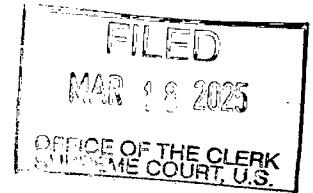


24-6852

ORIGINAL

No. _____



IN THE SUPREME COURT OF THE UNITED STATES

Eric William Diaz, Petitioner

vs.

Pennsylvania, Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA**

PETITION FOR WRIT OF CERTIORARI

Petitioner:

Eric William Diaz
Inmate #QP-0643
SCI - Coal Township
1 Kelley Drive
Coal Township, PA 17866

Respondent:

Dauphin County District Attorney's Office
c/o: Deputy District Attorney Ryan H. Lysaght
Dauphin County Courthouse
101 Market Street, Room 205
Harrisburg, PA 17101

QUESTIONS PRESENTED

1. - Whether the Pennsylvania State Courts violated the Double Jeopardy Clause of the Fifth Amendment by sentencing the Petitioner in accordance with a guilty plea that was based upon the waiver of the mandatory minimum sentencing provision of 42 Pa.C.S. § 9718.2 when the Petitioner was not even susceptible to being sentenced to said provision due to how the corresponding terms of incarceration for his first and second sexual offense convictions were not sequential and/or separated by an intervening opportunity to reform?

- Suggested Answer: **Yes.**

2. - Whether the Pennsylvania State Courts violated the Petitioner's Sixth Amendment Rights to be represented by conflict-free legal counsel during the plea negotiation stage(s) when there were proven conflicts of interest between that of the Petitioner and his Plea Counsel(s) that were brought forth to the State Trial Court's attention on multiple occasions?

- Suggested Answer: **Yes.**

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:

LIST OF ALL PROCEEDINGS IN THE STATE TRIAL AND APPELLATE COURTS

1. - In the Court of Common Pleas of Dauphin County Criminal Division
Docket Number: CP-22-CR-0003178-2017
Commonwealth of Pennsylvania (Plaintiff) v. Eric William Diaz (Defendant)
 - Sentencing Order issued on May 13, 2022
 - Post-Sentence Motions denied on July 6, 2022 and on July 13, 2022
 - Trial Court Opinion issued on December 12, 2022
2. - Superior Court of Pennsylvania
Docket Number: 1016 MDA 2022
Commonwealth of Pennsylvania (Appellee) v. Eric William Diaz (Appellant)
 - Appeal denied on December 28, 2023 (*See* 2023 Pa. Super. Unpub. LEXIS 3222; 311 A.3d 617)
 - Reargument denied on March 11, 2024 (*See* 2024 Pa Super LEXIS 93)
3. - Supreme Court of Pennsylvania
Docket Number: 234 MAL 2024
Commonwealth of Pennsylvania (Respondent) v. Eric William Diaz (Petitioner)
 - Appeal denied on December 31, 2024

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JURISDICTION

This Honorable Supreme Court of the United States has jurisdiction over this matter pursuant to U.S. Sup. Ct. R. 13(1) due to how this enclosed Petition for Writ of Certiorari is hereby submitted within ninety (90) of when the Supreme Court of Pennsylvania DENIED the Petition for Allowance of Appeal on December 31, 2024 at Docket Number: 234 MAL 2024.

OPINIONS BELOW

All of the Orders and Opinions of the State Trial and Appellate Courts are hereby listed as follows:

Exhibit "A" - The 12/31/2024 *Order* of the Supreme Court of Pennsylvania that DENIED the *Petition for Allowance of Appeal*.

Exhibit "B" - The 03/11/2024 *Order* of the Superior Court of Pennsylvania that DENIED the Application for Reargument.

Exhibit "C" - The 12/28/2023 *Opinion* and *Order* of the Superior Court of Pennsylvania that DENIED the appeal.

Exhibit "D" - The 12/12/2022 *Statement* of the Trial Court that was directed to the Superior Court for the issues raised on the appeal.

Exhibit "E" - The 07/13/2022 *Order* of the Trial Court that clarified that all of the Post-Sentence Motions were all DENIED.

Exhibit "F" - The 07/06/2022 *Order* of the Trial Court that DENIED the Post-Sentence Motions.

Exhibit "G" - The 07/06/2022 *Memorandum Opinion* of the Trial Court that supported the denial of the Post-Sentence Motions.

Exhibit "H" - The 05/13/2022 *Order* of the Trial Court that sentenced Mr. Diaz on the criminal matter at Docket No. CP-22-CR-0003178-2017.

STATEMENT OF THE CASE

On November 22, 2011 Mr. Diaz was sentenced by the Court of Common Pleas of Dauphin County, Pennsylvania (hereafter "Trial Court") to two (2) counts at 18 Pa.C.S. § 6312(d) - "possession of child pornography" to two (2) concurrent terms of five (5) years of Probation at Docket Number: CP-22-CR-0001985-2010 ¹ ("1985-2010" or the "Old Case"). On October 3, 2016 a Revocation Hearing was held on this matter at 1985-2010, and Mr. Diaz was resentenced at Count 1 to a term of five (5) years of County Intermediate Punishment with **the first year to be served in confinement at Dauphin County Prison** along with a consecutive term of five (5) years of Probation at Count 2.

On May 24, 2017 Mr. Diaz was charged with six (6) counts at 18 Pa.C.S. § 6312(d) on this instant case at hand before the Trial Court at Docket Number: Docket Number: CP-22-CR-0003178-2017 ("3178-2017" or the "New Case"). These alleged new offenses at 3178-2017 ranged from February to April of 2017 **while Mr. Diaz was incarcerated at the Dauphin County Work Release Center serving a corresponding term of incarceration on his first case at 1985-2010.**

Mr. Diaz filed numerous pre-trial motions on this New Case at 3178-2017, including, *inter alia*, numerous Motions to Recuse/Disqualify against the presiding Honorable Deborah E. Curcillo, which were all either denied and/or ignored, thereby **leaving a void upon the record on this recusal/disqualification matter.**

On February 18, 2022 Mr. Diaz filed a *Motion to Nullify All of the Court Orders Issued by the Honorable Deborah E. Curcillo*² in order to request of the newly-

Footnote 1: Mr. Diaz was also required to register for a period of ten (10) years as a sexual offender under Megan's Law III for the conviction on this **first sexual offense case.**

Footnote 2: The *Court Orders* that were requested to be nullified are all still affecting the status of this overall case, as they are still keeping Mr. Diaz actively incarcerated.

presiding Honorable Senior Judge Robert J. Eby³ to refrain from engaging in any substantive decisions affecting the underlying case until such time as when a record was developed on these unruléd upon recusal matters. Senior Judge Eby, however, never issued any ruling upon this 02/18/2022 *Motion to Nullify*⁴.

On March 9, 2022 Mr. Diaz filed a *Motion for the Appointment of Conflict Counsel* in order to highlight numerous "conflicts" that he had with that of the Dauphin County Public Defender's Office ("PD's Office"). On March 15, 2022 and March 17, 2022 Senior Judge Eby denied this 03/09/2022 *Motion* on what Mr. Diaz firmly believes to be false pretenses⁵.

On May 13, 2022 a combined Guilty Plea, Sentencing, and Revocation Hearing was conducted on both of Mr. Diaz's criminal matters before Senior Judge Eby. It was on this instant case at 3178-2017 that Mr. Diaz was sentenced to an aggregate term of six (6) to twelve (12) years of incarceration followed by a consecutive term of ten (10) years of Probation. On the other case at 1985-2010, Mr. Diaz was resentenced at Count 1 to a term of two (2) to five (5) years of incarceration to be run consecutive to that of the sentence imposed on the case at 3178-2017, and Count 2 of 1985-2010 was not revoked pursuant to the relevant common law⁶.

Footnote 3: On February 16, 2021 the Honorable Chief Justice Thomas G. Saylor of the Supreme Court of Pennsylvania assigned Senior Judge Eby to preside over this New Case. - Senior Judge Eby was also assigned to preside over the Old Case at 1985-2010 on April 27, 2021 and May 27, 2021 by the Honorable Chief Justice Max Baer.

Footnote 4: Senior Judge Eby not only failed to issue a pre-trial ruling on this 02/18/2022 *Motion to Nullify*, but His Honor also ignored the fact that Mr. Diaz specifically raised this particular issue within his 05/25/2022 *Post-Sentence Motion to Withdraw Guilty Plea*.

Footnote 5: Senior Judge Eby within his 03/15/2022 *Court Order* specifically stated that the "Defendant has been afforded various conflict counsel on separate occasions", which is a statement that is belied by the record. This particular discrepancy was also highlighted within Mr. Diaz's 05/16/2022 filing of the *Motion to Reconsider the Denial of the Motion for Appointment of Conflict Counsel*.

Footnote 6: At the time of the 05/13/2022 Revocation Hearing the ruling was recently issued in *Commonwealth v. Simmons*, 262 A.3d 512 (Pa. Super. Ct. 2021) (*en banc*).

On May 25, 2022⁷ Mr. Diaz filed several *Post-Sentence Motions*⁸ on both of his criminal matters. Mr. Diaz also filed other supplemental post-sentence motions dated from June 9, 2022 through July 13, 2022. On July 6, 2022 Senior Judge Eby issued an *Order and Memorandum Opinion* (see Exhibits "F" and "G" respectively hereto), and all of the *Post-Sentence Motions* were DENIED. On July 13, 2022 Senior Judge Eby issued a follow-up *Order* (see Exhibit "E" hereto) in direct response to an email from Mr. Diaz that addressed several unruled upon issues from the *Post-Sentence Motions* that concern his Constitutional Rights⁹.

On July 14, 2022 Mr. Diaz filed a *pro se Notice of Appeal* that was processed by the Superior Court of Pennsylvania at Docket No. **1016 MDA 2022**. On July 28, 2022 Mr. Diaz filed *Applications*¹⁰ to the Superior Court. On August 23, 2022 the Honorable Senior Judge Thomas J. Munley was assigned to preside over both of Mr. Diaz's criminal matters¹¹.

Footnote 7: The Superior Court acknowledged that these 05/25/2022 *Post-Sentence Motions* were timely filed on 05/23/2022 pursuant to the "**prisoner mailbox rule**" (see Exhibit "C" hereto on the first full paragraph on page *5).

Footnote 8: Mr. Diaz's 05/25/2022 *Post-Sentence Motion to Withdraw Guilty Plea* was filed on the basis of what he believed to be several "manifest injustices", including, *inter alia*, how the guilty plea was premised upon Mr. Diaz being susceptible to the mandatory minimum statutory provision set forth in 42 Pa.C.S. § 9718.2(a)(1), and due to how Mr. Diaz was represented by "conflicted" plea counsel at the 05/13/2022 hearings.

- Mr. Diaz also filed a *Post-Sentence Motion for Recusal/Disqualification of the Honorable Robert J. Eby*. Senior Judge Eby, however, did not acknowledge the existence of said filing at all, and therefore, he totally failed to develop a record on this recusal/disqualification matter.

Footnote 9: As per what was alluded to within Footnote 8 herein directly above, Mr. Diaz filed a *Motion to Recuse/Disqualify* for Senior Judge Eby to develop a record upon, which His Honor failed to perform in accordance with the precedential common law on this issue.

Footnote 10: This was a combined filing of an *Application to Seek the Appointment of Court-Appointed Counsel*, and an *Application Seeking the Recusal/Disqualification of the Honorable Senior Judge Robert J. Eby*.

Footnote 11: It was on 08/23/2022 that the Honorable Chief Justice Max Baer of the Supreme Court of PA appointed Senior Judge Munley to preside over Mr. Diaz's criminal matters due to how Senior Judge Eby's judicial commission was expiring a few days later on 08/31/2022.

On September 29, 2022 Senior Judge Munley appointed Attorney Kristen L. Weisenberger, Esquire to represent Mr. Diaz on this appeal matter before the Superior Court¹². On November 3, 2022 Attorney Weisenberger filed a *Statement of Matters Complained of on Appeal*. On December 12, 2022 Senior Judge Munley submitted a *Trial Court Memorandum Opinion Pursuant to Pa. R. A. P. 1925* (see Exhibit "D" hereto for this 12/12/2022 *Opinion*).

On April 29, 2023 Attorney Weisenberger filed an *Anders Brief* (see *Anders v. California*, 386 U.S. 738 (1967)) along with that of a *Petition to Withdraw as Counsel*. On August 3, 2023 Mr. Diaz filed a *pro se Brief for the Appellant*. On December 28, 2023 the Superior Court issued an *Opinion and Order* that affirmed the judgment of sentence and granted Attorney Weisenberger's *Petition to Withdraw as Counsel* (see Exhibit "C" hereto at p. *12). On January 22, 2024 Mr. Diaz timely filed an *Application for Reargument*. On March 11, 2024 the Superior Court denied reargument (see Exhibit "B" hereto).

On April 10, 2024 Mr. Diaz submitted a timely *Petition for Allowance of Appeal* to the Supreme Court of Pennsylvania and the matter was assigned to Temporary Docket Number: **110 MT 2024**. On May 14, 2024 Mr. Diaz then submitted an amended *Petition for Allowance of Appeal*, and the matter was then transferred to a permanent docket at No. **234 MAL 2024**. On December 31, 2024 the *Petition for Allowance of Appeal* was DENIED (see Exhibit "A" hereto).

Footnote 12: Senior Judge Munley conducted a hearing on 09/29/2022 for the matter of Mr. Diaz's 07/28/2022 *Application to Seek the Appointment of Court-Appointed Counsel*. It was at said 09/29/2022 hearing that Dauphin County's Chief Public Defender (hereafter "PD's Office"), Mary L. Klatt, Esquire, confirmed onto the record that **there were/are existing "conflicts" between that of Mr. Diaz and the PD's Office**, which is precisely why Senior Judge Munley assigned Attorney Weisenberger as "conflict counsel" for this appeal matter at Superior Court Docket No. **1016 MDA 2022**.

REASONS FOR GRANTING THE PETITION

The Pennsylvania State Courts Violated the Double Jeopardy Clause of the Fifth Amendment by Sentencing the Petitioner in Accordance With a Guilty Plea That Waived a Mandatory Minimum Sentence That the Petitioner Was Not Even Susceptible to Being Sentenced to:

It must first be pointed out this this Supreme Court that **Mr. Diaz was still serving a corresponding term of incarceration in direct relation to his first sexual offense case when he was alleged to have committed his second offense(s) on this instant case.** This was never disputed by the Respondent, and this Court can take judicial notice¹³ of how this adjudicative fact was actually acknowledged by the Superior Court of Pennsylvania with a prior *Opinion*¹⁴.

Footnote 13: See Fed. R. Evid. 201.

Footnote 14: The Superior Court within a previously issued *Opinion* that was associated with Mr. Diaz's first sexual offense case at Docket No. CP-22-CR-0001985-2010 ("1985-2010") very clearly iterated the following facts onto the record:

"... the trial court conducted a revocation hearing on October 3, 2016. ... At the conclusion of the hearing, the trial court sentenced [Mr. Diaz] to five years' county intermediate punishment, with one year in county prison ...

The Commonwealth subsequently charged [Mr. Diaz] with new offenses at CP-22-CR-3178-2017 (3178-2017). According to the public docket in 3178-2017, the charges included six new counts of possession of child pornography. The date of the [new] offenses charged in 3178-2017 ranged from February to April of 2017. The offenses apparently resulted from a search of [Mr. Diaz's] cell phone when he was at a work release center.", quoting *Commonwealth v. Diaz*, 245 A.3d 1075, 2020 WL 7385809 (Pa. Super. Ct. Dec. 16, 2020) at pp. *3-4 (emphasis added).

- It must also be mentioned that **Mr. Diaz was in a state of "incarceration" that was correspondent to his first sexual offense case at Docket No. 1985-2010 when he allegedly committed these second new offenses in relation to this case at hand at Docket No. 3178-2017, as it is well-established under Pennsylvania common law that:**

"a prisoner on work release remains in the constructive custody of the Commonwealth," quoting *Henkels & McCoy, Inc. v. W.C.A.B. (Hendrie)*, 565 Pa. 493, 776 A.2d 951, 955 (Pa. 2001) (emphasis added) (citation omitted).

In further regards to this particular issue at hand, we must also take judicial notice of how the Superior Court indeed verified that **the Guilty Plea that was accepted by the State Trial Court in this instant case was centered around Mr. Diaz being susceptible to the mandatory minimum sentencing provision of 42 Pa.C.S. § 9718.2** for these new second offenses at Docket No. 3178-2017 that allegedly occurred while **Mr. Diaz was still serving a corresponding term of incarceration** for his first sexual offense case at Docket No. 1985-2010¹⁵.

The problem at hand, however, is how **the Superior Court misapprehended the law** when it was specifically declared onto the record that:

"Diaz contends that section 9718.2(a)(1) does not apply unless he had finished serving his sentence for that crime. This argument is wholly frivolous, as **the statute explicitly requires only a prior conviction; there is no requirement, either explicit or implied, that Diaz's sentence be concluded.**", quoting the 12/28/2023 *Opinion* (see Exhibit "C" hereto) at pp. *7-8 (emphasis added).

Footnote 15: This Supreme Court can also take judicial notice of the adjudicative fact that the Superior Court within their 12/28/2023 *Opinion* that was entered in on this case (see Exhibit "C" hereto) at pp. *6-7 clearly stated onto the record that:

"Diaz was in fact subject to the mandatory minimum sentence of 25 years' incarceration, based upon his prior conviction for child pornography [at Docket No. 1985-2010], if the Commonwealth sought its imposition. See 42 Pa.C.S.A. § 9718.2(a)(1); 42 Pa.C.S.A. § 9799.14(b)(9). However, in exchange for his guilty plea, the Commonwealth waived the imposition of the mandatory minimum sentence and Diaz instead received the negotiated sentence" (emphasis added).

- Also see p. *3 of this same 12/28/2023 *Opinion* (see Exhibit "C" hereto) in order to recognize how the Superior Court also iterated onto the record that:

"When he pleaded guilty [on this new second case at Docket No. 3178-2017], Diaz admitted that, **while a resident of the county's work release program** [serving the corresponding term of incarceration for his first offense at Docket No. 1985-2010], he was in possession of a wireless phone in violation of the rules of the program and, when it was seized and searched, it was found to contain child pornography." (emphasis added).

By stating such, the Superior Court misapprehended how to apply the "Recidivist Philosophy" to that of 42 Pa.C.S. § 9718.2¹⁶ due to how Mr. Diaz highlighted how the statute of 42 Pa.C.S. § 9718.2 is linguistically mirrored to that of 42 Pa.C.S. § 9714¹⁷. This was why it was repeatedly brought forth to the State Courts' attention as to how their Supreme Court precedentially held that:

"statute of [42 Pa.C.S. § 9718.2] reflects a 'recidivist philosophy' and should be construed to allow for heightened punishment for repeat offenders **ONLY where their convictions for crimes of violence, and corresponding terms of incarceration, are sequential and each is SEPARATED** by an intervening opportunity to reform.", quoting *Commonwealth v. Shiffler*, 583 Pa. 478, 879 A.2d 185, 186 (Pa. 2005) (emphasis added).

To summarize matters, the Superior Court within a prior controlling case "conclu[ded] that Section 9718.2[] is subject to the [same] 'recidivist philosophy approach' as detailed by the *Shiffler* Court in interpreting Section 9714[]."¹⁸ This controlling holding from *Helsel*, however, contradicted with the conclusion that was issued in this case at hand when it was mistakenly iterated that 42 Pa.C.S. Section 9718.2 "explicitly requires only a prior conviction"¹⁹.

Footnote 16: Mr. Diaz thoroughly preserved his arguments on this matter of the legal necessity to apply the "Recidivist Philosophy" to that of 42 Pa.C.S. § 9718.2 within his State Court filings before the State Trial Court and Superior Court as follows:

- i. - The 05/25/2022 *Post-Sentence Motion to Withdraw Guilty Plea* at pp. *6-13;
- ii. - The supporting *Defendant's Memorandum of Law* at pp. *12-19;
- iii. - The 07/14/2022 *pro se Notice of Appeal* at pp. *18-28; and
- iv. - The 08/03/2023 *pro se Brief for the Appellant* at pp. *23-30.

Footnote 17: Mr. Diaz repeatedly referenced the Superior Court's controlling case of *Commonwealth v. Helsel*, 53 A.3d 906, 915 (Pa. Super. 2012), which held that:

"the pertinent language of the sentencing statute interpreted by our Supreme Court [of Pennsylvania] in *Shiffler* is identical to the pertinent language of the statute at issue in this case. Compare 42 Pa.C.S.A. § 9714(a)(2) with 42 Pa.C.S.A. § 9718.2(a)(2)."

Footnote 18: Quoting *Helsel*, 53 A.3d at *916 (emphasis added).

Footnote 19: Quoting the 12/28/2023 *Opinion* (see Exhibit "C" hereto) at pp. *7-8 (emphasis added).

More importantly, it must hereby be noted that **none of the State Courts have ever cited any legal authority to support the claim that Section 9718.2 "explicitly requires only a conviction".** This is due to how there is, quite simply, no legal authority to support this totally unfounded claim of the Superior Court's.

Phrased another way, Mr. Diaz is duly entitled to relief due to how it is in Pennsylvania that "the Legislature intended that [42 Pa.C.S.A.] Section 9718.2 be **subject to the same interpretation as Section 9714**" ²⁰. When one, in turn, applies 42 Pa.C.S.A. § 9718.2 in the place of 42 Pa.C.S.A. § 9714 to the above-quoted controlling holding of the Supreme Court of Pennsylvania's ruling from *Shiffler*, 879 A.2d at *186, one can logically extrapolate that:

The statute of 42 Pa.C.S. § 9718.2 reflects a "Recidivist Philosophy" and should be construed to allow for heightened punishment for repeat offenders ONLY where their convictions for sexual offense crimes, and Corresponding Terms of Incarceration, are sequential and each is SEPARATED by an intervening opportunity to reform.

In this instance, Mr. Diaz's Corresponding Terms of Incarceration for his first and second sexual offense cases Were NOT Sequential and/or SEPARATED. Therefore, it is abundantly clear that Mr. Diaz was **NOT susceptible to the penalties proscribed in 42 Pa.C.S. § 9718.2(a)(1).**

Since the agreed upon Guilty Plea entered in this case was premised upon said susceptibility to § 9718, said plea must thus have been permitted to be withdrawn by the State Trial Court in due accordance with how the Superior Court of Pennsylvania correctly iterated onto the record that:

"If the mandatory minimum sentence that the prosecutor threatened to seek at trial were, in fact, an illegal sentence, Diaz would possibly be entitled to relief. See *Commonwealth v. Hodges*, 2002 PA Super 1, 789 A.2d 764, 767 (Pa. Super. 2002).", quoting the 12/28/2023 *Opinion* (see Exhibit "C") at p. *7.

Footnote 20: Quoting *Helsel*, 53 A.3d at *916 (emphasis added).

In regards to the specific Federal Constitutional Right issue on this appeal, Mr. Diaz brings forth a formal challenge under the Fifth Amendment of the Double Jeopardy Clause in relation to how the Guilty Plea in this case was premised upon waiving an illegal sentence that he was not even eligible to receive. With that said, this Supreme Court established that a guilty plea forecloses a double jeopardy claim **unless "on the face of the record the court had no power to enter the conviction or impose the sentence."** (See *United States v. Broce*, 488 U.S. 563, 569 (1989) (emphasis added)).

As per what was thoroughly explained upon herein above, had Mr. Diaz not pled guilty, the State Trial Court would have had no power to impose the mandatory minimum sentence of 25 years. Therefore, according to the logic set forth by this High Court in *Broce, supra*, Mr. Diaz is able to raise this Double Jeopardy claim in regards to how his Guilty Plea was unlawfully induced.

After all, since this Court recognized that "[a] plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilt and **a lawful sentence.**" ²¹, the plea entered in this case must be permitted to be withdrawn due to how it was based upon how the State of Pennsylvania **haled Mr. Diaz into Court on a charge that he was not susceptible to receiving the mandatory minimum for.** ²²

In conclusion, the State Courts have cumulatively failed to address these constitutional claims, which is why justice demands of this High Court to grant Mr. Diaz his requested relief of withdrawing the Guilty Plea due to how said plea was based upon the State waiving a sentence that he was never eligible to receive.

Footnote 21: Quoting *Broce*, 423 U.S. at *569 (emphasis added).

Footnote 22: See *Menna v. New York*, 423 U.S. 61, 62 (1975) ("Where the State is precluded by the United States Constitution from haling a defendant into court on a charge, federal law requires that a conviction on that charge be set aside even if the conviction was entered pursuant to a counseled plea of guilty").

The Pennsylvania State Courts Violated Mr. Diaz's Sixth Amendment Rights to be Represented by Conflict-Free Legal Counsel During the Plea Negotiation Proceedings

It was in relation to this particular issue of Mr. Diaz's Sixth Amendment claims that the Superior Court of Pennsylvania iterated onto the record that:

"Diaz contends that Senior Judge Eby erred by denying Diaz's numerous pre- and post-sentence motions requesting the appointment of conflict counsel. As we have already concluded that Diaz knowingly and intelligently entered his negotiated guilty plea, and received the negotiated sentence, we further conclude that Diaz waived this issue. See *Lincoln*, 72 A.3d at 609," quoting the 12/28/2023 *Opinion* (see Exhibit "C") at p. *10 (emphasis added).

The problem at hand, however, is that the Superior Court within the very same page of this *Lincoln* case has specifically established that:

"Settled Pennsylvania law makes clear that by entering a guilty plea, the defendant waives his right to challenge on direct appeal all non-jurisdictional defects except the legality of the sentence and the VALIDITY of the plea," quoting *Commonwealth v. Lincoln*, 72 A.3d 606, 609 (Pa. Super. 2013) (emphasis added) (case citations omitted).

The Supreme Court of Pennsylvania also similarly ruled that:

"upon the entry of a guilty plea, a defendant waives all claims and defenses other than those sounding in the jurisdiction of the court, the VALIDITY of the plea and what has been termed the 'legality' of the sentence imposed," quoting *Commonwealth v. Eisenberg*, 626 Pa. 512, 98 A.3d 1268, 1275 (Pa. 2014) (emphasis added) (case citation omitted).

In this instance, the State Courts have collectively overlooked how **Mr. Diaz challenged the *VALIDITY* of the plea**, which according to *Lincoln* and *Eisenberg*, **is a non-waivable on direct appeal**. Mr. Diaz thus has the legal right to challenge how **the guilty plea was totally *INVALID* due to how he was represented by "Conflicted Counsel" during the plea negotiation process(es).**

The reason why the **Guilty Plea** was **INVALID** was due to how Mr. Diaz was forced to be represented by "**Conflicted Plea Counsel(s)**" as a result of how the presiding judge, Robert J. Eby, has a track history of denying criminal defendants of their Sixth Amendment Rights ²³. When this case was judicially reassigned ²⁴, however, the newly presiding Judge Munley **acknowledged that Mr. Diaz and his Plea Counsel(s) had "Conflicts of Interests" with one another** ²⁵.

Therefore, it is an incontrovertible fact that the State Trial Court's is of record acknowledging that **there were genuine "Conflicts" between that of Mr. Diaz and his Plea Counsel(s)**. With that said, it must hereby be mentioned that this High Court synonymized the relevant Sixth Amendment Rights issues as follows:

"Where a constitutional right to counsel exists, our Sixth Amendment cases hold that **there is a correlative right to representation that is free from conflicts of interest.**", quoting *Wood v. Georgia*, 450 U.S. 261, 271 (1981) (emphasis added) (case citations omitted).

Therefore, since Mr. Diaz had his numerous motions for "conflict-free" counsel denied by Judge Eby, **this equated to having no counsel at all during the plea negotiation phase(s) that occurred in this case**. With that being well-established onto the record, we can further look at how this High Court succinctly ruled that:

"The Sixth Amendment safeguards to an accused who faces incarceration **the right to counsel at all critical stages of the criminal process. The entry of a guilty plea . . . ranks as a 'critical stage' at which the right to counsel adheres.**", quoting *Iowa v. Tovar*, 541 U.S. 77, 80-81 (2004) (emphasis added) (case citations omitted).

Footnote 23: See *Commonwealth v. Beam*, 2014 Pa. Super. Unpub. LEXIS 208 (Docket No. 1810 MDA 2013 (Pa. Super. Ct. July 2, 2014) ("[C]onclud[ing] that the [Honorable Robert J. Eby's] finding that Appellant forfeited his right to counsel was erroneous.").

Footnote 24: See p. *6, n.11 herein above for details on this judicial reassignment.

Footnote 25: See p. *7, n.12 herein above for details on this particular issue.

Therefore, by combining the above-quoted controlling holdings from *Wood* and *Tovar, supra*, one must deduce that "the entry of a guilty plea [] ranks as a 'critical stage' at which the right to [Conflict-Free]²⁶ counsel exists."²⁷ In this case, due to reasons that were fully set forth herein above, **Mr. Diaz entered his Guilty Plea while he was represented by Conflicted Plea Counsel(s).**

This is critical to mention due to how this Court established the "**Correlative Right**" to "**Conflict-Free**" Counsel in *Wood, supra*. Therefore, we can look to another precedential ruling from this High Court which acknowledged that:

"[C]riminal defendants require [**Conflict-Free**] counsel during plea negotiations. Anything less might deny a defendant [Conflict-Free] representation by counsel at the only stage when legal aid and advice would help him.", quoting *Missouri v. Frye*, 566 U.S. 134, 144 (2012) (emphasis added) (citations and quotations omitted).²⁸

In conclusion, this issue at hand relates to how a criminal defendant's Sixth Amendment Right to "Conflict-Free" Legal Counsel was violated during the plea negotiation process(es) and how this, in turn, mandates that a post-sentence request to withdraw a guilty plea be granted. Unfortunately, in this case, the State Courts collectively "decided [upon this] important federal question in a way that conflicts with relevant decisions of this Court"²⁹ from *Wood, Tovar*, and *Frye, supra* by minimizing the importance of protecting Mr. Diaz's Sixth Amendment Rights.

It is due to these constitutional violations related to the plea negotiation process(es) that occurred in this case that Mr. Diaz formally requests of this High Court to grant the relief that is set forth herein directly below.

Footnote 26: The phrase "Conflict-Free" was added in due to how this Court sagely issued the above-quoted ruling from *Wood*, 450 U.S. at *271.

Footnote 27: Quoting *Tovar*, 541 U.S. at *81 (emphasis added).

Footnote 28: The phrase of "**Conflict-Free**" was inserted in twice in place of the word "**Effective**" within the brackets.

Footnote 29: Quoting U.S. Sup. Ct. R. 10(c).

CONCLUSION

WHEREFORE, based upon the foregoing, the Petitioner respectfully requests of this Honorable Supreme Court of the United States to **GRANT** this enclosed *Petition for a Writ of Certiorari* by **ORDERING** the Pennsylvania State Courts to **REVERSE** their *Opinions* and *Orders* that were entered in this case and to bestow upon Mr. Diaz the following relief:

1. - To **GRANT** the Petitioner leave to withdraw his guilty plea that was entered in this case before the State Trial Court on May 13, 2022 due to at least one (1) of the two (2) following reasons:
 - i. - Due to how the State Courts violated the Double Jeopardy Clause of the Fifth Amendment by how Mr. Diaz was sentenced in accordance with a negotiated plea that was premised upon waiving a mandatory minimum sentence that he was not even susceptible to being sentenced to; and/or
 - ii. - Due to how the State Courts violated Mr. Diaz's Sixth Amendment Right to be represented by "Conflict-Free" legal counsel during the plea negotiation process(es); and
2. - To **GRANT** such other relief as justice may require under the circumstances.

Date: March 18, 2025

Note: The "Prisoner Mailbox Rule" applies to this instant filing.
- See Fed.R.App.P.4(c)(1).
- Also see *Houston v. Lack*,
487 U.S. 266, 275-276 (1988).

Eric W. Diaz

Eric William Diaz, Petitioner, *pro se*
Inmate #QP-0643
SCI - Coal Township
1 Kelley Drive
Coal Township, PA 17866-1020