

No. _____

ORIGINAL

23-7052

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

NOV 14 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Shirron Gayles-Zanders — PETITIONER
(Your Name)

VS.

State of Nevada — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Nevada Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shirron Gayles-Zanders
(Your Name)

4370 Smiley Rd
(Address)

Las Vegas, NV. 89115
(City, State, Zip Code)

None
(Phone Number)

Questions Presented (5th, 6th & 14th Amend. Violations)

After review of petitioner's application for Writ of Certiorari, was petitioner denied & deprived of her 6th Amend. Constitutional Right to Counsel for her defense? ~~of competent legal assistance in said case?~~

After review of application for Writ of Cert., did the Court find that petitioner was deprived of her 6th Amend. Right to guarantee of a Competent Assistance of Counsel with said loyalty, did not act as an advocate with binding hand?

After review of application for Writ of Cert., did the Court find that petitioner was deprived of her Fundamental & Substantive Rights guarantees of the 5th, 6th & 14th Amendments to "protect her adversary process; (2) rights to fair & impartial legal process; (3) right to establish a fully developed record to prove her conviction & confinement is illegal; (4) right to preserve her Constitutional Claims for Habeas review; (5) right to Access the Courts?"

After review of application for Writ of Certiorari, did the Court find that petitioner was deprived of her right to Conflict-free Counsel and if Counsel exhibited Divided loyalty?

After review of application for Writ of Cert., did the Court find that petitioner's appellate counsel abandoned her case and left petitioner "Effectively Unrepresented?"

After review of application for Writ of Cert., did the Court find that petitioner was denied & deprived of her 5th, 6th & 14th Amend. right to file a Stay Motion to Retain Private Counsel of her Choice or file a Writ of Cert. before Affirmation?

Did Counsel deprive petitioner of her due process rights to file a Supplemental Brief?

Questions presented (5th, 6th & 14th Amend. Violations)

After review of petitioner's application for Writ of Cert, did the court find that appellate counsel Stewart's legal representation was Constitutionally deficient and provided objectively unreasonable appellate performance under Six Amend.?

After review of application for Writ of Cert, did the court find that counsel was ineffective for not filing for a Retrial, due to the claim of ineffective counsel on direct appeal or file for Evidentiary hearing to address unresolved issues, thus prejudicing petitioner and violating her due process rights of 5th, 6th, 14th?

After review of petitioner's application for Writ of Cert, did the court find that counsel was ineffective for not perfecting the direct appeal at petitioner's repeated request thus prejudicing petitioner and violating her 5th, 6th, & 14th rights.

After review of petitioner's application for Writ of Cert, did the court find that counsel deprived petitioner of her right to participate in the decision making, right to provide critical exculpatory evidence & information to support her appeal and did both counsel & the courts strip her of her right to personally defend and Access the Court?

After review of petitioner's application for Writ of Cert, did the court find that counsel and petitioner had irreconcilable differences that resulted in a complete attorney/client breakdown? Does it warrants automatic reversal?

After review of petitioner's application for Writ of Cert, did the court find that she was prejudiced and deprived of her 5th, 6th & 14th Amend. Federal Constitutional rights during her first appeal as of right under Strickland v. Washington

Was counsel ineffective for not informing petitioner of critical decisions?

Questions presented (5th, 14th, & 14th Amend. Violation)

After review of petitioner's application for Writ of Cert., did the court find that counsel both Actively & Constructively denied & deprived petitioner of her due process of law "right to Counsel" guarantees of the 5th, 14th, 14th Amendments,

After review of petitioner's application for Writ of Cert., did the court find petitioner was prejudiced and deprived of her due process of law when counsel filed an Anders brief with claims that were meaningless, inconsistent with provisions of Anders, filed adverse citations knowing the brief would abridge petitioner's right to preserve Constitutional Claims for review. Was Counsel ineffective as a matter of law in the context of the Anders Brief?

After review of application of Writ of Cert., did the court find that counsel's failure to raise the issues whose resolution is clearly foreshadowed by existing Federally established Constitutional law decisions, prejudiced petitioner and constituted ineffective assistance of Counsel?

After review of petitioner's application for Writ of Cert., did the court find that the State higher Courts used unlawful legal maneuvers (Evasion of Const. questions) to deprive defendant of her due process of law rights guarantees of the 5th, 14th & 14th Amendments? (Right to Counsel for her defense)

After review of petitioner's application for Writ of Cert., did the court find that the State Courts decisions raises significant questions regarding standard of review on issues of Constitutional dimensions?

Did the Court find that petitioner should have been granted leave to intervene by Nevada higher courts on Certiorari to resolve Constitutional issues?

Questions presented (5th, 6th & 14th Amend. Violations)

It is unconstitutional and a violation of the 6th Amend. for a state court to deny a substitution of Counsel when the court has been "informed" or "alerted" that a conflict of interest exist or that an irreconcilable attorney/client relationship exist. Did the State Court Violate petitioner's 5th, 6th & 14th Amendments, due process of law guaranteed protections under these Federal Const. rights?

The U.S. Supreme Court hold that before a ruling on a Motion to substitute counsel due to an irreconcilable conflict, a court "must" conduct such necessary inquiry as might ease the defendant's dissatisfaction, distrust & concern. Did the State Courts Violate the petitioner's due process of law rights & protection guarantees of the 5th, 6th & 14th Amendments?

The Court hold that if a court improperly deny a motion to substitute counsel, it is unconstitutional and an Error that "must be" reversed. Is petitioner entitled to Relief and reversal of her Conviction & Confinement?

The U.S. Supreme Court hold that all judges whether district or appellate have an independent "Duty" to safeguard a criminal defendant's right to Conflict-free counsel" to ensure the defendant receives a fair trial or adjudication process that does not contravene the guarantees of the 6th & 14th Amendments. After review of petitioner's application for Writ of Cert., did the court find that the state higher courts deprived petitioner's of her due process rights?

The Court hold if a judge is alerted "to a possible conflict of interest" and fails to take adequate steps to ascertain whether the conflict warrants separate counsel, the judge has unconstitutionally forced the appellant to choose between proceeding with a lawyer who has an apparent conflict or giving up the right to be represented by Counsel.

Questions presented (5th & 14th Amend. Violations)

After review of petitioner's application did the court find that the Court imposed "Affirmative Duty" on petitioner to personally appeal the Order of Affirmation and thus prejudice petitioner and violated her due process of law rights of the 5th, 6th & 14th Amendments, when they returned the Motion to Re-hearing, Motion for Affirmation Relief & Motion to Vacate Remittitur Unfiled?

After review of petitioner's application, did the Court find that the Nevada higher courts exhibited & demonstrated a bias & partial position in petitioner's case that hindered the higher courts from applying the law fairly, neutrally and accordingly to the Constitutional due process of law guarantees of the Federal Constitution?

After review of petitioner's application for Writ of Cert., did the court find that both Counsel and the Nevada Courts collectively through the utilization of methodical unlawful, unconstitutional legal maneuvers deprive petitioner right to counsel on appeal, but also limited the defendant's constitutional right of equal access to the appellate process?

After review of petitioner's application for Writ of Cert., did the court find that Counsel failed to assure petitioner an adequate opportunity to present her claim fairly in the context of the state's appellate process?

Who has the right to choose what Meritous Claims to pursue on appeal, Counsel or Appellant? Were appellant's right to choose what claims to pursue violated?

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

State of Nevada vs Shirron Gayles-Zanders, NO C-18-330 666-1
Eighth District Court, Clark County, State of Nevada Judgment entered June 27, 2022

State of Nevada vs. Shirron Gayles-Zanders, NO 84583
Nevada Supreme Court/Court of Appeals, Judgment entered August 24th, 2023

Shirron Gayles-Zanders v. The Eighth Judicial Dist Court of the State of Nevada, In and For the County of Clark; The Honorable Linda Bell; and Eric Bossi, Stein Forensic Hospital and The State of Nevada, Real party in Interest, Nevada Sup. Ct. NO 81304
Judgment entered 7/9/2020

Shirron Gayles-Zanders vs. The Eighth Dist. Court of the State of Nevada, In and For the County of Clark; and the Honorable Linda Marie Bell, and the State of Nevada
Real Party in Interest. Nevada Sup. Ct. NO. 81504 Judgment entered 9/18/2020.

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APPENDIX E	<u>Letter dated 9/2/2023 from attorney Stewart with Order affirming Conviction</u>
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APPENDIX G	<u>(20) Twenty Page Supplemental brief/Affidavit dated 8/24/2022</u> <u>(5) Five page Written Letter from Co-Counsel Williams dated 3/26/2022</u> <u>(1) One page Correspondence from Atty. Stewart dated 9/1/2022</u>

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(49) Forty Nine page Supplemental Brief/Affidavit dated 3/6/2023

(19) Nineteen page Affidavit/Complaint on Atty. Stewart dated 3/25/2023

(4) One page Correspondence from (S.C.) 4/11/23 Returning Document Unfiled.

(22) page Appellant's Opening Brief (In the S.C. of Nevada) dated 3/22/2023

(21) page Motion to Dismiss Counsel dated 5/17/23 filed in 8th Dist. Ct.

(45) page Emergency Motion to Dismiss Counsel dated 6/14/2023 in (S.C.)

Court Minutes dated 6/22/23 informing 8th Dist. Ct. Lack Jurisdiction

(13) page Motion for En Banc Reconsideration to Dismiss Counsel dated 7/7/23

Notice of Transfer to Court of Appeals dated 7/13/23 from Nev. S.C.

Notice of Transfer to Court of Appeals dated 7/18/23 from Atty. Stewart

FED-EX Shipment Receipt dated 7/11/23 Received by S.C. on 7/13/2023

(8) page request for Motion to Stay Direct Appeal dated 7/12/2023

Cert. of Mailing for Motion to Stay to Atty. Stewart dated 8/7/2023

(21) page Motion for En Banc Reconsideration dated 8/4/2023 to S.C.

FED-EX Shipment Receipt dated 8/8/2023 Received by S.C. on 8/14/2023

Correspondence dated 8/15/23 (S.C. informing Returning Unfiled Affidavit)

(7) seven page Complaint/Affidavit dated 8/21/23 to Nevada S.C.

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Nevada Court of Appeals Docket Sheet dated 10/9/2023

Nevada Supreme Court Docket Sheet dated 10/9/2023

(30) page Motion To Vacate Remittitur dated 10/19/2023

FED-EX Shipment Receipt dated 10/20/23 Received in (Nev.S.Ct) 10/25/23

Motion to Withdraw as Counsel (Atty. Treffinger) dated May 16th, 2022

Emails between Canon Brown & Atty. Treffinger Requesting Retrieval

1/31/2017 Incident Recall / Affidavit of Custodian Records dated 12/10/2019

Witness Statement dated 11/4/2017 (Alon Wing)

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9	Ripio v. State, 134 Nev. 411, 423 N.12, 423 P.3d 1084, 1097 N.12 (2018)	App. A
10	Valdez-Jimenez v. State, 136 Nev. 155, 158, 400 P.3d 976, 982 (2020)	App. A
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15	Martinez v. Court of Appeals of Cal., 538 U.S. 152 (2000)	App. B
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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 _____ 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 United States district 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.

☒ 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

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Nevada Supreme Court court appears at Appendix D to the petition and is

- ☐ reported at _____; or,
☒ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: _____, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 6/30/2023.
A copy of that decision appears at Appendix C.

☒ A timely petition for rehearing was thereafter denied on the following date: 9/18/2023 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. § 1257(a).

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Statement of Case (Grounds)

Petitioner base her Arguments in this petition on the below grounds & violations of her 5th, 14th & 19th Amendments Federal Constitutional Rights:

- 1) Right to Counsel for her Defense (Abuse of Judicial Discretion)
- 2) Right to Conflict-free Counsel (Abuse of Judicial Discretion)
- 3) Right to Retain private Counsel of Choice (Ignorance of Motion to Stay)
- 4) Right to Competent Effective Counsel of Said loyalty (Abuse of Jud. Discretion)
- 5) Right to Preserve Adversarial process & to preserve Const. Claims for Review
- 6) Right to Access the Court (Right to Fair & Impartial Appellate process)
- 7) Right to equal Access to the appellate process (Right to file Supplemental Brief)
- 8) Right to file for Retrial & Evidentiary hearing (Ineffective Counsel on Direct appeal)
- 9) Right to Self Representation (pled an all cause) Informed on Critical Decisions
- 10) Right to participate in decision Making (Choose Claims to file on Appeal)
- 11) Right to provide needed information to counsel to support claims on direct appeal
- 12) Right to file Rehearing & Review of Affirmation, Relief of Affirm, Vacate Reconstitution
- 13) Right to proper inquiry & hearing for substitution of Counsel (Evasion of Const. R.)
- 14) Right to a Brief that is consistent & Comply with the Provisions of Anders

Petitioner must reiterate & argue her Brief consisted of one claim that is customarily filed in State or Federal Habeas, the other claim was "Moot" and court-ordered adverse citations. Petitioner must emphasize in this right, it is clear that the Nevada higher courts erroneous denial of petitioner's Motion to dismiss counsel, ignorance of petitioner's complaints, Motion to Stay to allow petitioner to procure private counsel, unlawful Unfiling of Motions, Affidavits, refusal to allow the filing of petitioners Supplemental briefs and Retrial imposed "unreasonable constraints" on petitioner diligent endeavors to establish a fully developed record that her conviction & confinement is illegal, her "due process" right to preserve her adversarial process & right to Counsel for her defence thus forcing Shirron to participate in a Direct Appeal process that the very Structure was the Constitutional

GROUND See below
(continued)

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my 5th, 14th Amendment Right to Various Constitutional Violations based on these facts:

Petitioner argue her Conviction was obtained erroneously, illegally & unconstitutional due to many violations of petitioner's Constitutional due process rights either by ineffective Counsel, prosecutorial misconduct and Judicial Abuse. Listed below are some of the Constitutional Violations of Due process Rights:

- 1) Right to Self Representation (Faretta v. California)
 - 2) Right to Counsel Issues (Strickland, Smith vs. Robbins, 6th & 14th Amendments)
 - 3) Inefficiency of Evidence (Brady, McMann, Glasser vs. U.S.)
 - 4) Competency Issues (Improper Exclusion of Psych Evidence) (Ake v. Oklahoma)
 - 5) Altered Transcripts (Unlawful termination) of two Jurors after Jury Deliberation)
 - 6) Right to Plea NOT GUILTY (Brookhart v. Janis / 5th, 6th & 14th Amendments)
 - 7) Right to Suppression hearing (McMann v. Richardson, 6th Amendment)
 - 8) Right to Speedy Trial (Counsel failed to cite Controlling Precedence / McMann)
 - 9) Right to Remain Silent (Miranda vs. Ariz., McNabb/Mallory Rule / 5th & 14th Amendments)
 - 10) Right to Best Plausible Line of Defense (Miller v. State, U.S. v. Williams / 6th Amendment)
 - 11) Right to Confrontation (deprived of right to Confront Witness Han Wong)
 - 12) Right to Compulsory (deprived of Right to both Expert & Material Witnesses)
 - 13) Right to Competent Counsel with loyalty prescribed & Guaranteed by 6th
 - 14) Abuse of Judicial Discretion (Unlawful Pretrial hearing / Failure to Recuse)
 - 15) Abuse of Judicial Discretion (Failure to Advise Jury in Open Court (Incident Report))
 - 16) Prosecutorial Misconduct (Knowledge of perjured Testimony & Jury Tampering)
 - 17) Prosecutorial Misconduct (Concealing witnesses, false presentation of evidence, etc)
- Please Review both (30) & (39) Page Supplemental Briefs for additional Violations

Statement of Case

Petitioner avers due to she & counsel's conspicuous irreconcilable attorney/Client breakdown that derived from counsel's divided loyalty, Conflicting interest, lack of effective communication, undermining actions, refusal & failure to allow petitioner to file a supplemental brief, refusal & failure to file a Motion for retrial, refusal & failure to file & pursue all Meritous claims, refusal & failure to conduct an adequate investigation of petitioner's claims, refusal & failure to perfect the direct appeal at petitioner's repeated request, refusal & failure to request an evidentiary hearing, refusal & failure to keep petitioner informed of critical decisions, refusal & failure to allow petitioner to participate in the decision making, failure to give competent legal advice, failure to provide the "guiding hand" guaranteed by the 6th Amend, refusal & failure to preserve the adversary process, refusal & failure to withdraw at petitioner's request and most important refusal & failure to provide counsel for "her defense," effective assistance with said loyalty prescribed & guaranteed by the 6th Amend, petitioner avers she filed the much necessary Motion to dismiss counsel.

Petitioner argue due to Counsel's duty & obligation to provide Counsel for "her defense," counsel was duty bound to fulfill the above requests, pursue all Known Meritous claims or had a duty to withdraw to allow for a counsel who was willing to provide counsel for Shimoda's defense. Petitioner argue by not doing so, petitioner was deprived & deprived of her right to counsel and Counsel for "her defense," petitioner further emphasize & argue had counsel advised she had "no intentions" of pursuing the Meritous claims she initially listed, petitioner would have advised counsel to "Stay" the direct appeal proceedings before she filed the opening brief. Petitioner argue she was undermined by counsel.

Statement of Case

Petitioner avers immediately after receipt of Counsel's Opening Brief, she filed an appellate Complaint pursuant to NRAP Rule 33(a)(2). Petitioner avers she carboned copied the Nev. Sup. Ct. Petitioner avers counsel totally ignored addressing the Complaint and the Nev. Sup. Ct. returned the Complaint Unfiled See Appellate Complaint dated 3/23/23 in Appendix (G).

Petitioner avers after ^a ¹¹ No response from her appellate counsel or the Nevada Sup. Ct on the Constitutional issues raised in her complaint, she filed a Motion to Dismiss Counsel in the 8th jud. Dist. Court. Petitioner avers counsel sent her a correspondence advising she informed the 8th jud. dist. Ct. pursuant to NRAP 46(a), the 8th jud. dist. Court lacked jurisdiction to address the Motion and further requested that the Court strike the entire Motion from the record. Petitioner avers she received a response from the court informing they could not hear the Motion due to lack of jurisdiction as counsel advised.

Petitioner refiled the Motion to Dismiss Counsel dated 6/14/23 in the Nevada Sup. Court. The Motion was filed on 6/30/2023. Petitioner received an Order Denying the Motion on 7/6/23. Petitioner argue due to the Constitutional Violations raised and involved, the partial addressing of the Critical Constitutional issues raised, it was absolutely impossible for the Nev. Sup. Ct. to render a decision without first conducting an adequate inquiry or hearing. Therefore, petitioner concluded the Motion to dismiss was denied erroneously with the misapplication of law or facts on the basis of a partial unsubstantiated decision, thus prejudicing petitioner and violating her due process of law rights.

Petitioner avers she prepared a Motion for En Banc Reconsideration pursuant to Rule (27C)(2) to dismiss counsel dated 7/7/23 to Nev. Sup. Court. The Fed-Ex Tracking record reflect the Motion was received on 7/13/2023.

Petitioner avers on 7/17/2023 she received a Notice of Transfer from the Nev. Sup. Court pursuant to NRAP 17(b) advising "any filing in this matter from

Statement of case

this date forward shall be entitled "In the Court of Appeals of the State of Nevada"

Petitioner avers & argue therefore due to the Notice of Transfer and NRAP 17(B) & (E) accordingly, the Nevada Sup. Court no longer had jurisdictional authority to render a decision on her case. Petitioner further argue because the Nevada Sup. Court did not specify the particular reason for the transfer, i.e. whether or not the transfer was due to the Conflict of interest involving both Justices Herndon & Bell, petitioner was left to speculate on Jurisdictional authority. See Notice of Transfer dated 7/13/23 in Appen. (G)

Petitioner avers accordingly she filed a Motion for Ex Parte Reconsideration pursuant to NRAP 27(C)(2) & NRAP 27(A)(2). Petitioner avers on 8/3/23 she received a very vague undefined Order from the Nev. Sup. Ct. denying her Motion for Ex Parte Reconsideration. Petitioner avers the Order, ⁽¹⁾ was signed by one justice only; ⁽²⁾ the Motion pursuant to NRAP 17(B) was erroneously filed & decided in the Nevada Sup. Ct.; ⁽³⁾ No findings of facts or conclusions of law were indicated; ⁽⁴⁾ No case Citations were listed; ⁽⁵⁾ the Order was entered solely on the pleading; ⁽⁶⁾ nor was an opinion written. Petitioner therefore argue the Order of denial was erroneous, illegal & unconstitutional because there was not even a ground to base a denial nor was the adequate inquiry conducted to support the denial. Petitioner must emphasize, the Order of denial dated 7/28/2023 prejudiced petitioner and violated her Constitutional protection guarantees of the 5th, 6th & 14th Amendments. See Order dated 7/28/23 in Appen. (E)

Petitioner avers she refiled another Motion for Ex Parte Reconsideration dated 8/4/23 in The (C.O.A) which included the (8) page Motion to Stay, FedEx shipment record reflect the Motions were received in a timely manner on 8/11/23. Petitioner avers she received a written response dated 8/14/23 from the Nevada Sup. Court that they were returning "Unfiled" the Affidavit received in their office on 8/14/2023. See (7) page Affidavit/Complaint dated 8/21/23 in Appendix (G)

Statement of Case

Petitioner argue, "she sent the Motions to the Court of Appeals" not the Nevada Sup. Ct. as Nev. Sup. Ct. instructed her to do; "petitioner sent "Motions" and not "Affidavits" which according to rule 2.10(a) must be filed. Petitioner argue not only was the Motions to Dismiss or Motion to Stay not filed, neither Motion was dated stamped as received "filed" or "unfiled" or acknowledged whatsoever. See NRAP 40 (a)(2)(F).

Petitioner avers in response to the Nevada Sup. Court notice of Unfiled, she resent both the (6) page En Banc Reconsideration Motion, the (8) page Motion to "Stay" proceedings as (7) page complaint to Nev. Ct. of App., counsel Stewart and a Laundry List of other supporting documentation pertinent to her case. Petitioner declare once again her Motions were intentionally ignored & disregarded by both the Nevada higher courts & counsel to evade addressing the Motion to Stay the proceedings to allow petitioner her due process of law right to retain private counsel or to address the Constitutional issues raised on her Motion to dismiss Counsel on Certiorari before the issuing of the Order of Affirmation. Petitioner must emphasize the Order of Affirmation was coincidentally decided on 8/24/23 which just so happen to be the same date the court received both The En Banc Reconsideration & Stay Motion to proceedings.

Petitioner avers when she received the Order of Affirmation on 9/7/2023, she immediately prepared a (23) page Motion for Rehearing dated 9/8/23. The Motion was mailed to (C.O.A) on 9/18/23 and received on 9/18/23. With the Motion petitioner declare she once again sent the (8) page Motion to Stay.

Petitioner avers on 9/25/23 she received an Order denying her Motion for En Banc Reconsideration from the Nevada Sup. Court. However the Order was received after the mailing of the Motion for Rehearing to the Ct. of App. on 9/18/23. On the second page of the (2) page denial Order dated 9/18/23; it specifically states: "Appellant shall have (14) days from the date of this Order to file and serve "any"

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petition for Rehearing or Review." See NRAP 40; NRAP 40(A), "If no petition is not filed within the time period, the Remittitur shall issue. Petitioner argue not only did she file both a timely petition for Rehearing & Affirmation Relief, she requested counsel to certify the petitions and electronically file as well. The Motion for Affirmation Relief was delivered by Fed-Ex on 10/2/23 Rule 27(a)(3)(A).

Petitioner argue the above "Quoted statement" of Order imposed "Affirmation Duty" on her to personally Appeal in this situation and therefore her Pro Se Motions should not have been returned "Unfiled" by the Ct. of Appls. or Nev. Sup. Ct. Petitioner further declare when she received the Motions Unfiled with the Remittitur on 10/17/23 both the Motion for Rehearing & Affirmation Relief were erroneously dated stamped as being untimely received on 10/6/23 in which the attached Fed-Ex record will reflect is incorrect. See Order in App(E).

Petitioner avers in response to the Remittitur, she hastily prepared and filed a Motion to Vacate Remittitur dated 10/19/23. The Fed-Ex record reflect a delivery date of 10/25/23, signed by Morourke. Petitioner declare she has suffered immense prejudice through the Misfeasances of the Nevada jud. System, Petitioner aver & argue both her fundamental & substantive due process of law rights of the 5th, 6th & 14th Amendments have been violated collectively by and through unlawful legal maneuvers of the Courts, her appointed appellate Counsel and the inaccuracies & inconsistent filings of her official court documents by the court clerks.

Petitioner urge the U.S. Supreme Court to review each of her Motions to dismiss Counsel, her Complaints, Affidavits/Supplemental Briefs, Motion to Stay and all others documents Appended to support her petition. Petitioner avers the record will provide clear & convincing evidence the Nevada higher courts repeatedly abused their judicial discretion to hinder & hide critical "Bonafide Credibility Issues" from Habeas Review and Certiorari, thus depriving petitioner of due process Const. protections. Petitioner avers if permitted to stand, the Order of Affirmation would be a "MisCarried Justice

Statement of Case

The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right to have the assistance of Counsel for his or her defense". This right has two inherent components: (1) the right to counsel's undivided loyalty, and (2) the right to reasonably competent counsel.

The special value of the right to the assistance of counsel explains why it has long been recognized that the right to counsel is "the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n.14, 25 LEd 2d 763, 90 S.Ct. 1441 (1980). The text of the Sixth Amendment, it suggests as much. In *McMann*, the court held that the accused is entitled to a reasonably competent attorney, whose advice is within the range of competence demanded of attorneys in criminal cases." See also *Avery v. Alabama*, 84 LEd 377, 308, U.S. 444, *Wood v. GA*, 450 U.S. 261, 271 (1981).

Petitioner emphasize an accused right to be represented by counsel is an essential fundamental component of our Criminal Justice System. Lawyers in criminal cases "are necessities, not luxuries." Their presence is essential because they are the means through which the other rights of the person they are representing are secured. Without counsel, the right to a trial itself or direct appeal would be "of little avail," as the court has repeatedly recognized. "Of all the rights that an accused person has, the right to be represented by counsel is by far the most persuasive for it affects defendant's ability to assert any other rights she may have as Shriver has repeatedly argued in this case at bar. See *James M. Barnes* (1983).

Petitioner argue her direct appeal record amply reflect she was denied & deprived of her Constitutional due process right to counsel for her defense. Petitioner argue she has a compelling claim for Relief under U.S. v. Ash, 413 U.S. 300, 309, 37 LEd 2d 619, 93 S.Ct. 2968 (1973). The court held if no actual assistance for the accused defense is provided, the Constitutional guarantee has been violated.

Statement of Case

Petitioner argue and must emphasize "The Sixth Amendment, however guarantees more than the appointment of Competent Counsel by its terms, one has the right to "Assistance of Counsel" for "his or her defense." Assistance begins with appointment of counsel, it does not end there. The courts have repeatedly continued to emphasize that the purpose of counsel is to "preserve the adversary process" and that counsel must act "in the role of an active advocate in behalf of his or her client." Accordingly, a defendant is entitled to the reasonably competent assistance of an attorney acting as her diligent conscientious advocate, U.S.V. DeCoster, 487 F.2d, 1203 (1973)

Petitioner argue "the Constitution's guaranty of assistance of counsel cannot be satisfied by mere formal appointment of counsel. Petitioner argue that the appointment of her appellate counsel was a complete "sham", and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. In fact petitioner further argue her appellate record strongly suggests & demonstrate counsel's representation was contrived with the sole intent to arrest the development of any & all of petitioner's endeavors to establish a fully developed record that her conviction & confinement is illegal and to impede the preservation of any & all Constitutional claims for review in both state & federal Habeas proceedings or Certiorari.

Petitioner argue & must emphasize the sole purpose of having counsel is to protect both the fundamental & substantive due process of law rights guarantees of the accused, to preserve the adversary process and most important to provide Competent Effective loyal assistance for her defense. Petitioner argue what good is it to have counsel, if counsel fail to provide effective assistance & function as an active advocate for her defense. Petitioner argue she was deprived of her due process of law rights under Strickland & Cronic

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Petitioner over argue "more specifically, the right to assistance of counsel has been understood to mean that there can be no restrictions upon the function of counsel in defending a criminal prosecution in accord with the traditions of the adversary fact-finding process that has been Constitutionalized in the Sixth and Fourteenth Amendments," 422 U.S. at 857, 45 L.Ed.2d 593, 95 S.Ct. 1025.

In support of petitioner's arguments petitioner list *Jones v. Barnes*, 416 U.S. 745, 750, 77 L.Ed. 2d 467, 113 S.Ct. 3308 (1983), "where the court held to satisfy the Constitution, Counsel must function as an advocate for the defendant as opposed to a friend of the Court," *Ferris v. Ackerman*, 444 U.S. 193, 204, 62 L.Ed. 2d 355, 100 S.Ct. 402 (1979). "Indeed an indispensable element of the effective performance of defense counsel's responsibilities is the ability to act independently of the Government and to oppose it in adversary litigation," in which the record amply reflect Counsel simply failed to do.

In further support of petitioner's arguments, petitioner list *Engle v. Isaac*, 456 U.S. 109, 133-134, 71 L.Ed. 2d 783, 102 S.Ct. 155 (1983) *U.S. v. Agurs*, 427 U.S. 97, 102-105, 49 L.Ed. 2d 342, 96 S.Ct. 2392 (1976) *Tollett v. Henderson*, 411 U.S. at 267, 36 L.Ed. 2d 155, 93 S.Ct. 1602; *Parker v. North Carolina*, 397 U.S. at 797-798, 25 L.Ed. 2d 785, 90 S.Ct. 1458; *McMann v. Richardson*, 397 U.S. 759, 770-771, 25 L.Ed. 2d 743, 90 S.Ct. 1441 (1970) *Brady v. United States*, 37 U.S. 742, 756, 25 L.Ed. 2d 747, 90 S.Ct. 1463 (1970). *Wood v. Georgia*, 450 U.S. 261 (1980).

Petitioner argue "it is the client's right to expect that her lawyer will use every skill necessary, expend every energy and tap into every legitimate resource in the exercise of independent professional judgement on behalf of the client and in undertaking representation on the client's behalf. See *Thomas v. Municipal Ct.*, 878 F.2d 385, 289 (9th Cir.).

It is counsel's duty to conscientiously & competently launch a vigorous representation as an active advocate on defendant's behalf.

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Counsel is duty bound to uncover, investigate, & file all known Meritous Claims that can & should be filed on direct appeal to protect appellant's right to establish a fully developed record of facts to demonstrate her conviction & confinement is illegal and to preserve petitioner's Constitutional Claims for review in State & Federal Habeas proceedings if necessary. Counsel's refusal & failure to uncover & file all known Meritous Claims on Direct Appeal cannot be justified as a tactical strategy. Petitioner further argue "Mere invocation of strategy does not insulate an attorney's behavior from review". *Breechen v. Reynolds*, (41 F.3d 1343, 1369, 10th Cir. 1994). See also *Mason v. Hanks*, 97 F.3d 887, 894 (7th Cir. 1996) "Where the Court held certain defense strategies or decisions may be so 'ill-chosen' as to render Counsel's overall performance & representation Constitutionally deficient."

Petitioner argue the record reflect appellate counsel unreasonably failed to discover & address all known nonfrivolous issues/claims and to file a meritorious brief raising the issues to protect & preserve the adversarial process. Therefore petitioner argue she has established that her counsel provided objectively unreasonable appellate performance under the U.S. Constitution Amend. VI. The Cumulative Errors Warrants reversal.

Petitioner argue & emphasize in this case at bar, the record reflects "appellate counsel Stewart legal representation was so 'deficiently horrible' it constituted a 'Constitutional error' of the first magnitude and no amount of showing of want of prejudice would cure it." Petitioner list *Douglas v. Alaska*, 485 US 305, 39 LE2d 347, 99 S.Ct. 1105 (1979) in support of argument. Petitioner further aver & argue, the cost of litigating counsel's effects & impairments in this particular case is unjustified. See *U.S. v. Croniz* Please See & review Counsel's Stewart Docketing Statement in Appendix (G) dated 8/9/2023. Demonstrates she was aware of viable claims but refused to raise issues,

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Petitioner argue counsel Stewart Docketing statement speaks volume. It clearly demonstrates that counsel conducted a comprehensive study of petitioner's case record that was provided and from her review ascertained several claims to be Meritous and initial listed the Claims on her docketing statement as claims she plan to pursue on appeal. Petitioner further argue the claims listed were claims she ascertained to be Meritous as well and because the claims constituted "Structural defects" and particularly the right to Self-representation claim, it warranted an automatic reversal of petitioner's Conviction. Moreover the cumulative errors alone warranted automatic Reversal of petitioner Conviction. Petitioner therefore argue she suffered immense prejudice because counsel completely ignored & disregarded her many requests to argue not only the Constitutional Claims counsel ascertained to be Meritous but the numerous claims petitioner ascertained to be Meritous as well.

Petitioner argue & must emphasize it is considered a "harmless error" when counsel's mistakes are oversights and done unintentionally. However it is blatant negligence, ineffectiveness, unprofessional & unethical when counsel listed the known Meritous Constitutional Claims on the Docketing statement, led petitioner to believe not only was she going to argue the claims she listed but the claims petitioner requested counsel to argue as well. Petitioner argue the claims were critical because not only would the filings allow her to establish & fully develop her Conviction & Confinement is illegal & unconstitutional, the filing & arguments of the Claims also served as a vehicle to preserve her Constitutional Claims for review in both State & Federal Habeas. Counsel was duty bound to keep petitioner informed.

Petitioner declare & argue due to Counsel's conspicuous divided loyalty, intentional Ineffective Assistance of Counsel & deficient performance

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she will list numerous cases that are compelling claims for relief of the Order of Affirmation in addition to the provisions of Strickland.

Petitioner argue she has a compelling claim for Relief under U.S. v. Spitz, 342 F.3d 1154 (10th Cir. 2003). The court held "A lawyer who disregard specific instructions to perfect a criminal appeal acts in a manner that is both professionally unreasonable and presumptively prejudicial."

Gayles-Zanders therefore argue she was prejudiced by her appellate counsel's deficient performance, divided loyalty & conflicting interest. In support of her argument she list Delgado v. Lewis, 223 F.3d 976, 981 (9th Cir. 2000) where the court finding was that appellate counsel's failure to raise Meritous Claims on appeal prejudiced Delgado where "there were deficiencies in the trial court proceedings significant enough to warrant reversal as in Shirron's case at bar."

Therefore Gayles-Zanders has a compelling claim for Relief under Delgado v. Lewis (9th Cir. 2000). To say the least, counsel's refusal & failure to raise the "Sure Winner" Meritous Constitutional Claims at petitioner's repeated request unequivocally undermined the confidence in the outcome of Gayles-Zanders direct appeal which led directly to the illegal, unconstitutional Affirmation of Conviction. See: *Evitts v. Lucey*, See *Dwight Tappin, Jr. v. Muriz* (9th Cir. 2018)

Petitioner argue she as well has a compelling claim for relief under U.S. v. Thompson, 728 F.3d 711, 712-713 (D.C. Cir. 2013). It is the law of this circuit that a case be remanded to the district court on any claim of ineffective assistance first raised on direct appeal that cannot be readily resolved on the record before the court. Petitioner argue her case meets the standards of this decision.

Petitioner further argue the Order of Affirmation for her Conviction was obtained in violation of her Constitutional due process of law right under U.S. v. Gillis, 723 F.2d 549 (4th Cir. 1983). Petitioner argue due to the denial & deprivation of her right to

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File for a Retrial & file a Supplemental, she suffered immense prejudice and therefore has a compelling claim for Relief Under U.S. v. Gillis. See NRAP 30(a)

In United States v. Gillis, the Supreme Court held since appellant has a Constitutional right to "effective assistance of Counsel" on appeal but merely limited statutory rights to proceed pro se, the appellate court adopted procedures which strikes appropriate balance of these potential conflicting interest where it appoints counsel to brief the case and present oral arguments while allowing appellant to submit a Supplemental brief, by accessing the Court.

Petitioner argue due to her knowledge of this decision, accordingly she submitted a (20) page Supplemental brief to Counsel dated 8/24/22 listing numerous Meritous claims she wanted counsel to file on her behalf to not only support her claim that her Conviction & Confinement is illegal but also to preserve all known Meritous Constitutional Claims for review in Habeas if necessary.

Petitioner avers she advised counsel to file for a Retrial and evidentiary hearing.

Petitioner avers counsel replied with a letter dated 9/1/2022. See letter in Affen (6)

Petitioner argument is that first of all, Counsel provided misleading inadequate legal advice; ⁽²⁾ did not advise petitioner the Supplemental brief could be filed with the proper request for retrial; ⁽³⁾ deceptively led petitioner to believe she was going to pursue any & all Meritous claims on Opening Statement; ⁽⁴⁾ did not keep petitioner informed of critical decisions; ⁽⁵⁾ refused & failed to allow petitioner to participate in the decision making. Petitioner declare she was undermined by counsel's actions, suffered immense prejudice and was deprived of her due process of law protection rights guarantees of the 5th, 6th & 14th Amendments.

Petitioner argue the Court has repeatedly held when a claim of ineffective assistance of counsel is contemplated, it should & "must" first be presented to the district court in a Motion for a new trial as a means to aid the petitioner in perfecting the direct appeal and to preserve Constitutional Claims for review in Habeas. See U.S. v. DeCoster

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Petitioner avers & argue "when totalizing evidence is available, those leads must be pursued, a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead any reasonable attorney to further investigate. Petitioner argue she made numerous attempts to provide counsel with new evidence to support her claim her conviction is illegal & unconstitutional. When a right to appeal exist, a right to access the court.

In further support of petitioner's argument and Good Cause for relief, petitioner list *Bonin v. Calderon*, 59 F.3d 815, 834 (9th Cir. 1995), "Where the court held to determine whether counsel's errors prejudiced the outcome of the trial, the courts must compare the evidence that was actually presented to the jury with that which could have been presented had counsel acted appropriately." Therefore petitioner argue she has a compelling claim for relief of the Order of Affirmation under *McMann*, 397 U.S. at 770, 25 Fed. 2d 763, 90 S.Ct. 1441, "Where the court held that the accused is entitled to a reasonable competent attorney, whose advice is "within the range of competence demanded of attorneys in criminal cases". Petitioner argue a review of counsel's Docketing statement & Opening Brief clearly demonstrate & substantiate a preponderance of counsel's failures, deficient performance, ineffectiveness, divided loyalty & conflicting interests, prosecutorial misconduct, abuse of discretion,

Petitioner avers & argue she has a compelling claim for relief under *U.S. v. Cronie*, 466 U.S. 648, 659 n. 35, 104 S.Ct. 2039, 80 Fed. 2d 657 (1984) "Where the court held that the appellant must be able to provide needed information to his or her lawyer and to participate in the making of decisions on her own behalf. See Supplemental Briefs dated 8/24/22 & 3/1/23 in Appendix (G). Petitioner further argue due to appellate, counsel's divided loyalty, conflicting interest, deficient performance & Constitutional Errors, petitioner was deprived of her due process of law rights & guarantees of the 5th, 6th & 14th Amendments to show how specific errors of her trial counsel undermined the reliability of the finding of guilt. Petitioner has a compelling claim for relief under *Strickland*, 466 U.S. at 668

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Petitioner argue in further support of her argument a Good Cause for relief of her Order of Affirmation & Conviction, prejudice is presumed in the Anders Context based on the complete denial of counsel "Smith, 528 U.S. at 286, while prejudice is presumed in the present context based on the even more serious denial of the entire judicial proceedings itself. In support of her argument petitioner list Roe, 528 U.S. at 483. See also Davis v. Krummer, 167 F.3d 494-496-98 (9th Cir).

Petitioner argue she is entitled to relief because she received ineffective assistance of appellate counsel due to counsel's failure to comply with the requirements of Anders v. Calif., 386 U.S. 738, 18 LEd 2d 493, 89 S.Ct. 1346 (1967) which rendered petitioner's procedure fundamentally flawed. Shirron argue in this case at bar under current circuit precedent, counsel ineffectively assisted Shirron as a matter of law.

Petitioner declare she suffered immense prejudice because after counsel withdrawal she will left with no vehicle to pursue any of the many Meritous Constitutional claims for review in both state & federal Habeas proceedings due to counsel's refusal & failure to address the stronger Known/Non-Ambiguous Constitutional Claims on Direct Appeal in which does not comply with the provisions of Anders. Petitioner aver & argue counsel intentionally abused her power to make strategic decisions to sabotage & destroy not only petitioner's endeavors to prove her conviction & confinement is illegal but as well to abridge any & all of petitioner's further endeavors to preserve her claims for Review in Habeas. Petitioner argue the adverse citations were critically detrimental.

Therefore Shirron argue her claim meets the standards under the traditional test for ineffective assistance of counsel laid out in Strickland v. Washington, 466 U.S. 668, 80 LEd 2d 674, 104 S.Ct. 2052 (1984) thus warranting automatic reversal of Shirron's Conviction & Confinement.

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Petitioner argue she has a compelling claim for relief of her Order of Affirmation under *Darwin Jay Robinson, Sr. v. Charles Black, Warden, Nebraska State Penitentiary*, 812 F.2d 1084 U.S. Ct. of Appeals (8th cir 1987). In *Robinson v. Black*; The court held petitioner was denied effective assistance of appellate counsel in violation of U.S. Const. Amend III. The court determined that the brief submitted by petitioner's appellate counsel denied the petitioner of the Constitutional protections he was entitled to because counsel failed to act as an advocate for petitioner as in *Shimon's* case at bar.

The Sixth Amendment right to effective counsel in a criminal proceedings extends to indigent persons on direct appeal. In order to protect the defendant's rights, counsel must first brief anything in the record that might arguably support an appeal. This "mandatory" briefing must be done as an advocate. The Constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his or her client, as opposed to that of *amici curiae*.

Shimon argue she had a right to expect counsel to brief and argue her case to the best of counsel's ability, showing the most favorable side of the defendant's arguments. See *U.S. v. Ormeno* (9th cir 1993); *U.S. v. Ortega* (9th cir 2000). *Shimon* argue Counsel changed the adversarial process into an inquisitorial one by joining the forces of the state and working against her client. Petitioner argue the cause of advocacy is not served to read a brief filed by appellant's own counsel asserting the government's position in the case. To further support *Shimon's* claim for relief see: *Douglas v. Calif.*, 372 U.S. 353, 357-58, 9 LEd 2d 211, 83 S.Ct. 814 (1963); *Anders v. Calif.*, 386 U.S. 738, 18 LEd 2d 493, 87 S.Ct. 1396 (1967). See *Strickland v. Washington*, 466 U.S. at 668. Please See Counsel's Opening Brief in Append. (6) for adverse Citations

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Petitioner argument is that counsel deprived her of her Constitutional protections she is entitled to because counsel failed to provide⁽¹⁾ the adequate assistance of competence required of Counsel prescribed & guaranteed by the 6th & 14th Amendments⁽²⁾ failed to act as an advocate for Shirron defense thus prejudicing Shirron and Violating her due process of law protection guarantees of the 5th, 6th & 14th Amendments, to access the courts and participate in a fair state procedural process,

Shirron therefore declare & argue she suffered immense prejudice because after counsel's withdrawal, she will be left to proceed pro se against the state, which will have the benefit of the appointed counsel's mutilating brief that is riddled & infected with numerous detrimental adverse citations, weak, fruitless briefing, no arguments, the omission of known "dead banger Winner" Constitutional Claims, No Supplemental brief, no request for retrial to Supplement the direct appeal with evidence. The brief consist of one claim, although appropriate to file, is customarily filed in State or the bars, therefore provides the higher court the option to reserve hearing on direct appeal as petitioner repeatedly advised & predicted. The other claim was "Moot" which was essentially meaningless to file.

In the context of substitution of Counsel in a criminal matter, the extent of the conflict can be inferred from the appointed counsel's response and conduct. Petitioner argue she has a compelling claim for relief of her Order of Affirmation under Wadsworth, 830 F.2d at 1570-11 (9th Cir 1987) Petitioner argue the record amply reflect counsel's Stewart has failed petitioner in every aspect of her duty & obligation to represent petitioner to the standards prescribed & guaranteed by the due process clauses of the 5th, 6th & 14th Amends. Petitioner further argue it is clear & evident counsel did not provide Counsel for "her defense", provide the "guiding hand" that is guaranteed nor did counsel act in the best interest of petitioner. Petitioner argue, in fact, counsel abandoned her representation with respect to the Motion to Dismiss Counsel and with the (19) page appellate Complaint filed on Counsel on 3/25/23.

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Petitioner declare & argue counsel took an adversary, animus stance which petitioner argue left her "effectively Unrepresented." Petitioner argue she was left to file her Motions Pro Se which were all erroneously returned Unfiled by the higher Courts. See NRS 21(2)(a) in support of petitioner's argument.

Petitioner argue the case of Wadsworth offer vast support for her claim for relief because the circumstances involved in petitioner's case are very similar to the Wadsworth case. In Wadsworth, the court held that it was "error" for the court to deny substitution in these circumstances and that the court should have suspended the proceedings and appointed counsel for the petitioner for purposes of the pending motions. Petitioner avers the record amply reflect Shinn requested that the court allow another counsel to represent her pursuant to *Dogoniere v. U.S.* or in proper person to resolve her issues with counsel.

Petitioner argue the court was "duty bound" to stay the proceedings as petitioner repeatedly requested, conduct the proper adequate inquiry and appoint separate counsel to represent Shinn. Petitioner argue the record will amply reflect her Motion to stay the proceedings was repeatedly intentionally ignored & disregarded by counsel and "returned Unfiled" by the higher Courts.

Petitioner argue & must emphasize an inquiry into the source of petitioner's dissatisfaction with her attorney would have been useful to the justice in meeting his or her responsibility "to maintain proper standards of performance by defense attorney's" *McMann v. Richardson*, 397 U.S. 759, 771, 25 LEd 2d 763, 90 S.Ct. 1444 (1970) and thereby avoiding a later claim of ineffectiveness. Petitioner declare she is in her present predicament due to the erroneous, illegal, unconstitutional rulings & decisions of the Nevada Ct. of App. & Nev. Sup. Courts.

Petitioner argue, "In forcing her under the circumstances to accept counsel against her will and denying her Motion to dismiss counsel without conducting the adequate inquiry & hearing, the Nevada higher Courts prejudiced petitioner

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and deprived petitioner of her Constitutional due process of law right to: (1) right to Counsel & Counsel for her defense; (2) right to a competent, effective assistance of counsel with said loyalty prescribed & guaranteed by the 6th and 14th Amendments; (3) right to a Conflict-free Counsel; (4) right to prove her conviction & confinement is illegal; (5) right to access the courts; (6) right to preserve her adversary process; (7) right to plead own cause, provide information needed & participate in the decision making, therefore depriving petitioner of her rights guaranteed under Strickland during her first appeal, 466 U.S. at 668 thus warranting reversal of petitioner's Order of Affirmation & Conviction.

Petitioner argument is that in proceedings at which the Sixth & Fourteenth Amendment right to Counsel apply, whether in district court or in appellate proceedings, Judges & Justices alike have an independent duty "to safeguard a criminal defendant's right to Conflict-free Counsel in order to ensure that the defendant receives a fair trial or proceeding that is fair and does not contravene the 6th & 14th Amendments. *Wheat v. U.S.*, 486 U.S. 153, 161-162 (1983).

If a judge is "alerted" to a possible Conflict of interest and fails to take adequate steps to ascertain whether the conflict warrants separate counsel, the judge has unconstitutionally forced the defendant or appellant to choose between proceeding with a lawyer who has an apparent Conflict or giving up the right to be represented by counsel. See *Smith v. Lockhart*, 823 F.2d 1314 (8th Cir 1991) for relief in *Shimono's* case.

Petitioner argue despite clear indications & advisements of irreconcilable differences between she and Counsel Stewart, the courts refused & failed to take the adequate steps to ascertain the "root cause" of the Conflict to make a substantial determination if new counsel was warranted. In doing so the courts failed to recognize the Material breakdown in Communication and the detrimental affect & impact the irreconcilable differences were rendering on petitioner's direct appeal. Petitioner argue due to the court's failure to apply the proper procedural measures, petitioner

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suffered immense prejudice which rendered her effectively unrepresented."

Shirron argue the existence of competing interests in itself was clearly affecting counsel's capacity to give undivided loyalty to Shirron's interest (Cuyler Claim) and irreconcilable conflict between client and lawyer (Frazier Claim), petitioner need not show prejudice when an attorney's client breakdown results. Petitioner argue in forcing her to accept counsel under these circumstances and against her will violated her due process of law rights of the 5th, 6th & 14th Amendments.

Petitioner further argue in the Order denying her motion to dismiss counsel dated 6/30/23, The Justice additionally advised "petitioner could not represent herself on appeal pursuant to *Blonk v. State*." However petitioner argue to differ. Petitioner argue: Lacking a Constitutional ground to appear Pro Se on appeal, the basis for that claim right is under 28 U.S.C. § 1654, U.S. v. *Gillis* & *Faretta* & the rights of the Sixth & Fourteenth Amendments.

Petitioner base her argument on the right implicit in the Sixth Amend. to "make one's defense personally." *Faretta v. Calif.*, 442 U.S. 806, 819 45 LEd 2d 562, S.Ct. 2525 (1975). Petitioner also cites 28 U.S.C. § 1654 which states "In all courts of the United States, the parties may plead and conduct their own causes personally or by counsel as by the rules of such courts respectively or permitted to manage and conduct causes therein. Petitioner further argue and in support of her petition for Writ, Art 1 § 8 of the Nevada Constitution implicitly states: (1) in any court whatever, the party accused shall be allowed to appear and defend in person and with counsel, it also states; (2) No person shall be deprived of their Life, Liberty or property without the due process of law. Petitioner however declare & argue her direct appeal record amply reflect petitioner was deprived of her due process of law rights by the Nevada higher courts through their abuse of Judicial discretion; many arbitrary & capricious legal maneuvers & decisions.

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Petitioner must emphasize, the counsel provision supplement this design. It speaks of the assistance of counsel and an assistant, however expert, is still an assistant. The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the 6th Amendment, shall be an aid to a willing defendant - not an organ of the state interposed between an unwilling defendant and her right to defend herself personally. To thrust counsel upon the accused against her considered wish, thus violates the logic of the Sixth Amendment. In such a case, counsel is not an assistant, but a master, and a right to make a defense is stripped of the personal character upon which the Amendment insists. Petitioner must reiterate an unwanted counsel represents "the defendant only through a tenuous and unacceptable legal fiction." Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed her by the Constitution, for in a very real sense, it is not her defense (*Faretta v. California*).

Petitioner further argue even dating back to the Colonial Era, the common-law rule, succinctly stated in *R. v. Woodward* (1944) K.B. 118, 119 (1944) 1 All E.R. 159, 160 has evidently always been that "no person charged, with a criminal offense can have counsel forced upon her against her will, See 3 Halsbury's (2537) Laws of England p. 1141, pp. 624-625 (4th ed 1973) *R. v. Maybury*, 11 L.T.R. (N.S.) 566 (Q.B. 1865).

Petitioner argue "The Supreme Court has held that the denial of a defendant's Sixth Amendment right to conduct his or her own defense is a structural error. An error that undermines the integrity of the trial or appellate process itself. Petitioner argue where there exist a right to counsel, there exist a right to conduct one's own defense. In support of argument petitioner list *McKaskle v. Wiggins*, 465 U.S. 168, 177 n. 3, 79 L.Ed 2d 122, 104 S.Ct. 944 (1984) See also *Faretta v. California*

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Petitioner's argument is that in general, Counsel should be guided by the American Bar Assoc. Standards for the defense function. Counsel represents the legal profession's own articulation of guidelines for the defense of criminal cases (ABA 21.3.2). Under (ABA) guidelines it stipulates counsel must honor petitioner's decisions. Under (ABA) Standards for Criminal Justice 21.3.2, Comments p 21-72 (added 1980), that as an ethical matter, an attorney should argue on appeal all nonfrivolous claims upon which the client insists. Whether or not one agrees with the client's view of legal strategy, the lawyer after giving her best opinion, should acquiesce in the client's choice of claims.

Petitioner further argue she has a compelling claim for relief under *Thompson v. Warden*, 598 F.3d 281, 436 (6th Cir. 2010), the Court held: Failure of Counsel to raise an issue whose resolution is clearly foreshadowed by existing decisions constitute ineffective counsel. Petitioner declare & argue each claim initially listed on Counsel's docketing statement are clearly foreshadowed by existing Federal established law in particular (Right to Self-Representation) under *Tareta*. Petitioner must emphasize there is absolutely no excuse or reason counsel can provide to justify not pursuing the Meritorious Constitutional Claims she initially listed.

Petitioner emphasize & argue the Order of Affirmation of her Conviction was obtained erroneously, illegally & unconstitutionally due to and resulting from the erroneous, illegal, unconstitutional rulings & decision of her Motion to dismiss counsel. Petitioner argue the basis of her arguments are constituted under the current version of the (A-DEFA) of 1996 Standard of review: See 28 U.S.C. § 2257(a).

The United States Supreme Court interpreted this statute and more clearly defined the two-part standard of review in *Williams v. Taylor*, 529 U.S. 362, 404-405, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000). Petitioner argue that the decision rendered on the Motion denying dismissal of Counsel; (1) was clearly contrary to federal established law of the U.S. Supreme Court; (2) and clearly confronted facts that are materially

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indistinguishable from a relevant Supreme Court precedent. Petitioner argue in addition she will demonstrate that the ruling & decision on her Motion to dismiss counsel was so far departed from the accepted and usual course of judicial proceeding, as to call for an exercise of this court's supervisory power of Standard of review under Rule 10 §(a)(b) & (c) of Certiorari.

Petitioner argue & contend it is unequivocal that the erroneous, illegal, unconstitutional decision of her Motion to dismiss imposed unreasonable constraints on petitioner's: ⁽¹⁾ Right to Counsel for her defense; ⁽²⁾ right to Access the Courts; ⁽³⁾ right to procure private counsel; ⁽⁴⁾ right to establish & develop record to prove her conviction is illegal; ⁽⁵⁾ right to preserve adversary process; ⁽⁶⁾ right to defend & participate in decision making; ⁽⁷⁾ right to effective Competent Counsel with Loyalty & ⁽⁸⁾ right to Conflict-free Counsel.

Petitioner argue a review of her direct appeal record can & will amply demonstrate; ⁽¹⁾ petitioner provided ample "Good Cause" for Counsel's dismissal; ⁽²⁾ appellant's general loss of confidence or trust in counsel is indeed an adequate cause for appointment of new counsel; ⁽³⁾ petitioner provided ample demonstration of counsel's conflict of interest & divided loyalty; ⁽⁴⁾ petitioner stated & advised the courts on (page 3) Line item #27, the last line on Motion to dismiss dated 6/14/23 of she and counsel's complete attorney/client breakdown in which the record reflect the justices ignored & disregarded altogether; ⁽⁵⁾ petitioner also advised she and counsel had a total lack of communication in which was affecting & impacting counsel's ability to act as an active advocate, therefore rendering the success of petitioner's direct appeal highly unlikely or impossible as in the case of *Brown v. Carter*, 424 F.2d 1166, 1169-70 (CA 9, 1970) Petitioner argue she has a compelling claim for relief under this decision because the court held, case where distrust, animosity or other personal differences between defendant and her would be counsel renders effective representation unlikely or highly

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impossible, defendant has been deprived of his or her Six Amendment right to Counsel. The court held that "Loyalty has been described as perhaps the most basic of Counsel's duties." See *Strickland v. Washington*, See also *Brookhart v. Lewis*, See *McKee v. Harris & U.S. v. Cronie*, Petitioner argue & must emphasize she filed an appellate Complaint dated 3/25/23 (see Appendix (G)) and counsel and win the Nevada Supreme Court. Petitioner avers she received a letter dated 4/11/23 from the Nevada Sup. Ct. informing her the Affidavit was being returned & not filed. See (letter dated 4/11/23 in Appen (G)). Petitioner argue despite clear warning signs of an obvious complete attorney/Client breakdown, the higher courts ignored & disregarded her complaints and rendered a decision without conducting the proper procedural inquiry or hearing to make such a critical decision, thus prejudicing petitioner and violating her due process of law rights of the 5th, 6th & 14th Amendment. See *Strickland*, *Evitts vs. Luey*, *Williams v. Taylor*

Petitioner list in support of her claim for relief *U.S. v. Garcia*; "Where the Court held before a ruling on a Motion to substitute counsel due to irreconcilable Conflict, a court must first conduct such necessary inquiries as might ease the defendant's dissatisfaction, distrust & concern."

Petitioner list *U.S. v. Carlos Adelzo-Gonzalez*; "The court held the loss of Trust is certainly a factor in assessing "Good Cause" so long as petitioner can provide ample legitimate reasons for lack of Confidence in which petitioner argues she provided. "The Court further held the district court did not make an adequate inquiry and failed to recognize the material breakdown in trust and communication between defendant and attorney. The court further held it is a violation of the Sixth Amend. to improperly deny a Motion to substitute counsel in a criminal matter and an "Error" that must be reversed regardless of whether prejudice results."

Petitioner list *U.S. v. Moore* in support for her relief; "Where the court held

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if an appellant contends that her appellate counsel had a conflict of interest and that there was an irreconcilable conflict between lawyer and appellant, if the relationship between lawyer and client completely collapse as it did in Shirron's case at bar, the refusal to substitute counsel violates defendant's Sixth Amendment right to Effective Counsel. A defendant need not show prejudice when a breakdown of a relationship results in the complete denial of counsel. See *U.S. v. Cronie*, 466 U.S. at 648, 659.

Petitioner argue & emphasize "Active or Constructive denial of Counsel altogether is legally presumed to result in prejudice." *Toomey v. Burnell* (1990) Lack of Communication preventing an adequate defense. See *U.S. v. McClelland*, 782 F.2d 785, 789 (9th Cir 1986). See *Hudson v. Rusher*, 686 F.2d 826, 832 (9th Cir 1982) "Where the court held a total Lack of Communication results in a complete denial of counsel as in Shirron's case at bar,

Additionally petitioner argue a court may not deny a Motion for substitution in a criminal matter simply because it thinks counsel representation is adequate. Petitioner argue the Nevada higher courts emphasis on Counsel's competence and capacity to provide adequate representation rather than on the status and quality of the attorney/client relationship was misplaced, causing immense prejudice to petitioner leaving her virtually effectively Unrepresented, thus violating her due process of law right to Counsel for her defense, an effective, competent legal Counsel and Access to the courts,

Petitioner argue she has a compelling claim for Relief from the Order of Affirmation under *Morero v. Luebban*, 509 F.3d 489, 505 (8th Cir 2007) "where the Court held it is not the Court's Commission" "to invent strategic reasons or accept any strategy counsel could have followed without regards to what actually happened," when a petitioner shows that counsel's actions actually resulted from inattention or neglect rather than reasoned judgment, the petitioner has rebutted the presumption of

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strategy, even if the government offers a possible strategic reason that could have, but did not prompt counsel's course of action, petitioner argue she is entitled to relief under this decision.

Petitioner avers the conclusion inherent in petitioner's argument is that the courts intentional ignorance of her questions of Constitutional dimensions constitutes "Evasion," thus obstructing petitioner's Six Amend. right to Counsel for her defense and a right to an Effective Competent Counsel with said loyalty prescribed & guaranteed by the 6th Amend. & the Equal Protection Clause of the 14th Amendment to ensure a fair & impartial legal process.

Petitioner further argue the direct appeal process in itself was conducted in an unlawful, unconstitutional manner which was conspicuously not in compliance with the NRAP's, FRAP's & due process of law's rights & protection guarantees of the 5th, 6th & 14th Amendments. The courts omitted cases related to this claim.

Petitioner argue "court clerks are sworn officers of the court. They are duty bound & responsible for maintaining the completeness, accuracy and integrity of the court files and in that capacity receives and files all court papers, including copies of summons, complaints, answers, amendments, motions and appearances, and also issues some papers as summons and writs upon the Order of the judge."

Petitioner argue although procedural law does not state the law, it outlines the procedures that "must" be followed in applying the "substantive" law to ensure a process by which a person can secure his or her "substantive rights." Petitioner argue due to the numerous intentional erroneous Unfilings, incorrect & inaccurate court advisement letters, incorrect date stamped of critical court filings & documents both her fundamental & substantive due process of law rights & protection guarantees of the 5th, 6th & 14th Amendments, were violated.

Petitioner argue she has a compelling claim for Relief under Harris v. Nelson, 394 U.S. 286, 300; where it clearly states in pertinent part that:

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"Where specific allegations before the court show reason to believe that the petitioner may if the facts are fully developed, be able to demonstrate that her confinement is illegal, is therefore entitled to relief, it is the duty of the courts to provide the necessary facilities and procedures for an adequate inquiry." Obviously in exercising this power, the court may utilize familiar procedures appropriate, whether they are found in civil or criminal rules or elsewhere in the usage and principles of law. See *Teague v. Zook*, 806 F.3d 803 (4th Cir 2015); quoting *Quisenberry v. Taylor*, 112 F.3d at 279 (4th Cir 2009).

Petitioner argue the Order of Affirmation is a violation of her "due process" of law rights to Equal Protection under the 14th Amendment of the Federal Constitution because the effect of the ruling & decisions are "only" serving the deprivation of petitioner's Constitutional rights to (1) establish a fully developed record to prove her confinement is illegal; (2) to ensure that all of her Constitutional claims are preserved for review in Habeas proceedings; (3) her right to Counsel prescribed & guaranteed by the 6th Amendment. The effect of that if permitted to stand, would be tantamount to permitting a state by a arbitrary & capricious method of procedure to deny Shimmer the right to the aid and benefit of counsel as that right is embraced within the "due process" clause of the 14th Amendment. Petitioner argue she has a compelling claim for relief under *Reese v. Georgia* (350 U.S. 85, 100 LEd 77, 16 S.Ct. 167).

The court held "Any state procedural device which would deprive Shimmer of submitting evidence to prove the deprivation and prevent her from making a record in the inferior court is itself contrary to the 'due process' clause of the 14th Amendment." The denial & deprivation of an effective counsel in this instance is an Abuse of Discretion perpetrated by this court to hide "Bona Fide Credibility issues" from an Honorable reviewing court.

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"Any ruling whether by the trial court or the Nevada higher courts to deprive Shimon of her right to a fair appellate process and to deprive her of her right to protect her Constitutional rights through the aid of an 'Effective Counsel' is Contrary to the 'due process' clause of the fourteenth Amendment of the United States because the effect of such ruling is to deprive Shimon of the benefit embraced within the fourteenth Amendment."

"The fourteenth Amendment is paramount to any state rule of procedure, whether the same is embodied in statute or by judicial opinion, for the law to be otherwise would render the fourteenth Amendment valueless in so far as protecting personal liberty is concerned." Petitioner must emphasize and argue the Order of Affirmation for her Conviction is an egregious Miscarriage of Justice due to Abuse of Discretion & denial of Counsel for her defense.

Petitioner must argue & emphasize the sixth Amendment guarantees Counsel for "his or her defense." With this guarantee, a defendant have the right to two inherent components: (1) the right to Counsel's undivided loyalty, and (2) the right to reasonable effective counsel. Petitioner declare & argue her direct appeal record unequivocally demonstrate Shimon was denied & deprived of these inherent right & other associated rights guaranteed by the 6th Amend.

Petitioner affirmly declare & argue she has demonstrated a "reasonable probability" that "absent" Counsel Undermining actions, divided loyal, conflicting interests, intentional ineffectiveness, deficient performance & Constitutional errors and "Absent" the Abuse of Judicial Discretion, the Miscarriages of the Nevada higher courts justices & courts alike, petitioner declare the outcome of her direct appeal would have been successful given the preponderance of evidence available to support that her Conviction & Confinement is illegal and thus warrants reversal & remand.

Petitioner argue the Cumulative Errors alone Warrants Reversal of her Conviction.

Reasons for Granting the Petition

Petitioner argue her petition for a Writ of Certiorari should be granted because her case involve vital Constitutional issues & questions that does not just affect her as an individual but encompass many critical issues of injustices, inequalities & due process of law violations that has plagued & impacted the lives of many indigent American citizens abroad for centuries [463 US 757].

Petitioner avers the American public in particularly indigent Americans have been and are being deprived of their Constitutional rights to a Speedy Trial, the right to a fair & impartial adjudication process and most important, the right to a Competent & effective assistance of Counsel with said loyalty for "his or her defense." 459 U.S. 1104, 73 LEd 1312, 102 S. Ct. 2902 (1982) Through the misfeasances of the broken State Court Judicial System and the fallacious incantation of strategy by state appointed attorneys.

Petitioner argue the right to Counsel is an essential fundamental component of our criminal justice system. Petitioner argue the core purpose of having counsel is for the protection of the accused fundamental & substantive rights guaranteed by the "Bill of Rights" of the Federal Constitution. Petitioner avers & argue she was stripped of her right to defend & her right to Counsel for her defense. Petitioner avers & argue after review of her direct appeal records, the U.S. Sup. Ct. will ascertain that both counsel & the Nevada higher Courts "Undermined Democracy." Petitioner must emphasize Certiorari review is an essential component for the protection of the American people "Bill of Rights" of the Federal Constitution.

Petitioner argue the ignorance & nonaddressing of the critical Constitutional issues involved in her case by the U.S. Sup. Ct. would be an egregious disservice & message to the American public that the guarantees of the Federal Constitution (Bill of Rights) are valueless and only apply to those who are fortunate enough to retain private counsel that will honor & respect the defendant's right to protect their Constitutional rights that dovetail with the logic of the Sixth Amendment.

Reason for Granting the Petition

Petitioner must emphasize it would be in the best interest of the American public for the U.S. Supreme Court to grant petitioner's Writ of Certiorari because it would serve as a platform to further illustrate to the indigent Americans that the U.S. Supreme Court does indeed feel Americans pain of the many inequalities & injustices suffered at the hands of the broken judicial system. Further the issuance & addressing of this Writ will show the American public, that if presented with these issues the U.S. Supreme Court is committed to honoring their duty & obligation to apply the law fairly, neutrally & accordingly to protect the "Bill of Rights" with clearly established Federal Constitutional Laws. [463 US 763]

Petitioner avers the granting of this Writ of Certiorari will also provide national acknowledgement to the American public that the U.S. Supreme Court not only recognize the damage that the vast inequalities, disparities & injustices has cause to the reputation of the federal constitution, it will offer a firm solidification the U.S. Supreme Court is working with due diligence to remedy & resolve the injustice of the legal system nationally & bring the judiciary back into repute. Petitioner avers the issuance of this Writ will promote the public confidence & trust that the citizens of this country so desperately desire. Petitioner avers & emphasize the ignorance of the unjust actualities of the critical issues of her case by the U.S. Supreme Court would only exasperate the vast distrust & lack of confidence in the legal system which would be an egregious disservice to the American public and a vast contribution to a conspicuous "Miscarriage of Justice".

Petitioner argue with the preponderance of evidence presented by petitioner in this case at bar offer a firm solidification of the State Court's callous disregard for the authority & power that is vested in the U.S.

Reason for Granting the Petition

Supreme Court to ensure that the guarantees of the "Bill of Rights" are protected for all U.S. Citizens equally under 28 U.S.C. § 2101 & other federal statutes as well.

Petitioner must stress her direct appeal record amply demonstrate she exerted & exhausted every endeavor to establish & develop a full record that not only was her conviction & confinement was illegal, but to as well preserve all known meritorious constitutional claims for review if necessary in both state & federal Habeas or Certiorari. Petitioner argue further, both the Nevada higher courts & her appellate counsel utilized unlawful, unconstitutional legal maneuvers to deny & deprive petitioner of her due process of law rights to access the courts, thus violating her 5th, 6th, & 14th rights.

Therefore petitioner argue & must emphasize the Order of Affirmation for her conviction is clearly erroneous, illegal, & unconstitutional because the decision was derived from unlawful, illegal unconstitutional legal practices & maneuvers that are clearly contradictory to both state & federal laws, the guarantees of the 5th, 6th, & 14th Amendments and with many federal established decisions of other U.S. Courts of Appeals on the same important issues & matters. The decisions are so far departed from the accepted and usual course of judicial proceedings, it calls for an exercise of the U.S. Supreme Court supervisory power. Under & pursuant to 28 U.S.C. § 2101(c).

Petitioner argue the role of counsel should above all function as the instrument and defender of the client's autonomy & dignity. (463 US 745) Petitioner argue counsel's performance was not within the range of competence demanded of attorneys in criminal cases. Counsel refused & failed to assure petitioner an adequate opportunity to present her claim fairly in the context of the state's appellate process. (463 US 748) see also 28 U.S.C. § 3006(a), which demands "effective assistance of counsel."

Reasons for Granting the Petition

The court held counsel's failures to raise an appeal nonfrivolous Constitutional claims upon which her client insists must constitute "Cause and Prejudice" for any resulting procedural default under state law. See *Wainwright v. Sykes*, 433 U.S. 72, 53 LEd 2d 594, 97 S.Ct. 2497 (1977) (463 U.S. 750).

The Court of Appeal majority held that since Anders bars counsel from abandoning a nonfrivolous appeal, it also bars counsel from abandoning a nonfrivolous issue on appeal. See Counsel's docketing statement, pp. (6).

"An appointed Counsel's unwillingness to present particular arguments at appellant's request functions not only to abridge defendant's right to counsel on appeal, but also limit the defendant constitutional right of equal access to the appellate process." 665 F.2d at 433.

The court of Appeals held that, having demonstrated that appointed counsel failed to argue colorable claims at appellant's requests need not also demonstrate a likelihood of success on the merits of these claims. Id at 434 (463 U.S. 754).

Under the ABA's Standards for Crim. Justice 2.1.3 Comment, p. 21-42 (2nd ed 1980), that as an ethical matter, an attorney should argue on appeal all non-frivolous claims upon which her client insists. Whether or not one agrees with the court's view of legal strategy, the lawyer after giving his or her client her best opinion as to the course most likely to succeed, should acquiesce in the client's choice of which nonfrivolous claims to pursue. Certainly *Anders v. Calif.*, and *Faretta v. Calif.*, indicate that the attorney's usurpation of certain fundamental decisions can violate the Constitution (463 U.S. 755).

The court held that an attorney by refusing & failing to carry out her client's wishes, cannot forever foreclose review of nonfrivolous Constitutional claims in which petitioner proclaim if the court doesn't address on certiorari will happen in this case of *Anders v. Calif.*, 432 U.S. 848, 45 LEd 2d 562, 95 S.Ct. 2505.

Reasons for Granting the Petition

"for such overbearing conduct by counsel, there is a remedy," citing *Brookhout v. Jarvis*, 384 U.S. 1, 16 LEd 2d 314, 86 S.Ct. 1245, 7 Ohio Misc. 77, 26 Ohio Ops 2d 141 (1966), and *Fay v. Noia*, 372 U.S. 391, 439, 9 LEd 837, 835 S.Ct. 882, 34 Ohio Ops 2d 12 (1963). [463 US 755]

The Sixth Amend. provides that "in all criminal prosecutions, the accused shall enjoy the right to have assistance of Counsel for his or her defense." The court held the import of words like "assistance" and "Counsel" seems inconsistent with a regime under which counsel appointed by the state to represent a criminal defendant can refuse to raise issues with arguable merit on appeal when her client, after hearing her advisement & assessment of the case, has directed counsel to raise them. See *Entsminger v. Iowa*, 386 U.S. 751, 18 LEd 2d 501, 87 S.Ct. 1402 (1967). [463 US 757]

In recognizing the right to counsel on appeal, the court expressly rely on the Fourteenth Amendment Equal Protection Clause which in this context prohibits disadvantaging indigent defendants in comparison to those who can afford to hire counsel themselves, but also on its Due Process Clause and its incorporation of the Sixth Amendment's Standards. See *Anders v. Calif.*, 386 U.S. 738, 744, 18 LEd 2d 443, 87 S.Ct. 1394 (1967) *Griffin v. Illinois*, 357 U.S. 12, 17, 100 LEd 891, 76 S.Ct. 585, 55 AFR 2d 593, 77 S.Ct. 550 (1957); *Johnson v. Zerbst*, 304 U.S. 458, 462-463, 82 LEd 1461, 58 S.Ct. 1014, 146 AFR 357 (1938). See also *CP, Bearden v. Georgia*, 416 U.S. 660, 76 LEd 2d 221, 103 S.Ct. 2064 (1983) (463 US 757)

The court held a state may not incarcerate a person, whether she is indigent or not, if he or she has not had (or waived) the assistance of counsel at all stages of the criminal process at which her substantial right may be affected. *Argersinger v. Hamlin*, 407 U.S. 25, 32 LEd 2d 530, 92 S.Ct. 2006 (1979) *Mempa v. Rhay*, 389 U.S. 128, 134, 19 LEd 2d 336, 88 S.Ct. 254 (1967). Petitioner argue she is entitled to relief under *Whitkins v. U.S.*, 441 U.S. 468, 40 LEd 2d 375 (1979) as well

Reasons for Granting the Petition

The Constitution does not on its face define the phrase "assistance of counsel," but surely those words are not empty of content. See *Powell v. Alabama*, 287 US 45, 71, 77 LEd 158, 53 S.Ct. 55, 84 ALR 527 (1932). [463 US 758]

To satisfy the Constitution, counsel must function as an advocate for the defendant as opposed to a friend of the court. *Anders v. Cal.*, supra at 744, 18 LEd 2d 493, 87 S.Ct. 1396; Petitioner argue what is at issue in her case is the relationship of lawyer and client and who has ultimate authority to decide which Meritous issues should be presented on Appeal. Petitioner argue the right to "assistance of counsel" carries with a right, personal to the defendant, to make that decision against the advice of counsel if she chooses. If all the sixth Amendment protected was the states interest in substantial justice, it would not include such a right. [463 US 758]

The court observed "It is undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts. But where the defendant will not voluntarily accept representation by counsel, the potential advantage of a lawyer's training and experience can be realized, if at all, only imperfectly. To force a lawyer on a defendant only lead him or her to believe that the law contrives against her as in petitioner's case at bar. Personal Liberties are not noted in the law of averages. The right to defend is personal. The defendant and not her lawyer or the state will bear the personal consequences of a conviction. It is the defendant, therefore who must be free personally to decide whether in her particular case counsel is to her advantage. Although she may conduct her own defense to her own detriment, her choice must be honored out of the respect for the individual which is the lifeblood of the law." *Illinois vs. Allen*, 397 U.S. 337, 350-351 (68 LEd 2d 353, 90 S.Ct. 1057, 31 Ohio Ops 2d 163). [463 US 753] Petitioner argue she was stripped of her right to defend,

Reasons for Granting the Petition

Foretta establishes that the right to counsel is more than a right to have one's own case presented competently and effectively. It is predicated on the view that the function of counsel under the Sixth Amend. is to protect the dignity and autonomy of a person on trial by assisting him or her in making choices that are hers to make, not to make choices for her, although counsel may be better to decide which tactics will be most effective. *Anders v. California* reflect this view. Even when appointed counsel believes an appeal has no merit, she must furnish her client a "brief" covering all grounds for appeal so that the client may raise any points that she chooses. 386 US at 744, 18 LEd 2d 443, 87 S. CT 1396.

The right to counsel as foretta and *Anders* conceives it is not a wall or nothing right, under which a defendant must choose between foregoing the assistance of counsel altogether or relinquishing control over aspects of her case beyond its more basic structure. A defendant's interest in this case clearly extends to other matters. [463 US 762]

A Constitutional rule that encourages lawyers to disregard their clients wishes without compelling need can only exacerbate the clients suspicion of their lawyers. As in foretta, to force a lawyers decision on a defendant can only lead her to believe the law contrives against her. (422 US at 834, 45 LEd 2d 562, 85 S. Ct 2325). See also *Von Mote v. Gillies*, 332, US 708, 725-726, 92 LEd 309, 68 S. Ct 1316 (1948).

The right to counsel guaranteed by the Constitution contemplates the services of an attorney devoted solely to the interest of her client. *Glasser v. U.S.*, 315 US 60, 70 (86 LEd 600, 62 S. Ct 457). Undivided allegiance and faithful, devoted service to a client are prized traditions of the American lawyer. It is the kind of service for which the Sixth Amend. makes provision. [463 US 764]. Many clients are capable of making informed judgments about which issues to appeal, and when they exercise that prerogative, their choices must be honored & respected.

Conclusion

Wherefore, based upon the above and foregoing of any additional issues that may be raised throughout further briefings and hearings, Gayles-Zanders respectfully request this Honorable United States Supreme Court grant her petition for Writ of Certiorari finding she was denied & deprived of her Fifth due process of law substantive rights, rights to the fundamental fairness, sixth Amend. right to Counsel both effective and of said loyalty, right to Counsel for her defense, right to Conflict free Counsel, right to Choose counsel, right to dismiss ineffective counsel, right to fair & impartial legal process, right to conduct her own defense, right to Equal Protection of law guarantees of the Fourteenth Amend. due to the Abuse of Judicial Discretion, many erroneous, unlawful, unconstitutional rulings & decisions of both the Nevada Supreme Court & Nevada Court of Appeals and the erroneous, unlawful practices of the state court clerks. Further argue due to the many manifest injustices and violations of her due process of law Constitutional rights, she suffered immense prejudice on multiple levels throughout her court proceedings both trial & direct appeal. Petitioner argue she has demonstrated three various P & A's & legal arguments in this petition that her appellate counsel's performance & legal representation was so deficiently horrible and the circumstances were so likely to prejudice the petitioner, the cost of litigating the effect is unjustified thus warranting a reversal & remand of conviction.

Dated this 4th Day of November, 2023

Respectfully Submitted

Shirion Gayles-Zanders