No. 20-8005

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

PHILIP STEVEN MATNYUK — PETITIONER
(Your Name)

vs.

ATTORNEY GENERAL FOR THE STATE OF ARIZONA; DAVID SHINN DIR. ADOC — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PHILIP STEVEN MATNYUK #289243
(Your Name)

10002 S. WILMOT Rd / P.O. Box 24401
(Address)

TUCSON, AZ 85734
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. Was Matwyuks Due Process and Equal Protection and Constitutional Rights violated when trial counsel failed to investigate exculpatory evidence. I.E. Matwyuks proof of residency, proof of alleged victims motive to attack Matwyuk, proof that the alleged victims planned a physical attack against Matwyuk, proof that attack by alleged victims was made against Matwyuk and proof that Det. Delong, being a cousin of the alleged victims falsified reports and mishandled and tampered with evidence?

2. Was Matwyuks Constitutional Due Process rights violated when the lead Detective, (Det. Delong), while related to the alleged victims, remained in the capacity of the lead investigator in Matwyuks case?

3. Was Matwyuks denial by the trial court to represent himself a Constitutional Due Process Violation under the 14th Amendment?

4. Was Matwyuks 6th Amendment Due Process right to be represented by effective counsel violated by 1) his first attorney failing to inform him of a plea agreement offered by the state, and 2) His second attorney failing to convey multiple pleas to Matwyuk, instead filing a "Rule 11" against him, which he was ultimatly declared competent to stand trial?

5. Was Matwtuks 6th and 14th Constitutional Ammendmaent rights violated when the state solicited previously precluded testimony of Alicia Dena, and counsel failing to object to it?

6. Was Matwyuks 14th Amendment Constitutional rights violated by counsels (cumulative) Ineffective Assistance of Counsel errors?

LIST OF PARTIES

[X] 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:

RELATED CASES

Kingman Justice Court
Small Claims Case No. CV 2012-10560V
Against Alicia Dena By Matiyuk For property
and money.

Kingman Municipal Court M-0841
AZ008011J Case #. 12CV14
Order of Protection

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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 F to the petition and is

[ ] reported at N/A; 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 E to the petition and is

[ ] reported at N/A; 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 D to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Arizona Court of Appeals Div. 1 court appears at Appendix A & C to the petition and is

[ ] reported at N/A; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was January 14, 2021.

[ ] 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: January 14, 2021, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/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 June 5, 2020. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix _____.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Const. Amendments:

#4. Right to be secure in their Person, Houses, no warrant shall issue, But upon Probable Cause, Supported By oath and affirmation

#5. No person shall be compelled in any criminal case to be A witness against himself, nor be deprived of life Liberty or property without Due Process of law

#6. In all Criminal Prosecutions the Accused shall Enjoy the Right to a speedy and public Trial, and to be informed of the nature and cause of the accusation, to be Confronted with the witnesses against him, and to have the assistance of Counsel For his Defense.

#8. No Cruel and unusual Punishment inflicted.

And

#14. All Persons Born or Naturalized in the United States are Afforded the Right to Due Process of law and Equal Protection of the laws.

* Rule 10 - United States Supreme Court.

STATEMENT OF THE CASE

Petitioner Matwyuk, and one of the Alleged Victims in his case #CR-2012-00754, Alicia Dena, Bought a Home together in Kingman Az, the First of the year 2012. Things Between She and Matwyuk Became Sour and Ms. Dena Became Violent. So Violent In fact that the Police were Called, Where She was Found to be the Aggressor.

Because of Ms Denas violent actions, Matwyuk left the Home mid May 2012, But did not move out. He was Simply Tired of Being Abused. Matwyuk then Filed a Civil Suit Against Ms. Dena, (Kingman Az. Municipal Court # CV 2012-10560 W) For his Belongings in the Home and the money He invested in the Home.

MATLYUK WAS USING THIS CIVIL SUIT TO MINIMIZE ANY CONTACT WITH MS. DENA BECAUSE EVERY TIME MATLYUK WENT HOME, MS. DENA WAS VIOLENT TO HIM.

ONCE MS. DENA WAS SERVED WITH THE CIVIL SUIT SHE IN TURN FILED AN "ORDER OF PROTECTION" AGAINST MATLYUK, IN AN ATTEMPT TO KEEP HIM FROM HIS PROPERTY AND LEGAL RESIDENCE. SHE LISTED THE ADDRESS SHE AND MATLYUK BOUGHT TOGETHER AS HIS RESIDENCE.

MS. DENAS ORDER OF PROTECTION WAS ULTIMATELY DENIED DUE TO THE POLICE REPORTS STATING HOW SHE WAS ALWAYS THE AGRESSOR AND VIOLENT (SEE SUPPORTING DOCUMENTS, EXHIBIT L, PG. 38-40)

DENA, BEING UPSET OVER HER LOSING HER ORDER OF PROTECTION, AND BEING SUED BY MATLYUK, ENGAGED IN A "FACE BOOK" CHAT WITH SOME OF HER FRIENDS STATING MATLYUK SHOULD BE JUMPED, AND HOW THEY SHOULD "PLAY BASEBALL WITH HIS KNEE CAPS". (SEE SUPPORTING DOCUMENTS, EXHIBIT E, PG. 29) MS. DENA GOING AS FAR AS SOLICITING A THIRD PARTY TO ATTACK MR. MATLYUK. (SEE SUPPORTING DOCUMENT, EXHIBIT H, PG. 32-33)

ON JUNE 1, 2012 MS. DENA TELLS MATLYUK THAT SHE WAS SORRY FOR HOW SHE WAS BEING TO HIM, AND THAT SHE DIDN'T WANT TO FIGHT ANYMORE, ASKING HIM TO COME HOME. HE TOLD HER HE WOULD COME HOME THE NEXT MORNING JUNE 2, ND 2012.

ON THE MORNING OF JUNE 2ND 2012, MATLYUK ARRIVES AT THE HOME TO DISCOVER MS. DENA HAD CHANGED THE LOCKS. MR. MATLYUK KNOCKED ON THE DOOR AND WAS LET INTO THE HOME. AS HE WALKED INTO THE MASTER BEDROOM THERE WAS AN UNKNOWN MAN WAITING FOR HIM, AND HE BEGAN ATTACKING MATLYUK. MR. MATLYUK GRABBED A KNIFE TO DEFEND HIMSELF.

AS SOON AS MATLYUK COULD GET AWAY HE DID, IMMEDIATELY HE CALLED POLICE, HE WAS STILL IN SHOCK WHEN HE WAS ARRESTED BY THE KINGMAN POLICE.

MATLYUK WAS QUESTIONED BY KINGMAN DETECTIVE, BRANDON DELONG, WHO IS COUSINS WITH MS. DENA AND ANOTHER OF THE ALLEGED VICTIMS. HE WAS THEN TAKEN TO JAIL. DELONG DID NOT CARE THAT MATLYUK TOLD HIM HE WAS ONLY DEFENDING HIMSELF.

THROUGHOUT THE TIME MATLYUK AWAITED TRIAL, HE WAS INCARCERATED IN JAIL. HE WAS GIVEN TWO ATTORNEYS. HIS FIRST ATTORNEY WITHDREW BECAUSE OF THE FACT HE WAS ATTEMPTING TO EXTORT MONEY FROM MATLYUKS FATHER. THIS ATTORNEY HAD A PLEA FROM THE STATE, BUT NEVER CONVEYED IT TO HIM. (SEE SUPPORTING DOCUMENT, EXHIBIT K, PG 36-37)

His second Attorney Failed to investigate Matlyuks Defense. The Prosecution Suppressed Evidence that showed Matlyuks innocence, that Delong tampered with Evidence to make the attackers (the alleged victims) into the victims and make Matlyuk look like the Agressor. The Evidence tampered with was the Alleged Victims motive (civil suit), their plan to attack Matlyuk, the Facebook chats, and solicitation to hire someone to attack Matlyuk. The clear attempt on Matlyuk, the phone recording of Ms. Dena inviting Matlyuk back home, which was in fact his legal residence. (See Supporting Documents, Exhibits F & L pgs. 30, 38-40)

Matlyuk was convicted and sentenced to 36 years and the alleged victims got away with the perfect crime. Matlyuk then files his appeals with the following Courts:

1. Arizona Court of Appeals Division One (Direct Appeal) Case #1CA-CR 14-0202
2. Superior Court of the State of Arizona For Maricopa County (P.C.R. Rule 32) Case # CR 2012-00754
3. Arizona Court of Appeals Division One. (Petition For Review Case # 1 CA-CR 16-0833 PRPC
4. Supreme Court of Arizona (State Petition For writ of Habeas Corpus) Case # HC-18-0030
5. United States District Court For Arizona. (Petition For writ of Habeas Corpus) Case # CV-18-08299-PCT-JAT
6. United States Court of Appeals 9th Circuit) Case # 20-16316

Matlyuks Arguements are the same as the questions he is asking this Court to consider.

Mr. Matlyuk has not had any Justice Due to the Court only Reviewing the Record, and using the Fact that Matlyuk is not an Attorney to Properly litigate his Issues and Arguements.

Matlyuk is now asking this Court to Balance the Scales of Justice in the the interest of Justice and to Correct the Constitutional Violations Against Him, his 4th Amendment Right to be Secure in his Property and Self Defense, his 6th Amendment Right to self Representation and 14th Amendment Due Process and Equal Protection Rights.

REASONS FOR GRANTING THE PETITION

This court should grant Certiorari due to the fact that all the lower courts filed within the state of Arizona, and the Ninth Circuit court are only making their rulings and decisions on *innacurate court records and opinions* and are not on the facts of what the record is and what the petitioner is challenging. And that there are clear constitutional violations Matwyuk is alledging.

The United States justice system hinges on these rights that every U.S. citizen is guaranteed within the United States Constitution.

The petitioner has shown in his petition that there is clear compelling reasons that exist for the exercise of the courts discretionary jurisdiction with the fact that the petitioners Constitutional rights have been violated, and the lower courts have done nothing to correct their errors.

These errors consist of the fact that Matwyuks due process rights were violated by the lead Detective, (Delong), who is relatives with the alleged victims, handling all the evidence, and was able to steer the course of the investigation in the direction most favorable to protecting his families intrests, so as to avoid criminal prosecution from the crimes they committed against Matwyuk. And that there is evidence that Delong changed, conceiled and mishandled evidence. Matwyuks 6th Amendment rights were violated by the courts by, 1. Rejecting Matwyuks repeated requests to proceed in his own self representation. And 2. When the court denied that request, he was given ineffective counsel.

Matwyuk made multiple attempts to represent himself to no avail. And his attorney failed to investigate his case and convey the plea-agreements offered from the state.

Matwyuks attorney failed to object to previously precluded testimony, and failed to submit any evidence or call witnesses to support Matwyuks defense, which clearly can be seen in the attached Supporting Documents, and that there was evidence that exists to show Matwyuks defense. His attorneys performance fell below reasonable standards for being effective under *Strickland.*

The lower courts decisions are erronious. There is clear and convincing evidence that Matwyuks Constitutional rights were violated throughout the entire appeallate proceedings.

There is also clear and convincing evidence that these alleged victims had motive to cause harm to Matwyuk, because he is suing Alicia Dena, the alleged victim, who planned an attack against Matwyuk, even going as far as to discuss with her friends on "Facebook" how he should be jumped and one stating, "we should play baseball with his kneecaps."

These alleged victims attempted to assault Matwyuk, and their plan failed, and Matwyuk was able to defend himself, but with the help of their Police department relative, "Delong", these alleged victims were able to place themselves in the role as victims, and not the aggressors they were.

Matwyuk also provided evidence that the alleged victims attempted to solicit a "third party" to attack Matwyuk prior to the crimes he is charged with. Subsequently, an incident took place where an assault occurred against him.(Matwyuk) in his own home.

Then with the lead detective being a relative of the alleged victim, who remained in an active role of the lead detective in the case, was able to manipulate the course of the investigation, allowing the alleged victims to get away with the perfect crime. That, and the errors of the lower courts, and his attorneys ineffectiveness, contributed to Matwyuks Constitutional rights being violated, and ultimatly his conviction.

There is a clear National importance of having the Supreme Court decide the questions Matwyuk is presenting, aside from Matwyuk, an innocent man, who was charged with a crime when all he did was defend himself.

If the errors of the court are not corrected of these Constitutional violations against Matwyuk, how many other innocent men and women are currently in prison for the same errors and Constitutional violations.

The decision of the court that decided Matwyuks case is in conflict with the decisions of other appellate courts. Matwyuk has cited multiple cases to support his claims from multiple circuits which show that *Jurist of Reason* could agree that these are clear constitutional violations.

Matwyuk is asking this court to rule in his favor so as not to perpetuate the courts violations, in accordance with its laws and jurisdiction.

The very foundation of our justice system is to protect its citizens including Mr.Matwyuk.

ARGUEMENTS FOR EACH QUESTION PRESENTED FOR GRANTING THIS PETITION ARE AS FOLLOWS.

1. **Was Matwyuks due process and equal protection and constitutional rights violated when trial counsel failed to investigate exculpatory evidence, ie, Matwyuks proof of residency, proof of alleged victims motive to attack Matwyuk, proof that alleged victims planned a physical attack against Matwyuk, proof that attack by alleged victims was made against Matwyuk and proof that Det. Delong, being a cousin of the alleged victims, falsified reports and mishandled and tampered with evidence.**

TRIAL COUNSEL FAILED TO INVESTIGATION POTENTIALLY EXCULPATORY AND VITAL EVIDENCE TO MATWYUKS DEFENSE, "CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL."

MATWYUK CONTENDS COUNSELS PERFORMANCE WAS DEFICIENT FOR FAILING TO INVESTIGATE A PLANNED ATTACK AGAINST HIM ON FACEBOOK, THREATS MADE BY A.D.'S FATHER AND UNCLE, AND A LETTER WRITTEN BY "MR. POSS" TO THE TRIAL JUDGE SHOWING HIS INVOLVEMENT AND KNOWLEDGE OF THE CASE AND HOW ONE OF THE ALLEGED VICTIMS WOULD PAY HIM TO ATTACK MATWYUK BEFORE THE INCIDENT AND HOW HE WOULD MAKE HIS STATEMENT AT TRIAL.

THROUGHOUT THE PRE-TRIAL PROCESS, MATWYUK INSISTED THAT COUNSEL INVESTIGATE HIS DEFENSE ADEQUATELY, MATWYUK MAINTAINED THAT HE WAS ATTACKED BY MS. DENA AND HER FRIENDS, AND THAT THERE WAS SUBSTANTIAL EVIDENCE PRESENTED TO SUPPORT HIS CLAIM, FIRST MATWYUK WAS THREATENED BY MS. DENA'S UNCLE AND FATHER OVER THE PHONE. ALSO BEFORE THE INCIDENT, MS DENA INSTIGATED A "FACEBOOK" CHAT WHERE HER AND HER FRIENDS TALK ABOUT HOW THEY SHOULD JUMP HIM (MATWYUK), AND "BREAK HIS KNEECAPS." THEN AFTER THE INCIDENT TOOK PLACE, MR. POSS WROTE THE COURT TO INFORM THEM THAT HE HAD BEEN APPROACHED BY MS. DENA TO ASSAULT MATWYUK.

FINALLY, MATWYUK HAS PROOF THAT THE HOUSE BELONGED TO HIM, GIVING HIM A RIGHT TO BE THERE. FROM THE BEGINNING OF THE INVESTIGATION, THIS CASE WAS in Conflict. THE Kingman police DEPT. INVESTIGATED THIS CASE. ALL STATEMENTS MADE BY ALICIA DENA WERE TO THE LEAD DETECTIVE, (HER Relative). Petitioner WAS DENIED AN UNBIAS, UN PREJUDICIAL AND LEGALLY Proper INVESTIGATION SUPPORTED BY THE FACTS OF THE CASE.

PETITIONER LIVED AT (727 GOLD ST. KINGMAN, AZ 86401-5717) WITH THE ALLEGED VICTIM, MS. DENA. Kingman Police DEPT. AND THE MOHAVE COUNTY ATTORNEYS OFFICE BOTH INSISTED THAT MATWYUK WAS A TRANSIENT, KNOWING FULL WELL THIS WAS FALSE. IN FACT WHEN ALICIA DENA FILED FOR A P.P.O. SHE LISTED THAT THE PETITIONERS ADDRESS WAS (727 GOLD ST..)

PETITIONER INSISTED AND HAD PROOF HE LIVED THERE IN THE FORM OF ARIZONA DRIVERS LICENSE, ARIZONA VEHICLE REGISTRATION AND PAY ROLL CHECKS.

Petitioner insisted that he was asked to come home and was let into the home. Petitioner insisted that he acted in self-defense when he defended himself against Michael Hennings (a citizen felon) and during the altercation, Mr. Hennings, Ms. Dena and Kayla Giswhite were injured.

In the State Courts R/R, the State argues that 1) the Petitioner bears the burden of demonstrating Counsels choice regarding the presentation of his defense constituted deficient performance and were prejudicial. 2) Also, when considering whether a Habeas Petitioner was prejudiced by his Counsels alleged errors, the question is whether there is a reasonable probability that absent the errors, the factfinder would have had a reasonable doubt respecting guilt. 3) State Court also states that even if Matiyuk could establish that Counsels performance was deficient, as noted by the State trial Court, the eyewitnesses testimony of the four victims, i.e., that Matiyuk was the perpetrator of an unprovoked assault, was powerful evidence of his guilt.

Matiyuk has met his burden of demonstrating Counsels choice regarding the presentation of his defense constituted deficient performance and were prejudicial with the following facts.

Matiyuks trial Counsels only defense was self-defense. And for trial Counsel not to investigate and use the Facebook chats (see Supporting Documents Exhibit E, pg. 29) at trial is in-effective. The content of the "Facebook" chats would have shown the Jury that the intent to "Jump and Hurt him", was premeditated and planned a week before the incident. James Tellberg Sr. recognizes the Facebook chats, but believes they mean nothing, because the alleged victims did not act on the chats as soon as they wrote them. Judge Tellberg also believes that people dont think about things before they act, or that people may take a week to plan to do something, most competent people would think that taking a week to plan an attack is worse than acting in the moment.

Judge Tellberg states "then, even if Petitioners Counsel had investigated a week-old Face Book chat, it would not have been relevant to an "immediate" self defense claim.

FACEBOOK is NOT THE IMMEDIATE THREAT itself, IT'S THE EVIDENCE TO THE ALLEGED VICTIMS INTENT TO AMBUSH MATWYUK, WHICH CAUSED THE IMMEDIATE THREAT. THE IMMEDIATE THREAT WAS POSED AS SOON AS MATWYUK ENTERED His OWN HOME, AT WHICH POINT HE REALIZED HE WAS BEING AMBUSHED, AND THEN only HAD THE CHOICE TO DEFEND HIMself.

JUDGE TEilberg ALSO STATES PETITIONER CANNOT SHOW DEFICIENT PERFORMANCE BECAUSE HE DID NOT TESTIFY TO ESTABLISH SELF-DEFENSE. IT is NOT THE DUTY OF A DEFENDANT TO ESTABLISH His Claim OR DEFENSE WHEN HE is REPRESENTED BY AN ATTORNEY. IT is His ATTORNEYS DUTY TO ESTABLISH His CLIENTS Claim AND His OWN DEFENSE. MATWYUK DID NOT TESTify BECAUSE His ATTORNEY TOLD HIM NOT TO. SO BY THE ATTORNEY Telling MATWYUK NOT TO WOULD MAKE THE ATTORNEY DEFICIENT. EVEN IF MATWYUK WOULD HAVE TESTIFIED, AND TOLD THE JURY OF THE VITAL EVIDENCE THAT His ATTORNEY DID NOT SUBMIT AT TRIAL, EVERYTHING MATWYUK WOULD HAVE SAID WOULD HAVE BEEN OBJECTED BY THE STATE ATTORNEY ON THE GROUNDS OF HEARSAY, AND THAT THERE WAS NO ~~Point~~ Proof or EVIDENCE SUBMITTED AT TRIAL TO SUPPORT His Claim. THIS is MORE PROOF TO THE POOR PERFORMANCE OF COUNSEL AND His INEFFECTIVENESS.

JUDGE TERLBERG ALSO STATES, "FINALLY, PETITIONER CANNOT SHOW PREJUDICE BECAUSE FOUR EYEWITNESSES TESTIFIED inCONSISTENTLY WITH His CURRENT "SELF DEFENSE Claim." THE FOUR EYEWITNESSES ARE THE ALLEGED VICTIMS IN THIS CASE THAT MATWYUK is STATING HE HAD TO DEFEND HIMself AGAINST WHICH is WHY it's EVEN MORE IMPORTANT THAT TRIAL ATTORNEY SHOULD HAVE SUBMITTED THE EVIDENCE THAT MATWYUK WANTED TO DISCREDIT THESE ALLEGED VICTIMS. AND IF MATWYUK WOULD HAVE TESTIFIED, JUDGE TERLBERG WOULD PROBABLY SAY FOUR PEOPLES TESTIMONY OUTWEIGHS ONE, But if TRIAL ATTORNEY SUBMITTED THE EVIDENCE, IT WOULD HAVE OUTWEIGHED THE FOUR PEOPLES TESTIMONIES.

OTHER VITAL EVIDENCE OF COUNSELS FAILURE TO INVESTIGATE EXCULPATORY AND VITAL EVIDENCE TO MATWYUKS DEFENSE, CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL, AND EVIDENCE TO DISCREDIT THE FOUR ALLEGED EYEWITNESSES ARE AS FOLLOWS:

1) MATWYUKS DRIVERS LICENSE SHOWS PROOF OF RESIDENCE. (SEE SUPPORTING DOCUMENTS, EXHIBIT F, PG. 30) AND THAT HE

IS THE only one THAT HAS THE BODIES OF THE INCIDENT on it. Providing him ALSO WITH HIS 4TH AMENDMENT RIGHT TO BE SAFE AND SECURE on his own property STOWE V. POWELL 428 U.S. 465, 49 L.Ed 2d 1069, 96 S.CT. 3037.

2) Mr. Poss's LETTER TO THE TRIAL JUDGE (SEE SUPPORTING DOCUMENTS, Exhibit H. Pg. 32,33) THIS letter SHOWS THAT THE ALLEGED VICTIMS TRIED TO Elicit mr. POSS TO ATTACK MATWYUK. ALSO Discrediting THE VICTIMS TESTIMONY AND ENFORCES THE PLAN TO ATTACK MATWYUK AS DESCRIBED IN THE "FACEBOOK CHATS."

3) THE FACT THAT LEAD DETECTIVE DELONG WAS A Relative OF TWO OF THE ALLEGED VICTIMS (SEE SUPPORTING DOCUMENTS, EXHIBIT I, Pg. 34) DET. DELONG HANDLED VITAL EVIDENCE SUCH AS PHONE RECORDINGS ON MATWYUKS PHONE WHERE ALLEGED VICTIM TOLD him TO COME HOME. HE ALSO STATED ON REPORTS THAT MATWYUK WAS TRANSIENT, AND DID NOT LIVE AT THE RESIDENCE, (WHICH IS FALSE). DELONG CONDUCTED ALL THE INVESTIGATIONS AND INTERVIEWS, TWISTING THE CASE TO ADHERE TO HIS (Families) VERSION OF EVENTS. THESE ACTIONS VIOLATED MATWYUKS DUE PROCESS AND EQUAL PROTECTION RIGHTS. IF A JURY WOULD HAVE KNOWN THESE FACTS, THE OUTCOME WOULD HAVE BEEN DIFFERENT. (HUGHES V. JOHNSON 191 F.3d 607 9TH Cir. 1999)

4. THE EVIDENCE OF MATWYUKS Civil suit AGAINST ONE OF THE ALLEGED VICTIMS WHO PLOTTED THE ATTACKS SHOWS 1. MATWYUK LIVED AT THE HOME. AND, 2. SHOWS THE ALLEGED VICTIM HAD MOTIVE TO ATTACK MATWYUK.

THERE IS A Clear I.A.C. ISSUE in THESE GROUNDS. IT IS ALSO Clear THAT MATWYUKS Constitutional RIGHTS WERE VIOLATED, AND HE DID NOT RECEIVE EFFECTIVE ASSISTANCE OF Counsel. ~~SEE SUP~~ KRAMER V. KEMNA, 21 F.3d 305, 309 (8TH Cir. 1994); HART V. GOMEZ, 174 F.3d 1067 1070 (9TH Cir. 1999)

NO COMPETENT ATTORNEY WOULD HAVE MADE THE DECISION OR CHOICE NOT TO USE OR INVESTIGATE POTENTIALLY EXCULPATORY AND Certainly VITAL EVIDENCE TO THE DEFENSE, AND WAS UNREASONABLE U.S. V. RODRIGUEZ 675 F.3d 48, 56 (1ST Cir. 2012)

MATWYUK WANTS TO EMPHASIZE TO THIS COURT THAT HE TRIED TO HAVE ALL OF THE ABOVE listed EVIDENCE SUBMITTED AS EVIDENCE TO THE COURT PRIOR TO TRIAL (SEE SUPPORTING DOCUMENTS, Exhibits A, B, C, D. Pg. 21-28)

WHEN A PETITIONER SHOWS THAT COUNSEL'S ACTIONS ACTUALLY RESULTED FROM INATTENTION OR NEGLECT RATHER THAN REASONED JUDGEMENT, THE PETITIONER HAS REBUTTED THE PRESUMPTION OF STRATEGY, EVEN IF THE GOVERNMENT OFFERS POSSIBLE STRATEGIC REASONS THAT COULD HAVE, BUT DID NOT PROMPT COUNSEL'S COURSE OF ACTION. (MAYBERRY V. LUEBBERS, 509 F.3d 489, 502-03 (8TH CIR. 2007)).

PETITIONER HAS SHOWN JURIST OF REASON WOULD FIND THE R&R AND DECISIONS FROM THE DISTRICT COURT, NINTH CIRCUIT COURT DEBATABLE.

2. Was matwyuk constitutional due process and equal protection rights violated when the lead detective, (Delong), while related to the alleged victims, remained in the capacity as the lead investigator?

THE LEAD DETECTIVE, DELONG, WHO INVESTIGATED THIS CASE WAS A FAMILY MEMBER OF TWO OF THE VICTIMS AS EVIDENCED BY EMAIL CONVERSATIONS. MR. DELONG WAS THE DETECTIVE WHO HANDLED THE INITIAL INTERVIEWS OF VICTIMS, AND HANDLED THE PHYSICAL EVIDENCE. THERE WAS PHONE RECORDINGS ON MATWYUKS PHONE THAT DISAPPEARED. ALSO, MR. DELONG LISTED MATWYUK AS TRANSIENT, DESPITE THE FACT THAT MATWYUK RESIDED AT THE HOME.

INVESTIGATIVE AND POLICE PROCEDURES WERE VIOLATED BY ALLOWING LEAD DETECTIVE (DELONG) TO INVESTIGATE THE CASE AS HE IS (COUSINS) WITH THE ALLEGED VICTIMS, A.D. AND K.G. WHICH AFFECTED MATWYUKS RIGHT TO DUE PROCESS AND EQUAL PROTECTION.

PETITIONERS 6TH AND 14TH AMENDMENT RIGHTS TO EQUAL PROTECTION AND DUE PROCESS WERE SUBSTANTIALLY AFFECTED DUE TO AN EXTREME CONFLICT OF INTEREST IMPLICATED BY HAVING LEAD DETECTIVE INVESTIGATE, HANDLE CRUCIAL EVIDENCE, TESTIFY AND FOR INCORRECTLY PUTTING ON THE RECORD THAT THE DEFENDANT DID NOT LIVE AT THE LOCATION OF THE INCIDENT, AND PUT DOWN HE WAS TRANSIENT, EITHER AGAINST A DEFENDANT WHERE IN THE VICTIMS WERE DETECTIVES RELATIVES. SEE HUGHES V. JOHNSON, 191 F.3d 607 (5TH CIR. 1999)

IT IS CLEAR IN THIS CASE THAT THE ALLEGED VICTIMS PLANNED AN ATTACK ON DEFENDANT USING "FACEBOOK" (SEE SUPPORTING DOCUMENTS, EXHIBIT E, PG. 29) THAT THE ALLEGED VICTIMS TRY TO ENLIST SOMEONE TO ATTACK THE DEFENDANT, (SEE SUPPORTING DOCUMENT, EXHIBIT H, PG 32-33) THAT THE ALLEGED VICTIMS INVITED DEFENDANT BACK HOME, RECORDING ON DEFENDANTS PHONE IF LEAD DETECTIVE DIDN'T GET RID OF RECORDINGS THAT THE DEFENDANT WAS LED IN BY ALLEGED VICTIMS (THAT THERE IS NO SIGN OF FORCED ENTRY) THAT THE ALLEGED VICTIMS HAD MOTIVE BECAUSE DEFENDANT WAS SUING ALLEGED VICTIM FOR THE HOME (SEE CIVIL CASE), THAT THE ALLEGED VICTIMS WERE THE AGGRESSORS, AND WHEN THE ATTACK DID NOT GO AS PLANNED ON THE DEFENDANT BECAUSE DEFENDANT DEFENDED HIMSELF THAT THE ALLEGED VICTIMS PLAYED THE VICTIM ROLL. THAT BY HAVING THE ADVANTAGE OF HAVING THEIR RELATIVE AS THE LEAD DETECTIVE ON THE CASE TO TURN THE CASE AROUND ON THE DEFENDANT AND THE ALLEGED VICTIMS 100% TO GET AWAY WITH THEIR CRIME AGAINST THE DEFENDANT.

THIS WAS COMPLETELY PREJUDICIAL TO THE DEFENDANT AND IF THE JURY KNEW OF THIS EVIDENCE AND FACTS, A JURY OF REASON WOULD HAVE NEVER FOUND THE DEFENDANT GUILTY, AND NO ONE IN THE PUBLIC EYE WOULD FIND THE DEFENDANT GUILTY. THESE FACTS WOULD CERTAINLY INTEREST A JURY. MATWYUKS DUE PROCESS RIGHTS WERE VIOLATED BY THIS CONFLICT OF INTEREST CREATED BY THE LEAD DETECTIVE IN THIS CASE.

3. Was Matwyuks denial by the trial court to represent himself a Constitutional Due Process violation under the 14th Amendment?

The court erred in voilating Matwyuk's right to self – representation by denying trial counsels dismissal in violation of 5th 6th and 8th and 14th amendments to the united states constitution.

This claim was first raised in his Rule 32 and was found to be procedurally barred for his failing to raise the claim in his direct appeal, noting his appellate counsel overlooked the issue.

Matwyuk has presented evidence he wrote in the form of inmate letters to the court multiple times expressing his desire to proceed in his own defense. He notified the court of his intent to represent himself when he tried to fire his attorney, who even tried himself to remove himself from the case but was denied.

Matwyuk asserts the lower courts are in error for not acknowleging his *Facetta* claim.

During court proceeding, every defendant has a Sixth Amendment right to legal representation of his choice, wheather that means paid attorny, public defender or self – representation.

The Ninth Circuit 'Arizona' federal oversight ruled in *U.S. v. Moore*, 159 F.3d 1154, 1161 (9th cir. 1998) That a defendant's repeated attempts at dismissing counsel is to be regarded as a waiver of counsel, (See Supporting Document, Exhibits A, B, C, D, Pg[illegible],(Multiple attempts by Petitioner to dismiss his Counsel)

The court also failed to go beyond perfunctory questioning and make a "Scorching and Formal Inquiry" into Petitioners intentions for representations, and his desire in future proceedings.

Petitioners numerous Pre-Trial Pro-Per motions, Although lacking "Legal Verbage" warranted at least a Further Inquiry.

Bland V. California Dept. of Corrrections, 20 F.3d 1469, 1475 (9th cir. 1994) If Petitioner had been grtanted heis right to self-representattion, He could have corrected peerceived errors of his counsel. *Cook v. Ryan*, 688 F.3d 998, 609 (9th cir. 2012)

Due to this error Matwyuk was unable to correct his attorneys errors, but if he could have represented himself a jury of reason would not have found Matwyuk guilty of the crimes accused against him.

4. Was matwyuks 6th Amendment due process right to be represented by effective counsel violated by 1. His first attorney failing to inform him of a plea agreement offered by the state, and 2. His second attorney failing to convey multiple pleas to Matwyuk, instead, filing a "Rule 11" against him, which he was ultimatly declared competent to stand trial.

At the begenning of Matwyuk case, he was represented by Mr. Derienzo, and was given a plea proposal for a stipulated 12 year plea by the state. But he never presented it to Matwyuk. Instead he claimed a conflict of interest and withdrew as counsel despite his constitutional obligation to present any offer from the state. Matwyuks next attorney Mr.Craig, never communicated to him that the state offered a 12 year plea, instead, Mr.Craig misadvised Matwyuk of a second plea the state was offering, which was 5-15 years.

Mr Craig communicated the plea as 5-15 years per victim. Petitioner points to his Rule 11 hearing which he states "15 years or 50 years..." as evidence. He thought he was being offered a plea with a presumptive sentence upwards of 30 years.

Matwyuk trial counsel had a constitutional obligations to properly inform his client of what he was facing. Matwyuk provided evidence in his Exhibits of letters he sent the court prior to trial, in which he requested an audience with the court and in another, where he requests "Negotiations and counter offers for Plea Proposals". The court could have resolved this matter through conducting a "*Donalds*" hearing, but did not.

Jurist of reason would find it debatable the magistrate using guidance from *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) to determine Ground 2, when *Lafler v. Cooper,* 132 s. ct. 1376, 1385, 182 L. ED. 2d 398 (2012) is more suited when defendant is claiming I.A.C. of trial counsel for failing to give accurate advice as to A plea or communicating that a plea was even offered.

Circumstances where counsel's action may deprive a defendant of a plea offer in violation of his 6th amendment right to effective assistance of counsel is where the defendant was prejudiced by counsels deficient performance in advising the defendant to reject a plea offer and proceed to trial. Counsel's erroneous advise may involve an inaccurate prediction regarding the likelihood of prevailing at trial or probable sentence the defendant will receive if convicted. To demonstrate prejudice in this context, the defendant must show the outcome of the plea process would have been diffferent with competent advice where the plea offer was rejected, "A Defendant must show that, but for the ineffective advice of counsel, there is a reasonable probability that the plea offer would have been presented to the court. "IE, that the defandant would have accepted the plea and the prosecution would not have withdrawn it in light of interveining circumstances" that the court would have accepted its terms and the conviction or sentence or both under the offers terms would have been less severe than under the judgement and sentencing imposed. *Lafler v. Cooper* (Id),

TO DEMONSTRATE PREJUDICE IN THIS CONTEXT

1. A defendant must show that but for the ineffective advice of counsel, there is a reasonable probability that the plea offer would have been presented to the court.

Emails between the state attorney and the trial attorney show that the state attorney was willing to present the plea to the court. State attorney writes to trial attorney Randal Craig; *"Randal, I understand your need for more time. I attached the original plea offer,"*
"At one point before the plea was withdrawn/rejected, Delorenzo had (Matwyuk) at up to 15 years total or stipulated 12 years total. He has over one year credit, I will reopen the offer of up to 15 or stip to 12. Thanks, James" (See Supporting Documents, Exhibit J, pg.35)

2. The defendant would have accepted the plea even sending an "inmate letter" to the trial judge, stating, "please allow this to inform the court that I have received photo image documentation of facebook transmissions between several parties claiming to be victims or witnesses in the case against me, wherein they openly discussed and conspired to invite me into a trap at the time my case occurred and "beat me down." As well as " break my knee caps" with a baseball bat, with my full name being the intended target. Dated 1-18-2013, and "please Inform county attorney and allow me to request a hearing to discuss negotiations based upon my inability to effectively communicate with my counsel as to this enlightenment counter offer and plea negotiations. And Maryad other client attorney difficulties ineffective counsel" dated 1-18-2013 (See Supporting Documents, Exhibit d, pg.32)

3. Prosecution would not have withdrew it in the light of interveining circumstances, Matwyuk did not receive any other choices and prosecution even presented the plea in question to Matwyuks second attorney. (See Supporting Documents, Exhibit J. pg.35)

4. That the conviction or sentence, or both, under the plea offers terms would have been less severe than under the judgment and sentence that was imposed.

Matwyuk was sentenced to 5 consecutive sentences equalling 36 years. Had he been given the oppotrunity to receive and sign a plea, he would have signed said plea and be serving a stipulated 12 years total. A plea which was offered but never communicated to Mr. Matwyuk from his attorney. (See Supporting Documents, Exhibit J, pg35)

(See Supporting Documents, Exhibit K, pg36,37) Which shows Petitioner never received the plea from his Attorney, and instead, trial judge allowed attorney to withdraw.

It is clear Petitioner's 6th and 14th Amendment Rights were violated, *Missouri v. Frye.* 132 s. ct. 1399, 1408, 182 L, ED.2d 379 (2012) A component of the Sixth Amendment right to counsel in a plea bargaining context that counsel has a duty to communicate any offers from the Government to the defendant. The Sixth Amendment requires effective assistance of counsel during plea bargaining, *U.S. v Blaylock*, 20 F.3d 1458, 1465-69 (9th cir. 1994) Attorney's failure to communicate plea offer stated claim of I.A.C. mandating for a hearing, *Johnson v. Duckwork*, 793 F.2d 873, 902 (7th cir.); *Griffin v. United States,* 330 f.3d 733, 738-39 (6th Cir. 2003); *Teague v. Scott*, 60 f.3d 1167, 1171 (5th Cir.1995); *Turner v. Calderan*, 281 f.3d 851 (9th Cir. 2002)

With the above, and original application for C.O.A., jurist of reason would find the magistrates R&R and the District Courts judges determination to the facts as found by the state court debatable.(R&R pg. 29 at 10-14); "The court supports The state Habeas courts finding that a 15 year plea offer was made and rejected by Matwyuk, and Matwyuk points to no evidence, much less the clear and convincing evidence that rebuts the presumed correctness of the finding. Accordingly, the

court must defer to the state courts finding that a 15 year plea offer was made to and rejected by Matwyuk."

Thus the record on appeal is silent as to Matwyuk rejecting the plea as to the state court never held a *"Donald"* hearing, or any other hearing. Conveying, exploring, presenting or advising Matwyuk would be looking at if he went to trial, verses a plea.

Also where the state used transcripts from doctor that petitioner said they want to give him 15 years was only half the sentence, when in fact he said fifteen to forty five years. The state took what was said out of context to satisfy their argument.

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5. Was Matwyuks 6th and 14th Const. Amend. Rights violated when the state soliceted previously precluded testimony of Alicia Dena, and counsel failing to object to it?

A) THE PROSECUTING ATTORNEY COMMITTED MISCONDUCT BY INTENTIONALLY ELICITING PREJUDICIAL AND PREVIOUSLY PRECLUDED MATERIAL.

B) TRIAL COUNSEL ERRED BY FAILURE TO OBJECT TO THE ELICITATION OF PREJUDICIAL AND PREVIOUSLY PRECLUDED MATERIAL.

C) APPELLATE COUNSEL ERRED BY FAILING TO ASSERT COUNSELS FAILURE TO OBJECT IN HIS APPELLATE BRIEF, AFFECTING HIS 5TH, 6TH 8TH 13TH AND 18TH AMENDMENT RIGHTS.

PRIOR TO TRIAL, THE COURT GRANTED DEFENSE MOTION PRECLUDING PREJUDICIAL STATEMENTS FROM BEING BROUGHT UP AT TRIAL, AND DEFENSE COUNSEL FAILED TO OBJECT. DURING A RE-QUESTIONING OF MS. DENA, THE PROSECUTING ATTORNEY PROBES A TOPIC THAT WAS PRECLUDED IN THE MOTION WHICH CERTAINLY INFLUENCED THE JURY.

THE DISTRICT COURT HAS CONCLUDED THIS WAS INDEED A VIOLATION (Pg. 23 R.R, LINE 26-27) "ALTHOUGH THIS TESTIMONY MAY HAVE BEEN A TECHNICAL VIOLATION OF THE MOTION IN LIMINI, IT IS NOT A CONSTITUTIONAL ONE" BUT CONCLUDED IT WAS NOT EGREGIOUS ENOUGH TO WARRANT REVERSAL SINCE THIS WAS AN ISSUE THAT IMPACTED THE JURY.

ITS EFFECT IS CERTAINLY DEBATABLE AMONG JURIST OF REASON CONSIDERING THE COURT ADMITTED A TECHNICAL VIOLATION. IT FOLLOWS IT IS ADEQUATE TO PROCEED FORWARD.

STATE V. VICKENS, 180 ARIZ. AT 525-526, 885 P.2d AT 1090-1091, (WHERE INCULPATORY STATEMENTS BY DEFENDANT PRECLUDED. PURSUANT TO MOTION TO SUPPRESS, AND DEFENSE COUNSEL WITHDREW MOTION TO SUPPRESS, ALLOWING STATEMENTS TO BE ADMITTED INTO EVIDENCE. COUNSELS ACTIONS CONSTITUTED DEFICIENT PERFORMANCE UNDER (STRICKLAND) MOREOVER, TRIAL COUNSELS ACTIONS IN ALLOWING PROHIBITED TESTIMONY TO COME INTO EVIDENCE AFTER COUNSEL OBTAINED A RULING THAT THE TESTIMONY WAS INADMISSIBLE CANNOT BE DEEMED A REASONABLE TRIAL STRATEGY

6. Was Matwyuks 14th Const. Amend. Rights violated by counsels cumulative I.A.C. errors?

TRIAL COUNSELS MULTIPLE DEFICIENCIES, IF NOT ENOUGH SEPERATLY TO OVERTURN CONVICTION AND SENTENCES HERE, THE CUMULATIVE EFFECT TO RISE TO THE LEVEL OF INEFFECTIVENESS, WHICH WOULD AFFECT HIS 5TH, 6TH, 8TH, 13TH AND 14TH AMENDMENT RIGHTS.

THE COURT MUST LOOK AT THIS CASE IN A WHOLE. THE SIXTH AMENDMENT OF THE U.S. CONSTITUTION GUARANTEES THE EFFECTIVE ASSISTANCE OF COUNSEL, THE ARIZONA CONSTITUTION ARTICLE 2 § 24 PROVIDES THE SAME GUARANTEE; RULE 32.1 (A) STATES A VIOLATION OF EITHER GROUNDS FOR RELIEF. A LAWYER WHO FAILS TO INVESTIGATE MULTIPLE VITAL ASPECTS OF A DEFENSE LIKE HOW THE ALLEGED VICTIMS PLANNED AN ATTACK ON HIS CLIENT, MIS-ADVISED HIS CLIENT OF A PLEA PROPOSAL, HIS FAILURE TO OBJECT TO PREJUDICIAL, PRECLUDED STATEMENTS MADE DURING TRIAL, THE LEAD DETECTIVE ON THE CASE BEING RELATED TO THE ALLEGED VICTIMS OF WHICH HE HANDLED ALL THE EVIDENCE, INTERVIEWS, WAS CUMULATIVELY DEFICIENT IN REPRESENTATION AND PREJUDICED HIS CLIENT.

ALL OF THESE DEFICIENCIES ARE ARGUED THROUGHOUT MATWYUKS RULE 32, PETITION FOR REVIEW, WRIT OF HABEAS CORPUS AND SO ON.

SEE CEJA V. STEWART, 97 F.3d 1246 (9TH CIR. 1996) MULTIPLE ERRORS, EVEN IF HARMLESS INDIVIDUALLY MAY ENTITLE PETITIONER TO

Habeas Relief If Their Cumulative Effect Prejudiced Defendant, Murray v. Carrier, U.S. 478, 488 91 L.Ed.2d 397 (1982)

MATIWYUK Also Should Have Received effective assistance of Counsel on Direct Appeal. Harris v. Day, 226 F.3d 361 (9th Cir. 2000)

The Sixth Amendment Entitles A Criminal Defendant to effective assistance of Counsel on Direct Appeal and it is clear By Appellant Counsel Filing An Anders Brief and not Raising Any claims on Direct Appeal was also ineffective.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

P. Philip Matiwyuk

Date: April 13, 2021