NO. 22 _____

SUPREME COURT OF THE UNITED STATES

CHRISTOPHER H. WEST

Petitioner

Vs.

DANA METZGER, Warden and
ATTORNEY GENERAL OF
THE STATE OF DELAWARE

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

1. In denying petitioner's habeas certificate of appealability, where the 3d Circuit's review of the record entirely overlooked that the facts in trial counsel's statement established a violation of due process and 6th amendment violation per Deck v. Missouri, 544 U.S. 622 (2005), and these facts were required to be reviewed in the state court's decision yet never considered, would jurists of reason find it debatable that the petitioner made a substantial showing of the denial of a constitutional right requiring a reversal of the 3d Circuit's erroneous review?

2. Where the District Court erroneously applied deference under 2254(d) to a state court review that was a decision contrary to state- law procedural principles, with the petitioner providing the missing statement of trial counsel for rebuttal pursuant to 2254(e)(1) when these facts establish the narrow application of the presumed prejudice

holding of US v. Cronic, 466 U.S. 648 (1984) was it reversible error for the 3d Circuit to adopt the District Court's application of the standard as held in Harrington v Richter, 562 U.S. 86 (2011) that the decision be "beyond any possibility for fair minded disagreement"?

3. Where trial counsel fails to inform the court of his client's recent psychological evaluation and diagnosis of mental disorders at the time counsel submits his client to plead guilty, who's client appeared in a straight jacket/muzzled/ shackled and wearing mittens, is such conduct by counsel a complete failure of representation at a critical stage necessitating an Appellate review under the US v. Cronic standard, or does it constitute a presumption of prejudice under the Strickland v. Washington standard for ineffective assistance of counsel?

4. Does a state government agency's repeated obstruction of an incarcerated petitioner diligently pursuing his habeas rights under 2254 (b)(1)(B)(ii) render the process ineffective to protect the rights of the appellant such that the

cumulative due process violations of Sandin v. Conner, 515 U.S. 472 (1995) are violated?

5. Where the Third Circuit failed to follow its own precedent in U.S. v. Cole, 813 F.2d 43 (3d Cir. 1987), which requires further inquiry into a defendant's competency when a trial court was alerted to warning signs of a defendant's incompetency to plead guilty, when the defendant West appeared in court wearing a straight jacket, shackles, spit mask and mittens, and he had taken medications prior to his appearance, and yet the trial court failed to make further inquiry into the effects thereof, is it error for the circuit court to have accepted that the Defendant's plea was a knowing, voluntary and intelligent waiver of his rights?

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IV. PETITION FOR WRIT OF CERTIORARI

Christopher West, an inmate currently incarcerated at the James T. Vaughn Correctional Facility in Smyrna, Delaware, by and through his attorney Nicholas Casamento of Pennsylvania, respectfully petitions this court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

V. OPINIONS BELOW

The 3d Circuit's decision on August 26, 2022 to deny West's certificate of appealability due to their determination that West did not make a "substantial showing of the denial of a constitutional right"; Appendix 2. And then said Circuit Court's denial on September 23, 2022 of a petition for rehearing where "a majority of the judges of the circuit in regular service not having voted for rehearing"; Appendix 1.

VI. JURISDICTION

The Third Circuit denied Petition for Rehearing on September 23, 2022. See Appendix 1. This Petition is timely filed pursuant to Supreme Court Rule 13.1. This Court has jurisdiction under 28 U.S.C. 1254.

VII. CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V

United States Constitution, Amendment VI

United States Constitution, Amendment XIV

VIII. STATEMENT OF THE CASE

Factual Background:

On July 5, 2011 Petitioner, Christopher West, was arrested after a struggle with the police k-9 unit in Newark, Delaware. After being taken to a hospital for injuries sustained during the arrest, West was taken back to the police headquarters where he was interrogated for nine hours. Ultimately, West made an admission to the

bank robberies. On August 15, 2011, a New Castle County grand jury indicted West on two counts of Robbery 1st degree (11 Del. C. 832), Robbery 2nd degree (11 Del. C. 831) and Attempted Robbery 1st degree (11 Del. C. 531 & 831). West was provided a public defender (Bradley Manning). Another public defender (Robert Goss) appeared at a court appearance who advised West to waive the preliminary hearing; thereafter, no motions were ever filed by Manning challenging the prosecution's case.

During West's pretrial confinement, he was being evaluated for psychological and psychiatric problems which included suicide, bipolar and drug dependency. West was placed in Close Psychological Observation status (PCO) under which he was being observed daily. West's public defender Manning was aware of these issues and concerned enough to file a pretrial motion for psychiatric evaluation on October 18, 2011. A psychological report was provided to prior to West's guilty plea on January 9, 2012, in which West was labeled as drug dependent, suicidal, bipolar, with

PTSD but able to stand trial. The trial Court did not hold a competency hearing, nor did West's trial counsel request one, but rather accepted the finding of the psychological report. From December 1, 2011 through the week before his plea on January 9, 2012, West was being analyzed and evaluated by psychologists and psychiatrists who generated a 14 page "Psychological Behavior' report for West which his trial attorney Manning was aware of. Said counsel never alerted the trial court to West's Psychological Behavior report, which plan listed West as "suicidal", "bipolar disorder" "PTSD" and on several medications while still being housed under the PCO status. With all of this background, West was presented to the trial Court to plead guilty, appearing before the Court in a full straight jacket, mittens, shackled and with a spit mask covering his face. Neither the court nor his attorney ever addressed West's appearance nor addressed his recent evaluation and whether he was competent to make a knowing, intelligent and voluntary plea to felonies resulting in a twenty (25)

year sentence and thus waiving his trial rights. The trial Court's record is completely devoid of any inquiry into the "special circumstances" that may have necessitated the appearance of West in three forms of restraints. The Court completely overlooked how these restraints could interfere with West's ability to communicate with his counsel as has been held in Deck v. Missouri, 544 U.S. 631 (2005); nor did West's counsel alert the court to his client's ongoing psychiatric issues that would have affected West's ability to competently interact with his counsel at a critical stage of proceedings and thus make a knowing and conscious plea. Urquhart v. State 203 A.3d 719 (Del. 2019); U.S. v. Cronic, 466 U.S. 648 (1984).

After said plea on January 9, 2012, the Delaware Superior Court granted the State's motion to declare West an habitual offender and sentenced him to a total of 28 years at level V imprisonment, suspended after 25 years for decreasing levels of supervision. West did not take a direct appeal.

Procedural Background:

On February 17, 2013, West filed a post-conviction motion and on April 29, 2013 the Delaware Superior Court appointed counsel for West. On November 12, 2013 post conviction counsel filed a motion to withdraw as counsel; said motion was granted. On December 13, 2013 the Superior Court Commissioner issued a Report and Recommendation concluding that the motion for postconviction relief should be denied. State v. West, 2013 WL 6606833 (Del.Super.Dec. 12,2013)(Recomm. & Rpt.). The Delaware Superior Court adopted the Commissioner's Report on January 7, 2014. West timely filed to the Delaware Supreme Court on May 30, 2014. West's post conviction counsel filed a no merits opening brief and Rule Motion to withdraw pursuant to Delaware Supreme Court Rule 26. On August 28, 2014, the Delaware Supreme Court affirmed the Superior Court's denial of West's post-conviction motion. State v. West, 2014 WL 4264922 (Del.Aug. 28, 2014). At no stage in his state post-conviction

motion was West ever given a hearing on his motion nor was he permitted to introduce any evidentiary documents.

On June 18, 2014, West prepared for filing a pro se Habeas Corpus Petition to the Federal District Court of Delaware. On said date, West gave said habeas petition to Department of Corrections Officer Pfleagor for filing as was the procedure at the prison where West was being held. West was still being housed in the PCO section of the James T. Vaughn facility unable to have access to pens or paper, but was given special permission to prepare the habeas petition under guard watch. Officer Pfleagor logged in the petition; but unbeknownst to West, the petition was never filed with the Federal District Court. West remained in PCO and solitary confinement until late November 2014 at which time West first learned that his original June prepared habeas petition was never filed with the Court. As a result, on December 21, 2014, West again filed a Petition for Habeas Corpus under section 2254. This petition was sent and received by the Federal District Court. In said

petition West alleges five grounds which included: 6th Amendment violation; Ineffective assistance of counsel; plea was not knowing/intelligent and voluntary; cruel and unusual punishment; coerced confession/plea. On June 1, 2015, West filed an Amended Petition further explaining the above grounds. On December 15, 2015 West filed Motions for discovery, an evidentiary hearing, appointment of counsel, to amend his petition and a motion to compel production of documents. Also on October 13, 2015 West filed a "Memorandum of Points" in support of his petition. On October 24, 2017 Federal District Judge Gregory M. Sleet by Order dismissed West's petition and "All pending motions are denied as moot" and filed a Memorandum basing its denial on West's violation of the one year statute of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and thus never addressing the merits of West's grounds for relief. West, through counsel, filed a F.R.C.P. 60(b) motion asking the Court to correct its order denying his habeas petition as the denial of the petition

was in error as evidence, not known to Judge Sleet at the time of his decision to deny West's petition, disclosed that West had used due diligence to make a timely filing when he first prepared a petition in June of 2014 but through no fault of his own it was not filed.

Judge Sleet retired and Judge Maryellen Noreika was reassigned the 60(b) motion. On September 26, 2019, Judge Noreika denied by Order West's 60(b) motion and rendered a Memorandum in which she upheld Judge Sleet's denial based on an AEDPA violation in spite of the new evidence and declined to issue a certificate of appealability. West then petitioned the 3rd Circuit for Certificate of Appealability and such appeal right was granted. On appeal the 3rd Circuit agreed to vacate the District Court Order and remanded the matter on Order of December 17, 2020 with directives. Upon remand, District Court Judge Noreika vacated her denial of West's 2254 habeas petition as the State waived the statute of limitations defense and the Judge ordered the clerk to

"REOPEN" the case. The District Judge Noreika permitted West to supplement his petition with filings to clarify his issues and West submitted the "Behavioral Plan" as well as a letter from West's trial attorney delineating that the attorney believed West's appearance at his plea in the 3 point restraints did make it difficult to communicate and that West's sentence was excessive as well as admitting that he did not know if West ever received for review the discovery in his criminal case. Additionally, West, with the court's permission, reasserted his previously filed pro se Motions for discovery and evidentiary hearing. By this time, Robert May replaced Metzger as Warden.

On March 21, 2022, Judge Noreika dismissed West's petition for habeas relief rendering a Memorandum Opinion and again declined to issue a certificate of appealability. Judge Noreika did not consider those documents and pro se motions West had filed and thus vital evidence was never reviewed nor was an evidentiary hearing ever conducted throughout West's case history.

West filed a timely appeal with the 3rd Circuit and on August 26, 2022 the 3rd Circuit denied the application for a certificate of appealability stating that "Appellant has not made ""a substantial showing of the denial of a constitutional right"" or shown that reasonable jurists would debate the merits determination." And also citing Bell v. Cone, 535 U.S. 685, 697 (2002) (to apply Cronic, "the attorney's failure must be complete"). West filed a timely Petition for Rehearing with the 3rd Circuit. Said appellate court denied the Petition for Rehearing on September 23, 2022 as "a majority of the judges of the circuit in regular service not having voted for rehearing". West now files this Writ of Certiorari to review the decision of the 3rd Circuit which decision that is contrary to the law that should have been applied to West's habeas filings.

IX. REASON FOR GRANTING THE WRIT

A. 1. This Court's intervention is necessary to avoid erroneous deprivations of federal habeas relief in cases where a substantial showing of a constructive denial of

counsel equates to a 6th Amendment violation. This Court should clarify the standard of review in Harrington v. Richter, 562 U.S. 86 (2011) analysis when the Court of Appeals upheld the denial of relief in a 28 U.S.C. 2254(d) and Strickland v. Washington, 466 U.S. 668 (1984) application where a substantial showing of a constructive denial of counsel is shown. This case centers on what constitutes extreme malfunction in a state criminal proceeding that permits a defendant from seeking review in the federal system.

The 3rd Circuit, in denying West's application for certificate of appealability, indicated that it "reviewed all of the evidence in the record". Appendix 1. What was missing from this review were the various motions, supplemental documentation and memorandum of points that West had filed pro se. The District Court Judge Maryellen Noreika indicated in her denial of West's habeas petition at p.4 of her Memorandum, that she did not consider any of West's pro se filings as part of the record for review. Contained

within those filings were West's allegations and evidence including his trial counsel Manning's letter acknowledging West's condition at the time of his plea thereby demonstrating the constructive denial of counsel that the court should have used in its analysis. Pursuant to the narrow prejudice exception in U.S. v. Cronic, 466 U.S. 648 (1984), the state's analysis was contrary to the Cronic standard. Since the Cronic standard is a well understood and narrow exception, the state court had less leeway to fail to apply it as opposed to the more general standard of Strickland. Both the Federal District Court and the 3rd Circuit chose to ignore the misapplication of Strickland where West had made a substantial showing of evidence demonstrating the constructive denial of right to counsel. Both courts completely overlooked the conditions under which West was presented in court to plead guilty. Neither the District Court nor the 3rd Circuit made any mention of the severe conditions and appearance of West, yet they were both provided with West's filings and his counsel's

(Manning) letter to West acknowledging the restraints West was enduring during this critical stage. While the 3rd Circuit's Order states that "because Appellant has not made ""a substantial showing of the denial of a constitutional right"" or shown that a reasonable jurist would debate the merits determination" in its denial of West's application for a certificate of appealability, it used the Strickland standard in its finding. (3rd Cir. Opinion Aug. 8, 2022). By using such analysis, which it acknowledged was the same analysis used by the District Court, the 3d Circuit made its review of the West's pro se motions and "trial counsel Manning's letter" irrelevant. Such analysis avoids the case precedents of Deck v. Missouri, 544 U.S. 622 (2005) and Fahy v. Horn, 516 F.3d 169 (3d Cir. 2008) and thus the 3d Circuit's application is contrary to law. Had these facts been reviewed, it would be reasonably debatable to jurists that West made a substantial showing of the denial of a constitutional right to due process.

2. Where a reviewing Court refuses to consider those pro se filings which it invited the petitioner to reassert through counsel, and which were reasserted, which filings clearly state grounds supporting his petition for habeas relief, said denial is contrary to the sound principles addressed in Harrington v. Richter, 562 U.S. 86 (2011) and thereby denies due process. The 3rd Circuit adopted the District Court's review that West failed to show that his trial counsel "failed to subject the prosecution's case to meaningful adversarial testing". (3rd Cir. Opinion, Aug. 26, 2022). This analysis could only have been derived by the District Court's refusal to consider those reasserted filings which would have led the court to an analysis under Cronic. By refusing to consider the very filings it had invited West to reassert, the courts denied West his due process rights under the 14th Amendment. The 3rd Circuit's adoption of this error is contrary to law. Harrington. The erroneous application of deference by the District Court, and adopted by the 3d Circuit, under

2254(d) to a state court's review, which state Court review was contrary to state-law procedural principles, was in error. When a petitioner provides rebuttal evidence from his own trial counsel consistent with 2254(e)(1), the narrow exception of the presumed prejudice holding in Cronic must be applied as adoption of the standard in Harrington is applicable application of the law.

3. The 3d Circuit's denial of West's certificate of appealability cites as a basis that "...(to apply Cronic, ""the attorney's failure must be complete")". (3d Cir. Opinion Aug. 26, 2022); citing Bell v. Cone, 535 U.S. 685, 697 (2002). As the Court in Bell stated, "Under Cronic, the attorney's failure to test the prosecutor's case must be complete. Here, respondent argues not that his counsel failed to oppose the prosecution throughout the sentencing proceeding (emphasis added), but that he failed to do so at specific points." Bell, 687. Thus, had the respondent in Bell argued that his counsel failed to oppose the prosecution throughout the sentencing, the Court would have applied

Cronic. West's contention throughout has been that his trial counsel did not contest the prosecution's case throughout his entire plea hearing appearance proceeding. West's counsel never informed the court of West's current psychological status and psychiatric diagnosis yet having full knowledge of a recent 14 page psychiatric report indicating the PCO status and diagnosis of West. Nor did counsel oppose the prosecution's pursuit of West's plea of guilt while West was presented in court wearing a straight jacket, shackles, spit mask and mittens; a clear example of failure to subject the prosecution's case to meaningful adversarial testing at a critical stage. The 3d Circuit chose to disregard these factors in its analysis by indicating that a complete failure involves more than one critical stage such as a plea of guilty. The use of the standard in Strickland v. Washington, 466 U.S. 668 (1984) of the "deferential standard" was misplaced based on the misapplication of Bell.

In Urquhart v. State, 203 A.3d 719 (Del.2019), that court applied the U.S. v. Cronic, 466 U.S. 648 (1984) standard to find that the defendant was denied his 6th Amendment Right to Counsel. The Urquhart case involved similar circumstances to the West case in that counsel failed to provide and discuss discovery, review all the evidence with the defendant, be present at critical pre-trial hearings, but most importantly failing to contest the prosecution's case at a critical stage preceding. In West's case a letter from his trial counsel Bradley Manning dated August 26, 2015, some two and a half years after West's plea, which the 3d Circuit indicated it reviewed, states:"...at the time of your guilty plea colloquy I do recall you wearing some type of restraint similar to a ""straightjacket"" and some type of mask covering your face and mouth. Your restraints certainly would have impeded our ability to pass and share documents when speaking, although I do not recall specifically if it did." Said letter corroborates West's contention that his trial counsel

entirely failed to subject the prosecution's case to meaningful adversarial testing at the most critical stage of West's case, the guilty plea proceedings. Chronic at 659. It is exactly the type of critical stage and "complete failure" that this Court addressed in Bell.

The 3d Circuit incorrectly adopted the District Court's analysis that because trial counsel had met with West on several occasions prior to the plea hearing, along with filing some preliminary motions, showed that West's trial counsel's failure to subject the prosecution's case to meaningful testing was not complete. (J. Noreika, Memorandum at 5). This adoption of such analysis is contrary to the language and analysis in Bell. In Bell, trial counsel filed numerous pleadings and defended a prosecution, yet at the sentencing stage he failed to subject the prosecution's case to meaningful testing and thus was found to have violated the defendant's 6th Amendment right to counsel.

If the state Court fails to cite relevant federal law, as was done in West's case, and yet they later grant relief in another case as in Urquhart, then the "contrary to" clause of 2254(d)(1) is implicated. Bell v. Cone, 535 U.S. 694 (2002). The state Court's misapplication of the "Strickland" standard was in error as the facts of West's case are in line with those in Urquhart which prevented the state Courts from fully resolving West's claim and therefore the differential standards provided by the AEDPA do not apply here and thus the Federal District Court must conduct a de novo review. Apple v. Horn, 250 F.3d 203 (3d Cir. 2011). But failure of prior state court review to thoroughly investigate West's claims do not bar West from federal review. Duncan v. Henry, 513 U.S. 364 (1995). The common core of operative facts from West's Rule 61 post conviction motion (D.I. 17-3) and Memorandum of Points at (D.I. 17-10) state the valid claims that arise out of the same conduct, transactions and occurrences that are presented herein. Mayle v. Felix, 545 U.S. 644 (2005). And as the

Supreme Court stated in Martinez v. Ryan, 566 U.S. 1 (2012), an attorney error in an initial review of collateral proceedings does not preclude a habeas review where the claim of trial counsel's ineffectiveness (or abandonment) is substantial. As indicated above, the Federal Court's failure to review that West's trial counsel failed to review key discovery evidence with his client, and not challenging the prosecution's pursuit of a 25 years to life sentence at the guilty plea preceding, knowing full well that his client's psychological and mental status was in serious doubt regarding a knowing/conscious and voluntary plea, all which was adopted by the 3d Circuit Court, is contrary to law requiring review and remand to be consistent with case law precedent.

Furthermore, the 3d Circuit Court's additional explanation for its denial is that West failed to satisfy the "prejudice requirement, the defendant must show prejudice under Strickland because he failed to demonstrate that he was ""denied counsel at a critical stage"" of the

proceedings". 3d Cir. Order Aug. 26,2022, quoting from Hill v. Lockhart, 474 U.S. 52, 59 (1985). However, consistent with this Court's rationale in Garza v. Idaho, 139 S. Ct. 738 (2019), where the Court stated that a defendant retains the right to challenge whether his waiver of appeal rights was knowing and voluntary, West herein challenged his knowing and voluntary waiver of his trial rights to plead guilty; West argued that his plea was not knowing and voluntary due to his psychiatric diagnoses and medications affecting his ability to make rational and critical decisions. West's counsel was well aware of the mental instability of his client, and even filed a motion to determine competency, and yet presented West to the court looking like a "*Hannible Lecter*" without ever explaining the reasons for such appearance nor alerting the trial court to the most recent Psychiatric Report (Behavior Plan) with diagnosis of bipolar, suicidal and on several medications for such. Counsel's failure to alert the Court to West's condition at such a critical stage of proceedings allowed for

the acceptance by the trial Court of a plea that prejudiced West. His counsel's failure to protect his client's interests is conduct so far below reasonable standards that a presumption of prejudice should attach as in Garza. The District Court's decision, adopted by the 3d Circuit, to completely disregard such conduct and require West to now demonstrate a substantial showing of a denial of a constitutional right overlooks that which West has the right to challenge, i.e. whether his plea was knowing and voluntary under the circumstances.

4. Cumulative due process violations that obstruct a petitioner's access to the Court render the process ineffective to protect his rights to due process. Sandin v. Conner, 515 U.S. 472 (1995). At several points during West's federal habeas litigation, the James T. Vaughn prison where West was housed, prevented his access to the court and his counsel. In July 2014, West prepared for filing a 2254 habeas petition pro se which was a special arrangement given due to West being housed in the PCO

unit under 24 hour 7 days a week solitary unit. An Officer Pfleagor logged the filing into the housing logs and pay-to log as being prepared to be filed. Upon discharge from this solitary unit in November of 2014, West first learned that his habeas petition was never mailed to the District Court but was obstructed by the prison officials. West re-filed on December 21, 2014. On October 23, 2017, U.S. District Judge Gregory M. Sleet denied the December 21, 2014 petition as being time barred. In September 2018, West now with counsel, filed for correction of Judge Sleet's October 23, 2017 Order under a 60(b) motion which was initially denied by replacement Federal District Judge Noreika but later vacated on appeal and remanded. Said remand from the 3d Circuit Court instructed Judge Noreika to hold proceedings to determine if West had indeed attempted to use due diligence in his July 2014 habeas filing. Such proceedings were never held as the prosecution agreed to West's due diligence assertion. As no hearing or proceeding was held, West was not able to

demonstrate the obstruction that he faced in exercising his constitutional rights and which the 3d Circuit review did not entail. Heiser v. Ryan, 951 F.2d 563, 564; such obstruction would have entitled West to relief. Barker v. Wingo, 407 U.S. 514 (1971). Instead, District Judge Noreika accepted the prosecution's waiver of the timeliness defense. This denial of developing this evidence was compounded when the District Judge further obstructed West in denying his pro se (reinstated by counsel) motion for an evidentiary hearing to develop his allegations regarding his counsel's constructive ineffectiveness and the lack of a knowing/conscious and voluntary plea. The court was required to hold a hearing to permit West to develop any facts to assist the court in making an informed decision about West's habeas claims. Townsend v. Sain, 372 U.S. 293 (1963). Such deficiency in the record, which the 3d Circuit Court overlooked as well, allowed for the denial it gave to West's application for appealability. Even in

Mannings' letter he indicates he could not remember specifics as his representation was some four years prior.

The District Court's "Memorandum" at page 4 indicates that it was "unclear" as to what arguments and claims for relief were reasserted by counsel even though counsel had reasserted the same claims of the pro se filings. Having such confusion, the District Court still proceeds to review the record and render a decision which the 3d Circuit adopted. Said review by the District Court misinterpreted facts without holding a hearing and prevented West from receiving due process. Deck v. Missouri, 544 U.S. at 631-632. The Delaware Supreme Court Rule 26(c), which the prosecution acknowledged was never followed, was another example of the District Court's review lacking a complete record to demonstrate and support West's claims. The Manning statement is rebuttal to the presumption of correctness under a 2254(e)(1) challenge and should have been considered by the District Court to allow for an evidentiary hearing to permit West

the opportunity to establish a constructive denial of counsel under Cronic. However, by denying West that due process right to an evidentiary hearing, and thereby disregarding the importance of the Manning letter, such is not in line with Deck and the 3d Circuit's adoption of such conduct is contrary to such law which needs this Court's intervention to correct.

5. West's contentions center around the conditions of both his mental and physical state that the trial courts failed to consider and that his attorney did not further investigate and emphasize to the Court. On January 9, 2012, West was taken from the Howard R. Young jail to the Superior Court in Wilmington in three-point restraints (i.e., he was in a straight jacket, restraint mittens, and a spit mask) while wearing leg shackles. In the holding cell within the courthouse, West met with his counsel who advised that the prosecution had not altered their position from a week ago and that they are asking for twenty-five (25) years on West's agreement to plead guilty. West

inquired about trial prospects and his counsel indicated that West's confession to the police would go against him and would likely result in a guilty verdict. His counsel indicated it was too late to file for suppression and thus his statement would be admissible. West, faced with this, then accepted his attorney's suggestion to plead. His attorney filled out a Truth in Sentencing form in front of West and had him sign it with his restraint mittens on. West was then taken into court in the three-point restraints completely restrained. As delineated in counsel Mannings filing on October 18, 2011, which were attached to Respondent's documents submitted in his habeas filings, West had been in the psych ward section of the Howard R. Young facility on Psychological close Observation (PCO) for suicide watch and that West was taking prescribed medications (Wellbutrin - an anti-depression medication, Lithium - a medication to treat Bipolar Disorder and Risperdal an anti-psychotic medication) to which the trial Court did limited inquiry about but never explored the

quantity and duration he had been taking these medications. Furthermore, both the court and counsel had seen the Psychological Report regarding West's ability to stand trial, which examination was done on November 8, 2011, some two months prior to his plea. In the report, Dr. Charlotte Selig repeatedly states that West is a drug dependent individual who, labeled as "Polysubstance Dependence", has been using drugs and now medications to cope with his mental illness. The court and his counsel were well aware that West had mental illness issues to a degree that he was ordered to undergo an evaluation. What no one inquired about was what West endured from the time of his evaluation to the time of his plea; particularly for an individual on strong psychiatric meds.

While the "black letter" transcript dialogue seems to show a cogent conversation between the court and West, nowhere during the proceedings does the court or counsel express the three-point restraints West is in and whether or not it was affecting his ability to understand the

proceedings. When the court inquires about the medications West is taking (i.e., Wellbutrin, Lithium and Risperdal) it only asks, "Are those medications you take when you're not in custody?". West responds: "Somewhat". The court then merely inquires: "Do you feel well enough to proceed to enter a plea today?". West responds: "Yes, I do". At no time throughout the entire court proceeding of West's plea is there a description of the appearance of West in three-point restraints and nor an inquiry by the Court how that could be affecting his ability to make a knowing and "voluntary" plea; nor an adequate inquiry into his mental state to understand the constitutional rights to trial he is giving up.

Pursuant to United States v. Cole, 813 F.2d 43 (3d Cir.1987), where a court is alerted to a defendant's medication use that could cloud a defendant's judgment, the court must inquire further to determine whether a defendant is entering a plea voluntarily and knowingly. Adopting the Cole holding, the Second Circuit vacated a

plea when the trial court learned the defendant was on a series of medications but failed to make further inquiry into the specific medication's quantity and their side effects. United States v. Rossillo, 833 F.2d 1062 (2d Cir. 1988). The First Circuit suggested the best practice would be for a court to inquire about the types, effects, and dosages of medications particularly where there are some "warning flags". Miranda-Gonzalez v. United States, 181 F.3d 164,166 (1st Cir. 1999) citing United States v, Parra-Ibanez, 936 F.2d 588 (1st Cir. 1991). Clearly, there is discrepancy and conflict in how various Circuit Courts inquire into a defendant's mental state of mind before accepting a plea thus requiring this Courts clarification

Clearly in the West case, the Court and his counsel were well aware of West's mental conditions for which he was being medicated, housed in a psychological unit of the prison under PCO, had been ordered to undergo a psychological evaluation based on his own counsel's filing and belief, then restrained in three-point restraints

including a "spit mask" while appearing for a plea in which he could face "life imprisonment". There were clearly "warning flags" waving throughout West's appearance in court to plead guilty. Miranda-Gonzalez. Both the Court and counsel should have made further inquiry to assure that West was knowingly and voluntarily giving up his constitutional rights. Additionally, the report by Dr. Selig devotes 7 pages to West's drug use, drug treatments, suicide attempts and his prior drug and alcohol use that began at age 11. The "warning flags" were clearly delineated in this report, yet neither the court nor his counsel even mention the report at West's January 9, 2012, Court appearance. Even in the case of Deck v. Missouri, 544 U.S. 622 (2005), presenting a defendant in Court in leg irons, handcuffs and a belly chain was determined to violate both the 6th and 14th Amendment. Here West obviously presented in three- point restraints which included a straight jacket, spit mask and mittens while on "suicide watch", isn't that the kind of warning flag the

above case citings refer to and thus require the Court and counsel to make a much further inquiry then "Do you feel well enough to proceed to enter a plea today". It is clear that a knowing and voluntary plea could not have been accepted by the court under these circumstances without a further inquiry. This Court needs to address and further clarify those circumstances where the conditions of a defendant at a critical stage requires further inquiry before a plea can be deemed knowing, conscious and voluntary.

X. CONCLUSION

For the foregoing reasons, Mr. West respectfully requests that this Court issue a writ of certiorari to review the judgment of the Third Circuit Court of Appeals.

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XI. APPENDIX

6. ORDER -- 3-9-21 - MOTION FOR RECONSIDERATION –RULE 60(b)(6) GRANTED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.
C.A. No. 14-1513 (MN)

7 -ORDER 1-18-21 - Judgment entered on September 26, 2019, is VACATED. The case is REMANDED

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No. 19-3421

8- ORDER - 10-23-17 - DENYING CERTIFICATE OF APPEALABILITY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.
C.A. No. 14-1513 (MN)

9- BRADLEY V. MANNING LETTER
DATED AUGUST 26, 2015
C.A.1107001026 3-30-2012

APPENDIX 1

ORDER 9-23-22 DENYING REHEARING

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT - No. 22-1731

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 22-1731

CHRISTOPHER H. WEST, Appellant
v.
WARDEN JAMES T VAUGHN CORRECTIONAL CENTER
and
ATTORNEY GENERAL OF THE STATE OF DELAWARE
(D.C. Civ. No. 1:14-cv-01513)
SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge,
McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant Christopher H. West in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

ENTERED BY ORDER OF THE COURT
[Seal/ Electronic Signature]
CHERYL ANN KRAUSE
Circuit Judge

APPENDIX 2

ORDER 8-26-22 - DENYING APPLICATION FOR CERTIFICATE OF APPEALABILITY

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
CHRISTOPHER H. WEST : NO. 22-1731

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 22-1731
[Stamp:] FILED
8-26-22
CHERYL ANN KRAUSE
Circuit Judge

CHRISTOPHER H. WEST
Petitioner:
v
DANA METZGER, Warden and
ATTORNEY GENERAL OF :
THE STATE OF DELAWARE :
Respondents

ORDER

The foregoing application for a certificate of appealability is denied because Appellant has not made "a substantial showing of the denial of a constitutional right" or shown that reasonable jurists would debate the merits determination. See 28 U.S.C. §2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000). In particular, considering all of the evidence in the record, including the "Behavioral Plan" and trial counsel Manning's letter, Petitioner has failed to demonstrate that his plea was not knowing and voluntary, see Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005), or that his counsel rendered ineffective assistance. See Strickland v. Washington, 466 U.S. 668, 687 (1984); see also Hill v. Lockhart, 474 U.S. 52, 59 (1985) ("in order to satisfy the 'prejudice' requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial").

Petitioner was required to show prejudice under Strickland because he failed to demonstrate that he was "denied

counsel at a critical stage" of the proceedings or, as the District Court found, that his counsel "fail[ed] to subject the prosecution's case to meaningful adversarial testing." United State v. Cronic, 466 U.S. 648, 659 (1984); see also Bell v Cone, 535 U.S. 685, 697 (2002) (to apply Cronic, "the attorney's failure must be complete").

ENTERED BY ORDER OF THE COURT
[Seal/Electronic Signature]
CHERYL ANN KRAUSE
Circuit Judge
Dated: August 26, 2022
Lmr/cc All Counsel of Record
Case: 22-1731 Document: 15-2 Page:2 Date Filed: 08/26/2022
Case: 22-1731 Document 16 Page: 12 Date Filed: 09

APPENDIX 3

MEMORANDUM & OPINION 3-21-22 J Noreika

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Case No.
C.A. No. 14-1513 (MN)

CHRISTOPHER H. WEST,
Petitioner
v.
ROBERT MAY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,
Respondents

MEMORANDUM OPINION

Stephen A. Hampton, GRADY & HAMPTON, LLC, Dover, DE; Joseph A. Ratasiewicz, Nicholas Casamento, CASAMENTO & RATASIEWICZ, P.C., Media, PA – Attorneys for Petitioner.
Sean P. Lugg, Deputy Attorney General, DELAWARE DEPARTMENT OF JUSTICE, Wilmington, DE – Attorney for Respondents.

March 21, 2022
Wilmington, Delaware Case 1:14-cv-01513-MN
Document 106 Filed 03/21/22 Page 1 of 28 PageID #: 3058

M. NOREIKA, U.S. DISTRICT JUDGE:

Petitioner Christopher H. West ("Petitioner") filed a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 ("Petition"). (D.I. 3; D.I. 16). The Honorable Gregory M. Sleet dismissed the Petition as time-barred on October 24, 2017. (D.I. 68). Petitioner filed a Rule 60(b) motion for

reconsideration, which this Court denied. (D.I. 78). Petitioner appealed and the Third Circuit reversed and remanded the case for an additional determination on equitable tolling. (D.I. 84). On remand, the State waived the statute of limitations defense and the Court granted Petitioner's Rule 60(b) motion and re-opened Petitioner's habeas proceeding. (D.I. 88). Petitioner filed a Motion for Discovery and Reassertion of Petitioner's Pro Se Motions, with several of Petitioner's earlier pro se submissions attached. (D.I. 89). The Court issued an Order directing Petitioner to file a clarifying Memorandum in Support indicating which grounds Petitioner wished to pursue. (D.I. 90). Petitioner filed two Memoranda in Support. (D.I. 91; D.I. 97). The State filed an Answer in opposition, to which Petitioner filed several Replies. (D.I. 98; D.I. 102; D.I. 103; D.I. 104).

I. BACKGROUND

The charges at issue stem from three separate bank robberies and one bank robbery attempt, all of which were committed within the span of less than a week. Based on video surveillance and the description of the suspect from the witnesses to the bank robberies, a photo array was generated. Delaware State Police showed the array to three people, all of whom identified [Petitioner] as the perpetrator of the robbery.

There was a witness from the Citizens Bank robbery who observed the suspect using a dark colored Jeep Wrangler that identified [Petitioner] as the suspect. In addition to being identified by the witness as the bank robber, the vehicle identified as being driven by the bank robber, a dark colored Jeep Wrangler, matched the description of the vehicle [Petitioner] drove. In fact, [Petitioner] admitted to having committed the Citizen's Bank robbery and having driven a Jeep Wrangler to Citizen's Bank when he committed the bank robbery.[Petitioner] was also identified as the bank robber by the assistant manager at the Citizens Bank who was working at the time of the robbery.

The teller from the PNC bank robbery also identified [Petitioner] as the person who committed the PNC robbery. [Petitioner's] uncle also confirmed that the photo released from the Citizen's Bank robbery depicting the suspect was his nephew, [Petitioner].[when interviewed by the police, confessed to committing the three bank robberies and the attempted bank robbery. State v. West, 2013 WL 6606833, at *1–2 (Del. Super. Ct. Dec. 12, 2013).In August 2011, a New Castle County grand jury indicted Petitioner on two counts of first degree robbery, second degree robbery, and attempted first degree robbery. (D.I. 99-1 at 1, Entry No. 2; D.I. 98 at 3). On October 21, 2011, the Superior Court granted Petitioner's motion for a psychiatric evaluation. (D.I. 19-1 at 2, Entry Nos. 9, 10). The psychiatric report concluding that Petitioner was competent to enter a plea was provided to the Superior Court on December 1, 2011. (D.I. 19-1 at 2, Entry No. 11). On January 9, 2012, Petitioner pled guilty to one count each of first and second degree robbery. See West v. State, 100 A.3d 1022 (Table), 2014 WL 4264922, at *1 (Del. Aug. 28, 2014). On March 30, 2012, the Superior Court sentenced Petitioner as a habitual offender to a total of twenty-eight years at Level V incarceration, to be suspended after serving twenty-five years in prison for decreasing levels of supervision. Petitioner did not file a direct appeal. Id.

On February 27, 2013, Petitioner filed a pro se motion for post-conviction relief pursuant to Delaware Superior Court Criminal Rule 61 ("Rule 61 motion). (D.I. 19-1 at 4, Entry No. 39). The Superior Court appointed counsel to represent Petitioner. See West, 2013 WL 6606833, at *2. In November 2013, after determining that there were no meritorious issues to pursue, post-conviction counsel filed a motion to withdraw along with a memorandum of law in support thereof. Id. The memorandum included the two arguments Petitioner still wished to pursue. Id. at *2-3. On December 12, 2013, a Superior Court Commissioner issued a Report and Recommendation concluding that the Rule 61

motion should be denied and post-conviction counsel's motion to withdraw should be granted. See id. at *7. On January 7, 2014, the Superior Court adopted the Report and Recommendation, denied the Rule 61 motion, and granted post-conviction counsel's motion to withdraw. See West v. State, 147 A.3d 234 (Table), 2016 WL 4547912, at *1 (Del. Aug. 31, 2016). The Delaware Supreme Court affirmed that decision on August 28, 2014. See West v. State, 100 A.3d 1022 (Table), 2014 WL 4264922 (Del. Aug. 28, 2014).

On February 24, 2015, Petitioner filed in the Delaware Superior Court a second Rule 61 motion and a motion to withdraw his guilty plea. See State v. West, 2015 WL 3429919, at *1-2 (Del. Super. Ct. May 21, 2015). The Superior Court denied both motions on May 21, 2015. Id. Petitioner did not appeal that decision. Petitioner filed a third Rule 61 motion on March 21, 2016. See West, 2016 WL 4547912, at *1. On May 16, 2016, the Superior Court summarily dismissed Petitioner's third Rule 61 motion as procedurally barred under Rule 61(d)(2). See id. The Delaware Supreme Court affirmed that decision on August 31 2016. See id. at *2. In April and May of 2016, Petitioner filed a Rule 35(a) motion and an amended Rule 35(a) motion for correction of sentence. See West v. State, 148 A.3d 687 (Table), 2016 WL 5349354, at *1 (Del. Sept. 23, 2015). The Superior Court denied the motions and the Delaware Supreme Court affirmed that decision on September 23, 2016. See id. at *2.

In the meantime, in December 2014, Petitioner filed in this Court a pro se federal habeas petition, followed by an amended petition and memorandum of points (hereinafter collectively referred to as "Petition I"), asserting the following five grounds for relief: (1) his habitual offender sentence is illegal because one of the predicate convictions is illegal; (2) his guilty plea was unknowing and involuntary; (3) defense counsel provided ineffective assistance; (4) his confession was coerced; (5) the conditions

of his confinement constituted cruel and unusual punishment; and (6) he was deprived of his Sixth Amendment right to counsel. (D.I. 3; D.I. 9). The State filed an answer asserting that Petition I should be denied as time-barred or, alternatively, because the claims lacked merit. (D.I. 21). The Honorable Gregory M. Sleet denied Petition I as time-barred in October 2017. (D.I. 67; D.I. 68). In September 2018, Petitioner filed a motion for reconsideration. (D.I 69). The case was re-assigned to this Court, and the Court ordered the State to respond. (D.I. 73). The Court denied the motion for reconsideration. (D.I. 78). Petitioner appealed and the Third Circuit vacated the dismissal of the reconsideration motion and remanded the case for this Court to "determine whether [Petitioner] attempted to filed a (timely) habeas petition in June 2014 such that equitable tolling might be appropriate." (D.I. 84). In February 2021, the State informed the Court that they could neither prove nor disprove whether Petitioner attempted to file a timely habeas petition and waived their statute of limitations defense. (D.I. 86). In March 2021, the Court vacated the dismissal of Petitioner's habeas Petition and ordered the case reopened. (D.I. 88). Upon Petitioner's counsel's request (D.I. 87), the Court issued an Order providing Petitioner's counsel with an opportunity to "assess whether to re-assert and/or refile" Petitioner's previous pro se motions and/or filings (D.I. 88). Petitioner's counsel filed a Motion for Discovery and Re-Assertion of Petitioner's Pro Se Motions. (D.I. 89). The filing by Petitioner's counsel consisted of four pro se submissions by Petitioner.1 Unclear as to Petitioner's intent in attaching the previously denied filings without any Three of the submissions were motions (D.I. 89-2; D.I. 89-3; D.I. 89-4) that had been previously denied by Judge Sleet. The other re-submitted filing was a document titled "Amended Petition." (D.I. 89-1). As that "Amended Petition" was filed after the State had already filed its Answer to the original petition (see D.I. 33), Judge Sleet

ruled that the Court would not consider any new claims contained in the "Amended Petition" that did not "relate back" to the claims in the petition(s) filed prior to the State's Answer. (D.I. 50). The Court issued an Order: (1) rejecting Petitioner's Motion to the extent he was attempting to have the previously rejected submissions/claims included in the proceeding; (2) granting Petitioner's request to supplement and clarify claims that he had asserted prior to the State's filing of its answer to his original petition; and (3) directing Petitioner's counsel to file a Memorandum clarifying the grounds for relief still being pursued. (D.I.90). Thereafter, Petitioner's counsel filed a Memorandum essentially stating that Petitioner was raising the same "several distinct grounds for relief" that had been presented in his original "pro se habeas filing." (D.I. 91 at 2). Petitioner filed a pro se Supplement. (D.I. 97). The State filed an Answer. (D.I. 98). Petitioner's counsel filed a Reply (D.I. 102), another Reply with Petitioner's additions (D.I. 103), and then another amendment to the Reply on Petitioner's behalf (D.I. 104). From this point forward, the Court considers Petition I (D.I. 3; D.I. 16), Petitioner's Memorandum (D.I. 91), Petitioner's Supplement (D.I. 97), and Petitioner's first Reply (D.I. 102) as collectively comprising his request for habeas relief, and will refer to his request as "Petition."

II. GOVERNING LEGAL PRINCIPLES

A. The Antiterrorism and Effective Death Penalty Act of 1996

Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") "to reduce delays in the execution of state and federal criminal sentences . . . and to further the principles of comity, finality, and federalism." Woodford v. Garceau, 538 U.S. 202, 206 (2003). Pursuant to AEDPA, a federal court may consider a habeas petition filed by a state prisoner only "on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. The Court's Order dated March 9,

2021 provided Petitioner's counsel permission "to assess whether to re-assert and /or refile the pro se motions that were denied" when the original petition was denied in October 2017. (D.I. 88) (emphasis added). In granting such permission, the Court contemplated that Petitioner's counsel would parse through those motions and determine which, if any, could be re-asserted, and also provide an explanation for that determination States." 28 U.S.C. § 2254(a). AEDPA imposes procedural requirements and standards for analyzing the merits of a habeas petition in order to "prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law." Bell v. Cone, 535 U.S. 685, 693 (2002).

B. Exhaustion and Procedural Default

Absent exceptional circumstances, a federal court cannot grant habeas relief unless the petitioner has exhausted all means of available relief under state law. See 28 U.S.C. § 2254(b); O'Sullivan v. Boerckel, 526 U.S. 838, 842-44 (1999); Picard v. Connor, 404 U.S. 270, 275 (1971). AEDPA states,in pertinent part. 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.

28 U.S.C. § 2254(b)(1).

The exhaustion requirement is based on principles of comity, requiring a petitioner to give "state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State's established appellate review process." O'Sullivan, 526 U.S. at 844-45; see Werts v. Vaughn, 228 F.3d 178, 192 (3d Cir. 2000). A petitioner satisfies the exhaustion requirement by demonstrating that

the habeas claims were "fairly presented" to the state's highest court, either on direct appeal or in a post-conviction proceeding, in a procedural manner permitting the court to consider the claims on their merits. See Bell v. Cone, 543 U.S. 447, 451 n.3 (2005); Castille v. Peoples, 489 U.S. 346, 351 (1989). A petitioner's failure to exhaust state remedies will be excused if state procedural rules preclude him from seeking further relief in state courts. See Lines v. Larkins, 208 F.3d 153, 160 (3d Cir. 2000); Teague v. Lane, 489 U.S. 288, 297-98 (1989). Although treated as technically exhausted, such claims are nonetheless procedurally defaulted. See Lines, 208 F.3d at 160; Coleman v. Thompson, 501 U.S. 722, 750-51 (1991). Similarly, if a petitioner presents a habeas claim to the state's highest court, but that court "clearly and expressly" refuses to review the merits of the claim due to an independent and adequate state procedural rule, the claim is exhausted but procedurally defaulted. See Coleman, 501 U.S. at 750; Harris v. Reed, 489 U.S. 255, 260-64 (1989). Federal courts may not consider the merits of procedurally defaulted claims unless the petitioner demonstrates either cause for the procedural default and actual prejudice resulting therefrom, or that a fundamental miscarriage of justice will result if the court does not review the claims. See McCandless v. Vaughn, 172 F.3d 255, 260 (3d Cir. 1999); Coleman, 501 U.S. at 750-51. To demonstrate cause for a procedural default, a petitioner must show that "some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." Murray v. Carrier, 477 U.S. 478, 488 (1986). To demonstrate actual prejudice, a petitioner must show "that the errors at his trial [] worked to his actual and substantial disadvantage, infecting his entire trial with error of constitutional dimensions." United States v. Frady, 456 U.S. 152, 170 (1982). If a petitioner attempts to excuse his default on the basis of ineffective assistance of counsel, he can satisfy the prejudice component of the "cause and prejudice" standard

by meeting the prejudice standard needed to establish ineffective assistance of counsel under Strickland. See Holland v. Horn, 519 F.3d 107, 120 (3d Cir. 2008). Alternatively, a federal court may excuse a procedural default if the petitioner demonstrates that failure to review the claim will result in a fundamental miscarriage of justice. See Edwards v. Carpenter, 529 U.S. 446, 451 (2000); Wenger v. Frank, 266 F.3d 218, 224 (3d Cir. 2001). A petitioner demonstrates a miscarriage of justice by showing a "constitutional violation has probably resulted in the conviction of one who is actually innocent." Murray, 477 U.S. at 496. Actual innocence means factual innocence, not legal insufficiency. See Bousley v. United States, 523 U.S. 614, 623 (1998). In order to establish actual innocence, the petitioner must present new reliable evidence – not presented at trial – that demonstrates "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt." House v. Bell, 547 U.S. 518, 537-38 (2006); see Sweger v. Chesney, 294 F.3d 506, 522-24 (3d Cir. 2002).

C. Standard of Review

When a state's highest court has adjudicated a federal habeas claim on the merits,3 the federal court must review the claim under the deferential standard contained in 28 U.S.C. § 2254(d). Pursuant to 28 U.S.C. § 2254(d), federal habeas relief may only be granted if the state court's decision was "contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States," or the state court's decision was an unreasonable determination of the facts based on the evidence adduced in the state court proceeding. 28 U.S.C. § 2254(d)(1) & (2); see Williams v. Taylor, 529 U.S. 362, 412 (2000); Appel v. Horn, 250 F.3d 203, 210 (3d Cir. 2001). The deferential standard of § 2254(d) applies even when a state court's order is unaccompanied by an opinion explaining the reasons relief has been denied. See Harrington v. Richter, 562 U.S. 86,

98-101 (2011). As explained by the Supreme Court, "it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." Id. at 99.

3 A claim has been "adjudicated on the merits" for the purposes of 28 U.S.C. § 2254(d) if the state court decision finally resolves the claim on the basis of its substance, rather than on a procedural or some other ground. See Thomas v. Horn, 570 F.3d 105, 115 (3d Cir. 2009).

A state court decision is "contrary to" clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme Court] on a question of law or if the state court decides a case differently than [the Supreme Court] has on a set of materially indistinguishable facts." Williams, 529 U.S. at 413. The mere failure to cite Supreme Court precedent does not require a finding that the decision is contrary to clearly established federal law. See Early v. Packer, 537 U.S. 3, 8 (2002). For instance, a decision may comport with clearly established federal law even if the decision does not demonstrate an awareness of relevant Supreme Court cases, "so long as neither the reasoning nor the result of the state-court decision contradicts them." Id. In turn, an "unreasonable application" of clearly established federal law occurs when a state court "identifies the correct governing legal principle from the Supreme Court's decisions but unreasonably applies that principle to the facts of a prisoner's case." Williams, 529 U.S. at 413; see also White v. Woodall, 572 U.S. 415, 426 (2014).

Finally, when performing an inquiry under § 2254(d), a federal court must presume that the state court's determinations of factual issues are correct. See 28 U.S.C. § 2254(e)(1); Appel, 250 F.3d at 210. This presumption of correctness applies to both explicit and implicit findings of fact and is only rebutted by clear and convincing evidence to the contrary. See 28 U.S.C. § 2254(e)(1); Campbell v. Vaughn, 209 F.3d 280, 286 (3d Cir. 2000); Miller-El v.

Cockrell, 537 U.S. 322, 341 (2003) (stating that the clear and convincing standard in § 2254(e)(1) applies to factual issues, whereas the unreasonable application standard of § 2254(d)(2) applies to factual decisions).

III. DISCUSSION

Petitioner asserts the following five grounds for relief:

4 (1) his habitual offender sentence is illegal because one of the predicate convictions was invalid; (2) his guilty plea was not knowing, voluntary, and intelligent; (3) defense counsel provided ineffective assistance; (4) his confession was coerced; and (5) he was denied his Sixth Amendment right to counsel.

A. Claim One: Illegal Habitual Offender Status

In Claim One, Petitioner contends that his habitual offender sentence is illegal because one of the predicate convictions used for habitual offender status – his 2009 forgery conviction from Pennsylvania – is illegal. (D.I. 3 at 5); see also West, 2013 WL 6606833, at *7. According to Petitioner, his 2009 Pennsylvania conviction is illegal because the Pennsylvania court deprived him of his constitutional right to confront witnesses.5 (D.I. 3 at 5). Petition I explains that he is "in [the] process of appealing PA conviction." (Id.). 4 Petition I also includes a claim alleging that Petitioner was subjected to cruel and unusual punishment because he had to sleep on the floor without a mattress during pre-trial confinement. (D.I. 3 at 10). To the extent this claim challenges prison conditions as an independent claim, it does not assert an issue properly raised on federal habeas review. The Court notes that Petitioner presented the same conditions/cruel and unusual punishment argument in a separate action filed under 42 U.S.C. § 1983 seeking nine million dollars in damages. (See D.I. 1 at 10 in West v. Burley, Civ. A. No. 14-1486-GMS). On July 19, 2018, Judge Sleet dismissed that case with prejudice pursuant to a joint stipulation by the parties. (See D.I. 87 and 88 in West, Civ. A. No. 14-1486). In this proceeding, to the extent Petitioner's allegations concerning

lack of sleep and a lack of mattress provide additional background information for his involuntary plea argument, the Court will consider it as part of the overall argument presented in Claim Two.

5 In his Reply, Petitioner asserts that his real contention in Claim One "regarding the applicability of the 'habitual offender' statute to [his] sentencing is based on his claim that his plea was not knowing and voluntary as he was denied adequate representation." (D.I. 102 at 1). Petitioner does not clarify if the alleged inadequate representation about which he complains in Claim One occurred during the guilty plea process with respect to his 2009 Pennsylvania conviction or during the guilty plea process with respect to the 2012 Delaware conviction at issue in this proceeding. To the extent the inadequate representation relates to the 2009 Pennsylvania conviction, the Court addresses it in its analysis of Claim One.

Claim One is not a cognizable habeas claim. First, to the extent Petitioner argues that the Superior Court misapplied Delaware's habitual offender statute to the facts of his case, the argument is a state law claim that does not provide a proper basis for federal habeas relief. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991) (opining that claims based on errors of state law are not cognizable on habeas review.).

Second, to the extent Petitioner is indirectly challenging the legality of his 2009 Pennsylvania conviction for forgery, the argument is foreclosed by well-settled Supreme Court precedent. In Lacakawana Cnty. Dist. Att'y v. Coss, 532 U.S. 394 (2001), the Supreme Court held that,

> [o]nce a state conviction is no longer open to direct or collateral attack in its own right because the defendant failed to pursue those remedies while they were available (or because the defendant did so unsuccessfully), the conviction may be regarded as conclusively valid. If that conviction is later used to enhance a criminal sentence, the defendant generally may not challenge the enhanced

sentence through a petition under § 2254 on the ground that the prior conviction was unconstitutionally obtained. Id. at 403-04. The only exception to this rule expressly recognized by the Supreme Court is if the prior enhancement conviction was obtained without the defendant having counsel, in violation of the Sixth Amendment as set forth in Gideon v. Wainwright, 372 U.S. 335 (1963). See Coss, 532 U.S. at 404. Here, Petitioner's 2009 Pennsylvania conviction is no longer open to direct or collateral attack because the 11.5 month – 25 month sentence that was imposed for that conviction expired Delaware conviction, the Court construes Petitioner's explanation to be asserting an argument that his 2012 plea was not knowing and voluntary because he was not advised that he would be subject to sentencing as a habitual offender due to his 2009 Pennsylvania conviction. (See D.I. 99-11 at 4-5; D.I. 102 at 7; D.I. 102-1 at 5-9). The Court views this argument as part of Petitioner's challenge to the voluntariness of Petitioner's guilty plea in Claim Two.It was more than two years before Petitioner filed the original habeas Petition in this case.6 To the extent Petitioner may be contending that he was provided inadequate representation during his 2009 Pennsylvania case, only a complete denial of counsel with respect to Petitioner's 2009 Pennsylvania case would fall within the exception to the presumption of validity recognized in Coss. Given these circumstances, the Court regards Petitioner's 2009 Pennsylvania conviction as "conclusively valid," meaning that the 2009 conviction cannot provide a basis for challenging his habitual offender sentence. Accordingly, the Court will deny Claim One for failing to assert an issue cognizable on federal habeas relief.

B. Claim Two: Involuntary, Unknowing, and

Petitioner contends that his guilty plea was not knowing, voluntary, and intelligent because he was under the influence of psychotropic medication and incompetent at the time he entered the plea. Petitioner asserts that the

following “warning flags” should have caused the Superior Court to conduct an independent inquiry into his competency: (1) he had been in the psych ward section of the Howard R. Young facility on suicide watch; (2) at the time of his plea he was taking several prescribed medications: Wellbutrin (anti-depressant), Lithium (to treat Bipolar Disorder), and Risperdal (anti-psychotic); and (3) he was in a straight-jacket, restraint mittens, and a spit mask during the entire plea colloquy.7 (D.I. 102 at 1-3). Petitioner also contends that his guilty plea was involuntary because: (1) he was not appropriately informed that his 2009 Pennsylvania conviction could cause him to be sentenced as an habitual offender (D.I. 102 at 1); and (2) he was 6 (See D.I. 99-2 at 29-47). The Petition I also includes a separate claim alleging that he suffered “cruel and unusual” prison conditions, including being made to sleep on the floor without a mat. (D.I. at 10). As previously explained, the Court views this contention as providing additional support for Petitioner’s argument in Claim Two that he was not in the right state of mind to enter a guilty plea rather than as asserting an independent ground for relief. See supra Section III.FN4.

He was coerced into pleading guilty because “Deputy Warden Mark Emig [] told him to plead guilty or spend all 25 years to life butt naked in the hole” (D.I. 3 at 12). Petitioner presented Claim Two to the Superior Court in his Rule 61 motion and then to the Delaware Supreme Court on post-conviction appeal. The Superior Court denied Claim Two as meritless, and the Delaware Supreme Court affirmed that ruling “on the basis of, and for the reasons provided in, the [Superior Court] Commissioner’s thorough and well-reasoned report and recommendation that was adopted by the Superior Court.” West, 2014 WL 4264922, at *2. Given these circumstances, Petitioner will only be entitled to relief if the Superior Court’s decision8 was either contrary to, or an unreasonable application of, clearly established federal law. The conviction of an

accused while he is legally incompetent violates due process. See Pate v. Robinson, 383 U.S. 375, 378 (1966);); Drope v. Missouri, 420 U.S. 162, 172 (1975). A defendant is deemed competent to plead guilty if he has sufficient present ability to consult with his attorney with a reasonable degree of rational and factual understanding about the proceedings against him or if he assists in his defense. See Godinez v. Moran, 509 U.S. 389, 396, 398-99 (1993) (holding that the standard governing competency to plead guilty is the same as that governing competency to stand trial); Dusky v. U.S., 362 U.S. 402 (1960) (setting forth the standard governing competency to stand trial). The Supreme Court has identified several factors to be considered when assessing a defendant's competency to stand trial/enter a guilty plea, including attorney representations, prior medical opinions regarding the defendant's mental competence to stand trial, evidence of the defendant's prior irrational behavior, and the defendant's demeanor at trial or plea

8 See Wilson v. Sellers, 138 S. Ct. 1188, 1193-94 (2018) (reiterating that when a higher court affirms a lower court's judgment without an opinion or other explanation, federal habeas law employs a "look through" presumption and assumes that the later unexplained order upholding a lower court's reasoned judgment rests upon the same grounds as the lower court judgment). colloquy. See Drope, 420 U.S. at 177 n.13, 180. Nevertheless, "[e]ven when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change" in his competency. Id. at 181. Consequently, in order to satisfy the requirements of due process, a trial court must sua sponte conduct a competency hearing when there is a reason to doubt the defendant's competency and the evidence is sufficient to put the trial court on notice of a potential competency problem. See Pate, 383 U.S. at 385.

It is well settled that "competency is a state court factual

finding that, if supported by the record, is presumed correct." See Thompson v. Keohane, 516 U.S. 99, 111 (1995); Demosthenes v. Baal, 495 U.S. 731, 735 (1990). Implicit factual findings are presumed correct under § 2254(e)(1) to the same extent as express factual findings. See Campbell v. Vaughn, 209 F.3d 280 285–86 (3rd Cir. 2000). Consequently, a court's implicit and explicit factual findings that a petitioner was competent are presumed correct, unless the petitioner can rebut the presumption of correctness by clear and convincing evidence. See Taylor v. Horn, 504 F.3d 416, 433 (3d Cir. 2007).

The record in this case demonstrates that the Superior Court reasonably determined the facts when implicitly finding that Petitioner was mentally competent to enter a guilty plea. Prior to Petitioner's plea, defense counsel filed a motion to have Petitioner undergo a psychiatric evaluation. The Superior Court granted the motion and Petitioner was referred to the Delaware Psychiatric Center for an evaluation to "determin[e] competency and to obtain treatment for his own well-being." (D.I.99-6 at 142). In a Forensic Mental Health Examination Report ("Report") dated November 8, 2011, the psychologist who evaluated Petitioner explained that Petitioner was taking Lithium, Wellbutrin, and Risperdal at the time of his psychiatric evaluation – the same medications Petitioner stated he was taking at the time of his plea colloquy. (D.I.99-6 at 16, 144). The Report also detailed Petitioner's polysubstance dependence and his diagnoses of major depressive disorder and personality disorder with antisocial and borderline traits, finding that those factors did not "appear at present to impede [Petitioner's] capacities to understand his legal case, or to work with his attorney." (D.I.99-6 at154). The Report then concluded that Petitioner "possesses adequate factual and ration understanding of this pending legal case, as well as adequate capacity to assist in his own defense, and is therefore competent to stand trial." (D.I. 99-6 at 154) (emphasis in original).

The Report was provided to the Superior Court on December 1, 2011 and Petitioner's plea colloquy occurred on January 9, 2012. At the opening of the plea colloquy, defense counsel briefly mentioned Petitioner's mental health evaluation, the fact that he was taking prescription medication, and the fact that he had been determined to be competent. Defense counsel stated that he had met with Petitioner on several occasions and that Petitioner was able to understand and comprehend everything they had discussed. Defense counsel also informed the Superior Court that he believed Petitioner was entering the plea knowingly, intelligently, and voluntarily. Thereafter, the Superior Court asked Petitioner: (1) if he was currently taking medication; (2) to identify the medication; (3) if he was feeling well enough to enter a plea; and (4) if he understood everything defense counsel had represented to the court regarding the charges against Petitioner, the potential sentences, and Petitioner's competency evaluation. (D.I.99-6 at15-16). Petitioner was articulate and lucid in his affirmative responses to the Superior Court's questions. Petitioner indicated that he had discussed his guilty plea with defense counsel, understood the plea and rights he was waiving, and understood the nature and consequences of the proceeding. Petitioner was aware enough to indicate that, although he and defense counsel had reviewed the plea agreement and Truth-in-Sentencing guilty plea form, they had not reviewed the indictment. The Superior Court provided defense counsel an opportunity to review the indictment with Petitioner. After confirming that Petitioner understood the charges in the indictment, the representations on the Truth-in-Sentencing form, and that Petitioner was entering a guilty plea because he committed the crimes, the Superior Court concluded that Petitioner's plea was "knowingly, intelligently, and voluntarily given." (D.I. 99-6 at 17). Petitioner contends that his appearance in court wearing a straight-jacket, restraint mittens, and a spit mask coupled

with his medication regimen triggered the Superior Court's duty to conduct an independent inquiry into his competency. The Court disagrees. Petitioner himself acknowledges that the straight-jacket and "restraints were needed due to [his] propensity to harm himself and being under suicide watch." (D.I.102 at 5). And, although the improper administration of psychiatric medicine can render an individual temporarily incompetent,9 the fact that a defendant is taking medication for mental health issues does not per se render a defendant incompetent to stand trial or automatically trigger a court's duty to conduct an independent competency determination. See, e.g., Layne v. Moore, 90 F. App'x 418, 423 (3d Cir. 2004) (the fact that petitioner was taking medications "in itself does not show that he was mentally incompetent."); Sheley v. Singletary, 955 F.2d 1434, 1439 (11th Cir. 1992) (when determining the adequacy of a court's inquiry into a defendant's competency, the "focus [. . .] is what the trial court did in light of what it knew."); Chichakly v. United States, 926 F.2d 624, 631-32 (7th Cir. 1991) (even if a defendant alleges that he was incompetent due to psychiatric medications, "[t]here is certainly no need to conduct a competency hearing when there is no evidence before the Court of incompetency and when the defense attorney failed to request one and neither the prosecuting attorney nor the judge saw a need for one."). Rather, when presented with "significant evidence" that the defendant "has recently taken drugs, the court has the obligation to inquire further before 9 See Riggins v. Nevada, 504 U.S. 127, 137 (1992). determining that a competency hearing is necessary." United States v. Cole, 813 F.2d 43, 47 (3d Cir.1987) (emphasis added). The record in this case shows that the Superior Court satisfied its obligation to make a threshold inquiry into whether a more thorough and independent inquiry into Petitioner's competency was necessary. Defense counsel informed the Superior Court that he had several meetings with Petitioner and believed Petitioner

understood the proceeding and could make a reasoned decision to plead guilty. Petitioner told the Superior Court that he was on medication and was able to identify the medication. The Superior Court asked Petitioner if he understood what was going on during the colloquy, and Petitioner answered affirmatively. Significantly, the Superior Court was able to assess Petitioner's demeanor when answering its questions, and also knew that Petitioner had been declared competent to enter a plea. Nothing in this record of the plea colloquy indicates that Petitioner did not understand the nature of the proceedings against him or that he could not consult with defense counsel to assist in his case. See Indiana v. Edwards, 554 U.S. 164, 170 (2008); United States v. Lessner, 498 F.3d 185, 96 (3d Cir. 2007). Thus, given Petitioner's failure to provide clear and convincing evidence to the contrary, the Court accepts the Superior Court's implicit factual determination that Petitioner was competent to enter a guilty plea.

10 To the extent Petitioner argues that a psychiatric evaluation ordered by the Delaware Superior Court in February 2015 is relevant to the Court's instant analysis, the argument is unavailing. As a factual matter, the Superior Court did not order a new competency evaluation, but rather, ordered a psychiatric evaluation to "[d]etermine psychiatric or psychological treatment." (D.I. 21-1 at 1). Additionally, an evaluation of Petitioner's competency performed years after he entered his guilty plea has no bearing on the determination of his competency at the time of his guilty plea. For these reasons, the Court also rejects Petitioner's contention that the transcript of the clarification of his sentence that occurred in May and June 2016 demonstrates "his lack of mental ability to know what occurred in January 2012." (D.I. 102 at 7).

Having found that the Superior Court reasonably determined the facts when implicitly concluding that Petitioner was legally competent to enter a guilty plea, the

Court must next determine if the Superior Court's conclusion that Petitioner's guilty plea was voluntary, knowing, and intelligent was contrary to, or based upon an unreasonable application of, clearly established federal law. In cases where the petitioner's conviction rests on a guilty plea, the "focus of federal habeas inquiry is the nature of [defense counsel's] advice and the voluntariness of the plea, not the existence as such of an antecedent constitutional infirmity." Tollett v. Henderson, 411 U.S. 258, 266 (1973). The voluntariness of a plea "can be determined only by considering all of the relevant circumstances surrounding it." Brady v. United States, 397 U.S. 742, 749 (1970). When assessing the voluntary nature of a plea, the representations made by a defendant under oath during a guilty plea colloquy "constitute a formidable barrier in any subsequent collateral proceedings" and "carry a strong presumption of verity." Blackledge v. Allison, 431 U.S. 63, 74 (1977). As explained by the Third Circuit, "[t]he ritual of the [plea] colloquy is but a means toward determining whether the plea was voluntary and knowing. A transcript showing full compliance with the customary inquiries and admonitions furnishes strong, although not necessarily conclusive, evidence that the accused entered his plea without coercion and with an appreciation of its consequences." United States v. Stewart, 977 F.2d 81, 84 (3d Cir. 1992). Here, although that the Superior Court did not reference federal law when denying Petitioner's arguments that his guilty plea was involuntary because he was not properly informed about the effect of his 2009 Pennsylvania conviction and because his confession was coerced, the Superior Court's decision was not contrary to clearly established federal law because it cited Delaware cases which articulate the standard in Blackledge.11 The Court also concludes that the Superior Court cited State v. Harden, 1998 WL 735879, *5 (Del. Super. Ct. 1998) and State v. Stuart, 2008 WL 4868658, *3 (Del. Super. Ct. 2008). These cases either cite Superior Court did not

unreasonably apply clearly established federal law when denying Claim Two. The transcript of Petitioner's plea colloquy demonstrates that Petitioner was informed that he would be declared a habitual offender and that his 2009 Pennsylvania conviction would serve as one of the three predicate convictions. (D.I. 99-6 at 15). The transcript contains his clear and explicit statements that he had discussed his case with defense counsel and understood that, if sentenced as a habitual offender, he faced a minimum mandatory sentence of 25 years to life for the first-degree robbery charge. He responded affirmatively when asked if he was "freely and voluntarily pleading guilty to these charges," and responded negatively when asked if "anyone threatened or forced [him] to enter in this plea." (D.I. 99-6 at 17). In turn, the Truth-In-Sentencing Guilty Plea Form signed by Petitioner indicates that he knowingly and voluntarily entered into his plea agreement; he had not been promised anything not contained in the plea agreement; he was not forced or threatened to enter the plea agreement; and he knew he faced a possible maximum sentence of life under the criminal penalty statutes, with a minimum mandatory sentence of twenty-five years. (D.I. 99-6 at19).

Petitioner has failed to provide compelling evidence as to why the statements he made during the plea colloquy and on the Truth-in-Sentencing Form should not be presumptively accepted as true. Therefore, based on the aforementioned record, the Court concludes that the Superior Court reasonably applied Blackledge in holding that Petitioner was bound by the representations he made during the plea colloquy and on the Truth-In-Sentencing form. Accordingly, the Court will deny Claim Two for failing to satisfy the standard articulated in § 2254(d).

to Blackledge and articulate the same standard or cite to other Delaware decisions which cites Blackledge.

C. Claim Three: Ineffective Assistance of Counsel

As a general rule, ineffective assistance of counsel claims

are reviewed pursuant to the two-pronged standard established in Strickland v. Washington, 466 U.S. 668 (1984). Under the first Strickland prong, the petitioner must demonstrate that "counsel's representation fell below an objective standard of reasonableness," with reasonableness being judged under professional norms prevailing at the time counsel rendered assistance. Strickland, 466 U.S. at 688. The second Strickland prong requires the petitioner to demonstrate "there is a reasonable probability that, but for counsel's error the result would have been different." Id. at 687–96. A reasonable probability is a "probability sufficient to undermine confidence in the outcome." Id. at 688. In the context of a guilty plea, a petitioner satisfies Strickland's prejudice prong by demonstrating that, but for counsel's error, there is a reasonable probability that he would have insisted on proceeding to trial instead of pleading guilty. See Hill v. Lockhart, 474 U.S. 52, 58 (1985). A petitioner must make concrete allegations of actual prejudice and substantiate them or risk summary dismissal. See Wells v. Petsock, 941 F.2d 253, 259-60 (3d Cir. 1991); Dooley v. Petsock, 816 F.2d 885, 891-92 (3d Cir. 1987). A court can choose to address the prejudice prong before the deficient performance prong, and reject an ineffective assistance of counsel claim solely on the ground that the defendant was not prejudiced. See Strickland, 466 U.S. at 698. Finally, although not insurmountable, the Strickland standard is highly demanding and leads to a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland,466 U.S. at 689.
In United States v. Cronic, 466 U.S. 648, 659 n. 25 (1984), the United States Supreme Court articulated a very limited exception to Strickland's prejudice requirement, holding that there are three situations in which prejudice caused by an attorney's performance will be presumed: where the defendant is completely denied counsel at a critical stage; where "counsel entirely fails to subject the prosecution's

case to meaningful adversarial testing;" or where the circumstances are such that there is an extremely small likelihood that even a competent attorney could provide effective assistance, such as when the opportunity for cross-examination has been eliminated. See Cronic, 466 U.S. at 659 & n.25. With respect to exception two, the Cronic presumption of prejudice only applies when counsel has completely failed to test the prosecution's case throughout the entire trial. See Bell v. Cone, 535 U.S. 685, 697 (2002).
In Claim Three, Petitioner contends that defense counsel provided ineffective assistance by: (1) failing file a motion to suppress based on Petitioner's assertion that his confession was coerced (D.I. 3 at 7); (2) failing to keep him informed of discovery (Id.); (3) not consistently communicating with Petitioner during the time-period leading up to the guilty plea because of the restrictions placed on Petitioner's access to phone and mail (Id.); and (4) letting another public defender represent him during the preliminary hearing (D.I. 16 at 1).
The record reveals that Petitioner did not present sub-argument four concerning a different public defender representing him during his preliminary hearing to the Delaware Supreme Court in any of his state post-conviction proceedings. Although the Court concurs with the State's assertion that this particular sub-argument is therefore procedurally barred from habeas review, the Court will deny the argument as meritless. As Petitioner concedes that he was represented by a substitute assistant public defender during his preliminary hearing, Cronic is inapplicable to Petitioner's instant complaint. His argument also fails to warrant relief under Strickland and Hill, because he does not assert any specific allegations of deficient performance or prejudice with respect to the representation provided by the substitute assistant public defender. As for the remaining sub-arguments in Claim Three, the Delaware Supreme Court rejected the arguments as meritless in Petitioner's first Rule 61 appeal

after reviewing them under a standard identical to the Strickland/Hill standard. In his Reply, Petitioner asserts that the Delaware Supreme Court erred by applying the Strickland/Hill standard to these three sub-arguments of Claim Three because it should have presumed prejudice pursuant to Chronic . (D.I. 102 at 7) He argues that defense "counsel entirely failed to subject the prosecution's case to meaningful adversarial testing" by "fail[ing] to provide and discuss discovery [and] review all the evidence with [Petitioner]." (D.I. 102 at 8). Given Petitioner's presentation, the Court construes the remainder of Claim Three as alleging that Petitioner's case falls within the second exception identified in Cronic. Petitioner, however, cannot demonstrate that he suffered the complete lack of representation required to invoke the Cronic exception. The record reveals that defense counsel filed a motion for reduction of bail, a motion to have Petitioner undergo a psychiatric evaluation, and negotiated a plea offer that provided a substantial benefit to Petitioner. Accordingly, Cronic is inapplicable, and the Court will consider Petitioner's remaining three ineffective assistance of counsel allegations under Strickland and Hill.

Turning to the first prong of the § 2254(d)(1) inquiry, the Court notes that the Delaware Supreme Court did not specifically apply the Strickland/Hill standard when affirming the Superior Court's decision. Nevertheless, the Court concludes that the Delaware Supreme Court's decision was not contrary to Strickland or Hill, because the Delaware cases cited by the Delaware Supreme Court refer to the applicable precedent. See Fahy v. Horn, 516 F.3d 169, 196 (3d Cir. 2008) (Supreme Court of Pennsylvania's decision was not "contrary to" clearly established Federal law because appropriately relied on its own state court cases, which articulated the proper standard derived from Supreme Court precedent); Williams, 529 U.S. at 406 ("[A] run-of-the-mill state-court decision applying the correct legal rule from [Supreme Court] cases to the facts of a

prisoner's case [does] not fit comfortably within § 2254(d)(1)'s 'contrary to' clause"). 12 The Delaware Supreme Court cited to Foote v. State, 38 A.3d 1254 (Table), 2012 WL 562791 (Del. Feb. 21, 2012), which cited to cases that relied on Strickland and Hill. The Delaware Supreme Court also reasonably applied clearly established federal law when denying the first three sub-arguments in Claim Three. Citing to Delaware precedent articulating the same principles set forth in Blackledge, the Delaware Supreme Court determined that Petitioner failed to satisfy the prejudice prong of Strickland and Hill because the record reflected "that the plea provided a substantial benefit to [Petitioner], and that [Petitioner] discussed the plea extensively with his trial counsel and was satisfied with trial counsel's representation." West, 2014 WL 4264922, at *2. As previously discussed with respect to Claim Two, Petitioner has failed to provide any compelling reason as to why the statements he made during the plea colloquy should not be presumptively accepted as true. Consequently, the Court finds that the Delaware Supreme Court reasonably applied Blackledge in holding Petitioner bound by the representations he made during his plea colloquy.

Given this determination, the Court further concludes that the Delaware Supreme Court reasonably applied the Strickland/Hill standard in holding that Petitioner failed to demonstrate that he suffered actual prejudice as a result of defense counsel's actions. Accordingly, the Court will deny Claim Three for failing to satisfy the standard in § 2254(d).

D. Claim Four: Coerced Confession

In Claim Four, Petitioner contends that his confession was coerced because the "arresting officers told me they would kill me if I didn't confess." (D.I. 3 at 12). On post-conviction appeal, the Delaware Supreme Court denied Claim Four as waived by Petitioner's guilty plea. See West, 2014 WL 4264922, at *2. As articulated by the Supreme Court in Tollett v. Henderson:[A] guilty plea represents a break in

the chain of events which has preceded it in the criminal process. When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea. He may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel was [constitutionally ineffective].Tollett v. Henderson, 411 U.S. 258, 267 (1973). A voluntary and knowing guilty plea bars a defendant from raising antecedent non-jurisdictional13 constitutional violations "not logically inconsistent with the valid establishment of factual guilt and which do not stand in the way of conviction if factual guilt is established." Menna v. New York, 423 U.S. 61, 62 n. 2 (1975). Once again, although the Delaware Supreme Court did not reference federal law when denying Claim Four, its decision was not contrary to clearly established federal law because it appropriately relied on Delaware case law articulating the proper federal standard. Additionally, because Petitioner's plea was counseled, knowing, and voluntary, the Delaware Supreme Court's denial of Claim Four did not involve an unreasonable application of Tollett or Menna. Accordingly, the Court will deny Claim Four for failing to satisfy the standard in § 2254(d).

E. Claim Five: Denial of Sixth Amendment Right to Counsel

In his final Claim, Petitioner appears to argue that he was denied his Sixth Amendment right to counsel of choice because, due to the "severe nature of [his] confinement" (including "deprivation of phone and mail privileges as well as visits"), he "was not aware [his] family had offered to cover the fee for private counsel." (D.I. 16; D.I. 99-5 at 1). He also appears to argue that he was deprived of his Sixth Amendment right of access to counsel because the conditions of his confinement prevented him from

discussing his case privately with defense counsel. (D.I.16; D.I. 99-3 at 187). Based on the foregoing, the Court views Claim Six as alleging that the conditions as explained by the Court of Appeals for the Tenth Circuit, the term non-jurisdictional is somewhat confusing; rather, "[t]he most accurate statement of the law would be . . . [that a] guilty plea waives all defenses except those that go to the court's subject-matter jurisdiction and the narrow class of constitutional claims involving the right not to be haled into court." United States v. DeVaughn, 694 F.3d 1141, 1193 (10th Cir. 2012). Case 1:14-cv-01513-MN Document 106 Filed 03/21/22 Page 25 of 28 PageID #: 3082
25of Petitioner's confinement constructively deprived him of his Sixth Amendment right of access to counsel and his right to counsel of choice. Petitioner vaguely asserted these arguments in his first Rule 61 proceeding, but the Delaware state courts did not address them. For the following reasons, the Court concludes that both arguments lack merit.

1. Right to counsel-of-choice

Although the Sixth Amendment guarantees a criminal defendant an absolute right to the assistance of counsel, it does not guarantee a defendant an absolute right to counsel of his choice. See Wheat v. United States, 486 U.S. 153, 159 (1988); United Sates v. Gonzalez-Lopez, 548 U.S. 140, 151-52 (2006). "[T]he essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." Wheat, 486 U.S. at 159. A defendant has "the right to be represented by an otherwise qualified attorney whom that defendant can afford to hire, or who is willing to represent the defendant even though he is without funds." Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624-25 (1989). An erroneous deprivation of the right to choice of counsel constitutes a structural error requiring reversal of a criminal defendant's conviction. See Gonzalez-Lopez, 548

U.S. at 150. Importantly, however, the Sixth Amendment right to counsel of choice does not extend beyond a defendant's right to spend his own nonforfeitable assets. See United States v. Jamieson, 427 F.3d 394, 405 (6th Cir. 2005). Here, Petitioner does not allege that (a) he was denied the right to use his own assets to retain a private attorney; (b) he was unhappy with defense counsel's representation during the pretrial stage and communicated that dissatisfaction to the Superior Court; and/or (c) he requested and was denied substitute counsel. Notably, during the plea colloquy, Petitioner did not express any dissatisfaction with defense counsel's representation when asked if he had any questions or concerns. (D.I. 99-6 at 17). Thus, Petitioner has failed to demonstrate how the conditions of his pre-trial confinement constructively or actually deprived him of his right to counsel of choice.

2. Right of access to counsel

The Sixth Amendment guarantee of counsel includes the "opportunity for . . . counsel to confer, to consult with the accused, and to prepare his defense." Avery v. Alabama, 308 U.S. 444, 446 (1940). Complete denial of the assistance of counsel – whether real or constructive – is per se reversible error. See Perry v. Leeks, 488 U.S. 272, 280 (1989). Nevertheless, not every restriction on counsel's access to the defendant constitutes a deprivation of the right to counsel in violation of the Sixth Amendment. See id. at 280-85 (holding that prohibition of consultation between defendant and defense counsel during brief recess between defendant's testimony on direct and cross-examination did not amount to complete denial of counsel). In this case, even if the conditions of Petitioner's confinement rendered defense counsel's representation of Petitioner more difficult, those difficulties did not amount to a complete denial of access to counsel. Petitioner was represented by defense counsel when he entered his guilty plea. Defense counsel stated, without correction or objection by Petitioner, "I've met with [Petitioner] on a

number of different occasions . . . And he has been able to understand and comprehend everything we've discussed." (D.I. 99-6 at 15). When viewed in context with defense counsel's unopposed statement regarding meeting with Petitioner several times before the plea colloquy, Petitioner's instant bald and unsupported assertion does not explain how the lack of privacy and restrictions on his access to the phone, mail, and passing documents deprived him of his access to counsel.

Accordingly, the Court will deny Claim Five as meritless.

IV. CERTIFICATE OF APPEALABILITY

When a district court issues a final order denying a § 2254 petition, the court must also decide whether to issue a certificate of appealability. See 3d Cir. L.A.R. 22.2 (2011). A certificate of appealability is appropriate when a petitioner makes a "substantial showing of the denial of a constitutional right" by demonstrating "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." 28 U.S.C. § 2253(c)(2); Slack v. McDaniel, 529 U.S. 473, 484 (2000). If a federal court denies a habeas petition on procedural grounds without reaching the underlying constitutional claims, the court is not required to issue a certificate of appealability unless the petitioner demonstrates that jurists of reason would find it debatable: (1) whether the petition states a valid claim of the denial of a constitutional right; and (2) whether the court was correct in its procedural ruling. Id.

The Court has concluded that the instant Petition fails to warrant federal habeas relief and is persuaded that reasonable jurists would not find this conclusion to be debatable. Therefore, the Court will not issue a certificate of appealability.

V. CONCLUSION

For the reasons stated, the instant Petition for habeas

relief pursuant to 28 U.S.C. § 2254 is denied without an evidentiary hearing or the issuance of a certificate of appealability. An appropriate Order shall issue.

ENTERED BY ORDER OF THE COURT
[Seal/Electronic Signature]
Judge M. Noreika
District Court Judge

APPENDIX 4

ORDER - 3-21-22 DENYING MOTION FOR RECONSIDERATION J Noreika

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.
C.A. No. 14-1513 (MN

IN THE UNITED STATES DISTRICT COURT FOR
DISTRICT OF DELAWARE

Case No.
C.A. No. 14-1513
(MN)

CHRISTOPHER H. WEST
Petitioner
v.
ROBERT MAY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,
Respondents

ORDER

At Wilmington, this 21st day of March 2022,
For the reasons set forth in the Memorandum Opinion,
IT IS HEREBY ORDERED that

1. Petitioner Christopher West's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C § 2254 is **DISMISSED ,** and the relief requested therein is **DENIED** D.I. 3; D.I. 16; D.I. 91; D.I. 97; D.I. 102).

2. The Court declines to issue a certificate of appealability due to Petitioners failure to satisfy the standards set forth in 28 U.S.C. § 2253(c)(2).

ENTERED BY ORDER OF THE COURT
[Seal/Electronic Signature]
Judge M. Noreika
District Court Judge

APPPENDIX 5

ORDER 4-12-21 SUPPLEMENT & CLARIFY CLAIMS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.
C.A. No. 14-1513 (MN)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Case No.
C.A. No. 14-1513 (MN)

CHRISTOPHER H. WEST,
Petitioner,
v.
ROBERT MAY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,
Respondents.

ORDER

At Wilmington this 12th day of April 2021, IT IS HEREBY ORDERED that:

1. Petitioner's "Motion for Discovery and Reassertion" (D.I. 89) is DENIED-IN -PART and GRANTED-IN-PART, for the reasons set forth below.

2. To the extent Petitioner's "re-assertion" of his "Amended Motion for §2254 Relief" (D.I. 89-1) is a request to amend his Petition with the claims asserted therein, the Court notes that, on September 16, 2016, Judge Sleet denied Petitioner's motion to amend his habeas with any new arguments set forth in the aforementioned "Amended Motion for § 2254 Relief." (See D.I. 41;D.I. 50). Therefore, the request to add the same "new claims" in D.I. 89-1 that were previously rejected is DENIED. (Id.).

3. To the extent Petitioner's "re-assertion" of his "Motion for Amended Petition Providing Supplemental and Clarifying Information" (D.I. 89-3) is a request to supplement and clarify the claims asserted by Petitioner prior to the State filing its Answer (D.I. 21), the request is GRANTED and Court will consider such clarifying information when it considers Petitioner's claims. To the extent, however, the aforementioned "Motion for Amended

Petition Providing Case 14-cv-01513-MN Document 90 Filed 04-12-21 Page 1 of 2 PageID #:1911 2 Supplemental and Clarifying Information" (D.I 89-3) seeks to add new grounds for relief not previously asserted before the State filed its Answer, the request is DENIED.

4. Based on the foregoing, and in an effort to promote clarity and efficiency, on or before April 30, 2021, Petitioner's counsel shall file a Memorandum in Support of Habeas Petition indicating which grounds for relief Petitioner still wishes to pursue in this proceeding. The Memorandum shall include citations to the original pro se filings supporting such claims.

5. Petitioner's re-asserted motions to expand the record with the exhibits attached to those motions (D.I. 89-2 at 4-5 (Exhibit A); D.I. 89-4 at 7-17 (Exhibits A, B, C, D, E)) are GRANTED. The Court will consider the exhibits to the extent they relate to claims properly asserted in the Memorandum in Support referenced in Paragraph 3.

6. The State shall refrain from responding until so ordered by the Court.

ENTERED BY ORDER OF THE COURT
[Seal/Electronic Signature]
Judge M. Noreika
District Court Judge

APPENDIX 6

ORDER -- 3-9-21 - MOTION FOR RECONSIDERATION –RULE 60(b)(6) GRANTED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.
C.A. No. 14-1513 (MN)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Case No.
C.A. No. 14-1513 (MN)

CHRISTOPHER H. WEST,
Petitioner,
v.
ROBERT MAY, Warden, and ATTORNEY GENERAL OF THE STATE OF DELAWARE,
Respondent

ORDER

At Wilmington this 9th day of March 2021, IT IS HEREBY ORDERED that:

1. Given the State's waiver of the statute of limitations defense (D.I. 86 at 4), Petitioner's Rule 60(b)(6) motion for reconsideration (D.I. 69; D.I. 70) is GRANTED.

2. The October 2017 Memorandum Opinion and Order (D.I. 67; D.I. 68) dismissing Petitioner's §2254 petition as time-barred is VACATED.

3. The Clerk of the Court shall REOPEN this case.

4. Petitioner's request to assess whether to re-assert and/or refile the pro se motions that were denied in conjunction with the October 2017 dismissal of Petitioner's §2254 petition (D.I. 87 at 1) is GRANTED. Any such motions shall be filed on or before April 9, 2021.

5. The Clerk is directed to amend the caption of the case on the docket by substituting Warden Robert May for former Warden Dana Metzger, an original party to the case. See

Fed. R. Civ. P. 25(d).

ENTERED BY ORDER OF THE COURT
[Seal/Electronic Signature]
Judge M. Noreika
District Court Judge

APPENDIX 7

ORDER 1-18-21 - Judgment entered on September 26, 2019, is VACATED. The case is REMANDED

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case Number
No. 19-3421

CHRISTOPHER H. WEST,
Appellant v. WARDEN JAMES T. VAUGHN CORRECTIONAL CENTER;
ATTORNEY GENERAL OF THE STATE OF DELAWARE

On Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1:14-cv-1513)
District Judge: Honorable Maryellen Noreika

Argued on November 12, 2020
Before: HARDIMAN, SCIRICA, and RENDELL,
Circuit Judges.

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of Delaware and was argued on November 12, 2020. On consideration whereof, it is now hereby ORDERED and ADJUDGED that the Judgment of the District Court entered on September 26, 2019, is VACATED. The case is REMANDED to the District Court for further proceedings consistent with the Opinion of this Court.

ATTEST:
s/Patricia S. Dodszuweit Clerk
DATED: December 17, 2020

NOT PRECEDENTIAL
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

_____

Case Number
No. 19-3421

_____

CHRISTOPHER H. WEST,
Appellant v. WARDEN JAMES T. VAUGHN
CORRECTIONAL CENTER;
ATTORNEY GENERAL OF THE STATE OF DELAWARE

_____

On Appeal from the United States District Court
for the District of Delaware
(D.C. No. 1:14-cv-1513)
District Judge: Honorable Maryellen Noreika

_____

Argued on November 12, 2020
Before: HARDIMAN, SCIRICA, and RENDELL,
Circuit Judges.
(Opinion Filed: December 17, 2020)
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Case: 19-3421 Document: 55-2 Page: 1 Date Filed:
01/08/2021 2

Carvel Office Building Wilmington, DE 19801
Counsel for Appellees

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

HARDIMAN, Circuit Judge.

Christopher_West_appeals the District Court's order denying reconsideration of his untimely habeas corpus petition. We will vacate and remand.

I

West pleaded guilty to first and second-degree robbery in Delaware state court. *West v. State*, 2014 WL 4264922, at *1 (Del. Aug. 28, 2014). In 2012, he was sentenced as a habitual offender to twenty-eight years in prison. *Id.*

West filed a petition for writ of habeas corpus in the District Court under 28 U.S.C. § 2254 in December 2014, more than a month after the one-year deadline had passed. West claims he is entitled to equitable tolling because he tried to file a habeas petition"[o]n or about June 18, 2014" but prison officials did not mail it for him. District Ct. Docket No. 24-2 at 2. West alleged that he gave the petition to a corrections official named John Pfleegor, and that someone other than Pfleegor confiscated and destroyed the document without West's knowledge. West did not check his petition's status until after the November 3, 2014

deadline because he was held in an isolated cell under "psychological close observation" from June 9 to November 10. Although West usually was deprived of writing tools because he had swallowed sharp objects, West alleged that the prison made a special arrangement for him to draft the June 2014 petition in a closely supervised setting. Consideration of West's Petition was filed on June 2014. For that reason, we will vacate and remand so the District Court can determine whether West attempted to file a (timely) habeas petition in June 2014 such that equitable tolling might be appropriate. The District Court erred by assuming that West learned of the June petition's fate before the habeas deadline. If West delivered the petition to prison personnel for filing, they could have failed to mail the petition and destroyed it without his knowledge. And because West was held in isolation, he may have been prevented from learning that his petition was not filed until he was released from isolation soon after the filing deadline had passed. The Government argues that West forfeited his argument about the June 2014 petition because his counsel did not press it in his motion for reconsideration. This contention might be persuasive but for the fact that the District Court relied heavily on West's statements about the June 2014 petition to deny his motion. Because the District Court considered the allegation, it is subject to our review on appeal. See United States v. Washington, 869 F.3d 193, 208 n.53 (3d Cir. 2017). Citing Judge Sleet's opinion the Government_ contends that West has no evidence to support his claim that he attempted to file a petition on time. But West made the claim in multiple affidavits and alleged that there is a prison record of his attempt to pay the filing fee. He tried to obtain the fee record and depose John Pfleegor, but Judge Sleet denied his discovery motions. West's allegation about the June 2014 petition is specific internally consistent, and worthy of renewed consideration at the Rule 60(b)(6) stage.

* * * The District Court clearly erred when it denied West's Rule (60)(b)(6) Motion on the invalid premise that he should have know before the habeas deadline that no petition had been filed.

Case: 19-3421
Date Filed: 01/08/2021
PATRICIA S. DODSZUWEIT
CLERK

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov
January 8, 2021

APPENDIX 8

ORDER - 10-23-17 - DENYING CERTIFICATE OF APPEALABILITY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE.
C.A. No. 14-1513

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

CHRISTOPHER H. WEST,
Petitioner
v.
DANA METZGER, Warden and
ATTORNEY GENERAL of THE STATE OF DELAWARE
Respondents
Civil Case No. 14-1513 - GMS

ORDER

For the reasons set forth in the Memorandum Opinion set forth this date. It is hereby ORDERED that:

1. Petitioner, Christopher H. West's §2254 petition is **DISMISSED,** and the

2. The following motions are **DIMISSED** as moot

a. Motion for discovery (D.I. 54)
b. Motion to amend petition (D.I.55)
c. Motion to expand the case with supporting memorandum (D.I. 56)
d. Motion fir discovery and to expand the record (D.I. 57)
e. Motion to supplement and clarify the petition (D.I. 58)
f. Motion for injunction for speedier release (D.I.59)
g. Motion to expand the record (D.I.60)
h. Second Motion to expand the record (D.I. 61)
i. Third motion to expand the record (D.I. 63)

3. The court declines to issue a certificate of appealability because West failed to satisfy the standards set forth in 28.U.S.C. §2253 (c)(2)

DATED October 23, 2017

ENTERED BY ORDER OF THE COURT
[Seal/Electronic Signature]
Judge Gregory M. Sleet
District Court Judge

APPENDIX 9

BRADLEY MANNING LETTER

DATED AUGUST 26, 2015

SUPERIOR COURT OF THE
STATE OF DELAWARE

BRADLEY V. MANNING
Commissioner

New Castle County
Court House
500 North King Street
Suite 10400
Wilmington, Delaware
19801-3733

August 26, 2015

Mr. Christopher West
SBI no. 415857
James T. Vaughn Correctional Center
1181Paddock Road
Smyrna, DE #19977

Re: State v. Christopher West
I.D. No. 1107001026

Dear Mr. West,

I write in response to your letter dated August 6, 2015. As you noted, I was your attorney in 2011 and 2012 and represented you on case #1107001026 (and others) in the Superior Court.

During the time I represented you I do recall that you were often in physical restraints. As best I can recall, usually your hands were covered or contained in such a way as to prevent you from grabbing or holding objects. In your letter you called them "restraint mittens" which sounds like an accurate description to me. Additionally, at the time of your guilty plea colloquy I do recall you wearing some type of restraint similar to a "straightjacket" and some type of mask covering your face and mouth. Your "restraints certainly would have impeded

our ability to pass and share documents when speaking ". Although I do not recall specifically if it did. All Discovery was mailed to you at the prison. If you were allowed to keep it with you in your cell, or not, I do not know.

Sincerely,

// Bradley V. Manning / /
Commissioner

Original to Prothonotary