

20-8244

OPINIONAL

No : \_\_\_\_\_

In The

SUPREME COURT OF THE UNITED STATES



ABDUL S. AZIZ - PETITIONER

VS.

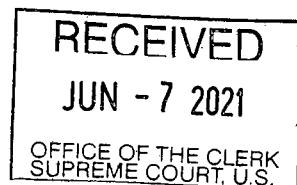
UNION COUNTY - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI

SUPREME COURT OF N.J. / APPELLATE DIVISION

PETITION FOR WRIT OF CERTIORARI

Confined N.J.S.P



Abdul - Aziz 1155445  
P.O. Box 861  
Trenton N.J. 08625-0861

### Questions Presented

- 1) Was error Committed by the Appellate Division when it neglected to consider Appellant's Pro- Se Supplemental Brief, or to file said brief considering the Circumstances .(Covid - 19, Ineffective Appellate Counsel)
- 2). Should Remand be ordered in relation to failed plea bargain negotiations R. 3:9-3 , R. 3:9-1
- 3). Was defense counsels failure to present any strategic or tactical defense theory below the standard of proficient representation .
- 4). Did the States use of perjured testimony, and edited Surveillance footage, deprive defendant of a fair Trial when that surveillance footage disappeared for two and one half years before state introduced or acknowledged its existence
- 5). Should information supplied by the Police be both factual and legally sufficient , as opposed to the misleading and absent of pertinent facts.
- 6). Should text messages that are only partial bits and pieces of a conversation and overwhelmingly prejudicial and affirmatively misleading be allowed into evidence if they also violate the doctrine of completeness.
- 7). Has the trial court abused and overstepped its authority when it allowed Illegally obtained evidence via Police Misconduct and violation of Constitutional right, previously suppressed by the Appellate Division into evidence, now calling it "Inevitable Discovery"
- 8). Should the Grand Jury Indictment stand when defendant's Constitutional right not to be a witness against himself in a Criminal prosecution has been violated
- 9). Once an individual states "I DO NOT WANT TO GET INVOLVED" has all consent therefore been immediately, effectively withdrawn regarding a warrantless consent search.
- 10). Has the trial court deprived defendant of presenting "HIS DEFENSE" when it refused to allow sworn affidavits of events to Jurors at trial unless stipulation of testimony is agreed to by defendant.
- 11). Should conviction stand with the state's use of perjured testimony and tampered evidence.
- 12). With the state not meeting its burden of proving the requirement of Premeditation, for knowingly and purposeful murder pursuant to 2C:2-2[3b] beyond a reasonable doubt,

how has the Appellate Division allowed that conviction to remain when it is clear the Jurors failed in performing their duties.

- 13). Why are their two standards / levels of “proof” for beyond a reasonable doubt, when it comes to a Black man facing a Murder charge in the State of New Jersey especially where the case is mainly circumstantial.
- 14). Although text messages show some dissatisfaction of the situation between Abdul- Aziz and Jackson , it clearly does not establish any pre- disposition for the commission of a crime. Yet, the Jurors were not instructed as to how the text messages were to be used. And wrongly allowed to assume premeditation . Therefore, should the text messages have been allowed at trial without specific direction by the court, being they only served to prejudice the defendant unfairly.
- 15). Has the Appellate court erred in waiving or deferring its review authority by merely conceding with the trial Judge Personal conclusions contrary of law regarding sentence, Past criminal history, Aggravating, Mitigating , and the totality of the circumstances

## 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:

## RELATED CASES

Tujillo v. Williams 465 F. 3d  
1210 (10<sup>th</sup> Cir. 2006)

Marance v. Fanckenot 879 F. Supp.  
(E.D. Tex 1995)

Bounds v. Smith, 430 U.S. 817 (1977)

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### POINT I.

Defense Counsels failure to offer any defense theory, witness', or exhibits whatsoever, and failure to conduct any effective adversarial challenges was especially appalling.. When an Attorney fails to raise an important but pertinent defense without any imaginable strategic or tactical reason for the omission, his performance falls below the standard of proficient representation that the Constitution demands clearly amounts to a "Total failure to actively advocate his clients cause." (Da-00, Da-01, 13T, 15T, Supplemental brief.)

### POINT II.

A trial court should view the situation in the light most favorable to the defendant when deciding how to instruct a Jury. (13T, Da-04, Supplemental Brief, final jury instructions, 9T)

### POINT III.

The State Prosecutor has the responsibility and duty to correct what he knows to be false and elicit the truth. It is uncontestedly the law in New Jersey and all the states that the use of perjured testimony and Tampered Surveillance footage by the State deprives the defendant of a fair trial. A lie is a lie , no matter what its subject when it is in anyway related to the case. (3T, S-164, 1T, S-162, Supplemental brief.)

### POINT IV.

Information supplied by the Police MUST be (written) sufficient both factually and legally. An Affidavit submitted to the court in support of the issuance of a warrant that is materially false misleading or which omitted critical information thereby nullifies the validity of a warrant then issued (Da-06 , Supplemental Brief )

POINT V.

The admission of all text messages by the Trial court of which are only Partial conversations are overwhelmingly prejudicial and affirmatively misleading they also violate the doctrine of completeness and should have been suppressed. (4T, 11T, Da-14, Supplemental Brief)

POINT VI.

The Trial Court's Rulings must be guided by law, and legal positioning. The trial court's Unreasonable application of law and abuse of its discretion regarding motion decisions continues to deprive defendant any chance or opportunity of presenting " his defense" before the court and Jurors when it failed to duly allow the submission of defendant's Sworn affidavits of which it previously found to be credible unless defendant would take the stand and testify, only further deprived defendant any chance of a fair trial, especially where the court clearly acknowledges that the death was accidental. If it had, clearly the outcome of the trial would have been different. ( 3T, 4T, Plea negotiation, 10T, 9T, 14T, 2T, Supplemental brief. )

POINT VII.

"Even though Sentencing does not concern the defendant's guilt or innocence, ineffective Assistance of Counsel during sentence can result in Strickland prejudice." (3T, Da-15, 16, 17, 18, 19 15T P.S.R. )

**Conclusion.**

**Certification of good faith.**

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Pro – Se Supplemental Brief and Appendix

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Marange v. Fantenot , 879 F.Supp.  
679 (E.D. Tex. 1995)

Bounds v. Smith , 430 U.S. 817 (1977)

Holsclaw v. Smith, 822 F.2d 1041(11<sup>th</sup>. Cir. 1987)

Showers v. Beard, 635 F.3d 625 ( 3d Cir. 2011 )

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 \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

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

reported at \_\_\_\_\_; 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 B to the petition and is Supreme Court N.J. Appellate Division

reported at Docket No A-004795-17T3; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the N.J. Supreme Court court appears at Appendix A to the petition and is

reported at Supreme Court N.J. 085200; 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 \_\_\_\_\_

[ ] 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: \_\_\_\_\_, 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 \_\_\_\_\_ (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**: *Supreme Court No. 1. Docket No 1081-200*

The date on which the highest state court decided my case was 3-9-2021.  
A copy of that decision appears at Appendix A.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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**

### **Statement of Matter**

This case contains matters of significant importance concerning and affecting the overall general public and its communities. However, the Appellate Court failed to duly address or consider all arguments via Pro- Se Supplemental Brief and its Appendix, as of defendants Right to be heard in his Direct Appeal.

The failure to timely submit said Pro – Se Supplemental brief was caused by circumstances beyond defendant's control. Namely, inadequate access to the New Jersey State Prison Law Library due to Extra restrictive Covid – 19 precautions combined with the Appellate attorney's seven month delay in providing him with the State's opposition brief.

Defendant presently stands wrongly convicted of Murder and related offenses for which he is currently sentenced to a term of 50 years. Numerous Constitutional violations were committed during the Grand Jury Process, Pre- trial hearings, Police/Prosecutor office investigations were incomplete and botched, on up throughout trial. In an effort to secure the reversal of these unlawful actions and proceedings , Defendant exercised his right to pursue Direct Appeal proceedings with the Superior Court of New Jersey Appellate Division docket Number : A-004795-17T3. on November 10,2020 the Appellate Division merit board judges were presented with Direct appeal docket no: A004795-17T3 in the matter of State v. Aziz . On November 24, 2020 the Appellate Court cites that the defendant does not deny on appeal these outlandish allegations made at trial. However, contrary to the Appellate Division's assertions, the appellant-defendant does "in fact" via REYES application, emphatically deny, raise and contest those exact issues at trial within his Pro-Se supplemental brief dated : November 19, 2020 of which was not filed , nor considered as a direct result of Appellate Attorney failure, As the State has not met its burden providing proof nor any evidence of any premeditation pursuant to **2C:2-2**

[3b] First degree Murder conviction cannot stand without having met the prerequisite for Purposely and knowingly murder. Counsels failure to challenge sufficiency of the State's evidence in the trial court , and on Direct appeal was clearly ineffective assistance where State's case is largely Circumstantial Holsclaw v. Smith ,822 F.2d 1041 ( 11<sup>th</sup>. Cir. 1987). Murder conviction must be overturned and defendant resentenced to a lessor included. As proof of accidental death was caused by the actions and initiation of the victim, and were wrongly and intentionally withheld from Jurors by the court. Combined with extensive delays attributed to the Covid - 19 restrictions put into place as of March 2020 AS- TO- DATE by New Jersey State Prison Administration officials, unduly preventing regular Law Library access, and access to the courts ( **see affidavit** ) . As a result, the Appellate division erred in its rushed final opinion dated November 24, 2020. Therefore defendant feels that Special circumstances are present in the matter at hand Pursuant to **R.2:12-4** and that Certification by the New Jersey Supreme Court should be duly granted according to the authority and holdings of Brady v. N.J. redist.Comm'n, 131 N.J. 594(1992). Notice of motion for reconsideration was duly submitted Pro-se Pursuant to **R.2:11-6** Darel v. Pennsylvania Mfrs. Ass'n Ins-co, 114 N.J. 416,426(1989); Polidorev.Kordvs, Puzio & Ditomasso, 228 N.J. Super. 387,394-395 (App.-Div.1988) (**NUNC PRO TUNC**) However, designated Appellate Counsel Ruth E. Hunter failed and refused to file defendant's documentation with the Superior Court Of New Jersey Appellate Division, as a result this notice of petition for New Jersey Supreme Court Certification results Pursuant to **R.2:12-3**

Therefore, defendant-Appellant also relies upon the accompanying Pro-Se Supplemental brief, its Appendix, Affidavit Trial transcripts combined with the Unreasonable Applications of

law utilized by the trial court Harrington v. Ritcher, 131 S.ct 770,786,178L.ED 2d 624 and “Special Circumstances” presently at hand now before this United States Supreme Court.

The State of New Jersey openly utilized Tampered / Edited surveillance footage and perjury by its witness’( E.P.D. police officer Humberto Alvarez) to obtain its tainted conviction , contrary to the holdings and authority of People v. Sauvides , 1 N.Y. 2d 554,154 N.Y.S.2d 885,136N.E.2d853(ct.App.1956). Those actions constitute a denial of due process of law Moonev.Holohan,294 U.S. 103 55S.Ct. 340,79 L.E.D.791 (1935).

Although in People v. Faulkner , 7 Ill. App 3d 221,{ 311A2d 764} 287 N.E.2d 243 (App.Ct. 1972 ) the court held that it also is the Prosecutor’s duty as a representative to see that a defendant receives a “fair Trial”; He / Shae is duty bound to inform the court and Jury of its incorrectness.

However..... Here that was Not Done. Instead , the State’s knowing use of perjured testimony and illegally altered surveillance footage ( 7/11/2011 E.P.D.) and the deliberate suppression of evidence to impeach that testimony, was allowed to ultimately obtain a tainted conviction by the Union County Trial court. Unfortunately, the Appellate counsel was ineffective for failing to address or argue the ineffectiveness of the Trial counsel for his failures in presenting Expert testimony to rebut prosecutor’s theory. Showers v. Beard , 635 F.3d 625 (3d Cir. 2011). It should further be noted that Appellate counsel did not raise one trial related issue on Direct Appeal before the New Jersey Appellate Division.

Defendant duly seeks relief by way of review by the Supreme Court of New Jersey, and prays the court vacates the Appellate Division final Judgement, remanding the defendant back to the Trial Court , where either a new trial is ordered, or where the State shall re-offer its original

plea of Aggravated Manslaughter at Twenty years. For guidance defendant relies upon the authority and holdings of Lafler v. Cooper , 566 U.S. 156, 132 S.Ct. 1376, L.ED 2d 398 (2012)

Furthermore defendant seeks relief by way of Writ of Certiorari with the United States Supreme Court to be either sent back to the New Jersey Supreme Court for Review on its merits, or, back to the Superior Court Of New Jersey Appellate Division for a complete reversal of this wrongful conviction of Purposely and Knowingly Murder in the First degree.

## **REASONS FOR GRANTING CERTIFICATION**

As this court is aware Certification of final Appellate rulings are generally reserved for “special reasons” see: **R. 2:12-4** Defendant submits that such “special reasons” are present at hand, making Certification of the Appellate Division’s opinion especially appropriate . (see attached Affidavit) Additionally, the Appellate Division’s current decision is now in clear conflict with a prior Appellate Division decision of April 1, 2016 Docket No: A-0931-14T3.

To begin with this matter involves significant issues involving denial of all fundamental fairness or any fair trial, these continuing issues involving Police/ Prosecutorial misconduct, Perjury, Evidence Tampering ,sloppy & incomplete investigations ,matters of Social injustice of which directly affect the general Public and their mistrust of Police and its ability to fairly or impartially conduct investigations within every community without bias or prejudice. As a result the public has come to realize that occasionally , the Police need Policing too..... However, these issues at hand have been repeatedly overlooked and not addressed within the case at hand, due the failures of Appellate Counsel not properly presenting , nor raising any viable issues or related issues to trial nor the filing of defendants Pro-Se Supplemental documentation with either the Superior Court of New Jersey Appellate Division , or the New Jersey Supreme Court AS- OF RIGHT, but should now be addressed and duly settled by the United States Supreme court, Including but not limited to the tainted wrongful conviction resulting from the above outlined and overall issues practiced here. The evidence presented against the defendant by the State of New Jersey appeared overwhelmingly prejudicial, especially since defense counsel has opted not to offer into evidence at trial any exhibits , witness’ defense theory, or otherwise a meaningful feasible and viable defense, contradicting the State’s largely circumstantial case. Contrary to : **Strickland v. Washington**, 466,688,104S.Ct. 2052,80 L.ED 2d 674 as defendant clearly

instructed counsel to present and advocate an Imperfect Self Defense due to the facts : 1) . The initial quarrel began without any felonious purpose. 2). The accused DID NOT Provoke the assault. 3). The weapon was drawn upon the defendant first, according to New Jersey Law where all of the above fell into place, the homicidal act will not be murder. Furthermore the defendant had reasonable grounds to believe , and in good faith believed, that the deceased intended to take his life, or do him great bodily harm, at that point, he was not obliged to retreat, nor consider whether he could safely retreat.

**Certification of good faith**

“I certify that the questions raised in this Petition are substantial. I further certify that this Petition is being filed by me in good faith and not for purposes of delay.”

**Conclusion**

For the above reasons and the Constitutional violations set forth in this rushed Appellate Division Final opinion without the filing , nor due consideration of the merits within the accompanying Pro – Se Supplemental brief, defendant Abdul- Aziz requests that Certification be

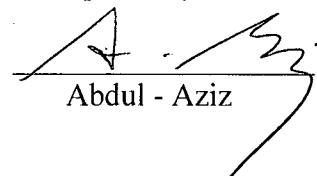
Granted regarding the issues duly raised herein that the Appellate court has clearly overlooked and wrongly stated that the defendant has not and did not raise or deny on his Direct Appeal.

In light of the totality of the circumstances as herein set forth the New Jersey Supreme Court should duly find that there was a manifest denial of Justice and therefore, in the interest of Justice upon its review, shall vacate the final judgement of the Appellate Division and duly grant defendants petition for certification and /or writ of Certiorari .

The Superior Court of New Jersey Appellate Division clearly failed defendant- Appellant Abdul -Aziz in the interest of Justice to right a wrongful and tainted conviction November 24, 2020. Where false testimony and illegally edited E.P.D. Surveillance footage Tampered evidence and the unduly suppressed Exculpatory evidence is concerned.

A new trial is required in a criminal case where false testimony and illegally edited Surveillance footage utilized by the state , its witness' is allowed to go uncorrected , when it appears that it could in all reasonable likelihood have affected the Judgement of the Jury . Whether the Nondisclosure was a result of negligence or design, it is the Prosecutor's responsibility to disclose the incorrectness of the witness' statements and testimony along with the unreliability of the surveillance footage. Giglio v. U.S. 150, 92 S.Ct. 763 31 L.ED 2d 104 (1972 ).

Respectfully Submitted,



Abdul - Aziz

Dated : *May 12, 2021*

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Date: 5-12-2021