No. 20-7054

In the Supreme Court of the United States

Paul E. Weber –

Petitioner,

vs.

Amy Arnott Quinlan, Delaware State Court Administrator; John Carney, Governor; Matt Denn, Attorney General; Andrew J. Vella, Deputy Attorney General; Jan R. Jurden, President Judge, Delaware Superior Court; Henley T. Graves, Sussex County Superior Court Judge; William C. Carpenter, Jr, New Castle County Superior County Judge; Margaret Rose Henry, Delaware Senate Majority Leader; Peter Swartzkopf, Delaware House Speaker; John Doe; Jane Doe,

Respondents.

On Petition for a Writ of Certiorari to
The Third Circuit Court of Appeals
No. 18-2559

PETITION FOR WRIT OF CERTIORARI

Paul E. Weber
VCC- SBI 162469 – W Bldg.
1181 Paddock Road
Smyrna, DE 19977

QUESTIONS PRESENTED

Is the refusal of state officials to afford a defendant existing postconviction remedies actionable under 42 U.S.C. §1983?

Is 42 U.S.C. §1983 the proper remedy to challenge state officials who deprive a criminal defendant any mechanism whatsoever, including an appellate process, postconviction remedy, or collateral process, to challenge a constitutionally infirm conviction?

If the answer to the aforementioned question is "no," what is the proper procedure for a criminal defendant to seek redress for the denial of his constitutional rights to due process and a fair trial where the state authority refuses to implement any remedy for review?

RELATED COURT PROCEEDINGS

1. U.S. District Court for the District of Delaware
   Weber v. Quinlan, et al.
   Civ. A. No. 18-637-LPS
   Opinion and Order
   June 11, 2018

2. U.S. District Court for the District of Delaware
   Weber v. Quinlan, et al.
   Civ. A. No. 18-637-LPS
   Opinion and Order
   July 11, 2018

3. U.S. District Court for the District of Delaware
   Weber v. Quinlan, et al.
   Civ. A. No. 18-637-LPS
   Opinion and Order
   July 24, 2018

4. Third Circuit Court of Appeals
   Weber v. Quinlan, et al.
   No. 18-2559
   Opinion and Order
   March 12, 2019 & November 8, 2019

5. Third Circuit Court of Appeals
   Weber v. Quinlan, et al.
   No. 18-2559
   Opinion and Order
   October 13, 2020

PARTIES TO THE PROCEEDINGS

Paul E. Weber –
Petitioner,

vs.

Amy Arnott Quinlan, Delaware State Court Administrator; John Carney, Governor; Matt Denn, Attorney General; Andrew J. Vella, Deputy Attorney General; Jan R. Jurden, President Judge, Delaware Superior Court; Henley T. Graves, Sussex County Superior Court Judge; William C. Carpenter, Jr, New Castle County Superior County Judge; Margaret Rose Henry, Delaware Senate Majority Leader; Peter Swartzkopf, Delaware House Speaker; John Doe; Jane Doe,

Respondents.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

Cases

Statutes and Rules

OPINIONS BELOW

Weber v. Quinlan, Civ. A. No. 18-637-LPS
(D.Del. June 11, 2018)

Weber v. Quinlan, Civ. A. No. 18-637-LPS
(D.Del. July 11, 2018)

Weber v. Quinlan, Civ. A. No. 18-637-LPS
(D.Del. July 24, 2018)

Weber v. Quinlan, No. 18-2559
(D.Del. March 12, 2019)

Weber v. Quinlan, No. 18-2559
(D.Del. October 13, 2020)

JURISDICTION

The United States Court of Appeals for the Third Circuit decided this case on March 12, 2019. (Appx. C)

A timely petition for rehearing was decided on October 13, 2020. (Appx. D)

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

- U.S.C.A. I
  V
  VI
  VX

- 42 U.S.C. §1983

- *Greer v. Klem*, 591 F.3d. 672 (3d Cir. 2010)(state postconviction procedures fundamentally inadequate and violative of due process mandate injunctive relief.)

- *Evitts v. Lucy*, 469 U.S. 387 (1985)(once state implements postconviction procedures, even if it is determined they had no obligation to act, due process protections vest to protect rights in those state-created actions).

- *Monroe v. Pape*, 365 U.S. 167 (1961)(primary purposes of §1983 is to provide remedy "against those representing the State in some capacity were unable or unwilling to enforce a state law").

- *Heck v. Humphrey*, 512 U.S. 477 (1994)(§1983 civil rights action allowed if it does not call into question the validity of conviction or sentence).

- *D.A.'s Office for the Third Judicial Circuit*, 557 U.S. 502 (2009)(Federal courts may upset State's postconviction relief procedures if they are fundamentally inadequate to vindicate substantive rights).

- *Case v. Nebraska*, 381 U.S. 336 (1965)(State must afford criminal defendants clearly defined method by which they may raise claims of denial of federal rights.)

- *Carter v. Illinois*, 329 U.S. 173 (1946)(Due Process requires state to afford opportunity to challenge intrinsic fairness of criminal process).

- *Bounds v. Smith*, 430 U.S. 817 (1977)(Due Process requires claim of constitutional violation be recognized by the state court.)

- *Matthews v. Eldridge*, 506 U.S. 309 (1993)(Due Process requires an opportunity to be heard "at a meaningful time in a meaningful matter").

STATEMENT OF THE CASE

Weber was denied his rights to a fair trial. Notwithstanding Delaware's laws mandating a postconviction process and the federal requisite for vindication of violations of the rights enumerated in the Bill of Rights, this Court held the absence of any authority authorizing a §1983 complaint for the deprivation of a postconviction process is fatal to his claim. The Third Court of Appeals framed the narrative incorrectly and its overly narrow and parochial holding misconstrues Weber's claim *in toto*. There must be more "hesitancy [which] is in part a recognition of the important role federal courts have assumed in elaborating vital constitutional guarantees against arbitrary or oppressive state action. We want to leave an avenue open for recourse where we think the federal power ought to be vindicated."[1]

This Court allows challenges to postconviction procedures under §1983.[2] This Court has previously allowed a 42 U.S.C. §1983 claim for injunctive relief to proceed because the postconviction procedures afforded by the state were fundamentally inadequate and violative of the right to procedural due process.[3] Relying on *District Attorney's Office for the Third Judicial District v. Osborne*,[4] this

---

[1] *Screws v. United States*, 325 U.S. 91 (1945).
[2] *Skinner v. Switzer*, 562 U.S. 521 (2010).
[3] *Greer v. Klem*, 591 F.3d 672 (3d Cir. 2010).
[4] 129 S.Ct. 2308 (2009).

Court recognized that the *Heck* rule[5] did not apply where postconviction relief procedures are inconsistent with the "traditions and conscience of our people" or with "any recognized principle of fundamental liberty."[6] (Significantly, however, the *Heck* rule is also inapplicable for a distinct reason. The relief Weber seeks — a process to challenge a conviction — would not render his conviction or sentence invalid.) On remand, the *Grier* court noted *Osborne's* holding that the "right to due process is not parallel to a trial right but...must be analyzed in light of the fact he [ ] has only a liberty interest in postconviction relief."[7]

To be sure, "[s]tates have no [federal constitutional] obligation" to provide postconviction relief proceedings for their prisoners.[8] However, when states do provide such procedures, due process applies. For example, in D*istrict Attorney's Office for Third Judicial District v. Osborne*,[9], the Court faced a 1983 claim challenging a denial of due process in a state postconviction relief proceeding arising out of an effort to secure release based on DNA evidence. The Court observed that

---

[5]*Heck v. Humphrey*, 512 U.S. 477 (1994)(A state prisoner cannot raise a 1983 civil rights claim relating to the validity of his conviction or sentence until the conviction has been reversed, expunge, declared invalid, or called into question by the issuance of a writ of *habeas corpus*.)

[6]*Osborne* at 2320-21, quoting *Medina v. California,* 505 U.S. 437, 446 (1992). See also *Grier v. Klem*, 2011 U.S. Dist. LEXIS 120453 (W.D.Pa. Sept. 19, 2011), adopted in part *Grier v. Erie County DA*, 2011 U.S. Dist. LEXIS 120751 (W.D.Pa. Oct. 19, 2011).

[7]*Id.*

[8]*Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987).

[9]129 S.Ct. 2308 (2009).

a "state created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right."[10] Certainly, states have "more flexibility in deciding what procedures are needed in the context of postconviction relief. [W]hen a State chooses to offer help to those seeking relief from convictions, due process does not dictat[e] the exact form such assistance much assume.[11] Nonetheless, due process continues to apply, and 1983 may be utilized to address appropriate violations.

Thus, assuming Weber had a state created right to assert his claims in a state *habeas* proceeding, a denial of due process in that proceeding would be actionable.

Moreover, this is one of those exceedingly rare cases in which the existence of the plaintiff's constitutional right is so manifest that is clearly established by broad rules and general principles. That is, this ought to have been a member of that class of "easiest cases" that according to Judge Posner, "don't even arise."[12]

For what it's worth, several legislators of the Delaware General Assembly have concluded Weber was denied a fair trial as well as his right to a process to

---

[10]*Id.* at 2319 (quoting *Connecticut Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463(1983)).
[11]*Id.* at 2320 (quoting *Finley*, 481 U.S. at 559).
[12]*Redding*, 129 S.Ct. at 2643.

vindicate that violation. These substantive violations, fairly and properly presented to the state courts but never adjudicated, are too numerous to recount here. "Everyone" knows Weber is innocent. The complainant, who made the allegation months after the alleged offense, and hours after Weber served her with a Chancery Court complaint and ended their engagement, has recanted the accusation.

Amazingly, the trial court did not even order restitution in this forgery/theft case because factually the complainant suffered no financial or other loss, a circumstance which is most likely unprecedented in the annals of criminal justice in a "theft" case. Weber will have to serve 25 years in prison as a direct result of this most dubious and *de minis* conviction. And although Delaware's constitution, statutes, rules, customs and practices mandate a postconviction process, and the United States Constitution guarantees citizens the right to seek redress for violations of constitutional magnitude, the state has deprived Weber any of these fundamental due process guarantees thus rendering his fair trial rights illusory and worthless. In effect, this Court's decision is a *de facto* abjuration of Weber's constitutional rights in their entirety and his disenfranchisement as a United States citizen. This is not zealous advocacy or hyperbole or embellishment — it is the hard and cold truth. Yet Weber is not only deprived of any process in which to seek vindication of these most egregious constitutional violations, but according to the lower Court's decision he may not even invoke the Fourteenth Amendment via 42 U.S.C. §1983 — a reflection

of congressional resolve to enforce the very constitutional rights deprived to Weber — to remedy the dearth of any process to vindicate these constitutional violations.

The decision undermines this Court's dictates, such as *Montgomery v. Louisiana*, which requires state collateral review courts to give retroactive effect to new substantive rules.[13] How is it possible to say in one breath that the state must give retroactive effect but say in their next breath the state does not have to actually enforce a process to provide that effect? In point of fact, this Court does not endorse such a *non sequiter* at all. Due process protects from arbitrary governmental action and survives the criminal conviction.[14] The conundrums the lower Court's decision presents are infinitesimal. In fact, the Court is saying despite the fundamental due process right to an adequate record of the proceedings, it is OK to immediately destroy the transcript without any review. With all due respect, deference, and humility, Weber says humbug. A serious and substantial claim of the violation of one's fair trial rights that is wholly ignored by state officials — indeed, intentionally ignored by the officials who knowingly circumvented the state laws, rules and processes that would have allowed constitutional review of Weber's conviction — would shock any American's conscience.

> "It is beyond dispute that convictions must be obtained in a manner that comports with the Constitution...it necessarily follow[s]...our system

---

[13] 136 S.Ct. 718 (2016).

[14] *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982) (Powell, J. concurring in part).

affords a defendant convicted in state court numerous opportunities to challenge the constitutionality of his conviction.[15]

[15]*United States v. Daniels*, 523 U.S. 374, 380-81 (2001)

REASONS FOR GRANTING THE PETITION

The panel decision conflicts with core principles of fundamental fairness. This Court's observation that "Weber has not cited, and we have not located, any authority supporting a proposition that a defendant who has no means of challenging his conviction in state court may assert a claim for relief under the United States Constitution in a §1983 action" is enigmatic and off-point. Weber is at a distinct disadvantage because the Court fails to take into account that Delaware's Constitution, laws, rules, practices and customs mandate an adequate postconviction remedy to vindicate Weber's substantive rights which were violated. The United States Constitution requires the states to establish a process to vindicate the deprivation of federal rights. The Supreme Court is adamant some measure of due process extends to the postconviction process. And 42 U.S.C. §1983 provides for a means of vindicating federal rights established elsewhere, primarily in constitutional law. As these concerns were not issues in the District Court and not briefed in this Court, Weber now finds himself without any remedy to vindicate the deprivation of his substantive fair trial and due process rights. And this Court's decision will encourage more states to violate a citizen's right to a fair trial without fear that they will have to answer for their unconstitutional acts and omissions. Surely this is not the Court's decision or intent? As this Court has said, "[A] thorny constitutional issue" could result if "no other avenue of judicial review [were] available for a party

who claims that s/he is factually or legally innocent as result of a previously unavailable statutory interpretation[.]"[16] This matter presents such an issue.

The Deprivation of any Means for Redress to Vindicate the Violation of Weber's Constitutional Due Process and Fair Trial Rights is Cognizable Under §1983

In a tribunal riddled with errors, Paul Weber was denied his constitutional rights to due process and a fair trial. The resulting consequences for Weber were myriad and substantively grave. But seemingly, all was not lost. In recognition that our system of justice makes mistakes, a plethora of remedies have been implemented by the State of Delaware for the aggrieved to seek redress for such constitutional violations. Of course, there are; the fruits of our Revolution included the protections of due process of law and a fair trial. Indeed, in the unfathomable event these cherished constitutional rights were abrogated, we would face the certain and forlorn prospect of a second revolution. *In any event, once Delaware chose to implement postconviction procedures, even if it is determined they had no obligation to act, due process protections vest to protect Weber's rights in those state-created actions.*[17] Disturbingly, Paul Weber finds himself trapped in a bureaucratic blender ensnared in a parallel universe. In Paul Weber's dystopian world, he was denied any process

[16]*In re Dorsainvil*, 119 F.3d 245, 248 (3rd Cir. 1997).
[17]*Evitts v. Lucy*, 469 U.S. 387 (1985).

to vindicate the infringements of his due process and fair trial privileges. Weber's state government officials (the appellees'), recognizing the unique series of unusual circumstances as an anomaly, expressed no outrage and shirked their duty to ensure Weber was afforded his constitutional rights.

Weber was denied *in toto* all traditional remedies for vindication of his due process and fair trial rights. Not necessarily for justice, but instead only for an opportunity to be heard. Weber's vehicle towards that end was 42 U.S.C. §1983, which was designed to hold "liable" "every person who [ ] causes [ ] any citizen [ ] the deprivation of any rights, privileges, or immunities secured by the Constitution." By depriving Weber any opportunity to vindicate the denial of his rights to due process and a fair trial, the appellees further violated Weber's rights to due process and access to the courts under the Privileges and Immunities Clause of Art. IV §2(1)1; the right to petition the government for redress of grievances under Amendment I; fair trial rights under Amendment VI; personal enumerated rights under Amendment IX, and Delaware's obligation to enforce Weber's due process rights under Amendment XIV, §1 the United States Constitution.

Notwithstanding the appellee's deliberate indifference to Weber's constitutional rights, the Third Circuit Court of Appeals held:

> "Weber has not cited, and we have not located, any authority supporting the proposition that a defendant who has no means of challenging his conviction in state court may assert a claim for relief under the United States

Constitution in a § 1983 action [ ]."

In the first instance and demonstrated herein, part of the difficulty in discovering relevant authorities concerning the requirement for remedies for redress of constitutional violations is because they were so ingrained in the judicial consciousness that generations have now passed without recent significant caselaw on the right.[18]

Weber has demonstrated a violation of his procedural due process rights as he has shown the existence of an interest protected by the Constitution's due process clause and an inadequacy of available procedures to challenge the state's actions.[19] It is not surprising there appears to be a dearth of any §1983 authority with a similar fact pattern. Where in this great nation can a citizen convicted of a felony offense after being deprived a fair trial not have an available process whatsoever to seek redress for the violation of his fair trial rights?

---

[18]*Carey v. Saffold*, 536 U.S. 214, 219 (2002). Outdated citations may be found in *Case v. Nebraska*, 381 U.S. 336, 338 n. 13 (1965)(Clark, J., concurring); *id.* at 345 n. 8 (Brennan, J, concurring); Reitz, C.J., *Federal Habeas Corpus: Postconviction Remedies for State Prisoners*, 108 U. Pa. L. Rev. 461, 469–70 (1960); *Effect of the Federal Constitution in Requiring State Postconviction Remedies,* 53 Colum. L. Rev. 1143 (1953); *State Postconviction Remedies*, 61 Colum L. Rev. 681 (1961); *State Postconviction Remedies and Federal Habeas Corpus*, 40 N.Y.U. L. Rev. 154 (1965); *State Postconviction Remedies and Federal Habeas Corpus,* 12 Wm. & Mary L. Rev. 149 (1970); *The Uniform Postconviction Procedure Act*, 69 Harv. L. Rev. 1289 (1956). See also American Bar Association Standards Relating to Postconviction Remedies (1978)(collecting and analyzing modern approaches to state postconviction procedures); National Commissioners on Uniform State Laws, Uniform Postconviction Procedures Act (1966) (model statute).

[19]*Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 59 (1999).

Of course, Weber or this Court cannot point to a precise fact-specific authority. In most circles the very question invites incredulous scorn and its premise is presumptuously preposterous. That the truism that everyone has their "one and only appeal" appears to have a single exception — Weber — cannot be held against him. As Justice Stevens noted, the citizens right to access an impartial tribunal to seek redress for official grievances is so fundamental and so well established that it is sometimes taken for granted.[20] It is impossible to juxtapose with any semblance of fairness Weber's plight with that of, let's say, a discharged public employee who was denied due process at his predetermination hearing (as Weber was denied due process at his "pre-conviction hearing",) had a right to seek redress of that due process violation (as Weber had a right to seek redress at his due process violation but was denied any opportunity to do so), as well as a right to seek further redress in federal court (unlike Weber according to the Third Court's decision).[21] This is nonsensical.

While this Court has long recognized that states have an interest in securing the finality of their judgments, finality is not a stand-alone value that trumps a state's overriding interest in ensuring that justice is done and its courts are secured to its citizens.[22] Weber is surely entitled to less than "the full panoply of rights" that would

---

[20]*Woodward v. Ngo*, 548 U.S. 81, 104 (2006).
[21]See generally, *Reilly v. City of Atl. City*, 532 F.3d 216 (3d Cir. 2008).
[22]*D.A.'s Office for the Third Judicial Circuit v. Osborne*, 557 U.S. 52, 98 (2009).

be due a criminal defendant prior to conviction. That does not mean, however, that pretrial due process cases have no relevance in the postconviction context.[23] The postconviction process cannot offend some principle of justice so rooted in traditional values as to be ranked as fundamental or transgresses any recognized principle of fundamental fairness.[24]

Deprivations of Remedies Indisputable:
Weber's Constitutional Due Process
and Fair Trial Rights are Illusory Without Remedy for Redress

Notwithstanding Delaware's blanket rules, laws and constitutional provisions mandating a remedy to redress violations of fair trial and due process rights, it is beyond dispute the defendants have sacrificed Weber's privilege by undermining well-established practices of postconviction processes designed to ensure adherence to the Bill of Rights and the Delaware Constitution.[25] The defendants, on the other hand, cite a 2009 Delaware Supreme Court case to support their misguided theory that Weber did have the remedies of Supreme Court Criminal Rule 35(a) and certiorari.[26] However, the decision is not controlling as it originates from a wholly distinct case. It is non-dispositive at is it amounts to nothing more than dicta. And it has proven to be in error.

---

[23]*Id.* at 95.
[24]*Id.* at 69.
[25]*See infra.*, Delaware's Constitution, Statutes, Rules, Customs & Practices Demand a Post Trial Due Process Review.
[26]*Weber v. State*, 971 A.2d 135 (Del. 2009).

In the first instance, the literally thousands of decisions regarding Rule 35 and certiorari unanimously agree they are not available remedies to challenge the constitutionality of a conviction. Indeed, not a single Delaware authority says otherwise. Two, when Weber did attempt to utilize the remedies of Rule 35 and certiorari, the Delaware courts held these remedies were not available to him. Three and most dispositively, several months ago the Delaware Supreme Court pivoted and acknowledged Weber did not have the remedies of Rule 35 and certiorari available.[27] QED. As to the related question — although entirely different question raised in this matter — of whether the suspect and unchallengeable conviction may be used to enhance a subsequent sentence, the Delaware Supreme Court unfathomably passed the buck to the federal judiciary.[28] This is further evidence of the appellees' flagrant disregard of Weber's constitutional rights with respect to his forgery conviction.

Due Process Requires Vindication of Fair Trial Violations

The right to claim a violation of a constitutional provision in a manner that will be recognized by the courts is also embedded in those rights recognized by the Constitution's text and our interpretations of it. Without the ability to access the

---

[27]*Weber v. State*, 213 A.3d 1195 (Del. 2019)("We do not question that the issue Weber again seeks to raise is a serious and important one... [Weber's] consequences [] lead [ ] one to ask whether there ought to be some mechanism for appellate review of the predicate conviction.).

[28]*Id.* at FN. 17.

courts and draw their attention to the constitutionally improper behavior, all of — us prisoners and free citizens alike — would be deprived of the first and often only "line of defense" against constitutional violations.[29]

The right to petition the government for redress of grievances traditionally involve access to the courts.[30] The Bill of Rights was created with the inherent understanding there would be a process to vindicate the violation of the rights promulgated. The constitutional requirement of due process in a criminal prosecution is not satisfied by formal compliance or merely procedural regularity, and a state must give one whom it deprives his freedom the opportunity to open an inquiry into the intrinsic fairness of the criminal process even though it appears proper on the surface.[31] Certainly, Weber's complaint demonstrates the deprivation of interests which require due process protection.

It is clear that the United States Constitution does not guarantee a right to appeal a state law criminal conviction. [32] This Court has also held that states have no obligation to provide for a postconviction process.[33] ***This Court, however, has***

---

[29]*Bounds v. Smith*, 430 U.S. 817 (1977).
[30]*Jutowski v. Twp. of Riverdale*, 904 F.3d 280, 294, n. 17 (3d Cir. 2018).
[31]*Carter v, Illinois*, 329 U.S. 173, 174-76 (1946).
[32]*McKane v. Durston*, 153 U.S. 684, 687 (1894)("A review by an appellate court of the final judgment in a criminal case, however grave the offense of which the accused is convicted, was not at common law, and is not now, a necessary element of due process of law. It is wholly within the discretion of the state to allow or not to allow such a review.").
[33]*Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987); see also *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 89 (2009)("States are under no obligation to provide mechanisms for postconviction relief... ").

specifically held that "the States must afford prisoners some 'clearly defined method by which they may raise claims of denial of federal rights."[34,35] Why?

---

[34]*Case v. Nebraska*, 381 U.S. 336, 337 (1965)(citing *Young v. Ragen*, 337 U.S. 235, 239 (1949).

[35]See generally *Case v. Nebraska*, 381 U.S. 336, 337-47 (1965)(Brennan and Clark, J.J., concurring); *United States ex rel. Herman v. Claudy*, 350 U.S. 116, 119 (1956); *Young v. Ragen*, 337 U.S. 235 (1949); *Grigsby v. Mabry*, 637 F.2d 525 (8th Cir. 1980); *Gibson v. Jackson*, 578 F.2d at 1048-49 (addendum of Rubin, J.); *Hart v. Eyman*, 458 F. 2d 334, 340 (9th Cir.) cert. denied, 407 U.S. 916 (1972); B*uchanan v. United States ex rel. Reis*, 379 F.2d 612 (5th Cir. 1967)(Suggesting the invalidity of state procedural rules or devices that are designed or serve to frustrate the adequate litigation of federal constitutional claims, are, e.g. *Ford v. Georgia*, 498 U.S. 411, 423 (1991)(refusing to recognize default of state procedural rule with which petitioner could not reasonably have been expected to comply); *Terrell v. Morris*, 493 U.S. 1, 2 (1989)(similar); *Ward v. Commissioners of Love County*, 253 U.S. 17, 22 (1920)("It therefore is within our province to inquire...whether the [federal] right was denied [by state court] in substance and effect, as by putting forward nonfederal [procedural] grounds of decision that were without any fair or substantial support"); *Enterprise Irrigation Dist. v. Canal Co.*, 243 U.S. 157, 164 (1917)(adjudication of federal claim may not be frustrated by "mere device to prevent a review of the decision upon the federal question"). See also *Beavers v. Saffle*, 216 F.3d 918, 923 (10th Cir. 2000)("State procedural rules that bar *habeas* review of ineffective assistance claims are viewed 'with a healthy degree of skepticism.'") See generally Bandon L. Garrett & Lee Kovarsky, *Federal Habeas Corpus: Executive Detention and Post-Conviction Litigation* (2013); 7 Wayne R. LaFave, Jerold H. Israel, Nancy J. King & Orin S. Kerr, Criminal Procedure §28.3 (3d ed. 2007 & Supp. 2012-13); Ronald P. Sokol, *Federal Habeas Corpus* 341-43 (2ed. 1969); James A. Albert & Gregory A. Brobeck, *Habeas Corpus – A Better Remedy in Visitation Denial Cases,* 41 Maine L.Rev. 239 (1989); Marc M. Arkin, *Speedy Criminal Appeal: A Right Without a Remedy*, 74 Minn. L.Rev. 437 (1990); Vivian Berger, *Herrera v. Collins: The Gateway of Innocence for Death-Sentenced Prisoners Leads Nowhere*, 35 Wm. & Mary L.Rev. 943 (1994); John Flannery, *Habeas Corpus Bores a Hole in Prisoners' Civil Rights Actions – An Analysis of Preiser v. Rodriguez*, 48 St. John's Rev. 104 (1973); Luis Kutner, *World* Habeas *Corpus and Humanitarian Intervention*, 19 Val. U. L.Rev. 593 (1985); Warren Lupel, *Recanted Testimony: Procedural Alternatives for Relief from Wrongful Imprisonment*, 35 DePaul L.Rev. 477 (1986); Robert Plotkin, *Rotten to the "Core of Habeas Corpus": The Supreme Court and the Limitations of a Prisoner's Right to Sue; Preiser v. Rodriguez*, 9 Crim. L. Bull. 518 (1973); Martin A. Schwartz, *The Preiser Puzzle: Continued Frustrating Conflict Between the Civil Rights and Habeas Corpus Remedies for State Prisoners, 37* DePaul L.Rev. 85 (1988); Robert J. Sharpe, *Habeas Corpus Extradition and the Burden of Proof: The Case of the Man Who*

Because mistakes like those in Weber's case are much more frequent than most people are comfortable to acknowledge.[36]

This Court has consistently held that defendants have a constitutional right to meaningful access to state postconviction courts.[37] The right of access to the courts is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights.[38] "**It is clear that ready access to the Courts is one of, perhaps *the*, fundamental constitutional rights**."[39]

Escaped from Devil's Island, 49 Cambridge L.J. 422 (1990); Scott Singer, "*To Be or Not to Be: What is the Answer? The Use of Habeas Corpus to Attack Improper Prison Conditions*, 13 New Eng. J. on Crim. Civ. Confinement 149 (1987); *Development in the Law – Federal Habeas Corpus*, 83 Harv. L.Rev. 1038, 1055-62, 1216 (1970); *The Effect of Violations of the Interstate Agreement on Detainers on Subject Matter Jurisdiction*, 54 Fordham L.Rev. 1209 (1986); *Federal Habeas Corpus Review of Nonconstitutional Errors; The Cognizability of Violations of the Interstate Agreement on Detainers*, 83 Colum. L.Rev. 975 (1983); *Habeas Corpus, Section 1983 and State Prisoners' Litigation Preiser v. Rodriguez in Retrospect*, 1977 U. Ill. L.F. 11953; *State Prisoners' Suits Brought on Issues Dispositive of Confinement: The Aftermath of Preiser v. Rodriguez and Wolff v. McDonnell*, 77 Colum. L.Rev. 742 (1977); Benjamin Vetter, *Habeas, Section 1983, and Post-Conviction Access to DNA Evidence*, 71 U.Chi. L.Rev. 587 (2004).

[36]Jordan M. Steiker, James W. Marcus, & Thea J. Posel, *The Problems of Rubber-stamping in State Capital Habeas Proceedings: A Harris County Case Study*, 55 Hous. L. Rev. 889 (2018); Carlos M. Vauez & Stephen I. Vladeck, *The Constitutional Right to Collateral Postconviction Review*, 103 Va. L. Rev. 905 (2017); authority cited *infra.* 7.2 n. 1

[37]*Bounds v. Smith*, 430 U.S. 817, 825 (1977). ("due process right to reasonably adequate opportunity to present claimed violations of fundamental rights to the courts"). Accord *Lewis v. Casey*, 518 U.S. 343, 350 (1996). See also *Christopher v. Harbury*, 536 U.S. 403, 412 (2002).

[38]*Wolff v. McDonnell*, 418 U.S. 539, 579 (1974).

[39]*Cruz v. Hauck*, 475 F.2d 475, 476 (5th Cir. 1973). Accord *McCarthy v. Madigan*, 503 U.S. 140, 153 (1992); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); See *Bounds v. Smith*, 430 U.S. 817 (1977). See also *Tennessee v. Lane*, 541 U.S. 509, 533 (2004).

Due process requires an opportunity to be heard "at a meaningful time and in a meaningful manner."[40] Criminal process is lacking where it "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."[41] A procedure for post-conviction relief can fairly be termed inadequate when it is so configured as to deny a convicted defendant any opportunity for judicial rectification of so fundamental a defect in his conviction.[42] What, then, should the Court say in Weber's circumstances, where he had no opportunity to be heard whatsoever and enjoyed no process whatsoever in which to challenge his forgery conviction? And where that conviction was used to enhance Weber's sentence from a 3-year minimum mandatory to a 25-year minimum mandatory? This Court seemingly recognizes:

> "It is beyond dispute that convictions must be obtained in a manner that comports with the Constitution....it necessarily follow[s]....our system affords a defendant convicted in state court numerous opportunities to challenge the constitutionality of his conviction."[43]

Not only did Weber not have "numerous opportunities" to challenge the constitutionality of his conviction, he was deprived of any remedy whatsoever despite numerous Delaware laws and rules mandating one. This Court must enforce its

---

[40] *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976).
[41] *Herrera v. Collins*, 506 U.S. 390, 408 (1993)(citing quotations omitted).
[42] *In re Davenport*, 147 F.3d 605, 611 (1st Cir. 1998).
[43] *United States v. Napolitan*, 830 F.3d 161, 165-66 (3d Cir. 2016), quoting *Daniels v. United States*, 532 U.S. 374, 381-82 (2001).

declaration announced in *Napolitan.*

While it is true that the constitutional protection in state postconviction proceedings are less stringent than at trial or on direct review,[44] the Supreme Court has never held or suggested that the Due Process Clause does not apply to these proceedings and must comport with the "fundamental fairness mandated by the Due Process Clause."[45]

> "**Postconviction relief procedures are constitutional if they compor[t] with fundamental fairness....Federal courts may upset a State's postconviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided.**" [46]

The right of access to the courts is an aspect of the First Amendment right to petition the government for redress of grievances.[47] Accordingly, the Constitution guarantees that Weber, like all citizens, have a reasonably adequate opportunity to raise constitutional claims before impartial judges.[48] Moreover, because access to the courts is fundamental right, government-drawn classifications that impose substantial burdens on the capacity of a group citizens to exercise that right require searching judicial examination under the Equal Protection Clause.[49]

---

[44]e.g. *Pennsylvania v. Finley*, 481 U.S. 551, 555-557 (1987).
[45]*Id.* at 556-557; see also *Murray v. Giarratano*, 492 U.S. 1, 8 (1989)(opinion of Rehnquist, C.J.).
[46]*D.A.'s Office for the Third Judicial Circuit*, 557 U. S. 52, 69 (2009).
[47]*Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983).
[48]*Lewis v. Casey*, 518 U.S. 343, 351 (1996).
[49]*Lyng v. Automobile Workers*, 485 U.S. 360, 370 (1988).

Weber's Right to Assert his Claim of the Denial of any Opportunity for Redress to Seek for Constitutional Violations via 42 U.S.C. §1983

Monroe v. Pape set forth the applicable principles in play here.[50] §1983 reaches those abuses of state authority that are forbidden by the State's constitution of statutes or common law.[51] It provides relief not only "where the state law was inadequate," "but also provide a federal remedy where the state remedy, though adequate in theory, was not available in practice."[52]

There are three kinds of §1983 claims that may be brought against the State under the Due Process Clause of the Fourteenth Amendment, all of which are applicable to Weber's complaint. One, §1983 allows Weber to bring suit for violations of his protections enumerated in the Bill of Rights.[53] Two, the substantive component of Due Process bars certain are arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them."[54] Three, the procedural component of Due Process requires Weber from the mistaken or unjustified deprivation of life, liberty, and property.[55] When a postconviction process is not available, an alternative [ ] to pursuing claim in a federal *habeas corpus* petition, the petitioner might present the claim to a federal court in a separate (albeit,

---

[50] 365 U.S. 167 (1961).
[51] *Zinerman v. Burch*, 494 U.S. 113, 124 (1990).
[52] *Id.*, quoting *Monroe* at 173-74.
[53] *Zinerman*, 494 U.S. at 125.
[54] *Daniels v. Williams*, 474 U.S. at 331.
[55] *Parratt*, 451 U.S at 537.

possibly, simultaneous) civil rights under 42 U.S.C. 1983."[56] Reiterating that "[o]ur system of law has always endeavored to prevent even the possibility of unfairness,[57] the Supreme Court emphasized the Due Process Clause is exercised to adequately vindicate individual rights[58] and allow all those concerned a fair hearing of the state law claims.[59]

The protection of the Due Process Clause applies to rights which have accrued to one under existing rules of law and have become vested, and such rights cannot be taken away by a change in the rules or remedies. Arbitrary and unreasonable abolishment of a right of action to redress injury to these central rights of person or property falls within the prohibition of the Due Process Clause, and the legislature may not abolish a remedy given by the common law to essential rights without affording another remedy substantially adequate.

Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for enforcement of a right, which a state has no power to destroy, unless there is, or was, afforded some real opportunity to

---

[56]Hertz, R. & Liebman, J. S., *Federal Habeas Corpus Practice and Procedure*, Part II: Timing of Federal *Habeas Corpus* Petition; State Remedies; Volume 1: Chapter 7: State Remedies: Professional and Constitutional Issues: §7.1 "Full and Fair" Proceedings [b] Constitutional Considerations and Fn. 94. (Copyright © 2019 Matthew Bender & Company, Inc., Release No.11, December 2019).

[57]*In re Murchison*, 349 U.S. 133, 136 (1955).

[58]*McGautha v. California*, 402 U.S. 183, 255 (1971) and allow all those concerned to fair hearing of their state law claims.

[59]*Id.* at 256.

protect it.[60] No principled distinction may be made between *Wilkinson v. Ohio Dept. of Rehab. & Corr.*[61] and Weber. In *Wilkinson*, the petitioners challenged the state's parole procedures under §1983 where a favorable judgment would not necessarily invalidate the conviction or sentence. Here, Weber challenges the state's postconviction procedures where a favorable judgment would not invalidate his conviction or sentence. In all actuality, Weber's situation is much more egregious as not only are his procedural due process rights implicated, but his rights to substantive due process, a fair trial, access the courts and petition his government have been violated as well.

Weber has been subjected to the most fundamental of injustices. It is readily apparent that under Weber's specific circumstances that Delaware's postconviction relief procedures are fundamentally inadequate to vindicate his substantive rights, and that these procedures (or lack thereof) "offends some [fundamental] principle of justice" or "transgresses any recognized principle of fundamental fairness.[62] Of course, §1983 is not itself a source of substantive rights. It is, however, a means of vindicating federal rights established elsewhere, primarily in constitutional law.[63] It is difficult to imagine a right more fundamental than the right to seek redress for

---

[60]*Richards v. Jefferson County Ala.*, 517 U.S. 793 (1996).
[61]544 U.S.74 (2005).
[62]*Medina v. California*, 505 U.S. 437, 446 (1992).
[63]*Albright v. Oliver*, 510 U.S. 266, 271 (1984), quoting *Baker v. McCollan*, 443 U. S. 137, 144, FN. 3 (1979).

violations of fair trial rights which resulted in severe direct and collateral consequences.

Violations of Weber's Procedural & Substantive Due Process Rights

The Due Process Clause of the Fifth Amendment provides that "No person shall be deprived of life, liberty, or property, without due process of law." The Court has held that the Due Process Clause protects individuals against two types of government action. So-called "substantive due process" prevents government from engaging in conduct that "shocks the conscience," or interferes with rights "implicit in the concept of ordered liberty." When government action depriving a person of life, liberty, or property survives substantive due process scrutiny, it must still be implemented in a fair manner. This requirement has traditionally been referred to as "procedural" due process." Obviously, the procedural due process requirements in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation of liberty may occur. It is impossible to conjure a more important liberty interest under the circumstances presented here.

The right of access to the courts is protected by the due process clauses of the Fifth and Fourteenth Amendments, and assures that no person will be denied an opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights. Two categories of federal due process protections under the Fourteenth Amendment which are redressable under §1983 are specific

protections defined in the Bill of Rights; substantive due process, which prohibits certain arbitrary government actions regardless of the fairness of the procedures uses; and procedural due process or the guarantee of fair procedure. Weber's circumstances implicate each. Delaware's postconviction scheme does not comport with the Fourteenth Amendment. Thus, the procedural due process framework of either *Mathews* or *Medina* governs this §1983 claim.[64]

As for procedural due process, it concerns the constitutionality of the procedures employed to deny a person's life, liberty or property, and procedural due process rules are meant to protect persons not from deprivation, but from mistaken or unjustified deprivation of life, liberty, or property. Although no one has a vested interest in a rule of law as such or in any particular form of remedy, withdrawal or change of remedy, in violation of interests already vested or in impairment a substantial right constitutes a denial of due process.

United States v. Mendoza-Lopez[65] reiterated that where a determination made in an administrative proceeding plays a critical rule in the subsequent imposition of a criminal sanction, there must be some meaningful review of the administrative proceeding. *Mendoza* was predicated on 18 U.S.C. §1326, which includes as an element of that offense the deportation of the alien-defendant. *Mendoza* affirmed the

[64]*Nelson v. Colorado,* 137 S.Ct. 1249, 1255-63 (2016).
[65]481 U.S. 829, 837-38, 841 (1987).

practice of permitting a challenge to the validity of a deportation order at the subsequent criminal proceeding. Due process demands some meaningful review. Weber is obviously entitled to at least the same due process protections as the alien-defendant. The appellees were duty bound not to frustrate adjudication of Weber's federal claims.[66]

Moreover, "the due process clause contains a substantive component that bars certain arbitrary, wrongful government actions 'regardless of the fairness of the procedures used to implement them.'"[67] Official conduct violates substantive due process if it "is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience."[68] It should brook no debate that the defendants, government officials responsible for implementing postconviction procedures who failed their duty while contemporaneously deceiving Weber that there were postconviction forums available to him, are culpable of arbitrary, egregious and outrageous conduct which would shock any conscience. Indeed, Weber has found it nearly impossible to convince anyone that he has no remedy at his disposal to

---

[66]*Grigsby v. Mayberry*, 637 F.2d 526, (8th Cir. 1980); *Gibson v Jackson*, 578 F.2d at 104 (addendum of Rubin, J.); *Hart v. Eyman*, 458 F.2d 334, 340 (9th Cir.) *cert. denied*, 407 U.S. 916 (1972); *Buchanan v. United States ex rel Reis*, 379 F.2d 612 (5th Cir. 1967); *Ford v. Georgia*, 498 U.S. 411, 423 (1991); *Terrell v. Morris*, 493 U.S. 1, 2 (1989); *Ward v. Commissioners of Love County*, 253 U.S. 17 (1920); *Enterprise Irrigation District v. Canal Co.*, 243 U.S. 157, 164; (1917); *Beavers v. Saffle*, 216 F.3d 918, 923 (10th Cir. 2000).
[67]*Zinermon v. Burch*, 494 U.S. 113 (1990).
[68]*Evans v. Sec'y of Dept. of Corr.*, 645 F.3d 650, 660 (3d Cir. 2011), citing *City of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1988).

vindicate the violation of the most basic and fundamental of rights to a fair trial due to its sheer implausibility.

There is a recognition of the equal obligation of the state courts to protect the constitutional rights of criminal defendants in order prevent needless friction between the state and federal courts.[69] Moreover, at least some measure of due process extends to the postconviction process.[70] One of the primary purposes of §1983 was to provide a remedy "against those who representing a State in some capacity were unable or unwilling to enforce a state law."[71] There can be no question Weber has firmly established the particular interests at issue here — the right to a fair trial — is protected by the substantive Due Process Clause and the appellee's deprivation of that protected interest shocks the conscience. Indeed, "shocks the conscience?"

Weber's circumstances are tantamount to our tradition of affording "serious consideration in judging whether a challenged rule or practice, or the failure to provide a new one, should be seen as violating the guarantee of substantive due process as being arbitrary, or as failing wholly outside the realm of reasonable governmental action."[72] Weber, who seeks enforcement of a federal right against

---

[69]*Staretz v. Ishee*, 389 F.Supp. 2d. 858 (S. D. Ohio 2005)
[70]*Ohio Adult Parole Authority v. Woodard*, 523 U.S. 272 (1998).
[71]*Monroe v. Pape*, 365 U.S at 175-76.
[72]*Poe v. Ullman*, 367 U.S. 497, 542 (1961)(Harlan, J., dissenting).

the state, should not be abandoned by this Court if any reasonable remedy can be fashioned.[73]

Delaware's Constitution, Statutes, Rules, Customs and Practices Demand a Post-Trial Due Process Review

Delaware does have due process remedies to vindicate the fair trial violations suffered by Weber. The appellees, however, not only refuse these remedies to Weber but pursued a course of actions to circumvent these constitutional and statutory provisions by way of bureaucratic fiat.

There is no dispute Weber did not have the right of appeal in light of Art. IV, §11(1)(b) of the Delaware Constitution. The provision precludes appeal of convictions where the sentence does not include a fine, restitution, probation, or prison sentence excluding 30 days.[74] However, 11 DEL.C. §4504(a), entitled "Postconviction Remedy," provides for due process review to those claiming their innocence.[75] 11 DEL.C. §5121(b) provides that criminal due process rules "shall not abridge, enlarge or modify the substantive rights of any person, and shall preserve the right of trial by jury as at common law and as declared by the statutes and Constitution of this State." 11 DEL.C. §§103, 201 affords additional protections. The

---

[73]*Robinson v. Pratt*, 497 F.Supp. 116, 122 (D.Mich. 1980).
[74]*Weber v. State*, No. 592, 2001, 2002 WL 31235418 (Del. Oct. 4 2002).
[75]Except at a time when direct appellate review is available, and subject to the time limitations set forth in this subsection, a person convicted of a crime may file in the court that entered the judgment of conviction a motion requesting the performance of forensic DNA testing to demonstrate the person's actual innocence.

authorized criminal rules state they "are intended to provide for the just determination of every criminal proceeding"[76] and proscribe procedures to ensure those just determinations.[77] All of these rules were implemented to ensure meaningful and adequate review of Weber's criminal conviction, all of which were denied to him.

Judicial power is the "irreducible inherent authority fundamental to the essence of a court without the courts would cease to function for which they are established.[78] Delaware's law also provides a mechanism for "general" judicial review. In *Curran v. Wooly*[79] the court found "the state must provide for the protection of constitutional rights [ ] by simple motion brought the court of original jurisdiction," which is precisely what Weber did. It is an essential function of the Constitution to give a defendant a reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his conviction and sentence.[80] Indeed Delaware has recognized "[It] is certainly correct that [defendants are] entitled under federal law to an adequate postconviction remedy..."[81] In the criminal context, the

---

[76]SUPER.C.CRIM R.2.
[77]SUPER.C.CRIM R. 37, 61. See also DEL.SUPR.CT.R. 26.
[78]*United States v. Dunegan,* 251 F.3d 477, 478 (3d Cir. 2001).
[79]104 A.2d 771, 774 (1954).
[80]*Carafas v. Lavallee*, 391 U.S. 234, 238 (1968); *Price v. Johnston,* 334 U.S. 266, 283 (1948).
[81]*Jones v. Anderson,* 183 A.2d 177, 179 (Del. 1962).

court can "entertain no doubt that the decision must be reviewable"[82] with respect to appellate or postconviction review. "We suggest that it might be appropriate for the Superior Court to adopt the rule dealing specifically with application of this sort."[83] Any premise that the State is not required to afford any corrective judicial process to remedy an alleged wrong involving due process is simply and plainly "wrong."[84] Significantly, other state constitutional provisions come into play which mandate a constitutional review of Weber's forgery conviction other than a direct appeal. Art. 1 §9 of the Delaware Constitution provides that all courts shall be open; and every person for an injury done him or her in his or her reputation, person, movable or immovable possessions shall have remedy by the due course of law, and justice administered according to the very right of the cause and law of land without suit, denial or unreasonable delay or expense. Art. 1 §16 empowers citizens to apply to persons entrusted with the powers of government, for redress of grievances or other proper purposes, by petition, remonstrance or address. This includes the right to present to a sovereign a petition or a remonstrance setting forth a protest or grievance arising out of governmental action. Art. 1 §13 provides that the privilege of the writ of habeas corpus shall not be suspended.

> Art. 1 §13 of the Delaware Constitution in conjunction with Title 10, 6901 and Title 10, 6902 of the revised code

---

[82] *Id.*
[83] *Id.* 179-80.
[84] *Mooney v. Holohan*, 294 U.S. 103, 113 (1935).

> of 1953, conferred jurisdiction upon this court to hear an issue the writ of *habeas* corpus in a proper case. However, no settle practice things to have been developed in the state governing this type of proceeding.

The Delaware Supreme Court has long has long reaffirmed the principle that some type of review is required to test the constitutionality of a conviction:

> **"It is now settled by the Supreme Court of the United States that a state must provide an adequate procedure to give a person deprived of his freedom the opportunity to have the intrinsic fairness of the criminal process under which he is committed examined into, even though it appears proper and regular on its face."**[85]

The Delaware Supreme Court reiterated that a "defendant is free to pursue other remedies available to him to re-examine into the legality of his conviction. Such as the rule in Delaware and such, also, was rule in the federal courts under the Judicial Act of 1789."[86]

Noting that no direct appeal or other specific remedy is required, the Delaware Supreme Court nonetheless recognized the requirement laid down by the Supreme Court of the United States as the guide to the states and establishing a procedure for the reexamining of sentences is that must be available and adequate. The Delaware Supreme Court has held the state must provide for the protection of constitutional rights through *habeas corpus*, *coram nobis*, or by the simple motion brought in the

---

[85]*Curran v. Wooly*, 104 A.2d 771, 774 (Del. 1954).
[86]*Id.* at 774.

court of original conviction.[87] Of course, Weber was not afforded any of these protections. Under Art. I, "the courts have a duty to afford a remedy for every wrong; the volume of cases, danger of fraudulent claims, or difficulty of proof do not eliminate the requirement."[88] Recognizing this duty, *James v. State*[89] noted that any convicted defendant has "standing" and a "right" to assert a claim through a variety of options, including direct appeal, correction of an illegal sentence, and postconviction petitions." Again, Weber was denied any of these remedies. Obviously, Weber has suffered the most significant of infringements on his freedom and he was due a process to bring his grievances before a judicial body. Creating a more efficient judicial system plainly constitutes a legitimate purpose.[90] In Weber's case, Delaware has plainly abandoned this tenet.

The fact the state did not provide Weber a specific process for redress does not alter the fact the Delaware constitution demands one. Weber thus invoked the Superior Court's inherent and/or equitable jurisdiction and authority. Specifically:

> "Courts are generally afforded inherent powers to undertake whatever action is reasonably necessary to ensure the proper administration of justice. This court has consistently held that Delaware courts have the inherent power to vacate, modify or set aside their judgments

---

[87] *Id.*
[88] *Young v. Red Clay Consolidated School District*, 122 A.3d 784 (Del Ch. 2015), quoting Holland R., Delaware State Constitution at p. 65.
[89] 1998 Del. C.P. LEXIS 39 (Del. Com. Pl.).
[90] *Id.*

orders."[91]

Moreover, the Delaware Superior Court rules are modeled after the Federal Rules of Civil Procedure, and thus are largely the same. For that reason, where Delaware case law is silent, the Delaware Courts have looked at federal case law, as well as case law from other jurisdictions for guidance.[92] The federal counterpart to SUPER.C.CIV.R. 60 allows for postconviction challenges under "extraordinary" or other circumstances.[93] SUPER.C.CRIM.R. 57 cements the Superior Court's authority to entertain a postconviction challenge by allowing use of the civil rules where "appropriate." Yet again, the appellees' denied these protections to Weber. Furthermore, the United States Supreme Court has held state courts "have inherent authority and are thus presumptively competent to adjudicate claims arising under the laws of the United States.[94] The Delaware Supreme Court has held as a last resort a defendant may file a "simple motion" for redress of constitutional violations.[95] That is, except for Paul Weber.

---

[91]*State v. Guthman*, 619 A.2d 1175, 1178 (Del. 1993) (emphasis added). See also *State v. Slowman*, 866 A.2d 1257, 1265 (2005); *State v. Remedio*, 108 A.3d 326 (Del. Super. 2014); *State v. Johnson*, 2006 WL 3872849 (Del. Super); *State v. Walls*, 2006 WL 2950491 at *2; *Hewitt v. State*, 2014 WL 5020251 at *1 (Del.); *In re Nichols*, 2004 WL 1790142 at *1 (Del. Super.); *Sample v. State*, 2014 WL 193761 *1 (Del.); *State v. Reed*, 2014 WL 7148921 at *3 (Del. Super).

[92]*Johnson v. Preferred Professional Inc. Co.*, 2014 Del. Super. LEXIS 28 (Del. Super. Feb. 17, 2014).

[93]*Buck v. Davis*, 137 S.Ct. 759, 777-78 (2017).

[94]*Tafflin v. Levitt*, 493 U.S. 455, 458-59 (1990); see also *Bowling v. Parker*, 882 F.Supp. 2d 891, 901 (E.D. Ky. 2012).

[95]*Jones v. Anderson*, 183 A.2d 177 (Del. 1962).

The United States Constitution Demands the State to Provide Redress for the Violation of Rights Enumerated in the Bill of Rights and to Enforce Their Own Postconviction Laws

The evolution of constitutional requirements of state postconviction remedies was eloquently linked to the rule of law and the right to access to the courts in *Boddy v. Connecticut*,[96] and greatly expanded the protections of post-trial proceedings. *Douglas v. California* held the right to counsel applied to first appeals of right.[97] *Ross v. Moffitt*, declining to extend Douglas to discretionary appeals, nevertheless restated the constitutional requirements of "an adequate opportunity to present...claims fairly in the context of the.....appellate process."[98] *Pennsylvania v. Finley* reiterated the equal protection guarantee of "meaningful access."[99] *Smith v. Bennett* barred the state's refusal to docket postconviction petitions to indigents who could not pay the filing.[100] *Johnson v. Avery* ruled a prison regulation prohibiting prison inmates from assisting each other unconstitutional.[101] *Precunei v. Martinez* invalidated a prison ban on law student and paralegal interviews.[102] *Bounds v. Smith* ruled a state must provide postconviction litigants with a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the

---

[96]401 U.S. 371, 374 (1971).
[97]372 U.S 353, 356 (1963).
[98]417 U.S. 600 (1974).
[99]481 U.S. 551 (1987).
[100]365 U.S. 708 (1961).
[101]393 U.S. 483 (1969).
[102]416 U.S. 396 (1974).

courts.[103] *Martinez v. Ryan* excuses procedural defaults to uncounseled post-conviction litigants.[104] The list goes on. To say, then, that Weber enjoyed no right to a review to begin with would be the ultimate *non-sequitur*. If this Court has determined that it would be inequitable to refuse to hear a defaulted claim when the State had channeled that claim to a forum where the prisoner might lack the assistance of counsel in raising it,[105] how can it be equitable to deny Weber any forum whatsoever in which to seek redress of substantive constitutional violations as presented here?

There is a "presupposed[ion] that a criminal defendant has given the state trial and appellate courts an opportunity to pass on his constitutional claims."[106] Of course, the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek judicial relief for some wrong.[107] And of course, the absence of any corrective process would make the constitutional promise of a fair trial a worthless thing. It was not until long after the Bill of Rights was adopted that criminal defendants had either a right of appeal or a right to challenge convictions by habeas corpus.[108]

---

[103]430 U.S. 817, 821-28 (1977).
[104]566 U.S. 1 (2012).
[105]*Martinez v. Ryan*, 566 U.S.1 (2012).
[106]*McCloskey v. Zant*, 499 U.S. 467, 519 (1991).
[107]536 U.S. at 415-16.
[108]e.g., *McKane v. Durston*, 153 U.S. 684, 687 (1894); *Ex parte Watkins*, 28 U.S. (3 Pet.) 193, 202-03 (1830).

It has long been recognized the Fourteenth Amendment precludes a state from keeping a prisoner imprisoned if the state persists in depriving him of a type of appeal generally afforded those convicted of crime.[109] Appellate and post-conviction courts reviewing the constitutionality of a state prisoner's conviction and sentence are guided by rules designed to ensure that state-court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of criminal justice.[110] There is a recognition that a defendant has at least his "one and only appeal."[111] "Appellate review...helps promote uniformity by 'tend[in] to iron out sentencing differences.'"[112] "A system of appeal as of right is established precisely to assure only those who are validly convicted have their freedom drastically curtailed."[113] A remedy is inadequate or ineffective "where the petitioner demonstrates that some limitation of scope or procedure would prevent" the petitioner from receiving adequate adjudication of his claims.[114]

The right to review takes on even greater meaning in the context of habitual sentencing and its severe penalties. The basis for the constitutional distinctiveness of prior convictions is not hard to see: unlike virtually any other consideration used

---

[109]*Dowd v. United States*, 340 U.S. 206, 209-10 (1951).
[110]*Martinez v. Ryan*, 566 U.S. 1, 9 (2012).
[111]*Coleman v. Thompson*, 501 U.S.722, 756 (1991).
[112]*Peugh v. United States*, 86 L.Ed.2d 84, 89 (2013), quoting *Booker*, 543 U.S. at 263.
[113]*Evitts v. Lucey*, 469 U.S. 387, 399-400 (1985).
[114]*Henry v. United States*, 525 Fed Appx. 67, 69 (3d Cir. 2013).

to enlarge the possible penalty for an offense "*a prior conviction itself must itself have been established through procedures satisfying the fair notice, reasonable doubt and jury trial guarantees.*"[115]

It is well established a state action depriving a person of life or liberty demands substantive due process scrutiny.[116] The Constitution requires "an opportunity...granted at a meaningful time and in a meaningful matter,"[117] "for a hearing *appropriate to the nature of the case.*"[118] This Court presumes that a wrongful state court conviction has continuing collateral consequences sufficient to present a case or controversy.[119] Therefore, "it is settled that due process requires that a defendant have notice and an opportunity to contest the validity or applicability of the prior convictions upon which a statutory sentencing enhancement is based."[120]

Conclusion

A dog deemed unfit for the community and slated to be put down nevertheless may have that decision reviewed.[121] Any citizen found to be illegally parked may

---

[115] *United States v. Jones*, 332 F.3d 688, 695 (3d Cir. 2003), quoting *Jones v. United States*, 526 U.S. 227, 249 (1999).
[116] *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).
[117] *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).
[118] *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313 (1950).
[119] *Brown v. Gallegos*, 58 Fed. Appx. 781, 782 (10th Cir. 2002); e.g. *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998), citing *Sibron v. New York*, 392 U.S. 40, 55 (1968).
[120] *United States v. Moore*, 208 F.3d 411, 413 (2d. Cir. 2000), quoting *Oyter v. Boles*, 36 U.S. 448, 452 (1962).
[121] 7 DEL.C. §§1730-1740.

nevertheless appeal that decision.[122] But incredibly, Paul Weber, who is confronted with the ultimate loss of liberty – the imposition of a virtual life sentence[123] – has no opportunity to contest his fate based on a suspect felony conviction where Weber adamantly proclaims his innocence and asserts he had an unfair trial. This sad and tragic truth does not comport with any traditional notion of fair play or justice.

It is always assumed that defendants can "attack prior convictions in state court."[124] It is also assumed that state courts remain open to challenges to state court proceedings that served as predicates to sentencing enhancements.[125] And it has long been accepted that a defendant may attack a conviction that is "presumptively void."[126] "When a defendant, facing sentencing, sufficiently asserts facts that show that an earlier conviction is "presumably void, the Constitution requires the sentencing court to review this earlier conviction before taking it into account."[127] Weber has been afforded none of these protections.

It is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.[128] Even a prisoner who appears to have had a

---

[122]5 DEL.C. §504(b)(2); 21 DEL.C. §4183.
[123]Pursuant to 11 DEL.C. §4214(a)(2004) the forgery conviction was used to declare Weber a "habitual offender" in another case.
[124]*Pettiford v. United States*, 587 F.Supp.2d 709, 712 (D.Md. 2008), citing *Custis*, 511 U.S. at 497.
[125]*United States v. Turner*, 793 F.Supp.2d 495, 511 (D.Mass. 2011).
[126]*United States v. Roman*, 989 F.2d 1117, 1120 (11th Cir. 1993)(en banc)(per curiam), *cert. denied* 114 S.Ct. 2139 (1994).
[127]*United States v Jackson*, 57 F.3d 1012, 1018 (11th Cir. 1995).
[128]*Herrera*, 506 U.S. at 415.

constitutionally perfect trial retains a powerful and legitimate interest in a remedy to assert his innocence.[129]

> "The American criminal justice system rightly sets the ascertainment of truth and the protection of innocence as its highest goals. The average school child is aware (or so we hope) that the accused is clothed with a presumption of innocence and that the prosecutor must prove beyond a reasonable doubt that a crime was committed. "**Moreover, the concern with innocence does not end at trial. Elaborate postconviction procedures are rightly in place to ensure not only that a trial was fair, but also that no individual has been wrongly convicted.**"[130]

As the Fourth Circuit Court acknowledged, it is well established that "the concern with innocence does not end at trial" and "elaborate postconviction procedures are rightly in place." Except, that is, for Paul Weber.

Over 60 years ago this Court stated:

> "All of the States now provide some method of appeal for criminal convictions, recognizing the importance of appellate review to a correct adjudication of guilt or innocence. Statistics show that a substantial portion of criminal convictions are reversed by state appellate courts."[131]

Weber has proclaimed his innocence of the forgery offense, made a showing that he was deprived of a fair trial, and never wavered in his monumental efforts to have his conviction reviewed for constitutional infirmity. As *Griffin* declared:

---

[129]*Herrera*, 506 U.S. at 438-39.
[130]*Harvey v. Horan*, 285 F.3d 298, 299 (4th Cir. 2002)(emphasis added).
[131]*Griffin v. Illinois*, 351 U.S. 12, 18-19 (1956).

> "The admonition of de Tocqueville not to confuse the familiar with the necessary has vivid application to appeals in criminal cases. ***The right to an appeal from a conviction for crime is today so established that this leads to the easy assumption that it is fundamental to the protection of life and liberty and therefore a necessary ingredient of due process of law."***[132]
>
> "Such a denial is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law."[133]

Except, that is, for Paul Weber.

WHEREFORE, Petitioner Paul E. Weber respectfully requests this Honorable Court to grant certiorari.

/s/Paul E. Weber
Paul E. Weber
VCC – 162469 – Bldg. W
1181 Paddock Road
Smyrna, DE 19977

January 25, 2021

[132] *Id.* at 25.
[133] *Id.* at 19.