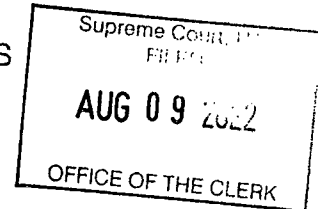


No. 22-5354

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



RICARDO NOBLE — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

RICARDO NOBLE

(Your Name)

#BX9351
S.C.I. Houtzdale • P.O. Box 1000

(Address)

Houtzdale, PA

(City, State, Zip Code)

NONE

(Phone Number)

DATE: 08/09/2022

QUESTIONS PRESENTED FOR REVIEW

PAGE

The facts, issues, and evidence related to a Juvenile Life's Decertification (Transfer) decision are relevant to said Juvenile Life's resentencing. The decertification (Transfer) decision presents the sentencing option of a light sentence as a Juvenile and extremely long sentence as an adult, see, Miller v. Alabama, 132 S.Ct. 2455 (2012); Alleyne v. U.S., 133 S.Ct. 215 (2013); Com. v. Munday, 78 A.3d 661 (Pa. Super. 2013).

1. Does the fact that, at Juvenile Life's Resentencing in 2018, the Judge recanted the only reason he claimed he denied Decertifying said Juvenile Life's petitioner to Juvenile system in 1992 make any sentence and conviction on said charges in adult Criminal system Unconstitutional, null and void?

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2. Did court err/abuse discretion by sentencing Petitioner to a manifestly excessive, unreasonable, and bias 40 years to Life, Restitution, and cost of prosecution, ignoring EX POST FACTO laws, sentencing Petitioner based on consideration of first degree murder, Not second degree murder, and after Resentencing an alleged co-defendant to 20 to 50 years?

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3. Did Court err/abuse discretion by relying on False, misleading, and inaccurate information to decide sentence?

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4. Did court err/abuse discretion by not replacing petitioner's unethical court appointed attorney (Robert Barbato) who was blatantly working with prosecution against petitioner (his own client) at every stage/issue of case to sabotage case?

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5. Did court err/abuse discretion by ignoring petitioner's possible and/or Actual Rehabilitative needs including, but not limited to, mental health rehabilitation?

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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:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A, B to the petition and is

- ☒ reported at (B) Com. Ricardo Noble, 420 WDA 2018 (Remanded)
Com. v. Ricardo Noble, 204 WDA 2020; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Erie County (PA) Common Pleas court appears at Appendix C to the petition and is

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

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: _____, 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 06/07/2022.
A copy of that decision appears at Appendix E.

NO Petition for Rehearing was Filed.

☐ 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

Eighth Amendment of U.S. Constitution: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Fourteenth Amendment of U.S. Constitution: "Nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Sixth Amendment of U.S. Constitution: "In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury, to be informed of nature and cause of the accusation; to be confronted with witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense." Fifth Amendment of U.S. Constitution: "Nor shall a person be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law." ~~U.S. Constitution~~

STATEMENT OF THE CASE

This ~~pro se~~ ^{pro se} petition is a "Juvenile Life." In 1991, at age 15, petitioner (Ricardo Noble) was arrested/charged

along with two other juveniles (Stephen Johnson (Johnson), age 16, and Antonio Howard (Howard), age 15) with

criminal homicide/murder, robbery, conspiracy to robbery, and related charges. Attorney James Moran was appointed by the court to represent

petitioners. On May 4th and 7th, 1992, petitioners' decertification hearing was held by Eise, Pennsylvania

Judge Sha & Connelly ("Connelly"). On May 8, 1992, Judge Connelly denied decertification without

stating a reason. In Judge Connelly's 02/18/1993 Memorandum opinion, Judge Connelly stated that

the only reason he denied petitioners' decertification to juvenile system request was Judge Connelly's

false and unsupported statement that "uncontradicted evidence" proved petitioner was the actual

shooter ("Killer"). Judge Connelly decertified Johnson to juvenile system. Petitioner and Howard were

tried together in adult court, on 06/05/1992, petitioner and defendant Howard were convicted by a

jury of the prosecution's peers for second degree murder, robbery and conspiracy to robbery. On

09/29/1992, petitioner was sentenced to pay cost of prosecution, restitution of 1/3 of \$6,100 and

mandatory life without parole ("LWOP") for felony

Murder (second degree murder), and concurrent 4 to 10 years for Robbery and conspiracy to Robbery. On 02/26/2016, petitioner filed PCRA (Post-conviction Relief Act) petition under Miller v. Alabama, 132 S. Ct. 2455 (2012), and Montgomery v. Louisiana, 136 S. Ct. 718 (2016), regarding resentencing juveniles sentenced to mandatory LWOP. On 04/18/2016, the court appointed attorney Robert Barbato (Barbato) to represent petitioner. Barbato is now in prison for scamming his clients from 2014 to 2020. On 01/29/2018, petitioner's Resentencing Hearing was held by Judge Connelly, petitioner's LWOP sentence, and petitioner was sentenced to a bias, manifestly excessive and unreasonable 40 years to Life, restitution, and cost of prosecution. On 03/22/2018, after petitioner's appeal rights were reinstated, Barbato filed Notice of Appeal and Concise statement of matters complained of on Appeal ("1925(b)") to Pennsylvania superior court (420 WDA 2018) and refused to give petitioner a copy of said documents. On 04/06/2018, Judge Connelly did Memorandum opinion of said 1925(b). On 06/15/2018, after Grazie hearing, petitioner was permitted to represent himself on appeal. On 08/06/2018, pro se, petitioner filed an Amended 1925(b). On 08/29/2018,

Judge Connelly did Memorandum opinion to said 1925(b). On 04/15/2019, PA Superior Court remanded, in part, the case (420 WDA 2018) to lower court to allow petitioner to file prose post-sentence motion to preserve the challenge of his 01/29/2018 40 years to life sentence, etc. On 12/13/2019, petitioner filed timely Amended Motion for Reconsideration/Modification of sentence in lower court. On 01/27/2020, said motion was denied. On 02/07/2020, petitioner filed Notice of Appeal and 1925(b) to PA Superior Court (204 WDA 2020). On 02/14/2020, Judge Mead filed Memorandum opinion to said 1925(b). On 07/21/2020, PA Superior Court denies said Appeal. On 08/17/2020, petitioner files Petition For Allowance of Appeal to PA Supreme Court (259 WAL 2020). On 12/02/2020, petitioner's petition for allowance of appeal was held pending decision of Com. v. Felder, 18 EAP 2018. On 02/23/2022, Felder was decided. On 06/07/2022, PA Supreme Court denied petitioner's petition without discretionary review.

REASONS FOR GRANTING THE PETITION

1. DOES THE FACT THAT, AT JUVENILE LIFER'S RESENTENCING IN 2018, THE JUDGE RECANED THE ONLY REASON HE CLAIMED HE DENIED DECERTIFYING SAID JUVENILE LIFER PETITIONER TO JUVENILE SYSTEM IN 1992 MAKE ANY SENTENCE AND CONVICTION ON SAID CHARGES IN ADULT CRIMINAL SYSTEM UNCONSTITUTIONAL, NULL, AND VOID?

The facts, issues, and evidence related to a Juvenile Lifer's Decertification (Transfer) decision are relevant to said Juvenile Lifer's Resentencing. Com. v. Brown, 26 A.3d 485 (Pa. super. 2011); Com. v. D.A.R., 160 A.3d 267 (Pa. super. 2017); 42 Pa.C.S.A. § 6355(a)(4)(iii)(D); Miller v. Alabama, 132 S.Ct. 2455 (2012). Decertification is a sentencing issue. Id. The decertification (Transfer) decision presents the sentencing option of a light sentence as a Juvenile and extremely long sentence as an adult. See, Miller v. Alabama, 132 S.Ct. 2455 (2012); Alleyne v. U.S., 133 S.Ct. 215 (2013); Com. v. Monday, 78 A.3d 661 (Pa. super. 2013).

In Judge Connelly's 02/08/1993 Memorandum opinion, page 12, he stated that the only reason he denied decertifying petitioner to juvenile system was his false / baseless claim that "uncontradicted evidence" proved petitioner was the actual shooter and, thus, he wanted petitioner to spend a very long time in prison (which was mandatory life without parole). But, at petitioner's 01/29/2018 Resentencing, Judge Connelly RECANED the only reason he said he based his decertification denial on and admitted that

No evidence ever existed to establish petitioner as the actual shooter. Resentencing Transcript ("R.T.") (Attached Appendix-C), p. 30 and 62, which further evidences that any sentence or conviction given to petitioner on said charges in adult court is unconstitutional, illegal, bias and manifestly excessive and that petitioner is also actually innocent of the sentence of 40 years to life, etc. and petitioner's conviction and sentence are an abuse of discretion and mis carriage of justice. See, Com. v. McCracken, 659 A.2d 541 (Pa. 1995); Com. v. Small, 647 Pa. 423 (Pa. 2018); Com. v. D.A.R., 160 A.3d 267 (Pa. super. 2017); Williams v. U.S., 503 U.S. 193 (1992); U.S. v. Christman, 509 F.3d 298 (6th Cir. 2007). Normally, the actual innocence doctrine is applied to the conviction, but it's also applied to the sentence. See, Schlepp v. Delo, 513 U.S. 298 (1995); U.S. v. Maybeck, 23 F.3d 880 (4th Cir. 1994); In the interest of J.B., 189 A.3d 390; No. 31 WAP 2017 (Pa. 2018). Imposing a mandatory minimum (LWOP) based on an alleged fact that has not been proven beyond a reasonable doubt violates due process of 14th Amendment of U.S. constitution and 6th Amendment of U.S. constitution right to jury trial. See, Com. v. Monday, 78 A.3d 661 (Pa. super. 2013); Apprendi v. New Jersey, 120 S.Ct. 2348 (2000); Alleyne v. U.S., 133 S.Ct. 215 (2013). Denying decertification based on

false alleged fact (actual shooter claim) not proven
beyond reasonable doubt subjected petitioner to a
mandatory minimum of LWOP in adult court in 1992.
Then, ~~27~~ years later, the same Judge recanted that
alleged fact. Petitioner always stated that he is not
the actual shooter and doesn't know who is the actual shooter,

2, DID COURT ERR/ABUSE DISCRETION BY SENTENCING
PETITIONER TO A MANIFESTLY EXCESSIVE, UNREASONABLE, AND
BIAS 40 YEARS TO LIFE, RESTITUTION, AND COST OF PROSECUTION,
IGNORING EX POST FACTO LAWS, SENTENCING PETITIONER BASED
ON CONSIDERATION OF FIRST DEGREE MURDER, NOT SECOND
DEGREE MURDER, AND AFTER RESENTENCING AN ALLEGED
CO-DEFENDANT TO 20 YEARS TO 50 YEARS?

Petitioner always stated (and the evidence proved) that
he is innocent of all charges against him (Robbery,
conspiracy to Robbery, and Second degree Murder), the only
sentence he always requested is release from prison, and
petitioner's sentence and conviction are a miscarriage of
justice. Schlup v. Delo, 513 U.S. 298 (1995); Com. v. Lawson, 549
A.2d 107 (Pa. 1988); In Interest of J.B., 189 A.3d 390 (Pa. Super.
2018); Jackson v. Virginia, 443 U.S. 307 (1979).

Trial court Judge (Shad Connelly) has a documented history
of demonstrating judgement that is manifestly unreasonable,
bias, ill-will, partial and prejudice against petitioner. A
review of how senior judge (Shad Connelly) handled all of
petitioner's and alleged co-defendants' (Antonio
Howard's and Stephen Johnson's) court proceedings
(decertification, etc.) verifies such. A defendant is
entitled to a sentencing judge who is fair and impartial.
Com. v. Williams, 69 A.3d 735 (Pa. Super. 2013); Chapman v.
California, 386 U.S. 18 (1968).

Petitioner is still being denied unconstitutionally many Days of 1992 Trial Transcripts, Preliminary Hearing Transcript, all witness statements (except defendant Johnson's) and other necessary appeal documents court ordered to be given to appellant (petitioner).

The court erred/abused discretion by sentencing petitioner to manifestly excessive, unreasonable, and Bias 40 years to Life, restitution and cost of prosecution, ignoring EX post facto Laws, sentencing petitioner based on consideration of First degree murder, Not Second degree Murder, and after resentencing an alleged co-defendant (Antonio Howard) to 20 to 50 years.

Petitioner's court appointed attorney (Robert Barbato (Barbato)) only worked against petitioner with prosecution to sabotage petitioner's case. On 02/10/2021, Barbato was sentenced to 18 to 36 months in prison for scamming his clients from 2014 to 2020.

On 03/22/2018, attorney Barbato filed a 1925(b), On 04/06/2018, Judge Connelly filed a Memorandum opinion (1925ca). In said 04/06/2018 1925ca, Judge Connelly stated that he resentence d petitioner based on First degree murder statute, 18 Pa.C.S. 1102.1(a), and that he was "Required to impose a mandatory maximum (tail) sentence of Life imprisonment when resentencing a juvenile on First degree murder." And also stated that the minimum amount of years (40 years) given to petitioner was also guided by First degree Murder statute. But, two months prior to resentencing petitioner, the same judge Connelly resentence d one of

petitioner's alleged co-defendants (Howard) to 20 to 50 years. Despite fact that petitioner and defendant Howard were tried and convicted together in adult court of second degree murder, Robbery, and conspiracy to Robbery in 1992. Then, sentenced to mandatory LWOP in 1992. Defendant Howard's prison behavior record is similar, if not worse, than petitioner's and his prison classification summary done by his prison counselor states that Howard has a high risk of re-offending violently if paroled (page 19 of Howard's 11/08/2017 Re-sentencing Transcript). Petitioner's prison classification summary states that petitioner has a low risk of re-offending. Defendant Howard was released on parole in May 2018. The prosecution did not request a particular sentence for defendant Howard's resentencing and left that solely for Judge Connelly to decide. But they requested 50 years to Life for petitioner. Judge Connelly and Erie County clerk of court have a documented history of repeatedly intentionally/maliciously falsely listing petitioner's conviction as First degree murder.

Judge Connelly always falsely accused petitioner of being actual shooter (Killer) and made his decisions based on said false/baseless accusation. See, page 15 of petitioner's 09/29/1992 sentencing. In Judge Connelly's 02/08/1993 Memorandum opinion, Judge Connelly stated that the only reason he denied decertifying petitioner to juvenile system was his false/baseless statement that "uncontradicted evidence" proved petitioner was the actual shooter.

the same judge Connelly decertified the oldest defendant (Stephon Johnson), who petitioner only knew for two days, to juvenile system in 1992 and defendant Johnson was released after a very short Juvenile system sentence, despite fact that:

(a) Antimony and Barium tests revealed that the only defendant with gun powder residue on their hands was defendant Johnson, Notes of Trial Transcript (N.T.), 06/02/1992 and 06/04/1992; (b) the only defendant with blood on their clothing was Johnson, N.T. 06/03/1992; (c) the only fingerprints on the victim's possessions (over 70 items) ~~taken~~ were Howard's and Johnson's, N.T. 06/03/1992 and 06/04/1992; (d) at trial, defendant Howard (a prosecution witness) testified that he and Johnson conspired to falsely accuse petitioner of being actual shooter, defendant Johnson was the actual shooter, N.T. 06/04/1992 and 06/05/1992 (p. 5 and 29), and that petitioner did not conspire to rob or kill the victim, N.T. 06/05/1992 (p. 33-34); (e) at petitioner's May 1992 Decertification Hearing, ALL witnesses (defense and prosecution) recommended that petitioner be placed in juvenile system, including same prosecution expert witness (Dr. Tronetti) who recommended that defendant Johnson NOT be placed in juvenile system (petitioner's May 4, 1992 and

May 7, 1992 Decertification Hearing Transcript (D.H.T.), (f) Judge Connelly admitted that petitioner proved his statutory burden of need/amendability to juvenile system, see page 4 of 07/02/1993 Hearing on petitioner's Motion For New Trial Transcript; (g) at trial, defendant Howard testified that he gave the gun (alleged murder weapon) to police the day ~~after~~ the shooting and that he stole the gun from his aunt two weeks before coming in contact with petitioner and the shooting happened, N.T. 06/04/1992 and 06/05/1992 (p. 18-19). But petitioner was the only defendant charged with possession of said weapon (gun) and defendant Howard was never charged with stealing said gun from his aunt.

The court relied on false, misleading, and inaccurate negative/prejudicial information to decide sentence from incomplete/insufficient presentence report and investigation, mitigation report, prison juvenile letter information packet, prosecution's sentence Memorandum and Defendant's (petitioner's) sentence Memorandum (prepared by petitioner's court appointed attorney Barbat, who only worked against petitioner with prosecutor). If Court considers improper factors in sentencing defendant, although the sentence imposed is not rendered illegal, the court has abused discretion. See, Com. v. McAfee, 849 A.2d 270 (Pa. super. 2004); U.S. v. Tucker, 404 U.S.

443(1993). Due process is violated when judge relies on misinformation, unreliable facts, and inaccurate information. see, Com. v. Rhodes, 990 A.2d 732 (Pa. Super. 2004); 404 U.S. 443(1972), U.S. v. Tucker. Judge Connelly told petitioner that he is not allowed at any time during Resentencing Hearing to address or correct any false/misleading and inaccurate information in prosecution's sentence Memorandum, Defendant's sentence Memorandum, Juvenile Life Info. Packet (prison file), etc. And if petitioner tries, he will be thrown out of courtroom. 01/29/2018 Resentencing Transcript, p. 2-4. Even though petitioner was not trying to argue the law, so, petitioner was not allowed to challenge validity of his prison file (records) at Resentencing.

In addition to other factors mentioned in this petition, 40 years to Life is manifestly excessive, unreasonable and bias because U.S. Sentencing Commission defines a Life sentence as 470 months (approximately 39 years and 3 months). So, petitioner's minimum date (40 years) is still a Life sentence. See, U.S. v. Nelson, 491 F.3d 344, 348-50 (7th Cir. 2007). 40 years to Life does not provide a meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation and doesn't comply with requirement to tailor sentence to individual level of culpability and participation in crime. Miller v. Alabama, 132 S.Ct. 2455 (2012). Juvenile Life's sentence reduced to 30 years based on Jones v. Mississippi,

141 S.Ct. 1307 (2021), emphasis on "Youth in Sentencing Matters." U.S. v. Ramsey, 2021 U.S. Dist. Lexis 89741 (S.D. N.Y. Mar 11, 2021).

At Resentencing Hearing, Judge Connelly stated that he is not considering petitioner's individual alleged level of culpability and participation in crime charged. 01/29/2018 Resentencing Transcript (R.T.), p. 2-4 and 29-31, despite fact that Miller v. Alabama, 132 S.Ct. 2455 (2012), requires consideration of said individual factors. The Jury, prosecution and judge Connelly could never state any fact or evidence to support any charge against petitioner. Also, a max date of Life means petitioner will be unconstitutionally punished for crimes charged/convicted of for rest of his life. That's excessive, cruel/unusual, especially considering the facts/evidence of this case.

The court erred/abused discretion by ignoring/violating Ex Post Facto laws/clauses by sentencing petitioner to 40 years to life. At time of alleged crime (1991), no Constitutional sentencing scheme existed, therefore the only Constitutional sentence available at said time was for the most serious lesser offense of Third degree Murder, which sentence in 1991 and 1992 was 10 to 20 years. Com. v. Rose, 2015 Pa. Lexis 2663 (Pa. 2018); Pa. Const. Art. 9, Sec. 17; U.S. Const. Art. I, Sec. 10; Weaver v. Graham, 450 U.S. 24 (1981).

A motion challenging restitution is not subject to timeliness constraints. The court at any time can reconsider and modify restitution. Com. v. Langston, 904 A.2d 917 (Pa. super. 2006). challenge to illegal sentence is

non-waivable. Com. v. Craig, 2018 Pa. super. unpub. Lexis 4520 (Pa. super. 2018). When imposing restitution, the sentencing judge should consider whether defendant received notice of intent to seek restitution prior to the hearing and whether defendant intends to object to imposition of restitution, Pa. R. crim. P. 705.1.

Petitioner always stated that he is innocent of all charges. At petitioner's original 1992 sentencing, petitioner was a juvenile (16 years old) and had no understanding of said proceeding. R.T., p. 39-44. Petitioner agreeing to make restitution at said time (1992), after being told by his court appointed attorney (James Moran) to do so, was not voluntary, intelligent, knowingly, or with proper understanding. Thus, is not valid. Henderson v. Morgan, 426 U.S. 637 (1976); Com. v. Kru, 153 F.3d 1020 (Pa. super. 2016).

During petitioner's original 09/29/1992 sentencing, Judge Connelly asked petitioner's court appointed attorney (James Moran (Moran)) if petitioner would be willing to "make" restitution. At said time, attorney Moran asked Judge Connelly for a "second" to speak to petitioner. Then, off-the-record, attorney Moran quickly told petitioner that he has to agree to "make" restitution when being sentenced. So, 16 year old petitioner ignorantly, involuntarily, ~~and~~ unintelligently, and without proper understanding agreed to make restitution. See, 09/29/1992 sentence

Transcript, p. 10. Even though, petitioner continued to state that he is innocent of all charges, said agreement severely prejudiced petitioner's sentence and conviction and was a manifest injustice. Examining the totality of the circumstances surrounding said involuntary/ignorant agreeing to restitution verifies such. com. v. Hart, 174 A.2d 660 (Pa. Super, 2017); com. v. Hickman, 779 A.2d 136 (Pa. Super, 2002), so it's obvious petitioner didn't understand and was not notified of intent to seek restitution before sentencing hearing and that petitioner didn't understand what agreeing to make restitution connotes and its consequences. com. v. Brown, 275 A.2d 332 (Pa. 1971); U.S. v. Cronin, 104 U.S. 2039 (1984); Fisher v. Gibson, 282 F.3d 1283 (10th Cir, 2002); Pa. Const. Art. 1, sec. 9 and 13; U.S. Constitution Amendments 1, 5, 6, 8 and 14. Petitioner's unconstitutional restitution situation is another example of some of the "incompetencies associated with youth" stated in Miller v. Alabama, 132 S.Ct. 2455 (2012), such as juveniles' inability to deal with prosecutors (including plea agreements, etc.) and their own attorney.

At the 09/29/1992 and 01/29/2018 Sentencing, Judge Connelly did not state whether restitution was imposed as part of sentence per 18 Pa.C.S. 1106 or as condition of probation per 42 Pa.C.S. 9754. Pa. R. Crim. P. 705.1(b)(6) requires such clarification. Also, trial court lacks authority to impose costs associated with resentencing proceeding necessitated by imposition of prior illegal sentence. Com. v. Lehman, 243 A.3d 7 (Pa. 2020).

In 2018, resentencing Judge Connelly recanted the only reason he claimed he denied decertifying petitioner to juvenile system in 1992, thus making any sentence and conviction of petitioner in adult court system unconstitutional, null and void. R.T., p. 30 and 62; Appendix V. New Jersey, 120 S.Ct. 2348 (2001); Alleyne v. U.S., 133 S.Ct. 2151 (2013).

Another example of Judge Connelly's biasness ~~and~~ prejudice is that, on two different days, Juror Mary Hayes asked Judge Connelly to remove her from the jury because she can't be fair and impartial since she personally knows too many people from prosecution directly involved in case, including adverse alleged co-defendant Johnson's Erie Police officer cousin (Jerome Odom). N.T., 05/29/1992, p. 104-106, and 06/01/1992, p. 3-5. Judge Connelly refused to remove Juror Hayes.

On 10/16/1991, petitioner came across defendant Howard walking down the street. Petitioner had known Howard since 4th grade but had not seen or heard from him in a few years before 10/16/1991. On 10/17/1991, defendant Howard introduced petitioner to defendant Johnson. On 10/18/1991, the shooting happened. Petitioner had only known defendant Johnson for two DAYS, not two years, (as Judge Connelly and court reporter falsely put in 01/29/2018 Resentence Transcript). Late the night of the shooting (10/18/1991), defendant Johnson went to his cousin Jerome Odom's (an Erie Police officer) house, told him about the shooting. Then, Officer Jerome Odom took defendant Johnson to Erie Police station. Defendant Johnson was the first defendant to turn himself in to police. Defendant Johnson implicated himself in a

homicide/Robbery and related charges, falsely accused petitioner of being actual shooter, was released the same day, and not arrested/charged until 10 days later. On 10/19/1991, petitioner was arrested and charged with Homicide, Robbery and related charges, didn't implicate anyone, and placed in adult Erie County Jail. On 10/19/1991, defendant Howard turned himself in to police, implicated himself in homicide/Robbery and gave police a gun (alleged murder weapon). Defendant Howard was not arrested and charged for said incident until 10 days later. No bond was set for petitioner. But, on 02/20/1992, defendant Johnson was released to society after a very low bond of Five thousand dollars (10% of 50,000 dollars) was paid.

None of petitioner's issues are waived or boilerplate. The courts' actions mentioned throughout this petition are inconsistent with sentencing code, 42 Pa.C.S. 9781(a) and (b); 42 Pa.C.S. 9721(b); 42 Pa.C.S. 6355 and contrary to norms of underlying sentencing process.

3. DID COURT ERR/ABUSE DISCRETION BY RELYING ON FALSE, MISLEADING, AND INACCURATE INFORMATION TO DECIDE SENTENCE?

The court erred/abused discretion by relying on false, misleading, and inaccurate information from presentence investigation report, prosecution's Sentence Memorandum, prison file (Juvenile Lifer

Information Packet), and Defendant's (petitioner's) Sentence Memorandum (drafted by petitioner's court appointed attorney (Robert Barbato) who only worked against petitioner) to decide sentence. And also sentenced petitioner based on First degree murder, but petitioner was convicted of Second Degree Murder. com. v. McAfee, 849 A.2d 270 (Pa. super. 2004); U.S. v. Tucker, 404 U.S. 443 (1973). One example of many, prosecution stated petitioner received 9 misconducts for assault while in prison. Petitioner presented documents verifying it was only 3 misconducts alleging assault in his appeals of sentence.

4. DID COURT ERR/ABUSE DISCRETION BY NOT REPLACING PETITIONER'S UNETHICAL COURT APPOINTED ATTORNEY (ROBERT BARBATO) WHO WAS BLATANTLY WORKING WITH PROSECUTION AGAINST PETITIONER (HIS OWN CLIENT) AT EVERY STAGE/ISSUE OF CASE TO SABOTAGE CASE?

A defense attorney who abandons his loyalty to his client and effectively joins the prosecution in an effort to attain a conviction or harsh sentence for his client suffers from an obvious conflict of interest, U.S. v. Cronin, 104 U.S. 2039 (1984), and makes entire adversary process unreliable. Fisher v. Gibson, 282 F.3d 1283 (10th Cir. 2002).

The superior court's 04/15/2019 remanded order did not state that petitioner couldn't raise this or other additional issues in his post-sentence motion. The court only stated that petitioner couldn't raise issues affirmed in their 04/15/2019 order again in his post-sentence motion.

At the beginning and toward end of 01/29/2018 Resentencing Hearing and in Defendant's Sentence Memorandum, Barbato and petitioner made the Conflict of interest clear/obvious to Judge Connelly, R. T., p. 2-4, 43, and 46. Com. v. Tyler, 360 A.2d 617 (Pa. Super. 1976). So, Judge Connelly abused discretion by not replacing Barbato. Com. v. Bradley, 261 A.3d 381 (Pa. 2021).

Attorney Barbato prejudiced petitioner and worked with prosecution against petitioner including, but not limited to, falsely/maliciously stating in Defendant's Memorandum for sentence that petitioner admits guilt (without petitioner's knowledge or consent); requested sentence of 20 to 60 years in sentence memorandum (without petitioner's knowledge or consent), then against petitioner's repeated objections at Resentencing Hearing; Barbato only reviewed and agreed with portions of petitioner's prison file provided by prosecution and prosecution's negative, false, and misleading interpretation of it; didn't file post-sentence motion; withheld documents and refused to communicate with petitioner.

On 02/10/2021, Attorney Barbato was sentenced to 18 to 36 months in prison for scamming his clients from 2014 to 2020. He also lost his license to practice law.

5. DID COURT ERR/ABUSE DISCRETION BY IGNORING PETITIONER'S POSSIBLE AND/OR ACTUAL REHABILITATIVE NEEDS INCLUDING, BUT NOT LIMITED TO, MENTAL HEALTH REHABILITATION?

The court erred/abused discretion by ignoring petitioner's actual and/or possible rehabilitative needs including, but not limited to, mental health rehabilitation. Ake v. Oklahoma, 470 U.S. 68 (1985); Com. v. Shroat, 2022 PA. Super. 46 (Pa. Super. March 15, 2022); 42 Pa. C.S. 9721(b); Pa. R. crim. P. 702, 702(b); 42 Pa. C.S. 9781(b); Com. v. Curnutte, 871 A.2d 839 (Pa. Super. 2005); Pa. Const. Art. I, Sec. 9 and 13; U.S. Const. Amendments 1, 5, 6, 8, and 14.

At petitioner's 1992 Decertification Hearing, expert psychologist, Dr. McGarrey, testified that petitioner is shy, quiet, passive, Not prone to anger or hostility, would be victimized in adult prison system, should be placed in juvenile system, and placing petitioner in adult prison system would have a significant negative impact and effect on petitioner. See, 05/04/1992 Decertification Hearing Transcript (D.H.T.), p. 33, 43-46. The prosecution's expert psychiatrist, forensic psychiatrist (Dr. Tronetti) agreed with Dr. McGarrey at said hearing and his psychiatric evaluation, see, 05/07/1992 D.H.T. The prosecution Never challenged their reports and recommendations.

Psychologist William Niles (Niles) was appointed to be mitigation specialist for petitioner's resentencing.

Niles stated that petitioner's case was the first time he did a mitigation report, R.7, p. 45, and stated that he had concerns for petitioner's mental health and that petitioner is suffering from a history of significant trauma that he (Niles) was not qualified to diagnose and recommended that a more qualified psychologist be appointed to do said evaluation and make said diagnosis. see, 01/23/2018 Motion For Appointment of Psychologist. Judge Connelly denied said Motion/request. Niles stated that he did not do a complete/sufficient presentence investigation and evaluation and did not request/review petitioner's entire relevant prison file and only relied on portions/interpretations of petitioner's prison file (Juvenile ~~Life~~ Info. Packet) provided by prosecution, R.7, p. 46. Also, petitioner has experienced involuntary long-term solitary confinement from 2006 to 2013 and 2014 to present, which is known to have significant mental/physical damaging affects/effects. see, Reid v. Wetzel, 1:18-cv-00176 (Pa.D.Pa., filed 01/25/2018, settled 11/18/2019); Johnson v. Wetzel, 2016 WL 5118149 (M.D.Pa. 2016); Shoatz v. Wetzel, 2016 U.S. Dist. Lexis 17515 (W.D.Pa. 2016); Wilkinson v. Austin, 545 U.S. 209 (2005) ("No study on the effects of solitary confinement or super max-like confinement that lasted

longer than 60 days failed to find evidence of Negative psychological effects.").

In PA superior court's 04/15/2019 opinion (Appendix-B), page 15, foot note 10, Superior court stated that on remand petitioner can raise question of trial court's consideration of his rehabilitative needs and "the trial court would then be able to address the extent of its consideration of petitioner's rehabilitative needs, including mental health rehabilitative needs, in any further opinion. The trial court's (Judge Connelly's) analysis of petitioner's rehabilitative needs consists of one sentence." superior court ruled that judge Connelly's one sentence analysis is insufficient. On remand, Judge Mead only stated in his 02/14/2020 Memorandum opinion (1925(a)) that "Judge Shad Connelly considered appellant's possible and/or actual rehabilitative needs at time of sentencing." Further evidencing that petitioner's Rehabilitative needs were not considered in Resentencing, U.S. v. Ramsey, 2021 U.S. Dist. Lexis 89741 (S.D.N.Y. 05/11/2021).

6. DID COURT ERR/ABUSE DISCRETION BY IGNORING THE HUNDREDS OF PAGES OF OFFICIAL DOCUMENTS ATTACHED AS EXHIBITS TO PETITIONER'S BRIEF THAT VERIFY THAT THE INFORMATION IN PRESENTENCE REPORT, JUVENILE LIFE INFORMATION PACKET, PROSECUTION'S SENTENCE MEMORANDUM, DEFENDANT'S SENTENCE MEMORANDUM, AND MITIGATION REPORT IS FALSE, MISLEADING, AND INACCURATE?

Petitioner attached as exhibits to his 04/22/2020

appeal Brief hundreds of pages of Documents supporting Brief to PA Superior court and superior court erred and abused discretion by ignoring said documents which verify that information in the sentence Memorandums, pre-sentence report, petitioner's prison file, etc. is negatively false, misleading, and inaccurate. Com. v. McAfee, 849 A.2d 270 (Pa. super. 2004); U.S. v. Tucker, 404 U.S. 443 (1972).

7. DID COURT ERR/ABUSE DISCRETION BY IGNORING/NOT ADDRESSING ABUSE OF DISCRETION/BIASNESS ISSUE OF RESENTENCING JUDGE CLAIMING IT WAS MANDATORY TO GIVE JUVENILE LIFER PETITIONER A MAX (TAIL) DATE OF LIFE FOR RESENTENCING, BUT, TWO MONTHS PRIOR, SAME JUDGE GAVE AN ALLEGED CO-DEFENDANT JUVENILE LIFER A MAX (TAIL) DATE OF 50 YEARS FOR RESENTENCING?

It's abuse of discretion/unconstitutional for judge to ignore obvious biasness of judge stating that it's mandatory to give petitioner a max date of Life. But, two months prior, same judge gave one of petitioner's alleged co-defendants (Howard) a max date of 50 years. Com. v. Williams, 69 A.3d 735 (Pa. super. 2013); Chapman v. California, 360 U.S. 18 (1967). Sentencing Judge (Judge Connelly) has documented history of biasness, ill-will, and prejudice against petitioner. Superior court left out the word "Bias" in their decision, even though it was stated in petitioner's 1925(b) questions.

8. IS PENNSYLVANIA'S LAW TO NOT CONSIDER A DEFENDANT'S ALLEGED INDIVIDUAL LEVEL OF CULPABILITY AND PARTICIPATION IN CRIME CHARGED WITH MULTIPLE DEFENDANTS UNLESS DISTRICT ATTORNEY IS SEEKING LIFE WITHOUT PAROLE SENTENCE?

It's unconstitutional for there to be multiple defendants in a criminal case and court refuses to

Consider the individual level of alleged culpability and participation in crime charged unless District Attorney is requesting LWOP. Especially, when said defendants can still be sentenced to LWOP. Com. v. Jones, 291 Pa. super. 69 (Pa. super. 1981); Smalis v. Pennsylvania, 476 U.S. 140 (1986); Roper v. Simmons, 543 U.S. 551 (2005); Miller v. Alabama, 132 S.Ct. 2455 (2012).

9. DID COURT ERR/ABUSED DISCRETION BY DENYING MOTION FOR PSYCHOLOGIST TO DO FULL EVALUATION OF PETITIONER TO MAKE DIAGNOSIS APPOINTED MITIGATION SPECIALIST (WILLIAM NILES) WASN'T QUALIFIED TO DO. THUS, IGNORING PETITIONER'S POSSIBLE AND/OR ACTUAL REHABILITATIVE NEEDS?

Psychologist William Niles (Niles) was appointed to be mitigation specialist for petitioner's resentencing. Niles admitted that he did not do full evaluation and investigation of mitigating factors he was hired to do, this was first time doing a mitigation report, he had concerns for petitioner's mental health, Niles stated that he was not qualified to do full psychiatric evaluation petitioner needs and Niles recommended that a more qualified psychologist be appointed. R.T. p. 46 and multiple requests for continuance. Judge Connelly abused discretion by denying said motion. Expert is needed where mental condition and future danger are central issues. Ake v. Oklahoma, 470 U.S. 68 (1985); Com. v. Curnette, 871 A.2d 831 (Pa. super. 2005).

10. DID COURT ERR/ABUSED DISCRETION AT RESENTENCING HEARING BY PROHIBITING PETITIONER TO ADDRESS/CORRECT FALSE AND MISLEADING DOCUMENTS AND AVERMENTS MADE

AGAINST PETITIONER BY PETITIONER'S ATTORNEY AND PROSECUTION IN THEIR SENTENCING MEMORANDUMS?

The court erred/Abused discretion by prohibiting petitioner to address/correct false and misleading documents and averments made against petitioner by his own attorney and prosecution in their Sentencing Memorandums, thus prejudicing petitioner and violating U.S. Const. Amendments 1, 5, 6, 8, and 14; Pa. Const. Art. 1, sec. 9 and 13; Com. v. Thomas, 553 A.2d 918 (Pa. 1989); U.S. v. Moreno, 809 F.3d 766 (3d Cir. 2016); Pa. R. Crim. P. 704 (C)(1); U.S. v. Tucker, 404 U.S. 443 (1972).

II. DID MITIGATION SPECIALIST ERR/AND PREJUDICE PETITIONER BY PROVIDING INCOMPLETE EVALUATION AND REPORT WITH FALSE/MISLEADING INFORMATION AND GIVING UNDERMINING WEAK TESTIMONY?

Mitigation Specialist/Psychologist, William Niles, admitted that he did not do the full evaluation he was appointed, but not qualified, to do and that he did not review petitioner's entire prison file relevant to resentencing, which is a main issue for resentencing, Miller v. Alabama, 132 S.Ct. 2455 (2012), but only agreed with and reviewed portions of petitioner's prison file (Juvenile Life Information Packet) provided by prosecution and prosecution's negative, false, and misleading interpretation of it, R.T., p. 46. The Juvenile Life Information Packet is an abridged version or "recitation" of petitioner's 27 year (at that time) prison file compiled by state correction institution (scit.) Greene prison staff with no actual education documents, misconducts, etc. and filled with false and misleading negative information. Niles' report did not state any mitigating facts or evidence regarding

petitioner's case (crimes charged, etc.). Among other false/prejudicial things, Niles' report falsely states that petitioner is "Offering to accept a 20 to 60 year sentence" (without petitioner's knowledge or consent); Niles severely under represented petitioner's education completion in prison; and maliciously crafted his report to give false impression that petitioner is admitting guilt, despite fact that petitioner always stated (and the evidence proved) that he is innocent of all charges. N. 05/29/1992 - 06/05/1992. A Constitutionally sufficient mitigation and presentence investigation/report were not done, and, thus, Niles' actions negatively effected petitioner's resentencing. And the court erred/abused discretion by relying on such. Niles also gave undermining/weak trial testimony. Rompilla v. Beard, 545 U.S. 374 (2005); Pa. Const. Art. 1, Sec. 9 and 13; Pa. R. Crim. P. 702(A)(3) and (B); U.S. Const. Amends. 1, 5, 6, 8, and 14; Towson v. Burke, 334 U.S. 736 (); Com. v. Kelly, 33 A.3d 638 (Pa. Super. 2001); Jones v. Barnes, 438 U.S. 745 (1983).

12. DID COURT REPORTER AND/OR THE COURT ABUSE DISCRETION AND PREJUDICE PETITIONER'S PRESENT AND FUTURE COURT PROCEEDINGS BY PROVIDING INACCURATE RESENTENCE HEARING TRANSCRIPT/TRANSCRIPTION?

The court reporter and/or court abused discretion and prejudiced petitioner's present and future court proceedings by providing inaccurate Resentencing Hearing transcript/transcription and refusing to allow correction of inaccurate Resentencing Hearing

Transcript, Maye v. City of Chicago, 404 U.S. 189 (1971), Pa. R. Crim. P. 704 c(4)(b) states that a verbatim account of entire sentence proceeding shall be made. Pa. R. A. P. 1926 and Pa. R. Crim. P. 115 permits correction or modification of errors in record, see, Com. v. Telford, 960 A.2d 1 (Pa. 2009); Com. v. Fields, 387 A.2d 83 (Pa. 1983). Due Process and Equal Protection of U.S. Constitution requires that defendants be given full and accurate transcripts, Griffin v. Illinois, 351 U.S. 12 (1956).

In Pa Superior Court's 04/15/2019 opinion, the court erred/abused discretion by stating that petitioner's issue is untimely because Resentencing Hearing Transcript was filed on May 7, 2018 but petitioner filed "Motion For Correction of Transcript" on 08/08/2018. The court overlooked the fact that petitioner could not challenge errors in the 01/29/2018 Resentencing Hearing Transcript within 5 days of May 7, 2018 because petitioner was represented by court appointed attorney Robert Barbato (who only worked against petitioner) and did not receive said Transcript until long after the 5 days. on June 15, 2018, after Grazier Hearing, petitioner was permitted to represent himself. on 08/08/2018, petitioner filed an Amended 1925(b) raising issue objecting to the inaccurate text of the

Resentence Hearing Transcript, com. v. Ricardo Noble, 420 WDA 2018. Also, on 08/06/2018, petitioner filed Motion For Correction of Resentence Hearing Transcript, Trial Court denied it on 08/28/2018, so, on 09/14/2018, petitioner appealed to PA Superior Court (com. v. Ricardo Noble, 1505 WDA 2018). On 04/09/2019, Superior Court erroneously labelled it as appeal of 01/29/2018 Judgment of sentence and, thus, Quashed it as untimely, Petitioner appealed 1505 WDA 2018 and was denied by PA Supreme Court (215 WAL 2019).

13. DID EVIDENCE SUPPORT A SENTENCE OF CONVICTION ON FELONY MURDER, ROBBERY, CONSPIRACY TO ROBBERY, and Decertification?

Petitioner is actually innocent of all charges (Felony Murder, Robbery and Conspiracy to Robbery) against him. No evidence ever existed to support a sentence or conviction on any of said charges or Decertification denial. see, pages 9-20 of this Brief; N.T., 05/29/1992 - 06/05/1992; D.H.T., May 4, 1992 and May 7, 1992; Mc Quiggins v. Perkins, 133 S.Ct. 1924 (2013); Satterfield v. D.A. Philadelphia, 872 F.3d 152 (3d Cir. 2017); In re Winship, 397 U.S. 358 (1970); Fiore v. White, 531 U.S. 225 (2001); In Interest of J.B., 189 A.3d 390 (Pa. 2018); Schlup v. Delo, 513 U.S. 298 (1995); "Resentencing: Erie, Pennsylvania's Betrayal of Child, Book Three" © 2019 by Ricardo Noble (petitioner) and "Erie, Pennsylvania's Betrayal of Child" © 2007 by Ricardo Noble can be read/downloaded for free at www.PrisonsFoundation.org.

14, DID SUPERIOR COURT ERR/ABUSE DISCRETION BY FALSELY STATING THERE WAS CONFLICTING EVIDENCE ABOUT WHO ACTUAL SHOOTER WAS, DESPITE FACT THAT PROSECUTION AND TRIAL JUDGE STATED NO EVIDENCE EVER EXISTED TO ESTABLISH PETITIONER AS THE ACTUAL SHOOTER?

The SUPERIOR court erred/abused discretion by falsely stating there was "conflicting evidence" about who was the actual shooter (killer) ~~out~~ of petitioner and his two alleged co-defendants in their 07/21/2020 PA superior court decision (Appendix-A, p. 2), despite fact that superior court had court documents verifying that prosecution and ~~RESENTENCING~~ Judge admitted that no evidence ever existed to establish petitioner as the actual shooter, see, R.T., p. 30 and 60; Prosecution's 08/04/1992 Motion to sentence, p. 3; com. v. Howard, 2014 Pa. Super. unpub. Lexis 3376 (Pa. Super. 2014); Chapman v. California, 386 U.S. 18 (1967); com. v. Spencer, 496 A.2d 156 (Pa. Super. 2016).

15, IS JONES V. MISSISSIPPI, 141 S.Ct. 1307 (2021), DECISION TO REDUCE MILLER V. ALABAMA, 132 S.Ct. 2455 (2012), JUVENILE SENTENCING CONSIDERATION REQUIREMENT TO ONLY A DISCRETIONARY SENTENCING PROCEDURE WHERE YOUTH IS CONSIDERED ABUSE OF DISCRETION/UNCONSTITUTIONAL?

It was unconstitutional and abuse of discretion for the court in Jones v. Mississippi, 141 S.Ct. 1307 (2021), decision to reduce Miller v. Alabama, 132 S.Ct. 2455 (2012), decision regarding sentencing of Juvenile Lifers, to only a "discretionary sentencing procedure where youth is considered requirement," see, Graham v. Florida, 560 U.S. 48 (2010); Miller v. Alabama, 132 S.Ct. 2455 (2012); Montgomery v. Louisiana, 136 S.Ct. 718 (2016).

CONCLUSION

considering the foregoing pages, this
petition for certiorari should be GRANTED.

I declare under penalty of perjury, 28 U.S.C.
1746, the foregoing is true and correct.

Respectfully submitted,
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