COVER PAGE. 1

NO. 22-6622

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MARVIN EDUARDO LUNA GOMEZ – PETITIONER
(YOUR NAME)

VS.

- NINETEENTH JUDICIAL CIRCUIT COURT OF VIRGINIA, FAIRFAX COUNTY CIRCUIT COURT; EMPLOYEES / CLAIM ONE
  1. BLAKE WOLCOSON, COURT APPOINTED ATTORNEY,
  2. M.J. LINDNER, FAIRFAX COUNTY CIRCUIT COURT JUDGE,
  3. ROBERT J. SMITH, FAIRFAX COUNTY CIRCUIT COURT JUDGE,
  4. MARCUS GREEN, ESQUIRE ASSISTANT COMMONWEALTH ATTORNEY,
  5. RAISSA WILBUR, ESQUIRE ASSISTANT COMMONWEALTH ATTORNEY,
  6. KATHELEEN. M. BILTON, ESQUIRE ASSISTANT COMMON WEALTH ATTORNEY,
  7. KIMBERLY PHILLIPS, COURT APPOINTED ATTORNEY,
  8. LAUREN. E. HAHN, ESQUIRE ASSISTANT COMMONWEALTH ATTORNEY,
  PURSUANT TO FED. R. CIV. P. 18 (a) AND FED. R. CIV. P. 20 (2) (A) (B) JOINDER RULE.
- FAIRFAX COUNTY [redacted] ADULT DETENTION CENTER SHERIFF OFFICERS EMPLOYEES/CLAIM 2
  9. 1ST. LT. J. SMITH, FAIRFAX COUNTY ADC SHERIFF OFFICER / CLASSIFICATION,
  10. CAPT. J. SHERWOOD, FAIRFAX COUNTY ADC SHERIFF OFFICER / CONFINEMENT,
  11. SGT. WAPLE, FAIRFAX COUNTY ADC SHERIFF OFFICER / CONFINEMENT,
  12. SGT. WRIGHT, FAIRFAX COUNTY ADC SHERIFF OFFICER / CONFINEMENT,
  13. C. BARLETT, FAIRFAX COUNTY ADC BEHAVIORAL HEALTH,
  14. PITTS. B. #0530, FAIRFAX COUNTY ADC SHERIFF OFFICER,
  15. FULLER. D, FAIRFAX COUNTY ADC SHERIFF OFFICER / SUPERVISOR,
  16. SGT. FANSLER, FAIRFAX COUNTY ADC SHERIFF OFFICER,
  PURSUANT TO FED. R. CIV. P. 18 (a) AND FED. R. CIV. P. 20 (2) (A) (A) JOINDER RULE.
- FAIRFAX COUNTY ADULT DETENTION CENTER MEDICAL SERVICES EMPLOYEES/CLAIM 3
  17. DOCTOR KASA, FAIRFAX COUNTY ADC MEDICAL DOCTOR,
  18. DOCTOR LEE, FAIRFAX COUNTY ADC MEDICAL DOCTOR.

CONTINUE FROM COVER PAGE – RESPONDENTS (2)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

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

PETITION FOR WRIT OF CERTIORARI

MARVIN EDUARDO LUNA GOMEZ

(YOUR NAME)

VADOC CENTRALIZED MAIL DISTRIBUTION CENTER
3521 WOODS WAY
STATE FARM, VIRGINIA 23160

(CITY, STATE, ZIP CODE)

none. n/a.

(PHONE NUMBER)

QUESTION(S) PRESENTED.

THIS CASE PRESENTS FUNDAMENTAL QUESTION OF THE INTERPRETATION OF THIS COURTS DECISION IN WOLFF V. MCDONNELL, 418 U.S. 539, 566, 94 S.CT. 2963 (1974). THE QUESTION PRESENTED IS FOREOF GREAT PUBLIC IMPORTANCE BECAUSE IT AFFECTS THE ODERATIONS OF THE PRISONS SYSTEM IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, AND HUNDREDS OF CITY AND COUNTY JAILS. IN VIEW OF THE LARGE AMOUNT OF LITIGATION OVER PRISON DISCIPLINARY PROCEEDINGS, GUIDANCE ON THE QUESTION IS ALSO OF GREAT IMPORTANCE TO PRISONERS, BECAUSE IT AFFECTS THEIR ABILITY TO RECEIVE FAIR DECISIONS IN PROCEEDINGS THAT MAY RESULT IN MONTHS OR YEARS OF ADDED INCARCERATION OR HARSH PUNITIVE CONFINEMENT. THIS CASE ALSO PRESENTS A QUESTION OF THE INTERPRETATION OF THIS COURT OF THE FEDERAL RULE IN CIVIL PROCEDURE 52 (a) IN §65.2 EFFECTIVENESS AT TRIAL THAT PROVIDES 1) THE STRICKLAND STANDARD. 2) STANDARD FOR REVIEW OF TRIAL ACTIONS 3) STANDARD FOR RELIEF AND 4) HEAT OF BATTLE DECISIONS. IN CASES WHERE THE "CLEARLY ERRONEOUS" STANDARD HAS BEEN APPLIED PURSUANT TO FED.R.CIV.PRO. 52(a)(b), WHERE THE PETITIONER IS SEEKING COMPENSATION AND THE PREISER/HECK RULE IS IN EFFECT BECAUSE THE CASE WAS OVERTURNED THROUGH HABEAS CORPUS, WITH THIS COURTS DECISION TO SUPPOR THIS CASES IMPORTANCE SIMILAR TO LINER V. GOORD, 196 F.3d 132, 134 (2d CIR. 1999) HOLDING THAT "28 U.S.C § 1915(a) AND 42 U.S.C §1999 (e)(c)(2) DISMISSALS ARE [redacted] DE NOVO REVIEW") WITH THIS COURTS DECISION IN ALLEN V. MC.CURRY, 449 U.S. 90, 101 S.CT. 411 (1980) BY CONTRAST, IF THERE WAS NO DECISION IN THE CRIMINAL CASE ON THE LEGALITY OF THE SEARCH OR ARREST YOUR CRIMINAL CONVICTION WILL NOT ESTOP YOU FROM SUING FOR THE CONSTITUTIONAL VIOLATION., HOW EVER BEING THAT, THIS CASES' ISSUES IS NOT ABOUT MY CRIMINAL CONVICTION BECAUSE IS ALREADY OVERTURNED. THIS CASE IS MORE ABOUT ACCESSING THE COURT AND [redacted] PROVING EVIDENCE IT SELF, WHERE THE EVIDENCE IS SUBSTANTIAL TO PROVE THAT CONSTITUTIONAL, FEDERAL, AND CIVIL RIGHTS WERE VIOLATED, BUT THE FIRST COURT FORCED A DISMISSAL ERRONEOUSLY, AND THE COURT OF APPEALS AFFIRMED THE DECISION WITHOUT REVIEW. AS IN WOLFF V. MC.DONNELL, 418 [redacted] U.S. 539, 94 S.CT. 2963 (1974) IN WHICH THE PEOPLES RIGHTS ARE BEING DENIED WHEN ATTEMPTING TO EXERCISE THE RIGHT TO CONFRONTATION AND CROSS EXAMINATION.

THE ISSUES IMPORTANCE IS ENHANCED BY THE FACT THAT THE LOWER COURTS IN THIS CASE DID NOT READ THIS CASE SO THEY FAIL TO SEE THE MATERIAL FACTS, OR LEGAL MATTER THAT WAS OVERLOOKED IN A DECISION THAT CONFLICTS WITH OTHER DECISIONS OF THE SAME APPEALS COURT, AND OF CASES THAT INVOLVE A QUESTION OF "EXCEPTIONAL IMPORTANCE" INVOLVING FACTS, e.g., THE DECISION IS IN CONFLICT WITH AUTHORATIVE DECISIONS OF OTHER FEDERAL APPEALS COURTS: RULE 35(b) FED.R.CIV.P. AND THE QUESTION WHAT WOULD HAVE HAPPENED IF I HAD BEEN GIVEN THE RIGHT TO A LAWFUL HEARING, IN MY DUE PROCESS IS BROUGHT IN.

SEE, e.g.) HAINS V. WASHINGTON, 131 F.3d 1248, 1250 (7TH CIR. 1997) ("UNDER THE PLRA, IT IS AT LEAST THEORETICALLY POSSIBLE THAT AN APPEAL FROM A §§1915(A) DISMISSAL (AND ACCOMPANYING DENIAL OF LEAVE TO PROCEED IN FORMA PAUPERIS IN DISTRICT COURT) COULD BE TAKEN IN GOOD FAITH'..." EXCEPTIONAL CASES MAY ARISE IN WHICH A DISTRICT COURTS GRANTS LEAVE TO APPEAL IN FORMA PAUPERIS TO A PLAINTIFF "WHO APPEALS A CLOSE QUESTION UNDER §1915 A IN GOOD FAITH.") // 28 U.S.C. §1331 (a) PROVIDES FOR FEDERAL COURT JURISDICTION OF ALL CIVIL ACTIONS

THIS CASE INVOLVES THE QUESTION OF STANDARD REVIEW IN WHETHER A PARTY IS ENTITLED TO SUMMARY JUDGMENT IS A QUESTION OF LAW OVER WHICH THIS COURT EXERCISES PLENARY REVIEW AS DECIDED IN NOONAN V. STAPLES, INC., 539 F.3d 1, 5 (1ST CIR. 2008); KAUCHER V. COUNTY OF BUCKS, 455 F.3d 418, 422 (3d [redacted] CIR. 2006). AND ANDERSON V. LIBERTY LOBBY, INC., 477 U.S. 242, 248, 106 S.CT. 2505 (1986)

LAST BUT NOT LEAST THE FUNDAMENTAL QUESTION IN THIS CASE AS TO WHETHER I FAILED TO STATE A A CLAIM IN THE DISTRICT COURT BECAUSE THE REASON TO DISMISS IS CONTRADICTING AND COMPLETELY ERRONEOUS. THE UNITED STATES DISTRICT COURT DISMISSED THE CLAIM BECAUSE THE DEFENDANTS ARE NOT PROPERLY JOINED AND LIST THE DEFENDANTS THAT ARE NOT PROPERLY JOINED AND THEN SAID THAT THE SAME PREVIOUS LISTED DEFENDANTS WERE THE ONLY DEFENDANTS PROPERLY JOINED. THEREFORE THE COURT IS "CLEARLY ERRONEOUS", "THEN THE CASE WAS APPEALED AND WITHOUT A DOUBT THE APPELLATE COURT AFFIRMED THE DECISION, SO NOW THIS CASE IS "PREJUDICED" AND HAS NOT EVEN BEEN HEARD. AS THIS COURT DECIDED OVER SIMILAR CASE IN GALL V. UNITED STATES, 552 U.S. 38 128 S.CT. 586, 591, 169 L.Ed.2d 445 (2007). WE MUST FIRST "ENSURE THAT THE DISTRICT COURT COMMITTED NO PROCEDURAL ERROR," Id. AT 597. IF AND ONLY IF, WE FIND THE SENTENCE PROCEDURALLY REASONABLE CAN WE CONSIDER THE SUBSTANTIVE REASONABLENESS OF THE SENTENCE IMPOSED UNDER AN ABUSE-OF-DISCRETION STANDARD." Id. F.R.CP. §14:3, §14:4, §14:6, §15.5, §1:16. THUS THE BELOW (LOWER) COURTS SERIOUSLY MADE THE BIG MISTAKE THAT IS "CLEARLY ERRONEOUS" AND FAILED TO CORRECT IT: THE DECISION IS IN CONFLICT WITH AUTHORATIVE DECISIONS OF OTHER FEDERAL APPEALS COURTS. RULE 35 (b), FED. R. CIV. P. AND 17 (b) IMMUNITY WAIVER THE COURT SHOULD CORRECT THAT MISINTERPRETATION AND MAKE IT CLEAR THAT WITNESSESS AND DEFENDANTS APPEAR AT THE HEARING IN THIS MATTER AND CONSIDER IT OF GREAT IMPORTANCE. PLAINTIFF CLAIMS THAT DEFENDANTS' ACTIONS OR FAILURE TO ACT AMOUNTED TO [redacted] A DEPRIVATION OF MR. GOMEZ'S RIGHT TO REASONABLE PROTECTION FROM ASSAULT AS PROVIDED BY THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION, AND IS ALSO SUPPORTED BY THE 4TH AMMENDMENT, CAUSE AND PREJUDICE 18 §242. AND 42 §1983 AND 42 U.S.C. §1997 e(e) IN (PLRA) PROVIDES: "NO FEDERAL CIVIL ACTION MAY BE BROUGHT BY A PRISONER CONFINED IN JAIL, PRISON, OR OTHER CORRECTIONAL FACILITY, FOR MENTAL OR EMOTIONAL INJURY SUFFERED CUSTODY WITHOUT A PRIOR SHOWING OF PHYSICAL INJURY."

CONTINUE ON TO THE NEXT PAGE.

I WILL NOW INSTRUCT YOU TO MR GOMEZ'S EIGHTH AMENDMENT CLAIM.

THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION GUARANTEES THAT NO PRISONER SHALL BE SUBJECTED TO CRUEL AND UNUSUAL PUNISHMENT. THE CONSTITUTIONAL PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT NOT ONLY PROHIBITS CERTAIN KINDS OF PHYSICAL PUNISHMENT, SUCH AS TORTURE, BUT EMBODIES BROAD AND IDEALISTIC CONCEPT OF DIGNITY, CIVILIZED STANDARD, HUMANITY, AND DECENCY. THE EIGHTH AMENDMENT REQUIRES CONDUCT COMPATIBLE WITH THE EVOLVING STANDARDS THAT MARK THE PROGRESS OF A MATURING SOCIETY. THUS, THE [redacted] EIGHTH AMENDMENT REQUIRES THAT A JAIL OFFICIAL, UNDER THE CIRCUMSTANCES AS I SHALL DEFINE THEM FOR YOU, MUST NOT BE DELIBERATELY INDIFFERENT TO A PRISONERS NEED FOR PROTECTION AGAINST PHYSICAL ASSAULT. A PRISONER WHO IS DEPRIVED OF SUCH PROTECTION BECAUSE OF A JAIL OFFICIAL'S DELIBERATE INDIFFERENCE TO A PHYSICAL ASSAULT HAS SUFFERED A VIOLATION OF HIS CONSTITUTIONAL RIGHTS AS GUARANTEED BY THE EIGHTH AMENDMENT.

TO BE CRUEL AND UNUSUAL PUNISHMENT, CONDUCT WHICH DOES NOT PURPORT TO BE PUNISHMENT AT ALL MUST INVOLVE MORE THAN ORDINARY LACK OF DUE [redacted] CARE FOR THE PRISONER'S INTEREST OR SAFETY. IT IS OBDURACY OR WANTONESS, NOT INADVERTENCE OR ERROR IN GOOD FAITH THAT CHARACTERIZES THE CONDUCT PROHIBITED BY THE CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE 1ST. 4TH, 5TH, 6TH, 8TH, AND 14TH AMENDMENTS OF THE UNITED STATES CONSTITUTION, RULE FEDERAL PROCEDURE §16:1, §15.5, §16.2, §14.3, §14.4, §14.6, §1.16 (a)(1), 6 §II COMMENT 1,2,3,4.

A QUESTION TO BE CONCERNED IN THIS CASE THAT IS TRULY SIGNIFICANT AND OF MOST IMPORTANCE IS WHETHER THE 19TH JUDICIAL ARE AWARE OF DUE PROCESS REQUIREMENTS PROTECTED BY U.S. CONSTITUTION AND KNOW ABOUT PRE-DETAINEES AND PRISONERS GUARANTEED RIGHTS UNDER FEDERAL RULES PROVIDED BY CONGRESS AND THEIR STATUTES THEREIN THAT SECURE CITIZENS RIGHTS. FURTHERMORE, FOR INSTANCE THIS CASE HAS BEEN OVERTURNED AND ITS A CASE THAT INVOLVES A SERIES OF DEPRIVATIONS SHOWN THROUGH MATERIAL FACTS IN COURT TRANSCRIPTS, AND DENIAL OF MOTIONS OF POST-TRIAL EXHAUSTION FOR RELIEF. THIS CASE ALSO INVOLVES SUBJECTION TO CRUELTY, THROUGH ASSAULT BY SHERIFF OFFICERS AND THE DENIAL OF IMMEDIATE MEDICAL CARE IN VIOLATION OF STATE POLICIES, AND SUBJECTION TO HIGH RISK OF PHYSICAL HARM OR EVEN DEATH THROUGH UNLAWFUL ARREST UNLAWFUL CONVICTION, AND INEFFECTIVENESS. THE UNWANTONNESS IS CLEARLY SHOWN IN UNNECESSARY USE OF FORCE WHICH IS ALSO UNJUSTIFIED AND UNLAWFUL BECAUSE THE SUPREME COURT HAS DECIDED IN TOWSEND V. BURKE, 334 U.S. 736, 68 S. CT. 1252, 92 L. Ed. 1690 (1948) REQUIRES THAT DUEE PROCESS REQUIRES THAT A CONVICTED PERSON NOT BE SENTENCED ON "MATERIALLY UNTRUE" ASSUMPTIONS OR MISINFORMATION, "REFFERING TO THIS CASES' ALTERATION OF EVIDENCE, BY ELABORATING A STATEMENT DURING ENDICTMENT OF FALSE INFORMATION WHERE THE PROSECUTOR TOLD THE JUDGE THAT THE PLAINTIFF (GOMEZ) HAD "A SHARP KNIFE WITH A WHITE SHARPENED TOOTH-BRUSH," WHEN IN FACT THE ONLY THING REPORTED WAS A 110 - POSSESSION OF SHARPENED INSTRUMENT (FILED DOWN N TOOTH BRUSH 4" INCHES LONG",

QUESTION (S) PRESENTED.

HOWEVER INNOCENCE COULD NOT BE PRESENTED BECAUSE MR. GOMEZ'S RIGHTS TO A FAIR TRIAL §16:1 SIXTH AMENDMENT RIGHT TO COUNSEL WAS DENIED, THE RIGHT TO WITHDRAW COUNSEL §9:6. AND EFFECTIVE ASSISTANCE, WHERE THE PLAINTIFF SHOWN EXCULPATORY EVIDENCE, NEITHER WAS HE ABLE TO SUPPRESS OR OBJECT AGAINST PRESUMPTIONS, INACCURATE INFORMATION AND FALSE CHARGES §17:8. AND §17:19 §17:24 AND §17:25 PROVIDES OBJECTIONS/OFFERS OF PROOF AND REAL AND SCIENTIFIC EVIDENCE.

MR. GOMEZ, THE PLAINTIFF IN THIS CASE HAS OVERTURNED THIS CRIMINAL CONVICTION 28. §2243 ISSUANCE OF WRIT OF HABEAS CORPUS. ON THE ALLEGATIONS OF DENIAL OF APPEAL APPENDIX ATTACHED IN PAGE 5 OF "APPENDIX A" THROUGH 16. TO WHICH INSTRUCTED COURT ORDER 19TH JUDICIAL DEFENDANTS HAVE NOT COMPLIED WITH TO PROVIDE A COURT DATE FOR A BELATED APPEAL.

42. U.S.C. §1983: CIVIL RIGHTS ACTIONS AGAINST STATE AND LOCAL OFFICIALS AND PRIVATE CONTRACTORS.

MOST PRISONERS CIVIL RIGHTS SUITS ARE BROUGHT UNDER 42 U.S.C §1983, WHICH PROVIDES: EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE OR ORDENANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES, OR OTHER PERSON WITHIN THE JURISDICTION THERE OF TO THE DERRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAWS, SUIT IN EQUITY, OR OTHER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS DECLARATORY DECREE WAS VIOLATED OR DECLARATORY RELIEF WAS UNAVAILABLE FOR THE PURPOSES OF THIS SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUMBIA SHALL BE CONSIDERED TO BE A STATUTE OF THE DISTRICT OF COLUMBIA. (BROOKS V. PEMBROKE CITY JAIL, 722 F. SUPP. 1294, 1299-1300 (E.D. N.C. 1989). THE SUPREME COURT HAS STATED THAT "THE DUE PROCESS CLAUSE PROTECTS A PRETRIAL DETAINEE FROM THE USE OF EXCESSIVE FORCE THAT AMOUNTS TO PUNISHMENT."); (MILLER V. FAIRMAN, 812 F. SUPP. 498, 505-06 (N.D. III. 1994) ("PRETRIAL DETAINEES HAVE A FOURTEENTH AMENDMENT DUE PROCESS RIGHT AGAINST BEING SUBJECTED BY JAIL GUARDS TO EXCESSIVE FORCE THAT AMOUNTS TO PUNISHMENT.") (ALLEN V. MC. CURRY, 449, U.S. 90, 101 S.CT. 411 (1980). BY CONTRAST, IF THERE WAS NO DECISION IN THE CRIMINAL CASE ON THE LEGALITY OF THE SEARCH OR ARREST, YOUR CRIMINAL CONVICTION WILL GENERALLY NOT ESTOP YOU FROM SUING FOR THE CONSTITUTIONAL VIOLATION.); (BIBERDORF V. OREGON, 243 F. SUPP. 2d 1145, 1158-59 (D. OR. 2002) (IF THE PLAINTIFF'S OVER-DETENTION RESULTED FROM POLICY, HIS STATE FALSE IMPRISONMENT WAS BARRED BY IMMUNITY, BUT HIS §1983 CLAIM AGAINST THE COUNTY COULD GO FORWARD).

(7)

LIST OF PARTIES

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

N/A [ ] 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:

PURSUANT TO RULE 18 (a) AND RULE 20 (2) (A)(B) OF FED.R.CIV.P.

- NINETEENTH JUDICIAL CIRCUIT COURT, FAIRFAX COUNTY CIRCUIT COURT EMPLOYEES. et al.

PURSUANT TO RULE 18 (a) AND RULE 20 (2)(A)(B). OF FED.R.CIV.P.

- FAIRFAX COUNTY ADC SHERIFF OFFICER EMPLOYEES. et. al.

PURSUANT TO RULE 18 (a) AND RULE 20 (2) (A)(B) OF FED.R.CIV.P.

- FAIRFAX COUNTY ADC [redacted] MEDICAL SERVICES EMPLOYEES. et.al.

RELATED CASES

PLRA IS SUBJECT TO REVIEW DE NOVO DE NOVO REVIEW.

SEE. LINER V. GOORD, 196 F.3d 132, 134 (2d CIR. 1999) HOLDING THAT "28 U.S.C. §1915 A AND 42 U.S.C. §1999 e (c)(2) DISMISSALS ARE SUBJECT TO DE NOVO REVIEW");

SEE. BARREN V. HARRINGTON, 152 F.3d [redacted]H93, 1194 (9TH CIR. 1998) (HOLD THAT DISMISSALS FOR FAILURE TO STATE A CLAIM ARE REVIEWED DENOVO.

SEE. HARPER V. SHOWERS, 174 F.3d 716, 718 N.3 (5TH CIR. 1998) (STATING THAT DE NOVO REVIEW IS "ONLY APPROPRIATE FOR DISMISSALS FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF MAY BE GRANTED.

SEE. 645-30 STANDARD OF REVIEW IS THAT OF ABUSE OF DISCRETION. UNITED STATES V. CARTER, 564 F.3d 325 (CA 4 2009). P.328. IN REVIEWING ANY SENTENCE, "WHETHER INSIDE, JUST OUTSIDE, OR SIGNIFICANTLY OUTSIDE THE GUIDELINES RANGE," WE APPLY A "DIFFERENTIAL ABUSE-OF-DISCRETION STANDARD,"

SEE. GALL V. UNITED STATES, 552 U.S. 38, 128 S.CT. 586, 591, 169 L.Ed.2d 445 (2007). WE MUST FIRST "ENSURE THAT THE DISTRICT COURT COMMITTED NO PROCEDURAL ERROR." Id. AT 597. IF AND ONLY IF, WE FIND THE SENTENCE PROCEDURALLY REASONABLE CAN WE CONSIDER THE SUBSTANTIVE REASONABLENESS OF THE SENTENCE IMPOSED UNDER AN ABUSE-OF-DISCRETION STANDARD." Id;

SEE. UNITED STATES V. STEPHENS, 549 F.3d 459, 465 (6TH CIR. 2008). PROCEDURAL ERRORS INCLUDING "FAILING TO CALCULATE (OR IMPROPERLY CALCULATING) THE GUIDELINES RANGE, TREATING THE GUIDELINES AS MANDATORY, FAILING TO CONSIDER THE § 3553 (a) FACTORS, SELECTING A SENTENCE BASED ON CLEARLY ERRONEOUS FACTS, OR FAILING TO ADEQUATELY EXPLAIN THE CHOSEN SENTENCE - INCLUDING AN EXPLANATION FOR ANY DIVIATION FROM THE GUIDELINES RANGE."

GALL, 128 S.CT. AT 597. WHEN RENDERING A SENTENCE, THE DISTRICT COURT "MUST MAKE AN INDIVIDUALIZED ASSESSMENT BASED ON THE FACTS PRESENTED." Id. HERE THE COURT DID NOT JUSTIFY CARTER'S SENTENCE WITH AN INDIVIDUAL-[P.329]IZED RATIONALE. {REMANDED FOR RESENTENCING.}

CONTINUE ON TO THE NEXT PAGE

CONTINUE FROM ____ RELATED CASES

COERCIONS AND THREATS INDUCED THE PLEA. 445.05 PG. 256.
SEE. MACHIBRODA V. UNITED STATES, 368 U.S. 487, 7 L.Ed 473, 82 S.CT. 510 (1962)

0445.55 JUDGES PARTICIPATION CREATED A COERCED PLEA.
SEE. STATE V. HEARD, 87 NE 3d 345, 2017 OHIO 8310 (OHIO; COA 8TH (2017)

SENTENCING INFORMATION NEEDS TO BE ACCURATE.
SEE. UNITED STATES V. PUGLIESE 805 F. 2d 1117 (CA. 7/1986)
*FOCUS NOTE: REQUIREMENT THAT INFORMATION ON WHICH SENTENCE IS BASED BE RELIABLE AND ACCURATE.**

P.1123. [9]S TOWNSEND V. BURKE

SEE. TOWNSEND V. BURKE, 334 U.S. 736, 68 S.CT. 1252, 92 L.Ed. 1690 (1948), RECOGNIZES, DUE PROCESS REQUIRES THAT A CONVICTED PERSON NOT BE SENTENCED ON "MATERIALLY UNTRUE" ASSUMPTIONS OR MISINFORMATION." Id. AT 741, 68 S.CT. AT 1255. IN ADDITION, CONGRESS' INTEREST IN RELIABLE SENTENCING INFORMATION CAN BE CLEARLY DISCERNED IN THE VARIOUS AMENDMENTS TO FEDERAL RULE OF CRIMINAL PROCEDURE 32. [redacted].

P.1124. CONSECUENTLY, A DISTRICT COURT HAS AN OBLIGATION TO ASSURE IT SELF THAT THE INFORMATION UPON WHICH IT RELIES IN SENTENCING DEFENDANTS IS BOTH RELIABLE AND ACCURATE. IN THE INSTANT CASE, THE DISTRICT COURT DID NOT SATISFY THIS RULE 32 OBLIGATION. INSTEAD, IT RELIED ON THE ALLEGATIONS OF THE PRESENTENCE REPORT AND ITS BELIEF IN.

IN THE APPELLANTS PRIOR HISTORY OF WITNESS INTIMIDATION; AND ANNOUNCED ITS "UNALTERABLE" CONCLUSION THAT THE PUGLIESES WERE IMPLICATED IN THE MURDER ATTEMPT. C J EXPRESSIONS OF A FIXED VIEW BASED ON THE PRESENTENCE REPORT MADE PRIOR TO A HEARING ARE INCONSISTENT WITH THE DUE PROCESS OBLIGATIONS IMPOSED ON A SENTENCING COURT TO CONSIDER ONLY RELIABLE AND ACCURATE INFORMATION.

P.1125 - THE CASE IS REMANDED TO ANOTHER DISTRICT COURT JUDGE FOR RESENTENCING CONSISTENT WITH THIS OPINION. "28 § 2243 ISSUANCE OF WRIT, CONVICTION OVERTURNED"

SEE. MORRISON V. LIPSCOMB, 877 F. 2d 463, 468 (6TH CIR. 1989) (NO IMMUNITY AT ALL FOR ACTIONS DICTATED BY COURT ORDER AND LEAVING NO DISCRETION).

SEE. HUDSON V. MCMILLIAN, 503 U.S. 1, 5, 1125.CT. 995 (1992). THE FACTS ALLEGED BY THE PLAINTIFF ARE EVIDENCE THAT THE DEFENDANTS WERE ACTING "MALICIOUSLY AND SADISTICALLY TO CAUSE HARM." THEY WOULD SUPPORT A JURY VERDICT IN THE PLAINTIFF'S FAVOR.

SEE. MILLER V. LEATHERS, 913 F. 2d 1085, 1088 (4TH CIR. 1990);
SEE. OLIVER V. COLLINS, 914 F. 2d 56, 59 (5TH. CIR. 1990);
SEE. ZIEMBA V. ARMSTRONG, 433 F. SUPP. 248, 251. (D. CONN. 2006).

SEE. WILLIAM V. ODMODT, 640 F. SUPP. 120, 121-23 (D. MINN. 1986)

SEE. U.S. V. COBB, 905 F. 2d 784 (4TH CIR. 1990)

SEE. SKRTICH V. THORNTON, 280 F. 3d 1295, 1302 (11TH CIR. 2002)

SEE. POLIZZI V. TRIST, 154 SO. 2d 84, 85 (LA. APP. 1963)

SEE. BROOKS V. KYLER 204 F. 3d 102, 108-09 (3d CIR. 2000)

SEE. FREEMAN V. RIDEOUT, 808 F. 2d AT 952 - DID NOT HAVE A HEARING.

SEE. FARMER V. BRENNAN, 511 U.S. 825, 834, 114 S.CT. 1970 (1994)

SEE. TREZEVANT V. CITY OF TAMPA (FL) 741 Fd 2d 336 (1984)

SEE. WINSTON V. COUGHLIN, 789 F. SUPP. 118, 120-21 (W.D.N.Y. 1992) HOLDING ALLEGATIONS THAT OFFICERS FILED FABRICATED REPORTS TO CONCEAL THEIR EIGHTH AMENDMENT VIOLATIONS STATED IN A CLAIM).

SEE. GAYLE V. LUCAS, 133 F. SUPP. 2d 266, 271 (S.D.N.Y. 2001).

SEE. ZARNES V. RHODES, 64 F. 3d 285, 292 (7TH CIR. 1995).

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MORRISON V. LIPSCOMB, 877 F.2d 463, 468 (6TH CIR. 1989) (NO IMMUNITY AT ALL FOR ACTIONS DICTATED BY COURT ORDER AND LEAVING NO DISCRETION).
ARBON STEEL SERV. CO. V. U.S, 315 F.3d 1332, 1334 (FED. CIR. 2003) -- PAGE # 31
LINER V. GOORD, 196 F.3d 132, 134 (2d CIR. 1999) HOLDING THAT "28 U.S.C § 1915 A AND 42 U.S.C. § 1997 e (c)(2) DISMISSALS ARE SUBJECT TO REVIEW DE NOVO REVIEW"); PAGE # 15, PAGE # 3,
HARPER V. SHOWERS, 174 F.3d 716, 718 N.3 (5TH CIR. 1998), [redacted] (STATING THAT DE NOVO REVIEW IS ONLY APPROPRIATE FOR DISMISSALS FOR FAILURE TO STATE A CLAIM ON WHICH RELIEF MAY BE GRANTED. PAGE#
BARREN V. HARRINGTON, 152 F.3d 1193, 1194 (9TH CIR. 1998) (HOLD THAT DISMISSALS FOR FAILURE TO STATE A CLAIM ARE REVIEWED DE NOVO. PAGE # 31
ANDERSON V. LIBERTY LOBBY, INC., 477 U.S. 242, 248, 106 S.CT. 2505 (1986). THE DISPUTED FACTS ALLEGED BY THE PLAINTIFF ARE MATERIAL. PAGE # 32, 4,
GALL V. UNITED STATES, 552 U.S. 38, 128 S.CT. 586, 591, 169 L.Ed.2d 445 (2007). WE MUST FIRST "ENSURE THAT THE DISTRICT COURT COMMITTED NO PROCEDURAL ERROR." Id AT 597. PAGE # 4, 33,
SPELL V. MC-DANIEL, 824 F.2d 13800 (4TH CIR. 1987) ($900,000 FOR BEATING RESULTING IN THE LOSS OF ONE TESTICLE.
* BORST V. CHEVRON CORP., 36 F.3d 1308, 1314 N-11 (5TH CIR. 1994) (NOTING THAT BECAUSE THE APPELLATE COURT DID NOT CONSIDER AN ISSUE, "THE DISTRICT COURT'S RULING ON THAT ISSUE IS NOT CONCLUSSIVE BETWEEN THE PARTIES."). HOWLETT V. ROSE, 496 U.S. AT 375-78 (STATE IMMUNITY RULES DO NOT APPLY IN STATE COURT IN § 1983, ACTION). PAGE # 33,

STATUTES AND RULES

RULE 35 (a) FED.R.CIV.P. AND 35 (b) FED.R.CIV.P.
A DEFENDANT MUST BE A "PERSON" TO BE SUED UNDER § 1983. IN MOST CASES "PERSON" MEANS THE SAME THING UNDER § 1983 AS IN ORDINARY USE., PAGE # 6,
HOWEVER, A CITY OR COUNTY GOVERNMENT IS ALSO A PERSON FOR PURPOSES OF § 1983
THE ELEVENTH AMENDMENT DOES NOT FORBID SUING THE STATE OFFICIALS FOR DAMAGES IN THEIR INDIVIDUAL CAPACITIES, AND FOR DECLARATORY OR INJUNCTIVE RELIEF IN THEIR OFFICIAL CAPACITIES.
18 (a) AND 20 (2)(A)(B) RULES OF THE FEDERAL RULES OF CIVIL PROCEDURES. JOINDER OF CLAIMS IN ACTION. PAGE # 30
RULE 4 OF THE APPELLATE PROCEDURES. (a)(4)(A)(ii) UNDER RULE 52 (b). TO AMEND, CORRECT, OR MAKE ADDITIONAL FACTUAL FINDINGS UNDER RULE 52 (b) WHETHER OR NOT GRANTING THE MOTION WOULD ALTER THE JUDGMENT.
RULE 32 SENTENCING INFORMATION NEEDS TO BE ACCURATE
RULE 17 (b) STATES THAT AN UNINCORPORATED ASSOCIATION CAN BE SUED FOR VIOLATIONS OF FEDERAL LAW REGARDLESS OF ITS STATE LAW CAPACITY TO BE SUED UNDER RULE 17 (b) FED.R.CIV.P. WAIVER OF IMMUNITY ##4
28 U.S.C. § 1331 (a) PROVIDES FOR FEDERAL COURT JURISDICTION OF ALL CIVIL ACTIONS UNDER THE CONSTITUTION, LAW, OR TREATIES OF THE UNITED STATES PAGE # 4,
42 U.S.C. § 1997 e (e) THE (PLRA) PROVIDES: "NO FEDERAL CIVIL ACTION MAY BE BROUGHT BY A PRISONER CONFINED IN JAIL, PRISON, OR OTHER CORRECTIONAL FACILITY, FOR MENTAL OR EMOTIONAL INJURY SUFFERED IN CUSTODY WITHOUT A PRIOR SHOWING SHOWING OF PHYSICAL INJURY."
18 U.S.C. § 242. DEPRIVATION OF CIVIL RIGHTS -, 8TH., 14TH, 5TH, 6TH, CONSTITUTIONAL U.S. AMENDMENTS. RULE 12. PLEADINGS AND PRETRIAL MOTIONS. RULE 11 RULES OF CRIMINAL PROCEEDINGS. (A)(B)(C)(E)(H) HARMLESS ERROR. → CAUSE AND PREJUDICE STANDARD. 4TH AMENDMENT. PAGE # 4,

OTHER

MC-CLOSKEY V. MUELLER, 446 F.3d AT 271-72 (1ST CIR. 2006) ("THE BIVENS DOCTRINE ALLOWS CONSTITUTIONAL CLAIMS AGAINST FEDERAL OFFICIALS IN THEIR INDIVIDUAL CAPACITIES, FOR ACTIONS TAKEN UNDER COLOR OF FEDERAL LAW," WRONGFUL ARREST / WRONGFUL CONVICTION. PAGE # 33
BIBERDORF V. OREGON, 243 F. SUPP. 2d 1145, 1158-59 (D.OR. 2002.) (IF THE PLAINTIFF'S OVER-DETENTION RESULTED FROM POLICY, HIS STATE FALSE IMPRISONMENT CLAIM WAS BARRED BY IMMUNITY, BUT HIS § 1983 CLAIM AGAINST THE COUNTY COULD GO FORWARD). PAGE # 6, 33
42 U.S.C. § 1985, § 1985(3) § 1986 CIVIL RIGHTS CONSPIRACY. AND DEPRIVATION.
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U.S. V. COBB, 905 F. 2d 784 (4TH CIR. 1990)

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TRUDEAU V. FEDERAL COMMISSION. 456 F. 3d 178, 186-87 (D.C CIR. 2006)

STATUTES AND RULES

VIOLATION OF §14:3 DISCOVERY BY THE DEFENSE UNDER RULE 3 A:11
VIOLATION OF §14:4 DISCOVERY BY THE DEFENSE OF EXCULPATORY EVIDENCE -
VIOLATION OF §14:6 DISCOVERY BY THE PROSECUTION UNDER RULE 3 A:11 FOR ACT AND FAILURE TO ACT.
DEPRIVATION OF CONSTITUTIONAL RIGHTS 4TH, 5TH, 6TH, 8TH, AND 14TH AMENDMENT.
§16:1 RIGHT TO A FAIR TRIAL, → §16:2. RIGHT TO A PUBLIC TRIAL..., RIGHT TO A TRIAL BY JURY.
§15:5. WITHDRAWAL OF PLEAS FED. R. CIV. P. 17 (b) WAIVER OF SOVEREIGN IMMUNITY.
VIOLATION OF PART 6 §II RULES OF PROFFESSIONAL CONDUCT, COMMENT [1] [2] [3] [4].
§1:16 DECLINING OR TERMINATING REPRESENTATION (a)(1)
[redacted]
GENEVA ACT : PROTECTS PRISONERS FROM UNLAWFUL ARREST/UNLAWFUL INCARCERATION AND CRUEL AND UNUSUAL PUNISHMENT

THOMAS V. HOLDER, 836 S.W. 2d 351, 353 (TEX. APP. 1992) ("A CIVIL ASSAULT IS COMMITTED WHEN A PERSON KNOWINGLY, INTENTIONALLY, OR RECKLESSLY CAUSES BODILY INJURE TO ANOTHER.")

HUDSON V. MC. MILLIAN, AND SULKOWSKA V. CITY OF NEW YORK, 129 F. SUPP. 2d 274, 291-92 (S.D.NY 2001) COURT APPLIES BELL V. WOLFISH, DOES NOT CITE HUDSON MC. MILLIAN, AND SAYS THAT PLAINTIFF MUST SHOW THAT DEFENDANTS HAD REASONS TO KNOW OF FACTS CREATING A HIGH RISK OF PHYSICAL HARM AND ACTED IN CONCIOUS DISREGARD OR INDIFFERENCE TO THAT RISK.)

OTHER

U.S. V. COBB, 905 F. 2d 784 (4TH CIR. 1990) (VERBAL PROVOCATION DOES NOT EXCUSE A PHYSICAL ASSAULT BY A LAW ENFORCEMENT OFFICER.)

ESTATE OF DAVIS BY OSTENFELD V. DELO, 115 F. 3d 1388, 1395 (8TH CIR. 1997) (NOTING THAT FAILURE TO REPORT CAN BE EVIDENCE OF DELIBERATE INDIFFERENCE.

KERMAN V. CITY OF NEW YORK, 261 F. 3d 229, 239-40 (2d CIR. 2001) (VERBAL ABUSE AND OTHER FACTORS MIGHT SUPPORT A CLAIM OF OBJECTIVELY UNREASONABLE FORCE).

FEDERAL RULE OF CIVIL PROCEDURES 52 (a) "CLEARLY ERRONEOUS"

PAGE #17

(12)

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

[ ] reported at n/a; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at n/a; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

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

[ ] reported at n/a; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the CIRCUIT COURT OF FAIRFAX COUNTY CRIMINAL court appears at Appendix A to the petition and is

[ ] reported at n/a; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

(13)

☑ For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was NOVEMBER 9, 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: DECEMBER 1, 2022, and a copy of the order denying rehearing appears at Appendix A.

n/a [ ] An extension of time to file the petition for a writ of certiorari was granted to and including n/a (date) on n/a (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 11-23-2021. A copy of that decision appears at Appendix B.

☑ A timely petition for rehearing was thereafter denied on the following date: DECEMBER 1, 2022, and a copy of the order denying rehearing appears at Appendix A.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[redacted].

1. THIS CASE INVOLVES [redacted] 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES: SECTION 1. → ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE[redacted] WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; 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. SECTION 5. → THE CONGRES SHALL HAVE POWER TO ENFORCE, BY APPROPRIATE LEGISLATION, THE PROVISIONS OF THIS ARTICLE.

2. THIS CASE ALSO INVOLVES THE 8TH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES: EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

3. THIS CASE INVOLVES THE 6TH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES: IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

4. THIS CASE ALSO INVOLVES THE 5TH AMENDMENT TO THE UNITED STATES CONSTITUTION WHICH PROVIDES: NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE PUT TWICE IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

5. THIS CASE INVOLVES THE 4TH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES: THE RIGHT OF THE PEOPLE TO BE SECURED IN THEIR PERSONS, HOUSES, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

(15)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6. THIS CASE ALSO INVOLVES THE 1ST AMENDMENT TO THE UNITED STATES CONSTITUTION, WHICH PROVIDES: 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 THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

7. THIS CASE ALSO INVOLVES "FALSIFYING A RECORD" PURSUANT TO STATUTE MODEL PENAL CODE §224.4; 18 U.S.C.A. §1506, 2071, 2073. WHICH PROVIDES: IT IS A CRIME, UNDER STATE AND FEDERAL STATUTES, FOR A PERSON, KNOWING THAT HE HAS NO PRIVILEGE TO DO SO, TO FALSIFY OR OTHERWISE TAMPER WITH PUBLIC RECORDS WITH PURPOSE TO DECEIVE OR INJURE ANY ONE OR TO CONCEAL ANY WRONG DOING.

8. THIS CASE ALSO INVOLVES PROVISION "DE NOVO REVIEW" PURSUANT TO §28 U.S.C §1915 (a) AND §42 U.S.C. §1999 (e) (c) (2), WHICH PROVIDES IN APPEALS: DISMISSALS ARE SUBJECT TO "DE NOVO REVIEW."

9. THIS CASE INVOLVES PROVISIONS OF TITLE 28 OF THE UNITED STATES CODE WHICH PROVIDE: see, e.g., ARBON STEEL & SERV. CO. V. U.S., 315 F.3d 1332, 1334 (FED. CIR. 2003) (MATTERS OF CONSTITUTIONAL INTERPRETATION RECEIVE PLENARY REVIEW); BOYLE V. U.S., 200 F.3d 1369, 1371 (FED. CIR. 2000) (WHETHER COURT HAS JURISDICTION AND WHETHER COMPLAINT STATES A CLAIM ARE QUESTIONS OF LAW REVIEWED DE NOVO).

10. THIS CASE INVOLVES "SUBSTANTIVE DUE PROCESS" ALSO SOMETIMES REFERS TO THE PROTECTIONS OF THE FIRST, FOURTH, SIXTH, AND EIGHTH AMENDMENTS. THAT IS BECAUSE THESE AMENDMENTS INITIALLY APPLIED ONLY TO THE FEDERAL GOVERNMENT. THEY NOW APPLY TO THE STATES BECAUSE THEY ARE CONSIDERED TO BE "INCORPORATED" IN THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE, WHICH DOES APPLY TO THE STATES.

11. THIS CASE ALSO INVOLVES "UNLAWFUL ARREST / UNLAWFUL CONVICTION". POST CONVICTION RELIEF CHAPTER 12 §12.9, HABEAS PETITION AFTER GUILTY PLEAS. [1], [2], [3], [4]. WHICH PROVIDES:

• [1] → ISSUES COGNIZABLE IN HABEAS. << NOTES >> A PRISONER WHO HAS PLED GUILTY MAY CHALLENGE THE ADEQUACY OF COUNSEL AND THE VOLUNTARINESS OF HIS OR HER PLEA BY A HABEAS PETITION. ENTRY OF A VOLUNTARY AND INTELLIGENT PLEA OF GUILTY CONSTITUTES A WAIVER OF ALL BUT JURISDICTIONAL DEFENSES.

• [2] → PREJUDICE << NOTES >> TO SHOW PREJUDICE WHERE A PLEA OFFER LAPSED OR WAS REJECTED BECAUSE OF COUNSEL'S DEFICIENT PERFORMANCE,

CONTINUE ON TO THE NEXT PAGE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM II.[2] - PREJUDICE <<NOTES>>

PETITIONER MUST SHOW A REASONABLE PROBABILITY THAT HE OR SHE WOULD HAVE ACCEPTED THE OFFER HAD COUNSEL ASSISTED EFFECTIVELY, AND THAT THE PLEA WOULD HAVE BEEN ACCEPTED BY THE COURT.

[3] → EFFECT OF RECORD <<NOTES>>

STATEMENT ON RECORD AT GUILTY PLEA, AS TO THE ADEQUACY OF COUNSEL AND VOLUNTARINESS OF HIS OR HER PLEA, ARE CONCLUSIVE ABSENT A VALID REASON WHY HE OR SHE SHOULD BE PERMITTED TO CONTRAVERT HIS OR HER PRIOR STATEMENTS. (NO EVIDENTIARY HEARING ABSENT AN ALLEGATION IN THE PETITION OF A VALID REASON.)

[4] → BURDEN OF PROOF <<NOTES>>

THE PRISONER HAS THE BURDEN TO SHOW PROOF THAT ABSENT MISADVISE BY ATTORNEY, HE OR SHE WOULD NOT HAVE PLED GUILTY.

12. THIS CASE INVOLVES STATUTORY PROVISION 1-65 OF THE VIRGINIA CRIMINAL LAW AND PROCEDURE §65.2. > PART XV PROFESSIONAL RESPONSIBILITY > CHAPTER 65 EFFECTIVE ASSISTANCE OF LOYAL COUNSEL. WHICH PROVIDES: [1] THE STRICKLAND STANDARD., [2] STANDARDS FOR REVIEW OF TRIAL ACTIONS., [3] STANDARD FOR RELIEF., [4] HEAT OF BATTLE DECISIONS., [5] SOME SPECIFIC DERELICTIONS., STATE AS FOLLOWS:

[1] THE STRICKLAND STANDARD: §65.2. EFFECTIVE ASSISTANCE OF LOYAL COUNSEL. DEFINING THE REQUISITE LEVEL OF LAWYERLY SKILL AND ADJUDICATING DEPARTURES FROM IT ARE DIFFICULT PROBLEMS WITH SEVERE SYSTEMIC IMPLICATIONS. AS JUSTICE O'CONNOR POINTED OUT IN THE WATERSHED CASE OF STRICKLAND V. WASHINGTON, IT WILL NOT DO TO HAVE EVERY CRIMINAL TRIAL FOLLOWED BY A TRIAL OF DEFENSE COUNSEL, NOR WILL IT DO TO HAVE COUNSEL ABANDON CLIENTS WITH WHOM THEY HAVE BECOME EXASPERATED OR OUT OF PATIENCE.[18] FOR MANY YEARS IT WAS ACCEPTED THAT PERFECTION COULD NOT BE REQUIRED OF COUNSEL ACTING IN THE HEAT OF BATTLE.[19] ON THE OTHER HAND, FOR THE RIGHT TO COUNSEL TO BE MORE THAN AN EMPTY ONE, COUNSEL HAD TO PERFORM AT A LEVEL WHICH ENSURED A FAIR TRIAL.[20] THUS, IT IS ONLY WHEN THE FAIRNESS OF THE TRIAL IS IMPLICATED BY COUNSEL'S MISCONDUCT THAT A SIXTH AMENDMENT ISSUE ARISES; OTHERWISE, THE ERROR IS "HARMLESS."[21] CRONIC, JUST CITED, IS THE BEGINNING OF THE "ANTI-WINDFALL" RULE, A RULE WHICH DENIES AN APPELLANT THE BENEFIT OF ILLEGAL ACTS BY A JURY OR ACTS OF COUNSEL WHICH MAY HAVE BEEN WRONGFUL WHEN DONE AT THE TRIAL LEVEL BUT WHICH HAVE BEEN CHARACTERIZED BECAUSE THE LAW WAS CHANGED.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 12. [1] THE STRICKLAND STANDARD: §65.2. EFFECTIVE ASSIST. COUNSEL THUS IN LOCKHART V. FRETWELL, A CAPITAL MURDER CASE, TRIAL DEFENSE COUNSEL FAILED TO OBJECT TO USE OF AN AGGRAVATING CIRCUMSTANCE WHICH HAD BEEN CONDEMNED BY THE CONTROLLING UNITED STATES COURT OF APPEALS. THAT DECISION WAS REVERSED WHILE FRETWELL WAS PURSUING A A VARIETY OF APPELLATE AND COLLATERAL REMEDIES. AS THE CHIEF JUSTICE SAW THE MATTER, GIVING FRETWELL THE ADVANTAGE OF COUNSEL'S ERROR AT TRIAL WOULD RESULT IN A WINDFALL TO WHICH HE WASN'T ENTITLED. IF HE WERE TO BE RETRIED, THE CURRENT RULE WOULD DEPRIVE HIM OF ANY OBJECTION TO THE AGGRAVATING FACTOR, SO HIS CASE WOULD GO TO TO THE JURY IN THE SAME POSTURE AS IT DID THE FIRST TIME. NO ASPECT OF THE PROCESS WAS UNFAIR, IN THAT ANALYSIS.[22] IN 1983, THE VIRGINIA SUPREME COURT CONSIDERED STOKES V. WARDEN AND FOUND THAT NEARLY ALL STATE COURTS AND THE UNITED STATES CIRCUIT COURTS OF APPEAL HAD REPLACED THE FORMER "FARCE AND MOCKERY" TEST FOR COUNSEL'S FREQUENTLY, APPELLATE COURTS WILL LOOK TO THE MATTER OF PREJUDICE FIRST AND, SEEING NONE, WILL ASSUME ERROR IN THE COMPLAINED-OF CONDUCT, AND THEN HOLD IT HARMLESS.[31] THE FINDING OF NO PREJUDICE IS, HOWEVER, SUBJECT TO INDEPENDENT REVIEW IN FEDERAL HABEAS CORPUS PROCEEDINGS AND THE WRIT MAY LIE, EVEN UNDER THE STRICT NEW STANDARDS OF REVIEW IN 28 U.S.C. 2254 (d)(1).[32]

[2] STANDARDS FOR REVIEW OF TRIAL ACTIONS: §65.2. EFFECTIVE ASSISTANCE OF LOYAL COUNSEL. A REVIEWING COURT MUST AVOID HINDSIGHT AND SECOND-GUESSING IN THE APPRAISAL OF COUNSEL'S CONDUCT.[33] RATHER, COUNSEL'S CONDUCT SHOULD BE JUDGED DIFFERENTIALLY AND IN TERMS OF THE PERSPECTIVE AT THE TIME OF ACTION.[34] COUNSEL IS ENTITLED TO A STRONG PRESUMPTION THAT QUESTIONED CONDUCT FELL WITHIN THE BROAD RANGE OF REASONABLY EFFECTIVE ASSISTANCE.[35] COUNSEL IS ALSO ENTITLED TO JUDICIAL RECOGNITION THAT PREVAILING PROFESSIONAL NORMS REQUIRE COUNSEL TO BE AN ACTIVE PLAYER IN AN ADVERSARIAL TESTING PROCESS. THESE ACTIVITIES INCLUDE THE NEED TO MAKE STRATEGIC CHOICES AND THE NEED TO INVESTIGATE ADEQUATELY INTO ALL IMPORTANT PHASES OF THE CASE;[37] BUT NOT EVERY ERROR OR OMISSION AMOUNTS TO INEFFECTIVE ASSISTANCE.[38] COUNSEL WHO IS CORRECT ON THE LAW CANNOT BE INEFFECTIVE AS TO ACTIONS DICTATED BY THAT KNOWLEDGE.[39] MORE OVER, THE DUTY TO ASSIST DOES NOT OBLIGUE COUNSEL TO PARTICIPATE IN A CLIENT'S DESIRE TO PRESENT PERJURED TESTIMONY,[40] OR IN A CLIENT'S INSISTENCE ON FILING EVERY POSSIBLE APPELLATE ARGUMENT,[41] OR TO LABOR UNDER A CRIPLING CONFLICT AMONG CLIENTS.[42] QUESTIONS OF EFFECTIVE ASSISTANCE OF COUNSEL, SUCH AS WHETHER OR NOT COUNSEL AT TRIAL MADE A TACTICAL CHOICE AND WHETHER OR NOT THE DEFENDANT WAS PREJUDICED ARE MIXED QUESTIONS OF LAW AND FACT WHICH THE APPELLATE COURT WILL CONSIDER DE NOVO.[43] HOWEVER, THE DISTRICT COURTS FINDINGS OF FACT ARE SUBJECT TO THE "CLEARLY ERRONEOUS" STANDARD OF FED. R. CIV. PRO. 52 (a).[44]

CONTINUE ON TO THE NEXT PAGE.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 12. [2] → STANDARDS FOR REVIEW OF TRIAL ACTIONS. §65.2.

IN WASHINGTON, JUST CITED, THE TRIAL DEFENSE HAD ACCESS TO LABORATORY EVIDENCE WHICH MIGHT HAVE SUGGESTED THAT SOME THIRD MALE, NOT DEFENDANT OR THE VICTIM'S HUSBAND, LEFT SEMINAL FLUID STAINS ON THE VICTIM'S BED. USE OF THAT EVIDENCE COULD ALSO HAVE STRENGTHENED SOME PARTS OF THE COMMONWEALTH'S CASE, SO THE UNITED STATES DISTRICT COURT CONCLUDED THAT COUNSEL HAD MADE A CHOICE NOT TO USE THE EVIDENCE. THE COURT OF APPEALS, HOWEVER DISCOVERED ON REVIEW DE NOVO THAT DEFENSE COUNSEL WAS IGNORANT OF THE IMPLICATIONS OF THE LAB RESULTS AND HAD MADE NO INQUIRIES ABOUT THEIR SIGNIFICANCE. THUS, THE COURT OF APPEALS REVERSED THE FACTUAL FINDINGS OF THE TRIAL JUDGE AND FOUND A DENIAL OF EFFECTIVE ASSISTANCE. IT ALSO FOUND THAT THE ERROR WAS NOT PREJUDICIAL BECAUSE THE LAB EVIDENCE WAS INCONCLUSIVE AND THE PROSECUTION'S CASE WAS OVERWHELMING.[45]

[3] **STANDARD FOR RELIEF. §65.2. EFFECTIVE ASSISTANCE OF LOYAL COUNSEL.**

ACTUAL (INCLUDING "CONSTRUCTIVE") DENIALS OF COUNSEL ARE PRESUMED TO HAVE BEEN PREJUDICIAL, i.e., WHERE COUNSEL WAS NOT PHYSICALLY PRESENT OR FUNCTIONING DURING A CRITICAL STAGE OF THE PROCESS, OR WHEN COUNSEL SUFFERED FROM AN ACTUAL CONFLICT OF INTEREST, THE COURT WILL GRANT RELIEF AND NOT SPECULATE ABOUT WHAT MIGHT HAVE BEEN.[46] THESE ACTUAL OR CONSTRUCTIVE DENIALS ARE ALL ATTRIBUTABLE TO THE GOVERNMENT, SO A PRESUMED PREJUDICE RULE IS APPROPRIATE, BUT WHERE THE FAULT IS COUNSEL'S, THE GOVERNMENT COULD NOT HAVE ACTED TO PREVENT IT. UNDER SUCH CIRCUMSTANCES, IT IS NOT BURDENSOME TO REQUIRE PROOF THAT THE ERROR OF COUNSEL PREJUDICED THE APPELLANT BY ADVERSELY AFFECTING THE DEFENSE.[47] FOR EXAMPLE COUNSEL'S FAILURE TO OBJECT TO OVERSTATEMENTS ABOUT DEFENDANT'S CRIMINAL RECORD WHICH LED TO USE OF A HARSHER SENTENCING GUIDELINE WAS INEFFECTIVE UNDER THE STRICKLAND STANDARD.[48] INDEED ANY COUNSEL ERROR WHICH RESULTS IN INCREASED JAIL TIME WILL MEET THE STRICKLAND PREJUDICE TEST.[49]

IT APPEARS THAT THESE APPARENTLY SEPARATE TRACKS ARE COMING TOGETHER, IN THAT EGREGIOUS COUNSEL FAULT MAY AMOUNT TO AN "ABSENSE." THUS, ASSERTION THAT COUNSEL DID NOTHING TO KEEP APPELLATE RIGHTS ALIVE, THAT HE TOLD THE DEFENDANT NOTHING ABOUT HIS APPELLATE RIGHTS AND THAT HE MISLED THE DEFENDANT'S FAMILY ABOUT THE STATUS OF THE CASE ESTABLISHED CAUSE FOR THE FAILURE TO FILE AN APPEAL. IN SUCH CIRCUMSTANCES, PREJUDICE WILL BE PRESUMED, AND THE WRIT SHOULD LIE.[50] THE MEASURE OF THE ADVERSE EFFECT SUFFICIENT TO WARRANT RELIEF ON DIRECT APPEAL IS THE SAME AS THAT USED IN CASES WHERE THE GOVERNMENT HAS FAILED TO PROVIDE EXCULPATORY INFORMATION TO THE DEFENSE. THE APPELLANT MUST SHOW A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, THE OUTCOME OF THE CASE WOULD HAVE DIFFERED.[51]

IN STRICKLAND, JUSTICE O'CONNOR DEFINED A REASONABLE PROBABILITY AS ONE "SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME." AS DISCUSSED IN §65.5[3], WITH RESPECT TO COLLATERAL PROCEEDINGS, THE PETITIONER MUST SHOW NOT ONLY [redacted]

CONTINUE ON TO THE NEXT PAGE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 12.[3] → **STANDARD FOR RELIEF.** §65.2. EFFECTIVE ASSIST. INEFFECTIVENESS BUT ACTUAL PREJUDICE. FROM THIS, IT FOLLOWS THAT FAILURE TO ALLEGE PREJUDICE WILL DEFEAT THE APPEAL OR COLLATERAL ATTACK.[53] IF THERE IS A SUFFICIENT ALLEGATION OF ERROR CAN BE DISMISSED ONLY ON A FINDING THAT COUNSEL'S ERROR WAS HARMLESS.[54] SUCH FINDINGS HAVE BEEN MADE RECENTLY IN CASES INVOLVING SUBSTANTIAL, BUT FORMAL DENIALS OF DUE PROCESS.[55] IT MUST BE NOTED THAT SOME ERROR IS "STRUCTURAL" AND CANNOT BE HELD HARMLESS. THERE IS A FINE CATALOG OF BOTH TYPES OF ERROR IN EMMETT V. WARDEN.[56]

[4] → **HEAT OF BATTLE DECISIONS.** §65.2. EFFECTIVE ASSISTANCE OF LOYAL COUNSEL. ALTHOUGH IT HAS BEEN WELL SAID THAT "[T]HERE IS NOTHING STRATEGIC OR TACTICAL ABOUT IGNORANCE,"[57] CONSIDERABLE LATITUDE WILL BE GIVEN FOR THE TACTICAL CHOICES MADE BY COUNSEL IN THE THICK OF THE ADVERSARY PROCESS.[58] SOME GOOD EXAMPLES ARE:

1. COUNSEL MAY DECIDE TO AVOID DEFENSE AS TO CERTAIN AREAS SO AS NOT TO MOOT OBJECTIONS PREVIOUSLY OFFERED, BUT THE FAILURE TO OFFER ANY DEFENSE IS INEFFECTIVE PER SE.[59]
2. COUNSEL MAY DECIDE TO ACCEPT INFORMAL DISCOVERY FROM THE PROSECUTOR TO AVOID A PRELIMINARY HEARING WHICH MAY BE DISADVANTAGEOUS.[60]
3. COUNSEL MAY CHOOSE TO CALL SOME WITNESSES AND NOT CALL OTHERS,[61] OR TO REFRAIN FROM CROSS EXAMINATION,[62] OR TO PURSUE SOME INVESTIGATIONS AND NOT OTHERS.[63]
4. COUNSEL MAY RECOMMEND THAT THE CLIENT CONFESS AND MAY MAKE CHOICES ABOUT THE DEGREE OF DEFENSE PARTICIPATION IN A PRELIMINARY HEARING,[64] OR MAY RECOMMEND CONFESSION AS TO SOME CHARGES AND DEFENDING VIGOROUSLY ON OTHERS.[65]
5. COUNSEL MAY DECIDE AGAINST REQUESTING AVAILABLE INSTRUCTIONS.[66]
6. COUNSEL MAY RELY ON CONTROLLING LAW IN THE CIRCUIT, ALTHOUGH THAT LAW IS UNDER ATTACK IN THE SUPREME COURT.[67]
7. COUNSEL MAY MAKE A DECISION NOT TO AGGRAVATE THE JURY BY FURTHER OBJECTIONS. THIS IS A "STANDARD TRIAL TACTIC," ALTHOUGH NEVER OBJECTING HAS BEEN CHARACTERIZED AS "FORENSIC SUICIDE." AS NOTED IN §65.2[3] ABOVE, STRICKLAND V. WASHINGTON APPLIES HERE.[68]
8. IN A CIRCUMSTANCIAL EVIDENCE CASE, COUNSEL MAY RELY ON THE CLIENT'S REASONABLE VERSION OF EVENTS, REJECTING UNCERTAIN AVENUES OF EXPLORATION WITH EXPERT WITNESS.[69]
9. IN A GANG-LEADER'S TRIAL FOR ASSAULT BY MOB, COUNSEL REFRAINED FROM INTRODUCING ANY EVIDENCE IN MITIGATION ON GROUNDS THAT CROSS-EXAMINATION AND REBUTTAL COULD HAVE PRODUCED MORE EVIDENCE OF HIS CLIENT'S LONG AND UNFAVORABLE HISTORY. THIS BLOCKED ALL PROSECUTION INPUT, BUT COUNSEL WAS STILL ABLE TO ARGUE SIGNIFICANT FAVORABLE EVIDENCE ALREADY IN THE RECORD.[70]

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 12. § 65.2. EFFECTIVE ASSISTANCE OF LOYAL COUNSEL.

[5] SOME SPECIFIC DERELICTIONS.

HEREWITH ARE A FEW EXAMPLES OF COUNSEL CONDUCT FOUND INEFFECTIVE:

1. DEFENSE COUNSEL FAILED TO CROSS-EXAMINE A CRUCIAL WITNESS WHO WAS A FORMER CLIENT. THIS WAS AN ACTUAL CONFLICT, SO ERROR PER SE.[71]

2. DEFENSE COUNSEL FAILED TO OBJECT TO AN INSTRUCTION FOUND VIOLATIVE ~~WHICH~~ OF DUE PROCESS BY THE SUPREME COURT OF THE UNITED STATES SEVEN MONTHS EARLIER.[72]

3. DEFENSE COUNSEL'S CHOICE OF AN "ALL OR NOTHING" DEFENSE TO A MURDER CHARGE MIGHT HAVE BEEN A VALID TACTIC, BUT HE OVERLOOKED THE FACT THAT HIS OWN CLIENT'S TESTIMONY FORCED THE JURY TO CONVICT.[73]

4. DEFENSE COUNSEL'S COMPLETE FAILURE TO SEEK DISCOVERY WHICH COULD HAVE SUPPORTED A MOTION TO SUPPRESS WAS PERVASIVE ERROR.[74]

5. DEFENSE ~~COUNSEL~~ COUNSEL, APPOINTED IMMEDIATELY BEFORE TRIAL, WAS INEFFECTIVE IN ADVISING CLIENT TO PLEAD GUILTY TO SEVEN FELONIES.[75]

6. COUNSEL WHO DID NOTHING TO ADVISE OR SECURE THE CLIENT'S RIGHTS EXCEPT SECURE THE PLEA BARGAIN DEFENDANT WANTED WAS INEFFECTIVE.[76] AS WAS COUNSEL WHO ONLY ACQUIESCED IN THE CLIENT'S WISHES.[77]

7. FAILURE TO FILE A NOTICE OF APPEAL WHEN SPECIFICALLY REQUESTED TO DO SO IS ERROR AND PRESUMED PREJUDICIAL IRRESPECTIVE OF THE MERITS OF THE APPEAL.[78] THE ANDERS ISSUE IS DISCUSSED IN THE NEXT SUBSECTION.

8. IN A CASE WHERE THE CLIENT'S VERACITY WAS CRUCIAL, COUNSEL'S FAILURE TO DO AN EASY FOLLOW-UP ON CLIENT'S AVERMENT THAT TWO OF THE FELONY CONVICTIONS LISTED BY THE GOVERNMENT AGAINST HIM HAD BEEN VACATED WAS INEFFECTIVE REPRESENTATION UNDER THE CIRCUMSTANCES.[79]

9. COUNSEL WAS INEFFECTIVE DURING SENTENCING PHASE OF CAPITAL MURDER CASE BY NOT ADDUCING SIGNIFICANT, AVAILABLE EVIDENCE OF DEFENDANT'S IMPAIRED MENTALITY AND DISADVANTAGE LIFE, PLUS POSITIVE EVIDENCE WEIGHING AGAINST A FINDING OF FUTURE DANGEROUSNESS.[80]

10. COUNSEL FAILED TO OBJECT TO AN INSTRUCTION WHICH TOLD THE JURY TO FIND GUILT IF THERE WAS NO PROOF ON ONE ELEMENT.[81]

11. COUNSEL FAILED TO INVESTIGATE PETITIONER'S PERSONAL HISTORY BEYOND A PRESENTENCE INVESTIGATION REPORT AND RECORDS FROM THE DEPARTMENT OF SOCIAL SERVICES.[82]

12. COUNSEL FAILED TO MAKE A DOUBLE JEOPARDY OBJECTION WHEN CLIENT WAS CHARGED WITH AGGRAVATED ~~ASSAULT~~ INVOLUNTARY MANSLAUGHTER AND COMMON LAW INVOLUNTARY MANSLAUGHTER.[83]

13. AT THE TIME OF CLIENT'S SENTENCING PROCEEDINGS, COUNSEL HAD A SECOND CLIENT WHO, WITH HIS FAMILY, HAD BEEN ENGAGED IN A SHOOTING WAR WITH FIRST CLIENT AND HIS FAMILY. EFFORTS TO MITIGATE THE SENTENCE ON WEAPONS CHARGES AGAINST FIRST CLIENT WOULD HAVE INVOLVED PROVING A VERY UNFAVORABLE CASE AGAINST CLIENT TWO. CONFLICT ESTABLISHED; CASE REMANDED FOR A DETERMINATION ABOUT PREJUDICE.[84]

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 12. EFFECTIVE ASSISTANCE OF LOYAL COUNSEL. §65.2.

[5] SOME SPECIFIC DERELICTIONS.

14. COUNSEL FAILED TO DISCERN THAT TWO CHARGES INVOLVED IDENTICAL ELEMENTS, AND FAILED TO MAKE A DOUBLE JEOPARDY OBJECTION. 84.1

15. IN A CAPITAL CASE, DEFENSE COUNSEL INTRODUCED EVIDENCE AT THE SENTENCING HEARING THAT HIS CLIENT WAS MORE LIKELY TO BE A FUTURE DANGER BECAUSE OF HIS RACE. 84.2.

13. THIS CASE ALSO INVOLVES VA. CODE ANN §8.01-654 — TITLE 8.01. CIVIL REMEDIES AND PROCEDURE > CHAPTER 25. EXTRAORDINARY WRITS > ARTICLE 3. HABEAS CORPUS. §8.01-654. WHEN AND BY WHOM WRIT GRANTED; WHAT PETITION TO CONTAIN. A.(1),(2), B.(1),(2),(3),(4),(5). WHICH PROVIDES TO THIS CASE SPECIFICLY.

A.(1). THE WRIT OF HABEAS CORPUS AND SUBJICIENDUM SHALL BE GRANTED FORTHWITH BY THE SUPREME COURT OR ANY CIRCUIT COURT, TO ANY PERSON WHO SHALL APPLY FOR THE SAME BY PETITION, SHOWING BY AFFIDAVITS OR OTHER EVIDENCE PROBABLE CAUSE TO BELIEVE THAT HE IS DETAINED WITHOUT LAWFUL AUTHORITY.

(2). A PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM, OTHER THAN A PETITION CHALLENGING A CRIMINAL CONVICTION OR SENTENCE, SHALL BE BROUGHT WITHIN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES. A HABEAS CORPUS PETITION ATTACKING A CRIMINAL CONVICTION OR SENTENCE, EXCEPT AS PROVIDED IN §8.01-654.1 FOR CASES IN WHICH A DEATH SENTENCE HAS BEEN IMPOSED, SHALL BE FILED WITHIN TWO YEARS FROM THE DATE OF FINAL JUDGMENT IN THE TRIAL COURT OR WITHIN ONE YEAR FROM EITHER FINAL DISPOSITION OF THE DIRECT APPEAL IN STATE COURT OR THE TIME FOR FILING SUCH APPEAL HAS EXPIRED, WHICH EVER IS LATER.

B.(1) WITH RESPECT TO ANY SUCH PETITION FILED, BY A PETITIONER HELD UNDER CRIMINAL PROCESS, AND SUBJECT TO THE PROVISIONS OF SUBSECTION C OF THIS SECTION AND OF §17.1-310, ONLY THE CIRCUIT COURT WHICH ENTERED THE ORIGINAL JUDGMENT ORDER OF CONVICTION OR CONVICTIONS COMPLAINED OF IN THE PETITION SHALL HAVE AUTHORITY TO ISSUE WRITS OF HABEAS CORPUS. IF A DISTRICT COURT ENTERED THE ORIGINAL JUDGMENT ORDER OF CONVICTION OR CONVICTIONS COMPLAINED OF IN THE PETITION, ONLY THE CIRCUIT COURT FOR THE CITY OR COUNTY WHEREIN THE DISTRICT COURT SITS SHALL HAVE AUTHORITY TO ISSUE WRITS OF HABEAS CORPUS. HEARINGS ON SUCH PETITION, WHERE GRANTED IN THE CIRCUIT COURT, MAY BE HELD AT ANY CIRCUIT COURT WITHIN THE SAME CIRCUIT AS THE CIRCUIT COURT IN WHICH THE PETITION WAS FILED, AS DESIGNATED BY THE JUDGE THEREOF.

13 ½. JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO 28 U.S.C.S. 1343 (a)(3) IN THAT THIS ACTION SEEKS TO REDRESS THE DEPRIVATION UNDER COLOR OF STATE LAW, OR RIGHTS SECURED BY ACTS OF CONGRESS PROVIDING FOR EQUAL RIGHTS OF PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM § 8.01-654. WHEN AND BY WHOM WRIT GRANTED; WHAT PETITION TO CONTAIN. B.(2)

B.(2) → SUCH PETITION SHALL CONTAIN ALL ALLEGATIONS THE FACTS OF WHICH ARE KNOWN TO PETITIONER AT THE TIME OF FILING AND SUCH PETITION SHALL ENUMERATE ALL PREVIOUS APPLICATIONS AND THEIR DISPOSITION. NO WRIT SHALL BE GRANTED ON THE BASIS OF ANY ALLEGATION THE FACTS OF WHICH PETITIONER HAD KNOWLEDGE AT THE TIME OF FILING ANY PREVIOUS PETITION. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A PETITIONER'S FIRST PETITION FOR A WRIT OF HABEAS CORPUS WHEN THE SOLE ALLEGATION OF SUCH PETITION IS THAT THE PETITIONER WAS DEPRIVED OF THE RIGHT TO PURSUE AN APPEAL FROM A FINAL JUDGMENT OF CONVICTION IS THAT THE PETITIONER WAS DEPRIVED OF THE RIGHT TO PURSUE AN APPEAL FROM A FINAL JUDGMENT OF CONVICTION OR PROBATION REVOCATION, EXCEPT THAT SUCH PETITION SHALL CONTAIN ALL FACTS PERTINENT TO THE DENIAL OF APPEAL THAT ARE KNOWN TO THE PETITIONER AT THE TIME OF THE FILING, AND SUCH PETITION SHALL CERTIFY THAT THE PETITIONER HAS FILED NO PRIOR HABEAS CORPUS PETITIONS ATTACKING THE CONVICTION OR PROBATION REVOCATION.

B.(3) SUCH PETITION MAY ALLEGE DETENTION WITHOUT LAWFUL AUTHORITY THROUGH CHALLENGE TO A CONVICTION, ALTHOUGH THE SENTENCE IMPOSED FOR SUCH CONVICTION IS SUSPENDED OR IS TO BE SERVED SUBSEQUENTLY TO THE SENTENCE CURRENTLY BEING SERVED BY PETITIONER.

B.(4) IN THE EVENT THE ALLEGATION OF ILLEGALITY OF THE PETITIONER'S DETENTION CAN BE FULLY DETERMINED ON THE BASIS OF RECORDED MATTER, THE COURT MAY MAKE IT DETERMINATION WHETHER SUCH WRIT SHOULD ISSUE ON THE BASIS OF THE RECORD.

B.(5) THE COURT SHALL GIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING A DETERMINATION ON THE RECORD OR AFTER HEARING, TO BE MADE A PART OF THE RECORD AND TRANSCRIBED.

13. THIS CASE ALSO INVOLVES PREJUDICE IN CRIMINAL PROCEEDINGS § 1 FAIR TRIAL § 46.3, § 46.4. CRIMINAL LAW.

14. THIS CASE INVOLVES STATUTORY PROVISION PURSUANT TO ARTICLE 3. HABEAS CORPUS § 17.1-310 AND TITLE 28 UNITED STATES CODE 28. § 2254 WHICH PROVIDES: STATE CUSTODY; REMEDIES IN FEDERAL COURTS. CASE # CL 2019 15095 AUG. 13, 2020.

(A) THE SUPREME COURT, A JUSTICE THERE OF, A CIRCUIT JUDGE, OR A DISTRICT COURT SHALL ENTERTAIN AN APPLICATION FOR A WRIT OF HABEAS CORPUS IN BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT ONLY ON THE GROUND THAT HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES. (COPY OF HABEAS CORPUS IS ATTACHED) SEE APPENDIX EXIBIT.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 14. ARTICLE 3. HABEAS CORPUS §17.1-310 AND TITLE 28 UNITED STATES CODE 28. §2254., WHICH PROVIDES. STATE CUSTODY; REMEDIES IN FEDERAL COURTS.

B(1) [redacted] AN APPLICATION FOR A WRIT OF HABEAS CORPUS ON BEHALF OF A PERSON IN CUSTODY PURSUANT TO THE JUDGEMENT OF A STATE COURT SHALL NOT BE GRANTED UNLESS IT APPEARS THAT —

(A) THE APPLICANT HAS EXHAUSTED THE REMEDIES AVAILABLE IN THE COURT OF THE STATE; OR

(B)(i). THERE IS AN ABSENCE OF AVAILABLE STATE CORRECTIVE PROCESS; OR

(ii). CIRCUMSTANCES EXIST THAT RENDER SUCH PROCESS INEFFECTIVE TO PROTECT THE RIGHT OF THE APPLICANT.

15. THIS CASE ALSO INVOLVES STATUTORY PROVISION OF UNITED STATES TITLE 28 §2243. WHICH PROVIDES:

28§2243. ISSUANCE OF WRIT; RETURN; HEARING; DECISION. AND § POWER TO GRANT WRIT.

A, COURT, JUSTICE OR JUDGE ENTERTAINING AN APPLICATION FOR A WRIT OF HABEAS CORPUS SHALL FORTH WITH AWARD THE WRIT OR ISSUE AN ORDER DIRECTING THE RESPONDENT TO SHOW CAUSE WHY THE WRIT SHOULD NOT BE GRANTED, UNLESS IT APPEARS FROM THE APPLICATION THAT THE APPLICANT OR PERSON DETAINED IS NOT ENTITLED THERE TO.

THE WRIT, OR ORDER TO SHOW CAUSE SHALL BE DIRECTED TO THE PERSON HAVING CUSTODY OF THE PERSON DETAINED. IT SHALL BE RETURNED WITHIN 3 DAYS UNLESS FOR GOOD CAUSE ADDITIONAL TIME, —NOT EXCEEDING TWENTY DAYS, IS ALLOWED.

THE PERSON TO WHOM THE WRIT OR ORDER IS DIRECTED SHALL MAKE A RETURN CERTIFYING THE TRUE CAUSE OF THE DETENTION.

WHEN THE WRIT OR ORDER IS RETURNED A DAY SHALL BE SET FOR HEARING; NOT MORE THAN FIVE DAYS AFTER THE RETURN UNLESS FOR GOOD CAUSE ADDITIONAL TIME IS ALLOWED.

UNLESS THE APPLICATION FOR THE WRIT AND THE RETURN PRESENT ONLY ISSUES OF LAW THE PERSON TO WHOM THE WRIT IS DIRECTED SHALL BE REQUIRED TO PRODUCE AT THE HEARING THE BODY OF THE PERSON DETAINED.

THE APPLICANT OR THE PERSON DETAINED MAY, UNDER OATH, DENY ANY OF THE FACTS SET FORTH IN THE RETURN OR ALLEGE ANY OTHER MATERIAL FACTS.

THE RETURN AND ALL SUGGESTIONS MADE AGAINST IT MAY BE AMENDED, BY LEAVE OF COURT, BEFORE OR AFTER BEING FILED.

THE COURT SHALL SUMMARILY HEAR AND DETERMINE THE FACTS, AND DISPOSE OF THE MATTER AS LAW AND JUSTICE REQUIRE. (JUNE, 25 1948, C. 646, 62 STAT. 965.)

16. THIS CASE ALSO INVOLVES STATUTORY PROVISION HABEAS CORPUS TITLE 28 OF THE UNITED STATES CODE § POWER TO GRANT WRIT. (C)(1)(2)(3) [redacted].

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUE FROM 16. § POWER TO GRANT WRIT (C)(1)(2)(3) [redacted], WHICH PROVIDES:

(C) THE WRIT OF HABEAS CORPUS SHALL NOT EXTEND TO A PRISONER UNLESS —

(1) HE IS IN CUSTODY ~~UNDER OR~~ BY COLOR OF THE AUTHORITY OF THE UNITED STATES OR IS COMMITTED FOR TRIAL BEFORE SOME COURT THERE OF; OR

(2) HE IS IN CUSTODY FOR AN ACT DONE OR OMITTED PURSUANCE OF AN ACT OF CONGRESS, OR AN ORDER, PROCESS, JUDGEMENT OR DECREE OF A COURT OR JUDGE OF THE UNITED STATES; OR:

(3) HE IS IN CUSTODY IN VIOLATION OF THE CONSTITUTION OR LAWS OR TREATIES OF THE UNITED STATES; OR

[redacted]

17. THIS CASE ALSO INVOLVES CRIMINAL AND FEDERAL RULE OF APPELLATE PROCEDURE AMENDMENTS RECEIVED TO JANUARY 21, 2005. PAGE. 365 JUDGMENTS OF DISTRICT COURTS. PURSUANT TO RULE 4. APPEAL AS OF RIGHT WHEN TAKEN (a) APPEAL IN A CIVIL CASE. (4) EFFECT OF A MOTION ON A NOTICE OF APPEAL. (A); WHICH PROVIDES:

[redacted].

(A) IF A PARTY TIMELY FILES IN THE DISTRICT COURT ANY OF THE FOLLOWING MOTIONS UNDER THE FEDERAL RULES OF CIVIL PROCEDURES, THE TIME TO FILE AN APPEAL RUNS FOR ALL PARTIES FROM THE ENTRY OF THE ORDER DISPOSING OF THE LAST SUCH REMAINING MOTION:

(i) FOR JUDGMENT UNDER RULE (50) (b);

*(ii) TO AMEND OR MAKE ADDITIONAL FACTUAL FINDINGS UNDER RULE 52 (b), WHETHER OR NOT GRANTING THE MOTION WOULD ALTER THE JUDGMENT;

(iii) FOR ATTORNEY'S FEES UNDER RULE 54 IF THE DISTRICT COURT EXTENDS THE TIME TO APPEAL UNDER RULE 58;

(iv) TO ALTER OR AMEND THE JUDGEMENT UNDER RULE 59;

(V) FOR A NEW TRIAL UNDER RULE 59; OR

(VI) FOR RELIEF UNDER RULE 60 IF THE MOTION IS FILED NO LATER THAN 10 DAYS AFTER THE JUDGMENT IS ENTERED.

18. THIS CASE INVOLVES PRISONERS LITIGATION REFORM ACT; THE RIGHTS OF PRISONERS PROVISIONS. CONDITIONS OF CONFINEMENT; (PRLA) 17. A. CRUEL AND UNUSUAL PUNISHMENT. WHICH PROVIDES: PART. I

- 1) THE OBJECTIVE COMPONENT: CRUEL CONDITIONS. PG 8.
- 2) THE SUBJECTIVE COMPONENT: DELIBERATE INDIFFERENCE. PG. 13.

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONTINUED FROM 18.(PLRA), THE RIGHTS OF PRISONERS, CONDITIONS OF CONFINEMENT

17. WHICH PROVIDE:

F. MEDICAL CARE Pg 36.

- 2) SERIOUS MEDICAL NEEDS. Pg. 54.
- 5) NEGLIGENCE AND MALPRACTICE Pg. 104

G. PERSONAL SAFETY Pg. 108.

- 1) PROTECTION FROM INMATE ASSAULT Pg. 108.

a) DELIBERATE INDIFFERENCE STANDARD. Pg. 108. "(RECKLESS DISREGARD)"

e) CAUSATION AND SUING THE RIGHT DEFENDANTS. Pg. 120. § 42 U.S.C. § 1983. "CAUSATION"; 42 U.S.C.A § 15601 et. seq. 42 U.S.C.A § 15607. "FAIL TO ACT ON RISKS THE OFFICERS KNOW ABOUT".

- 2) USE OF FORCE BY STAFF. Pg. 127. (ASSAULTED BY SHERIFF OFFICERS)

a) THE CONSTITUTIONAL STANDARDS. Pg. 128.

2) PRETRIAL DETAINEES Pg. 128

b) APPLYING THE STANDARDS Pg. 130

1) AMOUNT OF FORCE Pg. 130

2) INJURY Pg. 132

3) MALICE Pg. 134

4) JUSTIFICATIONS FOR USE OF FORCE Pg 135

19. THIS CASE ALSO INVOLVES ACTIONS, DEFENSES, AND RELIEF PURSUANT TO (PLRA) WHICH PROVIDES: CIVIL RIGHTS ACTIONS.

42 U.S.C. § 1983: CIVIL RIGHTS ACTIONS AGAINST STATE AND LOCAL OFFICIALS AND PRIVATE CONTRACTORS.

a) RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY FEDERAL LAW. b) PERSONS. C) COLOR OF STATE LAW AND SUING PRIVATE CONTRACTORS.

42 U.S.C. § 1983. WHICH PROVIDES:

EVERY PERSON WHO, UNDER COLOR OF ANY STATUTE, ORDINANCE, REGULATION, CUSTOM, OR USAGE, OF ANY STATE OR TERRITORY OR THE DISTRICT OF COLUMBIA, SUBJECTS, OR CAUSES TO BE SUBJECTED, ANY CITIZEN OF THE UNITED STATES OR OTHER PERSON WITHIN THE JURISDICTION THEREOF TO THE [redacted] DEPRIVATION OF ANY RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED BY THE CONSTITUTION AND LAW, SUIT IN EQUITY, OR OTHER PROPPER PROCEEDING FOR REDRESS, EXCEPT THAT IN ANY ACTION BROUGHT AGAINST A JUDICIAL OFFICER FOR AN ACT OR OMISSION TAKEN IN SUCH OFFICER'S JUDICIAL CAPACITY, INJUNCTIVE RELIEF SHALL NOT BE GRANTED UNLESS A DECLARATORY DECREE WAS VIOLATED OR DECLARATORY DECREE WAS VIOLATED OR DECLARATORY RELIEF WAS UNAVAILABLE.

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CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

CONTINUED FROM 19. 42 U.S.C. §1983.

FOR THE PURPOSES OF THIS SECTION, ANY ACT OF CONGRESS APPLICABLE EXCLUSIVELY TO THE DISTRICT OF COLUMBIA SHALL BE CONSIDERED TO BE A STATUTE OF THE DISTRICT OF COLUMBIA.

NOTES: IN PLAIN ENGLISH, THIS MEANS THAT ANY ONE WHOSE RIGHTS UNDER THE CONSTITUTION OR FEDERAL STATUTES HAVE BEEN VIOLATED BY STATE OR LOCAL OFFICIALS CAN SUE THOSE OFFICIALS UNDER §1983. A PLAINTIFF SUING UNDER §1983 MUST ALLEGE TWO "ELEMENTS":

1) "THAT SOMEONE "PERSON" HAS DEPRIVED HIM OF A FEDERAL RIGHT(S)" AND

2) THAT "THE PERSON WHO HAS DEPRIVED HIM OF THAT RIGHT ACTED UNDER COLOR OF STATE OR TERRITORIAL LAW."

20. THIS CASE INVOLVES **"CLEAR ABSENCE OF ALL JURISDICTION"** IN PLENARY REVIEW OF CONVICTION OF THE JUDGE'S "DUE PROCESS CLAUSE", AND COMPLETE DEPARTURE FROM JUDICIAL DUTY. REASON FOR DENYING MR. GOMEZ'S RIGHT IS A DEPARTURE FROM JUDICIAL ROLE

21. THIS CASE ALSO INVOLVES STATUTORY PROVISION RULE 60 OF THE FEDERAL RULE OF CIVIL PROCEDURES. RELIEF FROM JUDGMENT OR FINAL ORDER. WHICH PROVIDES:

RULE 60, FED. R. CIV. P. PERMITS A FINAL JUDGMENT OR ORDER TO BE CORRECTED OR VACATED UNDER CERTAIN CIRCUMSTANCES.

- ONE PART OF THE RULE PROVIDES THAT CLERICAL ERRORS IN JUDGMENTS, ORDERS, OR OTHER PARTS OF THE RECORD, AND ERRORS ARISING FROM OVERSIGHT OR OMISSIONS, MAY BE CORRECTED AT ANY TIME. [redacted]

RULE 60 (b)(6). "TO JUSTIFY RELIEF UNDER SUBSECTION (6) A PARTY MUST SHOW "EXTRAORDINARY CIRCUMSTANCES" SUGGESTING THAT THE PARTY IS FAULTLESS IN DELAY.

22. THIS CASE ALSO INVOLVES STATUTORY PROVISION OF FEDERAL RULE OF CIVIL PROCEDURE [redacted] 18 (a) WHICH PROVIDES THAT: "A PARTY ASSERTING A CLAIM, COUNTER-CLAIM, CROSS-CLAIM, OR THIRD PARTY CLAIM MAY JOIN, AS INDEPENDENT OR ALTERNATIVE CLAIMS, AS MANY CLAIMS AS IT WANTS (HAS) AGAINST AN OPPOSING PARTY." 20 (2)(A)(B)

NEVERTHELESS, WHEN A PLAINTIFF SEEKS TO BRING MULTIPLE CLAIMS AGAINST MULTIPLE DEFENDANTS, HE MUST ALSO SATISFY FEDERAL RULE OF CIVIL PROCEDURE 20 WHICH PROVIDES: 20 (2)(A)(B)

(2) DEFENDANTS: PERSONS... MAY BE JOINED IN ONE ACTION AS DEFENDANTS IF:

(A) ANY RIGHT TO RELIEF IS ASSERTED AGAINST THEM JOINTLY, SEVERALLY, OR IN THE ALTERNATIVE WITH RESPECT TO OR ARISING OUT OF THE SAME TRANSACTION, OCCURRENCE, OR SERIES OF TRANSACTIONS OR OCCURRENCES; AND

(B) ANY QUESTION OF LAW OR FACT COMMON TO ALL DEFENDANTS WILL ARISE IN THE ACTION.

23. 18 U.S.C. § 242 DEPRIVATION OF CIVIL RIGHTS:

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

VIOLATIONS OF STATE OR LOCAL LAW OR PRISON REGULATIONS CANNOT BE REMEDIED UNDER 42 U.S.C §1983 UNLESS THEY ALSO VIOLATE YOUR FEDERAL LAW RIGHTS. (DUE PROCESS)
PART 6, §II. RULES OF PROF. CONDUCT, 1.16 DECLINING OR TERMINATING REPRESENTATION. (a)(1)(6) COMMENT [4]
O.P. 720.1. ACCESS TO HEALTH SERVICES. COV § 53.1-10, § 53.1-25, § 53-1-32, § 53.1-40.1, § 54.1-2986, 28. § 2243
RULE 52 (a) STANDARD FOR REVIEW OF TRIAL ACTIONS §65.2 "CLEARLY ERRONEOUS." FED.R.CIV.P.
ARBON STEEL & SERV. CO. V. U.S., 315 F. 3d 1332, 1334. (FED. CIR. 2003)

18. §241, CONSPIRACY TO DEPRIVATION OF CIVIL RIGHTS,
18. § 241. DEPRIVATION OF CIVIL RIGHTS. 4TH 5TH, 6TH, 8TH AND 14TH AMENDMENT
5 U.S.C § 702 WAIVES IMMUNITY FOR ALL CLAIMS AGAINST FEDERAL OFFICERS OR AGENCIES WHO ACT IN THEIR OFFICIAL CAPACITY OR FAILED TO ACT UNDER COLOR OR LEGAL AUTHORITY.
28 U.S.C §1343 (a)(3) THIS ACTION SEEKS TO REDRESS THE DEPRIVATION, UNDER COLOR OF LAW OF THE STATE, OF RIGHTS SECURED.
RULE 70 (a), FEDERAL RULE OF CIVIL PROCEDURE.

STATUTES AND RULES
VIRGINIA CRIMINAL PROCEDURE CONSTITUTIONAL AND STATUTORY

§ 2:6 CONSEQUENCES OF AN ILLEGAL ARREST, § 3:5 SCOPE OF INVESTIGATION, § 7:8 SIXTH AMENDMENT RIGHT TO COUNSEL, § 7:9. CORROBORATION. § 7:15. CONSEQUENCES OF ASSERTION, § 9:6. WITHDRAWAL OF COUNSEL, § 9:7. EFFECTIVE ASSISTANCE OF COUNSEL, § 11:2. RIGHT TO A PRELIMINARY HEARING, § 11:4. STANDARD OF PROOF AND RULES OF EVIDENCE, § 14:2. DISCOVERY – GENERAL, § 14:3. DISCOVERY BY THE DEFENSE UNDER RULE 3A:11., § 14:4 DISCOVERY BY THE DEFENSE OF EXCULPATORY EVIDENCE CONSTITUTIONAL CONSIDERATIONS., § 14:6. DISCOVERY BY THE PROSECUTION UNDER RULE 3A:11., § 14:12. STATUTORY PROVISION'S § 15:2. ENTRY OF THE PLEA § 15:3. ENTERING A GUILTY PLEA., § 15:5. WITHDRAWAL OF PLEAS. § 16:1 RIGHT TO A FAIR TRIAL, § 16:2 RIGHT TO A PUBLIC TRIAL, § 16:3 RIGHT TO TRIAL BY JURY, § 17:8. PRESUMPTIONS AND STIPULATIONS, § 17:19. HEARSAY AND THE RIGHT OF CONFRONTATION, § 17:20. EVIDENCE-HEARSAY - STATEMENTS OF CONSPIRATORS, § 17:28. DEFENSES - GENERAL, § 19:4. PRESENTENCE REPORTS AND MENTAL EVALUATIONS, § 20:2. SUMMARY PUNISHMENT, § 20:4. APPEALS, § 21:4 DIRECT APPEAL TO THE COURT OF APPEALS, § 21:5. COMMONWEALTH'S RIGHT OF APPEAL, §

§21:7 APPEAL FROM THE DISTRICT COURT TO THE CIRCUIT - TRIAL DE NOVO
§21:8 STATE HABEAS CORPUS,

18. § 241 CONSPIRACY TO DEPRIVATION OF CIVIL RIGHTS CONSTITUTIONAL AND FEDERAL.
18. § 242 DEPRIVATION OF CIVIL RIGHTS.
28. § 2243 ISSUANCE OF WRIT; RETURN; HEARING; DECISION.
28 § 2254. WHICH PROVIDES STATE CUSTODY; REMEDY; REMEDY; REMEDIES IN FEDERAL COURTS.
§ 224.4; 18 U.S.C.A. § 1506, 2071, 2073 FALSIFYING A RECORD.
FEDERAL RULE OF CIVIL PROCEDURES 52 (a) "CLEARLY ERRONEOUS STANDARD"
PREISER / HECK OVERTURNED CASE.
42 U.S.C §1983

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STATEMENT OF THE CASE

THE PETIONER'S COMPLAINT ALLEGED THAT HE WAS CHARGED WITH SEVERAL SERIOUS [redacted] DISCIPLINARY OFFENSES BY PRISON OFFICIALS AND CONVICTED BY FORCE WHERE THE COURT FORCED THE DOCUMENT OF GUILTY PLEA IN THE PETITIONERS ABSENCE WHICH THEN THE DEFENDANTS REFUSE TO REVOKE AND WITHDRAW COUNSEL AND ALSO GIVE HIM THE RIGHT TO TRIAL.

POLICE REPORTS AND INVESTIGATION REPORTS AND THE LAB RESULT COME BACK NEGATIVE AND THAT THE FINGERPRINTS AND BLOOD RUNED TO THE LAB DID NOT BELONG TO ME, AND THAT THE WITNESSES DID NOT SEE ANY ONE. WHILE THIS IS TAKING PLACE I WAS ASSAULTED BY SHERIFF OFFICERS IN THE COUNTY JAIL WHILE CONDUCTING A PAT DOWN, I EXPLAINED THAT THE WAY HE WAS PULLING TOO HARD ON MY JUMPER WAS HURTING ME, THE OFFICER THEN BECAME UPSET. HE STATED THAT SHERIFF RUN THE JAIL AND NOT INMATES AND TOLD THE PLAINTIFF TO GO BACK IN THE CELL, THE SHERIFF OFFICER SAID THAT IF THE PLAINTIFF DIDNT LIKE THE WAY HE TREATED HIM STOP COMING TO JAIL TO WHICH THE PLAINTIFF RESPONDED STOP CHARGING ME FOR STABBING PEOPLE. SHERIFF OFFICER INCHARGE ORDERED TWO OTHER OFFICERS TO GRAB THE PLAINTIFF BY THE ARMS AND SLAMM HIM ON THE WALLS (THE SECURITY VIDEO) WAS REQUESTED) FRACTURING THE PLAINTIFFS CHEST. I WAS THEN TOLD TO GO IN THE CELL ASSIGNED, THE NURSES CAME TO PROVIDE MEDICATION FOR INFECTION AND WAS PUT ON THE LIST FOR X-RAYS, THE MACHINE WAS BROKEN FOR ONE YEAR, THE PLAINTIFF WAS TOLD. WHEN THE PLAINTIFF TRYED TO REPORT THE ASSAULT HE WAS DENIED THE PROPER FORMS BECAUSE HE WAS IN DISCIPLINARY SEGREGATION, INSTEAD MR. GOMEZ WAS SERVED WITH THE CHARGE FOR ASSAULT ON LAW ENFORCEMENT. EVEN THOUGH #EE EXPLAINED TO SUPERVISORS THAT HE HAD BEEN A VICTIM OF ASSAULT NOTHING WAS DONE. § 42 U.S.C. § 1983.

THE PREVIOUS CHARGE AQUIRED IN THE COUNTY JAIL WAS FOR POSSESSION OF A TOOTH BRUSH ISSUED TO INMATES (THUMB BRUSH) THAT WAS FILED DOWN, SO SHERIFF OFFICERS CHARGED THE PLAINTIFF WITH POSSESSION OF A SHARP KNIFE. HOWEVER MR. GOMEZ HAD PROBLEMS WITH EFFECTIVENESS AT TRIAL § 65.2. WHEN HE TRYED TO WITHDRAW HIS APPOINTED COUNSEL AND THE JUDGES DENIED HIM THAT RIGHT, BECAUSE HIS COUNSEL WAS A GOOD FRIEND OF THE JUDGES AND THAT THE COUNSEL KNEW WHAT HE WAS DOING. DURING THE PRELIMINARY HEARING MR. GOMEZ THE PLAINTIFF WAS ABSENT FROM COURT BECAUSE HE HAD GANGREENED TOE INFECTIONS ON HIS FEET, A NOTICE TO APPEAR IN COURT 30 DAYS LATER WAS SIGNED IN THE CELL CONTINUING THE COURT AND SENT BACK TO COURT (IN THE SAME BUILDING) THIS NOTICE HAS SEVERAL OPTIONS BUT THE OPTIONS ARE ONLY ACCEPTED BY COURT "ONLY IF PRESENT IN COURT" AND THOSE OPTIONS ARE DEFENDANT ENTER A PLEA OF GUILTY ☐ OR ☐ BENCH TRIAL IS REQUESTED ☐ OR TRIAL BY JURY IS REQUESTED, AND THESE ARE NOT BE CHECKED, THE PLAINTIFF SIGNED BECAUSE THE ONLY BOX CHECKED AT THE TIME WAS ☒ PLEA / TRIAL AT 10:00am ON THE 27TH OF FEBRUARY 2018. HOWEVER THE PLAINTIFF WAS NOT PRESENT IN COURT ON PRELIMINARY OR PLEA HEARING THE 27TH, AND HIS COURT APPOINTED COUNSEL WOULD NOT ANSWER THE PHONE NEITHER WOULD HE WITHDRAW THE PLEA THAT HE AND THE COURT PROCESSED 01-23-2018, AND FEBRUARY 27 2018,

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STATEMENT OF THE CASE.

IN MARCH, WEDNESDAY 7, 2018, I WAS IN COURT FOR INDICTMENT AND THE COURT STILL CONTINUED TO REFUSE TO WITHDRAW COUNSEL, THE PLAINTIFF TRY TO EXPLAIN TO THE COURT THAT THE PLEA OF GUILT WAS NOT HIS VOLUNTARY WISH THAT HE WANTED TO GO TO TRIAL, BUT WAS TOLD TO SIT DOWN AND BE QUIET OR HE WOULD BE CHARGED WITH CONTEMPT OF COURT. THE COURT ALSO REFUSE TO REHEAR THE CASE, REFUSED TO RECONSIDER THE CASE, THE JUDGES WENT WITH THE COERCION AND FORCED GUILTY PLEA AGAINST THE PLAINTIFF. [redacted] THE SUGGESTED GUIDELINES IN THE CASE WERE 4 6 AND 10 YEARS THE ASSISTANT COMMONWEALTH ATTORNEY ASKED THE COURT TO GO OVER THE [redacted] 10 YEARS MAXIMUM SENTENCE GUIDELINES DUE TO THE BRUTALITY OF THE ATTACK FOR MALICIOUS WOUNDING THAT (THE POLICE AND INVESTIGATORS REPORT ALONG WITH LAB RESULTS SHOWED INNOCENSE) THE COMMONWEALTH WILL ASK FOR A STRONG PUNISHMENT SO THE JUDGE WENT 18 YEARS OVER THE SUGGESTED GUIDELINES. FOR A CRIME I DIDNT COMMIT, FOR A KNIFE THAT I NEVER HAD, AND FOR ASSAULT ON LAW ENFORCEMENT WHEN IN FACT MR. GOMEZ, THE PLAINTIFF IN THE CASE WAS THE VICTIM OF ASSAULT. THAT RESULTED IN CHEST INJURY. 42 U.S.C. §1983 MEDICAL SERVICES DENIED THE MEDICAL ATTENTION NEEDED TO TREAT THE TOE INFECTION IN AN EARLY STAGE, INSTEAD WAITED UNTIL THE TOES WERE GANGREENED TO SEND HIM TO THE OUTSIDE DOCTOR (PODIATRICIAN) WHEN THE DOCTORS DID SEND HIM OUT FOR SURGERY, THE OUTSIDE DOCTOR (PODIATRICIAN) GAVE INSTRUCTIONS TO PROVIDE GOMEZ WITH PAIN MEDICATION AND ANTIBIOTIC TO WHICH DOCTORS IN FAIRFAX COUNTY JAIL REFUSE TO DO, THIS AND THEIR MALPRACTICE AND MEDICAL NEGLIGENCE CAUSED THE PLAINTIFF SEVERE INFECTIONS TO HIS FEET WHEN FORCED TO TAKE THE BANDAGES OFF AFTER SURGERY AND SOAK HIS FEET IN HOT WATER WITH BENTODINE AND EPSON SALT, WHICH IS WHY THE PLAINTIFF HAD 6 SURGERIES ON HIS FEET AND HAD TO VISIT THE PODIATRICIAN 4 TIMES. 18 U.S.C. §242 8TH, 14TH AMND. AUGUST 2019, [redacted] MR. GOMEZ WAS SENT TO DOC. WHERE HE OVERTURNED HIS CASE AND HAD HIS HABEAS CORPUS GRANTED ON THE ALLEGATIONS OF PREJUDICE, INEFFECTIVENESS, AND DENIAL OF DIRECT APPEAL CASE# CL. 2019 15095 IN WHICH THE COURT WAS GIVEN INSTRUCTIONS TO PETITION IN THE PLAINTIFF'S BEHALF TO THE COURT OF APPEALS FOR A RELATED APPEAL. AUGUST 13 2020, THE ASSISTANT ATTORNEY GENERAL HAD TO SEND ANOTHER COURT ORDER REMINDING THE COURT TO FILE THE PETITION AUGUST 10, 2022, TO WHICH THE 19TH JUDICIAL COURT IS NOT COMPLIANT. BECAUSE THESE ARE FALSE CHARGES, FALSE ARREST, AND WRONGFULLY CONVICTED IN RESULT OF A BROKEN HAND WHILE IN DOC. AWAITING TRIAL THE PLAINTIFF SEEKS COMPENSATION. MRI # M00094514 SURGERY ORTHOPEDIC B. SANTOS (276) 596-6715. WHERE A 6 MONTH DELAY IN MEDICAL TREATMENT CAUSED PERMANENT BONE DIFFORMATION OF THE PLAINTIFF'S RIGHT HAND. (KMCC MEDICAL WAS SUED FOR NEGLIGENCE AND MEDICAL DELIBERATE INDIFFERENCE.) NOTHING CAN FIX IT, REBRAKING WILL CAUSE MORE DAMAGE. 19TH JUDICIAL DEFENDANTS SUBJECTED THE PLAINTIFF TO HIGH RISKS OF INJURY BY DENYING HIS RIGHT TO APPEAL DIRECTLY.

STATEMENTS OF THE CASE

THE LOWER COURTS IN THIS CASE HAVE MADE LITTLE EFFORT TO SEE THE MATERIAL EVIDENCE AND SUBSTANTIAL FACTS, IN THIS INCLUDED THE FACT THAT THE U.S. DISTRICT COURT FORCED THE DISSMISSAL ERRONEOUSLY, AND CLEARLY STATED IN THE MEMORANDUM ORDER AND MEMORANDUM OPINION FOR WHICH REASON IT WAS DISMISSED. AFTER REVIEW OF THE JOINDER REQUIRED RULE, DEFENDANTS ARE PROPERLY JOINED, AND THE COURT STATES THAT THE DEFENDANTS THAT ARE IMPROPERLY JOINED ARE THE SAME DEFENDANTS THAT ARE PROPERLY JOINED THE REASON IS ERRONEOUS, AND CONTRADICTING AS IT IS FALSE ASWELL.

WHEN THE ISSUE IS BROUGHT UP TO THE U.S. COURT OF APPEALS, THIS COURT AFFIRMS THE U.S. DISTRICT COURTS DECISION AND DENIED THE RIGHT TO REHEAR. IN THE MOTION TO APPEAL, THE ISSUE WAS POINTED OUT TO THE COURT THAT THIS HAD BEEN ERRONEOUSLY DISMISSED, AND THE REASON WAS CONTRADICTING ITSELF. IN THE APPENDIX OF THE FULL CASE COPY ITS SHOWN THAT THE PLAINTIFF COMPLIED WITH COURT ORDERS TO FILE AN AMENDED COMPLAINT AND A PARTICULARIZED CLAIM STATING A CLAIM, IN WHICH MR. GOMEL COMPLIED AND ESTABLISHED EACH GROUND FOR EACH DEFENDANT AND IN COMPORT WITH RULE 18(a) AND 20(2)(A)(B) FOR EACH DEFENDANT IN EACH CLAIM INDEPENDENTLY WITH MATERIAL ALLEGED FACTS, THAT ARE SUBSTANTIAL TO SEE CLEARLY THAT THE PLAINTIFF IS ENTITLED FOR RELIEF PURSUANT TO 42 U.S.C §1983 FOR ASSAULT BY SHERIFF AN RESULT OF A FRACTURED CHEST, SUBJECTION TO 6 FEET SURGERIES DUE TO MEDICAL NEGLECT AND MALPRACTICE BY FACILITY DOCTORS, WRONGFUL ARREST WRONGFUL CONVICTION FALSE CHARGES, INEFFECTIVENESS, ABUSE OF DISCRETIONARY GUIDELINES, DENIAL OF DUE PROCESS, FORCED GUILTY PLEA IN ABSENCE, DENIED A FAIR TRIAL, DENIED DIRECT APPEAL, MOTION TO REHEAR AND MOTION TO RECONSIDER, SENT TO PRISON, THE PLAINTIFF FILED A HABEAS CORPUS AND WAS THEN GRANTED TO THE ALLEGATIONS OF DENIAL OF APPEAL WHICH IS IN EFFECT. WHILE WAITING FOR THE HABEAS CORPUS NEW COURT DAY THE PLAINTIFF SUFFERED A BROKEN HAND WHEN HE WAS ASSAULTED BY A CELL MATE. THE INJURY WAS REPORTED RIGHT AWAY, BUT KMCC DELAY OF 6 MONTHS TO PROVIDE IMMEDIATE TREATMENT CAUSED A PERMANENT IMPAIRMENT AND PERMANENT DAMAGE TO THE PLAINTIFS RIGHT HAND, TO WHICH WELL ALLEGED FACTS THE LOWER COURTS REFUSE TO SEE, IGNORED AND OVERLOOKED A RIGHT TO RELIEF AND INSTEAD DISMISSED THE CASE ATTRIBUTING TO THE DEPRIVATION OF FEDERAL, CONSTITUTIONAL AND CIVIL RIGHTS OF THE UNITED STATES LAWS, AUTHORITY, TREATIES AND POLICIES THEREIN.

REASONS FOR GRANTING THE PETION

THIS IS A CIVIL RIGHTS ACTION UNDER 42. U.S.C. §1983 BROUGHT BY A STATE PRISONER WHO ALLEGES HE WAS UNLAWFULLY ARRESTED AND ULAWFULLY CONVICTED. HE WAS DENIED THE RIGHT TO WITHDAW COUNSEL WHO FORCED THE GUILTY PLEA IN ABSENCE OF THE PLAINTIFF. UNITED STATES V. PUGUESE 805 F.2d 1117 (CA. 7/1986) - REQUIRED ACCURATE INF. HE WAS WAS ACSO DENIED THE RIGHT TO WITHDRAW THE INVOLUNTARY PLEA THAT WAS PROCESSED BY THE APPOINTED COUNSEL AND THE JUDGE IN A PRILIMINARY HEARING WHERE THE PLAINTIFF WAS ABSENT - TOWSEND V. BURKE, 334 U.S. 736, 68 S.CT. 1252, 92 L.Ed. 1690 (948) "DUE PROCESS" THE JUDGE AND THE COURT APPOINTED COUNSEL ALONG WITH COMMONWEALTH ACCEPT AND PROCESS THE INVOLUNTARY GUILTY PLEA FORCED BY THE DEFENDANTS AT THE PLEA HEARING WHERE THE PLAINTIFF MR GOMEZ WAS ABSENT ASWELL DUE TO GANGREEN FEET INFECTION. 18§242 VIOLATIONS THE PLAINTIFF WROTE LETTERS TO THE CLERK, THE JUDGES, THE COMMONWEALTH ATTORNEY, AND HIS COURT APPOINTED COUNSEL AFTER THE SURPRISE ENDICTMENT, HE WAS TOLD BY COUNSEL THAT HE HAD SIGNED THE PLEA, WHEN IN FACT THE MAIN REASON WHY MR. GOMEZ WANTED HIS ATTORNEY REMOVED FROM REPRESENTATION AT THE BEGGINNING OF THE CASE WAS BECAUSE HIS ATTORNEY WAS FORCING MR. GOMEZ TO PLEA GUILTY. MORRISON V. LIPSCOMB, 877 F.2d 463, 468 (6TH CIR. 1989) AFTER THE COURT AND DEFENDANTS RECEIVED MR. GOMEZ COMPLAINT, A HEARING WAS HELD TO WITHDRAW THE GUILTY PLEA AND HIS COURT APPOINTED ATTORNEY, AFTER GIVING THE COURT A SIGNIFICANT REASON, THE JUDGE EXPLAINED THAT MR. GOMEZ WAS NOT SATISFIED WITH HIS ATTORNEY AND "WAS ASKING THE COURT FOR THE WITHDRAWAL OF THE INVOLUNTARY GUILTY PLEA FORCED BY A DIFFERENT JUDGE AND HIS COUNSEL AND THE WITHDRAWAL OF HIS COUNSEL." THE JUDGE WITHDRAW THE PLAINTIFFS', (MR. GOMEZ'S) COUNSEL BUT NOT THE INVOLUNTARY GUILTY PLEA. ON THE SUGGESTED GUIDELINES THE PLAINTIFF HAD 4, 6, AND 10 YEARS, THE COMMONWEALTH ASKED FOR A SENTE OVER THE MAXIMUM SUGGESTED GUIDELINES. ON THE PRESENTENCE REPORT STATED THAT "MR. GOMEZ WAS NOT CONSIDERED TO HAVE A CRIMINAL BACKGROUND, SO THEY WONT BE USING THAT AGAINST THE CASE FOR SENTENCING." THE POLICE INVESTIGATION REPORT AT "NOVARIS LATENT EXAMINATION RESULTS" STATED THAT THEY COLLECTED DNA IN (8) AREAS AND FINGERPRINTS (4) PRINTS WERE LIFTED AND TURNED IN AND AFTER EXAMINATION, THE PALM LATENT IN THIS CASE WAS NOT IDENTIFIED TO THE PALM CARDS ON FILE AT NOVARIS FOR THE SUSPECT. SUSPECT. LUNA GOMEZ MARVIN. FCN: 3067309. AND WAS DENIED THE RIGHT TO TRIAL; AND THE RIGHT TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM, IN WHICH THIS CASE THE ONLY WITNESS IS THE VICTIM, IN WHICH THEY STATE THAT WITNESSES STRONGLY BELIEVE IT WAS MR. GOMEZ. TOWSEND V. BURKE, 334 U.S. 736, 68 S.CT. 1252, 92 L.Ed. 1690 (1948). WHILE THIS IS HAPPENING THE PLAINTIFF IS FORCED OUT OF RECOOPERATING BULDING WITH TOE INFECTIONS AND A TWISTED ANKLE BY CONFINEMENT OFFICERS WHO THREATENED TO USE PHYSICAL FORCE AND CHARGE HIM, IF MR. GOMEZ DIDNT PACK HIS BELONGINGS AND MOVE TO GENERAL POP. BARREN V. HARRINGTON, 152 F.3d. 1193, 1194 (9TH CIR 1998.)

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REASONS FOR GRANTING THE PETITION

MR. GOMEZ EXPLAINED TO THE CONFINEMENT OFFICERS INCHARGED (SHERIFF OFFICERS), THAT HE FEAR FOR HIS LIFE GOING BACK TO GENERAL POPULATION AND THAT HE WAS RECOOPERATING AND WAITING FOR A DOCTOR VISIT, AND THAT HE FEARED RISKING HIS LIFE, TO WHAT SHERIFF OFFICERS ANSWERED "WE DONT CARE WE WANT YOU OUT AND WE WILL USE PHYSICAL FORCE IF HAVE TO, YOU ARE A GROWN MAN DO WHAT YOU HAVE TO DO TO SURVIVE IN GENERAL POP," ANDERSON V. LIBERTY LOBBY, INC., 477. U.S. 242, 248, 106 S.CT. 2505 (1986) THE DISPUTED FACTS ALLEGED BY THE PLAINTIFF ARE MATERIAL. THE PLAINTIFF WAS GIVEN 3XL BOXER $ UNDERWEAR, SO HE MADE A (THUMB BRUSH) INTO A SMALL FILE DOWN PUNCHER, WITH THE HANDLE IT MEASURED ABOUT 4" INCHES IN LENGHT, WHICH HE TOOK TO ADJUST THE UNDER WEARS, AND TOOK IT WITH HIM BY ACCIDENT TO GENERAL POP. UPON ARRIVAL THE PLAINTIFF STUCK IT UNDER A DAYROOM BENCH WHERE HE FORGOT IT. SHERIFF OFFICERS FOUND IT AND TOOK IT. OFFICERS REFFED TO AND DESCRIBED THIS AS A [redacted] "WHITE SHARPENED TOOTHBRUSH" SEPTEMBER 16, 2017, ON SEPTEMBER 18, 2017, THAT EVENING, THE PLAINTIFF BECAME THREATENED BY AN UNKNOWN INMATE DURING LOCK DOWN JUST 4 DAYS PRIOR TO HIM MOVING IN, WHO CHALLENGED MR. GOMEZ TO FIGHT, THE PLAINTIFF RETRIEVED A NEW THUMB BRUSH AND FILED IT DOWN AND PUT IT IN HIS SOCK TO PROTECT HIM SELF AGAINST ANY POSSIBLE ATTACK AND TOLD HIS CELL MATE TO ADVISE THE POST DEPUTY ABOUT THE SITUATION, IN THE MORNING OF SEPTEMBER 18 2017, THAT MORNING SHERIFF OFFICERS SEARCHED THE CELL OF THE PLAINTIFF AND CONFISCATED THE SHANK PLACED HANDCUFFS ON MR. GOMEZ AND PLACED HIM IN DISCIPLINARY SEGREGATION. CHARGED IN-HOUSE WITH 110 - POSSESSION OF A WEAPON OR SHARPENED INSTRUMENT 2X (TWICE) SIU OFFICER CONDUCTED A CRIMINAL INVESTIGATION AND CHARGED HIM WITH WEAPON LAW VIOLATION - POSSESSING/CONCEALING A WEAPON (WEAP-520-12) IN THE COURT IT APPEARS § 53.1-203, IN VIOLATION OF CODE § 18.2-57. THE ARRESTING OFFICER STATED "(IT DOES NOT APPEAR HE IS AN IMMEDIATE THREAT TO STAFF. HIS WEAPON WAS INTENDED TO PROTECT HIM SELF FROM OTHER INMATES, HIS DEMEANOR THROUGHOUT OUR INTERACTION WAS CALM AND COOPERATIVE)" AUGUST 24, 2018, MR. GOMEZ'S ATTORNEY PROMISED HIM TO WITHDRAW THE GUILTY PLEA AND BRING THE ISSUE [redacted] UP IN COURT, BUT WHEN THE JUDGE ASKED THE COUNSEL IF THERE WERE CHANGES OR CORRECTIONS MR. GOMEZ'S COUNSEL SAID THAT THERE WERENT ANY. MR. GOMEZ APPOINTED COUNSEL WAS ASKED IF THERE WAS ANY EVIDENCE IN HIS DEFENSE THAT HE WANT TO PRESENT HE ANSWERED "NO." SO THE COMMONWEALTH ARGUED FOR A PERIOD OF INCARCERATION ABOVE THE HIGH END FOR ALL THE CHARGES BY FALSIFYING OR ALTERING EVIDENCE INFORMATION E.G., MODEL PENAL CODE, § 224.4; 18 U.S.C.A § 1506, 2071, 2073. FALSI CRIMEN FALSIFICATION, FALSIFY. (BY STATING "THE DEFENDANT'S BEHAVIORS CONTINUE TO BE INCREDIBLY NEGATIVE WHILE INCARCERATED ON MULTIPLE OCCATIONS., AND THE ONE CHARGE SPECIFICALLY IN THIS CASE, HAVING A SHARPENED KNIFE" -- REFERRING SPECIFICALLY TO 2018-120, WHERE IN THE BLOCK AT 7:00 PM., THERE'S A CRACK UNDER THE DAY ROOM BENCH "WITH" A SHARPENED WHITE TOOTH BRUSH WITH A NEWS PAPER ON IT," THE COMMONWEALTH ATTORNEY CONTINUES." EVEN WHILE INCARCERATED UNDER THESE ADDITIONAL CIRCUMSTANCES, HIS FIRST INSTINCT IN ALL OF THIS IS STILL TO ATTACK EVERYONE AROUND HIM. THAT CONTINUES TO BE SHOWN THROUGH THE MISDEMEANOR CHARGE."

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REASONS FOR GRANTING THE PETITION

TO WHICH STATEMENTS MR. GOMEZ'S (THE PLAINTIFF) APPOINTED ATTORNEY FAILS TO ACT AND OBJECT ABOUT EVERYTHING BEING SAID IN THE COURT, OR DO WHAT HE PROMISED MR. GOMEZ HE WOULD DO, WHICH WAS WITHDRAW FROM THE CASE AND WITHDRAW THE FALSE GUILTY PLEA ENTERED BY HIM AND THE PREVIOUS JUDGE, AND PROCESSED BY ANOTHER JUDGE WHILE THE PLAINTIFF (MR. GOMEZ) WAS ABSENT. THEREFORE THE 18 YEARS OVER THE 10 YEARS SUGGESTED MAXIMUM SENTENCE IS CLEARLY ERRONEOUS, AND INNACCURATE INFORMATION ELABORATED TO INTENTIONALLY CAUSE MR. GOMEZ PHYSICAL HARM. THE DEFENDANTS RECKLESS CONDUCT WITH ABUSE OF DISCRETIONARY GUIDELINES, HAD SEVERAL OPPORTUNITIES TO FIX THE ISSUES THROUGH MOTIONS FILED BY THE PLAINTIFF, BUT THE COURT DEFENDANTS CHOSE NOT TO, INSTEAD THEY CONVICTED THE PLAINTIFF, AND WHEN HE FILED THE MOTIONS TO REHEAR, IT WAS DENIED, MR. GOMEZ ALSO FILED A MOTION TO RECONSIDER WHICH THE DEFENDANTS ALSO DENIED WITHOUT REVIEW OR HEARING. THE PLAINTIFF ALSO FILED A MOTION FOR A DIRECT APPEAL AND THIS WAS ALSO DENIED, AND THE ORDER TO STAY IN THE COUNTY JAIL TO APPEAL AND WITHDRAW THE GUILTY PLEA WAS RECINDED BY ANOTHER COURT APPOINTED ATTORNEY AND THE JUDGE, THE PLAINTIFF [redacted] WAS SENT TO DOC AND NEVER GIVEN THE RIGHT TO TRIAL, CROSS EXAMINE WITNESSES, IN GENERAL THE RIGHT TO DUE PROCESS WAS NEVER GIVEN TO MR. GOMEZ, AND FALSE INFORMATION, AND FALSE CHARGES WERE DECLARED UNDER OATH IN THE COURT FOR WHICH HE WAS INDICTED AND CONVICTED. IN 2019 NOVEMBER 4, MR. GOMEZ FILED FOR WRIT OF HABEAS CORPUS, WHICH WAS GRANTED AUGUST 13 2020 AND THE DEFENDANTS FOR THE 19TH JUDICIAL HAVE NOT COMPLIED WITH THE COURT ORDER TO BRING THE PLAINTIFF BACK TO COURT FOR A TRIAL. 18. §242 DEPRIVATION OF RIGHTS. AND DUE PROCESS. ([redacted] BROOKS V. PEMBROKE CITY JAIL, 722 F. SUPP. 1294, 1299-1300 (E.D.N.C. 1989). MACHIBRODA V. UNITED STATES, 368, U.S. 487. 7 L. Ed 473 82 S.Ct. 510 (1962) AND THIS COURTS DECISION ON TOWSEND V. BURKE 334 US. 736, 68 S.Ct. 1252, 92 L. Ed. 1690 (1948) STATES THAT THIS COURT RECOGNIZES, DUE PROCESS REQUIRES THAT A CONVICTED PERSON NOT BE SENTENCED ON "MATERIALLY UNTRUE" ASSUMPTIONS OR MISS INFORMATION." Id. AT 741, 68 S.Ct. AT 1255. IN ADDITION, CONGRESS INTEREST IN RELIABLE SENTENCING INFORMATION CAN BE CLEARLY DICERNED IN THE VARIOUS AMENDMENTS TO FEDERAL RULE OF CRIMINAL PROCEDURE 32. CONSEQUENTLY, A DISTRICT COURT HAS AN OBLIGATION TO ASSURE IT SELF THAT THE INFORMATION UPON WHICH IT RELIES IN SENTENCING DEFENDANTS IS BOTH RELIABLE AND ACCURATE. IN THE INSTANT CASE, THE DISTRICT COURT DID NOT SATISFY THIS RULE 32 OBLIGATION. INSTEAD, IT RELIED ON THE ALLEGATIONS OF THE PRESENTENCE REPORT AND ITS BELIEF IN.

HOWEVER IN MR. GOMEZ'S CASE THE COURT REFUSE TO PROVIDE AN ATTORNEY THAT WOULD HELP, AND REFUSE TO FOLLOW THE PRESENTENCE REPORT AND ITS SUGGESTION INSTEAD THE COURT FALSIFIED EVIDENCE INFORMATION TO PUNISH THE PLAINTIFF WITH 18 YEARS OVER THE SUGGESTED SENTENCING GUIDELINES.

SKRTICH V. THORNTON, 280 F. 3d 1295, 1302 (11TH CIR. 2002) STATING ("IT IS NOT CONSTITUTIONALLY PERMISSIBLE FOR OFFICERS TO ADMINISTER A BEATING AS PUNISHMENT FOR A PRISONER'S PAST MISCONDUCT.")

GALL V. UNITED STATES, 552 U.S. 38, 128 S.Ct. 586, 591, 169 L. Ed. 2d 445 (2007) STATING "WE MUST FIRST ENSURE THAT THE DISTRICT COURT [redacted] COMMITTED NO PROCEDURAL ERROR." Id AT 597.

HOWEVER MR. GOMEZ'S CLAIM HAS NOT BEEN SOUGHT OR REVIEWED FROM THAT POINT OF VIEW. BORST V. CHEVRON CORP., 36 F. 3d 1308, 1314 N.11 (5TH CIR. 1994) (NOTING THAT BECAUSE THE APPELLATE COURT DID NOT CONSIDER AN ISSUE "THE DISTRICT COURTS [redacted] RULING ON THAT ISSUE IS NOT CONCLUSSIVE BETWEEN THE PARTIES.") IN MATTERS INVOLVING 28 U.S.C. §1331 (a), 42 U.S.C. §1997 e(e). SEE.

BIBERDORF V. OREGON, 243 F. SUPP. 2d 1145, 1158-59 (D. OR. 2002). AND MC. CLOSKEY V. MUELLER, 446 F. 3d AT 271-72 (1ST CIR. 2006) AND IN THE CASE OF LINER V. GOORD, 196 F. 3d 132, 134 (2d CIR. 1999). & 28 §2243 ISSUANCE OF WRIT, HECK PREISER RULE IN EFFECT CONVICTION OVERTURNED"

(34)

THIS CASE PRESENTS A FUNDAMENTAL QUESTION U.S. CONST, AMEND. VIII FARMER V. BRENNAN, 511 U.S. 825, 834, 114 S.CT. 1970 (1994) → 18 U.S.C § 242. 42 U.S.C. § 1983, → MACHIBRODA V. UNITED STATES, 368 U.S. 487. 7 L.Ed 473, 82 S.CT. 510 (1962). → TOWSEND V. BURKE, 334 U.S. 736, 68 S.CT. 1252, 92 L. Ed. 1690 (1948); → MORRISON V. LIPSCOMB, 877 F.2d 463, 468 (6TH CIR. 1989) UNITED STATES V. PUGLIESE 805 F.2d 1117 (CA. 7/1986) → FELIX V. MC. CARTHY, 939 F.2d 699, 702 (9TH CIR. 1991). → POLIZZI V. TRIST, 154 SO. 2d 84, 85 (LA. APP. 1963) → HOWLETT V. ROSE, 496 U.S. AT 375-78. → FELDER V. CASEY, 487 U.S. 131, 151, 108 S.CT. 2302 (1988). THIS CASE SHOULD CONCERN THIS COURT BECAUSE IT INVOLVES FEDERAL, CONSTITUTIONAL AND CIVIL ISSUES OF IMPORTANCE BOYOND THE PARTICULAR FACTS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MELG. MARVIN EDUARDO LUNA GOMEZ

Date: 01-11-2023