No. 22-5261 ORIGINAL

Supreme Court, U.S.
FILED
AUG - 3 2022
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Yusuf O. Bush — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

District of Columbia Superior Courts
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Yusuf O. Bush
(Your Name)

USP Pollock PO Box 2099
(Address)

Pollock, LA 71467
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does the AEDPA of 1996 Violate the Constition of the United States 1ST, 14Th, and 5Th, amendment? Specificly the 1ST amendment guarantee that the right to seek redress for grievances shall not be abridged; 14Th amendment guarantee that no state shall make any law which abridges the privelages or ammunities thereof.

2. Does the Code 2244(D)(1)(B) of the United States Code Give D.C litigants the unlimited time to file a 2254 of the United States Code (USC 2254) (28 § USC 2254)

3. Does being confined in Solitary Confinement (SHU) without legal material needed to complete USC 2254 petition + brief for 5 months without infraction or reason grounds for equitable tolling?

4. Did trial Court abuse its discretion by disregarding trial counsels admissions that the plea wasn't knowing and Voluntary While the motions asserted coercion, And Appelate counsel failure to raise it inefective

5. Was Appealate Counsel inefective for not advancing instances of inefective assistance in third prong as raised in the hearing and by what was in the record by researching and developing?

6. was Appealate Counsel inefective by not advancing trial courts refusal to acknowledge Use of false testimony

7. Was appealate counsel wrong for not advancing trial courts assesing the merits of case?

8. was Appealate counsel inefective for not advancing trial courts use of the incorrect legal standard

9. Was the D.C Court of appeals abusing discretion by using the incorrect legal standard in the recall of the mandate

LIST OF PARTIES

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

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Yusof Bush
V.
David J. Ebbert
(Notice; 28 U.S.C § 2403 (b) may apply ca and it isn't known if D.C has been notified)
as well as 2403(a) may apply

RELATED CASES

Yusof O. Bush V. United States NO. CF1-8930-14
Superior Court of the District of columbia
Judgement entered on April 2nd 2015

Bush V United States No. 15-CF-351 District of Columbia Court of Appeals. Judgment entered on December 9th 2016

Yusof O Bush V. United States NO. 15-CF-351
District of Columbia Court of Appeals
Judgement entered On February 5 2018

Yusof O. Bush V. David J Ebbert No. 19-1870
(KBJ) US District Court for the District of Columbia circuit. Judgement entered Aug. 6 2021

Related cases Continued

Yusuf O Bush V David J. Ebbert No. 21-3060 United States court of Appeals. Judgement entered on Feb. 11 2022

Yusuf O. Bush V. David J. Ebbert No. 21-3060 United States Court of Appeals For the D.C circuit. Judgement entered on March 24, 2022

Table of Authorities Cited

Cases

Table of Authorities cited (cont). II

OTher

Page #

Impediment = Merriam-Webster Dictionary of law defines the word as "Something that prevents or inteferes with a process, power, or right". The Merriam-Webster's dictionary defines the word Impediment as "Something that makes movement or progress more difficult" — 10, 11

Abridge = is defined as; "To shorten in time or extent" Merriam-Websters dictionary of law defines Abridg as; "To deminish or reduce in Scope" — 7, 8, 11

TABLE OF CONTENTS

INDEX TO APPENDICES

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 A to the petition and is

[ ] reported at ____________________; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

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

[ ] reported at Not stated in Order; 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 E to the petition and is

[ ] reported at ____________________; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the D.C Appeals court appears at Appendix D to the petition and is

[ ] reported at Unknown; 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 11th 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: August 24th 2022, and a copy of the order denying rehearing appears at Appendix C.

[✓] An extension of time to file the petition for a writ of certiorari was granted to and including Aug 21 2022 (date) on June 16 2022 (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 2-5-18.
A copy of that decision appears at Appendix D.

[ ] 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

1. 1st amendment (right to seek redress)
2. 14th amendment (no state shall abridge rights
3. 28 USC § 2244 D(1)(B) 1 year limit tolled until removal of impediment that violates constitution
4. D.C Court rule 41 180 day limitation to file IAAC violates Constitution and D.C Constitution
5. D.C code section 101 violated by D.C court rule 41 recall of the mandate
6. constitution of the state of New Columbia article I bill of rights; "The writ of Habeas Corpus shall be available Promptly at all times, successively and without limitation in all cases of unlawful detention, conviction, sentence" Violated by rule 41 as well as 1996 AEDPA
7. 1996 AEDPA (is illegal and void ab initio

...atement of the case

...2015 In the D.C superior court ...front of Judge Jennifer Anderson a 32(e) hearing to take back his plea was denied. Pro se litigant filed a recall of the mandate for IAAC. It was denied without denovo review but on trial courts rulings alone

Appealant filed a 2254 and after months of trying to get an answer recieved forms to refile which would have exceeded the limit he also filed an injunction. The District court after 26 months said I was time barred violating the 1ST and 14Th amendments against abridgement I filed with the court of appeals and also for a rehearing en banc which also denied me a COA claiming time barement citing 1996 AEDPA which is illegal and should be judicialy reviewed under constitutional violations consistant with the ruling under Marbury V. Madison thus making my petition timely and the 1996 AEDPA Void abinitio as it's illegal by constitutions language in the 1ST amendment

REASONS FOR GRANTING THE PETITION

This court should grant the Petion to rule on these issues of constitutionaly invalid laws and and fundamental defects and plain errors which are now being presented by this pro se litigant and should be held to the less stringent standard of review and liberal construction when examining procedural rule. ① Haines V. Kerner 404 U.S. 519 (1972).

In july of 2018 appealant was preparing his brief and appendix and having it typed up by another inmate when he was called to the lieutenats office and eventualy locked up in the secure housing unit (SHU), for an alledged assault. (even though while being admitted the victim stated to the captain, (exscuse Me) lieutenant that it wasn't me.

After 2 weeks while making rounds the Captain said after reviewing of the camera it was discovered that I wasn't the Culprit, but the captain stated he wouldnt let me out because he discovered other info, I never found out what that info was and was held in shu, then shipped to the low security shu (lock up) then back to the USP and eventualy shipped to Lewisburg secure manggement program without an infraction, for which I filed a 'Bivens suit' which is still Pending (see exhibits #1)

I had been trying to gain access to my property and legal materials, transcripts, etc since discovering that I would not be released to general Population I tried to file grievances which were denied to me which led to the 'Bivens' suit and in December I was given my property, I rewrote the brief and had the unit manager copy y appendix per the assistant warden mailed it as soon as I was done h was about 7 days, I even had e an injunction because my brief being accepted and the courts turned my brief/appendix (see

This shows diligence, for equitable tolling."
"We held that the circumstances that caused a litigant delay must have been beyond his control" 'Menoaminee Indian tribe of wis. V. United States 764 F.3d 51, 58 412 U.S App D.C 221 (D.C cir 2014)

I also presented in response that; the first amendment guarantee invalidates The 1996 AEDPA to the district court who never addressed the issue so actualy Conceded the point and to the appeals Court who refused to address the fundamental defect/plain error of the AEDPA.

The 1st amendmen states: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peacably to assemble and to petition the Government for a redress of grievances"

This in turn is supported by the 14th amendment which states; "No state shall make or enforce any law which shall abridge the privelages or immunities thereof".

Clearly the 1996 AEDPA is illegal

by the language of the constitution being in plain error and as a fundamental defect; unconstitutional and invalid as a matter of law therefore Void ab initio. Its existance results in a miscariage of justice affecting substantial rights of the citizens

Webster defines the active word here 'Abridge' as: To shorten in time or extent. Merriam-Websters Dictionary of law defines 'abridge' as: To deminish or reduce in scope

The landmark case Marbury V. Madison 5 U.S. 137 (1803) ruling is relevant here as the doctrine of Judicial review is called into play as the supreme court is the ultimate authority in interpeting the constitution, it must rule on this issue that affects the rights of all citizens. Chief justice John Marshall declared that any conflict between the constitution and a law passed by congress, the constitution must always take precedence. Thus petition must be viewed timely

As presented to the Court of appeals this plain error/fundamental defect illegal by the constitution also 28 USC § 2244 D(1)(B) states AEDPA 1yr Statute of limitation "is" tolled until removal of (1) an "impediment" that was "created by state action" and that Violated the constitution of the United States.

D.C court rule rule 41 which is declared Proper vehicle to file Inefecte assistance of appealate counsel mandates that it must be filed in 180 days in conflict with not just the US constitutional guarantee for 1st and 14th amendment rights to be secure from abridgement, but it's own constitution. As D.C code section 101 mirrors the first amendment, Creating a 180 rule to seek constitutional rights to seek redress of grievances violates both the US constitution as well as it's own constitution. Constitution of State of new Columbia Article 1 bill of rights state: "The writ of Habeas Corpus Shall be available promptly at all times, Successively and without limit in all Cases of unlawful detention, conviction or sentence".

Once the AEDPA (which is illegal itself) was implemented the the language gave D.C inmates unlimited time as the 180 day rule which was already illegal (see the 2 Supreme court justices memorandum in dissent in McIlwain V. United states 464 U.S 972, 78 L. Ed. 2d 349, 104 S. Ct. 409 (1983)) became the impediment as articulated in 28 USC § 2244 D(1)(B) as it not only violated the laws of the constitution namely 1st and 14th amendment decree that rights will not be abridged, this was also state action; that violated the equal protection Clause giving D.C litigants 6 months while every other federal inmate or habeaus petitioner had 1 yr. It matters not if it completely estopped the filing as the word impediment by Merriam-Websters Dictionary of law defines it as: Something that prevents or interferes with a process, power, or right The Merriam-Webster Dictionary defines it as: "Something that makes movement or progress more difficult."

The D.C circuit in Head V. Wilson 792

F.3d 102; 416 U.S. App. D.C 441 (2015) at 2015 U.S App Lexis 17 states; "First we agree with the fourth circuit that the term futile and impediment as found in § 2244 D(1)(B) are far from synonomous." It goes on to quote this court stating "futility cannot constitute cause..." quoting (Bousley V. United States 523 US 614, 623 118 S. Ct. 1604, 140 L. Ed. 2d 828 (1998).

So it matters little if the process was completly prevented as long as it created a situation that abridged, intefered with a process, power or right. or made movement or progress more difficult, which it did and does especialy for pro se litigants who by the time they realize this rule time is barred from this Habeas action.

This rule according to the language in 28 USC 2244(D)(1)(B) gives D.C inmates unlimited time to file until the impediment is removed. Thus invalidating the rule as it violates the constitution also by abridging the guaratee of the 1st and fourteenth amendment, implicates the equal protection clause and the 5th amendment. Thus petition is timely. Any Jurist of reason could find these arguments debatable as it shows the denial of Constitutional rights as well as calls for Judicial Review the Courts should issue a COA and grant Certiorari and any other relief deemed Just.

Furthermore, affective assistance of counsel is a matter of right, extending to ones initial direct appeal, so to time bar a fundamental right or substantative right(s), attacks the constitution which should be exposed to Judicial review and the constitution should always take precedence

Appealate counsel was constitutionaly defective the withdrawal hearing revealed numerous acts of deficient performance and for the fair and just standard all that is required is a showing of deficient performance. See Pettiford

V. united states 700 A.2d 207 id at 216
In a fair and just review the motion should be granted "If for any reason the granting of the privelage seems fair and just." id at 306 (quoting Kercheval V. United States, 274 U.S 220, 224, 71 L.Ed 1009, 47 S.Ct 582 (1927) (other citations omitted)
The factors used to determine whether it would be "fair and just" to allow the withdrawal of a guilty plea are as follows;
(1) "Whether the defendant has asserted his or her legal inocence" (To this see exhibit 1A) (2) "The length of delay between entry of a guilty plea and desire to withdraw it" (3) "Whether the accused has had the benefit of comptent counsel at all relevant times Gooding V. United States 529 A.2d 301, id at 306-07. "None of these factors is controlling and the court must consider them cumulatively in the context of the individual case" id. at 306
As to the second factor the court (trial) court and government stated that it would

not be especialy burdensome but the appeals court used the wrong legal standard stating "We will accept the governments concession that this was prompt enough to weigh in his favor (see exhibit 2B page 6) In using the wrong legal standard stated "To compel the complainant to relive her experience and Submit to hostile cross examination about it a second time in a public forum on account of appealants irresolution appears to be especialy burdensome and prejudicial to her and the governments legitimate interest." (see exhibit 2B page 6 second paragraph)

That was an erroneous conclusion, in Davis V. Alaska, 415 U.S. 308, 39 L. Ed. 2d 347, 94 S. Ct 1105 (1970) This court ruled "As in Alford, We conclude that the States desire that green fulfill his public duty to testify free from embarassment and with his reputation unblemished must fall before the right of petitioner to seek out the truth in the process of defending himself" Id., at 320 This was an erroneous legal position and any appeal of it (recall of the mandate) will be and was met with these flawed perspectives

The third factor as to whether the appealant recieved the full benefit of competent counsel was never litigated despite the fact that this was his main issue. Appealant counsel in his brief (see exhibit 3B, page 6) states "Mr. Bush is not challenging the courts findings that counsel was competent" This clearly shows inefective assistance as replacement counsels brief (see exhibit 4B) shows as will further show throughout this brief that this was the main issue so to not put forward the instances put on record in the withdrawal hearing automaticly show deficient performance and prejudice

Appealant sent counsel a cease and desist notice and wrote letters to the court along with a copy of cease and desist order (see exhibits 6)

Replacement Counsel Dorsey Jones filed a motion to withdraw the plea (see exhibit 4B) in which outlined some of trial counsels inefective assistonce, but during withdrawal hearing when trial counsel was asked was the plea knowing and Voluntary (see exhibit 7) at hearing dated 3/23/15 page 104: line 13-21 government asks " You did not doubt at the time that, that was Mr. Bush's knowing and Voluntary decision correct". Trial counsel responds "I wouldn't say knowing and Voluntary". That is the requirement and an admission by trial counsel who is aware of the brief submitted to the court asserts coercion is enough to allow withdrawal and appellant counsel had a duty present that for review on appeal but didn't

This case has all the similarities to osborne V. Shillinger 861 F.2d 629 in the 10th cir. were the court noted Osbornes attorney did not simply make poor strategic choices he acted with reckless disregard for his clients best interest and at times with the intention to weaken his clients case" Id at

Counsel disregarded his duties to his client causing a breakdown in the adversarial testing format seemingly on purpose.

Counsel threw away their oaths and became an agent of injustice, who will protect the rights of the people when the people assigned the duty become disinterested and desensitized

The D.C precedent in Doe V United States (583 A.2d 670,674) charges appealat counsel with the duty to "researching and developing Points thus uncovered that might give rise to inefective assistance of counsel claims" Id, at 675. Counsel had a duty to review the hearing transcripts and the brief by appellant counsel and advance any instances of inefective assistance of counsel

The note Summary of Ms Semyenava (trial counsel) will show (see exhibit 7.1) Page #27 it say "client describes CW as jealous and possesive on page #28 (see ex

-hibit 7.1) Tanyel has a lot of jealousy issues about the women he used to see; on page 24, Subpoena Medena Sherika. but sherika was never contacted, Sherika wrote an affidavit containing Ms Dixons behavior. (see exhibit 8)

In note Summary page 25 (see exhibit 7) entry 7/11/14 "Tanyel told client that she was manic depressive and had suicid attempts since childhood, and, was supposed to take meds growing up. These issues were part of the 32(e) hearing but not put forward on appeal Trial counsel had enough to file motion to gain access to her medical records, but that became irrelevant because Ms Dixon signed consent form to gain access to all relevant records including mental health records (see exhibit 9) trial counsel neglected to use these critical documents for her clients defense, and appealate counsel also had a duty to present this and other instances of ineffective assistance but didn't.

In Doe v. United states 583 A.2d 670, 674 it states "The duty investigate possible IAC is triggered by what appealate and trial counsel tell appealate counsel in response to a reasonably thorough inquiry." at 674-75

In appealate counsels brief it shows the disregard, (see exhibit 10 page 6 1st paragraph) it says "Mr. Bush is not challenging the Superior Courts finding that trial counsel was competent."

This was and remains the main issue and the hearing showcases that. (see exhibit 4B).

In the Competant counsel prong in the D.C Court of appeals ruling of appealate Counsels brief the Court states, "Appealant does not dispute the trial courts ruling of counsels inefectiveness in connection with his trial and guilty plea, it weighs against him to withdraw his plea".
(See exhibit 2B page 7)

The cease and desist order didn't alter his course nor the 6th amendment.

There was also numerous instances where no support to the trial courts factual findings not to mention the conclusions of law At the hearing page 24 (see exhibit 12 line 2) as well as throughout trial counsels testimony is credited; counsel admits that plea wasn't knowing and voluntary amidst the motion and claims of coercion, so to credit this statement but rules contrary to it shows abuse of discretion; in the withdrawal hearing (see exhibit 12.1 page 187 line 11 Ms. Semyenova states " On cross I was asked whether every decision about the questions I decided not to ask that Mr. Bush wanted me to ask was strategic and related to the defense theory and I wasn't thinking of friday, that 1 of the questions Mr. Bush wanted me to ask was about Ms. Dixons mental health history. And the failure to ask those questions wasn't related to any defense theory.... But even still Ms Dixon had signed a release of these documents (see exhibit 9) these things were and are relevant as it gives the trial court all it needs to withdraw the plea; trial counsel is admiting to proper performance but the trial court ignores it and appealate counsel attempted to bury these instances which prejudiced his counsel exscuse me his 'Clients' review by omission of relevant evidence material to the appeal and as in Osborne V. Shillinger Ibid at 621 "he acted with disregard for his clients best interest".

Ms Dixon stated to officers she had been smoking synthetic marijuana which is known for hallucegenic affects (see exhibit 14) Also see exhibit 14.5 in which CW was noted to say all women in her family were crazy and refered to herself as a basket case and that she'd hurt appealant if he ever broke her heart. This was compounded by appealate told Ms Semyenova of Ms Dixon stabbing her daughters father and that she was acting trying to portray a helpless victim. This led to discovery of the stay away order (see exhibit 15) this undermined her stance of helpless victim and would have greatly added to impeachment had it been used properly going to her mental health; page 2 of 3 ask's (see exhibit 15) describe all injuries respondant caused victim "it says verbal assault stabbing" see also exhibit 7.1 entry 6/11/14 4th line it says "she stabbed he daughters father in the stomach during a dispute." This was given before finding of stay away order. So its noted "abandoning an investigation at an unreasonable juncture makes a reasonable profesional judgement impossible Wiggins V. Smith 539 US at 527-28

No witnesses were called despite list of witness and what each would provide 1 of which was attorney Alphonso Gonzales whom had called Ms Dixon to contact me. who she told "he shouldn't have beat me up"; no sexual abuse (see exhibit 16) transcripts from 3/20/15 page 15.

There is also the phone records subpoena'd motion duces Tecum (which trial counsel could have filed for Ms. Dixons mental health records) showing Ms. Dixons lack of veracity that I tried to get on record (all jail calls are recorded) stating "I'm locked up for sexual abuse, I have a rape charge, they say I took your ass at gun point" To which Ms. Dixon states "Thats not what I told them" When in fact thats exactly what she said. (See exhibit 17) This is exculpatory. See also Replacement Counsel Dorsey Jones Addendum which is transcribed from one call "You didn't deserve this" but trial counsel didn't present. (see exhibit 17.1) In the sane report on forensic evidence collection. (see exhibit 17.5) item #14 of physical evidence recovery kit; reads "Fingernail scrapings" beside "yes"

In the Sane report (labeled patients des cription of assault) at the very bottom (See exhibit 18) were it says "were any of assailants injured in any way" its marked yes! with an X and says "I seen a couple of scratches on him I did what I had to do". But the analized product was never provided and neither counsel persued this brady violation just refusing to be of any meaningful assistance. This was a Structural error that should have been Presented for resolution

In furtherance (See exhibit 17.6) under past medical history second entry states "back" injury. But in withdrawal hearing 3/20/15 Page 183 line 1 (see exhibit 17.B) under Past medical history Ms Semyenona is asked about raising this issue to which is stated "I don't remember anything about a back injury". showing lack of attention to the defense. As Ms. Dixon was on workers comp. requiring back surgery and claiming to be hog tied and abused for hours yet have no claims of a sore back to the ME is impeachable and appealate counsel had a duty to present these issues that were presented to the trial court in the withdrawal hearing

Also in Sane report (See exhibit 18) labeled patients description of assault CW states "We had no issues we we just talking about starting over". But in the Grand Jury proceedings 5/12/14 page 16 line 10-19 this time upon arrival she state's "I went in his room, I asked him you know what he planned for the day. And he was already upset with me... (See ex. 17.9

First "no issues" then "he was already upset. Trial counsel neglected any instance that Showed a contradiction, didnt cross adversely and and appealate counsel had a duty to present what was showings of deficient performance as that is the threshold for withdrawal, prejudice wasn't required under the fair and just standard

There was also In the Grand Jury CW states (see exhibit A18) "My Face was Swollen my lips were swollen but in the, sane examination no such findings were noted. (See exhibit 18.1) Nurses findings of injuries. There was no confrontation that was meaningful to the defense

In the affidavit in support of arrest see exhibit 18.2 Ms Dixon tells detectives "The complainant observed him place the small black revolver in the side of his pants before running down the steps and left the house". The detectives initial interview (see exhibit 18.3). page 7 line 21 "And when he left he left with a gun" But in the Grand Jury page 52 line 8-9 (See exhibit 18.4) "When you left was Omar

still in the house? Answer "Yes".
First Claims that she witnessed him Place gun on hip then run down the steps and out of the house. Wether, drugs or a mental health episode or fabrication it is apparent that veracity is lacking here and appealate counsel should have advanced this as all that is required was deficient performance. We can't get to a place were just an allegation is sufficient.
The detectives recording becomes more relevant as the testimony was adopted under oath. (see exhibit 18.5) And it is a rule of law "when a witness testifies under oath and adopts a statement not made under oath that prior statement becomes substantitive evidence" quoting Mercer V United States 724 A.2d at 1195. The substantitive evidence Should have been used to impeach and wasn't is appealate counsels duty to point out and afford appealant his 6th amendment rights, as "willingness to testify falsely negates presence of moral duty to speak falsely, (e~~x~~scuse me) to speak truthfully

that is at the foundation of the theory of testimonial evidence" See wigmore § 957 at 803

In initial statement (see exhibit 18.3) Ms. Dixon mentions seeing a gun, (see also pag 7 line 21 exhibit 18.3) but never says a gun was used in testimony adopted under oath. In Grand Jury proceedings page 30 line 8 (See exhibit 18.6) no confrontation to this is attempted. In original/initial statement (See exhibit 18.3 page 4 line 12-15) Ms Dixon States" So we went to pick up my daughter, he made me drop her off. And when I came back thats when it started".

In the Sane report labeled patients description of assault (See exhibit 18) it states "We picked her up and dropped her off, we went to his house... first he hit me on the top of my head, smacking me in my jaw" clearly asserting that assault happened after dropping of her daughter. (See also defense investigators signed affidavit after the Grand Jury (exhibit 18.8 page 1-4) This is contradicted in exhibit 18.9 page 27-34 see exhibit 18.9

During the trial on 9/3/14 (see exhibit 19) Page 174 line 10-11 Ms Dixon says that her hands and feet were tied behind her connected to her feet; but on page 177 (see exhibit 19.1 lines 12-14) Ms Dixon says "Well I showed her that my hands were tied together because when I started screaming and he went to open the door, he tried to untie me" also (see exhibit 19.2) stating "well when I started screaming and his mom came to the door he started untying me. So he took the belt off and he untied my feet"

This is inherently incredible, if your feet and arms are connected behind you, how does hands get to front still bound. (from trial 9/13/14)

She is lying plain and simple, she bought up the idea of role playing to keep me from going out and set me up.

In the Grand jury proceeding (see exhibit 19.4) page 68 line 16 Ms Dixon says of when appealant was violent toward her

A "It was after my sisters wedding

Q And that was in Virginia?

A. Yeah.

Q What did he do there?

A. "he beat me in the head with a pair of his sisters shoes, he beat me in the head with a Knife, he kicked me in the stomach punched me in the stomach." in contradiction at trial proceeding 9/13/14 page 138 line 1-11 (See exhibit 19.5) on this same questioning as before with different answer confirms the fabrication without any meaningful cross examination

Q. Did anything take place while you and Mr. Bush were alone in Manassas VA.

A. Yeah

Q What happened

A. He beat me in the head, He took a Knife and stabbed me in my legs with it, poked me in my legs and then he took a pair of his sisters shoes and beat me in the head with it.

This should have been presented to the Jury but wasn't appealate counsel had an obligation to show this as inefective assistance but didnt. Her veracity wasn't a question at all and should have been. Transcripts from 9/13/14 page 209-218 trial counsel only asks of the complainants version of events without any impeachment painting an adverse picture with apparent intent to

Induce the plea; allowing the government to control the narrative from pages 187 to 217 Counsel simply asks CW her version of events without any impeachment which was abundant. (See exhibit 19.7)

As Noted "Some errors will have a pervasive affect altering the whole evidentiary picture"; Strickland V. Washington 466 US at 695-96. This was such a case, Counsel strategicly Performed badly and because I called it as I saw it was punished for it. (See exhibit 19.8) Trial court ruled "The defendant testified that he thought that MS. Semyenova wanted him to be found guilty... The court found that to be ludicrous. The court does not believe for one minute that Ms. Semyenova did not work this case because she is a woman and its a rape case and she wanted the defendant to be found guilty. When the defendant makes a statement like that it doesn't just question Ms. Semyenova's confidence but impunes her integrity as a defense attorney and when you make such an accusation without any evidence other than defendants own feelings it 'completely' undermines his credibility. The rule is "intrinsic evidence offered to prove validity of a prior statement can only be introduced while the witness is on the stand" Tyer V. United states 912 A.2d at 1163 quoting Mercer. Trial counsel had a duty to impeach with this, appealate counsel should have presented this for resolution. But allowed this manifest injustice to go unchallenged.

In the grand jury testimony (see exhibit 19.9) then on page 28 (see exhibit 20) she claimed to have been punched in the jaw numerous times that day and jaw was still 'swollen shut' and Ms. Semyenova doesn't impeach while she's on the stand and thes questions are on her questionaire for examination but doesn't ask them creating this breakdown in the adversarial testing process. So in the writing pad for her client to communicate during trial shows mounting distress (see exhibit A-1) like in Osborne V. Shillinger, IBid, as we see here counsel acted with reckless disregard for his clients best interest and at times with the intention to weaken his clients case" Counsel completely abandoned her questionaire and what she said to her client (see exhibit B-1 and A-1) She knew that CW'S claims weren't noted but left that narrative unchallenged but induced her client to plea this is "manifest injustice"

Transcripts of trial and hearing weren't available until appeal so appealate counsel had an obligation to research and develop the issues that may lead to IAC claims. As a review of the record would reveal as it was shown in the hearing the government knowingly offered false testimony in violation of D.C rule of prof. rule Conduct 3.8 Brady and napue.

Transcript from 9-4-14 Nurse Nichole Stahlman testifies falsely at pages 309-310 line 22 (see exhibit 20.1) prosecutor ask's "do you notice anything about the Jaw area"? she replies " It's so yes. It's red and swollen" and its tender.

trial counsel knew this to be a lie.

and let it go knowing it was a question that she had decided to ask before trial. (See also exhibit 20.2). At hearing pg. 195 line 15-25 line 20 by replacement counsel to Ms. Semyenova asks "what Im saying is did You -- did the examiner mark if she saw an injury on the Complainants Jaw" (See ex C2)

A No it's just the complaint of pain

Ms Semyenova intentionaly performed poorly but also use of false testimony/evidence known to be such by representatives of the State must fall under the 14th amendment. (See Sane findings exhibit 18.1)

This falls clearly under Napue V U.S 360 U.S at 269 " a bedrock principle of due process in a criminal trial is that the government may neither adduce or use false testimony nor allow false testimony to stand uncorrected

Thes issues were in front of the trial Court but disregarded in abuse of discretion

In Ms. Semyenova's examination by replacement counsel She's questioned and Impeached (See exhibit 20.2) from 3-20-15 page 193-196.

The trial courts rulings were based on erroneous legal principles. Appealate counsels fault.

First of all trial counsel admits that the plea wasn't knowing and Voluntary amidst assertions of coercion this was admitted. Thats significant (See exhibit 7), replacement was only required to show deficient performance see Pettiford at 216 Ms Semyenova used lack of assistance to induce the plea this is manifest injustice.

"When a guilty plea is challenged as being a product of coercion our concern is not soley with the subjective state of mind of the defendant, but also with the external force inducing the plea" Iaea V. Sunn, 800 F.2d 861 at 866.

So Counsels admission is significant and relevant as she admits it wasn't knowing and Voluntary. This was an abuse of discretion not to accept this admission.

"In resolving to withdraw a guilty plea the court should not attempt to decide the merits of the proffered defense thus determining the guilt or innocence of defendant." [Gooding V United States 529 A.2d. 301 id at 306

But that is exactly what took place (See exhibit 20.3) at Judges ruling pg. 34 Court states "At the motions hearing the defendant realy didnt explain any history as to why the complainant would make up the story about him... line 7 "It is a far stretch how-ever to leap from that to a conclusion that the complainant without so much as a conv-ersation then set out to frame him and the defendant realy didnt shed any light on that situation" (see ex. 20.4) page 34 "The Court had the benefit of sitting through the trial and listening to all the witnesses..." The court agrees with Ms. Semyenovas assesment the evidence was overwhelming of the def. guilt" (See exhibit 20.5) "Listening to her testimony in court and watching her demeanor, it's the Courts assesment that her testimony was devestating to the defense case. (See exhibit 20.6) "The court concludes that the defendant fled the jurisdiction to avoid being arrested" (See exhibit 20.7) starting on page number 37 and ending on page number

38 line 1-2 "The Court gives very little weight to either one of these witnesses because neither one were present and they realy don't add much"
(See also exhibit 20.8) "So based on the testimony it heard at trial, based on the proffer it heard at the plea the court concludes that realy the "evidence" is "overwhelming" of the "defendants guilt" Clearly Judge and Jury.
When the trial court makes an error of law it infects the exercise of discretion. Henson V. United states, 122 A.3d 899 at 902
Furthermore "A Court abuses it's discretion When it relies on an erroneous legal Principle" D.C office of Tax and Revenue V. Exxon mobile Corp. 141 A.3d 1088 (D.C cir 2016)

DCCA USED Incorrect Standard of law

The D.C court of appeals used the incorrect legal standard in assesing the appeal/recall of the mandate
It has ruled We review the trial courts legal determinations De novo" Byrd V. United states 614 A.2d 25, 30 (D.C 1992) also "We owe no deference

to the trial courts legal conclusions as to wether counsel was deficient In laea v. Sunn 800 F.2d 861 Footenot 7 says "To the extent that the state courts finding that Laea's plea was knowing represents a legal conclusion that it was uncoerced or that it was intelligently given with effective assistance of counsel it is freely reviewable." This is in conflict with DCCA ruling in the recall of the mandate the D.C Court of appeals only referred to the trial courts ruling as if what was presented only included factual findings, when it also contained legal conclusions, and even the factual findings we flawed

As shown earlier (see exhibit 7) trial counsel verbatim states the plea wasn't knowing and voluntary amidst assertions of coercion, but the D.C Court of appeals used the wrong legal principle as it required de novo review thus the court abused its discretion the plea should have been allowed to be withdrawn and jurist of reason could

Find it debatable as it is a matter of law that have not been followed and appealate counsel had an obligation to present these issues.

The constitution is the law of the land and the 1996 AEDPA should be struck down as it's inception attacks the 1st and 14th amendment. "When there is a conflict between the laws enacted by congress and the constitution the constitution must always take precedent. (just as Roe V. Wade violated the 10th amendment the constitution should be protected and preserved.) Marbury V. Madison 5 US 137(1803) For These and any other reasons this Court deems just I ask that certiorari be allowed; the plea be revoked under this courts original jurisdiction or remanded to the trial court for a new trial

Respectfully Submited
Yusuf O. Bush
Yusuf O. Bush #90320-007
USP Pollock
PO Box 2099
Pollock LA. 71467