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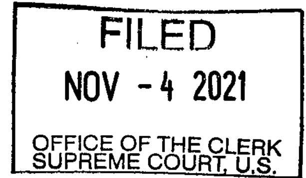

No.

IN THE

SUPREME COURT OF THE UNITED STATES

GLEN CAMPBELL,

PETITIONER.

V.

LA MANNA,

RESPONDENT.

On Petition For Writ Of Certiorari
To The Supreme Court Of The United States

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1). Whether the District Court overlooked Constitutional Claims and Cause and Prejudice.

2). Whether petitioner was intitled to an Evidentiary Hearing due to Counsel's failure to Acknowledge nor Deny Constitutional Rights.

3). Whether the United States Court of Appeals Overlooked Constitutional violations.

4). Whether Petitioner's Sixth Amendment was violated due to counsel's cumulative misrepresentation.

5). Whether Prosecutorial Misconduct is procedurally barred due to: (A). The showing of off and on the record violations, (b) The showing of Cause and Prejudice, (c) Rule 470.05(c) of the Criminal procedure law.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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

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JURISDICTION

The Decision of Nassau State court was entered on April 14, 2014, The 440.10 decision was entered on July 11, 2019, The Final judgement of Nassau was entered on December 18, 2014, The Decision of the Eastern District was entered on December 18, 2020, The decision of the United States Court of Appeals was entered on August 23, 2021. This Court's jurisdiction rests on 28 U.S.C. § 2254, 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED

This Case involves the Sixth Amendment to the Constitution of the United States, Which provides in relevant part: "In all Criminal proceedings, the accused shall enjoy the right... to have the assistance of counsel for his defense"; and the Fourteenth Amendment, Which provides in relevant part: "[N]or shall any State Deprive any person of life, liberty, or property, without Due process of Law."

STATEMENT OF THE CASE

The Crime:

On November 19, 2010 Nassau Police Department got a call about a possible robbery in progress. The Description given was Three Male Black's wearing Black Jeans and Black Hoody's, and One possibly wearing a Tan or White Hoody. A couple of miles away at a Woodbury Country Club , Glen Campbell, a Black Male, wearing a Grey Sweater, Green Jeans and Red Sneakers was stopped and Handcuffed for 45 Minutes pending an On-Scene Show Up. Minutes later a Black Jacket and Baseball hat was placed on top of the Patrol car. Two witnesses was brought to identify Mr. Campbell. The Two witness were unable to identify even with the items placed on Mr. Campbell. Mr. Campbell was still arrested and taken to the precinct where he was tricked helping officers and then charged with the crime.

PRE-TRIAL HEARING:

A Pre-Trial Hearing was held where numerous Officer's testified including arresting officer Molinelli. The following was stated:

Q. In the description that you received over the transmission, did he match any of that description?

A. No, because it just said-well, except for the male black part. It was either a white pullover or a black pullover.

Q. So other than him being a male black, he didn't match anything?

A. Correct.

(HT-Hearing Transcript at 102, Exhibit 2).

Q. So let me take a step back for a second. You get out of your vehicle. Did you pull your weapon at the time?

A. I do when I saw him.

Q. You did when you saw him. And would it be fair to say that MR. Campbell was not free to leave at that point?

A. Oh yeah he wasn't free to leave.

(HT. 103-104).

The petitioner was immediately arrested and held for at least a half hour before any attempt to determine if he was the right person detained. The testimony goes as follows:

Q. He was handcuffed?

A. Yes.

Q. Placed in the vehicle at this point?

A. Yes.

Q. And this is a radio patrol car, correct?

A. Yes, it is.

Q. How much time elapsed between that point and the time when two witnesses were brought over for the showup?

A. I'm going to say it was a while, probably a little more than a half hour.

(HT. 109).

Officer Molinelli then admitted that no one identified petitioner:

Q. Good afternoon, Officer. Just to continue sort of where we left off, you mentioned that there were two witnesses, neither of them who identified Mr. Campbell correct?

A. Correct.

(HT. 116).

Q. Once the showup was completed, what happened regarding Mr. Campbell?

A. After the second show-up, actually he was transported to the Second Precinct.
Q. So the entire arrest of Mr. Campbell, Just so I'm clear, you don't have a description of him, is that right?
A. Well except for the male black, right.
Q. Other than him being a male black in the back of a Country Club, there's no other description, correct?
A. Well, except for the black hoody and white hoody.
Q. But he's not wearing either of those?
A. No.
Q. In fact do you recall what he's wearing?
A. Yeah. He had like a grayish sweater went over his-
Q. And that did not match any of the description you received over the transmission?
A. Right.
(HT. 118-119).

Petitioner then advised counsel that he wanted to testify so that he may tell the judge facts of the illegal arrest and rebut the statement that was read of Michael Mohammed with an affidavit that was given to the petitioner from Michael Mohammed stating that he lied. And Counsel declined to let petitioner testify or tell him that it was his right. A Plea offer of 12 years was offered and petitioner wanted to accept it for the sake of his children and counsel persuaded petitioner to not accept it by stating he could get an even lessor offer and that he knows the judge and she loves his jokes. Counsel never stated on record the pros and cons of the offer like Mr. Haber attorney for Jose Fuertes did on record.
(HT. 4-5, 6).

At the end of the hearing the court erred and stated in it's findings of fact, that Molinelli saw the defendant wearing a "gray sweater/hoody" Which is not how the witness described the garment. The Court concluded that the defendant fit [] a general description of one of the perpetrators" without explanation, and did not cite arresting officer Molinelli's admission, except for race and gender, he did not match the description molinelli received.

Counsel never objected or challenged this decision nor at the end of trial to preserve this right for appellate review.

THE TRIAL:

During the trial Counsel continued to make crucial errors that prejudiced the petitioner and trial. Petitioner came across impeachment evidence from Adam Yusuf which showed the District Attorney's Key witness lying and implicating the petitioner as her assailant on another trial. When counsel was confronted and asked why didn't he know about this valuable information, he stated don't worry and that we can use this towards our advantage for the jurors and hold the District attorney accountable for withholding Brady Material. The Prosecution's Key witness Samina Kahn testified to the following:

Q. And eventually there was a trial on another individual that was invloved, correct?

A. Yeah.

Q. And you testified at that trial as well?

A. Yes.

Q. And at that trial, in order to prepare for it, did you meet with either the officer or an assistant district attorney?

A. Yeah.

Q. And you went through your testimony again, correct?

A. Right.

Q. And they showed you the video again, correct?

A. They didn't show the video that time.

Q. But they showed still pictures, these pictures, correct?

A. Yeah.

Q. So you had an opportunity to review these pictures in the past right?

A. Yeah.

Q. And when you met with that assistant district attorney and reviewed these photos, did they discuss with you who they thought that person was?

A. No.

Q. They didn't give you a name to that person?

A. No.

Q. Did the police officers that you met with, did they ever give a name to that

person wearing that jacket in that photograph?
A. No, they never gave a name.
(T.T.-Trial Transcript 710-711, Exhibit 3).

Impeachment Evidence Goes As Follows:

Q. Samina, I am going to ask you to look at what has been marked as people's 42 and 43 for identification. Do you recognize those?
A. Yes. He was the man who came into my room.
Q. Are those photographs, correct?
A. Yeah.
Q. Those are photographs of who?
A. Glen Campbell.
Q. You said he was the individual who did what?
A. Who came into my room and took me downstairs.
(Adam Yusuf T.T. 495-496).

Counsel never used this valuable information to impeach the witness nor did the District Attorney correct this when she admitted to having this information:

MS. LEWISOHN: Judge, we have the transcript from the Aadam Yusuf Trial.
(T.T. 1612, 21-22).

Counsel's error in not allowing petitioner to testify at pre-trial resolved in petitioner being questioned about knowing Michael Mohammed and the Courts refusal of the Affidavit. When Counsel was questioned by the courts pertaining to the affidavit, he lied to the courts stating that it was turned over a long time when petitioner had the only copy (T.T. 1613, 1-20, exhibit 4). Counsel then stated the prosecutor opened the door and that Michael Mohammed should be brought in, instead of investigating and using him as a key witness for the defense(T.T. 1614, 6-25, 1615).
Counsel then withheld another affidavit and the prosecutor told counsel that he pretended that he didn't have it (T.T. 1630).
Counsel then failed to investigate a video that was blurry and retain a professional specialist to determine such and instead allowed Four officers to testify that it was there opinion that the

petitioner was on the footage without objecting to this testimony (T.T. 1028-31, 1099, 1134, 1148, 1153, 1165-66, 1175-76, 1181-82, Exhibit 5).

Counsel then opened the door for the District Attorney to Question the defense witness on a crime for which he was currently incarcerated for pending trial, which led to the witness invoking his Fifth Amendment. The Jurors were excused in order for this witness to enter the court room to be fair to the defense and to keep the fact that he was incarcerated and not cast judgment before he testified (T.T. 1460, 23-25, 1461, 1-5, 1474, 23-25, 1475-1476-1477, 1-4, Exhibit 6).

Counsel then went as far to undermine confidence by cracking jokes on the evidence being submitted by the prosecutor. The record goes as follows:

MS. GURRIERI: Your Honor, at this time I'd ask to move them into evidence as People's 5 and 6.
THE COURT: Mr. Hardy, would you like to look at them?
Mr. Hardy: The CDs, sure.
THE COURT: Then let me know if you have an objection.
Mr. Hardy: Judge, they look like CDs.
THE COURT: Any objection, counselor?
Mr. Hardy: No, your Honor.

After the court room erupted into laughter from counsel's unprofessional joke. Petitioner advised counsel to do not do it again, which counsel ignored petitioner and did it again:

Q. Does this phone appear to be in the same or substantially the same condition as it was when you searched on March 5th of 2011?
A. Yes.
MS. GURRIERI: Your Honor, at this time I ask that it be moved into evidence.
THE COURT: Mr. Hardy, would you like to look at it?
Mr. Hardy: Can I make a call from it?
THE COURT: No, you may not.

Once again the court bursted into laughter.

(T.T. 738, 950, 18-25, 951, 1-8, Exhibit 7).

Counsel then made a harsh remark which caused the jurors to shake there heads and look at the petitioner like he was guilty:

Q. Did you see that person reach into his back to pull out a weapon?
A. I don't recall.
Q. But you stood here for an hour and watched those videos.
A. I'd have to watch them all again to look for that particular detail.
Q. I won't put us through that misery.

The court then had to intervene, and show the clip because counsel was not prepared and allow the witness to see the fopotage (T.T. 751, 25, 752, 1-7, 752, 8-18, 754).

During the People's Summation counsel allowed the prosecution to negatively affect the outcome of the trial which resulted in prejudice. The prosecution denigrated the petitioner by repeatedly telling the jurors that the petitioner and his witnesses made up stories and lies. Counsel never made one effort to object (T.T. 1707, 7-9, 1707, 19-21, 1708, 9-10, 1709, 1-10, 1710, 22-23, 1713, 5-9, Exhibit 7).

Counsel then went as far as to allow the prosecution to make an improper comment while pointing at the petitioner stating: "Look at his hole in his ear" to show the jurors that the person on surveillance who they couldn't identify wore earrings and the petitioner had a hole in his ear. No earring was submitted into evidence against the petitioner and counsel made no effort to object (T.T. 1689).

Counsel did however object when the prosecutor misstated evidence and stated that a jacket belonged to the petitioner when no such evidence existed. The court told the jurors that it was there recollection if any witness testified to such. The Prosecutor then continued its onslaught stating the jacket was found in a kitchen near the petitioner numerous times to link the petitioner to the

jacket. Counsel sat and watched as this onslaught tainted the trial (T.T. 1685, 16-24, 1686, 1-3, 1686, 12-19, 1687, 12-19, 1692, 14-17 exhibit 8).

440.10 Motion:

Petitioner filed a 440.10 motion on ineffective assistance of counsel and prosecutorial misconduct with the Trial Court and requested that Counsel submit an affidavit under Murray v. Carrier, 477 U.S. 478 (1986), or hold an Evidentiary hearing. Counsel submitted an affirmation acknowledging only three issues but failed to address or acknowledge nor deny petitioner's remaining claims. The Court then took it upon themselves to answer for counsel without providing an evidentiary hearing (See Decision exhibit 1)(Affirmation Exhibit 9).

And in its decision it used 440.10(2)(c) to deny prosecutorial misconduct except mitigating evidence and failed to acknowledge 470.05(2) of the Criminal Procedure Law. The Court stated that petitioner failed to show that the prosecutions witness was lying but never acknowledged the impeachment evidence submitted nor the prosecution acknowledgment in having these documents T.T. 1612, 21-22 Exhibit 10). Petitioner then filed for a leave with the Appellate Division and enclosed a letter requesting a new Judge which was denied (See Letter and Affidavits exhibit 10).

HABEAS CORPUS MOTION

Petitioner filed a Habeas Corpus Motion through counsel which was denied without the chance to submit a Traverse Brief and overlooked on Cause and Prejudice and Ineffective Assistance of counsel without an Evidentiary Hearing. The District court overlooked that Counsel failed to respond to all crucial allegations and a hearing should of been held under Townsend v. Sain, 372 U.S. 293 (1963) to determine Constitutional Violations.

UNITED STATES COURT OF APPEALS

The Court of Appeals denied the petitioner's appeal stating that petitioner failed to show a Constitutional Violation overlooking petitioner's claims.

SUMMARY OF ARGUMENT

On September 17, 1787 Benjamin Franklin saw a Half Sun carved in the back of the Presidents chair. He worried about the meaning of that Sun. "Was it setting on the American Republic?" As Delegates lined up to sign the Constitution, he knew the answer. "Now at length, I have happiness to know it is a rising and not a setting Sun." We as Americans are that rising Sun and we can rise above problems through time when we come together as a whole. And to allow the Constitutional Violations of the petitioner to go uncorrected, would be a cloud blocking out that Sun.

Fifty-eight Years ago, This Court held it to be "an obvious truth" that no criminal defendant could be "assured a Fair Trial" without the assistance of counsel and required the states to provide an attorney to "ant person haled into court, who is too poor to hire a lawyer." Gideon v. Wainwright, 372 U.S. 335, 344 (1963). Two decades later, in Strickland v. Washington, 466 U.S. 668 (1984), this Court, reinforcing Gideon, held that a Constitutional right to counsel includes not simply a right to a lawyer, but a right to "effective representation" by that lawyer in the adversarial system. In Strickland, this Court adopted a two-part test: (i) "the defendant must show that counsel's performance was deficient," i.e. "that counsel;s representation fell below an objective standard of reasonableness," id. at 687-88, and (ii) "[t]he defendant must show that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694.

If the lower Court's decision is allowed to stand, the "obvious

truth[s]" embodied in Gideon and Strickland - truths that have become the bedrock of our criminal justice system in which the great majority of defendants are indigents represented by appointed counsel will stand on fragile ground. In the present case No witnesses identified Petitioner at the Crime scene, despite so, he was held in police custody solely because he is black, and a crime had been committed by several black men in the community. The police placed articles of clothing they found on a car, and the witness identified the clothing. Not Petitioner. The clothing did not belong to Petitioner now were they associated with Petitioner at any time. No DNA came back to petitioner. In Raheem v. Kelly, 257 F.3d 122 (2d Cir. 2001), the United States Second Circuit of New York reversed a murder conviction on the basis of an unreliable identification despite other evidence of guilt. Like Raheem, the witness in the case at bar identified clothing and not petitioner. Therefore, the police had no probable cause to seize, arrest or detain petitioner. Counsel's failure to present Petitioner himself as a witness at pre-trial doomed the defense to failure. Petitioner did not receive a full and fair hearing in the state court and the district court should of held a hearing under Townsend v. Sain, 372 U.S. 293 (1963). In Stone v. Powell, 428 U.S. 465 (1976), the United State Supreme Court limited 28 U.S.C. 2254 and held: Where a state court defendant had a full and fair hearing on a 4th Amendment probable cause claim no habeas corpus would be granted. On the contrary, Petitioner could of satisfied this threshold and provide clear and convincing evidence and the attorney's failure to call petitioner to the witness stand to provide affidavits violated his constitutional rights under the 6th and 14th Amendments.

First, Petitioner had direct Knowledge about the events, and could have provided detailed information about the stop and seizure of

his person. The failure to present Petitioner's version of the events violated his fundamental right to a full and fair hearing. See e.g. McMann v. Richardson, 397 U.S. 759 (1970); Kimmelman v. Morrison, 477 U.S. 365 (1986). And the decision by the state court stating the petitioner matched a General description and wore a sweater/Hoody when no one testified to such clearly shows counsel's error in not allowing petitioner to do so.

In Rock v. Arkansas, 483 U.S. 44, (1987), this Court held: The right to testify in a criminal proceeding is fundamental and Petitioner has the authority to decide when and if he/she is going to testify under the advisement of competent counsel.

Here, counsel simply ignored Petitioner's right to testify, by unilateral action in deciding to end the suppression hearing.

During Plea negotiations a 12-year plea offer was presented by the People. Petitioner immediately advised the attorney that the plea was acceptable to him. Only to have counsel advise that the plea will come down once the co-defendant's case was severed. Therefore, the plea offer wasn't a good one at the moment.

In Lafler v. Cooper, 566 U.S. 132 (2012)(Scalia, J, dissenting):

"If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges of imposition of a more sever sentence.

Here a 12-year plea offer was made. Counsel misled the Petitioner that a lesser offer would be made. At no time did the attorney advise his client that the offer would go up if he didn't accept the plea as co-defendant's counsel did on the record. Also that he would be exposed to a 25 year sentence if found guilty.

The Lafler court wisely noted that the Sixth Amendment remedy

should be "tailored to The injury suffered from the constitutional violation and should not unnecessarily infringe on competing interest." United States v. Morrison, 449 U.S. 361, 364 (1981). Thus, a remedy must "neutralize the taint" of a constitutional violation, Id. at 365, while at the same time not grant a windfall to the defendant or needlessly squander the considerable resources the State properly invested in the prosecution.

Defense counsel failed to prepare Sydney Ragbirsingh before calling him to the stand. Or, move in a motion in limine to limit the people from cross-examining Ragbirsingh on pending cases. Counsel should have known to exclude the prosecutor from using Ragbirsingh's pending criminal accusation to undermine his credibility. Ragbirsingh's presumption of innocence was undermined by counsel's failure to object to the People's antics during trial and went as far as opening the door to the line of questioning. As in Wilson v. Mazzuca, 570 F.3d 490 (2009) Counsel failed to understand that by eliciting this testimony, he would open the door to the witness criminal history. This was poor lawyering and deathamentle to the petitioner's witness and case. This Court has held in Cuyler v. Sullivan, 466 U.S. 335 (1980), that a right and the constitution guarantees an accused "adequate legal assistance. Counsel fell well below the standards of Strickland when he failed to investigate witnesses, and evidence to determine if the video was admissable.

The Lower Courts failed to recognize that counsel withheld evidence Three times in the means of affidavits, and impeachment evidence which was a constitutional violation. This Court in Olden v. Kentucky, 488 U.S. 227, 231 (1988), stated The Constitutional right to confront a witness Generally includes the right to impeach and discredit the states witnesses. The Second Circuit has also

acknowledged the right of cross-examination is one of the most firmly established principles under Supreme Court Law (see Cotto v. Herbert, 331 F.3d 217, 248 (2d Cir. 2003).

Counsel's joking mannerism and harsh statement clearly violated the Strickland test that this court has implicated and this court in Jones v. Barnes, 463 U.S. 745 (1983)(Brennan, J., dissenting) clearly states "To satisfy The Constitution, Counsel must function as an advocate for the defendant, as opposed to a friend of the court)." The events clearly shows that the petitioner was amounted to not having the guided hand of counsel as this court mandates under the Sixth Amendment. A Great American Second Circuit Judge once written: "While a criminal Trial is not a Game in which the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators." United States ex rel. Williams v. Twomey, 510 F.2d 634 640 (CA7), cert. denied Sub Nom. Sielaff v. Williams, 423 U.S. 876 (1975).

Counsel caused the petitioner procedural default by not objecting throughout the course of pre-trial and trial phase and opinion testimony which prejudiced the outcome of trial and petitioner in not being able to get appellate review on meritorious issues. Counsel allowed the prosecutor to prejudice the petitioner with summations. These errors was crucial to the Strickland test and what this court stated in United States v. Cronic, 466 U.S. 648, 656-657 (1984). An attorney error during trial and Direct review may provide cause to excuse a procedural default; if the attorney appointed by the state to pursue the direct appeal is ineffective, the state prisoner has been denied fair process and the opportunity to comply with the state's procedures and obtain an adjudication on

the merits of his claim. Martinez v. Ryan, 566 U.S. 1 (2012). The State Court's reliance on §440.10(2)(c) to bar Petitioner's claim represents an "extorbitant application" of the state rule. Lee, 534 U.S. at 376, 122 S.Ct. 877. The District Court thus erred by deferring to the State Court's determination that petitioner's Prosecutorial claim was procedurally barred and by denying his §2254 petition on that basis. CPL 470.05 bars a defendant from raising unexhausted claims on direct appeal and 440.10 is the avenue mandated to exhaust such claims. This Court has observed that "a failure to develop the factual basis of a claim is not established unless there is lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel. "Williams v. Taylor, 529 U.S. 420, 432, (2000). The "exorbitant application of a generally sound rule renders the state ground inadequate" and will not prevent a federal court's consideration of the federal question presented. Lee v. Kemma, 534 U.S. 362, 376 (2002). Under CPL 470.05 the state case law indicated that compliance with the rule was demanded in the specific circumstances. In People v. Canales, 33 Misc.3d 1222 (a)(2011) Judge Joel M. Goldberg, J. Best said that: "There may be some level of Prosecutorial Negligence that would satisfy the requirements of 440.10(1)(b) and if not Protected by CPL 440.10(1)(b), then CPL 440.10(1)(h) would nevertheless under Federal and State Constitutional Due Process provisions protect a defendant from negligent misrepresentations of an incompetent prosecutor.

Furthermore, the failure of the prosecution in allowing its witness to testify falsely was not ruled as prosedurally barred.

Finally, The Cumulative error's by Counsel Caused Prejudice Throughout representation and doomed the petitioner for failure and Surpasses the Strickland test.

ARGUMENT

THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THE RIGHT TO THE ASSISTANCE OF COUNSEL.

The right to the assistance of counsel, guaranteed by the Sixth Amendment to the United States Constitution, forms the very heart and soul of our Federal Criminal Justice system because it protects "the fundamental right to a fair trial." Strickland v. Washington, 466 U.S. 668, 684 (1984), citing Powell v. Albama, 287 U.S. 45 (1932), Johnson v. Zerbst, 304 U.S. 458 (1938); Gideon v. Wainwright, 372 U.S. 335 (1963). However, the representation must be effective to fulfill the Constitutional necessities of the Sixth Amendment. McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970); Kimmelman v. Morrison, 477 U.S. 365, 374 (1986). Effective lawyers are "essential because they are the means through which the other rights of the person on trial are secured." United States v. Cronic, 466 U.S. 648, 653 (1984). The defense of criminal cases, where a person's life and liberty are at stake, requires an all-consuming commitment to the client.

Glen Campbell was denied this quality of commitment when trial attorney failed to investigate evidence and witnesses, object to opinion testimony, summations, pre-trial decision, prosecutor misconduct, withheld affidavits, impeachment evidence, joking and unprofessional conduct, opened the door, plea bargaining, and harsh remark. And now he has been precluded from asserting that complaint, grounded in the Sixth Amendment, because the Lower Court, District, and United States Court of Appeals overlooked the Ineffective Assistance of Counsel without holding an Evidentiary Hearing.

A. STRICKLAND'S PREJUDICE PRONG:

The legal test for determining whether one has been sufficiently prejudiced by the ineffectiveness of his counsel is set forth in Strickland v. Washington, 104 S.Ct. 2052 (1984). While "[i]t is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding," he "need not show that counsel's deficient conduct more likely than not altered the outcome in the case." 104 S.Ct. at 2067-68.

The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.

...The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability sufficient to undermine confidence in the outcome.

104 S.Ct. at 2068.

In the circumstances of this case, From the point of arrest, the People never had a seal tight case against the petitioner. There was no DNA, No witnesses, Nor evidence to show the petitioner engaged in the crime. The people used any and everything they could get there hands on to make a case. (1) Controlled phone calls of the defendant trying to help Nassau police Department apprehend the culprits. (2) Surveillance which showed no faces and blurry. (3) Testimony of non professional officers voicing their opinions. (4) And a phone conversation with the petitioner and brother and wife going over there testimony. The errors of counsel undermined confidence and weakened the defense and strengthen the people's case. To seal the deal, the people was permitted to go beyond the four corners in summation's while counsel sat and watched. If

counsel would of: (1) Impeached the Key Witness, (2) Objected to opinion testimony, (3)Investigated the Evidence, (4) Refrain from opening the door, (5) Show professionalism, (6) Refrain from harsh remarks, (7) Investigate Michael Mohammed and produce his statement, (8) Object to crucial Summations, (9) obtain a specialist to determine video.

The outcome would of probably be different and fair.

B. COUNSEL''S INEFFECTIVENESS CONSTITUTES CAUSE AND PREJUDICE FOR ANY PROCEDURAL DEFAULT.

If Prosecutorial Misconduct is deemed prohibited, then it's only prohibited because of counsel's ineffectiveness. If counsel would have not been ineffective in failing to object, petitioner would have succeeded in prosecutorial misconduct and pre-trial decision which was not contrary to the evidence. Counsel was more concerned in being a comedian than a professional attorney. This deficient performance prejudiced the petitioner by not having the meritorious issue judicated on direct review depriving the petitioner and the courts. Not only did this hurt the petitioners chance on appeal, but it hurt the case as well. Every single issue not objected to, has been over turned by every court in this state.

II. THE PROSECUTION'S CALCULATED, UNPROFESSIONAL AND INFLAMMATORY CLOSING ARGUMENT AND MISCONDUCT ROBBED THE PETITIONER OF THE FUNDAMENTAL FAIRNESS REQUIRED BY DUE PROCESS AND THE 14th AMENDMENT.

There is no dispute about the nature of the prosecution's conduct; The Closing Arguments made by the prosecutor in this case has been condemned by every judge who has looked at them. They have never been defended by the state as proper. These arguments flouted every rule of professional conduct recognized by the organized bar. They were calculated to divert the jury's attention from the central factual issues in the case, especially the issue whether the prosecution's problematic DVD evidence was sufficiently persuasive to convict the petitioner. Crafted to evoke passion and inflame

prejudice, these arguments violated petitioners most basic rights: to a fundamentally fair and reliable determination of his guilt or innocence.

"The actual impact of a particular practice on the judgment of jurors cannot always be fully determined. But this Court has left no doubt that the probability of deleterious effects on fundamental rights calls for close scrutiny. Estelle v. Williams, 425 U.S. 501, 504 (1976). Because the prosecutions improper arguments were designed and likely to affect the reliability of the fact finding process, they introduced more than a probability of actual prejudice. In such a case, the State should be required to demonstrate beyond a reasonable doubt that the arguments were harmless, Chapman v. California, 386 U.S. 18 (1967), if it asserts that they were. Here, the state has shown none of the sort.

A. MR. CAMPBELL WAS DENIED FUNDAMENTAL FAIRNESS IN THE DETERMINATION OF HIS GUILT OR INNOCENCE.

There is no doubt. The calculated, inflammatory argument of the prosecution in this case did more than draw the universal condemnation of this court. It violated the specific prohibitions embodied in the law of every state and the District of Columbia, for each state has adopted either the Code of Professional Responsibility or the new ABA Model Rules of Professional Conduct (1993). The Code provides that:

In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case...

(2) Assert his personal knowledge of the facts in issue, except when testifying as a witness.

(3) Assert his personal opinion as to the justness of a cause, as to the credibility of a witness...or as to the guilt or innocence of the accused...

DR 7-106(c). These prohibitions have been carried forward without charge in the Model Rules, Rule 3.4(e). The ABA Standards for Criminal Justice provide:

(a) The prosecutor may argue all reasonable inference from evidence in the record. It is unprofessional conduct for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inferences it might draw.

(b) It is unprofessional conduct for the prosecutor to express his or her personal belief or opinion as to the truth or falsify of any testimony or evidence or the guilt of the defendant.

(c) The prosecutor should not use arguments calculated to inflame the passions or prejudices of the jury.

(d) The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence, by injecting issues broader than the guilt or innocence of the accused under the controlling law, or by making predictions of the consequences of the jury's verdict.

(e) It is the responsibility of the court to ensure that final argument to the jury is kept within proper, accepted bounds.
id. § 3-5.8.

The prosecutor in this case flouted each and every one of these proscriptions: She asserted personal opinions from police officers,expressed personal opinions on the petitioner and witnesses that they was lying, misstated evidence numerous times.

B. CLEARLY ESTABLISHED FEDERAL LAW ON A CONVICTION OBTAINED THROUGH USE OF FALSE EVIDENCE.

Supreme court holdings have long "established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); see also United States v. Agurs, 427 U.S. 97, (1976); Giglio v. United States, 405 U.S. 150 (1972). "The same results obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Napue, 360 U.S. at 269. This court held in Giglio v. United States, 405 U.S. 150 (1972), that even though the specific prosecutor on the case did not have knowledge of the facts giving the lie to a prosecution

witness's testimony at trial, he was charged with the knowledge of another prosecutor because a prosecutor's office has a duty to "insure communication of all relevant information on each case to every [prosecutor] who deals with it." 405 U.S. at 154. As in this case the prosecutor had trial transcripts of Adam Yusuf's trial and should of known it's key witness was testifying falsely.

III. **AN EVIDENTIARY HEARING SHOULD OF BEEN HELD.**

In this Case Counsel failed to acknowledge allegations against him nor deny them, therefore an evidentiary hearing should of been held under Tonsend v. Sain, 372 U.S. 293 (1963). The petitioner submitted facts on and off the record and the District Court should of held a hearing when counsel failed to deny or acknowledge the allegations against him on ineffective assistance of counsel.

CONCLUSION

For the reasons above the lower courts decision should be reversed and the least an evidentiary hearing be held or a new trial ordered where the petitioner can enjoy the fair and full litigation of his Constitutional Rights.

The Petition for a Writ of certiorari should be granted.

Respectfully submitted;

Tyler Campbell 11-A-5427

Date: 11/1/21