IN THE

ORIGINAL

SUPREME COURT OF THE UNITED STATES

NO. 24-5824

OSCAR ALVARADO,
PETITIONER,
V.

SUPERINTENDENT SOMERSET., et al.,
APPELLEE,
NO.23-1840
(E.D. PA NO. 2-17-CV-03283)

ON PETITION

FOR WRIT OF CERTIORARI

COURT OF APPEALS FOR THE THIRD CIRCUIT

OSCAR ALVARADO
SCI CHESTER
500 E. 4TH STREET
CHESTER PA, 19013
DATE: 7-25-2024

PRO SE PETITIONER

QUESTIONS PRESENTED

(1) DID THE COURT OF APPEALS COMMIT LEGAL ERROR IN DENYING PETITIONER'S CERTIFICATE OF APPEALABILITY STATING THAT JURIST OF REASON WOULD NOT DEBATE THE DISTRICT COURT'S DECISION TO DENY RELIEF UNDER RULE 60(B)(1) OF THE FEDERAL RULE OF CIVIL PROCEDURE. WHERE THE DISTRICT COURT RULED THAT PETITIONER'S SIXTH AMENDMENT CONFRONTATION CLAUSE RIGHTS WERE VIOLATED, TRIAL COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE, AND ANY PROCEDURAL DEFAULT CAUSED BY PCRA COUNSEL IS EXCUSED UNDER MARTINEZ. BUT DIDN'T PREJUDICE HIM AND MISAPPLIED THE HARMLESS ERROR ANALYSIS?

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CITATION OF OFFICAL AND UNOFFICAL RECORDS

OSCAR ALVARAD V. SUPERINTENDENT SOMERSET, ET AL

(E.D. PA. CIV. NO. 2:17-CV-03283)

PARTIES

ALVARADO V. SUPERINTENDENT SOMERSET SCI ET AL

Editorial Information: Subsequent History

Related proceeding at, Decision reached on appeal by Commonwealth v. Alvarado, 53 A.3d 933, 2012 Pa. Super. LEXIS 2853 (Pa. Super. Ct., June 19, 2012)Appeal denied by Commonwealth v. Alvarado, 619 Pa. 683, 63 A.3d 772, 2013 Pa. LEXIS 152 (Jan. 30, 2013)Post-conviction relief denied at Commonwealth v. Alvarado, 156 A.3d 340, 2016 Pa. Super. Unpub. LEXIS 2992 (Aug. 18, 2016)Magistrate's recommendation at, Habeas corpus proceeding at Alvarado v. Wingard, 2019 U.S. Dist. LEXIS 4097 (E.D. Pa., Jan. 8, 2019)

Editorial Information: Prior History

CP-51-CR-0001284-2009. (Philadelphia).

CONCISE STATEMENT OF THE BASIC FOR JURISDICTION

RULE 10(C)

A STATE COURT OR A UNITED STATES COURT OF APPEALS HAD DECIDED AN IMPORTANT QUESTION OF FERERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT, OR HAD DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

RULE 14

(i) JUDGMENT WAS ENTERED AGAINST PETITIONER ON AUGUST 11, 2023

(ii) PETITION FOR PANEL HEARING WAS DENIED ON MAY 8, 2024

RULE 14.1(h) A DIRECT AND CONCISE ARGUMENT

In short, with out the use of Petitioner's non-testifying co-defendant's statement the government was unable to convict him of second degree murder because the statement **"ADDED"** extra detail to the live witnesses testimony. ("Evidence that did not exist anywhere else in the trial") It then bridged the gap in the witnesses testimonies, and bolstered the commonwealths unreliable witnesses credibility, convincing the jury that Petitioner committed a robbery. Undercutting Petitioner's whole trial strategy and defense. Which was to shred the commonwealth's **"ONLY"** witness to the alleged robbery, and that the murder arose no higher than third degree. Once the statement was introduced it killed Petitioner's whole ability to prove to the jury that no robbery occurred, because the statement only speaks of a robbery, bolstering the unreliable witnesses credibility. And the law is, if a unconstitutionally redacted statement undercuts a defendant's trial strategy, it prejudice him. Which is grounds for a new trial.

Petitioner's entire rule 60(b)(1) consist of the same argument, that the courts made a mistake and overlooked the overwhelming evidence aspect of the issue. Through this appeal Petitioner asks if he can be rewarded with the same legal result as in, *Washington, Vazquez,* and *Johnson.* All quoting *Bruton,*

Richardson and *Gray.* Which Petitioner's case falls perfectly in line with.

CONSICE STATEMENT OF THE CASE

Petitioner filed a motion for relief from Judgment dated March 21, 2020, Pursuant to federal rules of civil Procedure rule 60(b)(1) to set aside of correct Judgment of March 8, 2023, claiming that the district court made a mistake unreasonably applying Clearly Established Federal Law under *Bruton*, *Richardson,* and *Gray*. Ruling that Petitioner's Sixth Amendment Confrontation Clause Rights were violated, and ALL prior counsel were constitutionally ineffective. But then erroneously applied the harmless error analysis, Rule 52(a) of the Federal Rule of Civil Procedure, ruling Petitioner's non-testifying co-defendant's statement cumulative to other overwhelming evidence, which was not supported by the record.

The District court denied Petitioner's rule 60(b)(1) ruling it an unauthorized second or successive petition. Petitioner then filed for a Certificate of Appealability with the third circuit court of appeals. The circuit on 5-22-2023, denied Petitioner's certificate of appealability stating: "JURIST OF REASON WOULD NOT DEBATE THE DISTRICT COURT'S DECISION TO DENY RELIEF UNDER RULE 60(B)(1) OF THE FEDERAL RULE OF CIVIL PROCEDURE". Under *Slack v. McDaniel,* 529 U.S. 473, 484 (2000). The court acknowledged that Petitioner has

substantial claims when ruling stating: **"Namely Petitioner, who advanced substantial claims in his rule 60(b)(1) motion".** Then in denying the petition state: Petitioner presented an unauthorized second or successive petition, which the district court lacked jurisdiction to consider under *Gonzalez v. Crosby*, 545 U.S. 524, 530-32 (2005).

Petitioner then filed for a Panel rehearing on August 23, 2023, explaining that the courts made a substantive mistake by unreasonably applying the harmless error analysis rule 52(a) of the federal rule of civil prosedure to Petitioner's case, when Petitioner's Sixth Amendment confrontation clause rights were violated. Because the limited evidence in Petitioner's case distinguishes it from the cases on which the District court's conclusion relied. Unlike this case, the charges in thoses cases were supported by physical and consistent, powerful testimonial evidence seperate and apart from the statement of the non-testifying co-defendant. See. *Johnson v. Lamas,* 850 F. 3d 119, 122, 134 (3d Cir. 2017) (Murder trial in which physical evidence demonstrated that the fatal shot was made from the passenger seat of a car and two seperate witnesses who had known the defendant for over five years identified him as being in the passenger seat). *Fogg,* 414 F. App'x at 426 (co-defendant's statement was cumulative as to the

defendant's intent because the grizzly nature of the crime spoke for itself); *United States v. Hardwick,* 544 F. 3d 565, 574 (3d Cir. 2008) (two witnesses, including one co-defendant, testified to *Hardwick's* role in the crimes, a seperate witness testified as to his motive, and a ballistics expert established that physical evidence linked the crimes together). Here, there was no evidence seperate or apart from the statement to prove Petitioner's quilt or innocents. No physical evidence whatsoever as to a robbery. Only the testimony of **"ONE"** seriously flawed witness for the commonwealth. Thus, the Confrontation Clause violation was not harmless, absent the use of Petitioner's co-defendant's statement at trial, there is a reasonable probability that the jury would have acquitted Petitioner of robbery and the concomitant second degree murder charge considering the third degree murder charge instead.

Petitioner in his rule 60(b)(1) citd all case law pertaining to his Confrontation Clause Rights, and how those cases state that if introducing an unconstitutionally redacted statement of a non-testifying co-defendant and the statement **"ADDS"** to the live witnesses testimony, especially if the witness is unreliable, it undercuts the defendant's whole trial strategy and defense. The courts acknowledging that Petitioner was violated shows the substantially in

> IN THIS CASE, THE STATEMENT WAS CUMULATIVE TO OTHER OVERWHELMING PROPERLY ADMITTED EVIDENCE OF PETITIONER'S GUILT. THE OTHER WITNESSES WHO WERE AVAILABLE FOR CROSS-EXAMINATION PROVIDED EVIDENCE SUFFICIENT FOR THE JURY TO FIND PETITIONER GUILTY BEYOND A REASONABLE DOUBT. THE WITNESS INCLUDED MARGIE BELTRAN, WHO TESTIFIED THAT SHE WAS IN THE CAR WITH CYNTHIA ALVARADO AND PETITIONER DURING THE SHOOTING AND REMAINED WITH THEM AFTERWARDS. MS. BELTRAN PROVIDED A COMPREHENSIVE VIEW OF EVENTS OF THE DAY, JUST AS CO-DEFENDANT'S STATEMENT DID. BELTRAN TESTIFIED THAT CYNTHIA ALVARADO WAS THE DRIVER OF THE RED HONDA CIVIC, PETITIONER WAS THE PASSENGER IN THE CAR, AND SHE WAS IN THE BACK SEAT WITH CYNTHIA'S ONE YEAR OLD DAUGHTER. [MAG. R&R JA 028].

The same logic he describes as the redaction in this case not being sufficient to avoid implicating petitioner and there-fore was in violation. Judge Hart states;

> IN LIGHT OF THE CLEARLY ESTABLISHED FEDERAL LAW,
>
> WE AGREE THAT THE REDACTIONS IN THIS CASE WAS NOT SUFFICIENT TO AVOID IMPLICATING PETITIONER AND THEREFORE WAS IN VIOLATION OF *BRUTON*. GIVEN THAT PETITIONER WAS THE ONLY OTHER PERSON ON TRIAL AND WAS ONLY ONE OF THREE PEOPLE IN THE CAR AT THE TIME OF THE SHOOTING, IT IS NATURAL THAT THE JURY WOULD ASSUME THAT THE STATEMENT REFERRED TO HIM. SEE *VAZQUEZ* 550 F.3D AT 282 (RECOGNIZING THE NUMBER OF PERSONS INVOLVED IS SIGNICANT). IN A CASE SUCH AS THIS WHERE THERE WERE ONLY THREE PEOPLE INVOLVED AND THE OTHER TWO ARE ACCOUNTED FOR , THE STATEMENT AS READ TO THE JURY CLEARLY IMPLICATES PETITIONER AS THE SHOOTER.

[MAG. R&R JA-026].

He further states;

> "THE STATEMENT AS READ TO THE JURY CONTAINED OBVIOUS INDICATIONS THAT IT HAD BEEN REDACTED TO ELIMINATE PETITIONER'S NAME AND THE REDACTIONS CERTAINLY DID NOT ELIMINATE REFERENCE TO PETITIONER'S EXISTENCE. INSTEAD, IT REPLACED HIS NAME WITH NEUTRAL TERMS, WHICH WERE OBVIOUS INDICATIONS THAT IT WAS THE THIRD PERSON (OTHER THAN THE DEFENDANT MAKING THE STATEMENT AND THE TESTIFYING WITNESS, MS. BELTRAN). THE JURY NEED ONLY LIFT THEIR EYES TO FIND PETITIONER "SITTING AT COUNSEL TABLE, TO FIND WHAT... SEEMED THE OBVIOUS ANSWER". {MAG. R&R JA-027].

He states that Beltran also testified that when petitioner returned to the car he had at least 30 xanax that he did not have before, that they each took more xanax after the shooting and then they purchased angel dust for her (id. at 137-430). they changed cars at Cynthia's dad's garage, leaving the red Honda Civic and taking a red truck and they went to Cynthia's apartment where the police came and took them into custody.

He describes each and every detail from the statement. But leaves out the most important part of Beltrans testimony.... During the prosecutions questioning of Margie Beltran the prosecution asked Beltran:

> "HOW MANY XANAX DID MR. ALVARADO HAVE ON HIM WHEN HE RETURNED? BELTRAN ANSWERED; "I CAN'T REMEMBER". THE PROSECUTION WENT ON TO ASK BELTRAN: "WAS IT IN A NAPKIN LIKE BEFORE, OR WAS IT IN A CONTAINER?" BELTRAN ANSWERED: "I CAN'T REMEMBER." THE PROSECUTION THEN KEPTED ASKING BELTRAN; "WAS IT MORE THAN 10? WAS IT... ALL THE WAY TO 40, AND EACH TIME BELTRAN ANSWERED; "I CAN'T REMEMBER." THE PROSECUTION THEN ASKED BELTRAN, "WHAT IF ANYTHING DID MR. ALVARADO DO WITH THE PILLS THAT HE CAME BACK TO THE CAR WITH"? BELTRAN ANSWERED "I DON'T KNOW WHAT HE DID

WITH THEM. BUT WE POPPED A FEW MORE. (N.T. 7-12-2010 P. 134-135).

Beltran nor any other witness testified to, "HOW MANY PILLS WERE THERE, WAS IT IN A NAPKIN OR CONTAINER, AND WHAT WAS DONE WITH THEM. Those questions were later anwered by the unconstitutionally redacted and admitted statement. Like in, *Washington v. Sec'y Pa Dep't of Corr, 801 F. 3d. 160 (Ed Cir. 2015).* Where the court held that the non-testifying co-defendant's statement was not cumulative when the statement "**ADDED**" more detail, such as the defendant had taken a safe from the store that was robbed. The court concluded instead that admitting the statement was not harmless, reasoning that "a jury would have difficulty forgetting" the details offered by the confessing co-defendant's statement when determing the defendant's guilt. see also *Eley v. Erickson*, 712 F 3d 837, 842-43, 854-55, 859-61 (3d Cir. 2013) (non-testifying co-defendant's statement was not cumulative of testimony of three additional eyewitness where co-defendant uniquely asserted that the crime had been the co-defendant's idea and provided details about his involvement beyond what the testifying witness offered). Here too, petitioner's non-testifying co-defendant's statement, "IT WAS IN A BOTTLE" THERE WERE 28 IN IT" AND WE SOLD THEM AROUND THE NEIBORHOOD" provided context that answered the prosecutions unanswered

questions. HOW MANY PILLS DID MR. ALVARADO HAVE ON HIM WHEN HE RETURNED, **"THERE WERE 28"** WAS IT IN A CONTAINER OR NAPKIN? **"IT WAS IN A BOTTLE"** AND WHAT DID MR. ALVARADO DO WITH THE PILLS THAT HE CAME BACK WITH? **"WE SOLD THEM AROUND THE NEIBORHOOD"** All filled in the gap in the live witnesses testimony and offered a level of detail that would have been difficult for the jury to forget.

The Magistrate Judge only cited the number of xanax that the prosecutor stopped at in questioning Beltran. Even though Beltran's answer was "I CAN'T REMENBER" and Beltran **"NEVER"** testified to witnessing a robbery occur. Nor did Elizabeth Oritz. Only one witness for the commonwealth testified to witnessing a robbery occur. And at trial Petitioner's whole trial strategy and defense was to shred this witnesses credibility, that no robbery occurred, and that the murder arose no higher than third-degree. Cross-examination proved this witness unreliable. And the district court failed to address this fact.

PREJUDICAL AND INJURIOUS EFFECT

The error at issue here is- a Confrontation Clause violation. A constititional violation this court found to defy 'harmless error' review. Petitioner's case is one of those cases this court explained, contained a "defect affecting the framework

within which the trial proceeds, rather than simply an error in the trial process itself. *Fulminante, supra* at 310, 113, L.Ed 2d 302, 111 S ct 1246. Such errors "infect the entire trial process". *Brecht v. Abrahamson*, 507 U.S. 619, 630, 123 L. Ed 2d 353, 113 S ct 1710 (1993). And "necessarily render a trial "**fundamentally unfair**". The court must address whether the error had a substantial and injurious effect or influence in determing the jury's verdict *Brecht v. Abrahamson*, 507 U.S. 619, 623. This means, that there must be more than a reasonable probability that the error was harmful... (and) the court must find that the defendant was actually prejudiced by the error. *Davis v. Ayola*, 135 S. ct 2187, 2198, (2015). " if , when is all said and done, the [courts] conviction is sure that the error did not influence the jury, or had but very slight effect, the verdict and judgment should stand. "*O'Neal v. McAnich,* 328 U.S. 432, 437 (1995). " but if we have "grave doubt" about whether the error has a substantial and injurious effect or influence in determining the jury's verdict, like the statement did when it added **" 'IT WAS IN A BOTTLE', 'THERE WERE 28 IN THERE', 'AND WE SOLD THEM AROUND OUR NEIGHBORHOOD'** to the live witnesses testimony and offered a level of detail that would have been difficult for the jury to forget" we must conclude that the error was not harmless. "*Adamson v. Cathel,* 633 F3d. 248, 260 (3d Cir. 2011).

HARMLESS TEST

Before a Federal Constitutional error can be held harmless, a court must be able to declare a belief that the error was harmless beyond a reasonable doubt; The United States Supreme Court, on Certiorari, has the power to review the record De Novo in order to determine a error's harmlessness.

The United States Supreme Court in *Arizona v. Fulminante*, 527 U.S. 9 111, S ct 1246, 113 LED 2d 302, 499 U.S. 279 ruled that- Assuming that harmless error analysis applies to the admission at a state criminal trial, in violation of the due process clause of the Federal Constitution's Fourteeth Amendment, of a full but coerced confession in which the defendant disclose the motive for and means of the crime, the risk that such a confession is unreliable, coupled with the Profound impact that a confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the confession's admission was harmless, because (1) a defendant's own confession is probably the most probative and damaging evidence that can be admitted against him: and (2) while some statements by a defendant may concern isolated aspects of a crime or may be incriminating only when linked to other evidence, such a full confession may tempt the jury to rely upon that evidence alone in reaching a decision.

co-defendant answered it for us, she was with him. The statement disclosed the motive and means of the crime and **ADDED** to the live witnesses testimonies, and the jury relied upon that evidence to reach its decision. The error was more harmful than it was harmless, which caused a verdict of guilty of robbery and second degree murder. so it was incorrect to apply the harmless error analysis, just as in *Fulminante*

Most critically, applying the harmless error analysis decision was based on an analysis of the question as a matter of Petitioner's guilt or innocence in the aggregate, without parsuing out the evidence supporting the robbery charge or considering Petitioner's specific argument that his co-defendant's statement undermined his defense that the evidence only supported a conviction for murder in the third degree. see (Magistrate's R&R).

Applying harmless error to Petitioner's case goes against all case law. The proper inquiry is to discern any substantial and injurious effect or influence on the jury's decision process making and verdicts.... Not whether the evidence is

undercutting Petitioner's whole trial strategy and defense. See *Johnson,949 F. 3d* at 803. The United States Court of appeals for the third circuit found that a non-testifying co-defendant's statement that bolstered "some aspect" of this testimony" improperly corroborated" the testimony of the eyewitness. Id at 308. The "corroboration" between the to statements undercut the defendant's "efford to raise doubts about their less-than credible testimony, and likely caused the jury to give [the dubious eyewitness testimony] increased weight during deliberation's. Id, at 804; See also *Washington*, 801 F. 3d at 171 (also finding prejudicial error because a co-defendant's statement improperly bolstered the testimony of an unreliable eyewitness undercutting defendant's defense. The same legal result must apply. The statement went unquestioned because co-defendant's did not testify. Which is this country's sole purpose for the Sixth Amendment Confrontation Clause Rights, it gives a defendant a **GUARANTEED RIGHT** to face their accuser.

CONFRONTATION CLAUSE:

The Confrontation Clause of the Sixth Amendment, made applicable to the states through the fourteenth Amendment, guarantees the right of a criminal defendant "to be confronted with the witness against him". U.S. Const. amend VI.

the United States Supreme Court has interpreted the Sixth Amendment to include the right to cross-examine witness See *Pointer v. Texas.* 380 U.S. 400. 404 (1965). The Confrontation Clause bars "admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify. And the defendant had a prior opportunity for cross-examine. See *Crawford v. Washington*, 541 U.S. 36, 53-54. (2004).

ARTICLE I. DECLARATION OF RIGHTS SECTION 9. RIGHTS OF ACCUSED IN CRIMINAL PROSECUTION:

In all criminal prosecution the accused hath a right to be heard by himself and his counsel, to demand the nature of the accusation against him, to be confronted with the witness against him, to have compulsory process for obtaining witnesses in his favor and in prosecutions by indictment or information, a speedy public trial by an impartial jury of vicinage, he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence agaisnt himself.

This is what the courts agreed that was violated during Petitioner's trial. As been stated the statement went unquestioned because co-defendant did not testify at trial. Petitioner was unable to cross examine the testimony. And the statement tipped the balance as to the robbery, and the concomitant second-degree murder charges and underminded Petitioner's defense that the jury should consider convicting of murder in the third degree. Admitting the statement was not harmless error, and there is a reasonable probalility that absent the statement the outcome of the trial woud have been different. Once the statement answered the prosecution's witnesses unanswered questions, it caused Petitioner actual prejudice by influencing the jury's decision to convict for robbery and second-degree murder. As being argued in the Pennsylvania Supreme Court as to second degree murder and it's life sentence being 'cruel and unusual punishment'. Not only is Petitioner sentenced to mandatory life sentence for a robbery, Petitioner is serving a life sentence for a robbery he did not commit. And is convicted of a robbery off of an error committed by the courts. Without that error Petitioner would have been found guilty of third degree murder, which was his defense.

SECOND OR SUCCESIVE PETITION

The district court cited *Gonzalez v. Crosby,* U.S. 524, 531 (2005) stating that Petitioner's rule 60(b)(1) was a second or successive petition because Petitioner argued one of the same ineffective assistance of counsel claims that he argued in his initial § 2254. Petitioner did not have to argue any ineffective assistance of counsel, as stated the Magistrate Judge already ruled that Petitioner's trial counsel and PCRA counsel was ineffective. Trial cousel for not objecting to the violation, and PCRA counsel for not noticing the violation and amending it in a PCRA petition. So there was no reason for Petitioner to argue any ineffective assistance of counsel claim. Petitioner argued about the violation not that he was being violated. All parties agreed that Petitioner's rights have been violated, the violation is there. Now it on the integrity of the whole federal habeas corpus proceedings. *González v. Crosby,* 545 U.S. at 532, 538 (Majority opinion ruled 60(b) motion cannot be viewed as successive petition and subject to procedures and standards for such petition when motion "merely asserts" that a previous ruling which precluded a merits determination was error. See *González v. Crosby,* 545 U.S.536-39 (majority explains that a proper rule 60(b) motion "attacts, not the substance of the ferderal courts resolution of a claim on the merits, but some "defect" in the "integrity" of the Federal Habeas Corpus Proceedings"... Such as

Petitioner did. Petitioner cited law under the Confrontation Clause Rights were it says, if the error **ADDED** to the live witnesses testimony, it undercuts a defendant's whole trial strategy and defense. Which is a substantial and injurious effect. And how applying the "harmless error" is wrong because it **"affected substantial rights".**

The district court contends that Petitioner had not shown that he was prejudiced by the error, and that Jurist of reason would not debate the district courts decision to deny relief under rule 60(b)(1) of the federal rule of civil procedure. Under *Slack v. McDanial,* 529 U.S. 472, 484 (2000) and failed to grant a Certificate Of Appealability.

This is incorrect. Petitioner established that the court violated his Sixth Amendment Confrontation Clause Rights, and trial counsel was constitutionally ineffective for failing to preserve Petitioner's *Bruton* claim both before trial and during trial, was unreasonable under *Strictland*. Petitioner also satisfied the *Martinez* test for excusing the claim.

As the third Circuit Court of appeals explained, the threshole to meet the "some merit" requirement is the same as that required to obtain a Cerificate Of Appealability in that court, ie,. it must present a issue which reasonable jurists

habeas corpus petition has been rejected by a federal district court on procedural grounds, without reaching the underlying federal constitutional claim, like was the case with Petitioner, when the distrcit court ruled Petitioner's Rule 60(b)(1) a second or successive petition, is entitled to a Cerificate of Appealability under the appeal provisions of the Antiterrorism and effective Death Penalty Act of 1996 (AEDPA) (28 USC § 2253 (c) if the prisoner shows, at least, that jurist of reason would find it debatable both whether the Petitioner states a valid claim of the denial of a constitutional right and whether the district court was correct in it's procedural ruling- is allowing and encouraged to resolve the procedural issue first under the principle that **COURT WILL NOT PASS UPON A CONSTITUTIONAL QUESTION**.

There is no way the jurist of reason would not debate the district court's decision to deny a Cetificate Of Appealability. When Petitioner was granted a Cetificate Of Appealability when they ruled that Petitioner's Sixth Amendment Confrontation Clause Rights were violated. Case law is strongly on Petitioner's side. The same legal result must apply. At the very least, Petitioner should be rewarded with a fair trial. Every case that was cited in Petitioner's case in regards to the violation of his Sixth Amendment, *Bruton, Richardson, and, Gray. Vazquez,*

Washington, and, *Johnson*, all have been granted a new trial due to the substantial effect it caused. Petitioner should, at the least, be rewarded the same legal result as the cases used to rule that Petitioner was violated. Petitioner's case fits perfectly in line with those cases. In fact, Petitioner was violated far worst than those cases.

CONCLUSION

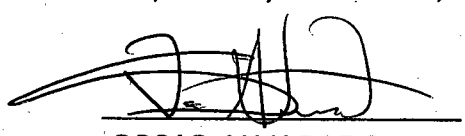
Petitioner asked for a panel rehearing, requesting that the courts decide his claim. However, the original panel though that Petitioner's rule 60(b)(1) was a second or, successive petition, which the district court said lacked jurisdiction to concider. Under *Gonzalez v. Crosby,* 545 U.S. 524, 530-32 (2005) and jurist of reason would not debate the district court's decision to deny relief under rule 60(b)(1) for the federal rule of civil procedure. Because Petitioner argued one of the same ineffective assistsnce of counsel claims. And Petitioner did not argue or have to argue ineffective assistance of counsel.

Petitioner asks if this court can determine If the district court's decision were contrary to, or involved an unreasonable application of clearly established law, and unreasonably applying "harmless error" rule 52(a) of the federal rules of criminal procedure as established by the holdings of this court.

Thus, Petitioner respectfully request that this court hears his substantial Constitutional Guaranteed Right to Confrontation Clause, that all parties agreed were violated.... Or, grant the appropriate relief, or whatever relief this court deems proper for the violation.

Date: 7-25-2024

respectfully submitted,



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