No. 18-8610

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

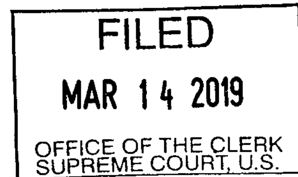
ANTONIO SIERRA- PETITIONER- PROSE

VS.

MR. JOSH SHAPIRO, ATTORNEY GENERAL OF PENNSYLVANIA, ET AL,

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT



PETITION FOR WRIT OF CERTIORARI

III

BY. /S/. ________________, -
/P/. MR ANTONIO SIERRA, PhD., DD.,

MAILING ADDRESS: MR. ANTONIO SIERRA,
IN CARE OF: MS. TUSDAY B. SIERRA
114 SHORT STREET
PHILIPSBURG PA 16866

ADDRESS OF RESTRAINT:
DEPARTMENT OF CORRECTIONS
SCI ALBION, PA.
PA. STATE ID. #. DV.0686
10745 STATE ROUTE 18
ALBION PA

QUESTION PRESENT

A.

Whether the District Judge of the Custodial United States District Court for the Western District of Pennsylvania is precluded from exercising Article III., and 28 USC § 2241 Jurisdiction and/or powers, when form over substance upon the Great Writ produced dispositive Opinions for the process at issue [?]

B.

Whether the animated principles underlying the Great Writ, preserves its Constitutional availability for a fair review, notwithstanding the lapse in the case where facts and evidence have no bearing on the judgments and the Great Writ of Habeas Corpus on its own is caused impairment [?]

LIST OF PARTIES

PARTIES WHOM DO NOT APPEAR IN THE CAPTION ON THE COVER PAGE ARE (INTER ALIA) :

Department of Corrections, Office of Chief Counsel, Laura J. Neal, Esq., FOR the DOC, Warden Michael Clark, Nancy Giroux (former warden), Self and/or all the same.

District Attorney of Erie, Mr. Jack Daneri Esq., of and for the Commonwealth of Pennsylvania, et al.

The Governor, Honorable Mr. Tom Wolf, of and for the Commonwealth of Pennsylvania, et al

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Browder v Director, Dept.' of Corrections of Ill, 434 US 257, 98 S.Ct 566 (1978)

Central Transp'n Co. v. Pullmans Palace Car Co., 139 US 24, 11 S.Ct 478 (1891)

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Commonwealth v. Orie, 88 A.3d 990 (Pa. Superior Court, 2014)

Cort v. Ash, 422 US 66, 95 S.Ct. 280 (1975)

Davis v. United States, 417 US 383, 94 S.Ct 2298 (1974)

Dodd v. United States, 125 S.Ct 2478, 545 US 353 (2005)

Engle v. Isaac, 456 US 107, 102 S.Ct 1558 (1982)

Frost vs. Corporation Commission, 278 US 515, 73 L.Ed 483 (1929)

Gannet Co, Inc., v. DePasquale, 442 US 368, 99 S.Ct. 2898 (1974)

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Hazel Atlas Glass Co. v. Hartford Empire Co., 322 US 238, 64 S.Ct 997 (1944)

Jacobs v. Giroux, 2015 U.S.Dist.LEXIS 82651 (3rd Cir. 2015)

Joint Anti-Fascist Committee v. McGrath, 341 US 123, 71 S.Ct 624 (1951)

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Panetti v. Quarterman, 551 US 930, 168 L.Ed.2d 662 (2007)

Paul v. Davis, 424 US 693, 96 S.Ct 1155 (1976)

Rashl v. Bush, 542 US 446, 124 S.Ct 2686 (2004)

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Steel Co., v. Citizens for a Better Environment, 523 US 83, 118 S.Ct 1003 (1998)

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI –

(III.rd)

Petitioner humbly request expedited this Court consideration in a Writ of Certiorari to issue in review of the Judgments below on the basis of his facts where consideration has merit

OPINION BELOW

A. - **FOR CASES FROM FEDERAL COURT**, -

.That may be designated for publication, not yet reported and/or is published and appears to this petition

. The Opinion of the U.S. Court of Appeals 3rd Cir. appears as Appendix A. (A. o1-o9)

. The Opinion of the District Court (WESTERN) appears as Appendix C. (C. o1-o4)

. The Opinion of the District Court – (MIDDLE) appears as Appendix D. (D. o1-15)

. The Opinion of the United States Supreme Court appears as Appendix B. (B. o1-o3)

B. - **FOR CASES FROM STATE COURT**, -

. That may be designated for publication, not yet reported and/or is published and appears to this petition

. The Opinion of the highest State Court to review the merits appears at No. 18 & 21 in the Certified Record of July 26, 2016 (hereinafter "CR. #.—" for convenience).

. The Opinion of the Superior Court appears at CR. #. 10, 12, and 14

. The Opinion of the Common Pleas Court (ERIE) appears at CR. #. 6, and 13

. The Opinion of the Common Pleas Court (ERIE) appears at No. 1 in the Certified Memorial of Evidence of July 26, 2016 (hereinafter "ME. #.—" for convenience.).

. The Opinion of the Common Pleas Court (LEBANON) appears at ME. #. 2, 3, and 5

. The Opinion of the Superior Court appears at CR. #. 4, and 7

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

(III.rd)

JURISDICTION

A. **FOR CASES FROM FEDERAL COURT,**

. The Date on which the Court of Appeals decided my case was September 11, 2018.

. A timely Petition in Chancery was issued that was converted into a Petition for Rehearing that the Court of Appeals denied on December 14, 2018. A copy of the Order denying rehearing appears to this petition at Appendix A. (A. 3-4).

. The Jurisdiction of this Court is invoked under the Due Process Clause of the Constitution and Laws of the United States, and Statutorily under **28 USC**, sections 1254(1), 1651, 1657(a), 2101 and 2106 respectively.

B. **FOR CASES FROM STATE COURT,** that appears to this petition

. The Date on which the highest state court decided my case was September 13 and November 1, of 2016.

. A copy of those decisions appears in CR. #. 18 to this petition.

. A timely Petition for rehearing was thereafter denied on December 2, 2016. A copy of the Order denying rehearing appears at CR. #. 21, to this petition

. The Jurisdiction of this Court is invoked under the Due Process Clause of the Constitution and Laws of the United States, and Statutorily under **28 USC**, sections 1257(a), 1651, 1657(a), 2101 and 2106 respectively.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

__. **CONSTITUTIONAL**, In pertinent parts

USCAm. 1st provides, congress shall make no laws ... abridging the freedom of speech, of the press, or the right of the people to petition the Government for redress of grievance.

USCAm. 5th provides, No person shall be held to answer for a crime unless on indictment, Nor be deprived of life, liberty, or property, without due process of law.

USCAm. 6th provides, The accused shall enjoy the right to a public trial, by an impartial jury of the state and district, to be informed of the nature and cause of the accusation to have compulsory process and Assistance of counsel for his defense.

USCAm. 14th provides, No state shall make or enforce any law which shall abridge the privileges immunities of citizens of the U.S., Nor shall any state deprive any person of life, liberty, or property, without due process of law, deny to any person within its jurisdiction the equal protection of the law.

USCArt. I § 9 provides, Habeas Corpus privilege shall not be suspended.

USCArt. I § 10 provides, No state pass any ex post facto law, or law impairing the obligation of contracts.

__. **STATUTORY**

Title 28 USC § 1254 provides, the supreme Court may review cases in the court of appeals by writ of certiorari granted upon the petition of any party before or after the rendition of judgment or decree.

28 USC § 1257(a) provides, the Supreme Court may review cases from final judgment or decrees rendered by the highest court of the State in which a decision could be had by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question on the grounds of its being repugnant to the Constitution, treaties or law of the United States, or where any right, privilege or immunity is specially set up or claimed under the constitution or authority exercised under the United States.

28 USC § 1651 provides, the Supreme Court may issue all writs necessary in aid of its jurisdiction, an

alternative writ or rule nisi.

28 USC § 1657 provides, the Supreme Court may hear any action Constitutional or statutory rights would be maintained in a factual context that indicates consideration has merit.

28 USC § 2106 provides, Supreme Court may modify, vacate, set aside or reverse any judgment or decree or order of a court lawfully brought before it.

28 USC § 2241 (a) provides, Habeas writ may be granted by Supreme Court or justice, district courts and any circuit judge. The Circuit Judge' Order shall be entered in the record of the district where restrain complained of is had.

28 USC § 2241 (c)(3) provides, Habeas writ shall extend to prisoner in custody in violation of constitution or law of the United States.

28 USC § 2243 provides, a court, justice or judge shall summarily hear and determine the facts and dispose of the matter as law and justice requires.

28 USC § 1746 provides, any matter required to be evidenced or proved under any laws of the United States may, with like force be proven by unsworn declaration, verification or statement in writing, subscribed as true under penalty and dated.

28 USC § 2244 (2) provides, in a second habeas "under section 2254"...

28 USC § 2244 (d)(1)(B) provides, limitation shall apply to application by a person in custody pursuant to "judgment of a State court"

636 provides, (c)(1) Party may consent to magistrate jurisdiction, if magistrate is designated the clerk of court shall at the time action is file notify parties... Whom may withhold consent without substantive consequence, (3) nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the supreme court of the United States.

(b)(1)(B) a designated magistrate shall submit to court judge their findings of fact and recommendation, - (C) any party may serve and file objections to such findings and recommendations within 14-Days after being served.

IV. **STATEMENT**

A. ***INTRODUCTION***

By the Courts Esteem and praying indulgence,

1. Information and evidence presently in use by those in government powers that is false and misleading, prejudice Petitioner, prosecution of case and the integrity of the Judiciary substantially in all its effects. Equity and good conscience requires the false and misleading statements and information be annulled and avoided for the following reasons:

a) These matters relate to your petitioner, Mr. Antonio Sierra and by proxy his younger sibling Mr. David Sierra (herein "D. &.A. Sierra or Sierra" if necessary), residents and citizen of the State of New York, Citizen of the United States and presently restrained and committed in the Commonwealth of Pennsylvania; In fact, these matters may also be of concern to the United States of America –ex rel, in error.

b) In the same timeline below, this also relate to Prosecutors, Attorneys and others in power that arise from facts and evidence represented by Prosecutor Mr. D. ARNOLD, J. DITZLER, C. COOK and Ms. J. GETTLE (herein "***Prosecutors***") of and by the Commonwealth of Pennsylvania, herein "***Cmwlth, State or Pa.***"

c) It is Petitioner strong contention the facts and evidence above, along with similar facts and evidence herein address as unknown and concealed are matters submitted in court to determine the truth of alleged facts that does not exist in any public record because of external events in the 2001 term of litigation; Yet, are matters that appear in Court records as docketed like,

a) SIERRA vs. WILSON, No. 3-cv-05-2281 and SIERRA vs DIGUGLIELMO, No. 3-cv-o6-0604 and may be found at http.//www/pamd.uscourts.gov//

b) Cmwlth vs. SIERRA, No. 592 MDA 2004, & Cmwlth vs. SIERRA, at 593 MDA 2004 (CONSOLIDATED) - and may be found at http.//www.pacourts.us/superior//

2. In conclusion, facts and evidence as matters communicated, are what came into existence between the first and second term of litigation in 2003 to 2006 and 2013 to 2015; particularly by the Prosecutors authority of and by the State in opposition to their own Prosecutors as placed before Honorable Judge(s) Mr. J. M. MUNLEY and Mr. A.R. CAPUTO (herein "Judge(s)") in the U.S. District Court for the Middle District of Pennsylvania, See, July 26, 2017, ***Certified Record*** at No. 2, pp.1-5 (herein "CR.#.-, pg. -).

1) **STATE COURT PROCEEDINGS**

3. Petitioner sought state review in March 16, 2016 after **Montgomery vs Louisiana**, announced a new Constitutional law on January 25, 2016, and within the State Post Conviction Relief Act ["PCRA"] sixty day time limits statute, 42 Pa. C.S. 9501, 9541-46; Yet State relief only extends to those individuals "convicted of a crime under the law of this state" Id. 9543(a) (1). Petitioner fairly gave notice of this presumed bar's inapplicability for State extraordinary review powers in a Prerogative writ, on the basis of his facts, as communicated in this petition., See. CR. #.1, pp.3-5.

4. In this expressed review, Petitioner communicated facts and evidence from two previous terms of litigation that fairly indicated Prosecutors took extraordinary steps to make information unavailable, while what as being provided is beclouded by misrepresentations and concealments about his primary rights actually impinged in the first, sixth and fourteenth amendment that he was entitled, but did not prevent, CR.1, pp. 6-8

5. In point of fact, Petitioner fairly addressed prosecutor's statements and information place before the Courts and judges for a favorable decision adverse to him in both terms of litigation. This included concessions not standing out form its surrounding background of misrepresentations, concealments and contradictions (Id., pp. 12-17) that did not generate a response from the Judge(s) reviewing the articles presented and/or cited from and this, even if examined for likeness or differences, compared to the 1998 Jury trial transcripts or such other form of information by any authority placing sentiments in the matter on Court or other records without Petitioners knowledge that he was entitled to challenge after fair notice (Id., & CR. #.4-5) but left without process on a cause to complain Id. & CR.#.2, pp. 1-3, 6-9, 19-23

6. On April 13, 2016, the trial court denied the writ and though Petitioners request to continue Informa pauperis prayed therein (CR. #. 6-7). In fact, the paupers prayer was directed to the Courts own Judge granting paupers in another action concerning Marriage contracts made void and presently not at issue due to judicial actions withholding review, indicating not proper for the Great Writ, and therefore excluded in this petition.

7. On direct appeal, the issues Petitioner raised was on the right to initial fair process after providing Respondents adequate notice and documents in all mattes with this case and an open invitation to request anything found wanting (CR. #.7, pp.5-7). Petitioner claimed no available PCRA relief, extraordinary matters that compel his to call for accepting his immediate surrender by the propriety of Montgomery new holding that allows retroactive application of criminal rules to state law as in Fiore v White, Alleyne v United States amongst others. Conclusively, Petitioner asked the Appellate court to reach the merits passed on by the trial court if it could, Id. pp.7-9 & CR. #. 8.

8. On June 20, 2016, the Superior court reclassified petitioner filings as an "Application for Relief" and held –Denied without prejudice to raise all properly preserved issues in an appellate brief. Id. CR. #.8. In June 24, 2016 the Court again denied Petitioners actual application for relief as held above, Id.

9. Petitioner appealed these Orders back to the Superior Court as ambiguous and unclear in the Scope of review and proceedings to take place; particularly what constituted "properly preserved issues," when the trial court did not address the merits, while this appellate court had authority to grant relief for application of recently decided cased in in April/May of 2016 like FOSTER v CHATMAN, \ MOLINA-MARTINEZ v. US and WELCH v US, while the Superior Court has yet to determine whether collateral review will extend, CR. #. 10

10. The State Superior and Trial Court collectively issued three orders as contrary to each other holding. The Appellate court in July 14th 2016, directed trial court not to address the merits of the underlying action so petitioner may proceed on appeal after he filed another pauper's application (CR. #. 12). The trial Court determined Petitioner was convicted, and on Attempt Criminal Homicide, the prerogative writ and affidavits is nonsensical and wholly without merit on July 12th. The Prosecutor was Ordered to file pleadings, (CR. #. 13).On July 29th , the Appellate court Ordered Petitioner to file pleadings or appeal will be dismissed (CR.#. 14.). In Fact, not knowing where this case resided was the least of my problems, Ordering the Prosecutor to respond after dismissing the action and addressing the writ was Petitioner main concern and new cause that under the appellate court's Order would ***not be*** a properly preserved issue.

2) **STATE OPPOSITION**

11. Mr. Daneri and Mr. Burns indorsement, possession and control as Prosecutors, tendered a consideration repudiating Petitioners injuries in person, property an relief on August 10, 2016, (CR.#. 15). Prosecutors here represented Petitioner was convicted, and on Attempt Criminal Homicide, the Court has no jurisdiction –venue to the prerogative writ and affidavits that is nonsensical and utterly without merit and should be dismissed as untimely under the PCRA, Id., However, prior to these prejudicial expressions,

A) Prosecutors had obtained all the evidence and facts to this case that itself fairly disclosed the time, date and actual misrepresentations, concealments and such matters bordering on Fraud on the Court, on its own esteem and

B) when compared to those matters disclosed and represented by States Prosecutors, Attorneys, Officers of the Court and Administrative Agents as presented and/or cited from and this, even if examined for likeness or differences, including the transcripts of the 1998 Jury trial, Petitioner provided in fairness and to avoid suspected continual miscarriage of justice and no constitutional protection, like for example:

12. The matters placed in Federal and State court materially related to a Jury trial for September 8-11, 1998 at the Lebanon County Court of Common Pleas ("CCP-Lebanon") and the State's induced plea agreement where the Prosecutors caused into existence by offer in a ***non-criminal charge***, for a jury verdict what Prosecutors expressed as "**Attempt Third Degree Murder**" and this, as the recorded trade to "Attempt Criminal Homicide," that is as found at page 707 at No. 11-12 of the Certified Trial Transcripts to this case (herein "TT.#-, p.-"), See July 26, 2017, ***Certified Memorial of Evidence*** at No. 6, pages, 1-7 (same TT. Above) herein after "M.E. #. -, pg.-"

(A) GENERAL FALSE AND MISLEADING

13. In April of 2006, Prosecutor by Motion persuaded the Judges for extended time to allegedly retrieve the record in this case. What later arose to Petitioner as false appearance is the first in a series of unlawful actions starting Federal Review that carried over from State Court' predated adverse action in Prosecutor GETTLE' opposition on August 2, 2004, to Petitioners consolidated appeal as fairly indicated on the record, CR.#.1, pp. 7-8 and CR.#.2, pp. 2-3 & 30.

14. The 22-months delay cause from the Prosecutors August 2nd, opposition to their contest in June 2006 of Petitioners 2005-06 Writ of Habeas Corpus -2254 petition, Id. is 667-Days of excessive preparation that isolated from August 2nd to April 20th motion as above, covers the same excess of 20-month and prejudice the Prosecutors had no lawful justification or excuse to advance or impose.

15. As the Prosecutors false appearance and statements wrongfully exerted influence by government posture already at their vantage, even if the goal was not to impair process, there still was no sound reason or excuse to purposely represent false and misleading Statements and information in this accounted excess of time when considering the main point of fact in ***what was reasonable known*** by the Prosecutors not solely what was within their possession.

B). EXACT –I.

16. Moreover in the same excess of time, the Prosecutor represented in 2006 that Sierra was convicted, charged and the Jury found him guilty of "Attempt Criminal Homicide;" Yet, this would be in direct conflict with Prosecutor GETTLE' representations that two year earlier admitted the charging offense as "Attempt Third Degree Murder," and conceded that Sierra had to "preserve this claim," See CR. #.3, p.1-2. In this point of reason to proper context,

The first appearance in the Prosecutors statements and information different as represented and in two Courts that produced the same result in denying Petitioner relief and truth of facts on conviction and charge is a material fact by the attending conflict causing confusion and injury to him directly, if not also the Judiciary and every form or record to date.

17. Further, Prosecutor Daneri and Burns possessed the trial transcripts approved March 18, 1999 as the record created before trial Judge Samuel A. KLINE, Prosecutor' David ARNOLD (above), B. CHARLES (now Judge), Public Defenders T.WYNN, J. KELSEY, C.JONES and Court reported M.Allwein whom certified the trial transcripts (herein after "record" for convenience), and therefore, these two Prosecutors has conclusive evidence, reasonable knowledge and information to settle this case' controversy in good faith, not continue the same series of misrepresentations and concealments plaguing this Case and Judicial impartiality, See, M.E.#.6.

18. Conversely, the record disclose that ***after*** Prosecutor obtained approval in their contract, Lawyer KELSEY, offered and then physically moved to "change" and "amend" the charging information to call for "Attempt 3rd Degree Murder as the charge instead of "Attempt Criminal Homicide," TT.p.707 #. 15-21 & p.708 #. 1-10)

19. On point, the explicit language in the plea agreement is amend, change & instead, in the context communicated above, shown on the record and is conclusive evidence that Sierra is ***not*** charged or convicted in Attempt Criminal Homicide and the ***non-criminal*** declaration sought and rendered is the non-existent charge Attempt Third Degree Murder; That as discovered in the second term of litigation, is a jury verdict rendered with **no** Judgment of conviction and **without** judgment of commitment as a matter of fact and law, that as law for example :

(a) LAWFULLY IN THE MATTER

20. It is now held that when a new substantive rule of Constitutional law controls a cases outcome, the Constitution requires State Collateral courts to give retroactive effect to that rule, **Montgomery**, 136 S.Ct. At 729; such as "a verdict without a judgment is of no validity," See, **Smith vs McCool**, 83 U.S. 560, 561, 21 L.Ed 324 (1873); And an act which is void because unconstitutional has no power and cannot create new rights nor destroy existing ones," **Frost,** (Infra) 278 US at 527. A conviction ***is not*** the a jury verdict, See, **Cmwlth vs. Maguire**, 452 A.2d 1047, 1049 (Pa. 1982), **Cmwlth vs Jacobs**, 39 A.3d 977, 983 (Pa. 2011). And Where the judgment does not exist for conviction, no commitment order will make detention lawful, See, **Hill vs U.S. ex rel. WAMPLER**, 298 US 460, 56 S.Ct. 760 (1963).

21. As the Prosecutors evidence conflicts with each other and the authentic record about ***conviction and charge***, this affects the ***power of the Jury*** under the Sixth Amendment to the Federal Constitution and Article 1 section 9 of the State Constitution, See, **Blakely vs Washington**, 542 U.S. 296, 308, 124 S.Ct 2531 (2004)

22. The rights guaranteed by the Constitution as communicated above, require that the State confront an accused, here Sierra, with the specific accusation of the crime; this held as basic to the fairness of the Court proceeding cannot be "waived" by anyone. See, **Cmwlth vs. Little,** 314 A.2d 270, 273 (1974), Sierra cannot be convicted of something not specifically accused against him, See, **Cmwlth vs Komatowski**, 32 A.2d 905, 909, (Pa. 1943) and **Cmwlth vs Longo**, 410 A.2d 368, 369 (Pa. Super 1979).

23. As the Sixth Amendment is held as limiting Courts power that "***infringe on the province of the Jury's powers,***" **Blakely,** 542 US @ 308, it follows, that "***no Judge can impose punishment where the jury verdict alone does not allow or have not found all the facts which the law makes essential to the punishment.***" Id. *542 US @ 304,* "State procedures that does not comply with the Sixth Amendment ***is invalid,***" Id. 542 US @ 305.

24. In conclusion, were the conviction does not exist, the commitment for confinement is illegal and due process of the Federal and State Constitution require that the commitment bear a reasonable purpose for the restrain, ***Wampler***, 289 US @ 456, See also, **Foucha vs. Louisiana**, 504 US 71, 86, 79 (1992). The State must afford the protections constitutionally required, Id., (all the above), and Also, **Kansas vs. Crane**, 534 U.S. 407, 413, 122 S.Ct 867 (2002) (Stating ***Foucha*** rejected an approach that would permit indefinite commitments of any individual, whether criminal or not).

(b) FACTUALLY IN THE MATTER,

25. As added point and instance, following adverse decisions of all Federal Judges in the 2005 through 2007 term; The Prosecutors 22-month of false, insincere behavior and excess time-preparation ("***artifice***") did not officially inquire with fair notice of issues and facts to investigate. Sierra obtained concealed information and evidence that was unknown to him from various sources of government like,

A). "***No*** sentencing Orders ***exist*** and **no** commitment Orders ***exist***." The governments Administrative Agencies communicate this in the Department of Corrections ("DOC"), the State Correctional Institute ("SCI"), the DOC-Right-To-Know Office ("RTK"), and the DOC-Office of Open Records ("OOR"), including its personnel that admit, concede and/or attest in the 2013 through 2015 term as shown in **Appendix** 7 through 10, and may be found at http.//dced.state.pa.us/public/oor/appeal//

B). that as above, personnel directly admitting, conceding or attesting include: DOC-RTK. A.Filkosky, Esq., DOC-OOR –C. Defelice, Esq., and Loran, Esq., and DOC-SCI C.Gill, (Records Supervisor), See, Id.

C). that as above, yet indirectly includes, DOC-SCI -N.Giroux (Warden-2013) and M. Clark (Warden 2016-). In addition, whether from evidence provided to Sierra and/or the numerous government process, proceedings and actions since 2006 to date, these and other named government individuals are participant present to and with actual knowledge of this information and evidence, See CR. #3 p. 3-4.

26. In another point and instance to all the same expressed above yet for the 2013 through 2015 term to redress these grievances, Sierra set out to search for a conclusive source in the cause and uncovered additional concealed facts and evidence that was unknown like,

A). Wealth of existing Judicial case laws and other authorities from 1972, **1983**, 1992 and 1994 that within these given years cite authorities of other States in 1935 through 1980 for the proposition that "***Attempt 3rd Degree***" is ***logically impossible*** and ***does not exist***.

B). the wrongful action of trial Judge 34-Days before certifying the record for the Prosecutors plea agreement, charge and jury verdict in the "***Attempt 3rd Degree Murder.***" Mr. KLINE instead stated Sierra convicted on "*Criminal Attempt to Commit Criminal Homicide,*" in February 17, 1999 as the lawfully issued court document causing prejudice and injury by communicating false and/or misleading statements and to the State Appellate Courts as shown in ME # 3 p. 3-4.

C). the wrongful action of trial Judge 16-Months after certifying the record for "***Attempt 3rd Degree,***" charge as above. Mr. KLINE instead stated Sierra convicted on "*Criminal Attempt to Commit Criminal Homicide,*" in August 10, 2000 and causing prejudice and injury as expressed and as provided in CR. # 3.

27. For all the same reasons as communicated and to be expressed, the record reveal what is fairly shown as explicit contrarieties and unconstitutional actions is representations made in this case as false, misleading and further, made without regard it was false so long as reviewing Judges were induced to rely on the misrepresentations.

28. In conclusion, these unlawful prejudicial action above intend to retain the illegal restrain of Sierra with no regard to the additional wrongdoing to the Courts, process and is sufficient to constitute Fraud and Fraud on the Courts of the United States as a matter of fact and as a matter of law; In this document appearing in final conclusion.

(C) EXACT –II.

29. The Prosecutor further represents that because Sierra requested the grading "***Third Degree***" to reduce possible sentence, the grading of third degree is merely a matter of semantics created by Sierra himself, See, **Apx.** 1

30. ***In contrast***, the record show that in this government induced plea agreement, the discussion in the Courts chambers focus was whether one looked to the crime codes or sentencing guidelines, there was nothing in the State law about "*Criminal Attempt to Commit Criminal Homicide*" and Mr. KELSEY wanted something on the record, TT.p. 705-706, & See, CR. #6, PP. 3-4

31. As shown in the record, the Prosecutor second opposition in conversation did not agree with the assessment of the law between Kline and Kelsey to, rather, set down twice in the Prosecutors explicit authority as "asking for an instruction to the Jury on "***Attempt 3rd Degree Murder***" and that is it, TT.p. 707, #. 6-12

32. In addition to the Prosecutors clear and precise expressions, and as previously communicated, prior to trial judge accepting the terms of this contract, Mr. Kelsey did submit his offered to "amend and change the charging information to call for "***Attempt 3rd Degree Murder***" as the charging offense instead of "*Criminal Attempt to Commit Criminal Homicide.*" Then, he physically exchange the two with approval and no objections, as it appears, TT.p. 707, #. 15-21, 708, #. 1-10; See enclosed **Appendix**

33. As these indisputable facts from the record are in explicit terms and contrast to the Prosecutors 2004- 2006 including that of Mr. Kline in 1999 and 2000 representations of what was before the Jury and what Sierra did and wanted; their statements are false and misleading and cause prejudice to Sierra when in fact and in law no lawful justification or excuse exists, then or now.

Sierra strongly believes, based on what was, each government officer or official knew and/or with reasonable knowledge of the facts, factors, laws and circumstances at issues as throughout, this constitutes miscarriage of justice.

(D) EXACT –III. ACKNOWLEDGMENT

34. The Prosecutors represent that the State does not have a **Statute** or a **Charge** as "***Attempt 3rd Degree Murder***" and that Sierra "***argues technically correct***" but should have "***preserved this issue***,"- CR #3 p. 1-2

35. The Prosecutors setting aside any "reason" why they admit Sierra' position to be true, what has been revealed since the 2004 through 2006 term is the creation of a charge and law in 1998 that trial judge KLINE took part in the Prosecutors plea agreement and solicited Wynn to concede.

This was done while each individual was knowingly aware of taking action beyond the power conferred on it by law.

36. In this above, after ***September 11, 1998*** contract is caused to exist and at all times thereafter; Sierra ***never*** received fair notice or chance to challenge in a meaningful time and manner, particularly when Kline made the agreement useless.

This is like being of no legal force and effect in ***February 17, 1999***, and this simply means he made the contract void.

37. Aware of this taken action beyond the power granted on it, Kline then decides to restore the plea agreement as an act of the Court in March 23, 1999; Then, for reasons still unknown, in August 10, 2000, Kline again makes the contract void, See ME. # 2-3, & 6

38. In proper context with regard to "awareness" as a point of Constitutional fact, the 2004 - 2006 term Prosecutors, one which is David Arnold from 1998-contract /jury trial; fairly indicates involvement in creating a charge and fashioning a law for "***Attempt 3rd Degree Murder***" with those appearing in 1998 as communicated above. Here, affecting the fairness and integrity of the Court, jury trial and Sierra' Constitutional rights occurs with knowledge and reason to know it's an unlawful act and existing authority in State law before and after deciding to act like for example,

A). To Sierra' Jury trial Verdict –15-Years ***prior*** as in 1983 and *Cmwlth vs Griffin*, 456 A.2d 171, 177-78 (Pa. Super). 6-Years prior as in 1992 and *Cmwlth vs Anderson*, 610 A.2d 1042, 1051 (Pa. Super), reversed on other grounds 650 A.2d 20 (Pa. 1994) and *Cmwlth vs Spell*, 612 A.2d 458, 461, n.5 (Pa. Super) affirmed, 643 A.2d 1078 (Pa. 1994). And 4-Years prior in 1994 and *Cmwlth vs Barnyak*, 693 A.2d 40, 45, n.5 (Pa. Super).

B). To Sierra' Jury verdict- 1-Year ***after*** as in 1999 and *Cmwlth vs Williams*, 730 A.2d 507, 511-12 (Pa. Super). 4-Years after in 2003, *Cmwlth vs Clinger*, 833 A.2d 792, 796 (Pa. Super), in addition, 5-Years after in 2004 and *Cmwlth vs Geathers*, 847 A.2d 730, 734-36 (Pa. Super)

39. It is noteworthy to express the State Supreme Court recognize the impact of these cases above during the same time Sierra was on or about litigating his case before said court, Like ***in 2009*** and **Cmwlth vs Weimer**, 977 A.2d 1103, 1105, 1112 (citing Clinger, Spells, Barnyak and Griffin –above). In ***2011***, at **Cmwlth vs Roebuck**, 32 A.3d 613, 615-16 (citing Weimer and cases cited as above with other decisions form States of the Union). And in ***2013***, at **Cmwlth v Fisher**, 80 A.3d 1186, 1187 (citing Weimer, Roebuck and some cases above).

40. As the only factual matter the Prosecutors admit into evidence is the charges description that restrain Sierra unlawfully is "***Attempt 3rd Degree Murder***" and that the record concludes is actual, anything to the contrary is illegal and causes injury to Sierra and must be completely removed, vacated, made invalid, null and void.

41. For all the same reasons, the misrepresentations addressed in this document are a direct and proximate result of Sierra' continual injuries that include unlawful restrain, forced detention and commitment, deterioration of life and health, deprivation of life, liberty, property and Constitutional protection.

42. The false and misleading statements communicated in this document being actual and unlawful, disparage and ruin Sierra' life, liberty, property and reputation with the continuous distribution of the misrepresentations communicated as a factual matter that is done without justification or excuse and as a matter of law that for example:

(a) **LAWFULNESS –II**

43. It is well established that the Legislature and not the courts are whom define a crime and ordain punishment, **U.S. vs Wiltberger**, 18 US (5 Wheat) 76, 95, 5 L.Ed 37 (1820). Immunity to one from a burden imposed upon another is a form of classification and necessarily results in inequity . . . unreasonable and arbitrary. **Frost vs Corporation Commission**, 278 U.S. 515, 522, 73 S.Ct 483 (1929), See also, *McCool, Wampler, Blakely, Foucha*, **Supra Infra**.

44. A court is not free to set aside a Jury verdict because a judge feels that some other result is more reasonable, **Tennant vs Peoria & P.U. RY. Co.,** 321 U.S. 29, 35, 64 S.Ct 409 (1944). Where a trial court "attempts to enter a different verdict that that entered by a Jury," the Courts are compelled to reject any alteration of the original verdict made," **Cmwlth vs Dunn**, 385 A.2d 1299, 1301 (Pa. 1975), accord **Cmwlth vs Reading**, 603 A.2d 197, 201 (Pa. Super 1991 (citing **Dunn**)). A trial judge in assessing a jury verdict does not sit as the thirteenth juror, **Cmwlth v Widmer**, 744 A.2d 745, 752 (Pa. 2000).

45. It violates due process to convict an accused for conduct that a ***criminal Statue*** as properly interpreted does not prohibit, **Fiore vs White**, 531 US 225, 228-28, 121 S.Ct 712 (2001)(per curiam). If ***the Statute*** under which an accused has been ***convicted*** is Unconstitutional, he has not in the contemplation of the law, engaged in criminal activity, for an unconstitutional statute in the criminal arena is to be considered ***no statute at all***." See, **Hiett vs U.S.,** 415 F.2d 664, 666 (Court of Appeals, 5th Cir, 1964).

46. It then would follow, that an "offense created by an ***unconstitutional law***, the Court has held is not a crime, **Ex Parte Siebold**, 100 U.S. 371, 376, 25 L.Ed 717 (1880). A conviction under such a law is not merely erroneous, but illegal and void and cannot be the legal cause of imprisonment, **Siebold**, 100 US @ 376-77. There is ***no grandfather clause*** that permits the State to enforce a punishment that the Constitution forbids. **Montgomery vs Louisiana**, 136 S.Ct. 718, 731, 193 L.Ed.2d 599 (2016). If the law is invalid as applied to the criminal defendants conduct, the defendant is entitled to go free, **Bond vs U.S.**, 564 U.S. 211, 227, 131 S.Ct 2355 (2011)(per curiam)(quoting Siebold).

47. It is also well established State law conduct does not constitute a crime unless is under title 18 of the Crime codes or another Statute of the State. **Cmwlth Booth**, 766 A.2d 843, 846 (Pa. 2001). And "when a court takes action beyond the power conferred on it by law (its Jurisdiction), its action is a nullity and objections cannot be waived by anyone," **Cmwlth vs Hall**, 140 A. 629, 631 (Pa.1928).

48. **Wherefore**, for all the same reasons, there is no lawful justification or excuse to keep Sierra in an unlawful restrained, as a matter of law and in fact as expressed throughout.

(b) <u>FACTUALLY *–ASSESSED*</u>,

49. As previously expressed, Prosecutor GETTLE' 2004 representation about the declaration pronounced as an offense by the 1998 Court and Jury trial-verdict to Sierra' committed-restrain is opposed by ARNOLD, DITZLER and COOK along the same lines; Yet, in fact, this opposition **should not exist,** because as communicated below, just four years prior to GETTLE's representation or Sierra taking on the Commonwealth without a lawyer or legal assistance; a "***conscientious examination of the record***" was performed by a licensed –certified attorney in the 2000 term of litigation. The Lawyer found, and the State Superior Court was wrongfully induced to believe that there was "***no case law which would provide,*** justify or support any relief or complaint ***Sierra might have of the information brought by the Commonwealth.***"

50. The Prosecutors representations in the 2003 to 2007 term, like the opposition between them that replace "no charge" for "no Statute," replace ***<u>Attempt 3rd degree murder</u>*** for Attempt Homicide and virtually replace the entire transcripts authenticity as provided -shown in Appendix 3-6, are facts and evidence Sierra did not know or was made aware of.

51. In fact, given the lack of information about this case, state law and the process alleged provided to his status as a State-foreigner from New York in the initial 9-Years, from November 4, 1997, arrest to the adverse rights and claims that came into existence, the only thing Sierra knew as a certainty was how to stay alive in the hostile environment he was restrained to endure.

52. The Prosecutors alterations and statements not known to Sierra, were not prominent to merit comment of the Judge(s) as they were significantly beclouded by false, misleading statements and concealments that include Mr. Arnold's level of involvement. This became known long after the Judge(s) July 2006 denial of Sierra' petition and Courts October 24, 2006 mailing of its docket statement sheets Sierra received about 5-days later.

53. In the years that followed the arrival of these four Prosecutors misrepresentations and concealments, Sierra did not sleep on his rights, rather attempted to understand from Prosecutors prejudicial actions to find the correct answers on some apparent duty or right, to and by the forced guess work left in their wake and noticeably while Sierra had no legal Counsel or assistance, government induced poverty, state incarcerated –restraint with its own demands and burdens.

54. Sierra' single piece of evidence supporting his case in a State court decision holding ***Attempt 3rd degree murder*** is not a crime, logically impossible and to the contrary of the four Prosecutors hesitant support, obscured by layers of misrepresentations and concealments was a case that existed in 1983; Yet, the Prosecutors knew or had reason to know about this law and what proceeded from it, prior to deciding not communicate or address "***<u>what</u>***" established Sierra' commitment and restrain, "***<u>how</u>***" *Attempt 3rd Degree Murder* is created and allowed given to the 1998 –Jury and "***<u>why</u>***" *Attempt 3rd Degree Murder* was allowed to be created and given to "*Jury-98*".

55. As a direct and proximate result of these Prosecutors misrepresentations, concealments and insincere concessions (hereinafter "State of facts" for convenience), Sierra have been and continues to be harmed. The Prosecutors state of facts impede the free exercise and protection of Sierra's First, Sixth and Fourteenth Amendment rights. It substantially impedes the flow of information and Sierra' ability to completely represent his case and access to fair and impartial Court, Judge or government, in a fair and meaningful time and manner by petition, address, remonstrance and/or grievance.

56. Realizing Arnolds involvement with the deprivation of never fairly challenging or litigating these Prosecutors Statement of facts impressed on the Court and Judge(s) during the 2003 to 2007 term, later became a forced focus after realizing the acts and action being represented by the Prosecutors, Sierra did not recognize or remember. This lead to facts and evidence that never existed or was released by the Prosecutor in 2006 until Sierra 2013 to 2015 term of litigation.

57. As expressed above, Prosecutor Arnold & Charles agreement offer declared Attempt 3rd Degree Murder as the charging offense in place of "Attempt Homicide," Lawyer Kelsey agreed, while Kline urged Lawyer Wynn to concede in September 11, 1998, before Kline approved the contract and faced the Jury.

58. In fact, this contract and declared offense in Attempt 3rd Degree Murder as allowed to be created and given to Jury-98, impeded the impartiality and fairness of the Jury-trial, shattered confidence and impartiality of the Court, Kline as Judge and the administration of Justice. The power of Court became "***functus officio***" before the new acts was performed and jurisdiction had absolutely ceased; See, e.g. **Hall vs. Ames**, 182 F. 1008, 1013-14 (C.A. 1.st Cir. 1910) (quoting (inter alia) **Williamson vs Berry**, 49 U.S. 495, 540-41, 12 L.Ed 1170 (1850).

59. This plea agreement that Sierra never knew of these five individuals (herein "initial Officers of the Court") was made useless in February 19, 1999 and August 10, 2000 when the words "Third Degree Murder" to insert the words "Homicide" after the word "Attempt," was removed by Kline, this act and action rendered the contract, jury verdict and non-criminal offense Attempt 3rd Degree Murder, null and void.

60. In fact, at the point when Kline in his opinion decided and/or sought to add this new dimension to Jury verdict & trial by placing these altered legal documents in the possession of other State appellate Courts and Judge(s) to influence their decision, Kline's acts and actions became unlawful and regarded as manifold prejudice and fraud on the Court,

See e.g. **Hazel Atlas Glass Co., vs Hartford Empire Co**., 322 U.S. 238, 245, 66 S.Ct 997 (1944) *-for Fraud On the Court*; & **Cmwlth vs. Kulick**, 216 A.2d 73, 74 (Pa. 1965) and **Cmwlth vs Young**, 317 A.2d 258, 264-265 (Pa. 1974) –For ***Manifold Prejudice***

61. It's of worthy note at this point to communicate that the actions by Kline imparted directly on Sierra' rights makes him a Judicial defendant that can be and was the proper party in Sierra' legal cause of action where Federal and/or State Courts inquire into the effects of the Officials performance on his duties not necessarily on the nature of the official duty itself, See, e.g.,

Ex Parte Young, 209 U.S. 123, 157, 28 S.Ct 441 (1908), acc'd - **Sabo vs. Casey**, 753 F.Supp. 581 (CA.3rd Cir. 1991), **Finberg vs. Sullivan**, 634 F.2d 50, 54 (CA.3rd Cir. 1980) (en banc), **Delong vs. Brumbaugh**, 703 F.Supp 399 (WD. Pa. 1989) (same).

62. As a direct and proximate result of these initial Officers of the Court contract, misrepresentations, concealments and unlawful influence of the Jury verdict, other Court and Judges, Sierra have been and continues to be harmed. The initial Officers of the Courts acts and actions impede Sierra' exercise and protection of Constitutional rights in the First, Sixth and Fourteenth Amendment. It substantially impeded the flow of information, Sierra' ability to completely represent his case and access impartial Court, Judge or government, in a fair and meaningful time and manner. It substantially deprived and impaired Sierra' Jury-trial guarantee, presumption of Innocence, fair –impartial Jury, trial, judge and the basic notice and opportunity to challenge in a meaningful time and manner.

63. As the 2003 to 2007 term Prosecutors insincere concessions does not stand out from its surrounding background of combined false and misleading statements and concealments, their statement of facts in this lite did not invite comments when placed in the possession of the Courts and Judges for the induced unfavorable decision to Sierra whom is substantially prejudiced as left without fair opportunity to challenge; In fact, also amount to continual wrongdoing as well manifold prejudice and fraud on the Courts as above, for example:

A). In the titled case: **SIERRA ex rel. Antonio Sierra** vs. **Samuel Kline and Nancy Giroux**, at CCP-LEBANON Docket #. CP-38-CR-11239-1997 and 2013-02357, Attorney for Kline named **Martha GALE**. After stalling process (6-mo or 171-Days) while in possession of the facts, evidence and laws in this instrument; Gale petition Court to dismiss Sierra Habe petition in March 6, 2014 –***Preliminary Objections*** ..., and represented that

1). "Kline in his official individual capacity is entitled to sovereign immunity;

2). No amendment can cure the deficiencies in Sierra' petition for Habeas Corpus and

3). [I]f a judge of a criminal court should convict a defendant of ***a non-existent crime***, he would merely be acting in excess of his jurisdiction and would be immune. Judicial immunity applies no matter how "erroneous" the act may have been, and however ***injurious*** in its consequence it may have proved to the plaintiff [Sierra]. (Emphasis added); See: http.//www.pacourts.us/

63).

B). In the same titled case above; And ***before*** Senior Judge **FARINA** gave Mr. Kline immunity in July 17, 2014 and ***after*** Judge FARINA Ordered ***briefs*** in May 30th to be filed and ***Oral argument*** in June 6, all of 2014- where Sierra written and oral representations maintained the facts, evidence and laws herein to establish that fraud, and Fraud on the Court destroys everything, even immunity; Attorney **GALE**, in August 4th ***Response to Sierra' Motion in Arrest of Judgment***, represented that

1) Sierra ask ** to contravene coordinate jurisdiction rule by overruling the ruling made by FARINA, a Judge of coordinate jurisdiction,

2) the only time ** rule in not applicable is when . . . a ***substantial change in facts*** or ***evidence*** or a ***clearly erroneous holding*** [1], and

3) Sierra' repeated raising and attempting to relitigate identical arguments and contentions that have been adjudicated frustrate the efficient flow of judicial proceedings..."

C). In the case: **ANTONIO SIERRA vs. Cmwlth of Pa., et al,** at CCP-Erie Docket # 10808-2016, Jack DANERI and Michael E. BURNS are the Prosecutors; that after five months of frustrated process from March 6, 2016 Prerogative Writ following **Montgomery vs Louisiana**, 577 U.S. – (January 25, 2016) (inter alia); Prosecutor in August 10, 2016 - ***Motion to Dismiss Sierra' Writ*** ..., Representing that

1). Sierra was convicted of Criminal **Attempt /Homicide** ,

2) Prerogative writ and affidavits is nearly indiscernible, presented in a nonsensical run on sentence fashion. Sierra failed to properly articulate his claims and Respondent is unable to discern with any certainty Sierra's grounds for relief or the facts in support of said grounds and

3). Assuming arguendo that the instant writ is not dismissed for any of the previous stated reasons, it is inter alia, verbose, vague, virtually incomprehensible and ***utterly without merit*** and should be dismissed on that basis.

.FOOTNOTE

1: **NB**. The Orders entered in this case was clearly erroneous. Sierra' facts and evidence were not fairly addressed and CCP-Lebanon October 6, 2014 Order, for the first time gave Sierra notice "***the notes of testimony in this case was not recorded or transcribed***," Received October 10, 2014.

D). the case that followed above at federal level as titled: **ANTONIO SIERRA vs. KANE (Attorney General), GIROUX (Warden)** and **DANERI (D.A.)**, at US.DC.WD.PA. Docket #'s: 17-01 Erie and 1:17-cv-00001-SPB, is picked up in response to Sierra' filings to the US. Court of Appeals of the 3rd Circuit ("CA. 3rd "), that lead to two Court Ordered amended Habeas Corpus 28 USC § 2241 Petition by the U.S. ***Magistrate District Judge*** - Susan P. BAXTER, that in August 3, 2017 Order within a footnote communicated that

1) Docket sheet as well as information available via the record Department at the S.C.I. -Albion which is also available to the public. Those documents and records ***establish*** that Sierra is serving a ***judgment of sentence*** imposed by the CCP-LEBANON..." See: http.//www/pamd/uscourts.gov//

E). Yet, in the case titled **Commonwealth of Penna**. vs. **ANTONIO SIERRA** at Pa. Superior Court Docket #' 1401 MDA 2000, the Court Appointed Attorney is named Charles P. Buchanio – [2], that in a petition to withdraw titled Anders Brief, dated October 25, 200 represented that

1) Counsel has made a ***"conscientious examination of the record"***

2) Counsel herein knows of "***no case law which would provide the relief that Sierra seeks, ...***"

3) Further Counsel knows of ***"no case law which would justify or support any complaint Sierra might have . . . of the information brought by the Commonwealth.***"

See. http.//www/pacourts.us/superior//

64. As a direct and proximate result of **Gale**, **Daneri**, **Burns** and **Buchanio** (herein Subsequent "Officers of the Court) misrepresentations and concealments and ***Magistrate*** Baxter's reliance on the false and misleading information created, supported, distributed and/or publicized by the Prosecutors, Initial and Subsequent Officers of the Court, Sierra have been and continues to be harmed without impunity; These acts actions and conducts communicated as causing harm and injury, impede Sierra' exercise and protection of Constitutional rights in the First, Sixth and Fourteenth Amendment.

65. In fact, it substantially impedes the flow of information without restrain, and impedes Sierra' ability to completely represent his case and access impartial Court, Judge or government, in a fair and meaningful time and manner. It ***substantially wrongfully approves*** of Sierra being deprived and impaired his Jury-trial guarantee, presumption of Innocence, fair –impartial Jury, trial, judge and the basic notice and opportunity to challenge in a meaningful time and manner.

.FOOTNOTE

2) Though named lawyers for David Sierra' are unknown, the fact Sierra suffers from the same as his brother indicated the same prejudicial scheme is at play, shared and retained and **must be cause to cease immediately**.

66. The sum total of facts for Sierra' unlawful non-criminal commitment restrain by a verdict without a judgment in Attempt third Degree Murder while supported by adequate evidence and laws are issue with merit that has not been fairly reviewed and frustrated as communicated above; except of course, "***granting***" Sierra permission to petition as a poor person –that is, Sierra is allowed to pay ***to be denied*** and kept within the revolving doors of what clearly indicates a corrupt government system that seems to indicate :

There is no Justification or excuse to attempt reason in the context of providing any existing opportunity underlying Sierra' facts, if the result of obtaining a remedy, relief and/or address the apparent adverse rights and claims would be to expose layers of corruption beyond the doors of the Court Of Common Pleas in Lebanon and/or Erie County, District Attorney's Office of Lebanon and/or Erie County, the Department of Corrections, the Department of Justice ***and- those Persons or Places whom know or have reason to know all the above.***

Att. - The Government

67. The fact Sierra is entitled to have these matters addressed and cleared up when taking into consideration the sum total of his facts and evidence is strengthened by the fact those in Government as communicated herein has known all these facts, evidence and laws as early in 2016-2019 term, as late in 2013-2015 term that includes for example,

A). To be eligible for FEDERAL habeas relief, Sierra must be in custody pursuant to a judgment of conviction by a State Court and this language is mandatory and the requirements cannot be determined in the vacuum, See, e.g., **Magwood vs. Patterson**, 130 S.Ct 2788, 2787. 177 L.Ed.2d 592 (2010) and 28 U.S.C. § 2254 (a) & (b)(1)

B). To be eligible for STATE Post Conviction Relief or "PCRA," Sierra must plead and prove by the preponderance of evidence he has been convicted of a crime under the Laws of the Commonwealth and this requirement is mandatory, See, E.g., Cmwlth vs. Peterkins, 772 A.2d 638, 641 (Pa. 1988), Cmwlth vs. Descardes, 101 A.3d 105, 111 fn.4 (Pa.Superior Ct. 2013) (citing extensive authorities);

68. On the basis of Sierra undisputed facts, for all the same reasons expressed throughout, no government officer or official as communicated in this instrument had, has or will have any lawful justification or excuse to keep Sierra in an unlawful restrain, as a matter of fact and as a matter of law.

3) FINAL STATE REVIEW

69. Petitioner sought a Writ of Prohibition for Due-Equal Process in the Spirit of his Sixth Amendment protection in the State Supreme Court to both lower courts on the basis of his facts as addressed in this petition, See CR. #. 16-17

70. In September 13, 2016, the State Supreme Court denied Petitioners action (CR. #. 18). In October 11, the State Supreme Court denied Petitioners action (CR. #18). In October 11, the State Superior Court dismissed the cause for the failure to file a brief (CR. #. 19 @ 7). In November 1, 2016, the State Supreme Court quashed appeal and dismissed all other actions as moot (CR. #. 18).

Petitioner sought the State high Court' reconsideration on the grounds of Montgomery' Constitutional law on the basis of his facts and supporting evidence (CR. #. 19-20). In December 2, 2016 the Court denied Reconsideration, CR. # 21.

B) FEDERAL PROCEDDINGS (I) USCA # 17-2988

1. In evidencing an intent to appeal, Petitioner filed a notice of appeal and affidavits on December 28, 2016 to the Court of Appeals in the Custodial Western District Court of the United States as pursuant to 28 USC 1746, 2253 and 3rd cir. Lar 22.1. See Cr. #.22

2. The Western District Court granted leave to proceed in forma pauperism on January 1, 2017. In fact, by granting to proceed as a pauper the Court constructively filed Petitioners matters.

3. On January 13 2017, the State trial Court of Erie entered an Order addressing technical matters critical in evaluating Petitioner's conduct, understanding and granted to Writ, to deny the action based on the Jurisdiction-venue cross over represented by Prosecutors, See M.E.#.1

4. Petitioner being caused to action in January 22, 2017, timely objected to the State trial Court Order, giving notice of appeal to the third circuit has been filed and yet, if the State corrective process would issue pursuant to Montgomery, an order should be expedited immediately (CR.#.26). No action was taken thereby confirming no state process would issue, Id. pp.14-15.

5. On February 2, 2017, the Western District Court- "Magistrate" issued an Order closing Petitioner' case until only an amended habeas corpus pursuant to § 2254 is filed consistent with the pre- consistent with the pre-printed form provided, CR. #.23

6. Petitioner timely filed Objections to the Magistrate and fairly provided copies in the same to the Middle District Court Judge Caputo (CR. #. 24).

7. Petitioner communicated the COA- as part of the present action under review relates to his notice of appeal and affidavit of December 28, 2016 for the Court of appeals, Id. pp.1, 27-28. Petitioner sought to effect the Statutory appeal and alternatively 14th Amendment relief pursuant to **Richardson v. Miller** and the cited authority found therein, 716 F. Supp. 1246 (8th Cir. 1989),Id. pp. 2-26.

8. On April 10, 2016, the Magistrate issued a second Order closing Petitioner' case until only a 2254 amended Habeas Corpus is filed consistent with the pre-printed form provided, CR.#.25. The Magistrate noted that petitioner cannot avoid the Statutory rules by filing a Motion at Common Law, Id.

9. Petitioner in fear of recurring prejudice by taxing appeal as experienced in State, obeyed as best possible the Magistrate' Orders. On July 26, 2016, Petitioner filed the Certified Record and Memorial Evidence with his Writ of Habeas Corpus pursuant to 28 USC§ 2241 (c) (3), evidencing his intent to withhold any further action by the Magistrate, See, Writ at pp. 39-40.

10. On August 3, 2017, the Magistrate issued an Opinion adverse to Petitioner solely on the grounds of an extrajudicial source of information to deny the petition and remove a Prosecutor from litigation.. However, evidence the Magistrate relied upon also indicated there is no lawful commitment or restrain for Sierra and it was not possible to determine the veracity of any public records (CR.#.3, pp.1-4). Moreover, Petitioner on the 2241 Writ raised as ground one (Count One) his suspicions on the prejudicial erroneous information and such reliance to a Constitutional significant degree; See Writ at p. 17. A copy of Magistrate decision appears at Appendix C- (C1-4).

11. Petitioner timely filed a notice and motion to the Western District Judge on August 10, 2016 pursuant 20 28 USC § 636, 1746 and FRCP 60(b) with respect to two related issues : 1) Whether the magistrate final order and opinion impinges on Petitioner's First, Sixth and due process rights, privileges and guarantees when the

Statutory conditions in issue are not satisfied [and] 2) whether an action not to affirm, but disaffirm unlawful contracts made void could be maintained by petitioner to order pursuant to 28 USC § 2241

12. Given an aready unfair procedure and after petitioners notice and motion as above remained idle, in September 29, 2017, he sought United States Supreme Court Intervention tantamount to a bill in equity to set aside all matters made void and unlawful on the Jury province, plea agreement, Judicial process and Petitioners restrain. This action, preceded by a timely notice of appeal pursuant to 28 USC § 636(c)(3), 2101(b) and the Due Process clause is based on his facts, evidence and laws as communicated in this petition.

13. On November 2, 2017, during the pendency of petitioners direct appeal to this Court and without his authorization, the Court of Appeals issued a panel Opinion dismissing for lack of Jurisdiction. The third circuits ruling was based on its holding that Petitioner needed to appeal Magistrate's dispositional Orders to the Western District Judge, that even then, would not be immediately appealable. A copy of this decision appears in Appendix A (A.5-6)

14. Petitioner timely filed a Chancery petition in the Court of Appeals pursuant to Marshall v. Holmes, 141 US 589 (1891), Montgomery (Surpa infra) and their progeny on November 14·th, to address on the basis of petitioners facts and all acts done, the unfair judicial procedures denying due process by contesting his acts as not done contrary to what plainly appears on record

15. On December 12, 2017, the Court of Appeals granted the action as a Petition for Rehearing and denied the action on January 10, 2018. A copy of this decision appears in Appendix A (A.7)

On December 2, 2017, the Middle District court issued and Opinion dismissing petitioners writ of habeas corpus, pending motions and denied Certificate of Appealibility ("COA"). The Courts ruling was based on its holding that the present petition is most definitely a 2254 action that petitioner did not seek approval from the Court of Appeals to file and Petitioner did not rely on a new rule of Constitutional law or present newly discovered evidence. A copy of this decision is provided in Appendix D (D.1-10)

16. After petitioner timely notice of appeal, in March 6, 2018, a writ of Certiorari preceded of this Court with respect to two related issues: 1) whether on the basis of petitioners facts, where lower court decision to subordinate powers with no regard to exceptional matters on review deny him due process of law [and] 2) whether

Montgomery adopted a new rule in January 25, 2016, for collateral review courts to apply new criminal rules retroactively so as to render the underlying adverse matters Constitutionally wrong.

17. In May 29, 2018 this Court denied Certiorari at USC # 17-8242. A copy of this decision appears in Appendix B (B.1).

(C) FEDERAL (II)-USCA #. 18-1150

18. On December 8, 2017, Petitioner filed a timely emergency petition in Chancery to the Full Middle district court for equitable relief set upon refilled evidence as plainly appearing on the Certified record and indicating 28 USC § 2281 applicability in seeking Court of Appeals authorization, 2) reliance on Montgomery newly declared Constitutional law and 3) presentation of newly discovered evidence as passed over without due attention by the Judiciary denying Due Process. However, this equitable petition was filed before the Middle District court December 7th, Opinion that Petitioner had obtained on December 11, 2017.

19. Petitioner filed an emergency motion to the Court of Appeals on December 28, 2017, to strike judgments on the grounds: 1) State review passed upon claims to apply Montgomery, address Jury-verdict and contract made void [and] 2) December 2016 notice and affidavits as held filed under federal authority was unfairly denied by Western District Magistrate [and] 3) timely oppositions to Magistrate Opinions as issued to said District Judge and 2241-habeas are lawful matters before Article III Custodial District Judge, presently not provided Constitutional and/or Statutory deference in Petitioners pleading's, Certified Record and Court Dockets as wrongful acts and actions in violation of his First, Fifth and Sixth Amendment rights and USC § 1746 & 2241.

20. In January 25, 2018, the Court of Appeals directed corrections to Petitioner's emergency motion, and preceded that be a second in January 29th of 2018, to file a COA within the time given.

21. On February 19, 2018, a Petition for Expedited Consideration & Appeal Nunc Pro Tunc- (COA in error) to the Court of Appeals, was petitioner' response to all the continual unfair procedures and prejudice on three grounds: 1) Serious doubt exist in the jurisdiction of the Court of Appeals where the factual predicate was unripe at the time of the first 2254-writ [and] 20 Jurisdictional assessment between 2241-writ and timely August 10th 2017 Objections to Magistrate opinion are primary matters before the Custodial-Western District Article III Judge that should not be displaced by subordinate action in this litigation.

22. In March 1, 2018, the Middle District Court issued a single Judge Opinion that dismiss Chancery petition. The Middle court's ruling was based on its holding that Petitioner did not seek authorization in the third circuit and while most but not all claims related to his original 2006 petition, the Court lacks jurisdictions to entertain it. A copy of this decision appears as Appendix D (D11-15).

23. In March, 2018, the Court of Appeal issued a panel Opinion affirming the judgment of the Middle District Court and dismissed all petitioner motions. The third Circuit ruling was based on its holding they would not find the Habeas Writ was properly dismissed by the district court as unauthorized second Petition that it lacked jurisdiction to consider. A copy of this decision appears in appendix A (A.8-9).

(D) FEDERAL PROCEEDINGS (III) –USCA#.18-2044

24. After Petitioner's failed efforts to consolidate the District Courts decision on March 1st with those found in his Motion to Strike before the Court of Appeals; in April 5, 2018 Permission for Amended Order, Petitioner addressed one related issue: (a) whether contract s made void by constitutional acts being also void because unconstitutional and focused repetition escaping review of acts by others creating hurdles, allows the Petitioner to seek the court of Chancery when fair Due-Equal Process is made inadequate at law on things claimed Petitioner did not due since December 28, 2016, yet fairly appearing done by signature of three witnesses to the contrary.

25. In May 9, 2018, the Court of Appeal determines Petitioner March 10 and April 5th actions after the case was closed to docket #.18-1130 and cannot be docketed there yet may submit a COA within 21 days from May 16, 2018.

26) On direct appeal to this court from the court of Appeals March 23, 2018 decision to action #.18-1150, Petitioner writ of Certiorari- by excusable neglect issued with respect to these three related issues: 1) Whether [lower] courts made an unreasonable determination in fact and in law in light of the evidence –contrary to due Process laws, Federal Law and/or 23 USC § 2253 and 2) If not so, whether under the facts of this case something more is required for authorization to satisfy the Burton rule [and] 3) Whether under the facts of this case Custodial Western District court lose jurisdiction.

27. In July 23, 2018, The United States Supreme Court Issued an Opinion that determined the Writ is out of time and court no longer has power to review. The copy of that decision appears in appendix B (B.2) Petitioner

immediately filed a letter for post dead line extension and excusable neglect in July 30, 2018 as the Writ was dated June 21st but mailed one day later.

28. In August 20, 2018 the Supreme Court issued an Opinion that determined Petitioner must resubmit the Petition with motion and notarized statement to file out of time. A copy of this decision appears in appendix B (B.3). Petitioner followed the Supreme Courts directive and on August 24, 2018, submitted the Writ, Motion and notarized Affidavit. However, no action has or is known to have been taken on these communicated submissions. The copy of the notarized affidavit appears in appendix B (B.4).

29. After Respondents decided not to respond to the court of Appeals June 6 and June 13th notice of COA-consideration- In June 28, 2018 Petitioner filed a timely reply to Respondents decisions and raised on related issue: 1) Whether the courts unreasonably determination of fact, law, evidence and circumstance is contrary to the Due Process clause and/or Federal law .

30. In September 11, 2018 Court of Appeals issued a panel opinion affirming the judgment of the Middle District Court. The Third Circuit' ruling was based on its holding they would not find debatable the Habeas Writ was properly dismissed by the district court as unauthorized Second Petition that it lacked jurisdiction to consider and would not debate whether Petitioner Rule 60 (b) motion was properly denied by the district court. A copy of this decision appears in appendix A (A.1-2)

31. Petitioner was thereafter blind sided by Respondent when they decided to deprive Petitioner legal mail by the court of Appeals in September 2018 to date; that he presumed that is September 11, 2018 Opinion , yet he is not certain of its contents.

32. On October 25, 2018 Petitioner without his lawful copy of the Court of Appeals September 11, 2018 opinion called for extraordinary remedy, rule waiver and rehearing to all the same related issues as manifest errors of facts and law in the a federal process as late as December 28, 2016 while maintaining the underline issues of unripe claims in earlier Writ, excessive judicial intervention denying due process, continual misrepresentation with concealments with regard to and unlawful made void jury verdict and plea agreement with no Judgment of Conviction or commitment as right for Application of Montgomery new constitutional law in the custodial western district court before the Article III District judge.

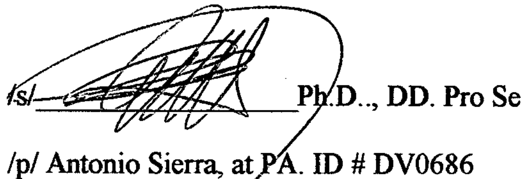
33. In November 9, 2018 the Court of Appeals granted the petition as a Motion to file out of time and in December 14, 2018, issued a panel opinion with limits that denied rehearing. A copy of this decision appears in Appendix A (A.3-4)

(E) Conclusion

34. Upon respectful great reason given to grant the Writ To An American Citizen's short distance for redress having traveled the longest road for extraordinary obstacles in perseverance in right sunder the constitution and federal statutes that would be maintained on the basis of this pro-se petitioners facts communicated in this petition; Expedition considered has merit.

35. I the petitioner, Mr. Antonio Sierra hereby declare under the penalty of perjury pursuant to 28 USC § 1746; that the following facts are true based on my personal knowledge information and belief.

36. Date March 13, 2019



/s/ __________ Ph.D.., DD. Pro Se

/p/ Antonio Sierra, at PA. ID # DV0686

REASON FOR GRANTING THE WRIT

The Court of Appeals dispositive holding that Petitioner seeks permission to file a second writ of habeas corpus (Apx. A. No.1-2), is conditioned upon § 2253 in manifest error, that impinge Constitutional and Statutory protections and in effect a continuum of the limitations (Id. No. 8-9) decides an important federal question in a way that conflicts with relevant decisions of this Court, particularly Panetti vs Quarterman, 551 US 930, 168 LEd.2d 662 (2007), Stewart vs. Martiniez-Villareal, 523 US 637 (1998) and Havens Reality Corp vs Coleman, 455 US 363 (1982).

I. THE UNITED STATES DISTRICT COURT FOR WESTERN DISTRICT HAS JURISDICTION OF PETITIONERS HABEAS CORPUS PURSUANT TO ARTICLE III, & 28 USC 2241(c)(3)

Notwithstanind the extraordinary hurdles created in this case, particularly as this litigation was concluding; the Court of Appeals was fairly given notice of manifest errors of fact and laws in the three series of litigation to this case that Petitioner maintains on the basis of his facts in this petition and abided in the law. The suspicion that brought about the writ of habeas corpus in 2006, was not based on the facts that did not arise until after that habeas proceeding was decided adversely to Petitioner, and claims that were unripe on events having not yet occurred that the present 2017 -Writ of Habeas Corpus established.

This Court has held that a previous unripe claim is not second or successive, Panetti, 551 US at 945-47; Martinez-Villareal, 523 US at 644-45. Further, this Court has allowed litigant to challenge more than just once incident of violative conduct, but an unlawful practice; Concluding "just as long as the last occurrence of the practive falls within the Statutory limitation period. Havens, 455 US at 380-81.

As expressed above, the present writ asserted nonexisting claims in the prior writ. In actuality, long after the first unauthorized review of the 2017-writ concluded adversely (Apx. D.1-10) where Petitioner agreed the Court did not have Jursidiction for completely opposite reasons determined (Apx. A.5-9); the Middle District Court acknowledges this material point of fact expressing:

"Some of the grounds for relief Mr. Sierra presents in his motion to amend relate back to his original petition, other do not. It is not necessary for the court to wade through all fifty - five pages, to determine that this Court must deny his motion..." (Apx.D. 13-14)

If this position is well taken, Petitioner was not required to raise unripe and often factually unsopported claims as a mere formality to the benefit of no party, Panetti, 168 L.Ed.2d at 678. Once the lower Court recognized claims were not present in the prior habeas, "[t]here was only one application for habeas relief" and the District Court should have ruled on each claim at the time it became ripe," Id., and Martinez-Villareal, 523 US at 643-44. Petitioner was "not required to get authorization to file a second application before his claim could be heard," Id.

The district Court is required to consider and address the procedural issues first, satisfying itself of the proper authorization to exert its powers pursuant to 28 USC § 2241, 2254, Slack vs McDaniels, 529 US 473, 458 (2000), Steel Co. v Citizen for a Better Environment, 523 US 83, 95 (1998). The District court considers and determines the facts within the Statutory language in 28 USC §§ 2241 and 2254 conferring Jurisdiction and dispose of the matter as law and justice requires, Id., and Browder vs. Director, D.O.C., 434 US 257, 266 (1978)

In this, as with Petitioner' case; where § 2254 requirements do not apply where the conditions of the clause is not satisfied, Dodd vs U.S., 125 Sct 2478, 2482 (2005), as refeence to a State Court judgment is held significant that cannot be defined in the vacuum, Magwood v. Patterson, 130 Sct 2788, 2797 (2010); the issuance of the writ may reside under 2241(c)(3), provided Petitioner was able to satisfy the in custody requirements at the time petition is filed, See, Rashl vs. Bush, 542 US 466, 480-81 (2004) and Jacobs vs Giroux, 2015 US.Dist.LEXIS 82651 (3.rd.)(applying § 2241). This requirement is based on the Habeas Statute rules Congress added to avert the **** possibility that every judge anywhere could issue the Great Writ on behalf of applicants far distantly removed from Courts whereon they sat." Rumsfeld v. Padilla, 542 US 426, 442, 435, (2004)

A. THE COURT OF APPEALS ADEQUATELY NOTIFIED OF UNFAIRLY DECIDING AN IMPORTANT FEDERAL QUESTION THAT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, Id. & Roell v. Withhrow, 538 US 508 (2003), Thomas v. Arn, 474 US 140 (1985), U.S. v. Griggs Provident Cnsm'r Discount Co, 459 US 56 (1982), and U.S. v. Raddatz, 447 US 667 (1980)

Notwithstanding the extraordinary procedural hurdles created and as this litigation was concluding, forcing Petitioner to address review in all the judgments below; The Judiciary has over his exhaustive objections, continue to communicate July 2017-Habeas Writ as § 2254-petition [Apx. A.9, C.1, D.1-6, 10-12 & 14-15].

One can only imagine how Petitioner fairly exhaust in State, file in Federal same claims declaring positively "No Judgment Of Conviction or Commitment Exist," (inter alia), supported by evidence; Yet, somehow label his prejudicial and unlawful restrain a § 2254-petiiton and through it all, not think to look in the law on the matter which would have easily shown him a way to lessen this horrific result.

As maintains on the basis of his facts communicated in this petition and briefly, the second term of litigation produced evidence material of representations Prosecutors made in 2006, yet State review created prejudicial obstacles that by the time Petitioner was before this Court, he could not get review of what declared "there is no Statute for what Jury found him guilty." This in effect created contrary in their 2004-Prosecutor and with misrepresentations and concealments that induced Middle Court Judge to dismiss 2006-Writ against Petitioner.

These facts and evidence was not ripe in 2006. In 2016 Montgomery was decided and the new Constitutional law placed him within its holding; Yet, State review again created unfair obstacles leading to Federal appeal in December 28, 2016 to the Court of Appeals. This was lost or mislaid because He was then forced into filing and in 2017- produced the 2241-Writ as a lawful demand to Article III. Judge and fair process. In this, everything in the § 2241-Writ, including the law provided, clearly shows it does not satisfy, let alone come close to the outer limits of § 2254.

In proper context to an impartial Judge on the facts, as a matter of law; The facts and evidence Petitioner placed at issue fairly communicates that Officers of the Court submitted fraudulent evidence and did so, not only to one forum, but to the Court itself that included articles of record and for a favorable decision. After the Jury-forum and Court decided adversely to Petitioner, the Officers of the Court with fraudulent articles began to submit them even to the federal Court, extensively quoted from it urging a favorable decision that they obtained for a situation evidencing a trial by fraud, Hazel Atlas Glass Co. v. Hartford Empire Co, 322 US 238, 250 (1944); A fraud that has ripened into the subversion of Justice, Id. & Cmwlth vs. Orie, 88 A.3d 990, 997 (Pa.Super 2014).

As a matter of law, then the Judge cause to action is precluded from judging his own cause, Gutierrez de Martinez, v. Lamagno, 515 US 417, 428 (1995). The Jury verdict as without a Judgment of Conviction is not valid, Smith v. McCool, 83 US 560, 561 (1873). The Jury -Verdict in its altered form and more than a mere inaccuracy is the unlawful false verdict accepted through disseminated information, Tennant vs Peoria & P.U. Ry Co., 321 US 29, 35 (1944), Paul vs Davis, 424 US 693, 712-14, 96 Sct 1155 (1976). The verdict as set aside and with the State induced plea agreement, is on two occasions recorded through a State Advisory Rule Opinion not lawfully recognized as a dispositional Order, Youst v Kecks Food Service, 94 A.3d 1057, 1075 (Pa.Super 2014); And to maintain such an action is not to affirm, but to disaffirm the unlawful contracts, Central Transp. Co. v Pullman's Palace Car Co., 139 US 24, 60 (1891), Logan County National Bank v. Townsend, 139 US 67 (1891).

Petitioner was not aware of these matters the State has been reluctant to part with if not for his first and second term of litigation with all attending obstacles and prejudices; Yet, in pertinent importance of the uncovered 1998-Jury trial that resulted in a verdict rendered in reliance of the forged evidence [88 A.3d at 997], in addition to the Judiciary's acknowledgment above; The lower Middle Court also express the impact of Petitioner facts in issue:

"Mr. Sierra contends that no judgment of Conviction * * * exists, and while restrained liberty of Sierra is apparent, whatever so be, all this from its inception is without authority and void, and reference to the same as it is anything flowing from the 1998 Jury Verdict to this present Petition does not serve to give the illegality any validation and is a nullity and void"

(US.DC.MD.PA. Apx.D. No. 4-5)

As in addition to the matters above addressed with consideration to these Judicial expression fairly taken with facts and evidence placed at issue, what Petitioner communicates is that Prosecutorial authorities concede an "offense" was created without a Statute and this concession simply admits two salient points : A) that an offense was caused to exist by an unconstitutional law, Bond vs U.S., 564 US 211, 227 (2011) and B) that the Jury had not found all the facts which the law makes essential to the punishment, Blakely vs. Washington, 542 US 296, 304 (2004).

This Court has maintained : "[a] conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void." Montgomery, 136 Sct at 731; It is a "complete miscarriage of justice to punish defendant for an act the law does not make criminal," Davis v. U.S., 417 US 333, 334 (1974). If "a law is invalid as applied to the criminal defendants conduct, the defendant is entitled to go free," Bond, 564 US at 227 (Ginsburg, J. Concurring)

In these regards, the Court of Appeal has concluded that the issue is not debatable among jurist of reasons twice (Apx. A.1-2, 8-9), and on direct appeal to this Court, the Court of Appeals determined it lacked Jurisdiction (Id. A.5-6) by reading the Western District Court -Magistrate decision as a "pretrial Order," Id., it suffices to point out that every reason that the Court of Appeals offered for not applying due process and equal protection principles to this case has a little more to do with outside interference that did not permit Petitioner to have his notice of appeals, objections and such filing's before the Judges, than it has to do with knowingly electing to deny the force of the Constitution in this present case.

Notwithstanding the dispositional holdings in this case, with respect, to the Court of Appeals pretrial Order of the Western Court Magistrate; the Court reasoning from 28 USC 636(b)(1) is fundamentally flawed in several respects:

A. On the face of the Magistrate's initial two holdings, following Petitioners December 28, 2016 notice of appeal being lost, mislaid and held as an act not done; Does not give notice to rightfully contest or refuse exist, [CR.#. 23 & 25]; and this is a prerequisite to any inference pursuant to § 636(c)(2), Roell, 538 US at 590, and Arn, 474 US @ 144-45.

B. With respect, all of the Magistrate' judgments [Id. & Apx. C. No. 1-4], do not contain the "prominent legend pursuant to § 636(b)(1)(C), and Arn, 474 US at 144.

C. If the Court of Appeals inference of implied consent lawfully attached to conduct, then Petitioners 2241 -Writ, followed by Objections in August 10.th, filed for the Western Distict Judge are, "timely motions under Federal rules filed in the district court, Griggs, 495 US @ 60. A litigant preserve his rights despite procedural defects where, as here, Petitioner timely objected, Arn, 474 US @ 148, n.6, and files papers that are the functional equivalent of what procedural rules require, Id. @ 155 & Torres vs Oakland Scavenger Co., 487 US 312, 316-17 (1988). Any appeal filed before the disposition shall have no effect and a subsequent notice of appeal is ineffective and simply self destructs, Griggs 495 US at 60-61.

As Petitioner issued his § 2241-writ followed by Objections, it was the Western District Court Judge whom was to exercise "ultimate authority to issue the appropriate Order Under the District Courts total control and Jurisdiction, Arn, 474 US @ 153; Raddatz, 447 US at 681-82. A Magistrate' ruling does not become that of the District Court when Objections is filed, Arn, 474 US @ 151. A Magistrate has no authority to make a final and binding disposition, Id. 153, Raddatz, 447 US @ 673, and the Middle District Court is also precluded pursuant to the immediate custodial rule, the territorial jurisdiction rule and Padilla, 542 US 426.

With respect to the Court of Appeals dispositive holding that concluded it had no Jurisdiction [Apx.A.5-6]; Petitioner sought review of the Magistrates judgments in this Court not the Court of Appeals and its holding is fundamentally flawed in several respects :

A. September 29, 2017, filing's is captioned to The United States Supreme Court, and a litigants choice of forum is entitled to some weight, Gulf Oil Corp. v. Gilbert, 530 US 501, 508 (1974)

B. U•S• Supreme Court Rules conception is that the term "District Court," is equated to appellate Court, Id. 14(1)(g)(i), a clear distinction to what the rules address as the United States Court of Appeals, Id. at (ii). Rule 18(3) mandates to follow "so far as possible rule 14." In this an appeal is taken in the same manner from the "district court," F•R•A•P• 3(a)(3).

C. where Petitioner claims communicate procedures "that snarls or obstacles precludes an effective remedy," Bartone v. U.S., 375 US 52, 54, (1963); particularly as here, against an unconstitutional restrain and manifold miscarriage of justice, federal courts have no other choice but to grant relief in the collateral proceedings Id., and the Court of Appeals and this Court have broad powers of Supervision to correct errors reachable by the appeal rather than remit the parties to a new collateral proceeding." Id.

The Court of Appeals may have allowed Petitioners' appeal to this Court in September 2017, before case spiraled far out of recognition to the main underlying issues as the Legislature expressly did not bar appeal to this Court with respect to a Magistrate' dispositional Orders, 28 USC § 636(c)(3); Yet, particularly because the Magistrates Judgments goes as far to dismiss the Respondent, without fair notice or opportunity to contest this dismissal [Apx.C. No.1-4], of the party contesting Petitioner State action, that in effect alters the contours of his action, City of Waco v. U•S• Fidelity & Guar. Co., 293 US 140, 143 (1934).

II. THE COURT MAY CORRECT ERROR, NOTWITHSTANDING THE LAPSE IN THE CASE WHERE THE FACTS AND EVIDENCE HAVE NO BEARING TO THE JUDGEMENTS UNDER REVIEW

Petitioner' final reason for granting the Writ is because, with respect, this court will not find the Character of Petitioner's case depends upon an analysis of the facts and evidence, and this conception alone frustrates the primary purpose of implied rights, privileges and protection Congress made available in 28 USC § 1746, 2242, 2241 and 2243; particularly to safeguard communications and fair access to government in the legislative scheme governing the relationship between Petitioner' class and Respondents class and the relationship existing here actual or implied, Cort vs Ash, 422 US 66, 82, 95 Sct 280 (1975)

Constitutionally, the Sixth Amendment guarantees such rights personal to the accused with its overriding purpose in the protection form prosecutorial and judicial abuses, Gannett Co, Inc. v. DePasquale, 443 US 368, 379, 99 sct 2898 (1974). The Sixth Amendment also delegates to a Courts Magistrate or Judges an affirmative Constitutional duty to ensure litigants have a fair trial, Id. at 378 -; a duty that, on the basis of Petitioner facts in this petition include receiving writings and evidence signed and verified pursuant to the law, 28 USC §§ 1746, 2242. To hear, consider or determine the facts and dispose of the matter as law and justice requires, Id. and §§ 2241(e)(2), 2243, Browder, 434 US @ 266; Martinez-Villareal, 532 US @ 643.

In relevant esteem, the due process clause entitled Petitioner to the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue in the decision making process, Marshall vs Jerrico Inc., 446 US 238, 242, 100 Sct 1610 (1980), this entitled impartial and disinterested tribunal guarantees that life, liberty or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law, Id., with assurance that the arbiter is not predisposed to find against the Petitioner, Id., Joint Anti-Fascist Committee v. McGrath, 341 US 123, 172, 71 sct 624 (1951)(Frankfurter J., concur).

With respect to the Judiciary of the District of Pennsylvania, there is absolutely no reason to tolerate the lapse which occurred in this case's abysmal recycle. This Court has recently made clear that no Court have the authority to leave in place a punishment or penalty that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. Montgomery, 136 Sct at 731. Stated another way : [A] Court has no "prudentual" license to decline to consider whether the statute under which the defendant has been charged lacks constitutional application to her conduct." Bond, 564 US at 227.

In Frost vs Corporation Commission, on the rights to do business only by license that Commission sought to enforce from a repealed Statute, Frost sought to prevent discrimination and granting license to others, 278 US 515, 517-524 (1929); This Court held the "proviso is unconstitutional as contravening the equal protection clause of the Fourteenth Amendment; ...Id. 528. In reaching this conclusion, the Court and as applied to the facts of Petitioner' present case, there reasoned :

"the proviso under attack, having been adopted by a subsequent act and being invalid, has no effect, as we have already said, ... it began and ended as a futile attempt *** to bring about a change in the law which ** Legislature had [not] enacted. For this purpose, and as construed and applied below, it was a nullity, wholly "without force or vitality," . . . . Id. [Bracket Sierra's]

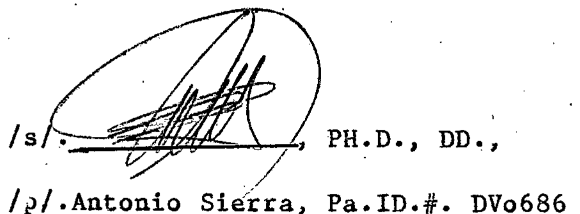
Before this Court, Petitioners case, with respect to the animating principle underlying the Great Writ; Fundamental fairness has been impaired, Engle vs Issac, 456 US 107, 126 (1982); and done against a recognized principle that even roadblocks to collateral review claims having been erected are recognized as reviewable to prevent violations of fundamental fairness, Id. at 135, (and all the above).

May this Court accept these reasons to grant this Writ.

See:

Certificate of Service

Enclosed



/s/ , PH.D., DD.,

/p/.Antonio Sierra, Pa.ID.#. DVo686