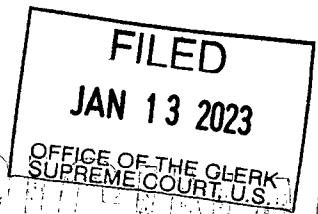


22-7266

No. _____



RECEIVED
SUPREME COURT OF THE UNITED STATES

IN THE

SUPREME COURT OF THE UNITED STATES

LEVAR LEE SPENCE — PETITIONER
(Your Name)

vs.

COMMONWEALTH OF PENNSYLVANIA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

LEVAR LEE SPENCE
(Your Name)

1 Kelley Drive (SCI-COAL TOWNSHIP)
(Address)

Coal Township, Pennsylvania [17866]
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the Pennsylvania Supreme Court SAYERES decision provide the necessary warrant of authority to subsume the constitutional Writ of Habeas Corpus AD SUBJICIENDUM within the PCRA?
2. Whether lack of statutory authorization in a state court of record disable discretion, once challenged, requiring sanction and/or deterrent for courts to proceed, notwithstanding?
3. Whether the right of self- representation in Pennsylvania require substantive and procedural due process protections enforceable under Article I, § 9, of the Pennsylvania Constitution as well as the Sixth Amendment to the United States Constitution?
4. Whether where challenges to the statutory authorization to impose a particular sentence is lacking in a State court, it has discretion to provide its own authorization?
5. Whether Brady violations, or newly and/or after discovered evidence and facts, or any other discovery issue, in Pennsylvania, can be deemed waived if discovery materials were refused pre-trial, at trial or post-trial?
6. Did the State violate Due Process and Equal Protection when it refused the right of direct appeal and timely requested trial transcript(s) by applying a STRICT compliance rule to their format?

7. Whether on appeal as of right the State discretion to decline or refuse to review and decide matters in a definitive and comprehensive analysis on the merits of the claim violate State and Federal constitutional provisions?
8. Did the supervisory powers over inferior courts disable its discretion under SPECIAL allocatur, where the state supreme court promulgated "special and important reasons" governing it, violating constitutional authority to refuse it?
9. Did the State have discretion NOT to review whether claim satisfy the collateral order three-prong test requiring immediate appellate review as of right?
10. Did the State violate constitutional provisions when it held a deficient waiver of counsel colloquy harmless where it refused to mention or address it in an overt judicially biased decision?

Question #1. Did the Pennsylvania Supreme Court SAYERES decision provide the necessary warrant of authority to subsume the constitutional Writ of Habeas Corpus AD SUBSIDIENDUM within the PCRA. The suggest answer should be in the negative. Accordingly, Petitioner contends hereby that, neither in the year 1879 by the Sayeres v. Commonwealth, 88 Pa. 291, decision, nor since the adoption of the State and Federal Constitutions, the powers delegated to the state legislative body, regarding writs of error, does not exist, implicitly or otherwise, within the Pennsylvania Constitution pertaining to the Writ of Habeas Corpus. See, PA. CONST. ART. 5, § 24 (1968) Your Petitioner further contends that there can be no power delegated to the state legislature to do anything the state constitution prohibits, which includes limiting or restricting the right to the Privilege of the Writ of Habeas Corpus, unless when in cases of rebellion or invasion the public safety may require it. For, naturally, any limitation or restriction whatsoever, under any interpretation to the contrary, constitutes a suspension. Further proof lies within the Bill of Rights. See, e.g., PA. CONST. ART. 1; also, U.S. CONST. ART. 1, § 9, cl. 2.

Question #2. Whether lack of statutory authorization in a state court of record disable discretion, once challenged, requiring sanction and/or deterrent for courts to proceed, notwithstanding. The suggested answer should be in the affirmative. For, fundamentally, a court without statutory authorization cannot act; and, once a court's statutory authorization is challenged, it must be proven on the record to exist before it can move one step farther. Your Petitioner contends that, according to state supreme court precedence, stare decisis, the State (Respondent) lacked the requisite statutory authorization to prosecute him. See, e.g. Meyer v. Beaver County Community College, 625 Pa. 563 (2014) Pursuant to the law-of-the-case doctrine, "when a court decides upon a rule of law that decision should govern the same issues in subsequent stages in the same case". See, Arizona v. California, 460 US 605, 618 (1983). Accordingly, Petitioner's conviction and sentence, which expires on April 15, 2023, is

null and void, from the beginning, and had been circumvented by the State. Petitioner was sentenced by the State (Respondent), in an aggravated range for challenging its statutory authority, to serve eight years' imprisonment.

Question #3. Whether the right of self-representation in Pennsylvania require substantive and procedural due process protections enforceable under Article I, § 9, of the Pennsylvania Constitution as well as the Sixth Amendment to the U.S. Constitution.

Suggested answer is in the affirmative. Your Petitioner contends that the right of self-representation is underdefined in Pennsylvania; and provides no protections substantively or procedurally from arbitrary or unreasonable government actions. However, whenever an individual elects to exercise his "right" of self-representation in Pennsylvania, the State (Respondent) warns him, *inter alia*, that he will receive no safeguards, and will be treated as a licensed professional attorney, but does not afford him the same courtesies of an attorney. Essentially, where there is a right, there must also be a remedy. Due process itself require, along with the equal protection of the Law, fair procedural rules for the vindication of rights. A "right" is summarily designed to confer a protection from harm, oppression, abuse, mistreatment, prejudice, injustice, discriminate, disadvantage or, *inter alia*, usurpation. In the Pennsylvania Constitution, under its provisions, the right of self-representation is recognized, but confers no protections in its exercise. Moreover, the right of self-representation also, supposedly, is provided for by the Sixth Amendment and made applicable to the states' procedure by Due Process and Equal Protection of the Law. Your Petitioner contends that the State (Respondent) fails to safeguard his liberties, and acted unreasonable and arbitrarily against him, criminally and civilly; and continue to do so, in the underlining exercise of the right of self-representation. See, *Haines v. Kerner*, 404 US 519, 520 (1972); also,

Faretta v. California, 422 U.S 806 (1975)

Question #4. Whether where challenges to the statutory authorization to impose a sentence is lacking, in the State courts, it has discretion to provide its own authorization.

Suggested answer is in the negative. If the State (Respondent) lacks statutory authorization to impose a sentence, it is illegal; and, an illegal sentence must be vacated. See, e.g., Commonwealth v. Wilson, 11 A.3d 519, 521 (Pa. Super. 2010). Additionally, the State can only function within the parameters set by some established rule or statute. Your Petitioner had challenged the State (Respondent) to produce the statute that would authorize it to sentence him to an aggravated eight-year sentence, and it had failed to do so. Instead, the State (Respondent) had contrived an extra-judicial, nonstatutory, method to refuse Petitioner remedy. In consequence of the State actions, Petitioner's sentence expires on April 15, 2023. See, 42 Pa.C.S. § 9781(a).

Question #5. Whether Brady violations, or newly and/or after discovered evidence and facts, or any other discovery issue, in Pennsylvania, can be deemed waived if discovery materials were refused pre-trial, at trial or post-trial.

The suggested answer should be in the negative. Although this is a matter never before raised in this Court, the State (Respondent) insist a new interpretation of the Court's decision in Brady v. Maryland, 373 U.S 85, that should wholly apply to the supervisory authority of this Court. It further adds a new rule, specially for the Petitioner, that can waive a newly-discovered fact or evidence or an after-discovered fact or evidence, notwithstanding. This new rule or interpretation goes contrary to fundamental principles of law for the State to

insist that some material evidence or facts withheld from him or unknown to him can be waived, despite any absence of fault on the Petitioner. See, *Boyd v. U.S.*, 116 U.S. 616.

Question #6. Did the State violate Due Process and Equal Protection when it refused the right of direct appeal and timely requested trial transcript by applying a STRICT compliance rule to their format.

The suggested answer should be in the affirmative. Your Petitioner contends that the State (Respondent) willfully neglected Petitioner's right of direct appeal and timely requested trial transcript in order to circumvent the challenges made therein. To this day, the Petitioner's direct appeal rights were never reinstated and he had never received a complete verbatim account of his trial court proceedings. Neither does the record support a knowing, voluntary, and intelligent waiver of these rights by the Petitioner. Your Petitioner contends that the State (Respondent) should not have applied the strict-compliance rule to the exercise of his constitutional rights, only to deprive him thereof. Due process protects the right of direct appeal, which inherently includes trial transcripts, or collateral review, and all that it may entail, when that right is guaranteed by the State (Respondent). See, PA. CONST. ART. 5, § 9; see also, e.g., *Evitts v. Lucey*, 469 U.S. 387, 393-95 (1985).

Question #7. Whether on appeal as of right the State (Respondent) discretion to decline or refuse to review and decide matters in a definite and comprehensive analysis on the merits of the claim violate State and Federal constitutional provisions. The suggested answer should be in the affirmative. Your Petitioner contends that he had a right to appellate review. Specifically, a comprehensive and definitive analysis on the merits of the claims Petitioner had raised on appeal. Your Petitioner further contends that the State (Respondent) had willfully and knowingly violate the Due Process and

other Federal Established Laws when it refused Petitioner a thorough discussion on the merits of his claims, along with the relief attached to them. See, Commonwealth v. Turner, 80 A.3d 754, 764 (Pa. 2013) (The government is prohibited from depriving individuals of life, liberty, or property, unless it provides the process that is due.). In this case, the process that was due to the Petitioner was deprived from him by the State (Respondent). See, Evitts v. Lucey, 469 US 387 (1985). This may be important to the public.

Question #8 Did the supervisory powers over inferior courts disable its discretion under **SPECIAL** allocatur, where the state supreme court promulgated "special and important reasons" governing it, violating constitutional authority to refuse it.

The suggested answer should be cautiously in the affirmative. First, Caution must be given so as not to disturb the discretion provided to the state supreme court, pursuant to Pa.R.A.P. § 1114, on allocatur or allowance of appeal. However, Your Petitioner contends that, in certain circumstances, statutory discretion must yield to constitutional and canonical duties. Your Petitioner contends that it is unconstitutional for the Pennsylvania Supreme Court to "violate any canon of legal or judicial ethics", see PA. CONST. ART. 5, § 17(b), including refusals to supervise the ministerial conduct of inferior courts. In this case, the inferior courts refused to provide Petitioner a comprehensive and definitive analysis to his claim on appeal as of right and, when Petitioner complained in a timely filing of the said liberty interest or fundamental fairness interest, the State (Respondent) refused to supervise. Accordingly, any court, but especially the state supreme court which swore by Oath to support and uphold the Constitution, in the Commonwealth of Pennsylvania, having "supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them",

see Judicial Canon § 2.12; and, the State refusal to do so violates the Pennsylvania Constitution. PA. CONST. ART. 5, § 17(b).

Question #9. Did the State (Respondent) have discretion NOT to review whether a claim satisfied the collateral order three-prong test requiring immediate appellate review as of right. The suggested answer should be in the negative. According to the Rules of Appellate Procedure, if any order, issue, claim, privilege, or right, meets the definition of a collateral order, showing that it is separable from and collateral to the main cause of action where the right involved is too important to be denied review and the question presented is such that if review is postponed until final judgment in the case the claim will be irreparably lost, it is appealed by filing a notice of appeal or petition for review. If, in fact, all three prongs of the collateral order test are satisfied, an immediate appeal may be taken as of right. Immediate appellate review inherently implicates a swift and imperative determination as to whether the issue meets the definition of a collateral order. See, e.g., Pa.R.A.P. § 313; cf. 28 U.S.C. § 1291. Additionally, any delay in that determination carries a probability of irreparable loss (of a right). The State (Respondent) have decided sua sponte that Petitioner was not equally entitled to prompt determination under the process that is due under collateral order rule. Your Petitioner contends that the State usurped its authority to impermissibly work injustice upon the Protected Liberty Rights guaranteed to the Petitioner by the Constitution and laws of the United States. U.S. CONST. ART. 6, cl. 2-3.

Question #10. Did the State violate constitutional provisions when it held a deficient waiver of counsel colloquy harmless where it refused to mention or address it.

The suggested answer should be in the affirmative. Accordingly, both the right to counsel and the right of self-representation are guaranteed by the Sixth Amendment to the United States Constitution and by Article 1, § 9, of the Pennsylvania

Constitution. Deprivation of these rights can never be harmless. Commonwealth v. Houtz, 856 A.2d 119 (Pa. Super. 2004) In Pennsylvania, what is meant by the deprivation of the right to self- representation is limit to a thorough on the record waiver colloquy where the State (Respondent) warns him of the protections a defendant elects to forgo as evidence that it is done voluntarily, knowingly, and intelligently. Nothing else. However, if the State fail to conduct a thorough on the record colloquy before allowing a defendant to proceed to trial constitutes reversible error. Id. Your Petitioner had obtained proof material to a deficient waiver colloquy from trial transcripts withheld from him by the State. When the Petitioner had raised the claim on appeal with its proof, the State ignored it. The State (Respondent) appears to have bias or ill-will against the Petitioner that, when taken together, should require the Court's supervisory powers.

In the interest of right and justice, questions 1-10 should be viewed cumulatively as well as seperately.

LIST OF PARTIES

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

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

i.) COMMONWEALTH OF PENNSYLVANIA - RESPONDENT

a. PENNSYLVANIA SUPREME COURT

b. SUPERIOR COURT

c. YORK COUNTY COURT OF COMMON PLEAS

ii.) LEVAR LEE SPENCE - PETITIONER.

RELATED CASES

COMMONWEALTH OF PENNSYLVANIA v. SPENCE, CP-67-CR-3301-2015

SPENCE v. NORTHUMBERLAND COUNTY COURT, DAUPHIN CO. CCP Dkt. no. 52-CV-2023

SPENCE v. YORK COUNTY PRISON, 2015-CV-2290, 2015 US Dist LEXIS 172000 (M.D.Pa. 2015)

SPENCE v. MCGINLEY, 2017 US Dist LEXIS 33012, 2016-CV-5710 (E.D.Pa.), transferred to M.D.Pa. 17-CV-0881, 2017 US Dist LEXIS 76982 (M.D.Pa. 2018), SPENCE v. RENN.

In Re SPENCE, 88 USLW 3103, 140 S.Ct. 280, 205 L.ed.2d. 202 (2019)

COMMONWEALTH v. SPENCE, No. 368 MDA 2020; 87 MDA 2021, 262 A.3d 581 (Pa. Super. 2021), Allowance of Appeal denied, 2022 Pa. LEXIS 1370, No. 214 MAL 2022 (Pa. 2022).

And others....

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APPENDIX A Letter (dated Feb. 22, 2023) to U.S. Supreme Court Clerk, Emily Walker regarding previous certiorari, appendices, etc.

APPENDIX B Order (dated Sept. 21, 2022) of Pennsylvania ~~Supreme~~ Court denying Allowance of Appeal

APPENDIX C Order (dated Nov. 23, 2022) of Pennsylvania Supreme Court denying reconsideration

APPENDIX D Order (dated Aug. 30, 2021) of Superior Court denying PCRA relief.

APPENDIX E Constitutional and Statutory Provisions Involved

APPENDIX F Table of Authorities (cases)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES (See Appx. E)

Pennsylvania Rules of Criminal Procedure

Pennsylvania Rules of Appellate Procedure

OTHER (See Appx. E)

Pennsylvania Code of Judicial Conduct

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

For cases from **federal courts**:

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

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

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

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

For cases from **state courts**:

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

reported at 214 MAL 2022; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Pennsylvania Superior court appears at Appendix D to the petition and is

reported at 87 MDA 2021, 262 A.3d 581; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

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

No petition for rehearing was timely filed in my case.

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

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

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

For cases from **state courts**:

The date on which the highest state court decided my case was Sept. 21, 2022. A copy of that decision appears at Appendix B .

A timely petition for rehearing was thereafter denied on the following date: Nov. 23, 2022, and a copy of the order denying rehearing appears at Appendix C .

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (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

(See Appendix E)

STATEMENT OF THE CASE

On April 14, 2015, Detective Russell Shauer III of the Springsggettisburg Township Police Department, York County, Pennsylvania, had obtained a search warrant from the Manchester Township (York County) Magistrate, Jeffrey L. Oberdorf, with an unspecific affidavit of probable cause that lacked dates, times, amounts, details, descriptions, price, etc. On April 15, 2015, the search warrant was executed by the York County Drug Task Force, led by Officer Michelle Hoover-Miller. Detective Russell Shauer was not present. The York County Drug Task Force, including Officer Michelle Hoover-Miller and Sargeant Detective Craig Fenstermacher, had failed to comply with the manner of entry, i.e. knock-and-announce rule, before forcibly entering the premises.

Upon searching the premises, multiple items were taken and inventoried, including a "box of a box containing heroin". This was a larger SEALED box with a smaller box in it "containing heroin". However, after the SEALED box had been marked as inventory item #1, and before being judicially inspected, the Sargeant Detective, Craig Fenstermacher, of the York County Drug Task Force had destroyed the sealed box. Notwithstanding, the Petitioner was arrested and charged under The Controlled Substance, Drug, Device, and Cosmetic Act.

Unable to obtain bail, Petitioner had remained in the York County Prison, without any assistance of an attorney, where he had been denied law library while in the hole (Restrictive Housing Unit) where he had spent twelve (12) out of thirteen (13) months; while the trial court REJECTED all of his filings; and, while the clerk of court filed only partial copies of his legal documents until after he was convicted and sentenced following a Bench Trial, presided by Judge Richard K. Renn, where the Commonwealth had presented NO evidence of

probable cause nor presented any testimony, eyewitness or otherwise, offering evidence that the Petitioner committed the crimes with which he was charged. Not one testimony was given that Petitioner was seen committing the crimes with which he was charged.

Furthermore, the Petitioner had challenged statutory authorization of the Controlled Substance, Drug, Device, and Cosmetic Act since the preliminary arraignment, where the magistrate, Douglas F. Heisenfelter, improperly placed a badge of infamy upon him setting events in order. The magistrate had labelled him, falsely asserting that the Petitioner had claimed to be a sovereign citizen. This was not true. Nevertheless, the courts refuse to afford Petitioner his rights guaranteed by the constitutions and have not yet met his challenges to the statutory authorization.

Petitioner was convicted on January 14, 2016. On January 20, 2016, the Petitioner had filed post-trial for acquittal which was never answered. Petitioner was sentenced on March 1, 2016, in the aggravated range for, *inter alia*, challenging the statutory authority which it refuses to address. Both, on March 9 and March 11, 2016, Petitioner had filed notice of appeal and request for trial transcript, which were ignored completely by the trial court, and other courts. After filing numerous appeals to address his statutory challenges, etc., and the courts refusing his jurisdictional challenges, Petitioner had filed his first PCRA on December 27, 2019 which had been denied on January 23, 2020, and QUASHED by the appellate court on September 4, 2020. Petitioner refiled again, to which was dismissed as "facially" untimely. The court had given no regard to the statutory challenge nor, *inter alia*, illegal sentence claims.

On August 30, 2021, the Superior Court of Pennsylvania had affirmed the PCRA court ruling that the PCRA petition was [] untimely, but it had failed or refused to address majority of the claims set forth in the Appellate Brief in a

comprehensive and definitive manner. Neither had the PCRA court provided a comprehensive and definitive analysis to the respective claims raised upon it.

On September 8, 2021, Petitioner had filed an application for reargument. The intermediate appellate court had denied the application for reargument on November 5, 2021, because the Petitioner was unable to afford to make copies due to prison staff interference(s), now under civil litigation on the state supreme court docket at 43 MAP 2022, with money received from family and friends at liberty without expressed authorization from prison policy.

On November 11, 2021, Petitioner had filed notice of appeal in the Superior Court for collateral order review, and it was forwarded to the state supreme court at 433 MT 2021. The state supreme court found the notice of appeal to be defective, and insisting he file instead of collateral order immediate appeal as of right a discretionary allowance of appeal.

On November 29, 2021, Petitioner filed Judicial Notice and Memorandum, along with a Petition for Collateral Order Review, indicating his intention to seek collateral order review in the Superior Court, but both courts refused to entertain Petitioner requests for judicial review to determine whether his claim satisfy the requirements of the collateral order rule. In fact, they were returned unfiled.

On May 17, 2022, a Petition for allowance of appeal was perfected and entered on the Supreme Court Docket for allocatur, at 214 MAL 2022. Whereas, under collateral order rule, the matter could have had concluded in the time it had taken to perfect an Allowance of Appeal. Thus, Petitioner had incorporated collateral order language into and throughout his petition for an allowance of appeal.

On July 1, 2022, the Petitioner filed a judicial notice again, informing

the state supreme court that the alleged illegal sentence, which the State refuses to address, even as a newly discovered fact, will expire on April 15, 2023 - an Eight (8) Year term - to which his claim and right to remedy are irreparably lost, notwithstanding. An unaddressed liberty interest. The notice had been returned unfiled.

On August 3, 2022, Petitioner filed a Demand for a Speedy Disposition. Opposing parties filed no response, but remain silent on the record. On September 21, 2022, the state supreme court DENIED the Petition for Allowance of Appeal, and the Demand for a Speedy Disposition was DISMISSED as moot. A Petition for Reconsideration was filed reminding the Respondent to this present petition for Writ of Certiorari of the substantial public importance of the claims set forth upon it, *inter alia*, and its refusal to adjudicate the matter under these extraordinary circumstances would further miscarriages of justice causing Petitioner irreparable loss of his rights. The Petitioner had also filed a Petition for a Writ of Mandamus in this very Court on October 7, 2022, which had been returned; and, again, on December 1, 2022, which this Court's clerk claims to have had lost or destroyed. On November 23, 2022, the state supreme court also DENIED the Petition for Reconsideration.

On or about January 26, 2023, Petitioner had filed a Petition for Writ of Certiorari. It was never filed, but also had been either lost or destroyed by the Court's clerk. Thus, this second attenuated version of the first Petition for Writ of Certiorari is filed. See, Appx. A.

Also, on December 4, 2021, Petitioner filed a new PCRA petition at the York County Court of Common Pleas. In January, 2023, the Petitioner had discovered that his PCRA petition, raising appellate court judicial bias and re-raising his unaddressed claims from his previous petition, was filed as "Case Correspondence" along with his attempts at prosecuting his appeal. Thus,

because PCRA had proven unavailable or ineffectual to him, Petitioner had filed a state writ of habeas corpus on or about January 1, 2023, to which had not been addressed, nor had any writ or order been issued upon praecipe to the York County Prothonotary, effectively suspending it.

REASONS FOR GRANTING THE PETITION

1. Did the Pennsylvania Supreme Court SAYERES decision provide the necessary warrant of authority to subsume the constitutional Writ of Habeas Corpus ~~AD SUBJICIENDUM~~ within the PCRA?

The suggested answer is, NO.

The Sayeres [v. Commonwealth, 88 Pa. 291 (1879)] decision could not produce the authority to derogate rights to the Privilege of the Writ of Habeas Corpus. The right to the swift, imperative, and efficacious remedy of the Writ of Habeas Corpus. In the matter at hand, PCRA had been proven unavailable or ineffectual to the Petitioner, LEVAR LEE SPENCE, and the Privilege of the Writ of Habeas Corpus is denied to him by the State or any other meaningful remedy in the State which would provide relief from conviction and sentence without authority of law.

Of the many challenges to the subsumption of the writ of habeas corpus, there are none that strike at the head of the serpent making it a requirement to (i) bifurcate the writ of error and the Writ of Habeas Corpus in their respective categories and (ii) test them both with the predicate statement of the Sayeres Court, to wit:

"It is as much the right of the legislature to restrict and limit legal remedies as it is their duty to furnish them." Sayeres v. Cmwlth., 88 Pa. 291 (1879)

The Pennsylvania Supreme Court had predicated upon the afore-mentioned statement in Commonwealth v. Peterkin, 544 Pa. 552, as its base and cornerstone for the subsumption of the Writ of Habeas Corpus under the PCRA. This is the cornerstone that should have had been rejected, at the onset. In the rudimentary sense, Sayeres pertained

to the legislative power to limit and restrict the writ of error, specifically. Therein, the Commonwealth agreed that at common law in all cases the writ of error was an act of grace for which a special allowance was required in the State, until the Schoeppe Act had passed.

Accordingly, your Petitioner asserts hereby that, neither in 1879 nor since the adoption of the State and Federal Constitutions, the powers delegated to the state legislative body, indicated by the then constitutional language "may be provided for by law", regarding writs of error, does not exist, implicitly or otherwise, within the State Constitution pertaining to the Writ of Habeas Corpus. See, PA. CONST. ART. 5, § 24 (1868). There is NO writ of greater import. The State had failed to notice this paramount fact in the Peterkin Court decision. The major distinctions between the Writ of Habeas Corpus and writs of error have been overlooked by the State and, having been substantially deprived of liberty and fundamental fairness, Petitioner sets forth this explicit challenge against its alleged warrant of authority.

Your Petitioner contends that there can be no power delegated to the state legislature to do anything the state constitution prohibits, which includes limiting or restricting the right to the Privilege of the Writ of Habeas Corpus, unless in cases of rebellion or invasion the public safety may require it. For, naturally, any limitation or restriction whatsoever constitutes suspension; and the government is prohibited from suspending the Great Writ of Right. Further proof of this lies in the absence of any mention of writs of error in the state constitutional Bill of Rights. See, PA. CONST. ART. 1, §§ 1 et seq.

Thus, the present inquiry requiring this Court resolute jurisprudence seeks to ascertain as a matter of public importance involving human rights is whether the Pennsylvania Post Conviction Relief Act of 1996 ("PCRA") could displace the Writ of Habeas Corpus. The very case now set forth for certiorari insists strongly to the contrary. Accordingly, the Writ of Habeas Corpus is intended to have "a much

broader scope than that form which is secured by the Habeas Corpus Act; for it may issue in all sorts of cases where it is shown to the Court that there is probable cause for believing that a person is restrained of his liberty unlawfully or against due process of law". Williamson v. Lewis, 39 Pa. 9.

The Post Conviction Relief Act falls short of the swift, imperative and efficacious remedy of the Writ of Habeas Corpus. See, Commonwealth ex rel. Levine v. Fair, 394 Pa. 262 (1958) (The writ of habeas corpus in Pennsylvania may be molded to suit the exigencies of any particular case. It is an implied common law power, not created by the habeas corpus act... but existing both before and since the passage of that act.).

The State and Federal Constitutions were designed as limitations upon the respective governments. They explicitly limit the government from suspending the Privilege of the Writ of Habeas Corpus. U.S. CONST. ART. I, § 9, CL. 2; PA. CONST. ART. I, § 14. Your Petitioner further avers that the PCRA has, in his case, fallen far short in its subsumption of the Writ of Habeas Corpus. In this case, the Petitioner had challenged the jurisdictional statutory authority of the trial court, and the State abandoned its duty to decide the matter. Your Petitioner also had challenged the State's lack of probable cause, and the State had refused to address his claim under the PCRA. In fact, under the PCRA, none of the Petitioner's claims have been decided on the merits, and Petitioner's Eight (8) Year sentence will expire on April 15, 2023.

On December 4, 2021, Petitioner had filed a new PCRA petition. That petition had raised appellate court judicial bias in the manner provided by Commonwealth v. Koehler, 228 A.3d 915 (Pa. 2020), and included all of the claims not addressed in the previous PCRA at 87 MDA 2020. The trial court had refused to file the PCRA petition; it had been filed on December 8, 2021 as "Case Correspondence". Petitioner had not discovered this until

one year later, notwithstanding. Despite Petitioner's attempts at prosecuting his new appeal, the trial court nor its clerk would respond. Therefore, in this case, the PCRA is proven unavailable and ineffectual to the Petitioner, and the Privilege of the Writ of Habeas Corpus subsumed.

On January 1, 2023, Petitioner filed with the York County Prothonotary a Petition for Writ of Habeas Corpus and praecipe. The Prothonotary refuses to commence the constitutional suit. See, *Brown v. Walker*, 161 U.S. 591 (Illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed.). Thus, where the PCRA deviates from legal modes of procedure, the constitutional provisions for the Writ of Habeas Corpus should be liberally construed. See also, *Boyd v. U.S.*, 116 U.S. 616.

2. Whether lack of statutory authorization in a state court of record disable discretion, once challenged, requiring sanction and/or deterrent for courts to proceed, notwithstanding?

Suggested answer: Yes.

In this instant matter, the Petitioner had challenged the State authority to invade his privacies. Without responding to his challenges on the record, the State (Respondent) had arrested, tried, and, *inter alia*, imprisoned Petitioner without authority of law. Your Petitioner contend, that not only had the State lacked probable cause in this case, but it also lacked statutory authorization from which it derived from The Controlled Substance, Drug, Device, and Cosmetic Act (Act of 1972), 35 P.S. §§ 780-101 et seq.

The Supreme Court of Pennsylvania had provided precedence in the proper interpretation of the Act of 1972 under the application of The Statutory Construction Act of Pennsylvania, 1 Pa.C.S. §§ 1500-1991, and the *ejusdem generis* doctrine. See, e.g., Meyer v. Beaver County Community College, 625 Pa. 563 (2014). Accordingly, the State judgments imposed upon the Petitioner on January 14, 2016 expire on April 15, 2023, because its void judgments have evaded adjudication on the merits of Petitioner's claim. Notwithstanding the law-of-the-case at hand.

The law-of-the-case doctrine should have dictated to the State that "when a court decides upon a rule of law", in this case the proper interpretation of a statutory construction, "that decision should govern the same issues in subsequent stages in the same case". Ariz. v. Calif., 460 US 605, 618 (1983)

Your Petitioner, in his application of the said the law-of-the-case doctrine, observed that the Act of 1972 explicitly excludes natural persons from its definition of PERSON which, as a penal statute, must be construed strictly. 1 Pa.C.S. § 1928(b) The findings of that precedent case, i.e. Meyer v. Beaver CCC, 625 Pa. 563 (Pa. 2014), was never appealed and remain the law-of-the-case or stare decisis. See, Christianson v. Colt Ind. Oper. Corp., 486 US 800, 816 (1988). Accordingly, the York County Court of Common Pleas lacked the statutory authorization with which would permit prosecution of the Petitioner. Thus, the Petitioner's conviction and sentence, which expire on April 15, 2023, is null and void.

Your Petitioner should have had been discharged, but the State

refuses to decide the matter. Your Petitioner, therefore, is within bounds to seek review and determination of this substantive matter.

The Constitution provides that No man shall be deprived of life, liberty or property, without due process of law, nor denied equal protection of the laws, by the States; but, whenever the States violate the Constitution and laws of the United States, the people look to the Federal Court to exercise its supervisory authority thereupon. Your Petitioner avers hereby that the State (Respondent) had deprived him of Property, Life and Liberty without the authority of law, and shirks its duty to hear and determine the substantive matter.

The Court should remand this matter to the State Supreme court with instructions, or whatsoever it may deem appropriate in such cases of jurisdictional usurpation.

3. Whether the right of self-representation in Pennsylvania require substantive and procedural due process protections enforceable under Article 1, § 9, of the Pennsylvania Constitution as well as the Sixth Amendment to the United States Constitution?

Suggested Answer is, ABSOLUTELY YES.

Fundamentally, a right requires a remedy. For a right without a remedy is no right at all. Your Petitioner avers that, in Pennsylvania, he had been, and continues to be, deprived of the right of self-representation. He avers that he had been punished, impeded, discriminated against, and impaired in the exercise of his constitutional right of self-representation by the State (Respondent). Your Petitioner further avers that there are no protections, currently in Pennsylvania, by which the State is bound to respect. Thus, where there are no protections, there is no need for a

remedy, and no effectual right. In the present case, the State refuses to define and detail what the right of self-representation entails within the State and Commonwealth of Pennsylvania, nor remedy for its deprivation. Therefore, this Court is prayerfully requested to do so.

Due process itself require fair procedural rules for the vindication of rights. Your Petitioner sets forth the inquiry, here, so as to ascertain the substantive and procedural due process which underline the exercise of the right of self-representation. Accordingly, the "essence of substantive due process is protection from arbitrary and unreasonable action". See, Black's Law Dictionary, 5th ed., pp. 745; 261-262. This Court should find arbitrary and unreasonable state action below which produced an unlawful conviction and sentence which expire on April 15, 2023, but had not yet been adjudicated on the merits of the case. In fact, Petitioner's appeal had been so frustrate by willful and intentional State (Respondent) action that it no longer pertains to the main cause of action.

Procedural due process, however, is defined as "safeguards to one's liberty and property mandated by the 14th Amendment, United States Constitution, such as the right to counsel appointed for one who is indigent, the right to a copy of a transcript, the right of confrontation; all of which are specifically provided for in the Sixth Amendment and made applicable to the states' procedure by the Fourteenth Amendment". See, Black's Law Dictionary, 5th ed., pp. 628-629. Coincidentally, the Petitioner had, *inter alia*, been substantively deprived of his right to timely requested transcripts and his right of confrontation. Moreover, the "right" of self-representation is also supposedly "provided for in the Sixth Amendment and made applicable to the states' procedure by the Fourteenth Amendment", and also Article I, § 9, of the Pennsylvania Constitution, but confers no protections in Pennsylvania from harm, oppression, abuse, mistreatment, prejudice, injustice, discrimination, disadvantage or the like. It does not

guarantee the right to a copy of a transcript, nor the right of confrontation, nor protections at critical confrontations with the licensed professional adversary (i.e. the government), among other rights associated with the significant impairment of the exercise of the right of self-representation. See, *McNeil v. Wisconsin*, 501 US 171, 177-78 (1991). This inherently raises an internal sub-question:

Whether the State was constitutionally and procedurally obligated to the self-represented criminal defendant?

Your Petitioner has found none which the State is bound to protect or enforce. In Pennsylvania, although self-representation is called a "right" it affords no protections in its exercise. In fact, the exercise of the right of self-representation in Pennsylvania carries only penalties. Not protections. See, e.g., Pa. R. Crim. P. 121(A). As a matter of fact, if a party that is criminally charged, and presumed innocent, elects to waive their right to counsel, that party is entitled only to be warned on the record that there will be no protections at all for him in the exercise of that particular right. *Id.*

Accordingly, if self-representation is considered a constitutional right, there must also be a remedy attached to its deprivation, impairment or disregard. Like the right to counsel, the right of self-representation should inherently incorporate rights of meaningful access to the courts and due process of law that must be fairly equal to the adversary. On the other hand, if in the exercise of the right of self-representation the State (Respondent), as in this case, substantially deprives, impairs, or disregards, or otherwise unfairly prejudiced a presumed innocent, along with those other rights inherent thereto, it may constitute an amercement proscribed by the Ninth Amendment to the United States Constitution and Article I, § 26,

of the Pennsylvania Constitution.

The Ninth Amendment provides that, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people". U.S. CONST. Amend. 9 The Pennsylvania Constitution Bill of Rights, at Article I, Section 26, it states that: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of a civil right, nor discriminate against any person in the exercise of any civil right"; and, in Section 25, "To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate".

Your Petitioner is fundamentally unfairly prejudiced by the State, in both his civil and criminal matters, depriving him of "meaningful" access to the courts, to the point of punishment, and discrimination, for exercising his constitutional right of self- representation in Pennsylvania Commonwealth, to wit:

A. Your Petitioner had been denied access to the courts by the county jail in his critical stages of pre-trial incarceration which denied him law library most of his incarceration during his criminal proceedings.

B. Your Petitioner had been denied access to the courts and due process of law when the trial court, knowing the disadvantages of his pre-trial incarceration, rejected every legal filing by him.

C. Your Petitioner had been unfairly prejudiced by the clerk of courts which had filed partial, incomplete, renditions of every legal document filed therein upon the public record.

D. Among other things, including withholding discovery from him until the day of trial, which not only contributed to his unlawful conviction, but also significantly impeded his appeal rights.

Following Petitioner's conviction and sentence, the trial court (Respondent) ignored his timely notice of appeal and his request for trial transcript. Your Petitioner never received his rights of appeal. Petitioner had received an incomplete rendition of trial proceeding transcript which co-counsel retrieved within days, on or about September 4, 2020, notwithstanding. Furthermore, the State (Respondent) refuse to provide Petitioner comprehensive and definitive analyses to the merits of the matters raised on appeal. See, Pa.R.A.P. § 341 (comment)(If the court addresses "fewer than all claim's" it does not constitute a final order.).

These are unequivocally matters for which the State should be bound to dispose because it is a State-created affair, but it refuses to do so. It would have had been more appropriate under the judicial responsibilities of the Pennsylvania Supreme Court, acting for the Commonwealth of Pennsylvania, to adjudicate these important matters of the State because it "has often interpreted the Pennsylvania Constitution to ensure greater protection to the rights of a criminal defendant than that provided by the Federal Constitution"; but it refuses to do so in this case. See, Commonwealth v. Sell, 504 Pa. 46. Thus, the conflict lies within the exercise of the "right" of self-representation of both civil and criminal litigants. Accordingly, and of paramount important, all similarly situated parties- litigants, especially prisoners, that fall under the said classification for equal protection of the laws from the ruling in Faretta establishing this "right" corresponding to the right of counsel require fundamental protections against arbitrary and unreasonable state actions such as the underdevelopment of that right in Pennsylvania and the mistreatment and discrimination of those who elect to exercise that right, whatever that means. See, e.g., Faretta v. California, 422 US 389

4. Whether where challenges to the statutory authorization to impose a sentence is lacking in a State court, it has discretion to provide its own authorization?

Suggested answer: No.

The State, Respondent to this petition, can only function within/ under parameters set by statutory provisions, and every act done by it must be done in-accord with some established rule or statute. Additionally, the Sentencing Guidelines do not authorize a sentencing court the latitude - Freedom of Action - to use extra-judicial methods when imposing sentence. Your Petitioner strongly insisted that the statute or rule which would permit and authorize the sentence of Eight (8) Years, in the aggravated range of 15-21 months, on March 1, 2016 was recently discovered not to exist. To this illegal sentence challenge, although the State could not produce its statutory authorization, it decided on its own that Petitioner did not deserve relief from an obvious illegal sentence. This constitutes a collateral order, which the State refuses to the Petitioner. Furthermore, the Petitioner had filed a new PCRA, on December 4, 2021, and the State refused to file it. Upon discovering that his PCRA petition was never filed, Petitioner had filed a Petition for Writ of Habeas Corpus immediately thereafter, on or about January 1, 2023, to which also the State refuses to file and act upon. In consequence thereof, Petitioner's illegal sentence expire on April 15, 2023.

Such deprivations of liberty and fundamental fairness are matters of public importance. In adding further insult to irreparable injuries, the State had once again ignored the law-of-the-case, or stare decisis, which clearly provide that "[i]f there is no statutory authorization for an imposed sentence, the sentence is illegal and must be vacated." Commonwealth v. Wilson, 51 A.3d 519, 521 (Pa. Super. 2010) In this case, there is no statutory authorization for

the sentence imposed upon the Petitioner, in an excessive range no less, which expires April 15, 2023, yet Petitioner remains imprisoned not by virtue of the warrant or commitment, but on account of the judgment of sentence. See, Hill v. U.S. ex rel. Wampler, 289 US 460 (1936) (The court speaks through its judgment, and not any other medium.). Your Petitioner constitutional rights of due process and his Protected Liberty Rights were violated at the time he was sentenced by the State, and then subsequently deprive of his rights of appeal. See, 42 Pa. C.S. § 9781(a) (The Defendant or the Commonwealth may appeal as of right the legality of the sentence.). Surely, this very Court will provide the law in such matter.

5. Whether Brady violations, or newly and/or after discovered evidence and facts, or any other discovery issue, in Pennsylvania, can be deemed waived if discovery materials were refused pre-trial, at trial or post-trial?

Suggested answer: No.

This is a matter never before raised in any court. The State (Respondent) had promulgated this unheard of rule specially for the Petitioner to work unjustly toward him. This is wholly a matter for the supervisory authority of this Court. Your Petitioner, during majority of his pre-trial incarceration, spent his time defending his liberty from a Restrictive Housing Unit within the county jail where he was denied law library access despite having no assistance of an attorney. Notwithstanding, on or about June 25, 2015, Petitioner had first requested discovery and Bill of Particulars, along with notification of the said pre-trial conditions. The trial court had rejected his request. This left the Petitioner defenseless at trial. Pre-trial conference was held without notice to the Petitioner.

On January 12, 2016, date scheduled for trial, the York County Senior Deputy Prosecutor attempted to pass some pages and a compact disc to the

Petitioner. Petitioner had refused the manner and timing of service. However, on January 14, 2016, Petitioner had accepted the papers and compact disc. Conversely, Petitioner had never viewed the contents of the compact disc because neither the trial court nor the county jail would provide him the opportunity to do so. There were no witness statements therein, no alleged marked serial numbers, or photographs, *inter alia*.

On November 12, 2020, Petitioner had discovered that a Supplemental Affidavit of Probable Cause, dated two days after execution of a search warrant and the Petitioner's arrest, was withheld by the Commonwealth of Pennsylvania. Interestingly, upon review, this Court will find that the Commonwealth's witness offered its probable cause testimony based on that supplemental affidavit because the initial affidavit was too vague; but, according to the Fourth Amendment to the U.S. Constitution and Article 1, § 8, of the Pennsylvania Constitution, the Affiant offered testimony outside of the four-corners of the initial affidavit in violation thereof. This constituted a Brady violation, but the State judiciary holds to its legislation that the Brady claim is waived because Petitioner had refused discovery. Petitioner had also discovered, through co-counsel, that the trial court had improperly denied trial transcript to Petitioner, because the record shows Three (3) consecutive timely requests.

Nevertheless, the State (Respondent) hold that it did not have to address any issues by obligation regarding discovery that had been raised on appeal by the Petitioner because he had refused discovery. The State considered the Brady claim, waived, pertaining to the supplemental affidavit of probable cause. The State had also considered the after-discovered material showing timely requests for trial transcript, which had been denied by trial court order on May 12, 2016, waived. The State (Respondent) further deemed Petitioner's discovery that search inventory, Item #. 1 was destroyed by Sgt. Det. of the York Area Drug Task Force which had

confessed to the same at trial, waived. However, the trial court had that confession and, inter alia, the probable cause testimony omitted from the trial transcript, and refuses to correct it.

This Court should provide judgment on the matter.

6. Did the State violate Due Process and Equal Protection when it refused the right of direct appeal and timely requested trial transcript(s) by applying a STRICT compliance rule to their format?

Suggested answer: YES.

In the Pennsylvania Rules of Appellate Procedure (Pa.R.A.P.), the notice of appeal, pursuant to Rule 904(A), shall be "substantially" in the form provided therein; and, a request for trial transcript, pursuant to Rule 1911, shall be "substantially" in the form provided for therein. The State had decided that the Petitioner's notice of appeal and requests for "entire trial transcript" should have had been strictly verbatim to the form provided by the respective rules, and were otherwise deficient, requiring no action from the courts.

Accordingly, there is a due process right underlying the timely filing of a notice of appeal and, also, a request for trial transcript. U.S. CONST. Amend. 14. The due process clause protects the right to direct appeal, including collateral appeal and all that it may require, when that right is guaranteed by the state. See, *Evitts v. Lucey*, 469 US 387, 393-95 (1985). The State had knowingly and willfully deprived Petitioner of his right to appeal and, also, a copy of the "entire trial transcript, and refuse to correct the constitutional violations. Additionally, the record clearly do not support waiver, whether there was a voluntary, knowing, and intelligent relinquishment of a right guaranteed by the Constitution.

Therefore, the Court should determine the law in matters where the State (Respondent) fail or refuse to apply the Substantial Compliance Rule to

a timely filed notice of appeal and request for trial transcript.

7. Whether on appeal as of right the State discretion to decline or refuse to review and decide matters in a definitive and comprehensive analysis on the merits of the claim violate State and Federal constitutional provisions?

Suggested answer: **YES.**

Your Petitioner avers that, in this case, there was no discretion in the courts of the Commonwealth of Pennsylvania to refuse or decline appellate review as of right, but the State (Respondent) was ministerially bound to provide a comprehensive and definitive analysis to all claims not previously litigated. The State had entered a decision on the record that failed to provide a thorough discussion of any of the Petitioner's claims. Pursuant to Pa. R.A.P. § 341, any decision addressing fewer than all claims cannot constitute a final order. Nevertheless, the State treats it as a final order.

Although these practices have become common under the unified judicial system of Pennsylvania, including the state supreme court supervisory authority, societal interest also demands an accountability for the State courts extending its own finality doctrine with gamesmanship and wasting judicial economy.

After a full round of PCRA proceedings, the Petitioner's claims still require litigation by the State. Thus, on December 4, 2021, Petitioner had filed a new PCRA petition with the State, amending appellate court judicial bias. The State refused to file it or act upon it. A year later, the State Court Administrator sent the Petitioner the case docket sheet informing him that his new PCRA petition was never filed, nor acted upon. Consequently, on January 1, 2023, Petitioner filed a Petition for Writ of Habeas Corpus, among other things, and the State had not acted upon it either. The right of appeal is guaranteed by the Fourteenth Amendment, and such continual constitutional violation upon constitutional

Violations should never be tolerated under ordered society where life and liberty are implicated. Therefore, without lawful direction from this Court regarding the specific matter, litigants exercising their rights of appeal could be deprived of finality in similar State fashion.

8. Did the supervisory powers over inferior courts disable its discretion under SPECIAL allocatur, where the state supreme court promulgated "special and important reasons" governing it, violating constitutional authority to refuse it?

Suggested answer: YES.

On November 21, 2021, Petitioner had filed for special allocatur in the state supreme court from a Superior Court panel decision which, *inter alia*, addressed fewer than all of the claims raised within the Appellant Brief. The state intermediate appellate court also refused reargument.

In circumstances such as this, litigants look to the state supreme court, having "supervisory authority for the performance of other judges" to enforce their rights. Likewise, the intermediate appellate courts also must look to the state supreme court to direct its conduct. However, on September 21, 2022, the state supreme court had denied special allocatur in the matter. Reconsideration was denied as well on November 23, 2022.

Any court, but especially the Pennsylvania Supreme Court, judge, or justice, of the Commonwealth of Pennsylvania, having "supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them", see Pa. Rules of Judicial Conduct 2.12; and, any state judge or justice that refuses its own judicial responsibilities violates the Pennsylvania Constitution. See, e.g., Pa. Const. Article 5, § 17(b) (Justices and judges shall not engage in any activity

prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court.).

Notwithstanding, on September 21, 2022, the state supreme court justices had decided together, in its sound judicial discretion, and in the performance of its judicial responsibilities, to violate both constitution and canon when it refused Petitioner special allocatur. Your Petitioner asserts further that the state supreme court decision, in fact, evidence general acquiescence toward improperly discharged judicial responsibilities by the intermediate appellate court judges.

Additionally, the Pennsylvania Constitution provides a right of appeal under direct review and, also, collateral review from criminal convictions and sentences, see PA. CONST. ART. 5, § 9, and that right must be interpreted to guarantee an adequate and effective appeal, and more than merely a meaningless ritual. That right is also guaranteed under the Due Process and Equal Protection of the Laws. Your Petitioner therefore inserts that, according to the constitution and canon, that right should inherently bind over to the state supreme court in instances where the lower courts, under its supreme supervision, simply decide to refuse a comprehensive and definitive analysis on the merits of each respective claim raised on an appeal as of right.

In the interest of right and law, there must be a balancing scale application to weight out judicial discretion against constitutionally and canonically sound judicial duties and responsibilities, and to determine which is weightier on an ad-hoc basis. In the matter at hand, the very least that should have had been decided by the state supreme court is remand the matter for comprehensive and definitive analysis on the merits of each claim not previously addressed in order to secure the right of appeal

in Pennsylvania. Your Petitioner contends hereby that it is unconstitutional to do anything less.

Accordingly, the United States Constitution is the supreme Law; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding; and, all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. U. S. CONST. ART. 6, clauses 2 - 3.

The Constitution for the Commonwealth of Pennsylvania also applies more weight to our proposed balancing scale where it provides, *inter alia*, that "[a]ll courts shall be open; and every man... shall have remedy by due course of law, and right and justice administered without sale, denial or delay", see PA. CONST. ART. 1, § 11. In Pennsylvania, "[a]ll men... have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty... and reputation..." PA. CONST. ART. 1, § 1. Then the State (Respondent) are further warned against reviewing Petitioner's claims on appeal as of right and intentionally refusing to address them because the claim are clearly entitled to relief. See, e.g., PA. CONST. ART. 1, § 26 (Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right.). Consolidation of all the questions and facts raised within this petition should sufficiently evidence intentional neglect against the Petitioner's Protected Liberty Rights.

Your Petitioner had challenged the statutory authorization of The Pennsylvania Controlled Substance, Drug, Device, and Cosmetic Act of 1972, 35 P.S. §§ 780-101 et seq. since his arrested, and the State refuses to address his challenges; but, proceeded notwithstanding to try him, lacking probable

cause, while using evidence obtained after the police failed to comply with the State's knock-and-announce rule, including an officer's confession of spoliation, followed by an illegal sentence which had been aggravated because of the Petitioner's statutory challenges. It had also been discovered that Petitioner's sentence also lacked statutory authorization. In this case, the State (Respondent) willfully neglected the fundamental principles of precedence when it deliberately ignored the law-of-the-case doctrine (stare decisis) and refused the Petitioner relief clearly entitled to or, at least, a comprehensive and definitive analysis to his claims.

Furthermore, pursuant to the Pennsylvania Rules of Judicial Administration, it is the policy of the unified judicial system that any matter at any stage of a proceeding be brought to a fair conclusion as promptly as possible, consistent with the character of the matter and the resources of the system. Pa. R. Jud. Admin. 703; also, Pa. Supreme Court I.O.P. 63.6. Fundamentally, the State (Respondent) should never be permitted when claims are raised as a matter of right to refuse redress or remonstrance. See, Pa. R. Jud. Conduct 2.7 (A judge shall hear and decide matters assigned to the judge...).

9. Did the State have discretion NOT to review whether claim satisfies the collateral order three-prong test requiring immediate appellate review as of right?

Suggested answer: NO. Explicitly, the collateral order doctrine provides immediate appellate review of any claim, order, or issue, or privilege as of right, if it meets all three prongs of the Rule. Pursuant to Rule 313, of the Pennsylvania Rules of Appellate Procedure, an appellate court is required to determine if the claim, issue, order, or privilege is (1) separable from and

collateral to the main cause of action where (2) the right involved is too important to be denied review and (3) the question presented is such that if review is postponed until final judgment in the case, the claim, etc., will be irreparably lost. See, e.g., Pa. R.A.P. § 313 (see note) (If an order meets the definition of a collateral order, it is appealed by filing a notice of appeal or petition for review.). However, when Petitioner had filed the said notice of appeal, the State (Respondent) refuse to determine whether certain claims satisfied all three prongs from which an immediate appeal may be taken as of right. Absent the satisfaction of all three prongs of the collateral order test, the State has no jurisdiction to consider an appeal. *Spanier v. Freeh*, 95 A.3d 342 (Pa. Super. 2014); cf. 28 U.S.C. § 1291; see also, *Commonwealth v. Brady*, 508 A.2d 286 n. 3-4 (Pa. 1986). Even if the State lacked jurisdiction to hear and decide the matter, from a prompt determination that immediate appellate review as of right under collateral order rule was unwarranted, the State was required to promptly decide if appellate review as of right was warranted - immediately - to protect the Petitioner from probable irreparable loss of a right. See, *Commonwealth v. Lambert*, 723 A.2d 684 (Pa. Super. 1998); *Kelly Sys., Inc. v. Leonard S. Fiore, Inc.*, 198 A.3d 1087 (Pa. Super. 2018), appeal denied, 208 A.3d 56 (Pa. 2018); also, *Yorky v. P.J.M. Intercon, LLC*, 79 A.3d 655 (Pa. Super. 2013).

Notwithstanding, the State refuse to review claims, issues, orders, or privileges, to determine whether the Petitioner is entitled to immediate appeal as of right, not only in his criminal cases, but, also, in civil matters as well. In fact, the State has effectively denied Petitioner, "LEVAR LEE SPENCE", meaningful access to the open courts in both criminal and civil matters. Thus, if this Court denies the petition, it will delay justice not only in Petitioner's criminal appeal but also in his civil actions for remedy from injuries and damages incurred in consequence to his criminal conviction and sentence. This Court should find

that these matters are cumulative and are so strongly tied together that lawful judgment in one single matter would affect the others in the interest of justice and fundamental fairness.

When the State (Respondent) refused Petitioner collateral order review of his unaddressed claims, which constituted an interlocutory order, it compelled the Petitioner to file a new PCRA on the unaddressed claims, and included a claim of appellate court judicial bias. The State refused to file the new PCRA, and ignored Petitioner's attempts to prosecute that appeal. It had taken Petitioner a year before discovering his PCRA was never filed by the State; thusly, creating an internal inquiry:

Whether the Writ of Habeas Corpus, subsumed by the PCRA, is the proper remedy when the former proves itself ineffectual or unavailable?

Nevertheless, Petitioner had filed a Petition for Habeas Corpus challenging the probable cause, among other things, and the State again refuses to act upon it. Under the PCRA, expiration of a sentence forecloses relief therefrom. See, Commonwealth v. Pierce, 579 A.2d 963, 966 (Pa. Super. 1990) (PCRA limits relief to defendants "whose sentences have not expired and... precludes relief for those whose sentences have expired, regardless of collateral consequences."); Commonwealth v. Hart, 911 A.2d 939 (Pa. Super. 2006); Commonwealth v. Fisher, 703 A.2d 714 (Pa. Super. 1997). Petitioner's sentence expires on April 15, 2015. Then the State will have completed manifest injustice upon the Petitioner. See, Pugar v. Greco, 394 A.2d 543 (Pa. 1978) (quoting Cohen v. Beneficial Industrial Loan Corp., 337 US 541 (1949) (defining collateral order)). This Court could prevent the delay and denial of justice....

10. Did the State violate constitutional provisions when it held a deficient waiver of counsel colloquy harmless where it refused to mention or address it in an overt judicially biased decision?

Suggested answer: YES.

Constitutional provision protects both the right to counsel and the right of self-representation. Accordingly, the relationship between these two rights require that one of them must be voluntarily, knowingly, understandingly and intelligently waived in order to exercise the other. The waiver must be voluntary, knowing, and intelligent. Anything less will not constitute waiver. See, *Adam v. U.S. ex rel. McCann*, 317 US 269, 278 (1942). In this case, the on the record waiver colloquy was insufficient to constitute a valid waiver and the relief should have had been guaranteed, but the State (Respondent) refused to address it. Your Petitioner hereby seeks to ascertain the significance with which those rights should be protected in the future under similar circumstances. Both the right to counsel and of self-representation are guaranteed by the Sixth Amendment and by Pa. Const. Art. I, § 9. Deprivation of these rights can never be harmless. See, *Commonwealth v. Houtz*, 856 A.2d 119 (Pa. Super. 2004) (Failure to conduct a thorough on the record colloquy before allowing a defendant to proceed to trial constitutes reversible error.). Your Petitioner had obtained trial transcript that was withheld from him for five years which provided material evidence of an insufficient waiver of counsel colloquy. However, when Petitioner raised the claim on appeal with the recorded proof, and the State (Respondent) ignored it while addressing the colloquy on other grounds. The State appear to have had bias or ill-will against Petitioner that, when taken together, should require supervisory authority from this Court.

SUMMARY OF REASONS FOR GRANTING THIS PETITION

The reasons for granting this particular petition are summarized below. Your Petitioner believes that by his questions, facts, along with the rights and law attached, he will clearly demonstrate considerations governing review on certiorari. These matters, when taken together, exhibit cumulative deprivations of rights to liberty and fundamental fairness. Respectively, right and justice demands that federal established law is enforced in the Commonwealth of Pennsylvania.

The Government is prohibited from depriving individuals of life, liberty or property, unless it provides the process that is due.

Pursuant to the Rules of the Supreme Court of the United States, Rule 10, in these matters set forth herein, the state court had decided an important question of federal law that had not been, but should be, settled by this Court; and, also, the state court had decided an important federal question in a way that conflicts with relevant decisions of this Court. Your Petitioner further incorporates the following:

- i.) the existence of a conflict between the decision of which review is sought and a decision of another appellate court on the same issue - i.e. the law-of-the-case - and
- ii.) the importance to the public of the issues. Id.

Additionally, Petitioner had seasoned his issues with erroneous factual findings and the misapplication of a properly stated rule of law. Your Petitioner therefore respectfully prays this Court enter an opinion, ensuring the State (Respondent) are not permitted to transgress their bounds nor impose their personal will against the public nor the State and Federal Constitution and laws:

Justice delayed is justice denied.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LEVAR LEE SPENCE

BY: LeVar Lee Spence

Date: March 30, 2023