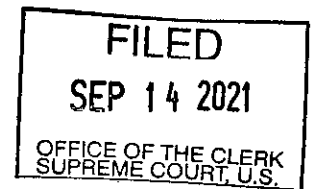


No. 21-6157

ORIGINAL

IN THE
SUPREME COURT of the UNITED STATES



Christopher Forman
Petitioner

v.

Commonwealth of Pennsylvania
Respondent

On Petition For Writ Of Certioari
To The United States Court of Appeal for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Christopher Forman
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Pro Se

QUESTION PRESENTED

1. Did Trial Judge failed to rule on meritorious issues ?
2. Did PCRA Counsel fail to raise a substantial claim of ineffective assistance of trial counsel, and was the petitioner claims not defaulted under, the exception rule, held by Martienz v. Ryan ?

TABLE OF AUTHORITIES CITED

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OPINIONS BELOW

Petitioner respectfully submits that a Writ of Certiorari issue to review the judgment below.

The opinion of the highest federal court, the United States Court of Appeals for the Third Circuit, to review the merits appear at Appendix A to the petition and is report at Superintendent Mason v. Christopher Forman, C.A. No.20-2356 (June 29, 2021).

The April 10, 2020, per curiam order of the federal court, The United States District Court at Appendix B to the petition and is unreported.

The September 9, 2019, opinion of the federal court, The United States Magistrate Court, appears at Appendix D to the petition and is unreported.

JURISDICTION

The Date on which the highest federal court decided petitioner's case was June, 29, 2021. A copy of the decision appears at Appendix A.

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

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution, and this Honorable Court held that the government cannot introduce testimonial evidence against a criminal defendant where the declarant is unavailable at trial and there was no opportunity for cross-examination at the when prior testimony was given.

STATEMENT OF THE CASE

1. State Court Proceedings

A. Evidence Presented at Trial

The petitioner Christopher Coker, was charged with the murder of Jarmanie Morgan on the afternoon of April 30, 2003, in the Frankford section of Philadelphia. A trial by jury was held, in the Court of Common Pleas of Philadelphia before the Honorable Judge Peter F. Rogers, Christopher Coker ("petitioner") was alleged to blatantly kill Mr. Morgan in a fight.

Christopher Coker ("petitioner") and his girlfriend was at Mr. Coker mother house preparing for his girlfriends son birthday party. At the top of Mr. Coker mother block there is a neighborhood trashcan, that Mr. Coker mother is in charge of keeping clean, because Mr. Coker mother is the block captain. Mr. Coker mother told him to change the trash bag, before the party began. As Mr. Coker changed the trash bag, he ask, the guys could they move from the corner, because the kids are going to be coming soon for the party, because they was arguing and making to much noise. Thats when Mr. Coker and the decedent got into a verbal argument that escalated into a fight. (Mr. Coker at the time, weighted 130 pounds, about "5.5" in height and recovering from a serious motorcycle accident on July 4, 2002. Where he fracture his head, neck, arm, and broke both of legs. The decedent was "6.6" in height and weighted over 270 pounds.) Mr. Coker was clearly at a disadvantage when the fight began between the two. Prior to the argument and the fight Mr. Coker was removing his gun from his mother house, because he knew all the kids would be coming to his mother house, and he didn't want one of the kids to find the gun and harm them selves. That was the reason Mr. Coker had the gun in his pocket at the time of argument that turned in a fight. Mr. Coker was being choke, punch, and slamed by Mr. Morgan, and during the fight Mr. Morgan, told Mr. Coker he is going to kill him, as Mr. Morgan is slamming Mr. Coker on the ground. As Mr. Coker was being slammed the gun that was in his pocket fallout his pocket, Mr. Coker grab the gun and shoot in the direction of Mr. Morgan. Immediately after the shooting, Mr. Coker left the neighborhood hours later upon receiving a call from his family that is when he learned that Mr. Morgan was shoot.

Days later Mr.Morgan died from his injuries. Months later Mr.Coker was apprehended and charge with murder and other related charges.

During Mr.Coker's trial there was NO direct evidence only testimonial evidence. The Commonwealth brought forth three witness to testify, the first witness was James Wirth the alleged eyewitness to the crime at hand. Before Mr.Coker trial the District Attorney Office could not locate Mr.Wirth for over two years he alleged that move out of fear. Mr.Wirth move, and did not get approval from his probation officer, while he was on probation for Indecent Assult, Corrupting the Morals of a Miner, and Indecent Exposure. After two years of absconding from his probation the District Attorney and Homicide Dectective got in contact with him, and flew him back to Philadelphia. ADA Feeney and Detective Mecdormett, meet Mr.Wirth once he arrived in Philadelphia, they KNEW Mr.Wirth was wanted for violating his probation, and not registering as a sex offender. They both had the power to arrest Mr.Wirth, but they elected not to arrest him, and they obstructed justice and let a known sex offender back in the communities of Philadelphia. At Coker's trial Mr.Wirth walk into the courtroom as wanted man without ANY consequences. Mr.Wirth, testified that "he was getting his kids ready so they can go outside, then he heard alot of people at the top of Brill and Hedge Street arguing, then the arguing turned into a fight, and could see Mr.Morgan fighting with someone because he was so much bigger then the other person he was fighting with." Mr.Wirth also testified that "at some point during the fight gun fire started, and he duck back in his house but he allegedly saw Mr.Coker shooting at Mr.Morgan as he ran away." Mr.Wirth, also testified that "he was approximate 200-to-300 hundred feet away on his enclosed porch, and he wear's eye-glasses. Mr.Wirth testimony was inconsistent and conflicting about his eye-witness account in regard to Mr.Coker shooting Mr.Morgan. Mr.Wirth was want for multiple sex crime at the time of his testimony, and being in that duress state of mind he was willing to say anything so he can save himself from being prosecuted for violating his probation and NOT registering as a sex offender. The Commonwealth call to the stand Mary Terrinovi and Harold Robles, they both testified "that they allegedly saw Mr.Coker with a gun after the shoots was fired. On cross-examination by trial counsel establish

that there was NO way they could have saw Mr.Coker with a gun from they view point." The Commonwealth also called Edward Stephen Chamara, M.D., who was a Fornsic Pathology Fellow in the Philadelphia Medical Examiner's Office at Mr.Coker trial. Dr.Chamara, who had not been present at the autopsy, to provide expert testimony based his testiony on portions of the autopsy report as well as autopsy photographs. In his testimony Dr.Chamara "LIED" stating "that the decedent was shoot from behind" , and there was nothing from Dr.Williams autopsy report the medical examiner who performed the actual autopsy that indicated that the decedent was shoot from behind. Outside of Dr.Chamara statement there is NO evidence that indicated that Mr.Coker did not act in selfdefense.

B. State Appellate Proceedings

On August 30,2005, Judge Rogers sentence Mr.Coker to consecutive prison terms of six-to-twelve years for manslaughter, and one-to-two yeas for PIC, followed by ten years of probation. After the petitioner sentence trial attorney did not file an direct appeal on the peitioner's behalf. Mr.Coker file a PCRA, Judge Rogers reinstated Mr.Coker's direct appeal rights nunc pro tunc on April 19,2007. On direct appeal, Mr.Coker file 5 claims through newly appointed counsel, two evidentiary claims, and three sentence error. Judge Rogers, address Mr.Coker's issues in an opinion recommending affirmance (file Phila.C.C.P. Nov.17,2008).

In his appellat brief, Mr.Coker presented only the issues relating to Court's instructing the jury outside the presence of and without counsel. The Superior Court affirmed the judgment of sentence, addressing the sole issue raised in his brief. (Pa.Super.Dec.15,2009). The Pennsylvania Supreme Court denied Mr.Coker's petition for allowance of appeal.(Pa.June 15,2010).

On November 12,2010, Mr.Coker file a pro se petition pursuant to Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa C.S.A. 9541-9551, Claims:

1. Ineffective assistance of trial counsel for failing to attain exculpatory testimony of Dr.Susan Williams, who conducted the actual autopsy,
2. Ineffective assistance of trial counsel for inadequately investigation Kia Miller, who would have provided exculpatory testimony

supporting Mr.Coker claim of self-defense,

3. Ineffective assistance of trial counsel for stipulating to the deceased's criminal record,

4. Ineffective assistance of direct appellate counsel for failing to attain James Wirth's sentence records to establish that was given leniency for testifying against Mr.Coker,

5. Ineffective assistance of appellate counsel for failing to attain an affidavit from Ms.Miller, attesting that Mr.Coker acted in self-defense,

6. The prosecutor introduce false testimony through the Commonwealth witness Dr.Chamara,

7. Mr.Coker was confronted with substantive evidence (the autopsy and hospital report). admitted through Dr.Chamara, that he could not cross-examine because the authors of the reports were not called as witnesses,

8. The prosecutor withheld vital documents that would allowed Mr.Coker to question Dr.Chamara about the hospital report,

Mr.Coker was denied his right to confront the author of the hospital report who did not testify,

10.Mr.Coker's due process rights were violated when Commonwealth witness, Mr.Wirth, testified falsely regarding a deal for his testimony, and

11.Mr.Coker due process rights were violated because:

a. Commonwealth witness, Mr.Wirth was corrupt source,

b. Mr.Coker should have not been held for trial based on Mr.Wirth preliminary hearing testimony,

c. The prosecutor and detective obstructed justice by failing to bring Mr.Wirth to justice for violation of the Magan's Law, and violating his probation for sexual assault,

d. The prosecutor and detective should not have release Mr.Wirth back into the community when they knew he was wanted for violating his probation,

e. The trial judge, prosecutor and detective should not let Mr.Wirth take the stand when he was wanted for other crimes,

f. The trial judge should not allowed trial to proceed based solely on the testimony of Mr.Wirth an

g. The prosecutor offered into evidence an autopsy and medical reports

that contained many discrepancies between them about the decess injuries with the authors.

Judge Rogers appointed counsel who file a Finley letter, after having Mr.Coker's case in limbo for years. Then she file motion to withdrew as counsel and accompany letter (Phila. C.C.P. May 11,2015). Judge Rogers issued a notice of intent to dismiss his petition, notice pursuant to Pennsylvania Rule of Criminal Procedure 907 (Phila. C.C.P. May 12,2015). Mr.Coker filed a response to the 907 notice, Judge Rogers allowed then appellate counsel to withdrew and appointed new counsel. Newly appointed counsel filed an amended PCRA petition claiming 7 claims in that amended petition.

On May 12, 2016, the Honorable Glenn B. Bronson, now sitting as the PCRA court, issued a notice of intent to Dismiss the PCRA petition, addressing each claims in the amended PCRA petition, notice pursuant to Pennsylvania Rule of Criminal Procedures 907 (Phila. C.C.P. May 12,2016). In response, Mr.Coker file a motion seeking to represent himself, asserting that counsel failed to raise meritorious issues. Judge Bronson conducted a hearing on June 30,2016, addressing each of the issues Coker wanted raised, and on the same date denied the motion to proceed pro se as well as the amended PCRA petition. AT the hearing, PCRA counsel remained as counsel as well.

On appeal, PCRA counsel pursued the seven claims in the amended petition he file, only filing one of Mr.Coker's claims. Judge Bronson issue an opinion recommending affirmance on appeal addressing each of the claims file by counsel in his amended petition. The Superior Court similarly address all seven claims, and affirmed and denial of PCRA relief (Pa. Super. July 26,2017). The Pennsylvania Supreme Court denied Mr.Coker's petition for allowance of appeal (Pa. Jan. 31, 2018)

C. Federal Appellate Proceedings

On August 9, 2018, Mr.Coker filed a petition of Habeas Corpus, based of the seven issues appellate counsel file in his amended PCRA petition, and Mr.Coker raised the issues that PCRA court address, and amended to the record;(1) the surrogate medical examiner testimony violated his right to confront witness; and (2) the surgeon surgical reported was introduce in his trial without the surgeon, which violated his right to confront the surgeon. On September 9, 2019, the Honorable

U.S.M.J. Elizabeth T. Hey issue a Report and Recommendation ("R&R") of denial. Mr.Coker filed objection to U.S.M.J. Hey's "R&R", on April 10,2020, U.S.D.J. Joseph F. Lesson, Jr, upheld U.S.M.J. Hey's "R&R". Citing:

"I conclude that defense counsel effectively used the autopsy report to undermine Dr,Chamara testimony, questioning several aspects of his testimony, which was, by the doctor's own admisson,based on his review of reports and photographs."

U.S.M.J. Hey's "R&R" report of denial is "contrary to, or involved an unreasonable application of, clearly establish Federal law, as determind by the Supreme Court of the United States."This Honorable Court held:

"The United States Supreme Court held that the Confrontation Clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial certification- made for the purpose of proving a particular fact-through the in court of a scientist who did not sign the certification or perform or observe the test report in the certification."Bullincoming, 564 U.S. at 652. The high Court ruled the Confrontation Clause precludes such practice, held, "the clause does not tolerate dispensing with simply because the court "believes" that question one witness about another testimonial statement provides a fair enough opportunity for cross-examination."

The U.S.D.J. Joesph Lesson Jr. filed his report and recommendation of denial on 4/10/20, the defendant Christopher Coker did not receive a copy of the denial until 5/16/20, tracking # 292686.

In Mr.Coker Notice of Appeal, he cited that U.M.D.J. Lesson Jr. delay transmitting his denial to the petitioner. In August of 2020, Mr.Coker file his Certificate of Appealability to Unites States Court of Appeal for the Third Circuit. On October 29,2020, the Third Circuit Court of Appeals, dismiss Coker petition of COA due to a jurisdiction defect. Citing:

"The District Court enter judgment in this case on April 10,2020. Appellant Christopher Coker had thirty days to timely appeal. See Fed. R. App. P. 4(a)(1)(A). He failed to do so. Because the deadline for filing a notice of appeal in a civil case is mandatory and jurisdictional, see Bowles v. Russell, 551 U.S. 205, 207-09(2007),

we dismiss the appeal for lack of appellate jurisdiction. In the absence of such jurisdiction, we are unable to consider Coker's request for a certificate of appealability."

Mr.Coker filed a petition for rehearing. Citing: Federal Rules of Appellate Procedure, 4(a)(1) and 4(a)(5), "Where just cause or excusable neglect is shown. This Court has held that "in computing the timelines of Pro-Se Prisoner appeals, any prison delay in transmitting to the prisoner the notice of the District Court final order or judgement shall be excluded from the computation of an appellant's time for taking an appeal." United States v. Grana, 867 F.2d 312,316 (3rd cir. 1989).

On June 29,2021, the Third Circuit Court of Appeals denied Mr.Coker petition for rehearing. Mr.Coker, has 90 days to filed a Writ for Certiorari.

REASONS FOR GRANTING THE PETITION

1. The Petitioner Contends that Trial Judge Addressed, the Petitioner's Issues for the Record, but Never Rule on the Meritorious Issues.

On June 30, 2016, the Honorable Judge Glenn B. Bronson, schedule a evidentiary hearing. However, upon the purpose of the June 30th hearing was not to collect evidence but rather to note a hearing pursuant to dictator of Commonwealth v. Grazier, 713 A.2d 81 (1998), to determine whether the appellant wanted to continue with appointed counsel. The petitioner file a motion of Grazier, because PCRA counsel only added one of Coker's issues in his amended PCAR petition. The Petitioner wrote to trial judge about PCRA counsel failing to raise meritorious issues in counsel amended petition. Trial Judge acknowledge the Petitioner letter, and forward a response to PCRA counsel.

During the commencement of the June 30th hearing, PCRA counsel stated on recorded that he could not advocate for the petitioner, because of the motion for Grazier, was the bases of the hearing. So the petitioner was under the pro se rule, during the June 30th hearing. During the hearing, the petitioner asserted that PCRA counsel failed to raise meritorious issues. Trial Judge, amended the record during the June 30th hearing, and addressed each of the petitioner issues making those issues apart of the appellant record. Trial Judge "NEVER" stated any judgement on the record about the petitioner issues at the June 30th hearing. Since the judgement in regards to the petitioner issues is "VAGUE" those issues remain in a limbo state. Since the pro se rule applied to the petitioner, trial judge has to state a ruling against the issues he amended to the record. Trial Judge made two rulings after he addressed the petitioner issues (1) PCRA counsel would remain as appellant counsel, and (2) that the amended petition file by appellant counsel was denied.

The petitioner contends that "IF" PCRA counsel would have raise the issues trial judge amended to the appellant record, that those would have been "DEFAULTED" because trial judge failed to make a ruling against those issues. This procedural default violated the petitioner

right to a effective appeal on meritorious issues.

Even though the ruling is "VAGUE" in regards to the issues amended to the record by trial judge. PCRA counsel still had a obligation to raise those issues at the earliest possible opportunity. Citing Commonwealth v. Douglas-Clark, 75 MAL 2021, Commonwealth v. Shaw, 247 A.3d 1008 (2021) held: "We approve[d] the Superior Court approach premitting a claim of deficient stewardship on part of appellate post-conviction counsel for falling to raise and preserve a claim that was pursued before the PCRA court to be raise on direct appeal."

This is a unique issue that only this Honorable Court can address, so for this reason, Certiorari should be granted.

2. The Petitioner Contends that Issues Raised in Original PCAR was NOT Defaulted under The Exception Rule, held by Martienz v. Ryan.

Citing Murray v. Carrier, 477, 488-89(1986) A petitioner can rely on post-conviction counsel's ineffectiveness to establish cause to over come the default of a substantial claim of ineffective assistance of trial counsel. A habeas petitioner must show (1) that procedural default was caused by either by the lack of counsel or ineffective counsel on post-conviction review; (2) in the initialreview collateral proceeding (i.e., the first collateral proceeding in which the claim could be heard); and (3) the underlying claim of ineffective assistance of trial counsel is "sustanial." Cox v. Horn 757,F.3d 113,119(3rd Cir.2014)(qouting Martinez, 566 U.S. at 14,132 S. Ct. 1309).

On November 12, 2010, the Petitioner file a pro se petition pursuant to Pennsylvania Post Conviction Relief Act ("PCRA"), 42 Pa. C.S.A. 9541-9551. (1) Dr.Chamara, was a surrogate medical examiner, that testified to Dr.Williams autopsy report. Dr.Chamara, give his own independent opinion during his testimony at the petitioner's trial stating, "the decedent was shot from behind", and there was nothing from Dr.Williams autopsy report or the record to support his testimony. Dr.Chamara neither authored the report nor did he participated in or supervised the examination of the decedent("The United States Supreme Court held that the Confrontation Clause does not permit the prosecution to introduce a forensic laboratory report containing a testimonial

certification- made for the purpose of proving a particular fact-through the in court of a scientist who did not sign the certification or perform or observe the test report in the certification." Bullcoming, 564 U.S. at 652. The high Court ruled the Confrontation Clause precludes such practice, held, "the clause does not tolerate dispensing with confrontation simply because the court "believes" that question one witness about another's testimonial statement provides a fair enough opportunity for cross-examination." Id. at 662.);(2) the ADA for Commonwealth of Philadelphia, introduced the decedent surgical report into evidence by way of Dr. Chamara who is a forensic pathologist, and has "NO" knowledge or qualifications in the surgical procedures.(citing Bullcoming, "by testifying in this manner,[the prosecution expert] became just like the surrogate witness in Bullcoming- a person knowing nothing about the particular test or testing process, by vouching for them regardless.")

Before the Honorable Judge Peter F. Rogers, retired he appointed appellant attorney David Rudenstein, to represented the petitioner on his PCRA petition. Appellant attorney filed an amended PCRA petition before new PCRA court, on the issues he felt that was of merit. After receiving a copy of the amended petition, the petitioner wrote to the Honorable Judge Glenn B. Bronson, stating that none of his issues was raised in the newly filed PCRA petition. The petitioner was displeased with the amended petition so he filed a motion of Grazier.

On June 30, 2016, the Honorable Judge Glenn B. Bronson, schedule a evidentiary hearing. However, upon the purpose of the June 30th hearing was not to collect evidence but rather to note a hearing pursuant to dictation of Commonwealth v. Grazier, 713 A.2d 81 (1998) to determine whether the appellant wanted to continue with appointed counsel.

During this hearing PCRA counsel stated on record before trial court that he could not advocate for the petitioner, because of the pending motion of Grazier. So the petitioner was under the pro se rule during hearing. The petitioner asserting that PCRA counsel failed to raise meritorious issues. (1) The surrogate medical examiner testimony violated his right to confront witness; and (2) the surgeon surgical reported was introduced in the petitioner trial without the surgeon, which violated his right to confront the surgeon. In support of his

claims, a review of the June 30th hearing transcripts will show that the petitioner, cited Bullcoming v. New Mexico, 564, U.S. 647,131, S. Ct. 2705,180 L. Ed. 2d 610 (2010) and Melendez-Diaz v. Massachusetts, 557, U.S. 305,129 S. Ct. 2527,174 L. Ed. 2d 314 (2009) two years before the Brown case decision. at 185 A.3d 316 (2018). The Brown case set the precedent's on the confrontation clause in Pennsylvania. The Pennsylvania Supreme Court determine that Brown right to confront witness was violated. Citing Commonwealth v. Brown 185 A.3d 316 (2018): "The Commonwealth called Dr.Alert Chu of the Philadelphia Medical Examiner's Office, who had not been present at the autopsy, to provide expert testimony based on portions of the autopsy report as well as autopsy photographs. Counsel for both defendants objected to the admission of the autopsy report and Dr.Chu's testimony apparently on the basis of Bullcoming v. New Mexico, 566 U.S. 647,131 S. Ct. 2705,180 L. Ed. 2d 610 (2011), arguing the report constituted testimonial evidence, and its admission through Dr.Chu violated the Confrontation Clause of the Sixth Amendment of the United States Constitution."

Trial counsel was ineffective for failing to object to admission of Dr.Williams autopsy report and its admission through Dr.Chamra, such failure to object is a substantial trial counsel error.

The question is, "DID" the petitioner meet the qualifications for the Martinez's exception a habeas petitioner must show, (1) that procedural default was caused by either the lack of counsel or ineffective counsel on post-conviction review; (2) in the initial-review collateral proceeding (i.e., the first collateral proceeding in which the claim could be heard); and (3) the underlying claim of ineffective assistance of trial counsel is "substantial." Cox v. Horn 757, F.3d 113,119,(3d Cir.2014)(quoting Martinez, 566 U.S. at 14,132 S. Ct. 1309).

The other question is whether there is a reasonable probability that the petitioner would have prevail? (citing and quoting Smith v. Robbins, 528 U.S. 259,284(2000):"Prejudice prong on "whether there is a reasonable probability that, absent the error, the petitioner would have prevail."

The petition asserts that PCRA counsel was the "CAUSE" of the procedural default, PCRA counsel was ineffective on post-conviction review, when he failed to raise a underlying claim of ineffective

assistance of trial counsel on the first collateral proceeding in which the claim could be heard, when the claim is "substantial."

In light of the Brown decision the petitioner contends that the prejudicial factors in regard to the Confrontation Clause in his case are more SEVER in nature, absent the error, by PCRA Counsel, the petitioner would have prevail on a underlying claim of ineffective assistance of trial counsel. The petitioner also contends that his case would have set precedent on the Confrontation Clause in Pennsylvania before the Brown Court.

For this reason, Certiorari is required.

Respectfully Submitted,

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CONCLUSION

The petition for Writ of Certiorari should be granted.

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