ORIGINAL

No. 20-7985

IN THE SUPREME COURT OF THE UNITED STATES

Taji Jemal Lee-Petitioner

Vs.

Superintendent Mahanoy SCI- Respondent(s)
Attorney General Of Pennsylvania

On Petition For Writ Of Certiorari From
The United States Court Of Appeals Of The Third Circuit

Taji Jemal Lee
GT-2434
301 Morea Rd.
Frackville, Pa. 17932

QUESTIONS PRESENTED

I. Is a defendants 6TH and 14TH Amendment Right to due process violated by the prosecutions intentional concealment of material evidence? And if so, is it an unreasonable application of clearly established federal law for an appellate Court to refuse to review the entire record while denying relief for failing to satisfy a heightend Brady v. Maryland, 373 U.S. 83 (1963) pleading requirement?

II. Is a defendants 6TH and 14TH Amendment Right to Trial by an impartial jury violated by a Trial Courts refusal to remove an actual prejudice juror? And if so, Can the Trial Courts failure to remove the bias juror be cured by Trial Counsel's "word" of a knowing, intelligent, and voluntary waiver?

III. Is a defendants 6TH and 14TH Amendment Right to due process violated by a Trial Courts omission of a portion of a jury instruction multiple times despite the juries Confusion and multiple request for the re-reading of the jury instruction? And if so, is it not an unreasonable application of clearly established federal law for an appellate Court to conclude Trial Counsel had any reasonable basis for failing to object?

IV. Is a defendants 6TH and 14TH Amendment due process Right not violated by the prosecutions knowing use of false and/or uncorrected testimony regarding a key witnesses plea bargain and/or credibility? And if so, can there be any reasonable basis for failing to object and/or raise on direct appeal?

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Statement Of Jurisdiction

A writ of Certiorari is being sought from the January 5, 2021 judgement of the U.S. Court Of Appeals of The Third Circuits denial of En Banc Rehearing seeking issuance of a COA; which affirmed the District Courts dismissal of petitioners 2254 habeas petition. Jurisdiction is conferred upon this Honorable court by ***28 U.S.C§ 1254***.

Lastly, jurisdiction is also conferred upon this honorable court by ***28 U.S.C § 1651***(a), which grants the U.S. Supreme Court jurisdiction to issue all writs necessary or appropriate in and of its respective jurisdiction and agreeable to the usage and principles of law. See also; ***Supreme Court Rule 10***(a)(c).

Constitutional Provisions

The Sixth Amendment States:

> ***In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state....... and have the assistance of counsel for the defense.***

U.S.C.A. 6 (emphasis added)

The Fourteenth Amendment states:

> ***No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, or property, without due process of law.***

U.S.C.A. 14 (emphasis added)

... ATEMENT OF THE CASE

A. THE FACTS:

IN THE PRESENT CASE, THE PETITIONER had a SEXUAL RELATIONSHIP WITH THE COMMONWEALTH'S CONFIDENTIAL INFORMANT, KENYON EBELING, which produced a male child, DOMMINICK TAJI LEE. THE child WAS TAKEN by THE CENTRE COUNTY CHILDREN AND YOUTH SERVICES (CYS) AT BIRTH DUE TO being BORN WITH COCAINE IN his SYSTEM from Ms. Ebeling's SECRET DRUG USE. TO CONCEAL THE CIRCUMSTANCES from PETITIONER, Ms. Ebeling provided deceitful INFORMATION TO (CYS) regarding THE identity of THE child's father. A short while after THE child's BIRTH, a family friend CONTACTED PETITIONER TO NOTIFY him about THE CIRCUMSTANCES SURROUNDING his SON'S BIRTH AND CUSTODY. Armed WITH THIS INFORMATION, PETITIONER CONTACTED (CYS) AND SUBSEQUENTLY received a PARTERNITY TEST affirming his PARENTAL STATUS, as well as VISITATION while seeking full custody of THE child. After discovering THRU a (CYS) STAFF member of PETITIONERS Knowledge of DOMMINICK'S whereabouts and efforts TO obtain custody, Ms. Ebeling CONTACTED THE STATE college police department ON September 29, 2004 TO report a false THEFT of $200 from her residence. IN an attempt TO prevent PETITIONER from receiving CUSTODY, Ms. Ebeling alleged THAT PETITIONER had STOLEN THE $200 from her residence. As a result of THIS THEFT, Ms. Ebeling also requested TO speak WITH NARCOTIC DETECTIVES, AT which Time she provided a myriad of information related TO PETITIONER'S involvement WITH drug dealing.

IN response TO THIS request, Ms. Ebeling was directed TO report TO THE STATE college police department TO provide a formal statement. However, before reporting, Ms. Ebeling admittedly detoured TO purchase drugs in Harrisburg before arriving AT THE police STATION and being Commissioned TO become a Confidential informant. Ms. Ebeling's Job was TO CONTACT PETITIONER daily and CONVINCE HIM THRU THREAT OR PERSUASION TO SECURE CONTROLLED SUBSTANCES. When PETITIONER refused, Ms. Ebeling STOLE (2) firearms and attempted TO provide THEM TO PETITIONER IN hopes of CONVINCING him THAT THE undercover ATTORNEY GENERAL AGENT WASN'T a Cop, and retrieving THE requested CONTROLLED SUBSTANCES WASN'T A CRIME. THIS PERSUASION led TO PETITIONERS JANUARY 11, 2005 ARREST.

B. Procedural History:

The instant action began by virtue of (5) criminal complaints filed against petitioner. (4) of the complaints were filed on January 11, 2005, the issuing authority being then district magistrate Judge Bradley P. Lunsford.[1] Petitioner was charged with various drug offenses within the (4) original complaints. On March 29, 2005, an investigating Grand Jury returned a presentment charging petitioner with six-teen additional violations of the Pennsylvania Crimes Code. On October 11, 2005, petitioner filed a motion to dismiss the charges arising from the Grand Jury presentment, with an amended petition being filed on April 7, 2006, seeking the recusal of then newly elected Judge Bradley P. Lunsford. On May 3, 2006, a hearing was held and order entered May 8, 2006, denying both motions. On May 22, 2006, petitioner proceeded to trial, subsequently being convicted on May 25, 2006.

After a (4) day trial, a jury found petitioner guilty of (26) drug related offenses, including possession of a controlled substance,[2] possession with intent to deliver a controlled substance,[3] delivery of a controlled substance,[4] criminal conspiracy to possess with intent to deliver controlled substance,[5] and criminal use of a communications device.[6] On July 18, 2006, petitioner was sentenced to an aggregate term of imprisonment of thirty (30) to sixty (60) years, all sentences imposed consecutively. After filing timely post-sentencing motions, the trial court denied all relief by order dated November 22, 2006. Opinion denying post-sentence appeal, 11/8/06, App. BB. On December 7, 2006, petitioner appealed his conviction to the Pennsylvania Superior Court. On March 10, 2008, the Pennsylvania Superior Court affirmed the trial courts decision. Superior Court Order, 3/10/08, App. HH. Com v. Lee, (No. 2119 MDA 2006) On December 17, 2008, the Pennsylvania Supreme Court denied Lee's petition for allowance of allocatur. Com v. Lee, (No. 224 MAL 2008) Petitioner did not seek certiorari with this honorable Court.

1. Judge Bradley P. Lunsford became Lee's trial judge and sentencing judge after being elected in 2005 as Centre County Court of Common Pleas judge.
2. 35 Pa.C.S. § 780-113(a)(16)
3. 35 Pa.C.S. § 780-113(a)(30)
4. 35 Pa.C.S. § 780-113(a)(30)
5. 18 Pa.C.S.A. § 903; 35 Pa.C.S. § 780-113(a)(30)
6. 18 Pa.C.S.A. § 7512(a)

Upon conclusion of direct review, Lee filed a timely pro-se petition for collateral review under the Pennsylvania Post-Conviction Relief Act (PCRA), 42 Pa.C.S.A. 39541 et seq., in the Court of Common Pleas of Centre County, Pennsylvania, on March 27, 2009. PCRA Petition, 3/27/09, App. KK. After the unrequested and unnotified appointment of PCRA counsel, Tami Fees, a unauthorized counseled amended petition was filed without petitioners knowledge on May 27, 2009. Amended PCRA Petition, 5/27/09, App. LL. On October 15, 2009, the Commonwealth filed a motion to dismiss several of petitioners claims without an evidentiary hearing. Respondents Motion to Dismiss, 10/15/09, App. OO. On October 23, 2009, the PCRA court issued an order never received by petitioner pursuant to Pennsylvania Rules of Criminal Procedure. PCRA Courts Pa.R.Crim.P. 907 Notice, 10/23/09, App. PP. Unrequested counsel was notified of the Commonwealth's motion to dismiss, requested time to respond, but never did. On March 12, 2010, the PCRA court granted the Commonwealth's motion to dismiss several of Lee's claims without an evidentiary hearing. PCRA Courts 907 Order, 3/12/10, App. RR. After an incomplete evidentiary hearing on January 31, 2012, the PCRA court subsequently denied petitioners PCRA petition. PCRA Courts Order dismissing PCRA, 4/23/12,[1] App. SS.

On August 10, 2012, petitioner filed a pro-se appeal to the Pennsylvania Superior Court. Com v. Lee, (No. 1472 MDA 2012). On August 24, 2012, petitioner filed his third motion to remove unrequested counsel; Pro-se Grazier Motion, 8/24/12, App. UU. On August 28, 2012, the PCRA court granted petitioners Grazier motion. PCRA Courts Order to Remove Counsel, 8/28/12, App VV. On September 13,

1. Lee's 1/31/12 (PCRA) evidentiary hearing was never completed. At the conclusion of January 31, 2012, it was established the record was to remain open for scheduling to finish receiving evidence in support of claims raised. Instead, the PCRA court issued an order 4/23/12 denying petitioner relief. Counsel's abandonment and the courts failure to serve notice on petitioner is how his appellate rights were reinstated nunc pro tunc on October 29, 2013.

2012, THE PENNSYLVANIA SUPERIOR COURT DIRECTED PETITIONER TO SHOW CAUSE WHY HIS APPEAL SHOULD NOT BE QUASHED AS UNTIMELY. Pa. Superior Court Order to show cause, 9/13/12, App. WW. ON SEPTEMBER 26, 2012, THE SUPERIOR COURT OF PENNSYLVANIA SUBSEQUENTLY QUASHED PETITIONERS APPEAL AS UNTIMELY. Pa. Superior Court Order Quashing Appeal, 9/26/12, App. XX. ON OCTOBER 19, 2012, PETITIONER SOUGHT ALLOWANCE OF APPEAL WITH THE PENNSYLVANIA SUPREME COURT; Com v. Lee, (No. 866 MAL 2012) WHICH WAS DENIED ON APRIL 8, 2013. Pa. Supreme Court Order denying Allocatur, 4/10/13, App. AAA.

ON JANUARY 17, 2013, PRIOR TO THE PENNSYLVANIA SUPREME COURTS DENIAL OF ALLOCATUR, PETITIONER FILED A SECOND PRO-SE PCRA APPEAL SEEKING THE RESTORATION OF HIS POST-CONVICTION RELIEF PROCEEDINGS. PCRA Petition II, 1/17/13, App. ZZ. ON JULY 12, 2013, THE COMMONWEALTH MOTIONED THE COURT TO DISMISS PETITIONERS SECOND PCRA PETITION WITH PREJUDICE. Commonwealth's Motion to dismiss PCRA Petition, 7/12/13, App. BBB. ON JULY 15, 2013, THE PCRA COURT DENIED THE COMMONWEALTH'S MOTION TO DISMISS; PCRA Courts Order denying motion to dismiss, 7/15/13, App. CCC, GRANTING THE REINSTATEMENT OF PETITIONERS APPELLATE RIGHTS INSTEAD OF PETITIONERS UNFINISHED COLLATERAL REVIEW PROCEEDINGS ON OCTOBER 28, 2013. PCRA Court Order Reinstating Appellate Rights Nunc Pro Tunc, 10/28/13, App. DDD. HOWEVER, PRIOR TO THE PCRA COURTS OCTOBER 28, 2013 ORDER GRANTING THE WRONG RELIEF, PETITIONER FILED A §2254 HABEAS CORPUS PETITION AND MOTION TO STAY IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA. Lee v. Kerestes, 1:13-cv-02353. (Doc. 1)

FOLLOWING THE PCRA COURTS OCTOBER 28, 2013 ORDER, PETITIONER FILED A TIMELY APPEAL TO THE PENNSYLVANIA SUPERIOR COURT. Com v. Lee, (No. 2005 MDA 2013). ON DECEMBER 23, 2014, THE PENNSYLVANIA SUPERIOR COURT AFFIRMED THE PCRA COURTS APRIL 23, 2012 ORDER DENYING PCRA RELIEF. Pa. Superior Court

12/23/14 Order, App. JJJ. On May 20, 2015, The Pennsylvania Supreme Court denied petitioners petition for allowance of appeal. Com v. Lee, (No. 123 MAL 2015), App. NNN. On June 1, 2015, petitioner sought extra-ordinary relief in The Pennsylvania Supreme Court pursuant to 42 Pa.C.S.A. § 726 following The newly-discovered evidence of petitioners Trial and PCRA Judges removal from hearing all criminal proceedings for Judicial Misconduct consistant with allegations made by petitioner years prior. Application for Extraordinary Relief, 6/1/15 App. OOO. On July 2, 2015, The clerk for The Pennsylvania Supreme Court returned petitioners application erroneously unfiled. Pa. Supreme Courts Response, 7/2/15, App. PPP.

On August 20, 2015, The honorable Magistrate Judge Karoline Mehalchick issued an order lifting The stay and abeyance requested by petitioner with his § 2254 habeas petition filed September 11, 2013. (Doc. 16) Following Judge Mehalchick's August 20, 2015 order removing The stay and abeyance, The Commonwealth requested several extensions of time to respond to petitioners § 2254 petition (Doc. 24; Doc. 25; Doc. 26; Doc. 27; Doc. 29; Doc. 30), before requesting to stay The proceedings for unrelated matters. (Doc. 31) On March 4, 2016, Judge Mehalchick granted The states stay. (Doc. 33) After receiving several additional extensions of Time to respond to Lee's § 2254 petition (Doc. 66; Doc. 67; Doc. 68; Doc. 69; Doc. 70; Doc. 71; Doc. 72; Doc. 73), The respondents filed an answer to Lee's petition on July 18, 2018. (Doc. 74) On August 3, 2018, Lee filed A Traverse to respondents answer. (Doc. 111) On April 8, 2019, Judge Mehalchick issued A Report and Recommendation recommending The denial of Lee's habeas Corpus petition pursuant to 28 U.S.C. § 2254. (Doc. 113) On May 22, 2019, Lee filed Timely objections to Judge Mehalchick's April 8, 2019 (R-N-R), as well as a formal motion to supplement The record. (Doc. 117; Doc. 118)

On February 24, 2020, the Honorable District Court Judge Yvette Kane adopted Judge Mehalchick's (R-N-R), and denied Lee's habeas corpus petition and certificate of appealability. (Doc. 119 at 6)

On March 11, 2020, Lee timely filed a notice of appeal and sought (COA) with the United States Court of Appeals of the Third Circuit. Lee v. Superintendent Mahanoy SCI, et al; No. 20-1529. On August 17, 2020, Lee's request was denied. A timely motion for rehearing was filed but also denied on January 5, 2021. Lee v. Superintendent Mahanoy SCI, et al; No. 20-1529 [Dkt. No. 10]. On March 21, 2021, Lee filed the instant appeal to the United States Supreme Court seeking Writ of Certiorari. Now comes this timely petition seeking certiorari.

Reasons For Granting This Petition

On May 10, 1967, in what proved to be the last year of his life, Dr. Martin Luther King Jr. spoke to an interracial group of Atlanta leaders known as the Hungry Club Forum. Never one to take a victory lap, instead of bragging about his 1964 Nobel Peace Prize, or the landmark laws he'd just successfully fought for like the Civil Rights Act of 1964, or Voting Rights Act of 1965, Dr. King could only focus on the massive work ahead! Dr. King said, "racial injustice is still the negro's burden, and America's shame". Fifty-four years later, his sentiment's still reign true.

On February 5, 1981, petitioner in the instant action was born in Beth Israel Hospital in Newark, New Jersey. For all intended purpose's, petitioner is a proud United States citizen. The protections and guarantee's of the United States Constitution was suppose to apply to him as "We the people," but they haven't. Instead, his constitutional rights have been trampled from pre-arrest to collateral review.

From pre-trial proceedings litered with falsities, to the strategical placement of a newly elected judge who had not only arrainged petitioner twice, but had intimate knowledge of petitioners case from receiving probable cause proffers for arrest warrants and wire taps. Fair is not a word you'd use to describe any of petitioners proceedings. Yet he still attempted his day in court against the allegations lodged. During his four days in court, the quarantee's and protections of the United States Constitution was no where to be found.

From bias juror's to perjured testimony, petitioners constitutional Rights were sacrificed at the alter of a conviction that would subsequently become secondary to nothing but finality. Petitioner was revealed that the concealment of something hidden in plain sight would never be discovered because the powers that be said so! Petitioner learned that the excessive (and later ruled illegal) sentencing of a first-time, nonviolent, low-level drug offender wouldnt offend anybody, let alone the Eighth Amendment. Because as Dr. Martin Luther King Jr. said fifty-four years ago, "racial injustice is the negro's burden".... But that's not why this petition should be granted, that's just a gloss over the autrocities endured by the petitioner over the past sixteen years.

This petition should be granted because Supreme Court Rule 10 states that; "A petition for a writ of certiorari will be granted only for compelling reason's". Supreme Court rule 10(a) states that, "a United States Court of appeals 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". id. That, and the federal courts denial of

Petitioners habeas corpus appeal for reasons and justifications offensive to this honorable courts well established precedents, is why this petition should be granted.

Grounds for Relief

I. Now u see it, now u don't -

> Is a defendant's 6th and 14th Amendment Rights to Due Process violated by the Prosecutions intentional concealment of material evidence? And if so, is it an unreasonable application of clearly established Federal law for an appellate court to refuse to review the entire record while denying relief for failing to satisfy a heightend Brady v. Maryland, 373 U.S. 83 (1963) pleading requirement?

A. Conclusion

In the instant matter, the Commonwealth's intentional concealment of material evidence during petitioner's four day jury trial deprived him of his constitutional right to present his sole defense, while impeaching the states key witnesses credibility and motive. See; App. G, at 69-75. The Commonwealth's judicial misconduct in concealing said evidence was further compounded by the subornation of the knowingly false testimony of Agent Scott Merrill during petitioners (PCRA) evidentiary hearing. See; App. M, at 193-194. The refusal of all courts below to review the entire record or acknowledge the appendixed proof of the Commonwealth's concealment of material evidence, while simultaneously alleging petitioner failed to satisfy a heightend pleading requirement, further infringed upon petitioners constitutional right to due process. See; Habeas Corpus Rule 5(c); Jeffries v. Morgan, 522 F.3d 640 (6th Cir. 2008). The state courts legal conclusion for denying petitioners Brady claim was such a departure by the lower courts that it resulted in an unreasonable application of clearly established federal law as determined by this honorable Court. 28 U.S.C. § 2254(d)(1) The magistrate and District Courts affirmance of such departure was based on an unreasonable determination of the facts in light of the evidence presented in petitioners state court proceeding. 28 U.S.C. § 2254 (d)(2)

B. The Rule -

Rule 5(c) of the rules governing section 2254 cases states that "[T]he respondent must attach to the answer parts of the transcript that the respondent considers relevant." In addition, "[T]he judge may order that the respondent furnish other parts of existing transcripts or that parts of untranscribed recordings be transcribed". Id. Likewise, according to 28 U.S.C. § 2254(f);

> If the applicant challenges the sufficiency of the evidence adduced in such state court proceeding to support the state courts determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant.... is unable to produce such

part of the record then the state shall produce such part of the record and the federal court shall direct the state to do so by order directed to an appropriate state official. id.

In light of the respondents urgency to not only disregard the petitioners citation of the Grand Jury transcript where proof of the Brady violation material existed, but the transcripts entire existence (Doc. 74 at 52n), the District Court abused its discretion by refusing to review the Grand Jury transcript and/or supplement the record to include them in light of the respondents intentional failure to include said transcribed proceedings. (Doc. 119 at 5n.7) SEE; Beck v. Bowersox, 257 F.3d 900, 901 (8th Cir. 2001) (District Court erred in denying motion to expand state court record as filed) The Third Circuit Court of Appeal decision to deny petitioner COA was in conflict with the Sixth Circuit Court of appeal holding in Black Law Enforcement Officers Ass'n v. City of Akron, 824 F.2d 475, 479 (6th. Cir. 1987) that a district court abuses its discretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an erroneous legal standard. id.

The factual record of the Grand Jury transcripts contradicted the state court's opposite conclusion. Petitioner exercised perfect due diligence in placing the federal courts on notice in his memorandum of law (Doc. 23 at 24n), motion to supplement the record (Doc. 117), and objections (Doc. 118 at 24), that the transcripts revealing the existence of the withheld evidence violating petitioners 6th and 14th Amendment rights had been ignored and unreviewed by all state courts in reaching the merits of petitioners Brady claim, and the factual determinations concluded therefrom. SEE; Taylor v. Maddox, 366 F.3d 992 (9th. Cir. 2004)

THE STATE COURTS refusal TO CERTIFY OR review THE relevant Grand Jury TRANSCRIPTS regarding petitioners Brady claim called into question THE validity of THE appellate process in THE STATE Courts. SEE; Wiggins v. Smith, 539 U.S. 510, 123 S.CT. 2527, 2538-39, 156 L.Ed.2d 471 (2003); and, Miller-EL v. Cockrell, 537 U.S. 322, 123 S.CT. 1029, 154 L.Ed.2d 931 (2003)

C. Analysis of Facts -

IN Strickler v. Greene, 527 U.S. 263 (1999), THIS Honorable Court SET OUT THE THREE components or essential elements of A Brady prosecutorial misconduct claim: 1) THE evidence at issue must be favorable TO THE accused, either because IT is exculpatory or because IT is impeaching; 2) THE evidence must have been suppressed by THE STATE, either willfully or inadvertently; and 3) prejudiced must have ensued. Strickler, 527 U.S., at 281-282, 119 S.CT. 1936. THE FACTS IN THE INSTANT matter satisfied all (3) elements, but were never assessed by THE State Court or federal Courts as such. SEE; App. FFF at 10-11, App. JJJ at 6-7, (Doc. 113 at 51-54), (Doc. 119 at 4-5)

To fatally undermine THE STATE Courts fact-finding process and Render THE resulting finding unreasonable, THE evidence in question must be sufficient TO support petitioners claim when considered in THE Context of THE full record bearing on THE issue presented. Taylor, 366 F.3d at 1001. When reviewing a petition pursuant TO challenges on factual grounds, §2254(d)(2) and §2254(e)(1) address THE appropriate considerations. 2254(d)(2) Mandates THE federal habeas court assess whether THE STATE Courts determination was reasonable or unreasonable given THE evidence relied upon by THE STATE Court. SEE; e.g., Wiggins, 123 S.CT. at 2539-40. THE language of 2254(d)(2) and 2254(e)(1) implies an important distinction; 2254(d)(2)'s reasonableness determination turns on a consideration of THE totality of THE evidence presented in THE STATE-Court proceeding, while 2254(e)(1)

Contemplates a challenge to the state courts individual factual determinations, including a challenge based wholly or in part on evidence outside the state trial record.

In the instant matter, the magistrates (R-N-R) concluded that petitioners Brady claim failed and the state courts decision was not contrary to clearly established federal law as determined by this Honorable Court because 1) petitioners claim was meritless; and 2) petitioner failed to offer "concrete evidence" of the suppressed material evidence. (Doc. 113 at 51n-53) Ironically, counting petitioners memorandum of law where he recites verbatim the conversation between then Senior Deputy Attorney General Michael Madeira and Centre County Narcotic detective Kenneth Ferron during petitioner's investigating Grand Jury proceeding regarding the withheld evidence in question, or the appendixed copy of that transcribed proceeding attached to Lee's memorandum of law (Doc. 23 at 26) and (Doc. 23, exhibit A), objection's (Doc. 118, exhibit A), and COA [Dkt. No 4, exhibit A], (5) times petitioner has provided clear and convincing evidence that has erroneously been ignored by the reviewing court. See; Marshall v. Hendricks, 307 F.3d 36 (3d. Cir. 2002), see also; Durham v. Piazza, No. 07-4338, 2009 U.S. Dist. Lexis 82380. 28 U.S.C. 2254(f)

As the Marshall court wrote, "a Strickland analysis regarding the effectiveness of trial counsel requires an analysis based on a complete record", thus it was error for the District Court to adopt the magistrates (R-N-R) denying habeas relief for failure to produce "concrete evidence" (Doc. 119 at 5) without an evidentiary hearing, supplementing the record pursuant to rule 5, or reviewing the appendixed transcripts attached to everyone of petitioners filings. Marshall, supra. 28 U.S.C. §2254(f)

EXTRAORDINARY BREAKDOWN IN THE JUDICIAL PROCESS-

LITIGANTS and appellate Courts alike have but one vehicle Through which to examine a Trial Courts proceedings for irregularities: The Certified record. Therefore, to alter a record is to strike at the very pillars of meaningful appellate review and therewith, the basic tenets of due process. In the instant matter, the Commonwealth intentionally failed to include petitioners grand jury transcripts in the certified record, despite there use during petitioners trial to cross-examine Commonwealth witnesses who testified "inconsistently" with their grand jury testimony. Contrary to the Commonwealth's attorney's assertion, petitioners grand jury transcripts were extremely relevant, and although not given to the jury for deliberation, evidence. (Doc. 74 at 50-52) Apparently unconcerning to the reviewing federal and state appellate Courts, was the Commonwealth's reiteration (3) times in (2) pages that the transcripts where proof of the alleged Brady violation exist, was not made part of the record by the one responsible for compiling the certified record. See; Pa.R.A.P rule 1921. Accident or Coincidence, that wasnt even the most egregious part. See; Com v. Williams, 715 A.2d 1101 (1997)

Begining with the PCRA Court, Judge Lunsford's refusal to review the record was why his legal and factual conclusion's were based on an unreasonable determination of the facts in light of the evidence presented in the state Court proceeding. 28 U.S.C. § 2254(d)(2), See also; Drake v. Portuondo ("Drake I") 321 F.3d 338, 346 (2d Cir. 2003)(no deference to state Courts required where state Court hindered the development of the factual record), See also; Miller-El, 537 U.S. at 346, 123 S.Ct. 1029 (state Court fact-finding process is undermined where the state Court has before it, yet apparently ignores evidence that supports petitioners claim) But this is the same judge who was removed from hearing all criminal proceedings for judicial misconduct before retiring amidst

Scandal and public scrutiny over destroying evidence of defendants seeking his recusal, and having inappropriate communication with several prosecuting attorney's during and after trial hours. SEE; App. OOO. SEE also; Com v. McClure, 172 A.3d 668 (2017)

Nevertheless, instead of reviewing the available transcript to resolve the matter in dispute, the PCRA Court opted for a decision devoid of logic, support of the record, or common sense. SEE; App. FFF, at pg 10-11. The PCRA Court concluded that "no report dating back to 2002 existed", and that he had "no reason to believe Trial Counsel was denied any discoverable materials". id This conclusion was based on Trial Counsel's assertion that "he could never know if there was a specific document he did not receive, but was not aware of any documents having existed that he did not receive". Compare; App. G, at pg 70-75, SEE also; Exhibit A, Kenneth Ferron 10/21/04, NT. pg 9-13. Maybe Trial Counsel misspoke when he objected and vehemently professed that after examining petitioners grand jury transcript he realized there was a "2002 debriefing of Kenyon Ebeling" that defense never received. Strickler, Supra., App. G, at pg 70.

Remembering that petitioner was indicted for offense's in 2002 under docket number CP-14-CR-793-2005; SEE: App. E, and subsequently convicted of the same offense's mentioned above in 2002; SEE: App. W, Count (9), the suppression of impeachment evidence was prejudicial, and violated petitioners 6th and 14th Amendment Rights under due process. Strickler, Supra. This was still not the most egregious part yet. Knowing that the Commonwealth had not presented petitioner with complete discovery, Senior Deputy Attorney General Dave Gorman begins his opening summation mentioning 2002 seven times, promising the jury witnesses that would cooberate his allegations of petitioners alleged criminal acts. SEE; App. G, at pg 29-35. The only person to fulfill this prophecy was Agent Scott Merrill, who's reference of "information" received from

"Numerous" law enforcement agencies in 2002 i[illegible]ited the objections, that prompted the side bar, that would years later be the cause of his perjury. SEE; App. M, at pg 193-194, (Compare) App. G, at pg 500-501. (Emphasis Added) SEE; Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959)

The district courts reliance of Cullen v. Pinholster, 563 U.S. 170, 185 (2011) as justification for failing to supplement the record or review the aforementioned transcript provided by petitioner was erroneous because Cullen is inapposite. Petitioner was not trying to introduce "new evidence," petitioner was asking the federal courts in accordance with precedent established in several different circuits, to supplement the record to include the necessary transcripts required to satisfy the statutory requirements for habeas relief. 28 U.S.C. § 2254(e)(1) Petitioner asked the federal courts not to reward the state courts strategical manipulation of the Commonwealth's failure to include a relevant and admissible part of the record, while denying petitioners attempts to have it included pursuant to state and federal rules of court. SEE; Drake I, Supra. Given the language of Pennsylvania's own rules of appellate procedure that "parties may rely on the list of documents transmitted to the appellate court and served on the parties, but if the list shows that the record transmitted is incomplete, the parties have an obligation to supplement the record pursuant to Pa.R.A.P 1926." (Correction and modification of the record) compare with 28 U.S.C. § 2254(f) to deny a pro-se litigant to supplement the record because the Commonwealth intentionally hindered the development of the factual record would allow future respondents to strategically deprive defendants of meaningful appellate review by purposely failing to include necessary files in the certified record. Miller-El, Supra.

Under Brady v. Maryland, THE government had a CONSTITUTIONAL Obligation TO furnish petitioner WITH any exculpatory evidence related TO his guilt or possible punishment. 373 U.S. at 87, 83 S.Ct. 1194. "THE individual prosecutor had a continuing duty TO learn of any favorable evidence known TO others acting on THE governments behalf in THIS case, including THE police". Strickler, Supra. (quoting Kyles v. Whitley, 514 U.S. 419, 437, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995) THE prosecuting attorney Knew THAT THE state failed TO produce all Brady material pursuant TO state and federal rule of law: He knew because Trial Counsel had allegedly notified THE Commonwealth's attorney weeks prior, and its WITHOUT dispute THAT THE (SDAG) Dave Gorman was aware of petitioners Grand jury proceedings and transcripts. SEE; App. G, at pg 70-75. Kyles, 514 U.S. at 438, 115 S.Ct. 1555. Aware of These facts, counsel still directed THE jurors attention several times during his opening statements; App. G, at pg 29-35, TO allegations of conduct alleged TO have been Committed by petitioner in or begining in 2002, Knowing THAT THE petitioner would be unable TO defend against These charges and allegations in light of THE withheld material evidence.

THE Commonwealth's attorney had referenced "information" from law enforcement agencies received since 2002 regarding petitioner, (App. G, at pg 70-75) yet TO date, THE only document received by petitioner was Kenyon Ebeling's September 29, 2004 debriefing recorded THE day She became an confidential informant for THE Pennsylvania Attorney General office. SEE; On Lee v. United States, 343 U.S. 747, 757, 72 S.Ct. 967, 96 L.Ed. 1270 (1952) Ironically, every party in THE instant matter has mentioned petitioners grand jury transcripts in some form or fashion, but not one court has reviewed THE (5) pages THAT would have ended THIS dispute (15) years ago. SEE; Exhibit A, (K. Ferron 10/21/04, NT. pg 9-13) Given THE statutory burden of proof imposed by 28 U.S.C. §2254(d)(2), §2254(e)(1), and §2254(f), reasonable jurist could debate THAT THE failure of all courts below TO allow petitioner TO supplement

THE record because of THE Commonwealth's intentional failure to include THE necessary transcripts needed to rebut THE state courts presumption of correctness by clear and convincing evidence, deprived petitioner of meaningful appellate review, and probably resulted in a unreasonable determination of THE facts in light of evidence presented. SEE; Valdez v. Johnson, 93 F.Supp.2d 769, 776 (S.D. Tex. 1999) (state habeas judges failure to read THE record denied Valdez a full and fair hearing on his federal constitutional claim)

D. Conclusion -

Regarding THE instant claim, THE state court never actually conducted a Strickland analysis; App. FFF pg 10-11, when adjudicating petitioners Brady claim on THE merits, instead, THE PCRA court made a credibility determination without a complete evidentiary hearing, or review of THE necessarily needed record in support of petitioners claim. Valdez, Supra. SEE also; Case v. Nebraska, 381 U.S. 336 (1965) Accordingly, Strickland teaches that a court deciding any ineffectiveness claim must "determine whether in light of all THE circumstances, THE identified acts or omissions of counsel were outside of THE wide range of professionally competent assistance". Strickland, 466 U.S. at 690.

IN THE instant matter, THE state court erred in ruling THAT THE prosecutions failure to disclose critical impeachment and exculpatory evidence did not violate Brady and its progeny. SEE; App. JJ at pg 6-7. Because that state court ruling was clearly erroneous, it was objectively unreasonable under (AEDPA), and petitioner was entitled to habeas relief. SEE; Benn v. Lambert, 283 F.3d 1040 (9th Cir. 2002) IN THE face of THE Commonwealth's prompting of THE federal courts (like all other courts below) to ignore petitioners production and citation of THE location of THE concealed "Brady material," (Doc. 74 at 49-52) THE magistrate and District Courts refusal to review THE complete record, or supplement THE record after imposing a higher pleading requirement than statutorily authorized under 28 U.S.C. § 2254(e)(1)'s clear and convincing evidence

STATUE, was erroneous, and petitioner is en...tled to habeas relief or remand for review of the petitioners grand jury transcripts. SEE; Nash v. Eberlin, 437 F.3d 519, 595 (6th. Cir. 2006) Petitioner has shown that reasonable jurist would debate the district courts and court of appeals determination made without benefit of the necessary grand jury transcript regarding petitioners Brady claim, and such decision denied petitioner meaningful appellate review of his 6th and 14th Amendment violations.

Wherefore, petitioner prays this honorable Court grant Certorari and clarify whether a defendants constitutional right to meaningful appellate review of a federal claim is violated by a federal and/or state courts refusal to review complete record or allow supplementation of record intentionally hindered by the state court.

II. Twelve minus one -

Is a defendants 6th and 14th Amendment right to trial by an impartial jury violated by a trial courts refusal to remove an actual prejudice juror? And if so, can the trial courts failure to remove the bias juror be cured by trial counsel's "word" of a defendants waiver of said rights without proof of the defendants knowing, intelligent, and voluntary waiver?

A. Conclusion -

An unbiased decision maker is not optional in any fair trial...... Unless your name is Taji Jemal Lee. The theory of law is suppose to be that, "A juror who has formed an opinion, cannot be impartial". See; Reynolds v. United States, 98 U.S. 145, 155, [25 L.Ed. 244] (1879). Petitioners constitutional right to be tried by a fair and impartial jury was violated by the trial courts refusal to remove an admitted biased juror immediately following his confession that he could not be fair and impartial; see: App. 6, at 348-350, or that his concerns were distracting him from paying attention to the proceedings. See; App. 6, at 490-494. The state courts finding that the admitted biased juror was not actually biased was based on an unreasonable determination of the facts; 28 U.S.C. § 2254(d)(2), and resulted in a decision contrary to clearly established federal law. 28 U.S.C. § 2254 (d)(1). Trial counsel's professed strategy for keeping the biased venireman was objectively unreasonable, and the District Court abused its discretion in concluding that trial counsel's "word" that petitioner wanted to keep bias juror days after trial counsel and the trial court failed to remove the venireman several times was erroneous. (Doc. 119 at 4)

Like the state court, the federal courts disregard of key aspects of the record in arriving at their conclusions. caused a defect in their statutorily required review; 28 U.S.C. § 2254, and fact-finding process. Miller-El, 537 U.S. at 346, 123 S.Ct. 1029. The Court of Appeals erred in denying (COA) because reasonable

JURIST Could have debated THAT THE assessment of Lee's Constitutional claim was wrong. Miller-EL, at 347.

B. THE Rule—

THE Sixth and Fourteenth Amendments of THE United States Constitution guarantee a Criminal defendant The right TO an impartial Jury. SEE; Morgan v. Illinois, 504 U.S. 719, 112 S.Ct. 2222, 119 L.Ed.2d 492 (1992) THE bias or prejudice of even A single juror is enough TO violate THAT guarantee. SEE; Dyer v. Calderon, 151 F.3d 970, 973 (9TH. Cir. 1998), SEE also; United States v. Martinez-Salazar, 528 U.S. 304, 316, 120 S.CT. 774, 782, 145 L.Ed. 2d 792 (2000) Despite THE strong presumption THAT constitutional errors can be harmless, THIS Honorable Court has concluded THAT THE denial of A jury TRIAL IS A STRUCTURAL error, subject TO automatic reversal. SEE; Arizona v. Fulminante, 499 U.S. 309, 310, 111 S.Ct. 1246, 113 L.Ed. 2d 302 (1991), SEE also; Gomez v. United States, 490 U.S. 858, 876, 109 S.Ct. 2237, 104 L.Ed. 2d 923 (1989) (quoting: Gray v. Mississppi, 481 U.S. 648, 668, 107 S.Ct. 2045, 95 L.Ed. 2d 622 (1987)

Because petitioners claim of ineffective assistance of counsel was based on Counsel's failure TO remove a biased juror, petitioner was required TO show THAT Juror Baney was actually biased against him in order TO succeed. SEE; Hughes v. United States, 258 F.3d 453, 458 (6TH. Cir. 2001) Petitioner sought TO apply THIS honorable Courts holding in Strickland v. Washington, 466 U.S. 668, 104 S.CT. 2052, 80 L.Ed. 2d 674 (1984), TO show ineffective assistance of counsel, which was clearly established Supreme Court precedent at THE Time of petitioners conviction. Under THE (AEDPA), petitioner was also required to overcome the presumption that counsel's reason for allowing Juror Baney to remain was sound trial strategy. 28 U.S.C. § 2254(e)(1), see also; Johnson v. Luoma, 425 F.3d 318, 328 (6th Cir. 2005)

C. Analysis of the Facts-

During petitioners (4) day jury trial, several instances arose involving Juror Jason Baney. The first incident was when the Sheriff's escorting petitioner out of a side exit of the courthouse accidently walked directly into (2) sitting jurors. See; App. G, at 343-346. Petitioner notified counsel who brought the incident to the courts attention and the (2) jurors were questioned regarding the matter. id. During this colloquy, Mr. Baney was questioned further regarding a message he had given the tipstave concerning his father working at the Centre County Jail where petitioner was being housed. id. After initially stating his concerns wouldn't affect his partiality, he quickly abandoned that belief, now conveying that he believed his concerns would affect him, and were not going to change. App. G, at 348-350

In response to this information, trial counsel initiates a conversation between himself, the (SDAG), and the trial court (in the presence of Mr. Baney) regarding how many jurors remained, and the possible problems of another juror being removed. See; App. G, at 351-352. The trial court interjects, erroneously explaining (it appears to Mr. Baney) the law and rules of court regarding an "automatic mistrial" if another juror left and it was less than twelve jurors available (essentially placing the Commonwealth's burden on Mr. Baney's back). id. Unfazed, Mr. Baney maintained that he believed his concerns would only worsen as the trial proceeded. id. Disregarding Mr. Baney's answers and demeanor, the trial court directed Mr. Baney to return to the jury. id.

The next afternoon, Mr. Baney returned with new concerns. App. H, at 490-494. This time it was about information conveyed by a friend to Mr. Baney regarding defamating information connecting petitioner to the disappearance of missing district attorney Ray Gricar. id. After being advised there was absolutely no validity to the allegations and/or news stories, Mr. Baney stated unequivocally that the information he had heard not only affected his partiality, but he found himself "distracted" during the proceedings all day. id. When asked if either counsel had any questions for Mr. Baney, trial counsel stated "no," and failed to request Mr. Baney's immediate removal or at least, another mistrial in light of Mr. Baney's admission of being distracted all day. id. Despite Mr. Baney's admitted bias, again he was told to return to the jury and not to discuss his concerns or discussions with the court. id. Notwithstanding the evidence within the record, the District Court denied habeas relief, concluding that despite Mr. Baney's admitted bias, trial counsel "said" it was petitioners "choice" to keep a biased juror. (Doc. 113 at 37-45) (Doc. 119 at 4)

D. Extraordinary Breakdown in the Judicial Process - (Actual Bias)

Juror bias is a factual ~~issue~~ issue that reviewing courts must give the factual assessment of trial judges the presumption of correctness, subject to the exceptions enumerated in 28 U.S.C. 2254 (d). The exception relevant in the instant matter is whether "the factual determination is not fairly supported by the record" 28 U.S.C. § 2254(d)(2). Petitioner avers that it wasn't, in fact, although courts normally defer to the assessment of the trial judge who hears the jurors tone of voice and sees his demeanor, in the instant matter, the record alone was so extensive and persuasive that it outweighed §2254's presumptive deference. Hughes, Supra. SEE; App. G, at pg. 346-353, 490-494

This same record is what authorized the federal courts to second guess the state courts fact-finding process, and review Petitioners claim under the "unreasonable determination" standard of §2254(d)(2). SEE; Cf. Lockyer v. Andrade, 538 U.S. 63, 75, 123 S.Ct. 1166, 155 L.Ed.2d 144(2003) As this Court held in Miller-El, "deference does not by definition preclude relief. A federal Court can disagree with a State Courts credibility determination, and when guided by AEDPA, conclude the decision was unreasonable." Id. at 340, 123 S.Ct. 1029.

In the instant matter, the State Court should have made a finding of fact in favor of petitioner regarding Mr. Baney's partiality, but to do so would have required the PCRA Court to admit its own error in failing to remove Mr. Baney originally itself. SEE; Com v. Drew, 459 A.2d 318(1983), also; Johnson v. Armontrout, 961 F.2d 748, 755(8th Cir. 1992) The trial Courts failure to dismiss Mr. Baney constituted manifest

Error, and did not merit the presumption of correctness normally due trial court factual findings. See; Hill v. Brigano, 199 F.3d 833, 844-45 (6th Cir. 1999) "Failure to remove a biased juror taints the entire trial, and the resulting conviction must be overturned". See; Wolfe v. Brigano, 232 F.3d 499, 503 (6th Cir. 2000) The question of whether to allow a biased juror to remain is not a discretionary or strategical decision, its an abuse of discretion. See; Wolfe, 232 F.3d at 503. The magistrates conclusion that the state courts factual finding that petitioner 1) failed to show that Mr. Baney was actually biased, and 2) that the state courts decision was not based on a unreasonable determination of the facts, was erroneous, and an abuse of discretion. Wolfe, supra

Obviously, where the state courts legal error infects the fact-finding process, the resulting factual determination will be unreasonable, and no presumption of correctness can attach to it. In light of the record, it appears that the federal courts ignored the legal ramifications Mr. Baney's colloquy presented in exchange for trial counsel's "word" that petitioner waived his 6th Amendment right to be tried by a fair and impartial jury without any confirmation of such a knowing, intelligent, or voluntary waiver. (Doc. 113 at 37-45) See; Hill, supra

THE DISTRICT COURT and COURT of Appeals made NO attempt TO elicit facts pertaining TO MR. Baney's bias from THE record. (DOC. 119 at 4) Instead, it appears THAT THE district Court and Court of Appeals findings were based on THE fact THAT after allowing an admitted biased juror TO remain ON petitioners jury TRIAL for days, TRIAL Counsel's "word" THAT he spoke with petitioner and petitioner was willing TO allow MR. Baney TO remain (subsequently waiving petitioners Constitutional right) ON THE jury, Trumped THE TRIAL COURTS, and TRIAL Counsel's responsibility TO rehabilitate OR remove MR. Baney. (DOC. 113 at 39-42) SEE; Hill, 199 F.3d at 844-845.

"Actual bias is bias in fact". THE district Court erred in concurring with THE State Courts conclusion THAT There could be any situation where failing TO remove A biased juror could be excused. Hughes, Supra. THE presence of a biased juror cannot be harmless, and THE error requires A New TRIAL without A showing of actual prejudice. SEE; United States v. Gonzalez, 214 F.3d 1109, 1111 (9TH Cir. 2000) TO allow THE instant denial of habeas relief in light of such facts would be TO allow A defendants TRIAL attorney TO waive a defendants Constitutional rights erroneously or purposely. SEE; Franklin v. Anderson, 434 F.3d 412, 428 (6TH Cir. 2006) In THE instant matter, THE record reveals THAT TRIAL Counsel and THE TRIAL COURT violated petitioners Constitutional rights by i) failing TO remove Mr. Baney after his declarations of partility; SEE App. G, at 351-352, 2) allowing Mr. Baney TO return WITH THE jury and possibly Taint THE OTHERS; SEE App. G, at 350, 494, and 3) for placing THE burden of THE Commonwealth possibly having TO retry petitioner if "another juror departed" on Mr. Baney's conscience. SEE; App. G, at 492-493.

In THE absence of an affirmative and believable statement THAT Mr. Baney could set aside his concerns and bias, and decide THE case on THE evidence in accordance WITH THE law, THE failure TO remove Mr. Baney was unreasonable, and contrary TO clearly established federal law. 28 U.S.C. §2254(d)(1), SEE; Patton v. Yount, 467 U.S. at 1036, 104 S.CT. 2885. THE magistrates disregard for THE content and context of Mr. Baney's colloquy's diminished petitioners production of THE clear and convincing evidence needed TO rebut THE states court presumption of correctness. (Doc. 113 at 39-40) THE magistrate referenced (3) Times in THE record where juror Baney exclaimed "he didn't know," or "he couldn't" when questioned regarding his partiality, yet THE Magistrate, district court, and court of Appeals still concluded THAT petitioners claim was meritless because petitioner failed TO "show" Mr. Baney was actually prejudiced against him. (Doc. 113 at 44)(Doc. 119 at 4)(Lee v. Superintendent, Mahanoy SCI; et al, No. 20-1529 [DKT. No. 10], SEE; Wolfe, 232 F.3d at 503.

THE COMMONWEALTH'S ARGUMENT AGAINST finding INEFFECTIVE ASSISTANCE OF COUNSEL REST PRIMARILY ON TRIAL COUNSEL'S WAIVER OF PETITIONERS CONSTITUTIONAL RIGHT TO BE TRIED by a fair and IMPARTIAL JURY. SEE; App.F, at 7, (DOC. 74 AT 44-45) THE MAGISTRATE AND DISTRICT COURT also latched ON TO MR. BANEY'S SILENCE IN THE face OF THE TRIAL COURTS generalized QUESTIONING OF THE ENTIRE JURY before deliberations as "assurance of his partiality." (DOC. 113 AT 37-45) SEE; Johnson, 961 F.2d at 753-754 ("an ambiguous silence by VENIRE PERSONS TO A generalized QUESTION ON BIAS IS NOT SUFFICIENT TO demonstrate IMPARTIALITY) Avoided by THE STATE COURTS AND ULTIMATELY THE federal COURTS also, was any MENTION OF THE TRIAL COURTS OR TRIAL COUNSEL'S responsibility regarding MR. BANEY and his rehabilitation OR REMOVAL. SEE; Government of The Virgin Islands v. Weatherwax, 77 F.3d 1425, 1434, 33 V.I. 399 (3d Cir. 1996) ("THE ABA STANDARDS FOR CRIMINAL JUSTICE recognize as being among THE NON-fundamental ISSUES reserved for counsel's judgement whether and how to conduct CROSS-EXAMINATIONS, what JURORS TO ACCEPT OR STRIKE, [and] what TRIAL MOTIONS should be made")

E. Conclusion -

It was impossible for THE DISTRICT COURT and COURT of Appeals TO have CONDUCTED AN independent review of THE record, and applicable LAW, and find NO ERROR IN THE MAGISTRATES (R-N-R) THAT THE VIOLATION of PETITIONERS 6TH Amendment right TO be TRIED by an IMPARTIAL JURY WITH THE effective ASSISTANCE of counsel was meritless. (Doc. 119 at 4) (No. 20-1529 [Dkt. No. 10]) All Courts below have erroneously ignored Juror Baney's admission of actual bias in favor of trial counsel's assertion that petitioner decided to allow Mr. Baney to remain on the jury without any proof of such declaration. Mr. Baney's indication of bias was so clear that the state courts fact-finding to the contrary had to be set aside. 28 U.S.C. § 2254(d)(2); see also, Kirk v. Raymark Indus., Inc, 61 F.3d 147, 156 (3d Cir. 1995)

The Third Circuits contrary conclusion directly conflicts with the opinion of other circuit courts that "if counsel cannot waive a criminal defendants basic 6th Amendment right to trial by jury without the fully informed and publicly acknowledged consent of the defendant, then counsel cannot so waive a criminal defendants 6th Amendment right to trial by impartial jury." Hughes, 258 F.3d at 463. Petitioner begs this honorable court to not allow defendants to be blamed for structural errors committed by trial courts and trial attorney's first, Martinez-Salazar, 528 U.S. at 316, 120 S.Ct 774, without any sound or signature ensuring a knowing, intelligent, and voluntary waiver of such a vital constitutional right. Hughes, Supra.

Counsel's performance was objectively unreasonable, and not requesting the removal of Mr. Baney after his admitted bias prejudiced the petitioner. All courts below determination that petitioners trial courts conclusion that trial counsel's performance was not constitutionally deficient was an unreasonable application of Strickland, which was

Clearly established federal law at the time of petitioners conviction. SEE; Strickland, 466 U.S. at 686, 104 S.Ct. 2064; 28 U.S.C. § 2254(d)(1) THE STATE COURTS CONCLUSION THAT MR. Baney was believable as an impartial juror was also contrary to, and a unreasonable application of Supreme Court precedent. SEE; Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (The presence of a biased decision-maker is a structural error subject to automatic reversal)

Wherefore, petitioner prays this honorable Court grant Certorari and clarify whether a defendants constitutional rights to be tried by a fair and impartial jury is violated by an admitted bias juror, and if so, can counsel waive a defendants right to be tried by an impartial jury without public confirmation of such a vital right.

III. Instructions Required -

Is a defendants 6th and 14th Amendment Rights to Due Process violated by a trial courts omission of a portion of a jury instruction multiple times, despite the juries confusion and multiple request for the reinstruction of the jury charge? And if so, is it not an unreasonable application of clearly established federal law for an appellate court to include that trial counsel had a reasonable basis for failing to object?

A. Conclusion -

In the instant matter, the trial courts failure to fully instruct the jury on petitioners sole defense of Entrapment violated his 6th and 14th Amendment right to due process. SEE; App. K, pg 1277-1285 The trial courts error also deprived petitioner of a meaningful opportunity to present a

Complete defense; SEE: California v. Trombetta, 467 U.S. at 485, 104 S.Ct. 2528, and Trial Counsel's omission in failing to object due to his complicity with the Trial Courts redaction deprived petitioner of the effective assistance of counsel at all critical stages. SEE; App. K, pg 1110, 1115; SEE also: Bell v. Cone, 535 U.S. 685, 696, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002)

THE district Court and Court of Appeals erred in adopting The magistrates (R-N-R) denying habeas relief in light of the state Courts failure to afford a full and fair hearing on collateral review regarding the instant claim. SEE; Townsend v. Sain, 372 U.S. 293, 313, 9 L.Ed.2d 770, 83 S.Ct. 745 (1963) The state Courts summary dismissal of the instant claim violated its own rules mandatory language of Notification; SEE: PA.R.Crim.P. 907, and unrequested, unauthorized Counsel failed to notify petitioner or respond. SEE; App. RR, pg 4-5, (Doc. 23 at 32-33), 28 U.S.C. § 2254(d)(2)

THE district Court and Court of Appeals further erred in adopting The magistrates conclusion that the state Courts finding was not contrary to established federal law because petitioners underlying claim was meritless, Therefore counsel could not have been ineffective (Doc. 113 at 47) because the state Court misapprehended petitioners grievance in making its factual findings. SEE; Wiggins, 123 S.Ct. at 2538-39. Construed liberally, petitioners underlying claim was that the trial courts redaction of petitioners entrapment instruction was prejudicial because it caused the juries confusion and deprived them on how to apply the law, thus infecting the entire trial. SEE; Brecht v. Abrahamson, 507 U.S. 619, 637, 113 S.CT. 1710, 123 L.Ed.2d 353 (1993) (Doc. 23 at 34)

B. THE RULE -

IN PENNSYLVANIA, THE defense of ENTRAPMENT IS Codified at 18 Pa.C.S.A. §313 and STATES IN PERTINENT PART THAT:

> (a) GENERAL RULE - A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, induces or encourages another person to engage in conduct constituting such by either;
>
> 1) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
>
> 2) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.

THE JURY INSTRUCTION ON THE defense is worded almost identically. SEE; Pa. SSJI §8.313 In fact, subsection (4)(c) states;

> (c) THE [officer] [person] does this by [making false representations that he or she knows are false and that are designed to mislead the other person into believing that the conduct is lawful.]

[spell out improper activities of the police officer
or cooperating person that allegedly contravene
Crimes Code Section 313(a)(1) or (2).]

The omission of this "command" is why petitioner avers that the district
courts adoption of the magistrates legal conclusion that petitioner
failed to prove the instruction was erroneous, and violated his due
process right, was an unreasonable determination of the facts in
light of the evidence presented. 28 U.S.C. § 2254(d)(2), (Doc. 113 at 47)
See; Miller v. South Dakota, 338 N.W.2d 673, 676 (S.D. 1983)(although
errors in instructing the jury do not always rise to a constitutional
level, "if the error goes to the heart of a defendants theory of defense,
it can infringe upon defendants rights to due process and jury trial".)

Under the (AEDPA), to prevail on the instant claim, petitioner
carried the burden of demonstrating that the state courts decision
that trial counsel was not ineffective in failing to object to the trial
courts redaction of the jury instruction on entrapment, was contrary
to clearly established federal law. 28 U.S.C. § 2254(d)(1) In the instant
matter, since both petitioners ineffective assistance of counsel claim,
and due process claims were both based on the redacted jury instruction,
the state courts and federal courts conclusion that the instant claim was
meritless, was also contrary to the clearly established Supreme Court
precedent in Strickland, and petitioner satisfied his burden in showing the
prejudice and then the lack of reasonable basis in trial counsel's actions. See;
Strickland, 466 U.S. at 687. (No. 20-1529 at Dkt. No. 4)

C. Analysis of The Facts -

When an instructional error rises to the level of a due process violation, federal habeas relief is appropriate if the instructional omission caused prejudice within the meaning of Brecht v. Abrahamson, Supra. See; Henderson v. Kibble, 431 U.S 145, 154, 97 S.Ct. 1730, 52 L.Ed.2d 203 (1997) An appraisal of the significance of the error in the instructions to the jury requires a comparison of the instructions which were actually given, with those that should have been given. Henderson, 431 U.S. at 154

In the instant matter, Entrapment was the theory and sole defense of the defense's case. By trial counsel failing to request and/or object to the absence of the complete jury instruction defining what constituted "improper activities" of the police officers or cooperating person's, trial counsel allowed the jury to speculate about the applicable standard for finding petitioner not guilty by entrapment. See; App. K, pg 1277-1285, See also; Com v. Beach, 438 Pa. 37, 264 A.2d 712 (1970) Counsel had no reasonable basis for so acting, and the district courts adoption of the magistrates conclusion that the state courts failure to find counsel ineffective was not contrary to clearly established federal law, was erroneous. Strickland, 466 U.S. at 687 (Doc. 113 at 47)(Doc. 119 at 6)

Petitioner presented clear and convincing evidence in the form of the state court record that 1) trial counsel agreed with the trial court and (SDAG) to redact what would become a "substantial and injurious influence" on the determination of the juries verdict; Cupp v. Naughten, 414 U.S. 141, 147, 94 S.Ct. 396, 38 L.Ed.2d 368 (1973); See, App. K, pg 1108-[redacted] 1115, 2) the jury was clearly confused and in need of adequate and accurate clarity regarding their confusion; SEE, App.K, pg 1283, and 3) THE TRIAL COURTS reason for refusing TO aid THE jury Through Their deliberations and confusion was premediatedly connected TO his reluctance TO read THE instruction as well as his disregard for clearly established precedent. SEE; App. M, pg 135-138, (emphasis added) SEE also, Com v. Harris, 431 Pa.Super. 222, 636 A.2d 210 (1994) 28 USC § 2254 (e)(1)

THE TRIAL COURTS had a duty NOT only TO provide THE jury WITH THE correct principles of law applicable TO petitioners case, but TO endeavor TO make such principles understandable in plain language. SEE; Pa. SSJI § 8.313 (4)(c) THE DISTRICT COURTS reliance on THE magistrates (R-N-R) ignored THE fact THAT when viewed in its entirety like THE jury instruction should have been by every reviewing court; Henderson, Supra., even if THE STATE COURTS interpretation of THE ENTRAPMENT charge was correct, THE charge when omitted still violated petitioners due process rights. THE STATE COURT concluded THAT under STATE law, petitioners claim was meritless, but they never addressed petitioners due process Theory remaining under federal law. SEE; Bennett v. Superintendent Graterford SCI, 886 F.3d 268, 279 (3d. Cir. 2018) (Doc. 113 at 45-47)

THE COURT of appeals erred in concluding THAT petitioners claim was meritless, and THAT no jurist could debate THAT THE resolution of petitioners constitutional claim was wrong, because a plenary review of THE record confirmed THAT THE TRIAL COURTS ERROR was of NO accident at all, but was premeditated. SEE; App. K, pg 1110, 1115; SEE: Miller-EL, 123 S.Ct. at 1039. THE record revealed it was a joint agreement between THE TRIAL COURT, TRIAL COUNSEL, and THE (SOAG), TO omit THE exact portion of THE jury instruction THAT would later cause THE juries confusion during deliberation, prompting their return several times. Therefore, reasonable jurist would have been able to debate had the record been actually reviewed, petitioner suffered a substantial constitutional violation. SEE; App. K, pg 1277-1285, SEE; Trombetta, 467 U.S. at 485, 104 S.Ct. 2528.

D. Conclusion -

THE Pennsylvania Court of Appeals decision was unreasonable in light of the record. 28 U.S.C. § 2254(d)(2) THE Court of appeals ignored Petitioners right to present a complete and meaningful defense to THE jury under principles set out in Mathews v. United States, 485 U.S. 58, 63, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988) and Trombetta, supra. They failed To consider the facts relevant to the due process prejudice prong. THE Court of appeals failure to address these issues constituted an objectively Unreasonable determination of both the law and the facts. SEE; Bradley v. Ducan, 315 F.3d 1091 (9th.Cir.2002)

Petitioner has not recieved a fair review of the serious violations of his constitutional rights during trial mainly due to the trial courts distortion of the issues presented, coupled with the appellate courts refusal to review the record instead of accepting the lower courts assessment of the facts. This honorable courts responsibility to examine these allegations should in no way be diminished by the existence of extensive review by the learned state courts which have ruled in petitioners case. Although tempting (as well as statutorily authorized) to presume the correctness of those rulings, this honorable court is charged to resist such temptation lest it fail in its duty to independently analyze the constitutional violations asserted in petitioners petition for habeas relief. If this court but review the record cited, petitioner promises that this court will determine that the writ must issue. SEE; California v. Roy, 519 U.S. 2, 5, 117 S.Ct. 337, 136 L.Ed.2d 266 (1996)

Wherefore, petitioner prays this honorable Court grant Certiorari and clarify whether a defendants 6th and 14th Amendment due process rights are violated by the omission of a jury instruction multiple times despite the juries request for clarification, and if so, was it an unreasonable application of clearly established federal law for the state courts to conclude trial counsel had a reasonable basis for failing to object?

IV.

Is a defendants 6th and 14th Amendment due process rights violated by the prosecutions knowing use of false and/or uncorrected testimony regarding a key witnesses plea bargain and/or credibility? And if so, can there be any reasonable basis for failing to object and/or raise on direct appeal?

A. Conclusion -

The criminal justice system is bottomed on several unwavering principles. One of those principles was recognized long ago by Justice Sutherland when he stated that:

> "A prosecuting attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest therefore, in criminal prosecution is not that it shall win a case, but that justice shall be done. He is in a peculiar and very definite sense the servant of the law, the two fold aim of which is that guilt shall not escape or innocense suffer. He may prosecute with earnestness and vigor---

Indeed, he should do so. But while he ..ake strike hard blows, he is not at liberty to strike foul blows. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one."

See; Berger vs. United States, 295 U.S. 78, 88-89, 79 L.Ed. 1314, 55 S.Ct. 629 (1935). In the instant matter, the state court violated petitioners constitutional rights first under Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959) by presenting false evidence to the jury, and second under Alcorta v. Texas, 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957) and Pyle v. Kansas, 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942) by failing to correct the record following presentation of false evidence.

The district court and court of appeals finding that the state courts conclusion that petitioners trial counsel was not ineffective in failing to object to the perjured testimony of Kenyon Ebeling was contrary to clearly establish federal law; 28 U.S.C. §2254 (d)(1), and a unreasonable determination of the facts in light of the evidence presented in the state court proceeding. 28 U.S.C. §2254(d)(2) Both courts erred in adopting the magistrates erroneous Martinez analysis in finding that petitioners ineffective assistance of appellate counsel claim was procedurally defaulted. (Doc. 113 at 55-56 n.47) See; Martinez v. Ryan, 566 U.S. 1 (2012); See also, Wilkerson v. Superintendent, 871 F.3d 221, 228-29 (3d.Cir. 2017) (in Pennsylvania, defendant exhaust his state remedies for a federal claim by raising claim on direct appeal or in a petition for collateral relief under the PCRA). See also; App. 666, pg 8-9. The district court and court of appeals decision in the instant matter was in conflict with other circuits on this same matter and requires the exercise of this courts supervisory power. Supreme Court rule 10(a).

B. THE RULE -

IN ORDER TO SUSTAIN A Claim of CONSTITUTIONAL ERROR resulting from prosecutorial misconduct in THE use of false Testimony, petitioner MUST establish THAT THE witness actually perjured him or herself, and THAT THE prosecutor Knowingly used perjured Testimony, or failed TO CORRECT what he subsequently learned was false Testimony. SEE; Prosdocimo v. Sec'y, Pa. Dep't of Corr., 458 F. App'x 141, 147 n.5 (3d. Cir. 2012) Under Giglio, THE petitioner MUST point TO specific facts establishing THAT THE Testimony was 1) used by THE STATE, 2) false, 3) Known by THE STATE TO be false, and 4) MATERIAL TO THE guilt or innocense of THE defendant. SEE; Giglio v. United States, 405 U.S. at 153-54; Napue, 360 U.S. at 269-72. IN THE INSTANT MATTER, THE STATE appellate Court and federal Court actually reference petitioners Citation of THE record establishing clear and convincing evidence of THE perjured Testimony and THE Commonwealth's subornation of such, and mock petitioners citation while never utilizing THE record TO evaluate claim. SEE; App. FFF, pg 8-10; App. JJ, pg 10 n.9; (Doc. 113 at 57 n.48) SEE; Carlson v. Jess, 526 F.3d 1018, 1024 (7th. Cir. 2008) (Trial Court based decision on unreasonable factual determination, substantive merits of claim to be analyzed under Pre-AEDPA standard which is de novo because There is no State Court analysis to apply AEDPA standards to)

C. Analysis of THE Facts -

IN THE INSTANT MATTER, Kenyon Ebeling's Testimony and credibility was critical TO THE Commonwealth's case. Under Napue and Alcorta, THE false Testimony presented was material TO both petitioners conviction, and confusion of operative facts needed for THE jury TO find petitioner was entrapped under Pennsylvania law. THE STATES solicitation of Ebeling's false Testimony regarding being "re-sentenced TO serve more Time" went TO THE heart of strategically attempting TO bolster her credibility before THE jury. SEE; App. I, pg 761-762. Undoubtably material and identical TO THE circumstances in Alcorta. id. 355 U.S. at 29-30, 78 S.Ct. 103.