

IN THE UNITED STATES SUPREME COURT

WASHINGTON, D.C.

Charles E. Smith: Propria Persona

vs.

Commonwealth of Pennsylvania

Dauphin County Prosecutor: 5603-CR-2016

Pa. Superior Court: 26-MDM-2017

Pa. Supreme Court: 503-MAL-2017

Docket No. _____

Petition for Certiorari

I, Charles E. Smith hereby moves before this Honorable Supreme Court under Title 28 U.S.C.A. section 2101 and U.S. Supreme Court Rule 13 asking for Certification and for this Honorable Court to hear the Final Order of the Pennsylvania Supreme Court at Docket 503-MAL-2017 that requested allocatur and was denied on february 26, 2018. This request for Allowance of Appeal was from the Pennsylvania Superior Court at 26-MDM-2017 that denied Habeas Corpus Relief from the final Interlocutory Order on February 6, 2017 by the Honorable Richard Lewis of the Duaphin County Common Pleas Court that denied Habeas Corpus relief at 5603-CR-2016.

This request for certiorari is needed to prohibit repetition and evade review as the matters are of the utmost importance as their have been many 14th Amendment Due Process Violations.

Wherefore I pray this request be granted.

Date: May 9, 2018

C.C.: File

Respectfully Submitted,

Charles E. Smith 68421

Charles E. Smith #68421

Dauphin County Jail

501 Mall Road

Harrisburg, Pa. 17111

Statement of Questions Involved

1. Was Petitioners Due Process Violated under Court Rule 544 when the Prosecution petitioned the President Judge to assign himself as the Alternate Issuing Authority under Court Rule 132?
suggested answer is yes
2. Were the Charges withdrawn or dismissed, and did the Prosecution receive permission to re-file from the Original Issuing Authority who allowed the withdrawal or granted the dismissal before moving for an Alternate Issuing Authority under Court Rule 132?
suggested answer is no
3. Was this Due Process Violation raised in the Lower Court and subsequent Appellate Courts?
suggested answer is yes
4. Was Petitioners Due Process Violated and did the State commit Prosecutorial Misconduct when they appeared at the Preliminary Hearing with a Blank Criminal Complaint with nothing but Petitioners name and Police Agencies information on it, no charges and no Acts associated with the accused?
suggested answer is yes
5. Did the President Judge err and commit Judicial Misconduct when he not only assigned himself

as an Alternate Issuing Authority, but did not dismiss the Complaint for Violating Due Process under Court Rule 504 which states: That the failure to state the act associated with the accused is insufficient and that a mere citation to the Statute allegedly violated, violates Due Process? Suggested answer is yes

6. Was this Due Process violation raised in the Lower Court and subsequent Appellate Courts?
Suggested answer is yes

7. Was Petitioner's Due Process violated under Article I section 8 ~~and~~ of the Pa. Constitution and the 4th Amendment of the U.S. Constitution when the Prosecution appeared at the Preliminary Hearing with a Blank Affidavit of Probable Cause to Arrest and no signature or seal from a Magistrate, Court Clerk, Judge or any other Neutral Detached Judicial Official?
Suggested answer is yes

8. Was Judicial Conduct committed when the Judge told the Prosecution to go get another Warrant and did not dismiss?
Suggested answer is yes

9. Was this issue raised in the Lower Court and subsequent Appellate Courts?
Suggested answer is yes

10. Was Petitioners Due Process under Article I sec. 9 of the Pa. Constitution and the 6th Amendment of the U.S. Constitution as well as Court Rules 542 and 545 violated when the Judge refused to allow Petitioner to call his witness and allow the hearing to be continued until the witness was present, stating: He will determine whether my witness will testify?
suggested answer is yes
11. Was this issue raised in the Lower Court and the subsequent Appellate Courts?
suggested answer is yes
12. Should the Appellate Courts have granted Petitioner Habeas Corpus due to these aforementioned 14th Amendment Due Process violations?
suggested answer is yes
13. Was Due Process violated when the President Judge not only conducted the Preliminary Hearing but also bounded it over for Court to himself as Trial Judge?
suggested answer is yes.
14. Did the Pennsylvania Superior Court err when it did not grant Habeas Corpus when it held Petitioner responsible for not following the requisite language

of P.R.A.P. 702, when it is the Government's Duty to make sure Appellate Rule 702 is followed
Suggested answer is yes

15. Does the Interest of L.J. 79 A.3d 1073, 1084-1089 require the Lower Courts to render an opinion for their ruling so that Petitioners and the Appellate Courts know the basis for the ruling?
Suggested answer is yes?

16. Did the President Judge render an opinion?
Suggested answer is no?

17. Did the Court rule in Williams v. Dr. Alladin 782 A.2d 1090, Com. v. Bell 762 A.2d 776 and Allah v. Seuerling that Pro Se Motions are held to less stringent standards than those Drafted by seasoned Lawyers?
Suggested answer is yes

18. Did the Court further rule in Williams v. Dr. Alladin 782 A.2d 1090 that when the elements to a cause of action are adequately set forth, a Pro Se complaint will not be dismissed because it is not artfully drafted?
Suggested answer is yes

19. Were these issues raised to the Pennsylvania Supreme Court on Allocatur at 503-MAL-2017?
Suggested answer is yes

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Citations in Support

1. Allah v. Severling 229 F.3d 220
2. Buchanon v. Verbonitz 581 A.2d 172
3. Commonwealth v. Bell 762 A.2d 776
4. Commonwealth Ex Rel Fitzpatrick v. Mirarchi 392 A.2d 1346
5. Commonwealth v. Flowers 399 A.2d 1188
6. Commonwealth v. Herstine 369 A.2d 362
7. Commonwealth v. Smith 140-MM-2016
8. Commonwealth v. Smith 187-MM-2016
9. Commonwealth v. Stossel 17 A.3d 1287
10. Commonwealth v. Thomas 419 A.2d 1344
11. Interest of L.J. 79 A.3d 1073, 1084-89
12. Paylor v. Claudy 366 Pa. 287; 77 A.2d 350
13. Petillo v. New Jersey 93 S.Ct 1393
14. Rosario v. Dept. of Corrections 920 A.2d 831
15. State v. Bobo 222 NJ Super 30
16. State v. Lakomy 126 NJ Super 430, 437
17. State v. Macon 57 NJ 325
18. State v. Ross 189 NJ Super
19. State v. Ruotolo 52 NJ 511
20. U.S. v. Crawford 124 S.Ct 1354
21. U.S. v. Di Rey 68 S.Ct 222
22. U.S. v. Erickson 127 S.Ct 2197
23. U.S. v. Feldman 103 S.Ct 1303
24. U.S. v. Giordenello 78 S.Ct 1245
25. U.S. v. Johnson 68 S.Ct 367, 369
26. U.S. v. Johnstone 856 F.2d 539
27. U.S. v. Miller 78 S.Ct 1196

Citations Continued

28. U.S. v. Oppen 75 S.Ct 158
29. U.S. v. Smith 75 S.Ct 184
30. U.S. v. Wong Sun 83 S.Ct 407
31. Williams v. Dr. Alladin 782 A.2d 1090

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☒ For cases from **state courts**:

The date on which the highest state court decided my case was January 18, 2018
A copy of that decision appears at Appendix 6.

☒ A timely petition for rehearing was thereafter denied on the following date: February 26, 2018, and a copy of the order denying rehearing appears at Appendix 6.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including May 7 (date) on 2018 (date) in Application No. ____ A ____.

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

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

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

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 6 to the petition and is

- ☐ reported at Rendered no opinion; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Pennsylvania Superior court appears at Appendix 4 to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Pa. C.S.A. Title 18 § 2506
2. Pa. C.S.A. Title 42 § 702
3. Pa. C.S.A. § 741
4. Pa. C.S.A. § 5574
5. Pa. Constitution Article 1 § 8
6. Pa. Constitution Article 1 § 9
7. Pa. Rule of Crim Procedure #132
8. Pa. Rule of Crim Procedure #504
9. Pa. Rule of crim Procedure #542
10. Pa. Rule of Crim Procedure #544
11. Pa. Rule of crim Procedure #545
12. U.S. Constituion Amendment #4
13. U.S. Consttution Amendment #6
14. U.S. Constitution Amendment #8
15. U.S. Constitution Amendment #14

Statement of the Case

Petitioner was arrested on July 6, 2016, by the Harrisburg Police Dept. and charged with "Death by Delivery". On August 29, 2016 a Preliminary Hearing was held in front of Magistrate George Zozos #12-1-05 and the and the State added a charge of "Drug Delivery". Petitioner noted that his requested witness was not present to testify afetr he informed his Attorney of record to make sure he was present, Petitioner then fired his Attorney of Record "Jonathan White" and handed Magistrate Zozos a Subpoena. Petitioner informed Mr. Zozos that it was imperative that the witness be present as he will offer testimony that the victim who was not a victim at all died from "Multiple Traumatic Injuries" and that the manner of Death is listed as accidental, meaning that the man was alive when he crashed and did not die until after he crashed from the injuries sustained in the crash. The Autopsy Report doesn't list the cause of death as "Acute Drug Intoxication" and therefore the cause of death can not be listed as "Multiple Traumatic Injuries Due toMultiple Drug Toxicity", meaning (2) two different causes of Death, all this means Your Honor is that the man had drugs in his system at the time that he died, but that is not what he died from. So I need my witness "Dauphin County Coroner Graham Hetrick" to be present for this hearing, and gave Mr. Zozos the Subpoena, these transcripts disappeared.

Magistrate Zozos then rescheduled the Hearing until October 3, 2016. On August 31, 2016 the Prosecution submitted a Motion to the President Judge, (Richard Lewis) asking that he assign himself as an Alternate Issuing Authority. Petitioner in turn submitted a Mandamus to the State Supreme Court at 140-MM-2016 which was denied. On October 21, 2016, a hearing was held in front of Judge Lewis of the Dauphin County Court of Common Pleas after (2) two responses from Petitioner. At the said Hearing Petitioner brought to the Courts attention that the Prosecution was violating Due Process under Court Rule 544 by moving for an Alternate Issuing Authority without following the procedure that is in place for such, that being the charges were never dismissed or

were they ever withdrawn, nor did they ever receive permission from the Original Issuing Authority who dismissed the complaint or allowed the withdrawal to re-file before they moved under Court Rule 132. Judge Lewis denied my argument and allowed the prosecution to proceed and assigned himself the Issuing Authority. Next Petitioner moved for dismissal of the Criminal Complaint under Com vs Thomas 419 A.2d 1344 and Court Rule 504 as the Criminal Complaint was blank and failed to list the Acts Associated with the accused, this violates Due Process under Thomas and the Court rule and should be dismissed with prejudice as the Complaint is insufficient, Judge Lewis again denied petitioners argument and Petitioner again moved for dismissal as the Prosecution appeared in Court with a Blank Affidavit of Probable Cause to arrest and failed to have a signature or a seal from a Judge, Magistrate or Court Clerk or any other Issuing Authority which violated Article 1 § 8 of the Pennsylvania Constitution and the 4th Amendment of the U.S. Constitution which both state in nearly identical words that: No warrants search or arrest shall issue except on Probable Cause and sworn under Oath or Affirmation before a Judge, Magistrate, Court Clerk or any other Neutral Detached Judicial Official and must describe the place to be searched, the items to be seized and the person to be arrested.

Judge Lewis then asked the Prosecution, "Are you telling me this man was arrested without a Warrant?", the prosecution stated, "Were saying he was arrested on an admission!", Petitioner in turn stated that is not in conformity with either Constitution and violates Due Process. Judge Lewis stated on the record it wasn't blank, this caused petitioner to state: Let the record show that Judge Lewis and Myself have in our hands a Blank Criminal Complaint, he is lying in this Courtroom and I would like a Copy of these transcripts as soon as possible. Judge Lewis then told the prosecutor, to go get another one and denied the Motion to dismiss. See Notes of testimony from 10-21-16. Petitioner then asked for Permission to Interlocutory Appeal and was denied, this was filed in the Superior Court at 56-MDM-2016 and denied. Petitioner then filed a Petition for Writ of Habeas Corpus in the Supreme Court at 187-MM-2016 which was also denied and led to Habeas Corpus relief in the District Court of Pennsylvania at 1:17-CV-2017 which was also denied.

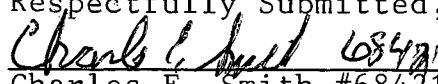
On October 26, 2016, under objections from petitioner, Judge Lewis conducted the Preliminary Hearing. Petitioner requested a continuance as his witness, "Dauphin County Coroner Graham Hetrick" was not present. Stand By Counsel "Jonathan White" was instructed by Judge Lewis at the conclusion of the Hearing on October 21, 2016, "in which Judge Lewis assigned himself as the Alternate Issuing Authority", to go to the Clerk of Court Office and file the Subpoena to make sure the witness was present. See notes of testimony from October 21, 2016. Judge Lewis denied the continuance stating that "We were moving on and he will be the to decide as to whether my witness will be allowed to testify or not!" Petitioner again objected by saying it is imperative that this case be continued until his witness is available as he will offer testimony that will refute the Prima Facie of the Prosecution, again petitioner was denied. Judge Lewis then conducted the Preliminary Hearing and based on the hearsay testimony offered by (2) two police officer's who were not present nor first on the scene, the matter was bounded over for trial. Petitioner again objected asking that the hearing be continued until the proper people who provided the reports were present, again this was denied and Judge Lewis bounded it over for Trial and assigned himself as the trial Judge also.

Petitioner then filed a motion requesting Interlocutory review in the Superior Court, the Superior Court docketed it as an Appeal from a final order at 1879-MDA-2016 on November 23, 2016, this was denied on January 17, 2017. On January 17, 2017 Petitioner filed another Habeas Corpus Petition moved under Paylor vs Claudy 366 Pa. 287 on its own merits under Title 42 C.S.A. 741, the Superior Court assigned it to an already existing matter at 17-MDA-2017, and on February 8, 2017, the matter was again denied without prejudice due to Petitioners ability to seek relief in the trial court

On January 17, 2017, Petitioner filed a Habeas Corpus Petition in the trial court in accord with said order of the Superior Court and on February 6, 2017, Judge Lewis denied the writ. Petitioner requested permission to appeal an Interlocutory order to the Superior Court on February 16, 2017, February 24, 2017 and on March 8, 2017, as Judge Lewis refused to certify and denied without an opinion being rendered.

On March 21, 2017, The Superior Court denied review when they assigned the matter as a Direct Appeal and quashed it rendering it moot. Petitioner submitted a Motion to refile along with argument in support of appellate review to the Superior Court and upon review docketed the matter to 26-MDM-2017, and on June 6, 2017, the matter was denied as the Superior Court stated that petitioner did not follow Title 42 of the C.S.A. § 702. Petitioner then filed for reconsideration under Title 42 C.S.A § 5574 as the lower court never rendered an opinion for their to a Question of Law or a Difference of opinion as it is the Governments duty and responsibility to ensure § 702 is followed.

On June 18, 2017 the motion to reconsider was denied. On June 30, 2017 Petitioner filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania at 503-MAL-2017 and on January 18, 2018, this request for Allocatur was denied, petitioner then filed for the motion to be reconsidered and on February, 26, 2018, this was also denied. This request for Certioari followed.

Respectfully Submitted,

Charles E. Smith #68421
Dauphin County Jail
501 Mall Road
Harrisburg, Pa. 17111

Summary Argument

The Federal Constitution is the standard by which every Law in this Country is measured and evaluated. It is the written standard by which everything else is measured having endured only 18 additions in its 242 year history. It is the foundation of the founding fathers and has enabled this country to get some of the most trying times we have ever seen. It has withstood the test of time and serves its vital function today because it is based on correct principles, fundamental fairness and the self evident truths that are in the declaration of Independence. These principles have empowered our State and Federal Constitutions with a timeless strength in the midst of social ambiguity and change. Our freedom and core values lie within a written constitution.

The fathers stated that we hold these truths to be self evident that all men are created equal, that they are endowed by their creator with certain unalienable rights and that among these rights are life, liberty and the pursuit of happiness and that to secure these rights, governments are instituted among men deriving their just powers from the consent of the governed. That when any form of government becomes destructive it is the right of the people to abolish it and institute a new government laying its foundation on such principles and organizing its powers in such form that as to them shall seem most likely to effect their safety and happiness.

These principles are the core of an Oath that every elected Official in this Country has sworn to uphold and defend, and in order to uphold such an oath depends on the emotional intellect of the person who swore on the Oath, not to let personal feelings, favors and outside influences determine just cause of action. We need law or else society will begin to deteriorate, and we need those who swore to protect the law, to uphold it, not only when it is convenient. The Lower Courts have seemingly violated every single right of petitioners and done everything in opposition to the Oath that they swore to uphold. This argument is based on Actual Facts, and actual facts can not be disputed.

The Federal and State Constitutions, Statutes and Court Rules, support Actual Facts and Procedure, that is what is supposed to be done and how it is supposed to be done, anything other than that violates what is called Due Process as everything has a process, from the time the Sun rises until it Sets, to the planets rotating around the Sun in perfect Order, to the directions on a Box for making a cake, to the Laws of this Country and this State, dont follow procedure and we have anarchy on our hands because the process has been violated. The Tyrants Petitioner is up against have done nothing but violated every right imaginable when it has come to following the process that the Constitution and Court Rules say should happen, as evidenced by the contents of this Brief, the Questions Involved, Arguments and Statement of the Case are all based on Actual Facts.

The Superior Court chose to deny relief because they say Petitioner never followed a Court Rule, neglecting the Actual Fact that it was the duty of the Lower Court to initiate the Process, which they did not do and therefore violated the process. Even if this was the case, Numerous Courts have ruled that Pro Se Motions are held to less stringent standards than those drafted by more seasoned Attorneys. These same Courts have ruled that they have an obligation to correct plain error and check-mate abnormalities and deficiencies of the Lower Court, see Williams vs Dr. Alladin 782 A.2d 1090, Com vs. Bell 762 A.2d 776, Rosario vs. Dept. of Corr. 920 A.2d 931, Com vs. Stossel 17 A.3d 1287, Allah vs. Severling 225 F.3d 220, New Jersey vs. Bobo 22 NJ Super 30, 535A.2d 983 and U.S. vs. Erickson 127 S.Ct 2197. The Court further went on to rule in Williams that when the elements to a cause of Action are adequately set forth, a Pro Se complaint will not be dismissed because it is not artfully drafted. This Constituted error on the part of the Superior Court twice by denying the Original Petition and then denying reconsideration when these arguments were pointed out to them.

This Sister States Appellate Court in New Jersey, has ruled that it would not normally consider questions not raised on Appeal, but then went on to state that it is the Court's duty to consider issues and questions of sufficient importance to merit Appellate review, and that they do so in recognition of their obligation to correct plain error of Constitutional Magnitude, their own Court Rule Supports this 2:10-2, as well as the Macon Court @ 57 NJ 325 and Lakomy @ 126 NJ Super 430, 437.

The 3rd Circuit Court of Appeals ruled in Johnstone 856 F.2d 539, 542, that the Bedrock Principle of the American justice System is that the Due Process Clauses protects one against conviction except beyond proof of a reasonable doubt of every fact necessary to constitute a crime with which one is charged, meaning a person can't be arrested simply on an admission of a crime. The failure of the State to produce a Criminal Complaint that was Blank of the Acts associated with the accused, and a Blank Affidavit along with their statement that "Defendant was arrested on an admission", supports the Johnstone Court and the 4th Amendment of the United States Constitution, Article 1 § 8 of the Pa. Constitution, Court Rule #504 and Com. vs. Thomas 419 A.2d 1344, as the mere admission does not give permission to arrest without a Warrant as the U.S. Supreme Court has ruled in Wong Sun 83 S.Ct 407, Smith 75 S.Ct 194 and Oppenheimer 75 S.Ct 158 in which the Oppenheimer Court ruled that there was independent evidence besides the admission of the crime, all three (3) Courts ruled that where a crime involves no Corpus delicti that a crime has been committed, evidence corroborative of a confession must implicate the accused to show that a crime has been committed. The Autopsy report does not state that a crime has been committed, see Com. vs. Smith 140-MM-2016, and arguments in Support of Review, nor does the Commonwealth possess any physical evidence that drugs were even present, having admitted that the alleged evidence found at the scene was destroyed without any Field Test results being conducted before this so-called alleged evidence was destroyed, and is trying to introduce pictures that may as well have been downloaded from a Snap-Shot, Instagram or a Facebook page, this is the reason that the Criminal Complaint and Affidavit of Probable cause to arrest are both Blank. This action violates Due Process all around the Board as the Wong Sun Court further went on to rule that if those in Law Enforcement can search, seize and arrest without a warrant and never be required to disclose the facts upon which they based their belief of what they consider Probable Cause, if in other words they have an Untouchable power to do these three (3) things without a warrant, then why would they ever bother to get a warrant?, and this same obvious conclusion follows, if the Courts when a search, seizure or arrest is attacked as Illegal, will assume without any facts that a search, seizure or arrest without a warrant was for Probable Cause. To strike down the Process for Probable

Cause without a warrant, while we maintain them for the issuance of a warrant would be to blast away one of the Support Columns of Justice by Law and renders the Complaint to be dismissed and Habeas Corpus to be granted. This Petition for relief is because Due Process has been violated by the Prosecution and upheld by the Lower Courts. Process comes from the Root word Procedure, meaning: A particular way of doing things or a series of steps followed in regular order, to go in an orderly way, a series of actions directed toward a particular result, as defined by Webster. Our Court Rules and Constitutions mandate that the Process be done in a certain way, thus was the wording in the Declaration of Independence because the King of Britain was a Narcisist and wanted to do things his way, denying the pleas of the people who wanted Justice and Due Process, oppressing the people without regard for Life, Liberty and the pursuit of Happiness. The Declaration further goes on to state that: In every stage of these Oppressions we have petitioned for redress in the most humbleness of terms: Our Petitions have been answered only by the repeated injury inflicted, "Cruel and Unusual Punishment". A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be a ruler of a Free People. This has been the actions of the Lower and Appellate Courts, Tyrants who have skipped and chosen to ignore the Process that was established by our Founding Fathers. You can't skip parts of the Process to achieve a particular result, this violates the Process, "Due Process", which is clearly what has happened in the instant matter. This Court has an obligation to correct plain error that is of Constitutional Magnitude, and is not only an obligation of the Court of Appellate Jurisdiction, see Bobo 22 NJ Super 30, 535 A.2d 983. For help in this matter the Court should turn to the Crawford Court at 124 S.Ct 1354 where the Court reversed its Roberts Decision concluding that the Indicia of Reliability standard was too Broad and left too much discretion in the Hands of Judicial Authority. It noted that Judges like other Government Officers can't always be trusted to safeguard the rights of the people, id @ 67, 100 S.Ct 2531. The Court went on to finally conclude that not clear standards are very manipulative, and why these standards might be of a small concern toward Petit larceny cases and the like. The framers had an eye toward the Politically charged cases where the JUST and UNBIASED

decisions of even those in the highest levels of the judiciary might not be so clear and thus can not always be trusted to do the right thng. The definition of decorum is: A certain way of doing things, or a particular way, tyrants are used to doing things their way and feel threatened when people go against the standard they have set. In the Intersest of L.J. 79 A.3d 1073, the Supreme Court of Pennsylvania went on to rule that the Lower Court must set forth its findings of facts and ~~conclusions~~ conclusions of Law at the end of the hearing so that the litigant and the Appellate courts are aware of the basis for the Courts ruling., for the Superior Court to dismiss the petition for review because of petitioner not following a Court rule when it is clear that Pro Se petitioners are not held to the same standard as seasoned attorneys has violated petitioners 14th Amendment right to due process and is error on the Court.

Requested Relief

Petitioner moves humbly and respectfully before the Court and asks it to not only grant Certiorari but to also grant the requested relif of Habeas Corpus due to the constant State and Federal Constitutional Vioaltions that petitioner has suffered at the hands of the Courts.

Wherefore I pray.

Date: May 12, 2018.

C.C.: File

Respectfully Submitted,

Charles E. Smith #68421
Dauphin County Jail
501 Mall Road
Harrisburg, Pa. 17111

Arguments in Support of

1. Due Process was violated with the Omission of the acts that were associated with the accused from the Criminal Complaint. This issue was raised at the Preliminary Hearing and has been preserved thru every step of the Appellate Process. The Courts have ruled in the following cases that this is considered a "Substantive Defect", that when a Defendant is misled by a complaint then he doesn't have fair notice of the charges that are pending and that the potential for prejudice is apparent and the Appellant is entitled to discharge, as the arrest warrant is invalid and entitles the Defendant to habeas Corpus relief, this is a 14th Amendment Due Process Violation. see Com Ex Rel Fitzpatrick v. Mirarchi 392 A.2d 1346, Com v. Thomas 419 A.2d 1344; Com vs. Herstine 399 A.2d 1188 and Com vs. Flowers 369 A.2d 362.
2. Petitioners Due Process under the 4th Amendment of the United States Constitution and Article 1 § 8 of the Pennsylvania Constitution, both of which lead to a 14th Amendment violation were violated when the Prosecution appeared in Court with a Blank Affidavit of Probable Cause to arrest and was told by the Court to get another one, which means the arrest is Illegal as both Constitutions state: That no warrants search or arrest shall issue except on probable cause and sworn under oath or affirmation before a Judge, Court Clerk, or any other neutral detached judicial official and must describe the place to be searched the Items to be seized and the person to be arrested,

The Failure of the Affidavit to contain a Signature and seal of an issuing Authority means in fact that this arrest was in fact issued by the arresting officer who is not neutrally detached and makes the arrest illegal. See State v. Bobo 222 NJ Super 30, 535 A.2d 983, as the Bobo Court relied on Wong Sun 83 S. Ct 407, State v Ruotolo 52 NJ 511, 512; State v. Ross 189 NJ Super 67, 73 and U.S. v. Johnson 68 S.Ct 367, 369, in stating that: The determination of Probable Cause for the issuance of a warrant can only be made by a Neutrally Detached Judicial Official. They further went on to say that what happened in Bobo was no mere technical violation of the law, as our State and Federal Constitutions authorizes the issuance of a search or arrest warrant only by the proper judicial officer and only upon a showing of Probable Cause that is supported by Oath or Affirmation that an Offense has been committed by the accused at the place that was described. This also makes the arrest Illegal as it further has violated the Due Process Clause of the State and Federal Constitutions.

3. A Judicial officer's neutral evaluation of a Criminal Complaint makes him or her uniquely qualified to decide whether its sworn factual allegations show the required Probable Cause. The Judicial Officer is then trusted to evaluate the legal sufficiency of the sworn facts and the credibility of the affiant making the charges against the accused. It is for these reasons and these reasons alone that our Federal and State Constitutions empower only Judicial Officers to make determinations of whether Probable Cause exists for the issuance of a warrant, making a warrant issued by a police officer patently defective, and makes this arrest illegal as it has violated our Federal and State Constitutions. See Bobo 222 NJ Super 30, 535 A.2d 983; Giordenello 78 S.Ct 1245; Petillo v. N.J. 93 S.Ct 1393 and Ross 189 NJ Super 67.
4. This Arrest is also Illegal as the Courts have ruled in Johnson v. U.S. 68 S.Ct 367 and Wrightson v. U.S. 222 F.2d 556 that: If Officers can arrest without a warrant and never be required to state the facts upon which they based their belief of Probable Cause, if in other words they have an untouchable power to arrest without a warrant, then why would they ever bother to get a warrant?, and then the same obvious conclusion follows, if the Courts allow when an arrest is attacked as Illegal will

assume without facts that an arrest without a warrant was for Probable Cause, to strike down all factual requirements in respect to Probable Cause for arrest without a warrant, while we maintain them for issuing a warrant, would be to blast away one of the support columns of Justice by Law.

5. This arrest is Illegal under Whitley v. Warden 91 S.Ct 1031, as the warrant in that case was held invalid because the Affidavit on which it was issued only alleged that the defendant had broken into a Ballroom, no facts were recited. No Issuing Authority or any other Neutral and Detached Judicial Official asked the arresting officer of the facts in that case, and there are no facts on the Criminal Complaint in the instant case, as the warrant is invalid due to the Criminal Complaint being blank, as well as the Affidavit. Judge Lewis of the Dauphin County Court violated Petitioners Constitutional rights under the 4th Amendment and Article 1 § 8 of the Pennsylvania Constitution when he asked the Prosecution, "Are you telling me this man was arrested without a warrant?", and the Prosecution stated: Well Sir he was arrested on an admission as you are aware of how we do things in Dauphin County and through out the Commonwealth! After this response in which Petitioner stated that what has happened is not in conformity with the State or Federal Constitutions and moved for a dismissal, this oral motion was denied and Judge Lewis told him to go get another warrant at the Preliminary Hearing that was conducted conducted on October 21st and 26th 2016. See notes of testimony from both dates.
6. Due Process was violated when Judge Lewis conducted this Preliminary Hearing on the motion of the Prosecution without following the Court rules of 544 (a), which state that before the Prosecution may petition the Court for an Alternate Issuing Authority the charges must first be dismissed by the Original Issuing Authority or withdrawn by the Prosecution, then they must petition the Original issuing Authority which allowed the withdrawal or dismissal for permission to re-file, then and only then can the Prosecution petition for an Alternate, this did not happen as the Prosecution moved straight to Judge Lewis, who not only assigned himself as an Alternate Issuing Authority, but held Petitioner for Trial and assigned himself as the Trial Judge also, all violating Petitioners rights to due Process under the Rules of the Court.

Due Process was violated under Article 1 § 9 of the Pennsylvania Constitution and The U.S. Constitution's 6th Amendment when Petitioner was not allowed to call his witness at the Preliminary Hearing as it was the sitting Judge, "Who Assigned himself as an Alternate Issuing Authority see averment 6", who stated that he would be the one who would decide whether the witness will testify or not, these Constitutional Rights state: In all Criminal Prosecutions the accused has a right to be confronted with the witness against him, and to have a compulsory process for obtaining them in his favor in prosecutions by Indictment or Information. This also violated the Courts Rule under 545. The Appellate Court also ruled in Buchanon v Verbonitz 581 A.2d 172, that the Preliminary Hearing is an adversarial part of the Criminal Proceedings and not a sidebar conference where proffers are made, thus the full panolopy of the petitioners rights are afforded to him, and those rights include that there is a right absolutely includes that there be a Compulsory process for obtaining witnesses in his favor, the Court went on to grant Buchanon Habeas Corpus Relief and dismissed all of the charges.

8. Due Process was also violated when the Court did not allow Petitioner to continue the Preliminary Hearing so that his witness would be available to testify. This violated the Courts rule 542 (G) and 545 (A), this was ruled illegal in Com. v. Ricker 120 A.3d 349, and was ruled an Exigent and Exceptional circumstance to warrant Interlocutory Review, however since the brief failed to state that the failure to allow the continuance violated Due Process, Habeas Corpus relief was not granted. Petitioner has raised this issue every step of the way as he has exhausted all of his available State remedies, specifically at, 143-MDM-2017, 56-MDM-2017, 187-MM-2016 and 503-MAL-2017., all of the Courts have refused to grant the requested relief.
9. The rulings and actions by the Lower and Appellate Courts have led to the violation of Petitioners 14th Amendment right to Due Process.

Respectfully Submitted,

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Conclusion

The Constitution of the United States is the standard from which every single Law in this country is derived from, it is the guideline and it has withstood the test of time to the tune of 242 years with only 18 additional amendments. The Constitution has withstood the test of time because it is based on solid principles, those same principles have allowed our country to endure some trying times such as slavery, wars, impeachments and a little of everything in between. These Principles have empowered the State and federal Constitutions with a timeless strength in the midst of Social Ambiguity and Change. The founding fathers stated: We hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights and that among these rights are life, liberty and the pursuit of happiness, and that to secure rights, governments are instituted among men deriving their just powers from the consent of the governed. These principles are the core of an Oath that every elected official has sworn to uphold and defend, and in order to uphold such an oath depends on the emotional Intellect of the person who has sworn to uphold that Oath. Petitioners Rights to Due Process has been violated at every stage of his Judicial proceeding and asks this Court to uphold his Constitutional rights and protect them, we as a society need law or else society will deteriorate and we need those who swore to protect the law to uphold it, as the President Thomas Jefferson stated, experience has shown that even under the forms of government that those who have been entrusted with power have thru slow operation perverted it into a Tyranny. I ask this Court to uphold and protect the Law they swore to uphold.

Date: May 5, 2018

C.C.: File

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