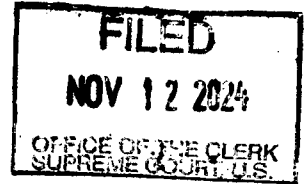


No. 24-5990

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Darius Rush Pro-se — PETITIONER
(Your Name)

vs.

Chris King — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darius Rush
(Your Name)

4269 West M-80
(Address)

Kincheloe, Michigan 49784
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. Where Petitioner's Objective Was To Maintain Innocence Of the Charged Criminal Acts. Was It UnConstitutional, When Trial Counsel Overrode That Decision And Conceded Guilt, In Violation of *McCoy v Louisiana*?
- II. Was It UnConstitutional, When Trial Counsel Failed To Challenge The Voluntariness Of Petitioner's Confession. Where The UnControverted evidence, was that A Co-Defendant / Uncle Was Brought Into The Interrogation Room To Coerce a Confession?

LIST OF PARTIES

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

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

RELATED CASES

1. People v Rush No. 312055, 2014 WL 151527 (Mich.Ct.App Apr 17 2014)
2. People v Rush, No. 325194, 2016 WL 1680742 (Mich.Ct.App Apr 26 2016)
3. People v Rush No 334740 2018 WL 1020305 (Mich.Ct.App Feb 22 2018)
4. People v Rush No. 349890 (Mich.Ct.App Sept 2019)
5. People v Rush No. 160459 (Supreme Court Apr 29 2020)
6. Rush v Winn, No. 2:20-cv-11540, 2021 WL 1904498 (E.D. Mich Mar 12 2021)
7. Rush v Douglas No 2:20-cv-11540, 2023 (E.D. Mich July 31, 2023)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was September 4 2024.

☒ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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Statement of The Case

Petitioner was tried in the Wayne County Circuit Court, on the Charges of armed robbery, Carjackings, First degree home invasion, Conspiracy to Commit home invasion, and receiving and Concealing Stolen Property. (Register of Actions Pg 13). His uncle and Co-defendant, Darnell Rush was tried Simultaneously, but by a Separate Jury. (Jury Trial 6/18/12 Pg 1).

During a brief opening statement, Petitioner's attorney acknowledged that the facts of the Case were Scarce, and Conceded that his client was No angel. (Jury Trial 6/19/12 Pg 118) Counsel noted that Petitioner was charged with Carjackings, armed robbery, home invasion, and Conspiracy to Commit home invasion. He asked the Jurors to Find Petitioner Guilty of what he's Guilty of and Stated his belief that the evidence would show that Petitioner had Nothing to do with the Carjackings and Nothing to do with an armed robbery. (Jury Trial 6/19/12 Pg 119-20).

Floyd Fulstam testified that he resided at 4325 Ashland, in the City of Detroit Michigan. (Jury Trial 6/19/12 Pg 123). On January 9 2012

at about 10:30 am. Someone knocked at his door and inquired about purchasing his station wagon. (Jury Trial 6/19/12 Pg 123-24). A second individual walked up, and one of the men offered Fulsiam \$3,000.00 for the vehicle. (Jury Trial 6/19/12 Pg 123-34). When Fulsiam leaned out the front door to get some contact information, one man rushed him. (Jury Trial 6/19/12 Pg 127-28). The individual pushed Fulsiam down on the couch, put a razor blade to his throat, and threatened to kill him if he moved. (Jury Trial 6/19/12 Pg 129). Meanwhile several other people rummaged through the house. (Jury Trial 6/19/12 Pg 131). They took his wife's computer and jewelry. One of them went through Fulsiam's pockets and took his keys, wallet and some money. (Jury Trial 6/19/12 Pg 132).

Eventually, the person who had Fulsiam pinned down let him up and told him to get in the back. (Jury Trial 6/19/12 Pg 134). The individuals left the house through the front door. Fulsiam grabbed his gun, ran outside, and shot at them. (Jury Trial 6/19/12 Pg 136). When he realized that they had stolen one of his cars

he Called OnStar. (Jury Trial 6/19/12 Pg 133-36). With OnStar assistance he got the Car back. (Jury Trial 6/19/12 Pg 136). Fulsom was unable to identify any of the Perpetrators. (Jury Trial 6/19/12 Pg 137).

A Co defendant Deondre Connely, Pleaded guilty to armed robbery First degree home invasion, Conspiracy to Commit First degree home receiving and Concealing a Stolen Motor vehicle, and Unlawfully driving away an automobile. (Jury Trial 6/19/12 Pg 157) He entered into a Sentence agreement requiring him to Serve Five to 20 Years in Connection with the instant Case. (Jury Trial 6/19/12 Pg 158) In exchange for his Plea agreement, Connely was obligated to testify about what happened before, during and after he and other individuals entered Fulsom's residence. (Jury Trial 6/19/12 Pg 159).

Connely testified that on the mornings in question an individual Named Desmond Robinson Pick him, Petitioner and Darnell L.P. (Tr, 6/19/12 Pg 163-74) They drove around, Smoked Marijuana, and discussed Committing a Breach and entering. (Tr, 6/19/12 Pg 164) When they arrived at Fulsom's house, Robinson and Darnell exited the vehicle. (Tr, 6/19/12 Pg 165-66).

Darnell was carrying a Small box Cutter. (Tr. 6/19/12 Pg 166) Connolly Saw Darnell throw a kick and force his way inside. (Tr. 6/19/12 Pg 169) Robinson waited for Connolly and Petitioner to come inside. (Tr. 6/19/12 Pg 170) As he entered the residence, Connolly Saw Darnell on top of Fulsom. (Tr. 6/19/12 Pg 170-71) Robinson was going through his Pockets. Connolly Watched Petitioner go to the back of the house. (Tr. 6/19/12 Pg 171) Robinson brought Connolly the keys to Fulsom's Car and told him to leave. Connolly drove off. (Tr. 6/19/12 Pg 172) Upon getting back up with the others, Connolly Saw Jewelry and a Computer. Connolly left Fulsom's vehicle in the backyard of an abandoned house. (Tr. 6/19/12 Pg 173)

On the Same date that Fulsom's belongings were taken, John Shock was working at Gold Shop Coins and Stamps in Grosse Pointe. (Tr. 6/20/12 Pg 6-10) Shock testified that Petitioner came in during the afternoon to sell rings, chains, and a bracelet. The store Paid him \$128.00 for the items. (Tr. 6/20/12 Pg 9-10)

Sergeant Ron Gibson, a member of the Detroit Police Department's video forensic team, extracted video evidence from the store. He used

The video evidence from one of the Store's Camers to develop Still Photographs that were admitted into evidence. (Tr. 6/20/12 Pg 89-90)

The officer in charge, Sergeant Cress Hushes, interviewed Petitioner Five days after the home invasion. (Tr. 6/20/12 Pg 69) Petitioner initially denied any involvement in the incident. (Tr. 6/20/12 Pg 70-71) So Hushes decided to bring Darnell Rush into the interrogation room. (Tr. 6/20/12 Pg 72) Hushes left Darnell in the room with Petitioner for approximately ten minutes. (Tr. 6/20/12 Pg 73) Hushes testified that after Darnell was escorted out the room, Petitioner reversed course and admitted his involvement. (Tr. 6/20/12 Pg 74)

Officer Brandon Knobelsdorf Participated in Petitioner's arrest. Darnell directed him to the house at which Petitioner was staying. (Tr. 6/20/12 Pg 99-100) Knobelsdorf also helped Hushes escort Darnell back to his cell after he was placed in the interrogation room with Petitioner. (Tr. 6/20/12 Pg 82)

Officer Michael Perzin testified about the Circumstances Surrounding Robinson's arrest. (Tr. 6/20/12 Pg 93) And officer Beshawn Gaines

Outlined the Circumstances Surrounding Darnell's arrest. (Tr. 6/20/12 Pg 98)

Darnell Rush Choose to testify. (Tr. 6/20/12 Pg 109) He denied being at Fulsom's residence on the date in question (Tr. 6/20/12 Pg 140) He admitted however that he went to a Pawn shop with Petitioner and an individual named Christopher Alexander. (Tr. 6/20/12 Pg 115)

Petitioner did not testify on his own behalf. (Tr. 6/20/12 Pg 160) Nor did the defense offer testimony from any other witnesses (Tr. 6/20/12 Pg 160)

Counsel For Petitioner began his closing argument by acknowledging that we cannot have this in our Society, and inviting the Jury to make Darius Rush Pay for what Darius Rush Put his hands on.

(Tr. 6/20/12 Pg 223) He admitted that Petitioner went in the house and stole in the house. But he attempted to downplay Petitioner's actions by arguing that his role in the home invasion was absolutely minor. (Tr. 6/20/12 Pg 225) Near the end of his closing he conceded that Petitioner was certainly guilty of home invasion in the first-degree. (Tr. 6/20/12 Pg 227)

The Juror's accepted Counsel's invitation and Found Petitioner Not as to the Charges of armed robbery, and Car Seizings, but guilty as to the Charges of First-degree home invasion, Conspiracy to Commit First degree home invasion, and receiving and Concealing Stolen Property. (Tr. 6/21/12 Pg 40-41). On August 1, 2012, the trial Court Sentenced Petitioner as a habitual-third offender to 217 months To 40 Years, For the First degree home invasion charge, 87 months To 40 Years (Consecutive) For the Conspiracy to Commit First degree home invasion, and time Served For the receiving and Concealing Stolen Property Charge. (Sentence Tr. 8/1/12 Pg ____).

Petitioner appealed as of right to the Michigan Court of Appeals. On direct Appeal appointed Counsel raised the Following Claims: (1) erroneously Sentenced him as a habitual offender, (2) abused its discretion by imposing Consecutive Sentences, and (3) Cruel and Unusual Punishment. Petitioner also Submitted a Standard Four brief in which he argued: (1) the trial Court erroneously allowed admission of a Prior inconsistent statement of a witness (2) the

Court erred in Not allowing admission of Newly discovered evidence (3) that the Statement to Police were involuntary. (4) that the evidence was insufficient to Prove home invasion. He also argued an ineffective assistance claim and Procedural default to excuse Failure to raise these issues Prior to filing. (Mich.-Ct. App. No. 316564 People v Rush Apr. 2014). The Michigan Court of Appeals, remanded For resentencing, Finding that Petitioner was Not an habitual offender. The Court of Appeals abandoned the Standard Four Briefs issues, Finding that they were Not Supported by Citation to the record. A Question Presented, (People v Rush No. 32055 (Mich.-Ct. App. Apr 17, 2014). On remand the trial Court resentedenced Petitioner to 145 months to 20 years For the home invasion charge, and a Consecutive 87 months to 20 years For the Conspiracy charge. Petitioner again appealed as of right to the Michigan Court of Appeals. This time he claimed that his Sentence should be reversed because the trial Court erroneously Scored his offense

Vericles (2) relied on Judicial Fact-Findings to assess offense Vericle Point's and (3) Failed to Properly Calculate the Credit to which he was entitled For time Served. (People v Rush No. 325194 (Mich. Ct. App. Apr. 26 2016)). The Court of Appeals Concluded that the Second and third claims warranted Further Consideration by the trial Court (Id. Pg. 4-6). On remand, the trial Court declined to disturb the Prior Sentence, but agreed to Sign an Amended Judgment Correcting the amount of Credit For time Served. (Post-Conviction Hearing No. 12-001084-01-711116). Petitioner appealed his Sentence for a third time to the Michigan Court of Appeals. He argued that the trial Court abused its discretion in Concluding Not to ~~See~~ reSentence him For a Second time. The Court of Appeals rejected his claim and affirmed the trial Court's decision. (People v Rush, No. 334740 (Mich. Ct. App. Feb 22, 2018)).

Petitioner also Submitted a Standard Four Brief to the Court of Appeals. The Court of Appeals rejected his claims, because they were Not Within the Scope of the appeal. (People v Rush, No.

334740 (Mich. Ct. App Feb. 22 2018).

Petitioner then returned to the State trial Court and filed a motion for relief from judgment. (Register of Action Pg 4). He maintained that he was constructively denied the assistance of Counsel during critical stages of trial and requested an evidentiary hearing. In an opinion and order dated February 4 2019, the trial Court denied the motion. (People v Rush No. 1200081-01 Pg 9). Petitioner subsequently filed a delayed application for leave to appeal in the Michigan Court of Appeals. On September 23, 2019, the Court of Appeals denied leave for failure to establish entitlement to relief from judgment. (People v Rush No. 349890 (Mich. Ct. App. Sept 23, 2019). Petitioner then sought leave to appeal in the Michigan Supreme Court. In an order dated April 29, 2020, the Michigan Supreme Court denied the application for leave. (People v Rush No. 160459 (Mich. Supreme Court Apr. 29, 2020).

On June 1, 2020, Petitioner filed a Pro se Petition for a Writ of Habeas Corpus in the United States District Court Eastern District.

He alleges that his trial Counsel Constructively denied him his right to effective assistance of Counsel. For Failing to Challenge his Statement to Police; Failed to Cross-examine Prosecution Witness; disregarded his obligation to ensure Petitioner understood his right to testify, and Conceded guilt during opening and closing argument. (Rush v Winn, No. 2:20-cr-11540 (E.D. Mich. May 12, 2021)). The district Court entered an Opinion and Order Granting Petitioner an evidentiary hearing.

At the hearing held August 24, 2022, trial Counsel Brian Gosniuk testified that he had little recollection of the events surrounding Petitioner's trial. Gosniuk admitted that he Conceded guilt to the Jury on the home invasion Charge; but did not recall whether Petitioner ever admitted to him that he was guilty of the home invasion. (Evidentiary Hearing 8/24/22 Pg 13). He further testified that he did not recall whether he ever told Petitioner. Prior to trial he was going to admit to the home invasion offense. (Evidentiary Hearing 8/24/22 Pg 17).

Gosniah admitted that at all times Petitioner wanted a full trial and maintained his innocence. (Evidentiary Hearing 8/24/22 Pg 18).

Petitioner testified that he was arrested and transported to the Ninth Precinct, where he was interrogated by Officer Cress Hushes (Evidentiary Hearing 8/24/22 Pg 58). Petitioner testified that Detective Hushes first asked him to talk about the incident that occurred outside the Pawn shop on January 9. Petitioner denied any involvement, and stated to Detective Hushes that he did not know what he was talking about.

(Evidentiary Hearing 8/24/22 Pg 59). Petitioner testified that Detective Hushes then asked if he knew, Cornell Rush, Desmond Robinson, and Deondre Conner. Petitioner replied that he did. Detective Hushes informed Petitioner that the three men had implicated him in a home invasion robbery. (Evidentiary Hearing 8/24/22 Pg 59). Petitioner testified that he denied any involvement and stated to Detective Hushes that he wanted an attorney. "Since he was being accused of a Serious Crime. (Evidentiary Hearing 8/24/22 Pg 59)". Petitioner testified that

Detective Hushes: Gave him a Standard Detroit Police Department Constitutional Right Form, and advised him to Sign Since he asked For an attorney. (Evidentiary Hearings 8/24/22 Pg 60). Petitioner testified that he Signed the Form believing he was ~~or~~ asserting his rights to an attorney, because Soon after Petitioner Signed the Form Detective Hushes Stated a Lawyer Won't be necessary, then left the interrogation room. (Evidentiary Hearings 8/24/22 Pg 60). Petitioner testified that Detective Hushes returned moments later with his Uncle Darnell Rush, and Ordered Darnell Rush to set down Nephew, telling him turned around and left the room. (Evidentiary Hearings 8/24/22 Pg 60). Petitioner testified that As Detective Hushes and Darnell Rush were entering the interrogation room, he stated to Detective Hushes that he was not willing to talk to him or Darnell Rush. (Evidentiary Hearings 8/24/22 Pg 60). Detective Hushes Ignored this request then left Darnell Rush alone in the room with Petitioner.

While alone in the interrogation with Darnell Rush, Petitioner testified that Darnell threatened to beat the shit out of ~~Petitioner~~ him if he didn't start telling these people what they wanted to hear. (Evidentiary Hearing 8/24/22 Pg 62). Petitioner testified that Darnell also promised him that he would set Probation if he admitted to the home invasion, because home invasion was a little minor offense. (Evidentiary Hearing 8/24/22 Pg 64). Petitioner testified that he believed his uncle, because he had received Probation after pleading to a home invasion in the past. (Evidentiary Hearing 8/24/22 Pg 64). Petitioner testified that he admitted and signed a statement about the home invasion, not because it was ~~not~~ true, but because of what Darnell had said and done. (Evidentiary Hearing 8/24/22 Pg 65).

Petitioner further testified that trial Counsel never discussed with him nor did he authorize Counsel to concede guilt. (Evidentiary Hearing 8/24/22 Pg 71). Petitioner testified that he went to trial to seek a

Not Guilty Verdict. (Evidentiary Hearing 8/24/22 Pg 71).

On July 31, 2023 the district Court granted Petitioner's Petition For Writ of habeas Corpus. (Appendix B). On August 26 2023 the State appealed the district Court's order. (6th Cir Opinion Pg) On September 4 2024 the Sixth Circuit Court of Appeals reversed the district Court's order and denied the habeas Petition. (6th Cir. Opinion Pg 34).

Reasons For Granting The Petition

Argument 1:

Where Petitioner's objective was to maintain innocence of the charged acts. Was it Unconstitutional, when trial Counsel overrode that decision and Conceded Guilt In violation of this Court's *McCoy v Louisiana* Standards?

Standard of Review:

Federal Constitution's Sixth Amendment Guaranteed Criminal defendants right to choose the objective of his defense, and to insist that his Counsel refrain from admitting guilt, even when Counsel's experienced based view is that Confessing guilt offers the defendant the best chance to avoid the death penalty. *McCoy v Louisiana*, 138 S.Ct 1500 (2018). the denial of this right constitute a structural error and Not Subject to harmless error review. *Id* at 1511.

Analysis:

The Sixth Amendment Guarantees to each defendant "the assistance of Counsel for his defence". The defendant does Not Surrender Control entirely to Counsel for the Sixth Amendment. In granting to the accused Personall the right to make his defence "Speaks of the assistance of Counsel" and an assistant however expert is still

an assistant. *Foretta v California*, 422 U.S. 806, 819 (2001). The lawless Province is trial management, but some decisions are reserved for the client including whether to plead guilty, waive the right to a jury trial, testify in one's own behalf and forgo an appeal. Autonomous to decide that the objective of the defense is assert innocence belongs in this category. Refusing to plead guilty in the face of overwhelming evidence, rejecting the assistance of Counsel and insisting on maintaining innocence at the guilty phase of a capital trial: are not strategic choices they are decisions about what the defendant's objective in fact are. *Weaver v Massachusetts* 582 U.S. 286, 295 ().

In the case of Dor On April 27, 2012 during a final conference, the state offered Petitioner a sentence agreement, of fourteen and one quarter years to thirty years, where he could have "just" pleaded guilty, to the home invasion, conspiracy, and carjacking counts. (Final Conference 4/27/12 Pg 4), the state requested the Court to stick the convictions if Petitioner goes to trial and convicted. (Final Conference 4/27/12 Pg 4) the trial Court Judge warned both Petitioner and trial Counsel that a conviction after trial

would result in numbers toward the high end of the 171 to 540 month guidelines. (Final Conference 4/27/12 Pg 4) Trial Counsel then asked for a one week adjournment to give his client time to consider the states offer. (Final Conference 4/27/12 Pg 3). On May 4 2012 during another Final Conference, Petitioner rejected the states offer and was proceeding to trial. Trial Counsel then provided the Court with three defense witnesses that would be called to support petitioner's Plea of Not Guilty during trial. (Final Conference 5/4/12 Pg 3). On June 19, 2012 during opening statement trial Counsel acknowledged that his client was no counsel. (Jury Trial 6/19/12 Pg 118). Counsel went on to note that Petitioner was charged with multiple counts of Car Jacking, arm robbery, home invasion and Conspiracy to Commit home invasion. (Jury Trial 6/19/12 Pg 118). Counsel concluded his opening by stating that his belief of the evidence would show that Mr. Rush had nothing to do with the Car Jacking and nothing to do with the arm robbery, and informed the Jury to find Mr. Rush of what he is guilty of. (Jury Trial 6/19/12 Pg 120). On June 20 2012 trial Counsel began his closing

arguments by Conceding that we cannot have this in our Society, and asked the Jury to make Darius Rush Pay for what he put his hands on. (Jury Trial 6/20/12 Pg 223). Trial Counsel Conceded that Petitioner went into the house, and stole out the house, but tried to soften the blow by arguing that Petitioner's role in the home invasion was minor. (Jury Trial 6/20/12 Pg 225). At the end of closing argument, Counsel Conceded in no uncertain terms that Petitioner was GUILTY of the home invasion first-degree. (Jury Trial 6/20/12 Pg 227).

To Note for the Court the Prosecution's theory of the case was that Petitioner was either GUILTY as charged or as an aider and abettor (Jury Trial 6/20/12 Pg 230). On August 24 2022 during an evidentiary hearing on Petitioner's claim of ineffective assistance of Counsel.

Petitioner testified that ~~he~~ trial Counsel never discussed any strategy of Conceding Guilt nor did Petitioner authorize Counsel to Concede Guilt. Petitioner testified that he went to trial for the sole

Purpose of Seeking a Not Guilty verdict. (Evidentiary Hearing 8/24/22 Pg 71). Trial Counsel testified that he recalled that Petitioner did not and was in fact maintaining his innocence, and wanted a Jury Trial. (Evidentiary Hearing 8/24/22 Pg 13).

When a client makes it plain that the objective of his defense is to maintain innocence of the charged acts, and pursue an acquittal, his lawyer must abide by that objective and may not override it by conceding. U.S. Const. Amend. VI. The ABA Model Rule of Professional Conduct 1.2(c) 2016 Provides that a lawyer shall abide by a client's decision concerning the objective of the representation. McCoy v Louisiana, 138 S.Ct 1500 at headnote 5.

The record is clear, that Petitioner maintained his innocence, and went to trial to pursue an acquittal on all charges, and that trial counsel nonetheless overrode that decision and conceded guilt.

(The Sixth Circuit Court of Appeals Decision Reversing habeas relief as to this claim was in conflict with ~~the~~ this Courts McCoy v Louisiana Standard)

The Court below held in reversing habeas relief as to this claim

11 Pause a moment to recognize Gasnik's theory of the case and his defense strategy: to try to set Rush acquitted of the

Violent Crimes by admitting the nonviolent Crimes despite the Bar
hand Gasnik had been dealt, which included an accomplice testifying
for the State, an incriminating testifying Co Defendant, Rush on
Commerce Pawnings the Stolen Jewelry, Rush Confession, and Rush Severe
Criminal history. Gasnik's opening and closing statements lay out this
theory. (6th Cir Opinion at Foot Note #9)

The Court never addressed *McLoy v Louisiana* when rejecting this
claim, despite the fact that Petitioner relied on it when Pursuing
relief. (Petitioner's Brief On Appeal Pg 21) and this Court should
reverse.

(Procedural Default)

Further the Court below held that Petitioner Procedurally defaulted this
claim by failing to raise it during direct appeal. (6th Cir Opinion Pg 30)
despite acknowledging in its opinion that the claim was raised
during direct appeal, and Post-Conviction Proceedings in the State Court.
(6th Cir. Opinion Pg 14-15).

Before a federal Court may Grant habeas relief to a State Prisoner
the Prisoner must exhaust remedies available in the State Court's

28 U.S.C. 2254(b)(1); *O'Sullivan v Boerckel*, 526 U.S. 838, 842 (1999). The exhaustion requirement requires that a federal habeas Petitioner Fairly Present the Substance of each Federal Constitutional claim to State Courts using Citations to the United States Constitution, Federal decisions using Constitutional analysis, or State decisions employing Constitutional analysis in similar fact patterns. *Levine v Torvik*, 986 F.2d 1506, 1516 (6th Cir 1998).

When the State Courts clearly and expressly rely on a valid state Procedural bar, Federal habeas review is also barred, unless Petitioner Can demonstrate "Cause" For the default and actual Prejudice as a result of the alleged Constitutional violation, or Can demonstrate that Failure to Consider the claim will result in a "Fundamental Miscarriage of Justice" *Coleman v Thompson*, 501 U.S. 722, 750-51 (1991).

Petitioner argues ~~that~~ In his Post-Conviction motion that Appellate Counsel was ineffective. Ineffective assistance of Counsel may establish Cause for Procedural default of his claims. *Edwards v Carpenter*, 529 U.S. 446, 451-52 (2000). Petitioner Could not Procedurally default the ineffective assistance of Appellate Counsel claim, because Post Conviction

review was the first opportunity he had to raise the claim. *Guilmette v Howes*, 624 F.3d 286, 291 (6th Cir 2010). If Petitioner can show that he received ineffective assistance of appellate counsel that rose to the level of a Sixth Amendment violation, it would excuse his procedural default for failing to raise his claims on his direct appeal in the state courts. *Seymour v Walker*, 224 F.3d 542, 550 (6th Cir 2000).

The Sixth Amendment guarantees a defendant the right to effective assistance of counsel on the first appeal by right. *Evitts v Lucet*, 469 U.S. 387, 396-397 (1985). A defendant must satisfy a two prong test to show that he was denied the effective assistance of counsel. First, the defendant must demonstrate that counsel's performance was so deficient that the attorney did not function as the "counsel" guaranteed by the Sixth Amendment. *Strickland v Washington*, 466 U.S. 668, 687 (1984). In so doing, the defendant must overcome a strong presumption that counsel's behavior lies within the wide range of reasonable professional assistance. *Id.* The defendant must overcome the presumption that under the circumstances, the challenged action might be sound trial

Strickland v. Strickland, 466 U.S. at 689. Second, the defendant must show that such performance prejudiced his defense. *Id.* A defendant demonstrates prejudice by showing that "there is a reasonable probability that, but for Counsel's unprofessional errors the result of proceedings would have been different." Strickland 466 U.S. at 694. The Strickland Standard applies as well to claims of ineffective assistance of appellate Counsel. See *Whiting v Burt*, 395 F.3d 602, 617 (6th Cir 2005).

In assessing whether a claim of ineffective assistance of Counsel satisfies the "cause" requirement of Coleman, a less stringent standard of review is applied than when reviewing an independent freestanding ineffective assistance of Counsel claim pursuant to the deferential standard of review found in 28 U.S.C. 2254(d). The question for the federal habeas Court is not whether the state Court's decision was unreasonable, but whether there was an independent Sixth Amendment violation under Strickland. Stated differently, the level of scrutiny of the ineffective assistance of Counsel claim is the same as would be applied on direct review. See *Joseph v Coxler*

489 F.3d 441, 459 (6th Cir. 2006).

Strategic and tactical choices regarding which issues to pursue on appeal are "properly left to the sound professional judgment of counsel." *United States v Perri* 908 F.2d 56, 59 (6th Cir. 1990). "Generally only when ignored issues are clearly stronger than those presented will the presumption of effective assistance of appellate counsel be overcome." *Monzo v Edwards*, 281 F.3d 568, 579 (6th Cir. 2002). Appellate counsel, however, may deliver deficient performance and prejudice a defendant by omitting a "dead-boss winner" which is defined as an issue which was obvious from the trial court record and would have resulted in a reversal on appeal. See *Meade v Lavigne*, 265 F. Supp. 2d 849, 870 (E.D. Mich. 2003).

Petitioner argued in his Post-Conviction motion for relief from judgment, Appellate Counsel was ineffective for failing to raise trial counsel concession of guilt issue. This issue was clearly obvious from the trial court record and would have resulted in a reversal on appeal as determined by the district court. (Appendix B) thereby excusing any default.

(Fundamental Miscarriage of Justice)

In the event that this Court would find Petitioner claim Procedurally defaulted, the Court should still Proceed to the Merits of this claim to Prevent a Fundamental Miscarriage of Justice.

"The very nature of the Writ demands that it be administered with the initiative and flexibility to insure that miscarriage of within it's reach are surfaced and corrected." *Morrell v. Wardens*, 12 F.4th 626, 631 (6th Cir. 2021), citing *Harris v. Nelson*, 394 U.S. 386, 391, (1969).

Here not allowing relief or at least reviewing a Structural error (Conceding guilt in violation of *McClay v. Louisiana*) would amount to a Fundamental Miscarriage of Justice.

Argument II:

Was it UnConstitutional when trial Counsel Failed to challenge the Voluntariness of Petitioner's Confession. where the UnControverted evidence was that a Co-Defendant/Uncle was brought into the interrogation room to Coerce a Confession.

Standard of Review:

To Determine whether the Confession made by the defendant... Was the Product of a rational intellect and a Free Will. *Lynum v. Illinois*, 372 U.S. 528, 534 (1963). The Ultimate question for this Court is whether a defendant's will was overborne by the Circumstances Surrounding the giving of a Confession. *Dickerson v. United States*, 530 U.S. 428, 434 (2000).

Analysis:

The Fifth Amendment to the United States Constitution Provides that No Person shall be Compelled in any Criminal Case to be a witness against himself. U.S. Const. Amend V. In *Miranda v. Arizona*, 384 U.S. 436, 458 (1966), the Supreme Court held that Pre-interrogation warnings are required in the Context of Custodial interrogations given the Compulsion inherent in Custodial Surroundings. And Considering that any Such Statements must be Voluntary, the Supreme Court has long held that to determine whether a Person's Statement to Police were involuntary, the Court must review the totality of the Circumstances. *Columbe v. Connecticut*, 367 U.S. 568, 602 (1961).

In Conducting this test a Court should Consider Factors Such as (1)

Petitioner Coercion (2) length of interrogation (3) location of interrogation (4) Continuity of Interrogation (5) the Suspect's Maturity (6) the Suspect's education (7) the Suspect's Physical and mental Condition (8) Whether the Suspect was advised of his Miranda rights (9) Whether the Suspect was threatened with abuse. *Withrow v Williams*, 507 U.S. 680, 693-94 (1993). Coercive Police activity is a Necessary element For Finding that a Confession was involuntary. *Colorado v Connelly*, 479 U.S. 157, 167 (1986).

The test is whether a defendant's will was overborne by the Circumstances Surrounding the giving of a Confession, taking into ~~the~~ Consideration the totality of the Circumstances, and both the Characteristics, of the accused and the details of the interrogation.

Dickerson v United States, *Supra*. See also, *Columbe*, 367 U.S. at 601-602; *Schneekloth v Bustamonte*, 412 U.S. 218, 223-27 (1973).

On August 24, 2012 during an evidentiary hearing on Petitioner's claim of ineffective assistance of Counsel.

Petitioner testified that on January 14 2012, he was arrested

and transported to the Ninth Precinct, where he was interrogated.
(Evidt. Hrg 8/24/22 Pg 58). Detective Hushes asked Petitioner to talk
to him about the incident that occurred outside the Pawnshop on
School 9th. Petitioner denied any involvement. (Evidt. Hrg. 8/24/22 Pg 59)

Detective Hushes then asked Petitioner if he knew, Darnell Rush, Desmond
Robinson, and Deondre Connors. Petitioner replied affirmatively. And
asked Detective Hushes what they had to do with an incident
that occurred at the Pawnshop. (Evidt. Hrg. 8/24/22 Pg 59). Detective
Hushes informed Petitioner that the three men had implicated him
in a home invasion and robbery. (Evidt. Hrg. 8/24/22 Pg 59). Petitioner
again denied any involvement, and stated to Detective Hushes
that he wanted an attorney "since he was being accused of a
Serious Crime" (Evidt. Hrg 8/24/22 Pg 59). Detective Hushes then gave
Petitioner a Standard Detroit Police Department Written Constitutional
Right Form, and ~~ad~~ advised Petitioner to sign since he asked
for an attorney. (Evidt. Hrg. 8/24/22 Pg 59). Petitioner signed the

Form believes he was asserting his rights to an attorney. (Evid. Hrg 8/24/22 Pg 59-60). Instead of respecting Petitioner's request for an attorney, Detective Hushes informed Petitioner that a lawyer would be necessary, then left the interrogation room. (Evid. Hrg 8/24/22 Pg 60). Detective Hushes returned moments later with Petitioner's Co-defendant/ Uncle Darnell Rush, and ordered Darnell Rush "to get your nephew talking," turned around and left. (Evid. Hrg 8/24/22 Pg 60). As Detective Hushes and Darnell Rush were entering the interrogation Petitioner said to Detective Hushes "Look I don't know what you want or what you're trying to do but I'm not trying to talk to neither one of y'all". (Evid. Hrg 8/24/22 Pg 60). Detective Hushes ignored this request and left the room. (Evid. Hrg. 8/24/22 Pg 60). While alone in the interrogation room with Darnell Rush, Darnell threatened to beat the shit out of Petitioner if he did not start telling these people what they wanted to hear. (Evid. Hrg. 8/24/22 Pg 62). In addition to ~~threatening~~ threatening Petitioner, Darnell also promised Petitioner that he would

Get Probation, because home invasion aint Nothings but a little minor offense. Petitioner believed his ~~uncle~~ uncle, because he had received Probation after Pleading to a home invasion in the Past. (Evidt. Hrs. 8/24/22 Pg 64) Petitioner then admitted and Signed a Statement about the home invasion, Not because it was true but because, what Darnell had Said and done to him. (Evidt. Hrs 8/24/22 Pg 65).

The district Court Found Petitioner's testimony Credible and Granted habeas relief on this claim, because, On June 20, 2012 during trial, Detective Cress Huches Corroborated Petitioner's testimony when he testified that he interviewed Petitioner Five days after the home invasion, (Jury Trial 6/20/12 Pg 69) that Petitioner initially denied any involvement. (Jury Trial 6/20/12 Pg 71) So he decided to bring Darnell Rush into the interrogation room (Jury Trial 6/20/12 Pg 72). And left Darnell Rush in that room For approximately ten minutes, (Jury Trial 6/20/12 Pg 73)

That After Darnell had spoken to Petitioner. Petitioner then admitted his involvement. (Jury Trial 6/20/12 Pg 74).

Petitioner's Confession was consistent with coercion the above Circumstances, shows the Confession was involuntary given rendering it inadmissible (Appendix B).

(The Sixth Circuit Court of Appeals Decision reversing habeas relief as to this claim was in conflict with this Court's Dickerson v United States, and Lynum v Illinois).

(Procedural Default)

The Court below held in reversing habeas relief as to this claim stated that Petitioner procedurally defaulted this claim by failing to raise it during direct appeal. (6th Cir. Opinion Pg 30) despite acknowledging in its opinion that Petitioner did raise this claim during direct appeal and Post-Conviction review. (6th Cir. Opinion Pg 14-15).

As stated in Argument 1, Petitioner excused any procedural default through his ineffective assistance of appellate counsel claim.

As this claim was obvious from the trial Court record and would have resulted in reversal on appeal as determined by the district Court (Appendix B).

The Sixth Circuit Never Addressed *Dickerson v United States* or *Crom v Illinois*, when rejecting this claim, and this Court should reverse.

Further the Court below held in reversing this claim "Rush fully insisted on his claim that he is actually innocent, that this was merely a Coerced Confession, but a false Confession Fabricated by Sgt. Hughes. But in the totality of the evidence his claim of actual innocence defies belief. Two even taking this story at face value, Dornell Purported motive for coercing Rush into a false Confession was to get the deal from the State that he desperately needed, but after Rush capitulated Dornell did not get any deal. Dornell went to trial. Three at trial Sgt. Hughes

testified that Rush gave the Statement voluntarily that Rush never indicated that he did not want to speak and that Rush never asked for an attorney. Four on Cross examination, the State introduced a Notarized Affidavit (dated May 24 2017) that Rush had admitted to the Michigan Courts in 2017, in which Rush, Swore Subject to Perjury, that Darnell did not coerce him. Thus as of 2017 Rush's story was that Darnell encouraged him to talk, but he (Rush) refused, so Sgt. Hushes removed Darnell from the room. According to that sworn testimony Subject to Prosecution for Perjury, Darnell never threatened or coerced Rush. Finally it is Passing Strange that Sgt. Hushes would concoct a False Confession needlessly favorable to Rush, i.e., in which Rush limited his participation in the crime by specifically denying that he touched Fulsom or his car and asserting that Darnell alone assaulted Fulsom. For these reasons, as well as basic common sense this new story about Darnell coercion defies belief".

(6th Cir Opinion at Foot Note # 19)

To Note For the Court, First this Statement by the Sixth Circuit Court was Factually incorrect. Second the Sixth Circuit made Credibility determinations, when that was the Province of the district Court. ~~at~~ Satterlee v Wolfenbarger, 374 F. Supp. 2d 562, 568 (E.D. Mich 2005) aff'd, 453 F.3d 362 (6th Cir., 2006) (Citing Stidham v Wingo, 482 F.2d 817, 820 (6th Cir. 1973). The district Court was well aware of the Mel ~~2017~~ 2017 affidavit when it Granted habeas relief as to this claim. Third, Demell Rush, Signed a affidavit Corroborating Petitioner's testimony on this issue. That the Sixth Circuit Failed to recognize.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harvey R.

Date: October 29 2024