No. 20-7873

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH McBRIDE -- PETITIONER
(Your Name)

VS.

STATE OF INDIANA. -- RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

7th CIRCUIT COURT OF APPEALS.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KENNETH McBRIDE
(Your Name)

D.F. 19216 W. U.S. 40
(Address)

GREEN CASTLE, IN. 46135
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

WHETHER A STATE CAN FORCE A U.S. CITIZEN TO FACE CRIMNINAL CHARGES, WITHOUT THE ASSISTANCE OF COUNSEL AFTER THE U.S. CITIZEN KEPT TELLING STATE COURTS HE IS NOT CAPABLE OF GOING PRO SE AND THAT HE NEEDS COUNSEL?

WHETHER FEDERAL LAW PERMITS A STATE TO FORCE A CONTRACT THAT WAS SIGNED UNDER DURESS; AND CALL IT A VALID WAIVER OF FEDERAL RIGHT?

WHETHER A STATE COURT CAN PUNISH A U.S. CITIZEN MULTIPLE TIMES FOR ONE OFFENSE, BECAUSE IT WAS A CRIME OF VIOLENCE, IN VIOLATION OF DOUBLE JEOPARDY PROTECTIONS?

LIST OF PARTIES

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

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

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CONSTITUITIONAL PROVISION

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[ ] For cases from **federal courts:**

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

[ ] reported at _____; or,
[✓] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

[✓] reported at McBride v. Warden, 2020 U.S. Dist. Lexis 150527 (N.D. Ind Aug 19, 2020.); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

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

[✓] reported at McBride v. State, 999 N.E.2d 417 2013 Ind. Lexis 970 (Ind. Dec. 12, 2013); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Appellate court appears at Appendix D to the petition and is

[✓] reported at McBride v. State, 2013 Ind. App Lexis 503 (Ind. Ct. App. Oct. 7 2013); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

1.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Dec. 28, 2020.

[ ] No petition for rehearing was timely filed in my case..

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 01-26-2021, and a copy of the order denying rehearing appears at Appendix B.

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

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

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was Aug. 15, 2013. A copy of that decision appears at Appendix D.

[✓] A timely petition for rehearing was thereafter denied on the following date: Oct. 7 2013, and a copy of the order denying rehearing appears at Appendix E.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 14TH AMENDMENT DUE PROCESS RIGHT TO A FAIR TRIAL
- 6TH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL
- 5TH AMENDMENT RIGHT AGAINST DOUBLE JEOPARDY
- 8TH AMENDMENT RIGHT AGAINST CRUEL AND UNUSUAL PUNISHMENT
- RULE 10(A) AND (C) OF THE UNITED STATES SUPREME COURT RULE

STATEMENT OF CASE

McBride was charged with counts 1 and 2, class B felony Criminal Confinement, counts 3, 4 and 5 class (B) felony robbery and counts 6, 7 and 8, class C felony Battery. McBride Then requested a fast and speedy hearing on March 13, 2012. The Court granted fast and speedy hearing and then appointed a public defender. On May 10, 2012 without consulting McBride regarding his right to a fast and speedy trial, His public defender requested a continuance, which McBride objected to in open court, the Trial Court then continued fast and speedy to full length of 70 days, noting that McBride has a right to a fast and speedy trial. On May 17th, 2012, without the presence of McBride, his public defender asked for another Continuance, without Consulting McBride; McBride was then called in for hearing and giving his new trial date beyond fast and speedy date. Again McBride stated his objections and asked the Court how can you take my fast and speedy away without my consent? The Court said take that up with your Public Defender. On July 19 2012 McBride addressed Court and told them how Jennifer Harrison had violated his right by failing to consult with him before asking for a continuance which would violate fast and speedy deadline, as well as failing to do a photo line-up, which would prove that McBride was not the one that robbed the store. McBride then asked for another attorney because the one the Court appointed was not working in his best interest, He informed the Court that Him and his public defender was always arguing and never could see eye to eye.

On July 31, 2012 the Court asked McBride if he wanted to go pro se McBride told court he was not capable, but need an attorney and that him and the Public Defender was not speaking and seeing eye to eye. The Court relieved McBride's Public Defender and forced McBride pro se. On August 16, 2012 Trial Court Asked McBride Again if he wanted to go pro se McBride told the Court he is not capable of going pro se and that he would like an attorney and the public defender He had fired, was not working in his best interest. The trial court tried to keep Jennifer Harrison as counsel for McBride, which McBride objected to asking for another attorney, because Jennifer Harrison had already violated his

rights and failed to do a pre- trial investigation, which includes a photo line-up that would prove he was not guilty of committing this crime. The trial court said it was not appointing a new counsel "you either take Jennifer Harrison or go Pro se, pressuring McBride to choose; McBride Under pressure stated he would rather go pro se, then to trial with an attorney who violated his rights. Not convinced the Trial Court said he didn't think McBride was capable to go pro se. McBride agreed and said I would love an attorney, anyone but Jennifer Harrison. The trial Court still not wanting to give new attorney, McBride was forced to sign the agreement to waive right to attorney and insisted that the court let him go so he can get an attorney at his expense. McBride went to trial without assistance and found was found guilty.

On Oct. 5th 2012 McBride was sentenced to a 30 year split sentence on four counts; Count 2 impose 6 years to be ran concurrent, counts 3, 4 and 5 for robbery were ran consecutive. McBride requested for direct appeal, appeal was filed on 11-05-2012. McBride's Appellate counsel argued 3 issues:

- Trial court committed reversible error when it allowed Mr. McBride to proceed pro se, because there was not a knowing and intelligent waiver of his right to counsel.
- The Trial court committed fundamental error when it admitted evidence obtained through an improper show-up identification procedure.
- Consecutive sentencing resulting in a 30 year executed term was not appropriate in light of nature of the offense and the character of the offender.

Appeal was denied on August 15 2013. Rehearing was denied on 7th day of Oct. 2013, upon transfer appellate counsel argued that McBride did not knowingly and intelligently waive right to counsel, Supreme Court denied transfer; 12-12-2013. McBride then filed P.C.R. on 10-21-2014, he was appointed counsel 11-12-2014, who continued McBride's hearing for two years, then later withdrew 12-17-2015. The issues raised in P.C.R:

- Ineffective assistance of appellate counsel, failing to suppress an impermissibly suggestive show up line up, in violation of 14th amendment due process and 6th amendment right to effective assistance of counsel.
- Ineffective assistance of appellate counsel, failing to raise issue that trial court abused its discretion when denying McBride substitute counsel and even the right to be represented by counsel and forcing him to trial pro se.
- Ineffective assistance of counsel; not consulting with client before removing fast and speedy trial without consent, thus violating constitutionally secured right to speedy trial and right to effective assistance of counsel.
- Trial court lacked jurisdiction to impose sentence.

McBride's hearing was scheduled on Dec. 6th 2016, McBride was transported from MCF to the city county building on 12-02-2016. As McBride was waiting for Court, McBride was not brought in court room, because sheriffs said they forgot he was in holding cell; the court denied P.C.R. saying defendant didn't show or failed to appear, even though it was no fault of McBride, on Dec. 6th 2012. McBride was transported back to Miami correctional facility from Marion county jail on 02-09-2016. McBride then filed a motion to correct sentence, on 1-13-2017, motion was denied 1-18-2017. McBride filed a lot of motions and affidavits trying to figure out what to do, he then filed a motion for guidance on 03-24-2017. Motion was denied 04-05-2017; McBride filed a motion for belated appeal on 07-05-2017. Order granting belated appeal was filed 07-14-2017, Notice of appeal filed on 07-17-2017. McBride ask the court of appeals to remand case back to P.C.R. stage so that he can raise his claims of ineffective assistance of counsel because his P.C.R. was denied without reaching merits; and McBride argued that the P.C.R. court abused its discretion denying motion to correct erroneous sentence, motion to remand was denied on 09-05-2018. Motion for oral argument was denied the same date. Motion to publish

memorandum decision was filed 09-28-2018. Order denying petition for rehearing on 10-15-2018. Order denying motion to publish filed on 10-18-2018; petition to transfer filed11-20-2018 and denied 12-10-2018. McBride filed Habeas Corpus relief on 01-24-2019. Habeas corpus relief was denied on august 19, 2020. McBride sought a rehearing and then filed motion to correct error, but both were denied. McBride filed an appeal on 9-9-2020. 7th circuit denied appeal on 12-23-2020 saying they find no substantial showing of a denial of a constitutional right. McBride sought rehearing; it was denied on 1-6-2021 the next step is Writ of Certiorari, which McBride has 90 days to file.

Reasons for granting the petition

1.

WHETHER A STATE COURT CAN FORCE A U.S. CITIZEN TO FACE CRIMINAL CHARGES WITHOUT THE ASSISTANCE OF COUNSEL AFTER THE U.S CITIZEN KEPT TELLING COURT HE IS NOT CAPABLE OF GOING PRO SE AND THAT HE NEEDED COUNSEL?

The Supreme Court long ago firmly established principles pertaining to the right to counsel. To be assured of a fair trial, a criminal defendant "requires the guiding hand of counsel at every stage in the proceeding against him. "Gideon v. Wainwright, 372 U.S. 335, 345, 9 L. Ed. 2d 799, 83 S. ct. 792 (1963). McBride when asked by Trial court, if he wanted to go pro se, He stated that "he not capable [see App.(L) pg.90 (exhibit A), pg. 3 line 19-23] Mr. McBride continues stating he needed counsel, and that the public defender the court appointed violated his rights, by not doing a pre-trial investigation, taking fast and speedy away without consulting McBride, and failing to do a photo line-up, which would have proven McBride, clearly didn't match description of robbers, and was not the robber.[see exhibit A pg.4 lines 6-24] of App.(L) pg.91. The sixth amendment right requires not merely the provision of counsel to the accused, but assistance, which is to be for his defense. If no actual assistance for the accused's

defense is provided, then the constitutional guarantee has been violated.] "United States v. Cronic, 466 U.S. 648, 654, {426 F.3d 1103} 80 L. Ed. 2d.657, 104 S. ct. 2039 1984 (quoting U.S. Const. amend. 6th). So when McBride told the Court that his Public defender wasn't doing a pre-trial investigation by not suppressing the show up line-up where it showed just McBride in handcuffs, and that His Public defender didn't do a photo line-up, which would have proven that McBride was not the robber and didn't rob anyone, which would have been very effective to the defense and then took His fast and speedy without consulting with McBride, after he objected to it in open court, even when the judge acknowledged the objection and right. The court should have given McBride another attorney, but when the court ignored McBride's claims and forced him to go pro se, all because he was letting the court know his public defender had violated his rights [see exhibit A pg. 4 line 20-pg 5 lines 1-9] App. (L) pg.91, the trial court violated McBride's sixth amendment right to effective assistance of counsel, and McBride could not have had a fair trial without the assistance of counsel. This is corroborated by the State of Indiana's own Appellate court in Mitchell v. State, App. 1981, 417, N.E. 2d, 314. When they held that failure to permit a defendant to have counsel amounts to a denial of due process and there can be no valid criminal trial unless defendant is represented by counsel " if he desires counsel ". So at no time was the trial court or any State court unaware of the federal legal principle and when McBride didn't want to go pro se and stated that he needed counsel because he was not capable of going pro se the court was duty bound to appoint another counsel.

On August 16th, 2012 we see Mr. McBride again telling the trial court he is not capable of going pro se and he need an attorney; but the court tried to keep his public defender, who violated his rights. [See exhibit B pg. 5 line 3-6] of App. (M) pg.99. Communication between McBride and his public defender, were so broken that it turned into an irreconcilable conflict, where McBride would rather go pro se than to be stuck with public defender Jennifer Harrison.[see exhibit B pg. 27 line 22-pg.28 line1-4] of App.(M) pg.121. Again the Court ignored claim and instead of appointing substitute counsel gave McBride an

ultimatum; either he was to go to trial with an attorney who violated his rights and failed to do a pre-trial investigation or McBride would have to go pro se; McBride refused having Jennifer Harrison representing him, for already stated reasons, and the courts made him go pro se by the process of elimination; even after McBride went pro se he still stated he needed and wanted counsel that is effective and the court denying him that[see exhibit B pg. 19 line 13 and 14 also pg. 22]. The court then asked McBride that "are you assuring this court that you have the capacity to conduct this trial?" [See exhibit B pg. 23 line 20-24] McBride then told the court "I'm not assuring it. [exhibit B pg. 23 line 25] see appendix M pg.117. The court then stated I have to give you an attorney. [See exhibit B pg. 24 line1-2]. McBride then stated "I would love an attorney. But instead of giving McBride a substitute counsel, the court tried keeping Jennifer Harrison as Public Defender and McBride kept telling the court that she hasn't done anything to help him in this case. [exhibit B pg. 24 line 8-9].

Supreme Court illustrate that constitutionally adequate representation can be vitiated not only where counsel has a conflict of interest arising from his duty of loyalty to another client, see, e.g. Cuyler v. Sullivan 446 U.S. 335, 348, 642 Ed. 2d. 333, 100 S. Ct. 1706 (1980), but also where counsel cease to function in the active role of an advocate, Entsminger v. Iowa, 386 U.S. 748, 751, 181 L. Ed. 2d. 501, 87, S. ct. 1402(1967). Particularly instructive in latter regard is Anders v. California, 386 U.S. 738, 18 L. Ed. 2d. 493, 87 S. ct. 1376 (1967). In which Supreme court confronted a California practice of refusing to appoint Substitute appellate counsel where there first appointed counsel has reviewed the record and has opinioned to the court that his client appeal is meritless. See id at 739-740 & n.2.

The court held that this procedure was inadequate, because it did not furnish petitioner with counsel acting in the role of an advocate nor did it provide that full consideration and resolution of matter as is obtained when counsel is acting in that capacity. See also Cronic, 466, U.S. at 656, (the adversarial process protected by the sixth amendment requires that the accused have counsel acting in the role of an advocate.) Quoting Anders 386 U.S. at 743). So when McBride was telling the courts that

his counselor was not doing the necessary rudiments demanded of attorney's by failing to do a pre-trial investigation and asking for a continuance, knowing that McBride objected to it the first time because it would violate the fast and speedy guarantee; and failing to suppress the impermissibly suggestive show up line-up. The court was supposed to appoint substitute counsel, to satisfy the sixth amendment right to effective assistance of counsel, in McBride's case since he desired counsel. McBride at no point wanted to go pro se but had no other option after telling the courts about what the public defender did and the courts not willing to give McBride another public defender. This violated McBride's sixth amendment right to counsel and 14th amendment due process right to a fair trial. And Supreme Court of the United States rule 10(a)

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Courts supervisory power;

(c) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

McBride's conviction should be overturned despite McBride's choice to choose self-representation. We see this corroborated in Plumlee v. Del Papa 2006 U.S. App. Lexis 25384 (9th Cir. Nev. Oct. 11 2006), when the federal courts held "to compel one charged with a grievous crime to undergo a trial with the assistance of an attorney with whom he has become embroiled in irreconcilable conflict is

to deprive him of the effective assistance of any counsel whatsoever. A natural corollary of this holding is that (where the erroneous denial of a motion to substitute counsel prompts a defendants to choose self-representation reversal of the conviction is warranted in spite of the client's choice to represent himself). "On the duty of a trial court to appoint substitute counsel in the face of irreconcilable conflict or complete breakdown in communication between counsel and client, there is near-unanimity among the federal circuits." So when all the reviewing courts in the State of Indiana and beyond the State of Indiana, that McBride presented this issue to, made a ruling that's contrary to this federal established law, the Courts violated Supreme Court of the United States rule 10(a) and (c). So even though McBride represented himself, his conviction should be overturned because McBride was denied one of his most fundamental rights, the sixth amendment right to counsel, applicable to the states through the 14th amendment. This alone warrants the attention of the Supreme Court of the United States.

2.

WHETHER FEDERAL LAW PERMITS A STATE TO FORCE A CONTRACT THAT WAS SIGNED UNDER DURESS, AND CALL IT A VALID WAIVER OF FEDERAL RIGHT?

On august 16th 2012, McBride was forced to sign a contract that would waive his right to counsel, by the trial court giving him an ultimatum, either go with the public defender who violated his rights, and failed to do a pre-trial investigation, such as a photo line-up, which was a big piece of evidence, that would have proven McBride did not commit the robbery; or he was to go pro se. [see exhibit A. pg. 3 line 22 in App. L pg. 90] &[exhibit B pg. 5 line 3]in App. M pg.99] the court even stated that he didn't think McBride was capable of going pro se; [see exhibit B pg.14 line 5-8] in App. M pg.108 , McBride even told the Court that he agreed with the Court that he needed an Attorney and don't have the knowledge to go pro se. [see exhibit B pg.14 line 9-12]. McBride told the court over and over that the public defender was not working for his best interest and that they were not speaking as a result to not

doing a photo line-up when he didn't match the description of the robbers, which was all black hoodie, gloves and mask. The court refused to give him another attorney and the only other option the courts left McBride with was to go pro se, in which McBride still not wanting to do, ended up signing the contract under duress in which McBride stated that he would rather go pro se than to be stuck with an attorney who is not acting in his best interest violating his rights. [See exhibit B pg.27 line 22-pg.28 line 1].

"Duress" may be defined as subjecting a person to a pressure which overcomes his or her will and coerces him or her to comply with demands to which he or she would not yield if acting as a free agent. (Ala. Delchamps v. Delchamps, 449 So. 2d 1249 (Ala. Civ. App. 1984)); further "duress" has been defined as the condition of mind produced by the wrongful conduct of another rendering a person incompetent to contract with the exercise of his or her free will power, (Ariz. Dunbar v. Dunbar, 102 Ariz. 352, 429 P.2d 949 (1967) N.C. Link v. Link, 278 N.C. 181, 179 S.E.2d. 697 (1971), or as the condition of mind produced by an improper external pressure destroying free agency so as to cause the victim to act or contract without use of his or her own volition,(S.D. Waara v. Kane, 269 N.W.2d 395 (S. D. 1978) Tex. Sanders v. Republic Nat. bank of Dallas, 389 S.W. 2d 551 Tex. Civ. App. Tyler 1965), or as unlawful constraint whereby by a person who is forced to do an act against his or her will. (Ill. Joyce v. Year Investments, Inc., 45 Ill. App. 2d 310, 196 N.E.2d 24 (1st dist. 1964) Utah Fox v. Piercey, 119 Utah 367, 227 P.2d 763 (1951).

As shown above McBride didn't want to represent himself and he only signed the contract under duress because he didn't know what else to do. If we considered the circumstances that McBride was placed in then we can see that McBride was acting against his free will because the trial court was not listening to or trying to here that McBride and his Public defender were not speaking, but the court tried to keep the same Public defender on the case in which McBride refused to have, he didn't refuse counsel altogether but Jennifer Harrison because to the best of his belief she was not acting in his best

interest [see Exhibit B pg.22 line 25] McBride was so distraught he even told the trial Court, he can't see how he can bring to the courts attention that the lawyer is working against him violating his right and failing to properly prepare a defense, and the court sit there and do nothing.[see Exhibit B pg.21 line 25-pg.22 line 1-2] even after McBride signed the Contract, He stated that he would like to hire an attorney; [see exhibit B pg.26 line 18-21]. To add salt to McBride's injury the trial Court said they was going to keep the public defender on representing him and stated "I might have this very same attorney sitting out in the gallery and she may be able to assist you, although she might be so mad at you at that point that she won't know how to assist you."[See exhibit B pg.21 line21-24]. This added more distrust to McBride's mind and faith in the trial court and the Public defender which resulted in McBride being under duress signing the contract to waive his right to counsel. This contract is void because giving the circumstances, McBride wanted counsel but the trial court refused to give him new counsel which forced him to go pro se, therefore McBride didn't knowingly and intelligently signed contract, to waive his rights, voluntarily of a sound mind because he signed under duress, and there can be no valid contract if duress exist in mind due to circumstances.

We see this in Union P.R. co. v. Public service Com., 248 U.S. 67 Sup Ct. [1918] where the U.S. Supreme Court held it always is for the interest of a party under duress to choose the lesser of two evils. But the fact that a choice is made according to interest does not exclude duress. It is the characteristics of duress properly so called. Also in French v. Shoemaker; 81 U.S. 314 1871 the Supreme court held that actual violence, even at common law, is not necessary to establish duress, because consent is the very essence of a contract, and if there compulsion such as that produced by threats to take life or inflict great bodily harm, as well as that produced by imprisonment is everywhere regarded as sufficient in law to destroy free agency, without which there can be no contract because in that state of case there is no consent.

As stated before McBride at no point in time did He want to go to trial Pro se, but stated he needed an attorney but refused the one the court appointed whom was conflicting with McBride but the court not listen to told him either he get Jennifer Harrison or you go Pro se in which McBride chose the lesser evils and signed the contract to go pros se only to hire an attorney. A person does not knowingly give up a right to counsel and then say he is going to hire a counsel this not a knowingly and intelligent waiver. McBride brought this to the attention of the Indiana Supreme court who denied transfer saying there was a knowing and intelligently waiver, [quoting Faretta v. California] saying that the sixth amendment affords criminal defendants the right to counsel, but a defendant also has a qualified right to self-representation if he so chooses. However, the Indiana Supreme court made a ruling that was contrary to well establish Federal Law because McBride wanted counsel and he stated he is not capable of going pro se at every stage in the proceedings see Exhibit A pg. 3 line 22-23 and Exhibit B pg.19 line 13-14] so If we take what McBride wanted in consideration McBride would've chosen to have an effective attorney represent him and not go pro se. It was only when McBride was denied substitute counsel that McBride had no other choice than to go pro se under duress. McBride's right to counsel is protected by the Sixth Amendment of U.S. constitution, this is the federal law that all lower courts are bound by and it can't be violated whatsoever. So the Indiana Supreme unreasonably applied Faretta v. California to McBride because he didn't choose to represent himself the circumstances forced him, under duress, to represent himself. Therefore the Indiana Supreme Court Violated the Supreme Court of the United States rule 10(a)

> a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Courts supervisory power; **(c)** A state court or a United

States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

This alone warrants the attention of the Supreme Court of the United States and McBride's conviction should be overturned and McBride's Case should be remanded back to the trial court for a new trial.

Ground 3.

WHETHER A STATE COURT CAN PUNISH A U.S CITIZEN MULTIPLE TIMES FOR ONE (1) OFFENSE BECAUSE IT WAS A CRIME OF VIOLENCE IN VIOLATION OF DOUBLE JEOPARDY PROTECTION.

On Oct. 5th 2012 McBride was sentenced on Four (4) counts; Count 2 for criminal confinement imposed six years (6) to be ran concurrent, Counts three (3), four (4) and (5) for felony B robbery were imposed consecutive. However, only one (1) robbery occurred at an Oriental Market on March 7th 2012, and is a product of a single criminal episode therefore the impositions of consecutive sentences on counts three (3), four (4) and five (5) were in violations of the Double Jeopardy Clause; case in point is the language in Miranda v. Cooper, 967 F.2d 392, cert. denied 113 S. Ct. 347, 506 U.S. 924, 121 L. Ed.2d 262, (1992), when the Supreme Court held that the Double Jeopardy clause protects against subsequent prosecution for the same offense after either acquittal or conviction and protects against multiple punishments for the same offense. U.S.C.A. Const. Amend. 5; see also Hicks v. Duckworth, 922 F.2d 409 (Ind.) 1991 when the Supreme Court stated Double jeopardy clause protects against: second prosecution for same offense after acquittal; second prosecution for same offense after conviction; and "multiple punishments for same offense. U.S.C.A. Const. Amend. 5. Also the Supreme Court held in [U.S. v. Furlett, 974 F.2d 839 (III) 1992,] that Double jeopardy clause is violated when there is second prosecution of individual for offense of which he already has been acquitted, second prosecution of

individual for offense of which he already has been convicted, or imposition of multiple punishments for same offense. U.S.C.A. Const. Amend. 5.

So we see from the U.S. constitution and the Supreme Court's rulings that the lower state courts abused their discretion when they punished McBride 3 times for one (1) robbery. The state courts could not say that they were unaware that federal law exist that prohibits there imposition of multiple punishments because it is embedded in the Constitution of the United States as well as the Ind. State Constitution.

When McBride brought this to the Attention of the lower courts under an erroneous sentence Motion telling the Courts that McBride sentence is in violation of the U.S. constitution Double Jeopardy Clause, and that McBride was only supposed to be convicted of one (1) robbery and sentenced for only one (1) under 35-45-5-1 and McBride quoted the State of Indiana's Supreme Court case Williams and Carter v. State of Indiana, 724 Ind. 656; 395 N.E. 2d 239; (1979) which instructed the lower courts pertaining to cases with a single intent and design or criminal episode.

All the state courts rejected McBride's claims of double jeopardy violations and stated that Because it was a crime of violence therefore it is prohibited from being a Criminal episode but this is not only Contrary to the State of Indiana's own Supreme court interpretation in O'Connell v. State of Indiana, Sup. Ct. 742 N.E. 2d 943; 2001 Ind. Lexis 193, Where the Supreme court defined episodes of criminal conduct for purposes of Ind. Code 35-50-1-2(b): An occurrence or connected series of occurrences and developments which may be viewed as distinctive and apart although part of a larger or more comprehensive series.

The same court further gave examples of criminal episodes, such as the simultaneous robbery of several individuals, the killings of several people with successive shots from a gun or successive burning of several pieces of property, all examples were crimes of violence not once did the say that a case is

prohibited from being a criminal episode because of a crime of violence, nor does the 5th amendment to the U.S. Constitution say that no one shall be punished for the same crime multiple times unless it was a crime of violence, thank God, because to do so would violate not only due process but also it will be a violation of the 8th Amendment right against cruel and unusual punishment. So to punish or sentence McBride multiple times for one robbery is definitely contrary to well established law Under the U.S Const. Amend 5, and in violation of The Supreme Court rule (10)(a)(c):

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Courts supervisory power;

(c) A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

rendering the process unfair and cruel and unusual punishment in violation of the 8th amendment and 14th amendment and warrants the attention of the Supreme court of the United States, and the sentence remanded down back to trial court with instruction to charge McBride for 1 robbery and sentence him only for one robbery incongruence to the U.S. constitution 5 amendment, 14th amendment and 8th amendment.

CONCLUSION

Therefore McBride respectfully petition that this court grant writ of Certiorari and grant Mr. McBride a new trial on all grounds for relief and immediately let McBride go from prison for he is innocent.

Kenneth McBride Pro se

Indiana State Farm

1946 west US 40

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Certificate of Service

I, certify that a true and Complete copy of this Here writ of Certiorari Has Been Mailed, First Class Prepaid postage, To Address: Supreme Court of the United States, Washington, D.C. 20543

Pro se