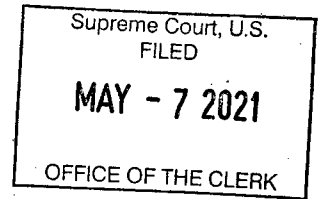


No. **20-8015**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



NOEL BROWN — PETITIONER
(Your Name)

VS.

COMMONWEALTH OF PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES SUPREME COURT

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

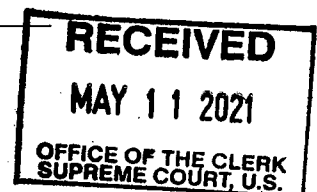
PETITION FOR WRIT OF CERTIORARI

NOEL BROWN MW0387
(Your Name)

SCI. SOMERSET 1600 WALTER MILL ROAD
(Address)

SOMERSET PA 15510
(City, State, Zip Code)

cc:404-399-0316
(Phone Number)



QUESTION(S) PRESENTED

1. WAS DECISIONS UNDER TITLE V11 ALSO RECOGNIZE THAT A PERSON CLAIMING THAT HE HAS BEEN THE VICTIM OF INTENTIONAL DISCRIMINATION MAY MAKE OUT A PRIMA FACIE CASE BY RELYING SOLELY ON THE FACTS CONCERNING THE ALLEGED DISCRIMINATION AGAINST HIM?

2. WAS THE COMMONWEALTH ASSERTS THAT TO THE BEST OF THEIR KNOWLEDGE AND BELIEF, THERE ARE NO RELEVANT PROCEEDINGS WHICH HAVE NOT BEEN TRANSCRIBED, A CLEAR AND REASONABLE SPECIFIC LEGITIMATE REASON FOR RESPONDENTS RESPONSE BEING WHOLLY INADEQUATE, AND NOT CONTAIN THE PROCEEDINGS, VOIR DIRE, PRELIMINARY INSTRUCTIONS, COMMITMENT PAPERS, DECISIONS BY JUDGE, DEFENSE MOTIONS, FELONY COMPLAINT, INDICTMENT & WORKSHEET, JURY NOTES, PEOPLES RESPONSES, PRO-SE MOTIONS, ROSARIO LIST, TRIAL EXHIBITS SHEET, VDF, VERDICT SHEET, WITNESS LIST, WAIVER OF COUNSEL SHEET, PRE-SENTENCE REPORT, ARRESTING OFFICER ON DIRECT, ARRESTING OFFICER ON CROSS, OR JURY DELIBERATIONS?

3. IN BATSON V. KENTUCKY, ALONG WITH ITS COMPANION CASE PEOPLE V. MOTTON, THE COURT RULED THAT UNDER THE FOURTEENTH AMENDMENT NO STATE CAN DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. FOR EXAMPLE IN ONE CASE, A CONVICTION WAS REVERSED ON THE ASSUMPTION THAT NO BLACKS WERE ON THE JURY THAT CONVICTED A INNOCENT BLACK MAN. IN ANOTHER DISCRIMINATION CASE, A FINDING OF INTENTIONAL DISCRIMINATION IS A FINDING OF FACT, THE COURT STATED. FACT ENTITLED TO APPROPRIATE DEFERENCE BY A REVIEWING COURT. A REVIEWING COURT ORDINARILY SHOULD GIVE THE APPROPRIATE FINDINGS AND OF THOSE PORTIONS OF THE MAGISTRATE JUDGE REPORT AGAINST WHICH OBJECTIONS ARE MADE GREAT DEFERENCE, THE COURT MUST DETERMINE IF A REVIEW OF THE RECORD EVIDENCE PLAIN ERROR OR MANIFEST INJUSTICE. A COURT MAY CONSIDER MATTERS INCORPORATED BY REFERENCE OR INTEGRAL TO THE CLAIM,

MATTERS OF PUBLIC RECORDS AND ITEMS APPEARING IN THE RECORD OF THE CASE.

THE QUESTION PRESENTED IS:

A. DOES THE SUBSTANTIVE HOLDING IN BATSON V. KENTUCKY, ALONG WITH COMPANION CASE PEOPLE V. MOTTON, THAT A ETHIOPIAN ORTHODOX RASTAFARIAN CONVICTED OF CRIMES BY AN ALL WHITE JURY, DRAWN FROM AN ALL WHITE VENIRE CANNOT BE SENTENCED TO THIRTY TWO YEARS, EQUATING TO LIFE IMPRISONMENT GIVEN THE AGE OF THIS PETITIONER WITHOUT TESTIMONY OF THE ARRESTING OFFICER UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES OF AMERICA. UNLESS THERE IS CONSIDERATION OF INDIVIDUAL MITIGATING CIRCUMSTANCES, APPLY ON COLLATERAL REVIEW TO PETITIONER?

B. DOES THE SIXTH AMENDMENT GUARANTEES THAT THE PETIT JURY BE SELECTED FROM A POOL OF NAMES REPRESENTING A CROSS SECTION OF THE COMMUNITY?

C. DOES THE SUBSTANTIVE HOLDING IN FED. R. CRIM. P.21. THAT THE COURT MUST SHOW PRESUMPTIVE OR ACTUAL PREJUDICE AS A DEMONSTRABLE REALTY NOT MERELY AS A MATTER OF SPECULATION. AS VENUE IN A CRIMINAL ACTION PROPERLY BELONGS IN THE PLACE WHERE THE CRIME ALLEGED AND THE ARREST WAS MADE. THUS VENUE CAN ONLY BE PROPER WHERE JURISDICTION ALREADY EXIST?

D. PRESUMPTIVE PREJUDICE CAN BE CHARACTERIZED AS A CIRCUS-LIKE ATMOSPHERE THAT PERVADES BOTH THE COURTHOUSE AND SURROUNDING COMMUNITY. VOIR DIRE IS THE PRIMARY TOOL FOR DISCERNING ACTUAL PREJUDICE?

E. DOES THE SUBSTANTIVE HOLDING IN ROBINSON V. VIA AND COMPANION CASE LEE V. SANDBERG, THAT THE RIGHT TO NOT BE ARRESTED WITHOUT PROBABLE CAUSE IS A CLEARLY ESTABLISH RIGHT, THAT AN ARREST WITHOUT PROBABLE CAUSE IS A CONSTITUTIONAL VIOLATION UNDER THE FOURTH AMENDMENT PARTICULARLY THE PERSON OR THINGS TO BE SEIZED UNLESS THERE IS MITIGATING CIRCUMSTANCES APPLY ON COLLATERAL REVIEW TO PETITIONER?

F. DOES THE SUPREME COURT HOLDING THAT RETALIATORY ARREST IS IN VIOLATION OF THE FIRST AMENDMENT AND SEARCHES CONDUCTED OUTSIDE THE JUDICIAL

PROCESS, WITHOUT PRIOR APPROVAL BY JUDGE OR MAGISTRATE, ARE PER SE UNREASONABLE UNDER THE FOURTH AMENDMENT SUBJECT ONLY TO A FEW SPECIALLY ESTABLISH WELL DELINEATED EXCEPTIONS. THE EXCEPTION ARE SAID TO BE JEALOUSLY AND CAREFULLY DRAWN. UNLESS THERE IS CONSIDERATION OF INDIVIDUAL MITIGATING CIRCUMSTANCES, APPLY ON COLLATERAL REVIEW TO PETITIONER?

G. DOES THE SUBSTANTIVE HOLDING IN MCCOY V. LOUISIANA, IN WHICH THE COURT ADDRESS THE RESPONSIBILITY OF DEFENCE COUNSEL IN CRIMINAL CASES, AND HELD THAT AN ATTORNEY DENIAL OF A CLIENTS AUTONOMY TO DECIDE THE OBJECTIVE OF HIS DEFENCE IS PER SE PREJUDICIAL?

H. IS IT THE DUTY AND OBLIGATION OF THE SUPERIOR COURT, STATE SUPREME COURT, DISTRICT COURT, COURT OF APPEALS TO FOLLOW THE DECISIONAL LAW OF THE UNITED STATES SUPREME COURT?

I. DOES THE SUBSTANTIVE UNREASONABLE APPLICATION OF CLEARLY ESTABLISH STATE AND FEDERAL LAWS, AS DEFINED BY THE SUPREME COURT OF THE UNITED STATES, APPLY ON REVIEW THAT PETITIONER IS WHOLLY INNOCENT, AND IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES?

J. THEY'RE AUTOMATIC ADJOURNMENTS WHICH YOU ARE ENTITLED TO, UNLESS THERE IS CONSIDERATION OF INDIVIDUAL MITIGATING CIRCUMSTANCES?

K. THAT A PERSON CONVICTED OF A CRIMINAL OFFENCE CANNOT BE SENTENCED TO IMPRISONMENT WITHOUT THE SWORN TESTIMONY UNDER OATH BY THE ARRESTING OFFICER UNDER THE FOURTH AMENDMENT UNLESS THERE IS CONSIDERATION OF INDIVIDUAL MITIGATING CIRCUMSTANCES, APPLY ON COLLATERAL REVIEW TO PETITIONER?

L. SIXTH AMENDMENT RIGHTS TO A JURY TRIAL, AS INCORPORATED AGAINST THE STATE BY WAY OF THE FOURTEENTH AMENDMENT, REQUIRES A UNANIMOUS VERDICT TO CONVICT DEFENDANTS OF SERIOUS OFFENSES?

M. SHOULD A MAGISTRATE OR FEDERAL JUDGE GOVERN IN MULTIPLE CASES FOR THE SAME PARTY AT THE SAME TIME, WITHOUT NOTICE TO PARTY OF THE ASSIGNMENT?

N. SHOULD REQUEST FOR COUNSEL BE GRANTED IF PETITIONER IS FINANCIALLY UNABLE TO OBTAIN ADEQUATE REPRESENTATION IF INTEREST OF JUSTICE REQUIRE IT?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

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

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BATSON V. KENTUCKY	2
PEOPLE V. MOTTON	2
ROBINSON V. VIA	3
LEE V. SANDBERG	3
McCOY V. LOUISIANA	4
PEOPLE V. McDAEL	CONCLUSION

STATUTES AND RULES

1. TITLE V11 AND THAT A PERSON CLAIMING THAT HE HAS BEEN THE VICTIM OF INTENTIONAL DISCRIMINATION MAY MAKE OUT A PRIMA FACIE CASE BY RELYING SOLELY ON THE FACTS CONCERNING THE DISCRIMINATION AGAINST HIM. PAGE 2
2. FOURTEENTH AMENDMENT AND NO STATE CAN DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS. PAGE 2
3. SIXTH AMENDMENT AND GUARANTEES THAT THE PETIT JURY BE SELECTED FROM A POOL OF NAMES REPRESENTING A CROSS SECTION OF THE COMMUNITY. PAGE 3
4. FOURTH AMENDMENT AND THAT THE RIGHT TO NOT BE ARRESTED WITHOUT PROBABLE CAUSE IS A CLEARLY ESTABLISH RIGHT. PAGE 3
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6. EIGHTH AMENDMENT AND EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL UNUSUAL PUNISHMENT INFLICTED.
7. FOURTEENTH AMEND IN PART: DENY TO ANY PERSON WITHIN ITS JURISDICTION EQUAL PROTECTION OF THE LAWS.
8. SIXTH AMENDMENT RIGHT REQUIRES A UNANIMOUS VERDICT TO CONVICT OF OFFENCE

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APPENDIX E: A TRUE COPY OF THE VIOR DIRE JUROR LIST

APPENDIX F: A TRUE COPY OF THE TRIAL TRANSCRIPT NOTES OF TESTIMONY

APPENDIX G: TIMELY PETITION FOR REHEARING IN STATE COURT

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APPENDIX L: TWO COPIES OF POSSIBLE SUSPECTS AND HOTEL REGISTRATION

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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 A to the petition and is

☒ reported at THIRD CIRCUIT; 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 B to the petition and is

☒ reported at OCTOBER 19th 2020 MIDDLE DIST.; or, PENNSYLVANI
[] 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 MARCH 24th 2020 SUPERIOR COURT; or, PENNSYLVANI
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the OCTOBER 23rd 2017 SUPERIOR court PENN appears at Appendix C to the petition and is

☒ reported at OCTOBER 23RD 2017 PENNSYLVANIA; 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 MARCH 3RD 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: APRIL 09/2021, and a copy of the order denying rehearing appears at Appendix A.

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

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was MARCH 24TH 2020.
A copy of that decision appears at Appendix D.

☒ A timely petition for rehearing was thereafter denied on the following date: MARCH 31ST 2020, and a copy of the order denying rehearing appears at Appendix G.

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "CONGRESS SHALL MAKE NO LAWS RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF, OR ABRIDGING THE FREEDOM OF SPEECH, OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."
2. THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSE, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULAR DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED."
3. THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: IN PART, "NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY. NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW."
4. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "IN ALL CRIMINAL PROSECUTION, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAIN BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION: TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM: TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESS IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE."
5. THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES: "EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND

UNUSUAL PUNISHMENT INFLICTED."

6. THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES:IN PART,"ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES, NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW, NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS."

7. THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION PROVIDES:"RIGHTS TO A JURY TRIAL, AS INCORPORATED AGAINST THE STATE BY WAY OF THE FOURTEENTH AMENDMENT, REQUIRES A UNANIMOUS VERDICT TO CONVICT DEFENDANT OF SERIOUS OFFENSES"

8. 18 U.S.C.§3006A(a)(2)(B): IF THE PETITIONER IS FINANCIALLY UNABLE TO OBTAIN ADEQUATE REPRESENTATION AND THE INTERESTS OF JUSTICE SO REQUIRE, THE COURT SHOULD APPOINT COUNSEL UPON REQUEST.

STATEMENT OF THE CASE

PETITIONER IS SERVING A SENTENCE OF 180 TO 384 MONTHS OF INCARCERATION. ON FEBRUARY 3RD 2017, FOLLOWING A TRIAL BY A ALL WHITE JURY, PETITIONER WAS CONVICTED FOR INTERFERENCE WITH CUSTODY OF CHILDREN, DISSEMINATION OF PHOTOS/FILM OF CHILD SEX ACT, CORRUPTION OF MINORS, SELL/FURNISH LIQUOR TO MINOR, TRAFFICKING IN MINORS. AT THE TIME OF THE INCIDENT PETITIONER WAS NEVER INVOLVED, NOR PARTICIPATED IN ANY OF THE ALLEGE CRIMES. ON JUNE 30TH 2016, IN A GROSS CASE OF MISTAKEN IDENTITY I WAS ARRESTED IN THE COUNTY OF MONROE, ON UNKNOWN CHARGES. I WAS TAKEN TO THE SWIFTWATER BARRACK LOCATED IN THE COUNTY OF MONROE WHERE I WAS NOT PROCESSED, I REMAINED IN THE CUSTODY OF SWIFTWATER TROOPERS FROM THE TIME OF ARREST 08:30am UPON TILL 6:30pm I WAS THEN DRIVEN IN AN UN-MARKED CAR OUT OF MONROE COUNTY TO WAYNE COUNTY AND MET UP WITH ANOTHER UN-MARKED CAR WHO TOOK CUSTODY OF PETITIONER AND TRANSPORTED PETITIONER THE REST OF THE WAY TO PSP HONESDALE. THERE PETITIONER WAS PROCESSED AND ARRAIGNED WITHOUT THE APPOINTMENT OF COUNSEL. NIGHT COURT DISTRICT MAGISTRATE BONNIE CARNEY, SET BAIL AT \$30,000 DOLLARS AND PETITIONER WAS INCARCERATED IN WAYNE COUNTY PRISON IN LIEU OF BAIL, WITHOUT EXPLAINING THE CHARGES.

BECAUSE PETITIONER CONVICTION WAS NOT IN THE PROPER JURISDICTION, THE TRIAL COURT DID NOT CONSIDER PETITIONERS AGE, FAMILY AND HOME ENVIRONMENT, PETITIONER LEVEL OF SOPHISTICATION IN DEALING WITH THE CRIMINAL JUSTICE SYSTEM, THE CIRCUMSTANCE OF THE OFFENSE, CONVICTION FROM AN ILLEGAL JURY, AND PETITIONER POTENTIAL FOR REDRESS.

THE JUDGEMENT OF SENTENCE WAS AFFIRM ON APPEAL BY THE SUPERIOR COURT ON OCTOBER 23RD 2017. THE PENNSYLVANIA SUPREME COURT DENIED A TIMELY PETITION FOR REVIEW IN WHICH THE SUPREME COURT ERROR TOWARDS THE

PETITIONER IDENTITY ON AUGUST 15TH 2017. SUPREME COURT AGAIN DENIED A PETITION FOR LEAVE TO FILE NUNC PRO TUNC RECONSIDERATION ON OCTOBER 12TH 2018. DESPITE THE REFUSAL OF THE WAYNE COUNTY PROSECUTOR TO FILE THEIR ANSWER ON DECEMBER 4TH 2018. PETITIONER TIMELY FILED A PRO SE, PETITION UNDER PENNSYLVANIA POST CONVICTION RELIEF ACT (PCRA). ON OCTOBER 25TH 2018. THE COURT APPOINTED COUNSEL FOR (PCRA) PETITION, COUNSEL FILED NO AMENDED OR SUPPLEMENTAL AMENDED (PCRA) PETITION. THE PCRA COURT DISMISSED PETITION WITHOUT GRANTING AN EVIDENTRY HEARING ON JULY 1ST 2019.

PETITIONER TIMELY FILED AN APPEAL TO THE SUPERIOR COURT ON MAY 1ST 2019. ON MARCH 24TH 2020. THE SUPERIOR COURT AFFIRMED THE LOWER COURT RULING IN ERROR. ON MARCH 31ST 2020. PETITIONER PETITIONED THE COURT FOR RE-ARGUMENT OF THE SUPERIOR COURT MARCH 24TH 2020, DECISION ON JULY 18TH 2019.

PETITIONER FILED A PETITION FOR WRIT OF HABEAS CORPUS WITH THE MIDDLE DISTRICT COURT. PETITIONER FILED THE ALL-INCLUSIVE PETITION IN WHICH PETITIONER ASSERTED THAT A CONVICTION OF A WHOLLY INNOCENT BLACK MAN, IN A JURY OF ALL WHITE CITIZENS VIOLATED THE UNITED STATES CONSTITUTION. THE ASSERTION WAS BASED ON FELLOW COURT DECISION IN PEOPLE V. MOTTON, AND COMPANION CASE BATSON V. KENTUCKY.

ON JUNE 10TH 2020, THE RESPONDENTS FILED TWO DOCUMENTS (DOC.17&18) IN RESPONSE TO THE PETITION. THE MAGISTRATE JUDGE NOTED "THAT RESPONDENT RESPONSE IS WHOLLY INADEQUATE. ON JUNE 18TH 2020, PETITIONER FILED TRAVERSE (DOC.19) AND ON JUNE 24TH 2020. PETITIONER FILED A SUPPLEMENT TO THE TRAVERSE (DOC.23). ON SEPTEMBER 3RD 2020, THE MAGISTRATE JUDGE ISSUED HIS REPORT AND RECOMMENDATION IN DENYING THE PETITION AND FOR THERE TO BE NO ISSUANCE OF A COA, CITING ISSUES WHICH THE COURT COULD NOT RESOLVED WITHOUT GRANTING THE EVIDENTRY HEARING. ON SEPTEMBER 9TH 2020, PETITIONER RESPECTFULLY OBJECTS TO THE MAGISTRATE REPORT AND RECOMMENDATION, IN PETITIONER BRIEF AND ATTACHED APPENDIX.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA RULING:

EVEN THOUGH PETITIONER HAD MADE TWO MOTIONS TO APPOINT COUNSEL (DOC.24) WHICH THE COURT DENIED. JUDGE MANNION, WITHIN HIS OPINION WROTE "THE MAGISTRATE REPORT AND RECOMMENDATION POINTS OUT THAT THE RESPONDENT STIPULATES THAT THE PETITIONER HAS FULLY EXHAUSTED STATE REMEDIES IN HIS CLAIMS, FEDERAL REVIEW OF PROCEDURAL DEFAULT CLAIMS IS BARRED UNLESS THE PRISONER CAN DEMONSTRATE CAUSE FOR THE DEFAULT AND ACTUAL PREJUDICE AS A RESULT THE ALLEGED VIOLATION OF FEDERAL LAW, OR DEMONSTRATE THAT FAILURE TO CONSIDER THE CLAIMS WILL RESULT IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE. NONE OF THE ISSUES RAISED IN PETITIONER BRIEF HAS MERIT. THUS PETITIONER HAS NOT ESTABLISH PREJUDICE. THE PETITIONER ALSO HAS NOT ESTABLISH A FUNDAMENTAL MISCARRIAGE OF JUSTICE." ON OCTOBER 19TH 2020. JUDGE MANNION, ADOPTED MAGISTRATE JUDGE ARBUCKLE, REPORT AND RECOMMENDATION, OVERRULED PETITIONER OBJECTIONS, DENIED THE PETITION FOR HABEAS CORPUS AND IN COMPLETE MISCARRIAGE OF JUSTICE THE COURT DECLINES TO ISSUE A CERTIFICATE OF APPEALABILITY (COA).

OCTOBER 19TH 2020. APPEAL TO THE UNITED STATES COURT OF APPEAL FOR THE THIRD CIRCUIT, AND REQUEST THAT THE 3RD CIRCUIT FOR A (COA) IN A CASE GOVERNED BY 28 U.S.C. §2253 AND FRAP 22(b). ON MARCH 3RD 2021. THE COURT ISSUED A CASE DISPOSITIVE ORDER DENYING PETITION REQUEST TO ISSUE (COA). ON MARCH 10TH 2021. PETITIONER PETITION FOR PANEL REHEARING AND REHEARING EN BANC.

April 9th 2021, the petition for rehearing by the panel and the court en banc, is denied.

REASONS FOR GRANTING THE PETITION

JURIST COULD CONCLUDE THAT THE ISSUES PRESENTED IN PETITIONER BRIEF AND ATTACHED APPENDIX, INCLUDING TRUE COPIES OF THE ORIGINAL COURT FILLINGS, WITH EXHIBITS (JURY LIST) AND OTHER ORIGINAL COURT DOCUMENT TRANSCRIPTS ARE MORE THAN ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER. MILLER-EL V. COCKRELL: THE UNITED STATES CONSTITUTION IS THE SUPREME LAWS OF THE LAND. WHICH CLEARLY STATES IN PART:"NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW: NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.""THE SIXTH AMENDMENT GUARANTEES THAT THE PETIT JURY WILL BE SELECTED FROM A POOL OF NAMES REPRESENTING A CROSS SECTION OF THE COMMUNITY.""THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT FORBIDS DISCRIMINATION ON ACCOUNT OF RACE IN THE SELECTION OF THE PETIT JURY."

JURIST OF GOOD REASON WOULD NOT DEBATE THAT PETITIONER HAS A CLEARLY ESTABLISH CONSTITUTIONAL RIGHT TO BE TRIED BY A JURY WHOSE MEMBERS ARE SELECTED PURSUANT TO NONDISCRIMINATORY CRITERIA.

FURTHERMORE, WITH ALL RESPECT SUBSEQUENT PRECEDENT REQUIRES THAT THIS COURT GRANT RELIEF SOUGHT BY PETITIONER AND ADJUDICATE A FULL REDRESS OF ALL ISSUES PRESENTED IN PETITIONER PETITION FOR WRIT OF CERTIORARI FOR THE VIOLATIONS OF CLEARLY ESTABLISHED CONSTITUTIONAL RIGHTS. BATSON V. KENTUCKY ALONG WITH COMPANION CASE PEOPLE V. MOTTON.

PETITIONER INTENDS TO RAISE THE RELEVANT FACTS. THE WAYNE COUNTY POPULATION DURING PETITIONER TRIAL IN 2016. WAS APPROXIMATELY #51,215 CITIZENS, OF WHICH 49.3% ARE WHITE, 38.4% ARE BLACK AND OTHER. THE RECORDS WILL SHOW CLEAR AND CONVINCING EVIDENCE OF THE NUMBER OR RACIAL COMPOSITION OF THE VENIRE, THE NUMBER OF RACIAL GROUP MEMBERS IN THE PANEL FROM WHICH PETITIONER JURORS WERE DRAWN.

THE TRIAL COURT ERROR TO NOT ASK IF EITHER SIDE WISHES THE JURY POLLED. TO INSURE SUCH A RUSH TO VERDICT IS UNANIMOUS COLLECTIVELY TO VERDICT. JURIST OF REASON WOULD NOT DEBATE THAT PETITIONER HAS A CLEARLY ESTABLISH CONSTITUTIONAL RIGHT TO POLLED THE JURORS.

LADIES AND GENTLEMEN JUSTICES, I AM IN PRO SE, AND DESPITE THE APPARENT CONFUSION AMONG STATE COURTS ON THE ISSUE OF CLEARLY ESTABLISH CONSTITUTIONAL RIGHTS. THE RIGHT TO A FAIR TRIAL, OF JURORS WHOSE MEMBERS ARE SELECTED FROM A POOL OF NAMES REPRESENTING A CROSS SECTION OF THE COMMUNITY. ONLY THIS COURT CAN CURE SUCH A VIOLATION OF CLEARLY ESTABLISH CONSTITUTIONAL RIGHTS. AS JUSTICE HARLAN, WROTE: "THERE IS LITTLE SOCIETAL INTEREST IN PERMITTING THE CRIMINAL PROCESS TO REST AT A POINT WHERE IT OUGHT PROPERLY NEVER TO REPOSE." TO DENY RETROACTIVE SUBSTANTIVE APPLICATION OF BATSON, WOULD COMPROMISE OUR JUSTICE SYSTEM'S CONSISTENCY AND LEGITIMACY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Hoel Brown

Date: 05-06-2021