23-7584

No. _____

_____

IN THE SUPREME COURT OF THE UNITED STATES

Quentin Salmond - PETITIONER

VS.

Commonwealth of Pennsylvania,

Superior Court of Pennsylvania EASTERN DISTRICT,

Supreme Court of Pennsylvania EASTERN DISTRICT - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

PETITION FOR WRIT OF CERTIORARI

Quentin Salmond

SCI FAYETTE

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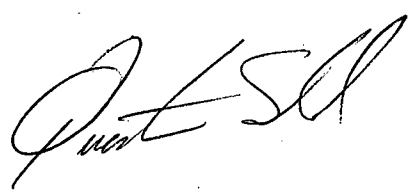
LaBelle,PA. 15450



QUESTION(S) PRESENTED

1. Is Conspiracy to Commit Third Degree Murder a Non-Cognizable Offense?

2. Can a defendnat be convicted of Conspiracy to commit third degree murder and third degree murder, if he is not the shooter of a victim?

3. Is it Unconstitutional in Pennsylvania, to be senteced to consecutive terms, for a conspiracy and a Third degree murder that stems from the same episode and/or event?

4. Does a Court violate a petitioner's Constitutional right to Due Process, if it denies a BRADY and/or NEWLY DISCOVERED EVIDENCE claim, before compelling the commonwealth to provide and/or produce the withheld material, when the petitioner has proven that the exculpatory material exist and is in the prosecution's possession?

5. Is it unconstitutional, for the Supreme Court of Pennsylvania, to make the rulings in Commonwealth v. Bradley, 261 A.3d; 2021, non retroactive?

6. Does the Pennsylvania PCRA one-year time bar violate a petitioner's **Constitutional Rights, when he is a prisoner and a layman to the laws?**

LIST OF PARTIES

[X] 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

Commonwealth v. Quentin Salmond, CP-51-CR-0009615-2012

Commonwealth of Pennsylvania v. Quentin Salmond, EDA 2022 NO. 3037

Commonwealth v. Pennsylvania v. Quentin Salmond, Docket NO. 267 ET 2023

Salmond v. City of Phila. Police Department et al., AP 2023-1343

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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.

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

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

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[X] is unpublished.

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

[X] reported at No. 3037 EDA 2022 J-S23044-23 OP 6537; 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).

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

The date on which the highest state court decided my case was 2/20/2024. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

STATUTES

STATEMENT OF THE CASE

Appellant was arrested on May 7,2012 and charged with the murder of Kenneth Wiggins, which occurred on April 8,2008. Appellant was tried and found guilty by a jury of Conspiracy to commit third degree murder and Third degree murder on March 12,2014. On July 28,2014 Appellant was sentenced to an aggregated term of 25-50 years of imprisonment, as the court erroneously ran appellant's sentence consecutive. Appellant's conviction was affirmed on October 30,2015.

Appellant filed a timely pro se Post-Conviction Relief Act petition ("PCRA") on July 5,2016 in which he raised (5) claims. Unbeknownst to the appellant, his court appointed counsel failed to raise these claims when he amended appellant's petition. In an evidentiary hearing on February 20, 2018 appellant addressed the court,raising the fact that his claims were not addressed. Appellant was never given a 907 intent to dismiss notice, and was not afforded the opportunity to raise an ineffective counsel claim.

An appeal to the Superior Court was denied at docket No. 722 EDA 2018, on January 23,2019. The Supreme Court of Pennsylvania Denied Allowance of Appeal on July 8,2019.

In light of BRADLEY, Newly discovered Evidence and facts, the petitioner filed a subsequent PCRA on September 16,2022. The PCRA court denied Appellant's petition on November 23,2022. The appellant filed an appeal on November 30,2022, in which the Superior Court of Pennsylvania denied on August 24,2023.

FACTS OF CASE

On April 8,2008, the day the victim was murdered, the appellant spoke over

the phone with the victim's best friend and Commonwealth witness Richard Hack, when the incident occurred. The witness provided the appellant's cell phone number to the Philadelphia Police. A warrant was served for the appellant's cell phone records and phone service T-Mobile provided the phone records to the Philadelphia Police in 2008. The records prove that the appellant was not at the scene of the murder nor was he able to speak to Commonwealth's Witness Robert Bluefort about the murder of Kenneth Wiggins, because the appellant was not in Philadelphia. These facts were known to the Commonwealth, through the appellant's phone records. However, the Commonwealth suppressed the appellant's phone records, and prior counsels failed to obtain these records.

The Commonwealth never denied having appellant's phone records in their possession, but they are attempting to aver that the appellant has not shown that his phone records exist. Yet, Lt. Barry Jacobs, of the Philadelphia Police Department has provided appellant with an affidavit on June 27,2023, swearing that the appellant's phone records indeed exist and are contained in the Homicide files. The appellant filed a motion to compel the Commonwealth to provide these records, however the PCRA court has failed to order the Commonwealth to do so. Although the Commonwealth has provided the appellant with phone records of the indicted police detective on the instant case, they aver that the appellant's own phone records are protected by "CHRIA," and that they are not obligated to provide the appellant with this Brady material.

As appellant believes this Court is the only avenue where he can receive justice, this brief seeking Certiorari follows.

ARGUMENT I

PENNSYLVANIA'S CONSPIRACY TO COMMIT THIRD DEGREE MURDER OFFENSE IS NON-COGNIZABLE.

A. Because Pennsylvania's Third degree murder is defined as, "a killing done with malice that is neither intentional NOR COMMITTED IN THE COURSE OF A FELONY." Young, 494 Pa. at 228,431 A.2d at 232 citing Com. v. Hare, 486 Pa. 123,129,404 A.2d 388,391 (1979).

This would mean that there would essentially have to be a conspiracy offense which is not a felony charge that in furtherance led to a third degree murder in any defendants case, for a Jury to even consider convicting a defendant of Conspiracy to commit third degree murder. In the instant case, there were no other charges that could be considered felony or non felony. Therefore any conclusions of Conspiracy would be surmise.

Moreover, when a judge amends the indictment for sentencing, where the courts has been practicing construing the conspiracy charge, it would be unconstitutional under Alleyne v. United States,133 S. Ct. 2151, where the Supreme Court determined that the Sixth Amendment inquiry was whether a fact was an element of the crime. Therefore, when a judge construes the indictment to make the proper conspiracy charge fit a jury's verdict, the court violates the sixth amendment, because "it is undisputed that a fact triggering a mandatory minimum alters the prescribed range of sentences to which a criminal defendant is exposed."

In other words, in Pennsylvania, as in the instant case, Jury's are convicting defendant's of Conspiracy generally, and at the sentencing phase the court is construing the indictment to make the conspiracy fit the underlying charge, but as in the instant case, this would mean the jury is

guessing at what the defendant is responsible for doing and the Judge is guessing at what the jury convicted the defendant of when it sentences the defendant, ultimately sentencing a defendant for an offense that he may not have been convicted of, violating the sixth amendment under Alleyne.

B. Quoting chief justice Madame Todd, "Appellant was neither charged with nor convicted of conspiracy to commit any specific degree of murder, much less third degree murder" Com. v. Weimer, 977 A.2d 1103 (Pa. 2009). "in sentencing a defendant on a conviction for conspiracy to commit criminal homicide, a court is required to determine the object crime underlying the conspiracy conviction, 18 Pa.C.S.A. §905 (except as otherwise provided, conspiracy is a crime of THE SAME GRADE AND DEGREE AS THE MOST SERIOUS GRADE AND DEGREE AS THE MOST SERIOUS OFFENSE WHICH IS AN OBJECT OF THE CONSPIRACY). This would validate the appellant's argument, supra, that Conspiracy to commit third degree murder is non cognizable, because the most serious offense would be a FELONY; and the conspiracy to commit third degree cannot be predicated on a charge that is a felony. Again, quoting justice Todd in Weimer, "while a jury may convict a defendant of conspiracy to commit criminal homicide, the trial court, in sentencing that defendant, must CONSTRUE such a non specific verdict and determine which predicate type of criminal homicide FORMED that conspiracy." This again will contradict this court's determination's in ALLEYNE.

C. 18 Pa.C.S.A §903 (a) states, in order to sustain a conviction for criminal conspiracy, the Commonwealth must prove that a defendant entered into an agreement to commit or aid in an unlawful act with another person or persons, with a SHARED criminal intent, and that an overt act was done in furtherance of the conspiracy. It is impossible for one to intentionally conspire to an unintentional result. This would mean one can conspire to

attempted murder, inter alia, if a Jury is allowed to find a defendant guilty of general conspiracy and the Judge is allowed to construe to fit the gradation, than that means a jury can be allowed to convict a defendant of general murder with no specific gradation, and the judge can be allowed to construe at sentencing to fit the gradation that the court pleases to. This is unconstitutional and a abuse of discretion. Further proving the Conspiracy to Commit Third-degree murder is non cognizable.

D. Pennsylvania's conspiracy statute is derived from section 5.03 of the Model Penal Code 18. Pa.C.S.A. §903, Official Comment-1972. Under the model Penal Code, where the object crime of a conspiracy is defined in terms of a result of conduct, such as homicide, the actor's purpose must be to promote or facilitate that result. Model Penal Code §5.03, cmt. 2(c)(i) at 407. Thus, of relevance in the instant case, in order to convict a defendant of conspiracy to commit third-degree murder, the Commonwealth would have to prove that the defendant with the intent of promoting or facilitating third-degree murder, agreed with another person that one or both of them would engage in conduct which constitutes third-degree murder, or engage in an attempt or solicitation to commit third-degree murder. However, the essence of third-degree murder is a homicide that occurs in the absence of a specific intent to kill. "Thus to be guilty of conspiracy to commit third-degree murder, an individual would have to intend to commit an unintentional killing, a logical impossibility. Quoting Chief Madame Justice Todd in Weimer.

In CLINGER, 833 A.2d, president judge Emeritus Stephen J. McEwen Jr. aptly stated, "In the present case...appellant could only be guilty of conspiracy to commit a crime if he intended that crime to be accomplished. Logic dictates, however, and this court has recognized that it is impossible for

one to intend to commit an unintentional act." 833 A.2d at 796 Citing Com. v. Spells, 417 Pa. Super. 233, 612 A.2d 458,461 n. 5 (1992). The American Law Institute in its Commentary to the Model Penal Code explained, "When recklessness or negligence suffice for the actor's culpability with respect to a result element, homicide through negligence is made criminal, there could not be a conspiracy to commit that crime."

Moreover, Quoting Chief justice Todd, "Logic dictates that one cannot agree in advance to accomplish an unintended result." Our sister states agree, SEE STATE v. Donohue, 150 N.H. 180,834 A.2d 253 (2003) "One cannot conspire to commit a crime where the culpability is based upon the result of reckless conduct." id. at 257-58. State v. Baca, 124 N.M. 333, 950 P.2d 776 (1997) the crime of conspiracy "requires both an intent to agree and an intent to commit the offense which is the object of the conspiracy." id. at 788.

Moreover section 903 of Pennsylvania's crimes code contemplates that one cannot conspire to commit a crime for which the culpability is dependent on an unintentional result. Therefore, Conspiracy to commit third-degree murder is a non-cognizable offense. In the instant case the appellant was convicted of conspiring through third person to commit third degree murder, which contradicts the Commonwealth's theory that the appellant was on the scene of the incident and it also contradicts the Commonwealth's theory that the appellant was the shooter in the instant case. Therefore the appellant has no clue as to what he was convicted of actually doing, that is what the jury is claiming his role was. This would leave a defendant with no possible way to defend himself, because the offense of conspiracy to commit third degree murder is ultimately subjective.

Finally, appellant would like this court to observe and take into consideration one last quote from the Chief Justice Madame Todd, "The accomplice statute merely requires that a defendant have the mental state required for the commission of a crime while intentionally aiding another. Roebuck, 612 Pa. at 658-59, 32 A.2d at 623-24. Notably, neither Pennsylvania's Conspiracy statute at 18 Pa.C.S.A. §903, nor Section 5.03 of the Model Penal Code, on which Section 903 is based, contains a provision similar to that contained in Pennsylvania's accomplice liability statute at 18 Pa.C.S.A. §306(d), or in Section 2.06(4) of the Model Penal Code relating to accomplice liability. This fact combined with our decision in Roebuck, indicates that a conspirator, unlike an accomplice, may not be held legally accountable for a result-based offense based on his agreement to engage,aid,or assist in the commission of a separate "contributing" offense. The majority does not attempt to account for the logical underpinnings of our decision in ROEBUCK, or the difference between Pennsylvania's conspiracy and accomplice liability statutes and the model penal code provisions from which they were derived, which we found to be significant in that decision...In my view, the only logical extrapolation of our decision in ROEBUCK, is that conspiracy to commit third degree murder is not a cognizable offense."

WHEREFORE, the appellant requests this Honorable Court to grant Certiorari, for the reasons that appellant was and is illegally sentenced for the non-cognizable offense of Conspiracy to Commit Third Degree Murder.

ARGUMENT II

A DEFENDANT CANNOT BE CONVICTED OF CONSPIRACY TO COMMIT THIRD DEGREE MURDER AND THIRD DEGREE MURDER IF HE IS NOT THE SHOOTER OF A VICTIM, UNDER THE PENNSYLVANIA CONSTITUTION.

Neither Pennsylvania's Conspiracy statute at 18 Pa.C.S.A. §903, nor Section 5.03 of the Model Penal Code contains a provision similar to that contained in Pennsylvania's accomplice liability statute. This fact indicates that a conspirator,unlike an accomplice, may not be held legally accountable for result-based on his agreement to engage,aid or assist in the commission of a separate "contributing" offense.

Moreover, in Commonwealth v. Rivera, 238 A.3d 482; 2020 Pa. Super. Under 18 Pa.C.S.A. §903(c), defendant only could be found guilty of conspiracy to commit robbery, which was the underlying foundation of the agreement upon which the conspiracy charges were based. In the instant case, there is no underlying foundation upon which the conspiracy charges were based. Here the court and jury is being allowed to surmise. It is well established that the Commonwealth does not meet its burden of proof beyond a reasonable doubt, because the evidence and all reasonable inferences rise no further than mere suspicion or conjecture. Although the Appellant stands on his claim of innocence, still the conviction of Third degree murder of a defendant without the defendant being found liable of being the shooter, will most certainly always fall into a legal question of law, that is Sufficiency of evidence. This being, if a defendant did not pull the trigger, the court and jury will always be guessing or assuming what he is responsible for doing.

Furthermore, in Commonwealth v. Lee, The Pennsylvania Supreme Court has agreed to hear the landmark case challenging the constitutionality of a

life sentence for second degree murder, where the defendant is not the shooter of the victim. Here, when a first degree murder occurs and the defendant is not the shooter in Pennsylvania, that defendant receives second degree murder, so it is on its face unconstitutional for a defendant to receive Third Degree murder when he is not the shooter in a case. As is the same for an attempted murder charge. In the instant case the appellant was not found guilty of being the shooter nor even carrying a fire arm as the Commonwealth argued in its theory, therefore if the Jury did not believe the Commonwealth's theory that the appellant in the instant case was the shooter nor did the jury believe the appellant carried a fire arm, then there could be no conclusion or evidence to what the jury believes the appellant's role is. This is the dilemma, because the illegality of the charge and sentence will always land back on the grounds of sufficiency.

The Abolitionist Law Center, Amistad Law Project, Center for constitutional Rights, the ACLU of Pennsylvania, MacArthur Justice Center, Eighth Amendment Law Scholars, The Sentencing Project, Boston University Center for Antiracist Research, Fair and Just Prosecution, FAMM and the Pennsylvania Department of Corrections Secretaries John Wetzel and George Little has file Amicus Briefs in the Pennsylvania Supreme Court, where its challenging and or questioning;

(1) Is Petitioner's mandatory sentence of life imprisonment with no possibility of parole unconstitutional under Article I, §13 of the Constitution of Pennsylvania, where he was convicted of second-degree murder in which he did not kill or intend to kill and therefore had categorical-diminished culpability, and where Article I,§13 should provide better protections in those circumstances than the Eighth Amendment to the U.S. Constitution.

In the instant case, the appellant is asking this court the same question as it pertains to Conspiracy to Commit Third degree Murder and Third Degree Murder. If Pennsylvania's Constitution Article I, §13 diminishes the culpability of a defendant for second degree murder, and indeed should do the same for the appellant in his third degree murder charge.

WHEREFORE, the appellant asks this Honorable Court to grant Certiorari, for the fact that a defendant cannot be found guilty for Third Degree Murder if he was not the shooter, because the Pennsylvania Constitution diminishes his Culpability for such an offense.

ARGUMENT III

IT IS UNCONSTITUTIONAL IN PENNSYLVANIA, TO BE SENTENCED TO CONSECUTIVE TERMS, FOR CONSPIRACY TO COMMIT THIRD DEGREE MURDER AND A THIRD DEGREE MURDER THAT STEMS FROM THE SAME EPISODE AND/OR EVENT.

Recently, in Robinson v. Super., CTA3 No. 15-1147, appealability was granted to resolve whether imposing separate sentences for attempted murder and aggravated assault violated double jeopardy clause where crimes involves one uninterrupted assault. Moreover, under Pennsylvania's merger doctrine, when a person is convicted of several crimes based on the same facts, the sentence for those crimes will merge unless the crimes are greater and lesser included offenses. Com. v. Anderson, 538 Pa. 574,650 A.2d 20 (1994). A defendant cannot be sentenced for two inchoate crimes arising from the same episode. 18Pa.C.S.A. §§906,903(c). In the instant case, the appellant's Co-defendant, Bernard Salmond's sentences for Conspiracy to commit third degree murder and third degree murder was merged at CP-51-CR-0009618-2012. However, the appellant's sentences for these same offenses were ran consecutively, which violates the Pennsylvania's merger doctrine, the equal protections to the law and the appellant's constitutional rights.

These occurrences are happening in Pennsylvania frequently and the appellate courts as in the instant case, are failing to even address the issue. According to 42 Pa.C.S. §9765, where crimes merge for sentencing purposes, when those crimes arise from a single act and all of the statutory elements of one offense are included in the statutory elements of the other offense, the court may sentence the defendant only on the higher graded offense.

A criminal episode is defined as an occurrence or connected series of occurrences which may be viewed as distinctive although part of a large, more comprehensive series. Com. v. Green, 232 Pa. Super. 134,335 A.2d 493 (1975). Additionally, a single criminal episode exists when a number of charges are logically and/or temporarily related and share common issues of law and fact, and separate trials would involve substantial duplication and waste of scarce judicial resources. Com. v. Hude, 500 Pa. 482,485 A.2d 177 (1983).

Finally, in Commonwealth v. Davis, 704 A.2d 650 (Pa.Super. 1997), Sentences for conspiracy to commit robbery and conspiracy to commit third degree murder merged where the conspiracy was to attack the victim with a baseball bat with intention of robbing him. Therefore, a sentence for the offenses of Conspiracy to commit third degree murder and third degree murder should merge for sentencing purposes, that is if Conspiracy to commit third degree murder is cognizable.

WHEREFORE, the appellant asks this Honorable Court to grant Certiorari, to correct the abuse of discretion and illegal sentence, where the Commonwealth has continued to violate its merger doctrine.

ARGUMENT IV

THE PCRA COURT VIOLATED APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS, WHEN IT DENIED APPELLANT'S BRADY AND/OR NEWLY DISCOVERED EVIDENCE CLAIM.

The Post-Conviction Act Court erred and abused it's discretion when it violated the appellant's Due Process rights, where it denied his BRADY and/or Newly Discovered Evidence Claim, without compelling the Commonwealth to provide and/or produce the withheld BRADY material, when appellant has proven beyond the preponderance of evidence that the exculpatory material indeed exist and is the prosecution's possession.

1. In Com. V. Johnson, 2016 Phila. Ct. Com. Pl. LEXIS 749, the court held an inmate's petition under the Post-Conviction Relief Act,42 Pa.C.S. §§9541-9546, it properly determined that the inmate established exceptional circumstances under Pa. R. Crim. P. 902(E)(1) for purposes of discovery of the homicide investigation file, based on the Commonwealth's pattern of failing to provide information in pretrial discovery that would have supported the inmate's self-defense claim.

Pa. R. Crim. P. 902(E)(1) provides that, in non-capital cases under the Post-Conviction Relief Act, 42 Pa.C.S. §§9541-9546, no discovery shall be permitted at any stage of the proceeding, except upon leave of court after a showing of exceptional circumstances. Further, it has been observed that the great majority of cases that have considered the discoverability of law enforcement investigations have held that in general such discovery should be barred in ongoing investigations, but SHOULD BE PERMITTED WHEN THE INVESTIGATION AND PROSECUTION HAVE BEEN COMPLETED. Neither the PCRA nor the Pennsylvania Rules of Criminal Procedure applicable to PCRA proceedings

define "exceptional circumstances," instead, it is for the PCRA court, in its discretion, to determine whether a case is exceptional and discovery is therefore warranted. Appellate court's will not disturb a PCRA court's finding with respect to the existence of exceptional circumstances unless the court has abused its discretion. In the instant case the PCRA court abused it's discretion.

2. After appellant was provided his lawyer's notes, he filed an initial PCRA petition on July 5, 2018. At ISSUE V-E. of the first PCRA petition, the appellant raised his trial counsel's ineffectiveness stating, "Trial counsel McKinney failed to utilize and proceed with an investigation as part of her defense by failing to locate and interview crucial alibi and material witnesses known to counsel...and offer proof of Petitioner's innocence, which included witnesses at the scene that gave a description of the person whom the prosecution alleged was petitioner at (6) feet tall to (6) two, and 180 pounds, where Petitioner is 5'8 and 150 pounds, and during the time of the murder the Commonwealth had records of the Petitioner's cellular device and location, which placed Petitioner at another location and not at the scene of the crime, and had counsel called Petitioner's alibi witness and material/fact witness Leonard Wheal, the outcome of the trial would have been different." (SEE EXHIBIT A)

However, The PCRA counsel that the Commonwealth provided to the appellant failed to raise these claims in his amended petition, unbeknownst to the appellant. Had the PCRA counsel presented the appellant's claims in his first PCRA petition, the appellant would have been able to prove his innocence then in 2018. Instead he continued the cumulative Ineffectiveness of the appellant's trial counsel, by the Court's own admission. (SEE EXHIBIT B)(At page 5 paragraphs two and three)

Here the PCRA court explained that the ineffective counsel failed to certify the appellant's witness, which defaulted the appellant's claim. The court attempts to justify the error made by PCRA counsel when it states, that if the counsel had certified the witness, it would not matter, because the petitioner admitted to killing the victim to Commonwealth's witness Robert Bluefort. However, this is not fact and can not satisfy the higher courts, because the appellant was not convicted of shooting nor killing the victim, and the appellant's phone records would prove further, it would have been impossible to ever speak to the Commonwealth witness, due to the fact, the records would prove that the appellant was not in Philadelphia, which the witness Mr. Bluefort perjured to.

3. In appellant's second PCRA petition he showed that the Commonwealth knew or should have know that the witness Bluefort committed perjury, which prejudiced the appellant at trial, because the prosecution retained the appellant's phone records proving the contrary before the witness Bluefort perjured. Therefore, the Commonwealth facilitated the perjury, by suppressing the appellant's phone records.

4. After a long exhaustion of attempts to retrieve his phone records, the appellant filed a MOTION TO COMPEL on March 30, 2023. (SEE EXHIBIT C). Here the appellant provided proof that his phone records exist, and the government interfered by suppressing these phone records, inter alia. However, the PCRA court abused its discretion, by advising the appellant to request the records from previous lawyers, that the Commonwealth itself provided the appellant. (SEE ALSO EXHIBIT D)

5. When appellant's family contacted his previous counsel's for his phone records as Judge McDermott advised him, they informed the appellant that the Judge told them not to give the appellant these documents, which not

only is an abuse of discretion but also Government Interference.

6. The appellant has since provided the courts with an affidavit from the Philadelphia Police Department's Lieutenant Barry Jacobs. Who is the right-to-know Records Officer. (SEE EXHIBIT E at 7) Here Lieutenant Jacobs has sworn that the appellant records are indeed in the Homicide files. However, the Right to Know Agencies are averring that these files are protected by "CHRIA" 18 Pa.C.S.A. §§9101 et seq.

However, the Right to Know appeal agency, informed the District Attorney's Office that "CHRIA" does not protect the agency from providing Warrants and Subpoena's, and ordered the DAO agency to provide appellant with said documents. The District Attorney's Office failed to follow this court's order. (SEE EXHIBIT F)

These facts were provided to the PCRA court when appellant motioned for the court to compel the Commonwealth to provide the appellant with his suppressed phone records, still the court erred and abused its discretion when it failed to compel and interfered by ordering the appellant prior counsel's not to provide said records, after informing the appellant to retrieve records from prior counsel's. More than an abuse of discretion, this is and obstruction of justice, Government interference, and a Miscarriage of Justice. Ultimately, "A defendant cannot conduct a reasonable and diligent investigation necessary to preclude a finding of procedural default, when the evidence is in the hands of the State." Bracey V. Superintendent Rockview SCI et al,986 F.3d 274;2021 U.S. App. LEXIS 1623 No. 17-1064. See also Salmond V. City of Philadelphia Police Department AP 2023-1343, where the Office of Open Records compelled the Philadelphia Police Department to turn over documents in the next 30 days, where they failed to do so.

WHFRFFORF, the appellant asks this Court to grant Certiorari and compel the Commonwealth to provide suppressed BRADY material, so that appellant can advance his actual innocence claims.

ARGUMENT V

IT IS UNCONSTITUTIONAL FOR THE PENNSYLVANIA SUPREME COURT TO MAKE THE RULINGS IN COMMONWEALTH V. BRADLEY, 261 A.3d; 2021 NON-RETROACTIVE.

In Com. v. Bradley, 261 A.3d; 2021, the Pennsylvania Supreme Court abandoned the Pa. R. Crim. P. 907 approach to preservation of Post-Conviction relief counsel's ineffective claims. Holding that, a petitioner may, after a PCRA court denies relief, and after obtaining new counsel or acting pro se, raise claims of PCRA counsel's ineffectiveness at the first opportunity to do so, even if on appeal, under the Post-Conviction Relief Act 42 Pa.C.S. §§9541-9546. The Court rejected the notion that considering ineffectiveness claims on collateral appeal constitutes a prohibited serial petition, violating the one-year time bar of the PCRA.

The Supreme Court has rejected appellants petitions on appeal, raising ineffectiveness of PCRA counsel, stating that the new rule is not retroactive. The Supreme Court's ruling that this new approach to raising ineffective counsel is not retroactive contradicts the very language in the case law, and also violates the Constitution's equal protection laws, Under the United States Constitution Fourteenth Amendment §1, which states, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...nor deny to any person within its jurisdiction the equal protection of the laws." Also violating the Pennsylvania Constitution Article 1, §§1 and 14.

In BRADLEY, it was held that, "As there is absolutely no language in the criminal rules or the case law of the court indicating that a petitioner must file a response to the court's notice of dismissal or risk waiver of

his claims, one cannot be faulted for failing to follow a nonexistent procedure." In the instant case where the appellant was not informed of a Pa. R. Crim.P. 907, where appellant was listed at the wrong prisons (SEE 209 EXHIBIT G), the court is still failing to allow him to raise ineffective assistance of PCRA counsel, due to their rulings that the new procedure is non retroactive. Although the court conceded that the previous 907 procedure was "functionally unsound." BRADLEY id. 3. The court then states "The Court adopts the essence of this approach: allowing a PCRA petitioner to raise claims of ineffective assistance of counsel at the first opportunity to do so, even if on appeal." However, if a petitioner has never had the opportunity to do so on his first PCRA proceeding, as in the instant case where his PCRA counsel abandoned him, then his second PCRA petition would be the first opportunity to do so.

The courts are at tempting to time bar petitioner's on a right that they have made clear was violated in the old 907 procedure;giving petitioner's a new procedure to cure, yet only making it available to petitioner's that are filing a PCRA petition after the BRADLEY decision. This on its face is a violation of the equal protections to the laws.

Moreover, second or subsequent petitions may be entertained when a strong prima facie showing is offered that a miscarriage of justice may have occurred. See Com. V. Szuchon,633 A.2d 1098,1099 (Pa. 1993).

"The Pennsylvania Supreme Court deems the consideration on collateral appeal of claims of post-conviction relief counsel ineffectiveness to spring from the original petition itself, and that doing so does not attempt to impermissibly allowing a second or subsequent serial petition." BRADLEY. In the instant case, the petitioner's Ineffective PCRA counsel claim, springs from the Appellant's original PCRA petition, where his PCRA

counsel was ineffective by the PCRA court's own admission. (See EXHIBIT B). Here, Judge Barbara McDermott explains that the appellant's counsel failed to certify his witness for an evidentiary hearing, although the appellant provided his counsel with a subpoena used at his co-defendant separate trial. This, inter alia, caused the appellant's claims which would have proved his innocence waived by his counsel. Also, unbeknownst to appellant, his other innocent claims, as his phone records that were suppressed by the Commonwealth, which would have proved his innocence, were also waived by his ineffective PCRA counsel. However, because the old Pa. R. Crim. P. 907 approach was "unworkable" the appellant was never afforded the opportunity to challenge his counsel's ineffectiveness.

Ultimately, the only avenue for the appellant to challenge his PCRA counsel's ineffectiveness would be through the use of BRADLEY, yet the Pennsylvania Supreme Court is unconstitutionally not applying BRADLEY retroactively, which would contradict standing case law that,

"When counsel representing a petitioner on a petition for post-conviction relief is severely ineffective such that his ineffectiveness essentially waives the petitioner's claims for relief, resulting in the dismissal of his petition, a subsequent filed petition will be deemed a continuation of the first petition for purposes of the Post Conviction Relief Act, 42 Pa. C.S. §9541 et seq. entitling the petitioner to the representation of counsel pursuant to Pa.R.Crim. P. 904 on the second petition." Com. V. Kubis, 2002 PA. Super. 296, 808 A.2d 196,2002 Pa. Super. (Pa. Super. Ct. 2002).

Last, "Appellant made sufficient allegations to invoke the exception to the timely filing of a petition for post-conviction relief, pursuant to post conviction relief Act 42 Pa.C.S. §9545(b)(1)(ii), by establishing that

he did not receive the review to which he was entitled by no fault of his own...counsel could not raise the ineffectiveness claims he wanted to pursue since his assigned counsel...cannot raise his or her own ineffectiveness. As a result, the Supreme Court of Pennsylvania held that appellant was required to be given the opportunity to seek review to which he was entitled." Com. V. Bennet, 593 Pa. 382,930 A.2d 1264,2007 Pa. LEXIS 1739 (Pa. 2007).

In the instant case, the appellant filed five (5) claims in his first PCRA petition, in which the Counsel that the Commonwealth appointed to the appellant failed to raise. Among those claims were a Brady claim that demonstrated that the Commonwealth suppressed phone records of the appellant's that would prove his innocence. Also the ineffectiveness trial counsel claim, that appellant's trial counsel failed to interview witness Leonard Wheal, which would further advance his innocence claims. However, cumulative errors by PCRA counsel waived these claims. (SEE EXHIBIT A) The Appellant attempted to raise this ineffectiveness at his first evidentiary hearing, but was not allowed to. (see Evidentiary Transcripts Dated: 2/20/18 The PCRA Court is continuing to deny access to these transcripts), Here the appellant was not afforded the opportunity to a 907 intent to dismiss, where the courts again had him listed at being at a prison where he was never housed. Ultimately, denying him the opportunity to even realize what was taking place, that is the ineffectiveness of his PCRA petition counsel.

Now, upon the discovery of the BRADLEY court, the appellant is attempting to raise these cumulative ineffective counsels claims, however, the court is denying him his meritorious claims, stating that these new procedures and court rules in BRADLEY, are not retroactive. For these reasons, The Supreme Court of Pennsylvania is contradicting prior case laws established

by its own court, and violating the U.S. Constitution Amendment 14 Section 1 and the Pennsylvania Constitution Article 1 Section 1 and Section 14.

WHEREFORE, the Appellant asks this Honorable Court to grant Certiorari.

ARGUMENT VI

THE PENNSYLVANIA PCRA ONE-YEAR TIME BAR VIOLATES A PETITIONER'S CONSTITUTIONAL RIGHTS, WHEN HE IS A PRISONER AND A LAYMAN TO THE LAWS

The Pennsylvania Post-Conviction Relief Act 42 Pa.C.S. §9545(b) time bar violates a petitioner's/defendant's Constitutional right under the Constitution of Pennsylvania Article 1, Section 14. Which states, "...The privilege of the writ of habeas corpus shall not be suspended." Also the PCRA time bar violates Article 1, Section 17, of the Pennsylvania Constitution, which states, "No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of special privileges or immunities, shall be passed."

Last the United States Constitution Amendment Six, stating a defendant has the right to Assistance of Counsel, and Amendment Eight, stating Cruel and Unusual Punishments shall not be inflicted, The Ninth Amendment Stating, "The enumeration in the Constitution, of certain rights, shall not be CONSTRUED to deny or disparage others retained by the people." The 14th Amendment is violated where it states, " No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...nor deny any person within its jurisdiction the equal protection of the laws."

Therefore Section 3 of Act 1995-32 (ss1) enacting a one-year time bar for a prisoner to file a post-conviction relief act is unconstitutional for the following reasons:

A. The PCRA time bar is being unconstitutionally utilized to circumvent, a prisoner's right to Pennsylvania's Article 1, Section 14, right to the writ of habeas corpus. Where a prisoner who is a layman to the law, will more than likely need more than a year to understand how to effectively file and exhaust the Post-Conviction Relief Act, also a prisoner will need more than a year to comprehend the law, let alone recognize the claims he may have and the meritorious grounds a claim stands on. Due to these fact it appears that the time bar is in place to limit frivolous filings and the backing up of the court, when actually, it has been put in place, so that when a petitioner learns the law and how to properly utilize it to raise his claims he will already be time barred. Thus, the time bar is circumventing the right to a habeas corpus, by pretending to give post-conviction relief that a petitioner and/or prisoner will need more than a year to comprehend.

B. The Time Bar violates Article 1, Section 17 of the Pennsylvania Constitution, Which bans ex post facto law, inter alia. When the Pennsylvania Constitution was created, the right to habeas corpus was not limited by a time bar. Thus amending or applying a time limit to the right of a writ of habeas corpus indeed violates the ex post facto law of the Pa. Constitution making the time bar null and void and/or unconstitutional.

C. The United States Constitution Amendment 6, States a defendant has the right to Assistance of counsel, so if a petitioner does not have effective assistance of counsel after he is denied direct review, he may not be aware that his clock is running. Thus, a prisoner who is a layman to the law, would essentially need assistance of counsel from the courts to not only explain the PCRA process but consult with him so that he can understand what claims he may raise that have merit. It takes a lawyer years of

college and then actual practice to understand the laws and the rules of criminal procedures, to expect a layman of the law to not only learn these laws and court rules but to also be able to file the proper documents violates the PCRA rules to effective assistance of counsel, due to the fact that counsel is not being provided to a prison until after he fills out a PCRA petition form and file with the Court. Here lies another problem, most inmates do not know how to read nor write, so a pro se petitioner would need counsel from the initial stages of the PCRA process, as soon as he is denied direct appeal.

D. Ultimately, the Eighth Amendment of the U.S. Constitution is being violated by the time bar, because to ban a prisoner who is a layman of the law for not knowing how to read, write, understand and/or comprehend the law, within a year is an extraordinary circumstance and it is cruel and unusual punishment on its face. Especially in the instant case when the appellant is attempting to effectively prove his actual innocence and the Courts are deliberately being indifferent by ignoring his merits and evidence he has provided in exhibits.

E. The enumeration in the constitution is strategically being construed to deny and disparage prisoner's who are layman to the laws. Because the courts are asking (1) To learn the law (2) Recognize your claims and the constitutional ground that the merits stand on (3) Recognize if you PCRA lawyer is ineffective, all within the same year, all while simultaneously exhausting your remedies in the courts. This is practically impossible. Even if one is able to file a petition in time, this means it is rushed, because he does not have enough time to effectively file.

F. Last The United states 14th Amendment is violated by the Pennsylvania PCRA one-year time bar, because the 14th amendment states, No state shall

make or ENFORCE any law which shall abridge the privileges or immunities of citizens. Yet this is exactly what the One-Year time bar does. Moreover, when the courts recognize how the PCRA rules and procedures are not effective or practical and procedures are being altered or changed, the courts are further violating the 14th Amendment by denying any person within its jurisdiction the equal protection of the laws, where its Supreme Court fails to make the changes retroactive, as in BRADLEY, as explained, supra.

In the instant case, The appellant filed a timely PCRA with five (5) claims, pleading his innocence. (SEE EXHIBIT A) The PCRA court appointed the appellant an ineffective PCRA counsel who failed to amend the appellant's claims, and failed to notify the appellant that he had not added his claims to the amended PCRA Petition. Then The PCRA counsel also failed to certify the appellant's witness as admitted by the Court. (SEE EXHIBIT B) Although the appellant provided the PCRA counsel, evidence that his phone records exist and the Prosecution suppressed his phone records he still failed to present the appellant's claims. Petitioner provided the PCRA counsel with the witness information he needed to certify, (SEE EXHIBIT H), yet the Counsel still failed to properly execute his duty.

Here lies the dilemma. The appellant was not given the chance to challenge his counsel's ineffectiveness. Even if the appellant recognized that his PCRA counsel was ineffective, the courts nor did counsel provide the appellant with a 907 intent to dismiss notice, as the court erroneously listed the appellant in SCI houtzdale. A prison that the appellant has never been housed. (SEE EXHIBIT G) Now that BRADLEY has given petitioner's another avenue to challenge a PCRA's counsel ineffectiveness

and the petitioner has provided the PCRA court with newly discovered evidence, the Supreme Court is denying appeal, because it has not made the new laws of challenging a PCRA counsel's ineffectiveness retroactive.

This essentially means that the Post-Conviction Relief Act is a mirage. And a prisoner will spend more time challenging his prior counsels effectiveness (or lack thereof), and his timeliness, than actually arguing his meritorious claims. Proving that even if the time bar was implemented to prevent the courts from being backed up, its not only unconstitutional, but it's ineffective. Because, court appointed counsels are filing "FINLEY" letters majority of the time. Other times, court appointed counsels are not doing any field work. Ultimately, attempting to present claims where he/she does not have to further investigate. As in the instant case, where counsel Joseph Schultz only raised two of his own issues that was technicalities that he could find within the pages of transcripts. Here is where an innocent petitioner suffers, because he is at the mercy of a counsel who is not willing to be effective. This is easily proven by comparing paid attorney briefs with Court appointed lawyer's briefs. There lies an obvious distinction of effectiveness and ineffective assistance of counsel.

THEREFORE, a petitioner/defendant/appellant certainly needs more than a year to file a Post-Conviction Act and/or state writ of habeas corpus. For the fact that if a prisoner is a layman to the law, and cannot afford an attorney, he is better off learning the law himself and representing himself, pro se. Rather than being at the mercy of a Court appointed counsel, who is almost always ineffective. Which leaves a petitioner in an overwhelming position, where he is now challenging the Commonwealth's case, the Courts discretion and his Counsel's ineffectiveness, where all the agencies tend to justify each others actions or inactions. If the state

infringes or impedes on this timely process, it is not only an obstruction of justice, but government interference. Especially, when a appellant has evidence of his actual innocence.

WHEREFORE, the appellant asks this Honorable Court to grant certiorari for all reasons listed, supra.

CONCLUSION

For the reasons set in this brief, the appellant asks that this Honorable Court grant Certiorari.

DATE: MAY 8,2024

RESPECTFULLY SUBMITTED

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