IN THE UNITED STATES SUPREME COURT

Larry Charles,	:	**Case Number: 20-2524**
Petitioner,	:	
v.	:	
Laurel Harry,	:	**Civ. Nos. 13-7548, 14-189**
Respondent.	:	

RULE 22- APPLICATION TO JUSTICE ALITO

I. INTRODUCTION

The Pennsylvania District Court (Eastern District) and the Third Circuit Court of Appeals denied relief to the Petitioner regarding his Rule 60(b)(6) Motion. The Petitioner requests that Justice Alito, sitting as a Third Circuit Judge, grant Petitioner's Request for a Certificate of Appealability.

II. ARGUMENT

A. Legal Standards for Certificate of Appealability

Under the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a habeas petitioner cannot appeal a District Court judgment unless he obtains a Certificate of Appealability. See, 28 U.S.C. Section 2253(c)(1)(A)(2). The Certificate of Appealability must specify which claim or claims meet the "substantial showing" standard.

To make a substantial showing, "obviously the petitioner need not show that he should prevail on the merits." Barefoot v. Estelle, 463 U.S. 880, 893 (1983). Rather, the petitioner need only show that the petition contains an issue (1) that is "debatable among

jurists of reason" ; (2) "that a Court resolve in a different manner" ; (3) that is "adequate to deserve encouragement to proceed further" ; or (4) that is not "squarely foreclosed by statute, rule, or authoritative court decision, or ... [that is not] lacking any factual basis in the record." Id. at 893 n.4 and 494.

This standard does not require the petitioner to show that he is entitled to relief:

> We do not require petitioner to prove... that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail. Miller-El v. Cockrell, 537 U.S. 322, 338 (2003). Therefore, doubts as to whether to issue a Certificate of Appealability should be resolved in favor of the appealant. Fuller v. Johnson, 114 F.3d 491, 495 (5th Cir. 1997).

If a ground was dismissed by the District Court on procedural grounds, a Certificate of Appealability must be issued if the petitioner meets the Barefoot standard as to the procedural question, and shows, at least, that jurists of reason would find it debatable whether the ground of the petition at issue states a valid claim of a constitutional right. Stack v. McDaniel, 529 U.S. 473, 483-484 (2000).

B. The Petitioner is entitled to a Certificate of Appealability

The Petitioner incorporates by reference the arguments presented in his Rule 60(b)(6) Motion.

As indicated above, the District Court entered an Order granting Petitioner's Motion to Exceed the Page Limit. We must agree with the fact that it would have been illogical for the Court to grant such a Motion for the Petitioner if he presented a wholly frivolous argument to the Court. It should be noted that no Court has referred to any of the

Petitioner's arguments as frivolous. The Petitioner's Rule 60(b)(6) Motion was 95 pages in length. The arguments presented were well-supported by authoritative opinions from the United States Supreme Court, Circuit Courts of Appeal (including the Third Circuit), Pennsylvania State Supreme Court, and the Pennsylvania Superior Court. The quality and depth of the arguments presented by the Petitioner clearly meet the Barefoot v. Estelle standard, and the standards of the other cases cited above.

The numerous cases cited and discussed by the Petitioner in his Motion not only establish that his issues are debatable, they also establish that Federal and State Courts at every level from the U.S. Supreme Court down to the Pennsylvania Superior Court have resolved the issues presented by the Petitioner in a different manner and ruled in favor of the petitioners. We can agree that issues supported by authoritative opinions that represent the true state of the law of the land deserve encouragement to proceed further. Clearly, the issues presented by the Petitioner are not "squarely foreclosed" by any statute, rule, or authoritative court decision and the issues find a factual basis in the record.

Recently, a Cable Network News reporter while reporting the news on national television stated that protesters vandalizing and burning buildings is not violence. In order to not agree with anything the President of the United States has to say, the reporter shared with the nation his liberal Orwellian redefinition of violence. Pick up any dictionary and we will find that destructive action or force directed toward people or property fits the definition of violence. But "Newspeak," as described by George

Orwell's book 1984, and used by the CNN reporter, strips words of their ordinary meaning and redefines them in order to promote a particular narrative. Acting in a manner similar to a news reporter promoting a one-sided narrative, the District Court Order ruled against the Petitioner and denied him a Certificate of Appealability. Hoping against hope that the instant request for a COA will be reviewed by an unbiased Court that will competently and honestly evaluate his arguments, the Petitioner will use the law of the land and prove, contrary to the conclusion of the District Court, that the Petitioner's Motion is not untimely, unauthorized, or meritless.

The Petitioner asks the Court to note the fact that the District Court declined the Petitioner's request to ask for a Commonwealth response. State and Federal authoritative opinions, including Judge Diamond's opinion in Stovall v. Warden, New Jersey State Prison, 2005 U.S. Dist. Lexis 6758, demonstrate that the Commonwealth would agree that the Petitioner never had an obligation to show how he was prejudiced by counsel's failure to perfect his first Direct Appeal.

In the Petitioner's case, the flawed and incorrect statement that the Petitioner received a direct appeal in 2010 when the Superior Court denied his direct appeal is an error that the Petitioner has urged the Federal Courts to correct for years. It is Hornbook law in every state and federal court in the country that prejudice is presumed when counsel fails to perfect the defendant's first direct appeal of right. See, Evitts v. Lucey, 469 U.S. 387 (1985)(counsel's failure to perfect the petitioner's appeal waived the petitioner's opportunity to make his case on the merits); Rivera v. Goode, 540 F.Supp.2d.(2008) (counsel's failure to file a Rule 1925(b) statement constituted deficient performance, and

prejudice is presumed); Edwards v. United States, 246 F.Supp.2d. 911 (E.D.Tenn. 2003) (granting habeas relief where counsel failed to act further, resulting in dismissal of petitioner's appeal); Turner v. United States, 961 F.Supp.189(E.D.Mich.1997)(granting habeas corpus relief where petitioner filed a valid pro se notice of appeal that was later dismissed because of counsel's failure to prosecute).

The 2010 Superior Court panel found the Petitioner's sole issue [not issues] was waived and his appeal was dismissed without any review on the merits. The PCRA Court, contrary to the law, as was done in Rivera v. Goode cited above, reviewed the Petitioner's case on the merits instead of granting a nunc pro tunc appeal that the law of the land demands. The Petitioner's Rule 60(b)(6) Motion is a timely effort to correct a hardship to the Petitioner who has not had the direct appellate review of his case that he is entitled to. In Stovall, cited above, after 20 years, Judge Diamond found that the petitioner, although he had a direct appeal of his meritless claim, and although he had a total of four reviews of his case that included a 16 page review by Judge Diamond that concluded that Stovall's issue was meritless, received ineffective assistance of counsel when his second lawyer failed to file a petition for allowance of appeal in the Pennsylvania Supreme Court. Stovall, with multiple findings of meritlessness, was not required to show how he was prejudiced by counsel's failure to file his appeal. The Petitioner, on the other hand, has never had his direct appeal and the erroneous finding by Judge Diamond that his 2010 "appellate process" where he was denied his constitutional right to a direct appeal satisfies his right to a direct appeal and that a prejudice showing is required impugns the habeas process and justifies granting the

Petitioner's Rule 60(b)(6) Motion. Judge Diamond has refused the Petitioner's request to explain why the Petitioner is denied relief when Stovall has been granted relief.

In Halley v. Commonwealth, 870 A.2d 785 (Pa. 2005), the Pennsylvania Supreme Court relying on state and federal cases, including Evitts, cited above, held that where the failure to file a Rule 1925(b) statement results in the waiver of all claims asserted by a defendant on direct appeal, prejudice may be legally presumed. Id. at 801. The Court reasoned that "the failure to perfect a requested direct appeal is the functional equivalent of having no representation at all." Id. The PA Supreme Court in Halley stated that the Superior Court in Commonwealth v. Halley, 839 A.2d 392 (Pa. Super. 2003) was incorrect to find that Halley had a direct appeal. As the Petitioner has urged to the Courts, without any lapse in his effort to seek justice and a correct interpretation of the law of the land, a denial of a direct appeal, even if followed by a PCRA Court review and Superior Court review on the merits, is not a constitutionally satisfactory substitute for the direct appeal that was denied. Judge Dubois, a reasonable jurist from the Eastern District Court, in her opinion in Rivera, cited above, quoted from Halley where the Court stated: Both the PCRA Court and the Superior Court have conducted merits review of Appellant's underlying claims and found no basis for relief. Although our decision here will thus result in duplicative review in Appellate's particular circumstance, the necessary review does not appear burdensome, and this case was not selected to determine whether an alternate procedure might serve as an adequate substitute to vindicate a criminal defendant's constitutionally guaranteed right to a direct appeal. Halley, at 801 n.5.

The statement in the Federal Court Order that the Petitioner's counsel perfected "an appeal" is false and "untethered" to any authoritative opinion that overrides the "presumption of prejudice" that Judge Diamond just established the Petitioner had. To state that "an appeal" was perfected and in the same sentence state that the Petitioner was not "deprived of an appellate proceeding altogether" rewrites the facts and the law and impugns the integrity of the habeas corpus proceeding.

According to Strickland v. Washington, 466 U.S. 668 (1984), any claim of ineffectiveness of counsel is "viewed as of the time of counsel's conduct." Id. In 2010, the Superior Court stated that the Petitioner's sole issue on direct appeal was waived because counsel failed to follow the proper procedures that would have perfected the appeal.

At the point in time when the Petitioner was deprived of his perfected direct appeal, he was entitled to a presumption of prejudice. An "appellate process" that states that the sole issue presented to the Superior Court is waived does not fit the definition of a perfected direct appeal. The statement in the Federal Court Order that counsel "did perfect an appeal" is not true. Basing years of error in denying a COA to the Petitioner on an untrue fact impugns the integrity of the habeas process. When we look at the 2010 Superior Court decision and the dissenting statement by Judge Fitzgerald, it is clear that no perfected direct review on the merits took place. To look at facts and then ignore them in order to continue to rule against the Petitioner while granting relief to other petitioners presenting the same issues is an extraordinary circumstance that creates a hardship for the Petitioner and impugns the integrity of the habeas corpus process.

To assert that no "jurists of reason" would agree with or debate the issues presented by the Petitioner makes no sense. The Petitioner's Rule 60(b)(6) Motion and the Petitioner's Request of a Certificate of Appealability provide cases from the U.S. Supreme Court and lower Federal and State Courts that prove that the issues presented by the Petitioner have been resolved in favor of similarly situated petitioners.

There is no way for an honest Judge to look at the 2010 panel decision and say that a direct appeal was perfected and therefore the Petitioner has not made "a substantial showing of the denial of a constitutional right." The Pennsylvania Constitution guarantees the right to a direct appeal of a conviction or sentence. If this right to the direct appeal has been waived due to omissions on the part of counsel, then the Petitioner has been denied the right to a direct appeal and has been denied the effective assistance of counsel.

The PCRA Court determined that Petitioner's lawyer "performed ineffectively." While performing the duty of a PCRA Court Judge, Judge Smith proves the Petitioner's point. If counsel had "perfected an appeal" and if the Petitioner had received the direct appeal that Judge Smith stated the "Petitioner was entitled to," PCRA Opinion, 2012, p. 2, Judge Smith would not have stated that counsel caused the "waiver of Petitioner's ability to attack the discretionary aspects of sentencing." Id., p.1. In other words, counsel caused the loss of a perfected direct appeal. Although acting erroneously by reviewing Petitioner's case on the merits proves the Petitioner's argument that no merits review on direct appeal took place. If the 2010 Superior Court panel conducted a review on the merits and the Petitioner presented to the PCRA Court a "grievance" stating that

some "issues" were not presented to the Superior Court, the PCRA Court would have made these facts clear. Instead of granting the nunc pro tunc direct appeal, Judge Smith provided the merits review that he acknowledged had been waived by ineffective counsel.

A review of the 2010 panel decision and a review of the 2012 PCRA Opinion demonstrate that the Petitioner was deprived of a perfected direct appeal. To continue to pretend that the Petitioner received a perfected direct appeal and some "issues" were left out by counsel and the Petitioner was obligated to establish a showing of prejudice impugns the integrity of the habeas proceedings and does not represent who we are as Americans.

In International Union, UAW v. Mack Trucks, the Court held that an abuse of discretion may be found when the "district court's decision rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." In the Petitioner's case, the abuse of discretion is found based on the fact the law of the land from the U.S. Supreme Court on down clearly establishes that Judge Diamond's ruling that the Petitioner was not deprived of an "appellate proceeding altogether" is an erroneous finding of fact, an errant conclusion of law, and an improper application of law to fact. Judge Diamond knows that the "appellate proceeding that the defendant was deprived of altogether" referred to in Roe v. Flores-Ortega, 528 U.S. 470, 483 (2000), is the perfected direct appeal, not notification from the Court that the direct appeal is denied because counsel failed to perfect it.

The Supreme Court in Flores-Ortega states that the loss of the "entire [appellate] proceeding itself, which the defendant wanted at the time and to which he had a right,... demands a presumption of prejudice." Id., at 483. The "proceeding" that the Petitioner wanted was the direct appeal. The "time" that he wanted it was after he was sentenced. The proceeding he had a "right" to was the direct appeal. The presumption of prejudice arises when the direct appeal is lost. This presumption of prejudice doesn't evaporate with the passage of time. Judge Diamond knows this because he granted relief to the petitioner in Stovall after 20 years with no requirement to demonstrate prejudice.

In the effort to use Flores-Ortega to deny relief to the Petitioner instead of properly applying the case to the facts presented by the Petitioner, Judge Diamond ignores the Supreme Court when it states that the restoration of a defendant's appellate rights forfeited by ineffective counsel requires "no further showing from the defendant of the merits of his underlying claims." Id. at 484. Why is this part of the Flores-Ortega case not mentioned? By acting contrary to and above the law as expressed by the Supreme Court, Judge Diamond creates law that only applies to the Petitioner and requires him to leap over a barrier that the Court in Flores-Ortega says should not exist.

It is telling that Judge Diamond avoids using the words "direct appeal." If the Judge truly believed that the Petitioner received his first direct appeal of right, he had many opportunities to say so. If the Judge admitted that the Petitioner was correct and that the Petitioner never had a direct appeal, the Judge would have to admit that he has been mistaken for years and he would have to rule in favor of the Petitioner.

In 2010, the Petitioner was deprived of the chance to present a direct appeal brief that showed that the sentencing judge, in addition to making several other sentencing errors, stated on the record that he was not following the law enumerated in the Sentencing Code. In 2012, the Superior Court concluded that the sentencing judge had the authority to impose the Petitioner's sentence. The sentencing judge's authority to impose a sentence was never an issue. The manner in which he used his authority to impose a sentence that violated the Petitioner's due process rights was the issue.

Because the Petitioner's sole issue was waived due to counsel's ineffectiveness, no review on the merits took place. If the Article V, Section 9 of the Pennsylvania Constitution right to a direct appeal of right includes an "appellate process" that denies the direct appeal, then this constitutional right is a hollow right that is meaningless.

On page four of the Order, Judge Diamond incorrectly restates the Petitioner's "grievance" as being "counsel failed to preserve issues for appeal." Nowhere has the Petitioner ever presented a "grievance" in which he asserted that "counsel failed to preserve issues for appeal." These words are very telling. These words apply to the Jones v. Barnes, 463 U.S. 745 (1983), cases where defendants complain that counsel failed to include in their direct appeals. The key words are "direct appeals." Judge Diamond refers to words ("counsel failed to preserve issues for appeal") that apply in cases where a direct appeal has been perfected as opposed to an "appellate process" that denies review of all the issues presented. In the Petitioner's case, counsel didn't "fail to preserve issues" for appeal. Counsel's ineffectiveness resulted in the total waiver of Petitioner's only issue and the total loss of Petitioner's direct appeal. The "perfected direct appeal" is the proceeding that the Supreme Court refers to when it discusses the

loss of an "appellate proceeding altogether."

When appellate counsel fails to file a 1925(b) concise statement, an appellate brief, or in some other way fails to perfect a direct appeal, the Superior Court will render a decision notifying the defendant that his direct appeal has been rejected. If this rejection of the direct appeal is the same as a direct appeal, Flores-Ortega and the related Supreme court cases would make no sense.

Imagine a defendant receiving a decision from the Superior Court that informs him that his direct appeal has been dismissed because counsel failed to file a brief. Would anyone with common sense declare that the defendant had a perfected appeal and he would have no reason to complain? Would anyone declare that counsel merely failed to include some of the issues the defendant wanted included in his direct appeal? Would anyone tell the defendant that he has to demonstrate how he was prejudiced by counsel's omission? The Petitioner's case had the same result that would have occurred if no brief had been filed in his case: The total loss of the direct appeal. Judge Diamond knows this. That's why he uses the word "issues" so that he can avoid discussing the effect of counsel's failure to perfect the sole issue in the Petitioner's case.

The 2010 Superior Court Decision repeatedly refers to a single issue. There is no honest way to interpret this decision as being a perfected direct appeal where the Petitioner's case was reviewed on the merits and counsel failed to include some issues for the review. It should not be possible for a cadre of federal judges to have actually read the 2010 Superior Court Decision and to have reached the conclusion that it is an

example of a perfected direct appeal. If judges would take a moment to read the 2010 Decision instead of rushing to rule against the Petitioner, they would see that the Petitioner has been right for years and he never received a direct appeal.

The reader must agree that the Petitioner's arguments are correct as they are based on the facts and are based on Supreme Court precedent and on authoritative state and federal opinions from across the country.

See Johnson v. Champion, 288 F.3d 1215, 1230 (10th Cir. 2002)("the negligent failure to perfect an appeal 'amounts to a complete denial of assistance of counsel during a critical stage' of the criminal proceedings"); Mchale v. United States, 175 F.3d 115, 119 (2d Cir. 1999)(where counsel has failed to perfect an appeal, "it is clear that the [defendant] need not demonstrate that, but for the ineffectiveness of counsel, such an appeal would have succeeded or even would have merit"); Jones v. Cowley, 28 F.3d 1067, 1073 (10th Cir. 1994)(prejudice should be presumed where counsel filed a Notice of Appeal but failed to perfect the direct appeal); Bonneau v. United States, 961 F.2d 17, 23 (1st Cir. 1992)(appellate counsel's failure to perfect an appeal created "no doubt that the appellant here was deprived of his constitutional right to appeal because of the dereliction of counsel [and appellant] does not have to show that there are meritorious issues to be appealed"); Edwards v. United States, 246 F.Supp.2d 911, 915 (E.D.Tenn. 2003)("Prejudice is presumed in cases where counsel initially files an appeal but later fails to prosecute the appeal, causing it to be dismissed."); Wallace v. State, 121 S.W. 3d 652, 660(Tenn. 2003)(counsel's inaction resulting in a waiver of all issues on appeal was presumptively prejudicial); People v. Rivera, 342 Ill. App. 3d 547 (Ill. App. Ct. 2003)("A

defendant whose lawyer fails to perfect an appeal does not have to show prejudice beyond the fact that he lost his right to appeal."); Langston v. State, 19 S.W. 3d 619, 621 (Ark. 2000)("There is a presumption of prejudice arising from the failure of counsel to perfect an appeal if counsel's deficient performance led to the forfeiture of the convicted defendant's right to pursue a direct appeal."); State v. Trotter, 609 N.W. 2d 33 (Neb. 2000)(counsel's failure to perfect appeal, after filing a notice of appeal, constituted prejudice per se). Cf. Evitts v. Lucey, 469 U.S. 387, 399-400(1985)("A system of appeal as of right is established precisely to assure that only those who are validly convicted have their freedom drastically curtailed. A state may not extinguish the right because another right of the appellant-the right to effective assistance of counsel-has been violated.")

The 2010 Superior Court Decision states that "Charles wholly failed to raise the issue he now presents for our review." Decision, p.4. "The right to appeal a discretionary aspect of sentencing is not absolute and is waived if the appellant does not challenge it in post-sentence motions or by raising the claim during sentencing proceedings." Decision, p.3. The Decision also states, "Because we find that Charles has waived the issue he seeks to present on review, we affirm." Decision, p.1. Judge Fitzgerald, in his dissenting statement, stated, "Accordingly, I would not find his claim waived, and I would instead address his claim on the merits." Dissenting Statement, p. 1. The 2010 Superior Court Decision found that the Petitioner waived his only issue for direct review and denied the Petitioner a direct appeal. To call the denial of a direct appeal a direct appeal makes no sense. The Court's 2-1 decision denied the Petitioner any review on the

merits.

It impugns the integrity of Federal Judges when they read the 2010 Superior Court Decision and go along with Judge Diamond's misstatement of the facts where he states that the Petitioner's "appeal" was perfected and the Petitioner is complaining that counsel "failed to preserve issues for appeal." The Petitioner has not located a case that asserts that using false facts in order to continue to rule against a Petitioner and deny his constitutional rights to an appeal and the effective assistance of counsel does not impugn the integrity of the habeas proceeding. It should be noted that in the denial of Rule 60(b)(6) Motion, Judge Diamond for the first time asserts that Petitioner's counsel "did perfect an appeal." Previously, Judge Diamond wouldn't go that far in giving an excuse to rule against the Petitioner. In denying habeas corpus relief to the Petitioner, he used the words "appellate process."

Directing the Court's attention to page one of the Order, we see "The Superior Court rejected Charles's challenge to the length of his sentence..." This part of the statement is not totally accurate. The 2010 Superior Court Decision did not address the Petitioner's sentencing challenge because the Court found that it had been waived. The entire direct appeal was rejected without any review of the arguments that would have been presented. By stating that the petitioner presented a "challenge to the length of his sentence," Judge Diamond narrows the scope of the arguments that the Petitioner would have presented if his direct appeal had been perfected. The Petitioner had a constitutional right to challenge the manner in which his sentence was imposed. This is the challenge that the Petitioner has been deprived of presenting.

C. Harbison v. Bell

The Petitioner directs the Courts attention to the United States Supreme Court decision in Harbison v. Bell, 173 L.Ed. 347 (2009). In Harbison, the Court held that the C.O.A. requirement applies only to "final orders that dispose of the merits of a habeas corpus proceeding- a proceeding challenging the lawfulness of the prisoner's detention." Id. at 354. An appeal from the denial of a Rule 60(b)(6) Motion that attacks a procedural ruling [the denial of a C.O.A.] that precluded a merits determination is not a final order that disposes of the merits of a case. 28 U.S.C. 2253(c)(1)(A).

In deciding the Petitioner's Habeas Corpus petition on July 30, 2015, the District Court erroneously concluded that the Petitioner's sentencing claim was not cognizable and was procedurally defaulted. The Court, without any citation to case law, made a passing comment concerning one of the six sub-issues of the Petitioner's sentencing claim. No comment was made concerning the other sub-issues. Therefore, to the extent that Petitioner's sentencing claim was not addressed by the Court due to the belief that this claim was not cognizable and was procedurally defaulted, no C.O.A. is required because by failing to fully address the sentencing claim, this claim was not disposed of on the merits.

The Court can't have it both ways. The Court can't find that a claim is procedurally defaulted and not address the merits of a claim and at the same time make a passing comment concerning a small aspect of the claim and assert that the claim was disposed of on the merits. The six sub-issues address different aspects

of the Petitioner's sentencing process. A comment concerning one of the sub-issues did not somehow resolve the merits of the other sub-issues. According to Harbison, no C.O.A. is required due to the fact that the Petitioner is challenging a procedural ruling [a finding of procedural default] that precluded a merits determination of the Petitioner's sentencing claim. The Petitioner also attacks a defect in the integrity of the federal habeas proceedings that denied a C.O.A. to the Petitioner when similarly situated petitioners' receive a C.O.A. when presenting identical claims.

D. Judicial Integrity

The Petitioner can not think of any action that impugns the integrity of the habeas process any more than federal judges ignoring U.S. Supreme precedent and their own precedent in order to deny the Petitioner his constitutional right to his first direct appeal of right. No court has declared, or could honestly declare, that the Petitioner received the direct appeal contemplated by the Pennsylvania Constitution.

No unbiased, competent, and fair judge can read the Petitioner's 2010 Superior Court Decision and declare that this decision provided the Petitioner with the same level of constitutional protection that the petitioner in Stovall received.

No unbiased, competent, and fair Court can logically conclude that no jurists of reason would agree with the arguments presented by the Petitioner when these arguments are based on opinions rendered by the U.S. Supreme Court and are based on fact, not fiction.

If the Federal Habeas Corpus process is to be the paragon of judicial integrity that is meant to be, then our federal judges should not have a strained relationship with the truth. In the Petitioner's case, the undeniable truth is that he never received a perfected direct appeal. The 2010 decision by the Pennsylvania Superior Court is absolute proof of this fact. It should vex the conscience of any law clerk, any judge, and any American who loves and respects our United States Constitution that District Judge Diamond and a dozen other federal judges can look at the Petitioner's 2010 Superior Court Opinion and pretend that he received a perfected direct appeal.

Counsel's per se ineffectiveness caused the forfeiture of a direct appeal where his sole issue would have received consideration. A proceeding in which the Superior Court denies a review of the sole issue on appeal results in no more of a direct appeal than having a lawyer who failed to file a Notice of Appeal. The Petitioner did not receive a perfected appeal. If his appeal had been perfected, the 2010 panel would have reviewed his sole claim. As the Decision clearly stated on page three, "the right to appeal...is waived."

The Petitioner's case is not like what we see in Commonwealth v. Reed, 971 A.2d 1216, 1226 (2009)("filing an appellate brief, deficient in some aspect or another, does not constitute a complete failure to function as a client's advocate so as to warrant a presumption of prejudice under Cronic). See, United States v. Cronic, 466 U.S. 648 (1984). See also, Commonwealth v. Reaves, 923 A.2d 1119 (2007)(narrowing ambit of reviewable issues on appeal does not constitute per se

ineffectiveness). In the Petitioner's case, his lawyer didn't file a brief that was deficient in some aspect allowing some review of some issues on the merits. The Petitioner's lawyer didn't narrow the ambit of reviewable issues on appeal. Counsel's per se ineffectiveness precluded any appellate review at all. Consistent with Cronic, a case in which the United States Supreme Court categorized circumstances where prejudice will be presumed and need not be proven, the Pennsylvania Supreme Court in Commonwealth v. Halley, 870 A.2d 795 (2005), held counsel's failure to file a Pa. R.A.P. 1925(b) statement thereby waiving all of his client's issues denied the client his constitutional right to a direct appeal. In the Petitioner's case, his sole issue was not perfected and he was denied appellate review on the merits.

The Pennsylvania Supreme Court in Commonwealth v. Rosado, 150 A.3d 425 (Pa. 2016), observed that filing a brief that raises only waived issues is akin to failing to file documents perfecting an appeal. There is no meaningful difference between an attorney who fails to file a Notice of Appeal, Rule 1925(b) statement, brief, or Petition for Allowance of Appeal- thereby forfeiting his client's right to appeal- and one who makes all necessary filings, but does so relative solely to claims he has not preserved for appeal, producing the same end. In both situations, counsel has forfeited all meaningful appellate review. Id. at 439.

Black's Law Dictionary, 1173 (8th Ed. 2004), defines the act of perfecting as "taking all the legal steps necessary to complete, secure, or record a claim, right, or interest." A review by an appellate court in which consideration of the only issue

presented is absent hardly fits the definition of a "perfected appeal." Contrary to Judge Diamond's assertion, no appeal was perfected. The decision whether to presume prejudice or to require an appellant to demonstrate prejudice depends on the magnitude of the deprivation of the right to effective assistance of counsel. The failure to perfect a requested direct appeal is the functional equivilent of having no representation at all. Rosado, at 431.

The State Supreme Court in Rosado speaks directly to the Petitioner's situation. The Court held that filing an appellate brief which abandons all preserved issues in favor of unpreserved ones constitutes ineffective assistance of counsel per se. In the Petitioner's case, as was done in the Rosado case, counsel's brief presented a single unpreserved issue and therefore the result was ineffective assistance of counsel per se.

It impugns the integrity of the habeas process when, in order to deny constitutional rights to the Petitioner, the federal court in an Orwellian manner, redefines "perfected appeal" to include a state appellate decision in which the state court makes it clear that no perfected direct appeal has taken place. The majority and dissenting members on the 2010 Superior Court panel established that all meaningful appellate review was foreclosed and forfeited by counsel. "The right to appeal...is waived." Decision, p.3.

In varoius Pennsylvania Supreme Court cases, relying on U.S. Supreme Court precedent, the Court has held that errors which completely foreclose appellate

review amount to constructive denial of counsel and thus ineffective assistance of counsel per se whereas those which only partially foreclose such review are subject to the ordinary Strickland/Pierce framework. In the Petitioner's case, it is a fact that appellate review was completely foreclosed. If misstating this fact does not impugn the integrity of the habeas process, then the message that is relayed is that federal judges with no accountability can change the facts of a Petitioner's case a rule in any manner that suits the judges.

The Petitioner directs the Court's attention to page two of the Order where Judge Diamond states that the Petitioner argues in his Reconsideration Motion that "his counsel's deficient performance cost him his right to appeal." Order, pg. 2. It is quite telling that the central argument urged by the Petitioner is identified by Judge Diamond, yet the judge never honestly refutes this argument.

Judge Diamond is well aware that the Petitioner's "grievance" about the loss of his "right to appeal" refers to a direct appeal where his sentencing issue is actually reviewed. What sense would it make for the Pennsylvania Constitution to guarantee a right to the non-review of a defendant's issues. Judge Diamond not only avoids the words "direct appeal," he also avoids mentioning the Pennsylvania Constitution which is the source of the Petitioner's "right to appeal." If the Petitioner presented a meritless argument to the Court, why didn't Judge Diamond declare that "the Petitioner received the direct appeal guaranteed by the Pennsylvania Constitution and his case was reviewed on the merits?" Judge

Diamond knows that he couldn't make such an assertion because it would be an attempt to prove too much. It was easier to misstate the facts and say that the Petitioner's counsel "did perfect an appeal," knowing that this is not true. Confident that other judges would not push back against the untrue facts he presented, Judge Diamond adds that the Petitioner was not deprived of an appellate proceeding altogether, knowing that the appellate proceeding referred to by the Supreme Court is a perfected direct appeal. The Petitioner in the Flores-Ortega case received several appeals enroute to the Supreme Court. But the only appeal that the Supreme Court referred to as being "denied altogether" was the direct appeal. Even if he has to do so in private, the reader knows that the Petitioner's arguments are correct, truthful, and supported by the law of the land.

In the Stovall case, the Petitioner received four reviews of his case (five reviews if we count the review by the Magistrate judge who failed to address the second lawyer's failure to seek allocatur and recommended that Stovall's petition be dismissed in its entirety) prior to Judge Diamond's conclusion that the second lawyer was ineffective in failing to seek allocatur to the State Supreme Court. Why didn't Judge Diamond tell Mr. Stovall that he received a "perfected appeal?" Since Mr. Stovall received a direct appeal where his case was reviewed on the merits, why didn't Judge Diamond tell Mr. Stovall that he was not deprived of "an appellate proceeding altogether?" Why didn't Judge Diamond tell Mr. Stovall that he needed to demonstrate how he was prejudiced by his second lawyer's failure to

seek allocatur? What sense can be made of the fact that the Petitioner has not received a perfected direct appeal of his case while Mr. Stovall gets four or (or five) reviews of his case and an opportunity for a fifth (or sixth) review?

A first year law student could write something that jurists of reason would agree with. The Petitioner never received a perfected direct appeal and this fact is confirmed by the 2010 Superior Court Decision and by the 2012 PCRA Court Opinion. It should not be this difficult for a citizen to find judges who will stand on the side of truth.

On page four of the Order, we find, "Appellant's first argument did not state a valid claim of ineffective assistance of counsel," followed by a citation to Strickland v. Washington, 466 U.S. 668, 687 (1984). If making a statement and placing a citation to a case next to the statement means that the statement is true, then the Petitioner's Motion should have been granted. If we actually read Strickland as opposed to just accepting an unsubstantiated statement and imputing it with truth because Strickland is cited next to it with no further analysis, we find that the above statement is not true. Strickland expressly acknowledges that actual or constructive denial of assistance of counsel falls within a narrow category of circumstances in which prejudice is legally presumed. Id. at 692. Since the failure to prefect a requested appeal is the functional equivilent of having no representation at all, Strickland, on its own terms, establishes the right to relief. Since Article V, Section 9 of the Pennsylvania Constitution guarantees a direct appeal of right, a failure to file or perfect such an appeal results in a denial so

fundamental as to constitute prejudice per se. Commonwealth v. Lantzy, 736 A.2d 564, 572 (1999). Without the need for further analysis, we can agree that the bald statement that the Appellant's first argument did not state a valid claim of ineffective assistance of counsel "fails under the weight of Supreme Court precedent and Article V, Section 9 of the Pennsylvania Constitution.

The instant case does not involve a Petitioner wasting the Court's time with a meritless argument. The Petitioner is not presenting a case to the Court that asks the Court to weigh the effect of counsel failing to call a certain witness. The Petitioner is not presenting a case that asks the Court to evaluate the prejudicial nature of statements made by a prosecutor during closing argument. The Petitioner is not presenting a case that asks the Court to determine a ruling by a trial judging was in error. For the better part of a decade, the Petitioner has been trying to get Federal Court Judges to acknowledge the truth. Instead of acknowledging the truth, these Judges have impugned the integrity of the habeas process by ignoring the truth. As the Petitioner has argued for several years, the 2010 Decision by the State Court is clear, the Petitioner's right to his direct appeal was waived due to counsel's failure to perfect his appeal. It impugns the integrity of the habeas corpus process when over a dozen Federal judges ignore the denial of a Petitioner's constitutional right and make excuses to continue to deny that right. For years, the Petitioner has waited in vain for Judge Diamond or any other Judge to explain why other similarly situated petitioners are granted their rights to a direct appeal while the Petitioner is denied the same right.

There is no way for anyone to read the 2010 Decision by the Superior Court and say that this is a perfected appeal in which the Petitioner's case was reviewed on the merits and that the Petitioner is simply complaining that some issues were not included by counsel. The 2010 and 2012 Superior Court decisions make it clear that the Petitioner did not receive a direct appeal. The Petitioner's arguments over the years based on the law of the land make it clear that a Post-Conviction appeal is not a constitutionally adequate substitute for a direct appeal. In the Petitioner's case, the 2012 PCRA appeal definately fails to protect his appellate rights because the Superior Court's decision in that appeal wrongly stated that the Petitioner, who was denied the right to a direct appeal, had to establish prejudice.

A "circular firing squad" of errors should not be used to continue to support erroneous rulings against the Petitioner. Judge Diamond denied the Petitioner's habeas corpus petition by erroneously concluding that a state court denial of a direct appeal is no different than a direct appeal, in spite of the fact that no review on the merits took place. Without any analysis, the Third Circuit Court relies on Judge Diamond's erroneous conclusion and agrees that the Petitioner's Rule 60(b)(6) Motion, Judge Diamond comes full circle and points to the Third Circuit Order (Doc. No. 30) that erroneously relied on Judge Diamond's erroneous finding that a direct appeal took place. By referring to the Third Circuit, Judge Diamond is doing nothing more than pointing to his original error that was accepted without question by the Third Circuit Court. Stated alternatively, Judge Diamond is pointing to his own past error to support his instant error.

The United States Supreme Court has held that a Rule 60(b)(6) Motion that challenges "some defect in the integrity of the federal habeas proceedings" should not be treated as a second or successive habeas petition. Gonzalez v. Crosby, 545 U.S. 524 (2005). On page four of the Order, Judge Diamond baldly asserts that the Petitioner doesn't attack a " defect in the integrity of the federal habeas proceeding," but takes issue with the decision rendered and a citation is made to Davenport v. Brooks, 2014 WL 1413943, (E.D. Pa. Apr., 14, 2014). In Davenport, the Petitioner filed a Federal Rules of Civil Procedure 60(b) and 60(d) Motions challenging the dismissal of an untimely filed habeas corpus petition. He asserted a meritless "actual innocence" claim. Setting aside the fact that many more relevant cases could have been cited in the Order, we have to ask if the citation to Davenport with no further analysis puts to rest the question of whether the Petitioner's Rule 60(b)(6) Motion is an unauthorized second or successive petition? In Gonzalez, the Supreme Court drew a distinction between a substantive challenge and a procedural one? When no habeas claim is presented, there is no need to deem a latter filing "second or successive" under Section 2244 (b). Gonzalez, at 533. Judge Diamond states that the Petitioner "extensively discusses legal principles" that support his disagreement with the "Third Circuit denial of a Certificate of Appealability." Order, p.2. Judge Diamond's own words establish that the Petitioner presented a procedural challenge, not a substantive one.

The reprise of the Petitioner in his brief is that it impugns the integrity of the habeas corpus process when a COA is denied to the Petitioner while other petitioners with identical issues are granted Certificates of Appealability and Writs of Habeas Corpus. Judge Diamond even lists some of the pages where this argument is urged. Nowhere in the Order does he directly address the Petitioner's arguments, choosing instead to make statements bracketed by cases "untethered" to the points made by the Petitioner in his arguments. Nowhere in the Order does Judge Diamond refute the fact that other petitioners, even a petitioner in one of Judge Diamond's cases, received relief when presenting identical claims. Why is there no attempt to challenge or even mention this central contention presented by the Petitioner?

Again, if making a statement and placing a citation to a case next to the statement means that the statement is true, then the Petitioner's Motion should have been granted. When deciding a Rule 60(b)(6) Motion, the Court may find an equitable basis to support a finding of extraordinary circumstance upon reviewing the underlying issues. Satterfield v. Dist. Atty. Philadelphia, 872 F.3d 152 (3d Cir. 2017). The Petitioner is able to do more than make a statement and place a citation to a case next to the statement. In Satterfield, the Court refers to Buck v. Davis, 137 S.Ct. 759 (2017), where the Supreme Court explained that a Court may consider a wide range of factors when determining if extraordinary circumstances are present and those factors may include "the risk of injustice to the parties" and

"the risk of undermining the public's confidence in the judicial process." The Third Circuit intrepreted Buck as permitting a Court to consider "the severity of the underlying Constitutional violation [as] an equitable factor that may support a finding of extraordinary circumstances under Rule 60(b)(6)." Satterfield at 163.

In Horton v. Dragonvich, 2010 U.S. Dist., LEXIS 113286 (2010), the Court intimated that it could be possible for Rule 60(b)(6) petitioner to establish diligence in pursuing a legal theory even six years after final judgment had been entered. Judge Diamond is well aware of the fact that constitutional rights don't come with an expiration date attached. This is why he granted relief to the petitioner in the Stovall case, cited and discussed above, two decades after his conviction.

In Hurtado v. California, 111 U.S. 516 (1884), the Supreme Court stated that no judge has the arbitrary authority to deprive another individual of their liberty. Judges are required to properly use discretion during their sentencing of criminal defendants. Without considering the direct appeal brief that was not reviewed in 2010 and without considering Hurtado and other state and federal cases addressing the due process rights of defendants during sentencing and establishing that sentencing involves more than looking at a chart and rendering a legal sentence, the Federal District Order concludes with the statement, unsupported by any facts or case law, that the Petitioner did not and could not establish a showing of prejudice.

On direct appeal, the evidence from the sentencing Judge's own mouth establishing that he was not following the Sentencing Code could have resulted in a reduction in the Petitioner's sentence. This fact alone would establish prejudice if there was a need to establish prejudice. As in many other Pennsylvania cases, some in which dissenting Judge Fitzgerald and majority Judge Donahue [later PA Supreme Court Justice Donahue] helped decide, the defendant's had their sentences reduced when the sentencing Judges failed to sentence the defendants in compliance with the Sentencing Code. In the Petitioner's case, the Sentencing Code violation by the Judge was one of six sub-issues the Petitioner has been denied the right to present on direct appeal. Two of the three Judges on the 2010 Superior Court panel were Judges who were not known to "rubber stamp" decisions against defendants. No one knows how an actual review on the merits would have turned out. Any judge who would conclude, without any basis in fact or law, that the Petitioner did not and could not establish a showing of prejudice would be displaying uncanny omniscience. The fact that the direct appeal was denied to the Petitioner who presented a viable sentencing challenge in itself provided a justification for a finding of prejudice. But those who follow the law, as opposed to those who act above the law, know that when counsel causes the total loss of a direct appeal, no showing of prejudice is required.

If the Petitioner's arguments were baseless and incorrect, the District Court Order would have directly engaged the arguments and proved that the cases relied

upon by the Petitioner were inapplicable. If the Petitioner's arguments were truly without merit, the District Court would have asked for a Commonwealth response. If the Petitioner did not present a well-supported attack on a defect in the integrity of the federal habeas proceedings that denied him a COA., the District Court Order would have demonstrated how Federal Judges ignoring Supreme Court precedent and their own authoritative opinions is not an "extraordinary circumstance." The District Court Order cited Moolenar v. Gov't of the Virgin Islands, 822 F.2d 1342 (3d Cir. 1987). Moolenar cites Chicago and E. Ill. R.R. v. Illinois Cent. R.R., 261 F. Supp. 289 (N.D. Ill. 1966) where an "extraordinary circumstance" that justified invoking Rule 60(b)(6) was found when it was the Court's action that created the "extraordinary circumstance." A similar "extraordinary circumstance" exists instantly because the Court's reviewing the Petitioner's case have, in order to deny the Petitioner's constitutional rights, avoided following clearly established federal and state law.

It is important for the Court to beware of Phelps v. Alameida, 569 F.3d 1120 (CA 9 2009). This case, like numerous other cases that support the Petitioner's right to a Certificate of Appealability and a Writ of Habeas Corpus, is not even cited or discussed in the Court's Order. Phelps involved a Rule 60(b)(6) petitioner who fought for eleven years before he was lucky enough to finally have his case assigned to a federal judge who reviewed his habeas corpus petition on the merits and ruled that the substantive arguments he presented to the Courts for over a decade were correct and the procedural excuses used by prior judges were

incorrect. If the Petitioner's reliance on Phelps was baseless and incorrect, why didn't the Court's Order make reference to Phelps and show in the Petitioner's case, erroneous procedural rulings are justified due to the passage of time? Of course, the Court's Order couldn't make this absurd finding. It was easier to ignore Phelps and take select quotes from various cases to support the Court's mission to rule against the Petitioner no matter what.

This Court has the duty to review the District Court's denial of a Fed. R.Civ. P. 60(b)(6) Motion for Reconsideration for an Abuse of Discretion. However, the District Court necessarily abused it's discretion if it's denial rested upon an erroneous view of the facts and the law. An erroneous denial of a C.O.A. prevented the Third Circuit Court of Appeals from reviewing the Petitioner's Rule 60(b)(6) Motion. This Court must be mindful of the fact that in enacting the habeas statute, Congress sought to interpose the Federal Courts' between the States and the people, as guardians of the peoples' federal rights- to protect the people from unconstitutional action. Phelps, at 1149.

In carrying out its' duty as the guardian of the peoples' federal rights, the Petitioner asks the Court going forward to be mindful of Rodriguez v. United States, 395 U.S. 327 (1969), and Commonwealth v. Lantzy, 736 A.2d 564 (Pa. 1999). In Rodriguez, the United States Supreme Court rejected a rule that required a defendant whose appeal had been forfeited by counsel to specify the points he would have raised if his right to appeal were reinstated. The Court stated: "We accordingly decline to place a pleading barrier between a defendant

and an opportunity to appeal that he never should have lost." Id. at 330. In Lansky, the Pennsylvania Supreme Court held that when counsel fails to perfect his client's direct appeal, counsel's conduct falls beneath the range of competence demanded of attorneys in criminal cases and denies the accused the assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution and Article I, Section 9 of the Pennsylvania Constitution, as well as the right to direct appeal under Article V, Section 9, thus constituting prejudice and per se ineffectiveness for PCRA purposes. In such a circumstance, a defendant is automatically entitled to reinstatement of his appellate rights. Id. at 572. The Pennsylvania Constitution guarantees the right to a direct appeal. This right cannot be denied by an unlawful ruling by a state or federal judge.

When we read Rodriguez, Lantzy, or any of the numerous cases cited and discussed in Petitioner's Rule 60(b)(6) Motion, we find support for his argument that he never had an obligation to prove that he was prejudiced by trial counsel's failure to perfect his first direct appeal. Using common sense, we can assert that if a defendant does not even have to specify the points he would raise if his right to appeal were reinstated, it is certainly an "erroneous view of the law" to impose an obligation on a defendant to demonstrate prejudice merely because time has passed and because state and federal courts refused to follow the law of the land in his case while following the law of the land in similar cases. It is ironic that the Petitioner is made to feel that he is to blame for the fact that for years, state and federal judges have refused to follow the law while ignoring undisputable facts.

This Court, in deciding the issue before it must be mindful of Judge Scalia's dissent in Day v. McDonough, 547 U.S. 198 (2006). Justice Scalia stated that time alone cannot extinguish the constitutional rights of habeas petitioners.

We have to wonder why there is such an intense desire to deny a Petitioner a C.O.A. and the direct appeal he would have had with no preconditions if counsel would have taken a little more time to perform his job correctly. The Federal Court Opinion acknowledges that trial counsel "performed ineffectively." Opinion, pg. 1. Didn't Rodriguez and Lantzy establish that ineffectiveness on the part of counsel in failing to perfect a defendant's direct appeal constitutes "prejudice" per se?

Imagine a judge, a lawyer, or a school teacher being admitted to a hospital because they are suffering from serious physical ailments. What if the patient was told to go to the hospital's medical library and do some research in order to diagnose and recommend a treatment for their condition? This would be absurd. It is just as absurd for criminal defendants (who in many cases have less than a high school education and are barely literate) whose lawyers failed to perfect their direct appeals to be told to go to the prison's law library and do some research in order to find all the constitutional errors that took place in their cases. This absurdity is why the Supreme Court have no requirement for defendants whose lawyers caused the loss of their right to a direct appeal to justify why their right should be restored.

Our constitutional democracy is in danger of extinction when judges can change the facts in a case in order to to rule against petitioners, deny a C.O. A., and then retreat under a carapace of incantations (the Petitioner is attacking the decision on the merits," "the Petitioner is seeking an alternative to an appeal") that makes petitioners feel that seeking justice and truth is a waste of time. As stated in the Petitioner's Rule 60(b)(6) Motion, unconstitutional and erroneous habeas corpus decisions deserve no protection. The constitutional rights of American citizens should not be a moving target.

The Petitioner, undeterred, has expended considerable ink over the years urging upon the Federal Court, the fact that a citizen is entitled to a direct appeal without any consideration of merit or prejudice. To require a showing of prejudice when the U.S. Supreme Court states that no such requirement exists violates 28 U.S.C. Section 2254(d). In the Petitioner's case, we see the state courts applying the "governing legal rule" in an unreasonable manner. See, Williams (Terry) v. Taylor, 529 U.S. 362, 407-408 (2000). The "governing legal rule" is found in Flores-Ortega where a defendant is guaranteed the effective assistance of counsel in perfecting a review on the merits of his conviction or sentence. The State Court and the Federal Court both violated the Petitioner's constitutional rights by requiring him to demonstrate when no such demonstration is required. See, Penson v. Ohio, 488 U.S. 75 (1988)(holding that the complete denial of counsel on direct appeal requires a finding of prejudice). Again, the Petitioner argues that

even if he needed to show prejudice, that showing is made by the fact that he was denied the opportunity on direct appeal to present the brief that would have established that the sentencing judge sentenced him in violation of his right to due process by stating on the record that he was not following the sentencing code.

In United States of America v. John Doe, 806 F.3d 732 (3d Cir. 2015), the Court made three observations that are keenly and undeniably relevent to this Court's task which is to competently and honestly decided whether or not to issue the Petitioner a Certificate of Appealability. First, Rule 60(b)(6) has no built-in time limit. Second, it is important to not ignore a Petitioner's diligence in making his arguments in the District and Circuit Courts. Third, the decision to grant or deny a COA involves a threshhold inquiry, not a merits determination. The John Doe case supports the Petitioner's argument that it is absurd, unfair, and unconstitutional for Courts to spend years denying constitutional rights to the Petitioner and to "blame the victim" if you will, and fault the Petitioner for this passage of time. The question we must ask is: How is it possible for the Petitioner to argue so extensively with the support of so many cases and be totally wrong about everything?

The Court should note the fact that Judge Diamond ignored the invitation to explain why he denies a COA to the Petitioner when his decision in the Stovall case establishes that the Petitioner's issues have been "resolved in a different manner." Barefoot v. Estelle, 463 U.S. 880 (1983).

Judge Diamond also ignored the invitation to explain why he denies a COA to the Petitioner when Judge Dubois's ruling in Rivera v. Goode, 540 F.Supp. 2d (3d Cir. 2008), establishes that the Petitioner's issues have been "resolved in a different manner."

The disinformation campaign that we see unfolding during the presidential election is the type of activity that we should not see reflected in our federal judicial system. In a relatively recent opinion, the Supreme Court ruled that political candidates can lie in their campaign ads. The permission to blanket the American people with falsehood, thankfully, has not been granted to the federal judiciary. When federal courts ignore facts that are undeniably true in order to avoid ruling in favor of a petitioner, they engage in activity that impugns the integrity of the judges who are supposed to protect the constitutional rights of American citizens.

The halls of our Federal Courts should be halls of justice, not an echo chamber where falsehood is allowed to reverberate unchecked.

If a federal judge or his law clerk would take a moment to read the six page 2010 Superior Court Decision, it would be clear that this decision is not a perfected direct appeal in which the case was decided on the merits and some issues were not included. It should not be hard to get our federal courts to seek out and acknowledge the truth. Without truth, there is no justice. Without truth, there is no integrity.

We live in an envirionment in which politicians and the news media shape facts to fit whatever narrative they want to promote. American citizens should not have federal judges (who are supposed to represent truth, justice, and integrity) who act like politicians and journalists and ignore any facts that run counter to their version of what they want the facts to be.

Let's take a closer look at the Federal Court Order and observe how cases and arguments that prove the Petitioner is on the right side of the law are avoided. This is clearly an Abuse of Discretion that is evident because the law was overridden and misapplied. Bias and ill-will are on display when a judge ignores his own published opinion, opinions from the highest court in the nation, opinions from his Circuit, and misstates facts in order to rule against the Petitioner.

There is no published opinion from any state or federal court that ignored a clear misstatement of fact in order to rule against a defendant. This is proof that the Petitioner's case is rare and extraordinary.

As America learned in the recent confirmation hearing for Supreme Court Justice Amy Coney Barrett, the role, the job, the duty of judges is to interpret and apply the law, not to make new law. If the Courts allow Judge Diamond's unconstitutional ruling against the Petitioner to stand, they would be complicit in allowing a clear constitutional violation to go unchecked.

The Petitioner respectfully requests that the Court intrepret the law as written, not rewritten by Judge Diamond.

D. Federal Court Order

On page one of the Federal Court Order, we see that the Post-Conviction Relief Court determined that the Petitioner's lawyer "performed ineffectively." In spite of stating that the Petitioner was entitled to appellate review, PCRA Court Judge Charles B. Smith reviewed the Petitioner's case on the merits and acting contrary to the law and without authority reviewed Petitioner's case on the merits and determined that the Petitioner could not show prejudice. There is nothing in the state constitution that authorizes a judge to deny a citizen's right to a direct appeal. The Order at this point could have cited and discussed one or more of the numerous cases identified by the Petitioner from the U.S. Supreme Court that establishes that the Petitioner who was denied his first direct appeal of right has no requirement to show prejudice. The Pennsylvania Superior Court affirmed that PCRA Court's error.

In Rivera v. Goode, 540 F.Supp.2d 582 (3d Cir. 2008), Judge Jan E. Dubois rejected Magistrate Judge Smith's report and recommendation concerning an inmate's ineffective assistance and sentencing claims and conditionally granted relief to the inmate whose direct appeal right was reinstated. In Rivera, the inmate had the same judge the petitioner had review his case. The inmate presented the same issues. The judge makes the same errors. But in Rivera, the error was corrected. Judge Dubois determined that the remedy for a violation of the right to effective assistance of appellate counsel is the reinstatement of the petitioner's appeal and the appointment of counsel. See, Barry v. Brower, 864 F.Supp.2d 294 (3d Cir. 1988).

The next point made by Judge Dubois affirms what the Petitioner stressed in his Rule 60(b)(6) Motion and in the instant Request of C.O.A.. A direct appeal and a PCRA appellate review are two different endeavors. Judge Dubois stated that "Magistrate Smith erroneously assumed that Petitioner could only relitigate the claims raised in his PCRA petition if his appellate rights were reinstated. In making this assumption, the Magistrate Judge failed to account for the fact that the Petitioner has never had a direct appeal considered on the merits and, as a result, he will not be limited to the claims raised in his earlier submissions when his direct appeal is reinstated." Rivera at 597. See, Commonwealth v. West, 883 A.2d 654 (Pa.Super. 2005)(where a direct appeal is reinstated, an appellant is not limited to his waived claims asserted in his brief, but rather, counsel and client may explore all available issues on appeal). Therefore, even if in the opinion of a PCRA Judge or a Federal Judge, a petitioner would be unable to establish prejudice if his right to a direct appeal were reinstated, on appeal, a petitioner is free to raise additional issues that haven't yet been identified.

No judge is so omniscient that he or she can predict that a petitioner will lose their appeal when the judge is not even aware of what issues will be presented on appeal. Judge Dubois followed the law of the land and referred to Commonwealth v. Halley, 870 A.2d 795 (Pa. 2005), where the Supreme Court of Pennsylvania stated: "We are cognizant that both the PCRA Court and the Superior Court conducted merit reviews of the Appellant's underlying claims and found no basis for relief. Although our decision here [to reinstate the Appellant's direct appeal]

will result in duplicative review in Appellant's particular circumstance...this case was not selected to determine whether an alternative procedure might serve as an adequate substitute to vindicate a criminal defendant's constitutionally guaranteed right to a direct appeal." Halley at 801, n.5.. Like every other relevent state and federal case in America, Halley establishes that a PCRA "appellate process" is not a substitute for a direct appeal. To give another example, what if a defendant has trial counsel who effectively represents him and objects to the trial court's failure to give a certain jury instruction? If appellate counsel fails to perfect the direct appeal, should a PCRA Petition be the only means to obtain review of what could have been a viable direct appeal issue? Trial counsel was not ineffective. Common sense without resorting to the law of the land dictates that certain claims appropriate for review on direct appeal lose their vitality when pursued in a second-hand manner on collaterial review.

On page two of the Federal Court Order, it is mentioned without elaboration that the Petitioner filed a second *pro se* PCRA Petition, which the Court denied as untimely. In order to make the Petitioner appear to be someone who filed all manner of untimely documents, the Order fails to give any background concerning the second *pro se* PCRA Petition. The second PCRA Petition was filed as a result of the Superior Court decision in Commonwealth v. Ciccone, 2016 Pa. Super. LEXIS 375, No. 3114 EDA 2014 (Ciccone I). The Court held that "when an unconstitutional mandatory minimum sentence statute results in an illegal sentence, that illegal sentence can be corrected by a timely PCRA Petition." The

Petitioner and other inmates relying on this decision timely responded and sought relief from unconstitutional mandatory minimum sentences. With lightning speed, Ciccone I was overturned by an en banc panel and removed from the LEXIS computer system. A PCRA Petition that was timely filed was deemed to be untimely after Ciccone I was overturned.

The Order concludes the Background and Procedural History section by stating that Charles argues that "counsel's deficient performance cost him his right to appeal." When deciding this same issue in Stovall v. Warden, New Jersey State Prison, 2005 U.S. Dist. Lexis 6758, Judge Diamond followed the law of the land and granted the inmate's petition as to his claim of ineffective assistance of counsel for failure to seek allocatur in the Pennsylvania Supreme Court.

After losing on the merits in his direct appeal, Stovall sought relief under Pennsylvania's Post Conviction Relief Act. The Montgomery County Common Pleas Court denied the petition and the Pennsylvania Superior Court affirmed. Therefore, Stovall received the "appellate process." In addition, he also received 15 pages of analysis by Judge Diamond in which the Judge concluded that Stovall's waiver of his Sixth Amendment right to counsel was knowing, voluntary, and intelligent.

In spite of the direct appeal, PCRA Court review, the Superior Court review, and the detailed review by Judge Diamond, Stovall was not told that his ineffective assistance of counsel claim was meritless. He was not asked to show prejudice due to counsel's failure to perfect his request for a discretionary appeal.

Stovall, who had a direct appeal along with other reviews listed above, had four reviews of his case. In spite of the above facts, Judge Diamond concluded that Stovall's second lawyer was ineffective under the Sixth and Fourteenth Amendments for failing to file a petition for allowance of appeal in the Pennsylvania Supreme Court. The Commonwealth agreed that Stovall, who had no hope of being successful on appeal to the Supreme Court, had a lawyer, who was per se ineffective in not perfecting a petition for allowance of appeal. As the Petitioner stated above, the Commonwealth would have agreed with the fact that he was entitled to a nunc pro tunc appeal with no preconditions.

There is no way to reconcile the conclusion by Judge Diamond that Stovall was automatically entitled to a fifth opportunity for a review of his case with the conclusion by Judge Diamond that the Petitioner is required to establish prejudice. Aside from the fact that there is no requirement to establish prejudice before regaining the right to a direct appeal that nobody denies was lost due to ineffective assistance of counsel, Judge Diamond, like Judge Smith, gave no thought to the fact that totally new issues can be submitted by any defendant who regains his right to appeal.

Judge Diamond concluded that the Petitioner can't establish prejudice when the Judge, like Judge Smith, gave no consideration to the brief that the 2010 Superior Court panel failed to review because the right to the direct appeal was forfeited. Although there is no requirement to establish prejudice, using Strickland standard prejudice could be established by proving the fact that when a sentencing judge