No._____

IN THE

SUPREME COURT OF THE UNITED STATES

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

vs.

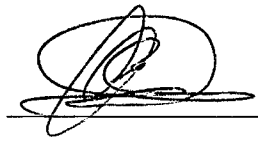
COMMONWEALTH OF PENNSYLVANIA, et al –RESPONDENTS

APPENDIX

On Petition for Writ of Certiorari to the

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

TABLE OF EVIDENCE

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

ANTONIO SIERRA, PH.D.,	:	No. 153 WAL 2020
Petitioner	:	
	:	Petition for Allowance of Appeal
	:	from the Order of the Superior Court
v.	:	
JACK DANERI, MICHAEL CLARK, TAMMY WHITE, SAMUEL KLINE, JOSH SHAPIRO, COMMONWEALTH OF PENNSYLVANIA,	:	
Respondents	:	

ORDER

PER CURIAM

AND NOW, this 6th day of October, 2020, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Patricia Nicola
As Of 10/06/2020

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

ANTONIO SIERRA, PH.D. Appellant v. JACK DANERI, MICHAEL CLARK, TAMMY WHITE, SAMUEL KLINE, JOSH SHAPIRO, COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1647 WDA 2019

Appeal from the Order Entered October 15, 2019
In the Court of Common Pleas of Erie County Civil Division at No(s): No. 12719-2019

BEFORE: BENDER, P.J.E., OLSON, J., and STEVENS, P.J.E.*

MEMORANDUM BY STEVENS, P.J.E.: **FILED MARCH 20, 2020**

Appellant Antonio Sierra, Ph.D. (Appellant) appeals *pro se* from the Order entered in the Court of Common Pleas of Erie County on October 15, 2019, denying his serial petition filed pursuant to the Post Conviction Relief Act (PCRA)[1]. We affirm.

In September of 1998, following a jury trial in Lebanon County, Appellant was convicted of thirty-one (31) criminal counts, which arose from a brutal incident that occurred in a second floor apartment on Main Street,

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* Former Justice specially assigned to the Superior Court.
[1] 42 Pa.C.S. §§ 9541-9546.

Anville, Pennsylvania, on November 4, 1997.[2] Appellant was sentenced in Lebanon County in 1998, and this Court affirmed his judgment of sentence in 1999. Appellant's appellate rights were reinstated on collateral attack in May of 2000. ***See*** Trial Court Opinion, filed August 10, 2000, at 1-2 (Court of Common Pleas of Lebanon County No. 1997-11239), attached as "Exhibit C" to PCRA.

In March of 2004, Appellant filed a Motion to Vacate and Set Aside Illegal Sentence and/or for Writ of Habeas Corpus, and the trial court denied the motions as untimely. Appellant fled an appeal with this Court in April of 2004, and in October of that year, we affirmed the trial court's Order. The Pennsylvania Supreme Court denied Appellant's Petition for Allowance of Appeal in April of 2005. Numerous motions followed, all of which were denied by the trial court of Lebanon County. Appellant's subsequent appeals to this Court and to the Pennsylvania Supreme Court were unsuccessful.

On October 3, 2019, Appellant filed the instant "Motion for Post Conviction Collateral Relief" in Erie County. Therein, he acknowledged that

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[2] Appellant's thirty-one guilty counts were as follows: three (3) counts of Criminal Attempt to Commit Criminal Homicide; six (6) counts of Aggravated Assault; three (3) counts of Recklessly endangering Another Person; three (3) counts of Unlawful Restraint; three (3) counts of Arson Endangering Persons; three (3) counts of Theft by Unlawful taking, one (1) count of Criminal Attempt to Commit Theft by Unlawful Taking; eight (8) counts of Robbery and one (1) count of Criminal Conspiracy. ***See*** Trial Court Opinion, filed August 10, 2000, at 2 n. 1 (Court of Common Pleas of Lebanon County No. 1997-11239), attached as "Exhibit C" to PCRA.

while he filed his Petition more than a year after the "alleged date of final judgment" he claimed his failure to timely-file the petition was the result of governmental interference with correspondence addressed to him while he has been incarcerated between January and April of 2019. ***See*** PCRA petition, filed 10/3/19, at 2-3. He also makes numerous allegations pertaining to his trial. Specifically, he contends, as he had in earlier appeals, that prosecutors conceded attempted third degree murder is not a valid charge of which one can be convicted.

In its Order entered on October 15, 2019, the trial court denied Appellant's PCRA petition as he has not been convicted of any crimes in Erie County; thus, no basis exists for a PCRA petition there. The court noted that Appellant was aware he had not been convicted of a crime in Erie County and advised him "that he may face sanctions for any further abuse of the judicial process in Erie County in which he seeks relief related to his Lebanon County Criminal Convictions." ***See*** Order of Court, 10/15/19, at 1.

Appellant filed a timely Notice of Appeal *pro se* on November 4, 2019. On November 5, 2019, the trial court entered its Order pursuant to Pa.R.A.P. 1925(b), and Appellant filed his "Plaintiff's Concise Statement of Matters Complained of on Appeal" on November 22, 2019. That statement is comprised of ten, single-spaced pages which contain forty-five separately numbered paragraphs. In its Memorandum Opinion filed on December 4,

2019, the trial court found that Appellant's appeal lacked merit and should be dismissed for the reasons set forth in the October 15, 2019, Order.

In his brief, Appellant presents the following Statement of Questions:

> 1) Whether portions of the trial court[']s Order that denied subsequent P.C.R.A. and in forma pauperis is manifestly unreasonable when government interference with conditions of an illegal incarceration is within 9545(b)(1)(i), to timely assert process commencement on violation to Plaintiffs First, Fourth, Sixth and Fourteenth Amendment to the Constitution of the United States by Defendants unlawfully seized incoming privileged correspondence with no probable cause and where plaintiff represents an illegal charge as detaining him without due process of law and impeding due course of justice? -
>
> 2) Whether, portions of the trial courts assessment of 2016-2017 filings in the State Courts of Pennsylvania as alleged (now) constitutes prejudice, where said portions of facts (presumably judicially true), are previously unknown and Plaintiff exercise due diligence to bring these claims before the (present) Court satisfying 9545(b)(1)(ii) component and, ... As plaintiff disclose an unlawful attack by Defendants on Plaintiff[']s civil action through a known Order that was a 1925(a) Opinion, as brought to the Trial Courts attention, Yet; thereafter, continued to cause prejudice by alleging intentional misleading and confusing technical facts critical to evaluating Plaintiffs conduct when Defendants and this Court themselves did not address the misrepresented nature of the Order, not effects of said determination, -
>
> 3) Whether the trial court exercised a manifestly unreasonable judgment when, notwithstanding any of Defendants and such government statements to the contrary of the evidence placed to the P.C.R.A. petition on record, plaintiff is not imprisoned for any indictable offense in the Commonwealth of Pennsylvania, rather (a) Incarcerated on Attempt 3rd Degree Murder, a non -criminal charge and **Commonwealth** [hereinafter "Cmwlth"] **v. Lee**, 312 A.2d 391 (Pa. 1973); (b) Where the trial judge altered a jury verdict after said verdict was entered on the record as the Original verdict, and (inter alia), **Blakely v. Washington**, 542 US 296 (2004), and **Cmwlth v Dunn** 385 A.2d 1299 (Pa.1975); (c) where

App. B.4

a 1925(a) opinion entered by said trial judge to unlawfully vacate said jury verdict and on the record cause plaintiff prejudice and (inter alia), **Cmwlth v. Lobiondo** 462 A.2d 662,_665. n.4 (Pa. 1983), (d) where even against the jury verdict, those in government further altered documents,_leaving a verdict without judgment (inter alia), **Smith v. MeCooi**, 83 US 560, 561 (1873); (e) where a plea agreement rendered void by the evidence as submitted capable of revealing no judgment of Sentence and no judgment of commitment to cause prejudice as to Plaintiff where the contract being without notice or opportunity to contest for plaintiff is dissolved as unconstitutional, illegal and said suspended alleged conviction and sentence as void, binds no one as the law will not avail itself to be made lawful and (inter alia) **Miller v Alderhold**, 288 US 206, 210 (1933), and **Hill v. Ex Rel Wampler** 296 US 460, 465 (1936); (f) where evidence expose Attempt 3R Degree Murder without a Statute and therefore an unconstitional law that is not a crime (inter alia) **Ex Parte Siebold** 100 US 371(1880), **Bond v U.S.** 564 US 211, 227 (2011)(per curiam); (g) where trial judge takes action beyond power conferred by law (its jurisdiction), renders action non-waveable, Void, a nullity and inter alia, **Hall v. Ames** 162 F. 1008 (CA.181. Cir. 1910), and **Cmwlth v. Hall**, 140 A. 626, 631 (Pa.1928); (h) where Defendants would be forced to agree issuing a Motion for Modification and (inter alia), **Cmwlth v. Isabell** 467 A.2d 1287 (Pa. 1983), (i) where plaintiff is required to file in custodial district as a matter of law, and **Jacobs v. Giroux**, 2015 U.S.Dist. LEXIS 82651 (US.DC.WD.PA), and **Brown v. Pa. D.O.C**, 81 A.3d 814 (Pa. 2018) -

4) Whether trial court erred in failing to issue restraining Order against all parties, immediately after plaintiff timely P.C.R.A. petition, where the facts as plead by plaintiff reveal a complete miscarriage of justice warranting judicial control over all immediate parties involved, rather than threaten sanction to plaintiff for entrusting life to the Administration of Justice ?

Appellant's Brief at 4-5.[3]

Prior to addressing Appellant's issues, we first must determine whether we have jurisdiction over his PCRA petition. "The question of whether a

[3] The Commonwealth has not filed an appellate brief.

[PCRA] petition is timely [filed] raises a question of law. Where the petitioner raises questions of law, our standard of review is *de novo* and our scope of review [is] plenary." ***Commonwealth v. Brown***, 141 A.3d 491, 499 (Pa. Super. 2016). Any PCRA petition, including second and subsequent petitions, must either (1) be filed within one year of the judgment of sentence becoming final, or (2) plead and prove a timeliness exception. 42 Pa.C.S.A. § 9545(b). Furthermore, the petition "shall be filed within 60 days of the date the claim could have been presented." 42 Pa.C.S.A. § 9545(b)(2).[4]

"For purposes of [the PCRA], a judgment [of sentence] becomes final at the conclusion of direct review, including discretionary review in the Supreme Court of the United States and the Supreme Court of Pennsylvania, or at the expiration of time for seeking the review." 42 Pa.C.S.A. § 9545(b)(3). Here, Appellant's judgment of sentence became final nearly twenty (20 Years ago; thus, Appellant's 2019 petition was facially untimely, and he was required to plead and prove an exception to the timeliness requirements. The exceptions provide as follows.

> (1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the

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[4] This subsection was recently amended, effective December 24, 2018, to extend the time for filing from 60 days of the date the claim could have been presented to one year. However, this amendment does not apply to Appellant's PCRA petition because it was filed prior to the amendment's effective date.

App. B.6

judgment becomes final, unless the petition alleges and the petitioner proves that:

> (i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;
> (ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or
>
> (iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

42 Pa.C.S.A. § 9545(b)(1)(i-iii).

Herein, even had Appellant filed the instant PCRA petition in the proper lower court, as noted *supra*, he attempts to plead the governmental-interference exception in his PCRA petition based upon the alleged withholding of correspondence from him while in prison and previously raised challenges to aspects of his trial. However, he has not proven he is entitled to relief under that exception to the PCRA time-bar. To the contrary, both Appellant's concise statement of matters complained of on appeal and appellate brief fail to conform to the Pennsylvania Rules of Appellate procedure prevent and these deficiencies have prevented meaningful appellate review. As a result, Appellant has waived these claims.

This Court has explained:

> Rule 1925 is a crucial component of the appellate process because it allows the trial court to identify and focus on those issues the

> parties plan to raise on appeal. This Court has further explained that a Concise Statement which is too vague to allow the court to identify the issues raised on appeal is the functional equivalent to no Concise Statement at all.

Tucker, 939 A.2d at 346 (citations and quotation marks omitted).

Instantly, the ten-page, single spaced concise statement Appellant submitted is not sufficiently concise, contains numerous confusing and vague contentions, and fails to set forth coherently his issues to be raised on appeal. Accordingly, we deem all of Appellant's issues waived. ***See, e.g., Jiricko v. Geico Ins. Co.***, 947 A.2d 206, 213 (Pa.Super. 2008) (holding that appellant had waived all of his issues on appeal for his failure to comply with Rule 1925(b), and stating that "while [a]ppellant's five-page [concise] statement can certainly be characterized as 'lengthy,' the crux of the problem is that the statement is an incoherent, confusing, redundant, defamatory rant[.]"); ***see also Kovalev v. Sowell***, 839 A.2d 359, 367 n.7 (Pa.Super. 2003) (stating that "as a *pro se* litigant, [an appellant] is not entitled to any particular advantage because [ ]he lacks legal training." (citation and quotation marks omitted)).

In addition, it is axiomatic that appellate briefs must materially conform to the requirements of the Pennsylvania Rules of Appellate Procedure, and this Court may quash or dismiss an appeal if an appellant fails to comply with these requirements. ***See*** Pa.R.A.P. 2101. "[W]here an appellate brief fails to provide any discussion of a claim with citation to relevant authority or fails to develop the issue in any other meaningful fashion capable of review, that claim

App. B.8

is waived." ***Commonwealth v. Johnson***, 985 A.2d 915, 924 (Pa. 2009), *cert. denied*, 562 U.S. 906 (2010) (citations omitted). In addition, "although this Court is willing to construe liberally materials filed by a *pro se* litigant, *pro se* status generally confers no special benefit upon an appellant." ***Commonwealth v. Lyons***, 833 A.2d 245, 251–52 (Pa.Super. 2003), *appeal denied*, 879 A.2d 782 (Pa. 2005) (citation omitted). Accordingly, a *pro se* litigant must comply with our procedural rules. ***See id.***

Herein, Appellant's brief falls well below the minimum standards delineated in the Pennsylvania Rules of Appellate Procedure. For one, the argument section of Appellant's brief is not divided into sections addressing each of the four issues he lists in his statement of questions involved. Pa.R.A.P. 2116(a), 2119(a). Also, the brief contains irrelevant citation to the record, and fails to discuss cogently the facts of this case as they relate to relevant legal authority. Pa.R.A.P. 2119(a)–(c).

Moreover, like his concise statement of matters on appeal, Appellant's brief is rambling and nearly unintelligible. Therein, Appellant discusses a myriad of issues most of which do not pertain to the questions before us and attempts to relitigate claims this Court previously determined lack merit either on direct appeal or in prior appeals on collateral review. Thus, even if we liberally construe the materials Appellant filed, including his concise statement, the lack of pertinent legal argument and other substantial defects in his appellate brief preclude us from conducting meaningful review. ***See***

Pa.R.A.P. 2101; ***see also Johnson, supra*** at 924. Accordingly, we affirm the trial Court's October 15, 2019, Order, albeit for a different reason.[5]

Appellant also filed with this Court a "Petition to Enforce Judgment", and an "Application for Reconsideration to Bail" on March 4, 2020. "An issue before a court is moot if in ruling upon the issue the court cannot enter an order that has any legal force or effect." ***Selective Way Ins. Co. v. Hosp. Grp. Servs., Inc.***, 119 A.3d 1035, 1040 (Pa.Super. 2015) (citation omitted). In light of our foregoing disposition, we decline to address these motions, and they are dismissed as moot.

Order affirmed. Petition to Enforce Judgment and Application for Reconsideration to Bail dismissed as moot. Jurisdiction relinquished.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 3/20/2020

[5] "It is well-settled that we may affirm the trial court's order on any valid basis." ***Seneca Res. Corp. v. S&T Bank***, 122 A.3d 374, 387 (citation omitted).

App. B. 10

ANTONIO SIERRA, Ph.D, Plaintiff	:	IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA CIVIL LAW DIVISION
v.	:	
JACK DANERI, MICHAEL CLARK, TAMMY WHITE, SAMUEL KLINE, JOSH SHAPIRO, Defendants	:	NO. 12719-2019

10/17/19

ORDER OF COURT

AND NOW, this 17th day of October 2019, the Motion for Leave to Proceed In Forma Pauperis is DENIED. The document the Petitioner filed on October 3, 2019 is styled as a Motion For Post Conviction Collateral Relief. The Petitioner has not been convicted of any crimes in Erie County, Pennsylvania, therefore there is no basis for a PCRA Petition.

The Petitioner's prior request for In Forma Pauperis status was denied by the Honorable Judge Daniel Brabender, Jr., dated April 13, 2016, which Order was affirmed by the Superior Court on November 23, 2016. The Petitioner's Application For Reconsideration was DENIED by the Supreme Court of Pennsylvania on December 5, 2016.

By Order dated January 13, 2017, Judge Brabender also dismissed a "PEROGATIVE WRIT" filed by the Petitioner for lack of jurisdiction.

As Petitioner knows, Erie County has nothing to do with his criminal convictions in Lebanon County. The Petitioner is advised that he may face sanctions for any further abuse of the judicial process in Erie County in which he seeks relief related to his Lebanon County criminal convictions.

BY THE COURT:

_____ J.
Sr. Judge William R. Cunningham

Cc: Antonio Sierra # DV0686
SCI-Albion

COMMON PLEAS COURT
ERIE, PA
2019 OCT 15 PM 1:04
CLERK OF RECORDS
PROTHONOTARY

App. C-1

P. 52.7

Ref: 1729094 pg 23 of 44 for ANTONIO SIERRA

ANTONIO SIERRA,	:	IN THE COURT OF COMMON PLEAS
Plaintiff	:	
	:	OF ERIE COUNTY, PENNSYLVANIA
v.	:	
	:	CIVIL DIVISION
COMMONWEALTH OF PENNSYLVANIA, et al.	:	
	:	
Defendants	:	NO. 10808 of 2016

COMMON PLEAS COURT
ERIE, PA
2016 JUL 26 PM 1:15
CLERK OF RECORDS
PROTHONOTARY

OPINION

The Appellant, Antonio Sierra, appeals from the Order entered April 13, 2016, denying Appellant's "Application By Obligation to Continue In Forma Pauperis Pa.R.A.P. 555, 551 and 28 USC §1915(a)(1)." This Opinion is in response thereto.

BACKGROUND

In September, 1998, following a jury trial at Docket No. 1239 of 1997 in the Court of Common Pleas of Lebanon County, Pennsylvania, Appellant was convicted of multiple counts each of Criminal Attempt (Homicide), Aggravated Assault, Recklessly Endangering Another Person, Unlawful Restraint, Arson, Theft By Unlawful Taking, Robbery and Criminal Conspiracy.[1] Appellant was sentenced by the Court of Common Pleas of Lebanon County in October, 1998. In December, 1998, Appellant filed a direct appeal with the Superior Court of Pennsylvania. In October, 1999, the Superior Court dismissed the appeal. Upon collateral attack, appellate rights were reinstated in May, 2000. Although this Court is unaware of the disposition upon direct appeal to the Superior Court, the Court Docket at No. 1239 of 1997 reflects that in March, 2004, Appellant filed in Lebanon County a Motion to Vacate and Set Aside Illegal Sentence and/or For Writ of Habeas Corpus. The motions were denied as untimely.

[1] 18 Pa.C.S.A. §901(a), 18 Pa.C.S.A. §2702(a), 18 Pa.C.S.A. §2705, 18 Pa.C.S.A. §2902(1), 18 Pa.C.S.A. §3301(a), 18 Pa.C.S.A. §3921, 18 Pa.C.S.A. §3701(a) and 18 Pa.C.S.A. §903(a), respectively.

App. C-2

Inmate ID Verified
Housing Unit Code Signature
Date 7-28-16 Unit CD

R.77a

A Notice of Appeal was filed with the Superior Court in April, 2004. In October, 2004, the Superior Court affirmed the trial court's determination.[2] In April, 2005, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal.[3] Docket activity also reflects subsequent involvement by the Commonwealth Court of Pennsylvania.[4]

Appellant is currently incarcerated at SCI Albion, located in in Erie County, Pennsylvania. On March 21, 2016, Appellant filed in the Court of Common Pleas of Erie County a *pro se* document entitled, "Prerogative Writ (In the nature of a Complaint in Equity and In the nature of an Imperfect P.C.R.A. Motion)". Concurrently, Appellant filed an "Affidavit at Large".[5] The Prothonotary docketed the matter. The docket does not reflect that any filing fee was charged.

On March 23, 2016, Appellant filed an "Application By Obligation To Continue In Forma Pauperis Pa.R.A.P. 555, 551 and 28 USC §1915(a)(1)". Concurrently, Appellant filed a letter with the Clerk of Courts, and a Praecipe for judicial assignment. The matter was assigned to the undersigned for disposition. On April 13, 2016, the Court denied the application to proceed *in forma pauperis*. On May 2, 2016, Appellant filed the instant appeal with the Superior Court from the Order denying the IFP request. Subsequently, on May 9, 2016, Appellant filed another petition for IFP status.[6]

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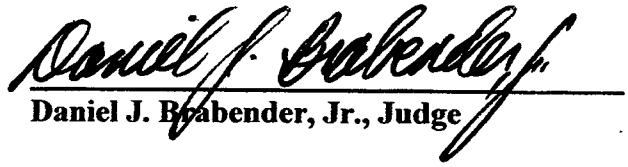
[2] *See Commonwealth v. Sierra*, 864 A.2d 583 (Pa.Super. 2004).
[3] *See Commonwealth v. Sierra*, 872 A.2d 1199 (Pa. 2005).
[4] *See Antonio Sierra v. Pennsylvania Dept. of Corrections*, Commonwealth Court of Pennsylvania Docket No. 2413 CD 2015.
[5] The Appellant's claims in the Prerogative Writ and Affidavit are nearly indiscernible, presented in nonsensical, run-on sentence fashion. Both documents contain reoccurring themes of illegal sentence, "wrongful commitment and false imprisonment which commenced an action in Lebanon", loss of liberty, reference to a grievance, and interference with a fiancé and a marriage contract.
[6] The second IFP petition filed May 9, 2016 remains pending, in light of the Notice of Appeal filed May 2, 2016.

The matter has already been assigned for disposition and is pending before the Court. There is no indication any filing fee was charged concerning the "Prerogative Writ (In the nature of a Complaint in Equity and In the nature of an Imperfect P.C.R.A. Motion)" and supporting "Affidavit at Large". The docket does not reflect a fee was charged. No receipt or invoice for any filing fee was attached to the IFP application. The matter is pending before the trial court. This appeal is without merit and should be dismissed. The Prothonotary is hereby directed to transmit the record to the Superior Court.

CONCLUSION

For the reasons stated herein, this appeal must be dismissed as wholly lacking in merit.

BY THE COURT:



Daniel J. Brabender, Jr., Judge

cc: Antonio Sierra, Inmate No. DV0686, SCI Albion, 10745 Route 18, Albion, PA 16475, LEGAL MAIL
District Attorney's Office, Erie, PA
Commonwealth of Pennsylvania Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17102
Department of Corrections, Nancy Giroux, Retired Superintendent, SCI Albion, c/o L. Neil, Esq., Office of Chief Counsel, 1920 Technology Parkway, Mechanicsburg, PA 17050

Appendix A

ANTONIO SIERRA **Plaintiff**	:	**IN THE COURT OF COMMON PLEAS**
v.	:	**OF ERIE COUNTY, PENNSYLVANIA**
COMMONWEALTH OF PENNSYLVANIA, et al. **Defendants**	:	**NO. 10808-2016**

COMMON PLEAS COURT
ERIE, PA
2016 JUL 26 PM 4:13
CLERK OF RECORDS
PROTHONOTARY

ORDER

AND NOW, to wit, this 26th day of July, 2016, it is hereby **ORDERED, ADJUDGED, and DECREED**, that the Respondents shall, file responsive pleadings to the Defendant's Prerogative Writ (in the Nature of a Complaint in Equity and In the nature of an Imperfect PCRA Motion) and the supporting Affidavit within 20 days of the date of this Order.

7-28-16

BY THE COURT:

DANIEL J. BRABENDER, JR. JUDGE

cc: Antonio Sierra, Inmate No. DV0686, SCI Albion, 10745 Route 18, Albion, PA 16475, LEGAL MAIL
District Attorney's Office, Erie, PA
Commonwealth of Pennsylvania Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17102
Department of Corrections, Nancy Giroux, Retired Superintendent, SCI Albion, c/o L. Neil, Esq., Office of Chief Counsel, 1920 Technology Parkway, Mechanicsburg, PA 17050

(1)

R.30a

ANTONIO SIERRA, Plaintiff	:	IN THE COURT OF COMMON PLEAS
	:	OF ERIE COUNTY, PENNSYLVANIA
v.	:	
	:	CIVIL DIVISION
COMMONWEALTH OF PENNSYLVANIA, et al.	:	
Defendants	:	NO. 10808 of 2016

OPINION

The Plaintiff, Antonio Sierra, is currently incarcerated at SCI Albion, located in Erie County, Pennsylvania, following convictions in Lebanon County, Pennsylvania, in 1998. The matter is before the Court on Plaintiff's *pro se* "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)", a supporting "Affidavit at Large" and a second request before this Court to proceed *in forma pauperis,* captioned "Motion For Leave To Proceed In *Forma Pauperis* (In the Nature of an Application)". Also before the Court is Respondent District Attorney of Erie County's Motion to Dismiss Plaintiff's "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)".

For the reasons set forth herein, the Court will grant Plaintiff's second request to proceed *in forma pauperis* concerning the Prerogative Writ; the Court will grant Defendant's Motion to Dismiss, and the Court will deny and dismiss the Prerogative Writ.

BACKGROUND

The limited procedural background known to the Court is set forth herein. In September, 1998, following a jury trial at Docket No. 1239 of 1997 in the Court of Common Pleas of Lebanon County, Pennsylvania, Plaintiff, Antonio Sierra, was convicted of multiple counts each of Criminal Attempt (Homicide), Aggravated Assault, Recklessly Endangering Another Person,

Unlawful Restraint, Arson, Theft By Unlawful Taking, Robbery and Criminal Conspiracy.[1] Plaintiff was sentenced by the Court of Common Pleas of Lebanon County in October, 1998. In December, 1998, Plaintiff filed a direct appeal with the Superior Court of Pennsylvania. In October, 1999, the Superior Court dismissed the appeal. Upon collateral attack, appellate rights were reinstated in May, 2000.

Although this Court is unaware of the disposition upon direct appeal to the Superior Court, the Court Docket at No. 1239 of 1997 reflects that in March, 2004, Plaintiff filed in Lebanon County a Motion to Vacate and Set Aside Illegal Sentence and/or For Writ of Habeas Corpus. The motions were denied as untimely.

A Notice of Appeal was filed with the Superior Court in April, 2004. In October, 2004, the Superior Court affirmed the trial court's determination.[2] In April, 2005, the Pennsylvania Supreme Court denied the Petition for Allowance of Appeal.[3] Docket activity also reflects subsequent involvement by the Commonwealth Court of Pennsylvania.[4]

Plaintiff is currently incarcerated at SCI Albion, located in in Erie County, Pennsylvania. On March 21, 2016, Plaintiff, *pro se,* filed in the Court of Common Pleas of Erie County a "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)". Concurrently, Plaintiff filed an "Affidavit at Large".[5] The Prothonotary of Erie County docketed the matter. The docket does not reflect that any filing fee was charged.

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[1] 18 Pa.C.S.A. §901(a), 18 Pa.C.S.A. §2702(a), 18 Pa.C.S.A. §2705, 18 Pa.C.S.A. §2902(1), 18 Pa.C.S.A. §3301(a), 18 Pa.C.S.A. §3921, 18 Pa.C.S.A. §3701(a) and 18 Pa.C.S.A. §903(a), respectively.
[2] *See Commonwealth v. Sierra,* 864 A.2d 583 (Pa.Super. 2004).
[3] *See Commonwealth v. Sierra,* 872 A.2d 1199 (Pa. 2005).
[4] *See Antonio Sierra v. Pennsylvania Dept. of Corrections,* Commonwealth Court of Pennsylvania Docket No. 2413 CD 2015.
[5] The Plaintiff's claims in the Prerogative Writ and Affidavit are nearly indiscernible, presented in nonsensical, run-on sentence fashion. Both documents contain reoccurring themes of illegal sentence, "wrongful commitment and false imprisonment which commenced an action in Lebanon", loss of liberty, reference to a grievance, and interference with a fiancé and a marriage contract. As can be gleaned from the Writ, Plaintiff challenges his

App. C 7

R872.

On March 23, 2016, Plaintiff filed an "Application By Obligation To Continue *In Forma Pauperis* Pa.R.A.P. 555, 551 and 28 USC §1915(a)(1)". Concurrently, Plaintiff filed a Praecipe for judicial assignment. The matter was assigned to the undersigned for disposition. On April 13, 2016, the Court denied the application to proceed *in forma pauperis.* On May 2, 2016, Plaintiff filed an appeal with the Superior Court from the Order denying the IFP request. Subsequently, on May 9, 2016, Plaintiff filed another petition for IFP status.[6]

On July 14, 2016, the Superior Court denied Plaintiff's "Application for Clarification".[7]

On July 26, 2016, this Court filed its 1925(a) Opinion concerning Plaintiff's appeal from the Order of April 13, 2016 denying the initial request to proceed *in forma pauperis.* Concurrently, the Court directed the Defendants to file responsive pleadings to the Plaintiff's Prerogative Writ and supporting Affidavit.

On August 10, 2016, the District Attorney of Erie County filed a Motion to Dismiss Plaintiff's Prerogative Writ.

On August 12, 2016, Plaintiff filed an Emergency Notice of Appeal, an Application for Relief, and an Application to Proceed *In Forma Pauperis* with the Pennsylvania Supreme Court concerning this Court's 1925(a) Opinion filed July 26, 2016, and the Order directing Defendants to file responsive pleadings to the Prerogative Writ.

On September 1, 2016, Petitioner filed with the Pennsylvania Supreme Court a "*Pro-Se* Notice to be Heard . . . Before a Judge".

On November 1, 2016, the Pennsylvania Supreme Court quashed Plaintiff's Emergency Notice of Appeal, and dismissed as moot The Application for Relief, the Application to Proceed

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conviction in Lebanon County, and contends wrongful imprisonment has infringed upon his personal liberties and finances.

[6] The second IFP petition filed May 9, 2016 is pending.

[7] The Application for Clarification does not appear on this docket.

In Forma Pauperis, and the *Pro Se* Notice to be Heard Before a Judge. On December 2, 2016, the Pennsylvania Supreme Court denied the Application for Reconsideration of its Order of November 1, 2016.

With the resolution of Plaintiff's various appeals and applications to our appellate courts at this docket number, remaining for disposition are: the *pro se* "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)" filed March 21, 2016 and supporting "Affidavit at Large"; the "Motion for Leave to Proceed *In Forma Pauperis* (In the Nature of an Application)" filed May 9, 2016; and Defendant's Motion to Dismiss.

DISCUSSION

1. The Plaintiff's "Motion for Leave to Proceed *In Forma Pauperis* (In the Nature of an Application)" filed May 9, 2016.

Upon review of the Motion and attachments thereto, and in the interests of judicial economy, the Court will grant the motion, with regard to the pending Prerogative Writ.[8]

2. The "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)" and the District Attorney of Erie County's Motion to Dismiss

As can best be gleaned from the Prerogative Writ, Plaintiff asserts his convictions and sentences are illegal, and claims *Montgomery v. Louisiana,* 136 S.Ct. 718 (2016) requires this Court to give retroactive effect to *Alleyne v. U.S.,* 133 S.Ct. 2151 (2013), which affords him relief. Through the vehicle of an extraordinary writ, or "prerogative writ"[9], the Plaintiff requests

[8] However, there is no indication any filing fee was charged concerning the Prerogative Writ. The docket does not reflect a fee was charged. No receipt or invoice for any filing fee was attached to the IFP application.

[9] "Extraordinary writ (17c) - A writ issued by a court exercising unusual or discretionary power. Examples are certiorari, habeas corpus, mandamus, and prohibition. – Also termed *prerogative writ." Black's Law Dictionary* ___ (10th ed. 2014).

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R.89a.

the Court to exercise unusual or discretionary power in this civil action by awarding him certain remedies for the alleged illegal convictions and/or illegal sentences.[10] *See Prerogative Writ, pp. 3-4.* The crux of Plaintiff's claims in the Prerogative Writ is that his conviction in Lebanon County, which adversely impacts various liberties and secondarily, his finances, was wrongfully obtained.

The PCRA is intended to be the sole means through which post conviction relief can be sought. 42 Pa.C.S.A. §9542; *Commonwealth v. Haun*, 32 A.3d 697 (Pa. 2011). Only in the very rare case where an issue is not cognizable under the PCRA can it be raised through an alternative method. *Commonwealth v. Taylor*, 65 A.3d 462, 466 (Pa. Super. 2013). However, where a petitioner is claiming an illegal sentence, the motion must be treated as a PCRA. *Id.* Petitioner's claims that his convictions and sentences are illegal, as articulated within the Prerogative Writ, fall squarely within the PCRA and must be treated as such. Petitioner cannot circumvent the PCRA by couching claims which are cognizable under the PCRA as equitable claims or as (civil) "imperfect PCRA" claims.

However, this Court is unable to treat Petitioner's Prerogative Writ as a miscaptioned PCRA petition. Jurisdiction for a collateral attack upon Plaintiff's convictions/sentences does not lie in Erie County, Pennsylvania.

> The subject matter jurisdiction of a criminal court extends to the offenses committed within the county of trial. *Commonwealth v. Guess,* 266 Pa.Super. 359, 378, 404 A.2d 1330, 1339 (1979). Subject matter jurisdiction in the trial court exists by virtue of presentation of *prima facie* evidence that a criminal act occurred within the territorial jurisdiction of the court. *Commonwealth v. Goldblum,* 498 Pa. 455, 475, 447 A.2d 234, 244 (1982). *See Commonwealth v. Conforti,* 533 Pa. 530, 626 A.2d 129 (1993) (a court has no jurisdiction over an offense unless it occurred within the county of trial, or unless by some statute it need not occur within the county of trial).

[10] The remedies Plaintiff seeks include the following: release on bail; release on non-monetary conditions; an injunction prohibiting access to his finances; an Order declaring his sentence, conviction, and commitment as unlawful, wrongful and/or void. *See Prerogative Writ, pp. 17-19.*

Comonwealth. v. McNeil, 665 A.2d 1247, 1251 (Pa. Super. 1995). *See also, Commonwealth v. Hendrickson,* 684 A.2d 171, 179 (Pa. Super. 1966), *aff'd* 724 A.2d 315 (Pa. 1999).

Jurisdiction over Plaintiff's PCRA claims properly lies in Lebanon County, Pennsylvania, where Plaintiff's convictions occurred. Thus, this Court has no jurisdiction to review the merits of the claims asserted in the Prerogative Writ.

CONCLUSION

The Court will grant Plaintiff's "Motion for Leave to Proceed *In Forma Pauperis* (In the Nature of an Application)" filed May 9, 2016. The Court will grant the District Attorney of Erie County's Motion to Dismiss Plaintiff's "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)". The Court will deny and dismiss the Plaintiff's *pro se* "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)". An Order consistent with this Opinion will be entered.

BY THE COURT:

1/13/2017
Date

Daniel J. Brabender, Jr.
Daniel J. Brabender, Jr., Judge

cc: Antonio Sierra, Inmate No. DV0686, SCI Albion, 10745 Route 18, Albion, PA 16475, LEGAL MAIL
Michael E. Burns, Esq., Assistant District Attorney, Erie County
Commonwealth of Pennsylvania Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17102
Department of Corrections, Nancy Giroux, Retired Superintendent, SCI Albion, c/o L. Neil, Esq., Office of Chief Counsel, 1920 Technology Parkway, Mechanicsburg, PA 17050

App. C.U

R. 912.

ANTONIO SIERRA, Plaintiff	:	IN THE COURT OF COMMON PLEAS
	:	OF ERIE COUNTY, PENNSYLVANIA
v.	:	
	:	CIVIL DIVISION
COMMONWEALTH OF PENNSYLVANIA, et al.	:	
Defendants	:	NO. 10808 of 2016

COMMON PLEAS COURT
ERIE, PA
2017 JAN 13 PM 5
CLERK OF RECORDS
PROTHONOTARY

ORDER

AND NOW, to-wit, this 13th day of January, 2017, upon consideration of Plaintiff's "Motion for Leave to Proceed *In Forma Pauperis* (In the Nature of an Application)" filed May 9, 2016; Plaintiff's "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)" filed March 21, 2016; and the District Attorney of Erie County's Motion to Dismiss Plaintiff's "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)" filed August 10, 2016, the Court hereby **ORDERS** the following:

1. Plaintiff's "Motion for Leave to Proceed *In Forma Pauperis* (In the Nature of an Application)" filed on May 9, 2016 is **GRANTED.**

2. Plaintiff's "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)" filed on March 21, 2016 is **DENIED AND DISMISSED** for lack of jurisdiction.

3. The District Attorney of Erie County's Motion to Dismiss Plaintiff's "Prerogative Writ (In the Nature of a Complaint in Equity and In the Nature of an Imperfect P.C.R.A. Motion)" filed August 10, 2016 is **GRANTED,** as the Court lacks jurisdiction to address Plaintiff's claims.

BY THE COURT:

Inmate's D Verified
VILLEGAS
Housing Area Staff Signature
Date 1/18/17 Unit C/2

Daniel J. Brabender, Jr., Judge

cc: Antonio Sierra, Inmate No. DV0686, SCI Albion, 10745 Route 18, Albion, PA 16475, LEGAL MAIL
Michael E. Burns, Esq., Assistant District Attorney, Erie County
Commonwealth of Pennsylvania Attorney General, 16th Floor, Strawberry Square, Harrisburg, PA 17102
Department of Corrections, Nancy Giroux, Retired Superintendent, SCI Albion, c/o L. Neil, Esq., Office of Chief Counsel, 1920 Technology Parkway, Mechanicsburg, PA 17050

APPENDIX, A
[To Motion by 14th Amendment]

STATEMENT OF THE CASE

Petitioner's statement of the case is provided as Exhibit 5 to this petition. Petitioner incorporates paragraph 1 – 67, as though set forth fully herein.

STATEMENT OF REASON FOR ALLOWANCE OF APPEAL

QUESTION No. 1

Appellate Courts misapprehended *Bond vs. United States, 564 U.S. 211, 131 S. Ct. 2355 (2011(Per Curiam))* and *Commonwealth vs. Albrecht, 994 A.2d 1091(Pa. 2010)*. Petitioner asserted Defendants confiscated privileged correspondence on September 10, 2019. He first learned of this by their notice regarding "disposition or confidentially destroy" privileged correspondence submitted, not on the dates the mail was actually issued; Yet an additional twelve days later, and even up to one year of Defendants unreasonable seizure, therefore in violation of the Constitution and Laws of the United States and Supreme Court of Pennsylvania. Petitioner showed the information of September 10, 2019 could not have been obtained earlier, despite the exercise of due diligence, *Albrecht, 994 A.2d @ 1094*, and in violation to Constitutional Amendments; See: *U.S. vs. Place, 462 U.S. 696, 701, 103 S. Ct. 2637(1993)*; Petitioner further showed "any condition of his incarceration is illegal to meet government interference exception of PCRA timeliness requirements. id. Albrecht @ 1095.

Petitioner asserted his custody and sentence for Criminal Attempt to Commit Third Degree Murder ("Attempt 3rd Degree Murder") is illegal, causing substantial injury by being incarcerated for a charge that does not have a State Statute, exceeds the Legislature's power because it violates the due process

clause, and it is "[a]n offense created by an unconstitutional law [and] the courts have held it is not a crime [,] id. *Bond, 564 U.S. @ 226-27.*

The Appellate Court determined "Appellate brief fell well below the minimum standards delineated in the Pennsylvania Rules of Appellate Procedure," to affirm dismissal and waiver of claims, the Court recognized but declined to address the unconstitutionality of petitioners charge in Attempt 3rd Degree Murder. Contrary to Bond, Supra infra; and *Commonwealth vs Milchak, 2019 Pa. Super. Unpub. LEXIS 2526, 219 A.3d 279 (2019);* See, exhibit 1

QUESTION No. 2

Appellate Court overlooked the significance of Bond Supra Infra. And Commonwealth vs. Milchak, 2019 Pa. Super. Unpub. LEXIS 2526, 219 A.3d 279 (2019).

In petitioner's brief, he complied with the rules, providing from The Statement of the Case to the Conclusion – six sections with twenty-three subsections covering the facts material to litigate. For example, petitioner provided the requirements to Albrecht Supra. Infra; and the Constitutional Amendments, Id. @ pgs. 18 – 23.

He addressed the timeliness of the cause assuming the facts were ripe with actions occurring in 2016 litigation that directly prejudiced petitioner on account the lower Courts Order that was presumably a 1925 Opinion without any features or direction pursuant to the rules made for petitioner, but given to defendants', Id. 23 -33; See Exhibit 2 & 4. Petitioner addressed defendants' erroneous information from 1998 through 2016, while showing with adequate

App. D. 2

evidence that the Commonwealth conceded to petitioners allegation to a point, invalidating his charge as one without a Statute and therefore Unconstitutional, although the claim was not ripe at the time of the first Writ of Habeas Corpus, Id. 33 – 40 (citing (inter alia) Panetti vs Quaterman, 551 U.S. 930, 994, 127 S. Ct.2842 (2007)), Id. 41 – 49.

He discussed the Supreme Court of the United States Territorial-Custodial Rules, Id. 49 – 52, and concluded with invoking judicial asylum, Id. 52 – 53; And, defendants' did not respond giving petitioner further Federal benefits (if not also benefit from the State). See: Petition to Enforce Judgement of February 28, 2020 @ pgs. 1 – 4 (quoting (inter alia) Folger v. The Robert G. Shaw, 1847 U.S. App. LEXIS 1, 24, 9 F.CAS 335 (1.St Cir.1847) and Commonwealth vs. Watts, 23 A.3d 980, 982 n.2 (Pa. 2011) (declining to consider Commonwealth argument).

In petitioner's case, the Appellate Court prejudicially exalted (sic) the procedural rules to the status of substantive objectives," Fisher vs. Hill, 81 A.2d 860, 863 (Pa. 1951) to now add "shackles" to petitioners prison ensemble; See Commonwealth vs. Cooper, 27 A.3d 994, 1003 (Pa. 2011) (stating Rules are not shackles); with Commonwealth vs. Baker, 722 A. 2d 1028, 1029 (Pa. 1999)(dissenting Opinion(stating that "this court routinely reinstated certain rights where there was valid reason and addressing the liberal construction of the Rules...)).

Moreover, the Appellate Court could have treated this case like Milchak, where the Appellate Court, in its own words found Milchak brief, amongst other things "woefully inadequate because it fails to conform in any material aspect with our

App. D.3

rules of appellate procedure; Yet, the court went on to say, "We decline to invoke waiver because the issue on appeal are clear." Id. 219 A.3d @ Ph.#4. (citing Pa. RAP.2111, 2114 – 2119, 2111 (a)(9)); And in Bond, the United States Supreme Court repeatedly held that "A court has no prudential license to decline to consider whether the Statute under which [Petitioner] has been charged lacks constitutional application to [h]is conduct." 564 U.S. @ 277. An offense created by an unconstitutional law; said Justice, GINSBURG, "them court has held is not a crime" (quoting Ex Parte Siebold, 100 U.S. 371, 376, 25 L.Ed. 717 (1880). The Appellate Court misapprehended and overlooked the authorities petitioner addressed, and the Courts error caused petitioner prejudice when the lower court had jurisdiction to hear this case as presented.

Conclusion: For these stated reasons petitioner respectfully request for the court to grant his petition and give him leave to appeal the Orders at issue in order to finally remove or vacate the illegal conviction Attempt 3rd Degree Murder and have defendant return the unreasonably seized privileged correspondence; with all due respect.

Respectfully,

/s/ Tuesday D. Baker-Couturiaux (Sierra)

/s/ Pa. ID.No. DV0686
Antonio Sierra, Ph.D., Pro-Se
Department of Corrections, SCI-Albion
10745 State Route 18, Albion, Pa. 16475

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The Fourth Amendment states in pertinent parts, the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizure shall not be violated. USCAm.4th The right not to experience or endure a meaningful interference with retaining possession of personal property and in maintaining personal privacy from seizure that is unreasonable, Soldal v. Cook County, 506 US 56, 61-65 (1992). This amendment protects interests in avoiding unnecessary disclosure of personal matters and the right to autonomy and independence in matters of personal decision making, Whalen v. Roe, 429 US 589, 599-600 (1977). In sum, a seizure that might appear to be lawful at its inception can violate the Fourth Amendment if the manner of execution unreasonably infringes upon interests protected by the Constitution, See: Illinois v. Caballes, 543 US 405, 407 (2005).

The Sixth Amendment states in pertinent parts [an] "accused shall enjoy the right to a speedy or public trial by an impartial jury of the State and district . . .which shall have been previously ascertained by law, and ... to have the Assistance of Counsel for his defense. USCAm.6th. This Constitutional Amendment have as its overriding purpose in the protection of the accused from Prosecutorial and Judicial abuses; Kelo v. City of London, 545 US 469, 491 (2005);And, is a right that is personal to the accused, Gannett Co, Inc., v. DePasquale, 443 US 368, 370-80 (1979). It requires a Jury trial without additional burdens, such that where "a judge inflict punishment that the jury verdict alone does not allow, the jury has not found all the facts "which the law makes essential to the punishment [and] the judge exceeds his proper authority," Blakely v. Washington, 542 US 296, 304 (2004). Where a judges authority to impose an enhances sentence depends on finding a specified fact (as in Apprendi) one of several specified facts (as in Ring) or any aggravating fact (as here), it remains the case that the jury verdict alone does not authorize the sentence. The judge acquires that authority only upon a finding some additional fact. Because the State's sentencing procedure did not comply with the Sixth Amendment, petitioners sentence is invalid. Id. @ 305.

App. E. 1

The Fourteenth Amendment states in pertinent parts: 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 due process of law; USCAm.14th .

The due process entitles Appellant to the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue on the decision making process, Marshall v. Jerrico Inc., 446 US 238, 242 (1980); this entitled impartial and disinterested tribunal is a guarantees that life, liberty and property will not be taken on the basis of an erroneous or distorted conception of the facts or of the law, Id. with assurance the judge is not predisposed to find against him, Id. and Joint Fascist Committee v. McGrath, 341 US 123, 172 (1951)(FRANKFURTER J, concurrence). It protects Appellant whether as Plaintiff or Defendant, Logan v. Zimmerman Brush Co, 455 US 422, 429 (1982); Paul v Davis, 424 US 693, 710, n.5 (1976); protects "cause of actions," Logan, 455 US @ 428, the right to exclude others and the right to security under the bundle of rights, Burns v. PA.DOC., 544 F.3d 279, 287 (Ca.3rd. Cir. 2008); the right to have local laws administered judicially and have a this national right that is the property of every citizen, Murray v. Magnonia Petroleum Co., 23 F.2d 347, 348 (5th Cir. 1927). It is a Due Process guarantee to impartiality that entitles Appellant the right before a Federal and State Agencies and Courts, R. v. Cmwlth. Depart' of Public Welfare, 636 A.2d 142, 152 (Pa. 1994); Shah v. State Bd. of Medicine, 584 A.2d 783, 792 (Pa.Cmwlth 1991); Nesses v. Shepard, 68 F.3d 1003 (7th Cir. 1995)(independent right); Great Western Mining & Mineral Co. v. Fox Rothchild, LLP., 615 F.3d 159 (3rd Cir. 2010)(impartial forum-citing Nesses); Cmwlth v. Gulluta, 716 A.2d 663 (Pa.Super 1998)(impartial tribunal); It is the fundamental right to notice and opportunity to be heard in a meaningful time and in a meaningful manner [and] before being condemned to suffer grievous loss of any kind, Matthew v. Eldridge, 424 US 310, 399 (1976); a right to contract, engage in any occupation of life and in the right to acquire useful knowledge in one's orderly pursuit of happiness, Paul, 424 US @ 722, n.10 (1976), Meyers v. Nebraska, 262 US 390, 399 (1923).

App. E.2

A. **ACCESS TO THE COURT AFFECTED BY IMPROPER DENIAL**

In this present case, Senior Judge Cunningham and Judge Mead [herein trial court "Judges"], entered an Order that is manifestly unreasonable to constitute an abuse of discretion when denying Appellants Ifp- and PCRA- motion(s) on matters unrelated to the initial cause and matters not of Appellants own doing, Grady v Frito-Lay, 836 A.2d 1038, 1046 (Pa. 2003).

In Amrhein [vs. Amrhein,], a panel of the Superior Court on pauperism stated that a "trial court must focus on whether the person can afford to pay and cannot reject allegations contained in an application without conducting a hearing, Id. 903 A.2d 17, 20 (Pa.Super 2006)(citation omitted). The panel of the Amrhein Court through another case reiterated that a "trial court disbelief of averment in an Ifp application requires the Court to hold an evidentiary hearing to determine the veracity of the claims of the inability to pay costs. Id. at 24 (citation omitted).

Initially, Mr. Sierra, made the trial court-Erie aware of his financial limits in his PCRA-motion of September 25, 2019, respectively informing the court that :"***I have $ 80.17 in my prison account excluding cost in mailing this action [and] I have been permitted to proceed in forma pauperis on the United States District Court Western District of Pennsylvania,***" Id.R.15a. Two days later, He filed a second Ifp-motion with an affidavits in support on September 27, 2019, Id.R.49a-R.51a. Although the balance of $ 64.02 does not appear on that document due to institutional problems with up-dating their Kios system, Appellant did state and provide all the necessary information regarding his income, assets and liabilities pursuant to the laws of the State.

Pennsylvania Rules of Civil Procedure 240(b), states that "a party who is without financial resources to pay the cost of litigation is "entitled," to proceed in forma pauperis.

Subsection (j) states that "simultaneous with the commencement of an action or proceeding or the talking of an appeal, a party filed a petition for leave to proceed in forma pauperis, the Court, prior to action on the petition may dismiss the action, proceeding or appeal if the allegations of poverty is untrue, of if it is satisfied that the action , proceeding or appeal is frivolous. Pa.R.Civ. P. 240(b) & (j).

Moreover, section 9542 provides for :

"an action which person "***convicted of crimes they did not commit or serving unlawful sentence may obtain collateral relief***" for an action by which person can raise claims which are properly a basis for Federal habeas Corpus relief. The action established in this subchapter shall be the sole means for obtaining collateral relief..." Id. 42 Pa.C.S. § 9542.(emphasis mine).

In this case, speaking for the Court, Senior Judge Cunningham denied the Ifp-motion outright and/ or straight out, and then after mentioning the PCRA- motion went on to explain that:

The Petitioner's prior request for in forma pauperis status was denied by the Honorable Judge Daniel Brabender Jr. dated April 13, 2006, - which Order was affirmed by the Superior Court on November 23, 2016. The Petitioners Application for Reconsideration was denied by the Supreme Court of Pennsylvania on December 5, 2016. By Order dated January 13, 2017, Judge Brabender also dismissed a "Prerogative Writ," filed by the Petitioner for lack of jurisdiction. As Petitioner knows, Erie County has nothing to do with his criminal conviction in Lebanon County. The Petitioner is advised that he may face sanctions for any further abuse of the judicial process in Erie County in which he seeks relief related to his Lebanon County criminal convictions. Id.

Contemporaneously, Judge Mead also denied Appellants third-Ifp-motion before Appellate Court finally allowed him pauperism, and in this action the trial court judges committed an error of law, Amrhein, 903 A.2d @ 19 (trial court resolution of Ifp-motion will be reversed if the Court abused its discretion or committed an error of law).

In this appeal, Appellant filed his notice of appeal with added documents to the Superior Court in October 28, 2019, Yet, he was faced with a financial balance of$ 90.25 for appeal purposes, Id.R.53a-R.54a; And still needed to file papers with the Court; These acts prompted him to once again ask the trial Court-Erie to accept his Ifp- application on November 18, 2019, through an ***Application by Leave for Court Action in Matters***, Id.R.68a.

Appellant then briefly explained the filing history to include a third-Ifp-motion that the court may act upon and stated that with pauperism, he would be able to have transcripts filed while he paid in installments what he could not do in one lump sum, Id.R.68a @ 1-9. The Ifp-motion came with an Affidavits in support of the motion and an income source, employment, financial institutions, assets, persons relying on Appellant, income changes, debts, and a financial account statement for the past 12-months evidencing his willingness to proceed, Id.R.49a-R.51a. On November 26, 2019, the trial court judges denied the application and Ifp-motion and for the reasons set forth in October 15, 2019s' Order, Id.R.68a.

In this case, the trial court judges did not take any interest on the averments truth to Appellants inability to pay, did not take interest in his assets, liabilities or expenses and rather, denied the pauperism status on matters that occurred during 2016-2019 Litigation and without giving Appellant a forum to defend or explain what actually was the issue at the time and that Defendants would be forced to agree.

As the trial court judges denied Appellants Ifp- and PCRA motions, this action cause Him prejudice and to undergo a procedure that snarls and obstacles, violating (among other things), his right to due process, Bartone v. United States, 375 US 52, 54 (1963), and constitute an improper denial of the Access to the Courts, Grant v. Blain, 868 A.2d 400, 402 (Pa.2005). This court should grant Appellants relief to proceed to the merits of his claims, and/or alternatively grant him legal counsel. Id.

B. THE CAUSE IS TIMELY ASSUMING THE FACTS ARE RIPE

Section 9545 of title 42 states in pertinent parts :"the failure to raise a claim previously was the result of interference by government officials with the presentation of the claim in violation to the Constitution or laws of the United States, Id. 42 Pa.C.S. § 9545(b)(1)(i). Moreover, Appellant must show that "***any of the conditions of his incarceration were illegal'*** as required to meet the government interference exception to the PCRA's timeliness requirements." Commonwealth v. Albrecht, 994 A.2d 1091, 1095 (Pa.2010)(emphasis mine); cf. 42 Pa.C.S. § 9542 (similar).

In this case, the time line of events is important as Defendants issued their notices that stated they were going to dispose of Appellants ***Privileged Correspondence*** on September 10, 2019, though this notice given date was as issued by a third party officer whom called Mr. Sierra to receive the mail in notices. Each notice had an additional date but each did not come with ***Privileged Correspondence*** the notices asserted to have confiscated awaiting destruction, Id.R.16a-R.23a.

For example, Appellants mails as seized on January 14th, is not reported until August 29th of 2019 and this illegal act occurred for every privileged correspondence alleged to belong to Appellant, Id.R.16a-R.20a. The date of August 29th as alleged the date of delivery is actually done on September 10 ,2019, twelve additional days later, yet this delivery is simply for the notices alone, Defendants have retained the privileged correspondence as belonging to Appellant to date that he avers they have unlawfully seized causing prejudice in violation to the Constitutional rights, Id. Infra. @ pp.18-20. As appellant has not placed this mail in the hands of Defendants, nor has there been any probable cause to believe any negativity on the mails, rather, that the Federal and State Agencies and Courts have communicated their esteem to have their free information directed to Appellant, these matters are uniquely different than what occurred in Commonwealth vs. Moore, 928 A.2d 1092 (Pa.Super 2007). In Moore, the Superior Court was faced with an appeal from the Commonwealth after the Court of Common Pleas-Philadelphia granted defendants motion to suppress the State's evidence, Id. 1094-95.

On appeal the issue was whether defendant-prisoner, could claim a Constitutional right to privacy in his ***non-privileged mail.*** Id. 1095-96. In reading through Federal and State case law, the court went on to determine a person to (1) have established a subjective expectation of privacy and (2) have demonstrated that the expectation is one that society recognizes as reasonable and legitimate, Id. 1097-1101(quoting Commonwealth v. Duncan, 817 A.2d 455, 463 (Pa. 2003)). The Moore panel held Appellant had no constitutional right to privacy in his non privileged mail (sic) as he placed mails into the hands of prison officials [and] used coded language. Id. 1102.

In this instant case, Appellant shown a subjective expectation to privacy and one that society has recognized as reasonable and legitimate as prison walls do not form a barrier separating prison inmates from the protection of the Constitution. Turner v. Safley, 482 US 78, 84 (1987). Most privileged mails seized are Attorneys communications, and "[E]ven in jail, or perhaps especially there, the relationship which the law has endowed with particularized confidentiality must continue to receive unceasing protection..." Lanza v. New York, 370 US 139, 143-44 (1962). The U.S. Court of Appeals for the Third Circuit held "opening properly marked incoming attorney or Court mail outside a prisoners presence, or reading such mail, infringes the Constitution. See, Bieregu v. Reno, 59 F.3d 1445, 1450-51 (3rd Cir. 1995)(citing other Courts of Appeals). The court held the failure to safeguard attorney-client confidentiality "chills protected expression and may inhibit the inmates ability to speak, protest and complain openly without reservations with the court." Id. at 1452. The U.S. Supreme Court has ruled the only way to ensure the confidentiality of mail to incarcerated people is to require prison open legal mail only in the presence of the individual whom it is addressed. Wolf v. McDonnell, 418 US 539, 576-77 (1974); Accordingly, Appellants has shown a subjective expectation of privacy and one that society recognizes as legitimate where confidential communications is critical not only to promote the effective legal representation of the clients interest, but also the overall administration of justice. Hunt v. Blackburn, 128 US 464, 470 (1888); In Re Search Warrant B-21778, 513 Pa. 429, 441 (1987).

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In this present case, Appellant issued on September 11, 2019, a Release Form for Privileged Correspondence after Defendants gave notice about receiving mails and were preparing to discard the Correspondence and in this prejudice Appellant long before Defendants were letting him know they were in custody of his privileged correspondence months earlier, yet Defendants were confiscating mails instead of providing them. See, e.g., 18 USC § 1702 (Obstruction of Correspondence, Id. § 1701 – Obstruction of Mails, Generally).

On September 17 & 19, of 2019, Appellant again provided Defendants the Release form addressed above and this time provided the warning adding: "a legal cause will be filed if privileged correspondence is not released on September 23, 2019 or five days before the given due date, Id.R.25a-R.27a., no reply was directed from Defendants.

In September 25th, Appellant filed his PCRA motion on the grounds of government interference with the Appellants ability to access the free flow of information as provided by the government through the Judiciary an Legal Organizations that Defendants have illegally deprived, causing prejudice in obtaining the information and Appellants ability to prosecute his case in violation to the First, Fourth and Fourteenth Amendment to the Constitution of the United States, Id.R.2a-R.3a, See infra at pp.18-20.

In this case, Appellant fairly stated that Defendants are intentionally obscuring a substantial amount of his Privileged Correspondence from reaching him and illegally confiscating said privileged mails as addressed to Mr. Sierra without probable cause of any illegal act in and of Him, making Defendants unreasonable seizure an illegal action that is furthered by Appellants incarceration, sentence and charge that are also illegal, depriving him due process of law in violation to the Fourth, Sixth and Fourteenth Amendment to the Constitution of the United States, Id.R.4a-R.5a; R.6a-R.12a.

App. E.8

Defendants version of a reply had issued when Mr. Clark stated he nor Ms. White have any idea of what I am speaking of, Id.R.27a. This false and misleading statement was not supported by Ms. White whom in turn stated that memos were placed in housing units and either return mail to sender or destroy, Id.R.26a; And, since these statements are intentional misrepresentations of Defendants actual knowledge as issued on September 26 and 27 of 2019, Appellant decided his PCRA was the proper course as deprivation of his substantial privileged correspondence dated back into the 2018 term of litigation remaining confiscated, Id.R.28a-R.30a.

In this, Appellant action satisfied § 9545(b)(1)(i), where he raised government interference with his claims and further established the conditions of his incarceration is an illegality, pursuant to Albrecht, 994 A.2d @ 1095. Moreover, he was not required to file a grievance or exhaust administrative remedies first because Appellant is caused direct prejudice in a process aimed at tripping him up, Ross v. Blake, 136 S.Ct. 1850, 1856-60 (2016) and secondly, Defendants were already in the business of (sic) "curtailing mails and altering process as necessary to honor the Departments [own] commitment," Id.R.31a-R.32a [bracket mine]; And, since, this Administrative statement has not been rescinded since, Appellant has no further need to trust those that illegally deprive him liberty,.

As Appellant filed his cause of action as a P.C.R.A. 15 days after Defendants issued their first notice(s), these facts upon which his claim is predicated were unknown to him until after Defendants decided to issue such notices and as such, these facts could not have been ascertained by the exercise of due diligence. Id.R.12a @ 6-B, 42 Pa.C.S.§ 9545(b)(1)(ii).

Appellants avers his presentation of a cause of action is one under the PCRA that is the sole means for obtaining collateral relief and which Appellant is charged, convicted and incarcerated of a crime he did not and could not have committed; Serving an unlawful sentence, Id.§ 9542, Id.R.1a-48a. As he must wait until the proper Court finds in his evidence, he continues to be harmed and injured. Id.

App. E. 9

In Appellants case, the seized mail looks as such:

DATE RECEIVED	PRESUMED REPORTED DATE	COLLECTIVE TIME OF POSSESSION
1/14/19	8/29/19= 227 DAYS	1 YEAR- 7 DAYS & COUNTING
1/17/19	8/29/19= 224 DAYS	1 YEAR- 5 DAYS & COUNTING
1/22	8/29/19= 220 DAYS	1 YEAR- & COUNTING
1/28	8/29/19= 214 DAYS	359 DAYS & COUNTING
2/11	8/29/19= 199 DAYS	344 DAYS & COUNTING
3/18	8/30/19= 165 DAYS	309 DAYS & COUNTING
4/01	8/30 = 151 DAYS	295 DAYS & COUNTING
4/03	8/30 = 149 DAYS	293 DAYS & COUNTING

In addition, the seized correspondence as late in 2018 are as such:

DATE CONFISCATED	CONFISCATION NUMBER	TIME OF POSSESSION
9/14/18	B.727965	494 DAYS & COUNTING
9/18/18	B.727972	490 DAYS & COUNTING
9/27/18	B.727978	482 DAYS & COUNTING

In this present case, the trial court judge's ruling was the product of manifest unreasonableness so as to be clearly erroneous to constitute an abuse of discretion, Id. Grady at 1046. When wrongfully setting aside Appellants statements in his inability to pay, expenses, debts ,income source and in like regards, remove his PCRA outside the law where the Court did not claim it did not have jurisdiction, only that it did not have the patience to deal with Appellants Constitutional deplorable issues which he has subscribed to the protection of the Statute as herein, declaring under penalty of perjury the truth of his averments, Id.R.13a, R.51a & R.72a. This Court should grant Appellants relief and hear this matter, alternatively provide assistance of Counsel.

II. Portions of the trial courts assessment of 2016-2017, filings in State Court constitute prejudice where facts are previously unknown and Appellant exercise due diligence as he disclose an unlawful attack by Defendants on his civil action thorough a known 1925 Opinion that continued to cause Prejudice to Appellant.

Under the time for filing petitions, section 9545(b)(1)(ii) states in pertinent parts that "the facts which the claim is predicated were unknown to petitioner and could not have been ascertain by the exercise of due diligence [and] any petition invoking an exception provided in paragraph (1) shall be filed within [60 days] one year of the date the claim could have been presented, Id. 42 Pa.C.S. § 9545(b)(ii) & (2), as amended, October 9 ,2018, SB no. 915

Additionally, in providing a newly discoverable fact, the Appellant must show that "the facts upon which the claim is predicated were unknown to him an could not have been ascertained by the exercise of due diligence, Cmwlth v. Blakeny, 193 A.3d 350, 361 (Pa.2018); If Appellant can establish the two prongs, then the PCRA Court has jurisdiction over the claim, Id. (quotations omitted).

(A.) INITIAL 2019- UNREASONABLE SEIZURE

Appellants correspondence, described above failed to reach him at all times said privileged mail has been in the custody and control of the Defendants, Id.R.16a-R.30a. On or by August 29th and September 10, of 2019, He's told there is mail for him but has to be destroyed. These fact upon which claim is predicated is unknown as the dates themselves are meant to escape actual notice (see above @ Infra p.28), and could not have been in the possession of Defendants on August 29th or September 10th, but rather for close to, and at times, beyond a year, Id.R.31a-R.48a. (constitution evidence by government) See also: Id. R.12a @ (B)- (Defendants mailing notices to Appellant made facts known), causing substantial prejudice.

(i) SUBSEQUENT 2016-2017 ACTION

Conversely, when Judge Brabender Jr. denied an in forma pauperis on April 13, 2016, Id.R.75a., by Appellant, he appealed that determination by filing a notice of appeal with the Superior Court. Id.R.60a-R.61a. Although other applications were filed while he waited for the Courts judgment, Id.R.61a, on July 14th, the Superior Court denied Appellants Ifp-motion without prejudice for him to seek permission first with the trial court-Erie. The Superior court went on th State on Appellants Ifp-motion that

> "the trial court is DIRECTED to determine **without regards to he merits of the underlying action** whether Appellate qualifies for in forma pauperis status for purposes of proceeding on appeal. If Appellant does not qualify, the trial court shall enter an Order denying Appellate in forma pauperis Status and shall attach thereto a statement explaining the reasons for the denial.... Id.R.76a, R.61a (emphasis by the Court).

Appellant then obtained an Order from Judge Brabender Jr. on July 26, 2016 that not only addressed the merits of the Prerogative Writ's petition, Id.R.77a-R.78a, yet, determined that "the appeal is with-out merit and should be dismissed," [and] further, gave the Commonwealth 20 days to file responsive pleadings, Id.R.79a-R.80a. Three days later, the Superior Court entered an Order on July 29, 2016 demanding briefs by September __, 2016, Id.R.61a.

Here, the trial court judged did not make known that the Order(s) from Judge Brabender Jr. are, with all due respect, deceiving, See: R.75a, R.77a-R.80a. None of the judge's Orders state or have any identifying feature to separate an "Order" from an "Opinion," a material facts that is in the present case not missing, See Id.R.57a with all other Orders, and this caused Appellant prejudice, sufficient to violate his due process rights.

Here, each court submitted its determination that snarls and obstacles Appellant process to effective State remedy as he was processing the last Order before the next one came in, Id.R.75a-R.80a, And still, processing that Order before the next one, Id.R.81a, and by Defendants prejudicial actions, Id.R.82a-R.85a., that in addition to Appellants statement of facts, Id.R.62a-R.66a, simply put, Defendants made false and misleading statements when they had the actual evidence before them and could not be dismissed their own government Statements as frivolous, Id. This caused a Writ of Prohibition to the State Supreme Court of Pennsylvania, yet said court denied Appellants case, Id. R.61a-R.67a, See also: Bartone, 375 US @ 54.

The trial courts entered (A) an Order that is an Opinion [R.77a-R.80a], and (B) an Order that GRANTED Appellants Ifp-motion, to determine the writ is denied, and GRANTED Defendants Motion to Dismiss, [R.86a-R.92a]; Yet, these Orders are matters that the lower Court lost power to decide in January 13, 2017, as Appellant was on appeal in ***December 28, 2016***, [R.67a], as to the United States Court of Appeals for the Third Circuit; And this would make the Orders/ Opinions null, void and should be set aside, Commonwealth v. Spruill, 80 A.3d 453, 462 (Pa. 2012).

Pa. Rule of Appellate Procedure 1701, generally holds that after an appeal a trial court may no longer proceed further in the matter, Id. Commonwealth v. Cooper, 27 A.3d 994, 1004 (Pa. 2011); Rule 1701 then lists actions that a trial court is authorized to perform once appeal is taken, Id. If the rule is triggered, it affects the trial courts power, if it is not triggered, it does not affect it, Id. @ 1005 (Rule 1701(b)(3) was never triggered and could not have affected the trial courts authorization to rule on the motion); Yeager v. Long, 425 A.2d 426, 427 (Pa.Super 1981)(lower court had no power after appellant notice of appeal), Id. 428 (lower court Order granting Appellees motion to strike was not among the limited actions authorized. The Order was therefore a nullity ....)

Judge Brabender Jr. Orders caused Appellant prejudice as it released an Ifp-motion eight months later, already denied by the Superior Court, Id.R.67a. It erroneously granted Defendants to file and inconsistent with the Rules of Court; a Motion to Dismiss and thereby deprived Appellant the security of this 1925(b) action and further denied his Prerogative Writ, Id.R.60a-R.67a; placing him in a process that snarls and obstacles as it precluded an effective State remedy when the facts as plead was fairly sufficient for the court to exercise extraordinary jurisdiction to grant Appellant relief, Id. Bartone, Supra Infra., where these matters in the breakdown of the State process were facts that were unknown until after the trial Courts Judge(s) Order and could not have been ascertained by the exercise of due diligence.

Alternatively, as Appellants motion on January 22, 2017, was in response to the Courts Order that was not responded, the breakdown in the process continues to deprive him a fair forum, Id.R.67a, and He qualifies for an equitable exception under the Continual Wrong Theory as the "asserted occurrence falls within he limitation periods and the time of the discriminatory action," as Judge Brabender Jr.- (A) disobeyed the Superior Courts Order by determining the writs merits, (B) gave defendants time to file what is not a 1925(b) Statement, (C) deprived appellant from filing a statement of matters under 1925(b) and (D) deprived Appellant of a process causing substantial prejudice. See, Havens Reality Corp v. Coleman, 455 US 363, 102 S.Ct 1114 (1984), And See, Delaware State College v. Ricks, 449 US 250, 257-58, 101 S.Ct 498 (1980).

As the trial Court Judges Order on matters occurring in 2016-2017 are deprived a realistic representation of facts as stated above, the Courts ruling is, with all due respect in error, constituting an abuse of discretion and this Court may exercise the power to determine whether Appellant whom is serving 23-Years of a 34-Year sentence for a non-criminal / non-cognizable offense, is imprisoned for a crime that does not exist and falling outside the legal perimeters of any statute. Commonwealth v. Mundey, 78 A.3d 661, 664 (Pa.Super 2013)(addressing categories of illegal sentences).

App. E. 14

III. Trial Courts exercised a manifestly unreasonable judgment, when notwithstanding any Defendants or government statements to the contrary of the evidence place in the PCRA petition to the record, Appellant is not imprisoned for any indictable offense in the Commonwealth of Pennsylvania, rather incarcerated on Attempt 3rd Degree Murder, a non-criminal charge and ... related matters.

(A.) PREJUDICIAL ERRONEOUS INFORMATION

In this present case, the Government does not want to acknowledge the evidence Appellant has and stand in defiance of him uncovering other evidence such that Defendants fabrications fooled the District Judge Baxter (then US.DC.WD.PA. MDJ.) on August 3, 2017 when She issued an Opinion adverse to Appellants case on the grounds of Defendants information. This extrajudicial source, caused Judge Baxter to rely on prejudicial erroneous information to deny Appellant his Writ of Habeas Corpus, See Paine v. Baxter, 595 F.2d 197, 201-02 (4th Cir. 1979).

The fabricated evidence by Defendants also indicated that there was no lawful restraint on Appellant and this made any claims to the evidence as placed on the Writ that much more important to view not Defendants dissemination of false, misleading and often times concealing statements prejudice him, causing a Constitutional injury in depriving Appellate of a fair process, due to false information, Id.R.6a, (quoting 1:17 Erie, at US.DC.WD.PA). See also: Pruett v. Levi, 622 F.2d 256, 258 (CA. 6th Cir 1980) and Paul; 424 US @ 712-14; Hence, in disclosing that "Mr. Sierra asserted his incarceration is illegal because amongst other things Defendants do not possess a lawful Court Order signed by the sentencing court authorizing any lawful restrain of him," – this action violates his Constitutional rights in the Sixth and Fourteenth Amendment, USC, and 28 USC § 2241(c)(3), Id.R.6a, R.11a-R.12a. This averment as supported by Defendant documenting his efforts conclude with stating that there is "*no sentencing and no commitment Order*," Id.R.35a-R.56a.

Joseph v. Glunt, 96 A.3d 365, 367-68 (Pa.Super 2013)(OOR concluding that an affidavits from DOC affirming the "nonexistence" of the sentencing Order was determinative").

Though Defendants have "various" copies of Appellants trial transcripts as necessary records, it is the prejudice in the discrepancy between trial transcripts and the Courts pronouncement of his charge for sentence and imprisonment that stumbles when looking at one area of the evidence, Id. Glunt, 96 A.3d @ 368 & 372 (Appellant must argue discrepancy between sentence orally pronounced, sentence actually imposed and/or trial transcripts); And, in Appellants case, although he does not have a Sentencing or Commitment Order, his sentence of 34 –years to 64 years is illegal and prejudice Appellant constituting a miscarriage of justice where He is serving a sentence without a Statute. Commonwealth vs. Archer, 722 A.2d 203, 209 (Pa.Super 1998)(en banc)(a sentence is illegal where a Statute bars the court from imposing that sentence).

The trial court when acting as a Sentencing court has great discretion and deference in sentencing, yet this is not unfettered; appellate courts retain the power and the duty to vacate sentences imposed where there is an abuse of discretion, Commonwealth v. Smithon, 631 A.2d 1053, 1055 (Pa.Super 1993). A sentence must exceed the statutory limits or be patently excessive, Commonwealth v. Catanch, 581 A.2d 226 (Pa.Super 1990).

There is no Statute for "Attempt 3rd Degree Murder. Appellants logic is one of simplicity, if there is no Statute for the alleged crime there is no sentencing him under this non-cognizable charge, to do so would be to charge and sentence Appellant under an unconstitutional law prejudicing him and contrary to Bond v. United States, 564 US 211, 226, 131 S.Ct 2355 (2011)(Per Curiam)(Justice Ginsburg concurrence)(Appellate has a personal right not to be convicted under a constitutionally invalid law). Trial Court Judge Kline, sentenced Appellant with his little brother to 20 to 40 years, then after a moment where Lawyer Wynne alerted the Court Appellant Antonio Sierra was charge in New York on a different offense, this alone was enough for Judge Kline to raise his sentence to 34 to 64 years, causing prejudice to Appellant and for all the same reasons addressed.

App. E.16

In causing Appellant prejudice, trial Court Judge Kline entered a different verdict than that entered by the Jurors in 1998 and did so in a 1925 Opinion (twice), setting aside Appellants conviction and sentence all together and Appellant makes this argument as one seeing that since no Sentencing or commitment Order exist in this case, he must rely on memory to challenge the conviction and sentence, if the "conviction is the essential supporting infrastructure for a sentence, *** illegality with respect to the former extends to the late as well. The alternative, is for the Courts to accept as legal a sentence which is grounded upon an illegal conviction, Id. Spruill, 80 A.3d @ 464 (quoting Fiore v. White, 531 US 225, 228-29, 121 S.Ct 712 (2001)(Per Curiam).

(i) TRIAL COURTS ACTION

September 11, 1998, trial transcripts "records" confirms that Appellant is incarcerated for Attempt 3rd Degree murder, Id.R.40a. Nevertheless, trial court Judge Kline files a 1925 Opinion on February 17, 1999, that stated: "Sierra was convicted o[f] criminal Attempt to commit criminal Homicide[,]" (herein "Attempt Homicide"), Id. R.45a. Then, and without providing Him notice or chance to contest, the judge removes the Jurors verdict on Attempt 3rd Degree murder making it void, Id.R.9a. This caused substantial prejudice to Appellant in his right to a fair trial and being properly notified of the changes, See: Blakely v. Washington, 542 US 296, 308, 124 S.Ct 2531 (2004)(Sixth Amendment held as limiting the Courts powers that infringes on the province of the jury's powers).

Sometime within the 34-days from the trial court judge Kline's February 1999 Opinion, He signed the records in March 23, 1999 and return Appellant back to Attempt 3rd Degree Murder charge and not Attempt Homicide, and again, without notice or chance to challenge, Armstrong v. Manzo, 380 US 548, 551-52, 65 S.Ct 1187 (1965). Trial court Judge Kline finally set the Jurors verdict aside (presumably) in August 10, 2000, and in another 1925 Opinion where he again held, without notice or chance to contest that Appellant is convicted of Attempt Homicide, Id.R.9a; causing him substantial prejudice, Id. Blakely, Armstrong, Supra Infra.

In causing Appellant prejudice, the trial court took liberties with Appellants case without his knowledge, without notice and without the security of the Jurors and did strike the non-cognizable charge Attempt 3rd Degree Murder and in turn the jury verdict on this charge. None of the outcomes to trial Court judge Kline actions furthered Appellants interests or protected his fundamental due process rights to be tried and convicted of a cognizable offense, rather, the trial court took action beyond power conferred on it by law (its jurisdiction), and its actions is a nullity and objections cannot be waived. Commonwealth v. Hall, 291 A. 626, 631 (Pa. 1928). This fundamental error requires a new trial or that the charge be held void and/or set aside, Supra Infra, Bond, Fiore, Blakely, Armstrong, and Spruill, 80 A.3d @ 462.

Both trial court judge(s) Kline and Brabender Jr. issued a 1925 Opinion as shown on the record and [Id.R.45a, R.46a & R.57a.] yet there are no 1925 Opinions mentioned during Brabenders' review of this case, [Id.R.75a, R.77a-R.80a, R.86a-R.87a], not until R.88a, that made July 26, 2016, Order a 1925 Opinion, Id.R.77a-R.80a., an act not known to Appellant and probably the Commonwealth. In this case, the trial court- Erie judge's ruling was the product of manifest unreasonableness to be clearly erroneous as their reliance on Judge Brabenders duty to issue an Order as opposed to an Opinion is negated on the record. In causing prejudice to Appellant, a "trial courts 1925 Opinion is intended as an aid to the reviewing appellate courts and cannot alter a previously entered verdict," Commonwealth v. Lobiondo, 426 A.2d 662, 665, n.4 (Pa. 1983)(quoting Commonwealth v. Dunn, 385 A.2d 1299, 1301 (Pa. 1978))(Holding, Courts are compelled to reject such alterations to the original verdict made), See also: Id.R.7a., R.58a @ 3(c).

As the verdict itself is infirm, there was no need for the trial court-Erie Judges to bring forth matters that occurred in 2016-2017 litigation as the court has the power to effectively undo and set aside an unlawful conviction and sentence. The present Order on appeal deprives Appellant of due process on its own and constitutes an error of law.

(ii) COMMONWEALTH CONCESSION TO APPELLANT CLAIMS

Appellants one piece of evidence that opens this case is from Prosecutor Ditzler in June 2, 2006, in response to His Federal Writ of Habeas Corpus, where it was stated that: "Sierra as convicted of Attempt 3rd Degree Murder argues correct, [and] the Commonwealth does not have a Statute for what he has been convicted of," Id. R.34a, R.63a. These statements caused prejudice to Appellant as Ditzler was in direct conflict with First Assistant District Attorney –Prosecutor Gettle, and her statements that : "there is no charge as third degree attempt murder," Id.R.33a, R.63a. This as stated to the Superior Court on August 2, 2004, [593 MDA 2004], was accompanied by stating "Appellant should have preserved this claim in his first PCRA claim of ineffectiveness". Id.

In **Bond**, the Court held "[a] conviction under an [unconstitutional] law is not merely erroneous, but is illegal and void an cannot be a legal cause of imprisonment.... For this reason, a court has no "prudential" license to decline to consider whether the Statute under which the defendant has been charged lacks constitutional application to h[im], 564 US @ 227, (Justice GINSBURG concur)(quoting Ex Parte Siebold, 100 US 371, 376, 25 L.Ed 717 (1879)). In **Siebold**, The Supreme Court disagreed with Appellant that Congress could not have enacted the laws at issue, but in discussing its jurisdiction asserted,: "the validity of the judgment is assailed on the grounds that the acts of Congress under which the indictment were found are unconstitutional. If this position is well taken, it affects the foundation of the whole proceedings. An unconstitutional law is void, and is as no law. An offence created by it is not a crime. A conviction under it is not merely erroneous but is illegal and void., Siebold, 100 US @ 376.

Appellant asserts that his Federal due process rights are violated because he was found guilty under an unconstitutional law, many government officials and officers known or have reasonable knowledge of this injustice for over 16 years to date, refuse to do anything about and because in a prejudicial deprivation, He learns for the first time Attempt 3rd Degree murder does not have a Statute.

As Appellant could not challenge Defendants interpretation of facts as they were based on events that had not yet occurred, and the District court for the Middle District denied His erroneous Writ of Habeas Corpus pursuant to 28 USC § 2254, although the claim was not ripe at the time the first writ was adjudicated, Panetti v. Quarterman, 551 US 930, 944, 127 S.Ct 2842 (2007), Id.R.64a; It is these statements from the Commonwealth as the Prosecutors that render all actions by Defendants to date as Unconstitutional, prejudicial to Appellant and void. Id. R.61a-R.63a, R.8a-R9a.

When with their statements, all of Defendants acts are brought into question as to the fairness of Appellants process from trial to an alleged sentence to being placed under a commitment and incarceration, the overall effect is to deprive Appellant of Due Process in every court of justice he applies for relief. His claims stand without a process as the evidence brought together with no Sentencing and no Commitment Orders exist Id. R.35a-R.36a & R.64a, makes the Prosecutors statements much greater not to be subject to contest as a matter of law; "a warrant of commitment departing in matter of substance from the judgment back of it is void, Hill v. US.Ex Rel Wampler, 298 US 460, 465, 56 S.Ct 760 (1936); A "verdict without a judgment in a case like this is of no validity[fn.1], Smith v. McCool, 83 US 560, 561, 21 L.Ed 324 (1873); Id.R.59a.

1: During the 2016-2017 litigation the court and Defendants had rejected Appellants claim on his exact evidence to (sic) "accept the immediate and unconditional surrender....currently ensconced in this Courts jurisdiction, to be brought before the judge to answer questions, present evidence and to the effects herein...." See **Prerogative Writ on March 16, 2016**, at CCP-Erie, Dkt **No. 10808-2016**, pg. 17-18. Here, at the time of the petition "[t]he commitment was neither better nor worse because of the ruling of the judge that he would let it stand as written. If void, it was still void, if valid, it had received no accession of validity. Id. ***Wampler***, 298 US @ 467. The writ of habeas corpus searches the record back of the commitment. It lays a duty on the Court to explore the foundation and pronounce them true or false," Id.

Defendant Ditzler also made statements that were misleading, like that Appellant created the charge to avoid a harsher punishment; Id.R.8a, R.34a, R.63a. In addition, Defendants at all times to litigation the facts to this petition have stated that Appellant is (1) incarcerated on Attempt Homicide, (2) he was attempting to limit liability by keeping the charge as a "lower" grade, (3) there is no known law which would provide Appellant any relief or support the complaint He brings on the information brought by the Commonwealth and (4) that this cause of action should be dismissed as utterly without merit, Id.R.65a-R.66a, R.62a.

As appellant is prejudiced by the fact he did not obtain proper notice to begin process, the facts that he is deprived the free flow of information and due process after the fact does not divest the court of the main point at issue, ***Armstrong, Bond, Siebold***, Supra Infra., the main point to his crying now is that whatever the issue with his evidence, whether right or wrong, "the articles should have stood or fallen under the only title it could honestly have been given,"-

Hazel Atlas Glass Co. v. Hartford Co., 322 US 238, 242, 64 S.Ct 997 (1944).

(a) APPELLANTS ALLEGED CHARGE

The trial transcripts disclose that Lawyer Kelsey was attempting to reasons from th crime codes and sentencing guidelines on whether there wa a charge as Criminal Attempt to Commit Criminal Homicide, [herein "Attempt Homicide,"], Kelsey said: "There is no such crime," yet, he wanted to placed something on the record. Id.R.38a-R.39a. The Prosecutors took issue with this assessment and began to oppose the conversations and rulings between Kelsey and trial court Judge Kline, in their induced government plea agreement, Id.R.39a-R.40a. In their objection, Prosecutor Arnold /Charles stated that all they were asking "as in a regular homicide case, you charge general homicide, and then you select the grade as you go later. Same thing with an Attempt Homicide, we are asking for an instruction to the Jury on Attempt third Degree murder, and that is it," Id.R.40a.

Kelsey, satisfied that Prosecutors sought charge, moved to amend on "your information to call for Attempt 3rd Degree Murder as the charge instead of Attempt Homicide," Id.R.40a.-R.41a. Judge Kline satisfied Kelsey, Arnold and Charles had an agreement convinced Lawyer Wynne to concede on the information so that he could say "Criminal Attempt to Commit Criminal Homicide, 3rd Degree Murder;" and Wynne conceded. Kelsey moved to physically remove Attempt Homicide from all the information to call for ***Attempt 3rd Degree Murder***, Id.R.40a-R.41a, R.63a, R.8a.

Appellant is prejudice as trial court judge(s) [and Kline] are not impartial to Him or his plight on this plea agreement and all processes after. The trial courts honesty is seriously questioned when (1) attempting to read an information for a charge not recognized in Pennsylvania, for (2) claiming Appellant was looked for this charge /to lower its degree, and after trial, (3) covering up the charge, Id. R.44a-R.47a., It is fundamentally erroneous and bias or bias per se, as it was Prosecutors that sought Attempt 3rd Degree Murder, IdR.40a., Appellant had no say in this process. Withrow v. Larkin, 412 US 35, 47, 95 S.Ct 1456 (1975).

(b) THE NO LONGER COVERED CHARGE

In this case, the trial court judge(s) [including Mr. Kline] has never stated Appellant convicted of Attempt 3rd Degree Murder rather, Attempt Homicide, knowing or with sufficient reasonable knowledge what his incarceration is and rather that clear the record, they remove "third degree" from between "Attempt Homicide" and proceed with denying Appellant relief. This is unconstitutional, erroneous, and prejudice Appellant. In ***Kulik***, a new trial was grated because the trial judge inserted the word "not" between the words "do" and "have" in one part of the charge, Id. 216 A.2d 73, 74 (Pa. 1965). In ***Young***, 317 A.2d 258 (Pa. 1974), the trial judge did not merely insert a single word., but rather, sought in his opinion to add an entirely new dimension to his charge on reasonable doubt, Id. @ 265. The Young court held that this case presented manifold prejudice and reversed the trial court granting a new trial. Id.

Although Appellant respectfully reminds the Court that this appeal is due to the trial court Judges various erroneous denial of his Ifp-motion, these actions as a whole deprive him a right to a disinterested adjudicator. The presumption of honesty and integrity is shattered by the unfair process Appellate has to undergo to litigate and obtain relief and in this, the "judicial misconduct distinguished from "personal interests" resulted in an impermissible judicial bias that deprived Appellant of a fair trial," Allen v. Hawley, 74 Fed. Apx. 457, 459-60 (6th Cir. 2003)(concept of judicial bias addressed).

(c) INTENT vs. MALICE

In Appellants trial on September 11, 1999, trial court Judge Kline instructed the Jurors that they could find Mr. Sierra guilty of Attempt 3rd Degree Murder if the commonwealth proves that first, Jose Ortiz, Anthony Miles and David Baker ***are dead*** if the third degree murder had occurred. Second , that the Defendants ***killed them***. And third, that the Defendants ***did so with malice*** [fn.2]. The trial court then explained malice as:

> [t]he word malice as I am using it, has a special legal meaning. It does not mean simply hatred, spite or ill will. malice is a shorthanded way of referring to three different mental states that the law regards as being bad enough to make killing murder. Thus, a killing was malice if the killer acted with: First, an intent to kill, or second, an intent to inflict serious bodily harm, or third, a wickedness of disposition, hardness of heart, cruelty, recklessness of consequence, and a mind regardless of social duty, indicating an unjustified disregard for the probability of death or great bodily harm, an extreme indifference to the value of human life, a conscious disregard or an unjustified and extremely high risk that his actions might cause death or serious bodily harm[fn.3] .

2: Tr. 753

3: Tr. 754

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The trial court therefore instructed the Jurors that they could find Appellant guilty of Attempt 3rd Degree Murder if the Commonwealth proved that He committed the offense of attempt murder. Pennsylvania law does not recognize the offense of attempt 3rd degree murder, Id. R.10a (quoting Federal and State Law holding there is no such charge as Attempt 3rd Degree Murder).

Malice is the essential element of murder and is the difference between murder and manslaughter, Commonwealth v. Cruz-Centeno, 668 A.2d 538, 539 (Pa.Super. 1995). First degree murder is recognized by the characteristic that it's a specific intent crime, Commonwealth v. Blackeny, 946 A.2d 645, 652 (Pa. 2008), but not third degree murder. And, yes, it requires an intentional act, but not an act defined by Statute as ***an intentional murder***.

> [E]vidence of intent to kill simply is irrelevant to third degree murder. The element of third degree murder absolutely includes an intentional act, **but not an act defined by the Statute as intentional murder.** The act sufficient for third degree is still a purposeful one, committed with malice, which results in death [.]
>
> Commonwealth v. Fisher, 80 A.3d 1186, 1191 (Pa. 2013)(emphasis added).

Attempt third degree murder is therefore not a cognizable offence under Pennsylvania law. Commonwealth v. Weimer, 977 A.2d 1103, 1112, (Pa. 2009). Moreover, "attempt" is a specific intent crime, cf. 18 Pa.C.S. § 901 (a *"person commits an attempt when with intent to commit a specific crime he does any act which constitutes a substantial step towards the commission of that crime.*"). The only degree or murder seemingly worth of belief under title 18 Pa.C.S. § 901, is attempt first degree murder because first degree murder is a specific intent crime. Despite this clearly established law, trial Court judge Kline gave the jurors a defective murder instruction, Id.R.65a, R.10a-R.12a.

In this, by allowing the jurors to base its third degree attempt murder verdict on specific intent and malice (in the absence of specific intent), the trial court made it far more easier for the Commonwealth to obtain a murder conviction and substantially increase the likelihood the jury would and did convict Appellant on a non-cognizable charge. Neither outcome further Appellants interests or protects his fundamental due process rights to be tried and convicted of a cognizable offense if so charged.

Trial Court have broad discretion in phrasing and wording jury instructions, and a duty to convey the law "clearly, adequately and accurately[.]" Commonwealth v. Hawkins, 701 A.2d 429, 511 (Pa. 1997). A proper jury instruction is fundamental to our adversarial system of criminal justice, Commonwealth v. Saunders, 602 A.2d 816, 818 (Pa. 1992). If the trial court inaccurately explains the law, particularly the elements of a charging offense, the misstatement of law constitutes reversible error if the misstatement constitutes a fundamental error or the record is insufficient to determine whether the error affected the verdict. Tincher v. Omega Flex, 104 A.3d 328, 351 (Pa. 2014).

In this case sub judice, the trial courts have prejudice Appellant as (1) the defective jury instruction represents a fundamental error of law and (2) Prosecutors Ditzler and Gettle have determined that the Commonwealth does not have a Statute for Attempt 3rd Degree Murder. This instruction affects the jurors verdict to find Appellant committed a non-cognizable / non-criminal charge under a law that is unconstitutional, ***Siebold, Bond***, Supra Infra.,. If nothing else, the power of the court became "***functus officio***" before the new act was performed and jurisdiction had absolutely ceased, Hall v. Ames, 182 F. 1008, 1013 (1st Cir. 1910)(quoting (inter alia) Williamson v. Berry, 49 U.S. 495, 540-41, 12 L.Ed 1170 (1850)), **Hall**, 291 A. @ 628; Id. R.10a., This fundamental error requires a new trial or as Appellant request relief -to vacate and set aside the unconstitutional charge, Id.R.23a-R.14a.

An error is fundamental if it" deprives a defendant that fundamental fairness essential to the very concept of justice, and denies him due process of law guaranteed by the Fourteenth Amendment, Commonwealth v. Williams, 248 A.2d 301, 304 (Pa.Super 1968); **Armstrong**, Supra. Infra.

The trial courts Attempt 3rd Degree Murder instruction constitutes a fundamental error of law causing prejudice to Appellant. It is fundamental due process that the Commonwealth cannot charge a person with a non-cognizable, non-criminal charge and jurors cannot be oppressed with the great labor of determining whether Appellant committed this charge, *Bond, Siebold, Blakely*, Supra. Infra., As the United States Supreme Court states in [a discrimination case of licensing over cotton gin] at Frost v. Corporation Commission, 278 US 515, 527, 73 L.Ed 483 (1929) :

"***We suppose it clear, that no law can be changed or repealed by a subsequent act which is void because unconstitutional. . . . An act which violated the Constitution has no power and can, of course, neither build up nor tear down. It can neither create new rights nor destroy existing ones. It is an empty legislative declaration without force or vitality.*** (citing cases).

When trial court Judge Kline committed himself to charging Attempt 3rd Degree Murder, and then giving the jurors an instruction on this charge, Judge Kline rendered the entire trial unfair by setting the jurors to fail in their Constitutional duty after Appellant found and the Commonwealth declared there is "no Statute for Attempt 3rd Degree Murder." This is what occurred when (1) the information was changed from Attempt Homicide to Attempt 3rd Degree murder, and (2) trial court defective instruction (a) permitted Jurors to consider whether Mr. Sierra committed a non-cognizable charge and (b) the real possibility that jury convicted Appellant for a non-cognizable/ non-criminal charge, although these matters are "void because unconstitutional," Id. ***Frost, Siebold, Bond***, Supra Infra.,.

Likewise, the record is insufficient to determine whether the trial court judge demonstrated actual bias, an appearance of partiality or judicial bias. Trial Court Judge Kline made a fundamental error and unfair considering the facts of this case, but the issue is not with Judge Kline, rather, on the Prosecutors and Lawyers at the time convinced him to select Attempt 3rd Degree Murder, when it was already established law there is no such crime. ***Griffin, Williams***, Supra Infra.,

This is why when taking into account Judge Klines' action in vacating the charge twice without giving notice or chance to contest, a fact that he became aware of during the 2016-2019 term of litigation, Id.R. 9 a., there is simply little to no record of "why," exactly "what" occurred, who(m) were the parties (at the time it was decided) and that brought Appellant to question the Administration of Justice (i.e., changing the charge, choosing to keep it from me, placing false and misleading statements on records and giving it to other courts, inducing them to find against me, withholding the free flow of information and due process at all times I attempted to litigate in good faith and hard pressed deprivation).

Put differently, the record is insufficient to determine whether [and who, how many times, when, where, why] Defendants got together (and if at all conspired to the detriment of Appellants case), to challenge Appellants claims whether with false, misleading and concealed information, statements and/or evidence, Id.R.1a-R.14a., R.60a.-R.67a. In these situations, the fundamental error of that deprives Appellant a fair trial, extending to his appeal and requires reversal., Id. ***Armstrong***, 380 US @ 552 (fundamental is the opportunity to be heard in a meaningful time and manner); ***Young***, 317 A.2d @ 264 (Appellate review has become such an integral part of the criminal procedure that it may be properly viewed as an extension of the trial itself)(quotations omitted). It is these fundamental errors that requires a new trial or as Appellant request relief -to vacate and set aside the unconstitutional charge—Attempt 3rd Degree Murder.

DC-138

Rev. 4/2012

No. 12719-2019

COURT OF COMMON PLEAS OF ERIE COUNTY

PENNSYLVANIA

COMMON PLEAS COURT
ERIE, PA
2019 OCT -3 AM 8:23
CLERK OF RECORDS
PROTHONOTARY

MR. ANTONIO SIERRA, Ph.D., Pro Se

PLAINTIFF

VS.

MR. JACK DANERI, D.A., MICHAEL CLARK- WARDEN, TAMMY WHITE -MAIL ROOM SUPERVISOR, SAMUEL KLINE- JUDGE, JOSH SHAPIRO- A.G., COMMONWEALTH OF PENNSYLVANIA, Et Al,

DEFENDANTS

MOTION FOR POST CONVICTION COLLATERAL RELIEF

¶. LIST BELOW THOSE INFORMATION OF INDICTMENTS & OFFENSES FOR WHICH YOU HAVE NOT COMPLETED YOUR SENTENCE

INFORMATION OR INDICTMENT NUMBERS.

ACTION NO. 10808-2016 -C.C.P. ERIE COUNTY

ACTION NO. 2013-02357 -C.C.P. LEBANON COUNTY

ACTION NO. 98-11239 -C.C.P. LEBANON COUNTY

¶. I WAS CHARGED OF THE FOLLOWING .

CRIMINAL ATTEMPT TO COMMIT CRIMINAL HOMICIDE THIRD DEGREE MURDER

[OR] ATTEMPT 3.RD DEGREE MURDER, See. Exhibit.C (C.1-2) inter alia.

/S/ _____, Ph.D., PRO-SE

/P/. ANTONIO SIERRA, ID.#. DV-0586

SCI-ALBION-1075 STATE ROUTE 18

ALBION PA 16475 -

App F.1

R.1a

COMMON PLEAS COURT
ERIE, PA
2019 OCT -3 AM 8:23
CLERK OF RECORDS
PROTHONOTARY

1. MY NAME IS: Antonio Sierra, Ph.D., Pro-Se
I am from the State of New York, BRONX, N.Y. 10460

2. I am Now: (c) confined in SCI ALBION | (d) Residing at 10745 State Route 18, Albion Pa 16475

3. I WAS not SENTENCED to a total term of imprisonment by the trial judge- Samuel A. Kline, J., of the Court of Common Pleas of Lebanon, Pa.

Following A: Trial by Jury

4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

I. A violation of the Constitution or laws of the United States which, in the circumstances of the particular case so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place

5. I AM ELIGIBLE FOR RELIEF BECAUSE, ALTHOUGH THIS PCRA PETITION IS BEING FILED MORE THAN ONE YEAR AFTER THE ALLEGED DATE OF FINAL JUDGMENT, I HEREBY ALLEGE AND CAN PROVE THAT THE FOLLOWING EXCEPTION HAS BEEN MET :

(i). My failure to raise this claim previously was the result of interference by government officials with the presentation of the claims in violation of the Constitution and laws of the United States. I intend to prove my claim was late due to governmental interference by showing:

1. The government, by way of the Department of Corrections –SCI. Albion unlawfully seized incoming privileged correspondence with no probable cause and where Plaintiff represents an illegal charge is detaining him without due process of law, impeding the due course of justice. See Commonwealth vs. Cox, 204 A.3d 371, 391 (Pa. 2018), Commonwealth v. Albrecht, 994 A.2d 1091, 1095 (Pa. 2010).

2. Without probable cause or any justification whatever, SCI-Albion Defendants Mr. Michael CLARK-WARDEN and Ms. Tammy TURNER (Mail Room Supervisor) and others not presently known by plaintiff, intentionally agreed to, and did introduce false, misleading and concealing statements and information about:

A. plaintiff informed how department is to dispose of original privileged mail and

B. failing to admit to evidence plaintiff has provided on the illegal charging offense and illegal sentence

3. As a result of defendants intentional and malicious confiscation of plaintiff mails, He is

A. deprived without cause from accessing correspondence address to him

B. deprived on or about eight to nine month and/or up to defendants Notice regarding disposition of incoming correspondence as verified received September 10, 2019

C. detained without probable cause on fabricated evidence where it is more likely than not, the false information provided on plaintiff incarceration for Attempt third Degree Murder is used to deprive liberty without due process of law. As it was but for cause of the alleged deprivation that produced false and misleading information, and often times concealed statements to the same effects; plaintiffs incarceration on the non-criminal charge Attempt 3rd Degree Murder is unconstitutional, wrongful and defendants committed fraud and upon the Court.

4. Defendants Clark, White and/or others unknown to plaintiff had knowledge or had they diligently exercised their duties, should have knowledge plaintiff evidence fairly establish the truth determining process was so undermined that no reliable adjudication of guilt or innocence could have taken place

5. By means of these wholly unfounded Seizures, defendants Clark and White directly cause plaintiff personal and legal injury. Said defendants refused and/or ignored to complete the release form of Correspondence when duly requested to do so by plaintiff, and thereby defendants actions and conduct is in violation of the First and Fourteenth Amendment to the Constitution of the United States in several respects, including taking action to deprive plaintiff of possession, use and enjoyment of his mails for about the time so stated herein (above).

6. Defendant Clark, White and/or others not presently known to plaintiff, cause this evidence by Notice to appear, yet without the actual privileged correspondence. The notice goes on to provide two options for selection on the disposition of correspondence and thereby means to trick plaintiff in giving up his rights intentionally.

7. By means of confiscation, false and misleading statements and unlawful detention, Defendants Clark and White intentionally or with deliberate indifference and callous disregard of plaintiff rights deprive plaintiff of his right to be free of unreasonable seizure in violation to the Fourth and Fourteenth Amendment to the Constitution of the United States and 28 USC § 2241(c)(3)

8. Defendant Clark, White and such other(s) [herein "Officers or Officials" for convenience], acting both individually and in concert, refused to initially send the none articles of correspondence of legal character back to plaintiff, and as a direct and proximate cause of such refusal and/or ignorance, none of said letters was ever received by the addressee and plaintiff, Antonio Sierra.

9. Defendant Clark, White and/or Officers or Officials acting both individually and jointly, failed to mail a considerable amount of correspondence which war properly submitted to them for mailing during the period of this incarceration at SCI- Albion where various pieces of mail dealt with legal and personal matters and none threatened, contemplated or included plans for any criminal activity, threated or posed any clear and present anger of physical harm of violence to any person; none were obscene or written in any form of code. Said mail as un-received and held captive by Defendants as dated August 29th and issued September 10, 2019 includes but is not limited to the following:

A. Correspondence/ Response by Commonwealth Court of Pa. of 14 JAN. 2019

B. Correspondence/ Response by ACLU of 17 JAN. 2019

C. Correspondence/ Response by Supreme Court of PA, {CLERK} of 22 JAN. 2019

D. Correspondence/ Response by Supreme Court of Pa, of 28 JAN. 2019

E. Correspondence/ Response by U.S. Court of Appeals 3rd Cir. of 11 FEB. 2019

F. Correspondence/ Response by Commonwealth Court of Pa. of 18 MAR. 2019

G. Correspondence/ Response by ACLU –Eastern Region, of 1 APR. 2019

H. Correspondence/ Response by U.S. Supreme Court, of 3 APR. 2019

10. Correspondence above [i.e. 5.9], failed to reach plaintiff, and as a proximate result of interference by Defendants Clark, White, Officers and/or Officials acting both individually and on a concerted action, each said Defendant acquiesced, condoned, encouraged and assisted the actions of the others in a deliberate effort to single out Plaintiff for harsh, arbitrary and discriminatory treatment with regards to correspondence, in knowing disregard of applicable prison mail regulations in effect as set forth in title 37 P.S. 93.2. Said correspondence was in fact permitted by mail regulation despite Central Office officers affirming "curtail[ing] mail ...[with] "many process being reviewed or altered as necessary..." This submitted on December 7, 2018, received January 9, 2019 and again as submitted March 13, 2019.

11. Defendant did both, individually and in pursuance of a common plan or design deliberately single out Plaintiff for harsh, arbitrary and discriminatory treatment with regard to his correspondence and incarceration, in knowing disregard to the fact that plaintiffs constitutional rights were thereby violated.

12. The malicious seizure placed against plaintiff by the Defendants Clark, White, Officers and/or Officials, and further, the tortious acts in producing false and misleading information to deprive civil rights in free speech, due process and due course of justice is as a proximate result prejudice to Plaintiff and deprived his liberty and property in violation to the First, Fourth and Fourteenth Amendment to the Constitution of the United States and 28 USC § 2241(c)(3).

(ii) The facts upon which the claim is predicated were unknown to the Plaintiff and could not have been ascertained by the exercise of due diligence. The following facts were previously unknown to me:

1. All the correspondence described above that failed to reach plaintiff and dated August 29, 2019 is verified served September 10, 2019, on plaintiff. A copy of said mail appears as Exhibit A (A.1-A.8)

2. Defendants herein named have further seized plaintiff privileged correspondence, affirmed such seizure and in continual wrong include prejudicing plaintiff mailings by:

A. U.S. Court of Appeals, 3rd Circuit, for September 14, 2018- confiscation No. B.727296

B. U.S. Supreme Court for September 18, 2018- confiscation No. B.727972

C. Supreme Court of Pa., for September 27, 2018- confiscation No. B.727978

D. Pa.Doc. Central Office affirm, December 7, 2018, rec'd 1/9/29 at #. 760951

E. Pa.Doc. Central Office affirm, March 13, 2019, at #. 759674

F. Actions as found in Grievance –no confiscation given. As these mails are seized by named defendants, a copy of said mail appears as Exhibit B. (B.1- B.5)

3. Other articles of evidence showing plaintiff intentionally kept from knowing about illegal incarceration, it effects on the 1998-Jury and possible fraud and upon the Court by named Defendants is provided as:

A. August 2, 2004 –concession by Government Prosecutor, Exhibit C.1

B. June 2, 2006 –concession by Government Prosecutor, Exhibit C.2

C. September 16, 2013 –concession by Government Lawyer –Pa.Doc, RTKL, Exhibit C.3

D. October 1, 2013 –concession by Government Records, Pa.DOC, -Albion Exhibit C.4

E. September 11, 1998 Trial Transcripts –CCP-Lebanon Exhibit C.5 –C.11

F. February 17, 1999 –concession by Government Trial Judge, Exhibit C.12-C.13

G. August 10, 2000 –concession by Government Trial Judge, Exhibit C.14- C.15

4. These other articles of evidence as intentionally withheld by the Defendants herein named caused plaintiff prejudice while the factual predicate has not yet matured to make claims ripe for review.

5. As a direct and proximate result of Defendants actions, plaintiff have been harmed and injured. Plaintiff have failed to represent the truth about plaintiff incarceration and at time conceal the truth all together, depriving plaintiff of his Constitutional and statutory rights where the U.S. District Magistrate Judge, (now District Judge) statements of August 3, 2017, relied on false and misleading statements by Defendants to a Constitutional degree of prejudice.

(iii) The right asserted is a Constitutional right that was recognized by the United States Supreme Court after the time period provided in this section and have been held by that court to apply retroactively:

1. In Fiore vs. White, the Court asked "[w]hether Pennsylvania can, consistently with the Federal Due Process clause, convict for conduct that its criminal statute, as properly interpreted does not prohibit." 531 US 225, 228, 121 Sct. 712 (2001)(per curium). The Court held that Fiore' conviction failed to satisfy the Federal Constitutions demands, Id. 229.

2. In Montgomery vs. Louisiana, 136 Sct. 718, 193 L.Ed.2d 599 (2018), the Court held that when a new substantive rule of Constitutional law controls the outcome of the case, the constitution requires State collateral review courts to give retroactive effect to that rule. Id. at 729. See also: Teague vs. Lane, 489 US at 301 ([A] cause announces a new rule if the results was not dictated by current precedent existing at the time and defendants conviction became final. (emphasis in original).

3. As Fiore retroactive issue need not awaits a case law to decide its retroactivity, State law must retroactively apply this new criminal rule to State law, Guzman v. Greene, 425 F.Supp.2d 298, 317 (2nd. Cir. 2006)(SDJ. BLOCK); And as Montgomery declared its decision retroactive, the case in itself is not ill fitted for application to the present case at bar, See: Commonwealth vs. Abdul-Salaam, 812 A.2d 497, 501 (Pa. 2002).

---

6. THE FACTS IN SUPPORT OF THE ALLEGE ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS: [Please excuse cases cited, it could not, with all due respect be helped].

A). I know the following facts to be true of my own personal knowledge:

I. Prosecutor Gettle should have not been allowed to concede there is no charge as Attempt 3rd Degree Murder, and then take issue with Counsels effectiveness for various reasons:

A. First, the Sixth Amendment is held as limiting court powers that "infringe on the province of the jury powers." Blakely v. Washington, 542 US 296, 308, 124 Sct 2531 (2004).It follows that no judge can impose punishment were the jury verdict alone does not allow or have not found all the facts which the law makes essential to the punishment. Id. 304. In this present case, the evidence show the trial Judge vacated Attempt 3rd Degree Murder twice, rendering it void and without notice or chance in plaintiff to contest. Here, the State procedure did not comply with the Sixth Amendment and such procedure is rendered invalid as a matter of law. Id. at 305.

B. It is well established law the legislature and not the courts are whom define a crime and ordain punishment. U.S. v. Wiltoerger, 18 U.S. 76, 95, 5 L.Ed 37 (1820). Here, where the trial court attempts to enter a different verdict than that entered by a jury, the Courts are compelled to reject such alterations to the original verdict made, Commonwealth v. Dunn, 385 A.2d 1299, 1301 (Pa. 1975), Commonwealth v. Reading, 603 A.2d 197, 201 (Pa.Super 1991)(citing Dunn). See, Frost v. Corporation Commission, 278 US 515, 522, 73 Sct 485 (1929)("Immunity to one from a burden imposed upon another is a form of classification and necessarily results in inequity ... unreasonable and arbitrary

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	Action No. 97-11239
	:	No. 97-11240
	:	No. 97-11241
v.	:	
	:	
~~ANTONIO SIERRA~~	:	
DAVID SIERRA	:	
SAMUEL SIERRA, JR.	:	JURY TRIAL

TRANSCRIPT OF PROCEEDINGS

September 8 - 11, 1998

COURTROOM NO. 3

BEFORE
HON. SAMUEL A. KLINE,
JUDGE

VOLUME IV

APPEARANCES:

BRADFORD H. CHARLES, ESQUIRE
and
DAVID ARNOLD, ESQUIRE
For - Commonwealth

THOMAS K. WYNNE, ESQUIRE
For - Antonio Sierra

JOHN R. KELSEY, III, ESQUIRE
For - David Sierra

CHARLES T. JONES, JR., ESQUIRE
For - Samuel Sierra, Jr.

COPY

REPORTED BY:
MARY ANN ALLWEIN,
OFFICIAL COURT REPORTER

EXHIBIT C5
Page 1 of 2019

TRIAL CONTINUED

Friday
September 11, 1998

(The following discussion occurred in chambers:)

MR. KELSEY: I haven't put too much effort into this, but I did look and notice that I couldn't find anything, whether it was sentencing guidelines or charging or anything about Criminal Attempt to Commit Criminal Homicide. There is no such crime.

Everything I saw was Criminal Attempt to Commit First Degree Murder, Criminal Attempt to Commit -- and so on -- and Voluntary Manslaughter, Involuntary Manslaughter.

There is no such thing as Criminal Attempt to Commit -- however, Criminal Homicide includes all of those, including Voluntary -- Involuntary Manslaughter.

I am concerned that there is no such crime as Criminal Attempt to Commit Criminal Homicide. I know that you charge Criminal Homicide for a killing, and then determine what the grade is later. But I don't -- but in this --

THE COURT: And they are not being required to grade the offense --

MR. KELSEY: In the sentencing guidelines

EXHIBIT C.6
PCRA OF 2019

Ref: 874777 Pg 100 of 129 for ANTONIO SIERRA

there is a -- sentencing guidelines provide for gradation, depending upon whether it is a Criminal Attempt to Commit First Degree Murder, Second Degree Murder, Third Degree Murder or Voluntary Manslaughter. Each of those has a different sentencing guideline amount and is a separate criminal offense.

THE COURT: Well, let me ask you this question then, if the District Attorney is requesting third degree, I will rule as a matter of law now that it could be no higher than third degree. Does that address your issue?

MR. KELSEY: Well, I don't know if it does or doesn't, because I have not had more than a few minutes to think about it.

THE COURT: I understand. The only other thing that I could do would be to read Voluntary and Involuntary.

MR. CHARLES: I am not asking that. I am asking only for --

MR. KELSEY: I am just throwing it out, because I want something on the record.

THE COURT: Let me make it very clear, in the event that that charge is convicted, I will not sentence -- cannot and am barred from sentencing any higher than what the guide would be for Third Degree

EXHIBIT C-7
PCRA 2014

Ref: 874777 Pg 111 of 129 for ANTONIO SIERRA

Murder. And the Jury can't either, obviously.

MR. KELSEY: And I am not even sure if you charge that if you're not going to be prohibited from sentencing above what Voluntary Manslaughter would be, I just don't know.

MR. CHARLES: I don't agree with that at all. I am asking, as in a regular homicide case, you charge general homicide, and then you select the grade as you go later.

Same thing with an Attempted Homicide, we are asking for an instruction to the Jury on Attempted Third Degree Murder, and that is it.

THE COURT: Do you need any other instructions?

MR. KELSEY: Well, maybe that is -- maybe you should amend your Information to call for Attempted Third Degree Murder as the charge, instead of Attempted Criminal Homicide.

MR. CHARLES: If you want to designate it that, that is fine with me, that is a matter of semantics. That is what we are asking.

THE COURT: Attorney Wynne -- that is up -- if you stipulate, on the Information I will say Criminal Attempt to Commit Homicide, Third Degree Murder.

Exhibit C-8
PCRA of 2019

MR. CHARLES: That is fine with me.

MR. KELSEY: That solves the problem.

THE COURT: And then I am going to give a charge --

MR. KELSEY: I would also request that you change that on the Information, so that -- well, let me put it right here, Criminal Attempt to Commit Criminal Homicide, Third Degree. I will put it right on every one.

MR. CHARLES: That is fine.

MR. KELSEY: I have another thing I want to put on the record while you are doing that, and I don't know -- the only reason I am doing this is because I am not sure. It would be my request to have the charge of failure to call a potential witness.

My -- you had mentioned that the reason that that was not going to be allowed was because of the availability of a witness. I would merely state that for the purposes of the record that the witness, Carol Diaz, was not called by the Commonwealth, was subpoenaed by the Commonwealth. She testified at the preliminary hearing on behalf of the Commonwealth.

And if we were to call her, I believe that she might have some 5th Amendment Rights that would have prohibited her from being available. And that is

EXHIBIT - C9
PLEA of 2019

why I say that she may not be available. It is because she would have those 5th Amendment Rights not to testify, if called.

THE COURT: Let me rule this way, though I understand your argument, it still does not -- I still do not agree, because unavailability is at the time of trial, and those facts were not before me.

You did not subpoena her, there was no testimony put on or evidence from any party that she was truly unavailable. And I do not believe that unavailability -- if you invoke the 5th Amendment, then I would address that issue, but it was not done. She was not subpoenaed, so therefore, I won't grant that request.

(End of discussion in chambers.)

CHARGE OF COURT

THE COURT: Good morning, ladies and gentlemen. It is now at this juncture that I will instruct you on the law. Let me give you a little bit of a preface, however, in this particular case, because I don't want inquiring minds to say, why, Judge Kline, can't we take this and read it?

Very simply, the Pennsylvania Supreme Court has recently again, but very clearly said that you are not allowed to take notes. And we, as Judges, are not

EXHIBIT G-10
PCRA of 2019

I hereby certify that notification of filing the within transcript of testimony was given to counsel of record this 23rd day of March, 1999.

I hereby certify that the proceedings are contained fully and accurately in the notes taken by me on the hearing of the above cause, and that this copy is a correct transcript of the same.

MARY ANN ALLWEIN,
Official Court Reporter

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

SAMUEL A. KLINE, J.

EXHIBIT C.11
PCRA-OR-2019

000396

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	**No. 1997-11239**
ANTONIO SIERRA, Defendant	:	

APPEARANCES:

BRADFORD H. CHARLES, Esquire — Attorney For the Commonwealth
District Attorney of Lebanon County

THOMAS K. WYNNE, Esquire — Attorney For Defendant

OPINION, KLINE, J., February 17, 1999.

Before us is Defendant Antonio Sierra's ("Sierra") Statement of Matters Complained of on Appeal in which Sierra appeals his sentence imposed following his jury trial conviction. Pursuant to Pa.R.App.P. 1925(a), we write this Opinion to explain to the Superior Court why our sentence was not excessive, but, rather, fair and appropriate given the circumstances of the case.

Sierra was convicted on thirty-one (31) criminal counts, including, *inter alia*, Criminal Attempt to Commit Criminal Homicide, Robbery and Arson,

EXHIBIT C 13
PCRA of 2019

App. E. 8

Ref: 874777 pg 30 of 129 for ANTONIO SIERRA

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY, PENNSYLVANIA

CRIMINAL

COMMONWEALTH OF PENNSYLVANIA	:	
v.	:	**No. 1997-11239**
ANTONIO SIERRA, Defendant	:	

APPEARANCES:

DEIRDRE M. ESHLEMAN, Esquire — **Attorney For the Commonwealth**
District Attorney of Lebanon County

CHARLES P. BUCHANIO, Esquire — **Attorney For Defendant**

OPINION, KLINE, J., August 10, 2000.

Before us is Defendant Antonio Sierra's ("Sierra") Statement of Matters Complained of on Appeal in which Sierra appeals his sentence imposed following his jury trial conviction. Pursuant to Pa.R.App.P. 1925(a), we write this Opinion to explain to the Superior Court why our sentence was not excessive, but, rather, fair and appropriate given the circumstances of the case.

Exhibit C.H.
PCRA 1-2-19

Ref: 874777 pg 31 of 129 for ANTONIO SIERRA

App. G.9

R462

Sierra was convicted on thirty-one (31) criminal counts, including, *inter alia*, Criminal Attempt to Commit Criminal Homicide, Robbery and Arson, following an incident that occurred in a second floor apartment on Main Street, Annville, Pennsylvania on November 4, 1997.[1] To appreciate the brutality of Sierra's crimes, we will present a factual history of the events surrounding the case.

On November 4, 1997, sometime in the early evening, Sierra, his two brothers, David and Samuel, and Carol Diaz ("Diaz") were passengers in a vehicle owned and operated by Jose Ortiz ("Ortiz"). Sierra and David were in town from New York City, and the brothers needed to obtain some money to return to New York. While the group was driving around the City of Lebanon, the Sierra brothers discussed tentative plans to rob someone that evening to obtain the necessary monies. Intending to divert attention away from the Sierras' robbery plans, Ortiz drove to Annville to see some of his friends.

Ortiz proceeded to the residence of Lesa Taylor. Ms. Taylor was not home at the time; however, two of Ortiz's friends, Anthony Miles ("Miles") and Daniel Baker ("Baker"), were present, and they permitted the group access to

[1] Sierra's thirty-one guilty counts were as follows: three (3) counts Criminal Attempt to Commit Criminal Homicide; six (6) counts Aggravated Assault; three (3) counts Recklessly Endangering Another Person; three (3) counts Unlawful Restraint; three (3) counts Arson Endangering Persons; three (3) counts Theft By Unlawful Taking; one (1) count Criminal Attempt to Commit Theft By Unlawful Taking; eight (8) counts Robbery; and one (1) count Criminal Conspiracy.

EXHIBIT C.15
PCRA of 2019

Ref: 874777 pg 32 of 129 for ANTONIO SIERRA

R.472

APPELLEE'S BRIEF
(page 8-9)

In Re:
COMMONWEALTH OF PENNSYLVANIA vs. Antonio Sierra
Superior Court of Pennsylvania

Action no. 593 MDA 2004

AUTHORED BY :
Ms. Jennifer W. GEITLZ, Esq.
First Assistant District Attorney
P.A.I.D. no. 79191
COMMONWEALTH OF PENNSYLVANIA, LEBANON COUNTY, PA. 17042

While the Commonwealth concedes that there is no such charge as "third degree" attempted murder, the Appellant should have preserved this claim during his first PCRA

claim of ineffectiveness. Then a hearing could have been held to determine if there was a logical, strategical basis for the actions of Trial Counsel. Furthermore, even if This Honorable Court should determine that the Appellant's challenge is one of "legality of the sentence", according to Commonwealth v. Fahy, 737 A.2d 214 (Pa. 1999): "Although legality of sentence is always subject to review within the PCRA, claims must still first satisfy the PCRA's time limits or one of the exceptions thereto." Fahy at 223. The time limit for filing claims is one year from the final judgment in the case, which here would date back to October of 2001. Finally, the Commonwealth submits that none of the enumerated exceptions apply to the Appellant's case.[3] As such, the Commonwealth respectfully requests that This Honorable Court deem the Appellant's issue as waived.

To: CCP Erie County
as Exhibit 3i

Dated: August 2, 2004
on the Brief

EXHIBIT C-1
PCRA of 2004

Memorandum In Response To
Petitioners Writ of Habeas Corpus
(page 10)
In Re: Antonio Sierra vs. Diguglielmo, et al.
U.S. DC. MD. PA.
Civil no. 3-CV-06-0604
Judge Caputo

In the case at bar, Petitioner was convicted of Criminal Attempt to Commit Criminal Homicide – Third Degree. Petitioner argues, albeit technically correct, that the Commonwealth does not have a statute for what he has been convicted of. It is true that a person cannot attempt to commit a non intent-based crime. However, Petitioner fails to recognize that according to the charge to the jury, he was actually charged and convicted of an intent-based crime, and the grading of Third Degree is merely a matter of semantics. Moreover, the matter of semantics was created by the Petitioner himself, seemingly to limit his own exposure to a harsher sentence that would be coupled with a conviction of Criminal Attempt to Commit Criminal Homicide – First Degree. Here, the Petitioner essentially wants to "have his cake and eat it too" as he requested the grading of Third Degree to reduce his possible sentence, and now attempts to use the same grading as a means of getting rid of his sentence altogether. For these reasons, Fiore is not controlling in this case as the Commonwealth met its burden in proving that Petitioner was guilty of Criminal Attempt to Commit Criminal Homicide, regardless of the grading.

To: Certified Copy as Exhibit 32.

AUTHORED BY :

Kim M. DITZLER, Esq.
Deputy District Attorney
P.A.I.D. no. 83761

Christopher J. COOK
Legal Intern
P.A.I.D. no. 1 ENT 2006

COMMONWEALTH OF PENNSYLVANIA, LEBANON COUNTY, PA. 17042

Exhibit C.2
PCRA-01-2019
(not dated).

Form DC-135A

INMATE'S REQUEST TO STAFF MEMBER

SCF ALBION

CLO: (See Below).

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS
Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)

2. Date: 9-19-19

3. By: (Print Inmate Name and Number)
Antonio Sierra DU6686

Inmate Signature

4. Counselor's Name: MARTUCCI

5. Unit Manager's Name: ZILLNAW

6. Work Assignment: Unit

7. Housing Assignment: CB-04

8. Subject: State your request completely but briefly. Give details.

Enclosed is a Release of Correspondence Notice Form (REVERSE)

As you already know what this entails, please release my mail.

CC: CLARK-WARDEN
White - Mail Room
CC. File (Central Review).

9. Response: (This Section for Staff Response Only)

To DC-14 CAR only ☐

To DC-14 CAR and DC-15 IRS ☐

STAFF MEMBER NAME _____ (Print) _____ (Signature) DATE _____

EXHIBIT A(9)
TO PCRA OF
2019

RELEASE OF CORRESPONDENCE NOTICE FORM

To Mr. Clark (WARDEN), Ms. White (MAIL ROOM) and/or
Subordinate personnel September 17, 2019

YOU are currently acting both individually and jointly to fail to mail a considerable amount of correspondence which were properly submitted to YOU for mailing during the period of this incarceration at SCI-Albion.

The various pieces of such correspondence dealt with legal, political and personal matters. None of such correspondence threatened, contemplated or included plans for any criminal activity whatsoever, none threatened or posed any clear and present danger of physical harm of violence to any person, none was obscene, and none was written in any form of code. Said unmailed correspondence includes but is not limited to the following.

A) Correspondence/response by the Commonwealth Court of Pa., of 1/14/2019
B) correspondence/ response by ACLU of 1/17/19
C) correspondence/ response by Supreme Court of Pa, Prothonotry for 1/22/19
D) correspondence/ response by Supreme Court of PA for 1/23/19
E) correspondence/ response by US.Court of Appeals for Third Circuit for 2/11/19
F) correspondence/ response by Commonwealth Court of Pa for 3/18/ 2019
G) correspondence/ response by ACLU Eastern Region for 4/1/19
H) correspondence/ response by US.Supreme Court for 4/3/19

Please release these correspondence to Me within five days of this notice, [or SEPTEMBER 23, 2019] or I shall be force to file a legal cause against you.

This is My Second and final request.

Sincerely,
Antonio Sierra, Ph.D.,
DV.Dodo

EXHIBIT A(10)
TO PCRA OF
2019

App. G.14

R. 252

Form DC-135A

INMATE'S REQUEST TO STAFF MEMBER

~~TO: SCI ALBION~~

~~CC: MAIL SUPERVISOR~~

Commonwealth of Pennsylvania
Department of Corrections

INSTRUCTIONS
Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.

1. To: (Name and Title of Officer)
~~MR. WHITE~~

2. Date: 9-23-19

3. By: (Print Inmate Name and Number)
ANTONIO SIERRA - DU-0686

Inmate Signature

4. Counselor's Name: MARTUCCI

5. Unit Manager's Name: ZILMAN

6. Work Assignment: Unit.

7. Housing Assignment: CB-64

8. Subject: State your request completely but briefly. Give details.

ENCLOSED IS A RELEASE OF CORRESPONDENCE NOTICE FORM (RECEIVED) AS YOU ALREADY KNOW WHAT THIS ENTAILS, PLEASE RELEASE MY MAIL ON 9/23/19 YOU ASKED WHAT ITEMS WERE CONFISCATED AND TO SEND YOU COPIES OF THE NOTICE.
PLEASE TAKE NOTICE - YOU HAVE ALL THE NOTICE YOU ARE REQUIRED BY LAW TO ACT ACCORDINGLY. AS YOU ARE CURRENTLY MESSING WITH ME PLEASE BE ADVISED 9-27-19 IS MY FINAL NOTICE. DUE.
THANK YOU FOR YOU ATTENTION.
CC: WARDEN - CLARK
MAILROOM - WHITE
FILE - ME

9. Response: (This Section for Staff Response Only)

If this is regarding legal mail a memo was placed on each housing unit & notice placed on inmate element with direction. Either return mail to Sender or destroy this direction was given by the DOC.

To DC-14 CAR only ☐ | To DC-14 CAR and DC-15 IRS ☐

STAFF MEMBER NAME _____ Print _____ Ms. White Signature DATE 9/26/19

'19SEP23 AM 8:17

Form DC-135A **INMATE'S REQUEST TO STAFF MEMBER** TO: SCI ALBION C/O: WARDEN	Commonwealth of Pennsylvania Department of Corrections INSTRUCTIONS Complete items number 1-8. If you follow instructions in preparing your request, it can be responded to more promptly and intelligently.
1. To: (Name and Title of Officer) MR. CLARK	2. Date: 9-19-2019
3. By: (Print Inmate Name and Number) Antonio Scurto - DV-0636 Inmate Signature	4. Counselor's Name: Mautucci 5. Unit Manager's Name: Zillman
6. Work Assignment: CELL WORKER	7. Housing Assignment: G4-CB unit

8. Subject: State your request completely but briefly. Give details.

Enclosed is a Release of Correspondence Notice Form (Reverse)

As You Already Know what this entails, please release my mail.

9. Response: (This Section for Staff Response Only)

NO DOES WHAT YOU ARE TALKING

ABOUT, NOR DOES MS WATTS

To DC-14 CAR only ☐	To DC-14 CAR and DC-15 IRS ☐

STAFF MEMBER NAME _____ (Print) _____ (Signature) DATE 9/27/19

7.2.1, Counseling Services Procedures Manual - Section 3, Request Slips **Attachment 3-A**

App. G.16

R.27.2

DC-154A Revised 7/2009

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

No. B 727965

Confiscated Items Receipt (Inmate)

DC-NUMBER	Inmate Name	Cell	Facility	Date	Time
DX0686	Sierra	64	SCI-Huntingdon	9/11-18	1100

☐ Random Search
☐ General Search
☐ Investigative search

Misconduct Report Prepared
☐ Yes ☒ No

Comments:

Item(s) Confiscated	Disposition	Item(s) Confiscated	Disposition
1. 1 Pc Legal mail US Court of Appeals		2.	
3.		4.	
5.		6.	
7.		8.	
9.		10.	

☐ **Uniform Commercial Code (UCC) and Paper Terrorism Materials**

UCC and related material will be confiscated and will not be subject to a disposition other than return to the inmate, destruction or forwarding to the Chief of Security or Chief Counsel's Office. Upon confiscation, the inmate has 15 days to file a grievance, in accordance with **DC-ADM 804, "Inmate Grievance Procedure."**

Signature and Title of ***Staff Member*** Confiscating the Item(s)

Signature and Title of ***Staff Member*** Disposing the Item(s)

White – DC-15 Yellow – Deputy Superintendent for Facilities Management Pink - Inmate

States: 1 Piece of Legal mail U.S. Court of Appeals

App. G.17

EXHIBIT B(1) To PCRA Pet 2019

R.282

45

DC-154A Revised 7/2009

No. B 727972

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

Confiscated Items Receipt (Inmate)

DC-NUMBER	Inmate Name	Cell	Facility	Date	Time
DU0086	SIERRA	CB-64	SCI A	9/18/18	1445

☐ Random Search
☐ General Search
☐ Investigative search

Misconduct Report Prepared ☐ Yes ☒ No

Comments: (1) Legal Envelope Refused to ~~Sign~~ Accept

Item(s) Confiscated	***Disposition***	Item(s) Confiscated	***Disposition***
1. (1) LEGAL ENVELOPE US SUPREME COURT 1 1ST ST NE		2.	
3. WASHINGTON DC 20543		4.	
5.		6.	
7.		8.	
9.		10.	

☐ **Uniform Commercial Code (UCC) and Paper Terrorism Materials**

UCC and related material will be confiscated and will not be subject to a disposition other than return to the inmate, destruction or forwarding to the Chief of Security or Chief Counsel's Office. Upon confiscation, the inmate has 15 days to file a grievance, in accordance with **DC-ADM 804, "Inmate Grievance Procedure."**

Signature and Title of ***Staff Member*** Confiscating the Item(s)
ROBISON CO1

Signature and Title of ***Staff Member*** Disposing the Item(s)

White – DC-15 Yellow – Deputy Superintendent for Facilities Management Pink - Inmate

States: (1) Legal Envelope U.S. Supreme Court 1st Street N.E. Washington D.C. 20543

(1) legal envelope Refused to Accept.

mail not placed in evidence Bag

EXHIBIT B(2) TO PCRA of 2014

Apr 9.18

R.29a

46

DC-154A Revised 7/2009

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

No. B 727978

Confiscated Items Receipt (Inmate)

DC-NUMBER	Inmate Name	Cell	Facility	Date	Time
DV-6860	SIERRA	CB-64	SCI-A	7-27-18	11:40

☐ Random Search
☐ General Search
☐ Investigative search

Misconduct Report Prepared
☐ Yes ☒ No

Comments: Inmate is requesting to have mail held

Item(s) Confiscated	Disposition	Item(s) Confiscated	Disposition
1. 1pc. LEGAL MAIL	From: Supreme Court of Pennsylvania Office of the Prothonotary 4th Grant St. Ste 801 Pittsburgh PA 15219-2410	6.	
3.			
5.			
7.		8.	
9.		10.	

☐ **Uniform Commercial Code (UCC) and Paper Terrorism Materials**

UCC and related material will be confiscated and will not be subject to a disposition other than return to the inmate, destruction or forwarding to the Chief of Security or Chief Counsel's Office. Upon confiscation, the inmate has 15 days to file a grievance, in accordance with **DC-ADM 804, "Inmate Grievance Procedure."**

(C.O.) [signature] LT Anderson

Signature and Title of ***Staff Member*** Confiscating the Item(s)

Signature and Title of ***Staff Member*** Disposing the Item(s)

White – DC-15 Yellow – Deputy Superintendent for Facilities Management Pink - Inmate

States: 1 Piece Legal Mail From: Supreme Court of Pennsylvania Office of the Prothonotary 4th Grant Street Ste 801 Pittsburgh PA 15219-2410

Inmate is Requesting to have mail held.

7-27-18

APPENDIX III
App 6 of 9

EXHIBIT B(3)
To PCRA of 2019

R. 302

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

64

CB

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/29/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 1/14/2019

Sender Name: COMMONWEALTH COURT OF PENNSYLVANIA

Sender Address: 601 COMMONWEALTH AVENUE
HARRISBURG PA 17106

9

Receptacle No: _____

Please Select the option below as to how the sealed and secure original document should be disposed:

Returned to sender at DOC cost; or

Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

Inmate ID Verified
Receiving Unit Staff Signature
Date 9/10/19

EXHIBIT A(1).
TO PCRA OF
2019

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

64

CB

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/29/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 1/17/2019

Sender Name ACLU

Sender Address: PO BOX 60173
PHILADELPHIA PA 19102

Receptacle No: 9

Please Select the option below as to how the sealed and secure original document should be disposed:

Returned to sender at DOC cost; or

Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

Inmate ID Verified
Housing Unit SO's Signature
Unit CB
Date 9/10/19

EXHIBIT A (2)
TO PCRA OF
2019

App-G. 21.

B.17.a

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

64

CB

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/29/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 1/22/2019

Sender Name PROTHONTARY, SUPREME COURT

Sender Address: 414 GRANT STR, SET 801
PITTSBURGH PA 15219

9

Receptacle No: _____

Please Select the option below as to how the sealed and secure original document should be disposed:

Returned to sender at DOC cost; or

Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

Inmate ID Verified
Housing Unit Officer Signature
Date 9/10/19

EXHIBIT A(3)
TO PCRA OF
2019

R.18a.

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

CB
64

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/29/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 1/28/2019

Sender Name PROTHONOTARY, SUPREME COURT

Sender Address: 414 GRANT STR, STE 801
PITTSBURGH PA 15219

Receptacle No: 9

Please Select the option below as to how the sealed and secure original document should be disposed:

☒ Returned to sender at DOC cost; or

☒ Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

Inmate ID Verified
Housing Unit CO's Signature
Date 9/10/19 Unit CB

EXHIBIT A(4)
TO PCRA OF
2019

R.19.a

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

CB

64

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/29/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 2/11/2019

Sender Name US COURT OF APPEALS OFFICE OF THE CLERK

Sender Address: 601 MARKET STREET
PHILADELPHIA PA 19106

Receptacle No: 11

Please Select the option below as to how the sealed and secure original document should be disposed:

Returned to sender at DOC cost; or

Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

EXHIBIT A(5)
TO PCRA OF
2019

Inmate ID Verified
Housing Unit Officer Signature
Date 9/10/19

App. G.24.

R. 208.

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

C-B 64

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/30/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 3/18/2019

Sender Name COMMONWEALTH COURT OF PENNSYLAVANIA

Sender Address: 601 COMONWEALTH AVENUE
HARRISBURG PA 17106

Receptacle No: 13 **13**

Please Select the option below as to how the sealed and secure original document should be disposed:

☒ Returned to sender at DOC cost; or

☒ Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

Received by Mail Room
Date 9/10/19

EXHIBIT A(6)
TO PCRA
OF 2019

R.218.

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

CB

64

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/30/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 4/1/2019

Sender Name ACLU EASTERN REGION

Sender Address: PO BOX 60173
PHILADELPHIA PA 19102

Receptacle No: 14

Please Select the option below as to how the sealed and secure original document should be disposed:

☒ Returned to sender at DOC cost; or

☒ Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

EXHIBIT A(7)
TO PCRA OF
2019

Inmate ID Verified
Housing Unit Officer Signature
Unit CB
Date 9/10/19

R.22.a

App. G-26.

Notice Regarding Disposition of Stored Incoming Privileged Correspondence

CB
64

To: DV0686 SIERRA, ANTONIO

From: T. White
Corrections Mail Room Supervisor, SCI Albion

Date: 8/30/2019

As you were previously informed, the Department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy. Department records indicate that sealed original privileged correspondence exists for you as follows:

Date Received: 4/3/2019

Sender Name SUPREME COURT OF US OFFICE OF THE CLERK

Sender Address: WASHINGTON
WASHINGTON DC 20543

Receptacle No: 14

Please Select the option below as to how the sealed and secure original document should be disposed:

☒ Returned to sender at DOC cost; or

☒ Confidentially Destroyed by the contracted vendor at DOC cost

Inmate Signature: _____

Staff Signature: _____

Inmate ID Verified
Housing Unit ID Signature
Date 9/10/19 Unit CB

EXHIBIT A(B)
TO PCRA OF
2019

B.23a

App. G.27

Ref: 874777 Pg 124 of 129 for ANTONIO SIERRA

Pennsylvania Department of Corrections
Right-to-Know Office
Office of Chief Counsel
1920 Technology Parkway
Mechanicsburg, PA 17050
Telephone 717-728-7763
Fax 717-728-0312

September 16, 2013

ATTACHMENT 14

Antonio Sierra, DV0686
SCI-Albion
10745 Route 18
Albion, PA 16475

Re: RTKL #1405-13
Sentencing Records

Dear Mr. Sierra:

This letter acknowledges receipt by the Department of Corrections of your written request for records under the Pennsylvania Right-to-Know Law (RTKL). Your request was received by this office on August 12, 2013. On August 16, 2013, an interim response was sent to you extending the final response date to September 18, 2013. A copy of your original request letter is enclosed.

Your request for your Sentencing Order and your Commitment Order, other than your DC-300B Court Commitment is denied for the following reason:

- The record(s) that you requested do not currently exist. When responding to a request for access, an agency is not required to create a record which does not currently exist or to compile, format or organize a public record in a manner in which it does not currently compile, format or organize the public record. 65 P.S. § 67.705; *See Moore v. Office of Open Records*, 992 A.2d 907, 909 (Pa. Cmwlth. 2010)("The Department cannot grant access to a record that does not exist. Because under the current RTKL the Department cannot be made to create a record which does not exist, the OOR properly denied [the] ... appeal."); *See also Bargeron v. Department of Labor and Industry*, 720 A.2d 500 (Pa.Cmwlth. 1998).

You have a right to appeal this denial of information in writing to Terry Mutchler, Executive Director, Office of Open Records (OOR), Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. If you choose to file an appeal you must do so within 15 business days of the mailing date of this response and send to the OOR:

1) this response; 2) your request; and 3) the reason why you think the agency is wrong in its reasons for saying that the record is not public (a statement that addresses any ground stated by the agency for the denial). If the agency gave several reasons why the record is not public, state which ones you think were wrong.

Also, the OOR has an appeal form available on the OOR website at:

https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf.

Sincerely,

Andrew Filkosky
Agency Open Records Officer

Enclosure

cc: Superintendent Giroux, SCI-Albion
Superintendent's Assistant, SCI-Albion
File

EXHIBIT C.3
PCRA PETITION 2019

App G.28

R. 35a

Ref: 874777 Pg 115 of 129 for ANTONIO SIERRA

AGENCY ATTESTATION OF NONEXISTENCE OF RECORDS

Agency: Pennsylvania Department of Corrections

Name of Requestor: Antonio Sierra, DV-0686

Appeal Docket Number: AP# 2013-1817

Records Requested: Sentencing Order and Commitment Order, other than DC-300B Court Commitment

I, Cheryl Gill, hereby declare under the penalty of perjury, pursuant to 18 Pa. C.S. § 4904, that the following statements are true and correct based upon my personal knowledge, information, and belief:

I am employed by the Department of Corrections as Records Supervisor at the State Correctional Institution at Albion. If the specific records requested above were in the possession of this Institution, they would be retained as official records in files within my custody. After a reasonable search, I have determined that no responsive records exist within my custody, possession or control.

Date: 10/1/13 Signature: Cheryl Gill

Cheryl Gill
Records Supervisor
State Correctional Institution at Albion
PA Department of Corrections

To. COP- Erie County
as Exhibit 34

Exhibit C.4
PCRA of 2019

App-G.29.

R.362

UNITED STATES DISTRICT COURT OF PENNSYLVANIA
FOR THE WESTERN DISTRICT

Antonio Sierra, Pro-Se Petitioner-Appellant
vs.
THE COMMONWEALTH OF PENNSYLVANIA
vs.

No. 17-01 Erie

The Department of Justice	Department of Corrections	The District Attorney of Erie
Ms. Kathleen Kane, A.G.	Ms. Nancy Giroux, WARDEN	Mr. Jack Daneri, D.A.

Respondent-Appellees

CERTIFICATE OF SERVICE

A. I Antonio Sierra, incarcerated Pro-Se at the below location certify pursuant to 28 USC § 1746 this 28 day of December 2016, personally caused to be served the following attached to this Certificate of Service:

1) Notice of Appeal to the U.S.C.A. 3rd. Cir.,
2) Appendix A -Order of November 1, 2016, Appendix B -Order of December 2, 2016,
3) Affidavit Of Sierra' Endured Deprivations with
4) Exhibit 1- Representation of the U.S.S.C. of 7/16/15 & USCA of 8/13/15

B. That in mailing with U.S.P.S. first class mail, postage paid, the same is placed in the Jailors hands for mailing in the normal course of business satisfying the requirements of F.R.A.P. 3(d)(2) and 4(c) and the Houston Rule.

C. ISSUED TO :

1). United States District Court of Pennsylvania
For The Western District
17 South Park Row (Erie Division)
Room A-150
Erie, PA 16501

2). PLEASE TAKE NOTICE, that the additional copies provided are for Respondent-Appellees identified in Notice as stated below. Thank You.

D. 1-Original / 1 -Copy For the Court with 3- copy's for Respondent-Appellees, 1- copy for Petitioner-Appellant pursuant to F.R.A.P. 3(a)(1). - 6- total.

/s/. _____ /ID.# DV.0686
/p/.antonio sierra, Pro-Se
SCI. Albion
10745 State Route 18
Albion, PA 16475

U.S. D.C. W.D. PA. EXHIBIT #2, 1/8/17

DC-138A

CASH SLIP

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

1. REQUISITIONING INMATE

DOC NUMBER	NAME (PRINT)	LOCATION	DATE
DV-0686	Antonio Sierra	CB-64	28 Dec. 2016

2. ITEMS TO BE CHARGED TO MY ACCOUNT

United States Postage, First Class mail service required for the attached Manila Envelope addressed to :

United States District Court of Penna. | ENCLOSURES
For The Western District | Notice of Appeal to USCA-3 Cir.
OFFICE OF CLERK OF COURTS | Appendix A, ORDER of 11/1/16
(Erie Division) | Appendix B, Order of 12/2/16
17 South Park Row | Affidavit of Sierra' Endured
Room A-150 | Deprivations with Exh. 1,-
Erie, PA 16501 | Repr'n of USSC 7/16 & USCA 8/13 of 2015
Issued Upon FRAP. 4(c) & Houston Rule For Pro-Se | Receipt -Returnable

Total-174 pages.

PROCESSED
DEC 29 2016
MAILROOM

USPS TRACKING # & CUSTOMER RECEIPT 9114 9999 4423 8664 7961 90
For Tracking or Inquiries go to USPS.com or call 1-800-222-1811.

Inmate ID Verified
Housing Unit CO's Signature
Date 12/28/16 Unit C/B

3. INMATE'S SIGNATURE
4. OFFICIAL APPROVAL

5. BUSINESS OFFICE'S SPACE

CHARGE ENTERED	DATE	BOOKKEEPER
$ 10.80		

U.S. D.C. W.D. PA. EXHIBIT #2, 1/8/17

(1) –2013 to 2015

(a) –State:

On September 9, 2013, petitioner filed a Writ of Assistance, Alternatively Writ of Liberty in the trial Court of Common Pleas, Lebanon County, Pennsylvania for Hazel-Atlas remedy; No. 97—11239; And, on November 24, 2014, a State Writ of Habeas Corpus, No. 2013—11239. The trial court dismissed the action with prejudice on July 15, 2014, and Motion for Arrest of Judgment followed on July 23, 2014. The trial court denied the motion on August 7, 2014.

On August 22, 2014, appeals followed to the State Highest Court that were transferred to the State Superior Court, entering an Order on September 29, 2014 to show cause why the matter should not be transferred to the Pennsylvania Commonwealth Court, No. 1446 MDA 2014. Petitioner clarified the nature of appeal under Federal Law and no jurisdiction in the Appellate Courts under his particular facts, on October 15, 2014; And on October 21, 2014 the Superior Court transferred the matter to the Commonwealth Court expressing no argument "is present to retain jurisdiction."

On October 27, 2014, the Commonwealth Court received Post Communications with objection to its jurisdiction; No. 1887 CD 2014. On November 14, 2014, the Appellate Court quashed the appeal as untimely; And, although two other petitions issued on November 20, 2014 and March 5, 2015; the Trial Court issued and Order removing In Forma Pauperis on October 6, 2014, causing prejudice on Commonwealth Court dismissed all motions on March 11, 2015.

On April 6, 2015, appeal to the Pennsylvania Supreme Court was again filed; Yet, on April 16, 2015, the clerk of court wanted an In Forma Pauperis motion added, fees to file on the clerks set legal course petitioner was to follow; No. 201 MT 2015. An access to court within Boodie v. Conn. Was field on April 23, 2015, and on May 1, 2015, the clerk modified her filing fee requirement while retaining the legal course to follow.

(b) –Federal

In May 2015, permission was sought in the United States District Court for the Western District of Pennsylvania; Yet the District Court declined and In Forma Pauperis Motion on May 18, 2015. On June 29, 2015, a Writ of Certiorari was filed to the United States Supreme Court under Burns v. Ohio. On July 14, 2015, the Clerk of Courts refused filings to seek process in the Court of Appeals or State Highest Court. Although attempts to file were taken on July 19th and August 8th of 2015, in both Federal Appellate Courts. On

August 13, 2015, the Third Circuit declined review as "they have no authority to compel the United States Supreme Court to take action."

(2) –2016 to 2019

(a) –State:

On March 16, 2016, a Prerogative Writ was filed on the propriety of Montgomery v. Louisiana (2016) in the Trial Court of Common Pleas, Erie County, PA, No. 10808 of 2016; attached as Appendix App. C. 2-12. On April 13, 2016, the trial court denied the action and In Forma Pauperis. Id. C.3-4.

On April 29, 2016, petitioner filed appeal to the Pennsylvania Superior Court, No. 631 WDA 2016, and on May 4, 2016 a third motion to proceed In Forma Pauperis [2nd] that the court docketed on May 9, 2019. Id. After various motions were denied in June and July 2016; the Superior Court denied May 9th In Forma Pauperis without prejudice to refile in the trial court. The Appellate Court Order set forth the limited issues the trial court may review excluding the merits on July 14, 2016.

On July 26, 2016, the trial court entered an Order addressing the merits contrary to the Superior Courts Order. The trial court went further, giving Respondents time to file pleadings to petitioner's Writ. In addition, Superior Court Ordered briefs on July 2, 2016, and thereby accepting the trial courts July 26th, Order, causing petitioner prejudice.

On August 12, 2016 a Writ of Prohibition to both lower courts is filed in the Pennsylvania Supreme Court with the action of giving Respondents' time to respond addressed under Pioneer [507 U.S. 380], No. 27 WAP2016. The Pennsylvania Supreme Court quashed appeals on November 1, 2016, and an Application for Reconsideration on December 2, 2016. Id. App. C.8-9.

Moreover, while appealing to the United States Court of Appeals for the Third Circuit on December 28, 2016, Id. App. G.30; The trial court issued an order on January 13, 2017, that released In Forma Pauper status eight months later, granted to dismiss Prerogative Writ for lack of jurisdiction; And, while the trial court took great pains to (repeatedly give emphasis its July 26, 2016 Order as a 1925 Opinion, in order to give technical acts in evaluating petitioner's understanding. On January 22, 2017, a motion was filed requesting a State Corrective process following the courts new revelations and the fact petitioner was on appeal to the Third Circuit; So, if the Court wanted to proceed, he required an Order clarifying the process. No State corrective process was forthcoming; attached as Appendix App. C.6-12.

(b) –Federal:

On December 28, 2016, petitioner filed a Notice of Appeal and Affidavits to the United States District Court for the Western District, directing appeal to be filed in the United States Court of Appeals for the Third Circuit, Id. App. G.30.

On January 11, 2017, the District Court granted In Forma Pauperis and on February 10, 2017 Ordered the filing of a Writ of Habeas Corpus under 2254 "solely." No. 17-01 Erie. On February 10, 2017, a Common Law Motion is filed, clarifying the Richardson v. Miller Relief pursued. On April 10, 2017, the District Court denied the Common Law Motion and held the case administratively closed until the Writ of Habeas Corpus under 254 is filed and thereby causing petitioner substantial prejudice.

On July 26, 2017, petitioner filed his Federal Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2241 (c)(3), to satisfy the Magistrate's Order while also the evidence placed at issue. On August 3, 017, the District Court Magistrate issued an Opinion relying on extrajudicial information to deny petition and remove a party; Notwithstanding the prejudice, the evidence relied upon by Magistrate Baxter, was ground ONE in the Writ.

On August 10, 2017, an appeal was issued to the United States Supreme Court [28 USC 636 (c) (3)]. On November 2, 2017, the Third Circuit issued an Opinion dismissing the appeal for lack of jurisdiction and failure to appeal the Magistrate to the District Judge; No. 17-12988. Petitioner appealed pursuant to Marshall v. Holes on November 14, 2017, as he did file in the District Court against the Magistrate's actions and should not be prejudiced by the Court of Appeals for the Third Circuit. Id. On December 12, 2017, the appellate court granted the action as a Petition for Rehearing and on January 10, 2018 denied the action.

On December 2, 2017, the United States District Court for the Middle District dismissed the Writ of Habeas Corpus, pending motion and denied Certificate of Appealability; The Court's ruling expressed petitioner did not first seek approval of the Third Circuit, rely on a rule of Constitutional law nor newly discoverable evidence; No. 3-cv-17-1584.

On March 18, 2018, appeal to the United States Supreme Court was sought. On May 29, 2018, the Supreme Court denied Certiorari; No. 17-8242.

(c) –Federal:

On December 7, 2017, petitioner filed an emergency petition with the Middle District Court, and On December 26, 2017, an emergency motion to strike judgment, both

on the grounds that denials were based on exactly what petitioner did in the Courts if they looked at the record evidence. After petitioner answered the Third Circuit Court of Appeals, for corrections on January 25, 2018, filed on February 19, 2018; the Middle District Court dismissed the petition on March 1, 2018, on the grounds the Court did not have jurisdiction; No. 3-cv-17-1584. The Third Circuit issued and Opinion dismissing petitioner's motion as an unauthorized second petition the court did not have jurisdiction to consider on March 23, 2018; No. 18-1150.

(d) –Federal:

On April 5, 2018 petitioner sought permission to Amend the Courts Order on the grounds the Middle District and Third Circuit Courts overlooked evidence as filed on December 28, 2016, that would place the case in the proper court, instead of depriving Due Process of law. The Court of Appeals for the Third Circuit responded on May 9, 2018, requesting a Certificate of Appealability, as the Court could not docket the matter in precious docket, No. 18-1130, requiring a new docket, No. 18-2044.

On June 21, 2018, petitioner appealed to the United States Supreme Court for a Writ of Certiorari, not knowing what to do in the lower Federal Courts; Yet, believing the recent decision would support a favorable outcome. On July 23, 2018, the Court determined that the Writ was out of time and did not have power to review. On July 30, 2018, petitioner filed for post-deadline extension as the Writ was one day late. The Supreme Court determined that a notarized statement was to be filed on August 20, 201. Petitioner followed the Opinions yet as of August 24, 2018, no action has been taken.

(e) –Federal:

On June 28, 2018 petitioner filed a response to Respondents' decision not to reply to the Third Circuits June 6th and 13th, 201 notice consideration; Yet the Third Circuit affirmed the Diddle District Court on September 11, 2018 and stating that the Court lacked jurisdiction to determine if the District Court properly denied petitioner's unauthorized Writ of Habeas Corpus or Rule 60 (b) motion. On October 25, 2018, petitioner requested an extraordinary remedy to the facts of his case. On November 9, 2018 the Third Circuit granted the petition as a Motion to file out of time and on December 14, 2018 denied the motion, No. 18-2044.

On March 13, 2019, appeal to the United States Supreme Court petition for a Writ of Certiorari, representing that the Middle Districts ruling is in error by denying petitioner a review on venue, and the Third Circuit decision is in error as 28 USC Section 2241 (c) (3),

was the cause of action filed in the Court that excluded the Jurisdiction of the Appellate Court, while rendering the actions of the Magistrate of the Western District Court, a Constitutional error; No. 18-8610.

No decision was rendered, and if rendered, it is unknown as petitioner has been without legal mail ever since Respondents' have taken to seize his letters.

(f) –FORM OF ACTION:

1. On September 25, 2019 appellant filed a Motion for Post-Conviction Collateral Relief ("PCRA") to the Common Pleas Court of Erie ("Trial Court"), and 15 days after defendants' injured appellant causing prejudice. See Original Record Tr. 1-15, R. 1a through R. 15a.

(g) –PROCEDURAL HISTORY

2. Appellant is provided a Notice Regarding the Disposition of Stored Incoming Privilege Correspondence by defendants on September 10, 2019; Five notices dated August 29th, and three dated August 30th, 2019, where defendants announced having "previously informed the department is undertaking to dispose of original privileged mail that has been securely maintained under its previous mail handling policy" [and] gave appellant opportunity to "select the option below as to how the sealed and secured original documents should be disposed: (i.e. return to sender at D.O.C. cost, or confidentially destroy by contracted vendor at D.O.C. cost). Defendants said, in conclusion, appellant had t sign the notice and return it for staff signature, Id. R. 16a – R. 23a.

3. Appellant then issued a Release of Correspondence Notice Form on September 11, 2019, so defendants release his mail within five working days or by September 23, 2019.

4. Appellant repeated this process on September 17th and 19th, 2019, adding **"I SHALL BE FORCED TO FILE A LEGAL CAUSE AGAINST YOU [and] "THIS IS MY SECOND AND FINAL REQUEST."** ID. R. 24a – R.27a; Appellant did not receive a response from defendants. Id.

5. September 5, 2019, Appellant issued his PCRA on Government Interference with Correspondence as he is restricted access by defendants as directed to serve him and they chose not to –this is illegal and contrary to the First, Fourth, and Fourteenth Amendments to the Constitution and laws of the United States, Id. R. 1a –R. 15a.

6. Defendants submitted a reply on September 26th and 27th, 2019. Appellant found this as false, misleading, and fabricated information when stating, "No idea of what is being

stated: [and] "demand the return [of] the mail to sender or destroy it by DOC." Id. R.26a – R.27a.

7. It was on this PCRA he disclosed defendants' wrongdoing continued from early in 2019 with his mails, as defendants refused to release while taking the opportunity to misrepresent, conceal, and fabricate evidence to continue his custody in violation to the Constitution on a non-criminal charge that is illegal, Id. R.28a –R.34a.

(h) NECESSARY FACTS TO BE KNOWN

8. Defendants had sufficient time to release appellants correspondence once received, rather than confiscate the mail and seize its information until the notice disposition of September 10, 2019, causing appellant prejudice.

9. Moreover, defendants Daneri, Shapiro, Clark (and probably Mr. Tom Wolf, Governor of Pennsylvania), could have informed appellant on or after July 18, 2019, and his Civil § 1983 Action to the United States District Court for the Western District of Pennsylvania about any of the numerous seized correspondence, rather than reuse appellant proper notice and a chance to contest in a meaningful manner, in violation to appellants Fourteenth Amendment Rights to the Constitution and law of the United States.

10. It is by means of Defendants unlawful detention of Appellant, correspondence and malicious charges placed against him, Defendants Daneri, Clark, White, Kline, Shapiro and the Commonwealth of Pennsylvania-in error, intentionally or with deliberate indifference and callous disregard of appellants rights, deprive him the right to be free from unreasonable seizure and/or searches, in violation of the Fourth and Fourteenth Amendment to the Constitution and laws of the United States, Cf..R.3a @ 7.

11. In this unlawful detention by Defendants and seizure, it has continued to date beyond the final month of September 23, 2019, [Id. R.24a -R.27a] and the alleged time defendants have used to claim receipt of said correspondence-(i.e. January 14,17, 22, 28 =[Id. R.16a – R. 19a], February 11th, March18th = [Id. R.20a – R.21a], April 1st and April 3rd, 2019 = [Id. R.22a -23a], causing injury in obtaining the free flow of information from valid sources in the power of government that defendants selected to identify as "privileged correspondence" prior to their illegal actions, causing prejudice and violating Appellants First, Fourth and Fourteenth Amendment to the Constitution and laws of the United States, Id.

12. Defendants continue a wrong in confiscation privileged correspondence as mail belonging to appellant, having no benefit of notice or chance to contest illegal actions as in

September 14, 18, & 27 of 2018 (Id. R.28a – R.30a); Defendants continued wrong is to keep him illegally imprisoned while causing prejudice and violating his right to notice and chance to contest in a meaningful time and manner. Id.

13. Defendants prejudice appellants right to use and access the free flow of information in a fair manner, before a disinterested tribunal in an impartial forum, violating his First, Sixth, and Fourteenth Amendments to the Constitution of the United States, after defendants declared on January 9, 2019, decision that "operations will and have resumed with many processes being reviewed or altered as necessary"... [and] "it was necessary to curtail* mail throughout our facilities as it was reasonably related to penological interests," Id. R.31a.

14. Defendants prejudice appellants right to use and access the free flow of information in a fair manner, before a disinterested tribunal in an impartial forum, violating his First, Sixth, and Fourteenth Amendments to the Constitution of the United States after declaring on March 13, 2019 that, "operations will and have resumed with many processes, including the handling of inmate mail, being reviewed or altered as necessary to honor the Departments commitment to ensure the safety of all aforementioned parties [and] "to that end, there is no known legal precedence nor rights violations as the Department is simply diverting the delivery and providing inmates with a copy instead of the original," Id. R. 32a.

15. Defendants therefore seize with no probable cause, incoming privileged correspondence where appellant represents an illegal charge as detaining him without due process of law, impeding the due course of justice, Id. R.2a @ 5.1.

16. That without probable cause or justification, defendants intentionally agree to and did introduce false, misleading, and concealed information as evidence about how appellant was informed of the disposition of his privileged mails and failed to admit to the evidence provided by appellant on the illegal charging offense and subsequent sentence for Attempt 3rd Degree Murder, Id. @ 5.2.

17. As a result of defendants intentional and malicious confiscation of appellant's mails, he is (A) deprived without cause for accessing correspondence, (B) deprived of about eight months, and/or up to defendants notice as verified September 10, 2019, to date, and (c) detained without probable cause on fabricated evidence, where it is more likely than not, the false information provided on appellants incarceration for Attempt 3rd Degree Murder, is used to deprive him liberty without due process of law, as it was but for cause of the

actual deprivation that produced the false and misleading information, and often times the concealed statements to the same effects when appellants incarceration on the non-criminal charge Attempt 3rd Degree Murder, is unconstitutional, wrongful, and defendants commited a fraud on the Court, Id. R.3a @ 3.

18. Defendants Clark, White, and/or others unknown to appellant, but known to Clark and/or White, had knowledge that appellant's evidence fairly establishes the truth determining process was so undermined that no reliable adjudication of guilt or innocence could have taken place, Id. R.3a @ 4.

(i) TRUTH DETERMINING PROCESS: (i) PROSECUTOR GETTLE

19. Prosecutor Gettle should not have been allowed to concede there is no such charge as Attempt 3rd Degree Murder, and then take issue with trial counsels' effectiveness (Id. R. 33a); And because...

20. It was trial Judge Kline, and not counsel whom ordered the jury to listen as he read the law; Kline infringed on the province of the jury power by reading Attempt 3rd Degree Murder as a charge after said charge was introduced by prosecutors to express, Id. R. 40a, R.7a @ 6.1- A.

21. Trial Judge Kline was the signing authority that, without providing appellant notice and opportunity to contest, vacated the charge Attempt 3rd Degree Murder, and did so twice after trial, rendering the charge void and is contrary to the Sixth and Fourteenth Amendments to the Constitution of the United States, Id. R. 44a to R. 47a, R.7a @ 6.1-B.

22. The trial court committed an error of law entering a verdict for Attempt Homicide, when the original verdict entered by the jury is in Attempt 3rd Degree Murder. In this, no judgment of sentence and no judgment of commitment exists, rendering the actions of defendants illegal and void because unconstitutional as a matter of law, Id. R. 35a to R. 36a; R. 8a @ 6.1- C.

23. Attempt 3rd Degree Murder is an offense created by an unconstitutional law; it is not a crime. A conviction under such law is illegal and void, and is in violation of appellants due process clause to accuse him of this conduct far beyond 20 years, and even where there is no statute to accuse the convicted, Id. R.8a @ 6.1-D.

24. As appellant demonstrated, Prosecutor Gettle's statement excluded Attempt Homicide as an alternative offense, Id. R.63a @ 20A. Ms. Gettle's evidence was displaced by the way trial Judge Kline called for **"malice"** and **"intent,"** as the incorrect legal standard to make up the alleged elements in and of the charge Attempt 3rd Degree Murder [and]

defendants were not called in chambers to "lower the degree," rather called upon the request by the prosecutor to change the charge. Id. R.65a @ 31 A-B.

(ii) **PROSECUTOR DITZLER**

25. Prosecutor Ditzler should not have been allowed to concede, "the Commonwealth does not have a Statute for what appellant has been convicted of," and then take issue with what he alleged was appellant's conduct during these proceedings and prejudicing appellant. Id. R.34a; R. 6a @ 6.2

26. First, for all the reasons addressed under Prosecutor Gettle, Id. R. 8a @ 6.2–A, where Ditzler's statement that **"there is no Statute"** undermined Prosecutor Gettle's statement that **"there is no charge,"** a conflict exists. Under Ditzler's interpretation, the greater degree of deprivation was felt in appellant after learning for the first time Attempt 3rd Degree does not have a Statute, rendering all acts by defendants as unconstitutional, prejudicing appellant and violates his First, Sixth, and Fourteenth Amendments to the United States Constitution.

27. In Ditzler's concession, as interpreted by appellant, he rendered Attempt 3rd Degree Murder as the only charge appellant is incarcerated for, therefore rendering any and all allegations of being charged for something other than Attempt 3rd Degree Murder a false, misleading, and fabricated statement. As such, there is no instruction that trial Judge Kline could have expressed to the jury as Attempt 3rd Degree Murder is a non-criminal, non-charge without a legal standard as a matter of law. Id. R.63a @23.

28. Prosecutor Ditzler's assertion that appellant sought the charge directly is false and misleading information as the trial transcripts disclose lawyer Kelsey III was who gave reason from the crimes codes and sentencing guidelines that there was nothing about Attempt Homicide to any degree; Yet, he wanted something on the record, Id. R. 38a – R.39a R. @32. In this plea agreement discussion, the opposition in Prosecutors Arnold/Charles, extended to the assessments and rulings given by Kelsey III and trial Judge Kline on the law, where prosecutors proposed all the wanted was Attempt 3rd Degree Murder as the charging offense, Id. R.39a – 40a, R.8a @ 6.2-B.

29. It was the trial transcripts "records" that disclosed how lawyer Kelsey III expressed the change Attempt Homicide for Attempt 3rd Degree Murder, and changed the information to read as such by physically exchanging the two after trial Judge Kline, called on lawyer Wynne to concede to the charge brought by the prosecutors in Attempt 3rd Degree Murder and he conceded. Id. R. 40a – R. 41a.

30. Prosecutor Ditzler declared appellant charged in Attempt 3rd Degree Murder [that] does not have a Statute, caused him prejudice and began to bring light to his case where trial Judge Kline is reading an instruction to Jury -1998 for the charge Attempt 3rd Degree Murder - which is without a State Statute, thus violating appellant's Sixth and Fourteenth Amendments to the Constitution of the United States.

31. It was Prosecutor Ditzler's statement that opened appellant's mind to look for the truth in his case, such as the February 17, 1999 Order of trial Judge Kline was actually a 1925 Opinion, and how that Opinion set aside the Jurys 1998 verdict on Attempt 3rd Degree Murder to find appellant guilty of Attempt Criminal Homicide, Id. R.44a – R.45a; And, done 34 days before certifying the trial transcripts "records" for March 23, 1999, finding appellant guilty of Attempt 3rd Degree Murder- the crime that does not exist Statutorily, Id. R.43a.

32. Appellant was also aware that trial Judge Kline also set aside the Jury verdict 16 months after certifying the record to hold in August 10, 2000, that appellant was guilty of Attempt Criminal Homicide, Id. & R. 46a – R. 47a; and thereby removed Attempt 3rd Degree Murder from documents as given to the Pennsylvania Superior Court, causing appellant prejudice and fraud upon the Court. Id. R.9a @ 6.2-D.

33. As the wrongful charge created and given to the jury in 1998 is Attempt 3rd Degree Murder, it became a wrongful prejudicial action to continue appellant's illegal detention under a crime created by an unconstitutional law/tribunal, it is not a factual rule of law, not a factual statutory crime and does not exist as a matter of law, Id. R.9a @ 6.2-E.

34. As a direct and proximate result of Prosecutor Ditzler's misrepresentations, concealments, and insincere concessions, appellant has been prejudiced and continues to be harmed as appellant has been serving 23 years of a 34 year sentence of a crime that does not exist, Id. R.9a @ 6.2F.

(iii) **LAWYER BUCHANIO**

35. Lawyer Buchanio's statement of not knowing of case law that provides relief (or) which would justify or support any complaint that appellant might have as to the sufficiency of evidence to support a conviction on the information brought by the Commonwealth should not have been allowed, and in-fact abandoned appellant, Id. R.9a @ 6.3.

36. First, for all the same reasons addressed under Prosecutor Gettle and Ditzler, Id. R. 9a @6.3-A, had Buchanio actually defended and fought for appellant he would have

learned, and should have known that as a competent attorney the charge was illegal and would have required the sitting judge to vacate and/or set aside the jury verdict.

37. Under Buchanio, an examination of the record with existing case law would reveal knowledge and reason for him to know of authorities existing before and after appellant's case was decided which held that Attempt 3rd Degree Murder is logically impossible and not a charge in Pennsylvania under State and Federal Law. It is well settled that counsel was under an obligation to cite and argue adverse cases, not simply hide from them, which under the facts of this case is as unprofessional as it is pointless, Id. R10a @ 6.3C.

38. If trial Judge Kline would have declined to address the illegality, Attorney Buchanio could have entered an interlocutory appeal or a civil action against Kline's ruling which impaired appellant's rights and thereby make Judge Kline a proper judicial defendant where his judicial performance of his duties are drawn into question, not the nature of the duty itself as a matter of law, Id. R.9a @ 6.3-B, R.61a @ 35.

39. As appellant's case has not been through the character of confrontation that the Constitution requires as adversaries, Lawyer Buchanio violates appellants Sixth Amendment guarantee under Chronic vs. United States.

40. As an appointed public defender, Buchiano's arguably deficient performance, the results would have been different. It was one thing to say appellant could not have been helped, it was quite another for counsel to sandbag appellant's objection claiming that appellant's objection had no merit, Id. R.6.3-D.

41. As a direct and proximate result of Lawyer Buchiano's deficiencies and misrepresentations, by failing to correct the prosecutors misrepresentations and unconstitutional – illegal jury charge in Attempt 3rd Degree Murder, appellant has been prejudiced and continues to be harmed by defendants' actions and conduct, in violation to appellant's Fifth, Sixth, and Fourteenth Amendments to the Constitution of the United States and 28 USC § 2241 (c)(3), Id. @ 6.3-E.

(iv) **PROSECUTOR(S) MR. BURNS / MR. DANERI**

42. Prosecutor Michael E. Burns and Jack (John) Daneri, as defendants, intentionally concealed appellant was to receive the full benefit and assistance of the trial court – Erie, pursuant to Pa. R.A.P 1925(b) as April 29th, 2016 Notice of Appeal, issued after the trial court Judge Brabender dismissed an In Forma Pauperis on April 13th, 2016 all belonged to appellant, Id. R. 75a. As defendents subvert the integrity of the court itself so

the judicial machinery could not perform in the usual manner, this caused prejudice to the fundamental fairness essential to the very concept of justice, denying appellant Due Process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

43. Defendants intentionally conspired to take advantage of the trial court process as willfully blind to the truth by substituting appellant for defendants, a 1925(b) Statement for a Motion to Dismiss, following the Order of the trial Court in July 26, 2016, Id. R. 77a to R. 80a; And contributed to the breakdown in the process, causing appellant to see a forced Writ of Prohibition in the Supreme Court after his free petition, access to court and due process were violated, Id. R. 62a @ 18; R.64a @ 29; R. 11a @ 6.4-E.

44. As defendants directed an intentional fraud at the Court itself when addressing appellant's incarceration for Attempt Homicide, and how the trial court judge is the one making the statement, Id. R.82a, when Prosecutor Ditzler **held** appellant convicted of "***Attempt 3rd Degree Murder***" charge, and how "***The Commonwealth does not have a Statute for what he has been convicted of,***" Id. **R.34a;** Prosecutor Gettle held there is no charge as "***Third Degree Attempt Murder,***" and how "***Appellant should have preserve this claim,***" **Id.** R.33a; And how personnel in government held to appellant's incarceration, there are "***No Sentencing Order and no Commitment Order***", Id. R.35a – R.36a; causing prejudice to appellant for all the same reasons addressed under Prosecutor Gettle, Ditzler, and Lawyer Buchanio, Id. R.10a – 12a, R. 62a -R.66a.

45. Defendants no jurisdiction couched in venue statement is false and misleading, Id. R.82a – 83a; as trial court – Erie exercises jurisdiction on the charge that here is a non-criminal, non-cognizable charge in nature. Defendants as lawyers and officers of the Court have a duty to disclose the evidence as received by appellant on incarceration as addressed above, [Infra @ 43], as these actions violate appellants Constitutional Rights, Id. R.10a @ 6.4-B, R.63a @ 19-20.

46. Defendants did not have to intentionally induce the trial court – Erie to treat the Prerogative Writ as a Post-Conviction Relief Motion (PCRA) to dismiss the motion as appellant is unable to satisfy any of the requirements under the PCRA, Id. R.83a – R.84a. Appellant offered a non-criminal, non-cognizable charge that could not satisfy the statutory language in § 9543 (a)(1) of Title 42; while the petition itself was timely and issued following the decision of the United States Supreme Court in Montgomery v. Louisiana [January 25, 2016], leaving the filing of the relief in the Prerogative, while defendants

retained a Motion for Modification under Pa.R.Crim.P. Rule 720; not continue appellant incarceration for a charge that is not a crime he has been serving 23 years of a 34 year sentence, violating his First, Sixth, and Fourteenth Amendments.

47. Defendants subvert the integrity of the Court itself so that the judicial machinery could not perform in the usual manner with false, misleading, and concealed statements when on the record Prosecutor Ditzler declared appellant charged in ***Attempt 3rd Degree Murder*** [that] ***does not have a Statute,*** and began to bring light to his case. It was recognized that trial Judge Kline was reading some form of instruction to Jury 1998 for the charge Attempt 3rd Degree Murder when it had no Statute, violating appellants Sixth, and Fourteenth Amendment; And, it was on Prosecutor Ditzler's statement that opened appellants mind to look further, such as not being provided notice or chance to contest in February 17, 1999 – Order of trial Judge Kline that was actually a 1925 Opinion, and how that Opinion set aside the Jury's 1998 verdict on ***Attempt 3rd Degree Murder,*** finding appellant guilty of ***Attempt Criminal Homicide,*** Id. R.44a – R.45a; This done 34 days before certifying the trial transcript "records" for March 23, 1999, finding appellant guilty of ***Attempt 3rd Degree Murder,*** Id.R.43a; to then have trial Judge Kline set aside the jury verdict after certification 16 months later to hold in August 10, 2000 appellant guilty of ***Attempt Criminal Homicide,*** Id. & R. 46a – R.47a; Here removing Attempt 3rd Degree Murder from court documents as given to the Pennsylvania Superior Court, Id. R. 9a @ 6.2 – D; And this caused fraud upon the court and prejudice to the fundamental fairness essential to the very concept of justice, denying appellant Due Process of Law guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States, Id. R. 64a.

48. As a direct and proximate result of defendants' misrepresentations, concealments, and insincere concessions, appellant has been prejudiced and continues to be harmed as appellant has been serving 23 years of a 34 year sentence of a crime that does not exist, Id. R. 6a @ 5.

49. As a direct and proximate result of all the defendants' actions and conduct, appellant has been harmed and injured by a bad faith misrepresentation about appellant's incarceration as he is convicted of the only charge ***"Attempt 3rd Degree Murder,"*** a charge that is stated by the Commonwealth Prosecutors to not ***"have a Statute"*** and for what appellant "has been convicted of," Id. R. 34a – R.33a; And, as to his actual incarceration,

there are ***"No Sentencing Order and no Commitment Order,"*** Id. R. 35a – R. 36a. The defendants have failed to conduct themselves befitting their particular government positions and conduct themselves in good faith, representing the truth about appellant's incarceration; And due to their intentional misrepresentation and concealments, a Magistrate Judge (now a U.S. District Court Judge) relied on their false and misleading statement and concealments on August 3, 2017 to a Constitutional degree, Id. R. 6a @ 5; causing appellant prejudice, denying him Due Process of Law guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution.

50. Appellant moved to show with evidence that he was not waiting for further factual development as defendants' have stated positively appellant was charged, sentenced, and incarcerated on a non-criminal, non-cognizable charge, Id. R. 33a – R. 48a; Making his claims ripe for review of Constitutional violations and relief critical to his cause for which he secured the Courts attention by filing a second motion on September 27, 2019 to proceed In Forma Pauperis, Id. R. 49a – 51a.

(j) ORDERS & OTHER DETERMINATIONS

51. On October 14, 2019 the trial court – Erie issued a panel opinion dismissing the cause and In Forma Pauperis. The determination by Senior Judge Cunningham ruling was based on its holding that there was no basis for a PCRA petition as appellant was not convicted of any crimes in Erie County [that] a prior IFP was denied by the entire state tribunal in the 2016 – 2017 term of litigation, including a Prerogative Writ for lack of Jurisdiction, and appellant was advised that any further abuse of process may result in sanctions for relief against his Lebanon County Criminal Conviction in Erie, Id. R. 52a.

52. On October 28, 2019, with concerns about the warning for sanctions in the trial court – Erie, appellant filed his Notice of Appeal with October 14th Order, a Procedural History of 2016 – 2017 Term of Litigation, a Statement of Matters Complained of on Appeal, and a third IFP motion with the Superior Court. The Appellate Court received appellants filings on November 4, 2019 and sent them to the trial court – Erie on November 5th of 2019, Id. R. 53a.

53. On November 8, 2019 the Superior Court issued a docketing sheet to review with a docketing statement to complete, and an invoice for an estimate of $90 U.S. Dollars and 25 cents, on appeal as due December 9, 2019, Id. R. 54a. Appellant completed the docketing statement by reprinting all the leaf's of papers [infra. #.52], on appeal in November 17, 2019, Id. R. 55a – R. 56a.

54. The trial court issued a panel opinion on behalf of Senior Judge in November 15, 2019, as issued by Judge Mead and directing appellant to comply with Rule 1925(b), file and serve the record and court a concise statement of matters complained of on appeal within 21 days, Id. R. 57a.

55. On November 18, 2019 appellant issued an **Application by leave of Court for Action in Matters** requesting trial court – Erie rule on In Forma Pauperis Motion as filed in and for the Superior Court on October 28, 2019, Id. R.68a. And, in November 25, 2019 appellant refiled his 1925(b) Statement, Id. R. 58a – 59a, and provided a certified ***Amendment in an Affidavit to Mr. Antonio Sierra' Procedural History***, Id. R. 60a – 67a.

56. On November 26, 2019 the trial court sustained dismissal of appellants IFP motion. Judge Mead based its ruling on Senior Judges October 15th, 2019 decision to deny appellant leave to continue, Id. R.58a -59a.

57. On December 4, 2019 the trial court issued a panel opinion holding appellant's appeal without merit and should be dismissed. Judge Mead based his memorandum Opinion stating, a review of Appellant's 1925(b) statement and review of the record and relevant case law sustains S.J. Cunningham's opinion to dismiss appeal, Id. R.69.

58. On December 8, 2019 appellant filed a **Petition to Renew Objections,** Id. R.70a, and stated his reasons as found in his November 25, 2019 Concise Statement of Matters Complained of on Appeal, Id. R.58a – R.59a. Appellant further issued a Petition for Pauperism (4th), in the Superior Court to decide (pending invoice), Id. R.71a – 72a.

59. On December 9, 2019 the Superior Court entered an Order to review the inventory list necessary for issues on appeal, Id. R.73a; Appellants brief is to be filed by January 21, 2020, Id.

60). On December 13, 2019, appellant issued **Application for Production of Less Copies** to the Superior Court. id. R.74a. Said Court issued an Order on December 26, 2019, GRANTING Appellant's in forma pauperis and reduction of copies, while denying pro se application for relief dated December 12, 2019, to properly raise any issue in his brief.

61). On December 27, 2019, appellant issued a Petition to Report Contents on Reproduced Record, and on January 16, 2020, submitted Appellate Brief with the Reproduced Record.

62). Appellee's did not contest any of Appellant's claims to the Superior Court.

63). On February 4, 2020, Appellant submitted a Motion and Application for Bail. The Superior Court received Appellants filings February 6, then on February 24, 2020 issued an Order denying his application for bail

64). On February 28, 2020, Appellant filed an Application for Reconsideration for Bail pursuant to Bond vs. U.S., 564 U.S. 211, 131 S.Ct. 2355 (2011) (Per Curiam), Commonwealth vs. McDermott, 547 A.2d 1236 (Pa. Super. 1988) & Bonaparte, 530 A.2d 1351 (Pa. Super 1987); And a Petition to Enforce Judgment pursuant to (inter alia) Folger vs. The Robert G. Shaw, 9 F. Cas. 335 (1st. Cir.1847), and the Superior Courts January 21,2020 Order to Appellee's.

65). On March 20, 2020, The Superior Court issued a determination affirming the Common pleas court denial of in forma pauperis and PCRA petition. The court held appellant had not proven he was entitled to relief as his brief fell below the minimum standards and did not follow the Pennsylvania Rules of Appellate Procedure.

66). On April 1, 2020, the Supreme Court of Pennsylvania issued a Second Supplemental Order that in pertinent parts "... extended the time to file any legal papers or pleadings by May 1, 2020." See 531 & 532 Judicial Administration Docket.