23-5082 ORIGINAL

No. ______________

FILED
JUL 03 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

William Richter — PETITIONER, PRO SE,
(Your Name)

vs.

People Of The State Of Illinois — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court for Northern District Of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Richter, Reg No S11355
(Your Name)

Stateville Correctional Center P.O. Box 112, Route 53
(Address)

Joliet Illinois 60434
(City, State, Zip Code)

N/A
(Phone Number)

Question(s) Presented

I. Whether The Seventh Circuit Denial Of Certificate Of Appealability And Subsequent Rehearing To Remedy The Erroneous Denial Of Habeas Relief And Post-Judgment Motions By The District Court Was Denial Of Adequate Access To The Court And Procedural Due Process, Being Such A Departure From The Accepted And Usual Course Of Judicial Habeas Proceedings As To Call For An Exercise Of This Court's Supervisory Powers 25

II. Whether The District Court Abused Its Discretion In Denying Petitioner Adequate Access To Court, Procedural Due Process And Equal Protection Of Law Without Ruling On Pending Motion For Extension Of Time And Motion For Appointment Of Counsel Prior To Suddenly Denying Habeas Relief And Compounding The Manifest Error By Forcing Petitioner To Proceed Pro Se Despite Petitioner's Clearly Established Severe Mental And Medical Disabilities And Lack Of Education And Subsequently Refusing To Allow Pro Se Filings, Being Such A Departure From Accepted And Usual Course Of Judicial Habeas Proceedings As To Call For Exercise Of This Court's Supervisory Powers 30

III. Whether The Substantial Admission At Trial Of An Overwhelming Number Of Hearsay Statements The Victim Allegedly Made Pursuant To The Unconstitutional Section Of 115.10.2a Of Illinois Code Of Criminal Procedure (725 ILCS 5/115-10.2a (West 2005)) Into Evidence In Violation Of The Confrontation Clause, Making A Categorical

---

1/ "PAL stands for 'prisoner at law,' that is, a type of lay pro se assistant who aids prisoners in conducting legal research and preparing post-conviction motions." Flowers v. Gaetz, (No. 09-C-1303)(N.D.Ill. 2-20-2010), Memorandum Opinion And Order, issued by the Honorable United States District Court Judge, Rebecca R. Pallmeyer, Slip Opinion, f/n6, at pages 11-12.

Mr Richter has been provided legal assistance of the PAL to prepare this instant filing, based on over three decades experience, which includes litigation in state and Federal Courts, in civil and criminal cases and previously before this Honorable court, due to Mr Richter being unable to represent himself pro se and unable to hire an attorney.

Rule Excluding Statements Involving The Government From The Strictures of The Sixth Amendment Confrontation Clause Being An Important Federal Question, Not Settled By This Court But Should Be As Being Important To The Public of This Issue 34

List of Parties

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

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

RELATED CASES

(1) People of The State of Illinois vs. William Richter
Illinois Appellate Court, Fourth Judicial District (Direct Appeal)
2012 ILApp (4th) 101025 (Issued October 22, 2012

(2) People of The State of Illinois vs William Richter
Illinois Appellate Court, Fourth Judicial District (P.C. Appeal)
No 4-14-0155 (unpublished order pursuant to Illinois Supreme Court Rule 23 (Issued December 7, 2015)

(3). William J. Richter (S11355) vs. Rudy Pfister
United States District Court for the Northern District of Illinois, Eastern Division Case No 16-cv-07660)
Memorandum Opinion And Order (Issued 3/31/2021)
(Denial of Habeas Corpus Relief) [Dist Doc 53]

Related Cases (Continued)

(4) William J. Richter (S11355) vs. Rudy Pfister
United States District Court for the Northern District of Illinois, Eastern Division (Case No 16-cv-07660) Order (Issued 3/31/2022) (Denial of Petitioner's Post-Judgment Motions (ie Rule 59(e) and Rule 60(b)) [Dist Doc 68].

(5) William Richter v. Charles Truitt
United States Court of Appeals for the Seventh Circuit (Case No 22-1718) Order (Issued 2/28/2023 (Denial of Certificate of Appealability)

(6) William Richter v. Charles Truitt
United States Court of Appeals for the Seventh Circuit (Case No 22-1718) Order (Issued 4/3/2023) (Denial of Petition For Rehearing and Rehearing en banc)

TABLE OF CONTENTS

INDEX TO APPENDICES

(Continued)

Index To Appendix (Continued)

Table Of Authorities Cited

(Continued)

Statutes And Rules

Page Number

Other N/A

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "E" to the petition and issued on 2/28/2023 and

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished. (Denial of Certificate of Appealability) [A85]

The opinion of the United States district court appears at Appendix "C" to the petition and issued on 3/31/2021 and

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished. (Denial of Habeas Corpus Relief [A63-A78]

[ ] For cases from Related cases:

The opinion of the United State Court of Appeals (7th Cir.) appears at Appendix "F" to the petition and issued on 4/3/2023 and

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished. (Denial of Rehearing/En banc Rehearing) [A86]

The opinion of the United States District Court Northern District appears at Appendix "D" to the petition and issued 3/31/2023 and

[ ] reported at ______; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished. (Denial of Post Judgment Motions) [A79-A84]

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 28, 2023 (See Appendix "E") [A85]

[ ] No petition for rehearing was timely filed in my case.

[✓] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 3, 2023, and a copy of the order denying rehearing appears at Appendix "F". [A86

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

[✓] Petition is due on July 2, 2023 and is being timely filed 2/

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

[✓] For cases from Related Cases:

The date on which the U.S. District Court decided my case was March 31, 2021. A copy of that decision appears at Appendix "C" [A63-A78]

[✓] A timely petition for rehearing was thereafter denied on the following date: March 31, 2022, and a copy of the order denying rehearing appears at Appendix "D".

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

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

2/ Based on information and belief as provided by the PAC, Mr Richter, in good faith submits this instant Petition is timely filed on July 5, 2023, pursuant to this court's Rule 13.2. (90 days from denial of Rehearing); Rule 29.2 (Inmate deposited in Institutional mail system on or before last day of filing due date) and Rule 30 (July 2, 2023 was a Sunday and July 3 and 4, 2023 being a holiday with no law library access to make necessary copies and/or mail service to mail and first available date being July 5, 2023 pursuant to well established Mail Box Rule (see Houston v Lack (citation omitted))

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

First Amendment: "Congress shall make no law... Abridging... the right of the people... to petition the Government for a redress of grievances." [ie Adequate access to court].

Fifth Amendment: "No person shall be held to answer for a capital, or otherwise infamous crime:... without due process of law."

Sixth Amendment: "In all criminal prosecutions, the accused shall enjoy the right to a speedy trial and public trial, by an impartial jury of the state and district wherein the crime shall have been committed... and to be informed of the nature and cause of the accusation: to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor and to have the Assistance of counsel for his defense."

Eighth Amendment: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Fourth Amendment: "... No State shall... deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction the equal protection of law."

28 USC Sec 2254 (d)(1) (2) (See Appendix "T" (A))

725 ILCS 5/111-2 (a) (West 2008) (See Appendix "T" (A))

725 ILCS 5/112A-3 (3) (West 2008) (See Appendix "T" (A))

725 ILCS 5/115.10.2a (West 2008) (See Appendix "T" (A))

750 ILCS 60/103 (6) (West 2008) (See Appendix "T" (A))

Illinois Rules of Evidence 803 (3) (See Appendix "T" (A))

[Page #4 omitted]

STATEMENT OF THE CASE

Background

(43). In October 2008, the defendant was charged with murdering Dawn Marquis by shooting her in the head (Vol. II, C. 10-11). 720 ILCS 5/9-1(a)(1), (a)(2) (2008); *People v. Richter*, 2012 IL App (4th) 101025, ¶ 5. Marquis had lived with the defendant for 17 years and was the mother of the defendant's two children. *Richter*, 2012 IL App (4th) 101025, ¶¶ 5, 11.

(44). The State's evidence at the ensuing jury trial revealed that Marquis had decided to leave the defendant because he was abusive, but had been scared to do so because the defendant had threatened to kill her if she left him. *Richter*, 2012 IL App (4th) 101025, ¶¶ 11-40, 51. She told a number of persons about the defendant's threats, and these statements were admitted into evidence under section 115-10.2a of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.2a (2008)). *Richter*, 2012 IL App (4th) 101025, ¶¶ 1, 11-40, 48, 51.

(45). Joe Hoffman was the person who shot Marquis. *Richter*, 2012 IL App (4th) 101025, ¶ 70. Hoffman was an alcoholic who worked for the defendant. *Richter*, 2012 IL App (4th) 101025, ¶ 60. According to Hoffman, after the relationship between the defendant and Marquis started to deteriorate, the defendant asked him to kill Marquis "almost everyday" because he was afraid she was going to take the children from him. *Richter*, 2012 IL App (4th) 101025, ¶¶ 68, 72. The record also indicates the defendant feared he would be disrespected if word got out that Marquis was seeing another man (Vol. XXIII, R. 161-62; Supp. Vol. III, transcript; Envelop Supp. to Record, People's Exhibit 45 CD).

---

7 PAR(S) #43 - #67 herein are from Brief And Argument For Petitioner-Appellant (App No 4-14-0155) PAR(S) #68 - #96, which are additional relevant facts as contained in the Record as Reviewed by the PAL. (PAR(S) #1 - #42 being omitted)

(46). There was testimony that Hoffman complied with whatever the defendant directed him to do, and that he was afraid of the bigger defendant who had physically assaulted him in the past. *Richter*, 2012 IL App (4th) 101025, ¶¶ 70,74. The jury heard that "Joe did whatever Bill told him to do" (Vol. XXII, R. 115), that Hoffman usually did what the defendant told him to do (Vol. XXII, R. 128), that the defendant "pushed [Hoffman] around" (Vol. XXII, R. 130), that "if Billy wanted something devious done he would tell Joe [and] Joe would do it," and that "Joe was a guy that did everything Bill said to do basically" (Vol. XXII, R. 140-41). *Richter*, 2012 IL App (4th) 101025, ¶ 74.

(47). Hoffman shot Marquis in the back of the head while she was in her car reaching for a cigarette. *Richter*, 2012 IL App (4th) 101025, ¶ 70. Police recovered a bullet casing from inside Marquis' vehicle which was identified by an expert at the trial as being from a .32-caliber gun (Vol. XX, R. 90-91). *Richter*, 2012 IL App (4th) 101025, ¶ 74. There was testimony that the defendant owned at least two handguns, including one that was a .32 caliber gun, and also that he had tried to buy a gun that could not be traced – a "river gun." *Richter*, 2012 IL App (4th) 101025, ¶¶ 61, 68, 73 (Vol. XXII, R. 148-49). Hoffman testified that the defendant gave him the gun he used to shoot Marquis. *Richter*, 2012 IL App (4th) 101025, ¶ 69. Hoffman fled to Florida after the murder. *Richter*, 2012 IL App (4th) 101025, ¶ 70.

(48). The defendant's evidence consisted of Hoffman's initial admissions that he had murdered Marquis on his own. *Richter*, 2012 IL App (4th) 101025, ¶ 70. The defendant's evidence also indicated that Hoffman had told two jail detainees that the defendant had not been involved in the murder, but the police were trying to coerce him into implicating the defendant in the murder. *Richter*, 2012 IL App (4th) 101025, ¶¶ 77-78. In addition, a defense witness testified that he had seen the defendant and Marquis together about one or two weeks before the murder and they had appeared to be in a good mood. *Richter*, 2012 IL App (4th) 101025, ¶ 76.

(49). Jimmy Mardis, who had testified for the State that Hoffman was an alcoholic and did whatever the defendant told him to do, including devious things, and who had also testified that the defendant had tried to purchase an untraceable gun, acknowledged that he and the defendant had a "falling out" in August of 2008 (Vol. XXII, R. 154-57). *Richter*, 2012 IL App (4th) 101025, ¶¶ 72-73. Mardis further acknowledged that he had failed to initially tell the police about the defendant's desire to buy the untraceable gun, and had also failed to tell the police that he had heard the defendant talk about killing Marquis, explaining that he had withheld the information because the defendant had threatened his family. *Richter*, 2012 IL App (4th) 101025, ¶ 73.

(50). The defendant's evidence further revealed that, although two witnesses testified that Marquis told them the defendant had obtained passports (seemingly so he could flee the country after the murder), no passports had been issued to the defendant or the children. *Richter*, 2012 IL App (4th) 101025, ¶ 80.

(51). In summation, defense counsel focused on Hoffman's admissions that he had acted on his own in killing Marquis in order to support the argument that the defendant had nothing to do with the murder (Vol. XXV, R. 62-117).

(52). The jury found the defendant guilty of one count of intentional murder while armed with a firearm (Vol. IV, C. 596). *Richter*, 2012 IL App (4th) 101025, ¶¶

1, 82. The court sentenced him to 75 years in prison. *Richter*, 2012 IL App (4th) 101025, ¶¶ 1, 82.

Direct Review

(53) On appeal, the defendant argued that the out-of-court statements Marquis made to other persons about the defendant's threats to kill her were not covered by section 115-10.2a of the Code, and that the admission of the hearsay statements had therefore violated his right to confrontation. *Richter*, 2012 IL App (4th) 101025, ¶ 85. This Court disagreed and affirmed his conviction. *Richter*, 2012 IL App (4th) 101025, ¶¶ 167-68. The defendant's Petition for Leave to Appeal was denied by the Supreme Court on January 30, 2013. *People v. Richter*, 982 N.E.2d 773 (Table).

Defendant's Postconviction Petition

(54). On November 7, 2013, the defendant filed a petition seeking postconviction relief (Vol. I, C. 627-735). In his petition, the defendant claimed that his trial counsel was ineffective in: (i) failing to discredit Marquis by pointing out that she had lied when she told other people that the defendant had obtained a passport; (ii) failing to discredit Marquis by pointing out that she had lied about staying away from the defendant for weeks due to her fear of him; and (iii) failing to discredit Marquis by pointing out that she had a drug problem (Vol. I, C. 641-42, 646, Exhs. K and L).

(55). The defendant added that trial counsel had been ineffective in failing to show that Joseph Hoffman killed Marquis on his own which counsel could have done through introduction of: (i) admissions made by Hoffman to that effect (Vol. I, C. 647-48, Exhs. E and O); (ii) testimony from jail detainees relating that Hoffman had told them he had killed Marquis on his own but was being tortured in order to implicate the defendant (Vol. I, C. 644, Exh. G); (iii) testimony from Pastor Rick Berg that it was obvious Hoffman disliked Marquis (Vol. I, C. 645, Exh. I); and (iv) testimony from other witnesses that Hoffman had problems controlling his temper and was a liar (Vol. I, C. 703, 705).

(56). The defendant also claimed that trial counsel was ineffective in failing to show defendant's lack of motive, his good character, and his consciousness of innocence through introduction of: (i) a Petition to Determine Parental Issues that would have negated the State's theory that his motive for murdering Marquis was his desire to maintain custody of their children since the petition would have allowed him to share custody of the children with Marquis (Vol. I, C. 643-44, Exh. F); (ii) police audio tapes of the defendant crying and expressing grief at Marquis' grave site; (iii) a promissory note showing he paid for her funeral and burial (Vol. I, C. 644-45 , Exh. H); (iv) personal opinion testimony from various witnesses that the defendant was not a violent person; and (v) testimony from these witnesses that they had never seen him with a firearm (Vol. I, C. 645-46, Exh. J).

(57). The defendant added that trial counsel was ineffective in how he handled the trial because he: (i) failed to investigate information provided to him during the trial that a juror was watching media coverage of the case and discussing the case with her hair stylist (Vol. I, C. 642); (ii) failed to file a motion *in limine* to exclude evidence of the bullet casing found in the victim's vehicle because the caliber of the casing had been initially misidentified by the police (Vol. I, C. 647, Exhs. M and N); and (iii) failed to argue that the defendant had not been correctly charged because he was not charged by accountability and because he was not provided with notice of the firearm penalty enhancement (Vol. I, C. 648, Exh. P).

(58). The defendant further claimed that the State had committed prosecutorial misconduct by: (i) failing to timely reveal eavesdropping recordings of the defendant (Vol. I, C. 651); (ii) failing to disclose that Joseph Hoffman had previously been convicted for making a false affidavit (Vol. I, C. 652); (iii) directing deputies at the jail to remove the State's discovery from the defendant's cell (Vol. I, C. 653); and (iv) directing a detainee at the jail to steal legal material from the defendant (Vol. I, C. 653).

(59). Finally, the defendant claimed that appellate counsel was ineffective in: (i) failing to argue that the rules of evidence had abrogated section 115-10.2a (Vol. I, C. 635-41); and (ii) failing to argue that the defendant's 75-year sentence was unreasonably disparate to Joseph Hoffman's (guilty plea) 30-year sentence (Vol. I, C. 654-55).

Summary Dismissal of the Petition

(60). On January 31, 2014, the trial court summarily dismissed the defendant's petition (Vol. I, C. 736-40).

(61). Regarding the defendant's claim that the rules of evidence had abrogated section 115-10.2a, the court found that the rules of evidence did not apply to the defendant because he was tried in October of 2010 and the rules did not become effective until January 1, 2011 (Vol. I, C. 738 at ¶ 5(a)).

(62). Regarding the defendant's claims that trial counsel was ineffective in failing to investigate the matters mentioned by the defendant, the trial court found that the outcome of the trial would not have changed had these matters been investigated and presented at the trial (Vol. I, C. 738-39 at ¶ 5(b)).

(63). Regarding the claim that the prosecution committed misconduct when it failed to timely reveal eavesdropping recordings of the defendant, the court found this was not misconduct because the disclosure was irrelevant (the recording was not used in the trial). As to the claim that the prosecution had committed misconduct in ordering that discovery material be removed from the defendant's cell, the court found that this was not misconduct because it was consistent with the supreme court rule regarding discovery (Vol. I, C. 739 at ¶ 5(c)).

(64). Regarding the claim that the defendant's sentence (75 years) was disproportionate to Joseph Hoffman' sentence (30 years), the court found that the difference was justified by the differing levels of culpability (Vol. I, C. 739 at ¶ 5(d)).

(65). Regarding the defendant's other claims of ineffective assistance by trial and appellate counsel, the court found that the outcome of the trial would not have changed had those claims been raised and trial and appellate counsel were therefore not ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984) (Vol. I, C. 739 at ¶ 5(e)).

(66). The court found the petition to be frivolous and patently without merit and dismissed the petition (Vol. I, C. 740 at ¶ 6).

(67). The defendant appealed on February 27, 2014 (Vol. I, C. 745-46).

(68). That on July 16, 2015, appointed Appellant Counsel Filed Brief And Argument For Petitioner-Appellant. said Brief being 18 pages in Length and raised a single procedural Argument despite Appellant having raised a plethora of violation of his constitutional Rights in his pro se Petition For Post-Conviction Relief (see Para(s) #54-#59 supra) and being addressed by the Circuit Court (See Pars) #60-#66 supra), thus being preserved and ripe for appellate review, resulting in unreasonableness of appellate counsel.

(69). That Appellant diligently attempted to remedy the unreasonableness of his appellate counsel's raising a single procedural argument by filing, with assistance of Law Clerk, "Appellant's Pro Se Motion For Leave To File Instanter "Supplemental Brief" (which was a combined pleading of Motion For Leave To File and his Supplemental Brief" (See [1] Petition Appendix 'A' at 103-109), which this Court may take judicial notice. (See Guaranty Bank v. Chubb Corp (7th Cir 2008), 538 F3d 587, 591 (shall take judicial notice of judicial proceedings))

(70) That despite the six (6) page Supplement Brief combined with the 18 page original Brief being less than half the 50 pages allowed by Supreme Court Rules and more importantly, Appellant specifically argued prejudice being suffered due to the fact meritorious issues would be deemed waived for Review before the Illinois Supreme Court as well as waived for Federal Review in a Petition For A Writ of Habeas Corpus" (See Id Appendix "A" Par #2 at 103-109), the Appellate Court summarily denied leave to file on December 4, 2015, approximately five (5) weeks after

Appellant's October 28, 2015 filing (See [1] Petition Appendix "B" at 110)

(71) That three (3) days after denial of leave to file as set forth in Par #70 supra the Appellate Court issued a Summary Order on December 7, 2015, affirming the Circuit Court's judgment. (See People v Richter No 4-14-0155 (4th Dist 12-7-2015) (unpublished Order pursuant to Illinois Supreme Court Rule 23(c)(2)) (Cf [1] Petition - Appendix "C" at 111-114)

(72) That Appellant filed a Petition For Leave To Appeal ("PLA") before the Illinois Supreme Court raising the Appellate Court erred in denying Appellant counsel's procedural argument and in denying leave to file "Supplemental Brief", and said Court issued an Order on March 30, 2016 denying the PLA (See People v William Richter (Ill. No 120299), Cf [1] Petition Appendix "H" at 118)

(73) That on June 18, 2016, Appellant filed a timely [1] Petition For Habeas Corpus Relief pursuant to 28 USC Sec 2254, raising eleven (11) claims with fourteen (14) sub-claims (as related to trial counsel's ineffectiveness) for a total of twenty-five constitutional claims (See [Doc 14] Answer at 10-11 (listing of claims by Respondent)), whereas said Answer was filed on November 7, 2016 (Id [14])

(74). That prior to and subsequently filing *pro se* CIJ Petition, Appellant had been communicating with Brosky as early as October 5, 2011 attempting to obtain Brosky's representation on his appeal from conviction and sentence imposed in December 2010 (*See* Exhibit #6 [A23]) (Also *see* Para(s) #75 - #87, *infra*)

(75) That after Appellant lost his direct appeal, Brosky wrote Appellant on April 24, 2013 and stated *inter alia*, "To take a case such as yours to the Federal courts would costs in excess of $50,000.00" (*See* Exhibit #7 [A24-A25] at A25)

(76) That Brosky wrote Appellate additional letters dated December 31, 2014, October 25, 2015 and December 22, 2015 (*See* Exhibit #8 [A26-A28]

(77) That on February 4, 2017, Brosky wrote Appellant discussing the fact he had not received any money from Appellant's civil attorney, Robert Caplin ("Mr Caplin") and stated *inter alia* "You can keep writing me if you want, but until I get the money there is nothing that I can tell you or do for you. You really need to concentrate on writing and calling Mr Caplin." (*See* Exhibit #9 [A29])

(78) That on May 25, 2017, Brosky wrote Appellant, acknowledging receipt of the $20,000.00 retainer for representing Appellant in the case *sub*

Judice (*See* Exhibit #10 [A30]) and Brosky entered his appearance on May 25, 2017 [Doc 21]. It will be noted having received the long sought-after money, Brosky attitude changed, as indicated by his statement "Therefore, unless I ask you for something, please refrain from sending me documents, unless you think it is essential, and then only send me the minimum or a short letter describing the document. I want to concentrate on what is important and effective and not get sidetracked." (*Id* Exhibit #10 [A30]), which clearly exhibits what Appellant wants is no longer important.

(79) That on June 17, 2017, Brosky wrote Appellant, providing a copy of the status hearing of June 13, 2017[8] and allegedly what discussion was had with the Court and ensured he would be up-to-speed on the case by the next scheduled status hearing on July 18, 2017 and thereafter would be out of the country from July 19th to August 14th. (*See* Exhibit #11 [A31])

(80) That Appellant was never told by Brosky at any time that Brosky was representing the owners of S+M Auto Brokers as of May 4, 2016 (ie Saed and Mohammed Ihmond ("Ihmond")), who is

8/ Previously the PAL advised Appellant of necessity of obtaining Report of Proceedings (*See* [Doc 79]/[Cir Doc 13] granting production of November 13, 2019 and January 10, 2020) During the preparing of this instant motion for C.O.A., PAL now advise Appellant the need for all status hearings and will file thereof.

illegally is in possession of Appellant's son Dodge, valued at up to $100,000. , which his son had offered to Brosky as payment for representation and Brosky had Ihmond tow and store said vehicle 9 which clearly created a conflict of interest. (Cf Exhibit #12 at [A32]) (ARDC Complaint In The Matter of Joel Alan Brosky No 6182556; Commission No 2018 PR00064 Filed August 21 2018 at Par #3 ("On or about April 23 2016 [Ihmond] agreed that [Brosky] would represent S+M Auto Broker and the Ihmonds in relation to case no 16-cv-4182 for an agreed upon fee. On May 4, 2016 [Brosky] filed his appearance in case no 16-cv-4182 on behalf of S+M Auto Broker and Ihmond's")

(81) That Brosky and Mr Caplan exchanged E-mail / Text messages, inter alia as follows

(A) From Caplan to Brosky dated 5/30/2017 at 10:04 am:
"As I recall, I am waiting for a copy of your Email to S+M about the release of Richter's [Son] Dodge to me. Meanwhile, I have to reset my appointment with Public Storage and they will want to know a new move in date.

9/ Appellant's son Dalton Marquis and son of the victim in the case sub judice ("Dalton") willing put up his 1970 Dodge Challenger to pay Brosky's legal fees. Brosky had S+M Auto Broker tow Dalton's Dodge to the premises of S+M Auto Select Services at or about 5729 S Western Avenue, Chicago Illinois on or about October 14, 2016, seven (7) month prior to Brosky entering his appearance in the case sub judice and Brosky had been representing at that time for the previous five (5) month owner Ihmond. After Appellant paid Brosky the twenty Thousand dollars (see Exhibit #10 [A30] and entering his appearance on 5/25/2017. Brosky was to have the car returned by his other client for the towing fee of $300, but Brosky and his client as of March 4, 2019 refused to release the Dodge unless paid the sum of $26,160.00 for unauthorized storage charges (see Exhibit #13 [A44-A48] (Complaint At Law Filed 10/14/2021 by Robert Caplan") which this Court may take judicial notice (See Par# 69 supra)

Let me know when you can get to this."

(B) From Brosky to Caplan dated 8/30/2017 at 11:46 a.m.:

"I'm on it."

(C). From Caplan to Brosky dated 9/6/2017 at 10:18 a.m.:

"+++ I need to get control of the Dodge as soon as possible to get it into shape for sale if necessary for additional fees for both you and myself. It could have a selling price between $25,000. and $100,000. Meanwhile, S+M are just sitting on it for bogus reasons. [Appellant] thinks they do not know the value of the car or the extreme inconvenience they are causing him, me and now you. I am still waiting for you to send me a copy of the email you said you would send to S+M to help get this car away from them, which would avoid the expense of litigation for replevin, conversion trover and/or detinue, wherein I would need you to testify about how they are overstepping (or understepping) what they were supposed to do. What is your time table to help?"

(D) From Brosky to Caplan dated 9/6/2017 at 1:04 p.m.:

"Bob, The matter regarding the Dodge will be resolved next week when the guy in charge of S+M Auto returns from his trip overseas."

(E). From Caplan to Brosky dated 9/12/2017 at 10:34 a.m.:

"I noted that your filing in 1:16-cv-07660 is due on September 15, 2017. Please email me a copy of whatever and whatever you file."

(F) From Brosky to Caplan dated 9/16/2017 at 11:26 a.m.:

[Discussion of Amended complaint and made clear that Appellant's issues were not a priority despite having informed Appellant he would file a Second Amended Complaint]

"The issue with the Dodge should be resolved by now. You can contact S+M and get the car back for cost of the tow." 10/

(82) That the Email/Text messages establish the conflict of interest where Brosky represented Appellant and S+M owners, and evidence of Brosky's patently false and misleading statement by Brosky, which is the "tip of the iceberg" as set forth in Par(s) #83 #87 infra.

(83) That Appellant's continual efforts to get Brosky to fulfill his promise and honor his agreement to subsequently file a Second Amended Petition to include the claims in [1] Petition omitted by Brosky and raise a constitutional challenge to the Illinois statute (ie 725 ILCS 5/115-10.2a), during November 2017 through 2018, resulted in a continuation of Brosky's misleading and lying to Appellant up to his suspension.

10/ There is no confidentiality issues of Appellant citing to parts of the Email/Text message as set forth in Par(s) #81(A)-(F) supra, based on both Brosky and Caplan representing Appellant, although Brosky discusses the representation in Habeas with Caplan raises addition concerns relating to Brosky. The notice at bottom of Email indicates "No material included in this Email is intended to establish attorney-client relationship or be thereby privileged unless an attorney relationship has otherwise been established, as to any issue of privilege. Assuming arguendo any issue is raised, Appellant waives the same. (see [57] Motion Exhibit "A" at 9-13)

(84) That once suspended, without honoring his duty and committment to Appellant, Brosky sent Appellant an undated letter (See Exhibit #14 [A49]), misleading Appellant in believing Brosky's suspension would result in his continued incarceration and requested Appellant to write the Executive Committee and lie on his behalf, ie "we have spoken and I have expressed remorse for my actions which angered the nurse." It will be noted the suspension was based on three (3) acts, not just one clearly being disingenuous (See Exhibit #12 [A32-A43])

(85) That without any funds to hire another lawyer and believing Brosky could continue to represent him if suspension was lifted, to have Brosky fulfill his promise of a Second Amended Complaint, did write the Executive Committee but on July 23, 2019 the request was denied. (See Exhibit #15 [A50])

(86) That Brosky's pattern, practice and custody of lying to Appellant was clearly evident in the April 13, 2019 letter, where Brosky stated "two attorneys (ie Mr Ramon Moore and Ms Patrycia Karlin), who he had discussed Appellant's case and willing to consider filing an appearance on Appellant's behalf, which will not cost Appellant

any additional money." (see Exhibit #1 [A1]), whereas Mr. Ramon A Moore's letter dated February 20, 2022 (see Exhibit #16 [A51], stating inter alia, "I have not had any discussion regarding your case or much less taking your case", clear and convincingly establishes Brosky's lie.[11]

(87) That Appellant diligently attempted to comply with Judge Pacold's directives as set forth during the status hearings on November 13, 2019 (see Exhibit #2 [A2-A7]) and January 10, 2020 (see Exhibit #5 [A10-A22]) as set forth in Para(s) #89-#90, infra, by writing Brosky on February 17, 2020 (as replied to by Brosky on February 19, 2020 (see Exhibit #17 [A52])) and on February 20, 2020 (as replied to on March 18, 2020 (see Exhibit #18 [A53])). Said replies clearly show, inter alia, Brosky's continuing to attempt to manipulate Appellant, exhibiting self-pity and no remorse and asking Appellant for help with his reinstatement, which lead Appellant to continue to believe Brosky would return as his counsel.

11 As for Ms Karlin, based upon information and belief, Brosky lied about her willingness to enter an appearance on Appellant's case whereas Brosky never spoke to her and she was not even licensed to practice in the Northern District, which made it impossible (see [Doc 57] motion Par #5 at 3-4)

(88) That Appellant diligently continued to comply with Judge Parcold's directive by contacting his civil attorney (i.e. Kurt H. Fever), who on April 30, 2020, provided as a courtesy a Motion To Appoint Counsel (namely Andrea Lyon), which Appellant filed on May 12, 2020 along with attached Exhibit A - Declaration of Kurt H. Fever (See [Doc 49])

(89) That the status hearing of November 13, 2019 (See Exhibit #2 [A2-A7]) establishes inter alia

(A) Appellant believed "I'm still represented by Joel Brodsky" (Id at [A3]; [A4])

(B) Both Ms Barbat and Judge Parcold were clearly disingenuous on the record as to Brodsky's status of suspension (Id at [A4])

(C) Judge Parcold directed Appellant to reach out to Brodsky, twice, despite knowing he was suspended as the Record clearly reflects (See [Doc 34] Order) and knowing Appellant was unable to comply due to his serious mental and medical disabilities. (Id at [A4-A5])

(90) That the status hearing of January 10, 2020 (See Exhibit #5 [A10-A22]) establishes inter alia

(A) Appellant attempted to comply with Judge Parcold's 11/13/19 directive to reach out to Brodsky (Id at [A12-A13])

(B) It was clearly established the case was fully briefed prior to suspension and the court had them under advisement (Id at [A13]) and it appeared Judge

Pacold plan to continue the case for 60 to 90 days to see if anything would change. (Id at [A13])

(C) Despite the fairness of such a continuance, Mr Schweder was "hell-bent" on taking advantage of Appellant, stating "its been fully briefed for two (2) years" and concedes to Appellant raising the fact Beasley was suppose to amend the Petition a second time but wanted to move forward on a ruling (Id at [A13 A14])

(D) When Judge Pacold inquired as to the claims Appellant want to raise, that Appellant was unable to respond effectively and continually discussed his mental and medical issues (Id at [A14-A19] and Judge Pacold indicated she could not give legal advice to him (Id at [A19])

(E) Most importantly, Judge Pacold clearly indicated "Another status will be scheduled for 90 days and if Beasley is not coming back to represent you, then we need to start thinking to the extent that you have other things you would like to raise, you'll either need to raise them yourself or find another attorney." (Id at [A15] emphasis added)

(F) Appellant's medical issues of Record (Id [A15]:[A20])

(91) That no status hearing was EVER held, Appellant never had the opportunity to raise the issues he discussed and obviously he is unable to proceed pro se, which is a reasonable reading of Exhibit(s) "2"-"#5".

(92). That the simple solution upon Brosky being suspended, would have been for Judge Pacold to strike Brosky's First Amended Petition [Doc 26] and Reply [Doc 30] and proceed on the "Fully Briefed" claims of [1] Petition, [Doc 14] Answer and Reply To Answer, which would not have caused any delay and ensured Appellant received adequate access to Court and procedural due process.

(93) That despite the option by Judge Pacold as set forth in Par. 92 supra being available, Judge Pacold instead abused her discretion by failing to EVER hold the scheduled status hearing and issued [Doc 53] Order denying all pending filings and entered judgment against Appellant.

(94) That Appellant attempted to remedy Judge Pacold's error by filing [Doc 50] Motion pursuant to Rule 60(b), [Doc 56] Court Certification and [Doc 57] Motion to Alter or Amend Judgment pursuant to Rule 59(e). Judge Pacold denied the same. (See [Doc 68] Order)

(95) That after a timely notice of Appeal was filed on April 27, 2022 [Dist Doc 69] and subsequent time extensions, Petitioner, with the assistance of his PAL

filed Amended Motion For Issuance Of A Certificate Of Appealability ("C.O.A.") on January 17, 2023, where three (3) Arguments were compelling reasons to grant the C.O.A. (See Appendix(s) "G" [A87-A100], "H" (A101-A110); and "I" [A111-A122) incorporated herein by reference for consideration thereof.)

(96) That on February 28, 2023, the United States Court Of Appeals for the Seventh Circuit ("Seventh Circuit") denied Petitioner's C.O.A. (See Appendix "E" [A85])

(97) That Petitioner subsequently filed a Petition For Rehearing And Rehearing En Banc, which the Seventh Circuit denied on April 3, 2023. (See Appendix "F" [A86])

(98) That Petitioner submits in good faith based upon information and belief by the PAL, this instant Petition is timely filed on July 5, 2023, based on the deadline of July 2, 2023 being a Sunday and July 3 and 4, 2023 being legal holidays, with no access to Law Library services to make necessary copies and no mail service whereas Stateville Correctional Center mail office was closed, and no mail going out until July 5, 2023 —

—/ Based upon information and belief as provided by the PAL, the PAL never allows a filing to get so close to a deadline, but due to circumstances beyond the PAL or Petitioner's control, the PAL fell into a drainage ditch on June 16, 2023 and has been unable to complete this instant filing until July 2, 2023 and in doing so being in extreme pain.

REASONS FOR GRANTING THE PETITION

I. The Seventh Circuit Denial of Certificate of Appealability And Subsequent Rehearing To Remedy The Erroneous Denial Of Habeas Relief And Post-Judgment Motions By The District Court Was Denial Of Adequate Access To The Court And Procedural Due Process, Being Such A Departure From The Accepted And Usual Course of Judicial Habeas Proceedings As To Call For Exercise of This Court's Supervisory Powers.

(99). Petitioner reasserts, reargues and incorporates Para(s) #43-#98 supra as relevant to this issue, and Para(s) #109 - #126, infra based on the connectivity of this issue and issues I, II and III for consideration thereof.

(100). Petitioner fully detailed the argument and supporting authorities in his pro se C.O.A at pages #40-#75 and has attached said argument hereto (See Appendix(s) "G", "H", "I" at A87-A122) and is incorporated herein as if fully set forth herein by reference, which this Court may take judicial notice (citation omitted)

(101) The absurdity of the Seventh Circuit to "rubber stamp" the District Court's erroneous denial of Habeas Relief and post-judgment motions, is beyond the pale whereas the denial of C.O.A. and Rehearing was manifestly erroneous, resulting in Petitioner being

deprived of his constitutional rights to adequate access to court, procedural due process and equal protection of law as guaranteed under the First and Fourteen Amendments to United States constitution (See Bounds v Smith (1977) 430 US 817, 828; Lewis v Casey (1996) 518 US 343, 351)

(102) The analogy of the denial of access to the court with the holdings of Bounds and Casey (lack of law library and legal assistance program) to the actions of Judge Pacaold, with resulted to an actual-injury to Petitioner, is undeniable, whereas [1] Petition filed pro se, being fully briefed of record, with the plethora of deprivation of his constitutional rights, being superceded by suspended attorney Brodsky's one (1) claim [Doc 16] Amended Complaint (See Appendix "J" (A123-A130); also see [Doc 30] Reply at Appendix "K" (A131-A136)) whereas without appellate review by denial of C.O.A. Petitioner was irreparably prejudiced by the denial of access to the court and procedural due process (See Powell v Alabama (1932) 287 US 45, 69 ("If in any case, civil or criminal, in state or federal court, were arbitrarily to refuse to hear a party by counsel employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and therefore of due process in the constitutional sense.")) (emphasis added)

(103) The Powell Court further held "the failure of the trial court to give [this Petitioner] reasonable time

And opportunity to secure counsel was a clear denial of due process." (Id. 287 US at 71) The record clear and convincingly establishes, inter alia, (i) during the two (2) status hearings, which Petitioner appeared, not by choice, pro se the confusion of Petitioner by the removal of his attorney Brodsky over his objection the issues of EIJ Complaint were being pushed by this Petitioner and Appearing Judge Pacold was in agreement (but appearances subsequently were shown to be purely disingenuous) (See Appendix(s) "L" (A137-A142); "M" (A143-A155), (ii) Petitioner had diligently sought counsel and assisted with Motion For Appointment of Counsel (See Appendix(s) "N" (A156-A157); "O" (A158-A161), — and (iii) Petitioner was obvious unable to represent himself (See Appendix(s) "P" (A162); "Q" (A163-A164). Thus, Petitioner was denied adequate access to the Court where proceedings were a sham and procedural due process. (Powell Id)

(104) This Court clarified the standard Petitioner was required to meet for issuance of a C.O.A in Miller-El - Cockrell (2003) 537 US 322, 123 SCt 1029, holding "...[A] prisoner seeking a C.O.A need only demonstrate a 'substantial showing of the denial of a constitutional right'. [and] satisfies this standard by demonstrating that jurist of reason could disagree with the District Court's resolution

---

Based upon information and belief, Andrea Lyons, who was willing to accept appointment after reviewing Petitioner's case, is one of the most respected attorneys in Illinois, being a former Dean of Law School; a law professor at another (i.e DePaul University of Law) and experience criminal defense attorney in Chicago and habeas law.

of his Constitutional claims or that jurist could conclude the issue presented are adequate to deserve encouragement to proceed further." (Id 123 SCt at 1034 citing Slack v. McDaniel (2000) 529 US 473, 484) (emphasis added))

(105) Petitioner clearly meet the standard for granting of C.O.A, whereas Petitioner did not have to prove that Judge Parold was necessarily "wrong" [although she was], just that her resolution of the constitutional claim is "debatable". And the law is clearly established this Petitioner need not show that he should prevail on the merits (See Miller-El Id 123 SCt at 1039; Barefoot v Estelle (1983) 463 US 880, 893 n 4)

(106) In fact, according to this Court's holding, "A claim can be debatable even though every jurist of reason might agree after the C.O.A has been granted and the case has received full consideration that [this Petitioner] will not prevail." (Id 123 SCt at 1040)

(107) The fact Petitioner's numerous claims of Constitutional deprivation in [I] Petition were briefed and ripe for review but never heard due to Judge Parolds abuse of discretion, compounding the denial of access to Court and procedural due process as relates to [I] Petition, is the erroneous denial of Habeas relief as argued by Brodsky (See Appendix(s) "J" (A123-A130); "K" (A131-A136), which Petitioner is entitled to adopt and incorporate without waiver of objection to forced pro se representation and disregard of [I] Petition's

numerous claims, which clearly established the violation of 28 USC Sec 2254 (d) (1), (2) entitling relief. To top off and complete the multi-level denial of access to the Court and procedural due process and equal protection of law, the Seven Circuit's denial of C.O.A and Rehearing left this pro se Petitioner, who is able to advance a claim of actual innocence (See Appendix "R" (A165-A174) (actual murder of Dawn Marquis acting alone gave original statement which totally exonerated Petitioner) with no remedy of law for review of his claims.

(108). The diligent attempts by Petitioner to vindicate his denial of constitutional rights of underlying deprivations (i.e. [1] Petition and [26] Amended Complaint) as well as subsequent denial of adequate access to the Court and procedural due process and equal protection of law have been drafted by such a departure from the accepted and usual course of judicial habeas proceedings as to call for an exercise of this Court's Supervisory Power.

Reversing the decision(s) of Seventh Circuit (See Appendix(s) "E" (A85): "F" (A86)) and District Court (See Appendix(s) "C" (A63-A78): "D" (A79-A84)) and remand to the District Court to be, inter alia, be heard on [1] Petition, with appointment of counsel, before a different Judge, and such other relief deemed proper, just, equitable and appropriate in the case sub judice to ensure the interest of justice is served for Petitioner and the Public, which suffers when an innocent person is wrongly convicted and incarcerated.

II. The District Court Abused Its Discretion In Denying Petitioner Adequate Access To Court, Procedural Due Process And Equal Protection Of Law Without Ruling On Pending Motion For Extension Of Time And Motion For Appointment Of Counsel, Prior To Suddenly Denying Habeas Relief And Compounding The Manifest Error By Forcing Petitioner To Proceed *Pro Se* Despite Petitioner's Clearly Established Severe Mental And Medical Disabilities And Lack of Education And Subsequently Refusing To Allow *Pro Se* Filings Being Such A Departure From Accepted And Usual Course of Judicial Habeas Proceedings, As To Call For Exercise Of This Court's Supervisory Power.

(109) Petitioner reasserts, reargues and incorporates Para(s) #43-#108 *supra* as relevant to this issue and Para(s) #117-#126, *infra*, based on the connectivity of this issue and issues I, II and III for consideration thereof.

(110). Petitioner fully detailed the argument and supporting authorities in his *pro se* C.O.A. at pages #40-#75 and has attached said argument hereto (*See* Appendix(s) "G", "H", "I" at A87-A122) and is incorporated herein by reference which this Court may take judicial notice.

(111) The holding by Judge Pacold [Dist Doc 53] Memorandum Opinion And Order were an abuse of discretion and manifest erroneous as previously set forth in C.O.A (*See* Appendix "G" Para(s) #118(A)-(E) at A93-A94 and incorporated herein for sake of avoiding repetition; and in clear violation of 28 USC Sec 2254(d)(1),(2) and pursuant

Powell v Alabama (1932) 287 US 45, 69 (cf Id at Pars) #119-#122 at A94-A95 (incorporated herein by reference))

(112) Assuming arguendo Judge Parold was in her discretion to remove suspended Brodsky from Petitioner's case, but there is absolute no judicial or common sense justification for her subsequent actions thereafter, up to and including the sudden denial of habeas relief and "clean up" order of denying Motion For Extension of time, Motion For Appointment of Counsel (see Appendix(s) "N" (A156-A157); "O" (A158-A161 (ie sworn declaration of Andrea Lyons willingness to accept appointment (cf Fn - at 27 supra)) indicating Brodsky was not then withdrawn as counsel and Petitioner proceeding prose, despite the latter two (2) factual holdings had occurred approximately 18 months before said ruling dismissing the case.

(113) To compound the abuse of discretion as set forth in Par #112 supra, refusing to allow pro se Petitioner's [1] Petition to be heard, despite feigning to the contrary (see Appendix(s) "L" (A137-A142); "M" (A143-A155)), forcing Petitioner to have only his suspended and removed attorney's [Dist Dcc 30] Amended Complaint (see Appendix "J" (A123-A130); also see Appendix "K" (A131-A136)) heard and subsequently denied, along with Petitioner's post-judgment motions (see Appendix "D" (A79-A87)) and forcing Petitioner to proceed pro se but refusal to be allowed to submit pro se filings, is an absolute absurdity.

(114). The abuse of discretion by Judge Pacold raises issues of an appearance of judicial bias, although this is not the proper time to develop the same but is only explanation for such departure from the accepted and usual course of judicial habeas proceedings, whereas this Court's holding in Faretta v California (1975) 422 US 806 has recognized Petitioner's right to proceed pro se which Judge Pacold ignored and failure to hold a hearing to determine Petitioner's ability to proceed pro se (See 18 USC Sec 3006A; also see United States v Gonzalez (2006) 548 US 140; U.S. v Smith (7th Cir 2012) 618 F3d 657; Pruitt v Mote (7th Cir 2007) 503 F3d 647; and Dorsey v Vargas (7th Cir 2022) ___ F.4th ___ 2022 WL 17688525) to cover up the fact Petitioner's lack of education and sever mental and medical issues (See Appendix(s) "P" (A162); "Q" (A163-A164)), but are now come to the light.

(115) To compound Judge Pacold's constitutionally questionable conduct, was the fraud by attorney Brodsky. As condemned by this Court in Hazel-Atlas Glass Co v Hartford Empire Co (1944) 322 US 238, 246, holding "the universal reason fraud on the court by an officer of the court is held in great disregard is because this conduct violates the integrity of the judicial system as well as violates the principles and sanctity of the judicial." The same could apply to Judge Pacold as well, whereas, Brodsky never filed to withdraw his appearance nor did Judge Pacold require the filing, and this fact and the two (2) status hearings understandably

lead Petitioner to erroneously believe Brodsky was still on the case, despite Judge Pacold failing to require Brodsky to appear and Petitioner appeared pro se and exhibited his lack of education and serious mental and medical disabilities, as to his obvious confusion and being unable to remained focused during the status hearings (See Appendix(s) "L" (A137-A142); "M" (A143-A155))

(116) Based on the facts of record and supporting authorities, as well as such a departure from accepted and usual course of judicial habeas proceedings as to call for exercise of this Court's supervisor power, reversal of the previous court(s) decisions (See Appendix(s) "C" (A63-A78); "D" (A79-A84); "E" (A85); "F" (A86) and remand to District Court to be, inter alia, be heard on [1] Petition, with appointment of counsel and leave to amend [1] Petition, before a different Judge and such other relief deemed proper, just, equitable and appropriate in the case sub judice to ensure the interest of justice is served for Petitioner and the Public, whereas if Petitioner is denied relief, then anyone will be subject to the same, whether innocent or guilty. Additionally, this Court should order an inquiry into Joel A Brodsky's actions and conduct in the case sub judice especially in light of his actions as set forth in People v Peterson 2022 IL App (3rd) 220206, whereas Brodsky's law license is only suspended, not disbarred, as he should be.

III. The Substantial Admission Of An Overwhelming Number Of Hearsay Statements The Victim Allegedly Made Pursuant To The Unconstitutional Section Of 115.10.2a Of The Illinois Code Of Criminal Procedure (725 ILCS 5/115.10.2a (West 2008)) Into Evidence In Violation Of The Confrontation Clause Making A Categorical Rule Excluding Statements Involving The Government From The Strictures Of The Sixth Amendment Confrontation Clause, Being An Important Federal Question, Not Settled By This Court, But Should Be As Being Important To The Public Of This Issue.

(117) Petitioner reasserts, reargues and incorporates Pars(s) #43-#116 supra as relevant to this issue for consideration thereof.

(118) Petitioner fully developed the argument and supporting authorities in his pro se C.O.A. at pages #64-#75 and has attached said argument hereto (See Appendix "I" at A111-A122) And is incorporated herein As if fully set forth herein by reference, which this Court may take judicial notice. (citation omitted)

(119) Petitioner was unconstitutionally charged by Information, with three counts of First Degree Murder (different theories of the same charge) that Petitioner while armed with a firearm ... shot Dawn Marquis in the head with a gun..." and its relevant to note, inter alia

(i) Petitioner was never provided a Preliminary hearing contrary to law as mandated by 725 ILCS 5/111-2(a) (West 2008), being relevant to the unconstitutionality of the charges and subsequent unlawful conviction of Petitioner resulting in a void judgment

(ii) The unrebuttable evidence as presented by the State was on August 24 2008 Joseph Hoffman shot and killed Dawn Marquis ("Dawn") and thereafter fled to Florida where he was arrested. (Tr R 79-81; 115; 126-127; 140, 149) During original confession, with absolutely no reason to lie, Hoffman willingly and voluntarily admitted that he alone had shot Dawn in the head and was solely responsible for the murder and most importantly admitted that Petitioner knew nothing about his plan to kill Dawn nor had any involvement. (See Appendix "R" (A165-A174)) Thus, clearly Petitioner never was armed with the firearm which was used to shot Dawn in the head nor committed said murder, being the State failed to present sufficient evidence to sustain every element of the charge whereas the charging instrument did not in fact including the fact of accountability nor if it had would not have had sufficient evidence to support the same

(iii) The unrebuttable fact that Hoffman did not meet the elements to support any charge in violation of the Illinois Domestic Violence Act of 1986 (See 750 ILCS 60/103(6) (West 2008)'; Also see 725 ILCS 5/112A-3(3) (West 2008) thus was not a domestic violence prosecution, despite the unconstitutional charging as alleged in Par #19 (i), (ii) supra.

(120) The State delayed moving for admission of Prior Statements pursuant to 725 ILCS 5/115.10.2a (West 2008) until August 3, 20010, nearly two (2) years after the Petitioner's arrest and only two (2) months prior to trial. (TR C111-112) One (1) month prior to trial, on September 17, 2020, the Trial Court issued "Decision of the Court holding, inter alia as follows:

(i) 4. "The deceased, due to the nature of her relationship with [Petitioner] would be a protected person under the Illinois Domestic Violence Act of 1986"; [As set forth in Par #119(iii) supra, this was not a Domestic Violence prosecution]

(ii). 5. "There is no crime entitled domestic violence" [A fact which goes to the heart of the issue]

(iii) 6. Although the charge in this case is murder, it is a domestic violence prosecution as contemplated by 725 ILCS 5/115-10.2a [A finding of fact being manifestly erroneous]'

(iv) "... the Court must determine whether or not the statements have equivalent circumstance guarantees of trustworthiness as other hearsay exceptions" [See Par #121 infra) (TR R 407) (emphasis added / [ ] added)

(121) The record in the case sub judice is devoid of any factual evidence as to Dawn's 'State of Mind' at the time of making the alleged statements, which would go to the heart of a judicial fact finding of "trustworthiness" of said hearsay statement and exhibits manifest error in the so-call trial court ruling to admit the prejudicial

evidence central to the wrongful conviction of Petitioner. The evidence now before this Court and never reviewed nor discuss by District Court, is at the relevant times the alleged hearsay statements were made, Dawn was under mental health treatment by Dr Moore (ie Psychological) establishing mental impairment, depression, fatigue, weight change, insomnia/hypersomnia, anxiety disorder, using alcohol and cannabis, having failed for (4) drug tests, and was massive aggressive. (See Appendix "S" (A175-A185))

(122) The "guarantees of trustworthiness" are not only required by Federal and Illinois Rules of Evidence when hearsay exceptions are sought, but under the Confrontation Clause of the Sixth Amendment under the clearly established precedent of this Court. (See California v Green (1970) 399 US 149; Idaho v Wright (1990) 497 US 805; Crawford v Washington (2004) 541 US 36; Michigan v Bryant (2010) 562 US 344 n3)

(123). Its relevant and of utmost import to note when a statutory provision conflicts with a Court Rule, the Court Rule mandates being followed. Clearly Illinois Rules of Evidence 803(3) trumps the statutes relied on by the Trial Court to admit the prejudicial hearsay statements by Dawn. Additionally, the Court never considered the motive to attack Petitioner's reputation, credibility and standing based on custody dispute where Petitioner had filed for determination of parental rights and Dawn intended to file for protective order, said attack were made in contemplation of said litigation It can not be doubted, if Drawn had not been murdered by Hoffman, which Petitioner had no involvement, at the custody hearing would have been held, those hearsay statement would not have been admissible as a matter of law under the Rules of Evidence, confirmed by her declaration that she was repeating her [false] accusation to "Everybody" as well as by the evidence that she did, in fact, repeat said false accusation about Petitioner to everybody to obtain custody

(124) The District Court ruling in violation of 28 USC Sec 2254(d)(1),(2) being contrary to this Court's well establish precedent (See Para #122 supra) Also see Ohio v Clark (2015) 576 US 1, 135 SCt 2173, 2179) While the hearsay rules and the Confrontation Clause protect similar values, they are no co-extensive (See California v Green (1970) 399 US 149 155) recognizing the modification of a State's hearsay rules to create new exceptions 'will often raise questions of compatibility with constitutional right to confrontation (Id 399 U.S. at 156) Thus based on the facts of the case sub judice and this Court's well-established precedent, clear and convincingly establishes the unconstitutionality of Section 115.10.2a as applies to this Petitioner entitles habeas relief

(125) The Illinois Appellate court was the last State Court decision to rule of the merits of Sixth Amendment violation (See William J Richter 2012 ILApp (4th) 101025 (See Appendix "A" (A1-A57). By making a "categorical rule excluding" statements not involving the government from the strictures of the Confrontation Clause, said State court Applied Federal Law

unreasonably and contrary to well established precedent of this Court, thus violating Petitioner's Rights under the Sixth Amendment to the United States Constitution, as Applies to Illinois pursuant to the Fourteenth Amendment of said Constitution. (See 28 USC Sec 2254 (d)(1)(2)) and the District Court abused its discretion by denying habeas relief of this violation.

(126) Based on the importance of this Federal question, not previously been settled by this Court based on a case of first impression, but should be as being important to the Public of this issue whereas if Petitioner can be so easily deprived of his constitutional rights, any member of the Public could face the same. Wherefore this Honorable Court should reverse the State court ruling and District Court denial of habeas relief and grant a new trial without the inadmissible and prejudicial hearsay statements of Drew to remedy this fundamental miscarriage of justice

Conclusion

(127) Mr William J. Richter was wrongful convicted as result of the perjured testimony of Joseph Hoffman. The actual murder of Drew, acting alone with no knowledge of the planned murder or participation by William J. Richter in said murder, evidence by Hoffman's original confession to Florida police (See Appendix "R" (A165-A174)) ("Mr Richter did not know he was going to shoot Drew and had nothing to do with the murder") whereas it was not until Hoffman was in the custody of Illinois police, being tortured and given a

sweetheart plea deal to implicate Mr Richter, did Hoffman change the truth to a lie to include Mr Richter. The only other evidence presented at trial was the unreliable hearsay statements allegedly made by Drew to others, pursuant to the unconstitutional section of Illinois Code of Criminal Procedure (725 ILCS 5/115.10.2a (West 2005)) referenced prejudicially as "testimony from the grave" by the State whereas there was no other physical or direct Evidence EVEN remotely tying Mr Richter to this crime. To prevent the remedy of this fundamental miscarriage of justice was Judge Pavlod's denial of habeas relief and facts set forth in Claim(s) I and II supra. This is Mr Richter's final opportunity to remedy this miscarriage of justice which he has endured for fifteen (15) years

(128) Mr Richter respectfully prays for this Court to exercise its supervisory power and/or grant this Petition for writ of certiorari

Respectfully submitted

William Richter

William J. Richter Pro Se
Reg No S11355
P.O Box 112 Route 53
Stateville Correctional Center
Joliet Illinois 60434

Petitioner Pro Se
(with legal assistance of a Prisoner At Law ("PAL"))