

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Tahree M Townsend PETITIONER

- vs. -

ROBERT GILMORE - RESPONDENT
SUPERINTENDENT

ON PETITION FOR WRIT OF CERIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

/s/ Tahree M Townsend

Inst. # (565671)
SCI @ DALLAS
1000 FOLLIES ROAD
DALLAS, PA 18612-9515

QUESTION PRESENTED

WHETHER, WHERE THE PROCESS OF REVIEW UNDER THE ANTITERRORISM & EFFECTIVE DEATH PENALTY ACT OF 1996, Pub.L. No. 104-123, 110 Stat., 1214 (1996), IMPOWERING FEDERAL COURTS TO ISSUE A WRIT OF HABEAS CORPUS FOR PERSONS IN STATE CUSTODY, THE DISTRICT COURT, WAS IN ERROR BY DENYING SAID RELIEF AND SUA SPONTE DENYING A ISSUANCE OF CERTIFICATE OF APPEALABILITY, PURSUANT TO 28 U.S.C. §2253(c) (1) (A), AND THE THIRD CIRCUIT COURT OF APPEALS, THEREAFTER AFFIRMING SAID DECISION?

LIST OF PARTIES

All Parties that do not appear in the caption of this case matter on the cover page. A list of all Parties to the proceeding in the Court whose judgment is the subject of this Petition are as follows:

ROBERT GILMORE - SUPERINTENDENT OF STATE CORRECTIONAL INSTITUTION @ GREEN TO WHICH THE PETITIONER IS UNCONSTITUTIONALLY BEING CONFINED;

JOSHUA SHAPIRO - THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA;

HEATHER F. GALLAGHER - CHIEF FEDERAL LITIGATOR FOR THE DISTRICT ATTORNEY'S OFFICE IN THE COUNTY OF LEHIGH COUNTY.

TABLE OF CONTENTS

PETITION FOR WRIT OF CERTIORARI THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.....	1
OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2A-2B
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE WRIT.....	4
CONCLUSION.....	

INDEX TO APPENDIXES

Appendix "A" - Decision of Third Circuit Court of Appeals.
Appendix "B" - Decision of the United States District Court.
Appendix "C" - Findings and Recommendation of Magistrate Judge.
Appendix "D" - Decision of timely filed Petition For Rehearing.

TABLE OF AUTHORITIES CITED

<u>Cases</u>	<u>Pages</u>
<u>Strickland v. Washington</u> , 466 U.S. 668 (1984).....	4
<u>Blystone v. Horn</u> , 664 F.3d 397 (3d Cir. 2011).....	5
<u>Buck v. Davis</u> , 137 S.Ct. 759 (U.S. 2017).....	7
<u>Miller-El v. Cockrell</u> , 537 U.S. 322, 123 S.Ct. 1029 (2003).....	7, 8
 <u>STATUTES AND RULES\</u>	
28 U.S.C. §2253(c) (1) (A).....	1
Article [VI].....	2-A
Amendment Article [IV].....	2-A
Amendment Articcle [V].....	2-A
Aemndment Article [XIV].....	2-A
28 U.S.C. §2254.....	3
28 U.S.C. §2254(b) (1) (A).....	4
Fed.R.Civ.P. 59(e).....	5
U.S. Supra. Ct. Rule 29.....	10

No. 17-1784

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

TERM, 2017

Jahree m Townsend, PETITIONER

- vs. -

ROBERT GILMORE - RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Petitioner in the above captioned matter respectfully prays that a Writ of Certiorari be issued to review the Judgment and Opinion of the United States Court of Appeals for the Third Circuit, refusing to grant Petitioner an issuance of a Certificate of Appealability, pursuant to **28 U.S.C. 2253(c)(1)(A)**, where Federal questions were involved concerning the legality of his State proceedings.

OPINIONS BELOW

The Opinion of the Court of Appeals and United States District Court are unpublished and appears in Appendix "A" & "B". The unpublished Recommendation appears in Appendix "C", and Petition For Rehearing decision appears in Appendix "D".

JURISDICTION

The Judgment of the United States Court of Appeals for the Third Circuit was entered on JUNE 28th 2017. The Opinion rendered in reference to the time Petitioner filed For Rehearing was entered on JUNE 28 2017.

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

CONSTITUTION 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 accusation; 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.

AMENDMENT ARTICLE [IV] [1791]
The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT ARTICLE [V] [1791]

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself not be deprived of life, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT ARTICLE [XIV] [1868]

Section 1. 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

Petitioner is a Pennsylvania State Prisoner who allegedly was a conspirator to two individuals Tariq Bailey and Brandon Anthony Figueroa who allegedly shot and kille Jimmy Ortiz on the date of May 10, 2008 in Lehigh County.

After a Jury Trial in the Court of Common Pleas of Lehigh County, Petitioner was convicted of Criminal Conspiracy to commit homicide and First-degree Murder.

After completing Appellate Review [Direct Review and Collateral Review in State Court] Petitioner filed a Petition For Writ of Habeas Corpus under 28 U.S.C. §2254 in the United States District Court For The Eastern District of Pennsylvania on the date of March 23, 2015 asserting:

1) his confession was involuntary and should havee been suppressed at Trial; 2) PCRA Counsel was ineffective in not arguing that trial counsel was ineffective in not arguing that trial counsel was ineffective in failing to present Townsend as a witness at the Suppression Hearing to support a claim that the confession was involuntary; 3) Trial Counsel was ineffective in failing to call witnesses that Townsend had requested and 4)after-discovered evidence "proves that Petitioner is actually innocent.

United States District Court Judge Legrome D. Davis appointed Magistrate Judge Marilyn Heffley to render a Report and Recommendation ("R&R").

On September 30, 2016 Magistrate Judge Heffley rendered a Report and Recommendation "R&R" recommending, in reviewing claim one held to less stringent standards than formal pleadings

drafted by lawyers, Petitioner is asserting two claims: 1) that his confession should have been suppressed based on a violation of the Fourth Amendment and; 2) his confession was involuntary under the Fifth Amendment, the Magistrate Judge recommended that Petitioner's Fourth Amendment claim is meritless, 3) Petitioner's claim that PCRA Counsel was ineffective in failing to challenge as ineffective Trial Counsel's refusal to present Townsend as a witness at the Suppression Hearing is non exhausted pursuant to 28 U.S.A. §2254(b)(1)(A), 4) Petitioner's claim that Trial Counsel was ineffective in failing to call witnesses that Townsend requested, the Magistrate Judge recommended the State Courts' application of the Strickland v. Washington, 466 U.S. 668 (1984) was reasonable and 5) Petitioner's claims that he is entitled to Habeas Corpus relief because he presented new evidence of his innocence discovered after Trial, namely the recantation of his alleged co-defendant Brandon Figueroa, the Magistrate Judge recommended that it be dismissed as non-cognizable because Federal Courts do not review State Courts' application of State law on Habeas review, and/or meritless and provides no basis for Habeas relief.

On March 15, 2017 United States District Court Judge Legrome D. Davis adopted the Report and Recommendation of Magistrate Judge Marilyn Heffley and sua sponta denied issuance of a Certificate of Appealability ("COA").

On the date of April 24, 2017 United States District Court Judge Legrome D. Davis determined "Petitioner has failed to provide any basis for reconsidering the Court's March 15, 2017 Memorandum and Order. See Blystone v. Horn, 664 F.3d 397, 415 (3d Cir. 2011)("[A] motion to alter or amend a judgment pursuant to Rule 59(e) . . . [is] not to be used as an opportunity to relitigate the case.") Accordingly, Petitioner's Rule 59(e) motion is denied."

Petitioner thereafter filed an Application for Issuance of a Certificate of Appealability in the United States Court of Appeals for the Third Circuit, under Number C.A. No. 17-1784 in which was denied on the date of June 22, 2017. The Order reads as follows:

ORDER

The request for a certificate of appealability is denied. Essentially for the same reasons given by the Magistrate Judge in recommending the denial of Appellant's 28 U.S.C. §2254 petition, Appellant has not shown that jurist of reason would find debatable the District Court's ruling that his claims are procedurally barred, non-cognizable, or **lack merit**. See Miller-El v. Cockrell, 537 U.S. 322, 336-37 (2003); Slack v. McDaniel, 529 U.S. 473, 484-85 (2000).

Petitioner then then sought Rehearing of this case dispositive Order by the Third Circuit Court in which was denied on the date of July 18, 2017. The July 18, 2017 Order for Sur Petition For Rehearing with Suggestion For Rehearing En Banc reads as follows:

**SUR PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC**

The petition for rehearing filed by Appellant Tahreel M. Townsend 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 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/ D. Michael Fisher
Circuit Judge

Dated: July 18, 2017

For good cause this Honorable Court granted an extension of time until December of 2017.

REASONS RELIED ON FOR THE GRANTING OF CERTIORARI

United States Supreme Court Rule 10(c).

Character of reasons - A Petition For a Writ of Certiorari should be granted in light of the fact that the United States Court of Appeals for the Third Circuit has decided an important question of Federal law in a way that conflicts with relevant decisions of this Court in Buck v. Davis, 137 S.Ct. 759, 197 L.Ed.2d 1 (Decided on 2/22/2017) where this Honorable Court determined that a state prisoner whose petition for writ of habeas corpus is denied absolute right to appeal, Federal law requires that he first obtain a "certificate of appealability" "COA". A COA may issue "only if the applicant has made a substantial showing by the denial of a constitutional right. § 2253(c)(2). Until the prisoner secures a COA the Court of Appeals may not rule on the merits of his case. Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003).

This Honorable Court elucidated that the COA inquiry, we have emphasized, is not coextensive with a merits analysis. At the COA stage, the only question is whether the applicant has shown that "jurist of reason could disagree with the District Court's resolution of his constitutional claims or that jurist could conclude the issues presented are adequate to serve encouragement to proceed further. *Id.*, at 327, 123 S.Ct. 1029, 154 L.Ed.2d 931. This threshold question should be decided

without "full consideration of the factual or legal bases adduced in support of the claims." Id. at 336, 123 S.Ct. 1029, 154 L.Ed.2d 931.

When a Court of Appeals sidesteps [the COA] process by first deciding the merits of an Appeal and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an Appeal without jurisdiction. Id. at 336-337, 123 S.Ct. 1029, 154 L.Ed.2d 931.

In this matter sub judice, the Court of Appeals For The Third Circuit phrased its determination in proper terms - that jurists of reason would not debate that Petitioner should be denied relief, but it reached that conclusion only after essentially for the same reasons given by the Magistrate Judge in recommending the denial of Appellant's 28 U.S.C. §2254 petition, in which was a merits analysis.

A reviewing Court that deems a claim nondebatable "must not necessarily conclude that the claims are meritless."

Petitioner's request for a COA raised two separate questions for the Third Circuit, one substantive and one procedural: first whether reasonable jurist could debate the District Court's conclusion that Petitioner was not denied his constitutional rights, and second whether reasonable jurist could debate the District Court's procedural holding.

CONCLUSION

WHEREFORE, the Petitioner prays that this Honorable Court grant a Certiorari, explicitly to determine whether a Certificate of Appealability should be issued for the foregone stated reasons.

Respectfully submitted,

/s/ Tahree M Townsend

Inst. # (JC15671)
SCI @ DALLAS
1000 FOLLIES ROAD
DALLAS, PA 18612-9515