

JAN 05 2023

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No.

23-5735

IN THE
SUPREME COURT OF THE UNITED STATESMichael James French — PETITIONER
(Your Name)

vs.

Salomon, Warden/Clearfield County — RESPONDENT(S)
Court Of Pennsylvania

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals (3rd)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael James French
(Your Name)1 Rockview Place, Box A
(Address)Bellefonte, PA 16823
(City, State, Zip Code)(?)
(Phone Number)

QUESTION(S) PRESENTED

- (1) What , "Definitive Actions Committed" , [Constitutes] the violent felony of the first degree ;
("Aggravated Assault With Serious Bodily Injury") - 18 Pa. C.S. §2702(a)(1) ?
- (2) What , "Alleged" Serious Bodily Injury occurred ? To whom , when and how ?
- (3) Why is there [No] "legal documentation" , in the Denials/Dismissals of "all" petitions presented , from [any] Pennsylvania court involved ? Federal and State ; showing the violent crime of *Aggravated Assault W/SBI* actually occurred ? {Fatual Basis/Elements`of} ?
- (4) Why would the Clearfield County Court Of Pennsylvania and "all" post conviction court(s) of Pennsylvania , Federal and State, [Fail] to "answer" with legal definition, the question of (Probable Cause) ? Justifying the (F1) crime of *Aggravated Assault W/SBI* ?
- (5) How is it [Constitutional] to ignore both , "Exculpatory Evidence" submitted throughout "all" petitions submitted , [Witnesses/Statements] and [Expert Medical Statement] , just to maintain possession of this "recognized" unlawfully induce crime ? Showing [Actual Prejudice] with both felonies of record.
- (6) How is it [Constitutionally Exceptable] , to substatute a "Wrongfully Accused" felony , with a violent felony that did not occure , with coercion and manipulation ; "Induced" into a Plea Deal with prejudice , to unjustly assure a conviction ? Manipulating Mr Michael James French in becoming a violent felon .

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 proceedings in the court whose judgement is the subject of this petition is as follows.

RELATED CASES

In, Pittman v Kyler, (2003 U.S. Dist. LEXIS 23036), is Commonwealth v Harris, 403 Pa. Super. 435,589 A.2d 264 (Pa. 1991); as in [FRENCH] ; In , [FRENCH] ("There is No definitive factual basis/elements of in the written colloquy or explained in the Plea On Record Colloquy , [inter alia] no objection from counsel at the plea on record colloquy justifying the violent crime of "Aggravated Assault W/SBI"") (**Not Intelligent**) . Citing , Sail v State, 862 N.E. 2d 702 (Ind. App. 2007) , (" The guilty plea was not K.V.I because the defendant was not advised to the elements of the crime , so the plea was not intelligent").

[Unprecedented] , [Notwithstanding , lack of understanding] , of a case related to the "Primary issues" of this case , in [French]. Obscuring/Ignoring [Expert Medical Statement] with Misinformation/Misdirection showing [Actual Prejudice] concerning U=U HIV. Counsels deliberate manipulation in obtaining Plea Deal in the first place, with a crime that did not occur.

"Hypothesized" when counsel informs defendant that , When a "Jury" hears about the defendants "Cancer" status, or "Diabetic" status , would convict on that information alone for the crime of (I.D.S.I) , [is absurd]. There is no prejudicial impact for Cancer or Diabetes being contracted by the defendant giving consensual oral sex.

Now the lack of understanding, of "Factual Information" of Undetectable/Untransmittable HIV and its [Prejudicial Impact] on a "Jury" , would convict on that [Inadmissible Statement] alone. Counsel preying on the ignorance of Mr French's knowledge of the law and his [Constitutional Right] to [Due Process] and condoned by the court. (**Not Knowingly** , **Not Voluntary**).

After the coercion/manipulation by counsel to obtain the [Unconstitutionally Induced Guilty Plea] with the "Induced" crime of (*Aggravated Assault W/SBI*) , over a year after the incident itself. The [Prejudicial Impact] of U=U HIV with [Actual Prejudice] , implies , "Preconceived Presumption of guilt" without investigation of [Probable Cause] , by "all" post conviction court(s) , Federal and State. This ("Showing erroneous legal commentary with false testimony from the courts involved,with misinformation of K.V.I. presented and misdirection to maintain possession of this "recognized" unlawful conviction").

Citing , Notation of , Commonwealth v Boyle, 733 A.2d 663 Super (1999) , ("Prejudice of which severance rule speaks is rather that which would occur if evidence tended to convict only by showing his propensity to commit crimes alleged or because a jury was incapable of separating evidence or could not avoid cumulating evidence") . [No Course Of Action For Defense] with counsels intimidation of the overall outcome. Citing , Nix v Whiteside, 475 U.S. 157,175 (1986) , ("Confidence in the outcome because of counsels deficiencies"). (**Not Voluntary**).

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("Notwithstanding, lack of understanding , that in Appendices E & F , Mr French added "notabene' to areas of misinformation and misdirection, showing No Factual Basis or Elements`of for the crime of Aggravated Assault ; Not knowing that these documents would be needed from thenceforth")

TABLE OF AUTHORITIES CITED

CASES (In Writ of Certiorari)	PAGE NUMBER
<u>Commonwealth v Boyle, 733 A.2d 633 Super. 1999;</u>	Page 2 of 40
<u>Commonwealth v Spiewak, 533 Pa. 1,8 A.2d 697,699 (1999);</u>	Page 3 of 40
<u>Hull v Kyler, 190 F.3d 88,110 (3rd 1999) : (Srickland, ID at 694)</u>	Page 3 of 40
<u>Commonwealth v Hines, 469 Pa. 55,559,473 A.2d 1180,1182 (1981);</u>	Page 3 of 40
<u>Commonwealth v Vaughn, 459 Pa. 35; 1974 Pa LEXIS 447</u> : Notation {459 Pa 38} with <u>Commonwealth v Roundtree, 440 Pa. 199,202,269 A.2d 709 (1970);</u>	Page 4 of 40
<u>Lambert, 387 F.3d at 235-36</u> ; Overarching Standard of <u>28 U.S.C. §2254(d)(2)</u> .	Page 4 of 40
<u>Pittmen v Kyler (2003 U.S. Dist LEXIS 23036)</u> ; With <u>Commonwealth v Harris, 403 Pa. Super 435,589 A.2d 264 (Pa Super 1991).</u>	Page 5 of 40
<u>Lopez v Folino U.S. Dist. 124244 (E.D. Pa).</u>	Page 8 of 40

STATUTES AND RULES

§59 CRIMINAL LAW-GUILTY PLEA-VOLUNTARINESS; ("Because a guilty plea is an admission of all elements of a formal criminal charge, it cannot truly be voluntary unless the defendant possesses an understanding of the law in relation to the facts")

When , (Burden Of Proof) showed (Actual Innocence), came the (Prosecutorial Misconduct).

§835 CONSTITUTIONAL LAW-DUE PROCESS-GUILTY PLEA; ("If a defendants guilty plea is not Voluntary or Knowingly, it has been obtained in violation of Due Process and is therefore viod").

OTHER

Authentication and Identification, Under Rule 901(a) ; Aggravated Assault W/SBI , In general ("To satisfy the requirements of authentication and identification an item of evidence, the proponent must provide evidence sufficient to support a finding and what the proponent claims it is"). When a defendant, giving another person consensual oral sex, that has U=U HIV, Diabetes or Cancer , does Not [Constitute] Aggravated Assault W/SBI. **28 U.S.C. §2254(e)(2)(B)** . ("Had Counsel developed a course of action for defense, Mr French would [not] have been facing the charge of Aggravated Assault at trial"), Showing [all] post conviction court(s) [Actual Prejudice] under **28 §2254(d)(2)**.

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 the petition and is , No: 22-1363 ; Rehearing-10-3-2022 &(B)

[?] reported at No: 22-1363 , C.O.A. Sept 8, 2022 ; 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 (C) to the petition and is

[X] reported at 2022 U.S. Dist. LEXIS 15316 ; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from state courts:

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

[x] reported at 252 A.3d 237; 2021 Pa. LEXIS 1462 ; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Western District of PA, Superior 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. 240 A.3d 161, 2021 Pa. Super. Unpub , LEXIS 2586.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 8, 2022.

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: November 3, 2022, and a copy of the order denying rehearing appears at Appendix (A).

An extension of time to file the petition for a writ of certiorari was granted to and including (60) Days (date) on May 18, 2023 (date) in Application No. ? A ? (Letter enclosed.)

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 APRIL 6, 2021. A copy of that decision appears at Appendix (D).

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

U.S. Constitution:

AMENDMENT VI; In all criminal prosecutions , the accused shall enjoy the right to a speedy and public trial , by an impartial jury of the State and district wherein the crime shall have been committed , which district shall have been previously ascertained by law , and to be informed of the nature and cause of the accusation ; to be confronted with witnesses against him ; to have compulsory process for obtaining witnesses in his favor , and to have the assistance of counsel for his defense.

AMENDMENT XIV; (1) All persons born in the United States , and subject to the jurisdiction thereof , are citizens of the United States and of the State wherein they reside . No State shall make or enforce any law which shall Abridge the privileges or immunities of citizens of the United States ; nor shall any State deprive any person of Life, Liberty, or Property , without Due Process ; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

December 15, 1018 , Post Conviction Relief Act , (P.C.R.A.) is filed to the Clearfield County Court Of Common Pleas ; with [Preserved] inquiry of (Probable Cause) for the (F1) crime of Aggravated Assault W/SBI . Pages regarding , [EXHIBIT C] in "Writ Of Certiorari" , pgs 26 through 31 of 40.

November 25, 2019 , Final ORDER by Presedent Judge , Fredric J. Ammerman , finalizes DISMISSAL and Denial of (P.C.R.A.) as "Moot" , by Judge Paul E. Cherry. [APPENDIX F]

December 9, 2019 , Notice Of Appeal to the Supreior Court Of Pennsylvania, Western District is submitted and filed/docketed February 4, 2020 , # 154 WDA 2020.

April 9, 2020 , (Matters Compained Of On Appeal) is filed.

August 14, 2020 , Superior Court Of Pennsylvania , Affirms DISMISSAL of (P.C.R.A.). [APPENDIX E]

September 9, 2020 , Petition For Allowance To Appeal is filed to the Supreme Court Of Pennsylvania ; Amended October 7, 2020 .

April 6, 2021 , Petition For Allowance To Appeal , is DENIED by the Supreme Court Of Pennsylvania , Western District. Mr French received Denial , while in the COVID Quarantine Unit at SCI-Rockview. [APPENDIX D]

May 13, 2021 , Federal Habeas Corpus §2254 is filed to the United States District Court, Johnstown Division , (10) days after being reliased from the Quarantine Unit at SCI-Rockview.

September 16, 2021 , Memorandum Of Law In Support of §2254 is submitted to the District Court.

October 15, 2021 , Rule and Order by the District Court , of Timeliness is issued.

November 8, 2021 , Memorandum/Brief Of Timeliness in Support Of 28 U.S.C §2244 and Statute Of Limitations 28 U.S.C. §2244(d) is submitted to the District Court , showing "Impediment" to timely file under 28 U.S.C. § 2244(d)(1)(B) while in quarantine at SCI-Rockview , by (9) days.

January 26, 2022 , Report and Recommenation by Magistrate Judge , Kieth A. Pesto , to DENY Federal Habeas Corpus §2254 , Final ORDER Denying Federal Habeas Corpus §2254 on February 25, 2022 . [APPENDIX C]

March 10, 2022 , Notice Of Appeal is submitted:

May 19, 2022 , (Amended) Certificate Of Appealability is filed to The United States Court Of Appeals (3rd).

July 29, 2022 , Court Of Appeals , files Memorandum In Support of Certificate Of Appealability.

("*Notwithstanding , lack of understanding*") Mr French "Unnecessarily" filed Annotated Statutes with Memorandum Of law on August 8,2022 ; This followed by a letter of appology and the unprofessionally stated , statements in Petition[s] submitted. Mr French's frustrations and anger , thought and stated ; vindictive prejudice ; spiteful conspiracy to obstruct justice ; obiterdicta , regarding all post conviction court[s]. For all post conviction court's [Failed] to verify [Probable Cause] , Elements`of the violent crime of Aggravated Assault W/SBI. Only erroneous legal commentary , avioding the primary claim in justifying this Felony of the First Degree.

September 8, 2022 , Certificate Of Appealability is DENIED by the Court Of Appeals (3rd). [APPENDIX B]

September 21, 2022 , Petition Requesting ,Both Pannel And En Banc Rehearing ; Pursuant to Fed R. App. 35 (b)(3) constituting the (F1) crime of Aggravated Assault W/SBI , is submitted.

November 3, 2022 , Petition Requesting , Both Pannel And En Banc Rehearing is DENIED. [APPENIX A]

January 5, 2023 , Petition For , Writ Of Certiorari is submitted to The Supreme Court Of The United States.

REASONS FOR GRANTING PETITION

When there was acknowledgement , by the Clearfield County Court of Pennsylvania , that Mr Shawn Bell , age 22 at the time did [not] give Mr French oral sex ; witnesses proving Mr Bell's sexual advances toward others , before and continued well after the incident with Mr French , {Concent} , showing "Reasonable Doubt" , [Actual Innocence] . Dropping the initial felony charge of (I.D.S.I.) , acknowledgement of being wrongfully accused , "Excessive Zeal" , took place of [Due Process] , the court still wanted a felony.

The [only] way the Clearfield County Court of Pennsylvania could "Add a charge" a "New Felony" , the charge of Aggravated Assault to Mr French's case ; was to coerce/manipulate this violent felony of the first degree , into a Plea Deal with "Actual Prejudice" , over a year after the initial incident. This with No [Probable Cause] ,Factual Basis/Elements`of.

Counsel, Intimidating Mr French with his Undetectable/Untransmittable HIV status and how a Jury may conceive this [Inadmissible] information and its [Prejudicial Impact] , ("**Not Knowingly**") . This coercion and manipulation under "Unlawful Direction of Counsel" , ("**Not Voluntary**") . That the charge of Aggravated Assault is just a formality , an inconsequential charge for the (12) Month Plea Deal , ("**Not Intelligent**") . This with misinformation and misdirection , (3) Days before trial , which added to the fact that Mr French was already under extreme duress. Preying on the ignorance of Mr French's knowledge of the law and his constitutional rights.

This [Unprecedented] issue of U=U HIV and its "Prejudicial Impact" , to fabricate this violent crime of Aggravated Assault that did not occur , [on prejudice alone] ; "is Unconstitutional". Bring's to "All" post conviction court(s) , {Preconceived Presumption Of Guilt} ; without investigation . Deliberately ignoring [Exculpatory Evidence] with [Actual Prejudice]. For ("*Mr Shawn Bell was [not] "harmed" in anyway or form , nor was Mr Bell in danger of "Harm" at any time , whatsoever*") . Under **28 U.S.C. §2254(e)(2)(B)** and **28 U.S.C. §2254 (D)(2)**.

For [all] post conviction court(s) , finding any "Erroneous Reasons" to Dismiss with Legal Commentary and Case Law , having no merit in Mr French's case. Ignoring/Sidestepping the Primary claims of the [Preserved] inquiry of [Probable Cause] ; Definitive actions committed ; Material Facts/Elements`of the violent crime of Aggravated Assault With/Serious Bodily Injury , a Felony of the First Degree. Only [Mere Iteration] of this violent crime is acknowledged with "Misinformation/Misdirection" , is a ["*Miscarriage Of Justice/Manifest Injustice*"].

Where in "Constitutional Law" does it state that it is legally acceptable to compromise and induce a felony into a Plea Deal that did not occur , just to seal a conviction ? Again , preying on the ignorance of Mr French's knowledge of the law and his constitutional rights to [Due Process] , [Witnesses/Exculpatory Evidence] ; The 6th and 14th Amendments apply.

Other than the Unlawful Inducement of Mr French's signature and the deliberate [Ineffectiveness Of Counsel's] unlawful direction at the Plea Colloquy , ther is [no] Legal Precedent for the violent , (F1) crime of Aggravated Assault With/Serious Bodily Injury.

This case , in [FRENCH] , "New Precedent" needs to be set forth , for this "Prosecutorial Misconduct" , is [Unconstitutional] . The state of Pennsylvania and there "Excessive Zeal" , to maintain possession of this unlawful conviction ; from this [Unconstitutionally Induced Guilty Plea] , with compromised crimes not committed ; due to the "Prejudicial Impact" , by counsel , to obtain Plea Deal, regarding U=U HIV. When this Judicial Error has been acknowledged behind closed doors with [Actual Prejudice] , by "all" post conviction court(s) , Federal and State ; Preying on the ignorance of Mr French's knowledge of the law and his Constitutional Rights, with misdirection and erroneous legal commentary .

In final declaration , may the Supreme Court Of The United States be attentive to the profound wisdom and Facts expressed hereto and come to agree with the petitioner's reasoning. Based on the foregoing , the petitioner , Mr Michael James French respectfully request that the Supreme Court Of The United States grant the *Petition For Writ Of Certiorari* and following relief.

That petitioner , Michael James French's conviction and excessive sentence be [Vacated With Prejudice] , "Pending" the resolution of weather the petitioner's conviction and sentence are free from any "Undue Influence" , Constituting Deficient Prosecution and Representation af all counsel and court(s) of record.

CONCLUSION

The petition for Writ Of Certiorari should be granted.

Respectfully Submitted



Michael James French

Date: JUNE 29, 2023