

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024-2025

TIMOTHY R. BROWN,
Petitioner,

-v.-

COMMONWEALTH OF MASSACHUSETTS
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE APPEALS COURT FOR
THE COMMONWEALTH OF MASSACHUSETTS

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

Pursuant to Supreme Court Rule 39, Petitioner Timothy R. Brown, asks leave to file the accompanying petition for writ of certiorari without prepayment of costs and to proceed *in forma pauperis*. The petitioner has been represented in the instant matter by counsel appointed by the Massachusetts Committee for Public Counsel Services (CPCS) pursuant to *Mass. Gen. L. c. 211D, §§ 5 and 6(b)*, based on a determination of the petitioner's indigence. The CPCS Notice of Assignment of Counsel indicating petitioner's indigence and CPCS Appeal Referral form as to the instant appeal are attached.

Respectfully submitted,

Dated: December 4, 2024

David H. Mirsky
David H. Mirsky, Esquire
(US Supreme Court Bar #246794;
MA BBO #559367; NHBA #9351)
Counsel of Record for Petitioner
Mirsky & Petito, Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel.: 603-580-2132
dmirsky@comcast.net

NOTICE OF ASSIGNMENT OF COUNSEL		Assignment Number	COMMONWEALTH OF MASSACHUSETTS	
		C8035639-3		
Date of Assignment	Judge	Court	477	Jury Session
8/13/2019	CPCS	Middlesex Superior Court		<input type="checkbox"/>

Name of Person for whom counsel assigned	The court has found the above-named person		
Timothy Brown, W102845			
Juv/Adult	<input checked="" type="checkbox"/> Indigent Contribution		
Docket No.	Incarceration Status		
0981CR01511	MCI Concord		

Post-Trial Criminal Case Purpose Of Assignment

Direct

Offense / Charge	Trial Court
602 Murder II	Middlesex Superior Court
666 Home Invasion	
700 Poss. Firearm w/o ID	

Attorney Assigned

BBO	559367
Name	David Mirsky
Address	P.O. Box 1063
Exeter, NH 03833	
Phone	(603) 580-2132

Authorized Signature:

Dorothy A. Mele



The Commonwealth of Massachusetts
Committee for Public Counsel Services
44 Bromfield Street, Boston, MA 02108-4909

ANTHONY J. BENEDETTI
CHIEF COUNSEL

TEL: (617) 482-6212
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VANESSA VELEZ
DEPUTY CHIEF COUNSEL
PRIVATE COUNSEL DIVISION

August 13, 2019

David Mirsky
P.O. Box 1063
Exeter, NH 03833

RE: Commonwealth v. Timothy Brown, W102845
Middlesex Superior Court No(s). 0981CR01511

Dear Attorney:

Enclosed is the Notice of Assignment of Counsel form for your post-conviction assignment. Please file your appearance in the appropriate court immediately and contact the client as soon as possible. You must also meet with your client at least once after you have reviewed the transcript.

You should not withdraw from this case without first conferring with Donald Bronstein, Director of Criminal Appeals, Private Counsel Division. Please forward a copy of the brief to this office upon filing.

If you wish to pursue a Rule 30 motion for new trial, or any other collateral attack where there is no automatic right to counsel, you must first obtain approval, by letter or phone, from Donald Bronstein, Director of Criminal Appeals.

If your client is not a U.S. citizen and there is a possibility that he could be deported as a result of this conviction, it is imperative that you contact the CPCs Immigration Impact Unit at iiu@publiccounsel.net or 617-623-0591.

Please review and adhere to all Performance Standards Governing the Representation of Clients on Criminal Appeals and Post-Conviction Matters, as set forth in CPCs' Assigned Counsel Manual which can be found at http://www.publiccounsel.net/private_counsel_manual/private_counsel_manual_index.html.

If you have any questions regarding your assignment, please contact me at the above number.

Sincerely,

A handwritten signature in black ink that appears to read "D. Mele/mt".

Dorothy Mele
Assignment Coordinator

APPEAL REFERRAL

DEFENDANT'S NAME Timothy Brown D.O.B. 07/28/2019

DOES DEFENDANT SPEAK ENGLISH? Yes No IF NOT, WHAT LANGUAGE? _____

LAST KNOWN ADDRESS/PHONE#/INSTITUTION MCI Concord

TRIAL/PROBATION VIOLATION HEARING/ MOTION (only after interlocutory appeal allowed)

COURT Middlesex Superior JUDGE Pierce HELD _____ DATE 07/23/2019
ATTORNEY Victoria Kelleher D.A. (or P.O. for VOP hrg.) Adrienne Lynch

INDICTMENT/ COMPLAINT NUMBER	CHARGE	DISPOSITION/SENTENCE
<u>15-08280981CR01511</u>	Murder, Second x2	15 to life, concurrent
	Home Invasion	20 concurrent
	Armed Intent to Rob	10 concurrent

ISSUES FOR APPEAL/COMMENTS:

Client was tried on charges of First Degree Murder, Home Invasion and Armed Robbery by predecessor counsel and convicted. Attorney Mirsky represented client on appeal and murder conviction reduced to second degree. I represented client on resentencing and argued against consecutive life sentences and that convictions for armed robbery and home invasion were duplicative. I also preserved issues from Mirsky's appeal previously denied by the SJC so they made be raised on a habeas in Fed Court. Client sentenced to concurrent sentences of 15 to life on murders. Motion to dismiss home invasion as duplicative was denied.

Client is happy to have either Attorney Mirsky or myself represent him on appeal of issues raised by motion to dismiss duplicative convictions and habeas, assuming CPCs appoints for this purpose. Though I do federal appellate work, I think it best that Attorney Mirsky take the appointment given his prior work on the due process violations and familiarity with the issues in this case. Attorney Mirsky is willing to take the appointment.

IN YOUR OPINION, IS THIS APPEAL OF STRATEGIC IMPORTANCE (e.g., issue of first impression; unsettled area of the law; good opportunity to argue for a change in the law)? Yes No

IF YES, PLEASE EXPLAIN WHY:

SJC decision in Commonwealth v. Brown changed the law in joint venture as applies to the murder/malice prong--however, the SJC refused to apply the decision to Brown himself by granting him a new trial. Instead, the law was made prospective and the SJC reduced Brown's conviction to second degree. Failure to apply the new rule to Brown's case was a deprivation of due process. Client seeking a habeas to Fed Court as to this issue.

POST-TRIAL ATTORNEY ACTION:

NOTICE OF APPEAL FILED: 07/29/2019

(date)

TRANSCRIPT/ CDs ORDERED: 07/29/2019

(date)

PLEASE NOTE: In most counties, clerks will not order transcripts of pre-trial hearings unless requested to do so. Please request tapes/transcripts of all pre-trial evidentiary hearings, as well as non-evidentiary hearings that may figure in the appeal.

STAY OF EXECUTION PENDING APPEAL? ALLOWED DENIED NOT SOUGHT

The Appellate attorney assigned to the appeal can provide you with feedback if you wish. Please check the box if you would be interested.

PLEASE CLICK ON THE SUBMIT BUTTON

SUBMIT

or

PRINT AND EMAIL THIS FORM TO: appealform@publiccounsel.net