October 25, 2000 asking for leave to withdraw as counsel as "he did not know of any case law which would provide the relief ...justify or support any complaint that [petitioner] might have as to the ...information brought by the Commonwealth." See, Pa. Super. 1409 MDA 2000 at Anders Brief, pg.6.

On May 2, 2001, the Superior Court denied petitioner's motion for relief; Yet again, after Judge Kline entered his Opinion on August 10, 2000 stating petitioner was convicted of "Attempt Murder;" Id. App. G.9-10.

During this time while represented by counsel, petitioner was unaware of Judge Kline's Opinions or that he revived the Attempt Murder charge and took away the Attempt Third Degree Murder charge as the Superior Court did not indicate a problem with the jury charge when Ordering a Pennsylvania Rules of Appellate Procedure, "Pa.RAP. 1925 (b) Order to be filed, as addressed in the Superior Courts Order of March 20, 2020 appearing in this petition as App. B. 1-10.

(B) – 2004 to 2008

In March 2004, petitioner filed a Motion to Vacate and Set Aside Illegal Sentence and/or for Writ of Habeas Corpus. The trial court denied the motion as untimely and an appeal was filed with the Superior Court, No. 593 MDA 2004.

On August 2, 2004 Prosecutor Jennifer Gettle filed an Appellate Brief denying all of petitioner's claims while conceding for the first time that (the Commonwealth does not have a charge as "Third Degree, Attempt Murder," Id. App. G.11. Yet, after making this concession she went on to argue counsel's effectiveness to deny review which the Superior Court denied in October of 2004. Petitioner appealed to the Pennsylvania Supreme Court seeking Allowance of Appeal and the Court denied review in April 2005. Petitioner filed his Writ of Habeas Corpus in 2005 to the United States District Court for the Middle District, No. 3-cv-06-0604.

On or about June 2, 2005 Prosecutor John Ditzler issued a Memorandum In Response to Petitioner's Writ of Habeas Corpus, where he denied petitioner's claims in part, while conceding that "petitioner argues correct, that the Commonwealth does not have a Statute for what he has been convicted of; Id. App. G.12. Mr. Ditzler then misrepresented petitioners' actions during the 1998 trial and induced the court for a favorable decision. Id. The District Court dismissed the Writ on July 18, 2006, adjudicating the Writ on the merits. An appeal was then issued to the United States Court of Appeals for the Third Circuit, that affirmed the District Court on January 25, 2007 finding no equitable tolling applies; Id. No. 06-3750; And a Petition for Reconsideration was also denied on April 18, 2007. Id.

On August 27, 2007 petitioner appealed to the Supreme Court of the United States seeking Writ of Certiorari. On October 17, 2007 the petition was placed on the Court's Docket; Yet was denied on January 7, 2008; Id. No. 07-7084.

(C) – OTHER ACTIONS

Following the above denials petitioner returned back to his deprivation in 2008, 2013, 2016, and 2019 receiving the same treatment in numerous judiciary and administrative agencies like the Department of Corrections, (PA DOC) and the Federal Judiciary, yet petitioner does not know of the conclusion to these later actions as the State has begun to confiscate privileged correspondence during this time, causing prejudice. An excerpt of the Procedural History as expressed above is provided to this petition as Attachment App. H.1—16.

(D) – 2020

On September 25, 2019, petitioner filed a PCRA motion in the Trial Court of Common Pleas – Erie County, Id. No. 12719-2019. This filing was 15 days after Respondents, PA DOC, injured petitioner: causing prejudice. Respondents were named as they reside in Albion. This appears to this petition as Appendix App. F.1—13.

Respondents were given a request form as a Release of Correspondence Notice on September 11, 17, and 19 of 2019, after Respondents unreasonably seized petitioner's Incoming Privileged Correspondence "mail" and misrepresented the matter, Id. App. G.13.

Respondents Superintendent Clark and Mail Supervisor Ms. Tammy White issued a reply on September 26th and 27th, 2019 that was misleading; Misrepresenting the issue (a) demanding the return of mail to send or destroy and (b) no idea of what is being stated; Violating petitioners Fourth and Fourteenth Amendment Rights to the Constitution of the United States: App. G.26—27.

Trial Court Erie issued an Opinion dismissing the action, the Informa Pauperis motion, and warned of sanctions for relief against Lebanon in Erie County; Yet were silent about their jurisdiction. This Opinion appears to this petition as App. C.1.

On October 28, 2019 petitioner appealed to the Superior Court; In appellant's brief submitted on January 16, 2020 with the reproduced record petitioner argued

the unreasonable Opinion of the trial court in denying the action and motion depriving petitioner access to court, No. 1647 WDA 2019, App. E.1—5. In addressing the question presented petitioner separated the issues to address the trial courts errors in wrongfully endorsing subsequent action in 2016-2017 litigation, Id. App. E.12—15; And, proceeded to address the claims under Commonwealth v Albright, Sodal v Cook County, and Bond v United States (inter alia); Id. App. E.6—11, 15—27.

On March 20, 2020, the Superior Court entered an Opinion that denied petitioner's case, stating petitioner's brief fell below the minimum standards delineated by the Pa. R.A.P. and that he cites irrelevant case law. This Opinion appears to this petition as Appendix B.1—10.

On May 1, 2020, petitioner appealed to the Supreme Court of Pennsylvania for Allowance of Appeal, Id. No. 153 WAL 2020. Petitioner raised the same questions presented in the lower courts where the trial court and Superior Court decided this case not in accordance with the decision of the Supreme Court of the United States. This appears to this petition as App. D.1—4.

On May 28, 2020, Respondents filed a letter to the Court not to file an answer to the Petition for Allowance of Appeal, agreeing with the Superior Court and stating that no relief should be granted. This appears to this petition as App. G.30.

On October 6, 2020, the Supreme Court denied petitioner's appeal; This decision appears to this petition as Appendix A.01.

At all times relevant to this case Respondents have not contested petitioner's claims. Petitioner respectfully files the instant petition for Writ of Certiorari, praying this Court may Grant this petition, Vacate the decisions and Remand for review on the critical issue at bar, with all due respect.

A1. OPINION BELOW

FOR CASES FROM STATE COURT:

The Opinion of the Pennsylvania Supreme Court to review the merits of this case is designated for publication, may be reported, and appears to this petition as Appendix App. A.01.

The Opinion of the Pennsylvania Superior Court reviewing the merits of this case is designated for publication, may be reported, and appears to this petition as Appendix App. B.1 – B.10.

The Opinion of the Pennsylvania Court of Common Pleas – Erie, reviewing the merits of this case designated for publication, may be reported, and appears to this petition as Appendix App.C.1 – C.12.

The decision of the Supreme Court of Pennsylvania on the question presented is in Petitioner's Petition For Allowance of Appeal, appearing to this petition as Appendix App. D. 1 – 4.

The decision of the Superior Court of Pennsylvania on the question presented is in Petitioner's Appellate Brief, appearing to this petition as Appendix App. E. 1 – 27.

The decision of the Pennsylvania Court of Common Pleas – Erie on the question presented may fairly appear in Petitioner's Motion for Post-Conviction Collateral Relief, appearing to this petition as Appendix App. F (F. 1 – F.7).

The Evidence as presented to the State Court appears to this petition as Appendix App. G. 1 – G. 30.

An account of the events in 2013 to 2019 appears in this petition as Appendix App. H.1 – H. 19.

2. JURISDICTION

The Supreme Court of the United States has jurisdiction of this case pursuant to 28 U.S.C. S 1257 (a): Brown v Western Railway of Alabama, 338 U.S. 294 (1949).

3. CONSTITUTIONAL PROVISION

The Fourth Amendment to the United States Constitution provides in pertinent parts that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizure, shall not be violated, ..."

The Fourteenth Amendment to the United States Constitution provides in pertinent parts that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without the due process of law; ..."

4. STATEMENT OF THE CASE

Petitioner avers that this case addresses the Fourth and Fourteenth Amendments to the Constitution of the United States, yet places the Federal Constitution at odds with the Opinion of the State Courts of Pennsylvania, when petitioner followed the rules of court, yet, the appellate court deprived itself of jurisdiction to dismiss the case and deprived petitioner his privileged correspondence, when every court had jurisdiction to hear the case under the State Post Conviction Relief Act (PCRA), and government interference exception pursuant to Albrecht, where all petitioner was required to show was when and how Respondents interfered with petitioners mail to become unreasonable under the Constitution of the United States, and show how and why petitioner's

"incarceration" is illegal in order for the State Court to have jurisdiction; Two material prongs petitioner met.

Respondents' issued an Opinion stating they would not file a response, clearly aware that the State Courts Opinion was an obstacle that petitioner could not account for. In this regard Respondents agreed with the Courts determination, although the error was clearly placed in the Courts Order.

Petitioner was charged with not following the Rules of Appellate Procedure in error and had the case dismissed and issues waived, causing substantial prejudice as these opinions give Respondents a cover to continue to seize petitioner's mail irrespective of whom submits them—whether lawyers or court personnel.

Petitioner prays this Court show mercy and grant the petition, vacating the order and remand the case, as it is within this Courts powers to do, with all due respect.

5. ARUGMENT

A. INTRODUCTION

This case places the Fourth Amendment to the Constitution of the United States and Federal law at odds with the Opinion of the State Court of Pennsylvania, when petitioner followed the rules of court; Yet the appellate court denied jurisdiction to dismiss the cause of action and deprive petitioner his privileged mail; Notwithstanding Respondents' contention to the contrary, Id. G.30.

B. JURISDICTIONAL REQUIREMENT TO PROCEED

Prior to the merits, petitioner had to satisfy the timeliness of the PCRA under State law, alleged to be "separate and distinct from the merits," Commonwealth v Albrecht, 994 A. 2d 1091, 1093 (Pa. 2010).

Petitioner's two criteria were: 1) file the petition within 60 days of when the petition could have been presented, Id. 1094 (citing 42 Pa. C.S. S 9545 (b) (2)); and 2) "show" any of the conditions of his incarceration were illegal as required to meet the government interference exception to PCRA timeliness requirement. Id. 1095 (citing 42 Pa. C.S. S 9545 (b) (1) (i) (government interference must violate United States or Pennsylvania Constitution or laws)).

C. TIMELINESS ON GOVERNMENT INTERFERENCE

Respondents' decided to notify petitioner his addressed privileged mail was not going to be delivered, rather, disposed of and petitioner was required to sign for the disposition of mail issued by lawyers, State and Federal Court personnel, Id. App. G.20-27. Petitioner's mailings have been in the possession of the State government for a year (and from 2018, i.e., App. E.10), dated for August 29th and 30th of 2019, as the given date of issuing the mails notice; Yet Respondents purposely held the notices until released on September 10th, 2020, Id. App. E.6-8.

Petitioner then decided to file an action against State government after he gave, Respondents the chance to release his mail on September 11, 17, and 19 of 2019; providing notice to release and awareness of the cause that would follow if mail was not released by September 23, 2019. Yet Respondents' did not file a timely

response, rather issued a reply that was false, misleading, and contradicted the other on September 26 and 27, of 2019, after petitioner filed the PCRA, making the decision of the proper course not requiring filing grievances as this would prejudice petitioner "in a process aimed at tripping him up." Id. App. E. 9-11, (citing Ross v. Blake, 136 S. Ct. 1850 (2016)).

Petitioner was then made aware of mailings being unreasonable confiscated by the government on September 10, 2019. Petitioner filed the PCRA on September 25, 2019, well within the time the facts were based; Or "which the claim is predicated were unknown and could not have been ascertained by the exercise of due diligence." Id. App. E.11 (citing Commonwealth v Blakeny, 193 A. 3d 350, 361 (Pa. 2018)).

D. TIMELINESS ILLEGAL INCARCERATION

Petitioner addressed illegal incarceration by showing: (1) there is no court Order authorizing restrain, violating petitioner's rights and 28 USC S 2241 © (3), particularly when State government concedes there is no Sentencing and no Commitment Orders in existence, becoming determinative evidence; Id. App. E. 15-16, (citing Pruett v. Levi, 622 F. 2d 256 (6th Cir. 1980), Paul v. Davis, 424 U.S. 693 (1976), and Joseph v. Glunt, 96 A. 3d 365 (Pa. Super 2013)).

Secondly, petitioner showed there is no statute for the charge Attempt Third Degree Murder, Id. App. E. 16 (citing Bond v. United States, 564 US 211, 226 (2011) (Concurring Opinion)). In this regard, government officers and officials concede

that petitioner is imprisoned on a charge that does not have a Statute and therefore renders petitioner's incarceration illegal and void, Id. App. E. 19-27.

Third and final, petitioner showed discrepancy between Trial Transcripts and Trial Courts Order of petitioner's charge for sentence and imprisonment when in 1998, the original charge in Attempt Murder was stricken off the information at the request of State Prosecutors to call for Attempt Third Degree Murder, the charge given to the Jury, Id. App G.4-5 There was no lawful reason to have two prejudicial Court Opinions purporting to be Orders reflecting petitioner's incarceration for Attempt Murder when the government passed upon this charge, and petitioner was not tried for that charge, Id. App. E. 17-18, (citing Blakely v Washington, 542 US 296 (2004) and Armstrong v Manzo, 380 US 548 (1965)).

In petitioner's case, he was timely in claiming the State government unlawfully seized his privileged mail and wanted petitioner to dispose of it causing substantial injury to petitioner and litigation, in violation of his Fourth and Fourteenth Amendment rights, Id. App. E.1-2. As petitioner was lawfully aware of Respondents receipt of mail through the notices issued on September 10, 2019, petitioner brought the case to the court's attention on time, and could not have learned about it any earlier despite the exercise of due diligence, Albrecht, 994 A. 2d @ 1094-95; And, where petitioner can establish these two prongs, then the trial court has "jurisdiction over the claim," Blakeny, 193 A. 3d @ 361.

E. STATE COURT ERROR IN DETERMINATION

In petitioner's case the Supreme Court denied Allowance of Appeal with no opinion, Id. App. A.1; And the Superior Court strained credulity by stating petitioner submits "irrelevant citation (sic) to relevant legal authority as they relate to the facts of this case...precludes us from conducting meaningful review;" Id. App. B.8-10; Affirming the Trial Court's denial, and contrary to due process of law. Petitioner respectfully disagrees.

F. COMPLIANCE WITH RULES OF COURT

The Superior Court stated petitioner failed to follow Pennsylvania Rules of Appellate Procedure, "PA. R.A.P." No. 2101 and 2116, Id. App. B. 8-9. Pa. R.A.P. 2101 states in pertinent relevance "briefs and reproduced records shall conform in all material respects with the requirements of these rules as nearly as the circumstance of the particular case will admit, ...". Here, the rule leaves room for other consideration in addition to compliance when the "circumstances of the particular case will admit, "such as, addressing the Territorial-Custodial Rule when the Court has to decide the jurisdiction in compliance with Federal law; The Superior Court noted as much when it stated: "[E]ven had Appellant filed the instant PCRA petition in the proper lower court, as noted supra, ..." Id. App. B.7. If this contention is well taken, it was error to state, "Appellants brief is rambling and nearly unintelligible." Id. @ 9.

Pa. R.A.P. 2116(a) states in pertinent parts that "Each question shall be followed by an answer stating simply whether the court agreed, disagreed, did not

answer or did not address the question." Petitioner did not present answers to question as trial court dismissed the case on IFP-motion and did not address the substance of petitioners claims. Yet, even if the trial court considered the case, sufficient to indicate a "Qualified answer;" Petitioner would be forced an additional showing of "the reason for such failure," and he was not adequately informed to make such a determination from the trial courts perspective, particularly when the trial court wrongfully advanced an issue that had no bearing on the present issue of government interference. See, App. B.1, and compare Id. App. H.2-3 (addressing 2016 term of litigation).

Finally, the Superior Court cites to Rule 2119; Yet, that rule does not support the work product placed at issue. In petitioner's brief, he divided the argument to 16 parts to the four questions; Each part addressing law believed to be relevant; For instance: 1) Petitioner opened his brief discussing Constitutional law, then addressed the trial courts error in dismissing PCRA and In Forma Pauperis "IFP-motion" in the 2) "Access To The Court Affected By Improper Denial," as trial court refused to take any interest on the affidavits in support of the motion, income source, employment, assets and debts, to rather, deny the action on matters occurring or explain what the actual issue was at the time, Id. App. E.1-5.

In addressing timeliness issues and government interference as stated above, this part was captioned 3) "The Cause Is Timely Assuming the Facts are Ripe, "Id. App. E.6-10; And, on the second question about 2016 term, petitioner again opened

discussion from the caption 4) "Initial 2019 –Unreasonable Seizure to then address the caption: 5) "Subsequent 2016-2017 Action, Id. App. E.11-14.

On the third question, petitioner addressed government interference showing an illegal incarceration caption 6) "Prejudicial Erroneous Information," and matters to the 1998 records as 7) "Trial Courts Action," leading to the caption 8) "Commonwealth Concedes to Appellants Claims." Here, petitioner addressed 9) "Appellants Alleged Charge, 10) The No Longer Covered Charge, and 11) Intent vs. Malice, "as distinctive to the particular points discussed. Id. E. 15-27.

Moreover, petitioner addressed deficient denial of counsel in 2000, by the caption 12) "Deficient Counsel, "addressed 13) "Defendants Modification" (where Commonwealth was obligated to petition for modification where there is no Sentencing Order) and 14) "Territorial—Custodial Rules" (where petitioner had the right to argue why Lebanon County lost jurisdiction under Federal law). See, Appellant Brief of January 16,2020 at pp. 46-51.

Finally, on the last question, petitioner did not present a caption as the issue and injury was personal, where review continues to be deprived, Id. pp. 52-53; Manzo, 380 US @ 552 (stating the opportunity to be heard as fundamental).

The Appellate Rules also state in pertinent relevance that the "argument shall be divided into as many parts as there are questions to be argued; and shall have at the head of each part-in distinctive type—the particular point treated therein, followed by such discussion and citation of authorities as are deemed pertinent." Pa. R.A.P. 2119(a).

In this case, the Appellate Court erred in dismissing petitioner's case as he did comply with the rules, and the court's Opinion is contrary to Federal law.

In 1949, this Court in Brown v. Western Railway of Alabama, stated that "strict local rules of pleadings cannot be used to impose unnecessary burdens upon the rights of recovery authorized by Federal law. "Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice;" 338 US 294, 298, (citation omitted). This is still good law.

As the State courts made a decision that was unfair and caused prejudice, petitioner is injured and his Fourth and Fourteenth Amendment Rights violated as the courts place an unreasonable obstacle before this petitioner simply trying to retrieve his mail and fairly litigate his claims, Bartone, 375 US 52, 54 (1963).

G. FOURTH AMENDMENT

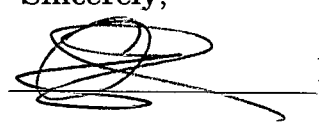
In Sodal v. Cook County, this Court held that the facts alleged suffice to constitute a seizure within the meaning of the Fourth Amendment for they plainly implicate the interest protected by that provision. Id. 506 U.S. 56, 72 (1992). In so holding, this court further supported its holding by looking to United States v. Place, 462 US 696 (1983), holding that "the police conduct exceeded the bounds of permissible investigative detention of the luggage." Id. 63 (quoting Place, 462 US @ 703).

In this case, Respondents do not object to the seizure of petitioner's mails, although they have to agree it's privileged correspondence and simply agree that the State courts ruled fairly as this was in their favor, Id. App. G.30; Yet, as shown herein the Courts did not rule fairly, rather set an obstacle to defeat the claims that had nothing to do with the rules of court and petitioner respectfully ask this court to please view for itself whether petitioner did comply with the rules; And in so doing, respectfully request that this court grant this petition as the state courts erred in their determination and failed to address the Federal claims; And "failure of State Appellate Court to mention a federal claim does not mean that the claim was not presented to it." Dye v. Hofbauer, 126 S. Ct. 5, 6 (2005).

6. CONCLUSION

Petitioner respectfully request this Court please grant the petition; Vacate the decision of the State Courts and Remand the case to properly receive due process of law. This Court has broad powers to GVR; Lawrence on behalf of Lawrence v. Chater, 516 US 163, 166 (1996) (per curiam) (Holding [W]e have the power to issue a GVR Order, and that such an order is an appropriate exercise of our discretionary certiorari jurisdiction).

Sincerely,



Ph.D. -Pro Se Inmate

Antonio Sierra, Pa. ID# DV-0686