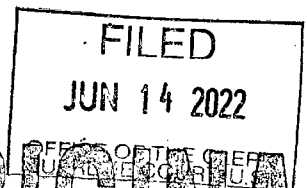


No. 21-8203



IN THE  
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Galina Rytsar

— PETITIONER

(Your Name)

vs.

Superintendant Cambridge Springs

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Galina Rytsar

(Your Name)

451 Fullerton Ave  
Cambridge Springs, Pa. 16403

(Address)

Cambridge Springs, Pa. 16403

(City, State, Zip Code)

(814) 398-5400

(Phone Number)

## Questions Presented

1. Did Appellant receive ineffective assistance of counsel, in violation of her Sixth Amendment Right, beginning at the Bucks County PA Court of Common Pleas level?

- No direct appeal was filed by Attorney Michael Kotik after her August 31, 2016 guilty plea hearing. Appellant had asked him to do so from the recorded phone lines at Bucks County Correctional Facility.
- Attorney Kotik coerced Appellant into taking an unknowing and involuntary guilty plea.
- Kotik never discussed or showed evidence/discovery the Prosecution allegedly had to use against Appellant. He stated he sent discovery to the Appellant at SCI-Muncy, but never did.
- Kotik told the court he was Russian speaking, but failed to translate information to the Appellant regarding pertinent issues in or out of court and could not read or write the Russian language.
- After initially telling her she would receive house arrest, he informed her she would receive a 40 year sentence if she did not take the plea, creating fear in her and her husband/codefendant.
- Kotik failed to inform her of deportation consequences in connection with the plea.
- Kotik would not allow Appellant to testify on her own behalf, though she

insisted she wanted to do so. Kotik forced her to read a statement he said he "cowrote" with her, but that he had actually composed himself.

- Attorney Kotik failed to impeach witnesses against the Appellant as to their motives for testifying against her, some of whom were attempting to receive reduced charges for their own separate criminal offenses.
- Kotik failed to introduce any evidence to counter the Prosecution to include phone records and bank statements that would prove Appellant's innocence.
- Kotik never objected to anything stated by the Prosecution, even when alleged prior bad acts of Appellant were introduced.
- Attorney Kotik, a schoolmate of Bucks County DA Jennifer Schorn, complimented her on the good job she and her witnesses were doing in court.
- Kotik was paid \$27,000 to represent the Appellant and failed to mount any sort of defense.
- Appellant was never informed by the Court or Attorney Kotik that she had 10 days after sentencing to withdraw her guilty plea.
- Appellant was assigned several attorneys in her appellate phase, but they were changed or permitted to withdraw without an explanation to her. This was later held against her in the appellate process as Judge Wallace M. Bateman told her that she "can't just go jumping from lawyer to lawyer". Appellant did not want to change attorneys and has letters to prove this. This caused any counsel's communication with Appellant poor throughout the appellate process.

2. The District Attorney, Jennifer Schorn, introduced alleged information into the trial court that contradicted statements in the police affidavits. She stated false earnings from Appellant's businesses and spoke of prior charges in another state. She stated that Appellant held her employees passports, which was untrue. No proof of this was ever offered in spite of searches of all business and personal property of the Appellant and her family.
3. Were Appellant's rights violated as she was subject to arrest, interrogation, trial, and sent to prison without benefit of a Russian translator at every step?
4. Was Appellant unable to exhaust state remedies in her case due to prison COVID lockdowns and a lack of access to courts?
5. Was Appellant's Habeas filing effectively derailed as and ex-inmate, Mark Marvin, filed a Response to the District Court for the 3rd Circuit that was unsigned and did not contain all the issues about which Appellant wished to argue? Marvin contacted the Appellant at the behest of another inmate and frequently files motions on other inmates' behalf throughout the court system.
6. Was the Appellant a victim of police entrapment? Witnesses like Alexandra Burdeyn, a prior employee who worked for the Appellant only 2 weeks, and who had 19 drug offenses, made false statements acting as an agent of the police that were used as cause to arrest the Appellant. Other employees also worked to set up the Appellant when she was trying to staff her legal business.
7. Did pre-trial publicity afford the Appellant a fair trial?

## LIST OF PARTIES

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

[x] 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:

Original Habeas filed when Petitioner was housed at SCI-Muncy. It was submitted by a person who attempted to continue filing on the Petitioner's behalf as "next Friend". Petitioner is now housed at SCI-Cambridge Springs. At time of filing, the Habeas SHOULD have been captioned as?

Galina Rytsar

v.

Lonnie Oliver, Supt. SCI-Cambridge Springs

## RELATED CASES

## **Index to Appendices**

### **Appendix A-**

United States Court of Appeals for the Third Circuit Order of Denial of Rehearing/Denial of Appointment of Counsel dated March 16, 2022 undersigned by Honorable Judge Thomas Ambro.

### **Appendix B-**

United States Court of Appeals for the Third Circuit Order of Denial of Certificate of Appealability dated February 2, 2022 undersigned by Honorable Judge Thomas Ambro.

### **Appendix C-**

United States District Court for the Eastern District of Pennsylvania Order of Denial of Certificate of Appealability dated September 9, 2021 undersigned by Honorable Judge Berle M. Schiller.

### **Appendix D-**

United States District Court for the Eastern District of Pennsylvania Order of Denial of Writ of Habeas Corpus without evidentiary hearing dated August 20, 2021 undersigned by Honorable Judge Berle M. Schiller.

### **Appendix E-**

United States District Court for the Eastern District of Pennsylvania Order of Denial of Motion to Request Review Regarding Plea Agreement dated June 15, 2021 undersigned by Honorable Judge Carol Sandra Moore Wells.

### **Appendix F-**

Court of Common Pleas of Bucks County Pennsylvania Order of Denial of Motion for Post-Conviction Relief Act hearing dated November 10, 2020 undersigned by Honorable Judge Wallace M. Bateman, Jr.

**Appendix G-**

**Superior Court for the Eastern District of Pennsylvania Non-Precedential Decision  
Reversing and Remanding the Case to the Court of Common Pleas of Bucks County  
dated November 27, 2019 undersigned by Joseph Seletyn, Esquire, Prothonotary.**

**Appendix H-**

**Response for Habeas Corpus written by a fellow inmate and submitted to the United  
States District Court for the Eastern District of Pennsylvania on Petitioner's behalf (to  
illustrate that Petitioner sought help from English speaking neighbors during the COVID  
lockdown not knowing that all issues would not be addressed or preserved). Filing  
undated.**

**Appendix I-**

**Reply to Answer in Opposition written by "Next Friend" Mark Marvin dated July 15,  
2021. This "Reply" only containing two issues for review to the United States District  
Court Eastern District of Pennsylvania. This filing sent to court and not signed or  
understood by Petitioner and contains only two issues complained upon.**

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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 \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished. No opinion. Only denial Order.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☒ reported at LEXIS 157556; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☒ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☒ reported at LEXIS 4434 224.A.3d 806; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ 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 February 2, 2022\_\_\_\_\_

☐ 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: March 16, 2022\_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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).

### ☒ For cases from state courts:

The date on which the highest state court decided my case was November 27, 2019  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ 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. § 1257(a).

# CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Sixth Amendment Conclusion

## Statement of the Case

After entering into an open plea with her husband/co-defendant in Bucks County PA Court of Common Pleas before Judge Wallace M. Bateman, Jr., Petitioner was sentenced to 3 to 10 years in a state correctional facility August 31, 2016. The offense warranting incarceration was Trafficking in Individuals. Petitioner filed a timely post-sentence Motion for Reconsideration. No direct appeal was filed. She was represented by counsel during the plea, sentencing, and post-sentencing motion phase. A timely Post-Conviction Relief Act (PCRA), 42 Pa. C.S. 9541, was filed June 19, 2017. Several motions for counsel were filed and granted, with appointed attorneys withdrawing for various reasons. A hearing was held before sentencing Judge Bateman October 25, 2018, to address Petitioner's request for appointment of counsel. At this hearing, she was asked to agree to be resentenced under RRRI, 44 Pa. C.S.A. 5303, PA's Recidivism Risk Reduction Incentive Program. She rejected RRRI and was denied an attorney. Petitioner's PCRA was denied December 13, 2018. Petitioner filed a timely notice of appeal to the PA Superior Court January 14, 2019. On November 27, 2019, the Superior Court reversed and remanded the matter to the PCRA court to conduct a hearing on the issue of whether the plea counsel had been ineffective as he failed to file a direct appeal. On March 16, 2020, the PCRA court held a hearing on the remanding issue. No response was issued until November 10, 2020. Within 2 weeks, when Petitioner recieved legal mail stating the PCRA court's ruling, SCI-Cambridge Springs was in a strict lockdown for COVID. It was not possible at that time for the Petitioner to receive help with legal work. She is Russian-speaking and any "writing" she does requires the

assistance of dictionaries and staff at the SCI-Cambridge Springs law library. She has no knowledge of legal terminology. SCI-CBS did not resume normal operations until March 16, 2021. Without knowing her rights, Petitioner had been timed-out for filing a notice of appeal to the PA Supreme Court. In the interim, a "friend" submitted a Habeas to the United States District Court for the Eastern District/Third Circuit on the Petitioner's behalf without her knowledge or signature. The document was unsigned and only contained two issues. The "friend" filing the unsigned Habeas has a history of filing motions on behalf of the Petitioner and other inmates through the court systems in various states, research throughout LEXIS NEXIS indicates. Petitioner was ordered to and signed a Petition and returned it to the Honorable District Court. Another inmate in the Petitioner's housing unit hand-wrote a "Response for Habeas Corpus Relief and Memorandum of Law In Support Thereof" and submitted it to District Court Judge Carol Sandra Moore Wells. Petitioner is unsure as to the date this was sent. It states no grounds for relief.

The Habeas Corpus was denied by Honorable Judge Berle Schiller on August 21, 2021. A timely appeal was sent to the United States Court of Appeals and denied on as of Feb. 2, 2022. A timely Petition for Rehearing was filed and denied on March 16, 2022 on an Order signed by Honorable Judge Thomas Ambro.

The Commonwealth of PA alleges that Petitioner and her husband operated a house of prostitution in Morrisville Borough, Bucks County, PA. Police, primarily Detective Timothy Carroll, claim they mounted an investigation when they were surveilling a drug dealer operating out of the plaza where the Petitioner's legal Spa business was located. Detective Carroll enlisted other police and ex-employees of the Petitioner's spa to entrap the Petitioner. Police obtained search warrants based on false information and Petitioner and her husband were arrested.

Petitioner seeks relief from this Honorable Court based on her questions presented. She avers she had ineffective assistance of counsel leading up to, during, and after the plea agreement she entered into August 31, 2016 by her paid attorney, Michael Kotik. Kotik purported that he was Russian-speaking and would be able to translate all aspects of Petitioner's case both in and out of the courtroom. He did not. Kotik is not certified interpreter. He did not discuss any of the facts or evidence against the Petitioner. She often relied on her daughter to tell her what happened in court. Her English language skills are improving now, years later, but during the time she was charged for these crimes and awaiting court, her English was rudimentary. Kotik was paid \$27,000 to represent Petitioner and failed to mount any sort of defense on her behalf. He failed to introduce any sort of evidence the Petitioner had to dispute what the District Attorney stated as fact in the courtroom and in police affidavits. Kotik failed to impeach witnesses that rendered statements against the Petitioner and her husband. These witnesses made accusations against the Petitioner that were not supported by evidence. Attorney Kotik refused to allow his client to testify on her own behalf in court, as is her right, opting to tell her to read a statement he "cowrote", according to him. He coerced Petitioner to enter into an unknowing and involuntary plea agreement without informing her of the possibility she would be deported. He stated she would receive house arrest if she took the plea, but that she would possibly face a 40 year sentence if she refused to sign a plea. Attorney Kotik never objected to any of the information presented in court against his client and even complimented the District Attorney of Bucks County, PA on the fine job she was doing in court. This is adverse to



the proper representation of his client. Kotik did not inform his client she could have withdrawn her plea within 10 days of sentencing. Kotik never showed Petitioner any of the evidence or discovery the Commonwealth allegedly had against her at any time before or after her guilty plea in spite of the fact that she had no idea what the proceedings were from the time of her arrest until she arrived at SCI-Muncy. Attorney Kotik coerced the Petitioner into pleading guilty to charges when she was not aware of the meaning of them. No direct appeal was filed on her behalf. Petitioner had asked him to do so from a recorded phone line in a Corrections' Counselor's office at Bucks County Correctional Facility. Petitioner's daughter also telephoned and visited Kotik's office several times requesting an appeal, but it never happened. Petitioner was sent to state prison with no knowledge of the appellate process. She sought help and received a succession of appellate lawyers who were either taken off her case or declined to defend her. She was never able to communicate properly with any of these attorneys in any purposeful way with a translator before they were off her case. She never received her discovery information from Attorney Kotik, the District Attorney for the Commonwealth, of any of the appellate attorneys in spite of filing several Motions requesting her files.

The Bucks County District Attorney who prosecuted this case introduced evidence into trial that contradicted statements in the police affidavit and evidence the Petitioner could have provided. The D.A. used false testimony by witnesses who were making statements against the Petitioner because they had criminal charges of their own. Petitioner's Constitutional Rights were violated as she was not provided a translator when arrested, interrogated, and imprisoned, and told by her attorney that she needed to sign her guilty plea. Petitioner is still not receiving translation services as an inmate at the PA State Correctional Facility (CBS).

Petitioner was not able to exhaust all state remedies in her case. She received an Order denying relief from the PCRA Court after the PA Superior Court ordered a review of her case, but this denial was sent to her only days prior to the COVID lockdown entered into December, 2020. The institution was not opened again for any law library access until March, 2021. Without any knowledge, the Petitioner had been relying on staff there who are trained and certified to assist her.

An unsigned Habeas Corpus and a "supplement" to a Habeas Corpus were sent to the

United States District Court by a person who contacted the Petitioner years before via mail and said he is a "next friend" and another inmate living near the Petitioner. Petitioner did not help write these filings and was not aware she was jeopardizing her appellate rights by seeking help from others and submitting their filings. Her case should have been appealed to the PA Supreme Court, however she had no way of knowing this while on COVID lockdown and no trained and capable legal assistance. The Habeas filed by the "Next friend" contained only two grounds for relief and the Petitioner had more issues to present for review. Her ability to argue these points have been damaged by this unsigned filing.

Petitioner avers she was entrapped by police in Morrisville Borough. The police had two placed near the toll booth at the New Jersey and Pennsylvania border that was in view of the shopping plaza. These officers were surveilling a drug dealer operating in the same plaza that held the Petitioner's legal spa business. This drug dealer, when questioned by police, made a false statement against the Petitioner to avoid his own criminal charges. The Morrisville police were corrupt and took the word of the drug dealer.

Petitioner contends untrue statements were made about her and her husband and their business to the press and that this affected the way her case was handled within the Bucks County PA Court System.

## Reasons for Granting the Petition

Petitioner respectfully requests this Honorable Court grant her a Writ of Certiorari as her Sixth Amendment Right to Assistance of Counsel was not rendered in an effective and honest way. Petitioner's plea attorney, Michael Kotik, coerced her and her codefendant husband into attesting to and signing an unknowing and involuntary plea agreement. *Wellnitz v. Page*, 420 F.3d 935, 936 (10th Circ 1970), "...if an attorney unfairly holds out an assurance of leniency in exchange for a confession of guilt the question may arise whether such assurances were coercive..." Attorney Kotik told the Petitioner at first that she would receive house arrest if she and her husband signed the plea agreement although they kept trying to tell him they wanted to advocate for their innocence. There was a serious language barrier and Petitioner told her Attorney she could prove her innocence. He pressed the plea idea, creating a threatening atmosphere, telling Petitioner she would receive 40 years in prison if she did not take the plea. Utilizing her daughter to help her communicate, Petitioner tried explaining to Attorney Kotik that she could defend herself through bank and telephone records, but the attorney failed to either show or attempt to explain alleged evidence against her or grant her the opportunity to tell him ways in which she could provide defense material to him. Petitioner was accused of keeping passports and other documents from employees to keep them in servitude, but no evidence of this was ever found. This issue went unaddressed by Attorney Kotik. *Couch v. Booker*, 632 F.3d 241, 247 (6th Circ. 2011), "trial counsel was ineffective when he failed to track down readily available and likely useful evidence that defendant asked counsel to obtain." Not one subpoena was filed

to gain evidence on behalf of his client by Kotik. Attorney Kotik stated at one point after he failed Petitioner in the Post-Conviction phase that he sent her discovery information to SCI-Muncy, which was too late for trial defense as she had been sentenced and sent to state prison by that time and furthermore, no discovery information was ever recieved. Legal mail signature logs can be provided by the prison to prove Kotik's claim was false. Petitioner tried desperately to explain that she wanted to testify in her own defense and her attorney forbade her to. *Rack v. Arkansas*, 483 U.S. 44, 49-52, 97 L.Ed. 2d 37 (1987) and *United States v. Leggett*, 162 F.3d 237, (3rd Circ. 1999), "The right to testify is personal to [the] defendant and may not be waived by counsel." Attorney Kotik capitalized on the fact that the Petitioner was non-English speaking, saying he spoke Russian and that he would "handle it". Kotik composed a statement for Petitioner to read in court, saying that she should say she helped to write it. She did not. Repeatedly Kotik told the court he spoke Russian but he was not translating all proceedings and facts to the Petitioner in a reliable manner. He was and is not a certified translator per the Court Interpreter's Act, 28 U.S.C. 1827. *Guzman v. United States*, 2004 U.S. Dist. LEXIS 28368, Petitioner's sentence was vacated as, "counsel's representation in connection with the guilty plea was ineffective because counsel failed to translate fully the plea agreement and misled the petitioner about the consequences of the plea agreement." Appellant is entitled to hear any information happening in court that may pertain to her case. The court ruled in *United States v. Joshi*, 896 F.3d 1303, 1309 (11th Circ. 1990), "the general standard for adequate translation of trial proceedings requires continuous word for word translation of

the record that he had gone to school with the District Attorney. PA Rules of Professional Conduct: Preamble: A Lawyer's Responsibilities [2] "As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical applications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system." Attorney Kotik's representation of the Petitioner was deficient and he seemed to indicate, through compliments offered to the Commonwealth's attorney, that he was not really on her team. Petitioner was able to offer information that would explain statements made by witnesses in her case, as well as information regarding the motivation of the witnesses who worked in conjunction with the police to make false allegations against her and her husband. Petitioner asked her daughter to explain this to her attorney as well, but he did not attempt to use any of this information. *DeLaRosa v United States*, 481 Fed Appx., 480, 483 (11th Circ.), case remanded for evidentiary hearing to determine whether trial counsel rendered ineffective assistance by failing to investigate and cross-examine a key government witness.

Attorney Kotik failed to file a direct appeal after Petitioner was sentenced August 31, 2016 in spite of the fact that she asked him to on the recorded phone line belonging to the Corrections' Counselor at Bucks County Correctional Facility. Petitioner's daughter also telephoned Kotik and visited his office begging him to file a direct appeal. Kotik had been paid \$27,000 and he did nothing. *Roe v. Flores-Ortega*, 528 U.S. 470, 120 S.Ct. 1020, 145 L.Ed. 2nd 985 (2000), "The Supreme Court held that an attorney's failure to file an appeal upon being instructed to do so by his client constitutes professionally deficient performance." The PA Superior Court ruled June 26, 2019 that the Petitioner's case be remanded due to this lack of filing a direct appeal. Attorney Kotik went on to testify on March 16, 2020 before Common Pleas trial Judge Wallace M. Bateman, Jr., that he was never asked to file an appeal. The Court refused to hear the Petitioner's request that phone records placed asking for a direct appeal from the Bucks County Correctional Facility be acquired.

Key Commonwealth witness against the Petitioner Alexandra Burdeyn was influenced by the police to falsify statements in order to work as their agent to make this case. Burdeyn told Petitioner Detective Carrol was aware that Burdeyn had 19 drug-related arrests and that he came to her apartment, entered without her permission, put her in handcuffs, and demanded she sign a document alleging Petitioner and her husband kept teenaged girls chained in their basement. She went on to say that she was made to work as the girls' Madame, reiterated to the Petitioner that she was forced by police to say this and threatened with 20 years in prison if she did not cooperated. Attorney Kotik never attempted to counter any statements made by Burdeyn. Burdeyn also denied in court in the trial/plea phase that she had ever been arrested and that she may have motives to make false statements to the police. Another witness, Natasha, (last name unknown to this writer), was also working with the police. D.A. Schorn lied and said Natasha was a "new employee" the Petitioner found for working in prostitution. Natasha was not recruited newly for prostitution. She worked previously for the Petitioner and had to leave because her child was ill. She called and begged to come back and the Petitioner agreed to hire her again. Natasha was with the Petitioner and her husband when they were arrested in 2015. They had gone to pick her up to come to work. When the police pulled the vehicle over to arrest the Petitioner, the officers had lengthy conversation with Natasha and gave her the keys to Petitioner's vehicle, which she then drove away. Natasha admitted conspiring with Tim Carrol in court and to the fact that she was lying when she said that she was never an employee of the Petitioner. Petitioner does not have transcripts of this testimony as she never recieved them. Many lies were told by the witnesses and the police. Attorney Kotik could have proven that Natasha was lying and that she had been in the employ of the Petitioner and her husband had he subpoenaed phone records to prove this relationship, but he did not. *Gomez v. Beto*, 462 F.2d 596, 597 (5th Circ. 1972), "When a defense counsel fails to investigate his client's only possible defense, although requested to do so by him, and fails to subpoena witnesses in support of the defense, it can hardly be said that the defendant has had the effective

assistance of counsel." Attorney Kotik, a paid attorney, did not impeach the witnesses for the Commonwealth, and failed to seek witnesses that could have helped the Petitioner to include other employees and business associates. *Hart v Gomez*, 174 F.3d 1067, 1070 (9th Cir.), "A lawyer who fails adequately to investigate, and to introduce into evidence, records that demonstrate his client's factual innocence, or that raises sufficient doubt as to that question to undermine confidence in the verdict, renders deficient performance." Kotik failed to subpoena phone records that could show calls and text messages to and from the employees who testified against Petitioner even though his client begged him to explore her defense. He failed to acquire easily accessible bank records that would show the District Attorney presented false information about the Petitioner's business revenue. He failed to inquire with the Commonwealth why they used witness statements saying the Petitioner held her employees passports and travel documents, but these were never found in various searches. Attorney Kotik failed to question the searches of the Petitioner's business, car, and other personal property.

District Attorney Jennifer Schorn made a statement in court that the Petitioner was arrested in New Jersey for prostitution in an attempt to plant the seed that the Petitioner had a pattern of this behavior. *Pa. Rule Evidence 404(a)(1)* "use of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character of trait."



Judge Bateman reminded Schorn that the Petitioner was never charged with this offense and that this information was not permissible in court, but Schorn continued in the use of false information to build the case against the Petitioner as she sat there in the court without complete translation and with an attorney who did not object to the falsities presented by the Commonwealth. D.A. Schorn also introduced information in court during the sentencing hearing that Petitioner and her husband made \$96,000 from on spa business in two months. Petitioner, in appellate phases after seeking help understanding what happened at the sentencing and in the rest of her case, realized she needed her attorney and the courts to physically view her bank records to substantiate that her deposits were \$48,000 together for a period of 2.5 months for two legal spas. Schorn gave false information that Petitioner had two bank accounts. She multiplied the actual monies made in the spas misrepresenting that the profits made were \$96,000. Each spa made approximately \$320 per day for legal commerce. All proceeds were legal and the spas made a total of \$48,000 together.

Petitioner was unable to exhaust the available state remedies due to COVID and a lack of access to the prison law library. She prays this Honorable Court will consider *Miller v N.J. State Department of Corrections*, 145 F.3d 616, "...equitable tolling appropriate when principles of equity would make the rigid application of a limitations period unfair." The Bucks County Court of Common Pleas ruled on Petitioner's case March 16, 2020 after it was remanded from the PA Superior Court. The date of the Order sent to the Petitioner was November 10, 2020. Petitioner had not heard from the court for 8 months and was not aware of any due dates or the intricacies of her appellate rights, but made appointments with the law library where she had received help throughout the appellate process. SCI-Cambridge Springs was completely locked down due to COVID just after Thanksgiving 2020. The library cannot be remotely accessed as the only housing unit at Cambridge Springs that has legal information is the RHU (Restricted Housing Unit for inmates under disciplinary sanction). Petitioner had been in contact with one Mark Marvin since March of 2018 when he wrote her offering to help with her case. She was under the impression he was an attorney so she wrote him again with the help of a roommate asking for assistance. Mr. Marvin filed an unsigned Writ of Habeas Corpus with the United States District Court for the 3rd Circuit without her knowledge dated November 30, 2020 on her behalf. Petitioner was unaware that she needed to pursue her case to the PA Supreme Court and that the filing of the Habeas would harm her case.

Petitioner's case was effectively derailed as Mr. Marvin not only filed a Habeas on Petitioner's behalf containing only two issues, but also a Response to the United States

District Court for the 3rd Circuit that did not contain all the issues Petitioner intended to complain about. Petitioner is Russian-speaking and had difficulty understanding spoken English in prison, but especially technical legal terminology. The prison does not supply a translator for any inmate. There are Spanish-speaking staff who are called when needed, but no other language translation service is offered. PA Department of Corrections policy DC-ADM 007, *Access to Provided Legal Services Procedures Manual, Section 1-Law Libraries and Services, F. Non-English Speaking Inmates*

"1. The Department will make reasonable efforts to provide non-employee translation services for non-English speaking inmates for the purposes of:

- a. communicating with the library staff and/or Inmate Legal Reference Aides;
- b. translating (orally or in writing) legal materials or court documents; and
- c. transcribing into English, documents prepared for submission to court."

Petitioner has been struggling with the use of a dictionary to receive help with legal documents since her arrival in state prison.

When Mr. Mark Marvin offered to assist her as a "next friend", she had no idea this would affect the exhaustion of state remedies and that there would be a failure to preserve appellate issues when Marvin complained only of two issues on her behalf in the Habeas, those being denial of court access and ineffective assistance of trial counsel as he advised her to plead guilty although she was entrapped by police. It is unfortunate that the filings sent by Mr. Marvin were accepted by the court. As in *Fed R. Civ. P. 11(a)*, "every pleading, written motion, and other paper must be signed by at least an attorney of record in the attorney's name or by a party personally if the party is

unrepresented. The court must not strike an unsigned paper unless the omission is promptly corrected after being called to the attorney of the party's attention." The court acted appropriately in sending an Order to the Petitioner asking her to sign the document filed by Mr. Marvin docketed November 30, 2020, but the Honorable District Court had no way of knowing that Petitioner did not know signing that document would indicate her acceptance that it was derailing her appellate rights. That Habeas and the Response filed by Mark Marvin effectively interfered with any work Petitioner could have and did receive when the prison resumed limited operations in March of 2021. At some point, an officer on the Petitioner's housing unit suggested another inmate help her and this inmate submitted a hand-written on notebook paper document titled Response for Habeas Corpus Relief and Memorandum of Law to the Honorable Judge Carol Sandra Moore Wells, United States-Magistrate Judge. This filing is undated and contains no claim for relief. Petitioner asks that she her case be heard with issues in addition to those filed in her original Habeas. *Whitmore v Arkansas*, 495 U.S. 149, "Limitations on the 'next friend' doctrine are driven by the recognition that it was not intended that the writ of habeas corpus should be availed of, as a matter of course, by intruders or uninvited meddlers, styling themselves as next friends." This is a delicate issue as Mr. Marvin may very well have been simply trying to help without properly understanding the entirety of the Petitioner's case and the Petitioner did not understand the help she received would affect her rights.

Petitioner and her husband operated a legal spa business, providing traditional services and neither condoned or were aware of any illegal activity occurring in the businesses. Petitioner's attorney did not investigate and the Petitioner was not able to advocated for herself in court, but she wanted to explain to the court the issue that entrapment on the part of the police was the reason for her address. Primary witness, Alexandra Burdeyn, had been an employee of the Petitioner's in 2013, borrowed \$10,000 from her kids and disappeared for 2 years. After the 2 years, she returned without paying back or referring to the money at all. After she was given a second chance by the Petitioner, a Christian, Burdeyn began drinking heavily, and was observed buying drugs in the parking lot of the shopping plaza that housed the spa business. This is when Burdeyn later told the Petitioner that Detective Tim Carroll came to her apartment and handcuffed her, forcing her to make a statement against the Petitioner. Burdeyn stated another Detective from the Warminster, Pa. Police department came to her apartment and forced her to testify against the Petitioner. The drug use caused the Petitioner to fire her. Burdeyn begged to stay on at the spa after being fired. When Petitioner refused to rehire her, she sent a text stating that she is an American and she would cause big problems for the Petitioner and her husband. Petitioner had asked her attorney to get phone records to prove that she had recieved this text, but plea Attorney Kotik would not subpoena evidence. Burdeyn and another employee were arrested and the Petitioner and her codefendant husband went to bail her out at the Morrisville, Pa. police station, where they were subsequently questioned without attorneys or translators. The bail and attorney money they brought for their employees was confiscated by police, as were their telephones. Police officers accused them of using illegal money to pay the bail but they had borrowed money from a friend to pay this bail and could prove this, but no one would listen to them. They were handcuffed and loudly shouted about prostitution. There was no translator. They were taken to a judge and asked for their passports. They felt threatened and were not aware of what was happening. This was a part of the tactic of entrapment being used by the police in this area. This is when the Petitioner and her husband were accused of forcing Burdeyn to act as a Madame and other things such as opening bank accounts for

them. Burdeyn had signed a document stating these things occurred and they did not. Petitioner was never given the chance to prove her innocence in a sham Common Pleas court situation that resulted in her accepting a non-intelligent guilty plea. Accepting the statement of Burdeyn that was forced upon her by police amounted to entrapment. "When the police conduct regarding obtaining evidence of a crime rises to the level of outrageousness, the conduct will support a finding of entrapment as a matter of law.", *Commonwealth v Zingarelli*, 2003 Pa Super 424; 839 A.2d 1064. Petitioner alleged the police were surveilling the drug dealer in her plaza and that witness Burdeyn concocted a story about her business to get out of the drug charge she was given based on her conduct outside the legal spa business.

Petitioner avers she received ineffective assistance of counsel at the plea and appellate levels of her case and that this affected her ability to preserved her appellate rights, and that she was somehow blamed for this in Post-Conviction proceedings. Her original attorney, Michael Kotik, did fail to file a direct appeal on her behalf. She had asked him to do so. Bucks County Court Common Pleas Judge Wallace Bateman committed an error in ruling that Kotik was never asked to file a direct appeal in his ruling dated November 10, 2020. Prior to this, in Petitioner requested the assistance of counsel and was denied in a timely PCRA that was denied December 13, 2018. Petitioner tried to seek the assistance of Bucks County in appeals. She had a hearing October 11, 2018 and it was postponed as she was given no translator. Petitioner was obstructed in the appeals process constantly and begs this court's consideration of these facts.

Petitioner received ineffective assistance of counsel at the hands of her plea attorney Micheal Kotik, but also in Post-Conviction phases. She had multiple attorneys of record in Post-Conviction, but she never received complete and effective representation. She was assigned PCRA Attorney Dean Malik after filing a timely PCRA June 27, 2017. Unfortunately, Malik represented her co-defendant as well and was removed from Petitioner's case due to the conflict of interest. Petitioner received a letter dated September 19, 2017 from Attorney Sharif Abaza, informing her he was now her counsel. Afterward, he forwarded another undated letter. It was a thorough explanation of the PCRA process. She obtained help from the SCI-Cambridge law library to understand the letter's meaning and responded with facts Abaza could investigate to help in her defense. Petitioner could help impeach witnesses against her who suggested she kept their passports to keep them in servitude, she could provide information about bank accounts that illustrate the fact that the Bucks County District Attorney completely misstated and manipulated bank records connected to her business, and she had several other facts to provide. Petitioner signed papers to release her records to Abaza from her last attorney. Petitioner recieved an Order dated January 16, 2018 from Judge Wallace Bateman of Bucks County, PA stating Attorney Sharif Abaza had been vacated as her attorney. There was no explanation as to why. She never heard from Abaza again. She was left in limbo. Yet another attorney, Bonnie-Ann Brill-Keagy was appointed her third appellate attorney. Again, Petitioner had to start over in the process of advocating for her defense. She received a letter dated February 12, 2018

from Attorney Brill Keagy stating she'd been delayed in getting information on Petitioner's case from Attorney Abaza and that she had many other people's cases to peruse. Attorney Brill Keagy, from Montgomery County, not Bucks County, Pa., wrote a letter to Petitioner dated April 24, 2019 stating she still did not have the transcripts from the case. She encouraged Petitioner to accept RRRI and said she had spoken to someone at the District Attorney's office about this. She also stated she repeatedly attempted to contact the prison to arrange contact with the Petitioner to no avail. Petitioner never wanted to accept a guilty plea and emphatically did not want to agree to RRRI and did not give Keagy any sort of permission to speak to the District Attorney's office about her case with the purpose of arranging more agreements to accept guilt when she was not guilty. She needed help in presenting information that could defend her and she was immediately greeted with more ways she could plead guilty by an attorney who was supposed to be defending her. Trial Judge Bateman, in an October 11, 2019 hearing after Petitioner asked for a new attorney, "I can't let somebody go from one lawyer to another. We've given you the benefit of an experienced and seasoned PCRA attorney {Brill Keagy} and she has concluded there is no merit to anything that's been raised, and I let her out of this case on that basis. I'm not going to appoint a new lawyer going forward." Judge Bateman seemed to know Brill Keagy and it seemed like the Judge wanted Petitioner to sign a RRRI sentencing order admitting guilt when she was not guilty. Petitioner prays this Court will grant her relief as the PA Superior Court had remanded and reversed her case November 27, 2019 so that the PCRA Court could conduct a hearing on the issue of whether or not the Petitioner had been effective for failure to file a direct appeal. The Petitioner could not afford a lawyer and was asking for help, but was never provided with competent counsel.



Pre-trial publicity did not afford the Petitioner a fair trial. Bucks County Assistant District Attorney Matthew Weintraub released information about the Petitioner, her husband, their business, and accusations about her past that were false into the press. The case had been subject to media coverage throughout and mentioned the Petitioner's ethnicity, further poisoning public perception. Her attorney, Michael Kotik, never spoke to her about this publicity, but family and friends told her about the situation. This may very well have contributed to the lack of representation she received by her attorney.

"In addition to actual prejudice, this court has recognized that there are some instances in which pre-trial publicity can be so pervasive and inflammatory [that] a defendant does not have to prove actual prejudice. In such instances, prejudice will be presumed if the defendant can establish that the pre-trial publicity: (1) was sensational, inflammatory, and slanted toward conviction, rather than factual or objective; (2) revealed the defendant's criminal record, if any, or referred to confessions, admissions, or re-enactments of the crime by the defendant; or (3) derived from official police or prosecutorial reports." *Commonwealth v. Tharp*, 830 A.2d 529. If the entire community was given information that indicated the Petitioner and her husband were guilty, a defense seemed impossible, and, in fact, never happened.

### **Conclusion**

This Honorable Court should grant the requested Writ of Certiorari because the Commonwealth of Pennsylvania Court of Common Pleas, the United States Court District Court for the Third Circuit, and the United States Court of Appeals for the Third Circuit made rulings in error of the facts.

The Petitioner's Sixth Amendment Right to effective assistance of counsel was violated, resulting in the loss of other rights, such as due process as the court was not in possession of all the facts needed to make an informed decision. Petitioner emphasized to her attorney from the onset of her criminal case that she was innocent of all the charges and received no defense. The Common Pleas Court of Bucks County, PA erred in not granting her relief as her plea attorney was ineffective, failed to file a direct appeal, and misrepresented the truth about this at a PCRA hearing held March 16, 2020 although the PA Superior Court ruled the Petitioner should receive relief. The Petitioner's appellate rights were damaged as she was appointed several appellate attorneys in Post-Conviction, but they were removed by the court or wanted her to take another guilty plea.

The Honorable United States Court for the Eastern District of PA erred in accepting a Habeas Corpus filing containing only two appellate issues from one Mark Marvin, a former inmate from New York state, who files unsigned Motions on behalf of other inmates asking for "Next Friend" status frequently. Petitioner had other issues about which to complain. She is Russian-speaking and was not able to receive proper help with her appeal due to COVID lockdowns at the PA State Correctional Facility at

Cambridge Springs, where she is housed. The Honorable United States Court of Appeals  
for the Third Circuit for the Eastern District erred for the same reason in denying

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Petitioner the right to appeal her case.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Galina Rytba

Date: 06.14.2022