

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Rancourt Woodell — PETITIONER
(Your Name)

vs.

Supt. Mike Wenerowicz — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
United State Court of Appeals for the
Third Circuit, 21400 U.S. Courthouse, 601 Market St.
Philadelphia, PA. 19106-1790
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rancourt Woodell
(Your Name)

Box 244
(Address)

Graterford, PA. 19426
(City, State, Zip Code)

X
(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER THE DISTRICT COURT'S FAILURE TO APPLY THE ONE-YEAR STATUTE OF LIMITATIONS UNDER SECTION 2244 (D)(1) TO ITS MAY 1, 2006 TO NOVEMBER 14, 2006 CALCULATIONS TO OR FOR PETITIONER'S CASE, AS IT DID IN NARA-v-FRANK (488 F.3d 187 (3rd Cir. 2007)), HUMMEL-v-ROSEMEYER (564 F.3d 290 (3rd Cir. 2009)), COMMONWEALTH-v-CRUZ (No. 852 A.2d 287, 288, 297 (Pa. 2004)), AND COMMONWEALTH-v-CHURPALKY (No. 1686 EDA 2012 (April 4, 2013)) TOLLING ALL FILING DEADLINES DURING THE PERIODS OF MENTAL HEALTH ILLNESSES, DEFECTS, CONDITIONS AND DISORDERS, WAS AN ERROR OF LAW, REQUIRING REVERSAL AND REMAND FOR DEVELOPMENT OF A FACTUAL FINDING RECORD ON WHAT IMPACT PETITIONER'S SEVERE AND FREQUENT SEIZURES, DEFECTS, CONDITIONS AND DISORDERS, STEMMING FROM PETITIONER'S UNDIAGNOSED SERIOUS MENTAL HEALTH CONDITIONS, DEFECTS, DISORDERS AND ILLNESSES MAY HAVE HAD AT THE TIME OF THE OFFENSE, DURING INTERROGATION, WHILE IN CUSTODY, TRIAL, DIRECT APPEAL, PCRA AND FEDERAL HABEAS CORPUS PROCEEDINGS?

II. WHETHER THE DISTRICT COURT FAILED TO CONDUCT AN EVIDENTIARY HEARING BASED UPON PETITIONER'S SERIOUS DIAGNOSED MEDICAL CONDITION OF SEVERE AND FREQUENT SEIZURES, STEMMING FROM HIS UNDIAGNOSED MENTAL HEALTH ILLNESSES, DEFECTS, DISORDERS AND CONDITIONS, RESULTING IN BRAIN SURGERY, RECOVERY TIME AND TREATMENTS WITH OTHER PSYCHOTROPIC AND SEIZURE MEDICATIONS AND TREATMENTS, WHICH PHYSICALLY HAMPERED HIS ABILITY TO DRAFT, DRAW, PREPARE AND SUBMIT A TIMELY PETITION WITHIN THE VERY STRICT TIME STRAINTS OF THE AEDPA, WHEN NEUROLOGISTS AND OTHER TREATING MEDICAL AND MENTAL HEALTH PHYSICIANS, SURGEONS, SPECIALIST AND PERSONNEL HAVE REPEATEDLY OFFERED TO TESTIFY ABOUT PETITIONER'S MENTAL HEALTH AND MEDICAL CONDITION, WITH EACH REQUEST BEING SUBSEQUENTLY DENIED WITHOUT EXPLANATION GIVEN?

III. WHETHER THE DISTRICT COURT'S NOTICE OF ELECTION PROVIDING HIM WITH THE OPTION TO EITHER WITHDRAW HIS MAY 1, 2006 FILED HABEAS CORPUS TO **REFILE** AN ALL-INCLUSIVE HABEAS PETITION WITHIN A YEAR OF THE DISTRICT COURT'S ORDER GRANTING PERMISSION TO WAIVE HIS ALREADY FILED MAY 1, 2006 HABEAS PETITION COULD MISLEAD A PRO SE PETITIONER, SUCH AS THE PETITIONER, TO BELIEVE THAT HE HAD AN ADDITIONAL ONE-YEAR FILING DEADLINE TO **REFILE** AN ALL-INCLUSIVE HABEAS PETITION, AS THE DISTRICT COURT'S NOTICE OF ELECTION IMPLIES; OR TO PROCEED WITH THE MAY 1, 2006 FILED HABEAS CORPUS PETITION, WAIVING ANY FUTURE CLAIMS THAT MAY BE AVAILABLE?

IV. IF SO, DOES THE PRO SE PETITIONER'S CONSTITUTIONAL RIGHT TO CONFER WITH COUNSEL ATTACH SINCE THE DISTRICT COURT'S NOTICE OF ELECTION FORM IS ASKING A PRO SE PETITIONER, WHO IS UNSKILLED IN THE SCIENCE AND SKILL OF LAW, TO WAIVE RIGHTS THAT MAY BE AVAILABLE TO HIM AT A LATER DATE OR TO PROCEED WITH HIS PRO SE HABEAS PETITION "AS IS" WAIVING ANY POSSIBLE CONSTITUTIONAL RIGHTS THAT MAY BE PRESENTLY AVAILABLE TO HIM IN HIS PRESENT FILED PETITION THAT MAY HAVE BEEN MISTAKENLY OMITTED BY THE PRO SE PETITIONER, WHO IS UNSKILLED IN THE SCIENCE AND SKILL OF LAW?

V. WHETHER THE DISTRICT COURT'S RULING THAT 196 DAYS OF PETITIONER'S ONE-YEAR FILING LIMIT HAD ELAPSED, IN SPITE OF PETITIONER BEING REPRESENTED BY APPOINTED COUNSEL FROM THE TIME OF PETITIONER'S ARREST THROUGHOUT JULY 18, 2012 THE TIME PERIOD IN QUESTION WITH RESPECT TO THE TIME PERIOD -MAY 1, 2006 THROUGH NOVEMBER 14, 2006- AND NOVEMBER 14, 2006 THROUGH JULY 18, 2012 THE DENIAL OF THE PENNSYLVANIA SUPREME COURT'S DENIAL OF ALLOCATUR HAD EXPIRED (MEMORANDUM, pp. 7-9, filed June 26, 2017), BEFORE RESUMING NOVEMBER 14, 2006?

LIST OF PARTIES

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

☐ 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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	2-4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF CASE	6-8
REASONS FOR GRANTING THE WRIT	9-16
CONCLUSION	17
PROOF OF SERVICE	18

INDEX TO APPENDICES

APPENDIX A - U.S. Court of Appeals Sur Petition for Rehearing (filed 12/14/17)
APPENDIX B - U.S. Court of Appeals Entry of Judgment (entered 9/21/17 filed 10/3/17)
APPENDIX C - U.S. District Court Memorandum (filed 6/26/17)
APPENDIX D - Superior Court Decision 1051 MDA 2010 (Pa.Super. 8/18/11)
APPENDIX E - Pa. Supreme Court (filed 7/18/12)
APPENDIX F - U.S. Supreme Court Certiorari (filed 5/1/06)
APPENDIX G - Trial/PCRA Court Order (filed 5/26/10 and 11/14/06 PCRA petition)
APPENDIX H - Superior Court Decision 105 MDA 2011 (Pa.Super.)
APPENDIX I - Pa. Supreme 693 MAL 2011 (Pa.)
APPENDIX J - U.S. District Court's Notice of Election
APPENDIX K - Attorney William Ruzzo (appointed ended 6/3/03); Attorney Joseph Cosgrove (appointed ended 1/15/07); Attorney Brian Corcon (appointed ended 7/24/07); Attorney Mark W. Bufalino (appointed ended 9/8/08); Attorney Michael Senape (appointed ended 5/26/10); Attorney Robert Buttner (appointed ended 7/18/12)
APPENDIX L - May 2, 2013 1st pro se Habeas petition (WOODELL-v-WENEROWICZ, M.D.Pa. Civil No. 3:13-cv-1192, Doc. 1)
APPENDIX M - U.S. District Court's September 24, 2013 Order granting permission to withdraw May 2, 2013 filed habeas petition to file an one-all-inclusive habeas petition in accordance with District Court's Notice of Election (Appendix J)

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBERS

COMMONWEALTH-v-CHURUPALYK,
Superior Court Docket No. 1686 EDA 2012 (filed April 4, 2013)

COMMONWEALTH-v-CRUZ,
852 A.2d 287, 297 (Pa. 2004)

COMMONWEALTH-v-WOODDELL,
NO. 105 MDA 2011 (Pa.Super.
NO. 693 MAL 2011 (Pa. July 18, 2012)
CP- -CR- (Luzerne County Common Pleas Courts)(filed May 27, 2010)
No. MDA (Pa.Super. August 18, 2011)
No. MAL (Pa. July 18, 2012)

HUMMEL-v-ROSEMEYER,
564 F.3d 290 (3rd Cir. 2009)

NARA-v-FRANK,
264 F.3dc 310, 314 (3rd Cir. 2001)

WOODDELL-v-SUPERINTENDENT GRATERFORD SCI,
No. 3:13-cv-1192 (Memorandum Opinion, pp. 2-3 (filed June 26, 2017)

WOODDELL-v-SUPERINTENDENT GRATERFORD SCI, ET AL,
No. 17-2518 (3rd Cir. September 21, 2017 (filed October 3, 2017))
No. 3:14-cv-01764 (M.D. Pa. Civil)
No. 3:14-cv-01764 (M.D. Pa. Civil)

WOODDELL-v-WENEROWICZ,
No. 3:13-cv-1192 (M.D. Pa. May 2, 2013)

STATUTES AND RULES

18 U.S.C. § 3006A

28 U.S.C. § 1254 (1)

28 U.S.C. § 1257 (a)

AEDPA 28 U.S.C. § 2244 (d)(1)

OTHER

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

The pro se 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 appears at Appendix A (December 14, 2017), B (entered September 21, 2017 filed October 3, 2017) to the petition and is unpublished.

The Opinions of the United States District Court appears at Appendix C (June 26, 2017) to the petition and is unpublished.

The Opinion of the highest State Court to review the merits appears at Appendix D (No. 1051 MDA 2010 (Pa.Super. August 18, 2011)) to the petition and is unpublished. On July 18, 2012 the Pennsylvania Supreme Court denied allowance of appeal/allocatur without any comment given and is appended to the petition as Appendix E.

The United States Supreme Court's denial of Certiorari dated May 1, 2006 appears at Appendix F (represented by appointed counsel Joseph Cosgrove) and is unpublished.

The Opinion of the trial/PCRA Court's denial of Petitioner's counseled 1st timely filed November 14, 2006 PCRA petition's May 26, 2010 denial appears at Appendix G (filed by Attorney Joseph Cosgrove, then represented by appointed counsels: Brain Corcon, Mark W. Bufalino, Michael Senape and Robert Buttner).

The Opinion of the Pennsylvania Superior Court (No. 105 MDA 2011) and Supreme Court (No. 693 MAL 2011) of Pennsylvania's denial of Petitioner's counseled PCRA appeal are unpublished but appears at Appendices H (Superior Court No. 105 MDA 2011) and I (Supreme Court No. 693 MAL 2011)(represented by appointed counsel Robert Buttner).

JURISDICTION

Petitioner was represented by appointed counsel William Russo at the trial of trial whose representation concluded with his filing of "Post Sentencing Motions on June 3, 2003," at which time Attorney Joseph Cosgrove was appointed to represent Petitioner during direct appeal to the Pennsylvania Superior and Supreme Court (filed June 4, 2003 and May 17, 2005), and on Writ of Certiorari to this Honorable Court on May 1, 2006. Attorney Cosgrove they represented Petitioner on the filing of his 1st PCRA petition on November 14, 2006, until Attorney Brain Corcon was appointed to represent Petitioner in his first timely filed PCRA petitions -filed by Attorney Cosgrove 11/14/06-. Attorney Corcon mistakenly argued that Petitioner November 14, 2006 1 st time filed PCRA petition filed by Attorney Cosgrove was time bar; but in an Order entered by the Court dated May 1, 2006 the Court ruled that Petitioner November 14, 2006 PCRA petition filed by Attorney Cosgrove was not time barred. Thereafter, Attorney Corcon's representation of Petitioner lasted from January 15, July 24, 2017 filing an Amended PCRA petition on August 21, 2007 arguing that Petitioner's PCRA petition was not time-barred as Corcon once mistakenly claimed. Attorney Mark W. Bufalino filed a petition arguing Petitioner's petition was timely barred. However, in Court Orders dated November 13, 2007, February 25, 2008 and September 8, 2008 entered by the trial Court all declared that Petitioner's PCRA petition was not time barred and that Attorney Michael Senape was appointed to represent Petitioner in these proceedings. On December 3, 2009 and February 15, 2008 Attorney Senape filed a PCRA Brief, appending thereto Hospital Records of July 11, 2001 and records of discovery of Petitioner in custody and during interrogation. On May 26, 2010 Petitioner's PCRA Petitioner was denied and Attorney Robert Buttner was appointed to file Petitioner's timely filed appeal to both the Pennsylvania Superior Court (COMMONWEALTH-v-WODELL, No. 105 MDA 2011) and the Supreme Court of Pennsylvania at COMMONWEALTH-v-WODELL, No. 693 MAL 2011)(Pa. Super. July 18,

2012) with representation by appointed counsel beginning at the time of Petitioner's arrest and concluding July 18, 2012 at the conclusion of the Pennsylvania Supreme Court's review of his counseled appeal at COMMONWEALTH-v-WODELL, No. 693 MDA 2011)(Pa. July 18, 2012). This gives this Honorable Court jurisdiction under 28 U.S.C. § 1257 (a).

This case also was presented to the United States District Court at WODELL-v-SUPERINTENDENT GRATERFORD SCI, ET AL, No. 3:13-cv-1192 (Memorandum Opinion, pp. 2-3, Filed June 26, 2017)(**May 2, 2013 habeas petition filed with permission of District Court on September 24, 2013**), with his **refiled** habeas petition being filed **September 11, 2014** (within a year of the District Court's September 24, 2013 Order permitting withdrawing of his May 2, 2013 habeas filed petition to **refile an one-all-inclusive habeas petition**), where the District Court found that 196 days of the time-period **Petitioner was represented by appointed counsel from conviction May 1, 2006 to November 14, 2016 had elapsed, where November 14, 2006 through July 18, 2012 -a time-period where Petitioner was still represented by counsel, was now tolled.** The District Court dismissed Petitioner's pro se petition as untimely filed. A timely "Application for Certificate of Appealability" was filed July 17, 2017 seeking remand and a full and fair opportunity to have Charles N. Munyon, M.D. (Temple University Hospital), Dr. Hershey, Dr. Valenya Poukaś (Temple University Hospital, Epilepsy Center), Dr. Christian, other Neurologist, who had examined Petitioner's severe medical illness, frequent and severe seizures caused as a result of his undiagnosed mental health illness, defect, disorder and condition, and who were aware of the impact of the prescribed psychotropic and seizure medications, Petitioner was undergoing during the time period in question, brain surgery, recovery and other medical procedures and treatments that may have hampered Petitioner's ability to meet the strict time restraints of the AEDPA and his ability to understand and assist counsel in these proceedings from the time of his arrest until the July 18, 2012 conclusion of his representation by appointed counsel

provide testimony, scientific evidence and evidence to support Petitioner's claims. However, the Court of Appeals denied COA, in spite of the medical records offered in Petitioner's Motion to Expand the Record. On September 21, 2017 the United States Courts of Appeal denied COA at WOODSELL-v-SUPERINTENDENT GRATERFORD SCI, ET AL, No. 17-2518 (3rd Cir. September 21, 2017)(District Court/Agency No. 3-14-cv-01764). Petitioner filed a timely "Petition for Rehearing In Banc" on October 13, 2017 with a timely Motion to Expand the Record with additional medical and mental health illness that were relevant to the claims at issue; however, on December 14, 2017 the United States Court of Appeals for the Third Circuit entered a "Sur Petition for Rehearing" denying Petitioner's petition for rehearing.

Based upon these above federal actions jurisdiction over this matter is under 28 U.S.C. §§'s 1254 (1) and 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions of the United States Constitution involved in this particular matter are the guaranteed right to the "effective assistance of counsel" (Amendment VI), the right to procedural and substantive due process and the equal protection of the law clauses of the fourteenth Amendment of the United States Constitution, the right to a fair trial as guaranteed by the due process clause, the right to the Great Writ, the Writ of Habeas Corpus, and the right not to have your life, liberty, property and happiness without being "duly convicted" by a jury of his peers.

The Mental Health Act and 28 U.S.C. § 2244 (d)(1) AEDPA equitable tolling are also provisions involved in this matter (i.e., medically ill are similarly situated as the mentally ill and equitable tolling should be applied to any filing deadlines during periods of sickness, illness, defects, disorders and conditions which may physically hamper one from meeting the strict time restraints of the AEDPA or any other filing deadline during these periods of sickness).

STATEMENT OF THE CASE

Petitioner's properly filed first PCRA petition was filed November 14, 2006 and denied May 27, 2010 by the trial Court at COMMONWEALTH-v-WODELL, CP- CR- (Luzerne County, CCP May 27, 2010). A timely appeal was filed and subsequently denied on August 18, 2011 by the Superior Court of Pennsylvania at COMMONWEALTH-v-WODELL, No.

(Pa.Super. August 18, 2011), and allocatur was denied on July 18, 2012 by the Pennsylvania Supreme Court at COMMONWEALTH-v-WODELL, No.

(Pa. July 18, 2012).

Petitioner's first Federal habeas corpus petition was filed May 2, 2013 in the United States District Court for the Middle District of Pennsylvania at WODELL-v-WENEROWICZ, C.A. No. 3:13-cv-1192 (M.D.Pa. May 2, 2013).

The District Court sua sponte issued upon the unrepresented Petitioner a "Notice of Election" who without the benefit of counsel and without an opportunity to consult counsel was asked whether he would withdraw his May 2, 2013 filed habeas petition to refile an all-inclusive habeas petition or whether he would proceed with his May 2, 2013 filed habeas petition "as is" and possibly waive any claims not presented in his May 2, 2013 filed habeas petition or any future claims that may be present?

Unskilled and illiterate in the science and skill of law, signed and submitted the District Court's "Notice of Election" form, without being able to consult counsel.

The pro se Petitioner was misled to believe that under the District Court's "Notice of Election" he had one (1) year from the date of the Court's Order granting him permission to withdraw his May 2, 2013 filed habeas petition to refile his all-inclusive habeas petition.

The District Court's order granting Petitioner permission to withdraw his May 2, 2013 filed habeas corpus petition was entered September 24, 2013 and therefore, under the District Court's Notice of Election the pro se Petitioner's filing deadline should have

September 24, 2014. Petitioner's September 11, 2014 filing of his all-inclusive habeas petition, therefore, falls well within that one-year time period allotted by the District Court's Notice of Election and September 24, 2013 order granting him permission to withdraw his May 2, 2013 filed habeas petition.

Petitioner's September 11, 2014 refiled all-inclusive habeas petition was poorly drawn due to Petitioner's poor health condition, severe frequent seizures requiring hospitalization from time to time, eventual brain surgery and recovery time and other medications and treatments caused by his once undiagnosed mental health defect, disorder, illness and condition requiring very powerful and dangerous psychotropic, seizure, pain and a list of other medications as he continued to represent himself in these proceedings, due to a lack of funds to retain counsel and the appointment of counsel to represent Petitioner in a process that he truly did not understand. **It was under these conditions, that the District Court's Notice of Election arrived and misled Petitioner to believe that he had a year to refile an all-inclusive habeas petition, as he continued to meet the strict time-restraints under the AEDPA, to avoid being time-barred in these proceedings that determine the outcome of his life.**

U.S. District Judge Kosik granted the pro se Petitioner numerous extensions to file his traverse brief, due to Petitioner's physical health hampering his ability to prepare and filing pleadings and/or to participate in any of these legal proceedings without the benefit of counsel; **however**, Petitioner's case was reassigned to U.S. District John E. Jones, III, who entered an order directing Respondents to submit a memorandum of law concerning the timeliness of the petition and to file the complete State Court record. On May 26, 2017 Respondents complied with the District Court's directions; and the pro se Petitioner, due to his extremely poor medical conditions hampering his ability to prepare and file a response within the specific time-limit given, requested an extension of time to file his pro se response thereto. The District Court granted his initial extension of time.

As a proximate result of the pro se Petitioner's health and inability to make it to the law library -to seek assistance in filing his poorly constructed reply/response Petitioner sought another extension of time to file his response and the District Court denied his request resulting in Petitioner's June 22, 2017. filing.

The District Court entered it Memorandum Order four (4) days later dismissing Petitioner's September 11, 2014 **refiled** all-inclusive habeas petition as untimely and denying the pro se Petitioner a certificate of appealability.

The pro se Petitioner filed a timely notice of appeal and an Application for Certificate of Appealability in the United States Courts of Appeal for the Third Circuit, which was docketed as WOODSELL-v-SUPERINTENDENT GRATERFORD SCI, ET AL, C.A. NO. 17-2518 (DISTRICT COURT CASE NUMBER: M.D.Pa.Civ. No. 14-cv-01764, which was denied September 21, 2017 (filed October 3, 2017), with a timely Petition for Rehearing In Banc on October 13, 2017. Thereafter, the pro se Petitioner filed a "Motion to Expand the Record on Federal Habeas Corpus 2254 (E)" pursuant to Federal Rules of Appellate Procedure 7 attaching Mental Health and Medical Records of Petitioner's diagnosis of his severe mental health and physical/medical diagnosis of an Epileptic Disorder supporting his claim that the District Court failed to consider the rare and extraordinary circumstance of his severe mental health and medical conditions that physically hampered his ability to comply with the strict time restraints of the AEDPA and the confusing District Court's Notice of Election misleading the pro se Petitioner to believe that he had one year to **refile** an all-inclusive habeas petition from the date of the District Court's Order granting him permission to withdraw his May 2, 2013 filed habeas petition to refile one all-inclusive habeas petition under the District Court's Notice of Election.

In a "Sur Petition for Rehearing" entered December 14, 2017 the pro se Petitioner's petition for rehearing en banc was denied.

The pro se Petitioner now files this timely praying that this Honorable Court will grant certiorari for the below set forth reasons.

REASONS FOR GRANTING WRIT OF CERTIORARI

This Honorable Court should grant certiorari on not only a case that involves colorable claims of ineffective assistance of counsel, but to determine if equitable tolling can be applied to the strict time restraint of the AEDPA in circumstances similar to those found in cases such as NARA-v-FRANK, 264 F.3d 310, 314 (3rd Cir. 2001); HUMMEL-v-ROSEMEYER, 564 F.3d 290 (3rd Cir. 2009); COMMONWEALTH-v-CRUZ, 852 A.2d 287, 297 (Pa. 2004); and COMMONWEALTH-v-CHURUPALYK, Superior Court Docket No. 1686 EDA 2012 (filed April 4, 2014) compared to this one that does not only involve extending tolling of all time restraints during periods of sickness in diagnosed mental health, defects and illnesses, but to extend all filing time restraints during severe medical conditions also be tolled. For example, in this particular matter as early as August 2, 2015 a temple Neurologist, physically examined Petitioner and diagnosed Petitioner as suffering from two types of seizures: "Complex Seizures " and "Sleeping Seizures;" and informed Petitioner due the severeness of his diagnosed condition and the shrinking of his Frontal Lobe Petitioner was being scheduled for immediate surgery (i.e., brain surgery)(Affidavit, Affirmance in Support of Writ of Habeas Corpus for the Appointment of Counsel Under 18 U.S.C. §3006A for Effective Representation Due to the Relief Sought, at p. 2). Under NARA-v-FRANK, HUMMEL-v-ROSEMEYER, CRUZ and CHURUPALYK, supra the pro se Petitioner's brain surgery, while severe and while recovery time for brain surgery would be extensive, these circumstances under NARA, HUMMEL, CHURUPALYK and CRUZ **would not entitle the Petitioner to relief** since the four involves mental illnesses, defects and disorders, while brain surgery involves a medical defect, illnesses and disorders conditions and although both mental illnesses and severe medical illnesses physically hamper both persons, the mentally ill and the medically ill, actual capability of performing normal everyday functions of everyday life that a reasonable person can easily perform. In this particular case, the source of all of the Petitioner's medical problems was his undiagnosed mental health illness that were so

severe that Petitioner "kept being hospitalized from having seizures [] even during [his] Pre-Trial proceedings..." (Id., Affidavit in Support of Writ of Habeas Corpus, pp. 2-3) and "Neurologist Dr. Poukas stated her diagnosis as: the Applicant was having more seizures than he thought, as he knew when he had a seizure, when he knew he was going to have a seizure, and would be unconscious for up to days; Panic Attacks detected by EEG were seizures, not anxiety, where he had 4 to 5 per day, not always having convulsions during these seizures. If he would have seen a Specialist a long time ago, his problem would not have become out-of-control and would have been treated properly" (Application for Certificate of Appealability, at ¶ 5 (k)); or "on 7/30/15 Dr. Hershey diagnosed a decreased size and signal changes in right hippocampus, then on 7/31/15 diagnosed a mild adenoidal hypotrophy, focal volume loss on right medial temporal lobe, increased T2 signal with hippocampal gyrus, decreased size and signal changes again" (Id., Application for Certificate of Appealability, at ¶ 6 (b)) and the pro se Petitioner being administered the following very powerful and dangerous psychotropic and seizure medications "Klonopin (2011-2013), Trazodone, Zoloft, Celexa, Neurotin, Dilantin, Tegretol (2012), Keppra, Depakote (causing him to overdose and spend a week in the hospital as a result of the high dosage being administered), Phenobarbital (2013), Trileptal, Keppra (2013-2015), ONFI 20 mgs. per day (a new narcotic), Lamictal 1200 mgs. per day and Topamax 500 mgs. per day (2017, and presently)" (Id., Application for Certificate of Appealability, at ¶¶'s 5 (g-i)). If the above medical treatment, conditions, defects and illnesses would have simply been defined as mental health defects, illnesses, disorders, or conditions there would be no question that equitable tolling would have been applied and all filing deadlines would have been suspended during the time period of Petitioner's illnesses (incapacitation, incompetency, sickness) under NARA-v-FRANK, HUMMEL-v-ROSEMEYER, CRUZ and CHRUPALYK, but in light of Petitioner's severe seizures, brain surgery (all stemming from his undiagnosed mental health defects, illnesses and disorders), recovery time, and treatment being defined as a medical condition, the District Court and Court of Appeals

determined that equitable tolling of the strict time restraints of the AEDPA is not tolled since the United States Supreme Court has never ruled that equitable tolling of the AEDPA one-year time requirement applies to severe medical conditions such as Petitioner. In fact, the District Court and Court of Appeals calculation of the one-year time begins during the period of Petitioner's severe seizures and medical condition, in addition to holding the pro se Petitioner accountable for the time period he was represented by appointed counsel, could not file anything in the Courts in light of **him having counsel of record.**

The calculation of 196 days of Petitioner's filing deadline elapses prior to direct appeal concluding and Petitioner's 1st PCRA petition filed by counsel. (District Court Memorandum, pp. 7-9 (filed June 26, 2017)). During this 196 days Petitioner was still represented by trial counsel William Ruzzo who filed the post-sentencing motion (June 3, 2003), they by Attorney Joseph Cosgrove during direct appeal to the Pennsylvania Superior and Supreme Courts (filed June 4, 2003 and May 17, 2005), Writ of Certiorari to this Honorable United States Supreme Court (May 1, 2006) and 1st PCRA petition (November 14, 2006). Therefore, Atoorney Cosgrove represented Petitioner From direct appeal, writ of certiorari and 1st PCRA petition filings, which concluded on January 15, 2007 when new counsel Brain Corcon mistakenly argued Petitioner is time-barred, although he was still represented by counsel (Joseph Cosgrove) as of January 15, 2007 (the trial Court's May 1, 2006 Opinion indicates **his petition did not become final until May 1, 2006**). Therefore, Attorney Corcon represented from January 15, 2007 until July 24, 2007 when an Amended PCRA petition being filed August 21, 2007. Attorney Mark W. Bufalino stated "Petition is time-barred." before filing an Amended PCRA petition (arguing Petitioner is not time-barred as Previous believed), on November 13, 2007. On February 25, 2008 the trial Court entered an Order dismissing time-bar and on September 8, 2008 appointed Attorney Michael Senape who filed a PCRA Brief on December 3, 2009 and February 15, 2009 Filed Exhibits: Hospital Records of July 11, 2001 and records of discovery of Petitioner in custody and during interrogation. On May 26, 2010

Petitioner's PCRA was denied May 26, 2010 and Attorney Robert Buttner filed Petitioner's Notice of Appeal, appeal to Superior Court (No. 105 MDA 2011), and Petition for Allowance of Appeal with the Pennsylvania Supreme Court (No. 693 MAL 2011), with his representation of Petitioner concluding July 18, 2012 with the denial of Petitioner's counsel filed Petition for Allowance of Appeal, by the Pennsylvania Supreme Court. Therefore, Petitioner was represented by counsel shortly after his arrest (State Court proceedings) through July 18, 2012 and Petitioner pro se filed his first Petition for Writ of Habeas Corpus in the District Court (WOODELL-v-WENEROWICZ, M.D.Pa. Civil No. 3:13-cv-1192; Is., Memorandum, pp. 2-3 (filed June 26, 2017)).

Although, the pro se Petitioner was represented by appointed counsel from arrest until July 18, 2012 denial of his counseled Petition for Allowance of Appeal, in the Pennsylvania Supreme Court, the District Court starts Petitioner's one-year time-limit on May 1, 2006 (Id., Memorandum, p. 4) and concluded from May 1, 2006 until November 14, 2006, finding that 196 days of the one-year filing of his Habeas petition had elapsed (Id., Memorandum, p. 5 (filed June 26, 2017)), when pursuant to 28 U.S.C. § 2244 (d) the entire period **should be tolled since he was represented by counsel** (time of arrest throughout July 18, 2012), **based upon the following reasons:** 1) the pro se Petitioner was medically ill, suffering **severe** and frequent seizures that would later result in brain surgery, caused by his undiagnosed mental health defect, illness and disorders hampering Petitioner's ability to consult with or assist counsel in preparing his defense or understanding counsel and the proceedings due to medical condition; and 2) the pro se Petitioner is prohibited from filing anything in the Courts as long as Petitioner has an attorney of record (hybrid representation). **In fact, if Petitioner would have filed any pleading, in any Court, and there is an attorney of record, that pleading would never be filed, nor ruled upon by the Court, who may have even returned the unfiled pleading to the Petitioner telling him/her that they have counsel of record and counsel must file the pleading. That would have been the case, if the pro se Petitioner would have filed any pleading in the Court between**

the time of his arrest and July 18, 2012 when representation by counsel finally concluded. Therefore, as a result of Petitioner's illiteracy in the science and skill of law and his medical condition of severe and frequent seizures and brain surgery as a result of his severe undiagnosed mental health illness, defect and disorders, the pro se Petitioner is being held accountable for the actions of appointed counsel (Cosgrove, Corcon, Bufalino, Senape and Buttner) and their handling of Petitioner's case from the time of arrest until July 18, 2012, the day representation of counsel concluded and the pro se Petitioner was left to represent himself in proceedings that he could not understand and his medical condition left him physically incapable of performing during his frequent periods of sickness. In light of the fact that the time period an accused is represented by counsel on direct appeal is not included in calculations pertaining to State post-conviction (PCRA) proceedings or the AEDPA 28 U.S.C. § 2244 (d) time filing deadlines, did the District Court and Court of Appeals err in finding that May 1, 2006 to November 14, 2006 the pro se Petitioner had already lost 196 days towards his one year filing deadline, **while he was still represented by counsel and did not represent himself during this May 1, 2006 to November 14, 2006 196 day time period of his one-year to file his petition deadline imposed by the AEDPA?** Then after November 14, 2006 to July 18, 2012 is tolled, a period that Petitioner is also represented by counsel, which is tolled according to the District Court, "Woodell successfully tolled the statute of limitations on November 14, 2006, **when he filed a timely PCRA.** At that point, approximately 196 days of the one year limitations period had elapsed. **The statute remained tolled until the conclusion of his PCRA proceedings on July 18, 2012"** (Id., Memorandum, p. 5 (dated June 26, 2017)). What is different prior to May 1, 2006 or after November 14, 2006 to July 18, 2012 than it is during May 1, 2006 and November 14, 2006? Absolutely nothing. The Attorney who represented Petitioner at trial, during direct appeal to this Honorable Supreme Court, is the same Attorney that filed Petitioner's November 14, 2006 PCRA petition that the District Court starts its tolling period from (November 14, 2006).

The next reason why granting of writ of habeas corpus pertains to the "Notice of Election" form issued by the District Court, at a time period where counsel was medically sick, could not understand the proceedings and rights being presented to be waived at this particular vulnerable unrepresented person and population urging this segment to waive very important right that may hurt their present or future legal rights, properties and entitlements, if these acts are later determined to be injurious, wrong and the result of any severe pain and damages that may arise therefrom.

Petitioners' offer that the main function of the Courts is to rule on pleading presented thereto, determine and to protect the rights of the parties involved in a cause of action, and to to resolution to a case of controversy with short time use of judicial functions, time and economy resources available, among other important matters of the Court.

A careful review of the "Notice of Election" proferems none of the functions of the Court. In fact, it simply urges a pro se litigate to withdraw his already filed habeas petition ~~which may be timely filed-~~ to withdraw that filed habeas corpus petition, opting to file an all-inclusive habeas corpus petition; or secondly, to proceed with the already filed habeas petition with the possibility of waiving any and all possible rights that he may have been able to be raised in an all-inclusive habeas corpus petition at a later date.

The problem with these options is that the District Court is entering a forum where if an unrepresented Petitioner, such as Petitioner with medical illnesses, brain injuries cause by his undiagnosed severe mental health illness disease, disorder and sickness- are going to be presented with constitutional rights that will either waive guaranteed rights or require Petitioner to make the critical decision to waive his right to any future possible claims that may be available at a future date in the proceedings. In this particular case, not only were no lower Court record developed in

the District Court below under TOWNSEND-v-SAM, but there also were no evidentiary hearing providing in the state Court proceedings where Dr. Valenya Poukas (Temple University Hospital Epilepsy Center), Dr. Hershey, Dr. Christian and other Neurologist doctors and persons from the mental health department were repeatedly willing to testify to the seriousness of Petitioner's severe and frequent seizures, requiring brain surgery, recovery, treatment with high dosages of other psychotropic and seizure medications and treatments (Klonopin, Trazodone, Dilantin, Tegretol, Keppra, Zoloft, Depakote, Phenobarbital, Trileptal, ONFI, Lamictal and Topamax (Application of Certificate of Appealability, ¶ 5 (g)) to establish how these medical problems and mental health illnesses and treatment may have had on Petitioner's ability to comply with the strict time filing restraints of the AEDPA.

Nor were evidentiary hearing to determine whether the District Court Notice of Election misled Petitioner, in his medical and mental health conditions to believe that by withdrawing his May 2, 2013 (granted by the District Court's September 24, 2013 Order) may have misled Petitioner to believe that he had an additional year to file his one all inclusive habeas petition from the date of the District Court's Order granting him permission to withdraw his already filed habeas petition that the Notice of Election is asking him to withdraw without the right to consult counsel on this very important waiving of a civil right that could forever time bar him from the Court.

In this particular matter Petitioner is simply asking this Honorable Court to extend its mental health illnesses, defects, disorders and considerations to several medical ill, defective, disordered and considerations where that medical condition hampers the Petitioner's physical and mental health circumstances for him/her to comply with the extremely strict time restraints and filing deadlines imposed by the AEDPA in filing a timely filed petition or a petition pleading one of the statutory exceptions.

Secondly, in this particular matter to determine whether counsel is required to be consulted -under the Sixth and Fourteenth Amendments- when the District Court issues a Notice of Election as the unrepresented party -who may suffer from medical/mental

health illnesses, defects, conditions and disorders- and the Notice of Election is giving the unrepresented Petitioner to withdraw an already filed habeas petition, or to without that already filed petition to refile an all-inclusive habeas petition after the District Court Order has been entered granting permission to withdraw that already filed pro se habeas petition. Counsel is required in circumstances where serious constitutional rights are being asked to be forever waived as the "Notice of Election" has repeatedly done in a bona fide way, with no ill harm or will intended, but the asserting and waiving of constitutional and privileges have be review by counsel and discussed with that Petitioner, since any decision rendered will effect the Petitioner's or future sometime thereafter.

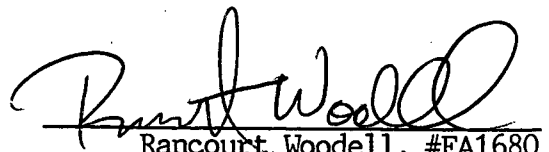
Based upon these above two genuine issues of material fact and there being no factual record developed to determine/brief these claims of extreme importance and of a federal stature this case should be remanded. And the Petitioner will ever pray.

CONCLUSION

Based upon the above set forth reasons of material fact, the extreme importance involving whether one who suffers from severe medical illnesses, defects, disorders and conditions, brain surgery, recovery time and other treatments by the use of psychotropic and seizure medications and treatments during periods of illness/sickness should have equitable tolling applied to those periods of illness/sickness under Section 2244 (d)(1) of the AEDPA, similar to equitable tolling being applied to those suffering from mental health illnesses, defects, sicknesses, disorders and conditions during those periods of illness/sickness; and whether the District Court's Notice of Election asking an unrepresented Petitioner (mentally ill/medically ill) to waive future constitutional rights that may be available to him or her or to decide if that Petitioner will proceed with his/her already filed possibly waiving constitutional rights that have been mistakenly omitted requires a Petitioner's right to confer with counsel to discuss the waiving of constitutional rights as the District Court's Notice of Election seeks the Petitioner to decide in spite of his/her being mentally ill/medically ill and unable to make such a knowingly, intelligently and voluntary decision.

For all of the above set forth reasons, the petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,



Rancourt Woodell, #FA1680
SCI-Graterford
P.O. Box
Graterford, PA 19426-0244
Pro Se Petitioner

Dated: February 14th, 2016