

No.

21-7063

FILED

JAN 10 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

SALAHUDIN SHAHEED - PETITIONER

Vs.

UNITED STATES OF AMERICA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIR.

C.A. No. 19-2632

PETITION FOR WRIT OF CERTIORARI

SALAHUDIN SHAHEED

Federal Correctional Institution Berlin

Post Office Box 9000

Berlin, New Hampshire 03570

QUESTION(S) PRESENTED

- 1) Has thousand(s) of people been wrongfully convicted, by courts of law, for: Drug introduction (into correctional institutions) and "illicit sex acts)" in the presence of women and "children"; in light of the fact the lower Courts has "deem" both aforesaid forms of conduct, to be "non-criminal"?
- 2) Are the lower Courts properly using its "physical force", when it declares: Drug introduction, into a correctional institution, and illicit sex acts), to be non-criminal conduct?
- 3) Can a lower Courts ruling, that misapplied the correct legal standard (i.e. the criteria of above questions) deprive a defendant of exculpatory defense, thereby becoming "Undue Influence" in the guilty plea entry context?

LIST OF PARTIES

☒ 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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	11
CONCLUSION	34

TABLE OF AUTHORITIES CITED

CASES

PAGE No.

Arcara V. Cloud Book, Inc. 106 S. Ct.

3172, 92 L. Ed. 2d 568, 478 US 695 (1986) 21

Berger V. California 393 US 314, 21 L.

Ed. 2d 508 89 S. Ct. 540 (1969) 22

Giglio V. United States 405 US 150, 31

L. Ed., 2d 104, 92 S. Ct. 763 (1972) 21

Jones V. Woodward 2016 U.S. Dist.

LEXIS 175291 (E.D. Cal. 2016) 29, 30, 31

Pennsylvania V. Ritche 480 US 39,

94 L. Ed. 2d 40, 107 S. Ct. 989 (1987) 21

Perez V. F. MOORE, et al., 2020 U.S.

Dist. LEXIS 94461 (N.D. Cal. 2020) 32

Rock V. Arkansas 483 US 44, 97 L. Ed.

2d 37, 107 S. Ct. 2704, 22 Fed (1987) 22

Slack V. McDaniel 529 US 473, 484

(2000) 27

United States V. Andrews 824 F. Supp.

1273 1288 (N.D. ILLINOIS 1993) . . . 12, 17, 18, 19, 20, 20

United States V. Boyd 55 F. 239 ;

1995 U.S. App. LEXIS 1046 (1995) 20

United States V. Brown 250 F. 3d

811, 815 (3d Cir. 2001) 25

United States V. Koopmans, et al.,

757 F. 2d 901 ; 1985 U.S. App.

LEXIS 29741 (7th Cir. 1985) 31, 32

United States V. Jones 336 F. 3d

245, 252 (3d Cir. 2003) 25

United States V. Ruckman 169 F.

Supp. 160 (S.D. W. Va. 1959) 32

United States V. SHAHEED 2019 U.S.

Dist. LEXIS 109988 (3d Cir. 2019) . . . 13, 18, 19, 20

Vasquez V. Hillery 474 U.S. 254, 265

266, 88 L. Ed. 2d 598, 106 S. Ct. 617 33, 34
(1986)

STATUTES AND RULES

PAGE No.

28 U.S.C.S. 2253 (c)(2) 3

28 U.S.C.S. 2255 3, 4, 24, 25, 26, 27, 28

18 Pa.C.S.S. 403 15

18 Pa.C.S.S. 3127 15

18 Pa.C.S.S. 5901 15

18 Pa.C.S.S. 5903 15

18 U.S.C.S. 13 15

18 U.S.C.S. 1001 16

18 U.S.C.S. 1791 14, 15, 32

18 U.S.C.S. 3521 (d) (1) (B) 16

Fed. R. App. P. 26 (b) 11

Fed. R. App. P. 35 11

Fed. R. App. P. 40 11

Fed. R. Crim. P. 11 15

OTHER AUTHORITIES

Article VI of the Fed. Constitution 12 - 34

The Doctrine of Reality of Consent 23, 33
(Undue Influence)

The Doctrine of Discharge of
Contracts (Discharge) 23, 33

The Doctrine of Discharge of Contracts

(A Covenant Never to Sue) 23

The Doctrine of Discharge of Contracts

(Release) 23

The Doctrine of Stare Decisis 33, 34

U.S.S.G. 5K1.1 13, 14, 15

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari
issue to review the judgment below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States court of appeals
appears at Appendix 5-34 to the petition and is

☐ reported at _____; or

☐ has been designated for publication but is not yet
reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 25, 2021, and a copy of the order denying rehearing appears at Appendix 35.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____ A _____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C.S. 2253 (c) (2) which states:

- (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
 - (B) the final order in a proceeding under section 2255 [28 U.S.C.S. 2255]
- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of denial of a constitutional right.

28 U.S.C.S. 2255 (b) which states:

- (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact

and conclusion of law with respect thereto. If the court finds that the judgement was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the Constitutional rights of the prisoner as to render the judgement vulnerable to collateral attack, the court shall discharge the prisoner or resentence him or grant a new trial or correct sentence as may appear appropriate.

STATEMENT OF THE CASE

1. On April 10, 2015, KHAYREE GAY, was arrested (via "criminal complaint"), for violation(s) of 18 U.S.C.S. 1951 (a) - ATTEMPTED ROBBERY (and 18 U.S.C.S. 2) and 18 U.S.C.S. 1201 (a) (1) - KIDNAPPING (and 18 U.S.C.S. 2). See App., pp. 97-104
2. On or about April 30, 2015, a grand jury was said to have returned a bill charging (indicting) KHAYREE GAY with violation(s) of 18 U.S.C.S. 1951 (a) - ATTEMPTED ROBBERY (and 18 U.S.C.S. 2); and 18 U.S.C.S. 1201 (a) (1) - KIDNAPPING (and 18 U.S.C.S. 2).
3. On or about June 2, 2015, KHAYREE GAY "proffered" information, to agent(s) of the government, implicating others, in the crime [he] was indicted, for, on April 30, 2015. See App., pp. 87-91
4. On or about June 4, 2015 a "Double-Blind Affidavit"; was tendered to the U.S. Magistrate, for the arrest of SALAHUDIN SHAHEED and one other person. See Dist. Court Doc. No. 2.

5. On or about June 9, 2015 Attorney COLEY O. REYNOLDS entered notice of appearance, for SALAHUDIN SHAHEED.

6. On July 2, 2015, KHAYREE GAY testified, at the grand jury, at the behest of the Office of the U.S. Attorney for the Eastern Dist. of PA.

7. On July 2, 2015, a grand jury returned a bill charging (superseding indictment) SALAHUDIN SHAHEED with violation(s) of 18 U.S.C.S. 1951 (a) - CONSPIRACY TO COMMIT ROBBERY; 18 U.S.C.S. 1951 (a) - ATTEMPT ROBBERY (and 18 U.S.C.S. 2) ; 18 U.S.C.S. 1201 (a) (1) - KIDNAPPING (and 18 U.S.C.S. 2).

8. On or about July 13, 2015 COLEY O. REYNOLD, withdrew, for non-disclosed reasons, as representation for SALAHUDIN SHAHEED (after hearing, for pretrial detention); the Court thereby appointed LAWRENCE J. BOZZELLI, to represent SALAHUDIN SHAHEED.

9. On September 2, 2015, SALAHUDIN SHAHEED filed a prose motion (request for New Counsel); and as result the Dist. Court held a hearing. Thereat, while under oath SALAHUDIN SHAHEED brought, to the Courts' attention the impropriety within the prosecutions' case, by way of [there] witnesses KHAYREE GAY and KEOLOCHA OLIVER committing sex act(s) inside the federal detention center. See - App. 92-96.

10. On October 5, 2015 (after numerous filing from the prosecution and the defense, regarding the data, which disclosed the acts committed, by GAY and OLIVER) the court adjudicated, in chambers' (the Court denied SHAHEED's access, to the in chambers' adjudication) over the criteria, involving KHAYREE GAY and KEOLOCHA OLIVER's drug introduction and sex act(s), in the presence of woman and children (there was no record-keep of the in chambers' adjudication). See App. 106.

11. On Oct. 6, 2015, in the course of the trial proceeding; trial counsel LAWRENCE J. BOZZELLI, notified SALAHUDIN SHAHEED, that the Dist. Court, whom presided over 03132-15 CR 187-002, has issued an order (as a result of the in chambers' adjudication) in favor of the prosecutions' standing to: Preclude mention of irrelevant, non-criminal conduct by a cooperating defendant (i.e. GAY's post-plea drug endeavors' and sex acts in the presence of women and children). See App 105.

12. On Oct. 7, 2015, during the second day of trial proceedings; trial counsel LAWRENCE J. BOZZELLI explicitly expressed, to SALAHUDIN SHAHEED, that: When KHAYREE GAY is questioned on direct examination, about the cooperation plea agreement (despite obligations thereof that [he] may not commit any crimes); [we] will not be able to bring to the jury's attention that GAY and OLIVER committed violation(s) of the law (post-plea), in light of the Dist. Courts' order. Thereby SALAHUDIN SHAHEED entered into a guilty plea. See -App. 107-111.

13. On or about Oct. 9, 2015, SALAHUDIN SHAHEED, emailed counsel LAWRENCE J. BOZZELLI noticing the need for a legal visit, to be held (SHAHEED needed to tell counsel BOZZELLI to alert the Court, that he desired to withdraw from guilty plea entered, on Oct. 7th).

14. On or about Oct. 13, 2015, counsel LAWRENCE J. BOZZELLI held a legal visit, with SALAHUDIN SHAHEED, whereby SHAHEED instructed counsel BOZZELLI, to take whatever measure, needed, to alert the Court of [he's] stern desire, to withdraw from the plea entered, regarding a crime [he] did not commit (counsel BOZZELLI "never alerted the Court", that SHAHEED wanted to withdraw from said plea).

15. On or about December 22, 2015, the Court received the "pro se filed motion" from SALAHUDIN SHAHEED to withdraw the plea.

16. On January 13, 2016, the Court held a hearing on SHAHEED's pro se filed motion to withdraw from plea entered, on Oct. 7th, 2015 (SHAHEED was represented thereat, by KENNETH C. EDELIN, as a result of the Courts' removal of LAWRENCE J. BOZZELLI, as representation).

17. On January 14, 2016, the Court rendered [its] decision denying SHAHEED's pro se filed motion to withdraw the guilty plea (contract of record) entered, on Oct. 7, 2015.

18. On February 4th and 5th, of 2016 the Dist. Court sentenced SALAHUDIN SHAHEED, to a term of imprisonment, for 240 months on counts One and Two and 365 months on count Three to run concurrently, with counts One and Two.

19. Thus, after direct appeal on denial of motion, to withdraw guilty plea; and pursuit of relief, via 28 U.S.C.S. 2255 filing(s); and petition to the Court of Appeals, seeking C.D.A.; thereupon Rehearing ... SALAHUDIN SHAHEED, now issues [this] WRIT of CERTIORARI, to this Honorable Court.

REASON TO GRANT THE WRIT

1. As a initial matter: On April 30, 2020, the Third Circuit Court of Appeals, entered its "denial" of Petitioner SHAHEED's request of a C.O.A. (per Fed. R. App. P. 36). Thus, said Fed. R. App. P. 35 and 40 afforded PETITIONER fourteen days' (14), to file for rehearing... Hence Petitioner SHAHEED submitted two motion(s) pursuant to Fed. R. App. P. 26(b), for extention of time, to file petition for rehearing / or rehearing en banc (the third circuit court "never" returned an order addressing said motion, dated May 5th, 2020). Consequently the aforesaid motion was issued, as a result of the "coronavirus", and [its] cause of the institution where PETITIONER abides, to be "lock down", therefore (which deprived PETITIONER of ability to reseach law and the perfection of [his] claims)). Now Petitioner SHAHEED timely presence this Writ (per Rule 13), to this Honorable Court, within ninty days of the Third Circuit Courts' last order, regarding SHAHEED's petition for Rehearing... See - App. 62-86.

2. The forgone questions (of cardinal importance) ushers' in the need, for [this] Honorable Courts' intervention, considering the Third Circuit Courts, has declared the conduct noted the questions (drug introduction and sex acts in the presence of women and "children"), as being "non-criminal conduct"; thereby becoming a matter of national importance (considering such said declaration, may become "jurisprudence", in other lower Courts of law, despite legislation criminalizing the said conduct).

3. Accordingly, Assit. U.S. Attorney Jeanine M. Lineham operated in a prejudicial likeness to: A.USA "William R. Hogan". Hence, in UNITED STATES V. ANDREWS 824. F. Supp. 1273, 1288 (N.D. Illinois 1993), the Court stated: The prosecutors had a constitutional obligation under Brady and Giglio to produce information concerning misconduct of the El Rukn inmate witnesses while in custody as protected government witnesses, as well as to disclose government supplied benefits.

[4] In UNITED STATES V. SHAHEED, *supra.*, the prosecution had the same obligation under Brady and Giglio, as mentioned, in the above cited case. Consequently the prosecution in turn issued a motion, with an adverse standing therein, contrary to the said obligations (with a notation, for the Court, to direct its clerk's office, to make "no" public entree, of said motion, on its docket). See E.D. Dist. Court's Doc. No. 94.

[5] To add emphasis: While being detained, at the federal detention center (hereinafter "F.D.C.") Khayree Gay (U.S. Marshal No. 28157-171) cooperated, with the U.S. Attorney's Office for the Eastern District of PA; and also testified, at the grand jury (on July 2nd, 2015), in accordance with the prosecution's objective. Accordingly Khayree Gay (hereinafter "GAY") entered, into a cooperation styled guilty plea agreement, with the Office of the U.S. Attorney... during the month of August, 2015. As a result of the aforesaid plea agreement: GAY swore (under oath) that [he] would not commit any crimes, after the date of said plea, as obligated thereby. Subsequently, "also" during the month of August, 2015: Khayree Gay and [his] children(s)

mother "Keolocha Oliver" (whom also testified, at the grand jury, and was also slated to be a gov. trial witness), were both being "investigated" (by the F.D.C.'s personnel) for GAY's drug selling and Keolocha Oliver's drug introduction into the F.D.C. (which constitutes violation of 18 U.S.C.S. 1791). Thus, said: The F.D.C.'s personnel set-up a sting styled operation, during GAY's visits, with "Keolocha Oliver (hereinafter "OLIVER"), by monitoring video recorders, to observe GAY's activities, with "OLIVER", while in visiting area. As a result of said observation: The F.D.C.'s personnel observed "Khayree Gay's" PENIS (repeatedly) plugged in the mouth, of "Keolocha Oliver" (oral sex), all while women and "children" were "present" in side visiting area (prompting personnel to apprehend GAY and OLIVER, thereby recovering drugs introduced). See App., pp. 36-44.

6. It should be noted: The cooperation agreement GAY entered into, with the U.S. Attorney's Office..., was pursuant to Fed. R. Crim. P. 11 (in conjunction with a motion filed under U.S.S.G. 5K1.1), that States (at pp. 3, point-J). The defendant understands that it is a condition and obligation of this cooperation agreement that the defendant not commit any additional crimes after the date of the agreement. See - App. 45-54.

7. Moreover an as alternative, to being charged with violation(s), of 18 U.S.C.S. 1791; GAY and OLIVER could have been charged (in State Court), pursuant to 18 Pa. E. S. S. 3127; 18 Pa C. S. S. 5901; 18 Pa C. S. S. 5903; 18 Pa C. S. S. 903, with a total maximum sentence of: 12 years and a \$25,000 fine. Hence GAY and OLIVER would have faced the same said sentencing range, in a Federal Court, via the Assimilative Crimes Act (which subjects an offender to "like punishment"). Which thereby contradicts the Third Circuit Courts declaration, that: The aforementioned conduct, carried out, by GAY and OLIVER was "non-criminal conduct". See - 18 U.S.C.S. 13.

[8] It should also be noted: The U.S. Attorney's Office..., was "still" considering "OLIVER", for "Emergency Witness Assistance Program" (despite the aforesaid drug introduction, sex acts in the presence of women and "children", at the F.D.C.). Hence, 18 U.S.C.S. 3521(d)(1)(B), states (in pertinent part): "The agreement of the person not to commit any crime." Thus, said "SHAHEED" asserts the aforesaid induced the prosecution, to wrongfully define "GAY" and OLIVER's said conduct, as "non-criminal", which the Third Circuit Courts have acquiesce (which defy "natural law"); thereby posing the need for this Courts intervention. See- App. pp. 55.

[9] Furthermore "OLIVER" also could have been prosecuted, pursuant to 18 U.S.C.S. 1001 (making a false statement). The said statute was punishable, by a \$250,000 fine and a term of imprisonment up to five (5) years. Thus "OLIVER" is subject to this punishment based upon the form [she] was required to fill out prior to every inmate visit, at the F.D.C., which states, as follows (in pertinent part):

You are prohibited from engaging in prohibited activities. violators may be ... arrested for possible criminal prosecution ... by ... local or Federal law enforcement authorities.

[10] Accordingly "OLIVER" would then be required, to sign said form, underneath a portion that reads:

I have read; I understand, and I agree to the above. If I am visiting with an inmate, I also understand and agree to abide by the visiting guidelines provided me by this institution.

[11] In UNITED STATES V. ANDREWS, supra., the Court found numerous forms, of wrong doing culminated with the U.S. Attorney's Office ... (prompting thereby the remedy of a new trial). The irony is: The similarities, between case action U.S. V. ANDREWS, supra., and the instant case now before this Honorable Court, seeking grant of WRIT of CERTIORARI (both being imbued with wrong doing); the following examples exemplify that point:

The Court stated: John Doe a non-Rukn cooperating witness ... observed Harris, Hunter and other government witnesses on the floor of the Metropolitan Correctional Center's sixth floor visiting room engaging in sexual

contact with female visitors'. After these visitors had provided them with drugs. UNITED STATES V. ANDREWS, *Supra*.

In UNITED STATES V. SHAHEED, *supra*, Just, as indicated within the above cited case; an inmate had also observed, then informed the Bureau of Prisons personnel that "Khayree Gay" was having "sex", with [his] girlfriend "OLIVER" (accoupled with having drugs introduced). As a result of the aforesaid: Defense counsel for SHAHEED sought retention, of the B.O.P.'s records, regarding "GAY" (in perparation of a sound trial defense)). Consequently, the prosecution posed a strong disposition, to the B.O.P. turning over [its] files, regarding GAY, to the defense (despite constitutional rights afforded to the noted defendant SHAHEED). See App., pp. 56.

The Court stated: Defendants have established that the Metropalition Correctional Center after consulting AUSA Hogan and acting with the legal advice of AUSA Wawzenski, failed to comply with the defense trial subpoenas ... to search for and produce records relating to drug testing results and disciplinary records of the EL Rukin inmate witnesses ... as a result; drug and disciplinary

information material to the reliability and biases of two key government witnesses was suppressed. UNITED STATES V. ANDREWS, *Supra.* .

In UNITED STATES V. SHAHEED, *Supra.*, In like fashion, to the suppression of material information in above cited case; defense counsel, whom represented Petitioner SHAHEED, served a copy of a subpoena, on "the Federal Detention Center", requesting the production of the inmate file for cooperating witness "Khayree Gay", 28157-171 (the said subpoena also requested the video taken from cameras inside the F.D.C.'s visiting room regarding said sex acts). Hence, whereby counsel was initially informed that the file would be provided to the defense, prior to the start of the jury trial, on Oct. 6, 2015. Consequently, on or about Oct. 2, 2015, defense counsel received another email, from the Legal Department of the F.D.C., which stated: They consulted with the Asst. U.S. Attorney (per regulations). And as a result the F.D.C., will not be releasing the records, being sought pertaining to GAY. See - App. 57-59.

Accordingly, the Court recognized: It was essential to the government case the jury perceive the El Rukn inmate witnesses as credible and reliable witnesses who independently corroborated each others' testimony. Because the suppressed evidence of misconduct and special favors bestowed by government had a reasonable probability of adversely affecting the jury's perception of these essential witnesses, the suppressed evidence was material. U.S. V. ANDREWS, *Supra.* Also-see-United States V. Boyd 55 F. 239; 1995 U.S. App. LEXIS 1046 (1995).

In U.S. V. SHAHEED, *Supra.*, The government's Attorney described "Khayree Gay", as being a "crucial witness". See - Dist. Doc. No. 94, at pp. 5. Hence it was thereby essential to the government's case that the jury perceive "GAY", as being credible and a reliable witness; thus, said the suppressed evidence of misconduct (drug introduction and sex acts in the presence of women and children) had a reasonable probability of adversely affecting the jury's perception of [this] crucial witness (whereby the suppressed evidence was in fact material).

[12] In Giglio V. United States 405 US 150, 31 L. Ed. 2d 104, 92 S. Ct. 763 (1972), this Honorable Court stated: "Aside from exculpatory evidence, the government is also obligated to disclose information that could be used to impeach government witness, especially where the witness's testimony is an important part of the government's case."

[13] In Arcara V. Cloud Book, Inc. 106 S. Ct. 3172, 92 LEd 2d 568, 478 US 695 (1986), this Honorable Court also stated: "A State has a legitimate interest in forbidding sexual acts committed in public..."

[14] In Pennsylvania V. Ritchie 480 US 39, 94 L Ed 2d 40, 107 S. Ct 989, (1987), this Honorable Court recognized: "The accused, who had been convicted on all counts, was entitled to know whether the agency file contained information that might have changed the outcome of his trial had the information been disclosed..."

[15] It should be noted, that: Petitioner SHAHEED, was notified (by defense counsel) during "trial proceeding" that the District Court, whom presided over 03132-15 CR 187-002, had rendered a decision to grant the government's "motion in limine" (to precluded mention of irrelevant, non-criminal conduct of a cooperating

defendant), after the in chamber deliberation (without any keep record thereof). Thus, said the aforementioned deprived Petitioner SHAHEER, of any ability to: Effectively cross-examine Khayree Gay and OLIVER, regarding biansess, ensued, as result of the governments' bestowed favors (such as classifying on GAY and OLIVER's behalf drug introduction and illicit sex acts, as non-criminal). See - App. 105.

16. In *Berger V. California* 393 US 314, 21 L Ed 2d 508, 89 S. Ct. 540 (1969), this Honorable Court stated: One of the important objects of the Sixth Amendment right of confrontation was to guarante that the fact finder had an adequate opportunity to assess the credibility of the witnesses.

17. In *Rock V. Arkansas* 483 US 44, 97 L. Ed. 2d 37, 107 S. Ct. 2704, 22 Fed (1987), this Honorable Court recognized: The right of confrontation had as its overriding purpose the protection of the accused from prosecutorial and judicial abuses.

18. Consequently the forgoing left Petitioner SHAHEED, with no realization of being trialed, by the jury of [his] choosing, when the lower Court's said declaration deprived the jury, of [its] ability to determine the relative credibility of GAY and OLIVER's testimony; leaving thereby the alternative of: Entering into a guilty plea agreement (contract of record) regarding a crime [he] did not commit (which thereby operated as "Undue Influence"); warranting discharge, from said contract therefore ("Release") via "repudiation" (coupled with SHAHEED's willful standing of a "covenant never to sue", in accordance, with "Release"). See App. 107-111.

19. BLACK'S LAW DICTIONARY 10th ed., defines:
Undue Influence. (18d)

1. The improper use of power or trust in a way that deprives a person of free will and substitutes another's objective; the exercise of enough control over another person that a questioned act by this person would not have otherwise been performed, the person's free agency having been overmastered. "Consent either to conduct or to a contract, transaction, or relationship is voidable if the consent is obtained through undue influence."

[20] Moreover "rules of conduct" (which are enforced in Courts of law) mandate the Third Circuit Courts, to measure GAY's aforesaid acts, as being unlawful, and criminal in nature; coupled with the fact, that "rules" (legislative enactments) also avow said conduct to be criminal. To declare anything to the contrary, would be an imposition, upon the legislator's ability to control and regulate individual's conduct, to promote the general welfare of the public.

[21] Notwithstanding the above said; the lower Court in [its] written reply, to Petitioner SHAHEED's claim number eight (8), of 28 U.S.C.S. 2255 filing, stated:

In grounds ... eight (8), Shaheed alleges that attorney Edelin was ineffective during the hearing on Shaheed's motion to withdraw his guilty plea. Shaheed asserts that Edelin improperly failed to: (1) agree that Court "abused its [sic] discretion by granting the government's motion 'in limine' to preclude irrelevant, non-criminal conduct"; Shaheed has failed to explain how these shortcomings affected the disposition of his motion to withdraw his guilty plea. Under the Federal Rules of Criminal Procedure, a defendant may withdraw a plea of guilty

if he "can show a fair and just reason for requesting the withdrawal," Fed. R. Crim. P. 11 (d) (2) (B). The defendant bears the burden of demonstrating a "fair reason" for withdrawal. *United States v. Jones*, 336 F.3d 245, 252 (3d Cir. 2003).

A district court must consider three factors when evaluating a motion to withdraw a guilty plea: (1) whether the defendant asserts his innocence; (2) the strength of the defendant's reasons for withdrawing the plea; and (3) whether the government would be prejudiced by the withdrawal." *Id.* (citing *United States v. Brown*, 250 F.3d 811, 815 (3d Cir. 2001)).

None of the issues raised by Shaheed would have been relevant at the hearing on Shaheed's motion to withdraw his guilty plea. Thus, it is clear that Shaheed was not prejudiced by his counsel's failure to raise them. The record shows that Shaheed's counsel performed competently at the hearing on the motion to withdraw. He presented evidence that Shaheed was asserting in his innocence, that Shaheed had been coerced

into pleading guilty or had been under duress, and also asserted that the Government would not be prejudiced by the withdrawal. However, after reviewing the evidence this court found Shaheed not credible and determined that he had not presented a "fair and just reason" for withdrawal. None of the issues raised by Shaheed would have changed that outcome. Accordingly, we reject the ineffective assistance of counsel claims raised in grounds eight, ten, eleven, and thirteen⁵. See App. 27-29.

22. Contrary to the Dist. Court's above said opinion, Petitioner SHAHEED affirmed, via "affidavit", submitted in conjunction with 28 U.S.C.S. 2255 petition, that: He verbally conveyed to counsel EDELIN (during legal visit, prior to hearing) the impact on how the preclusion of mentioning GAY's criminal acts eviscerated any meaningful ability to weed-out any biasness; and ability to test the veracity of GAY's testimony (especially considering how heavily the prosecution depended upon it). Thus, in SHAHEED's view the trial proceedings were a mere idle ceremony, remiss of constitutional affordances; thereby leaving the alternative of: Ending the trial —

proceeding, and enter into a guilty plea thereat (with the prosecution being given overweening bargaining power.) to charges [He] did not commit (considering nothing else was presented, by trial counsel BOZZELLI to SHAHEED). Nonetheless, as denoted the Dist. Court. denied: The 28 U.S.C.S. 2255 filing, and also denied the issuance, of a "certificate of appealability" (despite the files and records not conclusively showing SHAHEED wasn't entitled to relief).

[23] Thus, Petitioner SHAHEED thereby sought a "C.O.A.", from the Third Circuit Court of Appeals. To no avail the Appeals Court stated:

Shaheed's request for a certificate of appealability is denied because he has not "made a substantial showing of the denial of a constitutional right". 28 U.S.C.S. 2253 (c) (2). Jurists of reason would agree, without debate, that all Shaheed's claims are meritless or procedurally defaulted, for substantially the same reasons provided by the District Court. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). See - App., pp. 1-2.

24. Despite the Third Circuit Courts above assessment:
During the year 2018 (at least two years, after the hearing on SHAHEED's motion to withdraw from said contract of record) via Court order, SHAHEED was given the case file, in regards to case action 0313:15 CR 187-002, which was being held, by trial counsel Lawrence J. Bozzelli; which solidifies the affirmation, therein 28 U.S.C.S. 2255, that Kenneth C. Edelin never had possession of said file, to become a beast, of the facts of the said case; prior, to hearing on PETITIONER's pro se filed motion, to: Withdraw from the plea, which was vital, for counsel EDELIN to mount any meaningful presentation, to go before the Court; which contradict the validity of lower courts belief, that: Counsel EDELIN was able to present proficient evidence, on SHAHEED's behalf. Thus certifying counsel EDELIN's failure, to investigate, which is equivalent to ineffective assistance of counsel (duty of agency).

25. Moreover, neither: Legislative enactment, custom or judicial precedent support the Third Circuit Court's standing in regards to: GAY and OLIVER's acts). Thereby the Third Circuit Court circumvent judicial principles (experience and reflection) and "written law". Or has: Thousands of persons been wrongfully convicted, by

Courts of law, for "drug introduction" into correctional institutions and illicit sex acts in the presence of women and "children (as asked in the initial question). Which one would be left to decree, if the Third Circuits Courts aforesaid declaration is left standing, such as the "parties" in the following case actions):

In Jones V. Woodward 2016 U.S. Dist. LEXIS 175291 (E.D. Cal., 2016), the Court stated (in opinion, at "undisputed facts"):

At all times relevant to this action, Plaintiff Antonio Jones (J-9775) was in the custody of the California Department of Corrections and Rehabilitation (CDCR) and confined $\{$ 2016 U.S. Dist. LEXIS 63 at California State Prison Corcoran (CSP-Corcoran).

Jones is serving a term of life without the possibility of parole, plus eighteen years. At all times relevant to this action, Defendant Woodward was employed as a Correctional Officer at CSP-Corcoran.

At all times relevant to this action, Defendant March was employed as a Correctional Lieutenant at CSP-Corcoran.

Cespuglio began visiting Plaintiff on June 30, 2013, and was listed as Jones' fiancé. Cespuglio continued to visit Plaintiff on regular basis until August 10, 2014.

Officer Woodward began an investigation into a possible conspiracy between Plaintiff and his fiancée to smuggle drugs into the prison.

As part of the investigation, Woodward reviewed a surveillance video of Plaintiff and Ms. Cespuglio during a visit that occurred on January 26, 2014. From the video, Officer Woodward was able to identify Ms. Cespuglio and Jones in the Facility 03A visiting room.

The video showed that Plaintiff and Ms. Cespuglio greeted and said good-bye to each other with long, open-mouthed kisses. During these kisses, their mouths never came apart so Officer Woodward was not able to see an actual exchange of drugs.

On the same video, Officer Woodward observed what he believed to be Plaintiff and Ms. Cespuglio engaging in oral sex and sexual intercourse.

Officers Woodward and Scaife detained Cespuglio ... to the Administration Building. Officer Woodward then served Ms. Cespuglio with the search warrant..., transported and booked into the Kings County Jail for violations of California Penal Code Section 182, 4573, 4573.8, 4573.9, as well as Health and Safety Code Sections 11390, and 11360 (b).

The information supplied to the Kings County District Attorney's Office is the same documentation and information that Woodward used to file the rules violation, Log No. 3A-14-04-039, against Plaintiff.

On February 28, 2014, the Kings County District Attorney's Office filed a criminal complaint against Plaintiff, charging him with felony oral copulation while confined in a prison, the misdemeanor of engaging in or soliciting lewd conduct in a public place, and felony possession of drugs where prisoners are kept.

In *United States v. Koopmans, et al*, 757 F.2d 901; 1985 U.S. App. 2 EXIS 29741 (7th Cir. 1985), the Court stated: On March 6, 1983, Koopmans visited Henry at the prison. She filled in a questionnaire regarding the introduction of contraband, signed a visitor's log "... While the two were together in the visiting room, a guard secretly observed Henry ... putting his hand in Koopmans's pocket, removing his hand, putting it to his mouth, putting something in [1985 U.S. App. 2 EXIS 3] his mouth ...

At the end of the visit Henry was taken to a dry cell. Three days later he passed eight balloons, which were found to contain a green leafy substance ...

Three weeks later, an FBI agent interviewed Koopmans explaining to her that he was there to investigate her visit of March 6, after which eight balloons of marijuana were recovered from Henry, in violation of federal law

On June 10, 1983, Koopmans and Henry were indicted on one count of introducing marijuana into FCI - Oxford, in violation of 18 U.S.C.S. 1791 and 28 C.F.R. S. 6.1. A jury found them guilty and they were convicted on December 6, 1983.

In *United States V. Mills* 66 Fed. Appx. 273 (2d Cir. 2003), Scott A. Mills was sentenced to 37-months of incarceration, for possessing drugs, while being federal inmate. Also see - *Perez V. E. MOORE, et al*, 2020 U.S. Dist. LEXIS 944 61 (N.D. Cal. 2020).

In *United States V. Ruckman*, 169 F. Supp. 160 (S.D. W. Va. 1959), the court recognized: A defendant was convicted of smuggling food into a federal prison.

26. Nevertheless the Third Courts, in the instant case, declared: Drugs being smuggled, into a federal detention center; coupled with declaring that sex acts in the presence of woman and "children", was non-criminal conduct.

27. Thus, via the doctrine of "stare decisis"; the lower Courts said declaration (that drug introduction and sex acts, are non-criminal conduct), can't stand; therefore the contract of record (which is a derivative thereof) SHAHEED should be discharged from, by operation law; due to: SHAHEED would have not entered, into "any" contract, had it not been for the forgone; and would have continued, on ward with the trial proceeding.

28. In *Vasquez V. Hillery*, 474 US 254, 265-266, 88 L Ed 2d 578, 106 S Ct 817 (1986), this Court recognized;

The doctrine of stare decisis provides the means by which courts assure that the law will not merely change erratically, but will develop in a principled and intelligible fashion; the doctrine permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact; and while stare decisis is not an inexorable command, any detours from the straight path of stare decisis have occurred for

articulable reasons, and only when the Court has felt obliged to bring its opinions into agreement with experience and with facts newly ascertained.

29. In sum: Society needs this Honorable Court, to utilize [its] discretionary jurisdiction, to determine whether the lower Courts aforesaid standing justified, in accord with constitutionality.

30. WHEREFORE, if this Honorable Court determines, that drug introduction, into a correctional facility; and sex acts, in the presence of women and "children" are still crimes (as legislative enactments has declared them to be); then this Honorable Court should return an order, to remand the instant case, with instructions' (in light of the totality of the circumstance).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Salvador Ash-Shakiel

Date: 1/10/2022