

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

Lavelle D. Richardson –PETITIONER

Vs.

Cynthia Link –RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

AMENDED PETITION FOR WRIT OF CERTIORARI

**Lavelle D. Richardson, FE-0568
Route 29 Gravel Pike Road
P.O. Box 244
Graterford, PA 19426-0244**

QUESTION(S) PRESENTED

I. WHETHER APPELLANT SATISFIED THE *EXHAUSTION REQUIREMENTS OF SMITH-V-DIGMON AND BURKETT-V-LOVE*, WHEN HE RAISED ALL HABEAS CORPUS CLAIMS IN HIS PRO SE APPEAL TO THE SUPERIOR COURT, WHO OPTED NOT TO DECIDE THE CASE ON ITS MERITS, BUT TO REMAND FOR THE APPOINTMENT OF COUNSEL (AT SUPERIOR COURT NO. 1632 WDA 2010 (PA.SUPER. 2010))(REMANDED: JUNE 13, 2011 (PER CURIAM), SEPTEMBER 6, 2011 (MEMORANDUM OPINION); AND DECEMBER 6, 2011 (PER CURIAM))? IF SO, DID THE LOWER COURT ERR IN RULING THAT ONLY THE CLAIMS RAISED BY COUNSEL OF RECORD/COUNSEL ARE EXHAUSTED, WHEREAS, THE CLAIMS RAISED BY APPELLANT IN HIS PRO SE APPEAL WERE UNEXHAUSTED AND/OR NOT FAIRLY PRESENTED TO THE STATE COURTS?

SUGGESTED ANSWER: THE LOWER COURT RULED THAT THE CLAIMS RAISED IN APPELLANT'S PRO SE APPEAL (AT SUPERIOR COURT NO. 1632 WDA 2010 (PA.SUPER. 2010)) WERE UNEXHAUSTED AND/OR NOT FAIRLY PRESENTED TO THE STATE COURTS.

II. WHETHER *COUNSEL OF RECORD SATISFIES THE GUARANTEED SIXTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL*, WHEN COUNSEL SIMPLY FAILED TO FILE A MOTION TO WITHDRAW, DID NOT REPRESENT APPELLANT IN ANY PROCEEDINGS AFTER HIS REPRESENTATION ENDED, AND WHILE HIS NAME REMAINED AS *COUNSEL OF RECORD* FOR APPELLANT, RECEIVING ALL ORDERS, RULINGS, PLEADINGS, ALTHOUGH APPELLANT PROCEEDED PRO SE IN HIS ENTIRE PRO SE APPEAL AT SUPERIOR COURT NO. 1632 WDA 2010 (PA.SUPER. 2010))(REMANDED: JUNE 13, 2011 (PER CURIAM), SEPTEMBER 6, 2011 (MEMORANDUM OPINION); AND DECEMBER 6, 2011 (PER CURIAM))? IF NOT, DID THE LOWER COURT ERR IN ONLY CONSIDERING THE CLAIMS RAISED BY COUNSEL OF RECORD, BUT RULING THAT ALL CLAIMS RAISED BY PETITIONER, IN HIS PRO SE APPEAL, WERE CONSIDERED UNEXHAUSTED AND/OR NOT FAIRLY PRESENTED TO THE STATE COURTS?

SUGGESTED ANSWER: THE LOWER COURT RULED THAT COUNSEL OF RECORD SATISFIES THE SIXTH AMENDMENT GUARANTEED RIGHT TO COUNSEL, WHEN THE COURT HELD THAT ONLY CLAIMS RAISED BY COUNSEL WERE EXHAUSTED, FAIRLY PRESENTED AND COULD RECEIVE HABEAS REVIEW, WHEREAS, ALL HABEAS CLAIMS RAISED BY APPELLANT WERE UNEXHAUSTED AND/OR NOT FAIRLY PRESENTED TO THE STATE COURTS, AND THEREFORE, COULD NOT RECEIVE HABEAS REVIEW.

LIST OF PARTIES

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

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TABLE OF AUTHORITIES CITED

FEDERAL CASES RELIED UPON

SMITH-v-DIGMON, 434 U.S. 332 (1978)

BURKETT-v-LOVE, 89 F.3D 138 (3RD CIR. 1996)

TOWNSEND-v-SAM, 372 U.S. 293, 319 (1963)

STATUTES AND RULES

AMENDMENT FOURTEEN OF THE U.S. CONSTITUTION (PROCEDURAL AND
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AEDPA (EXHAUSTION DOCTRINE/FILING TIME-LIMITS/TIME-BAR) OF 1996, 110
STAT. 1214

28 U.S.C. §§'S 636 (B)(C)

28 U.S.C. § 2253 (C)(10)

HABEAS CORPUS RULE 5 (D)(1)(3)(E)

FEDERAL RULES OF APPELLATE PROCEDURE RULE 22 (B)(1)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 341 (FINAL ORDERS)

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PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 3517 (SUPERIOR COURT
CRIMINAL DOCKETING STATEMENT)

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

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Third Circuit appears at Appendix A-E to the petition and are unpublished.

The Opinion of the United States District Court for the Western District of Pennsylvania appears at Appendix G, I, K, L, GG, HH and II to the petition and are unpublished.

The Opinion of the highest State Court to review the merits appears at Appendix M-X to the petition and are unpublished.

The Opinion of the Common Pleas Courts of Blair County (Pennsylvania) appears Y-FF to the petition and are unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 1, 2017.

A timely petition for Rehearing In Banc was denied by the United States Court of Appeals on the following date October 11, 2017 and a copy of the Order denying Rehearing appears at Appendix A.

The date on which the highest State Court decided my case was December 9, 2011 (1632 WDA 2010 remanded) and April 1, 2013 (260 WDA 2012). A copy of that decision appears at Appendix T (1632 WDA 2010) and O (260 WDA 2012).

A petition for rehearing was denied by the Pennsylvania Superior Court on the following date May 14, 2013, and a copy of the Order denying rehearing appears at Appendix R.

A petition for allowance of appeal was filed and denied by the Pennsylvania Supreme Court on the following date November 13, 2013, and a copy of the Order denying allocatur appears at Appendix M.

The jurisdiction of this Court is invoked under 28 U.S.C. §§'s 1254 (1) and 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT FOURTEEN OF THE U.S. CONSTITUTION (PROCEDURAL AND SUBSTANTIAL DUE PROCESS)

AEDPA (EXHAUSTION DOCTRINE/FILING TIME-LIMITS/TIME-BAR) OF 1996, 110 STAT. 1214

28 U.S.C. §§'S 636 (B)(C)

28 U.S.C. § 2253 (C)(10)

HABEAS CORPUS RULE 5 (D)(1)(3)(E)

FEDERAL RULES OF APPELLATE PROCEDURE RULE 22 (B)(1)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 341 (FINAL ORDERS)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 904-905 (NOTICE OF APPEAL)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 1925 (B) (CONCISE STATEMENT OF MATTERS COMPLAINED OF ON APPEAL)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 1926 (PETITION FOR CORRECTION OR MODIFICATION OF RECORD)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 2111 (APPELLANT BRIEF)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 2113 (REPLY BRIEF)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 2116 (STATEMENT OF QUESTIONS INVOLVED)

PENNSYLVANIA RULES OF APPELLATE PROCEDURE RULE 3517 (SUPERIOR COURT CRIMINAL DOCKETING STATEMENT)

STATEMENT OF THE CASE

Petitioner's direct appeal concluded December 29, 2005 (COMMONWEALTH-v-RICHARDSON, No. 2013 WDA 2003 (Pa.Super. April 6, 2005), allocatur denied at 222 WAL 2005 (Pa. December 2005).

Petitioner filed a *timely first PCRA petition* on November 1, 2006 in the State Court (COMMONWEALTH-v-RICHARDSON, CP-07-CR-0001265-2001 (Blair County, CCP November 1, 2006)) and a *federal Habeas Corpus petition*, accompanied by a *Motion to Stay/Hold in Abeyance* in the United States District Court for the Western District of Pennsylvania (RICHARDSON-v-DIGUGLIELMO, 3:09-cv-70-KRG-KAP) with a copy of his *pending PCRA petition appended thereto*.

Petitioner filed a *Supplement to PCRA petition* in December 2006 with the *Affidavit of Stephanie Hockenberry appended thereto*, in the State Court.

Counsel Colin Hueston was retained thereafter, and filed an *Amended PCRA petition* in Petitioner's behalf *incorporating all claims raised in Petitioner's pro se PCRA and Supplement petitions therein*.

United States Magistrate Judge Keith A. Pesto entered a *Rule and Order* on April 22, 2009 directing the District Attorney to file a response to Petitioner's federal petition, while complying with Rule 5 governing Habeas Corpus under Section 2254. (Exhibit GG)

On June 4, 2009 U.S. Magistrate Judge Pesto filed his *Report and Recommendation* recommending that Petitioner's "*petition be dismissed without prejudice to Petitioner returning to Federal Court upon completion of the States proceedings* (Id., at p. 1). **Petitioner should file his petition when his State Court proceedings are completed**" (Id., at p. 7)(Exhibit FF), which was adopted as the **Opinion of the District Court** by United States District Judge Kim R. Gibson on December 9, 2009 in a *Memorandum Order* (Id., at p. 2)(Exhibit EE)

After years of unexplained delay by the State Court, Petitioner was afforded a PCRA Evidentiary Hearing on November 10, 2009 on *the two BRADY violation claims Judge Hiram A. Carpenter, III's Order limited the hearing too.* (Exhibit DD) The hearing produced 18 pages of transcript (Exhibit CC) and was scheduled nine (9) days after Judge Carpenter's November 1, 2009 newspaper article ("*Blair Judge Seeks Third Term,*" (Exhibit HH)), where *Judge Carpenter uses Petitioner's case and Judge Carpenter's rulings in Petitioner's case in his (Judge Carpenter's) re-election campaign.*

On September 20, 2010 Judge Carpenter entered an *Opinion and Order* denying Petitioner's Post-Conviction Collateral Relief Act petition. (Exhibit BB) *This denial Opinion and Order came three (3) days prior to Judge Carpenter's September 23, 2010 newspaper article ("Judge Denies Killer a Retrial, Man Convicted of 2001 Fatal Shooting Bear Elks Club," (Exhibit II)).*

Counsel Colin Hueston's representation of Petitioner ended once Judge Carpenter entered the September 20, 2010 Opinion and Order denying his PCRA petition; and Petitioner began to represent himself on September 20, 2010.

Petitioner, proceeding pro se, filed a Petition for Correction or Modification of Record (Exhibit AA) *seeking clarification of whether Judge Carpenter's September 20, 2010 Opinion and Order pertained to only the two BRADY violation claims that Judge Carpenter limited the November 10, 2009 PCRA Evidentiary Hearing too (Exhibit DD) or whether it applied to all 18 of Petitioner's PCRA claims presented to the Court.*

On October 19, 2010 Judge Carpenter entered an *Order of Court* denying Petitioner's Petition for Correction or Modification *in light of his Order and opinion of September 20, 2010 dismissing Petitioner's PCRA Petition which addresses all issues outstanding and the*

subsequent appeal of that Order to Superior Court. (Exhibit Z) The appeal this Order is referring to is the pro se appeal take to Superior Court by Petitioner at COMMONWEALTH-v-RICHARDSON, No. 1632 WDA 2010 (Pa.Super.) involving the September 20, 2010, October 19, 2010 and November 15, 2010 Orders of Judge Carpenter.

On November 15, 2010 Judge Carpenter enters a **second Order of Court** denying Petitioner's *Petition for Correction or Modification of Record*—that was denied by Judge Carpenter's October 19, 2010 Order of Court- *as Petitioner has counsel of record* in the person of Attorney Colin Hueston with a copy of his petition and the Court's Order being forwarded to Attorney Hueston. (Exhibit Y) (counsel

Petitioner, proceeding pro se, without the benefit of counsel, complied with all Rules of Appellate Procedure in prosecuting his pro se appeal to Superior Court at COMMONWEALTH-v-RICHARDSON, No. 1632 WDA 2010 timely filing: a *Notice of Appeal, 1925 (B) Concise Statement of Matters Complained of on Appeal (Exhibit X), Superior Court Criminal Docketing Statement, Appellant Brief, Reply Brief, Reproduced Record and Motion for Leave for Permission to Exceed Pro Se Appellant Brief and Reproduction of Record (Appendix/Exhibits) page length (See Per Curiam Order granting permission entered January 27, 2011; Exhibit W).*

On June 13, 2011 Superior Court entered a *Per Curiam Order* (Exhibit V) remanded Appellant's case to Judge Carpenter to direct Attorney Colin Hueston to file Petitioner's appeal or to appoint counsel within 14 days of order.

Petitioner filed a *Motion for Leave to File and Application for Relief* seeking a ruling on the merits of his 18 claims by Superior Court (Exhibit U).

Superior Court's September 6, 2011 Memorandum Opinion (Exhibit) remanded Petitioner's pro se appeal to Judge Carpenter *without ruling on the merits of Petitioner's claims*.

Superior Court's December 6, 2011 Per Curiam Order (Exhibit) remanded Petitioner's pro se appeal to Judge Carpenter to permit now retained Attorney Hueston to file a nunc pro tunc notice of appeal, *without ruling on Petitioner's 18 presented claims*.

Superior Court's April 1, 2013 *Nonprecedential Decision*—counseled appeal- (Exhibit) denied Petitioner's counseled appeal and denied reargument (Exhibit) on May 14, 2013 at COMMONWEALTH-v-RICHARDSON, No. 260 WDA 2012 (Pa.Super.).
Petitioner's counseled Petition for Allowance of Appeal was denied November 13, 2013 by the Pennsylvania Supreme Court at COMMONWEALTH-v-RICHARDSON, No. 230 WAL 2013 (Pa. November 13, 2013)(Exhibit)

Complying with the District Court's December 9, 2009 Order (RICHARDSON-v-DIGUGLIELMO, 3:09-cv-70-KRG-KAP (W.D.Pa. Dec. 9, 2009) *adopting Report and Recommendation*) directing Petitioner to refile his petition at the completion of State Court proceedings, Petitioner refiled his habeas corpus petition (RICHARDSON-v-WENEROWICZ, 3:14-cv-15-KRG-KAP) raising the same exact claim presented in his initial habeas petition (and the PCRA petition thereto at RICHARDSON-v-DIGUGLIELMO, 2:09-cv-70-KRG-KAP).

Petitioner's *refiled habeas corpus petition* was docketed as RICHARDSON-v-WENEROWICZ, 3:14-cv-15-KRG-KAP *rather than its initial* RICHARDSON-v-DIGUGLIELMO, 3:09-cv-70-KRG-KAP.

U.S. Magistrate Judge Pesto entered a *Rule and Order* (Exhibit) directing the District Attorney to file a response to Petitioner's federal habeas petition, complying with Rule 5 governing Habeas Corpus under Section 2254.

Petitioner filed a *Traverse Brief*, briefing all 18 claims raised in Petitioner's refiled habeas petition, with exhibits appended thereto to support his claims.

On January 9, 2017 U.S. Magistrate Judge Pesto filed a *Report and Recommendation* (Exhibit) recommending that Petitioner's petition be denied and that a certificate of appealability be denied.

U.S. Magistrate Judge Pesto's 36-page *Report and Recommendation* erroneously finding: *claims 3, 4, 5, 6, 7, 16, 17 and 18 were not fairly presented to the State Court (Id., p. 8), claims 10 and 18 did not cite a violation of a federal law, rule or constitutional right (Id.), and that claims 16 through 18 restate earlier claims and do not need separate discussion into 18 claims, several with subparts. I will summarize the claims because it serves no useful purpose to quote the Petitioner verbatim (Id., p. 35; claims 1-5 (pp. 6-8), claims 6-15 (pp. 7-8), claims 16-18 (p. 8)).*

Petitioner filed *Eight (8) Written Objections to the Report and Recommendation*. (Exhibit

I)

On January 26, 2017 U.S. Magistrate Judge Pesto entered a *Memorandum Order* (Exhibit

H) finding:

Richardson contends that I (Magistrate Judge Pesto) erred in not finding some of his claims exhausted (internal citations omitted). Richardson's argument is that he presented these claims pro se to the Superior Court (Id., p. 1). As I noted in my Report and Recommendation, "Richardson appealed from the denial of the [PCRA] petition, at first pro se and then through Hueston." (internal citations omitted) It is during that pro se period Richardson argues that he exhausted the balance of his claims. He is wrong. Colin Hueston, Esquire represented Richardson in the PCRA proceedings. After Judge Carpenter denied the PCRA petition, Richardson took a pro se appeal that was docketed on October 26, 2010. COMMONWEALTH-v-RICHARDSON, No. 1632 WDA 2010 (Pa.Super.) On June 13, 2011, September 6, 2011 and December 19, 2011, the Pennsylvania Superior Court remanded the matter for a determination by Judge Carpenter whether Richardson had knowingly and voluntarily waived his statutory right to PCRA counsel and was intending to proceed pro se. (Id., p. 2) The parties were permitted to file any further

supplement to the record (Id., pp. 2-3)

Petitioner filed a timely *Supplement to Record and Response to Memorandum* (Exhibit G) raising three (3) supplements and three (3) responses.

U.S. District Judge Gibson adopted Magistrate Judge Pesto's **Supplemented Report and Recommendation as the Opinion of the District Court** on March 29, 2017 (Exhibit F) denying Petitioner's habeas corpus petition and denying a certificate of appealability.

Petitioner filed an *Application for a Certificate of Appealability* (Exhibit E) in the United States Court of Appeals for the Third Circuit on April 27, 2017 at RICHARDSON-v-WENEROWICZ, No. 17-1872 (3rd Cir. 2017), and a *Supplement thereto* (Exhibit D) on August 17, 2017, which was denied September 1, 2017 in an *Entry of Judgment* (Exhibit C). Rehearing In Banc (Exhibit B) was filed September 12, 2017, and denied in a *Sur Petition for Rehearing Order* (Exhibit A) on October 11, 2017.

Petitioner files this timely Petition for Writ of Certiorari for the reasons set forth below.

REASONS FOR GRANTING THE WRIT

Granting this writ would allow the Court's holding in SMITH-v-DIGMON (434 U.S. 332 (1978); and BURKETT-v-LOVE, 89 F.3d 138 (3rd Cir. 1996)) to be extended to cases where a Petitioner, who proceeds pro se, has complied with all rules governing Appellate Procedure, has his case remanded by the Appellate Court (more than once) for the appointment of counsel without his properly preserved, presented, and briefed claims decided on their merits. It would determine whether Petitioner has satisfied the requirements of SMITH-v-DIGMON and is he entitled to habeas corpus review of those claims properly preserved, presented and briefed in his pro se appeal.

It would determine whether *counsel of record constitutes representation by counsel under the Sixth Amendment's guaranteed right to the "effective assistance of counsel,"* when:

i) counsel has clearly stated on record, **"he did not represent Petitioner and Petitioner proceeded pro se at every level of the appeal process"** ?; and ii) whether the claims (3,4,5,6,7, 10, 16, 17 and 18) properly presented and briefed by Petitioner are exhausted under SMITH-v-DIGMON and entitled to habeas corpus review?

The State and Federal Court record below clearly show: that while Petitioner was proceeding pro se, he complied with all rules governing Appellate Procedure while preserving, presenting and briefing claims 3, 4, 5, 6, 7, 10, 16, 17 and 18 to the Superior Court, who decided to remand Petitioner's case for appointment of counsel on June 13, 2011, September 6, 2011 and December 19, 2011 (after all briefs had been submitted to the Panel for a determination on the claims briefed). These determinations to remand Petitioner's case, by Superior Court, where

done without reaching the merits of claims 3, 4, 5, 6, 7, 10, 16, 17 and 18 that had been presented it the Panel, after the trial Court ruled on October 19, 2010 (Order of the Court) that all outstanding claims/issues were denied in its September 20, 2010 Opinion and Order, timely appealed to Superior Court in Petitioner pro se appeal at COMMONWEALTH-v-RICHARDSON, No. 1632 WDA 2010 (Pa.Super. 2010).

Under SMITH-v-DIGMON, the presentation of Petitioner's properly preserved, presented and briefed claims (3,4,5,6,7, 10, 16, 17 and 18) to Superior Court were exhausted for purposes of habeas review. Also see: BURKETT-v-LOVE, 89 F.3d 138 (3rd Cir. 1996).

The District Court found that although Petitioner presented these claims to Superior Court in his pro se appeal (1632 WDA 2010) and Superior Court remanded for the appointment of counsel -without ruling on the merits of claims 3, 4, 5, 6, 7, 10, 16, 17 and 18- these claims were not presented to the State Court since counsel was appointed, permitted to file a nunc pro tunc notice of appeal at COMMONWEALTH-v-RICHARDSON, No. 260 WDA 2012 (Pa.Super); and Petitioner was not entitled to habeas corpus review, relief and/or a certificate of appealability.

Petitioner filed timely objections to these findings arguing that he satisfied the requirements of SMITH-v-DIGMON and claims 3, 4, 5, 6, 7, 10, 16, 17 and 18 should be addressed on their merits since he was entitled to relief under these claims where he had demonstrated a colorable case of a violation of a federal rule, law and constitutional right.

The District Court improperly relied on the second denial Order (November 15, 2010 Order of Court) to Petitioner's Petition for Correction or Modification of Court Record (filed

September 28, 2010 by Petitioner pro se) that Petitioner had **counsel of record** in the person of Attorney Colin Hueston, which was hybrid representation, and therefore, claims 3, 4, 5,, 6, 7, 10, 16, 17 and 18 had not been presented to the State Court, although in actuality they had been presented to the State Court, satisfying the requirements of SMITH-v-DIGMON and Pennsylvania Supreme Court Order No, 218, Judicial Administration Docket No. 1, May 9, 2000, effective immediately, 30 Pa. Bulletin 2582 (May 27, 2000)(“*In all appeals from criminal convictions or post-conviction relief matters, a litigant is not required to petition for rehearing or allowance of appeal following an adverse decision by the Superior Court in order to be deemed to have exhausted all available State remedies respecting a claim of error. When a claim has been presented to the Superior Court, or to the Supreme Court of Pennsylvania, and relief has been denied in a final order, the litigant is deemed to have exhausted all available State remedies for purposes of Federal Habeas Corpus relief.* Comment to Pa.R.Crim.P. 901 and 42 Pa.C.S.A. § 9545 (b)(3)”). See: November 15, 2010 Order of Court (Exhibit and Memorandum Order January 26, 2017 (Exhibit).

Counsel of Record –also known as Attorney or Record- does not constitute representation by counsel under the Sixth Amendment’s guaranteed right to the “effective assistance of counsel.” McMANN-v-RICHARDSON, supra; STICKLAND-v-WASHINGTON, supra; CUYLER-v-SULLIVAN, supra. It simply constitutes prior counsel’s failure to withdraw his/her appearance from a particular case after representation has concluded, and therefore, **while counsel no longer represents that particular client anymore, all filings and rulings after representation has ended, are still mistakenly forwarded to that counsel rather than to the**

client due to the record still reading counsel as counsel or record/attorney of record in that specific case. In this particular case, Attorney Colin Hueston, in his July 12, 2017 letter (appended to Petitioner's Supplement filed in the Court of Appeals), counsel states:

As you recall, I represented you in the PCRA proceedings and direct appeals following. **I filed an Amended PCRA Petition. In that Petition, I incorporated by reference, all allegations or error asserted by you in your pro se Petition, which was filed on December 27, 2006.** I represented you at the PCRA evidentiary hearing on November 10, 2009. Judge Carpenter denied the PCRA Petition on September 21, 2010. When I advised you of this decision, **you proceeded pro se by filing your own Notice of Appeal to the Superior Court on October 26, 2010. (1632 WDA 2010).** On June 13, 2011 the Superior Court remanded the record to determine the status of your counsel. On June 22, 2011 I responded to a letter from Judge Carpenter regarding your representation in the Superior Court. I advised the Court that pursuant to your direction, **I did not represent you at any level in the Superior Court at that point.** I communicated with you during this process and sent you copies of all correspondence. **In October of 2011, you retained me for purposes of the Superior Court Appeal.** On October 18, 2011, I wrote Judge Carpenter because *the matter had been remanded for purposes of a colloquy following your request to proceed pro se. I wrote that if the Court permitted me to enter my appearance and represent you, I believed this issue was now moot and the matter could be returned to the Superior Court for a briefing schedule.* **Following some confusion,** on January 20, 2012, the Superior Court entered an Order advising that, having received confirmation from the Honorable Hiram A. Carpenter, III that you were represented by me, the Superior Court relinquished jurisdiction so that I may file a notice of appeal nunc pro tunc on Appellant's behalf within 30 days of the date of this order. **I filed this notice on February 14, 2012. The appeal was docketed at 260 WDA 2012. Our brief was filed on October 12, 2012. The appeal was denied on April 1, 2013. At your request, I filed a Petition for Reargument Nunc Pro Tunc which was denied on May 14, 2013. In the interim, to preserve your appellate rights, we filed a petition for Allowance of Appeal to the Supreme Court of Pennsylvania on April 26, 2013 (230 WAL 2013). Our Petition was denied by the Supreme Court on November 13, 2013.**

Id. July 12, 2017 letter (appended to Petitioner's Supplement filed in the Court of Appeals, as Exhibits A, B, and C), pp. 1-2.

Based upon the above material facts the District Court never conducted a de novo review of Petitioner's objections and supplement to record and response to memorandum alleging that the Report and Recommendation and Supplement Memorandum incorrectly found that counsel of record constitutes representation of counsel under the Sixth Amendment guarantee right to the effective assistance of counsel and therefore claims 3, 4, 5, 6, 7, 10, 16, 17 and 18 were properly exhausted in the State Court when Petitioner proceeded pro se in his appeal to Superior Court (1632 WDA 2010 (Pa.Super.)).

If the District Court would have conducted a de novo review of the record and the above set forth letter from Attorney Colin Hueston, Petitioner's objections and Supplement to the Record as required by 28 U.S.C. § 636 (b), an evidentiary hearing was required pursuant to 28 U.S.C. § 636 (c) and TOWNSEND-v-SAM, 372 U.S. 293, 319 (1963) in light of Attorney Colin Hueston's June 21, 2011 and July 12, 2017 letters to the State Court confirming that Petitioner represented himself at every stage of the appeal to Superior Court (1632 WDA 2010 (Pa.Super.)) process, and then reviewed Petitioner's Superior Court Criminal Docketing Statement (Pa.R.A.P. 3517), Appellant Brief (Pa.R.A.P. 2111), Reply Brief (Pa.R.A.P. 2113), Statement of Questions Involved (Pa.R.A.P. 2116), Petition for Correction or Modification of Record (Pa.R.A.P. 1926), and Concise Statement of Matters Complained of on Appeal (Pa.R.A.P. 1925 (B)) all present, preserve and properly brief claims 3, 4, 5, 6, 7, 10, 16, 17 and 18 that the Report and Recommendation and Supplement Memorandum -the District Court and Court of Appeals improperly adopted as the Opinion of the Court- found were not presented to the State Court because of an erroneous hybrid representation (Pa.R.A.P. 3304) finding by the State and Lower

Federal Courts.

If Habeas Corpus Rule 5 (d)(1) was compiled with, and the above documents from Petitioner's pro se appeal to Superior Court at 1632 WDA 2010 (Pa.Super.) were produced, with the Opinions of the trial and Superior Court (Habeas Corpus Rule 5 (d)(2)), along with Petitioner's reply (Habeas Corpus Rule 5 (e) an evidentiary hearing would have been held to develop factual findings and a determination on whether claims 3, 4, 5, 6, 7, 10, 16, 17 and 18 were actually presented to the State court (exhausted under SMITH-v-DIGMON and BURKETT-v-LOVE, supra); and on whether counsel of record constitutes representation of counsel as guaranteed by the Sixth Amendment's right to the effective assistance of counsel.

Granting a writ would simply extend the SMITH-v-DIGMON holding to circumstances where a Petitioner proceeds pro se on appeal, properly preserves, presents and briefs his claims, but instead of the Appellate Court addressing the merits of Petitioner's presented claims, it chooses to remand for the appointment of counsel and/or for some other non-related purpose to be determined. It would find that counsel of record does not equate to the representation of counsel, the effective assistance of counsel, that the Sixth Amendment guarantees; and finally, it would permit the Court of Appeals to remand this matter to the District Court for a determination on Petitioner's claims 3,4,5,6,7, 10, 16, 17 and 18 as raised in his refiled timely filed one-all-inclusive habeas petition.

CONCLUSION

WHEREFORE, Petitioner, LaVelle D. Richardson, acting pro se, respectfully request and prays that for all of the above set forth reasons this Honorable Court will GRANT Certiorari on the extension of SMITH-v-DIGMON to Petitioners proceeding pro se on a State appeal where he properly preserves, presents, and briefs those claims in accordance with the Rules governing Appellate Procedure, but instead of addressing the claims on their merits the State Appellate Court remands the matter to the trial Court for the appointment of counsel and/or for some other non-related purpose; and to determine whether counsel of record equates the Sixth Amendment guarantee right to the effective assistance of counsel when exhaustion of claims are being determined for habeas corpus review and whether those claims have been properly presented to the State Court. And the Petitioner will ever pray.

RESPECTFULLY SUBMITTED,


LaVelle D. Richardson, pro se

CONCLUSION

WHEREFORE, Petitioner, LaVelle D. Richardson, acting pro se, respectfully request and prays that for all of the above set forth reasons this Honorable Court will GRANT Certiorari on the extension of SMITH-v-DIGMON to Petitioners proceeding pro se on a State appeal where he properly preserves, presents, and briefs those claims in accordance with the Rules governing Appellate Procedure, but instead of addressing the claims on their merits the State Appellate Court remands the matter to the trial Court for the appointment of counsel and/or for some other non-related purpose; and to determine whether counsel of record equates the Sixth Amendment guarantee right to the effective assistance of counsel when exhaustion of claims are being determined for habeas corpus review and whether those claims have been properly presented to the State Court. And the Petitioner will ever pray.

RESPECTFULLY SUBMITTED,


LaVelle D. Richardson, pro se