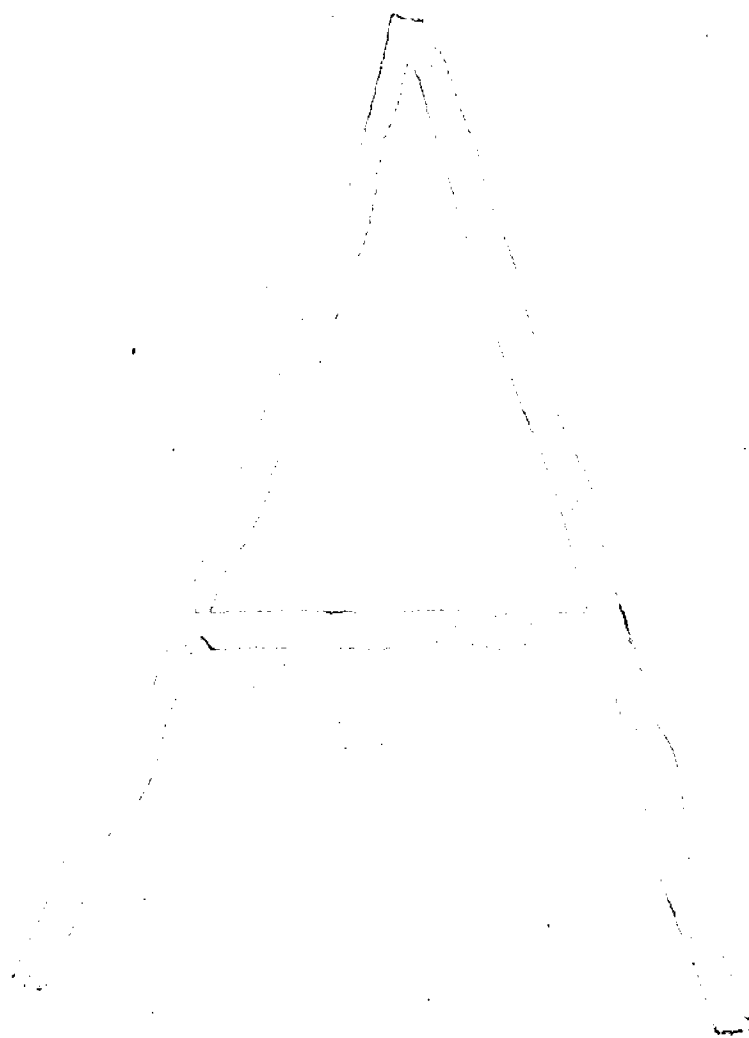


APPENDICES TABLE OF CONTENTS

- A. U.S. Court of Appeals Denial of rehearing 2-28-25 No. 24-1878
- B. Petition for rehearing en banc mailed: 2-5-25 No. 24-1878
- C. U.S. Court of Appeals Order dismissing appeal 1-27-25 No. 24-1878
- D. Appeal/App. for COA, Notice of Appeal, and IFP= 5-7-24
- E. U.S. Dist. Court ORDER denying 59(e) 12-22-23
- F. 59(e) Motion, and Brief in Support thereof 12-8-23, 12-18-23
- G. U.S. Dist Court Memorandum Opinion denying 2254 11-29-23
- H. Reply to respondent's answer to 2254 12-30-23
- I. 12-14-22 memorandum of law, and 2254 petition 10-11-22
- J. Supreme Court's 8-23-22 ORDER denying allowance of appeal
- K. pro se allowance of appeal, and counsel late allowance of appeal  
7-20-21  
No. 276 MT 2021 & 100 MAL 2021
- L. September 17, 2019 pro se PCRA No. CP-44-CR-0000560-2016
- M. Counsel Scott N. Pletcher's December 30, 2019 Amended PCRA  
(Where he omitted issues and then again in a brief.)



UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

No. 24-1878

---

MICHAEL C. ROMIG,  
Appellant

v.

SUPERINTENDENT FRACKVILLE SCI, ET AL.

---

(M.D. Pa. No. 4:22-cv-01628)

---

SUR PETITION FOR REHEARING

---

Present: CHAGARES, *Chief Judge*, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and SCIRICA,\* *Circuit Judges*.

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

---

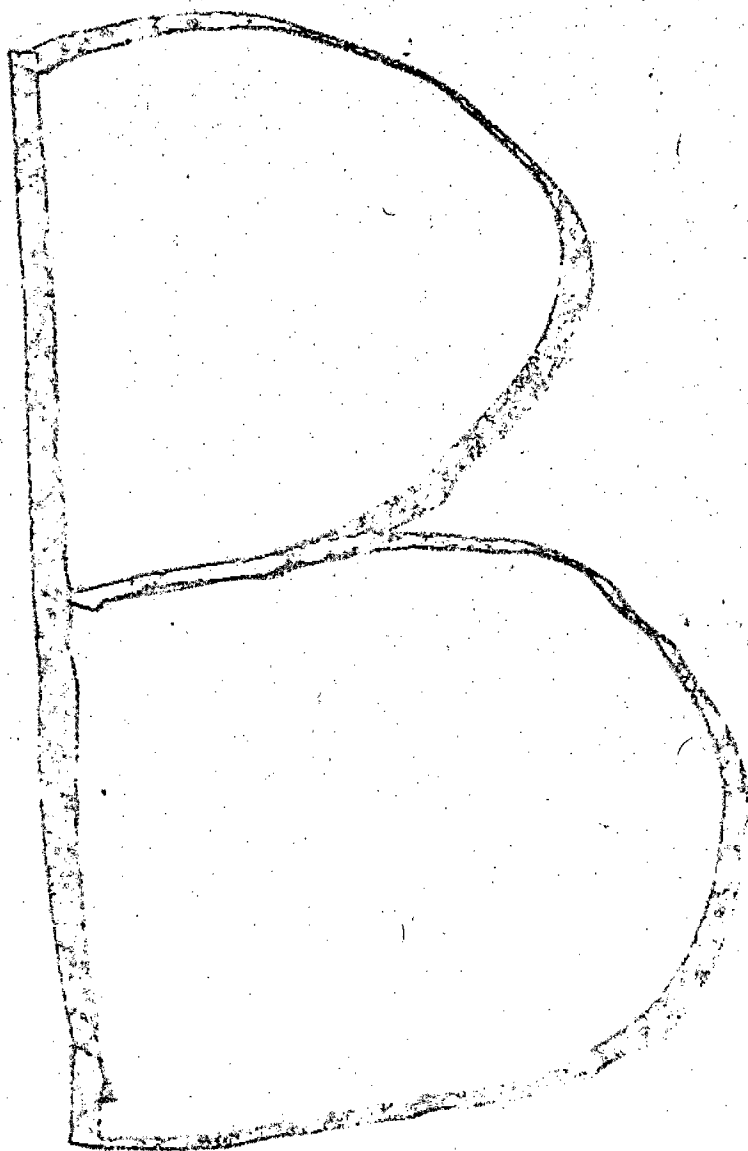
\* Judge Scirica's vote is limited to panel rehearing.

circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Peter J. Phipps  
Circuit Judge

Date: February 28, 2025  
Lmr/cc: Michael C. Romig  
All Counsel of Record



UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 24-1878

MICHAEL C. ROMIG, Appellant

VS.

SUPERINTENDENT FRACKVILLE SCI, ET AL

PETITION FOR REHEARING (en banc)

AND NOW COMES, Michael C. Romig pro se, requesting a rehearing where Appellant respectfully opposes the dismissing of his appeal on jurisdictional grounds of untimeliness, per this Courts January 27th 2025 panel opinion/order for the following reasons:

1.) After the District Court denied this Petitioner's Habeas corpus (28 U.S.C. § 2254), and Petitioner's subsequent motion for reconsideration of a final order, Petitioner attempted to file certiorari with the Supreme Court of the United States 1 First Street, N.E., Washington, DC 20543.

2.) On March 4th 2024 the Supreme Court of the United States issued a correction letter, of which did not reach the Petitioner because it was returned to sender by the Department of Corrections for failure to meet policy requirements. The letter of which was attached to the "NOTICE OF APPEAL, and APPLICATION FOR CERTIFICATE OF APPEALABILITY" states "Your case must first be appealed to the United States court of appeals. 28 USC 1254." This March 4th 2024 correction letter was returned by the Department of Corrections, where the same was received by the Office of the Clerk Supreme Court, U.S. on April 9th 2024, where the Supreme Court later re mailed the same to petitioner where he then finally did receive the correspondence. (Copy of Correspondence not attached where Petitioner requests leave to provide this Court with same.)

3.) Finally, this Petitioner properly filed his "NOTICE OF APPEAL, and APPLICATION FOR CERTIFICATE OF APPEALABILITY" by placing the same in the prison mail box on or about May 7th 2024. This is within thirty days of the United States Supreme Court's correction letter, and should be considered timely. Additionally, a habeas filing from a State conviction is a criminal matter.

4.) This Petitioner has been challenging this conviction, from the start with no avail, where Petitioner beleives he is justified and therefore innocent.

Wherefore in the interest of fair justice, Petitioner prays this appellate Court grant his request for leave to file the document received from the United States Supreme Court, rule on the Application For Certificate of Appealability, and schedule briefs.

-Attachment- This Courts ORDER dated January 27th 2025.

DATE: February 5th 2025

Respectfully Submitted



Michael C. Romig QK6374 pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 24-1878

MICHAEL C. ROMIG, Appellant

VS.

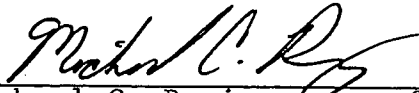
SUPERINTENDENT FRACKVILLE SCI, ET AL.

CERTIFICATE OF COMPLIANCE

I, Michael C. Romig hereby certify that the foregoing petition is less than 3900 words and less than 15 pgs. in accordance with Fed. R. App. P. 32(g).

DATE: February 5th 2025

Respectfully,



Michael C. Romig pro se QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 24-1878

MICHAEL C. ROMIG, Appellant

VS.

SUPERINTENDENT FRACKVILLE SCI, ET AL.

CERTIFICATE OF SERVICE

I Michael C. Romig hereby certify that all parties below have been served this day indicated below, by placing the foregoing Petition (copies) with prison authorities to be mailed by U.S. Postal Service first class:

Office Of The Clerk  
United States Court Of Appeals  
For the Third Circuit  
21400 United States Courthouse  
601 Market Street  
Philadelphia, PA. 19106-1790

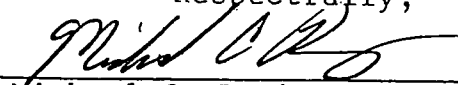
Susan E. Affronti  
Ronald Eisenberg  
Office Of Attorney General of PA  
1600 Arch Street  
Suite 300  
Philadelphia, PA 19103

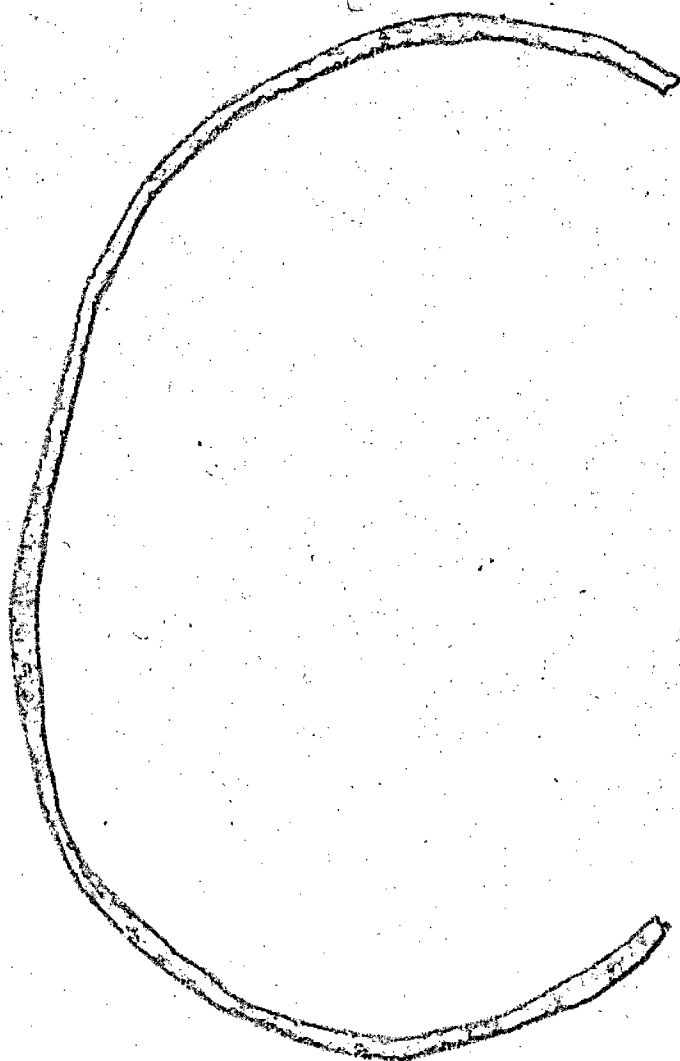
Gregory J. Simatic  
Office Of Attorney General of PA  
Appellate Litigation Section  
1251 Waterfront Place  
Pittsburgh, PA. 15222

Scott S. Harris, Clerk  
Emily Walker  
Supreme Court Of The United States  
Office Of The Clerk  
Washington, DC 20543-0001

DATE: February 5th 2025

Respectfully,

  
\_\_\_\_\_  
Michael C. Romig pro se QK6374  
S.C.I Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931



CLD-020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 24-1878

MICHAEL C. ROMIG, Appellant

VS.

SUPERINTENDENT FRACKVILLE SCI, ET AL.

(M.D. Pa. No. 4:22-cv-01628)

Present: KRAUSE, PHIPPS, and SCIRICA, Circuit Judges

Submitted are:

- 1) By the Clerk for possible dismissal due to a jurisdictional defect;
- 2) Appellant's notice of appeal, which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and
- 3) Appellant's motion to rescind the portion of the District Court's May 23, 2024 Order applying 28 U.S.C. Section 1915(b) and assessing fees for the appeal

in the above-captioned case.

Respectfully,

Clerk

ORDER

To be timely, a notice of appeal in a civil case must be filed within thirty days after entry of judgment. See Fed. R. App. P. 4(a)(1)(A). The deadline for filing a notice of appeal in a civil case is "mandatory and jurisdictional." Bowles v. Russell, 551 U.S. 205, 207-09 (2007). This Court "do[es] not have the power to create equitable exceptions to jurisdictional requirements." Carrascosa v. McGuire, 520 F.3d 249, 254 n.9 (3d Cir. 2008). Nor has Romig filed any documents which might be construed as a timely motion to extend the time to appeal under Fed. R. App. P. 4(a)(5) or to reopen the time to appeal

under Fed. R. App. P. 4(a)(6). Romig's appeal is plainly untimely, so we dismiss it for lack of appellate jurisdiction. Because we dismiss the appeal on jurisdictional grounds, we do not reach the question of whether to issue a certificate of appealability. And, because the District Court has already modified its May 23, 2024 Order requiring the deduction of fees from Romig's inmate account to cease further deductions and return any money improperly deducted, Romig's motion for the return of his fees is denied as moot.

By the Court,

s/ Peter J. Phipps  
Circuit Judge

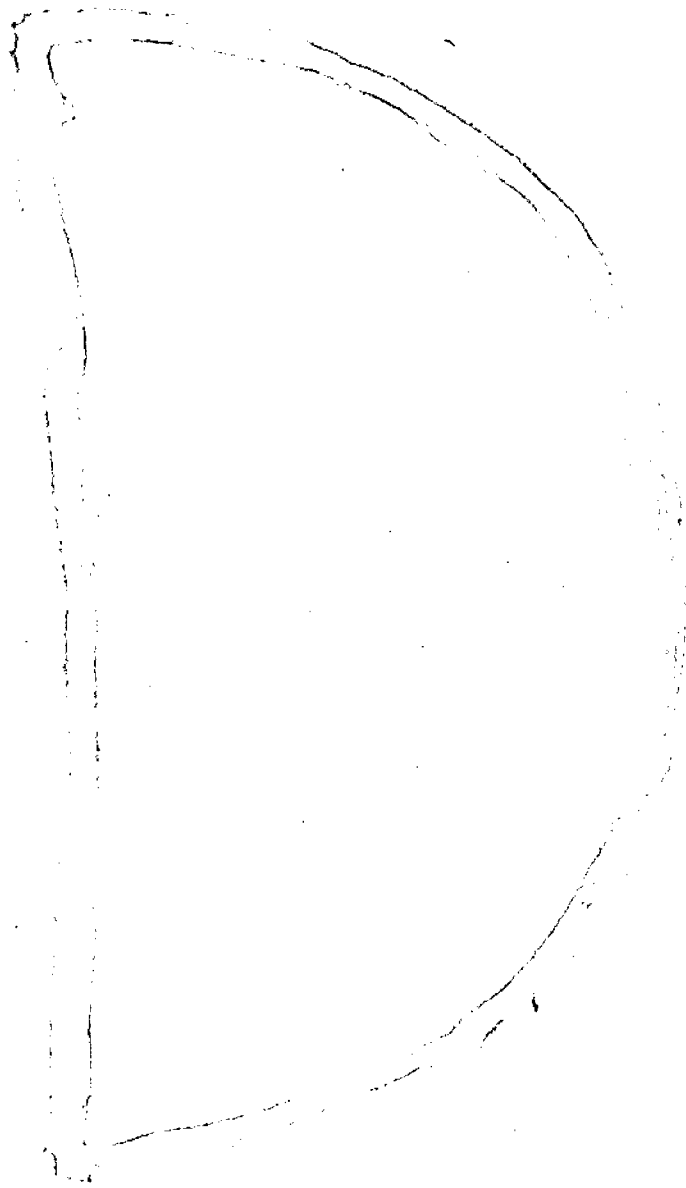
Dated: January 27, 2025  
Lmr/cc: Michael C. Romig  
All Counsel of Record



A True Copy:

*Patricia S. Dodszeit*

Patricia S. Dodszeit, Clerk  
Certified Order Issued in Lieu of Mandate



★

Michael C. Romig QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

May 7th 2024

To: U.S. District Court

Re: COA No. 4:22-cv-01628-MWB-MP

Enclosed please find (2) two copies each of Application for COA, Notice of Appeal, and IFP. Additionally as certificate of service indicates Gregory J. Simatic was also served with one copy.

Please note that the attachment exhibit to COA (letter from United States Supreme Court Washington D.C.) was delayed getting to me because of Department of Corrections refusing mail from The Supreme Court, due to DC-AD,-803 mail policy, where this application is timely.

Yours Truly

  
\_\_\_\_\_  
Michael C. Romig

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL C. ROMIG,  
Petitioner,

v.

KATHY BRITTAIN,  
Respondent

No. 4:22-cv-01628-MWB-MP

APPLICATION FOR CERTIFICATE OF APPEALABILITY (COA)

AND NOW COMES, Michael C. Romig pro se, and prays this Court issue a certificate of appealability, and avers the following:

JURISDICTION AND TIMELINESS

Petitioner filed a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Said petition was denied by this court November 29th 2023, as was Romig's subsequently motion for reconsideration of a final order, that was denied December 22, 2023. Petitioner then believed his only avenue was to appeal to The Supreme Court Of The United States Washington D.C.. After filing "Petition For Writ of Certiorari", Romig received a correspondence back from the Supreme Court directing him to first appeal to a United States Court of Appeals 28 U.S.C. § 1254, stamped with a date of April 9th 2024 (see attachment of this correspondence as evidence). Where Romig should have 30 days from that date to file this application, Notice of Appeal, and Motion For Leave To Proceed In Forma Pauperis. Where these Petitions are timely.

A. Scope and Standard for Granting Certificate of Appealability

Congress mandates that a prisoner seeking postconviction relief under 28 U.S.C. §2254 has no automatic right to a appeal from district court's denial or dismissal of a petition. Instead, petitioner must first seek and obtain a COA. Slack v. McDaniel, 529 U.S. 473, 481 (2000). A prisoner seeking a COA need only demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C §2253(c)(2). A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claim or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. (emphasis added) supra, at 484.

The standard for obtaining a COA does not require you to show that you're entitled to relief:

We do not require petitioner to prove ... that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case received full consideration, that petitioner will not prevail.

Miller-El v. Cockrell, 537 U.S. 322, 338 (2003). Therefore, doubts whether to issue a certificate of appealability should be resolved in favor of the petitioner. Fuller v. Johnson, 114 F.3d 491, 495 (5th Cir. 1997); and Buxton v. Collins, 925 F.2d 816, 819 (5th Cir. 1991); Buie v. McAdory, 322 F.3d 980 (7th Cir. 2003).

Further, if a ground was dismissed by the district court on procedural grounds (as it was at the current case, being procedurally defaulted by direct appeal counsel), a certificate of appealability must be issued if the petitioner meets the Barefoot v. Estella, 463 U.S. 880, 893 (1983) standard as to the procedural question, and shows, at least, that jurists of reason would find it debatable whether the ground of the petition at issue states a valid claim

of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 483-484 (2000).

Applying these principals above to Romig's application, a COA should be issued for the following grounds:

I. Ineffective Assistance of Counsels

In this case there is layers of ineffective assistance. It began with Trial counsel failing to object to the fact that there was no expert testimony as to the truth of injury at Trial as the judge at the preliminary hearing said there would be. Even though Trial counsel requested a deadly force castle doctrine, he failed to object after the judge came back and said he was only going to give the standard non-deadly force self defense instruction. By testimony of Romig on the stand he was entitled to the requested deadly force castle doctrine jury inst. (Suggested Jury Instruction 9.501A). Further, the Trial court abused it's discretion by refusing to give requested inst. The above is all violations of Petitioner's constitutional right to a fair trial. Additionally, Trial counsel was ineffective for failing to impeach Kelly McTavish, on the grounds of what he knew, but that the prosecution failed to disclose after it was also requested by defense counsel, violating Brady v. Maryland. Direct appeal counsel was ineffective for brief the castle doctrine deadly force jury instruction issue in the argument section of his brief to the Superior Court causing the issue to be waived by the Superior Court. And Lastly PCRA counsel was ineffective for failing to properly attack direct appeal counsels ineffectiveness, causing the issue to be procedurally defaulted by this court.

See Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L.Ed 2d 272, 2012; and Leeds v. Russel, 75, F.4th 1009 (9th Cir.2023) both cases of which are in direct opposition to the handling of this case by the District Court in the current case. Moreover Romig was entitled to effective assistance of counsel on direct appeal, and the District Court erred in it's rational opinion @76 as direct appeal counsel was also given Commonwealth v. Johnston, 263 A.2d 376 (Pa. 1970) where this Petitioner requested that he apply it to the deadly force castle doctrine instruction argument, where he failed to brief the issue (see Romig, No. 400 MDA 2018, 2018 WL 6598400 footmote 2.). Further Romig beleives that a request for instruction is sufficient and the District Court again erred at 57 of it November 29th 2023 opinion.

## II. U.S. District Court Constitutional error

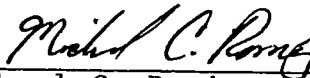
It was constitutional error for the District Court to procedurally default petitioner on ground 1 and 2 due to court appointed counsel action/inaction (Trial Counsel, Direct Appeal Counsel, and PCRA Counsel), where petitioner raised the issue to counsel and was left to their mercy, and as a result petitioner was prejudiced. This is a result of Americas continuing neglect to provide adequate representation to indigent persons/defendants.

CONCLUSION

For the reasons in this petition and the procedural issues on the record, Romig prays this Court issue a COA on each of the grounds raised to the district court by petitioner, and any other relief which this Court deems just and proper under these circumstances.

Date: May 7<sup>th</sup> 2024

Respectfully Submitted



Michael C. Romig pro se QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

CERTIFICATE OF SERVICE

I Michael C. Romig hereby certify that a copy of the foregoing was mailed, postage paid, this 7<sup>th</sup> day of May, 2024, to Gregory J. Simatic Assistant Attornay General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

Respectfully Submitted



Michael C. Romig pro se QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

March 4, 2024

Michael C. Romig  
#QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, PA 17931

**COPY**

RE: Romig v. Brittain  
USDC ED PA No. 4:22-cv-01628-MWB-MP

Dear Mr. Romig:

The above-entitled petition for a writ of certiorari was postmarked February 15, 2024 and received February 26, 2024. The papers are returned for the following reason(s):

Your case must first be appealed to a United States court of appeals. 28 USC 1254.

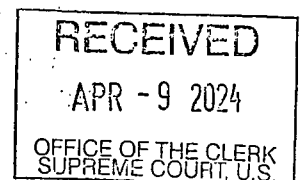
Sincerely,  
Scott S. Harris, Clerk

By **COPY**  
Emily Walker  
(202) 479-5955

Enclosures

*Attachment*

D-7



**United States District Court  
Middle District of Pennsylvania (Williamsport)  
CIVIL DOCKET FOR CASE #: 4:22-cv-01628-MWB-MP**

Romig v. Brittain et al  
Assigned to: Chief Judge Matthew W. Brann  
Referred to: Pro Se Law Clerk MP  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 10/18/2022  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner**

**Michael C. Romig**

represented by **Michael C. Romig**  
QK-6374  
SCI-Frackville  
SPECIAL MAIL-OPEN ONLY IN  
PRESENCE OF INMATE  
1111 Altamont Blvd.  
Frackville, PA 17931  
PRO SE

COPY

V.

**Respondent**

**Kathy Brittain**  
*Superintendent*

represented by **Gregory J. Simatic**  
Pennsylvania Office of Attorney General  
564 Forbes Avenue  
6th Floor  
Pittsburgh, PA 15219  
412-565-7680  
Email: gsimatic@attorneygeneral.gov  
**ATTORNEY TO BE NOTICED**

**Respondent**

**Josh Shapiro**  
*Attorney General of Pennsylvania*

**Respondent**

**Pennsylvania Attorney General's Office**

represented by **Gregory J. Simatic**  
(See above for address)  
**ATTORNEY TO BE NOTICED**

D-8

Date Filed	#	Docket Text
10/17/2022	<u>1</u>	PETITION for Writ of Habeas Corpus lodged pending the disposition of the Motion to Proceed In Forma Pauperis, filed by Michael C. Romig. (Attachments: # <u>1</u> Cover Letter, # <u>2</u> Appendix Part I, # <u>3</u> Appendix Part II)(lp) Modified on 10/18/2022 (lp).

Attachment 3 (5-18-2022)

		to Romig at SCI-Frackville )(nr) (Entered: 12/06/2022)
12/16/2022	<u>15</u>	Letter to the court in re interference of access to federal court correspondence from Michael C. Romig. (Attachments: # <u>1</u> Exhibit 1 - Unacceptable Correspondence Form, # <u>2</u> Exhibit 2 - Official Inmate Grievance) (nr) (Entered: 12/16/2022)
12/16/2022		DOCKET ANNOTATION: Per email from PRSLC - MP, Clerk is directed to remail <u>13</u> 12/2/2022 and <u>14</u> 12/6/2022 Order(s). (Resent today 12/16/2022) (nr) (Entered: 12/16/2022)
12/16/2022	<u>16</u>	MEMORANDUM OF LAW by Michael C. Romig re <u>1</u> Petition for Writ of Habeas Corpus. (Attachments: # <u>1</u> Transmittal Letter) (ea) (Entered: 12/16/2022)
12/23/2022	<u>17</u>	MOTION to Compel Use of Privileged Mail When Serving Documents by Michael C. Romig. (Attachments: # <u>1</u> Exhibit(s) - Certificate of Service)(nr) (Entered: 12/23/2022)
12/27/2022	<u>18</u>	ORDER - IT IS HEREBY ORDERED that Petitioner's <u>17</u> Motion to Compel is DENIED. Signed by Chief Judge Matthew W. Brann on 12/27/2022 (ea) (Entered: 12/27/2022)
12/30/2022	<u>19</u>	RESPONSE TO PETITION FOR HABEAS CORPUS by Pennsylvania Attorney General's Office by Pennsylvania Attorney General's Office. (Attachments: # <u>1</u> Appendix, # <u>2</u> Appendix, # <u>3</u> Appendix, # <u>4</u> Appendix, # <u>5</u> Appendix, # <u>6</u> Appendix, # <u>7</u> Appendix, # <u>8</u> Appendix, # <u>9</u> Appendix, # <u>10</u> Appendix, # <u>11</u> Appendix, # <u>12</u> Appendix, # <u>13</u> Appendix, # <u>14</u> Appendix, # <u>15</u> Appendix, # <u>16</u> Appendix, # <u>17</u> Appendix, # <u>18</u> Certificate of Service)(Simatic, Gregory) (Entered: 12/30/2022)
01/03/2023	<u>20</u>	CERTIFICATE OF SERVICE for Memorandum of Law by Michael C. Romig (Attachments: # <u>1</u> Cash Slips) (ea) (Entered: 01/03/2023)
01/23/2023	<u>21</u>	MOTION for Default Judgment by Michael C. Romig. (Attachments: # <u>1</u> Proposed Order) (ea) (Entered: 01/23/2023)
02/02/2023	<u>22</u>	TRAVERSE by Michael C. Romig to <u>1</u> Petition for Writ of Habeas Corpus(Lodged with Motion for IFP), <u>19</u> Response to Petition for Habeas Corpus,. (Attachments: # <u>1</u> Appendix List of Apendices, # <u>2</u> Appendix 2 - Tra1 - Post Sentence Motion, filed September 25, 2017, # <u>3</u> Appendix 2 - Transcript of proceeding of: Post Sentence Motion Held January 4, 2018, # <u>4</u> Appendix 3 - otion To Suppress Physical Evidence & Motion To Compel Funds for Expert Witness/Services Filed April 24, 2017, # <u>5</u> Appendix 4 -Transcript of proceedings of: Motion To Suppress Physical Evidence Held July 10, 2017, # <u>6</u> Appendix 5 -Superior Court Appeal Docket Sheet 1168 MDA 2020, # <u>7</u> ppppdix 6 -Transcript of proceeding on: Superior Courts ORDER for a on the record inquiry concerning counsel's Stewardship, Held January 5, 2021, # <u>8</u> otice of Intention to Appeal Filed Sept. 11, 2020, Concise Statement of Issues ComplainedFiled September 30, 2020 & Letter to Scott Pletcher Sent Oct. 27, 2020, # <u>9</u> Appendix 8 -Kelley McTavish's Criminal History Report, # <u>10</u> Appendix 9 -James Moore's Criminal History Report, # <u>11</u> Appendix 10 -Patricia-Koch's Criminal History Report, # <u>12</u> Appendix 11 -State Police Incident Report ( shows hospital arrival time ect.), # <u>13</u> Certificate of Service)(nr) (Entered: 02/02/2023)
02/02/2023	<u>23</u>	ORDER - IT IS HEREBY ORDERED that <u>21</u> Motion for Default Judgment is DEEMED withdrawn. Signed by Chief Judge Matthew W. Brann on 02/02/2023 (ea) (Entered: 02/02/2023)

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL C. ROMIG,  
Petitioner,

v.

No. 4:22-cv-01628-MWB\_MP

Kathy Brittain,  
Respondent

NOTICE OF APPEAL

Notice is hereby given that Michael C. Romig hereby appeals to the United States Court of appeals for the 3rd Circuit from the District Court's denial of Petitioner's writ of habeas corpus (November 29th 2023), and subsequent denial of motion for reconsideration of a final order (December 22nd 2023), where the Supreme Court Of The United States directed this appellant to the court of appeals, where this court did not issue a certificate of appealability.

Respectfully Submitted,



Michael C. Romig pro se QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

CERTIFICATE OF SERVICE

I Michael C. Romig hereby certify that a copy of the foregoing was mailed, postage prepaid, this 7<sup>th</sup> day of May, 2024, to Gregory J. Simatic Assistant Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.



Michael C. Romig QK6374

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MICHAEL C. ROMIG,  
Petitioner

v.

KATHY BRITTAIN,  
Respondent,

No. 4:22-cv-01628-MWB\_MP

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

AND NOW COMES, Petitioner, Michael C. Romig, and for his motion for leave to proceed in forma pauperis states as follows:

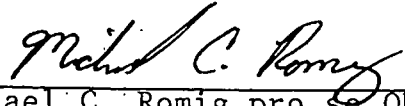
1. Petitioner is and has proceeded in this District Court by way of IFP status, and will be proceeding pro se IFP status on this appeal as well.

2. Petitioner is incarcerated, unemployed, and without funds to pay filing fees in this matter to perfect the appeal. Petitioner only receives \$50.00 a month from the Department of Corrections to live on. Other than an occasional gift sent from family and friends Petitioner does not have any other funds. (see attached statement of prison account).

3. Petitioner respectfully requests this Court to grant his leave to proceed in forma pauperis and waive the \$455 filing fee.

Respectfully Submitted,

Date: May 7<sup>th</sup> 2024

  
Michael C. Romig pro se QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania  
17931



# Integrated Offender Case Management System

5/1/2024 10:41:40 AM

## Monthly Account Statement

From Date: 04/01/2024

To Date: 04/30/2024

Housing	Case ID	Offender Name	Location	
D-A-2017-02	QK6374	ROMIG,MICHAEL	FRACKVILLE	
Batch#	Txn Date	Txn Description	Txn Amount(\$)	Balance After Transaction(\$)
FRA-034445	04/03/2024	32 - Commissary (FRA COMMISSARY FOR 04/03/2024)	-6.69	2.14
FRA-034454	04/04/2024	32 - Commissary (FRA COMMISSARY CR FOR 04/04/2024)	+3.50	5.64
FRA-034492	04/09/2024	32 - Commissary (FRA COMMISSARY FOR 04/09/2024)	-4.95	0.69
FRA-034507	04/10/2024	10 - Maintenance Payroll (GRP 2 - 7th -6th)	+61.60	62.29
FRA-034547	04/16/2024	32 - Commissary (FRA COMMISSARY FOR 04/16/2024)	-17.69	44.60
FRA-034574	04/20/2024	13 - Personal Gifts (MCCARDLE , CAROLE)	+50.00	94.60
FRA-034586	04/23/2024	37 - Postage (POSTAGE 4/23/24)	-8.95	85.65
FRA-034586	04/23/2024	37 - Postage (POSTAGE 4/23/24)	-2.35	83.30
FRA-034586	04/23/2024	37 - Postage (POSTAGE 4/23/24)	-2.35	80.95
FRA-034586	04/23/2024	37 - Postage (POSTAGE 4/23/24)	-2.35	78.60
FRA-034596	04/24/2024	32 - Commissary (FRA COMMISSARY FOR 04/24/2024)	-43.57	35.03
FRA-034612	04/25/2024	34 - Cable	-17.00	18.03
FRA-034638	04/30/2024	32 - Commissary (FRA COMMISSARY FOR 04/30/2024)	-8.70	9.33
Current, Escrow, & Available Balances are as of 5/1/2024 10:41:40 AM				
Current Balance		9.33		
Escrow Balance		0.00		
Available Balance		9.33		

CERTIFICATE OF SERVICE

I Michael C. Romig hereby certify that a copy of the foregoing was mailed, postage prepaid, this 7<sup>th</sup> day of May, 2024, to Gregory J. Simatic Assistant Attorney General, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

Respectfully Submitted

A handwritten signature in cursive script, reading "Michael C. Romig", is written over a horizontal line.

Michael C. Romig pro se QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

1944

1944

1944

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL C. ROMIG,

Petitioner,

v.

KATHY BRITTAIN,

Respondent.

No. 4:22-CV-01628

(Chief Judge Brann)

**ORDER**

**DECEMBER 22, 2023**

AND NOW, upon consideration of Petitioner Michael Romig's motion "for reconsideration relief from judgment or order Rule 60(b),"<sup>1</sup> which the Court construes as a motion for reconsideration of a final order—*i.e.*, a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e),<sup>2</sup> **IT IS**

**HEREBY ORDERED** that:

1. Romig's motion (Doc. 32) to alter or amend judgment is **DENIED**.<sup>3</sup>

---

<sup>1</sup> Doc. 32.

<sup>2</sup> See *Wiest v. Lynch*, 710 F.3d 121, 127 (3d Cir. 2013) (explaining that a motion characterized as a "motion for reconsideration," which "is not described in the Federal Rules of Civil Procedure," operates as "the functional equivalent of a Rule 59(e) motion to alter or amend a judgment" (citations omitted)).

<sup>3</sup> Romig's motion for reconsideration does not satisfy any of the narrow avenues for Rule 59(e) relief: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when [judgment was entered]; or (3) the need to correct clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (citation omitted). Romig merely attempts to relitigate the same arguments that were raised in his Section 2254 petition. See generally Doc. 33. However, a motion for reconsideration may not be used to reargue or relitigate old issues. See *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008) (citation omitted); 9C CHARLES ALAN WRIGHT & ARTHUR MILLER, FEDERAL PRACTICE & PROCEDURE §§ 2582,

2. To the extent that Romig's motion can be construed as a motion under Federal Rule of Civil Procedure 60(b), such motion is likewise **DENIED**. A certificate of appealability shall not issue, as Romig has not made a substantial showing of the denial of a constitutional right, *see* 28 U.S.C. § 2253(c)(2), or that "jurists of reason would find it debatable" whether this Court's procedural ruling is correct, *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

BY THE COURT:

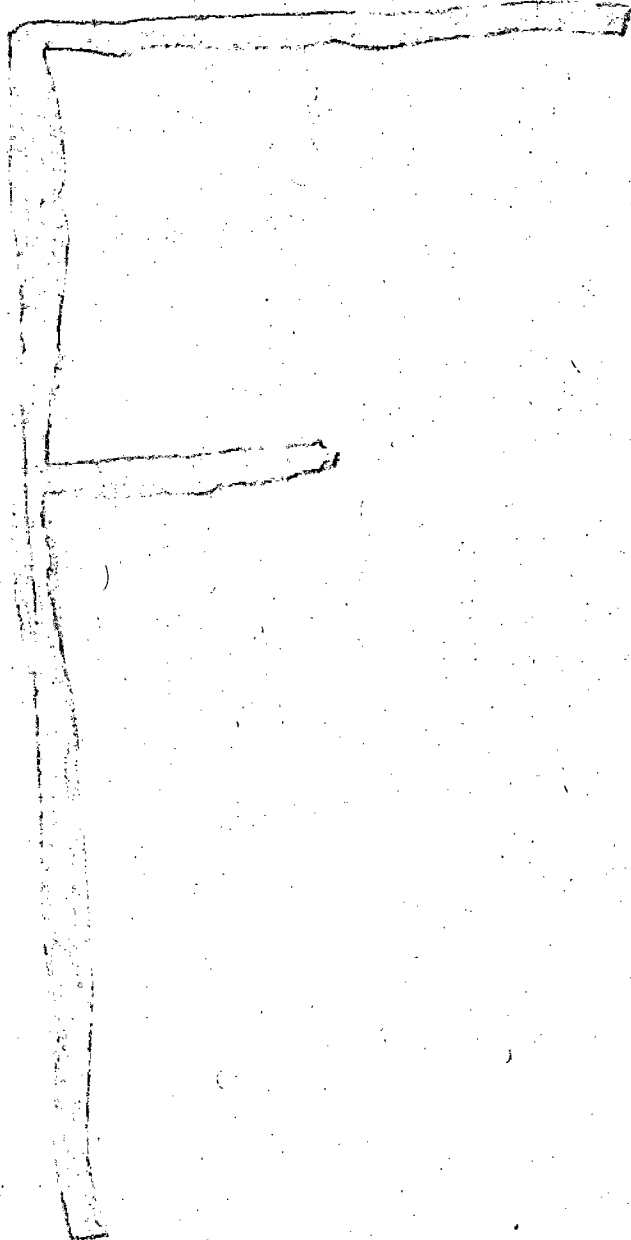
s/ Matthew W. Brann

Matthew W. Brann

Chief United States District Judge

---

2810.1 (3d ed. 2018). Nor is it a proper procedural vehicle to assert arguments that could have been raised earlier. *United States v. Kalb*, 891 F.3d 455, 467 (3d Cir. 2018). None of the arguments Romig asserts in his Rule 59(e) motion meet the stringent requirements for consideration following entry of judgment, much less do they warrant relief therefrom. Accordingly, the Court will deny Romig's motion for reconsideration.



Michael C. Romig QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

To: Clerk/Gregory Simatic

Re: No. 4:22-CV-01628

December 8th 2023

Please find and file the enclosed 60(b) Motion For Reconsideration Relief From Judgment or Order. Within Fourteen (14) days you will receive a brief in support of the foregoing motion. Thank you for your time in this very important matter.

Yours Truly

A handwritten signature in black ink, appearing to read 'Michael C. Romig', written over a horizontal line.

Michael C. Romig QK6374 pro se

copy

IN THE UNITED STATES DISTRICT COURT OF PENNSYLVANIA MIDDLE DISTRICT  
Sitting In Williamsport

MICHAEL C. ROMIG,  
Petitioner,

v.

KATHY BRITTAIN,  
Respondent.

:

:

:

No. 4:22-CV-01628

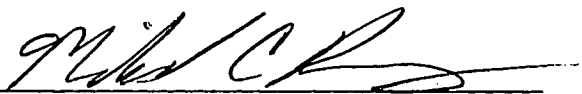
(Chief Judge Brann)

MOTION FOR RECONSIDERATION RELIEF FROM JUDGMENT OR ORDER

60(b)

AND NOW COMES, Michael C. Romig pro se requesting relief from a November 29th 2023 Memorandum Opinion and ORDER from this Court. Requested relief pertain to 60(b)(2)(5)(7). This arose from this Courts Opinion on Petitioner's 2254 Habeas Corpus grounds. This implicates current case law, and a Brief Supporting this Motion will follow within fourteen (14) days.

Respectfully Submitted



Michael C. Romig QK6374 pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

Date: December 8th 2023

IN THE UNITED STATES DISTRICT COURT OF PENNSYLVANIA MIDDLE DISTRICT  
Sitting In Williamsport

MICHAEL C. ROMIG,  
 Petitioner,

v.

KATHY BRITTAIN,  
 Respondent.

:

:

:

No. 4:22-CV-01628

(Chief Judge Brann)

CERTIFICATE/PROOF OF SERVICE

I hereby certify that on this date I mailed a Original and three copies to the Clerk, and one copy on the attorney general at the addresses below of this Motion For Reconsideration Relief From Judgment or Order 60(b):

Office Of The Clerk

Gregory J. Simatic

United States District Court

PA Office Of Attorney General

Middle District Of Pennsylvania

564 Forbes Ave.

U.S. Courthouse, Suite 218

Pittsburgh, Pennsylvania 15219

240 West Third Street

Williamsport, Pennsylvania 17701-6460

Respectfully Submitted



Michael C. Romig QK6374 pro se  
 S.C.I. Frackville  
 1111 Altamont Blvd.  
 Frackville, Pennsylvania 17931

DATE: December 8th 2023

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
Sitting in Williamsport

---

Civil Action No. 4:22-CV-01628  
(Chief Judge Brann)

---

Michael C. Romig,  
Petitioner,

v.

Kathy Brittain,  
Respondent.

---

BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION RELIEF FROM JUDGMENT OR ORDER  
60(b)

---

For Petitioner:

Michael C. Romig QK6374 pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

For Respondent:

Office of the Attorney General Western District  
Gregory J. Simatic  
564 Forbes Ave.  
Pittsburgh, Pennsylvania 15319

---

## TABLE OF CONTENTS

	Page
- Cover Sheet.....	1.
- Table of Contents.....	2.
- Table of Citations.....	2.
- Table of Statues.....	2.
- Order in Question.....	3.
- Procedural History of Case.....	4.
- Statement of Case.....	5.
- Argument.....	6, 7, 8.
- Conclusion.....	9.
- Certificate of Compliance.....	10.
- Certificate/Proof of Service.....	11.

## TABLE OF CITATIONS

- Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L.Ed 2d 272, 2012 U.S. LEXIS 2317..	6.
- Leeds v. Russel, 75, F.4th 1009 (9th Cir. 2023).....	6.
- Commonwealth v. Johnston, 263 A.2d 376 (Pa. 1970).....	6.
- Benatar v. United States, (1954, Ca9 Cal) 209, F.2d 734, 54-1 USTC P 9174, 45 AFTR 209, cert den (1954) 347 U.S. 974, 74 S. Ct. 786, 98 L.Ed 1114.....	7.

## STATUTES

- 28 U.S.C. § 2253 (c) (2).....	3.
- 28 U.S.C. § 2254.....	3, 4, 5, 10.
- 18 Pa.C.S.A. § 2702 (a) (1).....	4.
- 18 Pa.C.S.A. § 2702 (a) (4).....	4.
- 18 Pa.C.S.A. § 2701.....	4.

## SECODARY AUTHORITIES

- Suggested Jury Inst. 9.501B.....	7, 8.
- Suggested Jury Inst. 9.501A.....	7.

ORDER IN QUESTION

AND NOW, this 29th day of November 2023, in accordance with the accompanying Memorandum, IT IS HEREBY ORDERED that:

1. Petitioner Michael C. Romig's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is DENIED.
2. A certificate of appealability shall not issue, as Romig has not made a substantial showing of the denial of a constitutional right. see 28 U.S.C. § 2253(c)(2).
3. Romig's motion "for bail/release pending appeal" (DOC. 27) is DISMISSED as moot in light of paragraph 1 above.
4. The Clerk of Court is directed to CLOSE this case.

BY THE COURT:

Matthew W. Brann  
Chief United States District Judge

## PROCEDURAL HISTORY OF THE CASE

This case originated as a result of an incident that took place on or about August 2nd 2016, in the Petitioner's home (338 Whiskey Rd. Ext. McClure, Pennsylvania 17841). The incident occurred on or on the second, where Petitioner was detained on the morning of the third by State Police without incident. Petitioner was charged and arraigned on the third, where a Preliminary Hearing was held before Magisterial District Judge Jonathan Reed, Wednesday September 14th 2016. Charges were bound over. On April 18th 2017 a Hearing was held for Defendant's Rule 600 Motion, where nominal bail was granted and posted. State Parole lodged a detainer pending outcome of criminal charges. Petitioner reached his maximum expiration of that parole, and was released from S.C.I. Huntingdon on June 17th 2017, before being brought to trial on charges. Petitioner showed up to Trial on his own recognizance and was convicted of all charges 18 Pa.C.S.A. §2702(a)(1) Aggravated Assault, 18 Pa.C.S.A. §2702(a)(4) Aggravated Assault with a deadly weapon, and 18 Pa.C.S.A. §2701 Simple Assault, at a one day Jury Trial July 18th 2017. Sentencing was deferred until September 14th 2017, where Petitioner was sentenced to an aggregate term totaling nine and one-half (9½) years to thirty (30) years in a S.C.I.. Post Sentence Motions were filed and denied. Direct appeals were denied. PCRA was filed and subsequently denied by the Trial Court. PCRA appeals to the Superior Court, and allowance of appeal to the Supreme Court were denied as well. This Writ of Habeas Corpus (2254) was filed and denied in this Court. This 60(B) Motion follows to reopen the case.

STATEMENT OF CASE

Petitioner filed a writ of habeas corpus pursuant to 28 U.S.C. §2254 from state-court convictions and sentence, (see order in question).

This 60(b) motion follows to reopen said case. (see argument)

## ARGUMENT

Pro Se litigants should be given a reasonable latitude as they are not attorneys, where the Court can rely on the record, opinions & ORDERS, other filings and notes, where the denial of this writ of habeas corpus is unreasonable, for this and all of the following.

This writ of habeas corpus deals with a layered claim of ineffective assistance of counsel (Trial IAC, Direct Appeal IAC, and Post Conviction Counsel's "PCC" IAC). Leading to Trial Court's error in not giving a deadly force justificatin instruction, where trial counsel did in fact lightly object to requested deadly force castle doctrine instruction not being given. See 7/18/17 Trial Tr. at 201:15-23, again at Trial Tr. at 204:2-206:3, and again ref. at Trial Tr. at 251:6-9. This layered claim of IAC on multiple different counsels at different stages of this proceeding invoke Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L.Ed 2d 272, 2012 U.S. LEXIS 2317, and Leeds v. Russel, 75, F.4th 1009 (9th Cir. 2023), for cause and prejudice to excuse "Procedural Default" in Federal Habeas Proceeding. To sum this up the Deadly Force Instruction was Constitutionally fundamental to this case, and require reversal. In addition to counsel's deficiencies see May 21st 2019 letter to Justin P. Miller (direct appeal counsel), February 3rd 2019 letter, and most importantly March 28th 2018 letter citing many case laws to include in direct appeal Superior Court Brief, including Commonwealth v. Johnston, 263 A.2d 376 (Pa. 1970) before his brief to the Superior Court. (All attached)

Petitioner was caused harm by Trial Counsels light objection at Trial, instead of a more "strenuous objection" [movie A Few Good Men], and more over suffered prejudice by this Court claiming inaccurately denying excuse for default. Further Petitioner claims that a issue cannot be waived by direct appeal counsels deficiency of failing to brief a raised meritorious issue, of which is reversible on IAC claim of direct appeal counsel.

**Ground One/Two**

Clearly the 9.501B "Use of Non-Deadly Force in Self Defense (Castle Doctrine) was fundamentally the wrong instruction according to the charges the Petitioner was charged with. Requested 9.501A "Use of Force/Deadly Force in Self-Defense(Castle Doctrine) should have been given. See Benatar v. United States (1954, Ca9 Cal) 209 F.2d 734, 54-1 USTC P 9174, 45 AFTR 209, cert den (1954) 347 US 974, 74 S Ct 786, 98 L Ed 1114 "Although fundamental instructions should be given by court regardless of proper request or objection, instruction that needs to be related to facts [charges] at bar in order to be related to the facts [charges] at bar in order to be proper is not such fundamental instruction. By this the trial court should not be able to benefit by giving a insufficient and incorrect justification instruction (9.501B), that requires a duty to retreat. Further see Doc 16 at 11 (from note 78 of this courts opinion) "If the requested jury instruction would have been given there would have been no limit to the amount [sic] of force that could be employed in ones home in self defense" versus being limited to a reasonable amount of force, of which clearly could have changed the outcome of trial.

Dispite case law that directly contradicts that there is no "Federal Constitutional right to assistance of counsel in post-conviction proceedings, and thus there is no right to effective assistance of post-conviction counsel." it is clear that it was direct appeal counsel and the limits of force at this courts opinion footnote at 78, this clearly shows the prejudice as the jury could have believed by 9.501B that I used unreasonable force, and was therefore guilty. Again this clearly would have changed the outcome of trial.

### Ground Three

Facts are that medical personel that were involved with procedüres at the hospital that records were used at preliminary hearing to bind charges over,where victim was not present, should have been available at trial as the judge at preliminary hearing said they would be. (See pages from preliminary hearing Tr. attached to habeas corpus). Additionally to testify to the fact that the hospital nor EMS would have given him benzos that were in his tox screen. (attached to habeas corpus) It further shows he lied on the stand saying he doesn't do those type of things, and would have drawn doubt in the jury's mind as to the truth of his testimony.

### Ground Four

Effective trial counsel with a defendants best interests has more sources than an incarcerated Petitioner to get more accurate docket numbers and court munbers, where Petitioner should not be barred, as trial counsel should have investigated these well known individuals prior to trial and impeached them. Trial counsel IAC, direct appeal counsel IAC, and PCC IAC resulted in this courts review of this issue.

CONCLUSION

For all of the foregoing reasons this Petitioner respectfully requests this court revisit this matter and grant him habeas relief as request in Petitioner writ of habeas corpus 2254 from his state-conviction, and any other relief this Court deems.

Date: December 18, 2023

Respectfully Submitted



---


Michael C. Romig QK6374 pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with Federal Rules of Procedure 11, relating to word count limit. This brief in support is about 1082 words, counted with my human eye, where there may be error, but is less than both 15 pages and 5000 words.

Date December 18, 2023

Respectfully Submitted



Michael C. Romig QK6374 pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
Sitting in Williamsport

Michael C. Romig,  
Petitioner,

v.

Kathy Brittain,  
Respondent.

No. 4:22-CV-01628

(Chief Judge Brann)

CERTIFICATE/PROOF OF SERVICE

I hereby certify that on this day I have mailed by way of First Class United States Postal Service, this BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION RELIEF FROM JUDGMENT OR ORDER 60(b) on the parties indicated below with the proper number of copies:

(One Original & Three Copies)

Office Of The Clerk  
United States District Court  
Middle District Of Pennsylvania  
U.S. Courthouse, Suite 218  
240 West Third Street  
Williamsport, Pennsylvania 17701-6460

(One Copy)

Gregory J. Simatic  
PA Office of Attorney General  
564 Forbes Ave.  
Pittsburgh, Pennsylvania 15219

Date: December 18, 2023

Respectfully Submitted



Michael C. Romig QK6374 pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

I certify under the penalty of perjury that the foregoing is true and correct.

28 U.S.C § 1746

## APPENDICES

pages

- March 28th 2018(before trial) Letter to Justn P. Miller direct appeal counsel 1.
- February 3rd 2019 Letter to Justin P. Miller 2.,3.
- May 21st 2019 Letter to Justin P. Miller 4.
- Michael S. Gingerich October 4th 2016 Request for Discovery 5.,6.
- Michael S. Gingerich October 24th 2016 Request for missing/additional discovery 7.  
(Items never received)
- Criminal Legal News Artical 8.  
Procedural default in habeas proceeding (ie. Martinez/Leeds cases)

Michael C. Romig  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville Pa. 17931

To: Justin P. Miller Esq.

Re: CP-44-CR0000560-2016

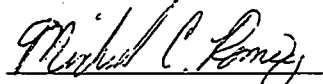
I am in receipt of your concise statement of errors. I have reviewed it, and think it will get the courts attention. Thank you for your professional assistance with this appeal. I do have a few questions regarding this superior court appeal. How long will it take to file the brief, and then get an answer/decision from the appellate court? If the court should affirm lower courts decision, I would ask/and direct you to file for allowance of appeal in the supreme court, then if unsuccessful in the supreme court file PCRA to include ineffectiveness of trial counsel (Michael S. Gingerich) along with other issues with my case that can be addressed this way. I hope that it doesn't go that far and we spoke and you didn't feel that was going to be necessary either, as the PCRA would be a last resort and would keep me incarcerated longer than need be. I am really hoping that it can all be handled through the superior court, without barring issues for PCRA. Again I will list some cases I would suggest to be read by you and applied to the case in the superior court brief :

- Commonwealth v. Bailey 2015 (relating to jury instruction on justification)*
- Commonwealth v. Ronald K. Mayo 272 Pa. Super. 115; 414 A.2d 696; 1979 Pa. Super. Lexis 3297 (relating to agg. ass. a4 and a knife, note alleged victim was unconscientious making even a conviction for simple assault impossible)*
- Commonwealth v. William Childs 142 A.3d 823; 2016 Pa. Lexis 1534 (relating to castle doctrine)*
- Commonwealth v. Johnston 438 Pa. 485; 263 A.2d 376; 1970 Pa. Lexis 812; 41 A.L.R.3d 576 (relating to castle doctrine and being ask to leave, then he would become a trespasser)*
- Commonwealth v. William W. Baker 299 Pa. Super. 241; 445 A.2d 544; 1982 Pa. Super. Lexis 4116 (relating to linking causation of injuries to a crime)*
- Commonwealth v. Jay C. Smith 532 Pa. 177; 615 A.2d 321; 1992 Pa. Lexis 449 (relating to court reversing and discharging defendant, holding that retrial was prohibited by double jeopardy, because the prosecutor's intentional misconduct in first trial denied defendant a fair trial) some charges for Kelley McTavish and James Moore where in fact Mifflin County cases and prosecutor and the court would or should have been aware of, not to exclude the fact that Kelley was on bail in Mifflin County at the time.*
- John Giglio v. United States 405 US 150, 31 L Ed 2d 104, 92 St Ct 763 (relating to withholding of suppression of evidence by prosecution in criminal case vitiating conviction.)*
- United States v. Hughes Anderson Bagley 473 US 677, 87 L Ed 2d 481, 105 S Ct 3375 (relating to failure of prosecution to disclose requested impeachment evidence held to constitute constitutional error only if there is a reasonable probability that , had the evidence been disclosed to defense, the result of the proceeding would have been different.)*

I'm sure you can see how these cases relate to mine. Please be sure to include mayo case in brief as well as other cases as you see fit. Please make sure preliminary hearing transcripts are included for superior court. Commonwealth v. Ricker and Pa.R.Crim.P. 542(E) may applicable in my case. Please let me know your thoughts as soon as possible.

Date: March 28, 2018

Sincerely

  
Michael C. Romig

F-16

A-1

Michael C Romig  
KR8614  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

**February 3, 2019**

**TO:** Justin P. Miller Esq.

**RE:** Supreme Court Appeal

I am in receipt of your petition of allowance of appeal. In your letter with that you said you were not hopeful that the petition would be granted. I have concern with this as the castle doctrine and property defense was fundamental, because it was established undoubtably that the incident took place in my house, from all witness's. Additionally there was testimony "from whatever source" that Mr. Moore was asked to leave *Commonwealth v. Johnston Supreme Court 238 Pa. 485; 263 A.2d 376; 1970 Pa. Super. LEXIS 812; A.L.R. 3d 576 No. 292 Jan. T., 1969* (I request you read this case). Therefore the trial court 100% erred in failing to give instruction that the defense requested. See trial transcript where defense objected and requested instruction. Even without According to *Benatar v. United States (1954, CA9 Cal) 209 F.2d 734, 54-1 USTC P 9174, 45 AFTR 209, cert den (1954) 347 US 974, 74 S Ct 786, 98 L Ed 1114* "Although fundamental instructions should be given by court regardless of proper request or objection, instruction that needs to be related to facts at bar in order to be proper is not such fundamental

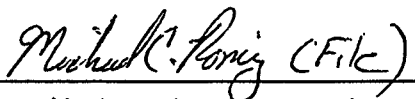
instruction". The jury needed to be aware of the amount of force one is allowed to use in one's home.

I am concerned about where you said that if my allowance of appeal is denied that I should file a prompt petition for PCRA. If I am just claiming ineffectiveness of Michael Gingerich, would you be representing me on the PCRA claim? Or is there something you think you did wrong that would benefit me to use your ineffectiveness as well? I believe I have a right to counsel to be represented on PCRA.

Did you file a mandamus with Mifflin County to compel Mr. Gingerich to forward toxicology results from the defense's pretrial discovery, that was intentionally withheld from appellate counsel and defendant? Maybe it is necessary for us to speak on the telephone again. Morning time during the week is good for me, as I have a group in the afternoon.

c.  
Justin P. Miller Esq.  
Defendant File

Yours truly

  
\_\_\_\_\_  
Michael C. Romig

Michael C. Romig  
KR8614  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

TO: Justin P Miller

RE: Trial transcript notes on failure to give Castle Doctrine instruction 9.501 (A) Justification:  
use of force/Deadly force in self defense (Castle Doctrine)

May 21, 2019

I've been doing some of my own research, and I've found some things you may find usefull. Enclosed is two case laws. you will receive them along with this letter in two separate envelopes, for mailing weight purposes.

In this envelope Commonwealth v. Torres from the Supreme Court with opinion by MR. JUSTICE SAYLOR and concurring opinion by NIGRO from 2001. This case outlines that the Commonwealth must demonstrate beyound a reasonable doubt that appellant did not act in self defense. In my case even though there was conflicting testimony with mine, the Commonwealth failed to develope on, and disprove appellants defense, as the burden shifted to the Commonwealth.

In an envelope by itself please find Commonwealth v. Cannavo with a concurring opinion by the same Judge I had from the Superior Court. That is interesting considering his opinion in that case cuppled with Commonwealth v. Johnston Supreme Court 238 Pa. 485; 263 A.2d 376; 1970 Pa. Super LEXIS 812 A.L.R. 3.d 576 No. 292 Jan. T. 1969. Specifically where in the overview it says "*The Court also ruled that the aggressor became a trespasser when he refused appellant's order to leave the premises; therefore, appellant did not prevoke the aggressor's attack.*"

I hope this makes sense to you. and please get back to me with your thoughts. Again I have still been trying to call you, and have gotten no answer. I was denied parole , so now I can;t even begin my Mifflin County sentence. Plus I would like to know what you beleive the time line is, or how long it will be till the Supreme Court will issue a decision on allowance of appeal?

I trust you will do your best to get me back with Brysen my seven year old son, who eagerly awaits his dad returning home! Happy mMemorial Day!

c.  
Justin P. Miller Esq.  
Michael C. Romig (File)

Yours truly

*File*

Michael C. Romig

MICHAEL S. GINGERICH  
ATTORNEY AT LAW  
4045 East Main Street  
P.O. Box 971  
Belleville, PA 17004  
(717) 935-2001

4 October 2016

Christopher R. Torquato, Esq.  
Mifflin County District Attorney  
Mifflin County Courthouse  
20 North Wayne Street  
Lewistown, PA 17044

Re: Commonwealth v. Michael Christopher Romig  
CP-44-CR-560-2016

Dear District Attorney Torquato:

This letter is a request for informal discovery made on behalf of my client, the above-named Defendant, in the above-numbered criminal action. Pursuant to Pa.R.Crim.P. 573, I ask that you provide me with the following:

- a) any evidence favorable to the accused which is material to either guilt or to punishment, and which is within the possession or control of the Attorney for the Commonwealth;
- b) any written confession or inculpatory statement, or the substance of any oral confession or inculpatory statement, and the identity of the person to whom the confession or inculpatory statement was made, which is in the possession or control of the Attorney for the Commonwealth;
- c) the Defendant's prior criminal record;
- d) the circumstances and results of any identification of the Defendant by voice, photograph, or in-person identification;
- e) any results or reports of scientific tests, expert opinions, and written or recorded reports of polygraph examinations or other physical or mental examinations of the Defendant, which are within the possession or control of the Attorney for the Commonwealth;
- f) any tangible objects, including documents, photographs, fingerprints, or other tangible evidence;
- g) the transcripts and recordings of any electronic surveillance, and the authority by which the said transcripts and recordings were obtained;
- h) the names and addresses of eyewitnesses;
- i) all written and recorded statements, and substantially verbatim oral statements, of eyewitnesses the Commonwealth intends to call at trial;
- j) all written and recorded statements, and substantially verbatim oral statements, made by co-defendants, and by co-conspirators or accomplices whether or not such individuals have been charged or not;
- k) the substance of any agreements, plea bargains or other promises or

MICHAEL S. GINGERICH

ATTORNEY AT LAW

4045 East Main Street

P.O. Box 971

Belleville, PA 17004

(717) 935-2001

To: Christopher M. Torquato, Esq., Mifflin County District Attorney

Re: Discovery Letter per Pa.R.Crim.P. 573

Commonwealth v. Romig, CP-44-CR-560-2016

4 October 2016

Page 2

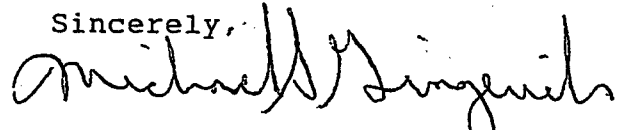
inducements made with or to co-defendants, co-conspirators and/or accomplices (whether charged or uncharged) in return for their testimony on behalf of the Commonwealth and against the Defendant. If such agreements, plea bargains, promises or inducements have been reduced to writing, or have been placed on the record in other proceedings, including, but not limited, to court proceedings, depositions, or sworn statements, or have been otherwise recorded by audiotape, videotape or other medium, the Defendant requests a copy of said writing, transcript or recording;

- 1) a written report of any expert the Commonwealth intends to call at trial or at any other hearing in this action, who has not yet prepared such a written report, stating the subject matter on which the expert is expected to testify, the substance of the facts to which the expert is expected to testify, and a summary of the expert's opinions and the grounds for each opinion.

This request for discovery should be considered a continuing request that extends to all times prior to and including trial, and encompasses any and all additional evidence or material initially requested by this letter pursuant to Pa.R.Crim.P. 573 (including the identity of any additional witness or witnesses) that the Attorney for the Commonwealth discover subsequent to the initial response to this letter.

Thank you for your consideration of this request.

Sincerely,



Michael S. Gingerich, Attorney

P.O. Box 971

Belleville, PA 17004

(717) 935-2001

Supreme Court ID# 32295

cc: Defendant

**MICHAEL S. GINGERICH**

ATTORNEY AT LAW

4045 EAST MAIN STREET

P.O. BOX 971

BELLEVILLE, PA 17004

717-935-2001

24 October 2016

Christopher R. Torquato, Esq.  
Mifflin County District Attorney  
Mifflin County Courthouse  
20 North Wayne Street  
Lewistown, PA 17044

Re: Commonwealth v. Michael Christopher Romig  
CP-44-CR-560-2016

Dear District Attorney Torquato:


I am in receipt of the discovery materials that you have provided per my informal request dated October 4th. After review of those materials, and as a further informal discovery request pursuant to Pa.R.Crim.P. 573, I ask that you provide me with the following:

- 1) Photogarghs of the victim, Defendant, and witnesses, along with crime-scene photographs, the existence of which was referenced in the Police Report.
- 2) The results of the testing of the blood samples taken by the police as a part of their investigation. If these samples are not to be tested, I ask that they be preserved for possible testing by the Defendant.
- 3) The prior criminal records of the alleged victim, James "Barry" Moore, and Commonwealth witnesses Patricia Koch and Kelley McTavish.
- 4) Statements by, and interviews with, James "Barry" Moore regarding the alleged assault and the events preceding said alleged assault.
- 5) Any additional medical records regarding James "Barry" Moore that describe the extent and permanency of his injuries allegedly caused by the alleged assault on him by the Defendant, as well as Mr. Moore's ongoing treatment and recovery prognosis.
- 6) Records regarding past and ongoing mental health and/or substance abuse treatment of James "Barry" Moore, along with any mental health evaluations and diagnoses on Mr. Moore.
- 7) Medical records of James "Barry" Moore that might disclose injuries or conditions, and the treatment thereof, that predate the alleged assault in this case.

Thank you for your consideration in this matter, along with your prompt response.

cc: Defendant

F-22

Sincerely,  
  
Michael S. Gingerich  
Attorney for Defendant

A-7

# Ninth Circuit Explains Martinez 'Cause' and 'Prejudice' to Excuse Procedural Default in Federal Habeas Proceeding Where Claim of IAC in State Proceedings Was Procedurally Defaulted Due to Postconviction Counsel's Failure to Timely Raise Claim

by Douglas Ankney

THE U.S. COURT OF APPEALS FOR THE Ninth Circuit explained the "cause and prejudice" framework of *Martinez v. Ryan*, 566 U.S. 1 (2012), in the context of a federal habeas proceeding where a claim of ineffective assistance of counsel at trial ("Trial IAC") in a state habeas proceeding was procedurally defaulted due to postconviction counsel's ("PCC") failure to timely raise the Trial IAC claim in state court.

## FACTS

Robert Marc Leeds and his estranged wife Sally Lane shared a home on Evening Song Avenue in Las Vegas, Nevada. Lane had become romantically involved with William Scarborough. Since Lane's family didn't know Leeds lived with her and were planning to visit during Thanksgiving, Leeds agreed to temporarily move out of the shared home while Lane's family visited.

Leeds later learned that Lane's family wasn't at the home, so he went there to retrieve medication. A heated argument occurred when Lane and Scarborough returned from a night out. Police were called and advised that Leeds had a right to be at the home because he resided there; Lane would have to commence eviction proceedings if she wanted him out of the home. Leeds voluntarily agreed to leave the premises for the evening.

The next morning, Leeds went to the home and apologized for his behavior the

previous night. He agreed to go to Florida for a while to be with his family but stated he and Lane could reconcile. However, Scarborough was also present at the home and told Lane to "stay strong" in her decision to separate from Leeds.

Scarborough agreed to give Leeds a ride to the airport, but the two men began fighting. They fell to the ground and rolled into the garage. Leeds claimed to have taken a knife from Scarborough, stabbed him in the chest, and said: "Die like the animals you kill." (Scarborough worked at an animal shelter where he euthanized animals that had to be put down.) Scarborough died from his injuries.

## Procedural History

The State charged Leeds with murder, use of a deadly weapon, and burglary while in possession of a deadly weapon. The burglary charge was alleged because the prosecutor argued that Leeds intended to "assault, batter, or murder" Scarborough when the two men entered the garage while struggling. At trial, the jury was instructed on two theories of first-degree murder: (1) willful, deliberate, and premeditated and (2) felony-murder predicated on the alleged burglary. The prosecutor explained to the jury in closing that "it did not matter if the jurors agreed on one theory; they could convict Leeds of first-degree murder as long as they all thought one of the two theories applied."

The jury convicted Leeds on all charges, but the verdict form did not specify which theory of murder the jury relied upon to convict him of first-degree murder. Leeds was sentenced to 20 years to life on the murder conviction, and his judgment was affirmed on appeal.

Leeds subsequently initiated a pro se habeas petition in state court. The district court ultimately appointed PCC who filed a supplemental petition alleging numerous errors of trial counsel, but PCC did not allege trial counsel was ineffective for failing to challenge the felony-murder theory on the ground that Leeds could not burglarize his own home ("Burglary Theory"). The state court denied Leeds' habeas petition, and he timely appealed

to the Nevada Supreme Court ("NSC"). During this appeal, PCC asserted for the first time the Trial IAC claim based on the Burglary Theory. The NSC denied the habeas petition, explicitly declining to consider the Trial IAC claim based on the Burglary Theory because that "ground for relief was not raised in Leeds' post-conviction petition for a writ of habeas corpus or argued in the district court below." Consequently, this claim was procedurally defaulted and never reviewed by a state court. See Nev. Rev. Stat. § 34.810(1)(b).

Leeds petitioned the U.S. District Court for the District of Nevada for federal habeas relief under 28 U.S.C. § 2254 ("Federal Habeas"). Ground Two of the Federal Habeas alleged that trial counsel "was ineffective for failing to challenge the burglary charge and felony murder theory on the ground that Mr. Leeds could not burglarize his own home." The District Court granted habeas relief as to Ground Two, finding that the procedural default was excused under *Martinez* and trial counsel provided ineffective assistance of counsel. The State timely appealed.

## LAW

The Court observed "[w]here, as here, a petitioner's claim was procedurally defaulted in a state habeas proceeding, he must show the default was excused in order for federal habeas review to occur." *Martinez*. That is, a petitioner may only "obtain federal review of a defaulted claim by showing cause for the default and prejudice from a violation of federal law." *Id.*

The U.S. Supreme Court has instructed that postconviction counsel's error can establish cause to excuse procedural default of a claim for trial counsel's ineffective assistance where state procedure requires a prisoner to raise that claim for the first time during postconviction proceedings. *Martinez*. Under Nevada law, "a post-conviction collateral proceeding is the first opportunity to raise ineffective assistance of counsel claims." *Gibbons v. State*, 634 P2d 1216 (Nev. 1981). Where the state habeas court is the only court to review the merits of Trial IAC claims, the Court explained "*Martinez* held that an effective

attorney is required in these initial-review collateral proceedings, and ineffective assistance by post-conviction counsel can establish cause for default."

To meet the "cause" standard of *Martinez*, the petitioner must demonstrate that PCC in the initial-review state collateral proceeding in which the Trial IAC claim should have been raised was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the petitioner must demonstrate that (1) PCC's performance was deficient—that is, counsel's performance fell below an objective standard of reasonableness and (2) PCC's deficient performance prejudiced the petitioner, i.e., if not for counsel's unreasonable performance, there is a reasonable probability the outcome of the proceeding would have been different. *Strickland*. Therefore, to meet *Martinez*'s "cause" standard, a petitioner must demonstrate that his PCC rendered deficient performance and that the deficient performance prejudiced the petitioner.

To satisfy *Martinez*'s "prejudice" standard, "a prisoner must also demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the petitioner must demonstrate that the claim has some merit." *Martinez*. Because both cause and prejudice must be established, courts are free to analyze the two requirements in any order. See *Michaels v. Davis*, 51 F4th 904 (9th Cir. 2022) (addressing prejudice first); *Djerf v. Ryan*, 931 F3d 870 (9th Cir. 2019) (addressing only cause).

Federal courts must first conclude that a procedural default is excused under *Martinez* before they may address the merits of the underlying Trial IAC claim. See *Martinez* ("A finding of cause and prejudice does not entitle the prisoner to habeas relief. It merely allows a federal court to consider the merits of a claim that otherwise would have been procedurally defaulted."). The Court also explained that when determining whether trial counsel was ineffective for purposes of a *Martinez* analysis, "we again use the *Strickland* standard, though we do not apply it as strictly as if we were considering the merits of the claim." See *Michaels v. Davis*, 51 F4th 904 (9th Cir. 2022).

## Application

In deciding Leeds' petition, the Court first examined whether he satisfied *Martinez*'s prejudice standard. The rationale is, if the procedurally defaulted claim has no merit, then it does not matter if the claim was procedurally defaulted due to PCC error. Leeds' Trial IAC

claim was that, had his trial counsel argued that Leeds could not burglarize his own home, the State would have been prevented from relying on the felony-murder theory, and since the State could not prove willful, deliberate, and premeditated murder, the jury could not have found him guilty of first-degree murder.

In *State v. White*, 330 P3d 482 (Nev. 2014), the NSC held that a person cannot burglarize his own home. The State argued that Leeds' trial counsel couldn't have provided ineffective assistance because his trial occurred in 2006—years before *White* was decided. See *Sopphanthavong v. Palmateer*, 378 F3d 859 (9th Cir. 2004) ("*Strickland* does not mandate prescience, only objectively reasonable advice under prevailing professional norms."). The Court rejected that argument, explaining that simply because the issue wasn't definitively decided until 2014 doesn't mean it was reasonable for a defense attorney not to have made the argument before *White*. As the *White* Court noted, the state's burglary statute was subject to two reasonable interpretations, including the one *White* eventually held to be correct. The Court stated that reasonable counsel would have made the argument for the interpretation that would have kept his client from facing a felony-murder charge. Therefore, the Court concluded that Leeds' trial counsel performed unreasonably or "deficiently."

Having satisfied the deficiency prong of *Martinez*'s prejudice requirement, the Court turned to the second prong of whether counsel's deficient performance prejudiced Leeds. The Court concluded that he also satisfied the prejudice prong because if the jury had not been instructed on the felony-murder theory "at least one juror may have not been convinced beyond a reasonable doubt that Leeds—distracted after discovering that his partner of twenty years was moving on—committed willful, deliberate, and premeditated murder." Therefore, the Court ruled that Leeds established that his Trial IAC claim is "substantial" and thus satisfies *Martinez*'s prejudice requirement.

The Court then addressed whether Leeds' PCC provided ineffective assistance under *Strickland*, thereby satisfying *Martinez*'s cause requirement. That is, Leeds must show that PCC's failure to raise the Burglary Theory constituted ineffective assistance under the *Strickland* standard, i.e., "deficient performance," and PCC's deficient performance prejudiced Leeds. *Martinez*. For this analysis, the Court explained, "we reviewed trial counsel's action in our *Martinez* analysis

under a more relaxed standard... we apply the *Strickland* standard with full force when considering PCC's action in the *Martinez* cause analysis." See *Clabourne v. Ryan*, 745 F3d 362 (9th Cir. 2014).

The Court began with the deficient performance prong of the *Martinez* cause analysis. Once again, the State argued that PCC couldn't have performed deficiently in 2013 because *White* was decided a year later. And once again, the Court rejected that argument based on the same reasoning it rejected the argument in its *Martinez* prejudice analysis. Just as trial counsel should have challenged the Burglary Theory at trial, it was unreasonable for PCC to also fail to make the argument. Therefore, the Court concluded that PCC performed deficiently.

Finally, the Court turned to the issue of whether PCC's deficient performance prejudiced Leeds and thereby satisfied *Strickland*'s second prong, which in turn would establish cause under *Martinez*. The Court explained that whether Leeds was prejudiced by PCC depends partially on the strength of his underlying Trial IAC claim because if it were merited, then PCC would not be ineffective for failing to raise it. See *Djerf*; see also *Sexton v. Cozner*, 679 F3d 1150 (9th Cir. 2012).

However, the Court already determined that Leeds' Trial IAC claim was "substantial" during its *Martinez* prejudice analysis, so given the strength of the claim, there is a reasonable probability PCC would have had success with the claim had it been raised. As such, there is a substantial likelihood the result would have been different but for PCC's failure to make the argument, the Court determined. See *Harrington v. Richter*, 562 86 (2011) (describing the *Strickland* prejudice standard). Therefore, the Court concluded that PCC's failure to assert the Trial IAC claim prejudiced Leeds, thereby satisfying *Martinez*'s cause requirement.

## Conclusion

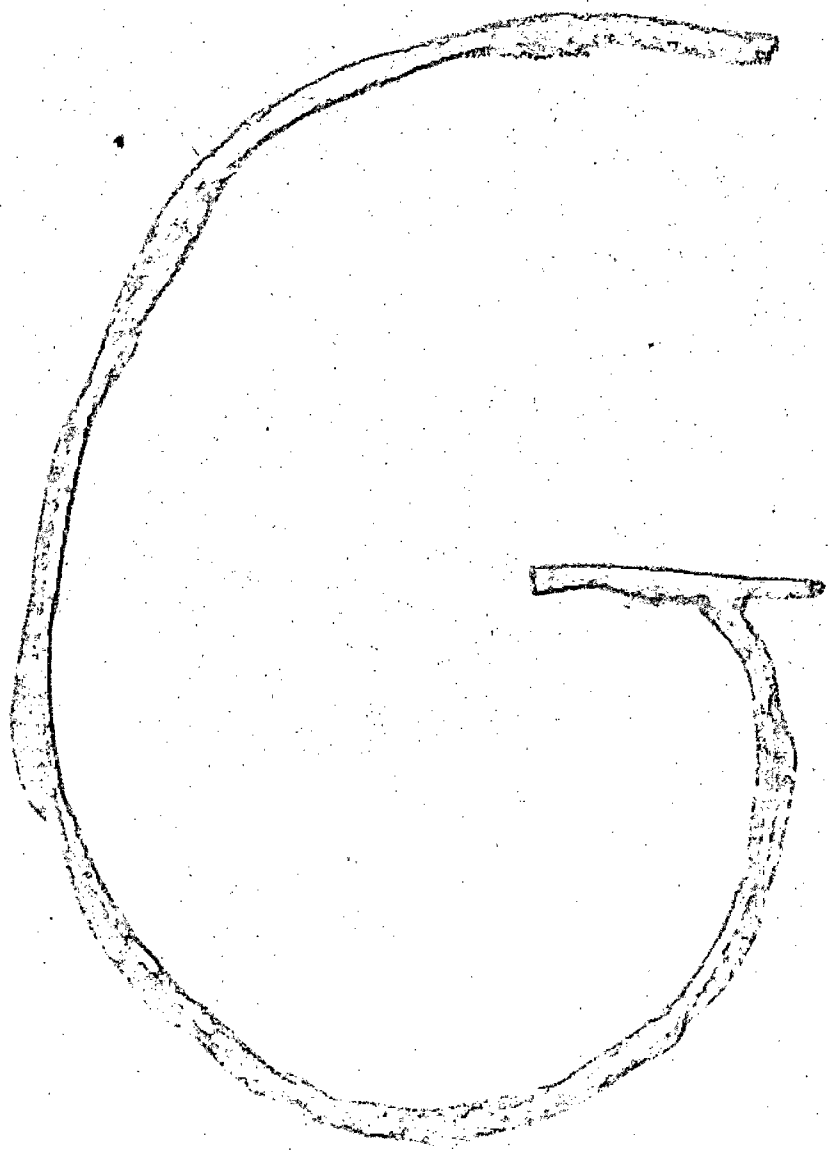
Because the Court concluded that Leeds satisfied both the prejudice and cause prongs of *Martinez*, it held his procedural default was excused. In addition, the Court held that Leeds also satisfied *Strickland* regarding the merits of his Trial IAC claim, and so, the District Court did not err in granting him habeas relief.

Accordingly, the Court affirmed the decision of the District Court in excusing the procedural default and granting habeas relief. See: *Leeds v. Russell*, 75 F4th 1009 (9th Cir. 2023).

CRIMINAL DEFENSE SERVING NORTH-EASTERN & CENTRAL PENNSYLVANIA  
TRIALS - DIRECT APPEALS - POST CONVICTION LITIGATION



Edward J. Rymasz  
MIELE & RYMASZ, P.C.  
125 East Third Street  
Williamsport, PA 17701  
(570) 322-2113  
rymasz@comcast.net  
www.mielearymasz.com



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL C. ROMIG,

Petitioner,

v.

KATHY BRITTAIN,

Respondent.

No. 4:22-CV-01628

(Chief Judge Brann)

**MEMORANDUM OPINION**

**NOVEMBER 29, 2023**

Petitioner Michael C. Romig filed the instant *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He seeks to overturn his 2017 state-court convictions and sentence for multiple counts of aggravated assault. Because Romig cannot satisfy the stringent requirements for federal habeas relief, the Court will deny his Section 2254 petition.

**I. BACKGROUND AND PROCEDURAL HISTORY**

The charges and convictions underlying this habeas action concern a physical altercation that took place in Romig's home in 2016. On the evening of August 2, after drinking together at a local bar, Romig invited Kelley McTavish, Patricia Koch, and James Barry Moore (McTavish's boyfriend at the time) back to his residence to continue socializing.<sup>1</sup> According to McTavish, at some point in

---

<sup>1</sup> *Commonwealth v. Romig*, No. 400 MDA 2018, 2018 WL 6598400, at \*1, 2 (Pa. Super. Ct. Dec. 17, 2018) (nonprecedential).

the evening Romig had attempted to show her naked pictures of himself that he had stored on his cellular telephone.<sup>2</sup> When Moore objected to this behavior, Romig “sucker punched” him in the face and then proceeded to unleash a vicious assault on him.<sup>3</sup> McTavish and Koch both testified that Romig repeatedly kicked and “stomped” on Moore—who was already unresponsive on the floor and bleeding from his nose, ears, and eyes—striking his head, back, and chest with kicks from steel-toed work boots.<sup>4</sup> Both women also testified that Romig then held a knife to Moore’s throat, threatening to “end it now.”<sup>5</sup> Koch attested that she believed Moore was “already dead” due to the extent of his injuries.<sup>6</sup>

McTavish and Koch eventually convinced Romig to let them drive Moore to Lewistown Hospital.<sup>7</sup> Moore then had to be life-flighted to another hospital due to the severity of his injuries.<sup>8</sup> He was critically wounded from the assault, sustaining—among other injuries—paralysis from his chest down, loss of the use of his hands, loss of the ability to ambulate, loss of control of his bladder and bowels, and loss of the use of his sexual organs.<sup>9</sup> Moore testified that, since the

---

<sup>2</sup> *Id.*, at \*1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*, at \*1-2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*, at \*2.

<sup>7</sup> *Id.*

<sup>8</sup> *Commonwealth v. Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*1 (Pa. Super. Ct. June 25, 2021) (nonprecedential).

<sup>9</sup> *Romig*, No. 400 MDA 2018, 2018 WL 6598400, at \*2.

August 2 assault, he had resided in either hospitals or nursing homes.<sup>10</sup> According to the police officer who interviewed Romig the morning after the assault, Romig had a laceration to his lip and his hand; no other bruising, swelling, or cuts were noted.<sup>11</sup>

Romig testified at trial in his own defense.<sup>12</sup> He told a drastically different story about the August 2 events, maintaining that Moore was the aggressor.<sup>13</sup>

Romig testified that, at one point before the altercation began, he had asked Moore and the other guests to leave his house, but Moore instead attacked him.<sup>14</sup> Romig testified that Moore pushed him through a window, struck him with a television remote, and continually “c[a]me back” for more when Romig thought the fight was over.<sup>15</sup> Romig also claimed that, after Moore lost consciousness, he wanted to call for an ambulance, but McTavish and Koch convinced him to let them take Moore to the hospital in their vehicle.<sup>16</sup>

Romig recounted that, after McTavish and Koch left with Moore, he drank several additional beers and passed out on his sofa “from a combination of alcohol, adrenaline, and blood loss,” awakening the next morning to two Pennsylvania State

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Troopers at his door.<sup>17</sup> Romig was arrested and charged with aggravated assault attempting to cause or causing serious bodily injury, 18 PA. CONS. STAT. § 2702(a)(1); aggravated assault attempting to cause serious bodily injury to another with a deadly weapon, 18 PA. CONS. STAT. § 2702(a)(4); and simple assault, 18 PA. CONS. STAT. § 2701(a)(1).<sup>18</sup>

Following a one-day jury trial, Romig was convicted on all three charges.<sup>19</sup> He was ultimately sentenced to 9 ½ to 30 years' imprisonment on the aggravated assault convictions.<sup>20</sup> Romig appealed, but the Superior Court of Pennsylvania affirmed the judgment of sentence.<sup>21</sup> In June 2019, the Supreme Court of Pennsylvania denied Romig's petition for allowance of appeal.<sup>22</sup>

Romig then filed a petition under Pennsylvania's Post Conviction Relief Act (PCRA),<sup>23</sup> the state's corollary to federal habeas relief.<sup>24</sup> The PCRA court denied Romig's petition.<sup>25</sup> On June 25, 2021, the Superior Court affirmed the PCRA court's denial of Romig's claims of ineffective assistance of trial and appellate

---

<sup>17</sup> *Id.*, at \*2-3.

<sup>18</sup> *Id.*, at \*1; *Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*2 n.1.

<sup>19</sup> *Romig*, No. 400 MDA 2018, 2018 WL 6598400, at \*3.

<sup>20</sup> *Id.* The simple assault conviction was eventually determined to merge with the aggravated assault convictions and the initial concurrent sentence entered for simple assault was vacated. *Id.*

<sup>21</sup> *Id.*, at \*1, 8.

<sup>22</sup> *Commonwealth v. Romig*, No. 29 MAL 2019, 215 A.3d 561 (Pa. 2019) (table).

<sup>23</sup> 42 PA. CONS. STAT. § 9541 *et seq.*

<sup>24</sup> *See Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*1, 2.

<sup>25</sup> *Id.*, at \*2.

counsel.<sup>26</sup> Once again, the Pennsylvania Supreme Court denied Romig’s petition for allowance of appeal.<sup>27</sup>

Romig filed his Section 2254 petition in this Court in October 2022.<sup>28</sup> He then filed a supporting memorandum of law in December 2022.<sup>29</sup> Respondent timely responded to Romig’s petition and memorandum of law,<sup>30</sup> and Romig filed a traverse several months later.<sup>31</sup> Romig’s Section 2254 petition, therefore, is ripe for disposition.

## II. STANDARD OF REVIEW

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)<sup>32</sup> mandates that petitioners demonstrate that they have “exhausted the remedies available in the courts of the State” before seeking federal habeas relief.<sup>33</sup> An exhausted claim is one that has been “fairly presented” to the state courts “by invoking one complete round of the State’s established appellate review process,” and which has been adjudicated on the merits.<sup>34</sup>

---

<sup>26</sup> *Id.*, at \*1, 5.

<sup>27</sup> *Commonwealth v. Romig*, No. 100 MAL 2022, 284 A.3d 115 (Pa. 2022) (table).

<sup>28</sup> Doc. 1.

<sup>29</sup> Doc. 16.

<sup>30</sup> Doc. 19.

<sup>31</sup> Doc. 22.

<sup>32</sup> 28 U.S.C. §§ 2241–2254.

<sup>33</sup> *Id.* § 2254(b)(1)(A).

<sup>34</sup> *Carpenter v. Vaughn*, 296 F.3d 138, 146 (3d Cir. 2002) (quoting *O’Sullivan v. Boerckel*, 526 U.S. 838, 844–45 (1999)); see also *Johnson v. Williams*, 568 U.S. 289, 302 (2013).

When a claim is properly exhausted and then raised on federal habeas review, the level of deference afforded to the state court decision is substantial.<sup>35</sup> The AEDPA “does not ‘permit federal judges to . . . casually second-guess the decisions of their state-court colleagues or defense attorneys.’”<sup>36</sup> Accordingly, under Section 2254(d), federal habeas relief is unavailable for exhausted claims unless the state-court adjudication “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law . . . or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.”<sup>37</sup> An unreasonable application of Supreme Court precedent includes situations where “the state court identifies the correct governing legal rule . . . but unreasonably applies it to the facts of the particular state prisoner’s case.”<sup>38</sup>

This is an intentionally difficult standard to meet.<sup>39</sup> Section 2254(d) “preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court’s decision conflicts with” clearly established Supreme Court precedent.<sup>40</sup> Thus, to obtain federal habeas

---

<sup>35</sup> *Bey v. Superintendent Greene SCI*, 856 F.3d 230, 236 (3d Cir. 2017), *cert. denied sub nom., Gilmore v. Bey*, 138 S. Ct. 740 (2018) (mem.).

<sup>36</sup> *Collins v. Sec’y of Pa. Dep’t of Corr.*, 742 F.3d 528, 543 (3d Cir. 2014) (quoting *Burt v. Titlow*, 571 U.S. 12, 15 (2013)).

<sup>37</sup> 28 U.S.C. § 2254(d).

<sup>38</sup> *White v. Woodall*, 572 U.S. 415, 425 (2014) (quoting *Williams v. Taylor*, 529 U.S. 362, 407 (2000)).

<sup>39</sup> *Harrington v. Richter*, 562 U.S. 86, 102 (2011).

<sup>40</sup> *Id.*

relief on an exhausted claim, a state prisoner must demonstrate that the state court's ruling on the claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility of fairminded disagreement."<sup>41</sup>

Finally, if a state court has ruled on the merits of a claim, a federal habeas petitioner generally must meet Section 2254(d)'s requirements "on the record that was before that state court."<sup>42</sup> Absent compelling circumstances,<sup>43</sup> district courts cannot supplement the existing state-court record for claims adjudicated on the merits.<sup>44</sup> "Otherwise, federal habeas petitioners would be able to circumvent the finality of state court judgments by establishing a new factual record" on federal habeas review.<sup>45</sup>

### III. DISCUSSION

Romig raises four grounds for relief in his Section 2254 petition, although his first two claims are interrelated. Romig asserts that: (1) the trial court failed to instruct the jury on the "use of Deadly Force / Castle Doctrine"; (2) counsel on direct appeal was ineffective for failing to develop and brief the argument regarding the deadly force castle doctrine jury instruction; (3) trial counsel was

---

<sup>41</sup> *Id.* at 103.

<sup>42</sup> *Cullen v. Pinholster*, 563 U.S. 170, 185 (2011) (footnote omitted).

<sup>43</sup> *See* 28 U.S.C. § 2254(e)(2).

<sup>44</sup> *Brown v. Wenerowicz*, 663 F.3d 619, 629 (3d Cir. 2011).

<sup>45</sup> *Id.*

ineffective for failing to object to the absence of medical expert testimony; and (4) the prosecution violated *Brady v. Maryland* by failing to provide defense counsel with the criminal backgrounds of its witnesses.<sup>46</sup> The Court finds that none of Romig's claims warrant relief.

**A. Grounds 1 and 2 – Deadly Force Castle Doctrine Instruction**

Romig's first and second grounds for relief involve the trial court's decision not to provide the "self-defense deadly force castle doctrine" jury instruction.<sup>47</sup> It appears that Romig is referring to the Pennsylvania Standard Criminal Jury Instruction 9.501A "Use of Force/Deadly Force in Self-Defense (Castle Doctrine),"<sup>48</sup> although he does not expressly provide the source or language of the at-issue instruction. However, during the trial charging conference, Romig and his attorney discussed jury instruction "9.501" and the judge decided to give instruction 9.501B.<sup>49</sup> Moreover, from the trial transcript, it is apparent that the trial court gave instruction 9.501B "Use of Non-Deadly Force in Self-Defense (Castle Doctrine)."<sup>50</sup>

In Romig's first ground for relief, he asserts that the trial court "abused it[']s discretion" by not providing the deadly force version of the self-defense castle

---

<sup>46</sup> Doc. 16 at 5.

<sup>47</sup> *Id.* at 10.

<sup>48</sup> See PA. SUGGESTED STANDARD CRIM. JURY INSTRUCTIONS 9.501A.

<sup>49</sup> See Doc. 19-2, July 18, 2017 Trial Tr. at 201:1-206:3, 246:12-248:13 [hereinafter "7/18/17 Trial Tr. at \_\_\_\_"].

<sup>50</sup> See *id.* at 246:12-248:13.

doctrine instruction.<sup>51</sup> Initially, it is doubtful that Romig’s “abuse of discretion” claim is cognizable on federal habeas review. For such a claim to implicate a constitutional violation, “the absence of an instruction” must “infect[] the entire trial with unfairness” such that it constitutes a due process infringement.<sup>52</sup> Indeed, “[i]t is the rare case in which an improper instruction will justify reversal of a criminal conviction when no objection has been made in the trial court.”<sup>53</sup> Furthermore, an “omission . . . is less likely to be prejudicial than a misstatement of the law.”<sup>54</sup> Romig’s claim that the absence of the deadly force self-defense castle doctrine instruction infected his *entire* trial with unfairness is simply unpersuasive, especially considering that the trial court gave a non-deadly force self-defense castle doctrine instruction.

Even assuming this claim implicates the due process clause and is properly considered on federal habeas review, it is procedurally defaulted. Although Romig identified this issue on direct appeal,<sup>55</sup> the Superior Court found that the claim was waived because it had not been briefed.<sup>56</sup> Additionally, it was never properly presented to the trial court inasmuch as, while the instruction was requested, no

---

<sup>51</sup> Doc. 16 at 10.

<sup>52</sup> *Albrecht v. Horn*, 485 F.3d 103, 129 (3d Cir. 2007).

<sup>53</sup> *Henderson v. Kibbe*, 431 U.S. 145, 154 (1977).

<sup>54</sup> *Id.* at 155.

<sup>55</sup> See *Romig*, No. 400 MDA 2018, 2018 WL 6598400, at \*3 (presenting second question for review as “Whether the trial court erred and abused its discretion by refusing to give [Appellant’s] requested jury instruction on Justification or self-defense and defense of property (the Castle Doctrine), and on the use of deadly force?”).

<sup>56</sup> *Id.*, at \*5 n.2.

specific objection was raised during trial to its absence.<sup>57</sup> Romig does not establish cause and prejudice to excuse his default.<sup>58</sup> Accordingly, this first claim is procedurally defaulted and unreviewable.<sup>59</sup>

Nevertheless, Romig did raise and exhaust his related Sixth Amendment claim of ineffective assistance of direct appeal counsel. Romig argues that, because he alleged that he had asked Moore to leave his home and then defended himself from Moore's attack, the castle doctrine applied and the deadly force castle doctrine instruction should have been given. He maintains that, because his counsel on direct appeal failed to properly brief and argue this claim, that attorney's performance was constitutionally deficient.

A collateral attack based on ineffective assistance of counsel is governed by the familiar two-pronged test set forth in *Strickland v. Washington*.<sup>60</sup> To prevail on

---

<sup>57</sup> See *id.*, at \*5 (noting that Romig “did not lodge a specific objection or exception to the court’s charge, thus waiving any challenge thereto” (citing *Commonwealth v. Baker*, 963 A.2d 495, 506 (Pa. Super. Ct. 2008) (“[U]nder Criminal Procedure Rules 603 and 647(B), the mere submission and subsequent denial of proposed points for charge that are inconsistent with or omitted from the instructions actually given will not suffice to preserve an issue, absent a specific objection or exception to the charge or the trial court’s ruling respecting the points.”))); see also *Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*2 (noting that, although trial counsel “sought to have the charge given . . . , trial counsel failed to specifically object to the trial court’s jury charge”).

<sup>58</sup> Although Romig faults his attorney on direct appeal for failing to brief the claim, (see Doc. 16 at 11; Doc. 22 at 3-4), he does not address the fact that any jury instruction claim was deemed waived for the additional reason that it was never presented to the trial court. Moreover, while ineffective assistance of counsel can constitute cause to excuse procedural default, see *Coleman*, 501 U.S. at 754, Romig has failed to establish prejudice for the reasons provided below in the discussion of his claim of ineffective assistance of direct appeal counsel.

<sup>59</sup> See *Martinez v. Ryan*, 566 U.S. 1, 9 (2012) (citing *Coleman v. Thompson*, 501 U.S. 722, 747-48 (1991); *Wainwright v. Sykes*, 433 U.S. 72, 84-85 (1977)).

<sup>60</sup> 466 U.S. 668 (1984).

such a claim, a defendant must demonstrate that (1) counsel's representation fell below an objective level of reasonableness based on prevailing professional norms, and (2) the deficient representation was prejudicial.<sup>61</sup> The defendant bears the burden of proving both prongs.<sup>62</sup>

In determining whether counsel has satisfied the objective standard of reasonableness under the first prong, courts must be highly deferential toward counsel's conduct.<sup>63</sup> There is a strong presumption that counsel's performance falls within the wide range of reasonable professional assistance.<sup>64</sup> Only a "rare claim" of ineffectiveness of counsel should succeed "under the properly deferential standard to be applied in scrutinizing counsel's performance."<sup>65</sup>

To satisfy the prejudice prong, the defendant must establish a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different.<sup>66</sup> The district court need not conduct its analysis of the two prongs in a particular order or even address both prongs of the inquiry if the defendant makes an insufficient showing on one.<sup>67</sup>

When a claim of ineffective assistance of counsel has been exhausted in state court, review of that claim by a federal habeas court is significantly

---

<sup>61</sup> *Strickland*, 466 U.S. at 687-88.

<sup>62</sup> *See id.* at 687.

<sup>63</sup> *Id.* at 689.

<sup>64</sup> *See United States v. Gray*, 878 F.2d 702, 710 (3d Cir. 1989).

<sup>65</sup> *Id.* at 711 (citing *Strickland*, 466 U.S. at 689-90).

<sup>66</sup> *Strickland*, 466 U.S. at 694.

<sup>67</sup> *See id.* at 697; *United States v. Lilly*, 536 F.3d 190, 196 (3d Cir. 2008).

circumscribed. The federal court does not review the ineffectiveness claim *de novo*; rather, “[t]he pivotal question is whether the state court’s application of the *Strickland* standard was unreasonable.”<sup>68</sup> Under this “doubly” deferential standard, “so long as fairminded jurists could disagree on the correctness of the state court’s decision,” a state court’s determination that a *Strickland* claim lacks merit precludes federal habeas relief.<sup>69</sup>

On PCRA appeal, the Superior Court analyzed and denied Romig’s ineffective assistance claim on the merits.<sup>70</sup> The Superior Court primarily relied on the statutory language of 18 PA. CONS. STAT. § 505(b)(2.1), which codifies the castle doctrine defense. The panel reasoned that, because the plain language of the statute indicates that the person against whom deadly force is used must be “in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within” the actor’s residence, and Moore had been invited into Romig’s home as a social guest, the deadly force castle doctrine defense did not apply.<sup>71</sup> The Superior Court additionally noted that Romig (through PCRA appeal counsel) had “failed to cite any case law for support of his contention that

---

<sup>68</sup> *Harrington*, 562 U.S. at 101 (emphasis added); *Collins*, 742 F.3d at 547-48.

<sup>69</sup> *Harrington*, 562 U.S. at 101, 105 (citation omitted).

<sup>70</sup> *See Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*2-3.

<sup>71</sup> *See id.*, at \*3 (referencing “plain language of subsection (b)(2.1)(i)”); *see also* 18 PA. CONS. STAT. § 505(b)(2.1)(i).

subsection (b)(2.1)(i) can be satisfied if the defendant asked the victim to leave the residence” after initially inviting that person in to socialize.<sup>72</sup>

Romig argues that Pennsylvania case law exists supporting his interpretation of application of the castle doctrine to invitees who are asked to leave a home. He also maintains that he provided this case law to his attorneys. He primarily relies on *Commonwealth v. Johnston*, 263 A.2d 376 (Pa. 1970).<sup>73</sup> The Court notes that *Johnston* does support Romig’s contention that the castle doctrine can apply when an invitee, who is asked by the owner of the premises to leave but remains and becomes a trespasser, attacks the owner and the owner defends himself with deadly force.<sup>74</sup>

There are, however, two problems with Romig’s argument. First, to the extent that Romig is claiming that his post-conviction appellate counsel was constitutionally ineffective for failing to cite appropriate case law on PCRA appeal,<sup>75</sup> that claim is a nonstarter. There is no federal constitutional right to assistance of counsel in post-conviction proceedings, and thus there is no right to effective assistance of post-conviction counsel.<sup>76</sup>

---

<sup>72</sup> See *Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*3.

<sup>73</sup> See Doc. 16 at 10; Doc. 22 at 3, 5. Romig, at times, provides the wrong citation for this case, (see Doc. 22 at 3, 5), but it is clear that he is referencing the 1970 Pennsylvania Supreme Court case *Commonwealth v. Johnston*.

<sup>74</sup> See *Johnston*, 263 A.2d at 379-80.

<sup>75</sup> See Doc. 22 at 5.

<sup>76</sup> See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); 28 U.S.C. § 2254(i) (“The ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief in a proceeding arising under section 2254.”).

Second, and more importantly, Romig has not shown that the Superior Court's denial of this claim was an unreasonable application of *Strickland*. The Superior Court, utilizing the castle doctrine statute and the record and briefing presented by the parties, determined that the castle doctrine was not applicable to the facts of Romig's case (and, presumably, that direct appeal counsel was not ineffective for failing to raise a meritless argument). This was not an *unreasonable* determination in light of the plain language of the statute and the lack of binding case law provided in Romig's briefing. "For purposes of § 2254(d)(1), 'an *unreasonable* application of federal law is different from an *incorrect* application of federal law.'"<sup>77</sup>

Assuming, only for argument's sake, that the Superior Court's application of *Strickland* was unreasonable and Romig's direct appeal counsel's performance was indeed deficient, this claim still fails on *de novo* review because Romig cannot establish prejudice. The gravamen of his claim is that the deadly force self-defense castle doctrine instruction (9.501A) should have been given rather than the non-deadly force self-defense castle doctrine instruction (9.501B), and his direct appeal attorney was ineffective for not properly asserting this argument.

---

<sup>77</sup> *Harrington*, 562 U.S. at 101 (quoting *Williams v. Taylor*, 529 U.S. 362, 410 (2000) (O'Connor, J, concurring)). "Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Id.* at 102-03 (citation omitted).

But Romig is overlooking the fact that, when presented with the conflicting versions of events and Romig's theory of self-defense (and given a self-defense instruction), the jury chose to disbelieve Romig's version and explicitly found that his actions were not justified. At trial, both McTavish and Koch provided damning eyewitness testimony that Romig viciously and mercilessly assaulted an unconscious and defenseless Moore by repeatedly kicking him in the head, chest, and back with steel-toed boots. Moreover, while Romig went back to drinking beer on his couch and was observed the next day to have a cut on his lip and hand, Moore had to be life-flighted for emergency medical treatment and was paralyzed from the chest down.

Romig has not explained, much less established, why there would be a reasonable probability that, if provided with the 9.501A instruction, the jury would have decided differently (*i.e.*, the outcome would have been different). For example, Romig has not provided *any* basis for concluding that the jury's verdict resulted from its determination that he used disproportionate force in self-defense<sup>78</sup> rather than disbelieving his version of events and claim of self-defense entirely, or that there is a reasonable probability that the provision of the 9.501A instruction would have resulted in a different outcome. Because Romig has not carried his

---

<sup>78</sup> See Doc. 16 at 11 (arguing that "if the requested jury instruction would have been given there would have been no limit to the ammount [sic] of force that could be employed in one's home in self-defense").

burden on this *Strickland* claim, even if the claim is stripped of AEDPA deference, no relief is warranted.

**B. Ground 3 – Ineffective Assistance, Expert Medical Opinion**

Romig next contends that his trial counsel was ineffective for failing to object to the absence of expert medical testimony at trial. This *Strickland* claim was likewise exhausted in state court.<sup>79</sup> The Superior Court found that nothing in Moore’s testimony about his substantial bodily injuries and medical treatment exceeded the scope of permissible lay witness testimony under the state rules of evidence, and thus concluded that trial counsel was not ineffective for failing to object to the absence of expert testimony.<sup>80</sup>

Romig does not engage with the Superior Court’s analysis of this claim. The Court finds not only that the state court’s determination on this *Strickland* claim was reasonable, but that it was correct. Moore, who personally experienced the physical repercussions and medical treatment following the August 2, 2016 assault, was permitted to testify about these issues, which were “rationally based on [his] perception,” and not on “specialized knowledge” that would require expert testimony.<sup>81</sup> Moore, for example, would be able to testify that he was hospitalized after the assault and that he was no longer able to use his lower body (including his

---

<sup>79</sup> See *Romig*, No. 1168 MDA 2020, 2021 WL 2624701, at \*3-4.

<sup>80</sup> See *id.*, at \*4 (citing PA. R. EVID. 701).

<sup>81</sup> See PA. R. EVID. 701.

bladder, bowels, and sex organs). These are not “expert opinions” that would require a Rule 702 medical expert, and the Superior Court was correct in finding that there was no basis to object to this testimony. Accordingly, the Superior Court’s determination on this *Strickland* claim was more than reasonable.

### C. Ground 4 – Alleged *Brady* Violation

In his final ground for relief, Romig contends that the Commonwealth violated *Brady v. Maryland*<sup>82</sup> by failing to disclose the criminal backgrounds of its witnesses.<sup>83</sup> The Superior Court addressed this claim on direct appeal.<sup>84</sup> The court, relying on *Commonwealth v. Tharp*,<sup>85</sup> determined that there was no *Brady* violation by the state for failing to turn over the criminal records of its witnesses (McTavish, Koch, and Moore) because defense counsel had equal access to this information through other publicly available sources.<sup>86</sup>

---

<sup>82</sup> 373 U.S. 83 (1963). In *Brady*, the United States Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87.

<sup>83</sup> Doc. 16 at 5. Although Romig includes “medical backgrounds” of the witnesses in his memorandum of law as allegedly suppressed *Brady* material, (*see* Doc. 16 at 14), this issue was not raised in state court and therefore is procedurally defaulted. In state court, Romig only argued that the Commonwealth failed to disclose its witnesses’ criminal backgrounds. *See Commonwealth v. Romig*, 2018 WL 6529393, Appellant Br. at \*8, 33-36 (Pa. Super. Ct. Aug. 12, 2018).

<sup>84</sup> *See Romig*, No. 400 MDA 2018, 2018 WL 6598400, at \*7-8.

<sup>85</sup> 101 A.3d 736 (Pa. 2014).

<sup>86</sup> *See Romig*, No. 400 MDA 2018, 2018 WL 6598400, at \*7-8 (“Accordingly, given *Tharp*’s holding that such records are public and ascertainable by the defense, and [Romig]’s failure to explain why the records he sought were unobtainable with reasonable diligence, we conclude that *Brady* was not violated in this case.”).

This decision is contrary to clearly established federal law.<sup>87</sup> There is no “reasonable diligence” component of a *Brady* claim requiring defense counsel to independently root out material evidence that should have been disclosed by the prosecution.<sup>88</sup> Rather, impeachment evidence—like a government witness’s criminal history—must be disclosed when it satisfies *Brady*’s disclosure requirements (*i.e.*, it is in the government’s possession and is material to either guilt or punishment).<sup>89</sup> Accordingly, because the Superior Court’s determination on this claim was contrary to clearly established federal law, the Court must review Romig’s *Brady* claim “unencumbered by the deference AEDPA normally requires.”<sup>90</sup>

Respondent argues that, because the state court opinion was “silent on the materiality prong of the *Brady* analysis,” this Court must analyze the “materiality facet of the claim through the deferential AEDPA lens.”<sup>91</sup> Respondent’s advocacy

---

<sup>87</sup> See 28 U.S.C. § 2254(d)(1).

<sup>88</sup> See *Dennis v. Sec’y, Pa. Dep’t of Corr.*, 834 F.3d 263, 290-92 (3d Cir. 2016) (en banc) (explaining that the Supreme Court has concluded that “[a] rule . . . declaring ‘prosecutor may hide, defendant must seek,’ is not tenable in a system constitutionally bound to accord defendants due process.” (alteration in original) (quoting *Banks v. Dretke*, 540 U.S. 668, 696 (2004))); see also *id.* at 293 (“To the extent that we have considered defense counsel’s purported obligation to exercise due diligence to excuse the government’s non-disclosure of material exculpatory evidence, we reject that concept as an unwarranted dilution of *Brady*’s clear mandate.”).

<sup>89</sup> See, e.g., *Wilson v. Beard*, 589 F.3d 651, 663-64 (3d Cir. 2009) (“[I]f the prosecution has the obligation . . . to notify defense counsel that a government witness has a criminal record even when that witness was represented by someone in defense counsel’s office, the fact that a criminal record is a public document cannot absolve the prosecutor of her responsibility to provide that record to defense counsel.”).

<sup>90</sup> *Panetti v. Quarterman*, 551 U.S. 930, 948, 953 (2007).

<sup>91</sup> Doc. 19 at 30-31.

for AEDPA deferential “gap-filling” is misplaced. Although the Superior Court failed to discuss materiality, it was not “silent” as to its determination of Romig’s *Brady* claim. It provided multiple pages of analysis, but unfortunately that analysis relied on a “reasonable diligence” standard that is contrary to United States Supreme Court precedent.<sup>92</sup>

Nevertheless, on *de novo* review, the Court finds that the evidence in question was not material. “Evidence is material [for *Brady* purposes] if there is a reasonable probability that, if the evidence had been disclosed, the result of the proceeding would have been different.”<sup>93</sup> A reasonable probability of a different result is demonstrated when the prosecution’s evidentiary suppression “undermines confidence in the outcome of the trial.”<sup>94</sup>

Romig claims that “Moore had an escape charge in Dauphin County” and “McTavish had multiple bad check charges.”<sup>95</sup> He also contends that McTavish “received a lenient sentence of six months[’] probation for the charges she was on bail for” at the time of the August 2 incident.<sup>96</sup> He additionally asserts that Koch “had a pending DUI from Montgomery County.”<sup>97</sup>

---

<sup>92</sup> See *Dennis*, 834 F.3d at 356 (Jordan, J., concurring) (explaining that “erroneous” reasoning is different than “opaque” reasoning, and that AEDPA deferential “gap-filling is reserved for only those cases where [the federal court] cannot discern the basis for the state court’s conclusions”).

<sup>93</sup> *Wilson*, 589 F.3d at 665 (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)).

<sup>94</sup> *Id.* (quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)).

<sup>95</sup> Doc. 16 at 14.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

The claims regarding Koch and Moore are plainly meritless. As to Koch, Respondent has not uncovered any convictions that could have been disclosed to defense counsel prior to trial, nor has the Court independently discovered any. While Romig alleges that Koch had a “pending DUI” in Montgomery County, no such conviction has been found by Respondent or located in the Unified Judicial System of Pennsylvania online database.<sup>98</sup> Romig himself is unsure about the resolution of this alleged charge.<sup>99</sup>

As for Moore, Respondent has identified prior convictions in 2001 and 2011 for controlled substance offenses.<sup>100</sup> Not only are these convictions stale and irrelevant, but they also would have been inadmissible under Pennsylvania Rule of Evidence 609 for impeachment purposes.<sup>101</sup> Although the admissibility of evidence is not dispositive of its materiality, admissibility remains “a consideration that bears on *Brady* materiality.”<sup>102</sup> In particular, “inadmissible evidence may be

---

<sup>98</sup> See <https://ujportal.pacourts.us/CaseSearch> (last visited Nov. 21, 2023). Romig provided what he claims is an “internet background check” for Koch. See Doc. 22-11. That document, however, does not contain full docket numbers or magisterial district numbers such that any search can be performed for the particular DUI offense noted. The Court additionally observes that such a conviction—even if it existed—is irrelevant and would be inadmissible as impeachment evidence under Pennsylvania Rule of Evidence 609. See *infra* note 101.

<sup>99</sup> See Doc. 16 at 14.

<sup>100</sup> See Doc. 19-13; Doc. 19-14. Respondent also notes a 1995 retail theft conviction for Moore, but it is highly unlikely this 22-year-old conviction would have been admissible under Pennsylvania Rule of Evidence 609(b)’s requirement that its “probative value substantially outweighs its prejudicial effect.” PA. R. EVID. 609(b). Romig does not address or discuss this conviction or assert that it would have been admissible or led to admissible evidence.

<sup>101</sup> Pennsylvania Rule of Evidence 609 differs from Federal Rule of Evidence 609 insofar as the only criminal convictions that are admissible for impeachment under Pennsylvania law are *crimen falsi*. Compare PA. R. EVID. 609(a), with FED. R. EVID. 609(a).

<sup>102</sup> *Johnson v. Folino*, 705 F.3d 117, 129-30 (3d Cir. 2013).

material if it could have led to the discovery of admissible evidence.”<sup>103</sup> Romig has not established, nor can the Court conceive, how these dated and inadmissible drug offenses could lead to the discovery of admissible evidence or implicate materiality in any other respect.<sup>104</sup>

Respondent has identified two criminal docket numbers for McTavish: CP-44-CR-0000644-2013 and CP-44-CR-0000056-2016. The first conviction (644-2013) was for use of, or possession with intent to use, drug paraphernalia in violation of 35 PA. STAT. AND CONS. STAT. § 780-113(a)(32).<sup>105</sup> McTavish pled guilty to this misdemeanor offense and was sentenced in December 2014, several years before the August 2016 incident and July 2017 trial.<sup>106</sup> This conviction would be inadmissible for impeachment purposes under state law, and Romig has not established any other basis for its materiality under *Brady*.

McTavish’s second conviction (56-2016) was for recklessly endangering another person under 18 PA. CONS. STAT. § 2705, a misdemeanor. This offense was charged in January 2016 and McTavish was sentenced on August 16, 2016, after pleading guilty that same day.<sup>107</sup> McTavish was sentenced to six months’

---

<sup>103</sup> *Id.* at 130 (collecting cases).

<sup>104</sup> Similar to Koch, the “internet background check” documents Romig provided for Moore (Doc. 22-10) do not contain full docket numbers or magisterial district numbers such that any search can be performed for the particular “escape” offense noted. The Court likewise observes that such a conviction—even if it existed—is irrelevant and would also be inadmissible as impeachment evidence under Pennsylvania Rule of Evidence 609.

<sup>105</sup> *See* Doc. 19-13 at 3.

<sup>106</sup> *See id.* at 6.

<sup>107</sup> *See* Doc. 19-14 at 1, 3.

probation.<sup>108</sup> Again, Romig has not established why this prior conviction would be material under *Brady*. It is not admissible for impeachment purposes under Rule 609(a), nor has Romig claimed that it would lead to the discovery of admissible evidence.

To the extent that Romig asserts that this conviction and sentence are somehow evidence that McTavish sought and received leniency in exchange for testifying against Romig,<sup>109</sup> this completely speculative claim falls short. McTavish did not testify until July 2017, almost a year *after* she was sentenced for the reckless endangerment misdemeanor offense. This timing does not, on its own, implicate a *quid pro quo* arrangement evincing leniency in exchange for testimony.

During trial, the court allowed Romig's trial counsel to question McTavish about being out on bail at the time of the August 2 incident to attempt to show that McTavish delayed getting Moore to the hospital out of fear for her own legal predicament (*i.e.*, that McTavish potentially violated her bail terms by drinking alcohol and smoking marijuana).<sup>110</sup> There was no questioning with regard to whether McTavish had received a benefit from the Commonwealth in exchange for trial testimony. In fact, the record is devoid of any evidence that McTavish received leniency in exchange for testifying at Romig's trial. Romig, therefore,

---

<sup>108</sup> *Id.* at 3.

<sup>109</sup> *See* Doc. 16 at 14, 17.

<sup>110</sup> *See* 7/18/17 Trial Tr. 70:15-74:13.

has failed to carry his burden to show the materiality of the reckless endangerment conviction such that he could establish a due process violation under *Brady*.

Romig lastly asserts that McTavish has “[f]ive counts of bad checks” in 2008, which he claims are *crimen falsi*.<sup>111</sup> Respondent does not address this assertion and the Court is unable to determine if such convictions exist, as they are unable to be located in the Unified Judicial System of Pennsylvania online database. The Court finds that, even assuming these temporally distant convictions exist and would have been admissible at trial under Rule 609(a), there is not a reasonable probability that the result of the proceeding would have been different. While it is possible that such convictions could have diminished the credibility of McTavish in the eyes of the jury, they would not have impacted the corroborating testimony of Koch or the vast disparity in the injuries suffered by Romig and Moore.

Romig, therefore, has failed to establish materiality for the alleged *Brady* evidence. The criminal histories that he claims should have been disclosed do not undermine confidence in the outcome of his trial. Consequently, his fourth and final ground for habeas relief is meritless.

---

<sup>111</sup> Doc. 16 at 14; Doc. 22 at 7; Doc. 22-9 at 4-6.

#### IV. CONCLUSION

For the foregoing reasons, the Court will deny Romig's petition for a writ of habeas corpus under 28 U.S.C. § 2254. The Court will likewise deny a certificate of appealability, as Romig has failed to make a substantial showing of the denial of a constitutional right.<sup>112</sup> An appropriate Order follows.

BY THE COURT:

*s/ Matthew W. Brann*

Matthew W. Brann  
Chief United States District Judge

---

<sup>112</sup> See 28 U.S.C. § 2253(c)(2).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL C. ROMIG,

Petitioner,

v.

KATHY BRITTAIN,

Respondent.

No. 4:22-CV-01628

(Chief Judge Brann)

**ORDER**

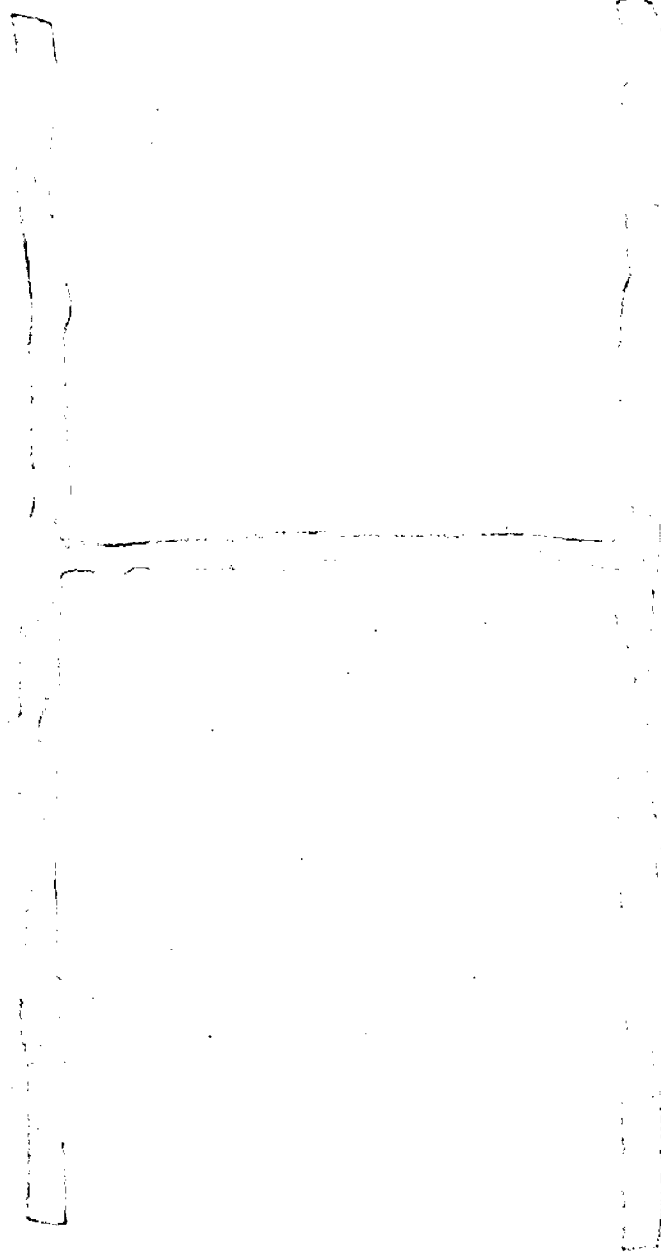
**AND NOW**, this 29<sup>th</sup> day of November 2023, in accordance with the accompanying Memorandum, **IT IS HEREBY ORDERED** that:

1. Petitioner Michael C. Romig's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED**.
2. A certificate of appealability shall not issue, as Romig has not made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).
3. Romig's motion "for bail/release pending appeal" (Doc. 27) is **DISMISSED** as moot in light of paragraph 1 above.
4. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

s/ Matthew W. Brann

Matthew W. Brann  
Chief United States District Judge



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Michael C. Romig, :  
Petitioner, :  
v. : Case No. 4:22-cv-01628  
: :  
Kathy Brittain, et al :  
Respondents :

REPLY TO RESPONDENT'S ANSWER  
TO PETITION FOR WRIT OF HABEAS CORPUS

AND NOW COMES, Michael C. Romig pro se, asserting the following as a reply to Respondent's Answer.

Preliminarily, Respondent's answer was due to be filed by January 2, 2023. Respondent mailed a copy from his office to Petitioner on December 30, 2022, through Smart Communications in Florida. Petitioner did not receive Respondent's answer until January 20, 2023. Petitioner is unsure how, if, and when answer was sent/filed in this Court as it is not indicated within the Attorney General's Certificate of Service. Although Gregory J. Simatic sent the copy to Petitioner UPS Overnight Delivery, Petitioner did not receive it for 21 days, making it impossible for a reply to be timely. Prior to this it was informally requested that Respondent use privileged mail service available per Department of Corrections mail policy. Where this Petitioner still believes his motion for Default / Failure of Consideration should negate the necessity of this "REPLY".

1.

For most of Respondents argument contained within the Answer To Petition For Writ Of Habeas Corpus, Petitioner believes that his original Petition and his Memorandum Of Law/Brief For Petitioner overcome those arguments. Any others will be discussed in this Reply.

ARGUMENT ON RESPONDENT'S MERITS OF PETITIONER'S CLAIMS

A. Trial Courts failure to instruct the jury on "requested" jury instruction of the use of Deadly Force / Castle Doctrine.

As previously stated, Respondent's characterization of Petitioner's Grounds Raised starkly different, where Respondent leaves out the fact that a specific instruction was requested at trial and more on point that a Deadly Force instruction was requested. Said instruction was fundamental, per the charge of Aggravated Assault: 18 § 2702 (a-4) with a deadly weapon, warranting this Deadly Force Instruction in Self Defense versus the Non-Deadly Force Instruction in Self Defense that the Trial Court gave. Thus leaving the jury unintelligible to the application of the law. Again this is discussed in Petitioner's Memorandum of Law Brief.

Further, it is believed that the castle doctrine instruction should also have applied in this case, where Petitioner testified that he had ask alleged victim was ask to leave for the way he was talking to Petitioner, and refused hence making him a trespasser (see Commonwealth v. Johnston, 438 Pa. 485; 273 A.2d 376; (1970).

Additionally, it is impossible to know if the jury arrived at a guilty verdict on the Aggravated Assault (a-1) charge as a result of not being properly instructed on the above. There are Three reasons for excusing alleged procedural default, one the charge was requested, two it was fundamental to the crimes charged, three

Regardless, in a safe guard attempt to preserve due process rights, this Reply follows gratuitously.

Also in Attorney General's petition section. IV. EXHAUSTION he changes the wording of my four claims for relief/grounds raised. (see Petitioner's Memorandum of Law Brief page five, and Respondent's Answer To Petition For Writ Of Habeas Corpus page 11.) Modification of the wording of grounds raised is no doubt an attempt to benefit against Petitioner's argument.

Enclosed in the appendices are several items, some of which were omitted by Respondent. Those being Petitions, and Transcripts from hearings held on this case (that Respondent seems to think they are germane to the issues before the Court). A clear reading of these items shows they are pertinent. One of the questions in this case relates to effectiveness of trial and appellate counsel, so included is January 5, 2021 on the record inquiry concerning counsel's stewardship, ORDERED by the Superior Court (see Superior Court Docket Sheet 1168 MDA 2020). Note the trial court really did not address the stewardship issue, just whether or not I wanted a attorney. Of which I do but one that does not waive my rights away, or fail to argue legal points or fail to file documents timely. Also included is criminal history reports of Kelley McTavish, James Moore, and Patricia Koch, showing charges and crimes of which Respondents claim doesn't exist. Lastly is a copy of the State Police's Incident Report, that shows differences in witness stories, and what was said at trial. Also arrival time to hospital.

2.

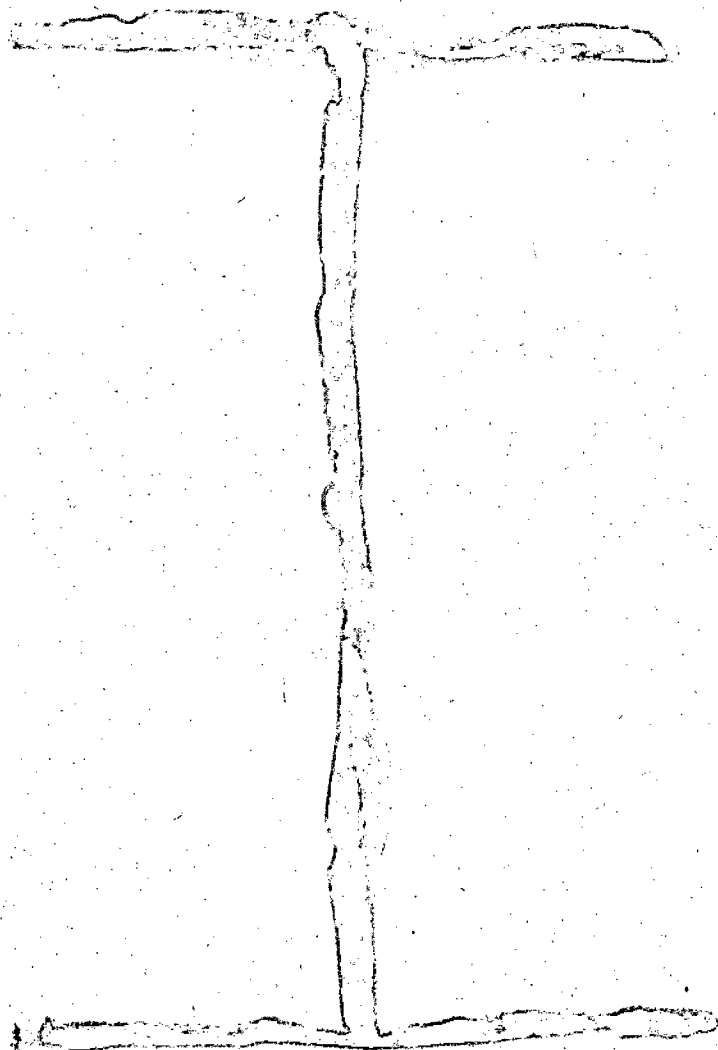
appellate counsel's ineffectiveness of failing to argue the raised issue in the argument section of his brief. At PCRA Hearing on June 2, 2020 Attorney Justin Miller testified on direct examination the issue of failing to properly brief the castle doctrine before the Superior Court. @ trans. page 7-11. Specifically on page 8 lines 7-20 Justin Miller admits to being deficient in briefing the issue and states "if I were to do it again, I would certainly separate out the self-defense justification question from the castle doctrine, but I addressed those two together."

This in itself shows that counsel's effectiveness was lacking in this case, and further prevents procedural default from preventing this Court from addressing the Trial Court's failure to give requested jury instructions, violating Petitioner's right to due process, and a fair trial. (see Petitioner's Memorandum of Law/Brief page 10 and 11 concerning jury instructions relating to Commonwealth v. Heatherington, and Commonwealth v. Leshner.)

B. Appellate counsel was ineffective, in that he failed to develop any argument on raised issue (Castle Doctrine) jury instruction on direct appeal in argument section of brief.

First, see Memorandum Opinion No. 400 MDA 2018 Footnote 2 that states "In Appellant's Statement of the Questions, he also mentions the court's failure to provide a jury instruction on the defense of property (the castle doctrine), and on the use of deadly force [.] Appellant's Brief at 7. However, Appellant does not develop any argument on these claims in the body of his brief. Consequently, we will not address them.

Next, see PCRA Hearing transcript pages 6-16. For my argument on this I will again point to Justin Miller's own admission of his deficient briefing, and if he could do it again what he would do



IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA  
Sitting in Williamsport

Civil Action No. 4:22-CV-1628  
(Chief Judge Brann)

MICHAEL C. ROMIG,  
Petitioner,

v.

KATHY BRITAIN,  
Respondent,

Memorandum in support of a properly filed Petition Under 28 U.S.C. § 2254, Writ of Habeas Corpus by a person in State Custody, attacking and requesting relief from a conviction and sentence imposed by David W. Barron at No. CP-44-CR0000560-2016 in the criminal division of the Court of Common Pleas of Mifflin County Pennsylvania, and subsequent Direct Appeal, and PCRA and Appeal of PCRA.

MEMORANDUM OF LAW/BRIEF FOR PETITIONER

Michael C. Romig OK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

TABLE OF CONTENTS

	Page No.
- Cover Sheet/Table of Citations/Secondary Authorities	1.
- Table of Contents	2. 3.
- Attorneys Involved	4.
- Grounds Raised	5.
- Statement of Case	6.-9.
- Argument	10.-19.
- Conclusion	19.
- Proof of Service	20.

TABLE OF CITATIONS

- Commonwealth v. Johnston, 438 Pa. 485; 273 A.2d 376; (1970)	10.
- Commonwealth v. Heatherington, 477 Pa. 562; 385 A.2d 338; (1978)	10.-12.
- Commonwealth v. Leshner, 473 Pa. 141; 373 A.2d 1088; (1977)	11.
- Commonwealth v. Romig, 2018 Pa. Super. Unpub. LEXIS 4697 203 A.3d 322. No. 400 MDA 2018	12.
- Commonwealth v. Young, 271 Pa. 59; 412 A.2d 159 (1979)	12.
- Commonwealth v. Tiernan, 455 Pa. 88; 314 A.2d 310 (1974)	12.
- Commonwealth v. Eberle, 474 Pa. 548; 379 A.2d 90 (1970)	13.
- Commonwealth v. Helm, 485 Pa. 315; 402 A.2d 500 (1979)	13.
- Commonwealth v. Mayo, 272 Pa. 115; 414 A.2d 696; (1979)	16.
- Commonwealth v. McClelland, 233 A.3d 717; 2020 Pa. LEXIS 3807	16.
- Commonwealth of Pennsylvania ex. rel. M. Russell Buchanan v. District Justice Edward Verbonitz and Luzerne County, 525 Pa. 413; 525 Pa. 413; 581 A.2d 172; (1990) LEXIS 185	17.
-USJ. Docket-Commonwealth v. Kelley McTavish No. CP-44-CR-56-2016	17.
- Giglio v. United States, 31 LED2D 104, 405 US 150	18.
- United States v. Bagley, 87 LED2D 481, 473 US 667	18.

2.)

Page No.

- Commonwealth v. Ricker, 120 A.3d 349 (Pa. Super. Ct. 2015) 18.
- Commonwealth v. Childs, 142 A.3d 823; 2016 LEXIS 1534 19.

Secondary Authorities

- U.S. Const. Amend. 5, 6, 14 15.
- Pa. Const. Art. 1 Section 1 and 9 15., 18.
- Pa. Rules of Criminal Procedure 542 (E) 16.

STATUTES

- 18 Pa.C.S.A. § 2702 (a)(1) Aggravated Assault
- 18 Pa.C.S.A. § 2702 (a)(4) Aggravated Assault/Deadly Weapon
- 18 Pa.C.S.A. § 2701 (a)(1) Simple Assault
- 18 Pa.C.S.A. § 2709 (a)(1) Harassment
- Suggested Jury Instructions 9.501 (A) Deadly Force

ATTORNEYS INVOLVED

Jefferey Michael Davis  
P.O. Box 206  
Lewistown, Pennsylvania 17044-0206  
(only up to preliminary hearing where he did not show up)

Michael S. Gingerich  
P.O. Box 971  
Belleville, Pennsylvania 17004  
(Trial Counsel)

Christian A. Kerstetter  
326 Allegheny Street  
Hollidaysburg, Pennsylvania 16648  
814-696-6580  
(Private Counsel, only appeared at Post Sentencing Hearing)

Justin P Miller  
817 East Bishop Street Suite D  
Bellefonte, Pennsylvania 16823  
(Direct Appeal Court Appointed Counsel)

Scott N. Pletcher  
119 Burrows Street  
State College, Pennsylvania 16801  
(Post Conviction Collateral Relief Court Appointed Counsel)  
814-272-0303

Christopher R. Torquato  
Mifflin County District Attorney's Office  
20 North Wayne Street  
Lewistown, Pennsylvania 17044  
717-248-9800  
(Prosecution)

4.)

GROUND'S RAISED

1.) Trial Courts failure to instruct the jury on "requested" jury instruction of the use of Deadly Force / Castle Doctrine.

2.) Appellate counsel was ineffective, in that he failed to develop any argument on raised issue (Castle Doctrine) jury instruction on direct appeal in argument section of brief.

3.) Counsel was ineffective for failure to object to the lack of medical expert testimony, and trial court erred by not providing any relief, as did appellate courts.

4.) Brady violation for failure of Commonwealth to provide defense with "requested" criminal backgrounds for victim/witness, as well as counsel's failing to investigate.

5.)

This counsel later withdrew prior to direct appeal, due to my inability to pay him due to my incarceration. Then after the trial court DENIED my Post Sentence Motion in whole, the court appointed me counsel for direct appeal (Justin P. Miller Esq.). Direct appeal was DENIED by both the Superior Court and the Supreme Courts.

I then filed a pro se Post Conviction Collateral Relief petition with the trial court, where the court did not address any of the issues in it, but instead choose to appoint alternate counsel to represent me for a first time PCRA. Counsel was directed to file an amended petition for PCRA, where this counsel (Scott N. Fletcher Esq.) omitted many of my issues from petitioner's original PCRA, Then omitted more in his subsequent brief. After a hearing that I was only aloud to attend via video, the court DENIED in entirety, and subsequently appeals from the PCRA were DENIED by the Superior, and the Supreme Court.

Wherefore this Habeas Corpus Petition and this following Memorandum follow.

The facts of the case are that myself and two females and another male had met at a bar in mid-afternoon August 2nd 2016, to provide me with a ride home from work. I had just recently met Ms. Koch, and had met Ms. McTavish only once before years earlier, but did not know the alleged victim Mr. Moore at all.

I noticed right away that the three were acting very odd, like they were on some type of drugs. After pretrial discovery was provided I found out why, it was because Mr. Moore's tox screen came back positive for benzodiazepines.

7.)

STATEMENT OF THE CASE

Petitioner was arrested on August 3rd 2016 at his residence by Pennsylvania State Police for an alleged assault to have taken place August 2nd 2016. Charges I was arrested for were count one 18 Pa.C.S.A. § 2702 (a) (1) Aggravated assault, (attempts or causes serious bodily injury to another), count two 18 Pa.C.S.A. § 2702 (a) (4) Aggravated assault, (attempts or causes bodily injury to another with a deadly weapon), count three 18 Pa.C.S.A. § 2701 Simple assault (a) (1), and count four 18 Pa.C.S.A. § 2709 Harassment (a) (1). A Preliminary Hearing was held before Magisterial District Judge Jonathan Reed, Wednesday, September 14th 2016 that was transcribed by Alice J. Marshall Arnold. Charges were bound over for trial. Michael C. Romig filed a motion pro se pursuant to Rule 600 (that counsel was forced to endorse), that was GRANTED. State Parole then took jurisdiction of me and moved me to S.C.I. Huntingdon, detaining me pending outcome of new criminal charges. I maxed out my State Parole 54 days later, prior to being brought to trial, and was released June 17th 2017.

Petitioner was convicted of all charges July 17th 2017 during a one-day jury trial. On September 14th 2017, I was sentenced to seven years to Twenty Years for count one, and a consecutive term of two and one-half years to ten years, totaling and aggregate term of nine and one-half years to thirty years in a state correctional facility.

Petitioner filed Post Sentence appeal with the trial court through court appointed counsel Michael Gingerich Esq., where I then hired private counsel Christian Kerstetter Esq. who argued Post Sentence Motion at Hearing.

6.)

We proceeded to my house where I live by myself, and consumed a few beers, played games, rode petitioner's horse. When it was the alleged victim's turn to ride the horse, he fell off the horse onto the macadam road. After this incident we moved inside to listen to music. The alleged victim and I became involved in an altercation after I had asked him to leave as I did not like the way he was talking to me in my home, where he verbally threatened me, grabbed, and pushed me. Where we then entered into a kind of wrestling match, during this time I was attempting to remove Mr. Moore from my home and was moving him towards my front door when he pushed me through a window beside my front door, breaking it, and causing a laceration to my right arm. Mr. Moore then began punching me. I returned blows as I felt necessary at the time of being attacked in my home, until I overpowered him and he fell to the floor. I then began looking for my cell phone, at which time Mr. Moore attacked me again from behind by hitting me in the face with a large television remote control in the mouth. My mouth began bleeding instantly. I again returned blows with my fists to Mr. Moore's face, when he fell this time I delivered two kicks to his ribs, to avoid another attack. Not knowing if he was going to get up again and attack I displayed a pocket knife I carry regularly and made a threat if he attacked me again I would end this. Mr. Moore did not get back up and the knife was put away.

I then helped the two females after several requests, carry Mr. Moore to Ms. Koch's car. Once he was in the car Ms. McTavish got into the passenger seat as I stood outside the car, and shouted profanities at me where I then spit blood I had in my mouth on the windshield of the car, from getting hit with the

8.)

remote by Moore. They peeled out of my drive way as they left. I went back into the house and passed out on the couch from blood loss and exhaustion. I was awoken in the morning by PSP banging on my front door. I opened the door and stepped outside where I was met by several troopers. One with a taser and another right in front of me pointing a pistol at me threatening that he would shoot me. I did nothing to warrant this treatment and was peacefully taken into custody, where some of the troopers commented on how cooperative I was. I was questioned by Trooper Michael Elder, and then transported to Mifflin County Correctional facility, where district judge R888 set bail at \$150,000.00.

I remained there until I filed and was granted nominal bail, where the Pennsylvania Board of Probation and Parole then took action and took me to Huntingdon pending the outcome of new criminal charges. Where I maxed out from State Parole June 17th 2017 before trial. I showed up on my own recognizance for jury selection, and trial, but yet before sentencing the trial judge reinstated the \$150,000.00 straight bail, even though I already posted nominal bail. Trooper Elder cuffed me in the court room, and I've remained serving back time for PBPP, until August 3rd 2021 where I just started my nine and one-half year to thirty year sentence.

9.)

(citing commonwealth v. Rose)". Then later goes on to say "it is also applicable in the instant case where the trial Judge failed to provide the jury with any standard to apply to the issue of self-defense [deadly force/castle doctrine/no duty to retreat], thus leaving the jury without legal guidance on an issue over which there was a bona fide factual dispute."

Further much like in Commonwealth v. Leshery 473 Pa. 141; 373 A.2d 1088; (1977) I do not believe that the Commonwealth even disproved the standard non-deadly force self-defense instruction beyond a reasonable doubt.

Fact remains petitioner was and is the sole occupier/owner of the property (trial trans. pg. 162 line 13 through pg. 163 line 7). Alleged victim became unruly, more than likely because he was under the influence of alcohol and benzodiazepines (Klonopin/Zanex) of which he lied about at trial, and district attorney attempted to justify by saying the medics could have given him that. (see appendix of 2254 motion James Moore medical record and trial trans. pg. 132 line 25 through pg. 133 line 24).

Further if the requested jury instruction would have been given there would have been no limit to the amount of force that could be employed in one's home in self-defense. (objection to jury instruction, trial trans. pg. 201 lines 17-25 through pg. 203 lines 1-4, and actual objection. pgs. 247-248-251 include actual instruction. Pages attached to appendix of 2254 motion)

Appellate Counsel Justin P. Miller was ineffective where he failed to develop any argument on raised issue castle doctrine jury instruction on direct appeal in his brief.

11.)

#### ARGUMENT

Ground one, trial court did abuse it's discretion in failing to give requested self-defense deadly force castle doctrine jury instruction, where defendant was in fact charged and convicted of aggravated assault (a) (4) with a deadly weapon, necessitating the instruction on the charge alone, with defendant's testimony at trial suggesting he acted in self-defense.

In the Superior Court, @ Docket No. 1168 MDA 2020 the Court states that "not surprisingly petitioner failed to cite any case law where an invited guest is ask to leave, and the Castle Doctrine can be invoked. I did in my pro se filings, where court appointed counsel Scott N. Pletcher omitted the same from his filing. Specifically that case being Commonwealth v. Johnston, 438 Pa. 485; 263 A.2d 376; (1970) "The court ruled that the aggressor became a trespasser when he refused appellant's order to leave the premises; therefore appellant did not provoke the aggressor's attack." This case also discussed "Both in this and other jurisdictions, however, it has been consistently held that one is under no duty to retreat when feloniously attacked or placed in danger while in one's own home. Then in Commonwealth v. Heatherington, 477 Pa. 562; 385 A.2d 338; (1978) @ footnote seven "This writer has had the occasion to comment upon the importance of jury instructions on the standard to be employed in determining guilt or innocence.

Nothing is more basic to the adjudicatory process than the standard to be employed by the finder of fact in the determining of guilt or innocence. Where the standard employed is so completely contradictory as to render it unintelligible, the fact finder is left without guidance and due process is offended.

10.)

This error can be proven by Superior Courts opinion at Commonwealth v. Romig, 2018 Pa. Super Unpub. Lexis 4697; 203 A.3d 322 Docket No. 400 MDA 2018 specifically foot-note two. This violates Petitioner's right to a fair trial. It is important as in Commonwealth v. Ronald Lawrence Young, 271 Pa. Super. 59; 412 A.2d 159; (1979) "A defendant has a legal right to exercise ejection, and would be without fault in provoking the controversy within the meaning of the first element of self-defense." it later says "If you find that the defendant was a licensee of the premises, then you must find that he had a right to eject the trespasser and that he would therefore be without fault in provoking the confrontation within the meaning of the first element of self-defense." it then cites Commonwealth v. Heatherington "where it is not harmless error to fail to instruct a jury on a factual point in question."

The Commonwealth introduced testimony at trial that was not raised prior or included in pretrial discover through Ms. McTavish, that Petitioner had showed her naked pictures of himself, even if this was true, it would not rise to a level of provocation necessary as outlined by Commonwealth v. Tiernan, 455 Pa. 88, 314 A.2d 310 (1974) where "Defendant's act of kissing victim's girlfriend could not be considered sufficient to establish that the defendant was at fault in provoking victim and to preclude application of doctrine of self-defense in prosecution of defendant for fatal shooting of victim." Additionally this was never proven. Petitioner believes that Commonwealth just had used it to smear the Petitioner in front of the jury and the appellate courts, where they used this in there opinions.

12.)

This was raised at trial, where attorney Michael Gingerich replied "This is the first time that I've heard anything like that", this was not in her written statement, or the police officers report. When ask about if she told anyone else she replied "just the DA.". Although Michael Gingerich's statement is not in the transcripts it is because it was omitted by a member of the court. The biggest issue with the court refusing to give requested self-defense/deadly force/castle doctrine instruction not being given is that petitioner "had no duty to retreat where alleged victim resided resided elsewhere, not a member of the household." see; *Commonwealth v. CEberle*, 474 Pa. 548, 379 A.2d 90 (1970) *Commonwealth v. Helm*, 485 Pa. 315, 402 A.2d 500 (1979) where "Since argument between defendant and victim occurred in defendant's home, she was under no duty to leave it." This should take care of argument on the first two grounds as they are similar. The only difference is that if appellate counsel would have argued in the argument section of his brief the outcome of the appellate court versus the outcome of the trial court would have been different.

Ground Three, Counsel was ineffective for failing to object to the lack of medical expert testimony, where trial court as well as appellate court erred in not providing any relief on this issue, when the record clearly shows at preliminary hearing that was transcribed that an objection was lodged by trial counsel at preliminary hearing regarding lack of medical expert testimony. Where the judge at that hearing said that medical experts would be available at trial to be cross examined, which they were not.

13.)

Lastly, at trial the District Attorney argued that medic or the hospital could have given Moore the benzodiazapines that were in his tox screen. Additionally, Petitioner has just began to serve his sentence in August 2021.

For all reasons mentioned constitutional rights were violated. Where the Defendant was denied his right to a fair trial before an impartial jury (U.S. Constitution, Amendments 6 and 14; Pennsylvania Constitution, Artical 1, Section 9); to present evidence and confront the evidence and the witnesses against him (U.S. Constitution, Amendments 6 and 14, Pennsylvania Constitution, Artical 1, Section 9); to Due Process of Law (U.S. Constitution, Amendments 5 and 14, Pennsylvania Constitution, Artical 1, Section 1 and 9); and to Equal Protection of Law (U.S. Constitution, Amendment 14, Pennsylvania Constitution, Artical 1, Section 9), and was denied his substantive and procedural rights under the statues of Pennsylvania and under the Pennsylvania Rules of Criminal Procedure in that:

a) trial court refused to give Defendant's requested instructions to jury on self-defense and defense of property (Castle Doctrine), and on "Deadly Force" as it relates to 18 C.S.A § 2702 (a) (4).

b) denial of trial court of continuance for testing of blood samples by defendant prior to trial, to determine exculpatory value.

c) the evidence marginally supports the jury's guilty verdicts, the weight of all the evidence admitted more strongly and conclusively supports verdicts of "not guilty" in that:

i) Affirmative defense of self-defense/defense of home and property (justification) was sufficiently proven to support not guilty verdict;

ii) Justification defense presented by Defendant was sufficient to negate finding of "malice" that is a requisite for guilty verdict on Aggravated Assault;

iii) evidence that Moore fell off horse shortly before alleged assault by Defendant, created reasonable doubt as to element that

15.)

Although, at trial Mr. Moore (alleged victim) popped wheelies in an electric wheel chair while defense counsel cross examined him in front of the jury. District attorney went a step further as to walk up and give the alleged victim a drink from a cup and straw, when he already had a nurse present in the court room. When questioned about the drugs in his system, alleged victim said "I don't do those type of things." . Petitioner believes that with other comments and questions relating to his sex organ, and other alleged injuries, that this was just a attempt to inflame the jury to invoke sympathy.

Ground four is for Brady violation for failure of Commonwealth to provide defense with requested criminal and medical backgrounds of victim/witnesses, as well as for trial counsels failure to investigate the same. Two requests were sent to the district attorney were he provided only the items he wanted to, and gave no reason why other requested items were not provided, and futher failed to deny that the same existed.

Petitioner, after trial had his family pay to do an internet background check that revealed Moore had an escape charge in Dauphin County, Ms. McTavish had multiple bad check charges, and received a lenient sentence of six months probation for the charges she was on bail for as she testified against me at my trial. She was also an informant with the drug task force.

Ms. Koch had a pending DUI from Montgomery County, where Mr. Moore was with her on this occasion as well. I am not aware of the outcome of that case.

14.)

Defendant "caused, or attempted to cause" serious bodily injury, or bodily injury, to Moore when considered in light of lack of Commonwealth medical evidence to link Moore's injuries to a crime.

iv) evidence raises unexplained time gap of several hours from point in time Moore was placed in Koch's car at Defendant's house and his arrival at Geisinger Lewistown Hospital, a mere 15-20 minute drive under normal conditions. Testimony by McTavish of a stop at Lewistown apartment with Moore prior to going to hospital with him supports Defendant's argument that either intervening cause of Moore's serious injuries or development of Moore's injuries to a serious, life-threatening state, due to the delay in treatment from the actions/inactions of Koch and McTavish.

This Court should also take into consideration a Superior Court decision/overview *Commonwealth v. Ronald K. Mayo* 272 Pa. Super. 115; 414 A.2d 696; 1979 Pa. Super. LEXIS 3297, "Defendant was found guilty of rape, indecent assault, aggravated assault, and involuntary deviate sexual intercourse. The court vacated the judgement of sentence on the aggravated assault and remanded for resentencing on simple assault and affirmed on the remaining judgment of sentence. - The court found that defendant had no intent to inflict bodily injury on victim, but only to frighten and/or humiliate her."

The issue of lack of medical expert testimony invokes a question in *Commonwealth v. McClelland* 233 A.3d 717; 2020 Pa. LEXIS 3807, where the Supreme Court of Pennsylvania started changing Pa. R. Crim. P. 542 (E). Although this recent decision makes it clear prosecutors need more than just hearsay testimony, the opinion does not give guidance on what that means in the practical sense, and some prosecutors may still seek to rely heavily on hearsay evidence,

16.)

while providing some direct testimony only from nonessential witnesses (Emphasis Added).

Much like in Commonwealth of Pennsylvania ex. rel. M. Russell Buchanan v. District Justice Edward Verbonitz and Luzerne County 525 Pa 413525 Pa. 413; 581 A.2d 172; 1990 Pa. LEXIS 185, regarding hearsay testimony. In the case at bar at Michael Romigs preliminary hearing an objection was lodged for hearsay testimony. The District Judge overruled the objection, stating as long as medical expert testimony was available at Trial for cross examination. Alleged victim was not present at the preliminary hearing, and later at trial no medical expert were presented to testify to the truth of the matter. The only testimony given was from nonessential witnesses, investigating officer, and one Commonwealth witness who had open criminal charges at the time of her testimony. Those charges were for reckless endangerment, and simple assault in the same jurisdiction, for a separate incident of which she was on bail for at the time of incident and preliminary hearing. Ms. McTavish surely had incentive to testify for the Commonwealth. See Commonwealth v. Kelley McTavish No. CP-44-CR-000056-2016 where she entered a guilty plea for six (6) months probation, only thirteen days after speaking with police regarding this matter. This more than likely was leniency in exchange for her testifying for the Commonwealth against Petitioner.

Giglio v. United States "Withholding or suppression of evidence by prosecution in case as vitiating conviction" U.S. Constitutional Law §840-evidence-nondisclosure "When the reliability of a given witness may well be determinative of guilt or innocence the prosecution's nondisclosure of evidence affecting credibility 17.)

deprived of their Constitutional Rights of confrontation and due process for years.

Commonwealth v. William Childs, 142 A.3d 823; 2016 LEXIS 1534 This can be used for guidance: for whether the defendant is entitled to a "Castle Doctrine [Deadly Force]" jury instruction? This is a procedural statute because it does not effect the person's right to use deadly force within his or her home, but rather created an evidentiary presumption relevant to the evaluation of such a claim of self defense.

#### CONCLUSION

Wherefore, all of the aforesaid argument deriving from grounds raised in original 2254 and this Brief in support of the same, where Petitioner Prays this Honorable Court vacate sentence, reverse conviction, dismiss charges, discharge appellant, barring retrial for Brady violations and prosecutorial misconduct.

Respectfully Submitted

Michael C. Romig

Michael C. Romig QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931  
(pro se)

DATE: December 14, 2022

justifies a new trial, under due process clause, irrespective of prosecution's good or bad faith." Regardless the jury was entitled to know about the character of the Commonwealth's star witness. Also see United States v. Bagley 87 LED2D 481, 473 U.S. 667, "Prosecution's failure to disclose requested impeachment evidence held to constitute constitutional error only if there is a reasonable probability, that had the evidence been disclosed to the defense, the result of the proceeding would have been different."

Fact remains petitioner/defense was refused material evidence, ie. victim/witness criminal background, and medical background, requested by way of pretrial discovery request. (see appendix of 2254)

Regardless, the Commonwealth failed to establish a prima facie case by producing legally competent evidence, thus Petitioner's Pennsylvania Constitutional Rights were violated, specifically Pa. Const. Art 1§9 "in all criminal prosecutions" the accused has the right to meet the witness against him "face to face". The right necessarily includes the right to confront witnesses and explore fully their testimony through cross-examination. A preliminary hearing is an adversarial proceeding which is a critical stage in a criminal prosecution. It is not a side bar conference at which offers of proof are made. Thus, the Pennsylvania Constitution mandates a criminal defendant's right to confrontation and cross examination at the preliminary hearing.

When a case is held for court based on hearsay testimony, of which is so wide spread, a "nickname" for the practice has been developed, as a case being "Rickered" relating to Commonwealth v. Ricker, 120 A3d 349 (Pa. Super.Ct. 2015). Because of this decision, criminal defendants throughout Pennsylvania were 18.)

#### PROOF OF SERVICE/CERTIFICATE OF SERVICE

I Michael C. Romig, hereby certify that the foregoing document has been delivered to the person(s) or office(s) named below, in the manner specified, and on the date indicated below:

(one original)  
U.S. Courthouse  
Attn: Chief Judge Brann  
240 West Third Street, Suite 218  
Williamsport, Pennsylvania 17701-6460  
(First Class Mail)

(one copy)  
Attorney Christopher Torquato  
Mifflin County District Attorney  
20 North Wayne Street  
Lewistown, Pennsylvania 17044  
(First Class Mail)

(one copy)  
Attorney General's Office  
16th Floor Strawberry Square  
Harrisburg, Pennsylvania 17120  
(First Class Mail)

(one copy)  
Kathy Brittain  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931  
(Institutional Mail Service)

Respectfully Submitted

Michael C. Romig

Michael C. Romig QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

Date: December 14, 2022

Michael C. Romig QK6374  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

My Copy

October 11, 2022

To: Clerk of The United States District Court

Re: Filing fee payment

Please find enclosed, (1) One original and (2) Two copies of my "Petition for Relief from a Conviction or Sentence by a Person in State Custody, (Petition under 28 U.S.C. § 2254). Copies of petition and appendices/reproduced record are by same number as above.

I have mailed my (5) Five Dollar filing fee by way of separate letter so I could personally seal this mailing. If you haven't received the \$5.00 yet it is because S.C.I. Frackville administration is holding it up. My Mother Carole R. McCordle will be in touch with your office to make full payment for filing. Although I have included In Forma Pauperis. Please disregard if she takes care of the fee.

You may respond to me as to the status of my filing at the address at the top of this page. Please use privileged mail control numbers that maybe aquired from the Department of Corrections. I mention this as I was having problems with the county clerk of courts, Lawyers, and Mifflin County Tax Claim Bureau sending mail to Smart Communications, where they scan/copy, and electronically transmitt opened privileged documents. Something the Department has previously agreed to cease doing in another matter in this court.

Yours Truly

Michael C. Romig  
Michael C. Romig QK6374

My Copy

Page 2

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District	Middle District
Name (under which you were convicted): Michael C. Romig		Docket or Case No.:	
Place of Confinement: S.C.I. Frackville		Prisoner No.: QK6374	
Petitioner (include the same under which you were convicted) Michael C. Romig		Respondent (authorized person having custody of petitioner) Kathy Brittain (Superintendent)	
The Attorney General of the State of Josh Shapiro Attorney General of Pennsylvania			

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Mifflin County Court of Common Pleas, 20 North Wayne Street, Lewistown, Pennsylvania 17044
- (b) Criminal docket or case number (if you know): CP-44-CR-0000560-2016
- (a) Date of the judgment of conviction (if you know): July 17, 2017 (Jury Trial)
- (b) Date of sentencing: September 14, 2017
- Length of sentence: 9 1/2 Nine & One Half Years to 30 Thirty Years
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: Two Counts of Aggravated Assault (18 § 2702 a1 and a4) / One Count of Simple Assault (18 § 2701 a1)

- (a) What was your plea? (Check one)
  - (1) Not guilty ☒
  - (2) Guilty ☐
  - (3) Nolo contendere (no contest) ☐
  - (4) Insanity plea ☐

Petition for Relief From a Conviction or Sentence  
By a Person in State Custody

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

Instructions

- To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
- You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
- Make sure the form is typed or neatly written.
- You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
- Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
- You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$50.00, you must pay the filing fee.
- In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
- When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:  
  
Clerk, United States District Court, Middle District of Pennsylvania  
P.O. Box 1148  
Scranton, PA 18501-1148
- CALUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
- CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

Page 3

- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

- (c) If you went to trial, what kind of trial did you have? (Check one)  
Jury ☒ Judge only ☐

- Did you testify at a pretrial hearing, trial, or a post-trial hearing?  
Yes ☒ No ☐
- Did you appeal from the judgment of conviction?  
Yes ☒ No ☐ After sentencing Post Sentence Appeal was filed with Trial Court.

Then-

- If you did appeal, answer the following:
  - Name of court: Superior Court of Pennsylvania Middle District
  - Docket or case number (if you know): No. 400 MDA 2018
  - Result: Denied, and Judgment of Sentence & Conviction Affirmed
  - Date of result (if you know): December 17, 2018
  - Citation to the case (if you know): 2018 Pa. Super. Unpub. Lexis 4697; 203 A.3d 322
  - Grounds raised: Whether the trial court erred/abused its discretion when it imposed a sentence at the top of the aggravated range of applicable sentencing guidelines by not clearly articulating legally correct and sufficient reasons for imposing sentences beyond the standard range of said guidelines. 2. Whether the trial court erred and abused its discretion by refusing to give defendant's requested jury instruction on Justification of self defense and defense of property (the castle doctrine), and use of Deadly Force? 3. Const. rights. 4. Brady violation.
- Did you seek further review by a higher state court? Yes ☒ No ☐  
If yes, answer the following:
  - Name of court: Supreme Court of Pennsylvania (Middle District)
  - Docket or case number (if you know): No. 29 MAL 2019
  - Result: Petition for Allowance of Appeal is DENIED
  - Date of result (if you know): June 18, 2019
  - Citation to the case (if you know): Com. v. Romig, 2019 Pa. Lexis 3362 (Pa., June 18, 2019)
  - Grounds raised: 1. Did Superior Court err in holding that the trial court's instruction on Justification was sufficient? 2. Did the Superior Court err in holding that the trial court did not abuse its discretion in denying Appellant's request for Appointment of an expert and scientific testing?

(b) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒ (not yet)

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: N/A

(3) Date of result (if you know): N/A

(4) Citation to the case (if you know): N/A

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: PCRA to the trial court of Mifflin County

(2) Docket or case number (if you know): CP-44-CR-0000560-2016

(3) Date of filing (if you know): After Pro Se Amended Petition was filed December 30, 2019

(4) Nature of the proceeding: PCRA

(5) Grounds raised: 1. Direct Appeal counsel was ineffective for failure to develop

argument in his brief to Superior Court. 2. Trial counsel was ineffective for failure to  
investigate, and subpoena expert witness for medical purpose at trial. 3. Trial counsel failed  
file a Habeas Corpus prior to trial, or any other pretrial motion. 4. Trial counsel did not  
object to Com. questions about bladder and sex organs working or not. 5. Did not object to victim  
testifying that medical staff told him "he was paralyzed from the waist down" Hearsay. 6. Trial  
counsel was ineffective for not objecting to antics of alleged victim popping wheelies on an  
electric wheelchair while testifying in front of jury. 7. No expert Med. Testimony at trial as  
it would be at prelim. 8. Da's comment "this is one step away from murder".

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☒ No ☐ (Despite request would not allow me to be present, video)

(7) Result: Defendant's Motion for Post-Conviction Collateral Relief DENIED

(8) Date of result (if you know): August 20, 2020

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: Superior Court Pennsylvania (Middle District)

(2) Docket or case number (if you know): No. 1168 MDA 2020

(3) Date of filing (if you know): Notice of Appeal filed September 11, 2020

(4) Nature of the proceeding: Appeal from DENIAL of PCRA

(5) Grounds raised: Did PCRA court abuse its discretion when it DENIED

Appellant's petition for Post-Conviction Collateral Relief on issue of  
Effective assistance of counsel?

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☒ No ☐

(7) Result: Affirmed / DENIED

(8) Date of result (if you know): June 25, 2021

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Supreme Court of Pennsylvania (Middle District)

(2) Docket or case number (if you know): No. 100 MAL 2022 see also No. 276 MT 2021

(3) Date of filing (if you know): August 5, 2021 Pro Se reserved time for filing.

(4) Nature of the proceeding: Allowance of Appeal from Superior Court DENIAL

(5) Grounds raised: Did Superior Court err on Castle Doctrine issue; and

instruct the jury on defense of property (castle doctrine) and Use of Deadly Force jury instruction  
at trial when the petitioner was in his home at the time of the alleged crime (agg. ass.)

2.) Did Superior Court err by failing to reverse the PCRA court's denial of his amended PCRA  
petition on the issue of appellate counsel's ineffectiveness assistance by failing to develop  
any argument on the issue of the Castle Doctrine and Use of Deadly Force on his direct appeal to

Superior Court where they could not address that issue due to counsel not arguing it in  
his brief. 3.) Did Superior Court err in its opinion that the Castle Doctrine cannot be invoked  
if a guest is told to leave a defendant's home after the guest becomes unruly and refuses to  
leave. (See Commonwealth v. Johnston, 438 Pa. 485; 263 A.2d 376 (1970))

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☒ No ☐

(7) Result: Petition for Allowance of Appeal DENIED Per Curiam (no opinion)

(8) Date of result (if you know): ORDER: 23 rd day of August, 2022 (copy attached)

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state court  
remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the  
grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Trial Courts Failure to instruct the jury on requested jury instruction  
the Use of Deadly Force/Castle Doctrine.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): If the jury would have  
instructed on Deadly Force/Castle Doctrine versus on the standardized non-deadly force self-  
defense instruction, where I was in fact charged and convicted of Agg. Ass. A4 (with a deadly  
on), the outcome of the trial would have been different, because there would be no limit to the  
amount of force used in ones home in self defense.

Objection and discussion

I trans. pg. 201 lines 17-25 thorough and to pg. 203 specifically lines 1-4. objection pg. 247-  
251, also includes actual instruction. Pages from transcript attached...

(b) If you did not exhaust your state remedies on Ground One, explain why:

Exhausted remedies including applying to attorney general conviction integrity  
section.

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA

Name and location of the court where the motion or petition was filed: Mifflin County Court of Common Pleas  
20 North Wayne Street Lewistown, Pennsylvania 17044

Docket or case number (if you know): CP-44-CR-0000560-2016 to include appeal dockets.

Date of the court's decision: August 20, 2020

Result (attach a copy of the court's opinion or order, if available): Defendant's Motion for Post-Conviction  
Collateral Relief is hereby DENIED. Defendant shall have 30 days from the date of  
this order and opinion to appeal to the Pennsylvania Superior Court.

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court middle district sitting in  
Harrisburg Pennsylvania

Docket or case number (if you know): 1168 MDA 2020

Date of the court's decision: June 25, 2021

Result (attach a copy of the court's opinion or order, if available): Affirm

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: Allowance of Appeal to Supreme Court; DENIED

Docket No: 100 MAL 2022 (copy of envelope and order provided from attorney  
etcher. Again through improper service Smart Communications) This vendor should not open legal mail  
Nor should this attorney use this service method.

GROUND TWO: Appellate Counsel was ineffective, in that he failed to develop any  
argument on: raised issue: (Castle Doctrine) jury instruction on direct appeal in his brief.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): see Superior Court  
decision No. 400 MDA 2018 foot note Two p. Ten. Where Petitioner was represented by Justin P. Mill  
iq., who is ineffective in his assistance to Defendant, as this attorney cited the Castle Doctrine  
as a issue, but failed to develop an argument in the argument section of his brief on the same.  
the underlying issue violates Defendant's Right to a fair trial.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?  
Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?  
Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA petition

Name and location of the court where the motion or petition was filed: Mifflin County Court of Common Pleas, 20 North Wayne Street, Lewistown, Pennsylvania 17044

Docket or case number (if you know): CR-44-CP-0000560-2016

Date of the court's decision: August 20, 2020

Result (attach a copy of the court's opinion or order, if available): Petition DENIED in it's entirety. (order and opinion attached in appendices)

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court Middle District sitting in Harrisburg, Pennsylvania

Docket or case number (if you know): 1168 MDA 2020

Date of the court's decision: June 25, 2021

Result (attach a copy of the court's opinion or order, if available): Affirm

Docket or case number (if you know): CP-44-CR-0000560-2016

Date of the court's decision: August 20, 2020

Result (attach a copy of the court's opinion or order, if available): Petition DENIED in it's entirety. (order and opinion attached in appendices)

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court Middle District sitting in Harrisburg, Pennsylvania

Docket or case number (if you know): 1168 MDA 2021

Date of the court's decision: June 25, 2021

Result (attach a copy of the court's opinion or order, if available): Affirm (copy of order/opinion attached)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:  
N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: Allowance of appeal to Supreme Court; DENIED, at No. 100 MAL 2022 (copy of envelope and order attached in appendices)

GROUND FOUR: Brady violation for failure of Commonwealth to provide defense with "redacted" criminal backgrounds for victim/witness, as well as counsel failing to investigate.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): Victim had criminally falsified as both witnesses. These two females had open charges against them at the time they testified for the Commonwealth in this case. Trial discovery requests attached in the appendices)

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Allowance of appeal to the Supreme Court; DENIED, Docket No. 100 MAL 2022 no opinion (copy of envelope and order provided by attorney Pletche through improper service method per privileged mail i.e. Smart Communications, this is a contracted outside vendor that scans copies and electronically transmits non privileged mail.

GROUND THREE: Counsel was ineffective for failing to object to the lack of medical expert testimony, and Trial court erred by not providing any relief as did appellate courts.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): There was testimony that alleged victim had Degenerative Arthritis. Additionally at the transcribed preliminary hearing the Judge made a statement that medical testimony would be needed at trial in his reasoning for objection for the truth of the matter relating to alleged victims injuries, regarding a prima facie case. (transcript pages from preliminary hearing attached in appendices)

(b) If you did not exhaust your state remedies on Ground Three, explain why: N/A

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA petition

Name and location of the court where the motion or petition was filed: Mifflin County Court of Common Pleas 20 North Wayne Street, Lewistown, Pennsylvania 17044

(b) If you did not exhaust your state remedies on Ground Four, explain why: Counsel omitted the issue in his amended PCRA petition, from Defendant's original pro se PCRA. Appealed on direct appeal to the Superior Court Middle District sitting in Harrisburg.

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐ (only on direct appeal to the Superior Court, and pro se PCRA)

(2) If you did not raise this issue in your direct appeal, explain why: N/A

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐ Yes but counsel omitted this issue in his amended PCRA.

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Original pro se PCRA (standard form)

Name and location of the court where the motion or petition was filed: Mifflin County Court of Common Pleas 20 North Wayne Street, Lewistown, Pennsylvania 17044.

Docket or case number (if you know): CP-44-CR-0000560-2016

Date of the court's decision: August 20, 2020

Result (attach a copy of the court's opinion or order, if available): Petition DENIED in it's entirety. (order and opinion attached in appendices)

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒ Because appointed counsel omitted issue from petitioner's PCRA

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☒

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: N/A

N/A Docket or case number (if you know): CP-44-CR0000560-2016

N/A Date of the court's decision: August 20, 2020

N/A Result (attach a copy of the court's opinion or order, if available): PCRA petition DENIED in it's entirety.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Counsel omitted my requested issue in his amended PCRA from my original pro se PCRA with the trial court, thus barring any further appeal.

(c) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: None

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: Brady issue was omitted by appointed PCRA Counsel against Defendant's will, in Counsel's amended PCRA from Petitioner's original pro se PCRA. A issue of which carries merit.

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. N/A

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*  
Per Supreme Court ORDER per curiam. This conviction became final August 23, 2022 when Petition for Allowance of Appeal was DENIED.  
Copy enclosed in appendices.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Michael S. Gingerich Esquire, P.O. Box 971  
Belleville, Pennsylvania 17004

(b) At arraignment and plea: Michael S. Gingerich Esquire, P.O. 971  
Belleville, Pennsylvania 17004

(c) At trial: Michael S. Gingerich Esquire, P.O. Box 971  
Belleville, Pennsylvania 17004

(d) At sentencing: Michael S. Gingerich Esquire, P.O. 971  
Belleville, Pennsylvania 17004

(e) On appeal: Justin P. Miller Esquire, 817 East Bishop Street, Suite D  
Bellefonte, Pennsylvania 16823

(f) In any post-conviction proceeding: Scott N. Pletcher Esquire, 119 Burrows Street  
State College 16801

(g) On appeal from any ruling against you in a post-conviction proceeding: Scott N. Pletcher Esquire,  
119 Burrows Street State College 16801

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: N/A

(b) Give the date the other sentence was imposed: N/A

(c) Give the length of the other sentence: N/A

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☒

Therefore, petitioner asks that the Court grant the following relief: Vacate sentence, Reverse and Remand appellate courts and trial court decisions, precluding retrial because of prosecutorial misconduct for brady issue, ect.  
or any other relief to which petitioner may be entitled.

No Attorney pro se

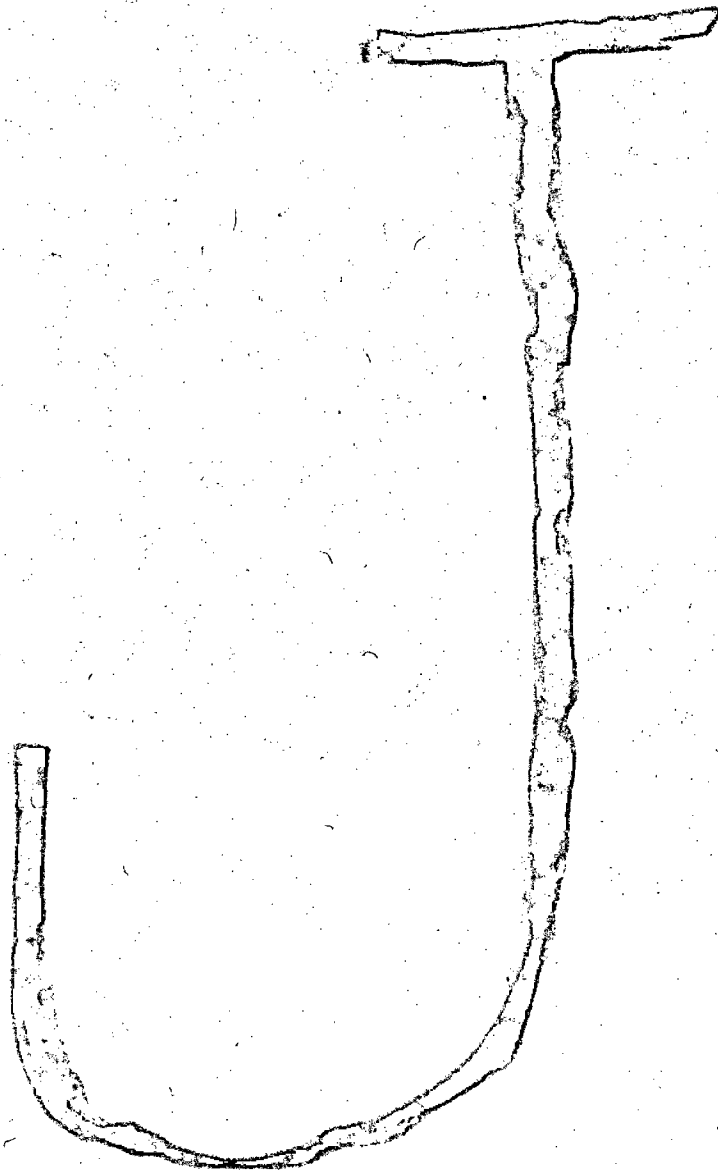
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on October 11, 2022  
(month, date, year).

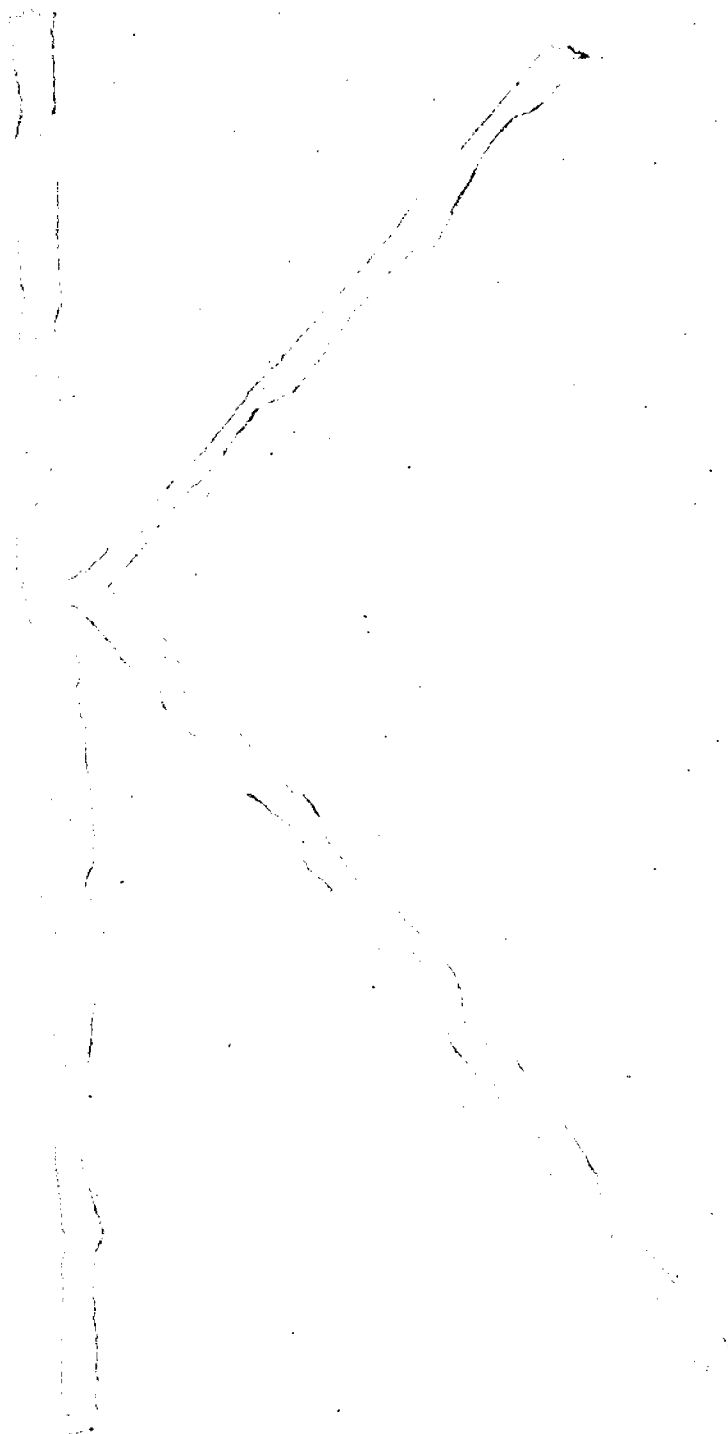
Executed (signed) on October 11, 2022 (date).

Michael C. Romig  
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A







**IN THE SUPREME COURT OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA )  
SUPERIOR COURT # 1168 MDA 2020 )  
V. )  
MICHAEL CHRISTOPHER ROMIG ) Allocatur Docket # 276 MT 2021 )

**PETITION FOR ALLOWANCE OF APPEAL**

Petition for allowance of appeal from the opinion filed JUNE 25, 2021  
by the Superior Court of Pennsylvania, to No. 1168 MDA 2020, affirming the  
Judgment of Mifflin County PCRA court, to No. CP-44-CR-560-2016

Michael C. Romig KR8614  
Pro se  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

**Table Of Contents**

I. Reference To The Opinion Delivered In The Courts Below	Pg. 1
II. The Order In Question	Pg. 1
III. Questions Presented	Pg. 1, 2
IV. Statement Of The Case	Pg. 3, 4
V. Petitioner's Allowance Of Appeal Should Be Granted	Pg. 4, 5, 6, 7
VI. Conclusion	Pg. 7
Certificate of Compliance	Pg. 8
Certificate Of Service	Pg. 9

**Reproduced Record/Appendix**

Non-Precedential Decision, Superior Court J-S17042-21	A-1-10
Order and Opinion from PCRA court denying PCRA AUG. 20, 2020	B-1-5
Order from PCRA court OCT. 16, 2020	C-1
Three pages from Prelim Hearing held Sept. 14, 2016	D-1-3
Petitioner's Original PCRA Petition	E-1-25
Appointed counsel's amended PCRA petition	F-1-4
Appointed counsel's brief in support of PCRA petition	G-1-9
James Moore's lab reports from 8-3-2016 (pos tox)	H-1-2

**Table Of Citations**

Commonwealth v. Johnston 438 Pa.485; A.2d 376; 1970 Pg. 2, 5,  
Commonwealth v. Childs, 142; A.3d 823; 2016 Pg. 5  
Commonwealth v. Heatherington, 477 Pa.562; 385 A.2d 338; 1978 Pg. 5, 6  
Commonwealth v. Leshner, 473 Pa.141; 373 A.2d 1088; 1977 Pg. 5, 6

**Statutes**

18 Pa.C.S.A. §2701(a)(1)  
18 Pa.C.S.A. §2702(a)(1)  
18 Pa.C.S.A. §2702(a)(4)  
18 Pa.C.S.A. §2709(a)(1)  
18 Pa.C.S.A. §505 & §507

**Secondary Sources**

Pa. SSJI (Crim) 9.501A  
Pa. SSJI (Crim) 9.501B

**I. Reference To The Opinion Delivered In The Courts Below**

The NON-PRECEDENTIAL DECISION that the Superior Court  
of Pennsylvania issued on JUNE 25, 2021 (No. 1168 MDA 2020 J-  
S17042-21) is attached hereto as Appendix A. The trial court's  
opinion, issued pursuant to Pennsylvania Rule of Appellate  
Procedure 1925(a), is attached hereto as Appendix B; and the  
trial court's order, which the Superior Court affirmed is  
attached as Appendix C; and Three pages from Preliminary Hearing  
Transcripts (Before Judge Johnathan Reed Wednesday, September  
14, 2016) attached as Appendix D.

**II. The Order In Question**

On JUNE 25, 2021 the Superior Court issued an opinion  
that concludes "Judgment of Sentence Affirmed" (see appendix  
A.).

**III. Questions Presented**

1.) Did Superior Court error, and was petitioner fundamentally  
entitled to a "Defense of Property (Castle Doctrine), and on  
the use of Deadly Force", jury instruction at trial when it  
was in fact requested, where petitioner was in his home, and  
he was charged and found guilty of all charges including 18  
Pa. C.S.A. §2702(a)(4) aggravated assault with a "Deadly Weapon"  
necessitating the above instruction?

Suggested Answer YES

2.) Did Superior Court error by failing to acknowledge appellate counsels ineffectiveness for failing to develop any argument on the "Defense of Property (Castle Doctrine), and on the use of Deadly Force, on his direct appeal to the Superior Court where they did not address this issue?

Suggested Answer YES

3.) Did the Superior Court error in denying that the Castle Doctrine cannot be invoked if a guest is told to leave after becoming unruly, then refuses to do so? (see *Com. v. Johnston* 438 Pa. 485; 263 A.2d 376; 1970)

Suggested Answer YES

4.) Did the Superior Court error in that they rationalized that "expert testimony" was not necessary, when an objection was lodged at the preliminary hearing, and the Judge said "as long as there will be someone who has direct knowledge or was involved in the preparing of those records that will be available for cross-examination during the trial."?

Suggested Answer YES

5.) Was PCRA counsel ineffective for failing to attack other issues he and I cited in original and amended PCRA?

Suggested Answer YES

2.)

Petitioner's privately-retained counsel was granted leave to withdraw on February 20, 2018, and court appointed counsel was given to represent petitioner on his direct appeal. A timely appeal followed thereafter with the filing of Notice of Appeal on March 6, 2018. The Pennsylvania Superior Court affirmed the judgment of sentence in a non-precedential opinion on December 17, 2018. Petition for Allowance of Appeal was filed with this court on January 14, 2019 (29 MAL 2019). Said petition was denied PER CURIAM June 18, 2019.

Petitioner filed a pro se Motion For Post Conviction Collateral Relief on September 17, 2019. Mifflin County PCRA court then appointed alternate counsel for petitioner's ineffective assistance of appellate counsel and trial counsel. Where he amended petitioner's PCRA filed on December 30, 2019. Appointed Counsel (Scott Nathan Fletcher Esq.) then filed a Brief in support of his petition for post-conviction collateral relief on July 27, 2020 (where Fletcher again removed issues from petitioner's PCRA. A hearing in Mifflin County was deferred until after Pandemic, but petitioner was forced to participate via video conference. An Order was issued from Mifflin County Judge David Barron Denying PCRA on August 21, 2020. An Appeal was then filed with the Superior Court, where the Superior Court affirmed. This timely Petition for Allowance of Appeal Follows.

#### V. Petitioners Allowance of Appeal Should Be Granted

The Supreme Court of Pennsylvania's review of the Superior Court is discretionary. Pa.R.A.P.1114(a). The Rules of Appellate Procedure set forth seven(7) reasons a petition for allowance of appeal may be granted, Any one of which is sufficient to grant petition. Pa.R.A.P.1114(b)

#### IV. Statement Of The Case

Petitioner Michael Romig was charged with Aggravated Assault §2702(a)(1); Aggravated Assault §2702(a)(4) "WITH A DEADLY WEAPON"; Simple Assault §2701(a)(1); and Harassment §2709(a)(1), in Mifflin County, Pennsylvania. Said charges arose from an incident alleged to have occurred on August 2, 2016. After a jury trial on July 18, 2017, Romig was convicted of all charges. Sentence was deferred until September 14, 2017.

On September 14, 2017, Romig was sentenced by President Judge David W. Barron as follows: Count 1, Aggravated Assault, §2701(a)(1) to a period of incarceration of not less than seven(7) years nor more than twenty(20) years in a (S.C.I.), consecutive to sentence imposed at CP-60-CR-59-2010; Count 2, Aggravated Assault §2702(a)(4) "WITH A DEADLY WEAPON", to a period of not less than two and one-half(2½) years nor more than ten(10) years in a (S.C.I) to run consecutive to the sentence imposed at Count 1; and Count 3, simple assault, §2701(a)(1), to a period of not less than three (3) months nor more than twelve(12) months in a (S.C.I) of which was later amended to merge for sentencing purposes. The court determined petitioner ineligible for RRRI minimum sentence.

Petitioner's court-appointed attorney filed timely Post-Sentence Motions on September 25, 2017. Petitioner retained private counsel to argue said Post-Sentence Motions at a hearing on January 4, 2018. The time for ruling on the Post-Sentence Motion was extended by 30 days January 4, 2018. The trial court, by Opinion and Order dated February 5, 2018, denied the Post-Sentence Motions in their entirety.

3.)

Petitioner's First and Second question in this allowance of appeal invokes (2) of these reasons. First, that the Superior Court's order conflicts with the Pennsylvania Supreme Court's holding in *Commonwealth v. Johnston* 438 Pa.485; 263 A.2d 376; 1970 Pa. LEXIS 812; 41A.L.R.3d 576 & *Commonwealth v. William Childs*, 142 A.3d 823; 2016 Pa. Lexis 1534 & *Commonwealth v. John Heatherington*, 477 Pa.562; 385 A.2d 338; 1978 Pa. Lexis 943 & *Commonwealth v. Barry Lee Leshner*, 473 Pa.141; 373 A.2d 1088; 1977 Pa. Lexis 692.

In the superior Court's Memorandum filed June 25, 2021 it rationalized that the castle doctrine is codified under subsection (b)(2.1). But at trial petitioner pointed to §505 (2.3) verses (2.1) cited in Childs. (see trial transcript pg.201 line 6 through pg.202 line 13). Moreover for the reasons that petitioner was in fact charged and found guilty of '18 Pa. C.S.A.2702(a)(4) agg. assault "with a DEADLY Weapon" entitles the petitioner application Defense of Property §507 (Castle Doctrine) and on the use of "Deadly Force. Additionally once SSJI 9.501(A) is given it is a complete defense and would apply to all charges. And because there would be no measure of force petitioner would be entitled to use everything up to deadly force . showing that If the instruction would have been given likely hood of a different outcome.

The Court also states that not surprisingly petitioner fails to cite any case law, when in fact I did in my pro se original PCRA citing *Com. v. Johnston*, where the Castle Doctrine can be invoked if a guest is told to leave a residence but refuses to do so.

5.)

In Com.v. Heatherington at foot note (7) "This writer has had the occasion to comment upon the importance of jury instructions on the standard to be employed in determining guilt or innocence. Nothing is more basic to the adjudicatory process than the standard to be employed by the finder of fact in the determining of guilt or innocence. Where the standard employed is so completely contradictory as to render it unintelligible, the fact finder is left without guidance and due process is offended. (citing com. v. rose)"that note later goes on to say, and I think is applicable to the case at bar "it is also applicable in the instant case where the trial judge failed to provide the jury with any standard to apply to the issue of self defense [Castle Doctrine], thus leaving the jury without legal guidance on an issue over which there was a bona fide factual dispute."

Much like in Com. v. Leshner I do not believe that the commonwealth disproved self defense beyond a reasonable doubt.

Even with respect to §505 (2.1) I believe once the unruly party was ask to leave he then became a trespasser, and would still satisfy the elements necessary to apply the Castle Doctrine.

Facts remain petitioner was and is the sole owner/occupier of the property (trial trans.pg.162 line 13 through pg.163 line 7). Alleged victim became unruly, more than likely because he was under the influence of benzodiazapines (klonopin,Zanax) of which he lied about at trial. (see medical records in appendix and trial trans.pg.132 line 25 through pg.133 line24).

6.)

#### Certificate Of Compliance

I hereby certify that this petition for Allowance of Appeal is less than 9000 words in conformance with Pennsylvania Rules of Appellate Procedure 1115(f), excluding the title page, table of contents, Table of citations, signature blocks, and appendices

*Michael C. Romig*  
7-20-21

8.)

finally, regarding the necessity for Medical Expert testimony at trial I point attention to Preliminary hearing trans. pg. 35,36,37, specifically pg. 37 line 8-14 where the judge states "I think the rules of evidence are pretty relaxed when it comes to hearsay as long as there will be someone who has direct knowledge or was involved in the preparing of those records that will be available for cross-examination during trial." Of which did no happen despite the judges statement in response to the defense's objection.

#### VI. Conclusion

For these reasons, petitioner believes Allowance Of Appeal should be granted, case heard by Judges and the Superior Courts affirmation should be reversed, sentence vacated, and a new trial granted.

Respectfully Submitted

*Michael C. Romig*  
Michael C. Romig  
KR8614  
S.C.I. Frackville  
1111 Altamont Blvd.  
Frackville, Pennsylvania 17931

pro se

Date: 7-20-21

7.)

#### Certificate Of Service

I Michael C. Romig, hereby certify that Four (4) copies of the Petition For Allowance Of Appeal, and Two (2) copies of reproduced record/appendix, have been served upon the Supreme Court, and One copy each of the same on parties indicated below, by way of United States First Class Mail Service:

Supreme Court of Pennsylvania  
District III  
Prothonotary Iren Bizzoso Esq.  
Pa. Judicial Center, 601 Commonwealth Ave.  
P.O. Box 62575  
Harrisburg, Pennsylvania 17106-2575

Superior Court of Pennsylvania  
Deputy Prothonotary Jennifer Traxler  
601 Commonwealth Ave. Suite 1600  
P.O. Box 62435  
Harrisburg, Pennsylvania 17106-2435

Hon. David W. Barron Pj. / Clerk of Courts  
Mifflin County Court Of Common Pleas  
20 North Wayne Street  
Lewistown, Pennsylvania 17044

Date: 7-20-21

Respectfully

*Michael C. Romig*  
Michael C. Romig

9.)

IN THE SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :  
: Nos. 276 MT 2021  
: Intermediate Court Docket No.:  
vs. : 1168 MDA 2020  
: Trial Court Docket No.:  
MICHAEL C. ROMIG : CP-44-CR-0000560-2016  
: Petitioner :

PETITION FOR ALLOWANCE OF APPEAL

AND NOW, comes the Petitioner, Michael C. Romig, by and through his attorney,

Scott N. Pletcher, Esq., of the Law Office of Scott N. Pletcher who files this Petition for allowance of appeal from the opinion filed June 25, 2021 in the Superior Court of Pennsylvania at Case No. 1168 MDA 2020, affirming the judgment of the Mifflin County Court of Common Pleas at Case No. CP-44-CR-560-2016 in the Petitioner's amended PCRA petition, and prays your Honorable Court to consider his petition and grant him a new trial.

Reference to the Opinion of the Courts Below: The opinion of the Superior Court which was issued on June 25, 2021 at Case No. 1168 MDA 2020, is attached as Appendix A. The trial court's opinion is attached as Appendix B. The trial court's order is attached as Appendix C.

The Order in Question: On June 25, 2021, the Superior Court issued an opinion that concludes, "Order Affirmed," (See Appendix A).

Questions Presented for Review: Did the Superior Court err, and was the petitioner entitled to a Defense of Property (Castle Doctrine) and Use of Deadly Force jury instruction at trial when the

and Petitioner is again angered that counsel removed additional issues from his *pro se* PCRA petition in the submitted brief. Petitioner's PCRA petition was denied on August 21, 2020. An appeal was then filed with the Superior Court on the denied PCRA petition and that court affirmed the decision of the PCRA court. This timely Petition for Allowance of Appeal follows.

Reasons Relied Upon for Allowance of Appeal: The holding of the Superior Court in this case conflicts with a holding of the PA Supreme Court. Petitioner argues that his case conflicts with this court's holding in *Commonwealth v. Johnston*, 438 Pa. 485; 263 A.2d 376 (1970) and that of *Commonwealth v. Childs*, 142 A.3d 823 (2016). The Petitioner argues that the lower court said that the Castle Doctrine was codified in 18 Sec. 505 (b)(2.1) in the *Childs* case. However, he argues that he cited Subsection (b)(2.3) at trial. (See, Trial Transcript, p. 201-202). Petitioner argues that Subsection 2.1 would still offer him the right to a jury instruction under the Castle Doctrine because once the victim was asked to leave, and refused, he became a trespasser, thereby satisfying the elements required to apply the Castle Doctrine.

Respectfully submitted:

*Scott N. Pletcher*  
Scott N. Pletcher, Esq.  
Counsel for Petitioner

Law Office of Scott N. Pletcher  
119 South Burrowes Street  
Suite 101  
State College, PA 16801  
814-441-0001  
814-238-1875 (Fax)  
PletcherLaw@aol.com

petitioner was in his home at the time of commission of the alleged crime (Aggravated Assault)?

Suggested Answer: Yes

Did the Superior Court err by failing to reverse the PCRA Court's denial of his Amended PCRA petition on the issue of appellate counsel's ineffectiveness assistance by failing to develop any argument on the issue of the Castle Doctrine and Use of Deadly Force on his direct appeal to the Superior Court where they could not address that issue due to counsel not arguing it in his brief.

Suggested Answer: Yes

Did the Superior Court err in its opinion that the Castle Doctrine cannot be invoked if a guest is told to leave a defendant's home after the guest becomes unruly and refuses to do so? (See *Commonwealth v. Johnston*, 438 Pa. 485; 263 A.2d 376 (1970)).

Suggested Answer - Yes

Statement of the Case: Petitioner was charged with two counts of Aggravated Assault, Simple Assault and Harassment for an alleged assault to the victim at the Petitioner's home on August 2, 2016. He was convicted on all the charges at a trial by jury on July 18, 2017. Petitioner was sentenced to a total of 9 1/4 to 30 years incarceration. The Petitioner filed post-sentence motions which were denied in their entirety. The Petitioner then appealed his case to Superior Court and they affirmed the judgment of sentence of the trial court. Petitioner then filed a petition for allowance of appeal with your Honorable Court on January 14, 2019 (29 MAL 2019) and that was denied on June 18, 2019.

Petitioner then filed a *pro se* petition for Post Conviction Collateral Relief on September 17, 2019. The PCRA Court appointed counsel for petitioner's PCRA to file an amended petition. Petitioner is angered that PCRA counsel did not include issues in the amended petition that Petitioner demanded be included. The PCRA court asked for briefs after the evidentiary hearing

TABLE OF CONTENTS

	Page
Reference to the Opinion of the Courts Below .....	1
The Order in Question .....	1
Questions Presented .....	1
Statement of the Case .....	2
Reasons Relied Upon for Allowance of Appeal .....	3

REPRODUCED RECORD

	Page
Superior Court Opinion .....	A-1
Order & Opinion of PCRA Court .....	B-1
PCRA Court Order .....	C-1
Amended PCRA Petition .....	D-1

Table of Citations

Page

*Commonwealth v. Johnston*, 438 Pa. 485; 263 A.2d 376 (1970)

2

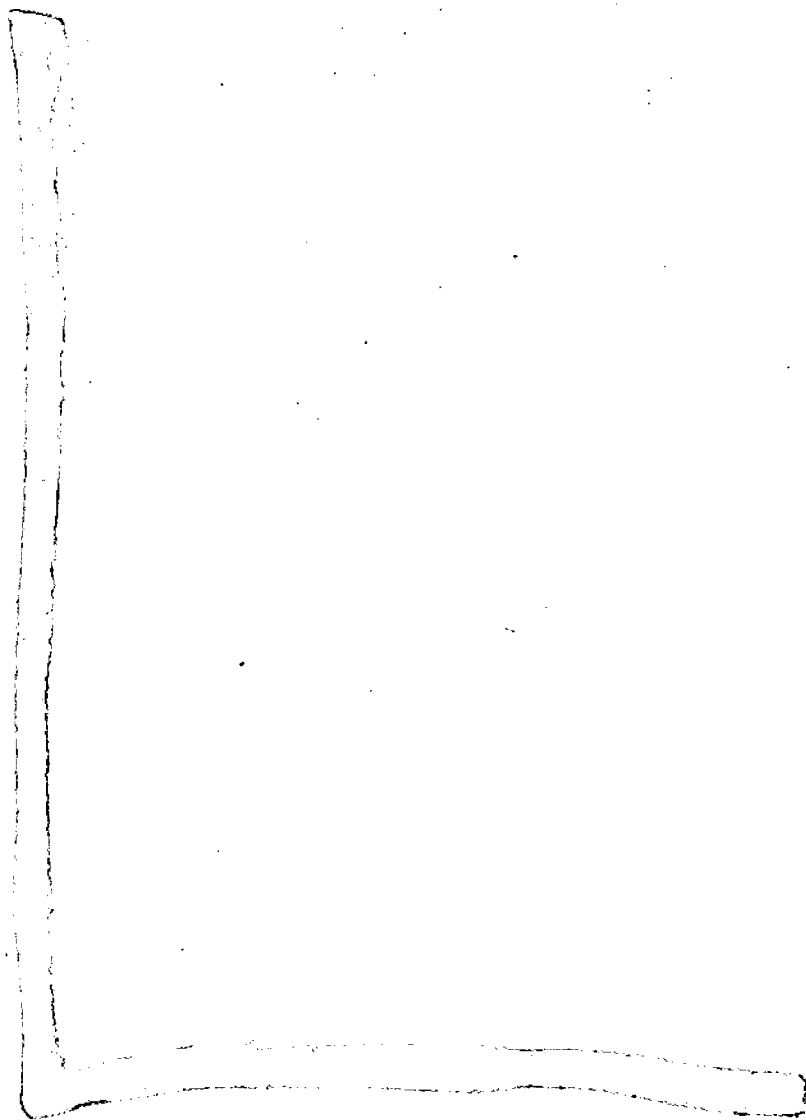
*Commonwealth v. Childs*, 142 A.3d 823 (2016)

3

Statutes

18 Pa.C.S.A. Section 505 (Castle Doctrine)

3



MOTION FOR POST CONVICTION COLLATERAL RELIEF

COMMONWEALTH OF PENNSYLVANIA VS  <u>Michael C. Romig</u> (Name of Defendant)	COURT AND DOCKET NUMBERS   To be filled in by Clerk of Court
--	---

NOTE: List below those informations or indictments & offenses for which you have not completed your sentence.  
INFORMATION OR INDICTMENT NUMBERS:

Supreme Court # 29 MAL 2019  
Superior Court # 400 MDA 2018  
Trial Court # CP-44-CR-0000560-2016  
Preliminary Hearing # CP-44-MD-0000085-2016

I WAS CONVICTED OF THE FOLLOWING CRIMES:

1. Aggravated Assault § 2702(a)(1)  
2. Aggravated Assault § 2702(a)(4)  
3. Simple Assault § 2701(a)(1)  
4. Harassment § 2709(a)(1) Noble Passed

FILED  
HARRIS COUNTY  
2019 SEP 17 AM 6:50  
CLERK OF COURTS

DEFENDANT'S COPY

I AM ELIGIBLE FOR RELIEF BECAUSE, ALTHOUGH THIS PCRA PETITION IS BEING FILED MORE THAN ONE YEAR AFTER THE DATE OF FINAL JUDGMENT, I HEREBY ALLEGE AND CAN PROVE THAT THE FOLLOWING EXCEPTION HAS BEEN MET:

☐ (i) My failure to raise this claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States.

intend to prove my claim was late due to governmental interference by showing:

Not applicable

-but District attorney failed to turn over prior and current criminal histories of witness and alleged victim, when proper request was made.

(Pictorial discovery requests)

☐ (ii) The facts upon which the claims are predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence.

The following facts were previously unknown to me:

Not Applicable  
Note

-Impeachment Evidence

is Brady Material, Court erred by limiting Defense and abused its discretion by not allowing Trial counsel to attempt to impeach witness Kelly McGavish, as she was on bail at the time of this incident.

☐ (iii) The right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

The Supreme Court of the United States or the Commonwealth of Pennsylvania has recognized the following retroactive constitutional rights after my period for filing:

Not applicable

DEFENDANT'S COPY

1. MY NAME IS: <u>Michael C. Romig</u> <u>KR8614</u>		
2. I AM NOW		
(a) <input type="checkbox"/> On Parole	(b) <input type="checkbox"/> On Probation	(c) <input checked="" type="checkbox"/> Confined in
(d) <input type="checkbox"/> Residing at <u>S.C.I. Frackville</u>		
3. I WAS SENTENCED ON <u>September 14</u> , 2017 TO A TOTAL TERM OF <u>9 1/2 to 30 years</u> , COMMENCING ON <u>August 3</u> , 2021 BY JUDGE(S) <u>David W. Barron President Judge</u>		
FOLLOWING A: <input checked="" type="checkbox"/> Trial by jury <input type="checkbox"/> Plea of Guilty		
<input type="checkbox"/> Trial by a judge without a jury <input type="checkbox"/> Plea of nolo contendere		
I am <input type="checkbox"/> Serving <input checked="" type="checkbox"/> Waiting to serve the sentence imposed		
<u>Serving Backtime, and a Hit from PBRP.</u>		
4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:		
<input checked="" type="checkbox"/> (I)	A violation of the Constitution of this Commonwealth or the constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.	
<input checked="" type="checkbox"/> (II)	Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.	
<input type="checkbox"/> (III)	A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.	
<input checked="" type="checkbox"/> (IV)	The improper obstruction of government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court	
<input checked="" type="checkbox"/> (V)	The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced	
<input checked="" type="checkbox"/> (VI)	The imposition of a sentence greater than the lawful maximum.	
<input type="checkbox"/> (VII)	A proceeding in a tribunal without jurisdiction.	
DEFENDANT'S COPY		

C-(7)

Layered Extraordinary circumstance PCRA

(1) Ineffective Assistance of appellate Counsel

Failure to cite a relevant court decision to Superior Court regarding Brady Material.  
leaving the court choose it own case and argument for resolve. § 2701(a)(1)  
Failure to develop any argument in the body of his brief on Castle Doctrine issues.  
see: opinion from Superior Court J-569011-18 Pg. 10 (footnote 2.)  
Further Counsel appealed a issue that was not addressed by the Superior Court to the Supreme Court, Thus being a needless issue, causing unjustified tolling as Jury Instructions on the Castle Doctrine would have been more appropriately addressed to a PCRA Court verses the Supreme Court and the result of their denial for Curiam, see: Petition for Allowance of Appeal from the Order of the Superior Court No. 29 MAL 2019, and Superior Court J-569011-18 Pg. 10 (footnote 2.)  
Mr. Moore's (alleged victim) toxicology screen, of which Trial Counsel willfully withheld from Appellate Counsel, despite Defendant requesting multiple times prior to appellate Counsel submitting his brief, was the above information turned over to appellate Counsel, where once appellate counsel received this info, he should have emergency extraordinary circumstance petition along with the Newly discovered evidence, as it shows Mr. Moore lied under oath perjurimg himself. See Appendices, Mr. Moore Medical Record Pg. 2 Laboratory Studies  
Failure for Appellate Counsel to argue that the trial court abused its discretion by sentencing defendant to the aggregated range, above the sentencing guideline norm, when the defendant never previously has had a felony in his history. And the probation department recommended a 5 to 10 year sentence from their PSI investigation.  
Additionally all of Court appointed counsels have done is muddy the waters, and make it necessary for the filing of a lengthy PCRA petition.

② Ineffective assistance of Trial Counsel / pre-trial as well

Failure to point out inconsistencies in Mr. McAnish's testimony regarding the knife.  
Failure to request dismissal of charges until <sup>alleged</sup> witness could be present to  
testify at a preliminary hearing as necessary by law. Fact is Mr. Moore  
as not present at the preliminary hearing, <sup>or any Medical Professionals to testify to facts or</sup> why Mr. Moore was not able to be present at the  
Detective Michael Elder clearly entered hearsay evidence to create  
a Prima Facie case where Mr. Gingerich properly objected, and  
the court at the preliminary hearing said "someone who has direct  
knowledge or was involved in the preparing of those (Medical records) records  
that will be available for cross examination during trial", and  
they never were made available at trial of which violated the  
defendant's right to a fair trial before an impartial jury (U.S.  
Constitution, Amendments 6 and 14; Pennsylvania Constitution, Article 1,  
section 9); to present evidence and confront the evidence and  
witnesses against him (U.S. Constitution, Amendments 6 and 14, Pennsylvania  
Constitution, Article 1, section 9); to due process of law (U.S. Constitution  
amendment 5 and 14, Pennsylvania Constitution, Article 1, section 1 and 9)  
and to Equal Protection of Law (U.S. Constitution, Amendment 14, Pennsylvania  
Constitution, Article 1 section 9), and was denied his substantive  
and procedural rights under the statutes of Pennsylvania and  
under the Pennsylvania rules of Criminal Procedure.

See Preliminary hearing transcript provided specifically objections  
by defense.

This shows Michael Gingerich was ineffective by failing for No Good reason, to demand Medical expert testimony for the truth to the matter at hand at Trial of ~~the~~

- Was it acceptable for MRI Reed to accept hearsay evidence and not charges over without alleged victim Present to testify at Preliminary Hearings?

C-4

...was Michael Scott Gingerich ineffective for failing to object to the fact that defendant's D-3 Photo not be admitted, and further talked the court into not admitting the photo as she said she couldn't remember when it was taken, when the photo clearly shows the date and Kelley McTearish at Lewistown hospital with her cell phone plugged into the Greisinger cell phone charging station. see. Photo B-28 and trial transcript pg 70 line 11-13. Fact also remains this photo was taken by state police.

- See photo's B-30 through B-37

Was Michael Scott Gingerich ineffective for failing to question trooper Michael Elden's statement linking the broken window being broke by the remote not my body, as I was in fact pushed outward through the window, contrary to Kelly McTavish's direct testimony. His can be proving by looking at the photo's location of remote on other side of room from the window. Further if the remote was what broke the window, the trajectory of a flying remote would have caused it to go through the window onto the front porch not bounce backward across a whole room. Again Blood should have been tested to show defendant was bleeding, to support his self defense theory beyond a reasonable doubt.

- All of the issues raised in this petition support dismissing charges, discharging defendant, or a minimum of a new trial if prosecutorial misconduct is not found by this court.

- Continue ineffective assistance of Trial Counsel

Was Michael Scott Gingerich Ineffective for failing to investigate and secure witness, and victim prior criminal records?

Was Michael Scott Gingersich Ineffective for failing to file not even one pretrial motion for relief, when there was multiple obvious actionable issues?

Note: The only reason Mr. Gingerich Endorsed Defendants 3-17-2017  
Petition to discharge from custody Pursuant to Rule 600 is because  
he had to.

- Was Michael Scott Gingerich Ineffective for failing to subpoena medical witnesses, with regards to Mr. Moore.

- Was Michael Scott Gingerich Ineffective for failing to object or request mistrial at the point where Mr. Moore "Poped wheelies" <sup>in a electric wheel chair,</sup> while being cross examined in front of the jury in flaming them.

- Was Michael Scott Gingerich ineffective for failing to object to District Attorney's Questions regarding his Medical abilities (specifically "did your penis work as a penis, should") again inflaming the jury's passion to be bias against me?

- Was Michael Scott Gingerich ineffective for failing to impeach witness Kelley McTavish, when after the fact defendant found out she had Criminal offenses, and was currently on bail and very well had incentive to testify against defendant in exchange for leniency for open charges, and the fact that she had worked previously with Drug Task Force as a informant? All of which would have changed the Outcome at trial, and was also discovered by the defense, or should have been discovered by the defense.

6. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS: (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

Violence and discrimination against children's rights  
violence and discrimination against children's rights

see C-1, C-2, C-3 and C-4 attached

4c 41 page

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

Appellate Counsel informed me to promptly file a PCRA motion to vacate if we were unsuccessful on direct appeal. Of course, given our negligible chance of success, I have promptly included a document / exhibits dated 1-16-2019 and June 19, 2019.

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

Ans: Although  $H$  is not a C.F.,  $C$  is.

7. SUPPORTING EXHIBITS

(A) In support of this motion I have attached as exhibits:

Affidavits [Exhibit(s) No. attached A-B-C]

Records [Exhibit(s) No. attached A-B-C]

Other Supporting Evidence [Exhibit(s) No. attached A-B-C]

(B) I have not attached any affidavits, records or other supporting evidence because

8. I HAVE TAKEN THE FOLLOWING ACTION(S) TO SECURE RELIEF FROM MY CONVICTION(S) OR SENTENCE(S):

(A) Direct Appeal (IF "YES," name the court(s) which appeal(s) as/were taken, date, term and number, and result.)

☒ YES ☐ NO (Prelim. Hearing - 10/14/16 - 400 MDA 2012 Superior Court Denied)  
400 MDA 2012 Superior Court Denied  
29 MAR 2019 Justin P. Miller Appeal Denied

(B) Previous proceedings in the courts of the Commonwealth of Pennsylvania  
☐ YES ☒ NO (IF "YES," name the type of proceedings (such as habeas corpus, etc.) - including former proceedings under the Post Conviction Hearing Act the Court(s) in which petition(s) was/were filed, date, term and number, and result.)

(C) Habeas Corpus or other previous in Federal Courts  
☐ YES ☒ NO (IF "YES," name the district in which petition(s) was/were filed, date(s), Court Number- civil action or miscellaneous, and result, including all appeals.)

(D) Other legal proceedings  
☐ YES ☒ NO (IF "YES," complete details-type of action, court in which filed, date, term and number, and result, including all appeals.)

DEFENDANT'S COPY

5

9. I request an evidentiary hearing. I certify, subject to the penalties for unsworn falsification to authorities set forth at 18 Pa.C.S. § 4904, that the following persons will testify to the matters stated. I have attached to this petition all documents material to the witness' testimony.

Witness Name: ALL Attorney's involved with case  
Witness Address:  
Witness Date of Birth:  
Witness Testimony:

Witness Name: Medical Professionals, Doctor's that  
Witness Address: located and performed surgery's referenced  
Witness Date of Birth: At Preliminary Hearing Sept. 14, 2016  
Witness Testimony: Description of Causation, Prognosis expected, and any problems they may have had during surgery & damage caused by surgery itself.  
Witness Name: James Barry Moore  
Witness Address: Unknown  
Witness Date of Birth: 1-22-1963  
Witness Testimony: Under oath testify to his current state and abilities.

4. Based upon the exceptional circumstances set forth below, I request that the District Attorney produce the following documents: Criminal histories of James Barry Moore, Kelly McTavish, & the mother. To include everything up to the present. And reliably suspect on all charges Kelly McTavish was on bond for while waiting for the Commonwealth. And a prognostic description of James Barry Moore's current status.

DEFENDANT'S COPY

7

9. FOLLOWING MY ARREST, I WAS REPRESENTED BY THE FOLLOWING LAWYER(S): (Give the lawyer's name and the proceeding at which he/she represented you.)

Michael S. Gingerich Esq. Prelim. Suppression Hearing, Trial, Post Sentence Hearing  
Christian M. Kerstetter Esq. Post Sentence Hearing (Private)  
Justin P. Miller, Direct Appeal Superior and Supreme

10. I PREVIOUSLY CHALLENGED MY CONVICTION IN THE FOLLOWING COURTS:

Court	Caption	Term Number	Attorney	Relief Requested
<u>Allegheny County</u>	<u>Post Sentence Motion Hearing</u>	<u>CP-44-CR-560-2016</u>	<u>Sh. Aaron Kerstetter</u>	<u>Dismissal</u>
<u>Superior Court</u>	<u>Direct Appeal from Superior Court</u>	<u>400 MDA 2012</u>	<u>Justin P. Miller Esq.</u>	<u>Dismissal</u>
<u>Supreme Court</u>	<u>Petition for Allowance of Appeal from the Superior Court</u>	<u>29 MAR 2019</u>	<u>Justin P. Miller</u>	<u>Allowance</u>

11. THE ISSUES WHICH I HAVE RAISED IN THIS MOTION HAVE NOT BEEN PREVIOUSLY LITIGATED OR ONE OF THE FOLLOWING APPLIES:

☒ (I) The allegation of error has not been waived.  
☒ (II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmation of sentence of an innocent individual. Because in Justice's priority was to get conviction of death force would have had to intervene.  
☒ The failure to litigate this issue(s) prior to or during trial or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

12. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:

(A) ☒ Release from custody and discharge  
(B) ☒ A new trial  
(C) ☒ Correction of Sentence  
(D) ☐ Other Relief (Specify):

DEFENDANT'S COPY

6

15. I ask that the Court consider the following argument, citation and discussion of authorities.

See attached pages A-1 through A-14  
directly after the page.

16.

(A) I am ☐ ABLE ☒ NOT ABLE to pay the cost of this proceeding.  
I have \$ 5.00 in my prison account.

(B) My other financial resources are:

None

16. (A) ☒ I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer.

(1) ☒ I request the court to appoint a lawyer to represent me.

(2) ☐ I do not want a lawyer to represent me.

(B) ☐ I am represented by a lawyer. (Give name and address of your lawyer.)

Michael S. Pung  
(Signature of Defendant)

9-11-19

DEFENDANT'S COPY

8

## Case Law

### - Jury Instruction Case Law

- Commonwealth v. Dustin Paul Bailey Court of Common Pleas Cnty. Superior Court No: 2125 Decided Nov. 20, 2015 non-precedential decision

(In the case cited no jury instruction for deadly force were requested. In Mifflin County case the defendant properly requested the castle doctrine/deadly force jury instruction. Mifflin County trial judge erred and further acted as a jury choosing not to give the instruction when a case for such instruction was made out by the defendant in his testimony, where and even though defendant's testimony conflicted with a witness. The jury should have heard the instruction and had the option to choose.)

- Commonwealth v. William Childs 142 A.3d 823; 2016 Pa. Lexis 1534

(Whether the defendant was entitled to a "Castle Doctrine" jury instruction? This is a procedural statute because it does not effect the persons's right to use deadly force within his or her home, but rather created an evidentiary presumption relevant to the evaluation of such a claim of self defense. Of which was made out by the defendant Michael Romig in his testimony at trial trans pg. 161-pg. 186. Specifically that he was attacked by the victim inside his home prompting his actions.)

- Commonwealth v. Johnston 438; 263 a.2d 376; 1970 Pa. Lexis 812; 41 A.L.R.3d 576

"The court also ruled that the aggressor became a trespasser when he refused appellant's order to leave the premises, therefore appellant did not provoke aggressor's attack." "Both in this and in other jurisdictions, however, it has been consistently held that one is under no duty to retreat when feloniously attacked or placed in danger while in one's home." (yet another reason the the jury should have been instructed on the castle doctrine, the defense of property, and deadly

1

presents evidence from whatever source on each of the three self defense elements, the trial court does not have discretion to decide whether to impose the instruction; rather, the court is legally mandated to do so."

### Evidence was not sufficient to sustain agg. assault a4

- Commonwealth v. Ronald K. Mayo 272 Pa. Super.115; 414 A.2d 696; 1979 Pa. Super. Lexis 3297

(with respect to whether or not a case was made out for agg. assault A 4, relating to assault with a "deadly weapon")

"Defendant got a steak knife from kitchen and placed it to the victim's throat, stating that he killed people who accused him of doing things that he had not done. The court found that defendant had no intent to inflict bodily injury on the victim, but only to frighten and/or humiliate her." (There is no further evidence in the Mifflin County case at bar to sustain agg. assault A 4.)

### Ineffectiveness of trial and appellate counsel

- 80 LED2D 674, 466 US 668 Strickland v. Washington

outlines "Two-part test of effective assistance of defense counsel held (1) reasonable effective assistance and (2) reasonable probability of different result with effective assistance. Also counsel's errors were so serious as to deprive the defendant of a fair trial because of a reasonable probability that, but for counsel's unprofessional errors, the results would have been different." (In the instant case counsel was unprofessionally ineffective for failing to object and impeach commonwealth's "star" witness Kelley McTavish, as her testimony was all the jury could have relied on, as Patricia was sleeping and alleged victim said he didn't remember anything from the night, see trial trans pg.123 lines 24-25, and pg. 124 lines 1-7.) "Government violates the right to effective assistance of counsel when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense." (ie. withheld prior criminal records

3

force.)

- Commonwealth v. Barry Lee Leshner 473 Pa. 141; 373 A.2d 1088; 1977 Pa. Lexis 699

(with respect : that commonwealth did not prove beyond a reasonable doubt that appellant did not act in self defense."note that a deadly force/castle doctrine instruction defense was raised in this matter."

- Commonwealth v. Carl L. Brown 491Pa. 507; 421 A.2d 660; 1980 Pa. Lexis 794

"Under the facts of this case we are constrained to conclude that it was error to refuse this instruction and consequently the judgments of sentence must be reversed and a new trial must be awarded."

- Commonwealth v. Heatherington 477 Pa.562; 385 a.2d 338; 1978 Lexis 943

(Even with insufficient non deadly justification instruction the jury never received instruction explaining the relationship between evidence of self defense and the element of malice. As malice is still an element for 18 Pa.C.S.A. 2702 (a1)/(a4) aggravated assault Felony One and Two. In Heatherington the jury received no instruction on the above and the case was reversed.)

- Commonwealth v. Ledford Superior Court No: 966 MDA 2013-2014 Pa. Super. Unpub. Lexis 2658(COPY INCLUDED)

"citing Commonwealth v. Gonzales 334 Pa. Super. 603, 483 a.2d 902, 903 (Pa. Super.1984) "however, a defendant is entitled to an instruction on any recognized defense that has been requested and has been made an issue in the case, and for which there exists evidence from whatever source that will support these three elements then the decision as to whether the claim is a valid one is left to the jury and the jury must be charged properly thereon by the trial court." Emphasis Added.

"thus if there was evidence which would have supported the claim of self defense, it was for the trier of the fact to pass upon that evidence and improper for the trial judge to exclude such consideration by refusing the charge." "once the defendant

2

and other specifically requested discovery material prior to trial.)

### Brady Issues

- 131 LED2D 490, 514 US 419 Kyles v. Whitley

(Same as above) "Brady v. Maryland (1963) the United States Supreme Court has held that the prosecution has a due process obligation under Federal Constitution to disclose material evidence favorable to a criminal defendant." (Hence without Kelley McTavish's testimony, which requested material would have given the defense the ability to impeach her, would put the whole case in such a different light as to undermine confidence in the verdict.

1 LED 342, 427 US 97 United States v. Agurs

'US 106] "[3] In Brady the request was specific. It gave the prosecutor notice of exactly what the defense desired. Although there is of course, no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or indeed is a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.

(Here in my case the district attorney received one request, and the defense then received some information, but not all requested, so a even more detailed discovery request was sent to the prosecutor. That of which was ignored regarding prior criminal records of witness and alleged victim, of which would have provided defense with a clear path to impeach Commonwealth's "crux" star witness Kelley McTavish. Which will later lead to my writing of Prosecutorial Misconduct when I cite *Com. v. Martorano* (1999). The crucial point here is specific information was requested/withheld by the district attorney in this case. And if information was given that was requested the outcome of trial would have been different. Additionally there is no doubt that the prosecutor was aware as well as the court because it related to charges in

5) *Printed copy of Kelley McTavish's Docket #CP-44-CR-0000056-2016 where she entered a*  
*6-11-16 Plea on 9-16-16 for 6 months probation*

Case Law

LED 20 481, 473 US 667 United States v. Bagley

(More specifically)

QUESTION "Prosecution's failure to disclose requested impeachment evidence held to constitute constitutional error only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different."

"Prosecutors should be required to disclose all evidence that reasonably appears favorable to the defense rather than to guess at its likely effect on the outcome of the trial."

5 A.2d 1197, 425 Pa. Super. 479, Commonwealth v. Samuel Bonaccorso

(Refusing to offer discovered evidence, i.e. blood that was requested to be tested prior to trial, as well as prior criminal records, of which at a minimum would change the degree of guilt.)

"Change in degree of guilt constitutes change in outcome of trial."

(Defendant requested in his pre-trial motion for testing of hard evidence, of which court denied funding for same. Counsel Michael Gingerich failed to have testing done, constituting ineffective assistance of counsel. Further the jury was entitled to know why Ms. McTavish was on bail, to show her credibility, and character. Additionally without medical expert testimony at trial, it is believed by the defendant that injuries to alleged victim were far less than what they were told to be at trial. Restitution in this case only reflects \$1821.61 in support of this.

(7)

31 LED 20 104, 405 US 150 Giglio v. United States

"Withholding or suppression of evidence by prosecution in case as vitiating conviction." (Constitutional Law § 840 - evidence - nondisclosure

"4. When the reliability of a given witness may well be determinative of guilt or innocence the prosecution's nondisclosure of evidence affecting credibility justifies a new trial, under due process clause, irrespective of the prosecution's good faith or bad faith."

(Again, Mifflin County prosecutor intentionally withheld prior criminal records of which would have impeached and shown favorable to defense for that purpose, and ultimately changed the outcome of trial.)

[405 US 154] "When the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within this general rule." (When Kelley McTavish entered a guilty plea for 6 months probation 13 days after she spoke with police regarding this matter, even though it was a separate criminal docket in same jurisdiction shows a strong chance for leniency in exchange for her testimony. Especially when this requested information was withheld by prosecution, and contracted public defender/court appointed counsel was so ineffective to not act in this matter. In short the jury was entitled to know of it

(6)

Case Law

elena Woodward v. Minakshi Chatterjee

2003 Pa. Super. 207; 827 A.2d 433; 2003 Pa. Super. Lexis 1337

CIT is believed by the defense that the prosecution used Trooper Michael Elder's testimony as expert medical testimony, of which is in error, as he is not a doctor nor was he involved in preparing of documents, from which he based his testimony from.)

"The admission of expert testimony is a matter within sound discretion of the trial court, whose rulings thereon will not be disturbed absent a manifest abuse of discretion. If the trial court makes an erroneous evidentiary ruling that causes harm to the complaining party, the only remedy is to grant a new trial. When improperly admitted testimony may have affected a verdict, the only correct remedy is the grant of new trial."

Commonwealth v. Raymond Martorano v. Albert Diadone et al.

559 Pa. 533; 741 A.2d 1221; 1999 Pa. Lexis 3402

outcome." The court affirmed the order of the superior court and discharge appellees on double jeopardy grounds. The double jeopardy clause of the Pennsylvania constitution prohibits retrial of a defendant when the conduct of the prosecutor is intentionally undertaken to prejudice the defendant to the point of the denial of a fair trial."

"In contrast to prosecutorial error, overreaching is not an inevitable part of the trial process and cannot be condoned. It signals the breakdown of the integrity of the judicial proceeding, and represents the type of prosecutorial tactic which the double jeopardy clause was designed to protect against."

(8)

- - - Continue Com. "Raymond Mortimer" Albert Diadone

"We agree with the Superior Court that a fair trial is not a lofty goal, it is a constitutional mandate, and where that constitutional mandate is ignored or subverted by the Commonwealth we cannot simply turn a blind eye and give the Commonwealth another opportunity."

(In that in the Mifflin County case at bar the prosecutor ignored specific discovery request for impeachable evidence to use to impeach Commonwealth Star witness Kelly McEwen. Additionally past medical history of alleged victim was refused, as well as his prior criminal history. Mr. Koch's prior criminal history was also refused. All had prior criminal falsi charges, and or other information that could have been used for proper cross examination, and or impeachment. All of which would have changed the outcome of trial, with skilled effective representation. Trial counsel was further ineffective for failing to pursue this further pre-trial, and appellate counsel was also ineffective as well, because defendant requested act on this issue, as well as find out Mr. Moore's current state as defendant was told by people in the community that Mr. Moore's injuries were nothing as they were portrayed to be. Including embellish by questioning about alleged victim's sexual organ. Again trial counsel was ineffective for failing to object to these comments, and the fact that Mr. Moore was put in front of the jury "popping wheelies" in an electric wheelchair without expert medical testimony to confirm.)

(9)

Commonwealth "Carl Beck" Sharon Beck 295 Pa. Super. 154; 441 A.2d 395; 1982 Pa. Super. Lexis 3320 (Pa. R. Crim. P. 4010 & Pa. R. Crim. P. 1405 (b))

In this case "the defendant struck the victim with baseball bat while the other defendant had his arms around the other victim's chest and cut his face with a knife."

"However, the court vacated the judgement of sentence and remanded for resentencing as the trial court did not comply with Pa. R. Crim. P. 4010(c) or Pa. R. Crim. P. 1405 (b), which required a statement of reasons for denying bail and imposing the sentence."

(Defendant did not ever fail to appear ever in his history, and should have remained on bail until sentencing. Trial counsel and appellate counsel were ineffective for failing to raise these issues. Depending on relief this court may grant, it may be necessary to reinstate defendant's original bail in this case.)

Commonwealth "Joy C. Smith 532 Pa. 177; 615 A.2d 321; 1992 Pa. Lexis 449

"Procedural Posture: Defendant appealed a decision of the superior court (Pottsville), which denied defendant's motion to preclude a new trial based on double jeopardy because of after discovered evidence of prosecutorial misconduct. Double jeopardy prohibited retrial of defendant where defendant was denied a fair trial due to the withholding of potentially exculpatory evidence and the denial of an agreement which gave the chief prosecution witness favorable sentencing treatment."

(by this Michael Romig was) "There by precluded from impeaching (Kelly McEwen) Mr. Moore's veracity by exposing his motivation to testify (her) falsely against appellant in order to minimize his own punishment."

(In the defendant Michael Romig's case justification would prove him innocent of the charges against him and beyond that without Kelly as a witness defendant could not have been convicted.)

10

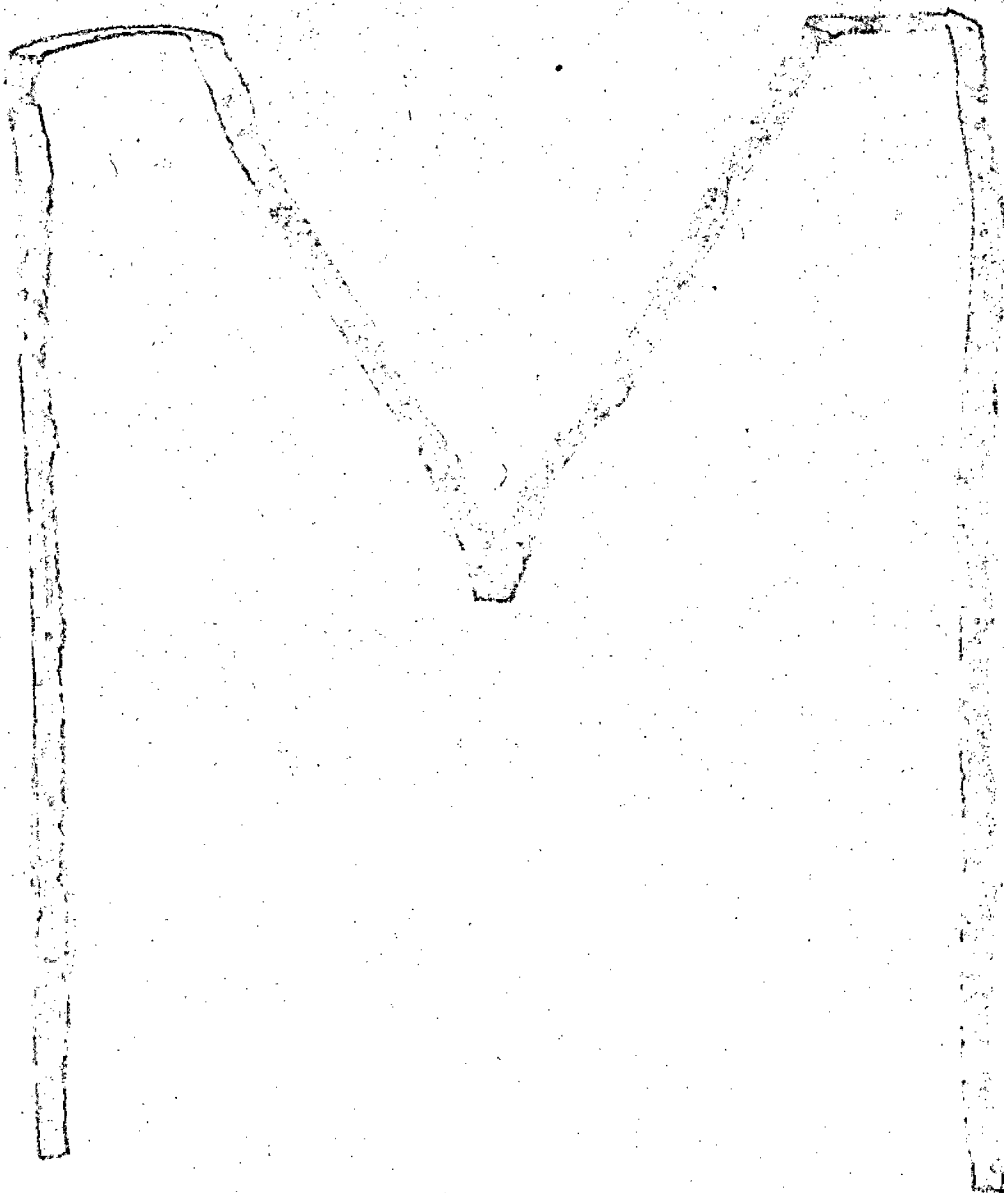
#### UNSWORN DECLARATION

I, Michael C. Romig, do hereby certify that the facts set forth in the above motion are true and correct To the best of my personal knowledge or information and belief, and that any false statements herein are made subject to the penalties of Section 4904 of the Crimes Code (18 Pa. C.S. § 4904), relating to unsworn falsification to Authorities.

No Notary  
Required

Michael C. Romig  
(Signature of Defendant)

9-11-19



IN THE COURT OF COMMON PLEAS OF MIFFLIN COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

Commonwealth of Pennsylvania

vs.

No. CR-560-2016

Michael Romig

**AMENDED PETITION FOR POST-CONVICTION  
COLLATERAL RELIEF**

AND NOW, comes the Defendant Michael Romig by and through his attorney, Scott N.

Pletcher, Esq., of the Law Office of Scott N. Pletcher, who files this amended petition for post-conviction collateral relief (PCRA), under Pa.R.Cr.P. No. 905, and prays your Honorable Court to grant him an evidentiary hearing so that he might argue his case.

1. The Defendant previously filed this PCRA, pro se, petition on September 17, 2019.

2. The Defendant's new counsel, referenced above, was appointed on September 30, 2019.

3. The Defendant is currently housed at SCI - Pottsville.

4. The Defendant was convicted on two counts of Aggravated Assault (18 Sec. 2702 a1 and a4) and one count of Simple Assault (18 Sec. 2701 a1) after a one-day jury trial on July 18, 2017. Judge David W. Barron presided at the Defendant's trial.

5. The Defendant was represented by Attorney Michael S. Gingrich at his trial.

6. The Defendant was sentenced by your Honorable Court (Judge David W. Barron, President Judge) on September 14, 2019, to a total of nine and one-half to thirty years imprisonment in a state correctional institution. The Defendant has not started to serve his sentence on these charges.

7. On September 25<sup>th</sup>, the Defendant filed his post-sentence motion.

8. On October 31, 2017 the Commonwealth filed its Answer to Defendant's post-sentence motion.

a writ of habeas corpus.

D. Trial counsel was ineffective in his assistance in that he failed to object to Commonwealth's questions to the victim about his bladder and bowels and sex organ working (TT, p. 122), or not working (TT, p. 126). Counsel could have also had the testimony stricken from the record with a jury instruction to disregard the same had the objection been sustained. Defendant requests a new trial due to this highly prejudicial and detrimental testimony.

E. Trial counsel was ineffective in his assistance in that he failed to object to hearsay from the victim when he testified what medical staff told him he was "paralyzed from the waist down." (TT, p. 124). Defendant requests a new trial due to this prejudicial testimony being heard by the jury and not excluded with an objection and request to strike from the record.

F. Trial counsel was ineffective in his assistance in that he did not object to the victim's antics in the courtroom regarding his need to tip his wheelchair upward and over in order to take the weight off his legs. (TT, p. 129). Counsel was ineffective in that he did not file a motion in limine regarding the victim's presence in the courtroom. Such actions were prejudicial to the Defendant and he requests a new trial so that the victim's presence, by itself, does not unfairly influence the jury against him.

G. Trial counsel was ineffective in his assistance in that he failed to argue to the jury in his closing argument that the Commonwealth provided absolutely no medical expert testimony and no medical records in regard to the victim's condition. The Defendant requests a new trial due to this ineffective assistance. (TT, 213-222).

H. Trial counsel was also ineffective in his assistance in that he failed to provide a medical expert for testimony about the victim and his fall from the horse and his injuries from the Defendant. The Defendant requests a new trial due to this ineffectiveness of counsel.

I. Trial counsel was ineffective in his assistance in that he failed to object to Attorney Torquato in his closing argument that this crime was "... one step away from murder." (TT, p. 225). Defendant requests a new trial due to this highly prejudicial statement from the Commonwealth.

15. Grounds for the requested relief have not been previously raised.

9. A hearing was held on January 4, 2018 on the Defendant's post-sentence motion. The

Defendant was represented at that hearing by Christian Kerstetter, Esq.

10. Defendant's post-sentence motion was denied on February 5, 2018 by your Honorable

Court.

11. The Defendant filed an appeal to the Superior Court on March 6, 2018. His appellate attorney was Justin Miller. (Case No. 400 MDA 2018).

12. The Superior Court affirmed the judgment of sentence on December 17, 2018.

13. The Defendant filed a petition for allowance of appeal to the PA Supreme Court on January 14, 2019. That petition was denied on June 18, 2019. (Case No. 29 MAL 2019).

14. Relief requested: The Defendant requests a new trial. The Defendant also requests that his appeal rights be reinstated.

15. Grounds for requested relief: (Note: Trial transcripts and Appellant's Brief are not attached to this petition but can be made available upon request).

A. Appellate counsel, Miller, was ineffective in his assistance of Defendant's (Appellant's) case in that he failed to develop any argument in his appellate brief on the trial court's failure to provide a jury instruction on the "defense of property (the Castle Doctrine), and on the use of deadly force." The issue was raised in Appellant's Statement of the Questions. Because

Attorney Miller did not develop any argument, the Court did not address them. (See Superior Court Decision, footnote 2, p.10). Defendant requests that his appeal rights be reinstated so that he might argue this issue to the Superior Court.

B. Trial counsel was ineffective in his assistance of Defendant's case in that he failed to investigate or subpoena the victim's medical records and/or subpoena medical experts to testify at the Defendant's trial regarding the victim's injury or possible injury of falling off of a horse onto his back. The Defendant requests a new trial so that such medical testimony or information can be used in the explanation of the victim's injuries. (See trial transcripts, p. 132).

C. Trial counsel was ineffective in his assistance in that he failed to file a motion for writ of habeas corpus prior to trial in order to discover if there was enough evidence to establish a prima facie case in this matter. Defendant requests a new trial so that he might make a motion for

Respectfully submitted:

*Scott N. Pletcher*  
Scott N. Pletcher, Esq.

Law Office Scott N. Pletcher

119 South Burrows Street, Suite 101

State College, PA 16801

814-272-0303 (office)

814-238-1875 (fax)

Email: [PletcherLaw@aol.com](mailto:PletcherLaw@aol.com)

IN THE COURT OF COMMON PLEAS OF MIFFLIN COUNTY, PENNSYLVANIA  
CRIMINAL DIVISION

Commonwealth of Pennsylvania

vs.

No. CR-560-2016

Michael Romig

ORDER

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, the Defendant's

Request for a PCRA Evidentiary Hearing is hereby GRANTED / DENIED. The Evidentiary Hearing shall be scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 2020 at

\_\_\_\_\_ in Court Room \_\_\_\_\_ of the Mifflin County Courthouse, Lewisburg,

Pennsylvania.

By the Court:

David W. Barron, President Judge

CERTIFICATION OF INTENDED WITNESSES

1. Attorney Justin P. Miller, 817 East Bishop Street, Suite D, Bellefonte, PA 16823.

Substance of testimony: Knowledge of the Castle Doctrine in this case and the reason for failing to develop the argument for that in his appeal brief. Defendant's file material is demanded at the evidentiary hearing.

2. Attorney Michael S. Gingrich, P.O. Box 971, Belleville, PA 17004. Substance of testimony: Pre-trial and jury trial strategy as outlined in paragraph 15 (B - I) of the amended PCRA petition. Defendant's file material and related documents and photos is demanded at the evidentiary hearing.

VERIFICATION

I, Scott N. Pletcher, Esq., verify that the facts set forth in this petition are true and correct to the best of my knowledge or information and belief and that any false statements herein are made subject to the penalties of the Crimes Code, 18 Pa.C.S. Sec. 4904, relating to unsworn falsification to authorities and that I am also authorized by the Defendant to file this petition on his behalf.

Scott N. Pletcher, Esq.

*Scott N. Pletcher*

- 5 -

CERTIFICATE OF SERVICE

I, Scott N. Pletcher, hereby certify that I delivered the foregoing document to the person(s) or office(s) named below, in the manner specified, on the date indicated below.

Service by personal delivery:

Attorney Christopher Torquato  
Mifflin County District Attorney  
20 North Wayne Street  
Lewistown, PA 17044  
Fax: 717-248-7780

Court Reporter  
Mifflin County Court of Common Pleas  
20 North Wayne Street  
Lewistown, PA 17044

Hon. David W. Barron, President Judge  
Mifflin County Court of Common Pleas  
20 North Wayne Street  
Lewistown, PA 17044

Michael Romig KR86144 (Defendant)  
Erickville - SCI  
1111 Althamont Blvd  
Frickville, PA 17931  
(Service by US Mail)

Scott N. Pletcher, Esq.

Law Office of Scott N. Pletcher  
119 S. Burrows Street, Suite 101  
State College, PA 16801  
814-272-0303  
814-238-1875 (fax)

12-30-2019

Date

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Case Records Public Access Policy of the Unified Judicial System of Pennsylvania that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: *Defendant's Counsel*

Signature: *Scott N. Pletcher*

Name: *Scott N. Pletcher*

Attorney No. (if applicable): *86910*

CERTIFICATE OF SERVICE

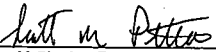
I, Scott N. Pletcher, hereby certify that I delivered the foregoing document to the person(s) or office(s) named below, in the manner specified, on the date indicated below.

Service by personal delivery or US Mail:

Attorney Christopher Torquato  
Mifflin County District Attorney - Respondent  
20 North Wayne Street  
Lewistown, PA 17044  
Phone: 717-248-9800  
Fax: 717-248-7780

Mifflin County Court  
Mifflin County Courthouse  
20 North Wayne Street  
Lewistown, PA 17044  
Phone: 717-248-4613  
Fax: 717-248-8337

Michael C. Romig - Petitioner  
KR8614  
SCI Frackville  
1111 Altamont Blvd.  
Frackville, PA 17931

  
\_\_\_\_\_  
Scott N. Pletcher, Esq.

Date: 03-05-2022

Law Office of Scott N. Pletcher  
119 S. Burrowes Street, Suite 101  
State College, PA 16801  
814-441-0001 (cell)  
814-238-1875 (fax)