No. 22-5263 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JUL 27 2022
OFFICE OF THE CLERK

JESSE BROWN — PETITIONER
(Your Name)

vs.

SUPERINTENDENT FAYETTE SCI ET AL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jesse Brown #HN1283
(Your Name)

S.C.I.-Albion 10745 Route 18
(Address)

Albion, PA. 16475-0001
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Whether was the Court of Appeal's decision that Petitioner's trial Counsel told the jury that his client was guilty of Murder for lesser degree of Murder was Sufficient, is the Petitioner entitled to A legitimate defense theory contrary to Glebe v. Frost, 574 U.S. — (2014)?

II. Whether was the Court of Appeal's decision that the Petitioner layered ineffectiveness assistance use in Strickland v. Washington, 466 U.S. 668 (1984) And Martinez v. Ryan, 132 S.Ct. 1309 (2012) is the Petitioner entitled to ineffectiveness Assistance to over come procedurally defaulted?

III. Whether was the Court of Appeal's decision is the Petitioner entitled to An standard of review on his claims?

LIST OF PARTIES

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

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

MARK CAPOZZA, SUPERINTENDENT SCI-FYT;
LAWRENCE KRASNER, PHILADELPHIA D.A.; AND
JOSH SHAPIRO, PENNSYLVANIA ATTY GEN.

RELATED CASES

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at No. 21-2959; 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[ ] is unpublished.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

[X] reported at No. 2:18-cv-04512; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] 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

[X] reported at Commonwealth v. Brown 998 A.2d 1256 (2010); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Commonwealth v. Superior Court court appears at Appendix C to the petition and is

[X] reported at Commonwealth v. Brown 986 A.2d 1249 (2009); or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MARCH 31, 2022.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: MAY 17, 2022, and a copy of the order denying rehearing appears at Appendix _____.

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

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was JANUARY 22, 2018. A copy of that decision appears at Appendix F.

[X] A timely petition for rehearing was thereafter denied on the following date: MAY 17, 2022, and a copy of the order denying rehearing appears at Appendix E.

[ ] 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

The Sixth Amendment to the United States Constitution Provides, in

Pertinent part:

> to have compulsory process for obtaining witnesses in his favor And to have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides, in

pertinent part:

> [N]or shall Any State deprive Any person of life, liberty, or property, Without due process of law. . . .

STATEMENT OF THE CASE

A. Procedural History:

Petitioner was arrested by the Philadelphia County Police Department and charged with murder and weapon offenses. The criminal charges arose from an incident that occurred on May 13th, 2006, on Porter Street in Philadelphia. In which Tariq Blackwell sustained two (2) bullet wounds resulting in his death. Petitioner was subsequently identified as the actor and charged in the matter. The case was bound over for trial in the court of Common Pleas, Philadelphia County at CP-51-CR-1301955-2006 before the Honorable George W. Overton, judge of the court, (hereinafter referred to as "trial court"), Jay S. Gottlieb, (hereinafter referred to as "trial counsel"), was appointed to represent petitioner. Pretrial hearings were held on motions to suppress evidence pursuant to Pa.R.Crim.P. Rule 573, from April 15th to the 18th, 2008, with the trial court denying relief. A jury was selected and on April 21st, 2008, returned a guilty verdict to the charge of murder in the First Degree, 18 Pa. C.S.A. § 2502(a), and guilty to the charge of violation of the Uniformed Firearm Act, 18 Pa. C.S.A. § 6106. The trial court immediately sentenced the petitioner to a mandatory Life term of imprisonment for the conviction of First Degree Murder, 18 Pa. C.S.A. § 2502(a), and a concurrent term of three (3) to six (6) years of imprisonment for the conviction of violation of the Uniformed Firearm Act, 18 Pa. C.S.A. § 6106.

A timely appeal was taken to the Superior Court of Pennsylvania. Petitioner was represented by trial counsel during direct appeals from the judgment of sentence. Presenting two (2) claims for review: (1) Trial court error where the court improperly admitted evidence of the defendant's subsequent possession of a firearm and where same was irrelevant and by unfair prejudice?; and (2) Is the defendant entitled a new trial as the result of court error where the court denied the defendant's motion for a Mistrial after defendant's photograph was identified as a "mug shot" by civilian witness?

On September 16th, 2009, a three (3) judge panel of the Superior Court of Pennsylvania affirmed the judgment of sentence at **Commonwealth v. Brown**, 1472 EDA 2008, reported at 986 A.2d 1249 (Pa. Super. 2009). A timely petition for allowance of appeal was taken to the Supreme Court of Pennsylvania. On July 21st, 2010, the

court denied allowance at **Commonwealth v. Brown**, 619 EAL 2009, reported at 998 A.2d 956 (Pa. 2010).

Petitioner filed a proper Post Conviction Collateral Relief Act, (hereinafter "PCRA"), 42 Pa. C.S.A. §§ 9541-9546, on August 19th, 2010, with the trial court pursuant to Pennsylvania Rules of Criminal Procedures, Rules 901-908. Petitioner filed an Amended Petition on December 28th, 2010. It should be noted that in both *pro-se* filings, Petitioner identified multiple Sixth Amendment Violations and invokes rights protected by guarantees of the United States Constitution. On May 6th, 2011, the trial court appointed attorney Richard T. Brown, (hereinafter referred to as "PCRA counsel"). Petitioner wrote PCRA counsel and informed counsel that he (petitioner) did not have the full discovery material or the trial transcripts in the matter and requested those documents from PCRA counsel. PCRA counsel did not respond to petitioner's request but instead filed four (4) separate different Amended PCRA petitions in this matter. The first petition was filed on September 9th, 2011; the second on June 22nd, 2012; the third on October 19th, 2012; and the fourth on March 15th, 2013. And on November 21st, 2013, PCRA counsel filed a supplement to the fourth Amended petition, which included three affidavits from proffered defense witnesses.

On January 24th, 2014, the trial/PCRA Court issued a notice of intent to dismiss pursuant to Pa.R.Crim.P., Rule 907. Petitioner filed a *pro-se* motion objecting to the court's intent to dismiss on February 5th, 2014, followed by a motion for an evidentiary hearing. The trial/PCRA court denied the motion and dismissed the PCRA petition. On March 21st, 2014, Petitioner filed a timely appeal. Petitioner again informed PCRA counsel that he was not in possession of the trial transcripts and requested PCRA counsel to obtain the record. On April 24th, 2014, the PCRA court ordered petitioner to file a concise statement of matters complained of on appeal. PCRA counsel requested an extension of time to file the 1925(b) statement until the transcripts were transcribed. On June 2nd, 2014, PCRA counsel filed the 1925(b) statement, but did not provide the petitioner with a copy of the record in this matter. On July 22nd, 2014, the PCRA court filed an opinion. There was a two (2) year delay in filing the appellant's brief from the denial of relief from the PCRA petition filed with the trial court in this matter.

First, due to PCRA counsel's failure to file a timely docketing statement pursuant to Pa.R.Crim.P., Rule 3517, the appeal was dismissed. PCRA counsel motioned the Superior Court of Pennsylvania for reconsideration and the Superior Court reinstated the appeal on July 9th, 2019. Because petitioner had not been informed of the reinstatement, on July 28th, 2014, petitioner filed a *pro-se* motion requesting counsel be granted leave to withdraw. As PCRA counsel had filed five (5) separate Amended petitions to the PCRA without notifying petitioner of the contents. Petitioner had no idea of what claims were being advanced by PCRA counsel. On August 27th, 2014, the Superior Court entered a *per curiam* order remanding the matter back to conduct a **Graizier** hearing, see: **Commonwealth v. Graizier**, 713 A.2d 81 (Pa. 1988). The hearing was held on October 24th, 2014, at which time petitioner expressed to both PCRA counsel and the court that he was ill prepared to represent his self in the matter. Petitioner had none of the record except a few filing post-sentence and collateral motions. Petitioner lacked the ability to draft a competent filing for review by the court. The court retained PCRA counsel as counsel of record in this matter.

The Superior Court issued a revised briefing schedule, where PCRA counsel failed to communicate with petitioner after the hearing on October 14th, 2014. PCRA counsel failed to file Appellant's brief on August 19th, 2015. The Superior Court once again remanded the appeal back to the PCRA court to determine whether PCRA counsel had abandoned the petitioner on appeal subsequent to the remand order of August 19th, 2015, PCRA counsel filed a supplemental Rule 1925(b) on September 16th, 2015. On March 14th, 2016 the Superior Court entered a *per curiam* order directing the PCRA court to respond within seven (7) days to the August 19th, 2015 order to determine if PCRA counsel had in fact abandoned petitioner on appeal.

On March 21st, 2016, the PCRA court did respond to the August 19th, 2015, order by informing the Superior Court that PCRA counsel was still the attorney of record in the matter. A new briefing schedule was established. On April 18th, 2016, petitioner filed a *pro-se* motion informing the court that PCRA counsel had not provided him with the record in this matter or communicated to petitioner the claims being advanced on appeal and therefore petitioner requested to proceed *pro-se*; the Superior Court denied petitioner's request in a *per curiam* order issued May 2nd, 2016. But on June 24th, 2016,

when PCRA counsel again failed to file petitioner's brief on briefing due date the Superior Court for the third time remanded the matter to the PCRA court to determine if PCRA counsel had abandoned petitioner. On July 25th, 2016, petitioner filed for appointment of new PCRA counsel citing his Sixth Amendment right to due process of law, and PCRA counsel's failure to provide petitioner with the record or communicate with the petitioner in any meaningful manner during collateral proceedings.

The Superior Court denied the motion on the grounds that it had relinquished jurisdiction to the PCRA court by virtue of its June 24th, 2016 *per curiam* order remanding the matter to the PCRA court. On August 15th, 2016, the PCRA court informed the Superior Court that PCRA counsel was still the attorney of record in this matter. It should be noted by this Honorable court that because PCRA counsel was counsel of record, none of the before said orders were being forwarded to the petitioner, but rather sent to PCRA counsel who was not communicating properly with petitioner. As a matter of record PCRA counsel filed a brief with the Superior Court on November 7th, 2016. Petitioner had no idea of what claims were advanced upon appeal. PCRA counsel presented the following claims for review: (1) that trial counsel was ineffective for failing to call defense witnesses; (2) trial counsel was ineffective in failing to object when the public was removed from the courtroom during *voir dire*; (3) trial counsel was ineffective in failing to assert petitioner's innocence and argue self-defense; (4) trial counsel was ineffective by presenting a diminished capacity defense without petitioner's permission; and (5) trial counsel was ineffective in failing to pursue sufficiently prior inconsistent statements of Tishea Green and to challenge Shanique Hawkins' statement to police. (See counseled PCRA appeal brief at .5). The court found that all the claims advanced by PCRA counsel on appeal from the denial of collateral relief were waived due to procedural default. The Superior Court held that PCRA counsel failed to seek permission to file a supplemental concise statement of matters complained of on appeal, Pa.R.A.P. Rule 1925(b)(2). The Superior Court noted that on the three occasions that the case had been remanded to the PCRA court, PCRA counsel never sought permission to supplement or amend the original statement of matters, Rule 1925(b) filed on June 2nd, 2014. Therefore, because PCRA counsel did not seek permission to

supplement/amend or file a 1925(b) *Nunc Pro Tunc*, the claims were procedurally defaulted for review. (See Appendix D pages 10-14).

The Superior Court affirmed the PCRA courts decision to deny collateral relief, (see footnote 1). On January 22nd, 2018, at **Commonwealth v. Brown**, 460 EAL 2017, reported 179 A.3d 459 (Pa. Super. 2018) (Appendix D). A timely application for allowance of appeal was taken to the Supreme Court of Pennsylvania and on January 22nd, 2018, allowance was denied at; **Commonwealth v. Brown**, 460 EAL 2017, reported at 179 A.3d 454 (Pa, 2018) (Appendix F).

On October 1st, 2018, petitioner filed an un-counseled application for Writ of Habeas Corpus pursuant to 28 U.S.C.A. § 2254, without the benefit of the record, relying on prior filings of trial counsel on direct appeal and PCRA counsel's filings. On November 6th, 2018, a revised petition was filed with the court in which petitioner gleaned three (3) claims for review by the Habeas court: 1) trial counsel violated petitioner's right against self incrimination by improperly conceding petitioner's guilt in closing arguments; 2) the evidence was insufficient to support a first degree murder conviction; and 3) trial counsel was ineffective for failing to object to Hawkins' testimony. Respondent filed a response to petitioner's filings and alleged that all claims were procedurally defaulted. The Honorable United States Magistrate Judge, Thomas J. Rueter, found that the state procedural rule constituted adequate and independent grounds for precluding federal review. Citing, **Nara v Frank**, 264 F.3d 310 (3rd. cir 2010)

In the Habeas court **Report and Recommendation** (hereinafter **R&R)** filed December 5th, 2019, at 18:4512 (see Appendix G). On December 16th, 2019, petitioner filed an objection to the R&R alleging cause to excuse the procedural defaults of the claims presented to the Habeas court. On December 27th, 2019, petitioner did file an amendment to the objection to the R&R. On December 21st, 2021, the Honorable, Joseph F. Cesson, Jr., judge adopted the R&R issued by the Magistrate judge on December 5th, 2019, at 2:18-cv-04512, (see Appendix B). Subsequent to the District court's order denying relief and certificate of appealability, petitioner filed a notice of

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1. On multiple occasions in *pro-se* filings with the court and correspondences with PCRA counsel, petitioner repeatedly requested copies of the record. This court should note petitioner was never provided the record in this matter and was forced to file the Writ of Habeas Corpus without the benefit of the record to prepare the writ, 28 U.S.C.A. § 2254 petition.

appeal, and application for relief pursuant to Fed.R.Civ.P. Rule 60(b)(6) (Appendix H). Petitioner filed on October 15th, 2021, with the United States Court of Appeal for the Third Circuit, (Appendix H). The appeal was placed in Abeyance pending disposition of petitioner's Rule 60(b)(6) motion. The Honorable, Joseph F. Cesson, Jr., United States District Judge denied relief under Fed.R.Civ.P. 59(e) and no bias exist to consider the motion pursuant to Fed.R.Civ.P. Rule 60(b)(6) entered on December 21st, 2021, at 2:18-cv-04512, (see Appendix I). Subsequent to the ruling, a application of appealability was filed with the United States Court of Appeals for the Third Circuit on April 7, 2022, presenting two (2) questions for review: 1) is the petitioner entitled to an evidentiary hearing due to the fact that post-conviction attorney Richard T. Brown failed to file a corresponding motion seeking permission to supplement previously filed notice of issue on appeal by filing a Pa.R.A.P. 1925(b) statement *Nunc Pro Tunc* that had got petitioner's lacked any meritorious claims, including his claims of ineffective assistance of trial counsel, Jay S. Gottlieb, making claims without merit? And (2) is the petitioner entitled to an evidentiary hearing due to the fact the petitioner filed a brief layering ineffective assistance on trial counsel and PCRA counsel, (see Petitioner's Brief, Doc. 42, filed on June 1st, 2021, page 14 of 103 at case 2:18-cv-04512-JFL).

The United States Court of Appeals for the Third Circuit panel of judges, the Honorable Krause, Mately, and Phipps, denied certificate of appealability on March 31st, 2022, which was filed on April 15th, 2022 at C.A. No. 21-2959, (see Appendix A).

Petitioner requested en banc rehearing on April 18th, 2022 with the court before a majority panel of judges which was denied by order of the court on May 17th, 2022, at C.A. No. 21-2959, (see Appendix E). This instant petition for Writ of Certiorari with this Honorable Court follows:

B. The Trial Court Proceedings

Trial Counsel Jay S. Gottlieb states to the jury:

> No hoodwinking, no BS'ing, no nothing. Straight out talking to you. Killing, My Client did it, but it is not first degree Murder.
>
> (N.T. 4-18-08, Pg. 14, 4-7)

Mr. Gottlieb also stated:

> You notice I'm not saying anything About self-defense, because it isn't A self-defense issue. It's A Killing. And I Agree with that one hundred percent, but it is not first degree Murder As the
>
> (N.T. 4-18-08, Pg 13, 20-25)

And Mr. Gottlieb stated to the jury:

> I would Admit to you right off the bat that Jesse Brown shot Tariq Blackwell. I don't think on the basis of evidence that you heard there is any reasonable doubt
>
> (N.T. 4-18-08, Pg 6, 21-25)

The D.A. Ms Pescatore stated to the jury:

> Well, I have to tell you I've been a D.A. now 19 years and there's not many cases I tried where defense counsel actually stands up and admits that their person did it

(N.T. 4-18-08, Pg 15, 10-15)

The performance of Mr. Gottlieb caused a break down in the adversarial system and relieved the government of proving its case beyond a reasonable doubt. This violated the Petitioner's Sixth Amendmend, right to Counsel, and Fourteenth Amendmend, due-proess; See. United States v. Swanson, 943 F.2d 1070; 1991 U.S. App. LEXIS 19734; 91 (Ninth. Cir. 1991). And see. United States v. Miguel, 338 F.3d 995 (CA9 2003). And Condev. Henry-, 198 F.3d 734 (CA9 2000). And also see. Glebev. Frost, 574 U.S.— (2014). for the proposition that preventing a defendant from arguing a legitimate defense theory constitues structural error.

C. The Direct Appeal and PCRA Proceedings

Jay S. Gottlieb was also direct Appeal Counsel Mr. Gottlieb only raise two claims (1) improperly Admitting evidence of Mr Brown's subsequent possession of a firearm, And (2) refusing to grant a mistrial

After A witness referred to Mr. Brown's identifying Photograph AS A Mugshot. Mr. Gottlieb fail to Challenge his MAIN Argument the lesser Charge of first-degree Murder on An Post-sentence Motion And/or direct Appeal violated PA.R.Crim.P. 1504(d) that provides that the Appointment of Counsel includes representation in any Appeal. Sixth Amendmend, right to counsel, And the Fourteenth Amendmend, due-proess, WAS violated in the direct Appeal proceedings. Richard T. Brown WAS PCRA Counsel the Claims he raise WAS (1) investigate AND CALL Character witnesses, And (2) Object when Mr. Brown's sister WAS removed from the Courtroom. Meritless Claims, than Counsel raise Mr. Brown Claims WAS (1) Preseniting A diminished CAPACITY defense without Mr. Brown's Consent, (2) failing to Assert to Mr. Brown's innocence And Challenge the Sufficiency of the evidence, And (3) failing to object to Shanique Hawkins's Supposedly false testimony. these issues got WAIVED because PCRA Counsel fail to inarticulA-tely, drafted Mr. Brown's brief. See Commonwealth v. Ollie, 450 A.2d 1026 (PA. Super 1982). Counsel left Mr. Brown's brief Completely lacking in substance. See Commonwealth v. Albert, 561 A.2d 736 (PA. 1989). Counsel fail to participate Meaningfully, And violated the representation requirement of the Act. 19 P.S. §1180-12 (Repealed) And that did not give

Appellate court the opportunity to Assess legitimacy of underlying claims. 42 Pa. C.S.A. § 9541 et seq.; U.S.C.A. Const. Amend. 6. This violated Mr. Brown's Sixth Amend-ment, right to Counsel, And Fourteenth Amendment, due-proess; Also see. Workman v. Superintendent Albion, 908 F.3 896; 2018 U.S. App. LEXIS 32345 (2018).

D. Federal District Court Decision

Mr. Brown raise in federal habeas petition (1) trial counsel violated his right Against self-incrimination by improperly Conceding Mr. Brown's guilt in his Closing Argument, (2) the evidence was insufficient to support A first-degree Murder Conviction, And (3) trial Counsel was ineffective for failing to Object to Ms. Hawkins's testimony. Magistrate Judge Thomas Rueter denied Mr. Brown's claims As procedurally defaulted And Meritless. In Mr. Brown's objections and Amended objections Mr. Brown layered claims of ineffectiveness use in the Strickland to excuse the default, showing, that Mr. Brown was perjudice by trial And PCRA Counsel; wheres, both counsels tactics And strategy had no rational basis in obaining A favorable outcome in Mr. Brown behalf And Mr. Brown use Martinez v. Ryan. Mr. Brown filed Rule 60(b) motion it was denied because Courts stated that Mr. Brown fails to establish An extraordinary Circumstance, but Mr. Brown did show An extraordinary Circumstance, if you will see. Commonwealth v. Watlington,

420 A.2d 431 (Pa. 1980). This case States:

The court found that pursuant to PCHA 19 P.S. § 1180-4 (Supp. 1979-80). Issues that could have been raised earlier were finally litigated unless the Petitioner could have shown extraordinary circumstances to justify his failure to raise the issues. The Court found that ineffective counsel was an extraordinary reason to justify defendant's failure to raise issues.

This show that Mr. Brown Claims has been over looked and disregarded And Mr. Brown did not have A standard review Mr. Brown's Fourteenth Amendmend, due-proess, was violated in this Court proceedings.

E. The Court of Appeals Decision

Mr. Brown's C.O.A should had been issued because Jurists of reason could disagree with the district Courts standard review Mr. Brown show an substantial showing of the denial of A constitutional right under Slack v. McDaniel, 529 U.S. 473, 481 (2000). for ineffective Assistance of Counsel. Mr. Brown claims was over look by an panel and they decision conflict with Strickland v. Washington, 466 U.S. 668 (1984). Mr. Brown's Fourteenth Amendmend, due-proess, was violated in this Court proceedings.

F. Conflict Between Federal District Court Decision

The Court states:

Brown's first habeas claim is procedurally defaulted and because trial counsel's concession in closing Argument that Mr. Brown fired the fatal gunshots in order to argue for a lesser degree of guilt was a reasonable strategic decision, Mr. Brown was not prejudiced by PCRA Counsel's failure to raise this claim.

Shouldn't Mr. Brown have an legitimate defense theory like Glebe v. Frost, 574 U.S. ___ (2014)? If you see. Commonwealth v. Myers, 897 A.2d 493 (Pa. Super 2006). This case states: Even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to it's heavy burden of proof beyond reasonable doubt. Also see. Commonwealth v. Flores, 909 A.2d 387 (Pa. Super 2006). And see. Commonwealth v. West, 883 A.2d 654 (Pa. Super 2005). See. Commonwealth v. Motley, 289 A.2d 724 (Pa. Super 1972). This case States: Trial Courts Statement in it's charge that, in it's opinion, it would be a Miscarriage of justice if Petitioner was found not guilty entitled Petitioner convicted of first-degree murder to a new trial even if defense counsel indicated to the jury that he thought his client was guilty of murder in the second-degree. All these cases was president to lower Court for review with layered of ineffectiveness of Counsel this Shows that Mr. Brown Claims was over look And dismissed.

G. Conflict Between The Court of Appeals Decision

The panel just adopted district Court decision Mr. Brown Claims was over look An dismissed the panel's decision is in conflict with Strickland v. Washington, 466 U.S. 668 (1984), And Martinez v. Ryan, 566 U.S. 1, 132 S Ct 1309, 182 L Ed 2d 272, 2012 U.S. LEXIS 2317 (2012) And Also see. Workman v. Superintendent, 908 F.3d 896 (2018). Mr. Brown Should had got some relief.

REASON FOR GRANTING THE PETITION

I. The Court Should Grant Certiorari to Resolve that Mr. Brown Is Entitled To A Defense.

The District Court states: Brown does not Assert that his claims Are not procedurally defaulted, rather, he argues that the default Should be excused based on the ineffectiveness of PCRA counsel for not properly presenting these claims in the state courts." If you see. Workman v. Superintendent Albion, 908 F.3d 896 (2018). This case states: Because A habeas petitioner's state post-conviction Counsel's Assistance was ineffective And because his underlying ineffective Assistance of trial Counsel claim had some merit the procedural default of his underlying claim was excused under Martinez v. Ryan. The District Court states. "Brown cannot establish that he was prejudiced." Trial Counsel Jay S. Gottlieb Stated to the jury: "you notice I'm not saying anything About self-defense, because it isn't A self-defense issue. It's A Killing It's An illegal Killing, And I Agree with that one hundred percent, but it is not first-degree Murder. (N.T. 4-18-08, p13., 20-25). Mr. Gottlieb had

confused the jury he said it's not self-defense issue and he said it's an illegal killing. There no way that the jury would had came black with an verdict of voluntary manslaughter. By Mr. Gottlieb failure to litigate manslaughter on an direct appeal or an post-sentence motion where Mr. Gottlieb performance had fell below any objetive standard of reasonableness wheres Mr. Gottlieb fail to appeal his main Argument Mr. Gottlieb performance being deficient by an unprofessional standard... Wheres Mr. Gottlieb trial tactics And strategy had no rational basis in obaining a favorable outcome in Mr. Brown behalf and wheres Mr. Gottlieb strategy was so insufficient wheres as it Amounted to no defense At all but-an open guilty plea to the jury And in open court Against Mr. Brown wishes and Against the weight of the evidence. This is an structural error. See. Glebe v. Frost, 574 U.S.—(2014). Mr. Brown had raise An diminished capacity defense in habeas corpus petition an had use the same arguments to support an self-incrimination claim. See. Workman v. Superintendent Albion, 908 F.3d 896(2018). This case states: A habeas corpus petition prepared by A prisoner without legal Assistance may not be skillfully drawn and should thus be read generously. It is the policy of the courts to give A liberal construction to pro se habeas petitions.

Court-Appointed PCRA Counsel Richard T. Brown raise An diminished capacity defense life Mr. Brown's brief Completely lacking in substance. See Commonwealth v. Albert, 561 A.2d 736. Under state law, Claims of ineffective Assistance of trial Counsel Must be raised in An initial-review collateral proceeding. See. Workman v. Superintendent-Albion, 908 F3d 896 (2018). Richard T. Brown this will show An Substantial Claim when Counsel failed to Allege that trial Counsel Mr. Gottlieb was ineffective for presented A self incrimination defense not An diminished capacity defense Mr. Gottlieb fail to Appeal his main Argument, Where, record(s) testimony of Jerrica Fulton And Tishea Green that they did not seen the shooting And statement Made by Tishea Green show that there was A unknown preson that was out there At time of the shooting that could be the shooter. Testimony of Officer Cannon testified that there were several different Models of Glocks And from the photo it could not be determined. (N.T 4-7-08 Pg 45-46) the evidence are not overwhelming, the evidence Are Circumstancesul. PCRA Counsel representation fell below An objective standard of reasonableness when counsel fail to file An Corresponding Motion seeking permission to Supplement previously-filed Notice of issue on Appeal by filing A Pa. R.A.P. 1925 (b) statement nunc pro tunc Counsel error was so serious And not functioning got Mr. Brown's Claims default And did not get Mr Brown's claims fairly presented to the state court.

This Violated Mr. Brown's Sixth Amendment, right to counsel, And Fourteenth Amendment, due-proess,. See. Strickland v. Washington, 466 U.S. 668 (1984); And Martinez v. Ryan, 566 U.S. 1, 9-10 (2012). Also see. Workman v. Superintendent Albion, 908 F.3d 896 (2018). Mr. Gottlieb fail on behalf of Mr. Brown present a case to modify a theory of the case to Account for not rebut with Commonwealth evidence, Mr Brown denial of his Sixth Amendment, right to counsel, Mr. Gottlieb did not play the role of an Advocate for Mr. Brown he played a Advocate for his theory. See. Workman v. Superintendent Albion, 908 F.3d 896 (2018). There for the petition for a Writ of certiorari should be granted.

For the foregoing reason, Petitioner Jesse Brown respectfully requests that the Court issue a writ of certiorari to the United States Court of Appeals for the Third Circuit. In the Alternative, he request that the Court grant certiorari, vacate the Third Circuit's judgment, And remand with instructions for the Third Circuit to reconsider Mr. Brown's Appeal in light of Glebe v. Frost.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jesse Brown

Date: 7-27-2022