Case 21-659

ORIGINAL

Supreme Court, U.S.
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In The
Supreme Court of the United States

Jason C. Whren,
Pro Se Petitioner.

V.

United States,
Respondent.

On Petition For Writ of Certiorari
to the Court of Appeals
for the
District of Columbia

Petition For Writ of Certiorari

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Question Presented

Whether the Court of Appeals for the District of Columbia failed to apply the applicable standards in Strickland V. Washington, 466 U.S. 668 (1984); and Hill V. Lockhart, 474 U.S. 52 (1985) to determine if a plea is knowingly, voluntarily, and intelligently made, where a defense attorney lied to his client, misleading his client to accept a plea he never should have accepted?

Also, whether the Court of Appeals failed to apply the applicable standards in Murray V. Carrier, 477 U.S. 478; and McClesky V. Zant, 499 U.S. 494 in determining whether a D.C. Code § 23-110 motion is appropriate for defendants that can demonstrate that they were prevented by "exceptional circumstances" from raising their issues at the proper time?

List of Parties

The Superior Court of the District of Columbia Criminal Division - Felony Branch

Related Cases

United States V. Jason C. Whren, Case No. 2012-CF1-20908, Superior Court of the District of Columbia. Judgment entered February 25, 2019. App. F.

Jason C. Whren V. United States, Case No. 19-CO-226, Court of Appeals of the District of Columbia. Judgment entered January 27, 2020, and October 15, 2020. App. F.

Statement of Jurisdiction

The Court of Appeals entered the judgment in petitioner's case on January 26, 2021. This petition is filed within 270 days after entry of the judgment. See Sup. Ct. R. 14.5. An extention to file the petition was given on dates June 3, 2021, August 4, 2021, and September 30, 2021.

This Court has jurisdiction to grant certiorari under 28 U.S.C. §1257(a).

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I. Statement of the Case

1. On December 5, 2012, petitioner was arrested by the D.C. Metropolitan Police Department Human Trafficking Unit, and presented to a Magistrate on December 6, 2012.
Petitioner was ordered held without bond pursuant to D.C. Code § 23-1322(b) and was held in preventive detention throughout the proceedings in this matter.

2. On May 8, 2013, petitioner was indicted on six counts of first degree child sexual abuse, in violation of D.C. Code § 22-3008; two counts of second degree child sexual abuse, in violation of D.C. Code § 22-3009; five counts of pandering of a minor, in violation of D.C. Code § 22-2705; one count of enticing a child, in violation of D.C. Code § 22-2704; and one count of contributing to the delinquency of a minor, in violation of D.C. Code § 22-811(b)(3).
In addition, petitioner's brother was indicted on one count of pandering, and a trial date was set for November 12, 2013.

3. On November 12, 2013, although all parties announced ready, the prosecutor during an ex-parte conference with the judge revealed that he was having difficulty securing the supposed complainant for trial.
Petitioners counsel didnt object, and the matter was carried until November 15, 2013.

4. On November 15, 2013, the prosecutor, again, during an ex-parte conference with the judge, again, indicated that he still was unable to secure the supposed complainant for trial. Again, petitioners counsel didn't object. Though petitioner was not informed of the reasons for the delays, as they were conducted in ex-parte bench conferences between the prosecutor and the judge, a new trial date had been set for March 31, 2014. Both, petitioner and his brother maintained their innocence.

5. On March 14, 2014 at the trial readiness hearing both sides announced ready for trial, and trial was set to begin on March 31, 2014.

6. On March 28, 2014 the matter was transfered from Judge Ramsey Johnson to Judge Lynn Leibovitz for trial. Again, though in open court, this time, the prosecutor indicated that he was still unable to secure the supposed complainant for trial.

7. On March 31, 2014, under the advice of his counsel petitioner accepted a plea to one count of first degree child sexual abuse (15 years), and one count of pandering of a minor (7 years), ran concurrent. Petitioners brothers charges were dismissed.

8. Roughly 7 days later petitioner wrote the chambers of Judge Leibovitz expressing his

wishes to withdraw the plea. (dated April 7, 2014- received April 14, 2014) App. C.

9. The trial judge conducted a Rule 32(e) hearing to determine if she would allow petitioner to withdraw the plea. (August 1, 2014. denied) case no. 2012-CF1-20908. App. F.

10. Petitioner appealed the trial courts decision to the Court of Appeals for the District of Columbia. (April 29, 2016. affirmed) case no. 14-CF-975. App. F.

11. Petitioner then moved to challenge the convictions collaterally by way of a D.C. Code § 23-110 motion to vacate and set aside the convictions, claiming facts that his Sixth Amendment guarantee to the effective assistance of counsel at all critical stages had been violated. (Febuary 29, 2019. denied) case no. 2012-CF1-20908. App. F.

12. Petitioner, again, appealed the trial courts decision to the Court of Appeals for the District of Columbia. (January 27, 2020. affirmed, procedural default) case no. 19-co-226. App. F.

13. Petitioner then moved to demonstrate the exceptional circumstance amounting to cause and prejudice which excuses a procedural default, by way of a motion to Recall the Mandate, with facts, claiming ineffective assistance of appellate counsel. (October 15

2020, denied) case no. 19-CO-226. App. F.
Specifically noted that "Appellant does not challenge the court's decision in this appeal but attempts to challenge appellate counsel's performance in his direct appeal, no. 14-CF-975; therefore, the Clerk shall file these pleadings in appeal no. 14-CF-975." (January 26, 2021, denied) App. F.

14. Petitioner, by way of a petition for rehearing en banc, pursuant to Rule 35 (b)(1)(A), then moved to demonstrate that the decisions of the division conflicts with the courts controlling authority, and therefore consideration by the full court is necessary to secure and maintain uniformity of the court's decisions. (Delivered, Febuary 9, 2021 - Received, Febuary 23, 2021 - Returned to Petitioner, Febuary 23, 2021) case no. 14-CF-975. App. F.

II. Brief for Petitioner

Petitioner, Jason C. Whren, respectfully request that The Supreme Court of the United States issue this Writ of Certiorari to the Court of Appeals for the District of Columbia, as presented herein:

III. Standard of Review and Applicable Legal Principles

D.C. App. R. 41 (f) states that; any motion to recall the mandate must be filed within 180 days from issuance of the mandate.

D.C. App. R. 25 (a)(2)(B) states, a paper filed by an inmate is timely filed if it is deposited in the institutions internal mail system on or before the last day for filing with evidence (such as a postmark or date stamp) showing that the paper was so deposited and the postage stamp was prepaid.

A. Discussion

This now brings into question the proper calculations of the 180 days from the date the mandate was issued, and also what date was petitioners motion to recall the mandate entered?

B. Argument

The mandate was issued on Febuary 18, 2020. Petitioner entered his motion to recall the mandate on August 14, 2020.

Petitioner, in calculating the 180 days from Feb. 18, 2020, keeping in mind that 2020 was leap year, adding a day to the month of Febuary, calculated that the 180 day deadline would have been August 16, 2020. But because the 16th of August was on a Sunday, and the institution legal mail system is closed on weekends, petitioner his motion on Friday the 14th. The date stamped on the delivered legal envelope, postage that was prepaid, 2 days before the August 16, 2020 deadline.

Though, the Court of Appeals for the District of Columbia may disagree with this calculation because petitioner filed his motion to recall the mandate in case no. 19-CO-226, and not

case no. 14-CF-975.

Petitioner reminds this Honorable Court, in White V. United States, 146 A.3d. 101 at n.4, the Court of Appeals for the District of Columbia had previously noted that, though 'pro-se litigants generally cannot expect 'concessions' because of their inexperience or lack of knowledge about the judicial system, but there are 'special circumstances' which require 'special care' when a pro-se litigant prosecutes a court case. Particularly technical matters or the timeliness of pleadings, and consequently, it is important to provide pro-se litigaats with the necessary knowledge to participate effectively in the trial process. see Padou V. District of Columbia, 998 A.2d. 286, 292-93 (D.C. 2010); see also Reade V. Saradji, 994 A.2d. 368, 373 (D.C. 2010); Macleod V. Georgetown Univ. Med. Ctr., 736 A.2d. 977, 979-80 (DC 1999) citing Haines V. Kerner, 404 U.S. at 519, when the Supreme Court stated that, the standard of review for pro-se complaints is liberal. (1972) id.

Furthermore, the Court of Appeals for the District of Columbia ordered that petitioners motion to recall the mandate by denied, because, many of the claims and defenses petitioner asserts in his motion were waived when he entered his plea. Citing Collins V. United States 664 A.2d 1241 (D.C. 2011) (the entry of a non-conditional plea waives all non-jurisdictional defenses).

C. Discussion

Petitioner poses the question, does a defendant waive his rights to the Sixth Amendment

Constitutional guarantee to the effective assistance of counsel at all critical stages, because he accepted the governments plea?

This now brings into question, is Collins, 664 A.2d 1241 (D.C. 2011) the proper legal standard that is applicable to petitioners Sixth Amendment issues of withdrawing this unconstitutional plea?

D. Argument

Clearly, Collins does not apply to petitioners collateral attack on his constitutional right to the effective assistance of counsel.

First, Collins sought review of an order of the trial court, which denied his motion to suppress tangible evidence.

In Collins, after the motion was denied Collins entered a plea of guilty. In his review Collins claimed that the trial court erred in denying his "pre-trial" motion to suppress because police did not have probable cause to arrest him and conduct a search incident to arrest.

On appeal the court held that the record did not reflect that the plea agreement was conditional, defendant didn't allege that it was, and there were no written or oral indicia of a plea conditioned on a right to appeal "pre-trial" matters, so the plea was presumed to have been unconditional. see D.C. Super. Ct. R. Crim. P. 11(a)(2).

In stark contrast, petitioner is seeking to withdraw an unconstitutional plea based on the ineffectiveness of his trial counsel, specifically in the plea process. Petitioner in his review claims that the trial court abused its discretion in

not conducting an evidentiary hearing to ascertain the merits of petitioners claims.

D.C. Super. Ct. R. Crim. P. 11(a)(2) specifically states that Collins failed to "reserve in writing the right to have an appellate court review an adverse determination of a specified pre-trial motion."

Petitioner, on the other hand, filed no such motion pre-trial.

Accordingly, what does apply in petitioners case is Strickland V. Washington, 466 U.S. at 694; Hill V. Lockhart, 474 U.S. at 59; McMann V. Richardson, 397 U.S. 759, 771, n.14 (1970); and United States V. McCoy, 215 F.3d 102, 107 (D.C. Cir. 2000).

The only prongs petitioner must demonstrate is, petitioner must show his trial counsel's performance (in the plea process) was deficient, and that those deficiencies prejudiced petitioner. see Strickland, 466 U.S. at 694.

In the context of a guilty plea petitioner must show "that but for counsels unprofessional errors there is a reasonable probability exist that petitioner would not have accepted the plea and would have insisted on going to trial." See Hill, 474 U.S. at 59. All that need be shown is a reasonable probability... sufficient to undermined confidence in the defendants decision to plead guilty. See McCoy, 215 F.3d at 107 (D.C. Cir 2000) (quoting Strickland, at 694).

Likewise, pertaining to "cause and prejudice", and the effective assistance of appellate counsel. Petitioner must show, in a motion to recall the mandate, that the "performance of

appellate counsel fell below an objective standard of reasonableness, and that petitioner suffered prejudice. Griffen V. United States, 598 A.2d at 1176. See Strickland, 466 U.S. at 685-98. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of (appellate) counsel be overcome". Smith V. Robbins, 528 U.S. at 288, and petitioner demonstrate just that in D.C. Code § 23-110 motions, and his motion to recall the mandate.

Though the Court of Appeals for the District of Columbia disagree when ordered that, "even if timely filed, petitioner failed to establish a basis for the court to recall its mandate. Further," it was ordered that, "appellant has not established a basis for us to reconsider our previous decision affirming the trial courts rejection of appellants claims that his trial counsel was not ready for trial.. See (January 26, 2021) App. F.

First, petitioner notes that his claims of ineffective assistance of counsel are not based on trial counsel not "being ready for trial" as ordered by the Court of Appeals. What petitioner is claiming is that his trial counsel erroneously advised petitioner to accept the governments plea without making that necessary independent investigation into the supposed complainant, most importantly the supposed complainants presence, after being specifically instructed to do so "repeatedly" by petitioner.

Therefore, petitioner must re-visit the facts introduced in his motion to recall the mandate, and leave the decision to this Honorable Court on if petitioner has satisfied the standards

necessary to establish cause and prejudice.

IV. Exceptional Circumstances

The Court of Appeals for the District of Columbia has repeatedly expressed its concerns that D.C. Code § 23-110 not be used as a substitute for direct relief. Shepard V. United States, 533 A.2d 1278 (D.C. 1987); Head V. United States, 489 A.2d 450 (D.C. 1985).
In Head, the court stated that relief under 23-110 is appropriate only for serious defects in the trial that were not correctable on direct appeal or which appellant was prevented by exceptional circumstances" from raising on direct appeal. id., at 451.

A. Discussion
This now brings the definition of "exceptional circumstances" into question.
The Supreme Court in McClesky V. Zant, 499 U.S. at 494; identified 3 types of exceptional circumstances. We now focus on number (2), constitutionally ineffective assistance of (appellate) counsel.

B. Argument
"An ineffective assistance of counsel excuses a procedural default on where the ineffectiveness of counsel was the cause of the procedural default" Murray V. Carrier, 477 U.S. 478, 488 (1986). "If the procedural default is the result of ineffective assistance of counsel, the Sixth Amendment itself requires that responsibility

for the default be imputed to the state...) see also Washington V. United States, 834 A.2d at 904, n. 10, interpreting Murray V. Carrier as saying that "ineffectiveness of counsel may constitute 'cause' only when that ineffectiveness is the very reason why such claims were not made on direct appeal."

Petitioner argues that he in no way slept on his rights and should not be barred from raising his constitutional claims. Petitioner began his attemp to withdraw the plea roughly 7 days after its acceptance when he wrote the judge expressing his wishes. see (letter to Judge Lynn Leibovitz) App. C. In his letter he expressed how his trial counsel talked him out of moving forward to trial, and deceived him into accepting a plea he never should have accepted.

The trial court conducted a motion hearing (Rule 32(e)) on August 1, 2014 in which petitioner was denied his constitutional right to withdraw the unconstitutional plea. During direct and cross examination of trial counsel at this hearing these precise iterations in support of petitioners claims were revealed and made part of the record. Petitioner then moved to appeal the trial courts decision.

Petitioner was appointed counsel for the sole purpose of direct appeal. During preparation for petitioners direct appeal, petitioner instructed appellate counsel to order these specific transcripts (Aug. 1, 2014, Nov. 12 and 15, 2013, and March 28, 2014) in which he did (all but 3.28.14), and explained to appellate counsel through phone

most important to his appeal. see (letter to Michael L. Spekter) App. D. Petitioner was again denied his desired relief, and now suffers actually and substantially due to the constitutionally ineffectiveness of his appellate counsel, from counsel's failure to locate and present this specific testimony and evidence to the court of appeals when these precise iterations of arguments and evidence was readily available and in appellate counsels possession, that would have supported and solidified petitioners claims of his trial counsels ineffectiveness.

I. Standard of Review and Applicable Legal Principles

A. Ineffective Assistance of Appellate Counsel

In order for petitioners claims of ineffective assistance of appellate counsel to succeed, petitioner must demonstrate that the "performance of counsel fell below an objective standard of reasonableness" and that petitioner suffered "prejudice, i.e., it must be established that there is a reasonable probability that but for counsels unprofessional errors, the results of the proceedings would have been different." Griffen V. United States, 598 A.2d at 1176

B. Correcting the Record

Though appellate counsel, in his opening brief for petitioners direct appeal attempted to introduce his statement of fact of the case, appellate counsel misinterpreted some very important testimony and facts that are

relevant to petitioners claims. Two of which petitioner will now correct.

In appellate counsels statement of facts counsel stated on page 12 that "appellant was not provided with the complaining witness birth certificate until the day of the trial (citing Tr. 8-1-14 p. 71) App. A. Then again on page 31 stating "appellant wasn't provided the birth certificate until the eve of trial" (citing Tr. 8-1-14 p. 39-43) App. A., also see (Michael L. Spekter - Opening Brief) App. D.

Clearly, as seen on page 71, and pages 39-43 from the Aug. 1st transcripts, petitioner testified to no such thing.

In fact, in petitioners first letter to appellate counsel petitioner specifically explained that he never seen or received a copy of a birth certificate from his trial counsel, but only received a copy from Mr. Archie Nicholes, the counsel appointed to petitioner for the Aug. 1st motion hearing. An issue that we will discuss in this motion.

Another misinterpretation by appellate counsel was counsels loose use of the term "fake I.D.".

For the record, the government never proved that the I.D. that was used by the supposed complainant was a fake, and the fact that trial counsel never brought this issue up in pre-trial, was as if to accept the prosecutions theory as fact.

Furthermore, the government never provided solid evidence that this supposed complainant was in fact K.B., and again, trial counsel never independently investicated who this supposed

complainant was either.
Though trial counsel did testify that his investigator in Seattle was unable to locate a birth certificate on a female named K.B. from Seattle, Washington. This actually in support of petitioners claims. (Tr. 8·1·14 p. 103 at 20-22) App A.
Moreover, appellate counsels loose use of the term "fake I.D." was used by appellate counsel as if petitioner imputed to counsel that the supposed complainant had a fake I.D. This was not the case. What was clearly explained in petitioners letter to appellate counsel was that petitioner instructed his trial counsel to investigate and possibly show that the supposed complainant was in fact Ericka Renee Williams (the name on the I.D. card with the supposed complainants face), only because the government never disclosed solid evidence proving that she was in fact K.B. Which we will also adress in this motion. See letter to Michael L. Spekter) App. D., also see (Tr. 8·1·14 p.41 at 5-8) App. A.

1. Deficient Performance (Cause)
Counsel on appeal raised 4 issues: (1) that petitioner was dissatisfied with counsels sudden change of demeanor about moving forward to trial, (2) that petitioner didn't have sex with the supposed complainant; (3) trial counsels lack of preparation, and lastly, (4) ex-parte conversations between the prosecutor and the judge (Judge Johnson).
The first three arguments were borderline frivolous, especially with counsel offering no type

of evidentiary support that held merit. Appellate counsel seems to have only repeated claims verbatim from the Aug. 1st hearing transcripts. And the last argument was completely frivolous, having no relation to petitioners wishes to withdraw the plea.

Moreover, all the arguments made, but the last, were already argued on Aug. 1st, and subsequently denied by the trial court, and them being again introduced, verbatim, with no new findings, were bound to fail on direct appeal.

But let us first bring to light issues that appellate counsel ignored and didn't attemp to raise on appeal.

In appellate counsels opening brief on page 19 in his argument counsel briefly mentioned that it was understood that the appellant is not claiming a defect in the Rule 11 proceedings. Though petitioner, in his Aug. 1st testimony never verbally stated that there was no defect in the Rule 11 proceedings, he acredits his not claiming a defect in the proceedings (verbally) to his ignorance to law. But clearly the majority of petitioners testimony from Aug. 1st expresses that there was in fact a valid claim of a defect in the Rule 11 proceedings that needed to be addressed on appeal. Appellate counsel overlooked testimony from petitioner (direct and cross examination) when petitioner stated 23 different times how he was mentally not present and in a daze, and confused after his trial counsels sudden change of direction

about moving forward to trial. Petitioner clearly testified to being mentally and emotionally forced by trial counsel to accept the plea. (Tr. 8·1·14.p.18 at 10-17; Id. p.19 at 1-10; Id. p.54 at 9-14; Id. p.55 at 15-17; Id. p.56 at 20-25; Id. p.73 at 1-17) App. A.

Appellate counsel overlooked testimony, and overlooked petitioners initial letter to the judge, when petitioner stated he answered the judge questions according to what he was instructed, not the truth. (Tr. Id. p.21 at 17 - p.22 ln. 15) App. A. also see (Initial letter to Judge Lynn Leibovitz) App. C.

Appellate counsel overlooked the trial judge, in her decision to not allow petitioner to withdraw the plea stating that counsel did advise petitioner on what questions would be asked in the Rule 11 proceedings, in support of petitioners claims that he answered according to what he was instructed, not the truth. (Tr. Id. p. 149 at 25 - p.150 ln.2) App. A.

Furthermore, appellate counsel overlooked the judge, in her decision, specifically state that petitioner made efforts to convince her during the Rule 11 proceedings. (Tr. Id. p. 150 at 15-18) App. A. This being in complete support of petitioners claims that he answered the questions asked by the judge according to what he was instructed by counsel so the judge would accept the plea, and not reject the plea. (Tr. Id. p.22 at 1-15) App. A.

These overlooked testimonies are direct claims of defects in the Rule 11 proceedings. Appellate counsel completely failed on his duties to his client outlined in Doe. to "research and

develop points thus uncovered, by what is reasonably noticeable from the trial courts record." Id., 583 A.2d 670, 674-75 (DC. 1990)

This Rule 11 is an issue that definitely needed to be fully developed. Instead, appellate counsel simply stated that it was understood that appellant is not claiming a defect in the Rule 11 proceedings. see (Opening Brief) App. D.

Another very important argument that appellate counsel ignored was petitioners concerns about trial counsels failure to challenge the indictment on the grounds of the competency of the grand jury. This issue was also explained to appellate counsel in petitioners first letter to counsel. see (letter to M. Spekter p. 8-9) App. D In his letter petitioner explains that due to the fact the government never proved who the supposed complainant was to the defense, then there was no way the government could have produced identification to the grand jury. In turn, the grand jury couldn't have been competent if no form of identification was provided to obtain an indictment for a 15 count indictment of charges pertaining to a minor.

Petitioner explained to appellate counsel that he explained to trial counsel that anybody could have testified at that grand jury hearing, and trial counsels response would always be that those were issues that had to be raised at trial.

Appellate counsel ignored petitioner in his letter explaining that no type of identification was available when the grand jury indicted because

if it was, it should have been disclosed to the defense in discovery, but it wasn't. No birth certificate, no social security card, no facesheet from the supposed complainant being arrested (because it was claimed by the government that she had a criminal history). Nothing was entered into the record or disclosed to the defense at the time of the indictment to prove who this person was. see (letter to M. Spekter) App. D.

Appellate counsel also ignored petitioner explaining in his letter that he (petitioner) then received a copy of a birth certificate (marked void) for a 15 year old female named K.B., received from Mr. Archie Nicholes, the counsel appointed to petitioner for the Aug. 1st motion hearing (mentioned in petitioners Correcting the Record). App. E

Petitioner explained, in his letter to appellate counsel, that it was impossible for this birth certificate to be present or available at the grand jury hearing because the birth certificate has an issue date of March 21, 2014 on the birth certificate, and petitioner was indicted almost a year prior in May 2013. So how could this birth certificate have been present at this grand jury hearing?

Also note that the copy of the birth certificate, that was finally provided by Mr. Archie Nicholes, has the word "void" throughout the entire background of the birth certificate. Black's Law Dictionary (Fifth Pocket Edition) defines void as - of no legal effect; and Webster Collegiate Dictionary (Eleventh Edition) defines void as -

useless.

Again, appellate counsel failed on his duties in representing his client outlined in Doe when counsel failed to research and develop points thus uncovered of possible ineffective assistance of counsel claims... triggered by... what appellant tell appellate counsel. id., 583 A.2d 670, 674-75 (D.C. 1990)

Furthermore, this very significant and important argument of identification, grand jury, and indictment would have revealed that trial counsel never received a copy of an authentic birth certificate of the supposed complainant, let alone received a copy of a birth certificate at all, but if so, it was a void (useless) copy. (Tr. 8.1.14 p. 71 at 10-13; Id. p. 116 at 7-10) App. A.

This revelation and development would have then uncovered that, according to trial counsel, his investigator in Seattle and Olympia was unable to obtain a birth certificate for a 15 year old female named K. B. (Tr. Id. p. 103 at 20-22) App. A. This being in support of petitioners investigation directives to trial counsel investigating who is E. R. W. (the name on the I.D. card with the supposed complainants face), versus who is K.B. (the name on the useless birth certificate). (Tr. Id. p. 41 at 5-8) App A., also see (E. R. W. I. D. card, K. B. birth certificate) App. E.

Instead, all this factual information and supporting testimony of trial counsels ineffectiveness was ignored by appellate counsel when petitioner specifically explained these issues to appellate counsel in his letters, phone conversations, and though they were reasonably

noticeable by the trial courts record. see (letter to M. Spekter) App. D.

Now the issues that appellate counsel did attemp to argue on appeal.

With respect to the first issue that was raised: Petitioner being dissatisfied with counsels sudden change of demeanor.

Appellate counsel posed no inquiry into what prompted counsel to suddenly change his course of direction about moving forward to trial. Or why would an attorney advise his client to plead guilty when his client has always maintained his innocence, and when counsel knew he wanted to go to trial. (Tr. Id. p. 113 at 11-13; Id. p. 109 at 10) App. A. And testimony that shows petitioner never entertained a conversation about a plea through the whole pre-trial proceedings. (Tr. Id. p. 97 at 1 - p. 101 ln. 18) App. A. Also testimony that petitioner had on his suit ready to move forward to trial. (Tr. Id. p. 113 at 3-5) App A.

Appellate counsel also overlooked or ignored concrete testimony that petitioner "repeatedly" rejected counsel (false) representations that he should accept the plea. (Tr. Id. p. 94 at 11-12) App A. Petitioner notes that, in appellate counsel first not locating this testimony, being reasonably noticeable from the trial courts record, it made it impossible for appellate counsel to compare the testimony of trial counsel and show that trial counsel purposefully diverted petitioner from moving forward to trial. (Tr. Id. p. 20 at 8-14) App A

While in DeCoster it states that a claim of ineffective assistance might be made out if

the wishes of the defendant were clearly diverted by erroneous advice, and he was substantially prejudiced thereby." id., 624 F.2d at 220-21. Also note that 85% of the testimony comes directly from trial counsel himself, making said testimony even more convincing and supportive of petitioners claims, thus, overlooked or ignored.

The second issue raised: Petitioners contentions that he never had sex with the supposed complainant.

Again, appellate counsel offered no type of explanation or evidentiary support that held merit to petitioners claims. When in fact convincing testimony and evidence does exist and was readily available to appellate counsel. Testimony that revealed trial counsels true position concerning petitioner, and his representation of petitioner.

Again, appellate counsel overlooked or ignored trial counsels testimony from Aug. 1st, testifying that petitioner told him consistently that he never had sex with the supposed complainant, but that counsel believed petitioner was lying because petitioner allegedly "had a twitchness in his eyes, and a smirk on his face." (Tr. Id. p. 114 at 14-18) App. A. Revealing to appellate counsel the real reason why trial counsel felt it was no need to make those necessary independent investigations throughout the history of the case.

Testimony that if uncovered should have prompted appellate counsel to investigate further and uncover the fact that trial counsel thought petitioner was guilty. (Tr. Id. p. 114 at 14-18; Id. p. 117 at 1-2) App. A. In turn opening more

avenues of investigation that would have led to more factual testimony and evidence in support of petitioners claims that counsels advice was purposefully erroneous and that the plea he accepted wasn't knowingly, voluntary, or intelligently made.

The third issue raised on appeal: Trial counsels lack of preparation.

This issue of preparation and investigation is the most important argument that holds merit in petitioners appeal, that appellate counsel overlooked.

The first argument sets the foundation for all other supporting arguments and evidence, and the second argument further elaborate on counsels position in his investigations and representation of his client.

(1) Trial counsels lack of making that necessary independent investigation into the supposed complainant, most importantly the supposed complainant presence, after being specifically instructed to do so "repeatedly" by petitioner.

Again, this testimony and evidentiary support that solidifies petitioners claims does exist and was readily available to appellate counsel. Revealed on Aug. 1st when trial counsel admitted to erroneously advising petitioner to accept the plea without reasonable independent investigations, proving that the plea petitioner accepted was neither knowingly, voluntarily, nor intelligently made, and therefore unconstitutional. (Tr. Id. p. 116 at 7-18, Id. p. 94 at 11-12) App A.

Petitioner, again, notes that appellate counsels failure to locate this extraordinarily important

testimony and evidence, when it was reasonably noticeable from the Aug. 1st transcripts, made it impossible for appellate counsel to compare trial counsels testimony on page 116 with his testimony on page 94, which would have brought to light the conversation between petitioner and counsel. (Tr. Id. p. 116 at 7-18; Id. p. 94 at 11-12; Id. p. 18 at 8-p. 19 Ln. 13; Id. p 54 at 9-14; p 55 at 15-17; p. 56 at 17-25; Id. p. 73 at 1-17) App. A., also see (Sworn Affidavit Jason C. Whren) App C.

This in turn should have revealed that according to the Aug. 1st transcripts, trial counsel never seen the two most important pieces of evidence that trial counsel claimed was the reason he advised petitioner to plea. The birth certificate, and most importantly the supposed complainant. (Tr. Id. p 71 at 10-13; Id. p. 116 at 7-18) App. A. Adding that petitioner "repeatedly" instructed trial counsel to go and independently investigate the supposed complainant, appellate counsel overlooked or ignored evidence and testimony very significant to appellants claims.

(2) Now the second overlooked or ignored issue by appellate counsel pertaining to preparation and investigation.

The specific item of investigation was a 6 second video of a hand holding petitioners penis, stated by trial counsel as being the governments strongest evidence against petitioner. In petitioners letter to appellate counsel petitioner how trial counsel never independently investigated the video or even contested the governments theory that it was the supposed complainants hand in the video. Petitioner

explained to appellate counsel that the hand in the video was not the supposed complainants hand. Petitioner explained that he told trial counsel how the video got on the supposed complainants phone, and at the time when petitioner and the supposed complainant were exchanging these explicit videos and pictures petitioner was led to believe the supposed complainant was 23 year old E.R.W. before she arrived in D.C. see (letter to M. Spekter p. 9) App D.

In the video you could clearly see petitioner, but you cant see the face of who's hand it is thats in the video. Appellate counsel overlooking or ignoring this issue, after this being specifically explained in petitioners letter, was another missed opportunity to argue how trial counsels not challenging the accuracy and authenticity of the hand in the video to what the government purported the video to be, that trial counsel seems to have made a habit of taking the prosecutors theories of the case as fact. More so, taking the prosecutors theory of the video as fact, and again, never made these necessary independent investigations after being told by his client consistently that the hand did not belong to the supposed complainant.

Appellate counsel also missed another chance to expose trial counsel on another weak position that evidence was consistent with guilt without first having made any attemp to investigate whether a case could be made that the evidence was consistent with innocence, and how this plainly shows the lack of effective assistance guaranteed by the Sixth Amendment

Appellate counsel missed trial counsels position of how he failed to present any explanation for the video other than petitioners guilt. In turn, revealing the bogus testimony by trial counsel as to his trial strategy in this case.

Trial counsel testified that he would challenge the credibility of the witness and show that "children dont always tell the truth." (Tr. Id. p.87 at 24-p.88 ln.2) App A.

First, petitioner poses the question of, what was your trial strategy before March 21, 2014? Because clearly this is the date that the useless /void birth certificate was issued. see (Birth C.) App. E.

However, counsels supposed trial strategy and his actions pertaining to investigation arent consistent. Appellate counsel missed another opportunity to expose trial counsel on his supposed theory. Because if trial counsel would have simply had the hand in the video compared to the hand of the supposed complainant, the comparison would have shown in fact that the hand did not belong to the supposed complainant. In turn, this exculpatory evidence would have solidified trial counsels supposed theory of his defensive strategy of "children not always telling the truth," but he didn't.

It would have been obvious to any competent defense attorney to independently investigate evidence when their client tells them that the evidence is flawed and has the potential vulnerability that could be exploited and found to refute the governments theory as to the

facts of the case.

Appellate counsel overlooked or ignored a deficient investigation on trial counsel and how it cannot be excused on the grounds that a competent attorney, aware of the evidence that an adequate investigation would uncover, could have made an informed judgment to pursue an alternative strategy and not use that evidence to his advance.

Instead, appellate counsel ignored the issues that petitioner explained in his letter, and chose to focus on just naming the same assertions that were already asserted at the Aug. 1st motion hearing verbatim, with no valid arguments, and also no evidentiary support that held merit. Its almost as if appellate counsel never read petitioners letters, or even the Aug. 1st transcripts.

The fourth and last issue raised on appeal: Ex-parte conversations between the judge and the prosecutor (un-sealed).

Here, appellate counsel argues that if those ex-parte conversations were known to the defense, counsel could have objected and possibly asked for more Brady material. This completely frivolous argument is the type that even if true wouldn't warrant petitioners relief.

Furthermore, appellate counsel offered no kind of explanation as to why Brady material had any relevance to petitioner and his wishes to withdraw the plea.

Though appellate counsel did bring to light, from the un-sealed ex-parte transcripts, the prosecutor lying in open court and giving false

representations to the judge concerning the availability of the supposed complainant on past trial dates. (Tr. 8·1·14 p. 123 at 24 - p. 124 ln. 14) App A., (Tr. 11·12·13 p.5 at 8-10; Tr. 11·15·13 p.3 at 12) App. B., also see (letter to Mr Spekter p. 11) App D., But appellate counsel overlooked how these false representations tainted the trial courts decision not to allow petitioner to withdraw the plea. (Tr. 8·1·14 p.153 at 21 - p. 154 ln.5) App A.

More troubling, appellate counsel overlooked that by comparing the un-sealed ex-parte transcripts with the Aug. 1st transcripts we find out that the government was never able to serve the supposed complainant the subpoena demanding she be in D.C. on March 31, 2014. (Tr. 8·1·14 p. 120 at 8 - p. 125 ln. 16) App. A., (Tr. 11·12·13 p.5 at 8 - p. 6 ln. 4; Tr. 11·15·13 p.3 at 12-20) App. B.

Also, a very important argument that appellate counsel overlooked, that is also very supportive of petitioners claims that his trial counsel purposefully deceived him into accepting the plea is testimony of counsels unprofessional conduct when trial counsel bragged of how he wanted petitioner in an empty cell in the cell block for what counsel called strategic reasons". (Tr. 8·1·14 p. 105 at 7-9) App. A.

Again, appellate counsel missed an opportunity to not only expose trial counsel and his deceitful plan, but also missed the opportunity to pose questions of what were these "strategic reasons". And/or what type of strategy is used or needed to relay truthful and reliable information to a client about a plea situation (?).

Simply put appellate counsel argued nothing that

held merit in petitioners appeal. While at the same time ignoring or overlooking all evidence and testimony of importance. Important evidence and testimony that petitioner did tell appellate counsel existed, and that was reasonably noticeable from the trial courts records.

a. Statutory Duties of Appellate Counsel

The Court of Appeals has outlined the scope of appellate counsel's duties in Doe V. United States, 583 A.2d 670, 674-675 (D.C. 1990).

We now focus on number (1) "investigating possible ineffective assistance of counsel claims ... triggered by ... what appellant tell appellate counsel in response to a reasonable thorough inquiry, and by what is reasonably noticeable from the trial court's record," and number (2) "researching and developing points thus uncovered." Id.

Doe firmly establish appellate counsels position in his representation of petitioner as to further argue petitioners claims of his trial counsels ineffectiveness to the Court of Appeals.

This was petitioners chance, through appellate counsel, to show what the Aug. 1st motion hearing had further revealed in support of petitioners claims, from appellate counsel developing points thus uncovered, triggered by what petitioner told appellate counsel, and from what was reasonably noticeable from the trial courts records.

This was not appellate counsels position to restate everything from the Aug. 1st motion hearing

testimony that doesn't exist. see (Correcting the Record) p. 12

In fact, one might ask, that after reading petitioners first letter to appellate counsel, how was it even possible for appellate counsel to overlook all the factual testimony in support of petitioners claims when petitioner basically pointed to said testimony and evidence? see (letter to M. Spekter) App. D.

Its almost as if appellate counsel didn't reasonably inquire thoroughly into the trial courts records what was reasonably noticeable or what was triggered by... what petitioner explained to appellate counsel in his letters.

Or even more troubling, appellate counsel didn't thoroughly read the Aug. 1st transcripts or reasonably inquire into petitioners letter at all. Indeed, appellate counsel had strong reason to thoroughly inquire into petitioners letters and the ordered transcripts and no good reason not to do so. Strickland, 466 U.S. at 690-91.

Strickland specifically states that "the reasonableness of counsels actions may be determined or substantially influenced by the defendants own statements. In particular, what investigations and decisions are reasonable depends critically on such information." id.

Indeed, appellate counsels failure to thoroughly investigate the ordered transcripts and petitioners letters "resulted from inattention, not reasoned strategic judgment." Wiggins V. Smith, 539 U.S. at 526

Appellate counsel committed to the 4 unpersuasive arguments prematurely. without

first thoroughly examining the transcripts he had in his possession, let alone petitioners descriptive letters. Therefore, his frivilous and borderline frivilous arguments was not the kind of reasonable professional judgment that could have supported the curtailment of further examinations and investigations. citing Strickland, 466 U.S. at 690-91.

Furthermore, this is not a case where appellate counsels failures may be excused, because the importance of the information that was not discovered and presented is extraordinarily significant and supportive to petitioners claims that he was denied his Sixth Amendment Constitutional right to the effective assistance of counsel at all relevant times. see Strickland, at 696.

Moreover, the arguments that petitioner did raise remain far more compelling than the points appellate counsel raised on direct appeal. Contentions bound to lose. see Smith V. Robbins, 528 U.S. at 288 "generally only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." id.

2. Prejudice (substantial)

Once "cause" is shown petitioner also shoulders the burden of showing, not merely that the errors created a possibility of prejudice but that they worked to his actual and substantial disadvantage. Shepard V. United States, 533 A.2d 1278, 1282; Griffen V. United States, 598 A.2d 1174, 1174

A. Discussion

Petitioner poses the question, minus appellate counsels unprofessional errors of overlooking or ignoring this extraordinarily important and convincing testimony and evidence, does a reasonable probability exist that the results of the direct appeal would have been different? This, in turn, poses inquiry as to the significance of this overlooked and ignored testimony and evidence that appellate counsel had in his possession.

B. Argument

Here, it is clear, the evidence and testimony petitioner presents in this petition for writ of certiorari is undisputable. These overlooked and ignored iterations of testimony and evidence explain and support the exact claims that were first made by petitioner in his initial letter to the judge roughly 7 days after he accepted the unconstitutional plea. Even excluding petitioners initial letter to the judge (dated 4.7.14, received 4.14.14) App. C., and how petitioners position has never changed since this letter, and how the testimonies that didn't exist from Aug 1st 2014 Rule 32(c) motion hearing, and the Nov. 12th and 15th un-sealed ex-parte transcripts, that were yet to be un-sealed, are all in exact accordance with petitioners claims mentioned in this letter to the judge.

Yet and still, this extraordinarily important testimony and evidence was completely overlooked or ignored see (initial letter to judge [illegible]

Leibovitz) App. C.

These specific iterations of testimony and evidence became readily available Aug. 1st 2014. Petitioner, in his first letter to appellate counsel (dated Feb. 21, 2015) gave appellate counsel specific directory, sharpening counsels necessary focus towards this evidence which uncovers solid testimony in support of petitioners claims. see (letter to M. Spekter) App. D.

In sum, appellate counsel overlooked or ignored 16 very significant and important issues of argument backed by concrete testimony. Evidence that would have almost guaranteed petitioner his desired relief. (1st) Appellate counsel overlooked or ignored the importance of petitioners first letter to appellate counsel, and how it should have posed as a blueprint to all the testimony revealed from the Aug. 1st transcripts, and the Nov. 12th and 15th transcripts. see (letter to M. Spekter) App D. (2) Appellate counsel overlooked testimony by trial counsel that petitioner always maintained his innocence, and (3) that he always wanted to go to trial. (Tr. 8.1.14 p. 113 at 11-13; Id. p. 109 at 10) App. A. (4) Appellate counsel overlooked trial counsels testimony that petitioner always maintained he never had sex with the supposed complainant, but (5) trial counsel thought petitioner was lying, and (6) believed petitioner was guilty. (Tr. Id. p. 114 at 14-18; Id. p. 117 at 1-2) App. A. (7) Appellate counsel overlooked paramount testimony when trial counsel admitted that his advice to

petitioner to accept the plea was erroneous (Tr. Id. p. 116 at 7-18) App. A., and how (8) petitioner "repeatedly" rejected counsels (false) representations and how (9) petitioner "repeatedly" ordered and instructed counsel to go and make that necessary independent investigation into the supposed complainant (Tr. Id. p. 20 at 8-10; Id. p. 56 at 20-25; Id. p. 94 at 11-12) App. A. (10) Also transcripts that were readily available to appellate counsel that support trial counsels need in making that necessary independent investigation into the supposed complainants presence, transcripts appellate counsel felt was not necessary or important and decided not to order, were March 28, 2014 transcripts. Showing trial counsel was aware of the many readiness issues with the government and how the supposed complainant was not cooperating with the government. (Tr. 3-28-14 p. 16 at 9 - p. 17 ln. 5) App. B.

Though appellate counsel did mention the testimony of the prosecutor was false concerning the supposed complainant being present on past trial dates (Tr. 8-1-14 p. 123 at 24 - p. 124 ln. 14) App. A.; "he overlooked the paramount testimony of how these false representations by the prosecutor strongly influenced and tainted the trial courts decision not to allow petitioner to withdraw the plea (Tr. Id. p. 153 at 21 - p. 154 ln. 5) App. A., also (12) how these false representations revealed that the government was never able to serve the supposed complainant the subpoena demanding she be in D.C. for the March 21, 2014 trial date. (Tr. Id. p. 120 at 8 - p.

125 ln. 16) App. A., (Tr. 11.12.13 p.5 at 8 - p.6 ln.4; Tr. 11.15.13 p.3 at 12-20) App. B. (13) Appellate counsel overlooked testimony that shows that trial counsel never actually seen a certified copy of the supposed complainants birth certificate, but that trial counsel, again, accepted the prosecutors word. (Tr. 8.1.14 p.70 - p.71 ln.16) App. A. (14) Appellate counsel overlooked testimony that trial counsels investigator in Seattle and Olympia was unsuccessful in obtaining a birth certificate of this supposed complainant. (Tr. Id. p.103 at 14-23) App. A. (15) Appellate counsel ignored a very important issue and argument of investigation preserved by counsel who represented petitioner on Aug. 1st, also an issue that was specifically explained to appellate counsel in petitioner's letter to appellate counsel, trial counsels failure to independently investigate the 6 second video that he, himself (trial counsel) stated as being the governments strongest evidence against petitioner. (Tr. Id. p. 117 at 5 - p. 118 ln. 4) App. A., also see (letter to M. Spekter p.9) App. D.

Not only did appellate counsel miss an opportunity to further argue his attempted argument of trial counsels lack of preparation, but also how this complete failure to independently investigate this exculpatory evidence, most likely created a cumulative effect on petitioner, and assisted trial counsel in deceiving petitioner into accepting a plea he never should have accepted.

Lastly, the (16th) overlooked or ignored evidence and testimony was very important and supportive of petitioners claims that trial counsel

purposefully diverted petitioner from going to trial and deceived him into accepting the plea. Appellate counsel overlooked testimony when trial counsel bragged how he wanted petitioner in an empty cell in the cell block for what counsel called "strategic reasons." (Tr. Id. p.105 at 7-9) App. A. Appellate counsel missed another opportunity to not only expose trial counsel and his deceitful plan and conduct, but also missed the opportunity to pose questions as to what these strategic reasons were, and/or what strategy is needed to relay truthful and reliable information to a client.

Instead, appellate counsel chose to focus on vague and conclusory statements, palpably incredible claims, and fact that even though were true, wouldn't have warranted petitioners relief.

The facts alone that this testimony is so overwhelmingly supportive of petitioners claims and it coming directly from the record, also 80% of the testimony coming directly from trial counsel himself, clearly shows that petitioner has been greatly prejudiced by appellate counsels errors.

Petitioner demonstrates that if these specific iterations of argument were presented by appellate counsel on direct appeal that a reasonable probability exist that these claims would have at least warranted an evidentiary hearing, hence, there is a reasonable probability exist that the results of the proceedings would have been different.

Appellate counsels failure to discover this

extraordinarily important testimony and evidence and present this evidence in petitioners brief on direct appeal shows the substantial prejudice petitioner suffered from not having his issues heard from his 23-110 motion by the Court of Appeals because of this procedural bar, and also supports the actual prejudice petitioner now suffers from not having this case reversed and remanded.

Though, to firmly demonstrate the actual prejudice petitioner now suffers, petitioner must re-visit facts introduced in petitioners D.C. Code § 23-110 motion.

VI. Summary

In applying the proper legal principles, petitioner, Jason C. Whren has demonstrated the exceptional circumstance", as established in McClesky V. Zant, 499 U.S. at 494, of ineffective assistance of (appellate) counsel, as established in Murray V. Carrier, 474 U.S. at 488, that excuses the procedural default of Whren being prevented from raising his underlying issues at the proper time, on direct appeal.

Mr. Whren also demonstrates that relief under D.C. Code § 23-110 is appropriate when encountered with this specific hurdle of an "exceptional circumstance," established in Head V. United States, 489 A.2d 450; and Shepard V. United States, 533 A.2d 1218.

Moreover, Whren demonstrates that appellate counsel was deficient, and that his deficiencies prejudiced Mr. Whren actually and substantially

as established in Griffen V. United States, 598 A.2d at 1176.

Likewise, Mr. Whren demonstrates in this petition for writ of certiorari that the Court of Appeals prior decision was wrong. Through no fault of the court, but rather, due to appellate counsels inadequacy in not thoroughly reviewing, and examining transcripts appellate counsel had in his possession, and his inadequacy in raising any important issues that held merit. When in fact testimony and evidence did exist and was readily available that supports, and that would have solidified petitioners claims that he was denied his Sixth Amendment right to the effective assistance of counsel at all relevant times.

VII. Standard of Review and Applicable Legal Principles

A. D.C. Code § 23-110 (c)

Unless the notions and files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice of, grant a prompt hearing thereon, determine the issues, and make findings of facts and conclusion of law with respect thereto.

Further, it states that, "there is a presumption that a trial court presented with a 23-110 motion should conduct a hearing." Gaston V. United States, 535 A.2d 893 (D.C. 1988).

In Pettaway, it was concluded that in order to uphold a denial of a 23-110 motion without a hearing, the reviewing court must be able to state that under no circumstances could the

petitioner establish facts warranting relief. Id., 390 A.2d at 983-84. (quoting Fontaine V. United States, 411 U.S. 213, 215).

Three categories of such claims have been recognized that do not merit hearings: (1) vague and conclusory allegations, (2) palpably incredible claims, and (3) assertions that would not warrant relief even if true.

B. Argument

Petitioners claims that trial counsel erroneously advised him to accept the plea when it wasn't in his best interest to do so, when counsel intentionally failed to seek the lawful objectives of his client. When counsel failed to make an independent investigation into the supposed complainant, most importantly the presence of the supposed complainant when being ordered and instructed to do so "repeatedly" by his client, is neither vague or conclusory, nor palpably incredible being so strongly supported by the record. Furthermore, petitioner demonstates with precision in this motion that the proven facts warrant his relief.

VIII. Standard of Review and Applicable Legal Principles

A. Ineffective Assistance of Counsel

The Sixth Amendment provides that "during plea negotiations defendants are entitled to the effective assistance of competent counsel." Lafler V. Cooper, 566 U.S. at 162; Missouri V. Frye, 566 U.S. at 138 "It is well established that

validity of a guilty plea depends on whether the plea represents a voluntary and intelligent choice, and that the voluntariness depends on whether counsels advice satisfies the Sixth Amendment guarantee of effective assistance." Hill V. Lockhart, 474 U.S. at 56, concluding that "a plea is not voluntary and/or intelligent, and therefore unconstitutional, if the advice given by defense counsel on which the defendant relied in entering the plea falls below the level of reasonable competence required by the Sixth Amendment." id. (quoting Tollett. V. Henderson, 411 U.S. at 267)

As explained in Tollett V. Henderson, a defendant who pleads guilty upon the advice of counsel "may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases". id., at 267. (quoting Hill V. Lockhart, 474 U.S. at 56)

This Court has developed a two-part test to determine whether the advice of counsel on which the defendant relied in entering his plea sinks to the level of ineffective assistance of counsel under the Sixth Amendment.

First, "the defendant must show that counsels errors in his representation fell below an objective standard of reasonableness." Hill V. Lockhart, 474 U.S at 57 (quoting Strickland V. Washington, 466 U.S. at 687-88)

Second, "the defendant must show that there is a reasonable probability that, but for counsels errors, he would not have pleaded guilty and

would have insisted on going to trial." Hill V. Lockhart, 474 U.S. at 59. The Court defines a reasonable probability as "a probability sufficient to undermined confidence in the outcome." Strickland V. Washington, 466 U.S. at 694.

B. Argument

Note: This is a case where an attorney purposefully was misleading to his client. Diverting his client from going to trial, and deceiving him to accept a plea he never should have accepted, because counsel believed his client was guilty. (Tr. 8.1.14 p. 114 at 14-17; Id. p. 117 at 1-2) App. A.

Under the Sixth Amendment guarantee it is unreasonable for counsel to make an uninformed decision without justification for doing so. This Court in Strickland said that "strategic choices made after less than a complete investigation are reasonable precisely to the extent that proffessional judgment support limitations on investigations". Strickland, at 691.

Strickland then states that "a particular decision not to investigate must be directly assessed for reasonableness in all circumstances." id.

C. Discussion

Petitioner opens the discussion as to, did counsel erroneously advise petitioner to plead guilty in the light of all the circumstances of this particular case?

1. Deficient Performance

Petitioner points to the circumstances of this particular case.

The underlying circumstances of this case is simple. Counsel, at the time, was well aware that the supposed complainant being present for trial was the most important issue throughout the history of this case. In fact, counsel was petitioners counsel on the two trial dates where the supposed complainant was in fact not present. (Tr. 11.12.13; 11.15.13) App. B. Counsel was also aware that this supposed complainant had a full history of not cooperating with the government throughout the case. (Tr. 3.28.14 p.16 at 9 - p.17 ln.3) App. B.

The Court: Both Mr. O'Banion and the defendant understood that the big ticket was whether or not the complainant was going to show up for trial. (Tr. 8.1.14 p.144 at 3-5) App. A.

Critically for counsel, and also contrary to his advice to petitioner to plead guilty, counsel testified that petitioner (1) had always maintained his innocence (Tr. Id. p.113 at 11-13) App. A., and that he (2) always wanted to go to trial. (Tr. Id. p.109 at 10) App. A. Similarly, counsel also testified that throughout the 16 months of pre-trial petitioner (3) never entertained a conversation about a plea (Tr. Id. p.97 at 1 - p.101 ln.18) App A., and (5) in fact, did have on his suit ready to move forward to trial. (Tr. Id. p.113 at 3-5) App A. Though, in stark contrast of counsels knowledge that the supposed complainants presence was

the "big ticket," as states by Judge Leibovitz, also adding counsels knowledge that petitioner always wanted to go to trial, and that petitioner never even considered or talked to counsel about pleading guilty. Also petitioner maintaining his innocence, and having on his suit ready to move forward to trial, Counsel still erroneously advised petitioner to plead guilty without first making that necessary independent investigation into the supposed complainant, most importantly, the supposed complainants presence, after being ordered and instructed to do so by petitioner. Making the plea neither knowingly, voluntarily, nor intelligently made, and therefore, unconstitutional.

August 1, 2014 Rule 32(c) motion hearing

Q. When you learned that she was here, what, if anything did you tell Mr. Whren?

A. I said -- I just said, she's here. The government announced ready for trial.

Q. You hadn't personally seen her here yourself when you told Mr. Whren that?

A. No. I hadn't personally seen her. Rarely does a defense attorney see a witness. I relied on the governments integrity saying -- I dont think they would announce that she was here if she were not here. I didn't say, well, let me look at her. That would be inappropriate.
(Tr. 8.1.14 D.11 at 7-12) top 4

Petitioner contends in his sworn affidavit, and the record is in concurrence as to the conversation between he and counsel in the cell block where petitioner specifically instructed counsel to go and independently investigate the supposed complainant. see (Sworn Affidavit Jason C. Whren) App. C.

Strikingly, counsels own testimony is in full support of petitioners contentions that he specifically instructed counsel to go and make that necessary independent investigation into the supposed complainant.

Mr. O'Banion: When I found out she was here Mr. Whren had told me repeatedly she wasn't going to show up. (Tr. Id. p. 94 at 11-12) App. A.

Petitioner also contends in his sworn affidavit and in his initial letter to the judge, and the record is also in concurrence, that after petitioner being successfully manipulated and strategically deceived by counsel about his chances at trial (Tr. Id. p. 18 at 8 - p. 21 ln. 4; Id. p. 42 at 22 - p. 43 ln. 23; Id. p. 54 at 8-17; Id. p. 56 at 20-25; Id. p. 73 at 1-17) App. A., also see (Initial letter to Judge Lynn Leibovitz) App. C., petitioner went for his last line of defense, the "big ticket," and specifically instructed counsel "repeatedly," as stated by counsel, to go and independently investigate the supposed complainant.

Counsel then left out the cell block, giving the impression that he had done what he was just ordered and instructed to do, came back in the

cell block and blatantly lied to petitioner regarding the fact of the supposed complainants presence. (Tr. Id. p. 94 at 2-20) App. A., also see (Sworn Affidavit Jason C. Whren at 8-9) App. C.

The record also reflect that counsel was aware that petitioners family opinion was most important to petitioner. (Tr. Id. p. 20 at 11-13; Id. p. 136 at 7-9; Id. p. 149 at 12-14) App. A. The fact that petitioner and his brother were made to be co-defendants, counsel knew that this extremely sensitive situation could be exploited and used as ammunition to not only further deceive petitioner into accepting the plea, but to also deceive petitioners mother concerning the facts of the case. (Tr. Id. p 94 at 17-20) App A.

Petitioners mother submitted a sworn affidavit and explained how counsel misled her. She expresses, "We were prepared to go to trial up until 10 minutes before trial. Mr. O'Banion scared me and upset me by telling me that my son could get life for crimes he didn't commit." see (Sworn Affidavit Jacqueline D. Whren) App C.

This advice was not the "result of a professional decision and informed legal choice made after an investigation of the alternative courses of action open to the defendant." See Strickland, 466 U.S. at 680

This was the result of "counsel abandoning an investigation at an unreasonable juncture," which "makes a reasonable professional judgment impossible." Wiggins V. Smith, 539 U.S. at 527-

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Likewise, this is a case in which, objectively speaking, trial counsel had strong reason to investigate the supposed complainant, most importantly the supposed complainants presence, and no good reason not to do so.

According to Strickland, a defense attorney who "breaches the duty of loyalty to his client, perhaps the most basic of counsels duties," could rise to the level of being unreasonable. Id, 466 U.S. at 692

a. Counsels Reasonableness

The proper measure of an attorney's performance is "reasonableness under prevailing professional norms." Strickland, at 688.

Prevailing norms of practice, such as those reflected in the A.B.A. Standards may inform our determination of what is reasonable, but they are only guides. id. "The purpose is simply to ensure defendants receive a fair trial." Id., at 689.

Specifically, counsel must "inform himself... fully on the facts and the law, thoroughly advise the client concerning all aspects of the case," and "keep the client informed of... developments in the case." A.B.A. Standards 4-3.8, 4-5.1(a); see Strickland, 466 U.S. at 688.

Though, in stark contrast to the standards the A.B.A. has set forth as guides to what is reasonable representation, counsel did the total opposite.

For instance, by counsel not independently investigating the supposed complainant, most importantly the supposed complainants presence, as

instructed by petitioner, and before erroneously advising petitioner to accept the plea, counsel didn't inform himself fully on the facts of the case to put himself in the proper position to even make a reasonable decision to advise petitioner to plead guilty. see Strickland, at 691. Instead, in the light of the circumstances of this particular case, counsel testified that he "relied on the governments integrity" because he didn't think the government would "announce that she was here if she were not here." (Tr. 8·1·14 p. 116 at 7-18) App. A. Not only disregarding his clients instructions, but also disregarding his "duty to make reasonable investigations." Id., at 691.

Furthermore, counsel couldn't have thoroughly advised his client concerning all aspects of the case, because counsel never made that necessary independent investigation to inform himself fully on the facts of the case. Therefore, it was impossible for counsel to give petitioner reliable, let alone reasonable advice "concerning all aspects of the case."

Though counsel did give more than enough (un-reliable) advice concerning the penalty aspect of the case. (Tr. Id. p. 18 at 8-17; Id. p. 19 at 1-13; Id. p. 54 at 8-14; Id. p. 55 at 15-17; Id. p. 56 at 20-25; Id. p. 73 at 1-17) App. A., also see (Sworn Affidavit Jason C. Whren), (Sworn Affidavit Jacqueline D. Whren), and (Initial letter to Judge Lynn Leibovitz) App. C.

Likewise, counsel didn't keep his client informed of any development in the case, again, because counsel didn't fully inform himself of the facts of this case, and/or the law.

In fact, if counsel had fully informed himself of the fact and the law, already recognizing that the supposed complainant was critical to the governments case (Tr. 11-12-13 p.5 at 25-p.6 ln.2) App B., knowing that he would need to independently investigate the supposed complainant to access the strengths and weaknesses of the supposed complainants testimony, and most importantly the governments case, and in order to administer a reasonable defense for his client, an independent investigation would seem to be counsels only option according to the A.B.A. Standards, and according to Strickland.

Instead, counsel testified that him independently investigating the supposed complainant would have been inappropriate. (Tr. 8-1-14 p.116 at 18) App.A

This can not be classified as a reasonable decision that makes a particular investigation unnecessary. see Strickland, at 691.

Furthermore, counsels fear that this legal independent investigation would have been inappropriate, counsel could have -- indeed should have --; under the circumstances of this particular case, notified the court and arranged for the trial courts supervision of his independent investigation into the supposed complainant, if the court shared his concerns.

More troubling is counsels testimony that petitioner told him "repeatedly" that the supposed complainant wasn't going to show up. (Tr. Id. p.94 at 11-12) App. A. This statement imposes that petitioner had to be convinced by counsel to plead guilty and not proceed to trial (Tr. Id. -

18 at 8- p.19 ln.13; Id.p.54 at 9-14; Id.p.55 at 15-17; Id. p.56 at 17-25; Id. p.73 at 1-17) App. A. Here, petitioners testimony implies that only after petitioner first not accepting counsels (false) representations, counsel then had to deceive and manipulate petitioner to plead guilty. See McMann V. Richardson, 397 U.S. at 777-79.

Counsel even bodly testified that he wanted petitioner in an empty cell for what counsel called "strategic reasons," (Tr. Id. p.105 at 7-9) App. A., because counsel didn't want "any other defendant" to confuse petitioner from accepting a plea he never should have accepted.

Strickland states that, "inquiry into counsels conversations with the defendant may be critical to a proper assessment of counsels investigation decisions. id., 466 U.S. at 691.

Further it states, "the reasonableness of counsels actions may be determined or substantially influenced by the defendants own statements or actions. Counsels actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations and decisions are reasonable depends critically on such information. id.

Instead, counsel relied on his oppositions "integrity" over the instructions and directives of his client. see Strickland, at 688

"Clearly, the decision to plead guilty must be made by the defendant. For this court would not let an attorney barfain away his clients rights. It is the defendant who must, with the help of counsel, rationally weight the advantages of going to

trial against the advantages of pleading guilty." Tollett V. Henderson, 411 U.S. at 271. (quoting Brady V. United States, 397 U.S. at 750). Yet nothing like that happened in this case. id. In this particular case, despite the specific circumstances, because counsel himself believed his client was guilty (Tr. Id. p. 114 at 14-17; Id. p. 117 at 1-2) App. A., counsel never made that necessary independent investigation into the supposed complainant that petitioner told him "repeatedly" wasn't going to show up. These types of actions by a defense attorney under these circumstances, let alone any circumstances, are completely unacceptable, and completely unreasonable, and can not be classified as reasonable tactical decisions.

2. Prejudice (actual)

Under the Sixth Amendment guarantee "where an ill-advised client pleads guilty when it wasn't in his best interest to do so," he establishes prejudice by showing that minus counsels deficiencies a reasonable probability exist that the defendant would not have plead guilty and insisted on going to trial. Hill V. Lockhart, 474 U.S. at 59. It states that "all that need be shown is a reasonable probability... sufficient to undermined confidence in the defendants decision to plead guilty." Strickland V. Washington, 466 U.S. at 694

A. Discussion

Petitioner poses the question minus

counsels erroneous advice, does a reasonable probability exist that petitioner would have not plead guilty and insisted on going to trial?

B. Argument

To not leave the answer of this question to unalleged speculation, and to also eliminate the distorted effect of hindsight. petitioner puts the dynamic of this question in a truthful context and state; had counsel advised petitioner to the truth, that counsel (1) never physically seen the supposed complainant present, or that counsel (2) was relying on the governments "integrity" that the supposed complainant was present (Tr. Id. p. 116 at 7-18) App. A, clearly, petitioner would have definitely insisted on going to trial.

Petitioner now states all related circumstances in support of showing the reasonable probability ... sufficient to undermined confidence in petitioner's decision to plead guilty.

(1) Petitioner always wanting to go to trial. (Tr. Id. p. 109 at 10) App. A.

(2) Petitioner always maintaining his innocence. (Tr. Id. p. 113 at 11-13) App. A.

(3) Petitioner never entertaining a conversation about a plea. (Tr. Id. p. 97 at 1- p. 101 Ln. 18) App. A.

(4) Petitioner believing he could win at trial. See (Sworn Affidavit Jason C. Whren) App. C.

(5) Petitioner having on his suit ready for trial. (Tr. Id. p. 113 at 3-10) App. A.

(6) The governments readiness issues throughout the history of the case, of which counsel was aware (Tr. 11-12-13 p. 5 at 16 - p. 6 Ln. 2; Tr. 11-15-13 p. 4 at 10-24;

Tr. 3.28.14 p.16 at 9 - p.17 ln.3) App. B.
(7) The governments case being completely based on false theories and circumstantial evidence, and what counsel called their strongest evidence actually being exculpatory evidence (had counsel independently investigated the video) (Tr. 8.1.14 p.117 at 23 - p.118 ln.3) App. A.

Lastly, and most importantly, petitioner shows, and the record is in concurrence of the most convincing reasonable probability... sufficient to undermined confidence in petitioners decision to plead guilty, when petitioner
(8) "repeatedly" rejected counsels (false) representations, and when
(9) petitioner "repeatedly" ordering and instructing counsel to go and make that necessary independent investigation into the supposed complainant, most importantly the supposed complainants presence. (Tr. Id. p.94 at 11-12) App. A.

Instead, because counsel believed petitioner was guilty, because petitioner allegedly "had a smirk on his face and a twitchiness in his eyes" (Tr. Id. p.114 at 14-18) App. A., counsel abandoned his duty to investigate the circumstances of this particular case at an unreasonable juncture, took up the position of the prosecutor, and deceived his client to accept a plea he never should have accepted.
Indeed, counsels unprofessional actions did seriously interfere with the administration of justice. see D.C. Rules of Professional Conduct, 8.4(d), 1.4(b), 1.3(b)(1), 1.4(a), 1.3(a), and 8.4(c) which specifically states "a lawyer shall not

engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. The term 'dishonesty' includes not only fraudulent, deceitful, or misrepresentative conduct, but also conduct envincing a lack of honesty, probity, or integrity in principle; a lack of fairness and straightforwardness. id.

IX. Expanding the Record

A. Prosecutorial Misconduct

Lastly, and also, to not leave the question of actual prejudice to unalleged speculation, in its determination, petitioner brings to the attention of this Honorable Court, and the record is in full support, that the prosecutor assigned to this case, the same prosecutor who's integrity counsel relied on "saying -- I dont think they would announce she was here if she were not here" (Tr. Id. p. 116 at 14-17) App A., indeed, will testify falsely in open court. False representations concerning this same supposed complainant in the history of this case, and in fact, announce that she was here, when in fact, she was not. (Tr. Id. p. 120 at 8 - p. 125 ln. 16) App. A.

This testimony by the prosecutor is false, and in total contradiction of the un-sealed ex-parte transcripts of private conversations between this same prosecutor and Judge Ramsey Johnson on November 12 and 15, 2013. (Tr. 11.12.13 p.5 at 8 - p 6 ln. 4; Tr. 11.15.13 p.3 at 12-20) App B

Strikingly, after the comparison of the August 1, 2014 Rule 32 (c) transcripts, and the November 12 and 15, 2013 un-sealed ex-parte transcripts, not only

did the prosecutor expose himself giving false representations to the judge about having the supposed complainant present in D.C. in November 2013 (which tainted the judges' decision not to allow petitioner to withdraw the plea on August 1, 2014-(Tr. 8·1·14 p.153 at 21-p.154 ln.5) App. A.), but critically, he also revealed that the government never was able to serve the supposed complainant the subpoena demanding that the supposed complainant be in D.C. for the March 31, 2014 trial date.

Therefore, the prosecutors entire story of what it took to get the supposed complainant to D.C. on November 12 or 15, 2013, and also what it took to get her back to D.C. for the March 31, 2014 trial date was all fabricated lies. This is fact, because both the prosecutors stories was based around the supposed complainant sitting in the witness room on November 12 or 15, 2013, and being served the subpoena for the March 31, 2014 trial date.

The fact is, the supposed complainant was never in the witness room in November 2013. So it is safe to say that the supposed complainant was never served the subpoena.

In turn, if the supposed complainant was never served the subpoena demanding that she be in D.C. for the March 31, 2014 trail date, adding the history of the supposed complainant not cooperating with the government throughout the case, and the strategic bold face lie told by the prosecutor, it is also safe to say that the supposed complainant never showed up and

was present for trial on March 31, 2014. (Tr. 8·1·14 p. 120 at 8 - p. 125 ln. 16) App A., (Tr. 11·12·13 p.5 at 8-24; Tr. 11·15·13 p.3 at 12-20) App B.

Moreover, these un-sealed ex-parte transcripts also reveal that without the supposed complainant the government would not be able to prove their case. (Tr. 11·12·13 at 23 - p.6 ln. 2) App. B.

X. Summary

In applying the proper principles of law, petitioner, Jason C. Whren is entitled to his requested relief. Mr. Whren has shown that his trial counsels performance was constitutionally deficient, and those deficiencies prejudiced Mr. Whren.

A lawyer owes his or her client several duties, and if a lawyer substantially breaches any of those duties, the lawyer may have rendered a constitutionally deficient performance. United States V. Decoster, 487 F.2d at 1203-04 (1973). These duties include the "duty to make reasonable investigations or to make reasonable decisions that makes, particular investigations unnecessary. Strickland V. Washington, 466 U.S. at 688, 691.

Mr. Whren has shown that counsel's "failure to become informed of the facts bearing the plea situation," as established in Ramsey V. United States, 569 A.2d 142, 147 (D.C. 1990) citing Tollett V. Henderson, 411 U.S. 258, 266-67, led

counsel to erroneously advise Whren to accept a plea when it wasn't in his best interest to do so, as established in Hill V. Lockhart, 474 U.S. at 59. Mr. Whren also shows how counsel's erroneous advise did not represent a voluntary and intelligent choice among the alternative courses of action open" to Mr. Whren, also established in Hill V. Lockhart, 474 U.S. at 56, making the plea neither knowingly, voluntarily, nor intelligently made, and therefore unconstitutional.

Moreover, in accessing counsels actions in light of the facts of this particular case, viewed at the time of counsel conduct, as established in Strickland V. Washington, 466 U.S. at 690, it is clear that Mr. Whren demonstrates that minus counsels constitutionally deficient performance there is a reasonable probability exist that Whren would not have plead guilty and insisted on going to trial. Mr. Whren demonstrates the reasonable probability... sufficient to undermined confidence" in Whren's decision to plead guilty, as established in Strickland V. Washington, 466 U.S. at 694, by showing that Whren told counsel "repeatedly" to investigate the supposed complainant because she wasn't going to show up. (Tr. 8.1.14 p. 94 at 11-12) App. A.

Furthermore, Mr. Whren demonstrates that a reasonable probability exist that the government never secured the supposed complainant for trial, or throughout the history of the case, and also that the government would not be able to prove their case without this supposed

complainant. (Tr. 8·1·14 p.120 at 8 - p. 125 ln.16) App. A, (Tr. 11·15·13 p.3 at 12-20; Tr. 11·12·13 p.5 at 8 - p. 6 ln.2) App. B.

The unjustified failure of counsel to conduct reasonable investigations into evidence that would shore up the defense is a classic form of constitutionally deficient performance. Especially in a case where the client instructs his counsel "repeatedly" to conduct these reasonable investigations.

Strickland specifically states that information provided by the defendant is a prime source of the factual bedrock upon which counsel must rely in making strategic choices. In particular, what investigations are reasonable depends critically on such information. id., 466 U.S. at 691

In Wiggins the Supreme Court ruled that "counsel abandoning an investigation at an unreasonable juncture," makes "a reasonable professional judgment impossible." id., 539 U.S. at 527-28.

Furthermore, it was ruled in Decoster that "a claim of ineffective assistance might be made out if the wishes of the defendant were in fact diverted by clearly erroneous advice and he was substantially prejudiced thereby." id., 624 F.2d at 220-21.

So was the defendant here. The direct consequence of the misadvice was an unconstitutional plea. And the criminal defendants plea, thus misinformed may be said to be both involuntary and unintelligent, with the simple fact that the

defendant was misled by erroneous advice.
When the misadvice of the lawyer is so gross as to amount to a denial of the constitutional right to the effective assistance of counsel, leading the defendant to enter an improvident plea, striking the sentence and permitting a withdrawal of the plea seems the only necessary consequence of the deprivation of the right to counsel. Deprivation of a constitutional right can not be left unredressed.
When it has occasioned the entry of a guilty plea, the inevitable redress is an order striking the plea or the release of the prisoner.

In a long line of cases that included Powell V. Alabama, 287 U.S. 45 (1932); Johnson V. Zerbst, 304 U.S. 458 (1938); and Gideon V. Wainwright, 372 U.S. 335 (1963), This Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right of a fair trial.
Specifically, in all criminal prosecutions, the accused shall enjoy the right... to be confronted with the witness against him. quoting Strickland V. Washington, 466 U.S. at 685. "Yet nothing like that happened in this case." Tollett V. Henderson, 411 U.S. at 271
The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsels skill and knowledge is necessary to accord defendants the "ample opportunity to meet the case of the prosecution," to which they are entitled. [illegible]

id. see Powell V. Alabama, supra, at 68-69. Yet nothing like that happened in this case.

The Sixth Amendment recognizes the right to the effective assistance of counsel because it envisions counsel playing a role that is critical to the ability of the adversarial system to produce just results. Strickland, at 685. Yet nothing like that happened in this case.

Representation of a criminal defendant entails certain basic duties. Counsels functions is to assist the defendant, and hence, counsel owes the client a duty of loyalty... the overarching duty to advocate the defendants cause. id., at 688. Yet nothing like that happened in this case.

The ultimate focus of the Sixth Amendment inquiry must be on the fundamental fairness of the proceeding whose results is being challenged. ... and simply to ensure that criminal defendants receive a fair trial. Strickland, at 689, 696. Yet nothing like that happened in this case.

In this particular case, first, because counsel believed his client was guilty (Tr. 8.1.14 p. 114 at 14-17; Id. p. 117 at 1-2) App. A., petitioner was clearly diverted from going to trial, and deceived into accepting a plea he never should have accepted.

Second, when petitioner took the proper pre-sentence vehicle to withdraw the unconstitutional plea the prosecutor assigned to the case lied to the judge concerning clear facts of the case, strongly influencing and clearly tainting her

decision in not allowing petitioner to withdraw the unconstitutional plea. (Tr. 8·1·14 p. 120 at 8 - p. 125 Ln. 16) App A., (Tr. 11·12·13 p.5 at 8-p.6 Ln. 4; Tr. 11·15·13 p.3 at 12-20) App B., (Tr. 8·1·14 p. 153 at 21-p. 154 Ln. 5) App. A.

Third, when petitioner took the proper vehicle to appeal the the trial courts decision the appellate counsel that was appointed to petitioner overlooked or ignored almost all the evidence and testimony petitioner imputed to him that clearly demonstrated his trial counsels ineffectiveness, and instead entered a very weak brief for petitioners direct appeal. See Smith V. Robbins, 528 U.S. at 288

Fourth, after the arbitrary and capricious decision of the trial court in denying petitioners D.C. Code §23-110 motion, without a response from the government, and without a hearing, the Court of Appeals procedurally bars petitioner from raising his underlying issues because of his appellate counsels errors on direct appeal. See (Jan. 27, 2020) App. F

Petitioner, Jason C. Whren, now, respectfully poses the question to This Honorable Court. When is it that petitioner is to experience the fundamental fairness that the Sixth Amendment envisions and guarantees? If a petitioner can prove his counsel was purposefully negligent, then a constitutional provision should be specifically put in place to protect criminal defendants from purposefully negligent attorney's, and also to assure that criminal defendants have

received the effective assistance of counsel guaranteed by the Sixth Amendment.

Likewise, if a petitioner can also prove that his appellate counsel was ineffective, this constitutional provision should be, and indeed, could be the link to tie the ineffective assistance of counsel and the ineffective assistance of appellate counsel together.

The simple fact that the subsequent denials of motions to recall the mandate do not toll the time for filing a petition for writ of certiorari, when as in this case the judgments are related, there needs to be a specific constitutional provision of this degree.

Otherwise, petitioner's would be forced to file their motions to the court's prematurely.

This constitutional provision will provide the dynamic needed to make this vehicle proper, and complete, and available for criminal defendant's claiming both ineffective assistance of counsel and the ineffective assistance of appellate counsel.

XI. Conclusion

Wherefore, for all the aformentioned reasons, this petitioner, Jason C. Whren, respectfully request that The Supreme Court of the United States issue this Writ of Certiorari to the Court of Appeals for the District of Columbia.

Jason C. Whren

J. C. W.