24-5251

ORIGINAL

NO.23-2411

IN THE

SUPREME COURT OF THE UITED STATES

KEITH VERNON DAVIS-PETITIONER

vs.

DAVID CLOSE, SUPERTENDANT, SCI HOUTZDALE-RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI

FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT WHICH RENDERED IN HIS APPEAL, WHICH JUDGMENT AFFIRMED THE DENIAL BY THE DISTRICT COURT OF HIS 28 U.S.C.§ MOTION TO EITHER VACATE SENTENCE IMPOSED BY THE COURT OF COMMON PLEAS, CAMBRIA COUNTY, PENNSYLVANIA OR ULTIMATELY, TO ALLOW AN EVIDENTIARY PROCEEDING TO ATTEMPT TO DETERMINE HIS GUILTY PLEA INVOLVED IN HIS CRIMINAL CASE OF PETITIONER'S ACTUAL INNOCENCE

PETITIN FOR WRIT OF CERTIORARI

KEITH VERNON DAVIS-NF9296
S.C.I. HOUTZDALE
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HOUTZDALE, PA 16698-1000
Pro Se PETITIONER

QUESTIONS

1. WHETHER AN INDEPENDENT JUDICIAL DETERMINATION WAS MADE OF PROBABLE CAUSE OR A WARRANT ISSUED 1/22/2017 AT INCIDENT No. 20170122M1328 PRIOR TO ENTRY O SEIZE PETITONER'S PROPERTY.

2. DID THE TRIAL COURT ERROR WHEN IT KNOWINGLY APPOINTED COMMONWEALTH'S SIBLING TO REPRESENT PETITIONER, DID NOT DISQUALIFY COUNSEL, DID NOT OBTAIN A SIGNED WAIVER OR TO REMEDY THE PRE SE CONFLICT OF INTEREST.

3. DID PETITIONER RECIEVE THE ASSISTANCE OF COUNSEL GUARANTEED BY BOTH THE SIXTH AMENDMENT AND ARTICLE I § 9 OF THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS; WHERE THE STATE ALSO DEINED PETITIONER COUNSEL OF CHOICE .

4. IN LIGHT OF TRIAL COURTS 9/9/2017 CONVICTION PRIOR TO THE UNLAWFULLY INDUCED COUNSELED 9/19/2017, PLEAD OF GUILTY RATHER THAN "*COUNSEL'S*" PROCEEDING TRIAL[N.T. 10/30/2017,5,15.], IS THE PLEA CONSIDERED KNOWING, INTELLIGENT OR VOLUNTARY.

5. IN LIGHT OF THE INCOMPLETE EVIDENCE IN THIS PARTICULAR CASE, DID THE TRIAL COURT CONVICT TWO *"KEITH'S"* FOR THE CRIME THAT ONLY ONE *"KEITH"* COULD HAVE COMMITTED ACCORD TRIAL COURT'S 4/10/2018 1925(a)(1) OPINION AT P.10.

6. WHETHER PA. SUPREME COURT REJECTED AS UNTIMELY OR DENIED PETITIONER'S FILED PETITION FOR ALLOWANCE OF APPEAL NUNC PRO TUNC AT 60 WDA 2022 AS PETITIONER'S NOT HAVING "AN APPEAL AS OF RIGHT"

LIST OF PARTIES

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

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

RELATED CASES

* Commonwealth v. Darlene Corbin, CP-11-CR-0000526-2017

* Commonwealth v. Jeffrey Keith, CP-11-CR-0000409-2015

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This Writ should be held to "less stringent standards than formal pleading drafted by a lawyer." HAINES v KERNER, 404 U.S. 519,520 (1972)

JURISDICTION

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

The date on which the United States Court of Appeals decided my case was January 19, 2024.

[X] 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 _____. A copy of that decision appears at Appendix _____.

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

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

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

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

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

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

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

KVD

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

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

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

KVD

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

CONSTITUTION OF THE UNITED STATES

STATEMENT OF THE CASE

Jaunary 22, 2017, Keith Vernon Davis [hereinafter "Appellant" or "Mr. Davis'] had the Johnstown Police [hereinafter "JPD"] remove his 34 yr. old son Brandon Davis Bey [hereinafter "Brandon" or "Mr. Davis-Bey"] for his 209 chandler Aveneu, Johnstown, PA. residence after a family issue at 1 a.m wherein at 2:30 a.m. Ms. Darlene Mae Corbin [hereinafter "Ms. Corbin" of co-Defndant] 16 yr. old daughter Elaine Corbin-Mason [hereinafter "the victim" or E.C.M.] absconded to join Brandon. When at 17:30 hrs. Johnstown Police Offficer [hereinafter "JPO" dan Schrader re-enters Davis' residence in his absence and departs at 18:00 hrs.[Commonwealth discovery p.1] after seizing evidence of a large white box, contents in sexual nature minus a search warrant or exigent cirstance incident No. 20170122M1328. January 24, 2017 as E.C.M probationary status was in jeopardy as the 16 yr. old had not returned Brandon files a Walk-in complaint against his father and Ms. Corbin [Commonwealth discovery p.21; Disc #5] alleging the sexual assault of E.C.M. and that he'd witnessed one occassion. February 8, 2017 detective Brad Christ [hereinafter "Det. Christ"] now applies for an Affidavit of Probable Cause and an Application for Search Warrant and Authorization at incident No. 20170122M1328 [See record]. February 9, 2017 det. Christ five other unidentifiable JPO's and cambria County Det. Brett Hinterliter conduct a heavily armed no knock, no announce and warrantless forced entry into Mr. Davis' 209 Chandler Avenue residence [Commonwealth discovery pp.78] depriving all occupants Ms. Corbin, 11 yr. old Alvin Keith [hereinafter "Alvin"]and 14 yr. old Vegenzo Peoples [hereinafter "Vegenzo" and Appellant of their "liberties" [Commonwealth discovery p.86] again minus a warrant or exigent circumstance at "Gun point." Ultomately that same date Mr. davis and co-Defendant Ms. Corbin were given copies of the Affidavit of Probable Cause for Arrest, here noticing that it identified the individual alleged to have assaulted E.C.M. as her former boyfriend

"Jeffrey Alvin Keith," at CP-11-CR-0000409-2015 two years prior during the same time period alleged and not "Keith Vernon Davis' or "Davis'! february 14, 2017 due to a conflict in respresnting the victim E.C.M. in her October 26, 2017 criminal proceeding [Commonwealth discovery p.49] the Cambria County public Defenders Office petitioned the court for appointment of counsel on Mr. Davis' behalf an order issued that same dateby the Honorable tamara Berstein [a former cambira County prosecutor] *knowingly* appoints Atty. Arthur T. McQuillan the sibling of cambira County District Attorney Kelly Callihan who prosecuted Davis in 2004 and a partner in McQuillan"s Law Firm. to represent Mr. Davis at CP-11-CR-0000474-201 [N.T. 9/3/2020,p.5], where shortly thereafter Counsel met with Davis accompanied by a women he identified as his sister (only) at the Cambira County Prison in advance of a preliminary hearing, here davis asserts his innocence. March 16, 2017 a preliminary hearing conducted dispite neither Mr. Davis-bey or Det. Christ the arresting Ofc. being available for cross-examination by Davis where counsel failed to objection. [Id. at p.3] the magistrate judge moves to waiver Davis' formal reading of the nature and cause of the accusations against him and counsel concurs [Id. at pp. 20-21] the victim disclosed brothers Alvin and vegenzo being present in the reseidence during the alleged assaults and where now located in a the Commonwealth's possession at foster home in Lewistown, PA. [N.T. 9/3/2020, p.5 Counsel proffers "I never interviewed to neither one of those individuals] [Id. at p.34-41] E.C.M. asserts the Honorable David Tulowitzki had placed her in Adelphoi Village Group home outside the residence during the time period. [see also 4/18/2018 1925 (a) Courts Opinion] However all cjarges were bound over for trial by the the magistrate judge. April 24, 2017 both Appellant and co-defendant Ms. Corbin were formally charged by information at Commonwealth v. Davis, CP-11-CR-0000474-2017 AND CP-11-CR-0000526-2017 respectivelly, also a Formal

arrignment scheduled before the Honorable David Tulowitzki in Davis' case, here Appellant notice that the judge nor the Commonwealth's atty. were present, yet, E.C.M's supervising probation officer Connie Creany sibling of the Honorable Timothy P. Creany, whom presided over Davis' former case in 2004 was present, her handing Atty. McQuillan a leagl envelope the contents never shared with Davis, thus his waiving Appellants formal arraignment as there being a pre se conflict, as the judges presiding over E.C.M.'s October 26, 2016 criminal proceeding. [see Trial judges 4/10/2018 Opinion, p.10] May 12, 2017 Counsel files Pre trail Omnibus Motion requesting Jeffrey Alvin Keith's transcripts from the prior 2014 assault at CP-11-CR-0000409-2015, whom plead Nolo Contendere december 8, 2017, therefore preserving Davis right to file Notice of Alibi. May 30, 2017 counsel files Pre trial Motion asserting that April 25, 2017 he received some but not all discovery at CP-11-CR-0000474-2017 from the Commonwealth. June 8, 2017 the Commonwealth moves for and is granted a continuance as Det. Christ had forgotten to submit the evidence seized by Ofc. Schrader at incident No. 20170122M1328 January 22, 2017 for forensic testing. June 21, 2017 via prison mail Davis received, yet denied the Commonwealth's initial written plea offer. July 7, 2017 a proceeding held to consolidate co-defendant Corbin's and Davis's cases for trial[Id. at pp. 2;8] counsel, the Commonwealth's Atty. and trial judge Berstein met to her chambers after Corbin's counel enters an objection [Id. at p.12] to resume sometime later here the Commonwealth Atty. proffers prosecuting*"Jeffrey Keith Davis"* [Id. at pp.8,10,14,15;17] counsel's introduction that crime was committed by another. July 20, 2017 again via prison mail counsel informs Davis that on July 18, 2017 that co-Defendant Corbin is now cooperating with the Commonwealth [appended hereto] she's made a statement agaisnt him... Since you co-Defendant will be testifying against "*the time to strike a plea bargain might be now before the DNA results come back*", again Davis refuses

[see Commonwealth discovery Disc's 4, 7; 8] August 29, 2017 a Nominal Bond proceeding conducted [Id. at p.4] counsel proffers "We are prepared to proceed to trial when notified to do so by the court...but... there are still somethings with DNA testing and some juvenile records and children and Youth records. September 18, 2017 Counsel accompanied by *"his juvenile male paralegal in training"* met with Davis at the cambria County Prison after his refusing the Commonwealth's second written plea offer date August 2, 2017, here counsel threw Davis' filed Alibi Calendar of E.C.M's aberrant behaviors during the alleged time across the table at him and storming out as Davis would not plea, stating *" I'm still going to see what type of plea I can get"*. September 19, 2017, [pursaunt to the Docket] Davis was transported to *an unscheduled proceeding,* placed in an Atty./Client room with both hands cuffed to a table, when Counsel the Cambria County District Atty. Kelly Callihan's sibling and associate in the McQuillan's Law firm enters and began to fill out a document, but when Davis inquuired as to the documents nature, counsel replied *"I'll answer any questions you have after I'm done"*, completes the papers and departs without a word after instructing David to initial and sign where instructed, sometime later counsel returns to state *"I got you one year less than what Jeffrey Keith got"* at No.0409-2015 for the prior assault of E.C.M. in 2014[He never informed Davis that a plea had been tabled] I took it before judge Krumenacker [and not before judge Berstein] because I knew he would do it, as Judge Berstein and his siblling the District Atty. were looking to make an example of someone and that Davis was in theri cross-hairs,so she wouldn't do and if I take the case to trial Davis *was going to get 20-40 yr.s* for each count. Davis received via prison mail September 20, 2017 two order of court one avering that the Honorable Norman A. Krumenacker,III had simply convicted him September 9, 2017 and Septmenber 19, 2017 that Davis had entered a plea of guilt.[appended hereto]

on that same date Davis submittted a pro se motion to withdraw guilty plea pursaunt to Pa. R.Crim.P. Rule 591(b) and pro se motion to dismiss Atty. McQuillan the D.A.'s sibling as counsel filed by the clerk on September 25, 2017. October 30, 2017 a hearing conducted on counsel's filed amended pro se motion to withdraw guilty plea and dismiss counsel [Id. at 5,8] counsel proffers he "believes after 30 yr.s of practice...the plea bargain was reasonable... he discussed it at lcngth with Davis" That Davis had represented that he was under duress and coercion from him, but belives his service was "proper under the circumstances" [Id. at 5,15] Counsel asserts *"I did counsel him to except the plea rather than proceed to trial...several days before the call of the list"* [see D.A. Pre-trail conference doc. appended hereto] which is the date on which this plea was entered which was September 19th [Id. at 5,20] counsel states "the DNA analysis came back with the alleged victims DNA on the sex toys...confiscated through a lawful search and seizure" [see Commonwealth discovery p.1]...and I think that had no small effect of Mr. Davis' decision to plead guilty...and I would levae him to address...his motion to dismiss me as counsel... Commonwealth [whom was time barred accord Pa.R.Crim.P. Rule 591(b)] proffers " *this plea as Atty. McQuillan said* came directly after *he* had found out that the DNA results came back." [Id. at 13,6] "the Commonwealth ahs been prejjudiced, there was DNA on the sex toys *that had not been tested* against Mr. Davis. [Id. at 13,22] *"it is not a matter of exact dtates that it happened, just that it happened."* And davis asserts his wish to proceed pro se[Id. at pp 8-9] he demands to face his accusers. October 31, 2017 Mr. Davis receives via prison mail the trial courts issued order denying his motion to withdraw guilty plea and motion to dismiss Atty. McQuillan as counsel without a Grazier hearing conducted. December 21, 2017 a Sentencing proceeding conducted, here [Id.at p.2] the sentencing judge instructs Davis to dawn his personal eyewear proffering "*There is a pair of glasses, sit and read*" as Davis "had" no glasses. the

Commonwealth [Id. at 3,13] proffers a 2009 sexual assault against a minor not charged [see SOAB report p.4] and counsel stood silient. Davis was sentenced to not less than 7 1/2 years nor more than 15 years incarceration in a state correctional facility{Id. atp.5]. the sentencing court orders counsel "I am having you perfect his appeal fisrt, upon Davis' assertion of counsel's ineffectiveness[Id. at pp.16,17;21] thus forcing Mr. Davis to proceed with unwanted counsel[N.T. 10/30/2017, pp.8-9] January 9, 2018 a Sentencing Modification proceeding conducted here at p.3,16 the D.A.'s sibling court-appointed counsel Arthur T. McQuillan proffers *" the court did not adequately take into consideration Mr. Davis' acceptance of responsibility for the crimes charged"* where at p.5,6 Davis asserts *"he does noty authorize his court-appointed counsel to address the court on his behalf"*; the sentencing judge Norman A. Krumenacker, III admonished Davis stating *"your entitled to your opinion and I am entitled to mine"* his ultimately denying modifiaction of the sentence imposed.

REASONS FOR GRANTING THE PETITION

The Third Enforcement Act of 1871, Section 1983 provides in relevant part:

> "Every person who under color of any statute, ordinance, regulation custom or usage of any State or Territory, subjects or causes to be subjected, any citizen of the United States...to the deprivation of any rights, privileges or immunities secured by the Constitution."

The Fourth Amendment and Article I § 8 of the United States and Pennsylvania Constitutions provide in relevant part:

> "The right to be secure in their person, house, papers; effects against unreasonable searches and seizures shall not be violated and 'No' warrant shall issue, but upon probable cause."

I. In the instant case the Commonwealth's charging documents "lacked" the key component which would make it valid. "A Judge or Magistrate's Signiture" where the Court in United States v. Spencer, at 2023 U.S. App. Lexis 20672 9quoting Brown V. Keane, 355 F.3d 82, 88-89 (2d Cir. 2004) held that 911 caller Brandon Davis-Bey's descriptions of that alleged sexual assault of E.C.M. could not be admitted as a present sense impression becuse Mr. Davis-Bey did not actually witness "any assault" when the Johnstown Police Department (hereinafter "JPD") unknown to petitioner entered his home January 22, 2017. It. was enough absent exigent circumstances that Officer Dan Schrader believed the facts he has for probable cause. The People of this state and the nation are constitutionally entitled to an independent determination of probable cause. Johnson v. United States, 33 U.s. 19, 68 S. Ct. 367, 92 L. Ed. 436 (1948), Moreover, that determination is to be before and not after Officer Schrader had searched petitoner's residence. The Constitutional protection against unreasonable searches and seizures is not some new thing produced by recent decisions in the courts. It is rooted in long recognized principals of humanity and civil liberty. Gold v. United States, 255 U.s. 298, 41 S. Ct. 261 L.Ed.

647 (1921) And in order to insure the protection of those constitutional provisions both the Pennsylvania and United States Supreme Courts require law enforcement officers to obtain a judicially issued warrant, absent exigent circumstances. Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408, 57 L.Ed. 290 (1978); Stoner v. California, 376 U.S. 483, 84 S.Ct. 889, 11 l.Ed. 856 (1964); Johnson v. United States, 333 U.S. 10, 68 S.Ct. 367, 92 L.Ed.436 (1948); Commonwealth v. Silo, 480 A.2d 62 (1978); cert. denied, 439, S.Ct. 1132, 99 S.Ct. 1053, 59, L.Ed. 2d 94 (19790; Commonwealth v. Linda, 448 Pa. 230, 293 A.2d 63, cert.dismissed, 409 U.S. 1031, 93, S.Ct. 253, 34 L.Ed. 2nd 483 (1987); Commonwealth v. Cockfield, 431 Pa. 639, 246 A.2d 381 (1968); Commonwealth v. Ellsworth, 421 Pa. 169, 218 A.2d 249 (1996). When the right to privacy must reasonably yeid to the right of search is, as a rule to be decided by a judical officer, not by a policeman or government enforcement agent. Johnson supra. Id., 333 U.S. at 13-14, 68 S.Ct. at 369 (footnote omitted). Chandler, 505 Pa. at 1222, 477 A.2d at 855. a prior independent judicial determination of probable cause is essential. Giving the proof of the constitutional requirement of a prior judicial determination of probable cause was missing form the record [Appendix A] when ofiicer Schrader searched the petitioner's residence and seized his property January 22, 2017, the court in Commonwealth v. Mslili, 521 Pa. 405, 555 A.2d 1254, 1260 (1989) (citing Chandler) held that the warrant had never issued when Detective Brad Christ February 8, 2017 filed for an Affidavit of Probable Cause and Application for Search Warrant Authorization. Further, because the warrant had never issued January 22, 2017 the "defect" could not be corrected at Incident No. 20170122M1328 "as there was no valid warrant." Chandler, 505 Pa. at 126, 477 A.2d at 857, In such the warrant may not be used at Incident No. 20170122M1328 as a means of gaining access to the petitioner's home, papers, or effects solely for the purpose of "making search to secure evidence" to be used against petitioner in a criminal

or penal proceeding...Gould v. United states, 255 U.s. 298 (1921). In Payton v. New Yorkl, 445 U.S. 573 (1980) the court examined the foundamental principals unrdelying the Fourth Amendment, it's history and purpose and plain language. The court reviewed the "familiar history that indiscriminate searches and seizures conducted under the authority of *'general warrants'* were the immediate *'evils'* that motivated the framing and adoption of the Fourth Amendment." Id. "To limit the governments authority to deprive individuals of their privacy and security.

The Sixth Amendment to the United States Federal Constitution and Article I §9 of the Pensylvania Constitution provides in relevant part:

> "In all criminal prosecutions, the accused shal enjoy the right to a speedy trial... by an impartial jury... to be informed of the nature and cause of the accusations... to be confronted with the witnesses agaisnt him/her, to have compulsory process for obtaining witnesses in his/her favor; to have the "Assistance of Counsel" for his/her defence."

the Fourteenth Amendment to the United States Federal Constitution and Article I §9 of the Pensylvania Constitution provides in relevant part:

> "No state shall deprive any person... or deny any person within it's jurisdiction 'Due Process or Equal Protection' under the laws."

II. In the instant matter we have long understood that the prosecutor's role is threefold: He/She serves as an "officer of the court", as an "administrator of justice" and as an "advocate. Commonwealth v. Stark, 479 Pa. 57, 387 A.2d 829, 83 (Pa. 1978) (discribing a prosecutor as an officer who is responsible for seeking "equal and impartial" justice... Commonwealth v. Nicely, 130 Pa. 261, 18 A. 737 (PA. 1889). Here the Cambria County Public Defender's Office petitioned thc court on bchalf of thc indigcnt African American petitioner Mr. Keith Vernon Davis for the appointment of counsel their repersenting the herein victim E.C.M. in her juvenile criminal proceedings before the Hon. David Tulowitzki regarding the unprovoked assault of a Children and Youth Services caseworker June 29, 2016.

The standards are coedified in Rule 1.7 of the Pennsylvania Rules of Professional Conduct which provides in relevant part:

> (a) except as provided in paragrapg (b) a Lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict exist if:
>
> ...
>
> (2) there is a significant risk that the representation of one or more clients will be materaillay limited by the Lawyer's responsibility to... a personal interest of the Lawyer.
>
> ...
>
> (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a) a Lawyer may represent a client if:
>
> ....
>
> (4) each client gives informed consent.

The comment to thie Rule includes an example of a Lawyer not representing an individual where the opposing Lawyer is a sibling unless both parties have given informed consent.

In the insatnt case the Hon Tamara R. Bernsteirn (a former Cambria County prosecutor) knowingly appoints the elected Distriact Attorney at the time of Davis' prosecution Kelly Callihan's brother to represent the petitioner february 14, 2017 at Appcndix B; N.T. may 26, 2020, at p.5; N.T. September 3, 2020, at p.5. Where the petititoner did not discover the relationship between his trial counsel Arthur T. McQuillan and the elected Cambria County District Attorney at the time until some two years after his unknowing plead of guilty. N.T. May 26, 2020 p. 12; Appendix C. "If the court knew or should have known in this case that aparticular conflict existed and neither inquired into or remedies"conflict" reversal is automatice." Armienti v. United States, 234 F.3d 820 (2d cir. 2009) (qouting Culyer v. Sullivan, 466 U.S. 335 (1980). An actual conflict existed when counsel colluded with his sibling the Cambria County District Attorney and Police Officer,Detective Brad Christ. It would be submitted that this conflict which "Mr. Davis did not waive" should be sufficient to make a finding the the petitioner was denied effective assistance counsel.

II. Shortly after his appointment in advance og Davis' preliminary hearing trial counsel and *his sister* the elected Cambria County District Attorney visited the petitioner at the cambria County Prison where trial counsel without informed consent intentionally discussed information relating to the Davis' representation.

The standards are coedified in Rule 1.6 of the Pennsylvania Rules of Professional Conduct which provides in relevant part:

> (a) "A lawyer shall not reveal information relating to representation of a client, unless the client gives informed consent."
>
> ...
>
> (d) "A lawyer shall make reasonable efforts to prrevent the inadvertent or unauthorized disclosure of, or unauthorized access to information relating to the representation of a client."

Which Mr. Davis "did not waive." The standards are coedified in Rule 1.8 of the Pennsylvania Rules of Professional Conduct which provides in relevant part:

> ....
>
> (b) "A lawyer shall not use information relating to the representation of a client to the disadvantage of the client"...

Also The standards are coedified in Rule 1.16 of the Pennsylvania Rules of Professional Conduct which provides in relevant part:

> (a) "Except as stated in paragrapgh (c) a lawyer shall not represent a client or where representation has commenced shall withdraw from representation of a client if:
>
> ...
>
> (4) "The client insists upon taking an action the lawyer consisders repungnant or with which the lawyer has a fundamental disagreement...

The standards are coedified in Rule 1.18 of the Pennsylvania Rules of Professional Conduct which provides in relevant part:

> (a) "A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.
>
> (b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use

or reveal information which may be harmful to theat person.

During this initial interview with trial counsel and his sibling, Mr. Davis asserted his and Codefenant Corbin's innocence of the accusations against them also relating the behavioral problems he and Ms. Corbin had been experiencing with her minor daughter E.C.M. and E.C.M.'s resentment towards them and any authority. [Police, CYS, and School officials]

IV. March 16, 2017 a preliminary hearing conducted where Id. at p.3 both the Magistrate and trial counsel waived Davis' formal reading. "To invoke the jurisdiction of a Court of Common Pleas, 'it is necessary that the Commonwealth confront the petitioner with a formal and specific accusation of the charges against him." Commonwealth v. Khorey, 521 Pa. 1, 555 A. 2d 100, 108 (1989) And the right of formal and specific notice of charges guaranteed by the Sixth Amendment to the federal Constitution and Article I §9 of the Pennsylvania Constitution, is so basic to the fundamental fairness of subsequent proceedings that it cannot be waived even if Mr. Davis voluntarily submits to the jurisdiction of the court. Commonwealth v. Jones, 593 Pa. 295, 929 A.2d 205, 211-12 (2007). By reason of the States failure to confront petitioner with formal and specific notice of the charges against him the State "lacked lawful" jurisdiction to proceed to trial or to judgment against Mr. Davis as he was unable to prepare a defence.

V. The Amendments contemplates that a witness who makes testimonyial statements admitted against petitioner will ordinarily be present....at the preliminary hearing. Crawford, 541 U.S., at 68, 124 S. Ct. 1354, 158 L.Ed. 2d 177. Here the record at March 16, 2017 reflects neither 911 caller Brandon Davis-Dey who reported the alleged sexual assaults of E.C.M. against the petitioner his father January 22, 2017 Appendix B and a recorded January 26, testimonial at Disc. 5, nor the arresting Detective Brad Christ after attendung the February 15, 2017 Forensic interview of E.C.M. Appendix B; N.T. August 29, 2017, at pp.7-8 were present for cross-

examination by the petitioner, yet trial counsel sat silent. The Pennsylvania Supreme Court determined that Pa. R. Crim. P. 542 (E)... "did not permit ...this... hearsay evidence a lone to establish all elements of all crimes for purpose of establishing a prima facie case against Mr. Davis at the preliminary hearing. Commonwealth ex rel Buchanan v. Verbonitz, 581 A.2d 172 (Pa. 1990) where a five-Justice majority held: the "hearsay evidence was insufficient to establish a prima facie case N.T. March 16, 2017, at pp.34-41. Here even E.C.M. asserted not be present, to include the various places resided and fundamental due process requires "no adjudication" be based solely on hearsay evidence"; Commonwealth v. McClelland, 654 Pa. 167, 179 A.3d 2 (2018) As the Lead Justice opinioned Davis' right to confront said witnesses against him guaranteed by the federal and Pennsylvania Constitutions "were violated" when Davis was bound over for trial solely on the basis of...out-of-court... hearsay testimony... because it [the State] relied on inadmissible hearsay rather that "competent evidence." Verbonitz, 581 A. 2d at 175. Futhermore, trial counsel advised the petitioner to "waive his April 24, 2017 formal arraignmaent"before the Hon. Davis Tulowitzki as there was a pre se conflict, his presiding over E.C.M.'s juvenile proceedings N.T. March 16, 2017, p.34,3., where Davis notice the courtroom was empty neither Judge nor Attorney for the Commonwealth were present, save for the Juvenile probation officer supervising E.C.M. Connie Creany, her hand trial counsel McQuillan a legal envelope the contents never share eith petitioner.

VI. Similarly, trial counsel McQuillan had a duty to undertake "reasonablr investigateions or to makc rcasonablc dccisions" that would render particular investigations unnecessary N/T. May 26, 2020, p.5 ; N.T. September 3, 2020, p.5. Strickland v. washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed 674 (1984). The reasonableness of a particular investigation depends upon evidence known to McQuillan N.T. March 16, 2017, PP.20-21; N.T. May 26, 2020, pp.7-12, as

well as evidence that would cause a reasonable attorney to conduct a further investigation. N.T. March 16, 2017, pp. 34-41. Where the victim E.C.M. and Davis informed trial counsel Mc Quillain N.T. May 26, 2020, pp. 7-12. Petitioner Davis was of the impression that his trial counsel did not investigate these two potential *"eye"* witnesses Id. at pp. 12-13. This fact *was not refuted* by trial counsel McQuillan N.T. September 3, 2020, p. 5. In the case at hand trial counsel's most significant errors was his failure to adequately investigate the prior sexual abuse by Jeffrey Alvin Keith N.T. July 7, 2017 pp. 12;14. where at N.T. March 16, 2017, p.22 as the petitoner and victim had advise counsel of E.C.M.'s prior sexual assault accusation at Commonwealth v. Keith, CP-11-CR-0000409-2017 during the exact same time frame alleged herein which is also most contested as trail counsel McQuillan strongly deined to pursue this defence that the crime was committed by another. See E.C.M.'s Fornesic Interview Appendix B; counsel's filed May 12, 2017 and May 30, 2017 Pre-trial/Omnibus Motions. In such case as the alleged sexual abuse of E.C.M. trial counsel's failure to investigate constitutes his ineffectiveness where a reasonable investigation would have disclosed exculpatory informtion bolstering Davis' credibility and disclosure that the alleged sexual assault could not have taken place as the State charged indictaing that the failure to introduce N.T. October 30, 2017, p.13 the related Police reports, Children and Youth; Juvenile records or the N.T. March 16, 2017, pp.20-21 alibi evidence, the trial Judges April 10, 2018 1925 (a) Opinion, at p.10 ; see Affidavits of Alvin Keith and Vegenzo Peoples Appendix B. supporting Davis' contentions of actual innocence and that sexaul assaults could not have occurred under the circumstances during the time frame alleged by the State. West v. Bell, 550 F.3d 542, 555 (6th Cir. 2008); Hart v. Gomez, 174 F.3d 1067, 1070-71 (9th Cir 1999); Williams v. Brown, 721 F.2d 1115, 1119-21 (7th Cir 1983) (holding trial counsel McQuillan's inadequate preparations for trial, including his failure to sufficiently

correspondence's pursuant to Pa. R. Crim. P. 576 Appendeix B. United States v. Tucker, 716 F. 2d 576, 579-586, 595 (9th Cir. 1983) (same). Trial counsel's errors prevented petitioner Davis from offering something akin to an alibi see May 12, 2017; May 30, 2017 Pre-tril Omnibus Motions; N.T. July 7, 2017, pp. 15-17 as the herein victim E.C.M. had not been residing at 209 Chandler Avenue, Johnstown, Pa. with the petitoner or his Codefendant her mother Darlene Corbin during the sexual assaults from June 1, until October 31. See Docket at Keith supra. his pleding Nolo Contendere December 8, 2016, sixty (60) days prior to Corbin's and Davis' February 8, 2017 arrests at Commonwealth v. Corbin, CP-11-CR-0000526-2017; Commonwealth v. Davis, CP-11-CR-0000474-2017 Appendix B. Nobel v. Kelly 89 F. Supp. 2d 443, 463 (S.D.NY. 2000) (holding that in the absence of a strategic explaination of Mr. McQullian's failure to properly investigate or to contact alibi witnesses was constitutionally ineffective... under our system of justice "all criminals even those clearly guilty or otherwise reprehensible are entitled to a fair trial and to "**effective**" assistance of counsel [including the Petitioner Davis]. United States v. Russell, 221 F.3d 615, 623, 54 Fed R. Serv. 1477 (4th Cir. 2000). Trial counsel's sibling the elected Cambria County District Attorney at the time Kelly Callihan had a duty to respect the rights of the petitioner...she was in a particular and very definite sense the servant of the law...as an officer of the court...she had a responsibility..."to seek justice with in the bounds of the law...which is guilt shall not escape nor innocence suffer. Therefore, in a criminal prosecution it is not "that she shall win a case, but that justice shall be done while she may strike a hard blow, she is not at liberty to strike foul ones it is as much her duty to have refrained from improper methods calculated to produce a wrongful convction as it was to use every legitimate means to bring about a just one" United States v. Berger, 295 U.S. 78, (1935).

VI. The courts have held "Where false statements knowimgly and intentionally or with reckless disregard for the truth was included by Detective Christ in the Warrant/Affidavit where E.C.M. alleges that "Keith" (not Davis) wrote her a letter when she came back from Adelphoi in "October" or that "Keith" (not Davis) one time in "October" was touching, kissing and eatting her vagina, see N.T. March 16, 2017, p.30; the Affidavit of Probable Cause Appendix A... anf if the false statemens were necessary to the findings of probable cause...where in the event the allegations of perjury or reckless disregrad was established... by a preponderance of the aforesaid evidence and Detective Christ"s false material set to one side and the Affidavit's remaining contents is insufficient to establish probable cause against petitioner davis the warrant must be voided and the fruits of the unlawful search excluded to the same extent as if probable cause was lacking on the face of the Affidavit. In Franks the court held:

"Davis had the...right...to...challenge the truthfulness of the statements in the Affidavit supporting the warrant. Id.;at 2681("Davis' challenge to the warrants veracity must be permitted)... deriving the grounds from the Language of the Warrant Clause itself... [N]o warrant shall issue, but upon probable cause supported by Oath or Affirmation...Put simply [W]hen the 14th Amendment demands a [factual showing sufficient to comprise probable cause] the obvious assumption is that it will be a truthful showing..." Farnks v. Delaware, 438 U.S. 154, 57 L.Ed. 2d 667, 98 S.Ct. 2674 (1978).

It was McQuillan's role to be a professional advisor and advocate...(not to usurp DAvis' decisions concerning the objectives of his representation) ...according to the extent that petitioner instructed court appointed McQuillan to pursue a course of action. U.S. v. Wellington, 471 F.3d 284 (2d Cir. 2005) see District Attorney's August 29, 2017 Pretrial Conference Notice; Petitioner's forwarded correspondences Appendix B. where Mr. McQuillan's performance was deficient as he made no effective challegne to hs sibling's (the State's) only alleged evidence of a sexual assault that was "never tested" againgst that of petitioner. Lindsltadt v. Keane, 239 F.3d 191 (2d Cir. 2001) N.T. October 30, 2017, p.13. Here the Commonwealth moves for and was granted a continuance June 8, 2017, as Detective Christ *"had allegedly forgotten"* to submit the

unlawfully seized evidence for forensic testing.

VII. "The Fifth Amendment prohibition against compelled self-incrimination by the Petitioner Davis is applicable to the State through the Fourteenth Amendment." Malloy v. Hogan, 378 U.S. 1, 6, 84 S. Ct. 1489, 12 L.ED 2d 653 (1964).

"Governments, state and federal, are thus constitutionally compelled to establish guilt by evidence independently and freely secured; may not by coercion prove a charge against the petitioner or his Co-defendant Darlene Corbin out of their own mouths." Id.; at 8.

Here the State relates it's initial plea offer to Conts 2 and 3. Appendix b. June 21, 2017. At N.T. July 7, 2017,pp 8 Mr. mcquillan requests his sibling [The State]provide him the results or scientific test...as...it's sort of hard to make a determination about evidence when you don't have it; *so that falls under discovery heretofore not provided* . see N.T. October 30, 2017,p.30. July 18, 2017 McQuillan informs petitioner Davis that Co-dfendant Corbin, after the State [his siblling] resorts to actual threats to detrimentally affect the custodial status and well-being of her children to compell her self- incriminate and cooperation. Lynum v. Illinosis, 372 U.S. 528, 83 S.Ct. 9 L.Ed 2d 922 (1963); see also Malloysupra. overbearing her will as now Corbin's cooperating with [McQuillan's sibling] the State as she gave a false statement (Disc 8, see also Disc's 3;4) **Brady** supra. through it's agents utilizations of Constitutionally impermissible threats and coercion to compell Co-defendant Corbin to falsely implicate Davis in the charges *"against them"*. See Corbin's May 30, 2018 590 Plea Disposition; Disc. 3,4;8. and the Docket at Commonwealth v. Corbin, 0526-2017 *as counsel David Beyer never filed for her discovery in her case* see also McQuillan's July 18, 2017 dated correspondence Affidavit Appendix B. here counsel advised the petitioner that "now might be a good time to seek a plea before the DNA test came back. Lindsltadt, supra. Again the State extented a second plea offer August 2, 2017 here Mr. McQuillan "counsseled" Davis to consider their offer to Count 2 of 18-30 months and Count 3 of 54-72 months consecutively for a total of eight and a half (8 1/2) years his guaranteeing

petitioner"that he'd only serve four (4)." Appendix B. But petitioner declined. Mr. McQuillan performed no acts of advocacy on Mr. Davis' behalf that was adversarial in nature, instead he repeatedly attaempted to convince the petitioner to accept a plea agreement from [his siblings] the State and plead guilty to the charges against petitioner in spite of Davis' protestations of innocence. And when petitioner Davis would not acquiuisce to a plea mr. McQuillan deceived the petitioner into signing a document he did not explain was a Plea Colloquy. N.T. October 30, 2017, at 5,15.; N.T. September 3, 2020,pp7-9. then he adopted [his sibling's] the States tactic's of threatening petitioner with the consequences to Mr. Corbin and her children if Davis refused to go through with the plea. see D.A.'s Pretrial Conference Notice, Plea Colloquy and both President Judge Norman A. Krumenacker, III's September 9, 2017 ex parte order of conviction filed at 11:40 a.m. September 19, 2017, as Davis *was to appear before* the Hon. Tamara R. Bernstein for *the call of the list* as "there were no Plea proceedings scheduled at Commonwealth v. Davis, 0474-2017. therefore petitioner's plea of guilty could not have been fully informed...were McQuillan failed to inform Davis that the State [his sibling] had offered a last minute plea, where Mr. Mcquillan had entered said plea, hence,the petitioner being taken before the Hon. Norman A. Krumenacker, III for an unschedule Plea proceeding at 1 p.m. as the Plea Colloquy had also been file at 11:40 a.m. simultaneously; however, McQuillan's unlawfully induced petitioner's plead of guilty entered some three (3) hours and fifty (50) minutes post ordered oc conviction. U.S. v. Fernandez, 205 F.3d 1020 (7th Cir. 2000). see D.A. Pretial Coffcrence Notice, Plea Colloquy; both filed September 19, 2017 Orders Appendix B. *Here the right that Petitioner Davis lost was not the right to a fair trail, but the right to participate in the decision as to or to decide his own fate* as the elected Cambria County District Attorney's sibling Arthur T. McQuillan failed to convey any plea offer had been extended until after he simply plead guilty for petitioner Davis and the petitioner sufferd perjudice as a result. Nunes v, Mueller,

350 F.3d 1045 (9th Cir. 2003) And based on Mcquillan's unprofessional performance it was sufficiently deficient so as to fall well below an objective standard of reasonableness. Russell supra.; Hamstreet v. Griener, 367 F.3d 135 (2d cir. 2004) Where [I]t was the role of Mr. McQuillan to be a professional advisor and advocte...(not to usurp petitioner's decisions concerning his objective of representation...According to davis' instructions that counsel was not to except any plea offers, but proceed to trial. Wellington supra.

VIII. As the [his sibling elected Cambria County District Attorney] State had a rule 600, Mr. McQuillan now abandons petitioner's interests in favor of his sibling's at N.t. October 30, 2017,pp. 3-6 of petitioner's pro se Plea withdrawal and Dismissal of Counsel proceedings as he could not argue in favor Mr. Davis as to do so would threaten his livelihood and expose his malfeasance. Lopez v. scully, 58 F.3d 38 (1995). Here Mr. Mcquillan expressed his immediate contempt for Davis and began to effectively act as his sibllings "standby" prosecutor. Rickman v. Bell, 131 F.3d 1150 (1997) because the petitioner exercised what Pa. R.Crim.P. 591 (B) allowed after the required ten (10) day response period elapsed and his withdrawal was to be liberally allowed, both Mr. Mcquillan and the state punished the petitioner and thus a due process violation of the most basic sort. Id. at 135. In Commonwealth v. Evans, 434 Pa. 52, 252 A.2d 689 (1969) The only issue was whether it is ever proper for President Judge Krumenacker, III to have participated in davis' plea bargaining that proceeded McQuillan deceptive enterance of plea of guilty. It was viewed by that Court that such a procedure was not consistent with due process and that McQuillan's plea entered on the basis of the unknowing sentence in which President Judge Krumenacker,III participated *" can not be considered voluntary"*. Furthermore, Due process "must draw a distinct line between on the one hand, advice from and 'bargaining' between Mr. McQuillan and the [his sibling] State"s Attorney and on the other hand, dicussions with President

Judge Krumenacker,III who ultimately determined the sentence to be imposed." Kereks v. Marony, 423 Pa. 337, 223 A.2d 699 (1966) Where the U.S. Court of appeals for the 11th Circuit held: Rule 11 (c) (1) provides that counsel for [his sibling] State and "petitioner Davis," either through Mr. McQuillan or acting pro se, may dicuss and reach a plea agreement, but [t]he President Judge the Hon. Norman A. Krumenacker,III "must not" participate in these discussions. United States v castro 521 Fed. Appx. 890, 2013 U.S. App. Lexis 11852. Rule 11 contains an "unambiguous" mandate" prohibiting any participation by the sentencing court in plea discussions "under any circumstances...[without] exception. Casallas, 59 F.3d at 1178. (quoting United States v. Corbitt, 996 F.2d 1132, 1134-35 (11th Cir.1993) Plain Error exists when the [President Judge] State court commits an error that is plain, affects petitioner Davis' substantial rights, and "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." United states v, moriarty, 429 F.3d 1012, 1019(11th Cir. 2005) (internal quotations marks and alterations omitted) "Judicial participation...by President Judge Krumenacker,III...is plain error." Corbitt, 996 F.2d at 1135. Rule 11 explained, barring sentencing [the Hon. President Judge Krumenacker, II] Court from tak[ing] [any] part whatever, in any discussions or communication regarding the sentence to be imposed before entery of "petitioner [Davis'] plea of guilty or conviction or submission to [it] of a...plea agreement. Id., at 1134 (quoting United States v. Werker, 535 F.2d 198, 201 (2d Cir. (1976); United States v. Diaz. 138 F.3d 1359, 1362-63 (11th cir. (1998) (holding that the [IIon. President Judge] State court violated Rule 11 because President jduge Krumenacker,III took an active part in discussing Davis' probable sentence before the time of Davis unlawful conviction.") As a Plea is more than an admission of conduct, it is a conviction. Ignorance, incomprehension, terror, inducement, subtle or blatant threats might be "a cover-up for unconstitutionality. Craney v. Cochran, 369 U.S. 506, 576, 8 L.Ed. 2d 70, 77,

88 S.Ct.884. Hence the elected Cambria County District Attorney and her sibling Arthur T. McQuillan pursued a course of action where their objective was to penalize the petitioner's reliance on his legal right to withdraw McQullian's plea of guilty, so as to proceed to trial self-represented. People v. Donavan, 184 A.D. 2d 654 (2d Dept. 1992); Bordenkirck v. Hays, 434 U.S. 357 (1978) (citing Chiffin v. Slychombe, 412 U.s. 17, 32-33,n.20; see also Lindsltadt supra.Since the record at Commonwealth v. Davis supra. is to incomplete to determine if petitioner' plea was coerced by[the elected Cambria county District Attorney's sibling] Mr. McQuillan where the evidence raises a question of McQuillan's conflict. People v. Gonzalez, 171 A.D> 2d 413 (1st Dept. 1991) see 9/9/2017, 9/19/2017 Orders and President Judge Krumenacker,III's 1925 9a) (1) Opinion/Order at p.10 Appendix C.

VIIII. Here petitioner Davis moved to dismiss appointed counsel[the elceted Cambria County District Attorney's sibling] Arthur T. McQuillan based upon his acting in a pro forma capacity representation of Davis merely in name only, as he was either "less than wholly candid, less than fully informed or "with all due respect" just plain in competent per Notes of testimonies:

(a) July 7, 2017,p.12: Mr. McQuillan: With trying to defend "Mr. Keith" against the allegations...

I think with the amount of time "MR. Keith" is facing...

The Court: "Mr. Davis"...

McQuillan: "or Davis"...

The Commonwealth: "Jeffrey *Keith* Davis...

McQuillan: And I'm trying to protect Jeffrey Allen...

McQuillan: In our case we "had an allegation against somone...

Clearly [the elected D.A.'s sibling] Mr. McQuillan is totally unaware of "who he's to be defending or whom is on trial!" see 7/16/2019 Affidavit of David King Appendix C.

(b) August 29, 2017,p. 4. McQuillan avers:

"We are prepared to proceed to trial when notified by the court...p.18. "I would note for the court "Mr. Davis "*wanted to go to trial*" in May and June.. "He *wanted to go to trial"* during the July-August term...

(c) October 31, 2017, p.5 McQuillan proffers:

"I did counsel him to except the plea rather than proceed to trail" ...which was... September 19th...the alleged sex toys...were confiscated through "a *lawfull search and seizure"...*

see Officer Schrader's 1/22/2017 Incident report #20170122M1328 and Detective Christ's 2/8/2017 Affidavit of Probable Cause and *"Application For Search Warrant and Authorization,"* which bears the exact same Incident NumberAppendix A. Id. at p.113 The State proffers:

"At this time" the Commonwealth has been prejudice...The DNA on the sex toys "was not tested against Davis"...and "we would have sent Davis' DNA to the lab"...the CYS records and Juvenile reords... were requested by Atty. McQuillan...and reviewd...so defense was prepared...those records were obtained...

Here President Judge Krumenacker,III denied both motions without an explaination. October 31, 2017 by order of court. And but for [the eleced Cambria County District Attorney's sibling] appointed counsel Mr. McQuillan's unprofessional error or omissions as stated N.t. August 29, 2017,pp 4;8 Petitoner would have proceeded to trial self-represented and thus a reasonable probability there would have been a different outcome at trial.

X. In Adams v. United States ex rel. McCann, 317 U.S. 269, 279, 87 L.Ed.2d 268, 63 S.Ct. 236, 143 ALR the court recognized tha tha Sixth amendment right to assistance of counsel

implicitly embodies a "correlative right to have dispensed with Mr. McQuillan's help...is not legal formalisms. It...rest on considerations that go to the substance of...the petitioner's position before the law...

> "...What were contrived as protections for...Davis should not be tuurned into fetters...as...to deny Davis his...choice of procedures in circumstances in which he as a layman, is as capable as a lawyer to make an intelligent choice, is to impair the worth of great constitutional safegaurds by treting them as empty verbalisms."

> "...When the administration of the criminal law...is hedged about as it is by the constitutional safegaurds for the protection of the petitioner, to deny Davis in the exercise of his free choice to...have dispensed with some of these safeguards...was to imprison Mr. Davis in his privileges and call it the Constitution." Id., at 279-280, 87 L.Ed 2d 268, 63 S.Ct. 143 ALR (emphasis added.)

> Petitioner's right to the assistance of couonsel...was intended to supplement the other rights of Davis, and not to impair his absolute primary right to conduct his own defense 'porpria persona." Id., at 274...

As petitioner Davis' right to defend is personal...and it was...the petitioner and not[the elected D.A.] nor her sibling Mr. McQuillan who on December 21, 2017, bore the personal consequencies of the Hon. President Jdge Krumenacker,III's constitutionally impermissible conviction...when Davis "clearly and unequivocally" October 30, 2017 that he wanted to represent himslef, here the record confirms petitioner was literate, competent, and understatnding, and that Davis had voluntarily exercised his "free will." Ferretta v. califomia, 422 U.S. 806, 45 L.Ed. 2d 562, 95 S.Ct. 2525 (1975). In the Sixth Amendments context, prejudice is presumed. Actual or Constrútive denial of the assistance of counsel altogether is legally presumed to result in prejudice...Moreover,, such circumstances involve impairments of the Sixth amendment right that are easy to identify...for that reason...because the prosecution is directly

responsible. One type of actual ineffectiveness...warrants..presumption of prejudice...Prejudice is presumed when Mr. McQuillan was burdened by the actual conflict of interest [his sibling's being the eleced Cambira County District Attorney] thus breaching his duty of loyalty, being perhaps his most basic duty; it is difficult to measure the precise effects on Davis' representation and the corruption... of such..conflict of interest. Id., at 692 (citations omitted). The Court elaborated on the presumed-prejudice exception elluded to in Strickland, recognizing that "there are...circumstances that are so likely to prejudice the petitioner ...anbd that is whether the trial process [has lost] it's character as a confrontation between adversaries [hia sibling]...if so then "the Constitutional guarantee is violated." Id., at656-57. and then, it is not necessary to demonstrate prejudice. These circumstances may arise in several different contexts. "Most obvious" is the complete [i.e., actual] denial of counsel." Id., at 659. But the court noted... the possibility of constructive denial of counsel, when...although counsel is present, "the performance of counsel [is] so inadequate that, in effect, no assistance of counsel is provided...as in the present case. Id., at 654, n.11. Equally important is...that mr. McQuillan entirely failed to subject [his sibling's] the prosecution's case to "meaningful adversarial testing," and there had been a denial of davis' Sitxh Amendment rights...it makes the adversarial process itself "presumptively unreliable." Id. at 662. United States v. Cronic, 466 U.s. 648, 80 L.Ed. 2d 657, 104 S.Ct. 2039 (1984). Here in the instant case the record affirms that the petitioner was literate, competent, and understanding, and that he voluntarily exercised his "free will", where the Hon. President Judge Norman A. Krumenacker,III committed "Plain Error" december 21, 2017, at16,21. his forcing court appoint Mr. McQuillan "upon this unwilling petitioner" was contrary to Davis' basic right to defend himself as he truely wanted to do so. (Quoting Mr. Justice Blackman with whom the Chief Justice and mr.Justice Rehnquist cocurred: "f there is any truth to the old

proverb that "one who is his own lawyer has a fool for a client!" The Court by it's opinion has bestowed that Constitutional right...on Davis.. to make a fool out of himself!" Ferretta supra.; also McKaskle v. Wiggins, 465 U.S. 169, 79 L.Ed. 2d 122, 104 S.Ct.944 reh den 465 U.S. 1112, 80 L.Ed.2d 148, 104 S.Ct. 1620. Henceforth, Mr. McQuillan's filed Concise Statement of Errors Complaint of on appeal averring "that the court didnot adequately consider [Davis' alleged] eceptence of responsibility," just prior to [the elected D.A.'s sibling's] Mr. McQuillan abondoning petitioner his filed February 8, 2018 Motion for Leave to Withdrawal as Counsel pursunat to Pa. R. Prof. Cund. 1.18 as he'd had a "fundamental disagreement with davis' course of action...his protestations of his innocence which the Hon. President Judge Krumenacker,III granted February 12, 2018. Wherefore, the usual rules regarding procedural default "do not apply" to petitioner's Sixth Amendment claims...since without effective assistance the incarcerated Davis has been deprived of his liberty see Davis' filed August 21, 2017 alibi Calendar. Kimmelamn v. Morrision, 477 U.s. 365 (1986). [I]n criminal trials the courts of the United States whenever a question arises whether a confession is incompetent...and not voluntary the issue is controlled by the Fifth Amendment...commsnding "that no person shall be compelled to be a witness against himself... Id., at 542, 42 L.Ed.573, as the Constitutional inquiry "is not whether the conduct of Mr. McQuillan]or his siblling the elected Cambria County District Attorney Kelly Callihan] the state in obtaining davis' confession was shcoking, but whether petitioner's confession was "free and voluntary": that is, "[it] must not...have been extracted by any sort of threats[to Ms. Corbin or himself]... nor obtained by any direct or implied promises"...nor by the extraction of any improper influences. Id., at 542-543, 42 L.Ed. at 573. Bram V. United States, 168 U.S. 532, 42 L.Ed. 568, 18 S.Ct. 183 (1887), Ultimately we must judge the fairness of Davis' trial thorough the Sixth Amendment lens looking to determine if Mr/ McQuillan had subjucted wvery bit of

[alleged] evidence and each element of [his siblings] the prosecution's case to "reasonable adversarial testing." Stouffer v. Reynolds, 168 F.3d 1155, 1661 (10th Cir. 1999). March 5, 2018 the Hon. President Judge Krumenacker.\,III appoints Atty. Christy P. Foreman, Esq. appellate counsel to represent Mr. Davis, as the Superior Court of Pennsylvania, Western District docket ["McQuillan's] filed appeal at 264 WDA 2018.

XI. March 12, 2018 as appellate counsel after [only] one phone consultation files her Concise Statement of Errors Complained of on appeal, avering "whether trial court abused it's discretion as the only issued presented. Here Davis' right to appellate counsel was not adequately fulfilled as appellate counsel Foreman's brief at 264 WDA 2018 "contained no references tot he State's [alleged] evidence not tested aganist the petitioner at N.T. 10/30/2017,p.13....making clear appellate counsel Foreman was not acting like an advocate on behalf of the petitioner. People v. Stokes, 95 N.Y. 2d 633 (2001). Whereas the trial court's april 10,2018 Opinion'Order pursaunt to Pa. R.A.P. 1925 (a) (1) at p. 10, the Hon Norman A. Kreumenacker,II President Judge avers: The evidence Davis...presents is *"Orders from the Juvenile Dependency Divison of the Courts entered August 17, 2016, October 12, 2016 and October 19,2016* placing the victim outside his residence and *an Order returning her Octber 26, 2016!"* [Where the State information's offense date being October 1, 2016] thus the assaults could not have taken occurred under those condictions by either Co-defendent Corbin nor petitioner Keith Vernon Davis as the State alleges the same exact time frame against Jeffrey Alvin Keith at Commonwealth v. Keith, 0409-2015 by Assistant District Attorney Elizabeth Bolton-Penna, whom prosected both cases, N.T. July 7, 2017,p12 her averring she's prosecuting "Jeffrey *Keith* Davis." who sexually assaulted E.C.M. yet E.C.M. avers February 15, 2017 at a Forensic C.A.C. Examination"*Keith*, began having intercourse with her when she was about 13 years old until last October [here she 16 yr.s old]. Bell supra.; Gomez,

supra. Here the Superior Court's february 19, 2019 Opinion/Order pursuant to Pa. R.AP. 1925 (a) (1) at p.3, n.4. affirms the State trial courts sentence based on the states misleading proffer of uncharged crimes...that Davis had a prior 2009 conviction for a sexual assault aganist a minor hence he was unconstitutionally convicted. See SOAB assessment report, p.4 and appended Notice of Non-existence Appendix C. March 12, 2019 Notice of filing a Petiton For Allowance of Appeal with the Supreme Court of Pennsylvania, ultimately denied by operation of law September 5, 2019. January 7, 2020, Petitioner files a timey Post-Conviction Relief Act (PCRA) Petition with the State trial court. The issues raised in Davis' petiition form the bases of his Petition for Habeas Corpus. As Appellate Counsel Foreman Motioing for Leave to Wihdraw as Counsel January 1, 2020, the Hon Judge Krumenacker,III grants appellate counsel's motion January 9, 202 and that same date appoints Atty. Richard M. Corcoran, Esq. as PCRA counsel to represent petitioner Davis. April 9, 2020, PCRA counsel files [his] an Amended Post-Conviction Relief Petition on Davis' behalf without consultation. May 26, 2020 a vedio PCRA Hearrng was to be held, it's being continued as [the elected D.A.'s sibling] Mr. McQuillan failed to appear. September 3, 2020, as there was not breakdown in the court system due to COVID that would justify [the D.A.'s sibling's] Mr. Mc Quillan's absence at p.3. the Hon Norman A. Krumenacker,III President Judge permits McQuillan's testimony via cell phone and PCRA counsel Corcoran sat silent. November 25, 2020, due to PCRA counsel's actions or inactions petitoner Davis was wholly deprived of his right to appellate review of "his" collateral claims as the trail/PCRA court issued it's Opinion/Order denying "PCRA" counsel Corcoran's Amended petition for Post-Conviction Relief. PCRA counsel timely filed a December 23, 2020 Notice of Appeal with the state trail/PCRA court and his filed Concise Statement of Errors Complained of on Appeal in accordance with Pa. R.A.P. 1925 (b) January 11, 2021 to the Superiro Coourt of

Pennsylvania docketed at Commonwealth v. Davis, Appeal No. 265 WDA 2021, January 1, 2021. February 16, 2021, the president Judge Krumenacker, III issues his second Opinion/Order pursunat to Pa. R.A.P. 1925 (a) (1). Ultimately, August 16, 2021 the Superior Court affirms the state trial?PCRA courts denial of Davis' appeal in it's Memorandum Opinion/Order again at p.3, n4. As PCRA counsel Corcoran abondon's petitioner in his August 23, 2021 correspondence notifying Davis of his withdrawal as counsel and his having thirty (30) days from the date of the order of denial to file a pro se Petition For Allowance of Appeal via his Institution's prison mail system received august 31, 2021. Where on September 15, 2021 petitioner's placing/filing "a timely" Petition for Allowance of Appeal in his Housing's mailbox accord Houston v. Lack, 487 U.S. 266 which he had dated September 16, 2021. As all Department of Correction Institution's were on Lock down *and their Law Libraries closed* due the Governor Wolf's COVID-19 Emergency Disaster Proclaimation until September 6, 2021. Here the Supreme Court of Pennsylvania erred in denying Petitioner's Petition for Allowance of Appeal as untimely in light of the COVID pandemic...in..that it did not comply with it's obligation under the rule that this majority of time period was *"tolled"* during the Governor's Emergency Disaster Proclamation. Commonwealth v. Stephan Anderer, 258 A.3d 3358, 2021 Pa. Super Unpub Lexis 1638, Commonwealth v. Jajuan Davis, 279 A.3d 1268 No. 572 WDA 2021, 2022 Pa. Super. Unpub Lexis 1167, Commonwealth v. Goldman, 70 A.3d 874 (Pa. Super. 2013); also Winfree v. Hill, case No. 3:21-cv-00039, 2022 U.S. Dist. Lexis 127239. (holding that Virginia COVID-19 tolling orders would ...have...afforded petitioner Davis...an additional 126 days to file.)

42 Pa. C.S. 9543 (a) (2) (ii) provides in relevant part:

Eligibility for Relief by said Government Interference.

42 C.s. 9543 (b) Exception provides in relevant part:

...does not apply if...Davis shows the exercise of reasonable diligence

It is established that 'the fundamental constitutional right to access tothe courts requires prison authorities' to assist inmates in the preparation and filing of meaningful legal papers by providing prisoner's with adequate law libraries or adequate persons trained in the law." Lewis v. Casey, 578 U.s. 343, 346, 116 S.Ct. 2174, 135 L.Ed. 2d 606 (1996) (citing Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1291, 52 L.Ed. 2d 72 (1977). "The tools it requires to be provided are those that the inmates need in order attack their sentences, dirctly or collaterally, and in order to challenge the conditions of their confinement." Id., at355. Prisoner's access to the courts must be adequate, effective and meaningful." Id., at 346. (emphasis added) Furthermore, the Fourteenth Amendment to the U.S. Constitution "governs any action of the state, whether thorough it's legislature, thorough it's Courts or thorough it's Executive or Administrative officerss. Thus the failure of the Department of Correction (an executive branch of state government) to ssist...petitioner Davis.. with access to...the Institution's Law Library...during the COVID-19 pandemic...imputes directly to thc state..." Mooney v. Holohan, 294 U.S. 103 (1935) as the state's shutdown was an event out of the Petitione's control. Jajuan supra. The Fourth Circuit held that allowing the petitioner physical access to the prison's law library 45 minutes/day, 3x/wk. did not constitute a meaningful oppertunity to conduct research. Id., at 1340. ; Williams v. Leeke, 584 F.2d 1336 (4th Cir. 1978) to include the Library a monhty security lock down and Staff's repeated no shows and/or call offs without reschedulings. The Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1961 provide in relevant part:

> "All persons within the jurisdiction of the United States shall have the same rights in **every** State and Territory to...Full and Equal benefits of all laws...enjoyed **by White Citizens!"**

(Quoting from Alexis DE Tocqueville's Democracy in America):

In re to the Court of Common of Cambia County, Pennsylvania...please "Explain to me how... in a... state founded bu Quakers and renowned for it's tolerance, for freed Negros [such as Darlene Corbin and Keith Vernon Davis] are not allowed to exercise their...Constitutional..rights as Citizens. Pennsylvania Rules of Criminal Procedure 590 (b) ...does not in any way eliminate the obligation of [McQuillani's sibling] the Attorney for the Commonwealth or Mr. McQuillan to comply with the mandates of Bray v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) and it's progeny. In Kyle v. Whitley, 514 U.s. 419, 131 L.Ed. 2d 490, 115 S.Ct 1555(1995) it was held that on federal habeas corpus review, petitioer was entitled to a New Trial because the elected D.A. Kelly Callihan's and sibling Arthur McQuillan's failure to comply with...their...due proccss obligation's to disclose material evidence [Ploice reports, CYS records; Juvenile records] favorable to petitioner Davis concerning his possible innocence of the crimes charged. N.T. October 30, 2017,p.13...for the net effect of the evidence with held by both appointed counsel Mr. McQuillan and [his sbiling] the state raises a reasonable probability that if the evidence was disclosed to petitioner Davis... it would have produced a different result...as among other factors...[the elected D.A. and her sibling] the State and court appointed McQuillan remain responsible for gauging the effects regardless of any failure of the Johnstown Police to bring prior favorable accusation evidence of Jeffrey Alvin Keith, Ms. Corbin's former boyfriend to the attention of A.D.A. Elizabeth Bolton-Penna also prosecuted him to their attention. Similarly, a recapitulation of the suppressed evidence and statements by Mr. Davis-Bey at Disc. No.5, who by the State's own admission to the record, was essential to their investigation and indeed "made their case against Davis-reveals that they were replete with inconsistencies and "Self-incrminating" assertions that Brandon Davis-Bey was anxious to see his father petitioner Davis arrested for the prior sexual assault of E.C.M. by Jeffrey Alvin Keith at 0409-2015, supra.

Disclosure to Davis would therefore have raised opportunities for the petitioner to attack the thoroughness and even the good faith of the investigation and would have allowed Davis to question the probative value of certai crucial evidence and disclosure not onlywould have resulted in a markedly weaker case for [his sibling] the state, essentially it would have substantially reduced or distroyed [his siblings] the state's only two witnesses reliability that was determinative of guilt or innocence; the state's [his sibling's] non-disclosure of Co-defendant Corbin's trial counsl David Beyer's and Detective Christ's intimidation see Affidaivt Appendix B. of her to prevent Corbin from testifying favorably on petitoner's behalf, deprived Davis a fair trial, where her counsel absent requesting discovery docketed at Commonwealth v Corbin, 0526-2017 Appendix B; Disc's 3,4,5;8. justifies a not only a new trial [but an civil rights removal to Allegheny County] under the due process clause irrespective of the State's good faith or bad faith. Giglio v. United States, 405 U.S. 150, 31 L.Ed. 2d 104, 92 S.Ct. 763 (1972). Petitioner contends that the true extent of 16 yr. old E.C.M.'s and 34 yr. old Davis-bey's bias against Corbin and his father petitioner Davis can only be revealed by their *"Abnormal"* relationship at Disc No. 5. Here petitioner's *"Adult"* son avers "his sneaking out of the basement to sit up with this 16 yr. old minor until 4 a.m.. specifically their accusations can only be weighted fairly when measured against their desire to First punish the petitioner nad Co-defendant Corbin for their interference with E.C.M.'S and 34 yr. old Davis-Bey's *"Abnormal"* relationship; Second to removed petitioner from his home, so as 34 yr. old Davis-Bey could return in hopes of resuming their *"Abnormal"* relationship. See petitoner's filed August 21, 2017 Alibi Calendar; Februay 15, 2017 Forensic Interview Appendix A. as evidence of sexual conduct with older males which offer to show 16 yr. old E.C.M.'s and 3 yr. old Davis-Bey's bias against and hostility towards her mother Darlene Corbin and his father peitioner Davis as motive to seek retribution by their false accusations. In

this case "if parents Corbin and Davis were simply quarreling with 34 yr. old Davis-Bey and 16 yr. old E.C.M.accord her january 22, 2017, 12:27 a.m. "Verbal Domestic" report Appendix B, one would not "normally expect" them to harbor a strong bias towards davis or Corbin. Jaubary 22, 2017 Verbal Report Appendix B. however, an ongoing relationship between 16 yr. old E.C.M. and 34 yr. old davis_bey would be a telling factor in understanding their alliance. Disc No. 5to show Davis-Bey and E.C.M. otherwise had an interest in the outcome of petitioner's trial. Commonwealth v. Black, 487 A.2d 396 (1985); Davis v. Alaska, 415 U.s. 308, 94 S.Ct. 1105, 39 L.Ed. 2d 347 (1974) as the fact and nature being the of 16 yr. old E.C.M.'s Juvenile record and probationary supervison status would tend to cast more suspicion on Davis-Bey and augment his motives to falsey identify Ms. Corbin and petitioner Davis his father in order to shift official attention away from then 16 yr. old E.C.M.'s *"Absconding"* with 34 yr. old Davis-Bey as she'd jeopardized her probationary supervison status. Petitioner *"Conditionally accepted"* legal representation per the "Constitutional guarantee" that court appointed McQuillan would act in his best interest.

VII. But Pesident Judge krumenacker,II used the porhibition against "Hybrid representation" to deprive the petitioner all tools guaranteed to him pursuant to the Sixth Amendment and the due process of law guaranteed per the Fourteenth Amendment. In Pennsylvania the courts of Common Pleas are the Criminal trial courts having original jurisdiction of all criminal and post-conviction matters, The Superiro Court is the intermediate appellate coourt having original jurisdiction of all criminal and post-conviction appeals from the Courts of Common Pleas and the Supreme Court is the highest appellate Court to which discretionary appeals are taken and exercises supervisory authority over all other criminal courts in the state. Pennsylvania.

Constitution, Article V Sections 2,3,5;10, 42 U.S.C. Pa. C.S. § 9545 (a), 742, 502, 721 and 726, respectively.

VII. Pennsylvania state judges and justices are elected or re-elected to state judicial office by the local or statewide electorate which they serve. Pennsylvania Constitution Article V §13, each of these state judges and justices are compensated by the very same state government that prosecuted the Petitioner and they seek to preserve the conviction of Mr. Davis in their courts. Id., at Section 16. As an elected state official the Hon. Nprman A. Krumenacker,II, President Judge necessarily takes part in the American political process his advocating certain partisan, politically oriented platforms and stances, in order to appeal to the electorate "and thier" political views, thus securing "his" election or re-election, so as to obtain or retain his "power, prestige, honor, status, salary, and emulations" that accompany his office as a state judge.Becasue, this pollitical process, is essentially, a popularity contest...he "panders" to the simplistic notions of justice of a "lay electorate ignorant" of the rigidities of the Constitution and rules of law; he attains or retains office by advocating "tough justice" and "tough on crimc" political platforms which is tantamount to guaranteeing that the Petitioner "will be convicted" and that "his" conviction will be preserved. See 9/9/2017, 9/19/2017 Orders; the 4/18/2018 1925 (a) (1) Opinion by the Hon. Krumenacker,III, at p.10, Appendix A. which clearly aligns him with the "interest of the State, It's prosecutorial agents, and It's politically-elected "Executive and Legislative branches of Pennsylvania State Government."

VIII. Nearly a centry ago, this Honorable United States Supreme Court held that the aims of justice and politics are inconsistent and mutually exclusive of ecah other:

> "A situation in which an official perforce occupies two practically and seriously inconsistent postions, one partisan and the other judicial, necessarily involves...a lack of due process of law in the trial of defendant's charge with a crime before him. Tumey v. Ohio, 273 U.s. 510,534,47,S.Ct. 437,71 L.Ed. 749 (1927).

The Yumey court held:

> "...the requirement of due process of law in a judicial procedure is **not** satisfied by the argument that men of the highest honor and greatest self-sacrifice could carry it on without the danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict Davis, or which might lead him not to hold the balance **nice, clear and true** between the state and the petitioner denies the latter due process of law."
> Id.,at 532 (emphasis added).

XV. "These are circumstances in which experience teaches that the probability of actual bias on the part of...[the Hon. President Judge Krummenacker.III]...the decision maker in this case..was to high to be constitutionally tolerable, where under a realistic appraisal of his psychology tendencies and human weakness's, the interest of [President Judge Krumenacker, III], in this case poses such a risk of actual bias that the practice must be forbidden if [davis'] guarantee of due process is to be adequately implemented." Caperton v. Massy Coal Co., 556 U.S. 868, 877, 883-84, 129 S.Ct.2252, L.Ed.2d 1208 (2009). (brackets affed). As the Hon. Norman A. Krumenacker, III had... a direct, personal, substantial, pecuniary interest in conviction and preserving petitioner's conviction. Caperton supera. att 876. To have dismissed Davis' criminal prosecution prior to trial or to vacate his conviction for constitutional violations by the Police [i.e. Officer Schrader's 1/22/2017 Incident report, or Detective Christ's 2/8/2017 Application for Search Warrant...Authorization Appendix A.] or prosecutorial misconduct that occurred during the course of the...alleged...criminal investigation, arrest, search ;and criminal prosecution would invite his own political, professional, social and "financial" disaster, for if the President Judge had not convicted Petitioneer ex parte... would provided his political opponents

and associates with the ability to call into question... his fitness for judical office in future election terms. "Self-preservation dictated the President Judge's not issuing rulings or decisions that conflicted with his poltical platform's that won him jjudical office.

XVI. Therefore, petitioner alleges by reason of bias and fundamental unfairness that tha Pennsylvania state courts, trial, direct appellate, and post conviction review processes in Davis' particular case were ineffective in protecting his federal constitutional rights and are not entitlted to the presumption of correctness that the federal courts normally accord the state courts. Daniel v. Unitcd Statcs, 532 U.S. 374, 381, 121 S.Ct. 1578, 149 L.Ed. 2d 590 (2001). The court in Wolf v. Colorado, at 42 held:

> Self-scrunity is a lofty ideal but it's exultation reaches new heights if we expect the President Judge Norman A. Krumenacker,III to prosecute himself or his associates. Wolf v. Colorado, 338 U.s. 25, 48 93 L.Ed 1782 (1948).

XVII. FEDPROC§62:346, provides in relevant part:

> "Notice of an opponents contentions...the basis for the motion..is to be...provided to thc opposing party...to avoid prejudicc...and a "meaningful opportunity"...to respond in a "timely manner!"

The Fourtennth Amendment to the U.S. Constitution "governs any action of state, whether thorough it's Legislature, whethter thorough it's Courts or whether thorough it's executive or administrative officers., thus Pennsylvania Governor Tom Wolf's (the executive administrator of state government) Emergency Disaster Proclamation in response to the COVID-19 pandemic effective shutdown all state Correctional facilities (to inclde petitioner's) which denied Davis any access to the prison's law llibrary and the courts, directly imputes to the state. Mooney v. Holohan, supra.

Furthermore, AMJUR§12 provides in relevant part:

> Plaintiff [petitione] must be provided "Notice"...given a meaningful oppertunity...to prepare, to defend or to respond...

In the instant case petitioner davis's State Correctional facility at Houtzdale was administratively lockdown from April 6, 2020 until September 6, 2021 without his or the other 198 inmates on his cellblock having access to the prison's law library, were confined to their cell 24 hr.s/day and only let out for 10 minutes showers every 4-5 days. August 31, 2021 petitioner received PCRA counsel's Agust 23, 20201 correspondence notifying him he had thiryt (30) days to file a pro se Petition for Allowance of Appeal in re the Superiro Courts august 16, 2021 Memorandum Order/Opinino, as he was granted leave to withdraw as counsel August 18, 2021. Here petitioner davis having only fourteen (14) days to respond, his filing a Petition for allowance of Appeal and a Motion for Enlargement of Time to File with the State's Supreme court, placing it in thc Instution's Mailbox September 15, 2021, where the state's highest court ignored this Honorabale court's holding in Houston V. Lack, 486 U.S. 288, 101 L.Ed. 2d 245, 108 S.ct. 2379. (1988), which provides in relevant part:

"...the situation of prisnor's seeking to a[[eal without the aid of counsel is unique.Such prisoner's cannot take the steps other litigant's can take to monitor thc processing of their notices of appeal and to ensure that the court clerk rcccivesand stamps their notice of appeal bcfore thc 30 day deadline...if other litigant's do choose to use the mail, they can at least place the notice directly into the hands of the United States Postal Service (or a private express carrier); and they can follow it's progression by calling the court...and...if the mail gose awry they can personally deliver notice at the last moment or...their monitoring will provide...evidence to demonstrate excusable neglect or...the notice was not stamped on the date received. Worse, the pro se petitioner Davis has no choice but to entrust the forwarding of his notice of appeal to prison authorities whom he "cannot" control or supervise andmay have every incentive to delay...he can never be sure...it will ultimately get stamped "filed" on time...if there is delay Davis..is unlkiely to have any means of proving it, "for his confinement" prevents him from monitoring the process sufficiently...on the part ofprison authorities from slow mail scrvicc or the clerk's failure to stamp the notice on the date received...Davis being...unskilled in law[a lay person] unaided by counsel [whom was granted leave to withdraw] and unable to..."leave [his cell or the prison], here Davis' control over processing of his notice ceases as soon as he hands it over to the "only" public official to whom he had access-the prison [C.O.] authorities...nothing suggests...that in the pro se petitioner's unique circumstances, it would be inappropriate to conclude Davis' notice of appeal...was "filied"..the moment he delivered it to prison officials...via a housing unit's mailbox for "forwarding" to the clerk of the State's Supereme court. Here the Supreme Court in it's

Petition and Motion in contrast to Rule 105 as being one day untimely, as petitioner dtated it for Septmeber 16, 2023.

XVIII. Here Magistrate judge Keith A. Pesto asserts that beacsue Petitioner did not file a petition for allowance of appeal with the Supreme Court of Pennsylvania within 30 days of the affirmance of the denial of prost-conviction relief by the Superiror Court, the AEDPA time limitations period began running again on the date of the Superior Court's decision, August 16, 2021. Judge Pesto further, asserts that the petition for allowance of appeal nunc pro tunc filed by petitioner with the Pennsylvania Supreme court on September 23, 2021 did not toll AEDPA's limitations period because it was untimely, and cites in support thereof Pace v. Giglielmo, 544 U.S. 409, 417-19, 125 S.Ct. 1807, 161 L.Ed. 2d 669 (2005). However, inlike the petitioner in Pace the Pennsylvania Supreme Court did notreject Petitioner's nunc pro tunc petition for allowance of appeal as untimely based upon the exceptionnal circumstances set forth in petitioner's filings wityh the court. see Commonwealth v. Davis, No. 60 WM 2021. the fact that the Pennsylvania Supreme Court"accepted" for filing and considered Davis' nunc pro tunc petition therefore presupposes that the petition was timely. See e.g. Ford v. Georgia, 498 U.S. 411, 421, 111 S.Ct. 850, 112 L.Ed.2d 935 (1991), It follows, then, that Petitioner Davis is entitled to statutory tolling for the period of August 16, 2021 to December 29, 2021, pursuant to 28 U.S.C.S § 2244(d)(2). Judge Pesto assert that under local standards Petitioner should not benefit from equitable tolling because petitioner "has no legal right to personal inadequacies nor extrordinary circumstances, nor are they contributed to the sate. In Fact petitioner "dose" have a constitutional right to legal assistance from persons trained in the law. Lewis, supra; Bounds, supra. see also Holt v. Pitts, 702 F.2d 639, 640-41 (6th Cir. 1983)9state may deny physical access to law library "to ensure security"...if davis...has access to persons trianed in the law.) Thus the

failure of the department of Corrections a department of the executive branch of government, to accommodate Davis' need for access to persons trained in the law in the particular circumstance [of COVID19 shutdowns] from August 16, 2022 to May 1, 2022 during the time period in which he could have been preparing a federal habeas corpus petition [if he had access to trained legal assistance at his priaon instituion] as petitiooner was limited to a single one-hour period of law library every 5 days ["if he obtianed one of the 12 single slots amonst the other 200 inmates on his cellblock] pursuant to the D.OC.'s implementation of the COVID19 "executive order issued" by Pennsylvania Governor Tom Wolf on March 19, 2020, many of which were and still are cancelled by the Petitioner's prison institution [without notice or rescheduling] imputes directly to the state. Mooney supra. Therefore, the state clearly interfered with the preparations of Petitioner's federal habeas corpus petition in violation of the Constitution. See Lewis supra. at 350.

XVIIII. Equitable principals have traditionally governed substantive habeas corpus law. See Holland v. Florida, 560 U.s. 631, 130 S.Ct. 2549, 177 L.Ed 2d130, 135 (2010). The term "equitable principals" is defined as: "the body of principals constituting what is fair and right;" "[t]he recourse to principals of justice to correct or supplement the law as applied to particular circumstances[;]" or "[t]he system of law or body of principals originating in the English Court of Chancery and superceding the common and statue law." **Black's Law Dictionary** (West Publishing Company, St. Paul MN) p.228 (brackets added) Petitoner respectfully asserts that like the Eleventh Circuit's standard in Holland supra.. Judge Pesto's standards for the application of equitable tolling in Petitioner's case is too rigid. "Courts must often exercise [their] equitable ppowers...on a case by case basis, demonstarting flexibility and avoiding mechanical rules, in ordert o relieve hardships and fast adherence to more absolute legal rules...exercising judgment

in light of prrecedent, both with awareness of the fact that specific circumstances [such as COVID-19], often hard to predict, "could warrant special treatment in an appropriate case." Id., at 135-36 (citations omitted) (brackets in original) (ellipsis added). AEDPA...does not set forth an inflexible rule requiring dismissal whenever it's clock has run." Id., at 143 (ellipsis added) "A petitioner [Davis} is entitled to equitable tolling "if he shows (1) that [dispite the governments interference due to COVID] he had been pursuing his rights diligently , and 92) that some extraordinary circumstance [his prison institution's lockdown, as all inmates were confined to their cells] stood in his way and prevented timely filing." Id., at 135." The due diligence required for equitable tolling purposes is *reasonable diligence*, not *maximum feasible diligence.*" Id., at 148 (citations and internal quotation marks omitted.)

XX. Therefore, your Petitioner respectfully asserts that he should have been entitled to equitable tolling. Here Magistrate Judge Pesto asserts that Davis' claim of actaul innocence is an inadequate conclusory claim that is contridicted by his guilty plea; his issuance of a report and Recommendation at 3:22-cv-00152 in favor of the Commonwealth and against Davis to dismiss petitioner's federal habeas corpus petition (as a former u.S. District Prosecutor) without requesting or reviewing the recods. However, Petitioner respectfully asserts that his federal habeas corpus petition contained sufficient factual and circumstantial evidence[Appedix A-D] to support his allegation that the State [and trial counsel] compelled his to enter a guilty plea. The fact that Petitioner (allegedly) plead guilty does not foreclose a fedearl court's review of petitioner's cliam of actaul innocence and compelled by state action to plead guilty. See Waley v. Johnston, 316 U,S. 101, 62 S.Ct. 964, 86 L.Ed. 1302 (1942); Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed 2d 274 (1969); Bousley v. United States, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed. 2d 828 (1998). Compelled guilty pleas are no more valid than a compelled confession.

See Spano v. New York, 360 U.S. 315, 79 S.Ct. 1202, 3 L.Ed. 2d 1265 (1959); also Malinski v. New York, 324 U.S. 401, 65 S.Ct. 781, 89 L.Ed. 1029 (1945). Pursuant to 28 U.S.C. §144 which states in relevant part:

> "whernever a part to any district court makes and files a "timely" and sufficient Affivdavit that the judge before whom "the matter is pending" has a personal bias *[towards any inmates at S.C.I. Houtzdale, see David King v. Smith, et al. at 3:20-cv-23 ;also Alvin Washington v. Smith,et al. at_____]* or prejudice either in favor of any adverse party *[the Commonwealth]* or against [Davis] the defendant, such judge "shall proceed no further..."

as the petitioner's filed July 18, 2023 Affidavit of Bias and Prejudice.

XXI. District Judge Kim R. Gibson isses in responce her July 19, 2023 Memorandum Order response asserting that the D.O.C's implemented "pandemic quarantine at S.C.I. Houtzdale that restricted "law library" access to one visit every two weeks.... that Petitioner would have still had about six (6) hours of law library per month for eight (8) months places a rough estimate of law Library access to a total of fifty six (56) hours leading up to the expiration of the limitations period . Although the Court makes no finding as whether this number of hours is sufficient for a pro se [prisoner] litigant to draft and file a habeas corpus petition...it does...cast doubt on the existence of a sufficient "nexus" between the pandemic restrictions and Petitioner's failure to timely file his petition. "No resonable jurist could conclude these facts, in llight of the "exacting standards" applied to equitable tolling claims, that petitioner established both that he diligently pursued his rights and that the "pandemic" specifically prevented his from filing his petition for a writ of habeas corpus petition. **Furthermore,** that Davis' petition for writ of habeas corpus is **DENIED WITHOUT A CERTIFICATE OF APPEALABLITIY;** this case is closed. Although the district court would not grant Petitioner a Certificate of Appealability (COA), the court [United States Court of Appeals for the Third Circuit] may consider...Davis... entitled to a COA.

XXIII. Petitioner respectfully asserts that his federal habeas corpus petition unquestionably states a valid claim of the denial of his Constitutional rights, and that jurist of reason would find it debatable whether the Distirct Court was correct in it's procedural ruling to dismiss Davis' habeas corpus petition without reaching the "merits" of the claims set forth therein. Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed. 2d 542, 548-49 (2000). Petitioner respectfully asserts the district court "erred" in it's procedural rulings. see Aursby v. Pennsylvania Parole Board , 2022 Pa. Commw. Unpub Lexis 4242022; Pa. Commw. Unpub. Lexis 424 No. 635 C.D. 2021; Smith v. Pennsylvania Board of Probation and Parole, 81 A. 3d 1091, 1094-95 (Pa. Commw. 2013). altough Petitioner's motion may not contain the desired amunt of explanatory detail, *"it is common knowledge"* that the COVID-19 pandemic...resulted in profound restrictions in "the prison system" in general, affecting inmate's *"ability to prepare necessary"* paperwork and/or "*file legal* documents". See e.g. Commonwealth v. Carter, (Pa. Super., No. 398 MDA-2021) (unreported) (olins, S.J.) slip op. at 5-6 (granting *nunc pro tunc* relief where COVID-19 pandemic caused "lockdown" of the prison and prevented the inmates [Davis] from filing *"a timely"* notice of appeal); Commonwealth v. Jajuan Davis, 279 A.3d 1268 No.574 WDA 2021"...The majority concludes that the time period during the COVID-19 *shut downs*"...was an event outof the control...of Petitioner Davis; Commonwealth v. Stephan Anderer, 2021 Pa. Super. Unplub. Lexis 1638; 258 A.3d 538. Appellant's post-sentence motion was "delay" by the judicial emergency declared in light of COVID-19 pandemic...finding... the trial court did not comply...in the present case...with it's obligation...as... this...majority of time period was "tolled" during the judical emergency...and... Governor Wolf's Emergency Disaster Proclamation. See In re: Gemeral statewide "Judicial Emergency, 234 A.3d 408 (2020) (due to the COVID-19 pandemic *'suspending tie calculations and filing deadlines."* Winfree supra.; Citing from the

Eastern and Western Districts of Virginia (holding COVID-19 "tolling orders" would afford Davis 'an additional 126 days" to file his case.

XXIV. August 7, 2023 Peitiion file "timely" Motion for a Certificate Of Appealability (COA) with the United States Court Of Appeals for the Third Circuit (U.S. Court of Appeals) under 28 U.S.C. § 2254(c)(1). January 19, 2024 the U.S. Court of Appeals issues it's denial of a (COA) at W.D. Pa. civ. No. 3:22-cv-0152 asserting Petitioner has not shown that his petition would be remdered timely through the application of statutory tolling or equitable tolling. That jurist of reason 'would not" dispute the District Court's determination that Petitioner Davis "is time barred." "Nor has he shown that the limitations period should be excused based on actual innocence.

XXV. There is a conflict among the Circuits on the exact point involved in this particular case. The Third circuit's affirmance of the district court's findings that *"51 hours in 8 months was per 6 hours each month"* was sufficient law library time for Petitioner Davis constituted a "meaningful opportunity" for petition to file "a timely appeal," where the Circuit's reasoning is flawed. The Fourth Circuit's reasoning correctly captures the requirements of Lewis supra.; Bounds supra. and Mooney supra., holding just the opposite in Williams v. Leeke supra. "that allowing a prisoner [Davis] physical access to his prison's law library for 45 minutes a day, three days a week did not constitute a "meaningful oppertunity" to conduct legal research. Id., at 1340.

XXVI. The Ninth Amendment to the United States Constitution provides in relevant part:

> "The enumerations to the Constitution, of certain rights, shall not be construed to deny or disparage "other's retained by the people!"

Your Petitioner [Davis] charges that the State has hled and is holding him in confinement without "due process of law" in violation of the Fourteenth Amendment of the Constitution of

the United States. The grounds of his charges are in substance, that the sole basis of his conviction was perjured "statements, which was knowingly used by the prosecuting athorities and court-appointed cousel Arthur Mc Quillan [the Commonwealth's agent's sibling] in order to obtain that conviction, and that these same authorities [and appointed counsel] deliberately suppressed evidence which would have impeached and refuted..."statements"...thus given against him. Davis urges that the "knowing use" by the states [and it's sibling] of perjured...statements...to obtain... his conviction and...their...deliberate suppression of evidence to impeach those statements constitutes a denial of Davis' due process of law. Furthermore, Petitioner contends that the state and it's sibling appointed counsel Mcquillan deprived him of his liberty with out due process of law by their failure in the particular circumstances to provide any corrective judicial process...as to this point by which Davis' conviction so obtain, may be set aside. Mooney supra. ,at 294 U.s. 110. Here to sustain Petitioner's conviction the 'facts and circumstances which the Commonwealth...has failed.. to prove...was that every essentiaal element of the...alleged...crime...was established *beyond a reasonable doubt.* Although, the Commonwealth"does not" have to establish guilt to a mathematical certainty and may in the proper case "rely on" wholly...the alleged...circumstantial [manufacture]evidencethe conviction must...have...*been based on more then mere suspicion or conjecture."* See Commonwealth v. Bailey, 488 Pa. 224 A.2d 345 (1972), where the record at Commonwealth v. Davis supra. is to incomplete so as to undermine the confidence in the outcome of the guilty plea.

CONCLUSION

PETITIONER KEITH VERNON DAVIS, pro se, respectfully requests that this Honorable United States Supreme Court GRANT the following relief in thihs fedearl wirt of habea corpus matter:

1. conduct a de novo review of Mr. Davis' state trial, direct appellate, and post-coviction proceedings;

2. vacate mr. Davis' guilty plea and state court judgment of conviction as having been obtained in violation of the Constitution and laws of the United States;

3. grant Mr. Davis a new trial, Civil Rights Removal to the Court of Common Pleas of Allegheny County, Pennsylvania, as it is apparent Mr. Davis can not obtain a fair and impartial trial in Cambria County due to the inflamed attitudes of it's citizen;and

4. any other form of relief which this Honorable Court may deem fair and just in this matter.