22-NO.7144

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: DAVID PRIESTER – PETITIONER

-VS-

SEC'Y MARK INCH, FLA. DOCS, et al. 22-6133

JOHN P. KEANE, SUPT. OSSINING CORR. U.S. 2ND CIR.

DANIEL SENKOWSKI., SUPT. CLINTON CORR. U.S. 2ND CIR.

WILLIAM H. FAUVER., WARDEN SOUTHERN STATE CORR. U.S. 3RD CIR.

PEOPLE V. DAVID PRIESTER, N.Y. APP. DIV. FIRST DEPT.

RESPONDENT(S)

PETITION FOR EXTRAORDINARY WRIT. S. CT. RULE 20.

WRIT OF MANDAMUS 28 U.S.C. 1651(2). WRIT OF HABEAS CORPUS 28 U.S.C. 2241(b), 28 U.S.C. 2254(2) PURSUANT TO 28 U.S.C. 2403(2)

DAVID PRIESTER #E59730
JEFFERSON CORRECTIONAL INSTITUTION
1050 BIG JOE ROAD
MONTICELLO, FLORIDA 32344

Question(s) Presented

Does the Sixth Amendment require the Assistance of and from counsel be appointed? A Federal and Constitutional matter effecting five trial(s). And seemingly would before this court's extraordinary writ!

Was counsel's representation in each trial for its Federal review, the cause for their conviction? And where so, would such a scenario be for this court's extraordinary writ?

Do each trial for Federal review in opinioning the counsel representation exude a conclusion. Whereof a callousness of an indifference, for this court's extraordinary writ?

When the Clerk of the U.S. Second Circuit Court of Appeals, received a 28 U.S.C. 2254 and a 28 U.S.C. 2244 petition for their filing(s) and processing for Appellate rules _____ with the 28 U.S.C. 2254, then intended to effect the petitioners custody: David Priester v. Daniel Senkowski and had not done so, though was appealed with its certificate of appealibility nor had the clerk answered inquiries, and time corrode its usefulness for custodial release. For a First and Fourteenth Amendment denial and its continuance, would be for this court extraordinary writ for this distinction for rule _____.

When the clerk of the U.S. Third Circuit Court of Appeal, received for appellate rule _____ for processing a Motion for Rearguing the court's decision or permission and adjudication of the Petitioner's original writ: David Priester v. William H. Faver. The motion has not been filed. But gives a response to divert the filing and inquiry of such motions filing and for its First and Fourteenth Amendment impediment, would seem in barring access to the court, would be for this court's extraordinary writ to its impediment on the process and judicial functions for rule _____.

When an attorney's representation influences a forfeiture of the Sixth Amendment right to be vindicated by a trial, with the aid of effective assistance, for its involuntariness, and would be the basis for Petitioner seeking New York's First Department Appellate Court's review and asking where its record support the representation similarities for pretrial, trial and arguably, appellate representation. Would its contention for its basis and similarities be for this court's extraordinary writ?

In David Priester, v. Mark Inch, Fla. Docs. Et 21.22-6133 ask through the prism of its pretrial representation for a Sixth Amendment denial or for its Fourteenth Amendment with standby counsel's representation upon request for Faretta, the assistance established law, for its due process. Questions would it form this court's extraordinary writ. Where the composition in representation is consistent?

David Priester v. Mark Inch, Sec'y

Florida Department of Corrections, et al No. 22-6133

Procedural History

The Petitioner was arrested on May 12, 2017, in the State of Florida, in the county of Seminole, for an offense reported to been committed in the municipal of Sanford, Florida. And was charged by prosecutorial information with grand theft, Stat. 812.014(2)(C), criminal use of personal information Stat. 817.568(2)(a), unauthorized use of driver's license or identification card, Stat. 322.212(1); forgery of credit card, possession with intent to defraud, Stat. 817.60(6)(b); battery upon a law enforcement officer, Stat. 784.07(2)(b); resisting an officer without violence, Stat. 843.02 and detained at the John E. Polk detention center in Sanford, Florida.

The Petitioner was arraigned before the Honorable Mark E. Herr and given a $7,500 bond. He was appointed public defender, Christopher Gorton. The State appearance was with ADA Lori Rauch and ADA Sara Shumway and assigned to the Honorable Debra S. Nelson. It ?? for a bench trial, presided over the Petitioner's plea of innocence and insufficient evidence for the State's burden to offer testimony or proof that corresponds to the language that make up the charging offense. Example: Robbery or Rape language mean the perpetrator if identified had communicated force or without permission arguing permission was required. And complainant for its victim had communicated an unwillingness or was not a willing participant. Had found for the charging offense of battery by its language of

intentional touching and grand theft for its language for its statute, supported by a specific amount of money taken for the charging statute or attempt or intent, by its language, proof that the victim or witness was the objective and with him theft or intent was reasonably the goal. For lacking testimony the victim was alerted or he sought was for it proof was his for attempt or intent and not the unauthorized use of his information presented through him to a good faith defense. Found the testimony supported the language for the charging offense. And exhibits exude for their circumstantial indications for reasonable belief. And any conflict in its proof resolved in favor of the prosecution for a verdict of guilty on all count(s) and sentenced the Petitioner to fifteen years, with five of the fifteen years to be done on probation. The trial record for factual or constitutional error was reviewed and briefed by appointed Appellate attorney, Nicole J. Martigano of the Public Defenders, Fifth District Court of Appeal, Daytona Beach, Florida. Appendix B of Writ of Certiorari and appellate record for the Petitioner's pro se brief, for Anders v. California. Acquired opinion by appellate judges: Evander, C.J., Cohen and Wallis, JJ; concur for its opinion, dated April 16, 2019 and published at 271 So.3d 991, for Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 and Federal Appeal for its 28 U.S.C. 2254(b) Writ of Habeas Corpus continuously searched for its Anders v. California, questions and validation. Florida's U.S.M.D. denied petition for Writ of Habeas Corpus, January 26, 2022. Appendix "D" and its U.S.C.A., Eleventh Cir. Denied Certificate of Appealability, June 3, 2022 Appendix "E". Brought this court's Writ of Certiorari docket number 22-6133. With trial and appellate record

Appendix. And for Writ of Certiorari David Priester v. Sec'y Department of Florida's Corrections, Mark Inch's, includes?? for this court's extraordinary writ for rule 20.3(c). having set out that the relief sought cannot be obtained in any other Court.

Rule 24.1A(2) reviewed on the merits where no additional questions are raised or its substance changed, and as an option accept that this Court may consider plain error not among the questions presented, yet evident from the record and otherwise within its jurisdiction. Rule 37.2(2) an extraordinary writ may be filed if it reflects the written consent of all parties and Rule 37(b) for this court granting where consent is withheld. To make the Writ of Certiorari's inclusion comprehension to this extraordinary writ. See reasons for granting the petition.

David Priester v. John P. Kean: U.S. Court of Appeal Second District

Procedural History

The petition for 28 U.S.C. 2254(b), Writ of Habeas Corpus corpusi initially attempted for its objectivity occurred upon his release from the New York Clinton Correctional facility to parole, mailed to the Eastern District Court located in Brooklyn, New York by certified mail with a certified copy to the Respondent addressed to Chemonge County prosecutor's office, mailed from the Bronx by certified mail of April 1987. Within the period of its mailing the Petitioner was arrested May 21, 1987 in the municipality of Fort Lee, town of Hackensack, an charged with burglary of an occupied dwelling and possession of counterfeit marijuana with the intent to distribute.

Fake marijuana brought questioning by a grand juror for its felony statute and criminal legality, to prosecution. And the juror did not sound as though she been apprised of its New York's commercial statute for acting without a valid license for its resale in any form for what is commercial law in representing the real and?? misdemeanor with a felony for several offenses of this arrest. And make one appreciate her consideration of what she was being asked to indict a citizen for its felony one more so thinking what would be her concern knowing this fake marijuana ob?? for is charging with an illegal search seen in her approach of the prosecution to ???? more questioning than the defense attorney(s). Each charge was indicted for their felony status by the grand jury of Bergen County for New Jersey.

The Petitioner was arraigned before the Honorable Frederida W. Kuechenmiesta and appointed attorney Joseph R. Contaldi his representation addressed the non use or disclosure of Petitioner prior convictions, as it was unrelated to the charges and was acquired in prison. And its felony, as prison contraband is disclosed would disclose priors and implicate the former conviction to get into prison for previous convictions. Must date the previous convictions, to implicate the length of sentence to the release, for explaining several prior convictions and would obscure any insufficient past for the instant case for its exoneration. Mr. Contaldi seen not?? several but its couple, as sufficient for its obvious prejudice to the state's evidence: testimony of ?? last print, illegal search and seizure, perjured testimony by its complainant, covered up with withheld all?? call. Moved to exclude its disclosure where there is a jury trial. Right after, Mr.

Contaldi, a conflict attorney, had been replaced with public defender Richard C. Garnett. For trial with whom the Petitioner's prior relations was disclosed and over Petitioner's request to confer with Mr. Garnett before and counsel of its disclosure was prevented by its ruling Judge. The Petitioner was found guilty of both offenses. Counsel had ?? monitor for its mistrial. The Petitioner in 1988 was sentenced on July 9th to three years for its counterfeit marijuana, run concurrent with is five years for his burglary judgment. Was granted parole within eighteen months of the five years to be served. Petitioner declined to sigh his parole agreement to his release. Had he done so, the time would had continued into his parole violation hold of twenty four months for his New York parole release in 1989, instead of 1993. As the Division of Parole had revised itself for its violation with the most a violation can hold is 24 months with the least being 90 days by their category. And would had start ??? not 1991 once New Jersey sentence with its good time expired. For an unnecessary additional two years with no results, where there arguably should have been. Imagine was deeply affected, where New Jersey District Court dismissed petition for its content and review in mid 1991. And reasoning there was a failure on Petitioner's part to present for exhaustion. ?? state redress, the disclosure of his prison profile and prior conviction for its prejudice for state resolution. Add injury to the result had not permitted the usual chance of redress to permit time to contest its reasoning as unsustainable against the fact evidentiary hearing barred claim was presented to dissolve itself of being unexhausted or a mixed petition was presented in the State's post conviction motion as it was not?? Presented on appeal

due to Mr. Matthew A. Glassman's, appellate attorney's failure to acquire its state Court review, and only to this?? to become the subject of the same Judge withheld ruled its exclusion for its prejudice. And became included because the same?? Judge also had not allowed consultation with counsel by Petitioner, who asked so as to thwart its disclosure the prejudice. Was not exhausted there with and should have. Being apparent for its presentation. And yet, the chance to bring the claims before the same Judge was exercised. See post conviction motion dated March 1991. Before seeking Writ of Habeas Corpus for its improbability and ultimate futility as the motion for its record base and content was not surprisingly answered for its Writ of Habeas Corpus and consistency of the court. And would timely intersect with Petitioner's extradition and interfere with redress of the writ's judgment of dismissal without prejudice to exhaust with State with its record, prior to its use with a successive writ, for its belated appeal.

The Petitioner with his extradition, parole revocation hearing and twenty four month hold was placed back in society on parole in 1993. And continued his trek upon the earth aware his mental and physical disposition is monitored and prayfully noted by its supervision and limitations structured as a condition and to be unsettling upon a judgment procured by prior restraints. An appointed attorney in violation of the constitution and judicial ethics. And for such an achievement seen casted aside or forfeited for its inquiry? As unfinished appellate litigation is its hopes as the prospect . . . for the continuous and would resume the required diligence for its answer with the Eastern District Court of the status of an answer

with Writ of Habeas Corpus deposited to the Bronx Postal of 170 St. Jerome Avenue. In 1987. Titled David Priester v. LaFave, Warden of Clinton Correctional Facility. Which would have been retitled: New York Division of Parole, for its custodian if surfaced before any violations for prison custody had not occurred and Petitioner was for another parole violations returned to the Ossining Correctional Facility. Months before a twenty four month hold expired, the Petitioner mailed his Writ of Habeas Corpus petition for his Chemonge County judgment of 1982, in 1995. His attention was available to New York as he was at presently in communications with New Jersey. The Writ of Habeas Corpus was mailed to the U.S.D.C. for its Northern District of New York. And addressed for its return communications: David Preister c/o Arlene Dantzler (sister). 1711 Lacombe Ave, Bronx, NY 10973 Apt. 7C. Presently current and communication with sibling same. The U.S.A.D. had not indicated for its filing September 21, 1995. They had the mailing address, when they answered Petitioner in 2001, informing they had transferred writ to the U.S.D.C. for the Western District of New York. For not communicating its transfer and for Petitioner's liability in neglecting a response or timely appeal. Nor was the mailing address indicated to been the means used by the Western District Court, for its claims of forwarding notice of its proceeding for response with its adjudications to excuse asking for pretrial representation against continued detention with its charges, indictment or information for redress where within pretrial assistance and representation with investigation for motions as representation had not occurred or explained. Indifference is pique with disrespect

as to whether Petitioner was emotionally suitable to represent himself. Is investigative being diagnosed with anxiety and depression for an emotional state for his waiver and representation which was scheduled for its evaluation with a street physician leading up to his arrest. Further counsel's own opinion of himself: he would not assist in his side as standby counsel. Where he is asked to do anything other than take over. And form the question, does the Sixth Amendment allow assistance and or representation to be available? or require assistance to be assigned or appointed: Where its required to be either available or to be procured. Could he under?? Disposition been avoided where counsel is made available and not appointed? And ask would the right to assistance for trial, be an offering, but not to be explored for its disposition? Which may require numerous communications to encounter an attorney, that could have represented pretrial investigation for motion, trial testimony for inconsistencies or testimony that cannot suppress the charge or its intent. Which seemingly was noted by appellate attorney. Who asked, should the Petitioner's ??? been argued. Looking at Anders, would seem baseless for broaching ask as an inquiry, if not noted.

Enclosed is a communication from a Peter Lombardo, an attorney, which convey he would have been available, and project traits compatible for its comprehension the Petitioner's approach and goals. It by permission to resurred the original petition through a successive writ for 28 U.S.C. 2244(d).

Incurred other violation since 1995. The moment fated may be delayed out not thwarted for its inevitability and thus the sentence Chemonge county had

expired in November 1998. But with Petitioner's inquire of its redress to its judgment sought through the writ. Continued though unrelated to his arrest or sentence of 1999. For a warrant and robbery of 1994. Before and not for his 1995 parole violation. And its prosecution for fifteen year sentence, from Petitioner's use of the alias James Thomas in 1994 deferred until November 1999 after a jury trial by Judge William J. Leibowitz, New York Supreme Court. While serving this new prison commitment had filed for the judgment of Chemonge County, a petition for Writ of Habeas Corpus in 2001. Its litigation involved its full federal appeal for its denial of Writ of Certiorari for time barred for failing to used the 28 U.S.C. 2254 within one year since the enactment of the Antiterrorist Act of 1996 and failing to offer good cause for not doing ?? for its means of redress in 2001.

Afterwards the Petitioner sought relief for the judgments unconstitutional infringements with his societal progress with employment, that led to continuous alternatives with the State court error coram nobis. Its effectiveness so would he impeded by the opinion of the trial prosecuting trail attorney Bruce Crew Third, so as to diminish the worth of its judicial rulings in favor of its violation, made possible in his capacity as the appellate Judge for its adjudications. Though nothing encouraging or inspiring, and done more so for its sake than anything else, had inquired into the Writ of Habeas Corpus of 1995. The Northern District Court of New York, answered that in 1995 titled David Priester v. John P. Kean, was transferred to the Western District Federal court of New York. The Western District Federal Court of New York communicated to the Petitioner, that his petition of

1995 was adjudicated. And for his redress and the petition adjudication, the Petitioner was told that he had been notified. Yet the court record did not refer to the Petitioner's street mailing address as the means of communication and neither had the court offered a scanning of its mailing to any known or list address or its postal return to its attempt in failing to demonstrate the Petitioner was actually communicated or offered the mailing was sent by registered mail for his signature or its return as an attempt for communicating with the Petitioner – yet acquired to reply to the dialogue that is to taken place prior to and for its adjudication and to response to file its appeal soon there latter and had outlined this due process denial for the second circuit U.S. Court of Appeals for the petitioning of the District Court adjudication with this court successive writ and limited to the petition and claims itself, had not been afforded the opportunity to marshal the claim for a denial of a full and fair hearing to reflect the trial proceeding, the derelict legal representation and testimony for seeking permission to file a second writ. The successive writ was sent by certified mail. The Petitioner's returned receipt registered the court's clerical receipt. Several times after the court clerk's receipt the Petitioner inquired into the clerk's inaction to file and process the Petitioner's successive petition? This approach by the Petitioner was in 2008. No responses or filing of the petition for the constitutional contention to the state and federal judicial opinions. In argument counsel by appointment and through appointment argue the assistance constitutionality for determining the probability of acquiring an agreeable attorney. And argue that the facts of the case for its legal representation, the Petitioner had

not received effective assistance he would had garnered a favorable verdict in this and all his other trials in supporting the relief warranted, cannot be obtained from any other court. which is to effect the appointment of counsel for the Sixth Amendment to this courts extraordinary writ. See foundation for its probability as reasons for granting the petition.

David Priester v. Daniel Senkowski: Second Circuit U.S. Court of Appeal.

Procedural History

As mentioned the Petitioner for a robbery arrest in 1999 was by grand jury indicted, was arraigned in the Manhattan Supreme Court who's held by its warrant from his arrest for a separate offense in 1999. This moment was eluded since 1994 under the alias James Thomas before the Honorable William J. Liebowitz and was appointed its public defender Adam Freedman who representation began with a whole hearing. An identification proceeding to examine the sufficiency of 16 witness facilitators of the person arrested for the accusations for continued prosecution. And where enabled as unreliable or mistaken can dissolve the continuance of that person prosecution. And was for the Petitioner's attorney's representation and the courts inspection to Mr. Freeman, the Petitioner enclosed police influence for his detention and identification. And is material where the police neither an eyewitness or his claim to been one is either questionable . . . where not shown to be convincingly perjured.

People of the State of New York v. David Priester, App.Div.First.Dept.

Facts/Procedural History

The Petitioner had absconded from the last few months with parole, from his 1999 conviction. And arrest in 2015, would bring its warrant. He would be held by his 1999 conviction parole warrant and housed and detained at Riker's Island. Before the parole warrant is to be lifted due to its expiration at is conviction sentence. Petitioner was brought before a Bronx Magistrate on a warrant for his arrest. He was charged by prosecutor information of demanding currency form a Chase Bank, located at Southern Boulevard in the Bronx, for Grand Larceny. Had entered a plea of not guilty. Had flooded the presiding Judge with pretrial motions emphasizing his approach with the State's case and counsel's role in its achievement for their communications and the effect of going to trial. With Petitioner's defense upon the Chase Bank teller initial rejection of his note to furnish him with the bank's money. And arguably due to its effect and arguably her assistance. For opposing the State's position he demanded the currency and thereto was her response and reason for obliging the Petitioner's note and not empathy or sympathy, for not initially being the response for its demand. And reactions rejected the initial to correspond alternate for her reasons. And defending his posture that his request of the currency was the communication received, for his unauthorized possession of bank currency. And possibly where the jury was most informed for an acquittal. Petitioner had sought his counselor assistance. Though appointed, with for trial Exhibits, the procurement of contentions and profile of trial(s) and

attorneys, for the need of I an unappointed attorney for the prospect of their alliance and prospect of for ??? a client and attorney relationship entwined with trust for its representation and Sixth Amendment meaning where he was to proceed in counselor representation of the note claim to the banks teller the more, sought out I fortuitous and was offered so as to acquire an attorney worthy of his hopes and sacrifice as being the motion for his affairs to which was pontificated would be represents with an appointed attorney, and was sought in honor for a means to compensate an attorney without his appointed. And facts justified the before presentation to an impartial jury. Without counsel's assistance to procur and after the supporting facts, as offered herein for the records availability, there would be no faith in a trial. And in forfeiting his Sixth Amendment right, the Petitioner with eighteen months jail credit, through several decline of the State's offer. Continued in spite of his motions for his posture for trial. A decision made determined upon a remaining six months for his continued hold, from a conditional release of twenty four months. And in seeing the futility of acquiring counsel essentially the public defender's office assistance being appointed. And dis?? By the ?? for reluctance and with much reservations and perceptibly for he pleads involuntariness to representing Petitioner's waiver of his Sixth Amendment right to trial and his defense with the assistance of counsel accepted the prosecution offer of a prison term of three years with an offer of a parade appearance within a month for a release before sixth months from time of sentence. Petitioner filed a notice of appeal appellate attorney was appointed and they had not talked or seen one another for a

client and attorney relationship in discerning the Petitioner's hopes, prospects or proposals consideration. And counsel appointment was he ?? and any detail he was acquainted with.

LIST OF PARTIES

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

[x] All parties do not appear in the caption of the case as the cover page.

A list of all parties to the proceeding in the Court whose judgment in the subject of this petition is as follows:

1. Bonepietro, Robert E., New Jersey's AAG
2. Crew III, Bruce, Prosecutor Chemonge County, New York State, Assoc. Appellee. Judge, App. Div. 3rd Department
3. Freedman, Adam, Public Defender, New York County
4. Freeman, Christopher, Public Defender, Seminole City, Florida
5. Garnell, Richard C., Public Defender, Bergen County
6. Glassman, Matthew A., Appellate Attorney, New Jersey
7. Kuchenmiester, Frederick J, Bergen County, New Jersey
8. Leibowitz, William J., New York County
9. Monroe, J., Chemonge County, New York State
10. Moody, Ashley, Attorney General Florida
11. Sloniger, Thomas E., Public Defender, Chemonge County, New York State

12.

RELATED CASES

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CASES PAGE

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR EXTRAORDINARY WRIT

Petitioner respectfully prays that a Writ of Mandamus to 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

[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

[x] reported at People v. Priester, NYS; People v. Priester, NJ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the _____ 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.

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 Appeal on the following date: _____, 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).

[x] For cases from State courts:

The date on which the highest state Court decided my case was (People v. Priester, NY 1984); (People v. Priester, NJ 1989). A copy of that decision appears at Appendix A-1.

[ ] A timely petition for rehearing was denied thereafter on the following date: _____, a copy of the order denying rehearing appears at _____.

[ ] 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

Constitutional Provisions:

First Amendment. Right to redress been denied.

Sixth Amendment. Right to select assistance.

Sixth Amendment. Right to impartial prejudice free jury.

Fourteenth Amendment. Right to due process guarantees for law.

Reasons For Granting The Petition

REASONS FOR GRANTING THE PETITION

David Priester v. Mark S. Inch et al, 22-6133

Faretta Hearing case # 2017-CF-1605A, Seminole County, Florida, Eighteenth Judicial Circuit, for Faretta v. California, 422 U.S. 806, 45 L.Ed. 2d 562, 955 S.Ct. 2525.

In showing the prevalent denial of the Petitioner's Sixth Amendment right to assistance of counsel, for trial. Sixth Amendment. And with all critical stages Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, U.S. v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 657. Pre-trial motions would count as a critical stage. Nelson inquiry would count as a critical stage, for Nelson v. State, 274 So.2d 256, 1973 Fla., trial preparation guided by advice of experience trial attorney, with the accuse for the prospect(s) available to him/her would count as a critical stage. Strickland v. Washington, Id 2041, FiField v. Sec'y, 849 Fed.App. 829. Where it is shown for its documentation the Petitioner had been without the assistance of counsel, for the Sixth Amendment. And this court's Gydeon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792. And argued, the stimulus for the results bearing the denial of Petitioner's Motion to Dismiss the prosecution information or at least have it to amend its information to exclude the Grand Theft and its related charges, so as to claim the denial of assistance with pretrial investigation of witnesses namely officer(s) claim(s) for their sworn testimony and its relation(s) to the prosecution information for its unsubstantiated bearings and with its investigator Morgan, for

perjury. For a denial to effective representation in being of assistance for the right to counsel effective assistance: U.S. v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed. 657.

For Faretta, it was explained to Petitioner by the presiding Judge Honorable Debra S. Nelson having an attorney represent itself as a means to surmount obstacles, that impose themselves as impediments are with the prosecution as opposing counsel a gross disadvantage. Went through the pro's and con's to ultimately illustrate there was no advantage in not having the assistance of counsel for the Sixth Amendment. But undeniably mitigated further having the attorney appointed can and more likely than not will prove to be with the accused and his/her objection an impeachment. The Sixth Amendment allows the accused to consider his/her situations and with the prospects of success, with the use of assistance from counsel. Comprehensively, the Sixth Amendment allows the accused the assistance of counsel . . . which adopt the proposition that the accused is to be permitted the inclinations, that counsel can be of assistance and by the accuse prospects, of assistance, there from and there with, being no frivolous endeavor upon one conscious even if the resources were limitless. And indicate the assistance imposed upon must be willing to meet all the demands of help and representation with every accused case being different. And for this complexity alone would make appointment impractical. To meet the benefit(s) adopting the use of assistance of counsel, where there is not a foundation of willingness. Like a juror must be willing to set aside prejudices for impartiality to be in accordance with the objective of the

Sixth Amendment and the accused not his/her considerations of the assistance of counsel. And is predominantly considered upon the assistant's willingness in conjunction with his/her accessibility with witnesses along with the assistants experience for their method to interview witnesses especially where such witness are of the law enforcement genre are to effectively investigate a matter, with the accused the Judge had explained for its advantage in having counsel's assistance. Faretta _____. Such Sixth Amendment assistance for counsel's assistance with the Petitioner's case, was tied into investigator Alfred e. Morgan's claim of having been bound to and having met his Sixth Amendment obligation, that would involve his disclosure of alleged victim Daniel E. Choquette's sworn testimony, for his sworn testimony, Ex. "A". Yet, not being within discovery for its Sixth Amendment and Fourteenth Amendment obligation and relevance for its inquiry? To which for the endeavor, counsel's assistance ??? be willfully acquisitioned. Such attributes for its aspect(s) was also tied into Deputy Tutino's sworn testimony. Ex. "B". as his sworn testimony, for his claim(s), relate to investigators, Morgan and Smalt. And to claims of that I alleged victim Choquette, as witnesses. Ex. "B". as he alleged for himself, Morgan and Smalt. that from them . . . and imparted to him, to allow him to say, that they said, the alleged victim Choquette had spoken with them as with himself, for the prosecution information, that with them, Choquette had allegedly claimed for his reiteration and disclosure as a material witness for 3.140(g); State v. Harting, 543 So.2d 236 (Fla. 5th DCA). In support of its reliance for its filing charges for Florida statue in accusation of the

offense. Had upon Deputy Tutinos report for the statue and the prosecutor's report of it representing such for its information. Had upon Tutino's sworn testimony for Hartunge at 237. Had with each upon his sworn testimony, identified himself as Choquette and the legitimate owner of the identity the accused had perpetrated and from same witnesses, it was asserted by them to him, that Choquette as the victim allegedly assisted to them and being told this by such witnesses. Had it also alleged the witnesses said for the victim, they was told for his reiteration, he was the victim of an unauthorized withdrawal in the amount of $6,500. With the accused as its suspected perpetrator for the charging of the statue as its violator., as sufficient in satisfying the statue for the prosecution information, though no sworn testimony from its alleged victim been disclosed though it's been alleged to been procured and also furnished Ex. "A" Morgan trial:

and would reason, the victim's sworn testimony, where it exists, would reflect itself with the sworn hearsay for its essentials for Morgan and Smatl. from that of Totino. Yet, with the sworn testimony absence to compare with the hearsay sworn testimony of Tudino, for the hearsay sworn testimony of Morgan and Smalt as hearsay being uncorroborated or relate to a confession to have their sworn testimony categorized differently. State v. Gonzalez, 212 So.3d 1099 [6]. And for his sworn testimony not alleged by the victim to be corroborated for its hearsay yet arguing for their exception. And assessing the absence of the victim's sworn testimony for its suspicious cause and impeded by its non-disclosure for chance to exam the essentials for verification must be visited with the victim and required

counsel assistance. Which the Petitioner was denied for his representations of the Motion to Dismiss for its challenge without sworn testimony to reflect differently and sought to move for a dismissal of the alleged accusations without the effective assistance structure upon counsel's assistance. Its denial had impaired the motions effect upon a dismissal of sworn hearsay claims said to been made by an unverified person for Morgan and Smalt and for Deputy Tutino's claims. Though not verified, not even to establish the victim's identity., proved to be impenetrable, though hearsay all around, in addition to being unsupported and most states reject its challenge upon insufficiency. United States v. Waldon, 363 F.3d 1103, 1109 (11th Cir. 2004). Supportively it was the result of counsel's denied assistance.

Assistance of counsel is a structural matter. With counsel's assistance being an integral part of the trial and prosecutorial process. And its denial is analyzed as a structural defect, and to subject to a prejudice analysis for harmless error. Cite omitted.

The denial of assistance to which can investigate a matter and to require its investigation to curb the effects, was found to be ineffective. Young v. State, 439 So.2d 306.

Comprehensively for the Sixth Amendment, with counsel having mobility and accessibility for his assistance and for Sixth Amendment relevance to his purpose within the scheme of judiciary proceedings and its denial to the Petitioner

and the denial bearing upon his failure to inquire into the alleged sworn testimony of the alleged victim of theft and identity fraud for Brady v. Maryland.

And the effects material for a Richardson v. State, 246 So.2d 771. Inquiry based upon Morgan's claim that such a sworn testimony was more and to been available for inspection for assistance, denied and would be the threshold of counsel continued denial, for its Writ of Certiorari as a follow up for its review with its questions for its relevance with its representation of denials for an extraordinary Writ of Certiorari is under review for rule 20, 24, 37.2 (A) and (B). For its representations of denials and hearing on the court for rule 20 extraordinary writ. In illustration:

1. Counsel investigatory assistance with Choquette for Tutino's claim for himself, Morgan and Smalt and Choquette., would have uncovered neither, despite their claims had spoken with Choquette to credit their sworn testimony, to not discuss where investigated would had impaired its composition of materiality to the statue for charging upon the sworn information for Grand Theft and identify fraud, to consider its investigative effects upon a successful challenge to the prosecution's information grounded upon the sworn testimony and its challenge within this court.
2. For the extraordinary writ, counsel's assistance was denied, rather than ineffective: as it is inconceivable counsel had failed for negligence and for his ineffectiveness where it is to be shown there resulted a prejudice. But for his denial Sean Morgan alleged to procure a sworn claim from Choquette and

claimed in himself to be a material witness to this act alleged to been performed by Choquette. And seeing its proof was not within discovery. And seen this omission retained for him contradictions for inquiry and denial for Brady v. Maryland. Had did the dishonorable and hand the matter over to the accused for his inadequate representation for its opportunity seized from within confinement.

3. The denial of assistance explained counsel's representation which had not included an investigation of Tutino's sworn testimony Ex. "B" for its legal effect, that says Morgan had been told by Choquette. And Choquette to Morgan that he had been alerted by Chase Bank. And Morgan had advised Choquette to make a claim for an unauthorized withdrawal in the expense of $6,500. And said he made this claim. Showed no inclination to investigate this claim of Morgan and Small alleged by twins that warrant the accused prosecutors thought not true or verified. And being a lawyer know where challenged must be investigated... where such is to be the assistance or representation for his client's immediate discharge. And was the issue between the Petitioner and counselor, though not aptly articulated.

And support assistance denied with representation in trial approach as counsel intended to discuss trial strategies and where he had not, would be a denial of his representation. Denied assistance with motion to dismiss. Denied counseling of motion's viability. Denied investigative inquiry into Choquette alleged sworn testimony for *Brady v. Maryland.*

Choquette statement would had disclosed he made no sworn testimony and could had been discovered with counsel assistance. And would have disclosed he was not asked to make a statement as was claimed. And his statement would had disclosed he made no statement. For the claim which said he had and the claim such was given to the State attorney. And his statement would not had said he was alerted by Chase Bank. And would not had said for his statement that he chase account was accessed. And he would not have said there was on his account an unauthorized withdrawal for the statue for the prosecutor's information as was represented for the sworn hearsay testimony and using Choquette's name...is no better than the accused in this regard. And worst in claiming its owner said his name and information can be used without authorization.

And his statement would as trial testimony indicate would have been devoid of such damaging testimony. Testimony that succinctly identified the Chase Bank account to been his own and it had been accessed the day before and preceded the following day with an attempt. For the sworn testimony said to been provided for disclosure where assisted.

The denial rather than ineffective assistance, is further seen from the Petitioner's numerous assertions: counsel's not interested_____. Counsel has not been representing him_____. He had not looked to come to court to represent himself_____. Not discussing trial strategy is partly the issue_____, are concerns that are for an in-depth court inquiry.

For this court's examination of the Petitioner's Faretta Inquiry: Had counsel representation of the Petitioner at any critical stage looked to offer assistance in an investigatory capacity? Had counsel's representation of the Petitioner looked to propose an evidentiary motion, psychological evaluation notion? Faretta hearing, Nelson hearing, or motion to dismiss? Had counsel indicated prior to ??? so as to make it unnecessary, for the court to suggest trial strategies he discussed? And was his ultimate course of action indicate he was not in ??? of the court's suggestions of doing what is unbecoming of his character to appease or suck up with no actual justification for not resolving the affair with a Faretta hearing. Which was best where he had no desire to assist though he been appointed and only because he been appointed to represent a NOUN!

The Petitioner had not disagreed with the court's position that without counsel assistance represent a disadvantage. And this had not escaped the Petitioner. For such assistance, he had conveyed that he attorney had not provided the assistance needed and looked for in a motion to dismiss. _____. And further showing the disadvantage had not escaped him, he had said, he had not looked to come to court to represent himself _____ or be without assistance. Also say further counsel have not been representing him _____ or assisting him.

And when one reason that it is only with counsel assistance being an indigent NOUN for his private investigator or attorney. That Petitioner would have been able to uncover investigator Morgan had made himself a material witness for the Sixth Amendment in saying he spoke with Petitioner's accuser. And in no position

to say this had not occurred. But had ??? investigation upon claim of having obtained sworn testimony and its absence ??? investigator. Which is represented in an appointed attorney who is not willing to seek its disclosure, that would have communicated no such claim was asked or provided for perjury. *Giglio v. U.S.*, 405 U.S. 150

Where such sworn testimony was procured prior to it being disclosed and provided in the guise of its trial testimony. For the sworn statement of Choquette for its content and substance would not had existed as he made no statement. And therefore it would not exist to communicate for the prosecutions information as Ex. "A' and "B". So as to have it said upon such exhibit(s) his bank account was accessed for $6500 and he was by Chase Bank. Counsel and not the Petitioner had the means to better argue his motion to dismiss on false or incorrect information.

Plain Error., U.S. v. Pugh, 403 F.3d 390, 397. And not abuse by Nelson Inquiry. Nelson v. State, 274 So.2d 258. For the holding of a Faretta hearing for a waiver of counsel it is the position of Petitioner that the Faretta Hearing must support counsel attempted to provide assistance. Where there in so supporting record of assistance had been available to be waived. Where its availability is absent is cause to address its absence with an inquiry.

Petitioner not looking to come to court to represent himself._____ or counsel have not been representing him_____. Or he cannot continue with counsel _____. Counsel is not interested_____.

Communicate he wanted counsel's assistance but it was not available for its advantage. Was for inquiry. And to permit counsel who made himself unavailable was plain error to permit same to persuade the court to bypass an inquiry as to the reason? Plain Error.

The record is devoid of an inquiry into whether assistance was available and being most distinct from effective assistance which critique assistance rendered. The court opinion there's no ineffective counsel assistance _____ and not whether Petitioner was denied assistance. Which Petitioner insisted he was entitled to and to such have been denied. How else could he had disclosed sworn hearsay testimony was perjured? If not with counsel's assistance? As witness was not available to question until he testified and became within access. His assistance was not required no longer. And to this end, the record do not support assistance was available or within reach, for the Sixth Amendment and the right to the assistance of counsel for by passing an inquiry as to this denial.

Other than providing to the Petitioner discovery, counsel claim that he was going to discuss trial strategies _____, to been abandoned if it was ever a real consideration. To be unexplained and to usurp the intense for itself with a research of Faretta... was going to seem more like a fleeing thought. And his assistance had include he informed the Petitioner of a plea offer for counsel being instrumental! And cause for the court to inquire into whether assistance was available where it was to bypass the Nelson inquiry. And with the record sustaining assistance was never available is plain error.

Where assistance was not available support representation was also not available for *Strickland v. Washington*, 466 U.S. 688, 104 S. Ct. 2052. And for its prejudice waived counsel and had agreed to stand by attorney. With the prospect of another attorney to consider for representation for rule _____ where Petitioner was persuaded by such attorney for representation was prejudiced with same attorney and denied its due process.

Stand by counsel denied rather than ineffective. For *Faretta v. California*, 422 U.S. 806, 45 L.Ed 2d 562, 95 S.Ct.2525, *Behr v. Bell*, 665 So.2d 1055 for *Mcgirth v. Jones*, 209 So.3d 1146. Counsel would for the record say assistance will continue to be unavailable even in the capacity of standby counsel where Petitioner was to ask counsel to do anything other than represent him or take over the obligation for its responsibility.

A denial constitute a conscious deprivation of representation and been to the overall denial for this court's extraordinary writ.

Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 880. For ineffective appellate counsel in not arguing Faretta for plain error in trial counsel by trial court not being the subject of a Nelson hearing and thereafter appointed same attorney as standby counsel impeded upon Petitioner's right to testify as he wanted to do in his defense of intended touching of a Law Enforcement Officer . and would had likely done so with another attorney as standby counsel. As he would he stay he would consider another attorney_____. And was open to the prospect of having an attorney

as standby counsel _____. And conceivably not where he knows the State attorney was to be appointed for his disposition allowed counsel was not going to be instrumental. And had prejudiced his options with the Petitioner's defense of unintended touching. And his testifying may had credited the facts where they was recounted by him: it is acceptance of $200, brought to Florida to access account(s) for the identities supplied. For arguably procuring from bank laundered money, opposed money by theft. But hidden money would justify $200 of $6500 or $2500. Where it is reported as theft by himself. While waiting for its withdrawal, was standing within bank, far from door at its counter without his glasses to match the identity photo. Car drove off, he turned to counter, and not discerned officer from counter, remain on phone, hurried through door, intended to get out door, was from behind as the revised, touched him, jerked his arm, spun around, raised both hands, phone left hand, shoved officer upright, rushed out door. With the rest coincide with testimony of Martinez and had not looked back in acknowledgment of yelling. And was a prospect desired and impeded with appointment of same attorney as standby counsel. Required a different attorney representation for the testimony entered into the record. And the prospect and its feasibility was applicable for such as attorney's insertion at such a junction in the trial proceeding rule _____ which Petitioner thought to invoke was an appeal matter. And appellate counsel failing to argue same counsel's appointment as standby counsel was arguably an abuse as well as plain error. With counsel's being clear on his relations to the Petitioner was to receive no assistance unless he is representing him _____. And the totality of

their communication was not feasible to give him as his standby attorney reign for its prejudice. And seeing he wanted to testify is difficult to conceive this denial was not even a consideration against an Anders Brief...for being transparent for its plain error.

Trial/Appeal Of Chemung County

Petitioner was in restraint and within the jury's sight and view all throughout his trial jury selection, testimony. And no instruction or objection was involved, is asked was he denied his Sixth Amendment right to an impartial jury?

Where this matter of being placed in restraint with no visible explanation as to the reason and no objection or instruction to the jury where the evidence against the Petitioner was the claim of one witness that a weapon was cast into a crowd of inmates and recovered from a crowd of inmates and was claimed by another inmate. Characterized as a liar, to belong to himself, and not the Petitioner who prior to and shortly thereto went through a metal detector and who was bodily searched, to which was not pointed out to the jury in addition to being in restraints, was denied effective assistance of counsel in all respects for this court's jurisdiction.

Trial/Appeal Of Bergen County

Was the Petitioner denied a fair trial when the State had not turned over discovery material namely a 911 call that would have pointed out that the victim only seen and reported one person. And the arresting officers were only looking for

one person. And the person that was seen within the victim's house testified he acted by himself. And the 911 call identified him and only him. Ask was he denied effective counsel?

Trial/Appeal Of New York County

Was the Petitioner denied his right to a fair trial and an impartial jury, where a presentation and failed to point out to jury that victim's identification and his involvement – was coerced by the officer? the only evidence was the testimony of the officer that the Petitioner was the one he observed in a dark movie vestibule and who ran into a subway and who he ran into behind and lost twice, "inferring" he seen him twice. It should not have required the identification from the witness and most certainly not by coercion. Ask was he denied effective counsel in all respects? See Appendix A.

Guilty Plea/Appeal Bronx County

Was the Petitioner denied his right to the assistance of counsel/representation under **Douglas v. California, 372 U.S. 353, 356, 83 S. Ct. 814, 9 L. Ed. 2d 811 (1963)** and **Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)** when he asked and when he took steps in presenting namely the note passed to a Chase Bank teller taken as evidence and the District Court judgment also passed to the Chase Bank teller to which granted a Certificate of Appealability from the Southern District of New York, illustrating that his actions to procure money from this Chase Bank was exercised upon and

with the intent to acquire an attorney in response to the circumstances now known to this Honorable Court as one course of action to constitutional denials having no judicial corrective measures. Would make his actions warranted... and the essence of his action was made known to this Chase Bank teller. And explained to been possibly a factor to her eventful cooperation against Grand theft. Had not utilized such money for an attorney entirely due to his drug addiction, to which he would later seek treatment. Question was his plea of guilty the result of his denial of assistance in presenting such constitutional denials to a jury? For a judgment upon justification where he acted with a reasonable objective and under duress? Should the Petitioner have ever sought the right to a trial and representation by counsel?

Trial/Appeal Of New York County

Petitioner was convicted in 1999 by a jury trial in a two person robbery. And was sentenced to 15 years. He filed a notice of an appeal, was given appellate counsel. He then withdrew his appeal. Thinking appellate counsel must come with appeal for his right to appeal. Claimed cause for distrust in assigned attorney's as cause for seeking self representation, where counsel is required to do more than assist. See Appendix A. was then brought to District Court after post motion on actual innocence was granted a Certificate of Appealability. No ruling.

Trial/Appeal Of Chemung County

Petitioner was convicted by a jury trial in 1982 of promoting prison contraband a prison knife. An appeal attorney filed a brief. Petitioner requested a supplemental brief be submitted. Appeal court ruled without supplemental brief and the issues of being in restraints. The State Supreme Court denied Certiorari. A federal writ was drawn up by an inmate James Cunningham and certified mailed to the Easter District of New York in 1987. No answer. After being returned from New Jersey Petitioner filed his Federal Writ in 1995. He left a forwarding address for responses. Writ was denied without his knowledge by the Western District of New York. Writ was denied as untimely. He then requested permission to file a Second Writ under his original writ of 1995. No ruling.

Trial/Appeal Bergen County, N.J.

Petitioner was convicted as a participant in a one man burglary. Yet said to been a two man crime by a jury in 1988. Attorney was assigned to appeal. The appeal was denied. State Supreme Court affirmed. The issue of the 911 call was not raised. The issue of his prior conviction for promoting prison contraband was to be excluded for any reference to prison and was introduced to the jury over a request to speak with his trial attorney. Post conviction motion was sought in 1991. No acknowledgment. Federal Writ containing unexhausted claims. Petitioner was then extradited back to New York. Who later sought a petition for a Second Writ for his

original Writ the dismissed by the Federal District Court of Camden, New Jersey in 1991. Pointing out that his unexhausted claim for the 911 call was then introduced in his Post Conviction Motion which went unanswered for exhaustion which made his original writ the subject of the District Court and was erroneously dismissed for an appeal. The use of the Second Writ was ruled as not necessary. The Petitioner submitted a motion to reargue that basically asked again was it not necessary to use a Second Writ? No response to his motion from the Third Circuit Court of Appeals.

Relief Sought

For David Priester v. Sec'y Mark S. Inch

The Petitioner move this Honorable Court on motion as relief, seek release in his own recognizance (ROR) while petition for 28 U.S.C. 2254(b), for the claim of actual innocent and deficient evidence. Denial of a substantial constitutional right and denial of counsel for the effectiveness of counsel. While claims are under ??? 36.3(A).

David Priester v. Supt. John P. Kean, Ossining Corr. Fac.

David Priester v. Supt. Daniel E. Senkowski, Clinton Corr. Fac.

David Priester v. Warden William H. Fauver, Southern State Corr. Fac.

People v. David Priester, First Dept. New York Appellate Division.

Where the court find:

Supt. Kean for U.S. 2nd Cir. Ct. of App. Clerk for its receipt and non filing for rule ____ for inquiry unsatisfactory for its review. Supt. Senkowski for its discontinuation of its southern district denial of 2008. Warden Fauver Third Cir. Ct. App. Failing to communicate its original answer in answer to reargument.

And find the constitutional denial(s) omissions or trial impediments for each to be so elementary so as to make comprehensive the unexplainable and the reason for irregular Judicial process for this court's authority and jurisdiction predicated on its constitution, warrant the transfer also of People v. Priester, to a court of action from this Honorable Court. And suggest attorneys who are fully abreast upon any impression that may have been made for an ROR.

Petitioners current filing is in compliance with this court's filing instructions dated: February 27, 2019, September 18, 2019, to be based upon its latest filing instructions dated January 29, 2020.

Relief with petition for Extraordinary Writ and Writ of Mandamus, is to have the court(s) of jurisdiction to their Writ of Habeas Corpus 28 U.S.C. 2254(b) for the 2nd Circuit U.S. Court of Appeal, render its opinion for a Writ appealed with a Certificate of Appealability or adopt such Writ within this court. With the same relief or approach adopted with a successive Writ for 28 U.S.C. 2244(b) within the Second Circuit Court of Appeal.

And the same relief or approach with a successive Writ of Habeas Corpus 28 U.S.C. 2244(b), within the Third Circuit Court of Appeal for the United States.

Conclusion

The Petition for an Extraordinary Writ should be granted.

Date: 14th day of March 2023.

Respectfully Submitted,

David Priester #E59730
Jefferson Correctional Institution
1050 Big Joe Road
Monticello, Florida 32344