

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024-2025

TIMOTHY R. BROWN,  
Petitioner,

-v.-

COMMONWEALTH OF MASSACHUSETTS  
Respondent

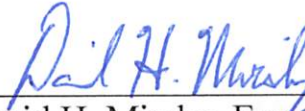
ON PETITION FOR WRIT OF CERTIORARI TO  
THE APPEALS COURT FOR  
THE COMMONWEALTH OF MASSACHUSETTS

**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



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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

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

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

<b>Post-Trial Criminal Case Purpose Of Assignment</b> Direct
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<b>Offense / Charge</b>	<b>Trial Court</b>
602 Murder II	Middlesex Superior Court
666 Home Invasion	
700 Poss. Firearm w/o ID	

<b>Attorney Assigned</b>	
<b>BBO</b>	559367
<b>Name</b>	David Mirsky
<b>Address</b>	P.O. Box 1063
	Exeter, NH 03833
<b>Phone</b>	(603) 580-2132

<b>Authorized Signature:</b>  Dorothy A. Mele	
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The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
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ANTHONY J. BENEDETTI  
CHIEF COUNSEL

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](mailto: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](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,

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

<del>15-0520</del> <u>0981CR01511</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.

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**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

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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](mailto:appealform@publiccounsel.net)