

No. USA P. 3 No. 24-1926

IN THE 24-7144

SUPREME COURT OF THE UNITED STATES

ORIGINAL

LAMAR HAYMES, Petitioner

v.

District Attorney Delaware County et al., Respondent

Commonwealth of PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

LAMAR HAYMES

Pro se

SCI-CAMP HILL

2500 Lisbon Road

CAMP HILL, PA. 17001

April 24, 2025

FILED

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QUESTION PRESENTED FOR REVIEW

In Martinez v. Ryan, 566 U.S. at 16, 17, 132 S. Ct. 1309, 182 L. Ed 2d 272 this court announced a narrow, "equitable... qualification" of the rule in Cedeno in an initial-review collateral proceeding rather than on direct appeal, in those situations a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if the default results from the ineffective assistance of the prisoners counsel in the collateral proceeding. In Trevino, the court clarified that this exception applies both where state law explicitly prohibits prisoners from bringing claims of ineffective assistance of trial counsel on direct appeal and where the state's procedural framework by reason of its design and operation, makes it unlikely in a typical case that a defendant will have a meaningful opportunity to raise that claim on direct appeal. 569 U.S. at 429, 133 S. Ct. 1911, 185 L. Ed 2d 1044, A1056.

The petitioner Lamar Haymes has been procedurally defaulted from being abandoned by counsel and for failing to exhaust state remedies. Pennsylvania requires that ineffective assistance of trial counsel claims be raised under Post-Conviction Collateral Relief, (P.C.R.A) Post Conviction Relief Act, Appointed counsel Filed a(n) Application to withdraw and Turner/Finley letter, Counsel failed to notify the petitioner that he needed to Amend his petition and correct the defects in order to avoid procedural default and being barred from having his issues reviewed.

The question presented is:

1. Does the narrow, equitable... qualification announced by this court in Martinez v. Ryan allow the petitioner to establish "cause" for purposes of excusing procedural default?
2. Under the AEDPA is a state prisoner entitled to one fair opportunity to seek Federal habeas relief from his conviction, also state court decisions contrary to clearly established law can entitle the petitioner to relief?
3. Has the petitioner suffered from a Fourteenth Amendment Due Process violation due to the rulings and judgment of the lower courts?

A LIST OF ALL PARTIES

Michael F.X. Coll	-	PCRA COURT JUDGE
BOWEN, KING AND FORD ELLIOT	-	SUPERIOR COURT JUDGES
John M. Gallagher	-	DISTRICT COURT JUDGE
Lyme A SITARSKI	-	MAGISTRATE JUDGE
SHWARTZ, MATEY AND CHUNG -		THIRD CIRCUIT JUDGES
JORDAN, HARDIMAN		
JORDAN, HARDIMAN, SHWARTZ KRAUSE	-	THIRD CIRCUIT JUDGES
RESTREPO, BIBAS, PORTER, MATEY	-	THIRD CIRCUIT JUDGES
PHIPPS, FREEMAN, MONTGOMERY - REEVES	-	THIRD CIRCUIT JUDGES
AND CHUNG	-	THIRD CIRCUIT JUDGES

PETITION FOR WRIT OF CERTIORARI

Lamar Haynes respectfully petitions for a writ of certiorari for this Court to exercise supervisory power to Review whether there has been a departure from the Accepted and Usual course of Judicial proceedings, or whether a sanction of such a departure by a Lower Court Occurred.

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OPINIONS BELOW

1. The decision of the United States Court of Appeals for the Third Circuit denial of petition for rehearing by the panel and certiorari en banc No. 24-1926 Attached as Appendix A-1.
2. The decision of the United States Court of Appeals for the Third Circuit, denial of certificate of Appealability No. 24-1926 Attached as Appendix A-2
3. The United States District Court For THE EASTERN DISTRICT OF PENNSYLVANIA denying petition for Writ of Habeas Corpus No. 21-cv-1022 Attached as Appendix A-3
4. The Magistrate JUDGE REPORT AND Recommendation Attached as APPENDIX A-4
5. The Superior Court Memorandum Attached as Appendix A-5
6. The Court of common Pleas of Delaware County, Opinion, No. 51 of 2005 and 865-2005 Attached as Appendix A-6
7. C.O. A Third circuit court of Appeals Attached as Appendix A-7
8. United States Supreme Court Notification Attached as Appendix A-8

JURISDICTION

The judgement of the United States Court of Appeals For the Third Circuit was entered January 8, 2025. February 28, 2025 The Petitioner received Notification from the Supreme Court of the United States office of the Clerk informing the petitioner that he has 60 days from that Notification to submit a Petition that meets the Filing Requirements.

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides:

"In all criminal prosecutions, the Accused shall enjoy the right to have Compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defense

The Fourteenth Amendment to the United States Constitution provides: "nor shall any state deprive any person of life, liberty or property, without due process of laws, nor deny to any person within its jurisdiction the equal protection of the laws."

section (g)

CONCISE STATEMENT OF THE CASE

A Review of a State Court Judgment is being sought from a Post-Conviction Relief Act determination from the Delaware County Court of Common Pleas, Stemming from the petitioners January 30, 2007 conviction of consolidated cases 51-2005 and 865-2005, including Murder, Rape, Kidnapping, and Abuse of Corpse of 15 year old Deanna Wright McIntosh, 51-05 and the assault of 19 year old Tynisa Moore 865-2005, Aggravated Assault, Simple Assault and False Imprisonment resulting in the petitioner being sentenced to Life without parole and additional 285-570 Months to run consecutive. The Public Defenders Office submitted one Issue for Review on direct appeal "Severance". November 24, 2008 the Superior Court Affirmed the petitioners judgment of sentence. November 06, 2009 the petitioner filed a timely pro se PCRA petition. Attorney Scott D. Galloway was appointed to file a(n) amended petition. Counsel filed a Motion to withdraw and Turner/Finley letter, the PCRA court dismissed the petition, Filing a Timely appeal, the Superior Court noted the "deplorable state of the record and ultimately Vacated the PCRA Court's Order. Henry D. Forrest was appointed and he filed a petition for allowance of appeal to the Pennsylvania Supreme Court, December 11, 2015 the Request was denied. Here is were the Record gets confusing for some courts, because the petitioners direct appeal rights were reinstated from an initial PCRA once the direct appeal becomes final, the subsequent petition is considered a first Time filing for timeliness purposes Com v. Lewis, 718 A.2d 1262 (Pa. Super 1998)

CONCISE STATEMENT OF THE CASE

A Review of ACN) Appellate court judgement is sought from the Superior Court of Pennsylvania A(n) Appeal from the PCRA order Entered April 24, 2019 in the Court

CONCISE STATEMENT OF THE CASE

After the judgment of sentence became final the petitioner Filed a Timely initial PCRA petition November 7, 2016 ACN) 8 page DC-198 MOTION FOR POST CONVICTION COLLATERAL RELIEF, along with 36 TYPED additional pages, 29 Typed pages from page 8 of the DC-198 Packet, the petitioner cites all of his Appellate issues. The Federal questions sought to be reviewed were violations of the Sixth Amendment, Fourteenth Amendment, Due Process, Fundamental Fairness and the equal protection clause, The PCRA court passed on the Federal Questions in a 14 page Opinion No. 51 of 2005 and 865 of 2005 in which it was determined that some of the questions (1) "were not raised in the PCRA petition" and were ~~waived~~ waived (2) some were labeled that they had "NO MERIT" (3) others were said "they could not be responded to" These determinations were made after Appointed counsel Stephen D. Molinaro Abandoned the petitioner after 24 months of Filing Extensions and then Requesting / Filing a Motion to withdraw along with a Turner / Finley The PCRA court issued Pa. R. Crim. P. 907 NOTICES OF INTENT TO DISMISS, This notice did not inform the Petitioner of the necessary defects required to be corrected. Attorney Stephen D. Molinaro refused to communicate or correspond and never once mentioned my defects. The PCRA court Ruled that (4) issues were not raised in the PCRA petition

1. Presenting False Testimony
2. ~~Presenting~~ Inconsistent theories:
3. Failed to elicit testimony
4. out-of-court statements

These issues were Raised in the PCRA but had no merit:

1. Failed to interview and call AS A witness Krisha Avicoli
2. Failed to interview and call AS A witness Daffer Dayton Rucker

The PCRA court claimed not to be able to Respond to these issues:

1. Trial counsel failure to object to the presentation of False Testimony
2. ~~Appellate~~ Appellate counsel failure to preserve obvious Issues

CONCISE STATEMENT OF THE CASE

A Review of a Judgment of a United States Court of Appeals is sought under 2254 (d)(1)(2) as well as the Anti-Terrorism and Effective Death Penalty Act of 1996 28 U.S.C.

November 9, 2023 the magistrate judge Lynne A. Sitariski filed a Report and Recommendation in the Discussion Section III. subsection A. Titled - The original petition on page - 7 - The judge states that the petitioner Filed (2) two PCRA petitions claiming that in the petitioners original Habeas petition the petitioner Asserted five claims (1) Appellate counsel was ineffective for failing to argue that the prosecution impermissibly ~~presented~~ presented inconsistent theories of the crimes between Petitioners trial and that of his co-defendant; (2) Trial counsel was ineffective for failing to argue that the prosecution knowingly presented false testimony or to object to that testimony (3) Trial counsel was ineffective for failing to call as a witness the Temple Hospital worker who spoke with the 19 year old Tynisa Moore, (4) Trial counsel was ineffective for failing to secure and present the cell phone records of Anwar Gattys and two other individuals, and (5) Trial and Appellate Counsel were ineffective generally in their presentation of the Facts and specifically for failing to argue the sufficiency of the evidence as to penetration for the Rape charge. All five claims are procedurally defaulted. claiming that the petitioner did not raise any of these ineffectiveness claims on direct appeal or in his first PCRA petition. The Magistrate judge goes on to state how the petitioner procedurally defaulted and is barred from Federal Review, stating that the lower Courts issued a Pa. R. Crim. P. 907 Intent to dismiss, not stating if the Rule 907 notified the petitioner of the defects of his petition. The Magistrate judge continuously stated that this was the petitioners second PCRA petition ultimately recommending that the petition for habeas corpus be Denied. The Petitioner Filed Timely Objections to the Report and Recommendation.

CONCISE STATEMENT OF THE CASE

April 19, 2024 the District Judge John M. GALLAGHER over ruled the petitioner's Objections to the Report and Recommendation in which the petitioner tried to express that his PCRA Petition was a First-time Filing under Pennsylvania Law, 42 Pa. C.S.A. § 9545(b) Commonwealth v. Lewis, 718 A.2d 1262 (Pa. Super. 1998). When a petitioner is granted a direct Appeal Nunc Pro Tunc in his first PCRA petition a subsequent PCRA petition is considered a first PCRA petition for timeliness purposes. On page -3- of Judge Gallagher's Order he acknowledges that the petitioner's First PCRA petition ultimately resulted in his State direct appellate rights being reinstated nunc pro tunc, The Judge goes on to state on page -4- that the petitioner may have had a legitimate reason for not including such claims in his First PCRA petition this reason is inconsequential because, more importantly he never included such claims in his second PCRA petition, concluding that the petitioner waived ineffective Assistance of counsel claims by failing to seek permission from PCRA court to file amended second PCRA petition to include such claims when original second PCRA petition lacked those claims, stating that there is no cause for the issuance of a certificate of appealability.

The PCRA court acknowledges that the petitioner argued ineffective Assistance of counsel claims and that they lacked merit and should be waived, Now all the way up in the United States District court the petitioner had no Ineffective Assistance of Counsel claims in his PCRA petition and now he has filed (2) two PCRA petitions without (IAC) claims.

The petitioner sought A(n) Application for certificate of appealability and District Judge Gallagher construed it as a Motion to Reconsider under F.R.C.P 60(b) and Denied the motion October 2, 2024.

UNITED STATE COURT OF APPEALS FOR THE THIRD CIRCUIT

The petitioner sought to request for a Certificate of appealability C.A. No 24-1926 and November 6, 2024 was denied.

The petitioner Filed a petition for Rehearing by the panel and the Court en banc No. 24-1926 And January 8, 2025 the petition for Rehearing was denied.

February 19, 2025 the petitioner filed a petition For Writ of Certiorari; and the papers were returned because the petitioner failed to comply with content requirements the petitioner was given instructions that he must resubmit the petition in corrected form within 60 days of the date of the letter which was February 28, 2025, or the petition will not be filed.

Since that time the petitioner has been removed from General population and placed on the Level 5 Housing Unit (Restricted Housing Unit) R.H.U. and has tried to the best of his ability to properly prepare this petition For Writ of Certiorari.

Section (b)

A DIRECT AND CONCISE ARGUMENT

Rule 10. Considerations Governing Review on Certiorari:

(a) A United States Court of Appeals has entered a decision in conflict with the decision of another United States Court of Appeals on the same important matter; has decided an important Federal question in a way that conflicts with a decision by a state court of last resort, or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

It is stated that under the AEDPA, a state prisoner is entitled to one fair opportunity to seek Federal habeas relief from his conviction. The petitioner has been denied this opportunity due to procedural default claims being lodged against his PCRA petition stemming from decisions that were made by the courts that are not supported by the record and constitute abandonment of the petitioner.

During the petitioner's trial, counsel Mark P. Mucht filed (2) two separate Motions (#1) Requesting to have the out-of-court statements of Anwar Gattys and Lauren Leton introduced (see: NOTES OF TESTIMONY 01/25/07 ALSO EXHIBIT 15-E pgs. 54-56 OF THE PCRA PETITION) and (#2) That the prosecution should be precluded from arguing inconsistent theories (see: NOTES OF TESTIMONY 01/26/07 pgs. 15 & 18-20) ALSO (see: PCRA petition - EXHIBIT 15-G AND EXHIBIT 16-F)

A DIRECT AND CONCISE ARGUMENT

The PCRA COURT and the Superior Court decisions differ pertaining to these two issues:

PCRA COURT - In its opinion the court held that these issues were not raised in the PCRA Petition (see: pages 10 & 13) and therefore waived. (Appendix A-4)

Superior Court - In its Memorandum the court held that these issues were not raised at trial, during unitary review or on direct appeal (see: pages 6 & 7) and therefore waived. (Appendix A-5)

Clearly established law is Pa. R. Crim. P. 905(B) this is regularly used when a petition for Post-Conviction Collateral relief is defective as originally filed. The Pa. R. Crim. P. 907 NOTICE OF INTENT TO DISMISS only serves the purpose of notifying a petitioner when the 907 specifically identifies the defects in the claim pleading or presentation in order to provide the petitioner with a legitimate opportunity to avoid dismissal due to correctable errors.

In 28 U.S.C.A. section 2254 it is provided that an application to a Federal court for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the state, or that there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner. In *Ex parte Hawk*, 1944, 321 U.S. 114, 64 S. Ct. 448, 86 L. Ed. 572. In that case the Court said, 321 U.S. at page 118, 64 S. Ct. at page 450: But where resort to state court remedies has failed to afford a full and fair adjudication of the Federal contentions raised either because the state affords no remedy, *** or because in the particular case the remedy afforded by state law proves in practice unavailable or seriously inadequate *** Federal court should entertain his petition for habeas corpus, else he would be remediless.

A DIRECT AND CONCISE ARGUMENT

The petitioner complained in his PCRA petition that trial counsel presented NO Evidence to the jurors or witnesses to help prove the petitioners innocence of the charge Aggravated Assault charge in Case No. 865-2003, or the Murder, Rape and Kidnapping of 51-2003. Trial counsel called six (6) witnesses in this ~~consolidated~~ consolidated jury trial for 865-05 and 51-05. Three of the witnesses were prosecution witnesses 1.) Sgt. David Spohn 2.) Kenneth Gy 3.) Ralph Kyser. None of these witnesses could testify to the petitioners innocence, 4.) Anuse Robinson 5.) John Marcone, neither of these witnesses could testify to the petitioners innocence in either case 6.) The petitioner testified on his own behalf out of necessity and trial counsels refusal to call witnesses, In the PCRA Petition the petitioner made several Ineffective Assistance of counsel claims citing counsels refusals and failures to call witnesses, obtain evidence and make objections (see: PCRA petition typed pages 37-39) Taylor v. Illinois, 484 U.S. 400, 409, 108 S. Ct. 649, 98 L. Ed 2d 798 (1988) "The right to compel a witness presence in the courtroom could not protect the integrity of the Adversary process if it did not embrace the right to have the witness testimony heard by the trier of fact. The right to offer testimony is thus grounded in the sixth amendment." Crisp v. Duckworth, 743 F.2d 580, 584 7th Cir. (1984) "Trial counsel cannot stand behind the shield of trial strategy for failure to interview readily available witnesses whose testimony would have been non cumulative and potentially aided the defense."

#1. PCRA COURT - Acknowledges that A(n) Ineffective Assistance of Counsel claim for Failure to obtain cell phone records was raised in the PCRA petition but the Defendant offered No prejudice from this failure and argued that Superior court should therefore reject this Assignment of error (see: page -12- Section E. Cell Phone Records) Appendix A-4

#2 - PCRA COURT - Acknowledges that A(n) Ineffective Assistance of Counsel claim For Failure / refusal to object to the prosecutions presentation of False Testimony was raised in the PCRA petition, It was argued that the Court cannot respond to this Assertion, so the Superior should reject it. (see: page -10- Section A. False testimony) (Appendix A-4)

A DIRECT AND CONCISE ARGUMENT

#3. PCRA COURT - Acknowledges that an Ineffective Assistance of Counsel For Failure to interview or call as a witness the hospital social worker Krista Avicoli was raised in the PCRA petition. The Court argued that this Assignment of error lacks any merit and the Superior Court should reject it.

In *Wainwright v. Sykes*, 433 U.S. 72, 84, 97 S. Ct. 2497, 53 L. Ed 2d 594 (1977) it was held "A state prisoner may overcome the prohibition on reviewing procedurally defaulted claims if he can show cause to excuse his failure to comply with the state procedural rule and actual prejudice resulting from the alleged constitutional violation."

"CAUSE"

First: The PCRA COURT ISSUED A Pa. R. Crim. P. 907 NOTICE TO DISMISS without identifying the defects that the petitioner needed to correct. "Due process violation"

Second: PCRA COUNSEL Filed A Motion to withdraw and a TURNER/Fintley letter without ever notifying the petitioner of any defects, 24 months PCRA counsel could have communicated to the petitioner the need to Amend his petition.

Third: Pa. R. Crim. P. 905(B) states that when a petition for post-conviction collateral relief is defective as originally filed, the judge shall order amendment of the petition, indicate the nature of the defects, and specify the time within which an amended petition shall be filed. *Commonwealth v. Mc Gull*, 574 Pa. 574, 832 A.2d 1014, 1024 (Pa-2003)

THESE objective factors are external to the defense defense and impeded the petitioner's effort to comply with the state procedural rule *Murray v. Carrier*, 477 U.S. 478, 488, 106 S. Ct. 2639, 91 L. Ed 2d 397 (1986).

A DIRECT AND CONCISE ARGUMENT

ACTUAL PREJUDICE

Due Process protection guaranteed by the Fourteenth Amendment

- Clearly Established Federal Law -

Right to effective assistance of counsel guaranteed by the Sixth Amendment

- Clearly Established Federal Law -

To be Afford a Compulsory process for obtaining witnesses in his favor

The legal principles that govern claims of ineffective assistance of counsel come from Strickland

v. Washington, 466 U.S. 668, 101 S.Ct. 2052, 80 L.Ed 674 (1984)

- Clearly Established Federal Law -

CLEAR CASE OF INEFFECTIVE ASSISTANCE OF COUNSEL

Trial counsel failed to present a defense, failed to interview and/or call available witnesses to defend against the charge of Aggravated Assault within Case No. 865-2005 also failing to object to false testimony being presented to the jury.

Case No. 865-2005 involved the petitioner striking the victim Tynisia Moore several times in a dispute over money, the petitioner disputed the charge of Aggravated Assault, No witnesses were called by trial counsel in order to prove the petitioner's innocence of the Aggravated Assault charge, A Temple Hospital Social worker gave a statement to authorities describing the victim's injuries, the petitioner requested that this individual be called as a witness in order to give the jurors an actual account of Ms. Moore's injuries, trial counsel refused and ultimately opted to attempt to discredit the victim on cross examination, unfortunately for the petitioner, the trial judge in his opening Jury Instructions informed the jurors that "statements made by the attorneys were not to be viewed as evidence" The Temple Hospital Social worker said in her statement to authorities that the victim suffered "some swelling to her face" This testimony would not substantiate the charge of Aggravated Assault, There were no medical reports of lacerations or cuts to the victim's face, However the prosecution requested that

A DIRECT AND CONCISE ARGUMENT

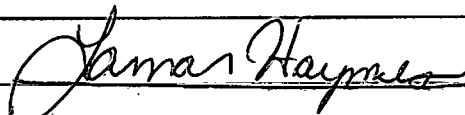
The victim Ms. Moore be allowed to step down from the witness stand and approach the jurors for them to receive a up-close look at scars on Ms. Moore's face, and informing the jurors that Ms. Moore receive permanent scarring to her face from the defendant, trial counsel failed to object to this presentation of false testimony and the allowance of Ms. Moore to show the jurors scars that Ms. Moore could have received anywhere from her past. The prosecution knew that the testimony was false and presented it anyway. In the trial court's opinion on pages 10-11 section II. (B) Krista Avicoli: The court makes the following statement; "trial counsel did not need to call Krista Avicoli because he was able to cross examine Ms. Moore and she admitted that she never had her liver examined or receive stitches to her face, The judge fails to acknowledge that you can receive permanent scars from cuts that do not require stitches, the jurors were allowed to be shown permanent scars that were labeled permanent disfigurement and told that one of the elements of Aggravated Assault is the causing of serious permanent disfigurement (Notes of Testimony 01/26/07 page 109) In the PCRA case I opinion section II. (B) Krista Avicoli page 11: The judge states Defendant who weighs approximately 300 pounds admitted to hitting Ms. Moore two times, This is a misguided stereo type to equate obesity with strength, There are 600 pound individuals who can not get out of their own beds. The petitioner argue that (1-) This issue is of arguable merit (2-) counsel had no reasonable basis for his actions and omission's in question and (3) counsel's in actions prejudiced the defendant, Had this "ONE" witness Krista Avicoli been called and the presentation of this false testimony been objected to, there is a reasonable possibility that the outcome of the proceedings would have been different Strickland v. Washington, 466 U.S. 668 (1984)

The petitioner does not wish to take up the courts time by rearguing every issue at this time, so for timeliness purposes the petitioner agrees that for all of the reasons raised in his PCRA petition, the petitioner suffered from Ineffective Assistance of trial counsel for Case No. 51-2005 as well as by Appellate counsel.

CONCLUSION

For all of the above mentioned reasons, Petitioner requests that this Court exercise supervisory power and Grant the petitioner Review, excusing procedural default for any of the reasons brought forth within this Writ of CERTIORARI PETITION

Respectfully Submitted,



LAMAR HAYNES QP-1523

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April 24, 2025