

Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, District of Columbia [20543]

In the Matter of;

STEVEN A. WRIGHT,

Appellant-Petitioner,

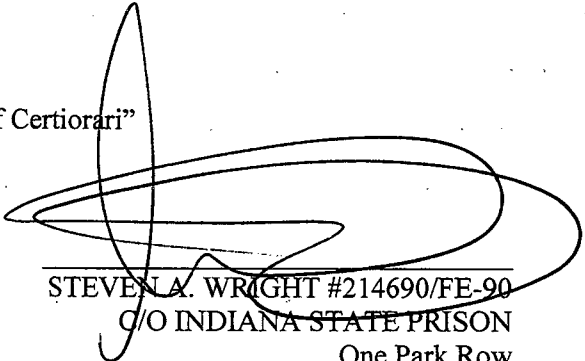
V.

Indiana Appellate Cause: 20A03-1004-CR-233
Indiana Trial Cause: 20D03-0906-FA-36

STATE OF INDIANA,

Appellee-Respondent, Loretta H. Rush – Chief Justice of Indiana
George W. Biddlecome – Trial Judge

“A Petition for Writ of Certiorari”



STEVEN A. WRIGHT #214690/FE-90
C/O INDIANA STATE PRISON
One Park Row
Michigan City, IN [46360]

Appellant-Petitioner ‘Pro Se’

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Questions for Review

- 1) Whether the Appellant-Petitioner was procedurally defaulted by his Appellate Counsel and through no fault of his own was deprived of his ability to exhaust any and all State remedies to the Highest State Court of Competent Jurisdiction.

Jurisdiction

Art. III Sec. II – *U.S. Constitution*;

“The Judicial Power shall extend to all cases, in law and equity arising under this constitution, the Laws of the United States, and Treaties made, or shall be made, under their authority.”

Amendment One (1), Bill of Right(s) (‘1791);

“.....the right of the people to petition the government for a redress of grievances.” *ft*

Amendment Fourteen (14) Sec. One (1), *U.S. Constitution* (‘1868);

“...No State shall deny to any person within it(s) jurisdiction the equal protection of the laws.” *ft*

Rule 10. Considerations Governing Review on Certiorari; *U.S. Supreme Court Rules*;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

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

Note: *Brown v. Brown*, 847 F.3d. 502 (‘2017) ;
16-1014 – 7th Cir. (February 01, 2017).

STATEMENT OF THE ISSUE

Whether the Petitioner was procedurally defaulted by his Direct Appeal Counsel (Marielena Duerring) and through no fault of his own was deprived of his ability to exhaust any and all State remedies (RE: A Motion to file a belated petition to transfer under Indiana Post-Conviction Rule 2 et seq. tendered October 25th, 2017) to the Highest State Court of Competent Jurisdiction.

STATEMENT OF THE GROUNDS

Introduction

COMES NOW, Petitioner in 'pro se' and does respectfully tender this Petition for Writ of Certiorari from the INDIANA SUPREME COURT. Petitioner tendered a Motion to file a belated petition to transfer to said Court on October 25th, 2017 and was denied relief unduly. Petitioner ("Wright") cites the following point(s) and authorities under Affirmation.

Petitioner "Wright" herein tenders this Petition for Writ of Certiorari out of necessity due to the Appellant – Petitioner's Counsel (Marielena Duerring) in Indiana State Cause No: 20A03-1004-CR-233. The Petitioner's failure to perfect this transfer was not due to the fault of the Petitioner. "Wright" has exhibited diligence in his attempts to perfect the transfer through attempts in pending post-conviction proceedings through appointed counsel under Indiana Post-Conviction Cause No. 20D03-1410-PC-40 (J. Michael Sauer – Indiana State Public Defender), however has been obstructed from raising the issue of transfer on post-conviction (i.e. collateral review) under Indiana Post-Conviction Rule 1 § 1(4)(c) re: amendment. Violation(s) under the 5th, 6th, and 14th amendments to the United States Constitution (RE: Confrontation, Effective Counsel and Equal Protection Clause(s)/Right(s)).

STATEMENT OF FACT

Petitioner Wright was convicted on a two (2) part information under I.C. § 35-42-4-3 et seq. re: "Offenses against persons". One as a Class 'A' felony and one (1) as a Class 'C' felony under Indiana Statute, previous to July 01, 2014. Petitioner was convicted on both counts and was sentenced to an Aggregate term of imprisonment of Thirty-five (35) years. Both sentences were to run concurrent. Date of Sentencing: March 25, 2010. Thirty-five (35) years - Count 1, Five (5) years Count 2.

Petitioner filed a Notice of Appeal re: the conviction on April 20 and 22, 2010 respectively. Appeal was docketed under Cause: 20A03-1004-CR-233. Counsel Appointed was;

Mari-elana Durring IN Bar # 19835-71
% 212 South Taylor Street
South Bend, IN 46601

During her appointment Counsel (named above) never consulted with Petitioner re: record accuracy or any other input. Date - Ap. Rule 32 A. Indiana

Petitioner's Appellate Brief was filed by Ms. Durring on the 16th of September, 2010, with the Indiana Court of Appeals. Appellate Brief was filed on the 20th of December, 2010 by Andrew R. Falk - IV Bar # 23869-49. Appeal was affirmed on the 28th of March, 2011. Issue(s) raised were:

(i) whether sufficient evidence supports his convictions; and

(ii) whether the trial court invaded the province of the jury and committed fundamental error in the giving of its instruction at reasonable doubt.

On the 28th of March, 2011, Marielena Durring communicated to Petitioner by letter informing him of the procedure for transfer and the denial of his appeal. (See) Attachment. Petitioner didn't receive the letter until many days subsequent to the date 03/28/2011. At the time, Petitioner was being held in the Elkhart County, Indiana Jail complex and was being restricted from any and all access to legal material. This was due to an internal management policy when one in custody

is represented by counsel. This was shown by Marielana Duerring's appearance in Appellate Cause 20A03-1004-CR-233. Petitioner sought remedy under Indiana post-conviction rule 2 (See) 2nd Attachment - Order Dated; November 22, 2017 - The subject of this certiorari. Petitioner now seeks relief herein.

ARGUMENT

Although Ms. Duerring - Petitioner's appellate counsel informed him of the outcome of his appeal, she failed to transfer his case to the Indiana Supreme Court as required to toll his time for habeas corpus review under AEDPA and The P.L.R.A. 28 USC § 2254 (re: 28 USC § 2244 and how the petition would be timely). Petitioner's argument in his Motion for belated petition to transfer was simply stated by one being forced to represent himself in 'pro se' and with no true standing as the court shows no partiality to one in 'pro se' appearance. (See) Evans v. State, 809 N.E. 2d 338, 344 (Ind. Ct. App. - 2004) "pro se litigants are held to the same standard as trained counsel and are required to follow procedural rules."

Ms. Durring's failure to withdraw as counsel during the appellate process procedurally defaulted the petitioner from exhausting his state remedy, as petitioner made the claim (as can be demonstrated by the multi-font print type herein due to restricted access of medium(s) and/or vehicle(s) to be able to make a proper presentment - the petitioner submits this under necessity) of his inability to understand the cumbersome complexities of the legal system in Indiana. (See) Ap. Rule 16(6) - Indiana Rules of Court. Ms. Durring's actions equated to her abandonment of the appeal and her actions were detrimental to the petitioner WRIGHT as to: exhaustion requirement under 28 USC § 2254.

(See) 'Brown', 847 F.3d 502 (2017)
Slip Op. pg 13/14 para. five (5) marked
dissent by 7th Cir. Judge C. Sykes.

Petitioner (an accused person) now incorporates previous argument made to the Indiana Superior Court for earnest consideration and in the spirit of judicial economy. (See) Statement of Supporting law herein.

STATEMENT OF SUPPORTING
LAW

An accused person (i.e. "Wright") requires the guiding hand of counsel at every step in proceeding against him. When denied this right even though he is may not be guilty, he will face the danger of either conviction or affirmation (i.e. procedural default in the "Appellant-Petitioner's" case), due to his inexperience and the inability to establish his innocence. Effective counsel will additionally preserve any/all issue(s) at every stage of both direct and collateral review. (See) Martinez v. Ryan No 10-1001 - Decision 03/20/2012 and Travis v. Thaler No. 11-10189 - Decision 05/28/2013 - United States Supreme Court.

(noting that inadequate assistance of counsel @ initial direct review may establish legitimate cause for relief i.e. failure to preserve remedial process. Id @ 566 U.S. — (2012) Syllabus: Martinez v. Ryan - Kennedy 1. delivering opinion 623 F.3d 731 pg 2 line 4-5 - Slip Opinion.

"Wright" sought help in 'pro se' by turning to prison law library advocate(s), who are usually self-taught with no formal training or experience. Cross v. Powers, 328 F. Supp. 899, 904 n.3 (West. Dist. Wisconsin, 1971) (noting the fact that 'jailhouse' lawyers may be unschooled and holding that this is no basis for prohibiting them from assisting other inmates.)

"Wright" sought prison law library advocate(s) as he had no other recourse, due to the standard practice of the Ind. Public Defender not willing to assist 'pro se' prisoner(s) when 'they' (i.e. Attorney(s)) feel the issues are not meritorious.

On occasion, the quality of service offered by jailhouse lawyer's is quite good. However, with such limited background, as one might expect, the service jailhouse lawyers provide is uneven at best and often outright deficient. Johnson v. Avery, 393 U.S. 483, 488; 89 S.Ct. 547, 21 L.Ed.2d 718 (1969) (jailhouse lawyers are "often too uninformed to provide adequate assistance" to inmates).

Hooks v. Wainwright, 536 F.Supp. 1330, 1348 (M.D. Florida 1982) dismissed, 716 F.2d 913 (11th Cir. 1983) and decision reversed on other grounds, 775 F.2d 1433 (11th Cir. 1985) ("Their legal reasoning [is] convoluted and even nonsensical.") "Wright" had to try and have prison law advocates perfect his transfer. The U.S. Supreme Court held in "Johnson" Id. @ 483 that absent the provision of an adequate substitute, inmates (at least those inmates who lack the skills to prepare papers on their own), the State may not unreasonably interfere with the services of jailhouse lawyers. However, the Court also stressed that the State reserves the power to regulate the manner in which jailhouse lawyers are permitted to ply their trade. States have done just that. Schenck v. Edwards, 921 F.Supp. 649 (E.D. Wash 1996), aff'd 133 F.3d 929 (9th Cir. 1998) (State has discretion in how to meet its affirmative obligation to provide access to the courts.) (See also; Thodden-X v. Cooke, 194 F.3d 1314 (6th Cir. 1999) (holding that the right to inmate legal assistance is —

derivative on the complainant's right to access to the courts).

"Wright" states and over herein that @ the time of the appeal he was represented by counsel (Ms. Durrine) and due to her "abandonment" of the cause which seems to be a per-
form of behavior for her or "standard
practice" (See) Shor v. State —
Cause 20805-1409-CR-438

and "Wright's" inaccessibility to any form of legal access in the Elkheart County Jail Complex. The transfer perfection timeline was defaulted as "Wright" was denied meaningful access and to consultation of legal advice, as it should be further stated, the right to a "counselor" is a right to assistance, not to representation. Bonoe v. Kindt, 868 F.2d 1442 (5th Cir. 1989).

"Wright" states and over that his inability to understand legal issues rendered his cause (The abandonment of Mr. Durrine) to become procedurally defaulted by failing to file the petition to transfer. This abandonment left the Appellant powerless to bring any of the issue(s) to the Indiana Supreme Court. This inaccessibility of said-
pg 14.

representation made "Wright" most vulnerable to restriction of access. (See) Adams v. James, 784 F.2d 1077 @ 1086 (11th Cir. 1986) (Clark J. concurring in part, dissenting in part). And the indeterminate lockdowns occurring periodically at the INDIANA STATE PRISON is in opposition to the Constitutional requirements that the law library remain accessible for substantial periods of time despite the inaccessibility of prisoner movement during a lockdown. A number of jail(s), institutional system(s) have implemented the guidance in the ruling in Bounds v. Smith, 430 U.S. 817 @ 828, 91 S.Ct. 1491, 52 L.Ed.2d 72 (1977) by arranging to provide inmates with the services of attorney's or paralegal(s) to assist inmates presenting their claims to the courts. It is obvious Indiana has chosen the less costly option of providing law libraries, (and with it deficient prison law advocates) and until the drumbeat of criticism with re: to 'Bounds' is dealt with properly by the Indiana General Assembly. The prose prisoner will continue to suffer lack of meaningful access due to not only the public

policy of lawmakers, but the Indiana Public Defender's Council due to lack of training and oversight. (See) Article Virginia Block - South Bend Tribune - December 15, 2016 titled;

" Public Defender System needs over-haul. "

The reason for this critique is an obvious one. Legal research is a complicated process even for attorneys. For any educated persons it is still more difficult, however most 'pro se' prisoners are not educated lay persons, much less lawyers. They are drawn largely from the ranks of the uneducated and the functionally illiterate. One government study over two (2) decades ago found that eighty-two (82) per cent of all prisoners had not completed high school and that fifty-five (55) per cent had not finished 1st grade. (See) Presidential Commission on Law Enforcement and Administration of Justice - Task Force Report; Corrections 2 (1967). (See) e.g., Raymond Y. Lin, Comment: "A prisoner's right to attorney assistance" 83 Columbia Law Review 1279 @ 1281 -

(1983) "figures demonstrate that there is a higher prevalence of illiterates in prison than in the general adult population", (Data "Additionally -

John Moslosky, "illiterate inmates and the right to meaningful access to the courts."

Volume 7 - Boston Univ. Pub. Int'l. Law Jour. pg 295 @ 302 (pub. 1998).

Conclusion

Petitioner "ALLEGIT" respectfully requests this Honorable Court to grant this request for certiorari and remand the proceedings (s) formerly docketed under 20403-1004-02-233 back to the Indiana Supreme Court, and allow petitioner the opportunity to exhaust his local remedy under Indiana law and as appropriate to allow petitioner further review under 28 USC § 2244 and 2254 respectively, and to grant any and all just and proper relief in these premises. This application is sworn as true and correct under 28 USC § 1746 (1) done under necessity.

for relief.
Date: 02/06/2018

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By: /s/By:

Station of Allegit