No. _____

ORIGINAL

24-7395

IN THE

SUPREME COURT OF THE UNITED STATES

_____

In Re ISAAC GRAAY__ -PETITIONER
(Your name)

ON PETITION FOR A WRIT OF HABEAS COPRUS

_____

PETITION FOR WRIT OF HABEAS CORPUS

Isaac Gray
(Your Name)

13800 McMullen Highway, SW
(Address)

Cumberland, Maryland 21502
(City, State, Zip Code)

301-729-7101
(Phone Number)

QUESTION(S) PRESENTED

1. Did the State court erred in denying trial counsel was ineffective in failing to suggest how cross-examination might have been beneficial concerning racially discriminatory peremptory challenges; 2) ask that the trial court pose any questions to the prosecutor; or 3) suggest any areas of concern with explanation given by the prosecutor?
2. Did the State court erred in denying trial counsel was ineffective in failing to inform the court that the State failed to prove petitioner "Doesn't meet the Statutory Requirements" for an "Enhanced Punishment?"
3. Did the State court erred in denying trial counsel was ineffective in failing to file "Modification of Sentence," within 90 days after sentencing, as requested by Petitioner?
4. Did the State court erred in denying trial counsel was ineffective by representing both the Petitioner and Jail-House Informant, conflict of interest?
5. Did the State court erred in denying that the State withheld exculpatory evidence—DNA; *Brady* violation?
6. Did the State court erred in denying prosecutorial misconduct by allowing the State to nolle prosequi the weapon, after the trial begun, and Double-Jeopardy attached regarding the weapon?
7. Did the State Court erred in denying prosecutorial misconduct by engaging in extra-judicial conspiracy with Government witness, Michael Malone, F.B.I. (Hair Analysis Unit)?
8. Did the State court erred in denying Petitioner's "illegal sentence," regarding Maryland Rule 4-345 and refused to comply with both of the Appellate Court's mandate from the Court of Special Appeals of Maryland and the Supreme Court of Maryland rulings?

LIST OF PARTIES

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

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

Howard County Circuit Court, 13-K-85-014210, Isaac Gray v. State of Maryland. Judgment entered March 20, 2023.

Supreme Court of Maryland, No. 77, Sept. Term, 1988, Gray v. State. Judgment entered September, 1989.

U.S. District Court for the District of Maryland, CCB-10-2521, Gray v. Hershberger. Judgment entered September 20, 2010.

RELATED CASES

Gray v. State, 317 Md. 250, Supreme Court of Maryland. Judgment entered September 8, 1989.

Gray v. Stouffer, No.: CCB-14-1472, U.S. District Court for the District of Maryland. Judgment entered May 8, 2014.

Gray v. Stouffer, No.: CCB-15-29, U.S. District Court for the District of Maryland. Judgment entered October 28, 2016.

Gray v. State, No.: 2029, Sept. Term, 2017, Court of Special Appeals of Maryland. Judgment entered December 31, 2018.

Gray v. AG of Md., No: CCB-19-3432, U.S. District Court for the District of Maryland. Judgment entered December 10, 2019.

Gray v. Malone, No.: CCB-20-249, U.S. District Court for the District of Maryland. Judgment entered January 31, 2010.

TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX—SUPPORTING DOCUMENTS

Exhibit #1 Letter—Christopher Wray, Director—F.B.I.; Security Clearance Access Code Required: Control No.: 22-OIG-014, March 4, 2022; 2-Pages.

Exhibit #2 Letter—Merrick Garland, U.S. Attorney General; Security Clearance Access Code Required: FOIA Request No.: 202200834; 2-Pages.

Exhibit #3 Letter—U.S. Dept. of Justice—Office of the Inspector General—Investigations Division; November 6, 2019; 1-Page.

Exhibit #4 Letter—U.S. Dept. of Justice—Internal Affairs Section; April 4, 2022; 1-Page.

Exhibit #5 Letter—Record/Information Dissemination Section—F.B.I.; F.B.I. File No.: 95-HQ-269212; June 27, 2014; 2-Pages.

Exhibit #6 Letter—FOIA/PA Specialist/Office of the Inspector General; Time Sensitive Request; Examiner Information Regarding Flawed Forensic Evidence; FOIPA Request No.: 1221651-000; June 27, 2014; 3-Pages.

Exhibit #7 Letter—F.B.I.—21 Pages Redacted Report; FOIPA Request No.: 1218740-000; Release No.: 260249; November 15, 2019; 2-Pages.

Exhibit #8 Letter—U.S. Dept. of Justice; Cases in Which Testimony was given by Michael Malone; Request No.: 1351757-000; June 10, 2016; 1-Page.

Exhibit #9 Notice Regarding Restricted Information Pursuant to Rule 20-201.1; Circuit Court of Maryland for Howard County; Confidential Information; Security Clearance Access for Dept. of Justice Testimony; February 26, 2021; 1-Page.

Exhibit #10 Letter—Kim Kochurka—U.S. Dept. of Justice; Time Sensitive Request; Control No.: 22-OIG-014; Status Update FOIA Request; December 14, 2021; 3-Pages.

Exhibit #11 Laboratory Analysis—51008023 SRQ CF; Head Hair; January 21 P.M.; 1-Page.

Exhibit #12 Laboratory Analysis—51008020 SRQ U V VYUI; No Hair of Negroid Origin; Feb. 26, A.M.; 1-Page.

Exhibit #13 Washington Post Article; F.B.I. Admits Errors at Trials; Past F.B.I. Analysis called "Complete Disaster:" July/2014; 2-Pages.

Exhibit #14 Information Resources—F.B.I.; Findings of the Office of the Inspector General/Dept. of Justice—Critical of Forensic Work Performed by Certain Lab Examiners; May 17, 1999; 2-Pages.

Exhibit #15 Microscopic Analysis—Page 2—IR 8434771; Another Suspect was compared with **Negative Results**; 1-Page.

Exhibit #16 Letter—U.S. Dept. of Justice—State of Maryland v. Isaac Gray, Case No.: 14210-12; Microscopic Hair Analysis Contains Erroneous Statements; Sept. 30, 2014; 4-Pages

Exhibit #17 F.B.I. Microscopic Hair Comparison Analysis Review—Evaluation Form; Date of Review 6/25/2013 and 12/23/2013; 1-Page.

Exhibit #18 Letter—U.S. Dept. of Justice—FOIPA Request No.: 1221651-000; Laboratory Reports/Examiner Information Regarding Flawed Forensic Evidence; July 23, 2013; 1-Page.

Exhibit #19 Letter—U.S. Dept. of Justice; FOIPA Request No.: 1218740-000; Release No.: 260249; **164** pages Reviewed ***only*** **143** pages being released; May 8, 2014; 2-Pages.

Exhibit #20 Semen (**DNA**) Examination; Lab No.: 51008020 RQ VF/ Ellicott City, MD; 12/16/85; **Negative Results**; 3-Pages.

Exhibit #21 Semen (**DNA**) Examination; Lab No.: 51008023 RQ VF/ Ellicott City, MD; 12/18/85; **Negative Results**; 3-Pages.

Exhibit #22 U.S. Court of Appeals for the Fourth Circuit; No.: 14-478; ORDER; Court GRANTS Motion and Authorizes the Filing of Successive Petition; December 18, 2014; 1-Page.

Exhibit #23 An Assessment of the 1996 Dept. of Justice Task Force Review of the F.B.I. Laboratory; U.S. Dept. of Justice/Office of the Inspector General; July/2014; 11-Pages.

Exhibit #24 Reporter's Official Transcript of the Proceedings, April 24, 1986 (Page 4-58) Nolle Prosequi—Openly Carrying a Weapon with Intent to Injure of Count 7 of 14210 and indictment 14212—Carrying a Concealed Weapon; 3-Pages.

Exhibit #25 Reporter's Official Transcript of Proceedings; Howard County, Maryland: April 22, 1986; Second Day of Trial/Jury Trial; Criminals No.: 14210-12; 7 Pages.

Exhibit #26 Reporter's Official Transcript of Proceedings; Howard County, Maryland; April 23, 1986; Trial on the Merits and Motion to Suppress—Volume III of IV; Criminals No.: 14210 and 14212; 6-Pages.

Exhibit #27 Reporter's Official Transcript of Proceedings: Howard County, Maryland; April 24, 1986; Trial on the Merits and Motion to Suppress—Volume IV of IV; Criminal No.: 14210 and 14212; 4-Pages.

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES PAGE NUMBER

OTHERS

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue.

OPINIONS BELOW

[ ] For cases from **federal courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

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

[X] reported at Atlantic Reporter; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Court of Appeals of Maryland court appears at Appendix D to the petition and is

[X] reported at Atlantic Reporter; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was October 2, 2017.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 6, 2017, and a copy of the Order denying rehearing appears at Appendix E.

[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____ (date) on _____(date) in Application No.____ A _____ .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[ ] For cases from **state courts:**

The date on which the highest state court decided my case was _____ .
A copy of that decision appears at Appendix _____ .

[ ] A timely petition for rehearing was thereafter denied on the following date: _____ , and a copy of the order denying rehearing appears at Appendix _____ .

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____ .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th Amendment, U.S. Constitution—Unreasonable Searches and Seizure

5th Amendment, U.S. Constitution—Due Process, Applicable to the Federal Government

6th Amendment, U.S. Constitution—Right to Confront Witnesses Against the Defendant; Right to have Representation by an Attorney

8th Amendment, U.S. Constitution—Cruel and Unusual Punishment

14th Amendment, U.S. Constitution—Due Process, Applicable to the States

Appellate Jurisdiction—Constitutional or Statutory—Methods of Appeal; Application for Leave to Appeal [Court of Special Appeals of Maryland] and Writ of Certiorari—Supreme Court of Maryland [Criminal Procedure 7-109; Appeal of Final Order]

Enhanced Punishment—Statutory Provisions—Failure to meet the Statutory Requirements—Illegal (Criminal Law—3-303(e)] and Maryland Rule 4-245 Subsequent Offenders

Discovery—Statutory: Maryland Rule 4-263(d)(5) and Maryland Rule 4-263(d)(8)

Illegal Sentence—Statutory: Article 25 of the Maryland Declaration of Rights and Maryland Rule 4-345(e)

Post-Conviction Procedure Act—Statutory: Criminal Procedure—7-102 and 7-104

Expert Testimony—Statutory: Maryland Rule 5-702

STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT

On August 25, 1985, Petitioner was charged with 1st Degree Rape. Petitioner was sentenced in the Howard County Circuit Court of Maryland on July 18, 1986 to a "natural-life sentence. (*Isaac Gray v. State of Maryland*, No.: 77/Sept. 8, 1989).

Petitioner has been able to demonstrate with "***irrefutable***" evidence, pursuant to the Jencks Act: *Clinton E. Jencks v. United States of America*, 353 U.S. 657 1. L. Ed.2d 1103, 77 S. Ct. 1007 (1957); and 28 U.S.C. § 2241 proceedings, unquestionably show that "***exceptional circumstances***" warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court, because a State court of last resort has decided an important federal question in a way that conflicts with the decision of another State court of last resort or of a United States Court of Appeals.

To justify the granting of a writ of habeas corpus, Petitioner is able to substantiate **Rule 20.4(A)**: (1) that the merits of the factual dispute were **not** resolved in the State court hearing; (2) that the fact finding procedure employed by the State court was **not** adequate to afford a full and fair hearing; (3) that the material facts were **not** adequately developed at the State court hearing; and (4) that the Petitioner was otherwise denied due process of law in the State court proceeding.

Jurisdiction is petitioned pursuant to the 28 U.S.C. § 2241; In re Bowe (2024) U.S. Lexis 988; and the **Jencks Act,** invokes the Court's jurisdiction to entertain "*original habeas corpus petition*," because of the **All Writs Act**: 28 U.S.C.S §1651: (1) Petitioner seeking writ has **no** other adequate means, such as direct appeal, to attain desired relief, (2) that petitioner will be prejudiced or damaged in a way not correctable on appeal, and (3) that lower court's order is clearly erroneous as a matter of law.

The Federal Bureau of Investigation (F.B.I.) ***withheld and sealed*** evidence/documents [**164** pages from the Petitioner and ***only*** released **143** pages of evidence. The additional 21-pages in Case File: FOIPA Request No.: 1218740-000; Release No.: 260249 remains "***withheld and sealed***" was a violation of "due

process" of petitioner's right to confrontation. The State violated Petitioner's right to "***effective cross-examination***," on a finding that the "Government" ***withheld*** information/documents, and investigative reports for discovery, which demonstrates habeas corpus petitioner is entitled to evidence/documents that affords him the "exceptional circumstances" that warrant the exercise of this Court's powers, [Rule 20.4(A)], because the lower courts refuse to state any case law, statutory enactment or Rule of law that is contrary to petitioner's evidence being presented. [**Jencks Act:** Discovery and Inspection § 13; (Accused's Right to Production of Documents in Government's Possession).]

Since the "Government," which prosecutes an accused also has the duty to see that justice is done, it is ***unconscionable*** to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to petitioner's defense.

As such, due to the lower court's refusal to provide adequate relief of the additional 21-pages ***withheld and sealed*** by the Government, ***"only"*** the Supreme Court of the United States, after thirty-nine (39) years can provide relief by *writ of habeas corpus* to "insure that miscarriages of justice, usurpation of judicial power and egregious constitutional violations" of this magnitude within its reach are surfaced and corrected. See...*Harris v. Nelson*, 394 U.S. 286, 291, 89 S. Ct. 1082, 1086, 22 L. Ed 281 (1969).

The prosecutor intentionally engaged in prosecutorial misconduct by *failing to give a race neutral explanation* for excluding black jurors during his peremptory challenges. [*Batson v. Kentucky*, 476 U.S. 79, 106 S. Ct. 1712 90 L. Ed.2d 69 (1986).]

The Petitioner was able to prove to the Court of Special Appeals of Maryland (*Isaac Gray v. State of Maryland*, No. 77/Sept. 8, 1989), that an established prima facie case of discrimination has been presented, on proof that members of the petitioner's race were substantially under-represented on the venire from which his jury was drawn, and that the venire was selected under a practice providing the opportunity for discrimination. This combination of factors raises the necessary inference of purposeful discrimination. See...Writ of Certiorari, (*Gray v. Maryland*, 317 Md. 250 (1989)).

Ineffective assistance of trial counsel's failure to inform the Court that the State failed to prove Petitioner "***doesn't meet the statutory requirements***," for an "enhanced punishment.

In Maryland, when the State seeks an "***enhanced punishment***," the State ***must*** prove each element of the enhanced penalty beyond a reasonable doubt, involving the *defendant's identity in the previous qualifying convictions*. The State failed to do so, therefore, the sentence is "**illegal**." See...*Nelson v. State*, 187 Md. App. 1 (2009).

Enhanced Punishment: The State *must* "***prove prior qualifying convictions***," and that the defendant served terms of incarceration. See...*Ford v. State*, 73 Md. App. 391 (1988). *Enhanced punishment applicable "only" if the defendant has been convicted of an earlier offense prior to the commission of the principle offense.* Enhanced Punishment Statute: Criminal Law—3-303(e) and Maryland Rule 4-245 (Subsequent Offender).

Failure of trial counsel to file "Modification of Sentence," within 90 days after sentencing, as requested by Petitioner.

In *Matthews v. State*, 161 Md. App. 248 (2005), "When a defendant in a criminal case is denied his right to a desired "Motion for Modification of Sentence," because of the ineffective assistance of counsel and through ***no*** fault of the defendant, he is entitled to file a "***Belated Motion for Modification of Sentence***, without the necessity of presenting any other evidence of prejudice." (***Trial counsel's failure to file Modification of Sentence, verified by the "Court Docket Entries***.")

"Prejudicial prosecutorial misconduct" occurred when the State falsified information to the court, pertaining to the jail-house informant **not** giving a note to the prosecutor. On cross-examination it was revealed that the prosecutor deliberately ***falsified information*** about the note and it was confirmed the jail-house informant gave the note to the prosecutor "*after his first meeting with the State and law enforcement officials*."

Person becomes an agent of the State, depriving the petitioner of his right to counsel, during an investigative interview. (Sixth Amendment violation) Any statements made after the jail-house informant's first contact with law enforcement officers he would be acting as an agent of the State and therefore any statements he elicited or obtained from the petitioner, after that point, would have to be suppressed under both of these cases. *Massiah v. United States*, 377 U.S. 201, 12 L. Ed. 2d 246, 84 S. Ct. 1199 (1964); and *Main v. Moulton*, 474 U.S. 159, 176 88 L. Ed. 2d 481, 106 S. Ct. 477 (1985).

The State intentionally violated the Petitioner's constitutional rights (5th & 14th due process violation), and deliberately "***withheld exculpatory DNA evidence***, which drastically would have yielded a different "sentence." [**DNA** is a powerful evidentiary tool and its importance in the courtroom ***cannot be overstated***. See...*Maryland v. King*, 133 S. Ct. 1958, 1966, 186 L. Ed.2d 1 (2013); *Whack v. State*, 433 Md. 728 (2013).]

Laboratory reports purposefully hidden by the prosecutor that demonstrates the **DNA** pertaining to Petitioner's "***actual innocence***," of the "*impermissible consideration of sentence*," and due process violations are meritorious.

The State fabricated information to the Court concerning a weapon, prejudicial prosecutorial misconduct to the Petitioner, when the State nolle prosequi the weapon, after the trial begun, and double-jeopardy attached regarding the weapon.

Double jeopardy attaches, because it operates as an acquittal. If a "Nolle Prosequi" is entered without the consent of the accused after trial has begun, jeopardy attaches. **Maryland Rule 4-247:** Nolle Prosequi ***must*** be entered in open court and the prosecutor must set forth the reasons for his action. See...*Hooper v. State*, 293 Md. 162 (1982). The State unquestionably failed to adhere to **Md. Rule 4-247** and the inconsistent verdicts, as to the petitioner having a weapon (knife) or not, on the same identical evidence. There is **no** dispute as to whether the verdicts were inconsistent. See...*Greathouse v. State*, 5 Md. App. 675 (1969); Double Jeopardy Attached.

Prosecutorial misconduct highly prejudicial to the Petitioner by the State engaging in extra-judicial conspiracy with Government witness, Agent Michael Malone, F.B.I. (Hair Analysis Unit).

Petitioner has demonstrated through the "Department of Justice," (D.O.J.) and the "Office of the Inspector General" that the prosecutor, Michael Rexroad and F.B.I. Agent, Michael Malone entered into an extra-judicial conspiracy to convict petitioner based on perjured testimony, which has been "verified" by the D.O.J. and that Rexroad "***withheld exculpatory evidence***," from the defense in violation of *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed.2d 215, 83 S. Ct. 1194 (1963).

The prosecutor knew all along that the additional cases listed against the Petitioner were misleading, but he wanted to continue the impermissible consideration, in order to justify "prejudice" towards the Petitioner. Under **Md. Rule 4-331,** the evidence of the Laboratory reports/**DNA** would have changed the "*impermissible consideration of the sentence*," as provided in § 8-301 of the Criminal Procedure Article. The Court was *highly influenced* to the *prejudice* of the Petitioner, regarding "***sentencing***," by the intentional misleading remarks of Rexroad.

The State failed to correct Petitioner's "illegal sentence," regarding Maryland Rule 4-345 and refused to comply with both of the Appellate Court's Mandate, from the Court of Special Appeals of Maryland and the Supreme Court of Maryland Rulings.

Illegal Sentence: 28 U.S.C. 2241—State Prisoner: Challenges "the fact or duration of a prisoner is confinement and seeks remedy of immediate release or a shortened period of confinement." [28 U.S.C. 2241 "Challenges the execution of Sentence."] See...*Hamm v. Saffle*, 300 F.3d 1213 (2002); (Violation of the Constitution or laws or treaties of the United States.) Secure release from "illegal" custody—*Preiser v. Rodriguez*, 411 U.S. 475 (1973).

Both of the Appellate Courts of Maryland (Court of Special Appeals and the Supreme Court of Maryland) opined, a "natural-life" (Given to the Petitioner) sentence could **not** and (**cannot**) be imposed unless the State provided a defendant with notice, at least 30 days prior to trial, of its intent to seek such a sentence. In cases involving a sentence as serious as a "natural-life sentence," it is entirely reasonable to require the State to follow the letter of the law. (*Gorge v. State*, 386 Md. at 619-20); and *Hammersla v. State*, 184 Md. App. 295 (2009). In this matter it did ***not*** do so. See...*Cook v. Warden of Md. Penitentiary*, 229 Md. 636, 184 A.2d 620 (1962); and *Kyles v. Whitley*, 514 U.S. 419 435, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). The State intentionally violated the Petitioner's 5th, 8th, and 14th Amendments, which drastically would have yielded a different "***sentence***."

REASONS FOR GRANTING THE PETITION

On Appeal to the Supreme Court of Maryland, [*Gray v. State of Maryland*, 317 Md. 250 (1989)]; Writ of Certiorari, petitioner challenged the facts established that the prosecution had engaged in a systematic pattern of discriminatory challenges, thus establishing an equal protection violation. The lower Appellate Court of Maryland, [Court of Special Appeals of Maryland: *Isaac Gray v. State of Maryland*, No. 77/Sept. 8, 1989).]; ***remanded*** the case due to the "Equal Protection Violation." The Court of Special Appeals stated, "If no equal protection found then petitioner is to be **re-sentenced**, since the original judgment was *vacated*."

The trial court knew the supposedly explanations given by the prosecutor was entirely different during the trial, and the prosecutor's previous explanations violated the 14th Amendment "Equal Protection Clause." [The *additional 21 pages* ***withheld and sealed*** by the Federal Bureau of Investigation offers "irrefutable evidence" of the trial court's "usurpation of judicial power," and this information should have been provided to the Petitioner, pursuant to the **Jencks Act**: *Clinton E. Jencks v. United States of America*, 353 U.S. 657 1 L. Ed.2d 1103, 77 S. Ct. 1007 (1957), after numerous "Petitions" have been filed, during the thirty-nine (39) years of the State and Federal Government's *Brady Violations*.] See...**Exhibits #18, #19, #20, #21 & #22 Attached.**

Trial counsel was ineffective by his failure to suggest how cross-examination might have been beneficial; (2) Ask that the trial court pose any questions to the prosecutor; or (3) suggest any areas of concern with the explanations given by the prosecutor.

Trial counsel was *deficient* and his behavior "*highly prejudicial*" by ***not*** objecting to the above issues what would have drastically changed the results of the trial, because the denial of the "right to effective cross-examination" is constitutional error of the first magnitude requiring automatic reversal. See...*Bagley v. Lumpkin*, 719 F.2d 1462 (1983.) The ***Government's non-disclosure of Brady information requires "reversal"*** in *United States v. Goldberg*, 582 F. 2d 483 (9th Cir. 1978).

Enhanced Punishment: Maryland Rule 4-245 (Subsequent Offender).

In Maryland, when the State seeks an "***enhanced penalty***," the State must prove each element of the enhanced penalty beyond a reasonable doubt, involving the *defendant's identity in the previous qualifying convictions.* If the State failed to do so, the sentence is "***illegal***." See...*Nelson v. State,* 187 Md. App. 1 (2009).

> Criminal Law § 3-303(e) **Required Notice**—"If the State intends to seek a sentence of imprisonment for not less than 25 years under subsection (d) (4) this section, the State ***shall*** notify the person in writing of the States' intention at least do days before trial. [1]

Both of the Appellate Courts of Maryland [Court of Special Appeals—*Hammersla v. State*, 184 Md. App. (2009)] and the Supreme Court of Maryland [*Gorge v. State,* 386 Md. 600 (2005)] opined, a "natural-life" sentence could not and (cannot) be imposed unless the State provided a defendant with notice, at least 30 days prior to trial, of its intent to seek such a sentence. ***Failure of the State to provide the defendant with a written notice thirty (30) days prior to trial*** requires that the defendant's sentence "**must**" be "**vacated**." [2]

Trial counsel's *ineffectiveness* to object to the State's failure to demonstrate "prior qualifying convictions and that the petitioner served terms of incarceration," unquestionably demonstrates trial counsel's *deficient performance* was "*highly prejudicial*" to the petitioner. See...*Apprendi v. New Jersey*, 503 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000) and *United States v. Bagley*, 473 U.S. 667, 674-75, 87 L. Ed. 2d 481, 105 S. Ct. 3375 (1985). **[Exhibits #1, #2, #3 & #6 Attached.]**

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[1] The State ***failed to notify the Petitioner in writing of intention to seek a natural-life sentence*** thirty days before trial.

[2] When a legislative body commands that something be done, using words such as "**shall**" or "**must,**" rather than "may" or "should," the court must assume, absent some evidence to the contrary, that it was serious and it meant for the thing to be done in the manner it directed, which ***unequivocally obligates the State to give written notice to the defendant***.

Failure of Trial Counsel to File "Modification of Sentence," within 90 Days after sentencing, as requested by Petitioner," Maryland Rule 4-345(e).

The statutory language demonstrates the right to counsel under the Public Defender Act is significantly broader than the constitutional right to counsel. See...*Webster v. State,* 299 Md. 581, 602-604 (1984). The right to due process of law is guaranteed by the 5th Amendment, applicable to the Federal Government, and by the 14th Amendment applicable to the States. See...*Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 9 L. Ed. 2d 799 (1963). [Effective Assistance of Counsel for indigent defendants.]

In addition, Md. Rule 4-214(b) provides as follows: (b) Extent of Duty of Appointed Counsel—When counsel is appointed by the Public Defender or by the Court, representation extends to all stages in the proceedings, including but not limited to custody, interrogation, preliminary hearing, pretrial motions and hearings, trial, "***motions for modification***" or review of sentence or new trial and appeal. See...*Wilson v. State*, 284 Md. 664, 671, 399 A.2d 256, 260 (1979). This is referring specifically to the right to counsel under the Public Defender Act, Judge Orth for the Court stated: "Entitlement to assistance of counsel would be hollow indeed unless the assistance were required to be effective. It follows that a criminal defendant has the right to the effective assistance of counsel on direct appeal of the judgment entered upon his conviction of a serious crime."

In *Flansburg v. State*, 103 Md. App. 394, 653 A.2d 966 (1995), the court stated, "The failure to follow a client's direction to file a motion for "modification of sentence" is a ***deficient act***, and such a failure is ***prejudicial***, because it results in a loss of any opportunity to have a reconsideration of sentence hearing." See...*Garrison v. State*, 350 Md. 128 (1998) and *Gross v. State*, 371 Md. 334 (2002).

Trail Counsel Representing Both the Petitioner and Jail-House Informant, Conflict of Interest.

Prosecutorial misconduct was unquestionably "*blatant*" after the prosecutor falsified information to the jury regarding statements given to the ***jail-house informant***, after his *first* contact with law enforcement officers. Under *Massiah v. United States*, 377 U.S. 201; and *Main v. Moulton*, 474 U.S. 159; the defendant's

right to counsel, any statements made after the ***jail-house informant's*** *first contact* with law enforcement officers, he would be acting as an Agent of the State and therefore any statements he elicited or obtained from the Petitioner, after that point in time have to be suppressed under both of those cases.

(Transcript Proceedings: April 23, 1986; Volume III of IV—Trial on the Merits)

Mr. Smith: I would argue as to the note though since it wasn't supplied to the State until after his contact with them. That point—right to counsel attached even supplied basically property of the defendant. I also base the motion not only on right to counsel but under the Fourth Amendment, search and seizure, on the grounds that he's now acting as a State Agent and giving property of the defendant over to the State. The only other basis for the motion I wanted to raise is the fact that at this point in time Jawara and Gray were both represented by the Office of the Public Defender, and without going into the basis, I just want to incorporate by reference my pretrial motion and argument along the ling that this was improper conduct of the State and, basically amounts to a violation of due process; that both were represented by the same attorney and without notifying his attorney effective it delayed his trial past the 180 days—*Hicks* Ruling.

(Page 3-55: Exhibit #26 Attached.)

A. After the first meeting they did not ask for the note until after the first meeting.

Ineffective assistance of counsel was extremely *deficient and highly prejudicial* regarding the Public Defender's Office to represent both the ***jail-house informant*** and the Petitioner was proven by the "Official Transcripts."

State withheld Exculpatory Evidence—DNA; Brady Violation.

The State intentionally violated the Petitioner's constitutional rights (5th & 14th due process violations), and deliberately "***withheld exculpatory DNA evidence***, which drastically would have yielded a different "sentence." [**DNA** is a powerful evidentiary tool and its importance in the courtroom ***cannot be overstated***. See...*Maryland v. King*, 133 S. Ct. 1958, 1966, 186 L. Ed.2d 1 (2013); *Whack v. State*, 433 Md. 728 (2013). Laboratory reports purposefully hidden by the prosecutor that demonstrates

the **DNA** pertaining to petitioner's "***actual innocence***," of the "*impermissible consideration of sentence*," and due process violations are meritorious.]

> The "illegality" inheres in the sentence: "Only three grounds for appellate review of sentences are recognized in the State of Maryland: (1) whether the sentence constitutes cruel and unusual punishment or violates other constitutional requirements; (2) whether the sentencing judge was motivated by *ill-will*, prejudice or other *impermissible considerations*; and (3) whether the sentence is within statutory limits," *Jackson*, 364 Md. at 200, 772 A.2d at 277 (quoting *Gary*, 341 Md. at 516, 671 A.2d at 496); citing *Teasley v. State*, 298 Md. 364, 370 470 A.2d 337, 340 (1984); see generally *Logan v. State*, 389 Md. 460, 425 A.2d 632 (1981).

The issue of whether the suppression of that probative evidence deprived the petitioner of his right to a "fair trial" and "sentencing" has been established with corroborating evidence. (*Kyles v. Whitley*, 514 U.S. 419, 435, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995)). See...**DNA** evidence provided by the "*Office of the Inspector General*" which offers "irrefutable corroboration that has shown a reasonable probability that these materials would have yielded a "*different sentence*—was an unreasonable application of the test for materiality under *Brady*." See...*Franks v. Delaware*, 438 U.S. 154, 156 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978); *Brown v. United States*, 2014 U.S. Dist. Lexis 2474. [**Exhibits #20 & #21 Attached.**]

When a State suppresses evidence favorable to an accused that is material to guilt or to punishment, the State violates the defendant's right to due process, irrespective of the good faith or bad faith of the prosecution. Also, when the State "fails to prove the qualifying conviction with sufficient evidence," it is "***not permitted a second bite at the apple***." See...*Collins v. State*, 89 Md. App. 273 (1991).

The State violated not only *Brady* and the related Maryland Rule pertaining to exculpatory information [**Md. Rule 4-263(d)(5)**, but also violated the discovery Rule related to expert testimony, which requires "the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert," and the substance of any oral report and conclusion by the expert. [**Md. Rule 4-263(d)(8).**]

Motion for Protective Order of Documents was filed by the **State**, in order to prevent the Petitioner from receiving discovery evidence. (**Verified by the Court Docket Entries.**)

The State Fabricated Information to the Court Concerning a Weapon, Prejudicial Prosecutorial Misconduct to the Petitioner, When the State Nolle Prosequi the Weapon, After the Trial Begun, and Double Jeopardy Attached Regarding the Weapon.

[Reporter's Official Transcript of the Proceedings, April 24, 1986; Page 4-58.]

> Mr. Rexroad: Yeah, I wasn't going to no pros that one. Within 14210 though, the count of openly carrying—openly carrying a weapon with intent to injure, which would be Count 7 of 14210, and then indictment 14212, I nol pros that indictment, which alleges carrying a concealed weapon.

Double jeopardy attaches, because it operates as an acquittal. If a "Nolle Prosequi" is entered without the consent of the accused after trial has begun, jeopardy attaches, because it operates as an acquittal. **Maryland Rule 4-247**: Nolle Prosequi ***must*** be entered in open court and the prosecutor must set forth the reasons for his action. See...*Hooper v. State*, 293 Md. 162 (1982). The State unquestionably failed to adhere to **Md. Rule 4-247** and the inconsistent verdicts, as to the petitioner having a weapon (knife) or not, on the same identical evidence. There is ***no*** dispute as to whether the verdicts were inconsistent. See...*Greathouse v. State*, 5 Md. App. 675 (1969); Double Jeopardy Attached.

Common Law Double Jeopardy—means nothing more than final verdict of either acquittal or conviction, on an adequate indictment. The defendant cannot be a second time placed in jeopardy for the particular offense. See...*Wright v. State*, 307 Md. 552 (1986). [**Exhibit #24 Attached.**]

Summary judgment should be "**granted,**" because there is ***no*** "genuine" dispute as to any material fact" that the court used the weapon (knife) to justify 1st degree; however, the State then "nolle prosequi" the same weapon. [The "illegality" changes the "**statutory requirements from 1st degree to 2nd degree" and drastically modifies the sentence.**]

Prosecutorial misconduct highly prejudicial to the Petitioner by the State engaging in extra-judicial conspiracy with Government witness, Agent Michael Malone, F.B.I. (Hair Analysis Unit).

Petitioner has demonstrated through the "Department of Justice," (D.O.J.) and the "Office of the Inspector General" that the prosecutor, Michael Rexroad and the F.B.I. Agent, Michael Malone entered into an extra-judicial conspiracy to convict petitioner based on perjured testimony, which has been "verified" by the D.O.J. and that Rexroad "***withheld exculpatory evidence***," from the defense in violation of *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194 (1963). On the immunity issue, Petitioner asserts that neither Rexroad nor Malone was protected by absolute immunity, because they were being sued for their participation in an extra-judicial conspiracy to deprive the Petitioner of his constitutional rights. In making this determination, Petitioner is relying on this Court's holding in *San Filippo v. United States Trust Co.*, 737 F. 2d 246 (2nd Cir. 1984), *cert. denied*, 470 U.S. 1035, 84 L. Ed. 2d 797, 105 S. Ct. 1408 (1985), where the Court held that absolute immunity does ***not*** "cover extra-judicial conspiracies between witnesses and the prosecutor to give false testimony." *Id.* at 255.

Petitioner bases his reliance on the U.S. Supreme Court's opinion in *Buckley v. Fitzsimmons,* 125 L. Ed. 2d 208, 113 S. Ct. 2606 (1993), which dealt with prosecutorial immunity. In *Buckley*, the Supreme Court made clear that the proper analysis for determining whether particular actions of an official are absolutely immune from §1983 liability is the "functional approach," which looks solely to the nature of the function performed. See...*Buckley*, 113 S. Ct. at 2613. Absolute immunity will apply to a prosecutor's conduct that is "intimately associated with the judicial phase of the criminal process," but ***not*** to a prosecutor's acts of investigation or administration. *Id* at 2614.

The holding in *San Filippo* is based on the "crucial distinction between the presentation of perjurious testimony and a conspiracy to present perjurious testimony." With regard to witnesses, the distinction is important, because witnesses enjoy immunity only for their actions in testifying, and are **not immune** for extra-judicial actions such as conspiracy to present "false testimony." The prosecutor, Michael Rexroad,

engages in *prosecutorial misconduct* by allowing false and exaggerated testimony from Agent Michael Malone, F.B.I.

Despite the conduct of the F.B.I. and the Department knowing that all of the cases involving "hair or fiber evidence analyzed by Malone to be "***seriously flawed***," they continuously allowed for Malone to engage in this type of behavior for years...rises to the level of outrageous misconduct, because the acts were intentional and **not** merely negligent. **[Exhibits #5, #7, #8, #9, #10, #11, #12, #13, #14, #15, #16, #17, #23, #25 & #27 Attached.]**

The unconstitutional violations against Michael Malone, F.B.I., and Michael Rexroad, prosecutor in the Howard County State's Attorney's Office and the Federal Bureau of Investigation unquestionably prove violations of Petitioner's "due process rights" through malicious, intentional acts established by evidence strong enough to "negate any negligent or innocent explanation, for the actions on the part of the individuals and the F.B.I."

A state court or a United States court of appeals has decided an important question of federal law that has **not** been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

State failed to correct Petitioner's "Illegal Sentence," regarding Maryland Rue 4-345 and refused to comply with both of the Appellate Court's mandate from the Court of Special Appeals [*Hammersla v. State*, 184 Md. App. (2009).] **and the Supreme Court of Maryland [*Gorge v. State*, 386 Md. 600** (2005).] **rulings.**

§ 2241 State prisoner—"Challenges the execution of a sentence." § 2241—Violation of the Constitution or laws or treaties of the United States." See...*Preiser v. Rodriquez*, 411 U.S. 475 (1973). Petitioner's "execution of sentence remains illegal." An illegal sentence can be corrected any time; therefore, **Maryland Rule 4-345** provides Petitioner with the "vehicle to do so at this time." Where the language used is

unambiguous, and consistent with the statue's apparent purpose, it should be accorded its ordinary meaning." See...*Thanos v. State*, 332 Md. 511, 522, 632 A.2d 765, 773 (1993). [**Appendix "F" Attached.**]

Both of the Appellate courts of Maryland opined, a "natural-life" sentence could not and (cannot) be imposed unless the State provided a defendant with notice, at least 30 days prior to trial, of its intent to seek such a sentence. In cases involving a sentence as serious as a "natural-life sentence," it is entirely reasonable to require the State to follow the letter of the law.

> Also "strict adherence to Criminal Law--§ 3-303(e), pertaining to Petitioner's crime; ***Required Notice:*** "If the State intends to seek a sentence of imprisonment for not less than 25 years under subsection (d) (4) this section, the State **shall** notify the person in writing of the State's intention at least 30 days before trial."

In this matter the State refused to adhere to the "***strict compliance of the law and failed to do so***." See...*Cook v. Warden of Md. Penitentiary*, 229 Md. 636 184 A.2d 620 (1962); and *Kyles v. Whitley*, 514 U.S. 419, 435, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). The State intentionally violated the Petitioner's 5th, 8th, and 14th Amendments, which drastically would have yielded a different "***sentence***." [**Exhibits #18, #19, #20, #21 & #22 Attached.**]

Petitioner has been deprived of basic fundamental rights guaranteed by the Fifth Amendment's Due Process Clause of the United States Constitution and seek to restore those rights in this Court. Criminal action ***must be dismissed when the Government***, on the ground of "***privilege***, elects ***not*** to comply with an order to produce, for the accused's inspection and for admission in evidence, relevant statements or reports in its possession of Government witnesses touching the subject matter of their testimony at trial."

The ***overriding responsibility of the Court is to the Constitution of the United States, no*** matter how late it may be that a violation of the Constitution is found to exist. *Herman v. Claudy*, 350 U.S. 116, 123, 76, S. Ct. 223, 227, 100 L. Ed. 126, 132 (1956). ["The sound premise upon which these holdings rested is that men incarcerated in flagrant violation of their constitutional rights ***have a remedy***." *United States v. Smith*, 331 U.S. 469, 475, 67 S. Ct. 1330, 1333, 91 L. Ed. 1610, 1614 (1947).]

CONCLUSION

The petition for a writ of habeas corpus should be granted.

Respectfully submitted,

Isaac Gray

Date: May 23, 2025