

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RONALD PHILIP FRANK, Petitioner

VS.

COMMONWEALTH OF PENNSYLVANIA, et al., Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

IS THE SUPREME COURT OF PENNSYLVANIA, AND THEREFORE THE COMMONWEALTH OF PENNSYLVANIA, VIOLATING PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE UNITED STATES CONSTITUTION BY REFUSING TO VACATE HIS MANDATORY MINIMUM SENTENCE THAT HAS BEEN HELD UNCONSTITUTIONAL AND ILLEGAL UNDER THIS COURT'S HOLDING IN ALLEYNE V. UNITED STATES AND MONTGOMERY V. LOUISIANA, WHICH HAS CREATED A CONFLICT BETWEEN THE STATE COURT AND THIS COURT THAT AFFECTS A CERTAIN CLASS OF INDIVIDUALS?

This instant petition is prepared on a typewriter, due to lack of access to computer.

LIST OF PARTIES

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:

Office of the District Attorney
Cumberland County Courthouse
1 Courthouse Square
Carlisle, PA 17013-3387

Office of the Prothonotary
Supreme Court of Pennsylvania
Middle District
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TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.	19

INDEX TO APPENDICES

APPENDIX A: Post-Conviction Court Order, Intent to Dismiss Petition, 8/19/16.
APPENDIX B: Post-Conviction Court Order Dismissing Petition, 9/12/16.
APPENDIX C: Post-Conviction Court 1925(a) Opinion, 11/30/16.
APPENDIX D: Superior Court Order affirming decision of Post-Conviction Court, 7/18/17.
APPENDIX E: Supreme Court Order denying Petition for Allowance of Appeal, 2/6/18.
APPENDIX F: Petitioner's Sentencing Order, Cumberland County, Pennsylvania, 8/3/10.
APPENDIX G: Supreme Court decision, <u>Commonwealth v. Wolfe</u> , 140 A.3d 651 (Pa., 2016).
APPENDIX H: Supreme Court decision, <u>Commonwealth v. Washington</u> , 142 A.3d 810 (Pa. 2016).

TABLE OF AUTHORITIES CITED

Alleyne v. United States, 133 S.Ct. 2152 (2013).	5
Baxstrom v. Herold, 383 U.S. 107 (1966).	16
Danforth v. Minnesota, 552 U.S. 264, 280-81 (2008)	12
Harper v. Virginia Dep't of Taxation, 113 S.Ct. 2510 (1993).	12
Mackey v. United States, 401 U.S. 667 (1971)	10
Montgomery v. Louisiana, 136 S.Ct. 718 (2016).	6
Police Dep't v. Mosley, 408 U.S. 92, 95 (1972)	16
Teague v. Lane, 489 U.S. 288 (1989).	6
United States v. U.S. Coin & Currency, 91 S.Ct. 1041 (1971).	11
Welch v. United States, 578 U.S. ____ (2016)	9
Yates v. Aiken, 108 S.Ct. 534 (1988)	11
Commonwealth v. Aponte, 855 A.2d 800 (2004).	9
Commonwealth v. Barnes, [J-84-2016].	17
Commonwealth v. Guzman, 121 A.3d 968 (2015).	8
Commonwealth v. Hopkins, 117 A.3d 247, 262 (2015).	8
Commonwealth v. Justin Secreti, 2016 Pa. Super. 28 (2016).	11
Commonwealth v. Lawrence, 99 A.3d 116, 112-25 (Pa. Super. 2014).	8
Commonwealth v. Leverette, 911 A.3d 998, 1001 (Pa. Super. 2006).	8
Commonwealth v. Peres, 121 A.3d 983 (2015)	8
Commonwealth v. Vasquez, 744 A.2d 1280, 1284 (Pa. 2000).	13
Commonwealth v. Washington, 142 A.3d 810 (Pa. 2016).	5
Commonwealth v. Wiley, 124 A.3d 735 (2015)	8
Commonwealth v. Wolfe, 140 A.3d 651 (Pa. 2016)	4
Fornwal v. Follmer, 616 A.2d 1040, 1042 (1992)	8
28 U.S.C. §1257(a)	1
28 U.S.C. §2254.	4
Fifth Amendment, United States Constitution.	1
Sixth Amendment, United States Constitution.	1
Eight Amendment, United States Constitution.	1
Fourteenth Amendment, United States Constitution	1
18 Pa.C.S. §3123(a)(7)	2
18 Pa.C.S. §9718	2
42 Pa.C.S.A. §9541 et seq.	4

Petitioner, Ronald Philip Frank, Pro Se, respectfully prays that a Writ of Certiorari issue to review the judgment below.

I. OPINIONS BELOW

The Opinion of the highest State Court – Supreme Court of Pennsylvania – to review the merits appears at APPENDIX E to the petition and is reported at Commonwealth v. Ronald Frank, 543 MAL 2017 (Pa. 2018).

The Opinion of the Superior Court of Pennsylvania appears at APPENDIX D to the petition and is reported at Commonwealth v. Ronald Frank, 1662 MDA 2016 (2017).

The Opinions of the Cumberland County Court of Common Pleas of Pennsylvania appears at APPENDIX C, B, & A, and is unpublished.

II. JURISDICTION

The judgment of the Supreme Court of Pennsylvania that denied Petition for Allowance of Appeal was entered on February 6, 2018. A copy of this decision appears at APPENDIX E.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(1) Fifth Amendment of the United States Constitution

"No person shall be held to answer for a capital offense. . .; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; . . ."

(2) Sixth Amendment of the United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the State. . . , . . . , 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."

(3) Eight Amendment of the United States Constitution

"Excessive bail shall not be required, nor excessive finds imposed, nor cruel and unusual punishment inflicted."

(4) Fourteenth Amendment of the United States Constitution

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States. . . . No State shall make or enforce any law which shall abridge the privileges of immunities of the 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."

(5) 18 Pa.C.S. §3123 - Involuntary Deviate Sexual Intercourse ("IDSI")

"(a) Offense defined. - A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (5) who suffers from a mental disability which renders him or her incapable of consent; or
- (6) (Deleted by amendment).
- (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(6) 18 Pa.C.S. §9718 - Sentences for Offenses against Infant Persons

(1) A person convicted of the following offenses when the victim is less than 16 years of age shall be sentenced to a mandatory term of imprisonment as follows: . . . 18 Pa.C.S. §3123 (relating to involuntary deviate sexual intercourse) - not less than ten years. . .

IV. STATEMENT OF THE CASE

Factual History: This case originated from the allegations that Maria Bucher made to Officer Tim Hutchinson, where she stated that Petitioner has sexually assaulted her son James Ainsworth. On March 12, 2008, Hutchinson interviewed Petitioner and informed him of the allegations. Petitioner denied such conduct and invoked his right to counsel. Thereafter, Petitioner retained Attorney Marlin L. Markley. On March 17, 2008, Markley sent notice to the West Shore Regional Police Department, informing them of his representation of Petitioner and that all contact is to be sought through counsel.

On April 23, 2008, the Cumberland County District Attorney's Chief Investigator, Lester Freehling, contacted Attorney Markley and requested an interview with

Petitioner. Attorney Markley invoked Petitioner's constitutional rights and denied the request. On June 11, 2009, Officer Jeffrey Franks initiated contact with Petitioner. During an interrogation at the West Shore Regional Police Department, Franks alleged to have obtained an incriminating confession from Petitioner. On July 1, 2009, Officers Franks, Karns and Morrow arrived at Petitioner's residence, took him into custody and charged him in this matter.

Petitioner was charged under two bills of information at CP-21-CR-0002091-2009 and CP-21-CR-0002094-2009, in the Court of Common Pleas, Cumberland County, Pennsylvania. Each of which contained identical violations of: 18 Pa.C.S. §3123(a)(7) Involuntary Deviate Sexual Intercourse ("IDSI"); §3122(1) Statutory Sexual Assault; §3126(a)(8) Indecent Assault less than Sixteen Years of Age; §6301(a)(1) Corruption of Minors; §5902(e) Patronizing Prostitutes; and §6318(a)(1) Unlawful Contact with a Minor. Petitioner was then represented by William T. Tully during trial.

Procedural History: Trial counsel filed an omnibus pretrial motion to suppress evidence on December 15, 2009 and February 16, 2010, which were denied on February 19, 2010. A non-jury trial was set for March 12, 2010, where Petitioner stipulated to the evidence upon trial counsel's advise. The trial court found Petitioner guilty on all charges. On August 10, 2010, the trial court sentenced Petitioner to a Mandatory Minimum Sentence of 10 to 20 years for the convictions of IDSI and an additional consecutive 5 to 10 years for the convictions of Unlawful Contact with a Minor in the second bill of information, for a total aggregate sentence of 15 to 30 years. All remaining convictions merged. Timely post-sentence motions were filed with the trial court and denied on August 17, 2010.

A timely appeal was taken to the Superior Court on September 2, 2010, at 1446 MDA 2010. On March 25, 2011 the Superior Court affirmed the judgment of sentence. No further relief was sought on direct appeal as trial counsel abandoned Petitioner.

A Pro Se Petition for Post-Conviction Collateral Relief ("PCRA") was filed on April 22, 2014, pursuant to 42 Pa.C.S.A. §9541 et seq., invoking the timeliness

exception of 42 Pa.C.S.A. §9545(b)(1)(i)-(iii). On April 28, 2014, the PCRA court appointed Michael Halkias as PCRA counsel, who filed a motion to withdraw and a 'no-merit' letter on September 26, 2014. On November 6, 2014, the PCRA court dismissed the PCRA but failed to inform Petitioner of such. A Pro Se Notice of Appeal was filed on November 16, 2014, but was not forwarded until February 20, 2015. A timely appeal was taken to the Superior Court at 246 MDA 2015. On February 3, 2016, the Superior Court affirmed the decision of the PCRA court. A timely Pro Se Petition for Allowance of Appeal was filed with the Supreme Court of Pennsylvania on February 22, 2016, at 346 MAL 2016. The Supreme Court denied allocatur on September 28, 2016.

During the time period the initial PCRA petition was before the Supreme Court, Petitioner filed his second PCRA petition on July 24, 2016 (docketed as August 12, 2016), pursuant to 42 Pa.C.S.A. §9545(b)(1)(ii)-(iii), within 60 days of the decision announced in Commonwealth v. Wolfe, 140 A.3d 651 (Pa. 2016), which invalidated the Mandatory Minimum Sentencing Statute of 18 Pa.C.S. §9718 that imposed the 10 year Mandatory Minimum Sentence upon convictions of 18 Pa.C.S. §3123(a)(7) - IDSI - for which Petitioner was convicted under. Petitioner also requested that the second PCRA petition be held in Stay and Abeyance Protection pending final adjudication of the initial PCRA petition due to Pennsylvania law that precludes the filing of a second PCRA petition while the first PCRA petition is still on review. The PCRA court dismissed the second PCRA petition on September 12, 2016. A timely Pro Se Notice of Appeal was filed with the Superior Court on October 2, 2016 at 1662 MDA 2016. The Superior Court affirmed the decision of the PCRA court on July 18, 2017. A timely Pro Se Petition for Allowance of Appeal was filed with the Supreme Court of Pennsylvania on August 9, 2017 at 543 MAL 2017. The Supreme Court denied allocatur on February 6, 2018.

Additionally, Petitioner filed a petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254 with the United States District Court of Pennsylvania on October 19, 2016 at 1:16-CV-02136, which was denied on March 24, 2017. A timely Pro Se Notice

of Appeal and Certificate of Appealability was filed with the United States Court of Appeals for the Third Circuit on May 7, 2017 at C.A. No. 17-1899, which was denied on June 28, 2017. A timely Pro Se Petition for Rehearing was filed on July 7, 2017 and denied on July 25, 2017. A timely Pro Se Petition for a Writ of Certiorari was sought with this Court and subsequently denied.

The matter before this Court is strictly the second PCRA proceeding that challenged Petitioner's Mandatory Minimum Sentence that has been found unconstitutional by the Supreme Court of Pennsylvania.

V. REASONS FOR GRANTING THE PETITION

A. THE SUPREME COURT OF PENNSYLVANIA HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, AND IN DOING SO, HAS ADDITIONALLY DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The Pennsylvania Supreme Court invalidates the Mandatory Minimum Sentencing provision of 18 Pa.C.S. §9718 on June 20, 2016, when it announced their decision in Commonwealth v. Wolfe, 140 A.3d 651 (Pa. 2016) (APPENDIX G). The Court held that Section 9718 is unconstitutional under the 6th Amendment of the United States Constitution and pursuant to this Court's decision in Alleyne v. United States, ____ U.S. ____, 133 S.Ct. 2152 (2013). This decision to invalidate the Mandatory Minimum Sentencing provision of Section 9718 established a new constitutional rule of law as it substantially affected the length of sentence that Petitioner and similarly situated individuals received for convictions of IDSI, Section 3123(a)(7). Since Section 9718 was found to be unconstitutional from its inception, any sentence resulting therefrom was illegal and therefore requiring the State Court to resentence Petitioner the standard range of Pennsylvania Sentencing Guidelines. In this case, Petitioner would have received an overall reduction of sentence of 4 to 6 years on the minimum side and 8 to 12 years on the maximum side, had the State Court properly resentedenced Petitioner under the decision announced in Wolfe.

Subsequently to the Pennsylvania Supreme Court decision in Wolfe, on July 16, 2016, the same Court announced their ill-fated decision in Commonwealth v. Washington,

142 A.3d 810 (Pa. 2016) (APPENDIX H) which held that Wolfe would not be applied to cases on Collateral review. The Washington panel cited this Court's decision in Teague v. Lane, 489 U.S. 288 (1989) when it erroneously determined Alleyne style cases do not apply to cases on Collateral review. The Washington panel incorrectly applied this Court's framework announced in Teague and further held that the invalidation of the Mandatory Minimum Sentencing provision of Section 9718 did not announce a new substantive rule that decriminalized conduct or prohibited punishment against a class of persons.

Like the Mandatory Minimum Sentencing issue in Montgomery v. Louisiana, 136 S.Ct. 718 (2016) before this Court that dealt with the invalidation of Mandatory Minimum Sentences for juvenile offenders and whether it applied on Collateral review under Teague, here, the invalidation of Section 9718's Mandatory Minimum Sentencing provision has the same exact affect on the legality of sentence and has created a new substantive rule of constitutional law which controlled the outcome of the case.

In effect, Pennsylvania has refused to give retroactive affect on Collateral review of the decision announced in Wolfe that invalidated a Mandatory Minimum Sentencing provision, which is in direct violation of this Court's holding in Teague, Montgomery and the United States Constitution. Petitioner and similarly situated individuals are imprisoned under an illegal sentence which, under law, must be corrected on Collateral review. This is the same issue that was before this Court with the "juvenile lifers", only now, a different class if individuals - those convicted under Section 9718 - are being denied the same relief that is owed to them under law.

The Pennsylvania Supreme Court's decision in Commonwealth v. Washington, 142 A.3d 810 (Pa. 2016) is erroneous and violates Petitioner's due process and equal protection of law rights. The Wolfe panel announced a new constitutional rule of law that must be corrected on Collateral review.

The issue now before this Court has been presented to the Pennsylvania Appellate

Courts in a pure federal rule of law violation but the Courts have refused to act and correct their misapplications of law. Additionally, the Superior and Supreme Courts of Pennsylvania have been in conflict with each other in whether the invalidation of Pennsylvania's unconstitutional Mandatory Minimum Sentencing provisions should have retroactive effect on collateral review. The failure of the Pennsylvania Supreme Court to apply this Court's holdings has resulted in a wide spread violation of Petitioner's constitutional rights, and the same rights of those who are similarlily situated.

ARGUMENT AMPLIFYING REASONS FOR WRIT

B. IS THE SUPREME COURT OF PENNSYLVANIA, AND THEREFORE THE COMMONWEALTH OF PENNSYLVANIA, VIOLATING PETITIONER'S DUE PROCESS AND EQUAL PROTECTION RIGHTS UNDER THE UNITED STATES CONSTITUTION BY REFUSING TO VACATE HIS MANDATORY MINIMUM SENTENCE THAT HAS BEEN HELD UNCONSTITUTIONAL AND ILLEGAL UNDER THIS COURT'S HOLDING IN ALLEYNE V. UNITED STATES AND MONTGOMERY V. LOUISIANA, WHICH HAS CREATED A CONFLICT BETWEEN THE STATE COURT AND THIS COURT THAT AFFECTS A CERTAIN CLASS OF INDIVIDUALS?

On August 10, 2010, Petitioner was sentenced to a Mandatory Minimum Sentence of 10 to 20 years for the convictions of IDSI - 18 Pa.C.S. §3123(a)(7). (APPENDIX F). The Mandatory Minimum Sentence of 10 to 20 years was imposed pursuant to 18 Pa.C.S. §9718, as the victims were less than 16 years of age when the crimes occurred.

On June 20, 2016, the Pennsylvania Supreme Court in Commonwealth v. Wolfe, 140 A.3d 651 (Pa. 2016) held that the 10 year Mandatory Minimum Sentence provision for convictions of IDSI is unconstitutional pursuant to the 6th Amendment of the United States Constitution and the decision of this Court in Alleyne v. United States, 133 S.Ct. 2152 (2013) and that Section 9718 is irremediably unconstitutional on its face, non-severable and void.

After Petitioner's conviction and sentencing, this Court issued the decision in Alleyne, whereby, overruling its own prior precedent and established a new Constitutional rule of law, grounded on the 6th Amendment. See Alleyne, 133 S.Ct. 2162-63. Alleyne held that any fact by law, increases the penalty for a crime must be treated as an element of the offense, submitted to the jury rather than a judge,

and found beyond a reasonable doubt. This Court also explained that the requirement to treat factors triggering at-law Mandatory Minimum Sentencing Enhancements as offense elements "enables the defendant to predict the legally applicable penalty from the face of the indictment. Id. 133 S.Ct. at 2161."

The effect of Alleyne's new rules was to invalidate a range of Pennsylvania Sentencing Statutes predicting the infliction of Mandatory Minimum penalties upon non-elemental facts and requiring such facts to be determined by a preponderance of the evidence at sentencing. See e.g. Commonwealth v. Hopkins, 117 A.3d 247, 262 (2015).

Section 9718 of the Sentencing Code required a Mandatory Minimum Sentence of 10 years for the conviction of IDSI, prior to the decision announced in Wolfe. The Wolfe panel held that under Section 3123(a)(7), the Statute's proclamation that the age of the victim factor is not an element is anomalous, since the victim's age, is in fact, encompassed with IDSI style offenses and 3123(a)(7). Wolfe appealed the IDSI sentence of 10 to 20 years, where the majority of the Court had previously determined that violations of Alleyne's commands implicates sentence legality. See Commonwealth v. Lawrence, 99 A.3d 116, 122-25 (Pa. Super. 2014).

In more than 30 separate cases, the Pennsylvania Supreme Court affirmed numerous decisions of the intermediate state courts, holding that sentencing statutes patterned in the same manner as Section 9718 are non-severable and void. See Commonwealth v. Wiley, 124 A.3d 735 (2015); Commonwealth v. Peres, 121 A.3d 983 (2015); Commonwealth v. Guzman, 121 A.3d 968 (2015).

There can be no Mandatory Minimum Sentencing imposition without statutory authorization. See Commonwealth v. Leverette, 911 A.2d 998, 1001 (Pa. Super. 2006) (If no statutory authorization exists for a particular sentence, that sentence is illegal and subject to correction). If a statute is found unconstitutional for any purpose, its unconstitutionality dates from the time of its enactment and not merely from the date of the decision holding it so. See Fornwall v. Follmer, 616 A.2d 1040 (1992).

The Wolfe panel further held that it is sufficient to observe that the Court has previously found that an asserted Apprendi-line violation implicated the legality of sentence. See Commonwealth v. Aponte, 855 A.2d 800, 802-03, n.1 (2004). Wolfe clearly created a new constitutional rule of law as it invalidated the Mandatory Minimum Sentencing Section of 9718, which imposed the 10 year Mandatory Minimum Sentence upon Petitioner.

Subsequently to the Pennsylvania Supreme Court's decision in Wolfe, the Court's panel in Commonwealth v. Washington, 142 A.3d 810 (Pa. 2016) refused to apply the correct retroactivity standards and failed to apply Alleyne-style violations to cases on collateral review.

In Washington the Pennsylvania Supreme Court relied on Teague v. Lane, 489 U.S. 288 (1989), when it determined Alleyne did not apply to cases on Collateral review. The Court noted that the Teague framework held that cases could only apply retroactively where such cases established a new substantive rule that decriminalized conduct or prohibited punishment against a class of persons or where such cases constituted a "watershed rule of criminal procedure," but failed to correctly apply the newly expanded retroactivity standard announced by this Court in Montgomery v. Louisiana, 135 S.Ct. 718 (2016).

The Teague framework creates a balancing between first, the need for finality in criminal cases, and second, the countervailing imperative to ensure that criminal punishment is imposed only when authorized by law. The Teague balance does not depend on whether the underlying Constitutional guarantee is characterized as procedural or a substantive function; that is, whether it alters only the procedures used to obtain the conviction, or alters instead the range of conduct or class of persons that the law punishes. See Welch v. United States, 578 U.S. ____ (2016).

It is profoundly clear the Constitution deprives the Government of the power to impose the challenged punishment (Mandatory Minimum), which represents the clearest instance of Substantive Rules for which retroactive application is appropriate and

and mandatory. See Mackey v. United States, 401 U.S. 667 (1971).

A decision that strikes down a Procedural Statute; for example, a Statute regulating the types of evidence that can be presented at trial, would itself be a Procedural decision. It would only affect the manner of determining the defendant's culpability, not the conduct of persons to be punished. A decision of this kind would have no retroactive effect under Teague unless it could be considered a watershed Procedural Rule. However, Wolfe struck down a criminal Sentencing Statute that prescribed a Mandatory period of punishment upon a class of persons, for a certain class of crime (IDSI). Thereby, altering the range of conduct or the class of persons that the law punishes. It follows that Wolfe announced a Substantive Rule that has retroactive effect in cases on direct appeal, as well as on Collateral review that challenge illegally imposed sentence.

It is clear by the language in Montgomery that Wolfe announced a new Substantive Constitutional Rule reviewable on Collateral review as Wolfe eliminated the state's power to impose a given punishment upon sentencing; that being Section 9718. Section 9718 did not "enhance the accuracy of a conviction or sentence" by determining the defendant's culpability; 9718 imposed a certain kind of criminal punishment for a certain primary conduct and most certainly, "a certain category of punishment for a class of defendant's because of their status or offense."

The Pennsylvania Supreme Court erroneously interpreted Wolfe as to merely impose a "new Procedural Rule". The invalidation of a Mandatory Minimum Sentencing Statute is not a Procedural Rule, it is a Substantive Rule that entirely affected the length of sentence imposed upon a defendant, and therefore the outcome of the sentencing proceeding.

Imposing two different sentences upon two separate defendant's for identical convictions of IDSI would create two separate classes of citizens which violates Due Process and Equal Protection of the law - where one was convicted prior to the decision in Wolfe and one convicted after.

In Commonwealth v. Justin Secreti, 2016 Pa. Super. 28 (2016), the Court held that this Court's decision in Montgomery made Miller v. Alabama retroactive for the purposes of reviewing illegal sentences where a juvenile has been subjected to a Mandatory Life Sentence. The premise of Montgomery is identical to Wolfe as both cases dealt with the implications of a unconstitutional Sentencing Statutes that imposed Mandatory Minimum Sentences for certain offenses by certain groups of offenders. Though Miller dealt with juveniles, the principles and applications of the law are identical to Wolfe, and the numerous Mandatory Minimum Sentencing Statutes that have been invalidated since Alleyne was announced in Pennsylvania. If Miller applies retroactively for juveniles, then most certainly Wolfe applies retroactively on Collateral review as well. They are one in the same, just a different class of offenders who were originally sentenced to Mandatory Minimum Sentences that were later found unconstitutional. To give retroactive affect of Miller to juveniles and fail to give retroactive affect of Wolfe to offenders convicted of IDSI - under the same exact circumstances - violates Due Process and Equal Protection rights of the United States Constitution. Both of the Sentencing Statutes that imposed the Mandatory Minimum Sentences upon juveniles convicted of 1st Degree Murder, and defendants convicted of IDSI, were invalidated for the same exact reason; they both violated the 6th Amendment of the United States Constitution.

Writing for the Court in United States v. U.S. Coin & Currency, 91 S.Ct. 1041 (1971), Justice Harlan made the following point when he declared that "[N]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment."

Under the Supremacy Clause of the Constitution, state collateral review courts have no greater power than federal courts to mandate that a prisoner continue to suffer punishment barred by the Constitution. If a state collateral proceeding is open to a claim controlled by Federal Law, the state court "has a duty to grant the relief that Federal Law requires." Yates v. Aiken, 108 S.Ct. 534 (1988). Where state

collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, states cannot refuse to give retroactive effect to a Substantive Constitutional right that determines the outcome of that proceeding.

Retroactivity suggests that when a court declares a new constitutional rule of criminal procedure is non-retroactive, the court is implying that the right at issue was not in existence prior to the date the rule was announced. But that is incorrect. The source of a new rule is the Constitution itself, not any judicial power to create new rules of law. State law may provide relief beyond the demands of Federal Due Process, but under no circumstances may it confine petitioners to a lesser remedy. See Harper v. Virginia Dept. of Taxation, 113 S.Ct. 2510 (1993).

The retroactivity analysis under Teague is not dispositive to the case at hand, in that, there is also a state-based remedy to correct Petitioner's illegal sentence that does not require a finding of retroactivity under Teague. The rule of non-retroactivity was fashioned to achieve goals of federal habeas corpus while minimizing federal intrusion into state criminal proceedings. It was intended to limit the authority of federal courts to over-turn state convictions, not to limit a state's authority to grant relief for violations of new rules of Constitutional law when reviewing it's own conclusions. See Danforth v. Minnesota, 552 U.S. 264, 280-81 (2008). Thus, Teague dictates whether a decision must be applied retroactively as a Federal Constitutional manner. It does not purport to be that last word on whether other remedies exist under Pennsylvania law for the correction of illegal sentences. As Danforth suggests, when Teague does not demand retroactive application of new Constitutional Rules, Pennsylvania is still free to provide a remedy above and beyond what is provided by Federal Constitutional Jurisprudence.

A Pennsylvania Court's authority to grant relief on Collateral review is dictated by the Post-Conviction Collateral Relief Act ("PCRA"). See 42 Pa.C.S.A. §9542 ("The action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose

that exist when this subchapter takes effect. . .") Moreover, the PCRA statute expressly states that it "provides for an action by which persons convicted of crimes they did not commit and persons serving illegal sentences may obtain collateral relief"). The Pennsylvania Supreme Court also stated "trial courts never relinquish their jurisdiction to correct an illegal sentence." See e.g. Commonwealth v. Vasquez, 744 A.2d 1280, 1284 (Pa. 2000).

There is no doubt that Section 9718 was unconstitutional when it was applied to Petitioner as it was unconstitutional from its inception, not merely from the date the Court in Wolfe declared it so. Alleyne did not serve to amend the United States Constitution. Alleyne recognized what had already been previously unrecognized, or which has been previously overlooked or misapprehended: that the 6th Amendment provides a defendant with the right to have any facts that increase the Mandatory Minimum Sentence to which he or she is exposed be determined by a jury beyond a reasonable doubt. Thus, Section 9718, through its proof at sentencing provision, routinely caused Pennsylvania Courts to violate a defendant's 6th Amendment rights until its unconstitutionality was finally recognized. More so, a court lacks the power to exact a penalty that has not been authorized by any valid criminal statute.

Nevertheless, whether illegal when issued, or rendered illegal as a result of intervening authorities, it is undisputed Petitioner is currently serving an illegal sentence. Pennsylvania law supports the proposition that illegal sentences must be corrected by Pennsylvania Courts, and the PCRA Statute expressly states that it exists to provide a remedy for illegal sentence which negates any other form of relief.

While challenges to the legality of a defendant's sentence can not be waived, they ordinarily must be raised within a timely PCRA. This is because the PCRA statute is intended as the sole means of collaterally challenging a sentence. Illegal sentencing claims pertaining to a sentence that exceeds the lawful maximum are cognizable under the PCRA. See 42 Pa.C.S.A. §9543(a)(2)(vii).

All PCRA petitions, including second or subsequent petitions, must be filed

within one year of the judgment becomes final, unless the petition alleges; and the petitioner proves, an exception to the one year time period. See 42 Pa.C.S.A. §9545

(b)(1). An exception applies when the petitioner alleges and proves one of the following:

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

(ii) the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence; or

(iii) the right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided for in this section and has been held by that Court to apply retroactively. 42 Pa.C.S.A. §9545(b)(1)(i)-(iii).

Any PCRA petition invoking an exception must be filed within 60 days of the date the claim could have been presented. 42 Pa.C.S.A. §9545(b)(2).

Here, Petitioner invoked exceptions §9545(b)(1)(ii) and (b)(iii) when he filed his second PCRA petition on July 24, 2016, within 60 days from the date the Pennsylvania Supreme Court announced Wolfe on June 20, 2016, as the claim of his newly discovered illegal sentence was previously unknown to him and could not have been ascertained until June 20, 2016; and that the right announced therein was recognized to apply retroactively after the time period provided for.

Though Pennsylvania Supreme Court panel in Washington determined Wolfe doesn't apply retroactively - an erroneous determination in itself under Teague and Montgomery - there is still an exception for timely filing under Section 9545(b)(1)(ii) as the illegal sentence was unknown prior to Wolfe, thereby making Petitioner's second PCRA petition timely filed as he plead and proved the applicability to the exception under the plain language of the timeliness provision. This exception negates any need for "retroactivity" in order to obtain relief. It is not up to the state courts to determine what "class" of claims is available for relief. The PCRA Statute is only meant to be read plainly and interpreted as such. Meaning, "any claim" that was

previously unknown can obtain relief. If the PCRA timeliness exception Statute was meant to preclude a newly found claim of an illegal sentence, the Statute would have reflected such, which it does not. Placing limitations on a Statute's plain language that does not exist within its intent and sole purpose, is a overreach of the Court's authority as it is not permitted to rewrite Statutes and law that is plainly written. It is one thing to interpret a Statute's plain language when it is ambiguous, but to flex the Court's power to limit the Statute's intent and purpose, is a clear abuse of discretion.

The following factors - as presented and plead in Petitioner's second PCRA petition - established he was entitled to Post-Conviction Collateral Relief due to the current illegal sentence he is imprisoned under: (1) Petitioner was sentenced to a Mandatory Minimum Sentence of 10 to 20 years for the convictions of IDSI, under Section 9718; (2) Wolfe held that Section 9718, which imposed the Mandatory Minimum Sentence is unconstitutional and invalidated, making his sentence illegal, and (3) Petitioner filed a timely second PCRA petition within 60 days of the Wolfe decision with the PCRA court who had full jurisdiction and authority to vacate Petitioner's illegal sentence, after which a statutorily corrected sentence would be implemented. Both the PCRA courts and the PCRA appellate courts failed to do so which violated Petitioner's right to Due Process and Equal Protection of the law, as well as constituting Cruel and Unusual Punishment.

Petitioner has followed all of the available avenues to correct his illegal sentence in the manner prescribed by Pennsylvania law. The Statutory provision of 42 Pa.C.S.A. §9545(b)(1)(i)-(iii) and (b)(2) is clear in its purpose and so was the intent of Pennsylvania's General Assembly when it was enacted.

To create two separate classes of individuals, who commit the same crimes of IDSI, but apply two vastly different sentences - one a Mandatory Minimum, and one not, depending on their conviction dates relevant to the decision announced in Wolfe creates two different kinds of punishments for the same offense. This directly violates

the United States Constitution.

The 14th Amendment guarantees that the Government (and State) must treat a person or class or persons the same as it treats other persons or classes in like circumstances. In today's constitutional jurisprudence, Equal Protection means that legislation that discriminates must have a rational basis for doing so. And if the legislation affects a fundamental right (such as Due Process, Legal Sentencing, free from Cruel and Unusual Punishment, etc.) involves a suspect classification (such as individuals convicted of IDSI), it is unconstitutional unless it can withstand strict scrutiny. See Baxstrom v. Herold, 383 U.S. 107 (1966). "As in all Equal Protection cases. . .the crucial question is whether there is an appropriate governmental interest. . .suitably furthered by the differential treatment." See Police Dep't v. Mosley, 408 U.S. 92, 95 (1972). Equal Protection principles are exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied to the procedural enforcement of laws but also to the substantive content of their provisions. In other words, the equal protection of the law is invariably treated as a substantive constitutional principle which demands that laws will only be legitimate if they can be described as just and equal.

Here, there is no rational basis to discriminate against petitioners who challenge their newly discovered illegal sentence during or on post-conviction review, especially when it is their first and only opportunity to present such a claim. Placing a mere procedural bar - where the claim can only be presented in direct appeal proceedings - above the need to correct an unconstitutional illegal sentence that has been invalidated does not serve or further any Governmental interest, unless that is to say, the Government interest is to deny petitioner's their constitutional rights and imprison them illegally. The only appropriate interest of a Government is, and should be concerned with, is to make sure an individual's sentence is constitutional, legal by Statute, just and equal, and free from cruel and unusual punishment. To create two separate classes of individuals convicted of IDSI who have

been sentenced to Mandatory Minimum Sentences based upon a mere procedural appealability avenue, i.e., Direct Appeal versus Post-Conviction Collateral Relief, does not further any sense of justice and fairness.

If a Mandatory Minimum Sentencing Statute is found to be unconstitutional after an individual is sentenced, the Equal Protection principles and guarantees require equal treatment, which is the automatic vacating of said illegal sentence as there is no Statutory authorization to further impose the illegal sentence.

It comports then that if a challenge to the legality of a sentence can not be waived, and a reviewing court has inherent authority and jurisdiction to correct it, then the court must do so. The Mandatory Minimum Sentencing provision of Section 9718 has been rendered unconstitutional on its face by Wolfe, as if it never existed to begin with. An unconstitutional Statute is no longer a law, has no existence, is a nullity, and has no force or effect as it is inoperative.

In Commonwealth v. Barnes, [J-84-2016], decided December 28, 2017, the Pennsylvania Supreme Court held that an appellant will not be barred from challenging his illegal Mandatory Minimum Sentence claim even if he or she failed to preserve it before the Trial Court or the Superior Court on direct appeal. This exception directly contradicts the preservation issue that would normally preclude review and relief of such claim where it wasn't presented for review where required under the law.

The Barnes opinion furthers the unjust, unequal and unfair treatment of other similarly situated individuals who are imprisoned under an illegal Mandatory Minimum Sentence. There has to be a balancing of interest and values in correcting illegal sentences, no matter when they occur as the individual being imprisoned under a sentence that lacks any Statutory authorization to remain imposed. To allow a petitioner the benefit of Alleyne/Wolfe when he or she did not even present or preserve the claim to the Trial Court or Superior Court on direct appeal, but in the same breathe deny a petitioner the same benefit who did in fact present and preserve it

in a timely PCRA petition, is not a decision balanced in the interest of fairness and justice. How can one petitioner who fails to follow the procedural preservation requirement and get relief - whether sua sponte or not - but then deny the same relief to another petitioner who follows it? This is clear and concise violation of Due Process and Equal Protection of the Law under the United States Constitution.

In Pennsylvania, the procedural preservation claim requirements on direct appeal were not intended to address this sort of sentencing issue when a Mandatory Minimum Sentencing provision has been held unconstitutional at a later date after an individual has been sentenced. This complication of "retroactivity" of Wolfe is just that, an unnecessary complication that has created a separate class of individuals who are being denied their constitutional rights when they shouldn't be. An illegal sentence is an illegal sentence no matter when it's held so, can not be waived, and must be corrected with the Court that implemented the sentence to begin with, by filing a PCRA petition within the time permitted. This is what occurred in this matter now before this Court.

The more convoluted exceptions that are created by Pennsylvania Courts for individuals challenging their illegal sentence on direct appeal, and failing to do so for individuals on Post-Conviction Collateral review, has merely complicated an issue that should have no complication and ambiguity at all. An illegal sentence should always be corrected, no matter the class of petitioners, and no matter the form in which they seek correction of said illegal sentence. To do otherwise - as here in Pennsylvania - violates the Due Process and Equal Protection Clauses of the United States Constitution.

Once an individual is sentenced, there is finality in that sentence until it is held illegal and/or unconstitutional. If finality and retroactive concerns are not an issue for individuals who challenge their illegal sentence on direct appeal, then most certainly it shouldn't be an issue if an individual challenges the same sentence on Post-Conviction Collateral review if that is his or her first and only

opportunity to do so.

To further the conundrum the Pennsylvania Supreme Court created in Washington, an individual can file a PCRA petition to restore his "waived" direct appeal rights nunc pro tunc and then challenge his illegal sentence. To allow those type of individuals the use of the PCRA as a means to eventually challenge an illegal sentence nunc pro tunc on "direct appeal", and then deny other individuals the same review of their illegal sentence on PCRA review - where it is a cognizable claim for relief - is unfair and creates to classes of individuals, violating Due Process and Equal Two Protection principle. In both instances the PCRA is the avenue by which the illegal sentence is being challenged, and therefore, both types of individuals should receive the same relief in the form of vacating their unconstitutional sentence.

It is paramount this Court exercise its inherent authority to apply the law embodied in the United States Constitution and ensure the State of Pennsylvania is not violating the constitutional rights of an entire class of individuals who are now being imprisoned under an illegal and unconstitutional sentence. The Pennsylvania Supreme Court invalidated the Mandatory Minimum Sentencing Statute of Section 9718 that imposed the 10 to 20 year sentence against Petitioner for his conviction of IDSI, creating a Substantive Rule of law that must be applied retroactively on Post-Conviction Collateral review. Section 9718 enforced a penalty that has been barred by the Constitution, resulting in a conviction and sentence that is unlawful. The Pennsylvania Supreme Court's application and understanding of this Court's holdings in Teague and Montgomery has been misapplied and misunderstood when they announced their decision in Washington and refused to apply the relief announced in Wolfe to those who were sentenced under Section 9718 prior to Wolfe.

VI. CONCLUSION

WHEREFORE, it is presented that Pennsylvania has decided an important question of Federal law that should be settled by this Court, as well as decided an important Federal question in a way that conflicts with relevant decision of this Court. It

is incumbent that this Honorable Court settle this Mandatory Minimum Sentence issue that affects Petitioner and thousands of similarly situated individuals.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Date

4/15/18

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