

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

In re: ALPHONSO SANDERS

PETITION FOR AN EXTRAORDINARY WRIT

Alphonso Sanders, EL-3251
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Question Presented

Whether the Court's concern for wrongfully convicting the innocent, give rise to the Court's inherent Power to correct a miscarriage of justice by invoking its original jurisdiction and/or Extraordinary Writ Power?

List Of Parties

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

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR AN EXTRAORDINARY WRIT**

Petitioner respectfully prays that a Petition For An Extraordinary Writ issue to review the judgment below.

OPINIONS BELOW

The opinion of the Pennsylvania highest State Court to review the merits appears at **APPENDIX C** to the petition and is unpublished.

The opinion of the Pennsylvania Supreme Court at **APPENDIX E** to the petition and is unpublished.

JURISDICTION

Jurisdiction is conferred on this Court pursuant to this Court's Rule 20.4 (a), 28 U.S.C. § 2241 (b), AND THIS Court's original habeas jurisdiction; § 1651 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District; wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusations; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Procedural Background

Petitioner's trial began with jury selection on July 5, 2000. **The jury was comprised of an all-white jury with the victim being a white woman.** On July 27, 2000, the jury found Petitioner [**an Afro-American man**] guilty of murder in the first degree.

On September 5, 2000 following a presentence investigation, Petitioner was sentenced to life without parole. On **DIRECT APPEAL**, September 19, 2000, defendant filed a timely Notice of Appeal to the Superior Court of PA. On May 22, 2001, the Superior Court affirmed the judgment of the sentence. **Commonwealth v. Sanders**, 778 A.2d 1247 (Mem.). On September 21, 2001, the Supreme Court denied Petitioner's petition for **ALLOWANCE OF APPEAL**. **Commonwealth v. Sanders**, 567 Pa. 724, 786 A.2d 987 (table).

On September 17, 2002, Petitioner filed a Pro-se petition for **POST-CONVICTION COLLATERAL RELIEF**. Counsel was appointed, and on February 19, 2003, Petitioner's attorney filed an amended petition. Evidentiary hearings on the amended PCRA petition were held on September 16, 2003, February 10, 2004, and February 17, 2004. Following the evidentiary hearings, the Court denied the amended petition on June 29, 2004. On May 24, 2005, the Superior Court affirmed the order of the Trial Court, **Commonwealth v. Sanders**, 880 A.2d 12 (table), and the Supreme Court denied Petitioner's petition for **ALLOWANCE OF APPEAL** on November 30, 2005. **Commonwealth v. Sanders**, 586 Pa. 711, 889 A.2d 1215 (table).

On March 14, 2006, Petitioner filed **WRIT OF HABEAS CORPUS**, No. 06-CV-1107. On August 3, 2006 Report and Recommendation was filed to deny Habeas Corpus. On May 15, 2007, U.S. District Court denied Habeas Corpus. On October 2, 2007, U.S. Court of Appeals 3rd Cir. denied Petitioner's request for **COA No. 07-2776**. On November 6, 2007, Rehearing denied. On April 28, 2008, Petitioner filed a **Motion for COA under Rule 60 FRCP** in the U.S. District Court for ED. PA. On May 5, 2008, Motion was denied.

On January 14, 2015, Petitioner filed the current petition for **POST-CONVICTION COLLATERAL RELIEF**. Counsel was appointed, and on March 27, 2015, an amended petition for post-conviction relief was filed. The Commonwealth filed its response on April 22, 2015. The Court held a conference with counsel at which the parties agreed that an evidentiary hearing was unnecessary.¹

The Post-Conviction Relief Court dismissed the petition on November 18, 2015. On December 16, 2015, timely Notice of Appeal was filed. Then on July 6, 2016, the Superior Court affirmed the Trial Court's decision. Thereafter, Petitioner acting Pro-se filed a petition for **Re-Argument**. It was denied on December 15, 2016. On January 14, 2017 Petitioner filed timely **Allowance of Appeal**. It was denied July 6, 2017. On September 5, 2017, Petitioner filed his **2244, No. 17-2911** requesting permission to file a second 2254 Habeas Corpus petition. Permission was denied September 28, 2017, order attached.

¹ Based on the parties' **briefs**, there is a disagreement whether the testimony of FBI Forensic Examiner Cary Oien, [N.T. Trial 1840-1877] emphasis [N.T. Trial 1848, 1854], is it to be disregarded in its entirety or only those portions indicated to be erroneous in the submission to the United States Department of Justice dated September 15, 2014.

Factual Background

On April 24, 1999, Kim Dougherty's body was found by Dale Bowers and Paul Sourbeer (N.T. Trial 149-153, 156-161). Petitioner was arrested June 29, 1999. On October 14, 1999, the District Attorney of Lancaster County charged the Petitioner with one count of Criminal Homicide, because of the death of Kim Lori Dougherty. Petitioner is of Afro-American descent, which is a cognizable group in Lancaster County. The victim in this case, Kim Dougherty, was of Caucasian descent.

On July 10, 2000, Petitioner's jury was selected from a jury pool of over 120 people, only one (1) was Afro-American, and that juror was eventually stricken. Defense counselors never objected nor contested any law about the impaneling of the jury process or selection of an all-white jury. The victim was white and the Petitioner an Afro-American.

The Commonwealth presented witnesses to show the Petitioner and victim had a relationship. The victim's son, Justin Davies, testified that the Petitioner was dating his mother ((N.T. Trial 310). The victim's mother, Lynn Weintraub, testified that about ten days before the killing, her daughter left home with Petitioner (N.T. Trial 425-426). The victim was later seen by her mother's neighbor trying break into her mother's home on April 10, 1999, (N.T. Trial 487-490).

The victim's friend, James Strong, testified that the victim came to his home on April 19, 1999, (N.T. Trial 1112-1114). The victim came with a man driving a green SUV; however, **he could not identify the driver.** (N.T. Trial 1115-1116). **No witnesses testified to having seen the victim with Petitioner on the day of the incident.**

Elizabeth Hoffman, a registered nurse for the Bucks County Department of Health, testified that the Petitioner came to her office on April 20, 1999, to be tested for sexually transmitted diseases (N.T. Trial 12251227, 1236). The Petitioner did not call for the results, and the results proved to be negative (N.T. Trial 1242-1243). On date of test Nurse Hoffman told Petitioner that he has a bladder infection [urethritis] (N.T. Trial 1238). Victim nor Petitioner had an STD or HIV/AIDS, as suggested by Prosecutor to the jury.

Forensic Pathologist, Dr. Wayne Ross, testified that the victim's body was found with severe charring to her external genitalia, lower abdomen, and upper thighs (N.T. Trial 1779). He opined that the victim died between 2:00pm April 23, 1999, and 2:00pm April 24, 1999.

The cause of victim's death was a gunshot wound to the back of her head. (N.T. Trial 1778-1780). When the Petitioner was arrested, there was no testimony that the police observed any signs of fighting or struggle on him.

There was evidence of an Alibi. Petitioner's wife testified that he came home at 08:45pm (N.T. 1997, 1998). They watched video movies and then went to bed between 11:00 and 11:30pm (N.T. Trial 2032). Also that Petitioner was in bed with her the next morning when she awoke. She had been up a few times in the night and Petitioner was always in bed next to her. (N.T. Trial 2000). Petitioner's daughter testified that when she got home at 12:30am her father's van was parked in the driveway. (N.T. Trial 2081).

It is uncontested that the Commonwealth's entire case was premised upon circumstantial evidence. (11-18-15 Opinion, pg. 7 ; (N.T. 19), except direct evidence of DNA blood and hair. Still the lack of certain evidence limits the Commonwealth's theory of case. There was no confession, nor witnesses who testified that Petitioner killed victim, also the police never

produced a murder weapon, and the motive of disease or financial challenge from or by victim to Petitioner was nullified by prosecution's witnesses' testimony.

The Petitioner's work records show that the security system logged in his last door entry at 6:43pm on April 23, 1999. See "Door Access Records" for Plymouth Service Building for April 23, 1999, Commonwealth's Exhibit No. 148 and 149, marked (N.T. Trial 1559). He was reported paged five times, but did not respond; according to the Commonwealth's witness. Defense counsel failed to call the company dispatcher to trial, who would have testified that the company was having communications problems with all pagers at that time and when trying to page the Petitioner (N.T. PCRA 26). In fact, pager records only showed three pages to Petitioner the evening of April 23, 1999.

Witnesses whose testimony was exculpatory for Petitioner's defense, were not allowed to testify at trial. Had they testified the outcome of trial would be different. All of these witnesses were on the Certified Witness List of the Trial Court. Their testimony was only allowed at the evidentiary hearings:

- A. Timothy Witherspoon - That other black men were threatening victim in April 1999, over alleged stolen drugs, by victim.
- B. Troy Vincent - Would have impeached NJ State Police Det. Sgt. Verbeke about Verbeke's lie of there being an alleged drug deal gone bad at home of Petitioner between Troy and Petitioner.
- C. Mario Partee - Would have impeached prosecution's theory that Petitioner's pager worked at all times. Mario was the primary dispatcher for technicians, as Petitioner was.
- D. Myles Suydam, Dennis Fisher, Stacey Lasher and Ahmed Moshen - None of them knew victim, but would have testified that they saw her in Lancaster previously and with people other than Petitioner.

Reasons For Not Making Application To The District Court Of Eastern Pennsylvania

The instant claim of innocence was exhausted thoroughly in the Pennsylvania State Courts. See Appendices [B], [C], [D] and [E]. However, relief was not granted in Pennsylvania. Therefore, Petitioner sought permission in the Third Circuit Court of Appeals, pursuant to 28 U.S.C. § 2244 to file a petition for Second/Successive [No. 17-2911], which was denied September 28, 2017. See Appendix [F].

This Court's exercise of its Extraordinary Writ Power is an extreme remedy that shall serve to supplant the conviction of any citizen who has been unjustly convicted of a crime for which he can unequivocally show that he is innocent. For the instant Petitioner to be able to prove, and this Court deny, that he stands innocent of the heinous crime that he was convicted of would emphatically undermine framer's intentions when they penned the Sixth, Eight, and Fourteenth Amendments to the United States Constitution.

For all that, this Country stands for; it does not stand to convict those for crimes that they did not commit. The instant request is Petitioner's absolute last opportunity to show that his conviction is unconstitutionally infirm and he respectfully requests this Court to exercise its original and exclusive Jurisdiction to intervene in this matter.

Reasons For Granting Extraordinary Writ

a) Newly Discovered FBI Report Undermined DNA Evidence Introduced at Trial Which Proves Petitioner's Innocence

This Court has underscored the power of DNA evidence introduced at trial and the impact that this evidence has on persuading a jury.

The evidence that Petitioner vehemently urges this Court to consider, that was wrongfully at his trial, and persuaded a Lancaster County jury to convict him, was as follows: On September 14, 2014, Norman Wong, Special Counsel, **U.S. Department of Justice ("DOJ")** sent a letter to Craig W. Stedman (Trial Prosecutor), District Attorney Lancaster County. The Wong letter started the report and testimony of FBI Forensic Examiner Cary Oien at the trial of Petitioner, *Exceeded the Limits of Science* and/or was improper vouching and was inaccurate and invalid. Appended to the letter was the July 18, 2013, **Microscopic Hair Comparison Analysis** done by the FBI Examiner Oien and a corrected report. **Appendix [A]**.

In essence, the impact of this wrongfully introduced **Microscopic Hair Comparison Analysis** on a jury cannot be undervalued when it is combined with other evidence to persuade a jury of Petitioner's guilt. For example, blood and hair DNA was allegedly found in Petitioner's work van. The blood evidence plausibly could have come from a prior incident where the victim cut her hand before entering Petitioner's work van after breaking into her parents' home. (N.T. Trial 1136, 1327). However, because the blood DNA was coupled with the Hair, that possibility **did not** exist. Why? Because you cannot explain away both hair and blood.

Petitioner was a working person. A former servant of the United States Military - Air Force. At the time of the crime, he was married, and employed as an electrician. Specifically, in the area of high - voltage. The State's case was premised on scant circumstantial evidence centered on the DNA evidence. See Appendix [G].

None of the evidence presented by the Commonwealth had both the probative value and rhetorical potential of the Hair Evidence. Now this newly discovered Hair Evidence undermines the conviction, based on inaccurate and unreliable evidence. See *McDaniel v. Brown*, 558 U.S. 120, 126, 130 S Ct. 665, 175 L. Ed 2d 582, 2010 U.S. Lexis 3 (unreliable DNA evidence to convict). Also, see *Jackson v. Virginia*, 442 U.S. 307, 99 S Ct. 2781, 61 L. Ed. 2d 560 (1979) (insufficiency of evidence to convict). Additionally, see *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) (proof beyond reasonable doubt).

The Hair Evidence tended to prove three crucial facts and enabled a powerful closing argument:

First, the presence of Ms. Dougherty's hair (so a jury could conclude) on a blanket that her mother identified as hers, was in Petitioner's van, supports the conclusion that Dougherty was in the van or, at minimum, that Petitioner has sufficient contact with her to have obtained her blanket. The worst-case scenario (for the defense) that could be inferred is that the victim's body was wrapped in the blanket.

Second, from the presence of a Caucasian pubic hair on the blanket, the jury could infer that Ms. Dougherty was naked on that blanket, either while alive (implying intimate contact with Petitioner, advancing the Commonwealth's theory of motive), or in death, allowing again, an inference that the decedent was wrapped in that blanket.

Third, from a red substance found on one of the hairs, although not identified as blood of Ms. Dougherty. The serologist did not *exclude* a human origin for the blood. Hence, a jury could infer that it is human and emanated from Ms. Dougherty, both of which advance the Commonwealth's narrative.

Nevertheless, it is the *fourth* inference that flows from the Oien's testimony that is the most powerful. Oien was unable to render an opinion whether the pubic hair on Ms. Dougherty's blanket removed from Petitioner's van, was consistent with known pubic hair removed from Ms. Dougherty's body at autopsy. *In a pointed series of questions, the prosecutor asked Oien to explain why:*

“Mr. Stedman: And I think you said that from the known pubic samples from Kim Dougherty, there wasn't a sufficient sample to compare to that pubic hair. Is that right?

Mr. Oien: That is correct.

Mr. Stedman: In your experience, if an accelerant such as gasoline is applied to the pubic hair region, and the hair set on fire, could that affect your ability to compare the samples to a questioned sample?

Mr. Oien: Certainly, if hair is burned, you lose microscopic characteristics as part of the hair being gone. And also, even if there's part of the hair present, I'm going to see that it has been burned or heat has been applied to it. There are specific microscopic characteristics that tell me that a hair has been burned.

Mr. Stedman: Do you remember whether these were burned or not?

Mr. Oien: The hairs in the pubic hair sample identified to me as coming from Kim Dougherty did exhibit characteristics of being burned, yes."

(N.T. Trial 1875-76).

The burning of the hair explains, somewhat benignly, why the expert was unable to associate the two hairs. But it implies also that someone did not want that association made and took steps to prevent it; it allows the inference that Petitioner destroyed evidence by "applying" an "accelerant such as gasoline" to the pubic region of the victim rendering it unusable for identification. Mr. Stedman was not merely providing an explanation for Oien's inability to connect the hairs, but he was blaming Oien's difficulties on Petitioner; implying even that he did so with the intent to hinder the analysis.

And Mr. Stedman made these arguments:

"Mr. Stedman: First of all, you have her hairs. You've got some of her hairs that are identified as much as the FBI guy can identify her hairs in the back of the van. But they're not just her hairs. There's hair with blood on it in the cargo area, I believe on the blanket. A hair with blood on it. Again, is this innocent coincidence or is this consistent with someone who shot somebody in the head, threw her body in there, there was some blood and there was some blood coming out in the back of her hair and one of her hairs fell out in the cargo area? It's something for you to decide.

"Mr. Stedman: He says -- Mr. Ballarotto says to you, well, why weren't there any matches of the pubic hair that was found in there with the burned pubic hair from the scene? Why not? Because he burned the pubic hair -- he burned her at the scene after he transported her in the van. He didn't burn her body and then throw her back in the van to leave a burnt pubic hair sample...

There is a pubic hair there. And there's a pubic hair from a Caucasian person in the back of the van, in the back of a crowded work van. Now, why is that there? Could it be it's consistent with someone who's stripped naked and thrown in that van?

There's no reason for a person's pubic hair to be in there. There's no room to do anything in that van. You saw how crowded it is. But there is if you're stripped, you're dead, and you're being transported."

(N.T. Trial 2321-22).

As noted above, the hair evidence was not the only evidence offered by the Commonwealth to prove Petitioner's guilt. The Prosecutor will no doubt argue there was blood evidence, circumstantial evidence, statements from the Defendant and other evidence. But the hair evidence was uniquely probative of guilt. *It, and it alone allowed the Commonwealth to prove multiple elements of its case:* an intimate relationship between Sanders and Dougherty; Dougherty's presence inside the van, dead or alive; and the spoliation of the evidence by guilt-conscious of Defendant determined to prevent her identification or association to him. It is arguable that the Hair evidence was essential to the Commonwealth's case and that without it, no juror would have voted to convict.

b) Trial Was Not Free From Non-Harmless Constitutional Violations

- 1. Petitioner was denied his right to counsel when Trial Counsel failed to object to erroneous jury instruction regarding Alibi Defense which negated Exculpatory Evidence.**

In this issue concerning Petitioner's innocence, the Trial Court instructions were erroneous and failed to explain the significance of the exculpatory evidence that Petitioner presented concerning his whereabouts on April 23, 1999. (N.T. Trial 1991-2089). Because of Trial Counsel's inactions, the jurors were not instructed on the consideration that was to be given to the exculpatory evidence presented at trial, denying Petitioner a Fair Trial.

The Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984) test qualifies as clearly established federal law, as determined by the Supreme Court. In order to establish a claim of ineffective assistance of counsel, the Petitioner must establish both that his Counsel's performance was deficient and that the deficient performance prejudiced his trial to the extent that it undermined confidence in the trial's outcome.

During instructions to the jury, the judge presiding over the trial instructed the jury that evidence that the Petitioner was at home or at work might be sufficient to raise a reasonable doubt. (N.T. Trial 2398). Nonetheless, the trial Judge did not instruct the jury and specify that any of the evidence presented constituted an "Alibi." By failing to specify that the evidence in question constituted

the defense of "Alibi," the jury was left with what was tantamount to a general instruction concerning the burden of proof and the fact that a reasonable doubt might arise from the evidence.

In Pennsylvania, the Courts have underscored the significance of a jury instruction which adequately explains to the jury the importance of an "alibi defense." *Commonwealth v. Saunders*, 529 Pa. 140, 602 A.2d 816 (1992). Thus, while a proper Alibi instruction need not contain any "magic language," the charge must make it clear to the jury that Alibi Evidence, by itself or taken together with other evidence, may tend to raise a reasonable doubt as to defendant's guilt. In short, the trial court must "make it clear to the jury that the defendant's failure to prove Alibi is not tantamount to guilt." *Commonwealth v. Weinder*, 395 Pa. Super. 608, 619-620, 577 A.2d 1364, 1370 (1990).

In the case at bar, the instruction given by the trial court regarding Petitioner's Alibi did not remotely come close to the instruction required by law in *Saunders*, supra. The instruction failed to explain, either directly or indirectly, what significance the jury should attach to the Alibi Evidence. In fact, the Judge did not even explain the legal definition of "Alibi" to the jury.

Here, the inadequate jury instruction combined with the inadmissible evidence - claim 2- regarding privilege confidentially protected conversation between Petitioner and his wife denied him a Fair Trial. The defense of Alibi that Petitioner relied on to prove his innocence was sabotaged due to ineffective assistance of trial counsel.

If the term “Alibi” had been used, the jury would have understood that evidence indicating Petitioner was not at scene of crime could have caused a reasonable doubt as to Petitioner’s guilt. The failure to instruct in that way was **PREJUDICIAL** to Petitioner since the jury was not fully instructed on this very critical issue. Clearly, Trial Court’s instructions were contrary to State and Federal law. Thus violating Petitioner’s Sixth and Fourteenth Amendment rights to the United States Constitution, inter alia, due process and equal protection clause.

Since the jury was never informed how to assess Petitioner’s Alibi Evidence, he was effectively deprived of a substantive defense. Under the circumstances, trial counsel’s inexplicable failure to object to the erroneous jury instruction constituted constitutionally ineffective assistance of counsel such as to entitle Petitioner a new trial.

“An erroneous jury charge may form the basis of a habeas petition, either independently or in conjunction with an ineffective assistance of counsel claim, where the instruction ‘so infected the entire trial that the resulting conviction violates due process’ by rendering the trial fundamentally unfair.” **Cupp v. Naughten**, 414 U.S. 141, 147, 38 L. Ed. 2d 368, 94 S. Ct. 396 (1973).

2. Inadmissible Evidence denied Petitioner a Fair Trial and undermined Exculpatory Evidence; And Trial Counsel failed to object to its admission.

From the time of his unlawful arrest, until his conviction, and heretofore, Petitioner has emphatically asserted his innocence. At trial, his defense was that he was at home when the victim was allegedly murdered. The defense offered compelling exculpatory evidence from the wife of Petitioner, and other family members, as to his whereabouts when the crime occurred. However, the prosecution, knowing the exculpatory and powerful nature of these facts, was able to disprove Petitioner's defense by interjecting inadmissible testimony privileged under State law, and defense counsel failed to object.

In Pennsylvania, confidential communications between husband and wife is privileged. See *Commonwealth v. Valle-Velez*, 995 A.2d 1264 (Pa. Super. 2010) (The fact that the wife discussed defendant's drug use with third parties did not constitute a waiver of the Spousal Privilege); See also, *Trammel v. United States*, 63 L.Ed.2d 186, 445 U.S. 40, 100 S. Ct. 906 (1980).

Petitioner urges that the "knowing use" by the Commonwealth of inadmissible testimony to obtain a conviction constitutes a denial of due process.

During trial, the Prosecutor elicited the following testimony about the alleged conversation between Petitioner and his wife, Pierrette:

“Mr. Stedman: Could you tell at all whether she was with anybody or not?

Sgt. Verbeke: She was with another woman, yes, sir.

Mr. Stedman: Okay. So the request was made, I guess, by Mr. Sanders to speak to his wife and then she, also requested to see Mr. Sanders as well?

(N.T. Trial 859)

Sgt. Verbeke: That's correct.

Mr. Stedman: Based on that request did you -- what'd you do?

Sgt. Verbeke: I allowed her to come into the cellblock to speak to her husband.

Mr. Stedman: And can you just describe for the jury, I guess, did you escort her, how that took place, what happened?

Sgt. Verbeke: ... I knew which one of the two women were Mr. Sanders' wife. I escorted her down the hallway ... so she could speak to her husband.

(N.T. Trial 859)

Mr. Stedman: Did you hear Mr. Sanders say anything?

Sgt. Verbeke: Yes, Sir, I did.

Mr. Stedman: Can you tell the jury what he said?

Sgt. Verbeke: As soon as he saw his wife he said, "You have to tell them I was home on Friday night, when they ask you." She made no comment to that. He said, "You remember, we watched a video."

Mr. Ballarotto: Your Honor, I object to any further statements from Mrs. Sanders. It's hearsay.

(N.T. Trial 861) - Direct By Prosecutor

Mr. Ballarotto: The statement that you attribute to Mr. Sanders in which he said that he threw Michael's Social Security Card in the drain was not a comment that you say was directed at you but rather was a statement that you say he made to his wife in the holding cell when you were standing in the doorjamb?

Sgt. Verbeke: Yes, Sir."

(N.T. Trial 932) - Cross By Trial Counsel

To prove ineffective assistance of counsel, this Court set out a two prong requirement: First, defendant must show that counsel's performance was deficient, requiring showing that counsel made errors so serious that counsel was not functioning as the "Counsel" guaranteed defendant by the Sixth Amendment; and Second, defendant must show that the deficient performance prejudiced the defense by showing that counsel's errors were so serious as to deprive defendant of a Fair Trial, a trial whose result is reliable. See Strickland v. Washington, 466 U.S. 668, 104 S. S. Ct. 2052 (1984).

At Petitioner's trial, Pierrette Sanders, his wife, and sister Rachel Sanders provided Alibi testimony. Pierrette's testimony established that Petitioner was home the entire night - 8:45pm onward - on April 23, 1999. (N.T. Trial 1991 - 2065). Rachel Sanders testified that Petitioner was at his mother's home on April 22, 1999 from 10:00pm until 1:00 am April 23, 1999 (N.T. Trial 2066 - 2077). In addition to Pierrette and Rachel's testimony, Petitioner's daughter Patrice and brother Michael Sanders also provided Alibi testimony. Patrice testified that on April 24, 1999, she came home at 12:30am and saw Petitioner's work van in the driveway. Also, she noticed Petitioner in bed with her mother, Petitioner's wife. Michael testified that on April 22, 1999, he saw Petitioner at their mother's home from 8:30pm until 12:30am on April 23, 1999. (N.T. Trial 2078 - 2086, 2087 - 2089).

Det. Sgt. Verbeke's testimony that Petitioner suborned Perjured Testimony from his wife and presumably the other Alibi witnesses, in addition to, Petitioner being in possession of Michael Turner's Social Security Card; denied him a Fair

Trial and undermined his Fifth and Sixth Amendment rights to present a defense and witnesses in his favor. This inadmissible evidence was only allowed because Trial Counsel was not familiar with the State laws of Pennsylvania. See *Hinton v. Alabama*, 2014 U.S. Lexis 1012 (2-24-14) (Court found trial counsel's performance objectively deficient for failure to research and learn the law.

The following testimony illustrates this fact:

The Court: Do you have any case law that supports that argument?

Mr. Ballarotto: No, Judge. I just have the rule that I cited in my Motion [§ 5914], and I think that's -- I think that it is not -- it is different from the husband/wife privilege [§ 5913] ... This is a Communications Privilege.

(N.T. Suppression 36-41)

Petitioner contends trial counsel's inactions fundamentally denied him a Fair Trial. The jury was allowed to consider evidence, Confidential Communications that practically undermined his Alibi testimony. The problem is Trial Counsel's failure to object to this error, as well as claim number one (1) denied Petitioner a Fair Trial. Had Trial Counsel objected there is a reasonable probability of a different outcome.

Conclusion

For the reasons premised within, Petitioner respectfully requests that this Court of last resort entertain his request to prove his innocence.

Wherefore, petition for an Extraordinary Writ should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alphonso Sanders", written over a horizontal line.

/S/ Alphonso Sanders

Date: December 1, 2017