

21-5578 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAY 03 2021

OFFICE OF THE CLERK

RICHARD M. MILLER — PETITIONER
(Your Name)

vs.

STATE OF MARYLAND — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF SPECIAL APPEALS OF MARYLAND
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RICHARD M. MILLER #354-608
(Your Name)

NORTH BRANCH CORRECTIONAL INSTITUTION
(Address)

14100 McMullen Highway S W
Cumberland, Maryland 21502

(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Did The Intermediate Appellate Court Of Special Appeals Of Maryland Err When Denying Petitioner His Absolute Constitutional Right To An Appeal Or Belated Appeal?

Did The Intermediate Appellate Court Of Special Appeals Err When Denying Petitioner's Application For Leave To Appeal Without Explanation Preventing Petitioner From Appealing His Case To The Court Of Appeals Of Maryland On Writ Of Certiorari?

Did The Post Conviction Court When Failing To Error On The Side Of Caution Deny Petitioner His Constitutional Right TO An Appeal Or Belated Appeal?

LIST OF PARTIES

[X] All Parties Appear In The Caption Of The Case On The Cover Page.

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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 _____ 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[] is unpublished.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[] is unpublished.

[X] For cases from state courts: COURT OF SPECIAL APPEALS OF MARYLAND

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

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[X] is unpublished.

The opinion of the COURT OF SPECIAL APPEALS OF MARYLAND court appears at Appendix A to the petition and is

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[X] is unpublished.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

[X] For cases from **state courts**: COURT OF SPECIAL APPEALS OF MARYLAND

The date on which the highest state court decided my case was 3-1-21. 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 _____.

[] 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

United States Constitution Amendment [VI]

In all criminal prosecutions, 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 previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witness against; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Competent Counsel for his defense.

United States Constitution [Amendment [XIV]]

Section (1) 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 life liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law...

STATEMENT OF CASE

1 Trial. On November 3rd 2008, Petitioner was tried by a jury with the Honorable Terrence J McGann presiding. On November 6th 2008 Petitioner was convicted of first degree sex offense attempted kidnapping and first degree assault. Petitioner was represented by private counsel Mr. Richard Basile.

2 Sentencing. On December 17th 2008 the Honorable Terrence J McGann imposed a sentence of life for first degree sex offense 30 years for attempted kidnapping to run consecutive to count 1 and 25 years for first degree assault to run consecutive to counts 1 & 2 for a total of life plus 55 years.

3 Appeal. Trial Counsel Basile (failed to file an appeal) On January 16th 2009, Mr. Basile filed an Application for Review of Sentence by a Three Judge Panel. On February 4th 2009 Mr. Basile filed a Modification of Sentence.

4. Post Conviction Proceeding. On October 26th 2015, Petitioner filed for post conviction relief arguing the claim trial counsel failed to note an appeal. See Appendix (d) attached. On April 1st 2016 a hearing was held on the petition. On May 18th 2016, Judge Greenberg denied the motion for post conviction relief and ruled that any subsequent motion should be filed by counsel, and should such a motion be filed by counsel Judge Greenberg would be willing to reconsider his ruling. On August 9th 2016 Petitioner filed a motion to withdraw his petition which was granted by the court.

On October 26th 2016 Petitioner filed a conditional supplemental petition for post conviction relief raising the issue trial counsel failed to note an appeal. See Appendix (d). On November 3rd 2016, Petitioner filed a bifurcated petition for post conviction relief. Both motions were denied without prejudice.

5. Post Conviction Proceeding. On December 13, 2018, through appointed counsel Scott Whitney a Petition for Post Conviction Relief was filed. Petitioner being not satisfied with the petition because of the lack of case law, Petitioner filed his original Bifurcated and Conditional Petition for Post Conviction Relief. See Appendix (d) attached. On or about April 19th 2019, Petitioner filed a Supplemental Petition for Post Conviction Relief to the Court.

6. Denial of Post Conviction Relief. On August 24th 2020, the Circuit Court for Montgomery County Maryland, issued a memorandum opinion denying relief, which the clerk docketed on August 27th 2020. See Appendix (c) attached. In its opinion the court concluded that trial counsel was not ineffective and his performance did not fall below an objective standard of reasonableness under Strickland v. Washington, 466 US 668 (1984).

7. Application For Leave To Appeal. On September 16 2020, Petitioner filed an Application For Leave To Appeal to the Court Of Special Appeals Of Maryland on the lower courts denial of post conviction relief. Petitioner requested the COSA to review four issues d,e,f, and g claiming the lower court erred. See Appendix (b).

On March 1st 2021, The Court Of Special Appeals Of Maryland, in an Unreported Opinion filed its opinion stating read considered and denied. The courts action prevented Petitioner from filing a writ of certiorari to the Court Of Appeals Of Maryland requesting review of the lower courts error. See Appendix (a) attached.

REASON FOR GRANTING THIS WRIT OF CERTIORARI

Petitioner was denied his absolute right to an appeal and/or belated appeal of errors made during his trial, where his trial counsel failed to file an notice of appeal. The Intermediate Appellate Court Of Special Appeals decision in its unpublished opinion filed March 1st 2021 in this case, was made contrary to Md Law, Federal Law and well settled law of this Court concerning a defendant's right to appeal after being convicted. The COSA action prevented Petitioner from appealing the lower courts decision to the Court Of Appeals Of Maryland, and forced petitioner to file an writ of certiorari to the United States Supreme Court where only 1% of the cases are selected to be heard each term.

Petitioner asserts that he is guaranteed by the United States Constitution and Strickland V Washington, 466 US 668 (1984), the right to effective assistance of counsel, a counsel that will subject the prosecutions case to a meaningful adversarial testing process. In United States v Chronic, 466 US 648 (1984), in an opinion by Stevens J , states:

"The substance of the Constitution's guarantee of effective assistance of counsel is illuminated by reference to its underlying purpose. '[T]ruth,' Lord Eldon said, 'is best discovered by powerful statements on both sides of the question.' This dictum describes the unique strength of our system of criminal justice. 'The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of the case will best promote the ultimate objective that the guilty be convicted and the innocent go free.' Herring v New York 422 US 853 862 45 LEd2d 593 SCt 2250 (1975). It is that 'very premise' that underlines and gives meaning to the Sixth Amendment. It 'is meant to assure fairness in the adversary criminal process.' United States V Morrison, 449 US 361 364 66 LEd2d 564 101 SCt 665 (1981). Unless the accused receives the effective assistance of counsel, "a serious risk of injustice infects the trial itself." Cuyler v Sullivan, 466 US at 343.

Thus, the adversarial process protected by the Sixth Amendment requires that the accused have "counsel acting in the role of an advocate," Anders V California, 386 US 738 743 18 LEd2d 493 (1967). The right to effective assistance of counsel is thus, the right of the accused to require the prosecution's case to survive the

crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted, even if defense counsel may have made demonstrable errors the kind of testing envisioned by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated. As Judge Wyanski has written:

"While a criminal trial is not a game in which the participants are expected to enter the ring with near match in skills, neither is it a sacrifice or unarmed prisoners to gladiators." United States ex rel, Williams v Twomey, 510 F. 2d 634 640 (Ca7), cert, denied sub norm Sielaff V Williams, 423 US 876 46 LEd2d 109 96 Sct 148 (1975).

Petitioner asserts when (his) trial counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing, there has been a denial of his Sixth Amendment rights that make the adversary process. No specific showing of prejudice was required in Davis V Alaska, 415 US 308 (1974). As trial counsel did in issue (f) failing to note an appeal. More importantly issues (d), (e), & (g) were appealable on direct appeal even though trial counsel failed to object or preserve them under plain error doctrine.

Petitioner further asserts that His trial counsel was not acting with competence when he represented Petitioner on the above complained about issues (d), (e), (f), & (g). Chapter 300, Maryland's Attorney's Rules of Professional Conduct. Md Rule 19-301.1 Competence (1.1), provides:

"An attorney shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for representation.

The Strickland court as not to restrict the wide latitude, counsel must have in making decisions. Strickland did not provide an all-inclusive list of imperatives for defense attorney's, but did list the minimum duties that are required of counsel. (1) duty of loyalty; (2) a duty to advocate; (3) a duty to consult with the accused in important decisions; (4) a duty to keep the

defendant informed of important developments; (5) a duty to conduct a reasonable investigation into the facts and law; and (6) a duty to possess and execute enough skill and knowledge to ensure a fair trial. *Id.* at 688-90. The Court Of Appeals Of Maryland has held Federal and State constitutional provisions are co-extensive Lodowski V State, 307 Md 233 247 513 A2d 299 (1986).

COMMENT

LEGAL KNOWLEDGE AND SKILL

[3] In an emergency an attorney may give advice or assistance in a matter in which the attorney does not have the skill ordinarily required where referral to or consultation or association with another attorney would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill considered action under emergency conditions can jeopardize the client's interest.

[4] An attorney may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to attorneys who is appointed as an attorney for an unrepresented person. See also Md Rule 19-306.2 (6.2).

THOROUGHNESS AND PREPARATION. [5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation * determined in part by what is at stake; major litigation and complex transaction ordinarily require more extensive treatment than matters of lesser complexity. An agreement between attorneys and the client regarding the scope of the representation may limit the matters for which the attorney is responsible. See Md Rule 19-301.2(c)(1,2)

MAINTAINING COMPETENCE. [6] To maintain the requisite knowledge and skill, an attorney should keep abreast of changes in the law and its practice, engaged in continuing study and education and comply with all continuing legal education requirements to which the attorney is subject.

Petitioner asserts trial counsel rendered ineffective assistance of counsel, because of the above stated case law and Md. Rule in subjecting the prosecutions case to a meaningful adversarial challenge, and failing to prepare and maintain competence concerning the complained about issues (d), (e), (f), and (g) found in Petitioner's Application For Leave To Appeal. See Appendix (b) attached.

(REASON FOR GRANTING THIS WRIT OF CERTIORARI CONTINUED)

(A) Petitioner asserts his trial counsel was ineffective when he failed to file a notice of appeal after being requested to do so on December 17th 2008. The Post Conviction Court and the Intermediate Appellate Court Of Special Appeals Of Maryland both erred when denying Petitioner his absolute right to an Appeal and/or Belated Appeal. In doing so both Courts ignored well settled Md. Law and case law; Federal Criminal Law and well settled case law of the United States Supreme Court. The Court Of Special Appeals, then blocked Petitioner from having the lower courts decision reviewed by Maryland's Highest Court.

On December 17th 2008, the Honorable Terrence J McGann after sentencing Petitioner explained the post-trial rights to Petitioner as being: 1) an absolute right to appeal his sentence within 30 days; 2) 90 days to file a motion for reconsideration of the sentence; and 3) 30 days to file for three judge panel review and all three must be in writing. See Exhibit #1 under Appendix (e) attached Before leaving the courtroom Petitioner requested trial

counsel to file an appeal and the other post-trial rights explained. However trial counsel filed everything except the appeal. See Exhibit #5 under Appendix (e) attached.

Petitioner laid-out in detail in his Bifurcated Petition for Post Conviction Relief that contained the necessary case law that supports Post Conviction Relief in the form of granting a Belated Appeal. See Appendix (D) attached. Which was part of the Post Conviction Hearing Record and should have been transmitted by the Clerk to the Court Of Special Appeals with all of the other Application for Leave To Appeal document's. See Post Conviction Court Memorandum and Order at pgs 2-3 under Appendix (b) & (c) attached. Petitioner provides the following in support of:

Criminal Procedure Article § 7-102 provides that in post conviction proceedings, a person may not begin a proceeding if allegations of error have been waived or finally litigated. Allegations are not finally litigated until they have been decided on the merits by (direct appeal) or application for leave to appeal. Criminal Procedures § 7-106(a)(1) All allegations of error that could have been raised on direct appeal, whether or not Petitioner took appeal, will be deemed waived. Id at (b)(1) If Petitioner does not have the opportunity to litigate issues cognizable in direct appeal via a belated appeal, those issues will be considered waived for purposes of post conviction litigation.

The failure to honor Petitioner's request to note an appeal on his behalf violated Petitioner's right to effective assistance of counsel, guaranteed by the Sixth and Fourteen Amendments of the United States Constitution and Maryland Declaration Of Rights. "Entitlements to assistance of counsel would be hollow indeed unless the assistance were required to be effective. It follows that a criminal defendant has the right to effective assistance of

counsel on the direct appeal of the judgement entered upon his conviction of a serious crime." Wilson v State, 284 Md. 664 671 (1979). In Maryland, a defendant in a criminal case denied his right to a desired appeal through no fault of his own, and who has been diligent in attempting to assert his appeal rights, is entitled to a belated appeal, without the necessity of presenting any other evidence of prejudice." Garrison V State, 350 Md. 128 139 (1988).

[A]ll criminal defendants who are convicted after a trial in circuit court are entitled to an appeal of right to the Court of Special Appeals. See Md. Code(2002) § 12-301 of the Court and Judicial Proceedings Article: (a party may appeal from a final judgement of the circuit court in a civil or criminal case). (See Exhibit #2 under Appendix (e) attached). The Public Defender's Office provides representation on, for indigent and incarcerated defendant's who have been convicted (after a trial, as opposed to a guilty plea) in the circuit courts of Maryland. See Md. Rule Code(1997) Art. 27A § 4(b)(2) (the Public Defender Act). See (Exhibit #3 under Appendix (e) attached).

The duties imposed by Md. Rule 4-214(b) and the Public Defender Act are also applicable to privately retained attorneys. See State V Mohoney, 16 Md. App. 193 (1972)(holding that duties imposed on appointed counsel by Md. Rule regarding the filing of post-trial motions are imposed on privately retained counsel's also).

A defendant's right to counsel attaches early in the process of the circuit court case, and trial counsel's duty of representation continues into the post-verdict stage. For instance a defendant has the right to counsel for the purposes of making a motion for new trial, noting an appeal, and filing a motion for modification of sentence. See Md. Rule 4-214(b)(Exhibit #4, under Appendix (e) attached). (When counsel is appointed by the Public Defender or

by the court, representation extends to all stages in the proceedings, including but not limited to custody, interrogations, preliminary hearings, pretrial motions and hearings, trial, motions for modification or review of sentence or new trial, and appeal¹⁴); State V. Flansburg, 345 Md 694(1997)(holding that duty of representation extended to the filing of a motion for modification of sentence, and holding that counsel's failure to file that motion may be addressed through the Post Conviction Procedure Act).

When a defendant request a direct appeal of right, but through no fault of his own, he is denied that appeal, then he is entitled to a belated appeal. State V. Shoemaker 225 Md. 639(1960); In Garrison, supra, (a defendant has the right to a belated appeal when the defendant is denied, through no fault of his own, the appeal that he desires and to which he is entitled).

Moreover when trial counsel Basile neglected to file a notice of appeal requested by Petitioner, the error also violated Petitioner's right to due process. More importantly this error has significant ramifications, not only was Petitioner deprived an essential guaranteed right, Petitioner is also deprived of filing a future Federal Habeas Corpus Petition, (as one of the requirements is to exhaust all state remedies; direct appeal, writ of certiorari, post conviction, leave to appeal, and writ of certiorari). The Post Conviction Court had the opportunity to correct the error by trial counsel Mr Basile, and preserve Petitioner's due process rights to future appeals by allowing Petitioner to file a belated appeal but refused to do so. the intermediate appellate Court Of Special Appeals of Maryland had the same opportunity and refused to do so.

The Post Conviction Courts Reason for Denying Petitioner A
Belated Appeal

PC COURT: At the Post Conviction Hearing, trial counsel testified that sometime after sentencing, but within the 30-day timeframe to file an appeal, he met with Petitioner to go into detail about Petitioner's post-trial rights. Trial counsel testified that he recalls this conversation happening where the Petitioner was incarcerated, sometime after Petitioner was sentenced because this a long conversation that would not have been able to occur in the courtroom directly after the sentencing hearing. Trial counsel testified that during this lengthy conversation he told Petitioner that the real issue was the severity of the sentence rather than Petitioner's guilt. Trial counsel stated that based on the overwhelming evidence presented on Petitioner's guilt, it did not appear that there would be success if the case went to appeal. Because of this, trial counsel advised Petitioner that it would not be logical to file an appeal, and instead told Petitioner that he should pursue a three-judge review panel as it would be more likely lead to a reduction of Petitioner's sentence.

(B). Petitioner asserts as stated the Court not his trial counsel explained his post trial rights, and his trial counsel after the trial sentencing on December 17th 2008, never came to explain anything. More importantly an appeal is Petitioner's right, successful or not it is his right. Period! As this Petitioner wrote in his Bifurcated Petition as a result of trial counsel's error in not filing an Appeal; Petitioner has lost the opportunity to file any Federal appeals i.e., (Federal Habeas Corpus, 4th Circuit, US Supreme Court). The record reveals trial counsel Basile did file a sentence review and a modification of sentence as Petitioner asked at the sentencing hearing but failed to file an appeal as requested. (See docket Exhibit #5 under Appendix (e) attached).

Trial counsel Basile was ineffective when he failed to file Petitioner's appeal and trial counsel did not want to be exposed for the mistakes he made that created the appealable issues below:

- 1) On November 3rd 2008, during Petitioner's trial (trial counsel) Basile objected to the State showing a surveillance video room Pollo Campero's to the jury that had not been properly authenticated. The video was shown over counsels objection and he failed to preserve the issue for appellate review, so it was deemed waived.
- 2) Each of the issues found in Petitioner's Application for Leave To Appeal were appealable issues in Maryland: (1) failure to request lesser included offense issue (d); (2) failure to object to unwarranted flight instruction issue (e); and (3) failure to object to (two) improperly worded voir dire questions that permitted prospective jurors to self asses whether they could be fair and impartial. See (AFLTA under Appendix (b) attached).

More importantly each of these issues have been raised on appeal in the Court of Special Appeals and Court of Appeals, with relief granted at one time or another.

The United States Supreme Court in Peguero V United States, 526 US 23 (1999) held (When counsel fails to file a requested appeal, a defendant is entitled to [a new] appeal without showing that his appeal would likely have had merit.). In Flores-Ortega, 528 US 470 (2000) the Supreme Court held:

[1a] In Strickland V Washington, 466 US 668 80 LEd 2d 674 104 SCt (1984), we held that criminal defendants have a Sixth Amendment right to "reasonably effective" legal assistance, *id.*, at 687 80 LEd 2d 674 104 SCt 2052, and announced a now-familiar test: A defendant claiming ineffective assistance of counsel must show (1) that counsel's representation "fell below an objective standard of reasonableness,"

[528 US 477]

id., at 688 80 LEd 2d 674 SCt 2052, and (2) that counsel's deficient performance Prejudiced the defendant. id., at 694 80 LEd 2d 674 104 SCt 2052, Today we hold that this test applies to claims like respondent's that counsel was constitutionally ineffective for failing to file a notice of appeal.

The Court in Flores-Ortega further stated: we have long held that a laywer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable. See Rodriquez V United States, 395 US 327 23 LEd 2d 340 89 SCt 1715 (1969). This is so because a defendant who instructs his counsel, to initiate an appeal reasonably relies upon counsel to file the necessary notice. Counsel's failure to do so cannot be considered a strategic decision; filing a notice of appeal is a purley ministerial task and the failure to file reflects inattention to the defendants wishes. In Jones V Barnes, 463 US 745 751 77 LEd 2d 987 103 SCt 3308 (1983) held: (the accused has the ultimate authority to make fundamental decision whether to take an appeal).

The Rodriques, Court further held: that the defendant by instructing counsel to perfect an appeal, objectively indicated his intent to appeal and was entitled to [a new appeal] without any further showing. Because "[t]hose whose right to an appeal has been frustrated should be treated exactly like any other appellan[t]," we reject any requirement that the would-be appellant "specify the points he would raise were his right to appeal reinstated. Id., at 330 23 LEd 2d 340 89 SCt 1715. See also Evitts V Lucy, 469 US 387 83 LEd 2d 821 105 SCt 830 (1985)(defendant entitled to new appeal when counsel's deficient failure to comply with mechanistic local court rules led to dismissal of first appeal).

Moreover this Court has concluded that it is unfair to require an

indigent perhaps pro-se, defendant to demonstrate that his hypothetical appeal might have had merit before any advocate has ever reviewed the record in his case in search of potentially meritorious grounds for appeal... Rather we require the defendant to demonstrate that but for counsel's deficient conduct he would have appealed.

Petitioner asserts in order for trial counsel Basile to have effectively explained the appealable issues to Petitioner as the Post Conviction Court wrote in its Memorandum/Opinion, id. at page 13 paragraph (2). See (PC OP under Appendix (c) attached). Trial counsel Basile would have had to purchase and read the actual trial transcript. Which he did not do since Petitioner's family members had informed him prior to sentencing they would not be retaining him to litigate Petitioner's appeal. The Court of Special Appeals was informed of this fact in Petitioner's Application for Leave to Appeal. id at page (15) paragraph (3) See (Appendix B Attached) Which further supports Petitioner's written version of events documented herein that trial counsel Basile:

failed to file a notice of appeal in this case because trial counsel did not want to be exposed as being ineffectve, because of the mistakes (he) made that created the appealable issues documented herein at page (4) paragraph one...

The evidence presented herein supports the Court Of Special Appeals Of Maryland and the Post Conviction Court both erred, when disregarding and/or misinterpreting well settled Law and well settled case law. When both Court's denied Petitioner his absolute constitutional right to an appeal and/or belated appeal in this case...

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard M. Miller

Date: August 25th 2021

APPENDIX

A