

NO.

21-6203

ORIGINAL

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

, TERM, 2021

MICHAEL WALKER,

Pro Se-Petitioner

V.

ATTORNEY GENERAL PENNSYLVANIA, SUPERINTENDENT, SCI-COAL
TOWNSHIP, AND, OFFICE OF DISTRICT ATTORNEY, DAUPHIN COUNTY

Respondents

On Petition for A Writ of Certorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR A WRIT OF CERTORARI

Michael Walker #EP-8184

SCI-Huntingdon

1100 Pike Street

Huntingdon, Pa. 16654

Pro Se-Petitioner

October 26, 2021

i.

QUESTIONS PRESENTED

As a result of the United States District Court for the Middle District of Pennsylvania in denying Petitioner's Motion for Relief pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedures, asserting his Actual innocence predicated upon his trial counsel's ineffective assistance in failing to reasonably and constitutionally act, the United States Court of Appeals denying Petitioner A Certificate of Appealability on basis that Petitioner's Rule 60 (b)(6) Motion for Relief was untimely filed, and, none of the issues raised in the original Habeas corpus proceedings were not dismissed as untimely, and, denying request for Rehearing En Banc. Therefore, the following Questions are presented:

(A) The Questions presented is Whether the Third Circuit erred in holding that Petitioner, who asserted Actual Innocence in a Rule 60(b)(6) Motion for Relief was not entitled to relief on basis that his petition was untimely filed, Is in contrary and/or conflict with its own decisional law, and/or this Court's holding involving claims of One's Actual Innocence, In Accordance to *McQuiggin v. Perkins*, or, *Satterfield v. District Attorney's Office of Philadelphia*?

(B) The Question presented is Whether the Third Circuit erred in holding that Petitioner, who asserted his Actual Innocence in a Rule 60(b)(6) Motion for Relief was not entitled to relief on basis that none of the claims in his initial habeas corpus proceedings were dismissed as untimely, Is in contrary and/or conflict with its own decisional law, and/or this Court's involving claims of one's Actual

Innocence predicated on trial counsel's ineffectiveness assistance, In Accordance to Strickland v. Washington, McQuiggin v. Perkins, Bucks v. Davis, and, Satterfield v. District Attorney's Office of Philadelphia?

(C) The Question presented Whether the Third Circuit's Decision Distorts Rule 60(b)(6) of the Federal Rules of Civil Procedures?

ii.

PARTIES TO THE PROCEEDINGS

The Petitioner in this case is, Michael Walker, Proceeding in Pro Se, and/or in his own behalf without counsel.

The Respondents is the Attorney General of Pennsylvania, Superintendent, SCI-Coal Township, and, Office of District Attorney, of Dauphin County, Pennsylvania.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Michael Walker, Pro Se-Petitioner respectfully petition and requests for A Writ of Certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this particular in denying and/or affirming the decision of the District Court for the Middle District of Pennsylvania denying Petitioner relief pursuant to Fed.R.Civ.P. 60(b)(6), asserting his Actual Innocence predicated upon ineffectiveness assistance of his trial counsel's failure to reasonable and constitutionally act, and, thus, failure to protect and defend his Actual Innocence.

OPINIONS BELOW

The decision of the Court of Appeals for the Third Circuit denying Rehearing en Banc. (App. A). The decision of the Court of Appeals for the Third Circuit denying a Certificate of Appealability. (App. B). The decision of the United States District Court for the Middle District of Pennsylvania denying Petition for Relief under Rule 60(b)(6). (App. C). The decision of the United States District Court for the Middle District of Pennsylvania denying Petitioner's initial/original Habeas Corpus Proceedings. (App. D).

JURISDICTION

On August 5, 2021, A Panel of the United States Court of Appeals for the Third Circuit denied Petitioner a Certificate of Appealability. Thus, On October 4, 2021, the Third Circuit denied suggestion for Rehearing En Banc. The Jurisdiction of this Honorable Court is invoked under 28 U.S.C. section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Society views the conviction of an innocence person as perhaps the most grievous mistake our judicial system can commit. Reflecting the gravity of such an affront to liberty, the fundamental miscarriage of justice exception has evolved to allow habeas corpus petitioners' to litigate their constitutional claims despite certain procedural bars if the petitioner makes a credible showing of actual innocence. Thus, asserting Actual Innocence may could overcome procedural hurdle, and/or statute of limitations.

See, 28 U.S.C. Section 2244(d)(1)

This Honorable Court has established and settled law that considerations of finality and comity must yield to the fundamental right not to be wrongfully convicted. See, *House v. Bell*, 547 U.S. 518(2006), *Schlup v. Delo*, 513 U.S. 320-21(citing *Murray v. Carrier*, 477 U.S. at496). CF, *Calderon v. Thompson*, 523 U.S. 538, 557(1998). Hence, when a petitioner asserts a threshold claim of actual innocence, along with a credible showing, the court has embraced and provided necessary relief. See, *McQuiggin v. Perkins*, 569 U.S. 383(2013).

STATEMENT OF THE CASE

This action arises out of nine(9) separate reports of armed robberies that were alleged to have occurred at retail stores between June 9 and July 11, 2000. All nine robberies were supposed to occurred in the City of Harrisburg in nearby Townships. On July 11, 2000, an informant's tip enabled the Harrisburg City Police without arrest warrant and/or probable cause to locate and arrest petitioner in a parking lot of the Edgement Plaza in the City of Harrisburg, Pennsylvania. On the same date of his arrest, petitioner had supposed to confessed to eight of the nine armed robberies. As petitioner was not clear and/or unable to provide the stores and/or their locations, the police took petitioner to the store's locations.

I. Initial Proceedings in the State Court

Following a jury trial, a guilty verdict was rendered on nine counts of robbery and firearm charges. On April 12, 2001, the trial court sentenced petitioner to an aggregated term of Fifty-Eight(58) to one hundred and sixteen(116) years at a state correctional institution.

On October 16, 2001, Petitioner filed a petition requesting relief under the Post Conviction Relief Act("PCRA"), 42 Pa. C.S. section 9541-9546, and was subsequently granted allowance of appeal of his sentence nunc pro tunc. New counsel was appointed, and, On November 19, 2001, Petitioner filed his appeal to the Superior Court of Pennsylvania, raising issues for the court's review, such as:

1. Whether trial counsel was ineffective for failing to file an omnibus pretrial; motion to sever the offenses,
2. Whether trial counsel was ineffective for failing to seek to exclude several in-court identifications of(Petitioner), and,
3. Whether trial counsel was ineffective for failing to file an omnibus pretrial motion challenging the propriety of the search and seizure of(Petitioners) vehicle and the voluntariness of(Petitioners) consent to search the vehicle.

(Citation omitted).

The Superior Court found no-merit to Petitioners contentions and affirmed the judgment of sentence on August 26, 2002. See, *Commonwealth v. Walker*, 809 A.2d 967(Pa.Super.2002)(unpublished memorandum). Petitioner did not seek review by the Pennsylvania Supreme Court. However, Petitioner did pursue collateral relief as set, below:

On November 25, 2002, Petitioner filed a pro se petition. The PCRA court properly treated it as a first petition and appointed new counsel. after counsel was appointed, petitioner filed a motion seeking to represent him, pro se. The PCRA court conducted a hearing on February 6, 2003, to determine whether Petitioner's waiver of counsel could be accepted. At the hearing, it was agreed that appointed counsel would continue to represent petitioner for the purposes of his PCRA petition.

On September 25, 2003, the PCRA Court permitted appointed counsel to withdraw after reviewing counsel's "No Merit" letter filed pursuant to *Commonwealth v. Turner*, 544 A.2d 927(1988), and, *Commonwealth v. Finley*, 550 A.2d 213(Pa.Super.1988). The PCRA Court provided petitioner with its notice of intent to dismiss the PCRA petition within twenty days. On October 20, 2003, the PCRA Court dismissed petitioner's PCRA petition. Thereafter, Petitioner filed a Motion requesting the right to file an nunc pro tunc from the order dismissing his PCRA petition. The PCRA Court granted petitioner's request on December 15, 2003. On January 7, 2004, Petitioner filed his timely Notice of Appeal.

The Petitioner raised several issues of trial counsel's ineffectiveness on appeal to the Pennsylvania Superior court. See, Doc.37-12, at 1-3. The Superior Court concluded that the "Record Supports" the PCRA Court's independent judiciary determination that there is no basis for granting PCRA relief in this case. (id. at 12). The order of the PCRA Court was affirmed on June 6, 2005. Petitioner sought an en ban reargument. See, Doc. 37-12, at 15. Petitioner's request was denied on August 12, 2005. See, Doc. 37-12, at 37.

On September 9, 2005, Petitioner filed a petition for allowance of Appeal to the Pennsylvania Supreme Court raising the same issues identified as 1 through 4, supra. See, Doc.37-13, at 7 11, 13-15. On May 1, 2006, the Supreme Court of Pennsylvania denied the petition. (id. at 20).

II. District Court-Habeas Corpus Proceedings

Petitioner initiated the filing of Habeas Corpus proceedings on June 20, 2006. The Petition for A Writ of Habeas Corpus was amended three times. See, Doc. 10,33,35. The Habeas Corpus Proceedings was initiated on Petitioner's Amended Petition for A Writ Of Habeas corpus(Doc. 35) filed on October 29, 2007, in which contained numerous exhausted and/or non-exhausted issues of trial counsel's ineffectiveness assistance. Doc. 37, at 1-17. An answer and brief in opposition to the petitioner's petition were filed on January 7, 2008. Doc. 37, 37-2. Petitioner filed his traverse on March 10, 2008. Doc. 41. An order was issued directing a supplemental response to be filed addressing petitioner's issues five through eleven of the amended petition. Doc. 49. A supplemental answer, brief and appendix were filed by respondents on January 21, 2009. Docs. 50, 50-2, 50-3. On June 3, 2009, Petitioner filed a supplemental traverse. Doc. 56.

On September 28, 2009, the District Court for the Middle District of Pennsylvania, denied petitioner's Petition for a Writ of habeas Corpus. The Court denied relief on all exhausted issues, claim two(in part), claim four(in part), claims five through nine, and, claim ten(in part) were denied due to procedural default. Doc. 57. The Court issued no certificate of appealability. On October 2, 2009, Petitioner filed a timely Notice of Appeal to the United States Court of Appeals

for the Third Circuit. On January 16, 2010, Petitioner filed for A Certificate of Appealability. On January 25, 2010, A Panel of the Courts of Appeals denied a certificate of appealability.

III. Actual Innocence Proceedings

On October 13, 2020, Petitioner filed a Motion for Relief pursuant to Federal Rules of Civil Procedures 60(b)(6), asserting his Actual innocence predicated on trial counsel's ineffectiveness assistance. Docs. 63,64. On February 24, 2001, the District Court denied petitioner's motion for relief. On March 15, 2021, Petitioner filed a timely Notice of Appeal to the United States Court of Appeals for the Third Circuit. Subsequently, Petitioner filed and requested for A Certificate of Appealability. On August 5, 2021, A Panel of the Third Circuit denied Petitioner a certificate of appealability, on the following basis: (1) motion for relief pursuant to Rule 60(b)(6) was untimely filed, and (2) none of the claims in petitioner's initial/original habeas corpus proceedings were not dismissed as untimely. The Court of Appeals denied the suggestion and/or request for Rehearing En Banc.

The result is that the Court of Appeals for the Third Circuit had and has improperly, inappropriately and erroneously misapplied and/or misapprehended the facts and overlooked the law pertaining one's assertion of Actual Innocence, as firmly settled and established by its own court, and/or most important, the decisions of this Honorable Court, and such will be lost, unless this Court intervenes.

REASONS FOR GRANTING THE PETITION

There is a conflict among a Panel and/or The Court of appeals for the Third Circuit and its majority's view, and, this Honorable Court's Precedent decisional law regarding the question(s) presented. That conflict is starkly illuminated by the contrast between the Third Circuit denying Petitioner a certificate of appealability affirming the district court's decision in denying petitioner relief pursuant to Rule 60(b)(6) Motion, asserting his Actual Innocence predicated on his trial counsel's ineffectiveness assistance. Where the Third Circuit's decision in *Satterfield v. District Attorney of Philadelphia*, 872 F.3d 152(3d.Cir.2017); *Reeves v. SCI-Fayette*, 897 F.3d 154(3d.Cir. 2018), and, this Court's precedent decisional law in *McQuiggin v. Perkins*, 569 U.S. 383, 133 S.Ct. 1924(2013), supports such relief.

The above-cited decisional/authority cases, specifically, the Court's decision in *McQuiggin*, concluded that, "extending the fundamental miscarriage of justice doctrine allows a habeas corpus petitioner, who makes a credible showing of actual innocence to pursue his or her constitutional claims even in despite of the Antiterrorism and Effective Death Penalty Act's ("AEDPA") statute of limitations by utilizing the fundamental-miscarriage-of-justice exception. Which is grounded in the equitable discretion of habeas to see that, and/or, if, federal constitutional error do nor result the prison of innocent

persons. Hence, the court recongized that an untimely petition should not prevent a petitioner who can adequately demonstrate his actual innocence from pursuing his claims. As the Third Circuit itself has acknowledged in Satterfield, the McQuiggin's decision was particularly relevant to Satterfield's case, where he properly characterized the McQuiggin's decision as effecting a change in the Court's decisional law. This sharply different treatment of similarly-situated litigation creates an intolerable conflict- and serve unfairness that this Court should resolve.

The issue does not arise only in the view of law, but the view of our society, the conviction of an innocent person as perhaps the most grievous mistake our judiciary system can commit. Reflecting the gravity of such an affront to liberty, the fundamental-miscarriage-of-justice exception has evolved to allow habeas corpus petitioners to litigate their constitutional claims despite certain procedural bars if the petitioner can make a credible showing of Actual Innocence. The differing legal standards and/or misapplication to well settled and established law utilized by a Panel of the Third Circuit in denying petitioner a certificate of appealability, on claims of asserting his Actual Innocence created confusion and/or taken a wrong turn from firmly rooted and settled law by view of the majority of the court previous decisions, and, this courts' decision in McQuiggin, as

effecting a change in the Third Circuit's decisional law. This particular case at bar, involves the issue, or, assertions of actual innocence, the instant petitioner, and therefore, is of great legal importance and complexity. Review by this Court is urgently needed.

- (A) The Third Circuit's decision in denying Petitioner a Certificate of Appealability in affirming the District Court's denial to Petitioner's Rule 60(b)(6) Motion for Relief, Asserting His Actual Innocence, Is in contrary and/or conflict with its own Decisional Law, and/or this Court's Precedent Decisional law, on Claims of Actual Innocence.

The Petitioner respectfully submits and strongly contends that, the Third Circuit's decision for denying Petitioner a Certificate of Appealability and/or Relief pursuant to Rule 60(b)(6), asserting his actual innocence predicated on trial counsel's ineffectiveness assistance, is wholly incorrect, and, is in contrary to its own decisional law, or, this Honorable Court's Precedent Decisional law, asserting and/or implicating One's Actual Innocence.

First and foremost, Our society views the conviction of an innocent person as perhaps the most grievous mistake our judicial system can commit. Reflecting the gravity of such an affront to liberty, the fundamental miscarriage of justice exception has evolved to allow habeas corpus petitioner's to litigate their constitutional claims despite certain procedural bars if a petitioner can make a credible

showing of actual innocence.

In *McQuiggin v. Perkins*, 569 U.S. 383, 133 S.Ct. 1924, 185 L.ed.2d 1019(2013), this Honorable Court extended this doctrine to allow petitioner's who can make this showing to overcome the Antiterrorism and Effective Death Penalty Act's("AEDPA") one year statute of limitations. In doing so, this Court recognized that an untimely petition should not prevent a petitioner who can adequately demonstrate his actual innocence from pursuing his claims. The view reflects society's value judgment that procedure should yield to substance when actual innocence is at stake.

Hence, in *Satterfield v. District Attorney of Philadelphia*, 872 F.3d 152(2017), As articulated by a panel of the Third Circuit Court held that, "Whenever a habeas petitioner bases a Rule 60(b)(6) Motion for Relief on a change in decisional law, the court should evaluate the nature of the change along with all of the equitable circumstances and clearly articulate the reasoning underlying its ultimate demonstration." In addition, the *Satterfield* Panel further held, "the *McQuiggin*'s decision allow a petitioner who makes a credible showing of actual innocence to pursue his or her constitutional claims even in despite of the AEDPA statute of limitations by utilizing the fundamental miscarriage of justice exception, which is grounded in the equitable discretion of habeas court's to see that federal constitutional error's do not result in the incarceration of innocent persons, such as in the instant case at bar, the petitioner. See, *Sattefield*, 872 F.3d at 159-61.

Hence, Satterfield asserted his Rule 60(b)(6) Motion that McQuiggin's decision was a change in relevant decisional law effecting the Third Circuit's decisional law, and therefore, were an extraordinary circumstance upon which his rule 60(b)(6) relief may issue. Satterfield identified this ruling in McQuiggin handed down several years after the district court dismissing his Habeas petition on remand-as an intervening change in relevant decisional law that requires such relief. *id.*, 872 F.3d at 159. Moreover, McQuiggin's focused on the fundamental miscarriage of justice exception, A doctrine that had previously been applied to allow a petitioner "to pursue his constitutional claims... on the merits notwithstanding the existence of a procedural bar to relief where the petitioner makes "a credible showing of actual innocence." 133 S.Ct. at 1931. This Court clarified that the fundamental miscarriage of justice exception would also permit a petitioner to overcome a petition that failed to comply with AEDPA's statute of limitations. Even so, a petitioner asserting actual innocence may not avail himself of the exception "unless he persuades the district court that in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt." *id.*, at 1928, 1935 (quoting *Schlup v. Delo*, 513 U.S. 298, 329, 115 S.Ct. 851, 130 L.3d.2d 808(1995)).

Moreover and interestingly speaking, In *Reeves v. SCI-Fayette, ET AL*, 897 F.3d 154(3d.Cir.2018), On Remand a Panel of the Third Circuit held that, "Reeves were to make the showing of Actual Innocence then the District Court shall review his ineffective assistance of counsel claim on the merits under the applicable AEDPA standard of review." *id*, 2018 U.S. App Lexis at 1.

Hence, Reeves was convicted of robbery, carrying a firearm without a licence, and second degree murder relating to an armed robbery of a gas station convenience store that resulted in the death of the store clerk. Reeves was sentenced to life imprisonment without the possibility of parole. He filed a four-month-late habeas petition in federal court asserting ineffective assistance of counsel and seeking to excuse his petition's untimeliness based on the Actual Innocence exception to procedural default recognized in *Schlup v. Delo*, 513 U.S. 298, 115 S.Ct. 851, 130 L.3d.2d 808(1995), and extended to include time-barred petitions in *McQuiggin*. Thus, to qualify for this exception, Petitioner-Reeves must present new, reliable evidence showing it is more likely than not that no reasonable juror would have voted to convict him. See, *Schlup*, 513 U.S. at 324, 329. The Court concluded that Reeves had identified evidence that may show Actual Innocence that was not presented to the jury, and thus, the Panel of the Third Circuit, vacated and remanded for further proceedings. *id*, 897 F.3d at 157.

Hence, Reeves asserted his trial counsel was ineffective in failing to present at trial, evidence of alternative suspects for the shooting, his left-handedness, mental condition at the time of his confession, and history of compulsive lying. Reeves, conceded that his petition is late but contend that his exculpatory evidence demonstrates his Actual Innocence and warrants excusing his untimeliness. *id.*, 897 F.3d at 160. In Reeves, a Panel of the Third Circuit articulated and stated that, "the district court did not reach the merits of Reeves ineffective assistance of counsel's claim, because WE hold that under the circumstances presented here, the Kai Anderson evidence is "new", given that it was known, but not presented allegedly due to his counsel's ineffective assistance." Thus, we vacate and remand. *id.*, 897 F.3d at 165.

Whereas, instantly, A Panel of the Third Circuit denied a certificate of appealability, and, thereafter, denied suggestion for Rehearing En Banc, affirming the district court's in denying petitioners' Rule 60(b)(6) Motion for relief, asserting his Actual Innocence predicated on his trial counsel's ineffectiveness assistance in failing to, (1) Request and/or challenge the failure to have Sequestered all Prosecutor's witnesses prior to start of trial, Where prior to commencement of trial no witnesses' had identify him, and, were permitted to remain seated in the courtroom through-out the entire proceedings, (2) file an omnibus pretrial motion for a Line-up, Where prior to start of trial, no witnesses' had made any identifications of

petitioner as the alleged perpetrator of accused crimes,(3)object to the prosecutor's improper and racially motivated use of Peremptory Challenges in violation of *Boston v. Kentucky*,and,(4) object to the Prosecutor's violation to petitioners' Confrontation right under the Sixth Amendment, to confront his accuser, where the leading detective and/or prosecutor made mentioned to information, or, witness leading to the petitioners' arrest, thereby, waving the confidentiality and revealing the identity of its confidential information/witnesses as their basis of probable cause to arrest without a warrant, and not allowing and/or affording petitioner the opportunity to confront his accuser at trial. Thus, Petitioner contends that his Rule 60(b)(6) Motion for relief, asserting his Actual Innocence is predicated on his trial counsel's ineffectiveness assistance, and, on the affective change of law by the Court's decision in *McQuiggin*, and, therefore, effecting the Third Circuit's decisional law in *Satterfield*, and such warrants excusing any issue of untimeliness, as indicated by the Third Circuit on basis for denying petitioner relief.

Hence, the Petitioner strongly avers that had, either, or, both, *McQuiggin* and/or *Satterfield* been in place at the time of his initial habeas corpus proceedings in year of 2006-09, an appropriate showing of his Actual Innocence may have allowed him to overcome his now untimely petition and pursue his "substantial and meritorious" ineffective assistance claims. The district court and/or Third Circuit denied petitioner's Rule 60(b)(6) Motion for relief without providing any analysis and/or determination showing if *McQuiggin* and/or *Satterfield* were of extraordinary circumstances,or, if, the particular

case at bar, had any 'intervening elements' to excuse any untimeliness argument. Further, the district court and/or Third Circuit failed to address, whether petitioner's rule 60(b)(6) Motion had any basis of relief based on this Court's decision in McQuiggin, and/or its own decisional law decided in Satterfield was a change in relevant decisional law, therefore, "an extraordinary circumstance" to justify relief under rule 60(b)(6). Whereas, herein, petitioner contends avers that his situation is factually, legally and procedurally analogous to that of this court's decision in McQuiggin, and, the Third Circuit's decision(s) in both, Satterfield and Reeves, and therefore, the third Circuit failed to secure and maintain uniformity of its own court's previous decisional law on issue, or, assertions to one's Actual Innocence, as asserted in this particular case at bar.

Moreover, the Third Circuit's decision in denying petitioner a certificate of appealability, and thereafter, denying Rehearing En Banc, re-affirming the district court's denying petitioner relief pursuant to Rule 60(b)(6), asserting his 'Actual Innocence' on basis of being "untimely filed"... At minimum, but constitutionally and importantly speaking, the Third Circuit's decision is inconsistent and creates confusion in its own Court of Appeals and with this Court on a very fundamental and constitutional important issue for years to come. The striking unfair and utterly in contrary and conflict between the Third Circuit decision and decision of this Court in McQuiggin, "recognizing that an 'untimely petition' should not prevent a petitioner who can adequately demonstrate his Actual Innocence from pursuing his claims;" and therefore, procedure should yield to substance when Actual Innocence is at stake. ID.

At minimum, but of constitutional concern, the Third Circuit's decision has/will create inconsistency and confusion in its own Court of Appeals on a very fundamental and important constitutional issue(One's assertion of Actual Innocence) for years to come as demonstrate by the striking contrast between the decision law and the "Majority View" of the Third Circuit's opposite conclusions in the case(s) of, Cox v. Horn; 757 F.3d. 113,18(3d.Cir.2014); Cox v. Horn, 2018 U.S. Dist Lexis, No.00-5188(August 28,2018); Satterfield and Reeves, supra's, and this Honorable Court's decision(s) in Schlup v. Delo, 513 U.S. 298(1995)(noting that petitioners's seeking habeas relief carry less of a burden when their convictions are the result of unfair proceedings---and the Actual Innocence threshold standard-applies than when they have been convicted after a fair trial); McQuiggin v. Perkins, and Buck v. Davis; 137 S.Ct. 759,778, 197 L.3d.2d 1(2017), will have a immediate fatal impact on the extraordinary importance of Actual Innocence at issue in this particular case, and, will affect tens-or-hundreds-of-thousands of cases. Thus, it is essential that this Honorable Court intervene now to provide more clarification and security to the Third Circuit on the current legal ratifications and proper determination, and/or analysis of review regarding one's assertions to their 'Actual Innocence', As implicated and determined by this Honorable Court's decision(s) in Schlup, McQuiggins and Bucks, supra's, and, The Third Circuit's decision(s) made in, Cox(1), Cox(2), Satterfield and Reeves, supra's.

Because the Third Circuit Erroneously and/or misapprehended clear and settled decisional law in this particular case regarding one's assertion of Actual Innocence, thus, the general importance of the issues presented, and, the Petitioner's specific importance to his Actual Innocence at issue in this case, Certiorari should be granted.

- (B) The Third Circuit Erred in denying Petitioner a Certificate of Appealability on basis that "None of the Claims in His Initial Habeas Corpus Proceedings were dismissed as Untimely", Affirming the District Court's decision in denying Petitioner Relief Under Rule 60(b)(6) Asserting his Actual Innocence, It is Contrary, or, Conflict with its Own Decisional Law, and/or this Court's Precedent Decisional Law regarding Assertions of Actual Innocence Predicated on Trial Counsel's Ineffectiveness Assistance.

Not surprisingly, therefore, the Third Circuit decision below is in contrary, or, conflict with well established and settle law of its own decisional law in Cox v. Martin Horn, 757 F.3d 113, 118(3d.Cir.2014)(Cox 1), Cox v. Horn, 2018 U.S. Dist Lexis, No.00-5188(3d.Cir.2018)(Cox 2), Satterfield v. DA office of Philadelphia, 872 F.3d 152(2017), and, also see, Reeves v. SCI-Fayette, et al, 897 F.3d 154(3d.Cir.2018), and, this Courts decisional law in McQuiggin v. Perkins, 569 U.S. 583(2013), and, Buck v. Davis, 137 S.Ct. 759, 778, 197 L.3d.2d 1(2017). The Third Circuit ruling conflicts with the decisions of the governing body of decisional and Precedent law between its own court and this Honorable Court, and all material and points of facts, or, law. Thus, the Third Circuit got it utterly and wholly wrong in denying Petitioner a certificate of appealability on basis that "none of the issues in petitioner's initial Habeas Corpus proceedings were dismissed as untimely", and therefore, A certificate

of appealability should be granted. See, Slack v. McDaniel, 529 U.S. 473, 484(2000)(certificate of appealability warranted where prisoner show that jurists of reason would find it debatable whether petition stated valid claim of denial of constitutional right and that jurists of reason would find it debatable whether district court was correct in its procedural ruling). id.

The Third Circuit's interpretation and/or decision in denying a certificate of appealability on basis that, 'None of the issues in petitioner's initial habeas corpus proceedings were dismissed as untimely' was wrong, and/or had essentially foreclose, or, inappropriately, misapprehended, or, wholly overlooked important facts, or, law in this particular case at bar. As an example:

On June 20, 2006, Petitioner initiated his habeas Corpus Proceedings by filing of Habeas Corpus Petition. (DK NO.1). The Petition for a Writ Habeas Corpus was amended three times. (DK NO(s) 10,33,35). The habeas corpus proceedings were initiated on petitioner's amended petition for a writ of habeas corpus. (DK NO.35). filed on October 29, 2007. Subsequently, on September 28, 2009, the district court for the Middle District of Pennsylvania denied petitioner's petition for Habeas Corpus relief. The District Court denied relief as to all exhausted issues, and, in addition, petitioner's 'unexhausted claims', specifically, Claim(s) at #9(ineffective assistance of counsel) were denied due to procedural default. (A-4, at p.g 10). Therefore, the petitioner's Claims at #9 were denied due to procedural default, habeas

corpus proceedings, which were dismissed due to procedural default (A-4, at p.g 10), such are the exact same claims/issues that petitioner asserts his "Actual Innocence" predicated on his trial counsel's ineffectiveness assistance for failing to constitutionally and reasonably defend and protect his 'Actual Innocence', and such issues are as follows:

Petitioner asserts and/or alleges the following issues of his trial counsel's ineffectiveness assistance, as initially raised during habeas corpus proceedings that were dismissed due to procedural default, therefore, re-asserts the following ineffective assistance of trial counsel for failing to:

(A) Request and/or make challenge to the failure to have Sequestered "All" Prosecution's witnesses' prior to start of trial, Where prior to commencement of trial no identifications were made of petitioner, as the perpetrator of alleged crimes,

(B) file and litigate an omnibus Pretrial Motion requesting for a Pretrial Line-up, Where prior to commencement of trial no prosecution's witnesses' had identify petitioner as perpetrator of alleged crimes committed,

(C) Object and/or make challenge to the Prosecutor's improper and racially motivated and/or base use of Peremptory Challenges by excluding "Potential Black Juror's" from petitioner's jury trial, and,

(D) Object and/or make challenge to the leading Investigating Officer, and thereafter, the Prosecutor's violation to Petitioner's Sixth Amendment Confrontation right, to confront and cross examined his accuser, Where referenced and mentioned of evidence obtained from statement of 'Confidential Informant'("CI") that was utilized as basis to orchestrate and initiate petitioner's arrest without a warrant and sufficient probable cause, thereafter, waving the Confidentiality of the witness, and, failing to produce the body of witness at trial, thus, denying petitioner of the right to confront his accuser.

See, A-4, at p.g 4-5,pp.A-E and, at p.g 10.

Hence, given this observation about the fundamental and constitutional importance of Petitioner's Actual Innocence predicated on his trial counsel's ineffectiveness assistance, the fundamental-miscarriage-of-justice exception and this Honorable Court's Precedent holding in Schlup, McQuiggin and Buck, supra's more broadly is applicable to the instant case at bar. Because petitioner's case contains both "Extraordinary Circumstances" and "Intervening Equities", thus, can making required showing of Actual Innocence, and both the District Court and/or Third Circuit failed to apply and/or determined whether such a showing could be made,or, provide petitioner with the opportunity. Thus, in determining if could made such a showing of Actual Innocence,therefore, its only proper to briefly look at least, one of petitioner's issues of trial counsel's ineffective assistance claims, prior to and/or during tribunal proceedings:

First and foremost, an accused has an absolute right to effective and competent assistance of counsel at trial, such is a bedrock principle in our jurists system. See, *Gideon v. Wainwright*, 372 U.S. 335(1963); also see, *Strickland v. Washington*, 466 U.S. 668(1984). Under *Strickland* test, with regard to claims of ineffective assistance of counsel, A petitioner must satisfy the two prong test set forth therein. First, the petitioner must show that counsel's representation was deficient, which representation fell below an objective standard of reasonableness, and, Second, must demonstrate prejudice. A petitioner must show that "there is a reasonable probability that", but for counsel's unprofessional error's, the result of the proceedings would have been different. A reasonable probability sufficient to undermine confidence in the outcome. *id*, at 694.

Hence, the petitioner avers that in one(1) out-of-six meritorious claims of ineffective assistance of trial counsel, Where he asserts his Actual Innocence predicated on his trial counsel's ineffectiveness assistance in failing to, "Request and/or make challenge to the failure to have Sequestered "All" prosecution's witnesses' prior to start of trial, Where prior to commencement of trial no witnesses' had identify petitioner was the perpetrator of accused crimes. Interestingly speaking, the issue were significant because it lead to petitioner's conviction. The petitioner was allegedly accused and charged with Nine(9) separate counts of arm robbery, and, prior to start of petitioner's trial, neither, his trial counsel, prosecutor, or, the Court sought to have all the prosecution's witnesses' sequestered ,or, removed from Courtroom, therefore, the

prosecution chose to have its witnesses' to identify petitioner for the first time, while seated at counsel's table in open court, approximately eight(8) and a half months between the time of his arrest and time had passed, being the only person of color present, and, after being charged with Nine(9) separate counts of arm robbery and all prosecution's witnesses' allowed and/or permitted to remain seated and attend through-out the tribunal proceedings, and, hear all other witnesses' testimonies accusing petitioner of alleged crimes committed. Therefore, subsequently, petitioner was found guilty on all alleged charges and crimes. This suggestiveness and highly prejudicial and inherent in this type of identifications of the accused are palpably clear. See, *Manson v. Brenithwaite*, 432 U.S. 98(1977), and, also see, *Commonwealth v. Fant*, 391 A.2d 1040(1978).

Thus, under the first part of Strickland test, petitioner must demonstrate that his counsel's performance was deficient. In 2001, the time of petitioner's trial, 'it was clear and settled law regarding the sequestration of witnesses', 'the purpose of sequestration is to prevent a witness from molding their testimony with that presented by other witness. *Commonwealth v. Counterman*, 719 A.2d 284(1988)(quoting and citing, *Manson*, supra). Importantly Noted, at the time of petitioner's trial in 2001, Rule 615 of the Pennsylvania Rules of Evidence, provides in pertinent part:

"[A]"t the request of a party or on its own motion, the Court may order witnesses sequestered so they cannot learn of the testimony of other witnesses."

Whereas, here, the petitioners' trial counsel did not, at any relevant time, oppose, or, made challenge to the underlying suggestive and highly prejudicial trial error committed, and therefore, a reasonable and competent trial counsel should have known, such as herein, where petitioner was accused of committing nine(9) counts of arm robbery against nine(9) separate individuals, where between the time of arrest and trial, approximately eight(8) and a half months has passed, no identifications procedures were utilized in an effort to have any of the prosecution's witnesses to identify him as the perpetrator of the accused crimes committed, thus, permitting and/or allowing all witnesses to remain seated in the court proceedings without being sequestered, and/or removed from the courtroom, and making identifications of petitioner in open court, and without any objections, and/or challenges made, whatsoever by trial counsel, and therefore, such constitutes to counsel's performance falling below an objective standard of reasonableness. Strickland, supra.

The Prejudice Prong of Strickland test, must show that counsel's omissions were prejudicial, and suffered thereby. Petitioner alleges where all prosecutions' witnesses were permitted and/or not sequestered and allowed to remain seated in the courtroom throughout trial proceedings, hearing each and other witnesses testimonies, while throughout entire trial proceedings counsel remained unopposed and quite, thereby, allowing petitioner to endure such unfair, unjust, and flawed tribunal proceedings, and therefore, counsel's omission

prejudice petitioner, and thus, his conviction was the result of said unfair, flawed, and, at constitutional error proceedings. See, *Schlup v. Delo*, 513 U.S. 298(1995)(noting that petitioners seeking habeas relief carry less of a burden when their convictions are the result of unfair proceedings-and the Actual Innocence threshold standard applies, than when they have been convicted after a fair trial).

In *Buck v. Davis*, 137 S.Ct. 759,778(2017), this Honorable Court held and stated that:

"the severity of the underlying constitutional violation is an equitable factor that may support a finding of extraordinary circumstances under Rule 60(b)(6), asserting Actual Innocence predicated on trial counsel's ineffectiveness assistance. The appellant in *Buck* sought to vacate the court's judgement so he could present an "otherwise defaulted" claim of ineffective assistance of trial counsel. *id*, 137 S.Ct. at 777-79. Thus, the Court held that, if, appellant can make a showing of Actual Innocence, alone, or, in combination with substantial and meritorious claims of ineffective assistance of counsel, the Courts' decision in *McQuiggin*, is almost certainly an exceptional circumstances."

Hence, from the onset both the District Court and/or the Third Circuit got it utterly and wholly wrong, or, inappropriately overlooked significant and sufficient points of material facts, or, law in denying petitioner a certificate of appealability on basis, "none of the issues in petitioners' initial habeas corpus proceedings were dismissed as untimely". (A-2)(A-3). However, interestingly, this was case not the case, petitioners' claims in initial habeas corpus proceedings were dismissed as untimely, specifically, Claim#9, petitioner asserted claims of ineffective assistance of counsel, thus, claims at #9, are the exact same claims/issues that asserts his

Actual Innocence predicated on his trial counsel's ineffectiveness assistance for failing to reasonably and constitutionally defend and protect his Actual Innocence. See, (A-4, at p.g. 4-5[pp.A-E] & p.g 10). Moreover, because petitioner claims of constitutional error-counsel's unreasonable and ineffective assistance during tribunal proceedings, or, failure to challenge unfair and unconstitutional proceedings, is the reason why Actual Innocence exception could apply to this particular case at bar, the gravity of that error bears on the weight of petitioners', McQuiggin and Satterfield claim. Therefore, the District Court and/or Third Circuit got it utterly and wholly wrong in denying petitioner a certificate of appealability on basis that, "none of the issues in petitioners' initial habeas corpus proceedings were dismissed as untimely", therefore, reasonable jurists would find its decision debatable, or, wrong, thus, petitioner constitutional right was violated. See, Slack v. McDaniel, supra. Hence, a certificate of appealability should have been issued in this particular case at bar.

C. The Third Circuit's Decision Distorts Rule 60(b)(6) of the Federal Rules Of Civil Procedurals("FRCP")

Given the inconsistency of the holding below with the uniform of prior decisions coming from the Third Circuit, it comes as an utterly surprise that the Third Circuit's analysis on the merits in the case at bar, is insupportable. Under the Third Circuit's holding and reasoning, "Petitioner Rule 60(b)(6) Motion for Relief, asserting his Actual Innocence was untimely filed pursuant to Fed.R.Civ.P. 60(c)(1), and, fails because "none of the issues in his initial habeas corpus

proceedings were dismissed as untimely"". (A-2). The Third Circuit's approach thus makes Rule 60(b)(6) determination and/or review turn on a wholly artificial inquiry--- whether the requirement of Rule 60(b)(6) would be satisfied in the imaginary circumstances that the case fits or falls within extraordinary circumstances, and/or contains intervening equities --- and entirely disregards the actual situation presented to the district court by the facts and/or evidence, therein, or, it require[s] a court to ignore important and relevant information, facts, or, extraordinary circumstances that sits squarely in front of it when deciding whether in reviewing a particular case, if there exists, or, determines extraordinary circumstances that warrants relief, such as, assertions to one's Actual Innocence. The Third Circuit's decision is flatly inconsistent with well rooted and settled language, history and purposes of Rule 60(b)(6).

Thus, Rule 60(b)(6), for example-the provision at issue in this case provides that, "is a catch-all provision that authorizes a court to grant relief from a final judgment for "any... reason" other than these listed elsewhere in the rule. Fed.R.Civ.P. 60(b)(6)... As noted at the outset, courts are to dispense their broad powers under Rule 60(b)(6), only in "extraordinary circumstances where, without such relief, an extreme and unexpected hardship would occur." See, *Sawaka v. Healtheast, Inc.*, 989 F.2d 138, 140(3d.Cir.1993); *Cox v. Horn*, 757 F.3d 113(3d.Cir.2014)(Cox 1); *Cox v. Horn*, 2018 U.S. Dist

Lexis, No.00-5188(Aug. 28,2018)(Cox 2); Satterfield v. DA Office of Philadelphia, 872 F.3d 152(3d.Cir.2017); and also see, McQuiggin v. Perkins, 569 U.S. 383(2013); Buck v. Davis, 137 S.Ct. 759, 778, 197 L.3d.2d 1(2017).

In Cox v. Horn(Cox 1), A Panel of the Third Circuit articulated, established and stated:

"that change in decisional law may-when paired with certain circumstances-justify Rule 60(b)(6) relief in Habeas Corpus proceedings, separately, and, perhaps more importantly, the panel explained, that the nature of the change in decisional law must be weighed appropriately in the analysis of pertinent equitable factors." 757 F.3d at 122. A district court addressing a Rule 60 motion premised on a change in decisional law must examine the full panpoly of equitable circumstances in the particular case before rendering a decision, in the particular matter, the district court did not articulate,or, used any of the established-requisite equitable analysis and/or factors, i.e., petitioners' claims of Actual Innocence, and, Ineffective Assistance of Counsel, and therefore, its assessment thereto petitioners' Rule 60(b)(6) Motion for relief constitutes to an abuse of discretion because it based its decision upon a clearly erroneous finding of fact, an erroneous conclusion of law,or, an improper application of law to fact, and therefore, a reasonable jurists would find the district court's decision denying petitioner's Rule 60(b)(6) Motion for relief, debatable."Id.

In Satterfield v. DA Office of philadelphia, A Panel of the Third Circuit Court of Appeals had articulated and held that:

"Separately, and perhaps most importantly, We explain that the nature of the change in decisional law must be weighed appropriately in the analysis of pertinent equitable factors, McQuiggin implicates the fundamental principle of avoiding the conviction of an innocent man and attempt to prevent such a mistake through the fundamental miscarriage of justice exception. If Satterfield can make the required credible showing of Actual Innocence to avail himself of the fundamental miscarriage of justice exception had McQuiggin been decided when his petition was dismissed equitable

analysis would weigh heavily in favor of deeming McQuiggin's change of law, as applied to Satterfield's case, an exceptional circumstances justifying Rule 60(b)(6) relief. While Satterfield's ability to show Actual Innocence is not case determinative in that the district court must weigh all of the equitable factors as guided by precedent, "We clarify that the nature of the change in law cannot be divorced from the analysis." Id, 872 F.3d at 155.

In *McQuiggin v. Perkins*, this Honorable Court established and reasoned, and held:

"We extended the miscarriage-of-justice-exception-doctrine to allow petitioners' who can make a showing of Actual Innocence to overcome the Antiterrorism and Effective Death Penalty Act ("AEDPA") one-year statute of limitations. In doing so, the Court recognized that an untimely petition should not prevent a petitioner who can adequately demonstrate his Actual Innocence from pursuing his claims." This view reflects society's value judgment that procedure should yield to substance when Actual Innocence is at stake." 133 S.Ct. at 1931.

In *Buck v. Davis*, this Honorable Court reasoned and stated,

"the severity of the underlying constitutional violation is an equitable factor that may support a finding of extraordinary circumstances under Rule 60(b)(6). The appellant in *Buck* sought to vacate the court's judgment so he could present an "otherwise defaulted claim of ineffective assistance of trial counsel". Id, 137 S.Ct. at 777-79. Thus, if appellant-Buck can make a showing of Actual Innocence, along, or, in combination with substantial and meritorious claims of ineffective assistance of counsel, McQuiggin's change in law is almost certainly an exceptional circumstance, and, thus, the district court failed to consider weighing these factors in favor of finding extraordinary circumstances, and such constitutes an abuse of discretion, and therefore, jurists of reason would find the district court's decision in denying appellant-Buck, relief under Rule 60(b)(6) of Fed.R.Civ.P., as debatable, and/or wrong. Supra.

Apparently, both the District Court and/or the Third Circuit forgotten, or, failed to acknowledge the purpose of Rule 60(b)(6) of Fed.R.Civ.P.... Rule 60(b)(6) is a catch-all provision that authorizes a Court to grant relief from a final judgment for "any... reason" other than those listed elsewhere in the rule. Fed.R.Civ.P.. As noted from the onset, Courts are dispense their broad powers under 60(b)(6) only in "extraordinary circumstances", where without such relief, an extreme and unexpected hardship would occur. Sawka, 939 F.2d at 140. Thus, the fundamental point of Rule 60(b)(6) is that it provides "a grand reservoir of equitable power to do justice in a particular case". See, Hall v. Cmty, Mental health Ctr, 772 F.2d 42, 46(3d.Cir.1885)(internal quotation marks omitted). A movant, of course, bears the burden of establishing entitlement to such equitable relief, which, again, will be granted only under extraordinary circumstance. McQuiggin, 133 S.CT. at 1931. But, A district court must consider the full measure of any properly presented facts and circumstances attendant to the movant's request. ID.

Moreover, the Third Circuit's holding finds no support in the language, or, well established and settled governing body of decisional law regarding Rule 60(b)(6), which nowhere suggests and/or agrees that the existence to denying relief under Rule 60 on basis of being "untimely filed and/or None of the issues in a petitioners' initial habeas corpus proceedings were dismissed as untimely", is just, or, the court could apply just unfair and illegitimate criteria to such

hypothetical review to Rule 60(b)(6) Motion for relief, that assuredly never should occur. To the contrary, a district court must consider the full measure of any properly presented facts and circumstances attended to a movant's Rule 60(b)(6) Motion for relief. Cox, 757 F.3d at 122. Thus, the third Circuit has applied, a flexible, multifactor approach to Rule 60(b)(6) motions, including those built upon post-judgment change in the law, that takes into account all the particulars of a movant's case. See, Coltec Indus, Inc, v. Hobgood, 280 F.3d 262, 274(3d.Cir.2002)(noting, in the context of a rule 60(b)(6) analysis, the propriety of "explicitly" considering "equitable factors"; in addition to a change in law). Lasky v. Conti Prods. Corp, 804 F.2d 250,256(3d.Cir.1986)(citing multiple factors a district court may consider in assessing a motion under Rule 60(b)(6)). Hence, a district court 'must' weigh all of the equitable factors as guided by precedent, the court have clarify that the nature of the change in law cannot be divorced from that analysis. See, Satterfield, 872 F.3d at 155.

Whereas, here, the Third Circuit and/or District Court dropped the ball utterly in failing to apply established standards of review to Rule 60(b)(6) motion for relief, asserting claim of Actual Innocence predicated on trial counsel's ineffectiveness assistance for failing to reasonable defend and protect petitioners' Actual Innocence. Petitioner contends that had, either, or, both, McQuiggin and/or Satterfield been in place at the time of his original/initial habeas

corpus proceedings, in 2006-09, thus, his defaulted ineffective assistance claims of trial counsel would have allowed him to overcome his untimely and/or procedurally defaulted petition and pursue his 'Substantially and Meritorious' ineffective assistance claims, therefrom, demonstrate and establish his "Actual Innocence". Hence, if petitioner were provided the opportunity to demonstrate his actual innocence, surely and undoubtedly, such could occur, along with, or, in combination with his 'substantially and meritorious' claims of ineffective assistance of counsel, and therefore, either, or, both cases, McQuiggin and/or Satterfield's change in law is almost, without any question whatsoever, certainly an 'extraordinary circumstance', and thus, the Third Circuit and/or District Court failed to apply and weigh in these factors in finding extraordinary circumstances, or, intervening equities, in the particular case at bar, and therefore, such constitutes utterly and wholly at error, and, A juror of reason could/would find that the Third Circuit and/or District Court's decisions' in denying petitioner a certificate of appealability from the denial of relief under Rule 60(b)(6) of Federal Rules of Civil Procedures, as debatable, and, petitioners' constitutional right were violated. See, Schlup, 513 U.S. at 316-17 (noting that petitioners seeking habeas relief carry less of a burden when their convictions are the result of unfair proceedings---and the Actual Innocence threshold standard applies---than when they have been convicted after a fair trial).

Indeed, contradicting the premise of its holding in the case at bar, the Third Circuit itself recognized that the Rule 60(b)(6) criteria ought to be applied in light of the actual circumstances before a court. Thus, interpreting the "commonalty" requirement and/or standard of review on Rule 60(b)(6) Motion for relief, the Third Circuit, wrote and held:

"Separately, and perhaps more importantly, WE explain that the nature of the change in decisional law must be weighed appropriately in the analysis of pertinent factors, McQuiggin implicates the fundamental principle of avoiding the conviction of an innocent man and attempt to prevent such a mistake through the fundament-miscarriage-of-justice exception, an exceptional circumstance justifying Rule 60(b)(6) relief, and, the courts must weigh all of the equitable factors as guided by precedent, WE clarify that the nature of the change in law cannot be divorced from that analysis. Satterfield, 872 F.3d at 155.

Hence, the Third Circuit's holding in denying petitioner a certificate of appealability affirming the District Court's denial to relief pursuant to Rule 60(b)(6) Motion, asserting claim of Actual Innocence predicated on trial counsel's ineffectiveness assistance is not, and cannot be squared with the more established and rooted general principle used to apply Rule 60(b)(6) motions. There is no legitimate, or, legally sounded reason why the Third Circuit lack of inquiry into the district court's failure to apply the proper evaluation to whether the attended change of law, along, or, with all of the equitable circumstances and clearly articulate, and provide, any reasoning underlying its ultimate determinations, and therefore, the task of weighing any or all equitable factors in order to grant

or deny a Fed.R.Civ.P. 60(b)(6) Motion in a habeas proceedings. The Third Circuit failed to apply these equitable factors. By the same token, the Third Circuit insistence on applying an unfavor and/or erroneous and inappropriate factors in reviewing and denying petitioners' Rule 60(b)(6) Motion for relief, "without taking into account the back-fall, or, its disastrous effect" on petitioner, thus, equally infected its conclusion that Actual Innocence/Petitioners' hypothetically have different interests, and/or circumstances in pursuing their claims, thereby, rendering their representations inadequate. In this particular case the decision below should not stand, where a miscarriage of justice has occur, where a "Actual Innocent" person cannot and is not afforded the fair and constitutional opportunity to pursue his Actual Innocence, and without the Court's intervening, an extreme and unexpected hardship would occur, instantly, an Actual Innocent person being subjected to prolonged and unnecessary imprisonment.

CONCLUSION

The Petition for A Writ of Certiorari should be granted.

Respectfully submitted,

/s/ Michael Walker

Michael Walker #EP-8184

SCI-Huntingdon

1100 Pike Street

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Pro Se-Petitioner

October 26, 2021

CERTIFICATE OF SERVICE

I, Michael Walker, Pro Se-Petitioner hereby certify that in pursuant to and/or required by by the Supreme Court Rule 29, caused to be served the foregoing documents titled, PETITION FOR A WRIT CERTOIRARI, APPENDIX, MOTION FOR LEAVE TO PROCEED IN FORMIA PAUPERIS AND AFFIDAVIT IN SUPPORT, upon the person(s) and in the manner as indicated, below:

VIA FIRST CLASS U.S. POSTAGE PREPAID MAIL:

Ryan H. LySought, Deputy District Attorney
Dauphin County District attorney's Office
101 Market Street, Dauphin County Courthouse
Harrisburg, Pa. 17101

I declare under penalty of perjury that the foregoing is true and correct.

Executed on *October 26*, 2021

Respectfully submitted,

/s/ *Michael Walker*

Michael Walker EP-8184

Pro Se-Petitioner

October 26, 2021