No. 22-7415

IN THE

SUPREME COURT OF THE UNITED STATES

RICKY VINCENT PENDLETON, PETITIONER

VS.

DONNIE AMES, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE WEST VIRGINIA SUPREME COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI OF RICKY VINCENT PENDLETON

Ricky Pendleton
c/o: #3572914-One Mountainside Way
Mount Olive Correctional Complex and Jail
Mount Olive, West Virginia 25185
Pro Se

QUESTIONS PRESENTED

1. **Whether the State courts's doctrine of res judicata was applied adequately after it summarily denies Pendleton's pro se filings of the successive habeas corpus petitions without a hearing. Does this violates Pendleton's due process rights under the U.S. Constitution?**

2. **Whether trial and appellate counsels' were ineffective at failing to object and raise that Pendleton was not put on notice before and during trial by the lower court's jury instructions of constructively amending a charge with substantial elements not alleged in the indictment. Does this prejudice and deprives Pendleton of due process right to notice of charge.**

3. **Whether trial and appellate counsels' were ineffective at failing to object and raise that the charge under malicious assault did not aver particular intent according to the terms of the statute. Does this prejudice and deprives Pendleton of due process right to notice of charge.**

4. **Whether trial and appellate counsels' were ineffective at failing to object and raise that the indictment failing at averring two addidional elements that would separate the greater from the lesser-included offense both charged against Pendleton. Does this prejudice Pendleton and is contrary to clearly established federal law.**

LIST OF PARTIES

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

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This Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

OPINION BELOW

The memorandum decison for the post-conviction habeas corpus relief of the West Virginia Supreme Court of Appeals is designated for publication but is not yet reported. A copy of the decision appears at Appendix A. The refusal of the Motion For Rehearing of the West Virginia Supreme Court of Appeals is unpublished. A copy of refusal appears at Appendix B.

JURISDICTION

This memorandum decision for the post-conviction habeas corpus relief is dated on March 26, 2022, appears at Appendix A. A timely Petition For Rehearing was thereafter refused on February 9, 2023. A copy of the Order refusing the Petition For Rehearing appears at Appendix B. The Mandate of the West Virginia Supreme Court of Appeals was issued on February 16, 2023, appears at Appendix C. This jurisdiction of this Court is invoked under U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Question Presented #1 involves:

West Virginia Code § 53-4A-1 , and West Virginia Code § 53-4A-7

W.Va. Habeas Corpus Post-Conviction Procedures Rule 9

violation of the Sixth, and the Fourteenth Amendments to the U.S. Constitution

Question Presented #2 involves:

The Grand Jury Clause of § 4 of Article III of the W.Va. Constitution

W.Va. R. Crim. P. 7(c)(1)

violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution

Question Presented #3 involves:

W.Va. R. Crim. P. Rule 12(b)(2)

violation of the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution

Question Presented #4 involves:

W.Va. Constitution Article III § 5; The double jeopardy Clause violation

violation to the Fifth and Sixth and Fourteenth Amendments to the U.S. Constitution

STATEMENT OF THE CASE

The social and legal implications of the West Virginia Supreme Court of Appeals affirming the lower state court of misapplying the doctrine of res judicata which should have been barred due to it summarily denying the successive habeas corpus petitions and failing to comply with the W.Va. Post-Conviction Procedures Rule 9 and W.Va. Code § 53-4A-7 and W.Va. Code § 53-4A-1, violating the Fourteenth amendment to the U.S. Constitution according to (question presented #1); The trial and state appellate counselors both were ineffective to assist the Petitioner for their failure to object, that the Petitioner was not put on noticed before or during trial by the lower state court constructively amending the kidnapping charge with three substantial elements not alleged in the indictment, violating the 5th, 6th and 14th amendments to the U.S. Constitution according to (question presented #2); The trial and state appellate counselors both were ineffective to assist the Petitioner for their failure to object, at trial or raise the issue in post-conviction habeas corpus Petition, that count two for malicious assault was defective on its face had averred *"intent to cause bodily injury"* instead of properly alleging the statutory version of *"intent to maim, disfigure, disable, or kill..."* in violation of the Fifth, Sixth, and Fourteenth amendments to the U.S. Constitution according to the (question presented #3); and The trial and state appellate counselors both were ineffective to assist the Petitioner for their failure to object, at trial or raise the issue in post-conviction habeas corpus Petition, that the Petitioner was charged and convicted of both the greater and the lesser-included offense when the greater offense had failed to alleged two additional elements which would have separated both charges which is why it is important for this Court to review the lower circuits decisions affirmed by the State highest court.

REASONS FOR GRANTING THE PETITION

A.

Why the Social and Legal implications of such decisions by the West Virginia Supreme Court of Appeals of affirming the lower circuit's decision at which misapplying the doctrine of res judicata according to the question presented #1 which is in conflict with its own decisions to other cases is important that the Court in this matter should review:

a. **"The State court had misapplied the doctrine of res judicata"** by failing to comply with the express requirements of W. Va. Post-Conviction Habeas Corpus Proc. R. 9 and W. Va. Code § 53-4A-7, meaning it failed to clearly state the grounds upon which the matter was determined, state whether a federal and/or state right was presented and decided, or make specific findings as to whether the petitioner was advised concerning his obligation to raise all grounds for post-conviction relief in one proceeding. The lower circuit court had summarily denies cases of Petitioner of the inital and successive habeas corpus petitions, according to *Pendleton v. Ballard*, No. 12-0653, 2013 W. Va. LEXIS 596, 2013 WL 2477245, at *7 (W. Va., May 24, 2013); *Pendleton v. Ballard*, 2015 W. Va. LEXIS 1095, 2015 WL 6955134 (W. Va., Nov. 6, 2015); and *Pendleton v. Ames*, 2022 W. Va. LEXIS 396 (W. Va., May 26, 2022).

b. **"Summarily denials" of habeas corpus petitions,** bars the doctrine of res judicata from becoming active. According in *Williamson v. Mirandy*, 2016 W. Va. LEXIS 110 (February 19, 2016), it was in this case that the W.Va. Supreme Court of Appeals decided when it found that one issue was not presented to the lower circuit court. Where the *Petitioner*, in that case had asked that the W.Va. Supreme Court of Appeals address that issue of his mental competency to enter his guilty plea, under the plain erro doctrine or remand this case so that the lower circuit court can address it. The W.Va. Supreme Court of Appeals delined to do it, because,

"[T]he circuit court summarily denied petitioner's petition without holding a hearing or appointing counsel, the doctrine of res judicata will not bar petitioner from filing successive habeas petitions." Now in the case at hand, was in direct conflict with *Williamson v. Mirandy,* where the W.Va. Supreme Court of Appeals had affirmed the circuit court's decision to "summarily deny" Petitioner's inital and successive habeas corpus petitions due to the doctrine of res judicata. Thus, whenever the circuit court "summarily denies a habeas corpus petition, this doctrine of res judicata will not bar any Petitioner from filing a successive habeas corpus petition; See Syl. Pt. 2, *Losh v. McKenzie*, 166 W. Va. 762, 277 S.E.2d 606, 608 (1981). The W.Va. Supreme Court of Appeals denied each of the Petitioner's successive habeas corpus petitions by misapplying the doctrine of res judicata.

c. **"Never had an omnibus hearing."** The Petitioner had never had an omnibus hearing and according to Syl. Pt. 4 in *Gibson v. Dale*, 173 W. Va. 681, 688-89, 319 S.E.2d 806, 813 (1984) which states: "An omnibus habeas corpus hearing as contemplated in W. Va. Code, 53-4A-1 et seq. [1967] occurs when: (1) an applicant for habeas corpus is represented by counsel or appears pro se having knowingly and intelligently waived his right to counsel; (2) the trial court inquires into all the standard grounds for habeas corpus relief; (3) a knowing and intelligent waiver of those grounds not asserted is made by the applicant upon advice of counsel unless he knowingly and intelligently waived his right to counsel; and, (4) the trial court drafts a comprehensive order including the findings on the merits of the issues addressed and a notation that the defendant was advised concerning his obligation to raise all grounds for post-conviction relief in one proceeding." (quoting Syllabus Point 1, *Losh v. McKenzie*, 166 W. Va. 762, 277 S.E.2d 606 (1981)).

The Petitioner had never had an omnibus habeas corpus hearing, where he would have presented himself *pro se* nor having knowingly and intelligently waive his right to counsel. W.Va. Code, 53-4A-1 et. seq. [1967] was violated by the lower circuit court, it never applied these factor to allow for the Petitioner to have this hearing. Also, according in *Gibson,* "The waiver provisions of W. Va. Code § 53-4A-1 et seq. (1981 Replacement Vol.) may be applied to bar consideration of grounds for relief not asserted in a prior habeas corpus proceeding only when the record demonstrates that an omnibus hearing was conducted in the course of such prior proceeding."

d. "statutes never show lower circuit court's application for the record" W. Va. Code § 53-4A-1(c) contemplates a knowing and intelligent waiver, the record had failed to conclusively demonstrate that the Petitioner voluntarily refrained from asserting known grounds for relief in the prior proceeding, " in the vein of a waiver of a constitutional right, which cannot be presumed from a silent record." See *Gibson v. Dale*, 173 W. Va. 681, 688-89, 319 S.E.2d 806, 813 (1984).

e. "Violation of the Townsend v. Sain" The circuit court did violate *Townsend v. Sain*, 372 U.S. 293, 313, 83 S. Ct. 745, 757, 9 L. Ed. 2d 770 (1963)[, overruled on other grounds by Keeney v. Tamayo-Reyes, 504 U.S. 1, 112 S. Ct. 1715, 118 L. Ed. 2d 318 (1992)], the United States Supreme Court concluded that federal courts must conduct evidentiary hearings upon application for a writ of habeas corpus by a state prisoner in the following circumstances:

If (1) the merits of the factual dispute were not resolved in the state hearing; (2) the state factual determination is not fairly supported by the record as a whole; (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing; (4) there is a substantial allegation of newly discovered evidence;

(5) the material facts were not adequately developed at the state-court hearing; or (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing.

f. "West Virginia Supreme Court of Appeals's usage in *Townsend v. Sain* as a guidance." According to the case, *Dement v. Pszczolkowski*, 245 W. Va. 564, 859 S.E.2d 732, 2021 W. Va. LEXIS 327 (W. Va. 2021), W.Va. Supreme Court of Appeals mentions: "[W]e think the list of circumstances announced in Townsend provides excellent guidance for the courts of this State in determining whether an evidentiary hearing should be conducted in a particular habeas corpus proceeding. *Gibson*, 173 W. Va. at 689 n.8, 319 S.E.2d at 814 n.8.

g. "A violation of the U.S. Constitution and the doctrine of stare decisis." Based on the above mention, which proves that the doctrine of res judicata was misapplied at violating the Fifth and the due process of the fourteenth amendments of the U.S. Constitution are reasons for granting the writ of certiorari. Which violates the doctrine of stare decisis, that plays an important role and protects the interests of those who have taken action in reliance on a past decision. The Petitioner wasn't able to address his habeas claims in the lower circuit court of serious trial errors newly discovered, due to the misapplication of the res judicata. W. Va. Code § 53-4A-1 et seq. (1981 Replacement Vol.). The importance of this issue shows why that the Court should hear them. The Fourteenth Amendment's guarantee that no State shall ``deprive any person of life, liberty, or property without due process of law." The Fifth Amendment provides that ``[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." The misapplication of the res judicata by the state lower court affirmed by the State's highest court violates this gurantee by taking away the Petitioner's life, liberty, or property under a decision

which shows its decision in other case(s) demonstrates that whenever the state lower circuit courts "simmarily" denies a habeas corpus petition, it will not bar that petitioner from filing a successive habeas corpus petition. Here in this case at hand, it did so against the Petitioner. Showing this matter is important for this Court to review.

B.

Why the Social and Legal implications of an ineffective assistance of trial and appellate counsels with the decision by the West Virginia Supreme Court of Appeals of affirming the lower circuit's egregious or flagrant abuse of justice decision, according to the question presented #2; which is in conflict with federal courts of constructively amending elements of a charge to the petit jury, is important that the Court in this matter should review:

a. **"By its constructively amending elements of a charge not in the indictment against the Petitioner."** The Petitioner was in fact misled, when the lower circuit court in the jury instructions constructively amending the charge of kidnapping (1965) statute, against the Petitioner by adding three substantial elements not alleged in the indictment, which were: "conceal," "entice," and "entice away."

b. **"The Petitioner was misled."** The Petitioner was misled by the instruction to the jury for the kidnapping charge. The Petitioner was subjected to an added burden of proof, and he was prejudiced. "Any substantial amendment, direct or indirect, of an indictment must be resubmitted to the grand jury..." 3, *State v. Adams*, 193 W. Va. 277, 456 S.E.2d 4 (1995).

c. **"The prejudicial against Petitioner."** The Petitioner was in fact prejudiced by his trial and appellate counselors for failing to object nor raise this issue in a post-conviction habeas corpus petition, that the kidnapping charge was broaden against him. This did affect the fairness

of the judicial proceedings, because there was evidence except of his co-defendant's overt act in with this charge. At relying on language from the Supreme Court's decision in *Stirone v. United States*, 361 U.S. 212, 80 S. Ct. 270, 4 L. Ed. 2d 252 (1960). The Supreme Court's interpretation according to *Stirone's* statement that "a court cannot permit a defendant to be tried on charges that are not made in the indictment against him," id. at 217, "to mean that a constructive amendment of the indictment constitutes error per se." (quoting the decision in *United States v. Floresca*, 38 F.3d 706 (4th Cir. 1994)).

d. "The Plain error doctrine ignored." In the Fourth Circuit, alleged constructive amendments not objected to below are subject to plain error review, under the Fed. R. Crim. P. 52(b). The Grand Jury Clause is violated "when the indictment is effectively altered 'to change the elements of the offense charged, such that a defendant is actually convicted of a crime other than that charged in the indictment.'" *United States v. Burfoot*, 899 F.3d 326, 338 (4th Cir. 2018) (quoting United *States v. Floresca*, 38 F.3d 706, 710 (4th Cir. 1994)). According to *United States v. Whitfield*, 695 F.3d at 308, the fourth Circuit Court of Appeal had concluded "that there was a constructive amendment to the indictment and that the error was "fatal and reversible per se." 695 F.3d at 308 (citations omitted). The case at hand, is not distinquished because there was no objection from the defense concerning the constructive amendment at trial, so therefore, *Whitfield* applies here.

e. "The ineffective assistance of trial and appellate counselors." The trial and appellate counselors failed to object or raise this issue during trial or the post-conviction habeas corpus petition. Their performances were deficient, but, for their prejudicial error and deficiencies the outcome would have been based on plain error review proven or reversal of charge.

f. "Trial and Appellate Counselors' deficient performance prejudiced the Petitioner." In the case at hand, the trial and appellate counselors' both had prejudiced the Petitioner whether it was during trial and post-conviction habeas corpus proceedings. They failed to object or raise to rebut the presumption of correctness that of the jury instructions which constructively amending the kidnapping charge. The ``reasonable probability that, but for both counselors' unprofessional errors, the result of the proceeding would have been different" that of which this issue would have been reviewed under the plain error doctrine in the Fed. R. Crim. P. 52(b), or the charged would have been dismissed from the indictment for being defective according to the post-conviction habeas corpus petition. The weight of the evidence doesn't point to the Petitioner only his co-defendant, who was deceased. The Petitioner was only indicted because of the fact that his co-defendant was deceased. The evidence in the case was only an eyewitness account by the victim in the case who only implicates co-defendant of the crime and only assumes that the Petitioner was close by never witnessing him doing any criminal act against him. Therefore, there is a substantial, not just conceivable, likelihood of a different result. That the state court's decision to instruction the jury of three substantial elements of "conceal'; "entice"; and "entice away," not alleged in the indictment is so obviously wrong that its error lies beyond any possibility for fairminded disagreement. Both performances were deficient and prejudicial.

g. "Constitutional violations" By the state court to go against its own precedence of clarifying "in *State v. Corra,* 223 W. Va. 573, 678 S.E.2d 306 (2009), that "[i]f the proof adduced at trial differs from the allegations in an indictment, it must be determined whether the difference is a variance or an actual or a constructive amendment to the indictment." Id. at 581-82, 678 S.E.2d at 314-15. There must of been insufficient evidence that to convict the Petitioenr of this

charge for kidnapping was weak. [i]f an indictment alleges that an offense was done in a particular way, the proof must support such charge or there will be a fatal variance. However, if such averment can be omitted without affecting the charge in the indictment against the accused, such allegation may be considered and rejected as surplusage if not material. Syllabus point 8, *State v. Crowder*, 146 W. Va. 810, 123 S.E.2d 42 (1961).Syl. Pt. 2, *State v. Scarberry*, 187 W. Va. 251, 418 S.E.2d 361 (1992). By the instruction to add three new elements was in fact a fatal variance which misled the Petitioner in making his defense and exposed him to the danger of being put in jeopardy for the same offense Id. at 255-56, 418 S.E.2d at 365-66. It violates its own article III, section 4 of the West Virginia Constitution, the provisions of Rule 7 of the West Virginia Rules of Criminal Procedure, and Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. Lastly, this Court should review the social and legal implications of this decision to instruct the petit jury on constructively amend the charge for kidnapping against the Petitioner.

C.

Why the Social and Legal implications of an ineffective assistance of trial and appellate counsels with the decision by the West Virginia Supreme Court of Appeals of affirming the lower circuit's egregious or flagrant abuse of justice decision, in question presented #3 of state court in conflict with federal courts based on defective indictment is important that the Court in this matter should review:

a. "Ineffective of assistance of trial and appellate counselors'" The trial and appellate counselors' failed to object or raise to rebut the presumption of waiver that according to the charge against the Petitioner for 'Malicious Assault' was defective on its face. Both performances were deficient and prejudicial. According to the 'Malicious Assault' charge in the indictment

against the Petitioner which averred: "WITH INTENT TO CAUSE BODILY INJURY" This averrment is wrong. The trial and appellate counselors' failed to object or raise to rebut the presumption of waiver. In *Strickland v. Washington*, 466 U.S. [668,] 689-90, 104 S.Ct. [2052,] 2065-66, 80 L.Ed.2d [674,] 694-95 [(1984)], both counselors' performance was deficient under an objective standard of reasonableness; and there is a reasonable probability that, but for counselors' unprofessional errors, the result of the proceedings would have been reversal of the conviction or a dismissal of the charge all itself from the indictment, during trial." Both performances were deficient and prejudicial towards the Petitioner.

b. "The defective charge of Malicious Assault" Both performances were deficient and prejudicial by the fact that according to the charge of Malicious Assault W. Va. Code § 61-2-9(a) which states in part: the intent must be **"to maim, disfigure, disable or kill,"** not any other intent. *State v. Meadows*, 18 W. Va. 658, 1881 W. Va. LEXIS 69 (W. Va. 1881). Pursuant to the W. Va. R. Crim. P. 12(b)(2), The trial and appellate counselors' failed to object or raise to rebut the presumption of waiver. The lower circuit court which was affirmed by the State highest court utilized the res judicata doctrine to dismiss this newly discovered issue, however, the courts failed to notice pursuant to W. Va. R. Crim. P. 12(b)(2) and the precendence it had set according to "Rule 12(b)(2) of the West Virginia Rules of Criminal Procedure requires that a defendant must raise any objection to an indictment prior to trial. Although a challenge to a defective indictment is never waived, this Court literally will construe an indictment in favor of validity where a defendant fails timely to challenge its sufficiency. Without objection, the indictment should be upheld unless it is so defective that it does not, by any reasonable construction, charge an offense under West Virginia law or for which the defendant was convicted." Syllabus Point 1,

State v. Miller, 197 W. Va. 588, 476 S.E.2d 535 (1996). This was so defective that it does not, by any reasonable construction, charge an offense under West Virginia law or for which the Petitioner was convicted.

c. "Conflict with federal courts" The issue with this claim is that the deficiency makes the trial so egregiously unfair as to amount to a deprivation of the Petitioner's right to due process. The alleged defects go to the jurisdiction of the trial court or deprive the Petitioner of the right to be sufficiently informed of the charges against him. "[T]he Due Process Clause guarantees [a defendant] the 'right to reasonable notice of a charge against him, and an opportunity to be heard [in] his defense ....'" *Barbe v. McBride*, 477 F. App'x 49, 51 (4th Cir. 2012) (quoting *In re Oliver*, 333 U.S. 257, 273, 68 S. Ct. 499, 92 L. Ed. 682 (1948)). Fourth Circuit case, *United States v. Medley*, 972 F.3d 399 (4th Cir. 2020), reh' en banc granted Nov. 12, 2020.

d. "Plain error doctrine violation" This claim violates the plain error doctrine in the Fed. R. Crim. P. 52(b), which was (1) an error; (2) that is plain; and (3) that affected his substantial rights. If he does so, an appellate court may use its discretion to correct the error if it seriously affects the fairness, integrity or public reputation of judicial proceedings. See Silber v. United States, 370 U.S. 717, 717, 82 S. Ct. 1287, 8 L. Ed. 2d 798 (1962) (reversing judgment for plain error as a result of a defective indictment);

e. "Violation of U.S. Constitution" This defective charge in the indictment violates the Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution. Lastly, this Court should review the social and legal implications of this decision by the states courts. Were both the trial and appellate counselors' ineffective for failing to object and raise this defective charge.

D.

Why the Social and Legal implications with the decision by the West Virginia Supreme Court of Appeals affirming the Flagrant abuse of justice in the lower circuit court's decision, in question presented #4 is important that the Court in this matter should review:

a. "ineffective assistance of trial and appellate counselors," Both trial and appellate counselors failed to object or raise that the indictment had failed to aver two additional elements which are (1) that the taking has been from the person of another or in his presence and (2) that the taking is by force or putting the person in fear, which would have separated the charge of robbery from the lesser-included offense of grand larceny, *State v. Neider*, 170 W. Va. 662, 295 S.E.2d 902, 1982 W. Va. LEXIS 878 (W. Va. 1982).

b. "Counselors were inadequate and prejudicial" Both counselors performances were deficient and had prejudiced the Petitioner. There is a reasonable probability that, but for both counselors' unprofessional errors, the result of the proceedings would have been the lower court would have dropped one of the charges either robbery or grand larceny, and it possibly would have been robbery.

c. "Outcome would have been different" There would have been a different result due to the circuit court, which would have had to dismiss either robbery or grand larceny charge against the Petitioner. Particularly the robbery charge would of been dismissed, because the charge had failed to allege a crime according to the indictment. Thus, mentioning that the robbery charged failed to aver At common law, the definition of robbery was (1) the unlawful taking and carrying away, (2) of money or goods, (3) from the person of another or in his presence, (4) by force or putting him in fear, (5) with intent to steal the money or goods.

d. "Violation of the double jeopardy Clause" According to the *Blockburger v. United States*, 284 U. S. 299, 304, 52 S. Ct. 180, 76 L. Ed. 306 (1932) (offenses defined by a single sovereign are distinct offenses only if each ``requires proof of a different element"). The robbery and grand larceny charges against the Petitioner could be separately prosecuted, however, this Court will find upon its review, a Double Jeopardy Clause violation even when the Petitioner was tried under two separate legal codes, the indictment had failed to aver the two additional elements which would have separated *robbery* from *larceny* which are: (1) that the taking has been from the person of another or in his presence and (2) that the taking is by force or putting the person in fear, according in *Neider Id.* Thus, violating the double jeopardy Clause.

e. "Surplusage" The robbery charged against the Petitioner had only alleged "DID VIOLENTLY STEAL" which is a surplusage pursuant to the indictment form for robbery, W. Va. Code, § 62-9-6. Notice to inform of the nature and cause was not given for this charge.

f. "Violation of both Constitutions" This did violate W. Va. Const. art. III, § 5, the 5th, 6th and the 14th amendments to the U.S. Constitution, based on this double jeopardy clause violation.

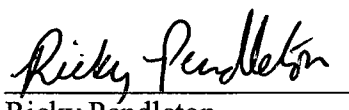
g. "The fundamental fairness of the proceeding." ``[a]ttorney error that constitutes ineffective assistance of counsel" similarly demonstrates cause to excuse procedural default. These reasons mentioned above, is cause to excuse the so-called West Virginia Code § 53-4A-1 doctrine of res judicata claims under *Martinez v. Ryan*, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272 (2012), and *Trevino v. Thaler*, 569 U.S. 413, 133 S. Ct. 1911, 185 L. Ed. 2d 1044 (2013). At demonstrating how both trial and appellate state counselors' were ineffective to show cause.

That there was cause for the Petitioner to not follow the West Virginia Code § 53-4A-1 doctrine of res judicata due to the fact that the lower circuit state court *'Simmarily'* denies his successive habeas corpus petitions and that he was actually prejudiced by the alleged constitutional error. Therefore, the lower circuit state court affirmed by the West Virginia Supreme Court of Appeals had misapplied the West Virginia Code § 53-4A-1 using the doctrine of res judicata.

CONCLUSION

These are the reasons based on the aboved mentioned, that the social and legal implications of the decisions by the lower circuit state court, affirmed by the W.Va. State highest court is being challenged which is important that the Court should review them. The Petition for writ of certiorari should be granted.

Respectfully submitted,



Ricky Pendleton
c/o: #3572914-One Mountainside Way
Mount Olive Correctional Complex and Jail
Mount Olive, WV 25185

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APPENDIX A:

The memorandum decision for the post-conviction habeas corpus May 26, 2022