No. 23-5359

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

James T. Burke, Pro-se, — PETITIONER
(Your Name)

vs.

State of Vermont, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Second Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James T. Burke, Pro-se, Prisoner-VT.-#15001291
(Your Name)
T.C.C.F., MS.
19351 U.S. Hwy. 49 North
(Address)
Tutwiler, MS. 38963-5249
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

#1. Whether Americans are lawfully entitled to conflict free defense counsel?

#2. Whether Americans are lawfully entitled to effective assistance of defense counsel under our Sixth Amendment??

LIST OF PARTIES

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

[X] 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: James T. Burke,VT.-#15001291/Pro-se-Prisoner T.C.C.F./19351 U.S. Hwy. 49 North/Tutwiler, MS. 38963-5249.

Andy Gilbertson,Esq./Chittenden County Deputy State's Attorney @
32 Cherry Street, Suite-#305
Burlington, VT. 05401.
(Respondent, State of Vermont).

RELATED CASES

Brady v. Maryland, 373 U.S. 83 & Giglio-discovery violation[s],

Ferretta v. Calif., 422 U.S. 806-WARRANING violation[s],

Fifth, Sixth and 14th U.S. Consti. Amend. violation[s],

Holloway v. Arkansas, 435 U.S. 475 (1975)(quoting Glasser, 315 U.S. 70, S.Ct at 465; Cuyler v. Sullivan, 446 U.S. 335, 349-50 (1980),

Strickland v. Washington, 466 U.S. 668 (1984), violation[s],

Wood v. Georgia, 450 U.S. 261, 272, n. 18, 67 L.Ed. 2d 220, 101 S.Ct 1097 (1981), violation[s] which needs to be again clarified.

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APPENDIX-V, Printed Case-#1-A to #26-Z, is further documentation of a unlawfully-unresolved actual attorney/client conflict that did in truth and legal fact, PREJUDICED DEFENDANT'S DEFENSE to the point this unlawful conviction, that now clearly needs this Honorable U.S. Supreme Court's more Honorable review and correction pursuant to this "gross collapse of the New York Appeals Court system and a unlawful affront and in contradiction to this more Honorable U.S. Supreme Court's precedent", because the New York appeals court panel in this case on April 5th, 2023, erected a formalistic barrier to the correct vindication of Peitioners statutory rights and made [BAD-LAW] for all Americans in this case by "over-looking" U.S. Supreme Court precedent.

TABLE OF AUTHORITIES CITED

OTHER

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

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

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

[X] reported at #20-229, Appendix-A to D; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

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

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

[ ] For cases from **state courts**:

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

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

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

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

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was 4/5/2023.

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

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 6/16/2023, 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).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Brady v. Maryland, 373 U.S. 83 & Giglio,

Ferretta v. Calif., 422 U.S. 806-WARRANING,

Fifth, Sixth and 14th U.S. Consti. Amendments,

Holloway v. Arkansas, 435 U.S. 475 (1975)(quoting Glasser, 315 U.S. at 70, S.Ct at 465; Cuyler v. Sullivan, 446 U.S. 335, 349-50 (1980)

Strickland v. Washington, 466 U.S. 668 (1984),

Wood v. Georgia, 450 U.S. 261, 272, n. 18, 67 L.Ed. 2d 220, 101 S.Ct. 1097 (1981).

STATEMENT OF THE CASE

Actual-innocent Petitioner was in truth and fact unlawfully convicted pursuant to a "He said, She said" case that amounted to a credibility contest and a close case in which (IAC) ineffective assistance of defense counsel caused Petitioners conviction togethe with several violations of this Court legal precedent as was and is documented by (2) two PCR reviewing attorney experts who both came to the same but separate legal conclusions of (IAC)ineffective-assi. of-counsel and also the fact of the trial courts unlawful failure to provide Petitioner with conflict free defense counsel, in clear and obvious law violations of U.S. Supreme Court precedent and Second Circuit case law pointed out and argued pursuant to Appeals Court local rule-24.1, with the timely filing on (May 31st, 2022) of Petitioners (BRIEF OF APPELLANT & PRINTED CASE[S], ie. Memorand #1 & #2), that clearly "identified relevant facts and made clear showings of Fifth, Sixth and 14th Amendment violations of our U.S. Constitution that have Constitutional nation wide legal significance for all Americans as is documented in this case by (2) two different "over-looked" PCR expert reviewing attorneys, who make a clear showing and both document a legal showing of likely merit pursuant to Second Circuit Appeals Court Rule-24.1." (Please see on file in the New York Court of Appeals, BRIEF OF APPELLANT & PRINTED CASE[S], Memorandum[s]-#1 & #2), that not only documents violations of U.S. Supreme Court precedent[s], but also presents colliding national interest of Fifth, Sixth, and 14th Amendment Constitutional significance pursuant to what this U.S. Supreme Ct. examined the American Constitutionallity of.

REASONS FOR GRANTING THE PETITION

#1. ACTUAL-INNOCENT Petitioner, was unlawfully convicted as a direct result of several violations of United States Supreme Court legal precedent as documented by (2) two PCR reviewing attorney experts who both came to the same separate legal conclusions of (IAC)-ineffective-assistance-of-counsel and also the trial courts failure to provide Petitioner with conflict-free-defense-counsel, in clear and obvious law violations of U.S. Supreme Court precedent and Second Circuit case law pointed out and argued pursuant to Appeals Court local rule-24.1, with the timely filing on (May 31st, 2022) of this Petitioners (BRIEF OF APPELLANT & PRINTED CASE[S], Memorandums-#1 & #2), that clearly "identified relevant facts and made clear showings of Fifth, Sixth, and 14th Amendment violations of our U.S. Constitution that have Constitutional nation wide legal significance for all Americans as documented in this case by (2) two different "over-looked" PCR expert reviewing attorneys who make a clear showing and both document a legal showing of likely merit pursuant to Second Circuit Appeals Court Rule-24.1" (Please review on file BRIEF OF APPELLANT & PRINTED CASE[S], Memorandum[s]-#1 & #2), that not only documents violations of U.S. Supreme Court precedent[s], but also presents colliding national interests of Fifth, Sixth and 14th Amendment Constitutional significance pursuant to what this Honorable United States Supreme Court examined the Constitutionallity of;

#2. In violation of what this Honorable United States Supreme Court clearly examined the Constitutionality of and put on the public record to make legally clear to are fellow Americans in this Country, the lower (3) three judge New York appeals ct. panel in this case on April 5th, 2023, unlawfully and subsequently erected a formalistic barrier to the lawful vindication of Petitioners statutory rights to a fair-trial with conflict free defense counsel and the effective assistance of that counsel for Petitioner in this case, as is defined under U.S. Supreme Court law, and our Sixth Amendment to are U.S. Constitution, suppose to be provided-----to all Americans as also provided for by our Congress, the rogue Second Circuit New York Appeals Court panel in this case unlawfully denied this Petitioner a C.O.A., to cut down on their tax payer funded work pursuant to what WE THE U.S. PEOPLE ARE PAYING THEM TO CORRECTLY DO, and not for any lawful reasons, on the contrary they did not even bother to find any true and correct legal reasons to deny C.O.A. in this case in which Petitioner is actually-innocent and argued this to blined and deaf New York lower Court judges and this amounted to "A gross collapse of the New York Appeals Court system that we the American people are supposed to trust," and further amounted to a affront to justice", that this more Honorable U.S. Supreme Ct. needs to step in on and correct the violations of its precedent.

#3. More problematically said New York Appeals Court panel of only (3) three judges appears to have completely "over-looked"

the listed, cited and argued documented by PCR review expert attorneys, violation[s] of (IAC)-ineffective-assistance of defense counsel violation[s], that were documented by them experts as [illegible] above the level of a Sixth Amend. U.S. Consti. violation, that was even admitted and joked about by alleged "defense-counsel", (Mr. Dan "the man" Maguire), himself under PCR deposition oath pursuant to his WRITTEN QUESTION[S] deposition in this case. (Please review Printed Case-A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P,Q,R, S,T,U,V,W,X,Y,Z), amounted to an additional "over-looked" again MANIFEST OF INJUSTICE that has again resulted in more bad law, and clearly constitutes a further abuse of discretion by said New York Appeals Court panel of clowns who unlawfully were to lazy to even review the legal issues that the experts documented violations of both Sixth Amendment Constitutional law, but also State and Second Circuit, Federal U.S. Suprme Court law, then to make their tax payer funded work more easy, denied C.O.A., and unlawfully failed to even have the legally corrupt State of Vermont Respondents timely respond to the corrupt conviction they caused this Petitioner still looking for justice with this, hopefully more honorable court, because again the New York Appeals Court panel clearly appears to have failed to correctly do their tax payer funded work in this case, to correctly review a close case and to take under correct legal consideration Petitioners (on file since May 31st, 2022, BRIEF OF APPELLANT), and it's exhibited PRINTED CASE[S], that now needs this more Honorable Courts review because this U.S. Supreme Courts more honorable review is clearly

needed in this case, to set this Honorable Courts violated case law strait and to further clairify this Courts violated precedent in the interest of justice to us-WE THE PEOPLE OF AMERICA, because the bad-and-contrary-law said Second Circuit Court of Appeals made in this case by being to lazy to correctly review for C.O.A., presents colliding national interest to all of us born in America, Americans Constitutional rights pursuant to our Fifth, Sixth & 14th Amendment Due-Process rights that have Consti. significance pursuant to what this United States Supreme Court examined the Constitutionality of.

#4. In light of the fact that Petitioner is actually innocent documented in conjunction with Printed Case-A,B,C,s,D,E,F,G,H,I,J, K,L,M,N,O,P,Q,R,S,T,U,V,W,X,Y,Z and Printed Case-#802 to 803 to PC-#1,137 to #1,138 to #1,093 all attached for this Honorable Court's more law educated review to MEMORANDUM[S]-#1 & #2, this actually innocent Petitioner should be afforded a in-person and timely evidence hearing with this Honorable Court asking legal questions of the Attorneys, just due to the "over-looked" fact that PC-A & B, clearly documents more than just a violation of In Re: Ciak v. U.S., 59 F.3d 296, 305 (2d Cir. Conn. May 25th, 1995), MANIFEST OF JUSTICE-#1, out of several in this case.

#5. Petitioner had a 5th, 6th, & 14th Amendment right under our U.S. Constitution to have a evidence hear and or new trial because of the clearly documented (IAC), resulting in a actual-innocent Petitioner being unlawfully convicted supported by PC-U,

pursuant to the complainants un-oppsed recantations in this "He-Said", "She-Said" sex case that amounted to a credibility contest in which, as a result of (IAC), ("Mr. Maguire") failed to impeach ("Emily Linso") with her conviction[s] in Vermont and also Penn, Tenn.. (as noted by the Vermont Supreme Court who said it was (IAC) however not preserved correctly for appeal because of (IAC)? Carmel v. Lunney, 70 N.E. 2d 169, 173, 518 NY.S.2d 605, 511 N.E. 2d 1126 (1987).

#6. Petitioners actual-innocence and resulting (IAC) conviction tolled the limitations period that demomstrated with the Printed Case exhibited PCR review experts who documented with their deposition[s] and motions, that Petitioner received (IAC) which caused Predjudice @ (PC-#1,271 to #1,272), deprevation of Petitioners Sixth Amendment rights to conflict free counsel, and resulting miscarriage of justice, constituted extraordinary case circumstances, thus equitable tolling did NOT apply to the------, "REASONABLE-TIME" standard.

#7. In Peterson v. Demskie, 107 F.3d 92 (2d Cir. 1997), the court found a petition filed 72 days after AEDP'S effective date, but some 18 years after the Petitioner's conviction had become final, was timely filed. Claudio v. Heller, 119, 2d 432, NYS 2d 1126.

#8. In Quezada v. Smith, 624 F.3d 514, the inmate satisfied the requirements under § 2244(b)(2)(B), for authorization of a second petition (just as Petitioner did see PC-V), by making a primafacia showing of Constitutional error, Petitioner also

alleged a due-process violation, because his conviction was left in place after Respondent was made aware of (Emily Linso's) recantations (BRIEF OF APPELLANT'S @ Printed Case-U) of material testimony that was in violation of both Brady/Giglio based on Respondents nondisclosure of a coached and coerced complaining witness, who admitted this to Petitioners investigator.

#9. Petitioner contended and contends to this day that his conviction resulted from (Emily Linso's) perjured testimoney, knowingly used by the Respondent to obtain Petitioners conviction, together with the delibrate suppression of defense evidence 100% favorable to Petitioners defense, "caused a deprivation of rights guaranteed by the Federal Constitution, pursuant to the due-proces clause of the Fourteenth Amendment" and Brady v. Maryland, 373 U.S 83, the suppression of evidence favorable to an accused is itself sufficient to amount to a denial of due-proces," (BRIEF OF APPELLANT, Dated: May 31st, 2022, Dkt!s-#22-896, 22-1028 & 22-2624). Carmel v. Lunney, 70 NE. 2d 169, 173, 518 NY. S.2d 605, 511 NE. 2d. 1126 (Ct. App. 1987).

#10. Both the district court and New York Appeals Courts had unlawful ex-party conversions to not allow Petitioners PCR experts to be reviewed correctly or at all and in fact both courts "over-looked" Petitioners PCR review experts opinions & motions and abused their discretion with their selective consideration of the record (ignoring the expert PCR review opinions, depositions and motions together with printed case exhibits), and them courts

failure to draw upon existing parts of the record to supprt it's conclusions. Carmel v. Lunney, 70 NE. 2d 169, 173 518 NY. S.2d 605, 511 NE. 2d 1126 (Ct. App. 1987).

#11. The on file (BRIEF OF APPELLANT, Dated: May 31st, 2022) together with it's attached Printed Case exhibit[s], did NOT support the denial Petitioner's appeal by the district courts who incorrectly determined that Petitioner had suffered no prejudice, the lower district courts did NOT fully develop its reasoning on the (IAC) ineffective counsel issue of defense counsels deficient performance. Pham v. U.S., 317 F.3d 178, (2nd Cir. Court of Appeal.

#12. Petitioner clearly showed with PCR review attorneys experts, that his defense attorney's lack of defense performance was very unreasonable considering all the circumstances of (Mr. Maguire's) ineffective counsel that caused this Petitioner documented prejudice and warrants de novo review at an initial hearing en banc for review by the full U.S. Suppeme Court.

#13. Petitioner sufferd a documented (BRIEF OF APPELLANT), Sixth Amendment violation when he received ineffective assistance of counsel from appointed public defender and past attorney Gener al (Mr. Maguire), when that attorneys "defense representation" fell far below an objective standard of reasonableness (as is documented by Petitioners PCR review experts), and there was a reasonable probability that, but for (Mr. Maguire's) many un-professional and bias defense errors, the results of the defense proceedings would have been different. See again;

Pham v. U.S., 317 F.3d 178 (2nd Cir. Court of Appeals 2003); Henry v. Poole, 409 F.3d 48 2005 U.S. App. LEXIS-#9447; also Gersten v. Senkowski, 426 F.3d 588; Ramchair v. Conway, 725 F. Supp. 2d 361 2010 U.S. Dist. LEXIS-#72583.

#14. Petitioner's ACTUAL-INNOCENCE claims on file in the BRIEF OF APPELLANT & PRINTED CASE'S Memorandum's-#1 & #2, still documents defense exculpatory scientific evidence from the F.B.I. testing lab at P.C.-#779, trustworthy eyewitness deposition[s] accounts. P.C.-#802 to #1,093 and physical defense evidence that was NOT presented at trial. P.C.-#802 to #1,093, makes the actual innocent claims to be compelling and demonstrates that more likely than not, in light of the evidence, no reasonable juror would find Petitioner guilty beyond a reasonable doubt- or to remove the double negative, that more likely than not any reasonable juror would have reasonable doubt, Bryant v. Thomas, 725 Fed. Appx. 72, 2018 U.S. App. @ LEXIS-#15301.

#15. Both the Appeals Court and the district courts failed to address PC-#802 - #803 or PC-#1,137-38 pursuant to (2) two defense witnesses (Mr. Maguire) failed to call, that cast doubt on this Petitioners conviction. Stephenson v. Connecticut, 639 Fed. Appx. 742.

#16. The lower courts erred by dismissing Petitioners petitions as untimely without first determining correctly, interealia, whether Petitioner had pursued his actual-innocence claim with due dilligence, Petitioners OPENING BRIEF together with its PRINTED CASE'S Memorandums-#1 & #2, presented and still presents a color-

able claim of actual innocence. Whitley v. Senkowski, 317 F.3d 223.

#17. Petitioner was unlawfully convicted on false sex allegations was entitled to §§ 2254(d) relief because the denial of his Sixth Amendment ineffective assistance claim was an unreasonable and bias application of clearly established law as the OPENING BRIEF AND it's PRINTED CASE showed and documented that further investigation was necessary and Petitioner would have been acquitted if all the with-held defense evidence was or had been presented. Rivas v. Fischer, 780 F.3d 529.

#18. Petitioner has "made a substantial showing of his actual innocents and of the denial of a Constitutional right pursuant to 28 U.S.C. § 2253(e)(2), namely the Sixth Amendment to our U.S. Constitution pursuant his right to conflict free effective assistance of counsel".

#19. The Federal district court and now also the (3) three judge appeals court panel failed to allow for a in-person actual innocent hearing to make correct and actual innocent hearing, adequate factual findings on the documented (by PCR review experts ----factual findings), pursuant to this He-Said-She-Said case that amounted to a credibility contest in which Petitioner received ineffective counsel resulting in a innocent person being unlawfully convicted, a unlawful conviction unlawfully allowed to stand.

#20. The (IAC) "misstakes" allowed thus far to stand, cheated Petitioner out of a fair and lawful trial and rose to the level of Constitutional ineffectiveness that has now been unlawfully "over-

looked" without even a actual in person evidence hearing, cheating Petitioner out of fair, true and justice all the way around in this case, after and when the New York Appeals Court could have construed the filing of the NOTICE OF APPEAL, three times, pursuant to docket numbers-#22-896, #22-1028 & #22-2624, as a tiemly request for a C.O.A. "on all issues raised in the appeal", (on file since May 31st, 2022), togetherwith its Printed case-Memorandums-#1 & #2. Cotto v. Herbert, 331 F.3d 217, 236 (2d Cir. 2003); Fed. R. App. P. 22(b)(2), the COA vest this more legaly educated U.S. Supreme Court with more timely jurisdiction to consider this Petition. Soto v. U.S. 185 F.3d 48, 51-53 (2d Cir. 1999).

#21. Defense Attorney (Mr. Maguire) admitted under oath that he had a personal interst in keeping Petitioner jailed conflicted with not only acquittal, but the Sixth & Fourteenth Amendments to our U.S. Constistution.

#22. The right to counsel is violated if a defense attorney has (as here) a actual-conflict of interest that adversely affects the attorney's performance. Amiel v. U.S., 209 F.3d 195, (2d Cir. 2000), ("An attorney labors under an actual conflict of interest for Sixth Amendment purposes if, during the course of the legal representation, the defense interest of the attorney and client diverge with respect to a defense...course of action".) Id [punctuation omitted].

#23. When a defense attorney has an actual conflict of interest, a defendant need NOT "demonstrate prejudice--that the

outcome of his trial would have been different but for the confl ict." Id 199. Rather, the defendant need only show "that some plausible alternative defense strategy or tactic might have been pursued but was NOT and that the alternative defense was inherent ly in conflict with or NOT undertaken due to the attorney's other loyalties." Id. [Memorandums-#2, PC-#A to T & #1,225].

#24. This is a much lower standard of proof than what the lower courts applied, Both the lower Courts expected Petitioner to prove that but for this actual conflict of interest, a better out come was reasonably likely. [Memorandum-#1 @ PC-#9 to #10, (citing ineffective assistance cases holding that Petitioner had not satis fied the second prong of Strickland v. Washington, 466 U.S. 668 (1984)). [Memorandum-#2, PC-#A to T, & #1,225 @ paragraph-#163].

#25. Instead, the correct question was whether any "plausible alternative defense strategy or tactic might have been pursued but was not, and the alternative defense was inherently in conflict with.. the said attorney's other loyalties. Amiel, 209 F.3d at 199, all of which attorney/client actual conflict was timely brought to the trial courts attention pursuant to both attorney Maguire's and Petitioners oral argument[s] in support of (Mr. Maguire's) urgent verbal motions to with-draw as a result of a documented attorney/ client conflict of defense interest during the 5/10/2010, pre-jury draw transcripts of May 10th, 2010, court hearing documenting a ACTUAL-CONFLICT if there ever was a case of ACTUAL-CONFLICT, and trial court Judge Katz failed to do his required duty to inquire into this documented actual-attorney/client conflict of defense

interest or correct the problem called to his attention pursuant to the on the court record and documented actual-conflict in a documented violation of more than just Ciak v. U.S., 59 F.3d 296, 305 (2d Cir. Conn., May 25th, (1995), Wood v. Georgia, 450 U.S. 261, 272, n. 18, 67 L.Ed. 2d 220, 101 S.Ct. 1097 (1981)("Clearly establishing that outright reversal is mandated when the trial court neglects a duty to inquire into a potential conflict of defense interest".); Holloway v. Arkansas, 435 U.S. 475 (1975), (quoting Glasser, 315 U.S. at 70, S.Ct. at 465); Cuyler v. Sullivan, 446 U.S. 335, 349-50 (1980); U.S. v. Levy, 25 F.3d 146, 152 (2d Cir. 1994)["trial judge's failure to appoint seprate counsel or to timely ascertain whether the risk was too remote to warrant another defense attorney, in the face of the actual conflict legal arguments and in court on the record representations made by both (Public Defender Mr. Maguire) and Petitioner before trial and before the jury was empaneled, deprived Petitioner of the guarantee of the correct and lawful assistance of defense counsel"]. Stated Law: REVERSAL IS AUTOMATIC, because that has yet to happen in this case, are"REASON-FOR-GRANTING-THE-PETITION".

#26. (Mr. Maguire's) loyalty to his family (who Petitioner had threaten because of Mr. Maguire working again with the State's attorney to undermine the true and correct defense issues of what happend and the defense evidence that pointed to them facts, ie. acute intoxication and T.H.C. use by both adults), was inherently in conflict with (Mr. Maguire's) bogus, incorrect lie to the jury of Lesbian-Remorse-Defense, and in further conflict of a true---

strategy or tactic aimed at securing acquittal, the documented on the court record Attorney/Client actual-conflict was so fundamental that the Illinois Supreme Court deems such above-said court circumstances a "per-se-conflict" needing no "prejudice or 'actual prejudice' in order to secure a reversal of his conviction. People v. Spreitzer, 123 Ill. 2d 1, 15 (1988), as that court reasoned, [The justification for treating these conflicts as per se has been that the defense counsel in each case had a tie to a person or entity---either counsel's past client, employer, or own previous commitments---which would benefit from an unfavorable verdict for the defendant. The existance of such tie created, in each instance, several problems, first, the knowledge that a favorable result for the defendant would inevitably conflict with the interest of his client, employer or self might "subliminally" affect counsel's performance in ways difficult to detect and demonstrate. People v. Stoval, (1968), 40 Ill. 2d 109, 113, 239 NE. 2d 441 (noting that representation by an defendants attorney who labors under a "possible conflict of interest is("unfair to the accused, for who can determine whether his representation was affected, at least, subliminally, by the conflict")). A second consideration in per se conflict of interest cases has been the possibility that the conflict will unnecessarily subject the defens attorney to "later charges that his representation was not complete ly faithful". Id. 35-36 (emphasis added) A "previous commitment" could hardly be more overriding, and harder to set aside, than the the commitment to protect one's own family from harm.

#27. (Public Defender Maguire), freely acknowledged (on the court record), the conflict resulting from his commitment to his family, whose stated interests he believed and verbally confirmed, lay with a **guilty verdict.**(Mr. Maguire), was "in the best position professionally and ethically to determine [whether] a conflict of interest [existed]," Holloway v. Arkansas, 435 U.S. 475, 485 (1978), and (Mr. Maguire), stated unequivocally (on the court record on 5/10/2010), that one did, It appears the trial court eventually agreed--to late--because it granted defense attorney Maguire's post-verdict motion to withdraw and failed/refused to allow this Petitioners request for both the appointment of new defense counsel and forced Petitioner to act as his own attorney for the P.S.I. and Sentencing, with-out first issuing a lawfully required by this Court, Ferretta v. Calif, 422 U.S. 806-WARRANING, Petitioner was again unlawfully deprived of conflict free counsel for a critical part of the defense because the court again neglected its duty to inquire into a attorney/client **actual conflict** of defense interest. **(quoting** Glasser, 315 U.S. at 70, S.Ct. at 465), Ciak v. U.S., 59 F.3d 296, 305 (2d Cir. Conn., May 25th, 1995 @ LEXIS-#13046) and Wood v. Georgia, 450 U.S. 261, 272, n. 18, 67 L.Ed. 2d 220, 101 1097 (1981)(REVERSAL-IS-AUTOMATIC), Memorandum-#1 and Printed Case.

#28. (Mr. Maguire) timely stated and unequivocally argued to the trial court that a actual attorney/client conflict of defense interest did in truth and documented fact exist during his pre-trial motion[s] to with-draw (Memorandum-#1), this was a documented per se, **actual-conflict**, if there ever was one or can be one, and

under the rules wisely adopted by the Illinois Supreme Court no prejudice need be shown.

#29. The defense record of evidence demonstrated and truely documented what was true to what happend ie. (acute intoxication & T.H.C. use by two consenting adults pursuant to the State of VT. May 9th, 2016 response to Petitioners STATEMENT OF MATERIAL FACTS, in the above-mentioned case), [See Memorandum-#2, at PC-#1,225 at paragraph-#163, (The State admits that Mr. Maguire answered "I suppose so" whether a forensic-toxicologist could have testified that acute intoxication was involved in this case"], meaning YES". to the fact that a alcohol & drug expert could have found acute intoxication by both adults involved in this case of the over-use of both T.H.C. & alcohol pursuant to the large amount of evidence taken into Police custody and the fact that PCR expert review attorney Paul S. Volk,Esq. deposition testimoney pursuant to his opinion on the large amount of drugs & alcohol evidence he reviewed in Police custody, a alcohol & T.H.C. drug expert would have been required for the defense, however was never obtain because Mr.Dan "the man" Maguire was again working with the prosecutor to obtain a conviction over this Petitioner, as Maguire use to work as a assistant attorney General prosecutor with his wife Cindy Maguire who still to this date, works as a assistant Attorney General in VT.

#30. The States May 9th, 2016 response to Petitioners Statement of Material Facts at paragraph-#240, Expert PCR review attorney Paul S. Volk,Esq. attested to the fact that (Mr. Maguire's) repeated defense "mistakes", accmulated and added up to prejudice this

Petitioners defense, State--- admits that PCR expert review attorny Volk testified under oath that this Petitioner was PREJUDICED by (Mr. Maguire's defense/non-defense errors), Dated and attended by assistant attorney General David Tartter on May 9th, 2016, see at Printed Case-#1,272 of Memorandum-#2, State's Responses to this Petitioners: STATEMENT OF MATRIAL FACTS, located at Memorandum-#2, at Printed Case-#1,225 to PC-#1,272, this under oath PCR expert-review records of opinions documents and demonstrates several better and on point with large amounts of defense evidence in Police cust. defense tactics that the defense could have and should have timely undertaken and DID NOT OVER Petitioners on the court record objections, ie. true to what happend, defense evidence and tactics that, could have secured acquittal, were inherently in conflict with the interest of so-called "Defense attorney Mr. Maguire" who could have but deliberately failed to investigate whether a diminshed capacity acute alcohol and T.H.C. drug use intoxication was the true and correct defense according to not only the alcohol and T.H.C. drug use evidence in Police custody, but how both Petitioner and Ms. Linso had admitted to their voluntary use and intoxication at the Petitioners residence and all the in custody evidence of that acute intoxication and T.H.C. drug use in Police custody in this case.

#31. Petitioner had a Sixth Amendment Constitutional right to conflict free counsel and trial court Judge Katz neglected his sworn legal duty to inquire into the ACTUAL attorney/client conflict of defense interest in violation of the Fourteenth Amendment of our U.S. Constitution, all of which has NATIONAL SIGNIFICANCE.

#32. Petitionr contends (Judge Katz) improperly failed to timely inquire (or at all), into whether (Mr. Maguire), had a true conflict of interest, that he had argued in his unlawfully denied past motions to withdraw to the extent (Mr. Maguire), should have been disqualified in order to protect Petitioners Sixth Amendment right to conflict free-counsel.

#33. Petitioner was NOT even given an opportunity to waive the conflict, nor would he have and this why (Judge Katz) failed to hold a hearing in accordance with U.S. v. Curcio, 680 F.2d 881 (2d Cir. 1982), to lawfully determine whether or not a attorney/ client conflict of defense interest existed, as set forth in the [Memorandums-#1 & #2], and also pursuant to U.S. v. Levy, 25 F.3d 146 (2d Cir. 1994), the Second Circuit explained the process, (however were to lazy to follow their own process), pursuant to what all trial court's [Judge Katz] MUST follow, however "over-looked" again in this case after and when [Judge Katz] was timely presented with a clear actual conflict of interest in violation of the well know NATIONAL and SIGNIFICANT, all trial courts MUST follow pursuant to U.S. v. Curcio, 680 F.2d 881 (2d Cir. 1982), See also Printed Case-Memorandum-#2, at PC-A to T.

#34. [Judge Katz] "over-looked" his inquiry obligation after being more than just sufficently appraised of the actual attorney/ client defense conflict of defense intersts. Wood, 450 U.S. at 272-73; Cuyler, 446 U.S. at 347; and Holloway, 435 U.S. at 484.

#35. [Judge Katz] unlawfully failed to look into (Maguire's)(documented PC-A to T), bias against Petitioner to determine whether

he (Mr. Maguire) suffered from actual or potential conflicts. See, Strouse v. Leonardo, 928 F.2d 548, 555 (2d Cir. 1991); U.S. v. Aiello, 814 F.2d 109, 113 (2d Cir. 1987)("Six Amend. "imposes duty to inquire"); U.S. v. Curcio, 680 F.2d 881 (2d Cir. 1982); Aiello, 814 F.2d at 111, 114 (2d Cir. 1987).

#36. Petitioner NEVER WAIVED attorney/client conflict. See; (Memorandum-#2 at PC-A to T), Mannhalt v. Reed, 847 F.2d 576, 580-81 (9th Cir. 1988), (PC-#802 to PC-#1,093).

#37. In violation of In Re: Carter, 2004 Vt. 21 at 6, 176 Vt. 322, 848 A.2d 281, [Judge Katz] further violated Petitioners Sixth Amendment right to PSI and Sentencing counsel, when that Court unlawfully refused to appoint defense counsel for them critical P.S.I. & Sentencing hearings and forced Petitioner to act as his attorney because (Mr. Maguire) and no Sherif body guard he had at the defense table with him at trial sitting between Petitioner and (Mr. Maguire), during the corrupt trial and conviction, while he was well aware he and the State's Attorney were rail-roading this Petitioner into a unlawful conviction and did not care because they were to well aware of being able to have un-lawful ex-party parties and after hour get togethers with phone conversations with both the Vermont Supreme Court and also the New York Court of Appeals, to further cause Petitiners conviction to be affirmed by them also corrupt Court[s] as a direct result of their common unethical litig ation practices of having un-lawful ex-party conversations with-eachother pursuant to what both the Vermont and New York Court systems do on a regular basis pursuant to rail-roading certain

clients with their assembly-line of injustice at both the courrupt State level of injustice judicial criminals and then Federal level of injustices of judicial criminals with both levels of corruption in conjunction with each-other "OVER-LOOKING" this Honorable Courts precedent, knowing full well it's a long shot for a Petitioner, (this Petitioner)), to have the U.S. Supreme Court allow for a full panel hearing on a PETITION FOR WRIT OF CERTIORARI, and this why (more the reason) this Court needs to allow Certiorari in this case, to timely correct it's true to our American law precedent[s], that has been and is currently still being violated over and over again in this case, the lower Court records document.

CONCLUSION

The Petition For Writ Of Certiorari should be granted for all the above said and Printed Case-A to Z, & PC-#1 to #2,000, legal reasons.

Respectfully submitted,

Pro-se
James T. Burke, VT.-#15001291
T.C.C.F.
19351 U.S. Hwy. 49 North
Tutwiler, MS. 38963-5249

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