No 22-7889 ORIGINAL

In the
Supreme Court of the United States

Tyree Lawson,
Petitioner,

v.

M. Ovemyer, Superintendent of SCI Forest,
the District Attorney of Montgomery County, and
the Attorney General of Pennsylvania
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

Petition for a Writ of Certiorari

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Petititon for Writ of Certiorari

The United States Supreme Court should grant Petitioner's requested writ of certiorari relief where the Fourth Amendment prohibitions against unreasonable searches and seizures in the case has been deminished to non-existence.

As the courts below has sadly falied and/or refused to acknowledge or fairly address.

Opinion Below

While relying on the United states Supreme Court's holdings, in **Stone v. Powell,** 428 U.S. 465 (1976), the Magistrate Court for the Eastern District for Pennsylvania mistakenly deemed ***Stone v. Powell,*** prevented it's court from providing .....relief on [Petitioner's] second [*habeas*] claim and that the first claim also does not avoid the Stone v. Powell bar. **Tyree Lawson v. M. Overmyer, et al.** E. D. Pa. U.S. Dist. Ct. 2015 US Dist LEXIS 116906 [CIVIL ACTION NO. 14-135].

The magistrate's reporting recommendations——while overruling Petitioner's objections was later adopted by the district court's adoption of reported recommendations through it's August 27, 2015, issued order. **Lawson v. Overmyer**, 2015 U.S. Dist. LEXIS 116405 (E.D. Pa., Aug. 27, 2015). Which also denied issuance of certificate of appealability.

Question Presented

I. Whether the 100 plus days the right to counsel was entirely denied resulted a deprivation of Guaranteed rights and due process of the law — which should have never been held as valid cause for denying Federal § 2254. *habeas* review of Fourth Amendment illegal search and seizure claims, by the **Stone v. Powell,** barrier; and the district court's later [non-disclosed] termnation of true Rule 60(b), resulted a further denial of due process [,] that was further suppressed by the United States Third Circuit Court of Appeals refusal to address the termination?

Jursdiction

The original opinion of the Third Circuit Court of appeals was entered on September 30, 2022. However, mailroom officials at Petitioner's current place of confinement upon receipt of the Order denying C.O.A, returned the court's mail back to sender with misleading information, alleging: "insufficient addressed information." And was returned back to the Third Circuit Court of Appeals on October 17, 2022; whom then time-stamped the document and remailed it back to Petitioner.

The Third Circuit Court of Appeals acknowledged Petitioner's after-the-fact delivery of the circuit's order denying relief, an accepted Petitioner's explanation of not officially receiving the document until October 26, 2022; via *nunc pro tunc* filed requested relief.

On November 15, 2022, the Third Circuit Court of Appeals denied reargument on November 15, 2022. The jurisdiction of this United States Supreme Court is respectfully invoked under 28 U.S.C. §1254.

Statutory, Constitutional Amendments, Rules and Provisions Involved

The following United States Constitution Amendments, Statutes and Provisions are involved in this case.

Fourth Amendment of the U.S. Constitution, provides:

> *Unreasonable searches and seizures.TextThe right of the people to be secure in their persons, houses, papers, and effects, against*

unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.Annotations

Fourteenth Amendment to the United States Constitution, provides:

> ***Sec. 1.*** *[Citizens of the United States.] All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

28 U.S.C. § 2254 , provides:

(a) *The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.*

(b) (1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

A) the applicant has exhausted the remedies available in the courts of the State; or

(B) (i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

(2) An application for a writ of habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

(c) *An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.*

(d) *An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be*

granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(f) If the applicant challenges the sufficiency of the evidence adduced in such State court proceeding to support the State court's determination of a factual issue made therein, the applicant, if able, shall produce that part of the record pertinent to a determination of the sufficiency of the evidence to support such determination. If the applicant, because of indigency or other reason is unable to produce such part of the record, then the State shall produce such part of the record and the Federal court shall direct the State to do so by order directed to an appropriate State official. If the State cannot provide such pertinent part of the record, then the court shall determine under the existing facts and circumstances what weight shall be given to the State court's factual determination.

(g) A copy of the official records of the State court, duly certified by the clerk of such court to be a true and correct copy of a finding, judicial opinion, or other reliable written indicia showing such a factual determination by the State court shall be admissible in the Federal court proceeding.

(h) Except as provided in section 408 of the Controlled Substance Acts [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel for an applicant who is or becomes financially unable to afford counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(i) The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254 [28 USCS § 2254].

Federal Rule of Civil Procedure, *Rule 60,* provides:

Rule 60. Relief from a Judgment or Order, Text

(a) Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) Timing and Effect of the Motion.

(1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.

(d) Other Powers to Grant Relief. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. § 1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

Statement of the Case

A. Factual history

Petitioner has been convicted of the June 12, 2006, home-invasion robbery of Joseph & Nancy Hevener. Also convicted for the tried acts were co-defendants Andrew Bing and Michael Alphonse Potter.

When at 5:30 am, Nancy Hevener (herein after: Mrs. Hevener), after starting her husband's truck was going back inside her home, but was shoved from behind by an unknown personwearing latex-gloves an a nylon stocking cover his face (later identified as Petitioner). Simultaneously, another person also wearing nylon stocking coverin g his face and wearing latex gloves later identified and confessed as being Andrew Bing ("Bing"), ran further into her home. When Mrs.

Hevener, in effort to alert her husband, screamed, "run Joe, run." 03/08/2011 Jury N.T. pg. 174-75

But instead, hearing his wife's screams Joseph Hevener (herein after: Mr. Hevener), ran towards her and in the center of the hevener's kitchen Bing and Mr. Hevener begun to fight. During the fight Mr. Hevener "gripped the hell out of Bing's private, when Bing responded by ramming his finger into Mr. Hevener's eye. 03/07/2011 Jury N.T. at 56.

While still squeezing Bing's private, reached and grabbed ahold of the Hevener's coffee pot —— and begun repeatedly striking the top of Mr. Hevener's head with it. 03/07/2011 Jury N.T. 49-50, 56; 73-75; 03/08/2011 Jury N.T. at 29

Simultaneously, while the fight was happening inside the hevener's home——Petitioner was outside chasing Mrs. Hevener, whom managed to had gotten away. 03/08/2011 Jury N.T. at 29.

Unable to catch her, Petitioner and later followed Bing, jumped in the Hevener's truck and sped away.

B. Police Investigation

In responding the the incident Springfield Township, Pennsylvania Police was dispatcted and discovered inside the hevener's home three broken pieces of latex glove, and a T--mobile cellular phone.

On January 15, 2007, Pennsylvania State Police Forensic Laboratory identified the DNA that was absracted from two of the June 12, 2006 discovered *three-pieces* of latex gloves matched the DNA profile of Joseph Hevener.

On July 6, 2007, Pennsylvania State Police Forensic Laboratory identified

the DNA that was absracted from the remaining third piece of the June 12, 2006 discovered *three-pieces* of latex gloves matched the DNA profile of Andrew Bing.

On August 10, 2007, or about Andrew Bing was arrested and identified hisT-Mobile cellular phone (267-334-4405), that he dropped inside the hevener's home on the day of the attempted robbery. Bing also identified his accomplice as "Ty", who Bing also established., "Ty, was up state serving time." Bing's identification sequentially resulted the arrest of co-defendant Michael Potter.

April of 2008, Andrew Bing testified as a prosecution's witness during the jury trial of Potter, stating that Potter set the entire robber up.

On August 29, 2008, after testifying against Potter, Common Pleas Court Judge Paul Tressler, at the Commonwealth's expressed request —sentenced Bing to serve not less than 3 nor more the 6 years of imprisonment. **Commonwealth v. Bing,** CP-46-CR-0006240-2007.

On September 14, 2007, investigating authorities then permitted Bing to change by it's 09/14/2007, signed photo-array, then allowed Bing to identify Petitioner, as instead being his accomplice; while suppressing the identity of his 08/10/2007, initial identified accomplice.

On March 26, 2008, in effort to concrete Bing's sequential identification of Petitioner, the case investigating detective ("Denise Hoisington"), sworn out a material false affidavit of probable cause [misrepresenting the 215-668-4414, was registered to Tyefeek Lawson, which was found at the June 12, 2006, robbery crime scene, and Forensic lab was submitted for DNA analysis] and that

a search warrant was needed to obtain a sample of Petitioner's DNA. And resulted the issuance of the 03/26/2008 Montgomery Co. issued Search Warrant.

On April 17, 2008, inside Philadelphia Police 24th & 25th Police district the case detective **Id.** and three other armed officers forcibly restrained Peitioner and seized it's sample of Petitioner's DNA pursuant to the issued warrant. **Id.**

On May 8, 2008, in second effort to concrete evidence Petitioner's presence at the June 12, 2006, robbery crime scene—the case investigating detective for a Philadelphia Co. search-warrant then solicited the assistance from a Philadelphia Police detective ("Geliebert Badge #614"). And in a reckless disregard for the truth the Philadelphia detective for the issuance of a Philadelphia Co. search warrant—— [***misrepresented***] the exact [misrepresentation that was contained within the case detectives' 03/26/2008, misleading Montgomery Co. affidavit of probable cause.]

On May 14, 2008, Montgomery Co. case detective through the Philadelphia's further assistance, had Petitioner transfer from Philadelphia Co. prison-system to Philadelphia 35th Police district. Where both in addition to other unknown armed uniformed officer forcibly seized a second sample of Petitioner's DNA.

On July 28, 2008, several months after obtaining several samples of Petitioner's DNA, more then a year discovering all evidence collected from the June 12, 2006, robbery crime scene—linked to Joseph Hevener and Andrew Bing; the case detective within a sworn-affidavit of probable cause [misrepresented Petitioner's DNA was found on evidence] that was found inside

the June 12, 2006, home invasion crime scene.

C. Procedural History

On January 13, 2009, Petitioner was arrested and charged with several acts of robbery, burglary and various acts of criminal conspiracy. On January 20, 2009, a preliminary hearing was held before Montgomery Co. Magisterial Judge William Householder. Petitioner, was represented by the Montgomery County Public defenders officer. At the conclusion of the preliminary hearing with the exception of charged acts of robbery by serious bodily injury the court bound the remaining charges over for court.

On March 2, 2009, the Montgomery Co. Public defenders office was removed from Petitioner's case.

On April 2, 2009, the prosecution filed it's criminal charges and reinstituted the dismissed acts of robbery by serious bodily injury caused to Mr. Hevener.

A video-formal arraignment without the Sixth Amendment Guarantee right to counsel was held on April 20, 2009, during Petitioner's absence from all state's proceedings——while confined in downtown Philadelphia Federal custody.

On May 8, 2009, a court hearing was held out-side petitioner's presence — then Common Pleas Court trial Judge Paul Tressler. established to the court's record "there existed a *'conflict of interest"*, between Montgomery Co. Public defender Raymond Robert, previous representation of co-defendant Andrew Bing; and Petitioner's sequential representation from Montgomery Co.

Public defender Seth Grant, and deferred the matters to Common Pleas Judge William Carpenter for the appointment of private counsel.

On July 7, 2009, the Montgomery County Common Pleas Court ("William R. Carpenter"), appointed private-counsel Richard Tompkins.

On May 4, 2010, resulting Private Attorney Tomkins, refusal to respond to Petitioner's written inquiries, refusal to respond to Petitioner's family phoned attempts, and unreasonable effort of requesting $122.50, from pauperis petitioner for disclosure of the case's discovery *files* Petitioner then waived the Sixth Amendment right to counsel, resulting the Common Pleas Court's sequential refusal to substitute conflict counsel.

On very May 4, 2010, immediate outside Petitioner's presence —— or with Petitioner's consent or request... the Common Pleas Court ("Judge Paul Tressler") revoked Petitioner's waiver of counsel, by appointing Private Attorney Joseph Hyland; whom immediate refused the case. And sequentially resulted the May 17, 2010, sequential Order appointing Private Attorney John Armstrong.

At some unknown period durng October or November 2010, then trial Judge Paul Tressler. was forced off the Montgomery County Court's bench and resulted Petitioner's case being reassigned to Common Pleas Judge William R. Carpenter.

On March 4, 2011, resulting Private Attorney John Armstrong's 10½ months complete refusal to acknowledge Petitioner's calls, letters or Petitioner's family inquiries— Petitioner during the in court appearance frantically tried explaining, the very to the court whom instead responded, "*he would not be*

removing Mr. Armstrong from the case, as it's scheduled for trial on Monday and has been on the court's docket for entirely too long; and I/Petitioner had the choice of either enjoying being represented by Mr. Armstrong, or proceed to trial pro se (sic)".

In effort to avoid any further hindrance Petitioner then naively waived the Sixth Amendment right to counsel on the very March 4, 2011, (72 hours) eve of trial-and after alerting the Common Pleas Court, the prosecution nor any prior attorney has ever disclosed a copy of the case discovery files; the court instructed the prosecution to disclose, "*any materials your office felt he should have for trial."*

D. Jury trial

Exactly 72 hours later, in a closed court proceeding with Attorney John Armstrong sitting as standby counsel, and at the conclusion of the speedy trial analysis hearing, Petitioner was tried pro se, and 2½ days later convicted of all tried act.

E. Sentencing

On June 1, 2011, the Common Pleas Court Carpenter for the sentencing hearing denied any further assistance from non-appearing standby counsel. And sequentially sentenced Petitioner to serve five consecutive sentences, totaling: 19 to 60 years. The judgment of sentence was affirmed on appeal by the Pennsylvania Superior Court, and later sought Allocution was denied by the Pennsylvania Supreme Court on January 18, 2013. **Commonwealth v. Lawson**,

60 A.3d 559 (Pa. Super. 2012), appeal denied, 619 Pa. 678, 62 A.3d 379 (Pa.2013).

F. Post Conviction PCRA Proceeding

On June 18, 2013, Petitioner first PCRA petition was filed. Counsel was appointed and later wrote of no-merit letter. After a pre-dismissal notice was issued, a final order of dismissal was issued on October 7, 2013.

G. Federal habeas proceedings

Before the resolution of the PCRA appeal, on January 2, 2014, Petitioner filed the Federal petition for habeas corpus relief. alleging:

> **1). The arrest was unlawful because the magistrate issuing the warrant was mislead by the detective's material misrepresentations; 2). the case's detective misrepresentations resulted the fraudulent procurement of each arrest & search warrant and the trial court improperly denied a suppression hearing; 3). the 952 pretrial detention denied Petitioner of the Sixth Amendment right to a speedy trial; 4). Petitioner's double jeopardy rights, and 5). Eighth Amendment right against cruel and unusual punishment was violated by the state's sentence.**

Pet. at 5, 7, 9, 10-11 Memo of Law.

The Commonwealth responded to the petition alleging ll claims were procedurally defaulted and meritless. Ultimately, the magistrate court deemed "Petitioner cannot obtain habeas relief based on either the first or second habeas claim and the other claims were procedurally defaulted.

On February 26, 2015, the Magistrate Judge issued it's reporting recommendations recommending the Petitioner's habeas petition be dismissed,

without an evidentiary hearing." By further holding: "Petitioner has neither demonstrated that any reasonable jurist could find this court's rulings debatable, nor shown denial of any federal constitutional right; hence, there is no probable cause to issue a certificate of appealability." And further denied the issuance of a certificate of appealability. **Tyree Lawson v. M. Overmyer, et al.** 2015 U.S. Dist. LEXIS 116906.

On August 27, 2015, while overruling petitioner's objections the district court issued it's order dismissing Petitioner's petition seeking Writ of habeas corpus relief. **Lawson v. Overmyer**, 2015 U.S. Dist. LEXIS 116405 (E.D. Pa., Aug. 27, 2015).

A timely appeal was filed in the United States Third Circuit Court of Appeals at C.A. 15-3259, relief on appeal was denied on March 10, 2016.

A petition for writ of certiorari relief was sequentially filed on April 17, 2016, on March 20, 2017, this United States Supreme Court denied certiorari relief. **Tyree Lawson, Petitioner** vs. **Michael Overmyer, Superintendent, State Correctional Institution at Forest, et al.** [197 L Ed 2d 534] 2017 US LEXIS 1880.

On August 24, 2017, Petitioner filed in United States District Court for the Eastern District of Pennsylvania an application for Rule 60(b) relief. And titled that document: Motion for Extraordinary Relief under Rule 60(b)(4)&(D) and/or in the Alternative Equal Protection of the Law.

After discovering that the August 24, 2017, captioned action had been outside the scope of the January 2, 2014, initial habeas Fourth Amendment

claims on November 6, 2017, by requested and permitted leave of the court Petitioner filed a Supplemental Rule 60(b)(6) application for relief. However, without notice, reason or opportunity to contest ——the district court terminated the November 6, 2017, filed request.

On March 8, 2018, district court issued it's order transferring Petitioner's August 24, 2017, filing to the Third Circuit's Court of Appeals to determine, "*if petitioner's filing was factually a second and successive unauthorized §2254.*" After contesting the presumptions, on April 30, 2018, the Third Circuit's Court of Appeals denied the transferred application, as an "unauthorized second and successive habeas petition."

H. PCRA appeal

On September 19, 2014, in an unpublished memorandum decision, Pennsylvania Superior Court affirmed the PCRA court's October 7, 2013, decision denying PCRA relief. **See Commonwealth v. Lawson**, 3005 EDA 2013 and 3008 EDA 2013, 2014 Pa. Super. Unpub. LEXIS 554 (Pa. Super. filed 9/19/14) (unpublished memorandum).

Thereafter, on December 23, 2015, Petitioner discovered evidence of the Commonwealth's principal witness, and otherwise the charged accomplice Andrew Bing testified falsely during Petitioner's [pro se] jury-trial. Specifically, during such trial, pro se Petitioner questioned Mr. Bing if his trial testimony was motivated by the Commonwealth's negotiated plea agreement. However, in response, Mr. Bing, in a total disregard for the truth, stated: "It wasn't a negotiated agreement." And filed the serial petition-seeking PCRA relief,

alleging the newly-discoevered evidence from Andrew Bing's best friend Alexander Fulton [State. No. KG-2257]. Whom was willing to testify (a) that Andrew Bing, the Commonwealth's principal witness, months after Petitioner' jury trial admitted to him, that because of his trial testimony on the Commonwealth's behalf he served "only" a small amount of prison time; (b) and, after explaining to him the circumstances of his case, Mr. Bing, attempted to persuade him into testifying against the other person and/or persons charged in his case for a lighter sentence.

Yet, by order entered on February 1, 2016, the PCRA court without reason issued it's notice of intent to dismiss the petition without an evidentiary hearing by alleging "it was untimely filed". After Petitioner's pro se contesting response - by order entered on February 29, 2016, the PCRA court dismissed the petition. It's denial was affirmed on appeal by the Pa. Superior Court. **Commonwealth v. Tyree Lawson,** 2016 Pa. Super. Unpub. LEXIS 3718; 159 A3d 42 [Appeal No. 763 EDA 2016]; reargument denied by **Commonwealth v. Lawson**, 2016 Pa. Super. LEXIS 799 (Pa. Super. Ct., Dec. 20, 2016).

Since that time, Petitioner filed a series of other PCRA petitions, all of which with the exception of the June 19, 2018, filed petition-seeking Post-Conviction Collateral relief- resulting the May 2, 2018, reversal and vacate of *prior*-Philadelphia [10/09/2009 wrongful-attempted murder conviction], Petitioner filed the latest petition for PCRA relief. And stated within that filing, 'because a previous unrelated 2009 [,] attempted murder conviction was later vacated and nolle prossed in 2018, was amongst the information th[e trial court]

had utilized during it's 2011 sentencing hearing- to deem Petitioner "was a violent criminal, and enhanced his sentence to the 19 to 60 year, imposed. Instead of the sentencing guideline required 3 to 6, at the least or the 5 to 10 at the most applicable-guideline sentence. See N.T., 6/1/2011, at 38 (sentencing court explaining that Petitioner's criminal history includes "serious crimes of violence").

On July 30, 2018, the PCRA court dismissed Petitioner's petition without an hearing. And later on August 13, 2018, reissued the order "due to an error". On August 30, 2018, Petitioner filed a timely notice of appeal to the Pennsylvania Superior Court.

On appeal the Pennsylvania Superior & the PCRA court "agree[d] .... 'that [Petitioner] established the applicability of the newly-discovered facts timeliness exception. See PCRA Court Opinion, 11/15/2018, at 5. Where [Petitioner] could not have learned that the ..... Conviction was overturned prior to March 15, 2018, and he filed his PCRA petition shortly thereafter." *(emphasis added).* But denied the requested relief by deeming there existed NO Pa. State law that allowed the new evidence exception to be used for resentencing hearings. **Commonwealth v. Tyree Lawson,** 2020 Pa. Super. Unpub. LEXIS 135; 223 A3d 626223 A.3d 626

No. 2543 EDA 2018. But finding Petitioner established jurisdiction in it's court, appellate, *sua sponte'd* a separate legality of sentence claim. And vacated the 2018, order of the PCRA court denying relief. And remanded with instuctions for that court, **"to consider the legality of [Petitioner]'s sentence"**(Emphasis not in

original).

The PCRA court responding to the January 10, 2020, vacate and remand on January 17, 2020, issued it's order scheduling [resentencing].

However, 22 months later the trial court during it's PCRA review-resentencing hearing refused to address Petitioner's counsel [additional Legality of Sentencing claims which till date violates **Apprendi v. New Jersey**, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). Ultimately, on May 31, 2023, Pennsylvania Superior Court upholding the PCRA court's reasoning for not addressing Petitioner's additional Legality of Sentence ***Apprendi***-violations during it's resentencing hearing. **Commonwealth v. Tyree Lawson,** Unpub. Pa. Superior 05/31/2023 [Appeal No. 2608 EDA 2021].

I. Federal proceedings surrounding 12/23/2015 new evidence

On September 1, 2017, Petitioner, filed an application in the Third Circuit Court of Appeals seeking authorization, pursuant §2244, to file a second and successive habeas application resulting the December 23, 2015, *newly-discovered* facts from Bing's best from Alexander Fulton. On October 13, 2017, the Third Circuit Court of Appeals denied the requested authorization, by deeming:

> *"Petitioner referes to new evidence that he purportedly discovered on December 23, 2015, regarding a witness guilty plea and deal with the prosecution. Petitioner, however, has not identified that evidence and has not otherwise made any showing on his claim in this regard."*

On May 31, 2018, in effort to correct the deficient pleadings of the September 1, 2017, denied §2244, application, Petitioner filed in the Eastern

Pennsylvania United States District Court a Rule 60(b)(6), Motion and titled that document: Supplemental Pleadings for Extraordinary Relief Pursuant Rule 60(b)(6).

About the middle of November 2020, Petitioner hearing nothing from the district court on the status of the May 31,2018, filed application——purchased through the clerks office an updated docket sheet. And discovering, for the first time November 13, 2017, termination of the November 6, 2017, filed Supplemental Rule 60(b)(6) application for relief.

Petitioner, having discovered such termination of the filed request, in addition to the district court's March 8, 2018, transferring and the Third Circuit's April 30, 2018, order denying application as "unauthorized", petitioner filed a request to amend the title of the May 31, 2018, filed Rule 60(b)(6), filed Supplement. **Id.** Which was denied through the district court's January 5, 2021, order, and resulted Petitioner's sequential January 28, 2021, filed 59(e) Motion seeking to alter and amend judgment.

After the prosecution's filed opposition, and Petitioner's contesting application the district court denied the filing on or about February 8, 2022.

On February 13, 2022, through flawed reasoning the district court *mistakenly* labeled Petitioner "*a convicted murderer serving a Life sentence*" and denied the filed request.

On February 13, 2022, Petitioner then filed an immediate request seeking relief from the district court's flawed judgment, pursuant Rule 60(b)(1).

After the prosecution's filed opposition——on June 29, 2022, the district

cort denied Rule 59(e) relief. A timely appeal was filed and docketed on August 17, 2022. On August 19, 2022, a timely petition was submitted - requesting certificate of appealability be issued, based upon:

i. **The denial of §2254 Federal habeas corpus Fourth Amendment claims based on procedural default and barred Stone v. Powell, remains improperly based on the 100 plus day period when the State Court entirely denied the Sixth Amendment Right to Counsel; and the district court erred, abused it's discretion and resulted a denial of due process of the law by it's November 13, 2017, without notice or reason, or cause for terminating Petitioner's November 4, 2017, true Rule 60(b)(6) motion for relief;**

ii. **the district court improperly ignored Petitioner's June 4, 2018, Supplemental Rule 60(b)(6), motion that sought to challenge the Third Circuit Court of Appeals October 13, 2017, Order denying the filed request seeking authorization to file a second and successive § 2254, based on the December 23, 2015, newly-discovered evidence;**

Id. Petition for Certificate of Appealability at **App'x A.**

On September 13, 2022, Petitioner then filed a request seeking leave of the court to supplement the Application for Certificate of Appealability, in effort to clarify pleadings.

On September 30, 2022, the United States Court of Appeals for the Third Circuit's Judges: AMBRO, SHWARTS AND BIBAS, issued it's memorandum order denying the filed request for C.O.A. relief, by deeming:

> *"[J]urist of reason would not debate the District Court's denial of Appellant's motion under 59(e) of the Federal Rules of Civil Procedurs. And further held that Petitioner was not entitled to have the District court consider the claim of new evidence because it constituted an unauthorized second and successive habeas petition over which th district court lacked jurisdiction..."*

Id. 3rd Cir. September 30, 2022, Order at **App'x B.**

On October 26, 2022, through explained reasoning "*delaid delivery of the Circuit's Order——by [requested leave Petitioner filed an Nunc pro tunc request]*" for reargument stemming the Circuit's failure to address the district court's November 13, 2017, without notice, explanation, cause or reason termination of Petitioner's November 6, 2017, true Rule 60(b)(6) motion. (**App'x C**—*Nunc Pro Tunc filing*)

On November 15, 2022, the Third Circuit Court of Appeals denied reargument. (**App'x D**—Order denying).

After several identified *errors* were address and corrected, this request, seeking certiorari be granted respectfully, now follows.

Reason for Granting the Petition

This Court should grant certiorari relief and consider the two questions Petitioner presents.

Importantly, the issue-presented centers around significant Fourth Amendment violations. And further challenge the fairness of the prosecutorial functions used to obtain and sustaining Petitioner's conviction.

In that, the challenge is:

Whether the state's 100 plus days denial of the Sixth Amendment right to counsel resulted the deprivation of guaranteed rights and due process of law—— that should have never been sequentially used as cause for denying Federal §2254, habeas review of Fourth Amendment [illegal search and seizure] claims, by the *Stone v. Powell, barrier;* and the district court's later [non-disclosed] termination

of true Rule 60(b) and resulted a further denial of due process which the Third Circuit refused to address.

I. PRELIMINARY STATEMENT

Petitioner is being held in the custody of the Commonwealth of Pennsylvania in violation of the United States Constitution. And under the circumstances adequate remedy only lies through this Supreme Court of the United States.

In the matters before the Court there has been NO hearing provided throughout the state's process to allow Petitioner the right to challenge neither 1). the case detective's material-misrepresentations which, she with a reckless disregard for the truth cited within each search and arrest warrants sworn affidavits of probable cause; 2). the unlawfulness of either forced-body intrusion Petitioner was forced to suffer while seizing Petitioner's DNA; nor 3). the irrefutable facts establishing in 2007, the case detective and prosucution's team discovered all evidence collected from the June 12, 2006, robbery crime scene, in 2007, exclusively linked to Andrew Bing and Joseph Hevener, thereby dispelling any lawful cause or interest for its 2008 seizure of Petitioner's DNA. 4). the mageisterial judge during the preliminary hearing — who did not issue the arrest warrant was never allowed to permit the prosecution to change the July 28, 2008, sworn affidavit-misrepesentation with additional misleading assertions.

II. ARGUMENT IN SUPPORT

In **Brecht v Abrahamson**, Sir Justice Stevens stated in a concurring opinion:

The Fourteenth Amendment prohibits the deprivation of liberty

> "without due process of law;" that gurarantee is the source of the federal right to challenge state criminal convictions that result from fundamentally unfair trial proceedings. Neither the term "due process," nor the concept of fundamental unfairness itself, is susceptible of precise and categorical definiton, and no single test can guarantee that a judge will grant or deny habeas relife when faced with a similar set of facts.

Id. 507 U.S. 619, 640 (1993).

In this case the violations of Petitioner right's started on April 17, 2008. Specifically, when Springfield Township, Pennsylvania Police Detective Denise *Hoisington* ("Detective *Hoisington*"), and several other armed officers inside Phila. 24th/25th Police district forcibly restrained Petitioner, shoved a DNA saliva swab stick into Petitioner's mouth, and unlawfully seized its first DNA saliva sample under the officers' alleged "full authority ' pursuant to Montgomeray County March 26, 2008, issued search warrant'." (Exh. E - 3/26/08 Montgo. Warrant)

On May 14, 2008, exactly several weeks after its first forced DNA abstraction, *Hoisington* obtained the assistance from Philadelphia Police Detective *Geliebert* whom transferred Petitioner from Phila. Co. Prison system and to Philadelphia 35th Police district. Where inside that district's second floor detective's office; Detective *Hoisington*, Philadelphia Detective *Geliebert* and other armed officers restrained Petitioner while being both handcuffed and shackled; and shoved its second DNA swab stick into Petitioner's mouth. Thereby forcibly seizing its second DNA saliva sample. While, then alleging "full authority from Philadelphia County [facially-unauthorized] May 8, 2008 dated search warrant." (Exh. F - 05/08/08 Phila. Co. Warrant)

In **Brecht v Abrahamson**, the Justice explained, "every allegation of due process denied depends on the specific process provided, and it is familiar learning that all 'claims of constitutional error are not fungible'." **Id.** 507 US at 640; citing, **Rose v Lundy**, 455 US 509, 543 (1982) (Stevens, J., dissenting). The state officials in this case participated in several unlawful executed searches that eventfully resulted to the illegal arrest, and the resulting conviction in violation of the Fourth and Fourteenth Amendments. In that, on July 28, 2008, Police Detective *Hoisington*, prepared and submitted a 2-page sworn affidavit of probable cause that was contained in a 10-page criminal complaint to the Montgomery Co. District Magistrate Judge Gloria M. Inlander. However, within the detective's explanation of probable cause after avering, "two unknown person(s) wearing latex glvoes and nylon stocking covering their faces forcibly entered the home of Nancy & Joseph Hevener's in its robbery attempt; assaulted them and fled inside the Hevener's truck," *Hoisinger*, consciously omitted there was instead [two-seperate instances], that *Hoisington* and other armed officers forcibly abstracted Petitioner's DNA [;] yet in other material parts of the affidavit Detective *Hoisinger* [recklessly averred];

> A search warrant for DNA of Mr. Tyree A Lawson was obtained, I collected a sample of his DNA and sent it to the Pennsylvania State Police Forensic Laboratory, Bethlehem for comparison to the evidence foudn inside the Hevener's home on the day of the Robbery. Amy Irwin of the Pennsylvania State Police Laboratory confirmed that the sample of Tyree A. Lawson's DNA matched the DNA evidence that was collected at the Hevener's homeon the DNA of the robbery (sic). (**Exh**. G - 07/28/08 Sworn Affadavit of Probable Cause)

It is well settled law the Supreme Court held a showing of probable cause

must be established to justify the issuance of a warrant for either arrest or seizuer. **Giordenello v United States**, 357 U.S. 480, 488, 78 S. Ct 1245, 2 L. Ed. 2d 1503 (1958). In **Giordenello**, the Court explained:

> The language of the Fourth Amendment that "... no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing... the person or things to be seized," of course applies to arrest as well as search warrants. See, **Ex parte Burford** (US) **3 Cranch** 448, 2 L ed 495; **McGrain v Daugherty**, 273 US 135, 154-157, 71 L ed 580, 584-586, 47 S Ct 319, 50 ALR. The protection afforded by these Rules when they are viewed against their contitutional background, is that the inferences from the facts which lead to the complaint "... be dranw by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." **Johnson v United States**, 333 US 10, 14, 92 L ed 436, 440, 68 S Ct 367. The purpose of the complaint then, is to enable the appropriate magistrate, here a commisioner, to detnermine whether the "probable cause" required to support a warrant exists. The Commissioner must judge for himself the persuasiveness of the facts relied on by a complaining officer to show probable cause. He should not accept without question the complainant's mere conclusion that the person whose arrest is sought has committed a crime.

Id. at 357 US 486, 487.

On January 13, 2009, Detective *Hoisington*, through its July 28, 2008 procured warrant (Exh. G), then arrested and charged Petitioner with robbery and all other acts arising from the June 12, 2006 home invasion.

Seven days after the arrest, on January 20, 2009, Detective *Hoisington* obtained a writ and temporary-transferred Petitioner from Federal Authorities to Montgomery Co. for the case schedule preliminary hearing. At the hearing appointed Public Defender (Peter Christopher Fiore), introduced himself and disclosed a a copy of Hoisington's July 28, 2008, cirminal complaint which included Hoisington's sworn affidavit of probable cause. And within minutes of

the very disclosure, Petitioner alerted the public-defender to the detective's averred misrepresentations. Specifically, as it was humnaly impossible for Petitioner's "DNA to had been found on anything found inside the June 12, 2006, home invasion crime scene." Petitioner explained the specifics of the Hoisington's disingenuous misrepresentations, as the affidavit alleged: "Tyree A. Lawson's DNA matched the DNA evidence that was collected at the Hevener's homeon the DNA of the robbery (sic)" was false. But was relied upon by the July 28, 2008, district magistrate ("Gloria M. Inlander") in issuing an arrest warrant and ultimately led to an unlawful arrest.

Yet, and contrary to the Fourth Amendment protections, specifically, which involve the "probable cause requirement," requiring "before either a warrant for either arrest or search can be issued, the judicial officer issuing the warrant — must be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant." **Spinelli v United States**, 393 US 410, 465 (1969); **Aguilar v Texas**, 378 US 108, 119 (1964); see also **Illinois v Gates**, 462 US 213, 233 (1983). But immeditate after explaining, the defender made a rushed departure from the atterny/client area, seconds later Petitioner was escorted into a closed courtroom. Upon entering, the presiding Magisterial Judge ("William Houselholder"), announced "he's allowing the prosecution to amend the detective's July 28, 2008, arrest warrant's probable cause affidavit (sic)."

Then after, over the contesting objection the presiding magistrate stated into the record, "the case detective moments prior informed him that the evidence

containing Petitioner's DNA was instead foudn on evidence that was collected form the Hevener's truck (sic)." (Exh. I - 01/20/2009 Judge's 01/20/2009 Amendment of 07/28/2008 Affidavit of Probable Cause).

In the present case, the information supplied to Magistrate Judge Inlander, on July 28, 2008, by the detective's sworn affidavit was not sufficient to suport an independent judgment of probable cause. The Affidavit contained nothing placing Petitioner to the scene of this horrific robbery, except an accusation alleging, "Tyree A. Lawson's DNA matched the DNA evidence that was collected at the Hevener's home on the day of the robbery (sic)." Yet, six months after the warrant was issued, and after the arrest upon the sequential disclosure of the affidavit within the criminal complaint [the detective's very sworn averments] was immediate opposed as being false. In fact, the prosecution immediately agreed, yet asked the [preliminary hearing magistrate] to amend the affidavit. Yet, this Court, has never wavered from the principle, "... the judicial officer before issuing such a warrant [must] be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant." **Id. see also Whiteley v Warden**, 401 US 560, 564 (1971). Accordingly, if the warrant was invalid the arrest was illegal.

The question, therefore, is whether Magistrate Judge Inlander was supplied with any information other than the complaint — yet at this stage essentially after the preliminary hearing decided to infringe upon Petitioner's due process rights by deciding to amend the six month prior reckless disregard sworn affidavit that was submitted to Magistrate Judge Inlander; a reversal of the

resulting conviction should be the only available remedy.

But several weeks after the preliminary hearing Montgo. Public Defender Seth Grant, on February 20, 2009, then filed a contesting Ominbus Pretrial motion stemming each unlawful "search and seizure" and seeking "dismissal of all charges." The Common Pleas Court, however responded by removing the defenders association from Petitioner's case. And during an attorney-client call the defenders association ~~infromed~~ informed Petitioner, "private counsel would be appointed in the near future (sic."

However, on April 20, 2009, uncounseled-Petitioner while being detained within downtown Phila. Federal Detention Center was escorted to the second floor video conference room for the Montgo. Co. case's Video-Formal Arraignment. When [uncounseled Petitioner], via video hearing was compelled to enter a plea of either guilty or not guilty, after the court declined to address Petitioner's request for counsel.

In **Brewer v Williams**, this Court made importantly clear, "[a] perosn is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him 'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.'" Id. at 430 US 387, 398 (1977), quoting **Kirby v Illinois**, 406 US 682, 689 (1972); see also **United States v Gouveia**, 467 US, at 187-188 (quoting **Kirby**); **Estelle v Smith**, 451 US 454, 469-470 (1981) (quoting **Kirby**); **Moore v Illinois**, 434 US 220, 226 (1977) (quoting **Kirby**). **Cr. Powell v Alabama**, 287 US 45, 57 (1932) ("[T]he most critical period of the proceeedings against these defendants" was "from the time of their arraignment

until the beginning of their trial."); see also, **Michigan v Jackson**, where the Court made even more clear, "that a request for counsel at an arraignment should be treated as an invocation of the Sixth Amendment right to counsel 'at every critical stage of the prosecution,'" 475 US 625, at 633 (1986).

Here, Petitioner had become the accused several months [prior], yet for the arraignment proceeding was entirely denied counsel and was further forced to enter a plea. **C.f. Powell v Alabama**, 287 US 45, 69 (1932) (... The "guiding hand of counsel" was essential to advise petitioner of his rights in this delicate situation.). This formal arraignment proceeding — was therefore "the stage when legal aid and advice was most critical" to Petitioner. See, **Hamilton v Alabama**, 368 US 52, 7 L Ed 2d 114, 82 S Ct 157 (1961).

Yet, in disregard of Petitioner's denied right to counsel, two weeks after the [uncounseled] formal arraignment in Petitioner's complete absence, the Common Pleas Court held a pretrial hearing on officially removing Montgo. Co. Public Defenders Office from Petitioner's cae, while alleging a "conflict of interest" (Exh. H - 05/08/2009 Order). As the order details, Robert Raymond for Andrew Bing and Seth Grant for Tyree Lawson, conflict of interest. But, what the order does not explain is the Montgo. Co. Public Defender Raymond Roberts negotiated Andrew Bing's cooperation with the district attorney's office and in exchange for the lenient sentence of 3 to 6 years, exactly several months after testifying aganist other charged co-defendant Michael Potter.

On July 7, 2009, Montgomery Co. Common Pleas Judge William R. Carpenter, appointed private counsel Richard Tomkins to Petitioner case (Exh. I -

07/07/2009 Private Counsel's filed Appearance).

On May 4, 2010, a public open-court hearing was held. Where having met private counsel for the first time, and after placing the courts record [counsel's failure to communicate, and refusal to surrender a copy of the case discovery, in additino to concealing an exculpatory notarized affidavit from charged co-defendant Michael Potter (never disclosed); combined with the Common Pleas Court's decision not to remove counsel]. Petitioner then waived his Sixth Amendment right to counsel. And subsequent to the court's waiver colloquy (Exh. J - 05/04/2010 Waiver Colloquy & Waiver Form). Petitioner was then permitted to proceed pro se. However, unbeknown to Petitioner immediate outside Petitioner's [re]quired presence, when the Common Pleas Court appointed private counsel Joseph Hyland (Exh. K - Order appointing Hyland), whom refused the case. And sequentially resulted the May 17, 2010, sequential order reappointing the Montgomery County Public Defenders Office bact to Petitioner's case (Exh. L - Oder appoiting John Armstrong) (later discovered Montgo. Chief Public Defender).

During the Friday March 4, 2001, in-court proceeding, 291 days after being appointed to Petitioner's case [,] Petitioner asked Attorney Armstrong why he never responded to any of Petitioner's letters or phone calls. Yet, after advising Petitoner "the case was scheduled to start trial on Monday." Petitioner ~~was~~ brought to Attorney Armstrong's attention several unresolved motions (i.e., Franks Hearing request, Motion to Suppress, Motion to Dismiss, etc); when responding and alerting petitioner, "he would not be supporting nor adopting anything

petitioner has filed — and further deemed there did not exist "any grounds to seek suppresstion." When Petitioner stood and frantically tried to explain to the court:

> Contrary to being assigned to my case on May 17, 2010, Attorney Armstrong has made no effort to contact me, with the exception of the August 2010, attempt, after I recieved 2 court orders denying 2 previous pro se motions, by finding represented defendants has no right to act as co-counsel. When, I was then alerted to Attorny Armstrong being appointed by the court. AFter which I wrote him several letters, around the very time I asked the court to remove him from the case. But received no response from the court. And further brought the court's attention to the fact I previously waived the right to cousel altogher because prior counsel's similar refusals and trying to charge me $100 something dollars for a copy of the case discovery files. Yet, contrary to that open court's proceedings and granting pro se status — the court immediate outside my presence reappointed a different attorney who refused the case, and apparenly later resulted Armstrong being appointed to my case.

When the court interrupted my explanation and flatly stated, "he would not remove Attorny Armstrong from the case, as the case been on the docket for entire too long... and I had either the opportunity of enjoy being representd by Attorney Armstrong or start trial Monday representing myself. (sic)" Id.

In effort to avoid any further hindrance of my criminal matters I was then compelled to waive the Sixth Amendment right to counsel (Exh. M - 03/04/2011 Second Signed Waiver). And having been forced to waive the right to counsel, after Attorny Armstrong's 10 1/2 months non-actions waived all [other available defenses], Petitioner alerted the court neither Attorney Armstrong, nor any previous appointed attorney had ever disclosed a copy of the case's discovery files.

In responding, the court directed the prosecuting attorney, "give him anything your office feels he should have for trial." **Id**.

72 hours laters, on the scheduled day of Petitioner's jury trial based on

various withheld documents that the prosecution disclosed 72 hours prior, Petitioner attempted to file in open court [Petitioner's pro se Motion to Suppress all Illegally Obtained Identification Evidence]. But upon in-court disclosure of the document to the court, without reviewing the court stated, "You have not filed a timely omni-bus pretrial motion within the required 30 days after the formal arraignment, so your request for suppression is denied furthermore, I find an abundat showing of probable cause for the issuance of each warrant." 03/07/2011 Motion hearing N.T. 11-13.

Then after, in a closed court proceeding over the following several days Petitioner was tried pro se, was overruled on all objections. While the prosecution presented throughout the entire trial knowingly false evidence alleging, "Scienitific Evidence proves his DNA linked him to the crime." But instead, the very "scientific evidence" miraculously established only a 1/2 inch saliva stani was discovered on the "nylon stocking police recovered from inside the Hevener's vehicle front passenger floror." And otherwise only consistent with facts surrounding the 2008 forced DNA seizures, specifically, when the case detective while Petitioner was being restrained shoved its 1/2 inch saliva swab stick into petitioner's mouth.

Here Petitioner is being held in the custody of the Commonwealth of Pennsylvani in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution. And under the circumstances adequate remedy only lies through this Supreme Court of the United States.

Because the evidence collected from the June 12, 2006, home-invasion crime scene included only: 3 pieces of latex gloves and a cellular phone. The very very cellular less than 24 hours after being discovered ——investigating authorities learnt the cellular was registered to Thomas Davis with a T-Mobile registered # 267-334-4405, and registered to a downtown Philadelphia homeless-shelter's address (**Ex. N**—06/13/2006—Montgo Warrant & Affidavit).

In fact several months later on January 15, 2007, investigating authorities through Pennsylvania State Police Forensic Laboratory report, identified the DNA that was abstracted from ~~tow~~ 2 of the three discovered pieces of Latex Gloves matching the DNA profile of Joseph Hevener. **Ex. O**—1/15/2007 Lab Report). And Several months later, specifically, by Pennsylvania State Police July 6, 2007, sequential Forensic Laboratory Report——the state police identified the DNA abstracted from the remaining 3rd piece of Latex Gloves matched the DNA profile of Andrew Bing. (**Ex. P**—7/06/2007 Lab Report).

Not long after, authorities arrested Bing, whom then confessed an identified his accomplice as Ty. Who Bing also established "Ty was up state doing time." (**Ex. P**——8/10/2007 Police Interview).

Yet, and sufficient to shock-ones-conscious a month-after identifying "Ty", investigating authorities not only turned a deliberate blind eye and suppressed Bing's identification of "Ty"; but then permitted and assisted Bing's subsequent September 14, 2007, misidentification of Petitioner, as instead being his accomplice (**Ex. R**—9/14/2007 Bing's 2nd Id).

And five months after that second-misidentification without "any" other

evidence from the June 12, 2006, robbery crime scene ——in a reckless disregard for the trurth the case detective recklessly alleged, prepared and submitted for the issuance of a search warrant to seize a sample of petitioner's DNA, based upon:

> ***Evidence collected from the crime scene includes pieces of latex gloves, duct tape and a cellular phone. The latex gloves were submitted to the Pennsylvania State Police Laboratory Bethlehem for DNA analysis. A search warrant of (215) 668-4414, shows the phone belongs to Tyefeek A. Lawson, Date of Birth 05/07/1979, etc, etc.***

Id. 03/26/2008 Montgo. Co. Search Warrant & Affidavit).

on April inside Philadelphia 24th/25th Police district, pursuant to it's alleged authority resulting Montgo. Co. issued search warrant **Id.** the case detective and several other armed officer, inside an interrogation room, forcibly restrained Petitioner and shoved a DNA swab stick into Petitioner's mouth; and unlawfully seized it's *first* DNA saliva sample.

Then on May 8, 2008, while omitting it's April 17, 2008, initial DNA seizure, but for the issuance of a *Phila.* Co search warrant then solicited the exact reckless disregard for the truth [mis]representation of the *Montgo.* Co. issued search warrant——but through the averring assistance of a *Phila.* Police Detective. And resulted it's May 14, 2008, second forcible DNA seizure inside the second floor detective's office at Philadelphia 35th Police district. (**Ex. F**——05/08/2008 *Phila. Co* Search Warrant & Affidavit).

Several months after unlawfully seizing each DNA salivan sample, in a total disregard of **[all evidence collected from the 2006 robbery crime scene in 2007, exclusively linked to A. Bing & J. Hevener];** July 28, 2008, the case detective recklessly alleged, prepared and submitted for the issuance of a warrant

authorizing Petitioner's arrest, based upon:

> **"A search warrant for DNA of *Tyree A. Lawson* was obtained. I collected a sample of his DNA and sent it to the Pennsylvania State Police Laboratory, bethlehem for comparison to the evidence found inside the Hevener's home on the day of the robbery. Amy Irvin of the Pennsylvania State Police Laboratory confirmed that the sample of Tyree Lawson's DNA matched the DNA evidence collected at teh Hevener's home on the day of the robbery.*(sic)*"**

Ex. G——Arrest Warrant & Affidavit).

In **Stone v. Powell**, this United States Supreme Court held that, "where the State has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the ground that evidence obtained in an unconstitutional search or seizure was introduced at trial." 428 U.S. 465, 494 (1976)

Given these circumstance, it is necessary to restate once again the Post-**Stone v. Powell,** role of a Federal habeas corpus court—when faced with a Fourth Amendment claim. The quest is not whether the trial court "correctly" decided the Fourth Amendment issue, but whether the Petitioner was given an opportunity for full and fair state court litigation of his Fourth Amendment claim. Here, because Petitioner was uncounseled during the state's April 20, 2009, formal arraignment stage—when the state took advange of Petitioner's unaware right.... ... Petitioner till date continues to suffer significant hardship resulting deprivation of the most critical right to due process of law.

Arguably, "in certain Sixth Amendment context, "however, prejudicial is presumed." And "[n]o showing of prejudice is necessary ' ' if the accused is denied counsel at a critical stage of his trial." **United States v. Cronic,** 466 U.S. 648, 656

(1984), or left ' ' entire without the assistance of counsel on appeal." **Penson v. Ohio,** 488 U.S. 75, 88 (1988).

Because counsel throughout the entire state's proceedings was entirely denied of Petitioner's defense.

This Honorable Supreme Court cannot allow this conviction to stand. Importantly because it signify an era when persons, with the natyionality of Petitioner was not afforded any rights at all. As like the state has treated - and continues to treat petitioner.

Conclusion

For the reasons stated the requested writ of certiorari should issue——to reaffirm and reestablish the Fourth Amendment protections against ***unreasonable searches and seizures*** shall "not be abridged in the absence of probable cause. And *No* state should be allowed to circumvent the protections upon a period when the State failed or refused to ensure the most essential & basis Sixth Amendment right to counsel. The requested *writ* should issue to further address or correct district court's without notice termination of Petitioner's November 4, 2017, *true* Rule 60(b)(6), filing as well as the decision of the Third Circuit Court of Appeals equal failure to address the presented claim.

Respectfully submitted,

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06/16/2023