

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

CLARK MCKNIGHT, Pro Se — PETITIONER
(Your Name)

vs.

FRANK BISHOP, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CLARK R. MCKNIGHT
(Your Name)

14100 McMullen Highway, S.W.
(Address)

Cumberland, Maryland 21502
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Did the U.S. District Court abuse its discretion when it determined the Petitioner's §2254 petition was not timely under §2244(d)(1)-(2)?
- 2.) Did the U.S. District Court abuse its discretion when it determined that Petitioner's claims were not cognizant under §2254?
- 3.) Did the District Court abuse its discretion when it failed to hold an evidentiary hearing?
- 4.) Did the U.S. Court of Appeals for the Fourth Circuit abuse its discretion when it determined Petitioner had "not made the requisite showing", that the District Court's ruling was wrong or that he was denied rights under the U.S Constitution?

LIST OF PARTIES

- ☐ All parties appear in the caption of the case on the cover page.
- ☒ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

The Attorney General of the State of Maryland

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	9
CONCLUSION.....	24

INDEX TO APPENDICES

APPENDIX A

United States Court of Appeals for the Fourth Circuit JUDGEMENT

APPENDIX B

United States District Court for MARYLAND MEMORANDUM/ORDER

APPENDIX C

United States Court of Appeals for the Fourth Circuit ORDER

APPENDIX D

MARYLAND STATE Court of Special Appeals OPINION

APPENDIX E

Cousins v Green No. 08-8374

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
ACCARDI v SHAUGHNESSY 347 U.S. 260 (1954)	17
BRINKERHOFF-FARIS v HILL 281 U.S. 673 (1930)	18
CULLEN v PINHOLSTER 563 U.S. 170 (2011)	21
HAINES v KERNER 404 U.S. 519 (1972)	23
LONCHAR v THOMAS 517 U.S. 314 (1996)	16
MILLER-EL v COCKRELL 537 U.S. 322 (2003)	22
SLACK v MCDANIEL 529 U.S. 473 (2000)	16, 22, 23
STRICKLAND v WASHINGTON 466 U.S. 668 (1984)	18
TOWNSEND v SAIN 372 U.S. 293 (1963)	21
TRUAX v CORRIGAN 257 U.S. 312 (1921)	10
VASQUEZ v HILLERY 474 U.S. 254 (1986)	14, 15
WALL v KHOLI 179 L.Ed.2d 252 (2011)	12, 13
WILLIAMS v TAYLOR 529 U.S. 420 (2000)	21
Goldring v State 358 Md. 490 (2000)	11, 18
Williams v State 321 Md. 266 (1990)	11, 18
STATUTES AND RULES	
28 USC §2244	12
28 USC §2253	21, 22
28 USC §2254	11, 13, 16, 18, 19, 20, 21
FRAP Rule 32.1	13
Statute §7-107 (UPCPA)	13, 14, 15
Md. Rule 16-101 d.3(ii)	10, 20
Md. Rule 15-310	15
Md. Rule 4-215 (e)	10, 22
Md. Rule 2-311(f)	10, 11
Md. Rule 1-201(a)	10
OTHER	
Sixth Amendment	17-21
Fourteenth Amendment	9, 10, 17, 19, 20

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 A 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 B 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 _____ 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 _____ 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 22, 2017.

☐ 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: February 27, 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SIXTH AMENDMENT TO THE U.S. CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, 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 defence.

FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION

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

28 U.S.C. §2244 (d)(1);(2)

- (d) (1) A 1 - year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgement of a State court. The limitation period shall run from the latest of -
- (A) the date on which the judgement became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post conviction or other collateral review with respect to the pertinent judgement or claim is pending shall not be counted toward any period of limitation under this subsection

28 U.S.C. §2253(c)(1);(2)

- (c) (1) Unless a circuit justice or judge issues a certifi

cate of appealability, an appeal may not be taken to the court of appeals from-

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of a process issued by a State court, or
- (B) the final order in a proceeding under section 2255[28 USC §2255.]

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right

28 U S C §2254 (a);(d)(1),(2); (e)(2).

(a) The Supreme Court a justice thereof, a circuit judge or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgement of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(d) (1) An application for a writ of habeas corpus, on behalf of a person in custody pursuant to the judgement of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States, or

(2) resulted in a decision that was based on an unreasonable determinations of the facts in light of the evidence presented in the State court proceeding.

(e) (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that--

(A) the claim relies on--

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable, or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

STATEMENT OF THE CASE

On August 4, 2014 the Court of Special Appeals affirmed the Petitioner's conviction, in case number 679. Petitioner then filed a timely petition for Writ of Certiorari in the Court of Appeals of Maryland, case number 369, which was denied in November, 2014. Further requests for Reconsideration were denied March 30, 2015. Ninety day period to file a Writ of Certiorari in the Supreme Court would elapse on June 30, 2015, therefore his judgement, for direct review purposes, became final on that date.

On June 8, 2015 Petitioner filed for collateral review, in the form of a State Habeas Corpus, case No. CAL15 18289, challenging the Circuit Court's Interpretation and Application of a mandatory Rule of Procedure, the trial court's jurisdiction, and denial of Federal rights under the the Fourteenth Amendment, to Due Process and Equal Protection, and under the Sixth Amendment's right to counsel. Several motions were filed in that court, including a Motion for Recusal because the judge determining the petition was one of the six judges Petitioner cited in his petition as being improperly authorized to continue criminal trials along with the judge who continued Petitioners case, in violation of the mandatory provisions of the state Rule of Procedure that entitled Petitioner to immediate release. Petitioner also filed Motions to Alter and Amend, and a Motion to Submit to the Court of Appeals a Question of Law to request the higher court's guidance in ascertaining a correct interpretation of the Rule and statute. The last of these motions were denied by Judge Maureen Lamasney on August 17, 2015 who mischaracterized the Motion to Recuse as a Motion for Reconsideration, without a determination of whether the mandatory provisions of Rule 16-101(d)3(ii) were violated, and without holding a hearing required under Rule 2-311(f). On August 18, 2015 the Court of Appeals denied Petitioner's Question of Law.

A timely Application for Leave to Appeal with a Motion to Proceed In Forma Pauperis was filed and granted on October 20, 2015 by the Court of Special Appeals, Case No. 01616. Petitioner filed

Briefs in March of 2016, after receiving an extension from the court. Various motion were filed in that court including another Motion to Submit to the Court of Appeals a Question of Law which was never presented to the higher court, but was instead denied by the Chief Judge of the Court of Special Appeals, and also a Motion for Default Judgement because the State failed to file Briefs on the date specified by the court. That motion was also denied, without explanation, and no instructions for the State to comply with the Court's initial Order to submit Briefs. In September 2016, while the case was still pending in the Court of Special Appeals Petitioner filed a Writ of Certiorari in the Maryland Court of Appeals, Docket No 439. Under state law a petitioner may ask that the higher court grant certiorari before an answer is given in the intermediate court. On October 31, 2016 in an unreported opinion the intermediate court granted the state's motion to dismiss although this writer never received a copy and therefore never had an opportunity to rebut the state's claim that an appeal under state habeas corpus was not appealable. A timely filed Motion for Reconsideration was denied on December 15, 2016. The Court of Appeals also denied Certiorari on this date. No Motion for Reconsideration or petition for Writ of Certiorari to the Supreme Court was sought.

Under Maryland law two avenues of post conviction relief are available, the first is through the Maryland Uniform Post Conviction Procedure Act (UPCPA), and the second is a petition for a Writ of Habeas Corpus. Petitioner chose the second option because (1) he was seeking immediate release; (2) since he'd been forced to represent himself at trial he was forestalled from bringing ineffective assistance of counsel claims against himself; and (3) he was prohibited from relitigating the same claims decided on direct appeal.

On January 3, 2017 Petitioner filed in the U.S. District Court in Baltimore a 28 U.S.C. §2254 Case No. JFM-17-311, alleging that his trial, conviction, and sentence are void as the state was without jurisdiction because the administrative judge of the circuit court failed to comply with the mandatory provisions of a rule of procedure, and in taking him to trial his rights to due process

of law and equal protection under the law, as embodied in the Federal Constitution were denied. Petitioner also requested the District Court to decide whether his Sixth Amendment rights were violated.

On March 28, 2017 the Respondents filed a Limited Answer to Petitioner's petition, requesting the District Court dismiss the petition as 'Time-barred', under the theory that because a denial of a state habeas corpus is not appealable when it's used to attack the legality of an underlying conviction and/or sentence, the time Petitioner spent [on appeals] did not toll the one year limitations period under 28 U.S.C. §2244 (d)(1). Their claim that between August 17, 2015 and August 17, 2016 there were no proceedings pending in state courts to toll the limitations period ignored the fact that the Court of Special Appeals granted the Petitioner's Application for Leave to Appeal, and Petitioner proceeded, on good faith, as directed by the court.

On April 12, 2017 Petitioner filed a Reply to Respondents Answer detailing why the Respondents argument fails, (factually he did have something pending in the state Court of Appeals during the time indicated by Respondents), and therefore he'd met the requirement under §2244(d)(2), which should have also qualified him to receive equitable tolling, (showing diligence in pursuing his rights).

On August 14, 2017 the U S District Court for the District of Maryland issued a Memorandum dismissing Petitioner's §2254 with prejudice as 'Time-barred', and ruled his claims were not cognizable under §2254. It also declined to grant equitable tolling although a consistent timeline and factual evidence was presented to it as proof Petitioner had been diligently pursuing his rights, and had always had a proceeding pending in the state court. The District Court also declined to issue a Certificate of Appealability.

On August 20, 2017 a timely Notice of Appeal was filed, Case No. 17-7131, in the U.S. District Court. On September 11, 2017 an Informal Brief was filed in the U.S. Court of Appeals for the Fourth Circuit requesting issuance of a Certificate of Appealability.

lity. The Court of Appeals denied Petitioner's request for a Certificate of Appealability and dismissed his application on December 22, 2017, ruling Petitioner "has not made the requisite showing".

On January 3, 2018 Petitioner filed a Motion for En Banc Rehearing, citing material facts and legal matters that he believed the Court overlooked and decisions from this Court that Petitioner believed their opinion conflicted with. However, on February 27, 2018 the Court denied Petitioner's motion for En Banc Rehearing, and on March 7, 2018 issued its MANDATE.

REASONS FOR GRANTING THE PETITION

The most compelling reasons for this Honorable Court to intervene and exercise its discretionary jurisdiction either through granting certiorari to hear the case on the merits, or granting the petition, vacating the judgement of the court of appeals, and remanding for further proceedings is because this case concerns the most egregious deprivation, by the State, of not one, but two of the Petitioner's most fundamental rights, protected by the United States Constitution, the right to due process of law/ equal protection of the laws, and the right to counsel.

The Due Process Clause of the Fourteenth Amendment prohibits state action that deprives a person of life, liberty, or property without due process of law.

Under the Fourteenth Amendment, there are two types of due process claims: substantial and procedural. Substantial due process rights attach only when a fundamental right is involved thus ensuring that the government does not unjustifiably infringe on the right.

For procedural due process to attach, a person must have more than an abstract need or desire to have a life, liberty, or property interest. A person must have a legitimate claim of entitlement to such an interest. The United States Constitution does not create these interest; rather they are defined by existing rules or understandings that secure certain benefits and that support claims of entitlement. See Smith v United States, 277 F. Supp. 2d 100 (D.C. Cir. 2003)

Equal Protection- A phrase not susceptible to exact definition, generally, a guarantee under the Fourteenth Amendment to the United States Constitution that no person or class of persons shall be denied the same protection of the law which is enjoyed by the other persons other classes under like circumstances, in their lives, liberty, or property, and in pursuit of

happiness. See Truax v Corrigan, 257 US 312 (other citations omitted). Concisely stated, the guarantee of equal protection means that the right of all persons must rest upon the same rule under the same circumstances; both in privileges conferred and in liabilities imposed.

Structural Errors- defects that fundamentally undermine the reliability and fairness of the trial- require reversal [and are not subject to harmless error review].

The State, through its judiciary, unjustifiably deprived Petitioner of rights to due process of law, both substantive and procedural; equal protection of the law; and his right to counsel, all protected under the United States Constitution, when it failed to strictly adhere to the mandatory requirements of its statutes and Rules of Procedure. And in its abrogation of these rights the State has secured an unlawful conviction and imposed an illegal sentence for which the Petitioner will be made to suffer the grievous loss of liberty for a term of Life + 10 years imprisonment.

The provisions of Maryland Rules of Procedure 16-101.d.3 (ii); 4-215(e); and 2-311(f) are mandatory, and therefore judges lack discretionary authority to proceed in anyway contrary to these rules' requirements. Maryland Court of Appeals has repeatedly held its "rules are precise rubrics", "have the force of law", and "are to be read and followed". The Court of Appeals, in Valonis v. State held ("When a rule...mandates or prohibits conduct, the consequences of noncompliance are those prescribed by the rule or statute") see 431 Md. at 573; and Maryland Rule 1-201(a) Rules of Construction.

The provisions of Rule 16-101 d.3(ii) require a County Administrative Judge to, ("authorize not more than one judge at a time to postpone...criminal cases"). The Circuit Court violated the requirements when it authorized six judges for that purpose. The provisions of Rule 4-215 require a judge presiding over a trial or hearing where a defendant requests to discharge counsel to ("permit the defendant to explain the reasons for the request")

The judge in the Petitioner's case violated the rules requirement when she failed to inquire into, and permit the Petitioner to explain his reason for requesting to discharge his counsel. The provisions of Rule 2-311(f) require a court to hold a ("hearing if one was requested"). The Circuit Court in Petitioners State habeas corpus case violated the requirements of the rule when it failed to hold an evidentiary hearing although one was requested.

As these rules afford no discretion and are grounded in fundamental rights i.e. speedy trial, and right to counsel, the mandated sanctions for noncompliance are severe. The severe sanctions serve two purposes, the first is to protect the criminal defendants rights, and the second is to encourage the lower court's compliance. Because the lower courts failed to follow the exact course of the law Petitioner was denied due process of the law, which offends against the rule of law. As these sanctions were mandated, and applied by the States highest court in the cases of other defendants similarly situated Petitioner is entitled to all the privileges conferred in those other cases i.e. (dismissal of charges, conferred on the defendants in Goldring v. State, 358 Md 490, 750 A.2d 1, 2000 Md. LEXIS 177(2000); (reversal of conviction, conferred on the defendant in Williams v. State, 321 Md. 266, 582 A.2d 803 (1990)). The demands of equal protection of the laws require nothing less.

CONFLICTS AND ERRORS WITHIN THE U.S. DISTRICT COURT'S DECISION

The United States District Court, in deciding Petitioner's §2254 application held, "McKnight's convictions became final for direct appeal purposes on June 29, 2015...". (See Appendix B, pg 4). Also, that "Neither [that] court nor the United States Court of Appeals for the Fourth Circuit has yet to decide whether a Maryland state habeas corpus proceeding tolls the one-year federal habeas corpus limitations period." And, "an appeal of a direct attack on a conviction is not permitted under the state habeas statute...". (See Appendix B, pg 5).

The court further determined, "In order to be entitled to

equitable tolling of the limitations period, McKnight must establish that either some wrongful conduct by respondents contributed to the delay in filing his federal habeas corpus petition, or that circumstances beyond his control caused the delay". (See Appendix B, pg 5).. In its final determination that Petitioner was not entitled to either statutory, or equitable tolling the District Court held, "McKnight provides no explanation as to why he failed to attack his conviction under available post-conviction procedures", and "McKnight has failed to satisfy his burden to demonstrate that equitable tolling is warranted, and his claims for habeas corpus relief are time-barred." (See Appendix B, pg 6).

The District Court in determining the cognizability of this Petitioner's claims held, "Each of McKnight's claims centers on state criminal procedure and state rules. Because the grounds presented in the instant petition solely address state court rules and procedures, they are not cognizable on federal habeas corpus review, even if they are timely filed." (See Appendix B pg 6).

First, the District Court's decision is in conflict with this Court's holding in WALL v. KHOLI 179 L.Ed 2d 252, where Justice Alito, writing for a unanimous court, held ("Congress may have refrained from exclusive reliance on the term 'post conviction' so as to leave no doubt that the tolling provision applies to all types of state collateral review after a conviction". The Court even went so far as to clarify its position with its "meaning" and "definition" of the term collateral review, ("we hold that the phrase "collateral review" in §2244(d)(2) means judicial review of a judgement in a proceeding that is not part of direct review"); and ("We thus define "collateral review" according to its ordinary meaning. It refers to judicial review that occurs in a proceeding outside of the direct review process")179 L.Ed 2d at 259-60, and at 267 respectively. Therefore, because Petitioners state habeas corpus petition was an attempt to seek "judicial review" that was a proceeding outside of the direct review process", meeting the courts definition, Petitioner's

state habeas petition should have tolled the AEDPA limitations period, and thus his federal habeas corpus petition would have also been timely.

The District courts holding that neither that court nor the Court of Appeals for the Fourth Circuit have yet to decide whether a Maryland state habeas corpus petition tolls the limitations period disregards the language and spirit of this Courts holding in KHOLI Id. It also fails to consider that until Petitioners case, it had never held that a Maryland state habeas petition did not toll the limitations period. As recent as 2011 both courts entertained the federal habeas petition of a prisoner from Maryland nine years after his direct appeal became final in 1997. This prisoner had filed three state habeas corpus petitions before filing his §2254 petition with the District court in 2006. At no time did the prisoner file an application for relief under the Uniform Post Conviction Procedure Act (UPCPA), and there was never a question from the state, the District court, or the Court of Appeals of whether his claims were time-barred because he initiated proceedings under state habeas corpus rather than UPCPA. (See Cousins v. Green, Appendix E, pg 1-2). Pursuant to FRAP Rule 32.1 a copy of this case is submitted as an unreported opinion. An indication that the Court of Appeals had previously recognized Maryland state habeas corpus as a vehicle for postconviction relief, is its holding in Chavis v. Smith, 834 F. Supp. 153 (D. Md 1993), ("two avenues of postconviction relief are available in the Maryland courts; the first is through Maryland Uniform Post Conviction Procedure Act (UPCPA), and the second is a petition for writ of habeas corpus"); and in Burch v. Corcoran, 273 F 3d 577 (4th Cir. 2001) ("the common law remedy of habeas corpus remains available, however, in situations for which the UPCPA does not provide a remedy"). If the state habeas corpus was previously recognized by the District court and Court of Appeals for the Fourth Circuit, yet it was not afforded the protection of tolling the limitations period then how viable of an avenue would that process be? It would be fruitless for a petitioner to proceed down that avenue, knowing that he has relinquished all

of his rights to present his claims to a federal tribunal. It would, also, be prejudicial to all those defendants who, by no fault of their own, the UPCA did not provide a remedy to.

The District courts determination that an appeal of a attack on a conviction, fails to quote the statute in full, and therefore misses the true meaning of it. Statute §7-107(b)(2)(ii), reads: This subtitle does not bar an appeal to the Court of Special Appeals, in any other proceeding in which a writ of habeas corpus is sought for a purpose other than to challenge the legality of a conviction of a crime or sentence of imprisonment for the conviction of the crime, including confinement as a result of a proceeding under Title 4 of the Corrections Service Article. The courts phrase, "appeal of a direct attack on a conviction" falls short of the statutory language, "appeal of a direct attack on a conviction of a crime". A challenge to the legality of a conviction is different than a challenge to the legality of a conviction of a crime or sentence for the conviction of the crime, because the latter infers after criminal proceedings have begun or are done. Petitioners claims were that 'prior' to any criminal proceedings taking place the County Administrative Judge for the Circuit Court of Prince George's County violated a mandatory rule for which dismissal of charges was the only sanction deemed appropriate by the Court of Appeals; in a hearing, also prior to trial proceedings, the trial judge failed to comply with another mandatory rule for which the Court of Appeals has deemed a reversible error and right to a new trial appropriate. Petitioners challenge was not directly towards any of the things particular to criminal proceedings i.e. (insufficiency of evidence, witness testimony, jury instructions, ineffective assistance of counsel, etc), instead it was a challenge to the court and states authority to initiate trial proceedings and the unlawful deprivation of constitutional rights, which amounted to a miscarriage of justice, as well as a structural error. ("alternate ground for asserting a basic miscarriage of justice would be a constitutional violation undermining the structural integrity of the criminal tribunal itself")VASQUEZ v HILLERY,

474 U.S. 254, 263 (1986). Further, had the state habeas court not violated another mandatory Maryland rule, requiring the court to hold an evidentiary hearing if one was properly requested, as Petitioner did, there would not have been a need for appellate review because Petitioner would have had an opportunity to present irrefutable evidence, offer testimony, and present legal precedents in support of his claim that he is held in violation of the United States Constitution, and is entitled to immediate release. Rule 15-310(a) Appropriate Remedy, reads: If the judge determines that the individual is confined or restrained without legal warrant or authority, the judge shall order that the individual be released or discharged immediately.

The Court of Appeals has also held that under subtitle §7-107 (b)(2)(ii), of the UPCPA, an appeal is not barred in cases where the UPCPA does not provide a remedy. Therefore, since under Maryland law a litigant may not relitigate claims in a proceeding brought under the UPCPA that was already litigated on direct appeal Petitioner's claims raised on his habeas corpus petition, the same ones raised on direct appeal, could not be raised in a proceeding under the UPCPA. The only available remedy was a petition for writ of habeas corpus, which offered the only appropriate relief, immediate release, or a hearing that could lead to immediate release. Ordinarily in a postconviction brought under the UPCPA if the sentence is to be set aside, the accused would be entitled to a new trial, not unconditional release.

The District courts finding that Petitioner provided no explanation as to why he did not file for proceedings under UPCPA are incorrect, because Petitioner did so in his 'Reply to Respondents Answer' pages 5-7, however inartful that explanation may have been.

The District Court abused its discretion when it found Petitioner's claims were time-barred because his "appeal [was] not permitted under the state habeas statute", because this determination overlooks and completely disregards the fact that the

Court of Special Appeals granted the appeal when it granted the Application for Leave to Appeal (AFLA), ordered the filing of Briefs, and later issued its Opinion and Mandate. Petitioner should not be penalized for proceeding, on good faith, as ordered by the Court of Special Appeals with the belief and understanding that his appeal was proper.

The District Court abused its discretion when it failed to grant equitable tolling under the facts of case because the Petitioner met the requirements of diligently pursuing his rights with the initial filing of his state habeas corpus petition before his direct appeal was final (See Appendix B, pg 5), filing a timely Notice of Appeal, and AFLA which was granted, filing Briefs, and then filing a petition for writ of certiorari in the Court of Appeals. And therefore the time spent in all of these proceedings should have been tolled.

Even if Petitioners §2254 application had not been timely filed, as this is his first petition, and possibly his only opportunity to have his claims of denial of constitutional rights, adjudicated on their merits, by a federal tribunal specifically designed to protect those rights. It may also be his last meaningful opportunity to seek protection from the States unlawful infringement on those rights. ("Dismissal of a first habeas corpus petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty") LONCHAR v. THOMAS, 517 U.S. at 324; ("the writs ability to fulfill its vital role in protecting constitutional rights") SLACK v. McDANIEL, 529 U.S. at 483.

COGNIZABILITY OF CLAIMS

The District Courts deciding Petitioners claims were not cognizable under 28 U.S.C. §2254 because the "claims centers on state criminal procedure and state rules", and because they "solely address state court rules and procedures", are not only incorrect but it is also a mischaracterization or misinterpreta-

tion of the Petitioners actual claims. And in so doing, it effectively ignored the claims of denial of due process of law, and equal protection of the laws, as well as the denial of the Sixth Amendment right to counsel, were all effects of a greater cause. That cause being the State's failure to follow the exact course of the law, and failure to follow its own policies and procedures.

The District Court's decision is in conflict with the Sixth Amendments right to counsel clause, the Fourteenth Amendments Due Process and Equal Protection clauses, and dozens of decisions handed down by this Honorable Court and other federal circuits as well.

Petitioner's claims that the state courts had failed to comply with its own rules and regulations were cognizable under §2254 because under the Accardi Doctrine agencies of the government may not violate their own rules and regulations, or else their actions might be deemed invalid. The principle that the accepted policies, rules, and regulations may not be administered arbitrarily, but must be followed applies to the judiciary as well. ("If state law imposes substantive limitations on trial courts or other authorities exercise of official discretion... state law may create constitutionally protected liberty interest, and a clear violation of state law may amount to denial of liberty without due process, in violation of the Fourteenth Amendment"), Jackson v Ylst 921 F.2d 882(9th Cir. 1990); ("granting writ because sentencing judge violated Due Process Clause by failing to follow state law procedure in which petitioner had constitutional protected liberty interest"), Walker v Deeds 50 F.3d 670 (9th Cir. 1995); ("state statutes and regulations can create a liberty interest, which is protected by the Fourteenth Amendment. The state may not arbitrarily deprive that interest when its law contains the repeated use of explicit mandatory language in connection with specific substantive predicates") Chavis v Smith 834 F. Supp. 153 (1993); ("A state law or regulation can create a liberty interest protected by the Due process clause through

the use of explicit mandatory language in connection with specific substantive predicates that limit official discretion to create a legitimate expectation that a particular outcome will be reached upon a finding of the relevant criteria") Gibson v United States 2006 U.S. Dist. LEXIS 101737 (3rd Cir.).

Petitioner's claim that because of this failure to comply with mandatory rules of procedure his rights to due process, equal protection, and right to counsel was cognizant under §2254 because the states highest court, the Court of Appeals, had already enunciated its decision that, ("compliance with Rule 16-101 d.3(ii) is mandatory and therefore the appropriate sanction for its violation is dismissal of the charges") Goldring v State 358 Md 490 (2000); ("The provisions of this Rule requiring a judge to permit defendant to explain his reasons for requesting to discharge counsel are mandatory") Williams v State 355 Md 420 (1999). This very court held in BRINKERHOFF-FARIS v HILL 281 U.S. 673 (1930); ("when a states highest court has clearly established a rule as the settled law of the State,...it would...be entirely futile for a litigant to pursue a defense based on the possibility that the rule might be different in his case"); ("The Cox case decided by the highest state court, held that the provisions...were mandatory and if not fully complied with, the trial court lacked jurisdiction") Harper v Boles 278 F. Supp. 618 (1967).

Petitioner's claim that the trial court gave him the option of keeping the counsel he had expressed dissatisfaction with, and "to work it out", obtain counsel of my own although my indigent status was known by the court, or proceed to trial pro se, was cognizant under §2254 because this court held in STRICKLAND v WASHINGTON ("actual or constructive denial of counsel presumed to result in prejudice") 466 U.S. 668 (1984); ("court's failure to inquire into defendants dissatisfaction with counsel constituted denial of counsel") Benitez v U.S. 521 F.3d 625 (6th Cir. 2008); ("reversible error if motion for substitution of counsel is denied simply because court finds

current counsel adequate") United States v Musa, 220 F.3d 1096 (9th Cir. 2000).

All of the cases cited above are proof that not only, can non-compliance with mandatory state rules deprive an individual of rights protected by the U.S. Constitution, but it also proves those claims are cognizable under §2254.

Therefore the United States District Court for the District of Maryland abused its discretion when it determined that the Petitioner's claims were not cognizable under 28 USC §2254.

FAILURE TO HOLD AN EVIDENTIARY HEARING

The District Court abused its discretion when it failed to hold an evidentiary hearing because under the particular facts of Petitioner's case all of the requirements were met, and none of the statutory preclusions applied.

Federal habeas corpus hearings are required if three conditions are met- (1) the petition alleges facts that, if proved, entitle the petitioner to relief, (2) the fact based claims survive summary dismissal because their factual allegations are not "'palpably incredible' or 'patently frivolous or false'" - the standard for summary dismissal in habeas corpus proceedings and (3) for reasons beyond the control of the petitioner...the factual claims were not previously the subject of a full and fair hearing in the state courts, or if a full and fair state court hearing was held, it did not result in state court factfindings that resolved the controlling factual issues in the case.

- (1) If, as the Petitioner alleges, that the violation of mandatory state rules acted to deny him due process of law, equal protection of the laws, and denial of counsel- a structural error and Sixth Amendment violation- then he is entitled to relief, and the first requirement has been met.
- (2) Petitioner's claims survived summary dismissal by the District court, progressing through each proceeding, and were never deemed 'palpably incredible' or 'patently frivolous or false' by either court, therefore the second requirement was met.

(3) Although a hearing was requested in the State habeas corpus proceeding by the Petitioner, and thus was required by law, that court failed to hold a hearing. Although three hearings were held prior to trial those did not result in factfindings that resolved all the controlling factual issues because in the first hearing to discharge counsel Petitioner's request was denied, with the judge telling the parties to work it out; the second hearing, to dismiss charges for violation of Rule 16-101 d.3(ii) the factual issue of whether the judge who had continued Petitioner's trial was one of six judges authorized by the county administrative judge which would be a violation of the rule, was never resolved because the judge chose to focus solely on whether the judge in question was designated the 'day' she affected the continuance in question; and the final hearing to discharge counsel the court failed to allow Petitioner to explain his reason for the request, and simply allowed him to proceed pro se, thus the third requirement was met.

As mentioned above none of the preclusions apply to the facts of this case. Under §2254(e)(2), "If the applicant has failed to develop the factual basis of a claim in state court proceeding the court shall not hold an evidentiary hearing on the claim...". The Petitioner presented factual evidence of his claim the State habeas corpus court, requested an expedited hearing, but the court failed to address the factual issue and failed to hold a hearing. Those same claims were then presented to the Court of Special Appeals and Court of Appeals of Maryland, as well as the U.S. District Court for the district of Maryland. Thus far, none of those courts have addressed Petitioner's claims on their merits of denial of Constitutional rights under the Sixth and Fourteenth Amendments. ("If however, the facts are still not developed despite the petitioners diligence in the state proceeding, then the petitioner does not need to fulfill the requirements of §2254(e)(2) because the petitioner is not considered to have failed to develop the facts"); ("diligence requires, at a minimum, seek[ing] an evidentiary hearing in State court in a manner prescribed by state law"). WILLIAMS

WILLIAMS v TAYLOR 529 U.S. 420 (2000); ("the limitation created by §2254(d) would not apply if the State did not provide any review of the federal claim at all, since there could be no state court adjudication of the claim on the merits") CULLEN v PINHOLSTER, 563 U.S. 170 (2011).

Past Court's have leaned, heavily, in the direction of holding evidentiary hearings where a Petitioners confinement and detention might be illegal or in violation of his constitutional rights. Chief Justice Warren's opinion for the Court identified a strong federal policy favoring hearings because ("detention...obtained [in violation of the Constitution] is intolerable") and because, ("the opportunity for redress, which presupposes the opportunity to be heard, to argue and present evidence, must never be totally foreclosed"), TOWNSEND v SAIN 372 U.S. 293 (1963).

FAILURE TO ISSUE CERTIFICATE OF APPEALABILITY

In construing AEDPA Certificate of Appealability provision, the Supreme Court has ensured that habeas corpus petitioner who are denied relief in the District Court have, under 28 U.S.C. §2253 (c)(2) a meaningful opportunity for appellate review of the district court's ruling.

The Fourth Circuit Court of Appeals abused its discretion when it determined that the Petitioner had not made the requisite under §2253(c)(2) because under the language of the statute the only standard is a "substantial showing of the denial of a constitutional right", which the Petitioner clearly made. The Court had access to the same evidence as the District court, an 'Order of Designation', issued, signed, and dated by the County Administrative Judge for P.G County, with five trial judges and herself designated/authorized to continue criminal trials, in violation of a mandatory Maryland Rule that the States highest court has held warrants the sanction of dismissal of all charges; the Petitioner alleged the trial judge presented him with the option to "work it out" with his counsel, obtain counsel of his own, or to proceed to trial pro se, which deprived him of his Sixth Amendment

right to counsel -a structural error-, but also his rights under Maryland Rule 4-215(e) which entitles him to reversal of his conviction and a new trial; there was no hearing held in State habeas corpus proceedings, which under state law was a requirement, therefore there was no adjudication on the merits of his constitutional claims; and lastly, the State never refuted any of his claims as false, frivolous, or without merit and neither did any of the lower courts. Any one of these claims should have garnered issuance of a Certificate of Appealability, unrefuted as they were.

The Court of Appeals citing this court's holding in MILLER-EL v COCKRELL and SLACK v MCDANIEL failed to observe the most glaring conflict with their decision and this court's holding in those two cases. ("AEDPA does not require petitioners to prove that a decision is objectively unreasonable by clear and convincing evidence") MILLER-EL v COCKRELL 537 U.S. 322 (2003); ("neither the District Court or the Circuit Court of Appeals have given full consideration to the substantial evidence which the accused had put forth in support of his prima facie case") Id. Both of the examples speak directly to the circumstances in Petitioner's case, because just as there was reason to admonish the lower court's for not giving full consideration to the evidence put forth in MILLER Id., the District Court and Court of Appeals in this case are guilty of giving no consideration to any of the evidence put forth even though that evidence was unrefuted. An unchallenged claim of denial of constitutional rights should have amounted to a prima facie showing, if not substantial, and a Certificate should have been issued to further explore the claims on their merits.

In SLACK v MCDANIEL the State asked the Court to construe the "Certificate of Appealability", which conditions the issuance of a certificate upon a "substantial showing of the denial of a constitutional right"(28 USC §2253(c)(2)(2006). - to limit appeals to "constitutional" rulings and thereby forbid the issuance of a certificate of appealability when a district court denies a peti-

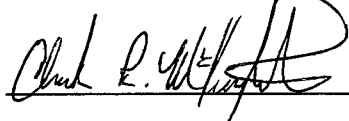
tion on procedural grounds without reaching the underlying constitutional claim. This Court "reject[ed] this interpretation" because of its obvious deleterious effect on the writs ability to fulfill its "vital role in protecting constitutional rights" 529 U.S. at 483.

Instead of protecting the Petitioner's rights under the U.S. Constitution, the rulings of both the lower courts have further denied him these rights by denying him the opportunity to have the merits of his federal claims adjudicated under federal law, by a federal tribunal. The Court of Appeals' decision that the Petitioner failed to meet the requisite showing has set the standard for such a showing far beyond the reach of the Petitioner and well beyond the scope of the scope of this Court's ruling in the two cases cited above. It also sets the bar well beyond the standard set in HAINES v KERNER where that Court held the petitions, motions, etc. of inmates unrepresented by professional counsel should be "liberally construed", 404 U.S. 519 (1972).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 18, 2018