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ORIGINAL

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SUPREME COURT, U.S.

In The

# Supreme Court of the United States

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**VANDER K. CLAYBORNE**
*Petitioner*

**V.**

**COMMONWEALTH OF PENNSYLVANIA**
*Respondent*

* * * * * *

**ON PETITION FOR WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT**

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# PETITION FOR WRIT OF CERTIORARI

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**Vander K. Clayborne BX7919**
**1 Kelley Drive**
**Coal Township, PA 17866**
**Prose' Petitioner**

## QUESTIONS PRESENTED

In every jurisdiction of the United States - both federal and State - there is a balancing test for deciding whether a court's decision to deny a Criminal Defendant his rights is a right and here this Criminal Defendant asserts his right and wishes this court to consider his petition and make an appropriate order as such.

***I. Should this Court review the decision of the Pennsylvania Supreme Court to deny the Petitioner the right to have his unwarrented guilty plea looked into as he was borderline mentally retarded with the IQ of a juvenile?***

***II. Should this court establish a new law that provides for adults that commit crimes that carry a manditory sentence of Life Without Parole, that at the time the crime was said to have been commited, have the mindset of a juvenile and or be borderline/fully mentally retarded with low IQ's be afforded the same oppurtunity as parole just as juviniles have as deceided by this court in Miller v. Alabama?***

## PARTIES TO THE PROCEEDINGS

The Petitioner is Vander Clayborne, who is Prose. The Respondant is the Commonwealth Of Pennsylvania.

## RELATED CASES

- Commonwealth v. Clayborne, No. CP-23-CR-9696-1990. Judgment entered October 9, 1991.
- Clayborne v. Commonwealth Of Pennsylvania, 911 EDA 2021. Judgment was not entered, A Kings Bench petition was filed to the PA Supreme Court.
- Clayborne v. Commonwealth of Pennsylvania, 108 MM 2021. judgment entered January 4, 2022.

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# In The

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**VANDER K. CLAYBORNE**
*Petitioner*

**v.**

**COMMONWEALTH OF PENNSYLVANIA**
*Respondent*

* * * * * *

## ON PETITION FOR WRIT OF CERTIORARI TO THE PENNSYLVANIA SUPREME COURT

The petitioner Vander K. Claycorne, prays that a **Writ of Certioari** issue to review the judgment of the Pennsylvania Supreme Court rendered from the proceedings on January 4, 2022.

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## OPINION BELOW

The Pennsylvania Supreme Court issued an order denying the petition for **King's Bench / Extraordinairy Relief** without authoring an opinion. There are no opinions to attach to this Writ, only orders.

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## JURISDICTION

The original decision of the Pennsylvania Supreme Court was entered on January 4, 2022. No application for rehearing was filed.
The jurisdiction of this Court is invoked under **28 U.S.C. § 1254.**

## CONSTITUTIONAL PROVISIONS INVOLVED

### U.S. COSNT., AMENDMENT. VIII

Execssive bail shall not be required, nor excessive fines imposed, ***nor cruel and unusual punishments inflicted.***

### U.S. COSNT., AMENDMENT. XIV SECTION 1

All persons born or naturalized in the U.S. and subject to the jurisdiction thereof are citizens of the United states and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privledges or immunities of citizens of The united States***; nor shall any State deprive any person of Life, Liberty, or property, without dueprocess of Law;*** nor deny to any person within its jurisdiction the equal protection of the laws.

## STATUTES

### 28. U.S.C § 1254

Cases in the Courts of appeals may be reviewed the Supreme Court by the Following methods:

(1) by Writ Of Certiorari granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree.

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired and upon such certification the Supreme Court may give binding instructions or requrie the entite record to be sent upfor the decision of the entire matter in controversy.

## STATEMENT OF THE CASE

The Petitioner, Vander Clayborne, plead guilty to murder (general), possession of an instrument of crime, aggravated assault, attempted murder, and possession of a firearm. He elected to have a degree of guilt hearing in front of a sole Judge at the advice of his counsel. He also elected to plead guilty at the advice of his counsel. He was found guilty of first-degree murder by Judge Frank T. Hayes. He then faced a jury of what was supposed to be his peers for the penalty phase of his trial. It was at this point that his trial counsel put forth as a witness, Mr. Allen Tepper. Mr. Tepper was the Psychologist that evaluated the Petitioner before trial was ever scheduled to begin. Trial counsel had Mr. Tepper testify as to the findings from his evaluation of the Petitioner. The jury could not unanimously agree on the death penalty and the Petitioner was ultimately given a sentence of life in prison without the possibility of parole for the first-degree murder charge. As to the attempted murder and aggravated assault charges, they should have merged with one another as well as one, if not both, should have been taken off the table because of the plea.

The Petitioner made several PCRA and Habeas Petitions to the court explaining the ineffectiveness of his counsel, but it fell on death ears. He also claimed his guilty plea was not knowingly or of his own will. He did not know, rather, understand what was going on with specific questions. Once he obtained new counsel, he understood a little better and he expressed how his guilty plea was coerced from him by his trial attorney.

It is the intention of this Petition to restore the Petitioner whole. At the time of the crime, the Petitioner had the mental state and capacity that which of a 3rd grader. He never received a mental evaluation prior to trial, for trial. He never received one prior to sentencing or the penalty phase hearing. He never had full due process. He should not have received the sentences he received nor some of the charges. Mainly, the sentence of life without parole as he should have

been tried and if needed as a juvenile as he had the actual mental state of one, regardless of his age. He was abandoned by his attorney and the entire justice system.

**Thus, should this case be remanded for proper sentencing of something that allows parole such as 30-60 or life with the possibility of parole after 30 years, it will be, not only detrimental consequences to the Petitioner, but also to the very real world such as people similarly situated as the Petitioner and inhibit proper justice statewide.**

## REASONS FOR GRANTING THE WRIT

### *I. Should this Court review the decision of the Pennsylvania Supreme Court to deny the Petitioner the right to have his unwarrented guilty plea looked into as he was borderline mentally retarded with the IQ of a juvenile?*

In no way should the Petitioner had been allowed to plead guilty. It was apparent he not only didn't understand, but he was mentally incapable of knowingly agreeing to possibly being put to death. On June 27, 1991, Allen Tepper, J.D., Psy. D., conducted a psychological evaluation of the Petitioner. The following tests were administered:

1. Bender Gestalt with Recall
2. Quick test Intelligence Inventory
3. Wide Range Achievement Test-Revised (WRAT-R)
4. Rorschach

5. Thematic Apperception Test (TAT)
6. Clinical Interview with Vander Clayborne
7. Clinical Interview with Donna Clayborne (wife)

Concluded was the following from the evaluation. Mr. Clayborne has an extensive psychiatric history consisting of inpatient hospitalization and outpatient treatment as reported beginning in 1982. Mr. Clayborne was hospitalized for the first time in March 1982 at the Philadelphia Psychiatric Center. His reported symptoms at that time included bizarre behavior, insomnia, rambling speech, hyperactivity, speaking in paranoid terms, ideas of reference, auditory hallucinations, delusions of persecution, and feeling the "mob" might harm him for some unknown reasons. He was diagnosed as suffering from schizophreniform disorder, and was treated with Haldol, an antipsychotic medication.

Mr. Clayborne was hospitalized as an inpatient a second time at Philadelphia Psychiatric Center on December 18, 1982. His symptoms at that time included beliefs that people were after him, and hearing a voice saying "watch yourself". It was reported that he had been exhibiting increasingly unreasonable paranoia, suspiciousness, and the fears concerning others, and that this bizarre behavior included such incidents as Mr. Clayborne getting up for no apparent reason in the middle of a conversation to do exercises, complaining about constant neck and stomach problems, splashing water on his face and arms four to five times in the course of an hour to "keep myself clean," and exercising an attempt to prepare himself for a war that he expected to break out in 1991. Mr. Clayborne was diagnosed as suffering from Schizophrenia and Second Episode Schizophreniform illness, and once again was treated with Haldol, an antipsychotic medication.

Both preceding and following this hospitalization, Mr. Clayborne was treated as an outpatient at the West Philadelphia Community Mental Health Consortium. During this ongoing course of

treatment, Mr. Clayborne was diagnosed as suffering from Paranoid Schizophrenia, and received both medication and individual and group counselling.

On May 29, 1987, Mr. Clayborne was treated as an inpatient at Misericordia Hospital. Reported difficulties at that time included agitation, constant pacing in the house, losing 35 to 40 pounds within the past 3 to 4 weeks, believing that his mother had AIDS, and beliefs in which he felt that dead bodies were in a neighborhood store. Mr. Clayborne was diagnosed as suffering from A Typical Psychosis, and was treated with Haldol, an antipsychotic medication.

Following his arrest in this matter, Mr. Clayborne began to exhibit agitated, inappropriate, and bizarre behavior in jail. He was diagnosed as suffering from Paranoid Schizophrenia and was prescribed Haldol to help control his symptoms.

In addition to these formal hospitalizations, Mr. Clayborne's wife, Donna Clayborne, also reports past problems and difficulties. Mrs. Clayborne described these difficulties as waxing and waning in nature, in that sometimes Mr. Clayborne would appear to be functioning adequately, whereas other times problems were noted. Mrs. Clayborne was aware of some of her husband's past difficulties and also stated that during the summer of 1990, he was "talking crazy" and exhibited rapid speech, sweating, and was "talking in puzzles". Mrs. Clayborne consulted Mr. Clayborne's mother, who Mrs. Clayborne believed had had more experience with Mr. Clayborne's past problems. Although Mrs. Clayborne believed that he should enter a hospital, Mr. Clayborne was unwilling to admit himself to a psychiatric facility at that time.

On the Quick Test Intelligence Inventory, Mr. Clayborne exhibited an I.Q. of 72, falling within the Borderline Mentally Retarded Range of Intelligence... On the Bender Gestalt, Mr. Clayborne

exhibited a number of errors, which raised the possibility of underlying cerebral dysfunction.... On the Wide Range Achievement Test-Revised, Mr. Clayborne achieved the following scores:

**ITEM GRADE EQUIVALENT PERCENTILE**

| Item | Grade Equivalent | Percentile |
|---|---|---|
| Reading | 3E | .8 |
| Spelling | less than 3 | .4 |
| Arithmetic | 4B | .9 |

Mr. Clayborne's 0.8 percentile in Reading indicates that 99.2% of the individuals in his peer group/ are more proficient in reading than he...

Mr. Clayborne presents the picture of a man who has been suffering from a long-standing severe mental illness, namely, Schizophrenia, Paranoid Type. Mr. Clayborne has received this diagnosis on a number of past occasions, and this examiner is in agreement with this classification.

In the past, this mental illness has manifested itself by such symptoms as auditory hallucinations, delusions, feelings of persecution, and paranoid beliefs. When receiving antipsychotic medication, these symptoms subside to some degree. When not receiving ongoing medication, Mr. Clayborne, may experience a regression in his ability to distinguish internal fantasy from external reality.

Mr. Clayborne attempts to downplay or keep hidden from others his unusual thoughts and beliefs. These attempts to keep unusual beliefs hidden is not unusual among people with severe

psychological difficulties. Such an attempt to keep these beliefs to oneself also is not an uncommon occurrence among individuals suffering from paranoid symptoms and problems.

The past history and present evaluation indicate that when under more stressful or anxiety provoking situations, Mr. Clayborne will experience a more decreased capacity to control, regulate, and monitor his thoughts and feelings. At times, he may be able to keep these feelings hidden from others. At other times, this upsurge in symptoms may become more apparent or noticeable to outsiders. For example, his wife describes this type of noticeable regression and upsurge in symptoms during the summer of 1990, a number of months preceding his arrest in this matter. This type of regression and upsurge in symptoms also was observed in the jail a number of weeks following Mr. Clayborne's arrest in this case.

**At the time of Mr. Clayborne's arrest on the present matter, it is the opinion of this examiner that he was suffering from a major mental illness, namely, Schizophrenia, Paranoid Type. The available history indicates that at this time, he was not receiving any active treatment, nor was he taking any psychiatric medication for this illness.**

Over the years, one of the more significant symptoms exhibited by Mr. Clayborne were feelings of paranoia in which he believed that people were trying to **get him or to hurt him**. Part of the factual pattern in the present case is that prior to his arrest, Mr. Clayborne believed that his apartment had been burglarized. Apparently, there actually were items missing from his apartment. Thus, in an extremely tragic sense, Mr. Clayborne's past worst fears had been realized. That is, for years he had been convinced that people were trying to get at him. And, for years, he received psychiatric treatment for these beliefs. Now, these beliefs and fears that in the past had been labeled as being delusional, suddenly had come true. Thus, this perceived burglary, coupled with his

underlying schizophrenia, would have exerted additional pressure and stress upon Mr. Clayborne during the time of the incident.

Mr. Vander Clayborne is a 28-year-old man currently awaiting trial in a homicide matter. He is functioning within the Borderline Mentally Retarded Range of Intelligence and displays symptoms consistent with the possibility of underlying brain damage. He is suffering from Schizophrenia, Paranoid Type, and has received past inpatient and outpatient psychiatric treatment for this condition. In the past, the more severe symptoms associated with this psychiatric illness have been controlled with the use of antipsychotic medication. During the time period immediately preceding his arrest, Mr. Clayborne was suffering from Schizophrenia, Paranoid Type, and was not receiving any active treatment or medication for this condition.

It is plain to see Mr. Clayborne, in no way, should have been allowed to plead guilty knowing all of the aforementioned, especially without being given a Competency evaluation. It is proven that the Petitioner was suffering from and being treated for schizophreniform and believed people were out to get him. Even if people weren't out to get him. If people would say he went to them and asked for gun it could mean he was trying to protect himself or others from being harmed. The Judge and the Petitioner's counsel failed him with regards to this matter of finding out his mind state with a second opinion as well as taking in to account what the Psychologist wrote in his report.

Trial counsel should have made sure the mental information was known to the court and or asked for a new evaluation. He did not. One who pleads guilty consents to a waiver of treasured rights. ***Commonwealth v. Flood*** **426 Pa. Super. 555, 564, 627, A.2d 1193, 1198 (1993)** In order to be valid, a guilty plea must be knowing, intelligent and voluntary. **Pa. R. Crim. P.** 590 ***Commonwealth v. Suater.*** **Pa. Super. 484, 567, A.2d 707 (1989).** A decision to plead guilty

cannot be accepted as being knowingly and intelligently entered without an assurance that the accused fully comprehends the maximum punishment that might be imposed for his conduct. ***Commonwealth v. Persinger,*** **532 Pa. 317, 323, 615 A.2d 1305, 1307 (1992).** Emphasis here is on intelligent. There is no way anyone that has an ounce of intelligence can say its intelligent to plead to murder general where the penalty can be anywhere from 10 years to death knowing one person and not twelve would decide if you will possibly end up to where you could ultimately narrow that down to life in prison or death, especially when the events were not that of which would be made that you would, either spend the rest of your natural life in prison or be executed while in prison. That is not intelligent, and the Judge should not have allowed it, especially without a competency hearing/evaluation. The questions asked of the Petitioner were of yes, no nature, in which, all questions asked were answered, "yes".

There were no questions asked to see if the Petitioner only knew to say yes or would he give a different answer. Why would the Petitioner also say he has no psychiatric problems, knowing he's been hospitalized for them, as well as other things he was going through? The Petitioner has filed several Post Sentence Motions/Petitions since being found guilty, all of which were written by someone other than he because of his inability to structure what is needed properly, as far as understanding fully or being able to write the proper wording. This is still the case, 30 years later.

The guilty plea form has several scribble outs with no initials. This is a legal document. Why are there no initials to note who made corrections to ask why? Page one question two speaks about not having any physical emotional or mental problems, which effect his ability to understand what he was doing on that day…

The Petitioner left that blank. **(NT 8-14-96 page 2).** In reviewing the guilty plea form, the court discussed with Petitioner the fact that the Petitioner had not initialed the statement "I do not have any physical, emotional or mental problems, which effect my ability to understand what I am doing here today..." It is also

noted that the Petitioner was taking medication the day of the guilty plea **(NT 8-14-96 page 2)** Haldol and Colonel. He had been taking them every day for quite

some time.

***II. Should this court establish a new law that provides for adults that commit crimes that carry a manditory sentence of Life Without Parole, that at the time the crime was said to have been commited, have the mindset of a juvenile and or be borderline/fully mentally retarded with low IQ's be afforded the same oppurtunity as parole just as juviniles have as deceided by this court in Miller v. Alabama?***

Thus far, the Petitioner has put forth evidence and arguments that he possessed the Mindset of a juvenile. In ***Miller v. Alabama,*** Justice KAGAN delivered the opinion of the Court. "[T]he two 14-year-old offenders in these cases were convicted of murder and sentenced to life imprisonment without the possibility of parole. In neither case did the sentencing authority have any discretion to impose a different punishment. State law mandated that each juvenile die in

prison even if a Judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life with the possibility of parole) more appropriate. Such a scheme prevents those meeting out punishment from considering a juvenile's "lessened culpability" and greater capacity for change, ***Graham v. Florida*, 560 U.S. 48, 68, 74, 130s. Ct. 2011, 2026-2027, 2029-2030, 176 L.Ex.2d 825. 2010,** and runs afoul of our cases' requirement of individualized sentencing for Defendants facing the most serious penalties. We, therefore, hold that mandatory life without parole is for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on Cruel and Unusual Punishment.

In ***Jackson v. Norris***, two Justices gave a dissenting opinion noting that Jackson's mandatory sentence ran afoul of Graham's (***Graham v. Florida)*** admonition that "[a]n offenders age is relevant to the Eighth Amendment and Criminal Procedure Laws that fail to take Defendants' youthfulness into account at all would be flawed.

Webster's New College Dictionary defines youthfulness as:

**Youthfulness** *n.* **1.** Of, relating to, or suggesting youth.

The Petitioner's mental state was definitely of, relating to and suggesting youth. Therefore, he should be considered a youth regardless of what his age is.

The Eighth Amendment's Prohibition of Cruel and Unusual Punishment "guarantees individuals the right not to be subjected to excessive sanctions". That right flows from the basic precept of justice that punishment for a crime should be graduated and proportioned "to both the offender and the offence not just one or the other. The concept of proportionality is central to the Eighth Amendment. It must be viewed less through a historical prism than according to" the evolving standards of decency that mark the progress of a maturing society. In ***Roper and Graham***,

it was established that children are constitutionally different from adults for purposes of sentencing. Juveniles have diminished culpability and greater prospects for reform, thus they are less deserving of the death penalty, as well as Life without Parole. Children have a lack of maturity and an under-developed sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking. A child's character is not as well formed as an adult. His traits are less fixed and his actions, less likely to be evidence of irretrievable depravity.

The Petitioner had the mindset, as well as the learning/thoughts of a child less than 10-years-old at the age of 28, when the crime was committed. This must be taken into account when sentencing him. This sentence is definitely Cruel and Unusual and must be looked at as such. If a child was eight and was a doctor or just did some other phenomenal feet, that would not be in their age range, but that of an adult, would you still hold that child to the same standard if they committed a crime as such? You don't hold them to the standard of a child if they make the grades and do the schooling to graduate college. You allow them to graduate and move on with life. If this is the case, an adult with the mindset of a child, should be afforded the same rights as a child.

In ***Roper v. Simmons*, 543 U.S. 551 (2005),** the court held that the Eighth & Fourteenth Amendments to the U.S. Constitution prohibit sentencing persons to death upon conviction of crimes committed when they were juveniles & ***Miller v. Alabama* 567 U.S. 460 (2012),** the majority held that the Eighth Amendment to the U.S. Constitution prohibits sentencing a juvenile to life in prison without parole unless the sentencing court conducts a hearing and determines that the Defendant is one of those "rare juveniles" who is permanently incorrigible. Individuals, namely, the Petitioner who had the mind state and set of a juvenile should be afforded the same as an actual juvenile by their age. It is the mindset, not the actual age that commits the crime,

therefore, the Petitioner should be treated the same. The Petitioner did not possess the culpable mental state constituting malice aforethought nor afterthought.

The Petitioner being sentenced to life without Parole is a violation of his 8th Amendment right to be free from cruel and unusual punishment. It's not his fault he has a mental disability therefore he should not be punished for it. Life without parole is cruel and unusual in the sense that he can be punished for being found guilty of committing a crime, but its excessive and cruel to take his life away when he has mental disabilities and has the mind state of a 3rd grader while being an adult. He should be afforded the same chance as a juvenile that is sentenced to life as the mind development is the same if not less than a juvenile.

This case presents several Constitutional questions that require immediate and significant action. The Petitioner has been in prison for over 30 years for a crime he did commit and owned up to. However, he was treated unfairly by doing so. His charges should have been third degree at the most, manslaughter at the least, yet he was duped into pleading guilty to a charge of murder general. With his guilty plea, he faced sentencing of a minimum of 10 years in prison to death. Almost always when a person pleads guilty, it's to save the government time and money, as well as to get a deal. In every case, the government makes some sort of offer to the Defendant for a plea deal in order to obtain a conviction, save money and obtain justice for the victim(s), their family and or friends. In this case, the Petitioner was not offered a deal. If he was, it was never relayed to him. Also, with a plea deal, things are taken off "the table" to make it more likely a person will accept it. Here, the Petitioner plead guilty while the possibility of being put to death was still on the table. Not only did he do that, but he was to have his fate of the possibility of being faced with that option in front of a sole person, not twelve. If these two things, or if not, at least one doesn't set off alarms that the Petitioner didn't comprehend what's going on, then what has our Judicial

System come to? Innocent until proven guilty is how it's supposed to go! The Petitioner had rights and still does prior to and after the trial and they were, as well as continue to be, stripped away from him. No one in their right mind would plead guilty, just to allow one person to determine the option of if they live, die, or spend the rest of their life in prison. Also, no competent Attorney would advise their client to do so either. There was nothing pointing towards first degree.

It is clear to see the Petitioner was abandoned by his counsel, as well as he did not fully comprehend what was going on. He even let the court know when he was given the guilty plea form that he did not understand. If the Petitioner was just pleading without a fight, the proper plea would be "**no contest**". But again, who in their right mind would do that when the events would not warrant it? Would any of you justices? Would anyone you know? Would you advise your client of such? I'm sure if it were that the events warranted the death penalty, you would advise your client to fight as there is a window, even if it were small, to not get put to death and allow a jury to decide, not a single man.

Although the jury ultimately decided the fate of the Petitioner, whether he was going to face life or death, it was the single man that determined if he would even get that far in the degree of guilt phase. A jury could have and should have determined that and or a plea deal should have been attempted and or offered. The Petitioner was doomed by the system from the very beginning. For these reasons and more to be given, the Petition must be decided through the United States Supreme Court as it is definitely warranted, not only for the Petitioner, but for others in similar situations.

This case raises, not only important questions regarding the deprivation of rights of the Petitioner, but also the deprivation of rights of others past and present.

The exigencies of the moment require that this Court exercise its Jurisdiction. The Petitioner is subject to cruel and unusual punishment by his treatment then and now. He was not given a fair shake and the actual events leading to his arrest would not have gotten him Life in Prison nor even threatened with the death penalty. He continues to suffer mentally now, even worse, as he still doesn't understand. His family suffers, as he was taken away for a long time period.

Due to the importance of the issues presented and the need for immediate resolution, Vander Clayborne respectfully requests that this court grant the Writ of Certiorari.

## CONCLUSION

The Pennsylvania Courts killed a mosquito with a sledgehammer when they sentenced and found Vander Clayborne guilty. Vander was defending himself. He had the mental state and capacity of a juvenile although he was an adult. None of this was taken into consideration. His 8th and 14th Amendment rights were taken away from him.

Here, we have a 59-year-old, Vander Clayborne. He is this age now, but when he was 28, he had the mindset and mental capacity, that which of a 3rd grader. There is no doubt that he committed crimes on that day.

There are several cases from the same county where crimes similar to the Petitioners have been committed by persons that were white, yet the African Americans have systematically been receiving unjust and unequal treatment, which was a violation of their 14th U.S. Constitutional Right to Due Process and fair and equal treatment. One case that comes to mind is ***Commonwealth v. DuPont.***

DuPont laid in wait and was charged with 3rd degree murder due to a diminished mental capacity. I can name several other cases, but I would then go over the word count.

There are four branches on the "murder tree" in American Jurisprudence: (1) Felony Murder, (2) Intent to Kill, (3) Intent to Cause Grievous Bodily Harm, and (4) Depraved Heart/Gross Reckless Murder. The latter three branches at the "Malice Aforethought" limbs. Malice Aforethought is closely associated with "**Mens Rea**." ***Mens Rea*** literally means "guilty mind" and is fundamental to our Criminal Justice System. ***Mens Rea*** is a measure of a person's mental or personal culpability in committing an act. Criminal offenses generally require an action ("**actus reus**"), but we Judge the action's severity based upon the ***Mens Rea*** of the actor. ***Mens Rea*** is often the reason why crimes are graded by degree of severity. Without Malice Aforethought, murder is reduced to Manslaughter. There can be no murder without **Malice Aforethought**.

The Common-law felony doctrine, by substituting the intent to commit a felony with the malice aforethought required for 1st Degree Murder., violates the basic /principle of criminal law that bases liability on individual culpability. You must look at everything with the chain of events. The individual was not shot in a vital organ, nor was he intentionally shot to kill. There were no events leading up to the shooting that were premeditated, nor were they "***Malum in se***".

On that day, two people were shot. However, one bullet was fired at each. There was no Malice Aforethought, as well as the Petitioner was in the passenger's side of a car and left the car and ran home, in which it was a whole city away. He was shocked, scared, and ran, not because he wanted to get away, but just as a child when they do something they feel is wrong, they get scared and run to a safe place; a place of comfort, and his home is his comfort area.

The Petitioner, Vander Clayborne, and other individuals that have or will experience being an adult with a juvenile mind deserve an opportunity at regaining their life. While they were

incarcerated, the correctional system was supposed to do just that; correct them and help make them productive citizens. They were not only to be punished, but rehabilitation is also what was supposed to and has happened with Vander K. Clayborne, and he deserves to show that he is worthy of being given that opportunity now that he's an older man versus when he was a younger man with a child's mindset, due to his illness. He deserves to have the opportunity to have a parole, just as juveniles have now because his mindset was that of a juvenile when he sorrowfully committed the crime he has always owned up to and never ever denied. He has only denied the magnitude, in which, it was presented as that of MALICE and that never was the case.

The United States Supreme Court should exercise their Powers here and allow a Writ of Certiorari as this action not only will bring justice and restore rights to the Petitioner, but possibly others currently incarcerated under the same Breach of Rights. Justice is not one-sided when it begins its equally sitting. Lady justice is blindfolded, but not deaf. She doesn't see race, color, creed, or gender. She listens closely and weighs out everything. Lady Justice isn't blind folded with earplugs holding a noose!

For these reasons, a Writ of Certiorari should be issued to review the judgment of the Pennsylvania Supreme Court.

**DATED:** 3/30/22

**Respectfully Submitted,**

Vander K Clayborne

**Vander K. Clayborne BX7919**
**1 Kelley Drive**
**Coal Township, PA 17866**
**Prose' Petitioner**