

NO. 25 - 6996

FILED
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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

BRANDON RICHARD WELLS
Petitioner

V.

COMMONWEALTH OF PENNSYLVANIA
Respondent

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

PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner,

Brandon Richard Wells, #QP9408
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LaBelle, PA 15450

QUESTION PRESENTED

Was Petitioner's right to appeal as guaranteed by the Pa. Constitution, Article V, § 9, denied when the Superior Court waived issues and affirmed the judgment of sentence because Petitioner's U.S. Const. amend. VI right to effective counsel had been violated?

PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

- *Commonwealth v. Wells*, 2025 Pa. Super. Unpub. LEXIS 462 (Pa. Super. 2025)
(No. 157 WDA 2024) Judgment of sentence affirmed on February 25, 2025.
- *Commonwealth v. Wells*, No. CP-61-CR-0000297-2022
Judgment of Sentence Entered September 19, 2023 in the Court of Common Pleas of
Venango County Criminal Division.
- *Commonwealth v. Wells*, No. 74 WAL 2025
Petition for Allowance of Appeal Denied on September 10, 2025.

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at *Commonwealth v. Wells*, 2025 Pa. Super. Unpub. LEXIS 462, (Pa. Super. 2025).

JURISDICTION

The date on which the highest state court decided my case was September 10, 2025. A copy of that decision appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- **U.S. Const. amend. VI**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

- **Pa. Constitution, Article V, § 9**

There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such court to be as provided by law; and there shall be such other rights of appeal as may be provided by law.

STATEMENT OF THE CASE

"A system of appeal as of right is established precisely to assure that only those who are validly convicted have their freedom drastically curtailed. A State may not extinguish this right because another right of the appellant - the right to effective counsel - has been violated." *Evitts v. Lucey*, 469 U.S. 387, 399-400, 105 S. Ct. 830, 838, 83 L. Ed. 2d 821 (1985).

In the instant case, which is based on wholly circumstantial evidence, the Superior Court waived two claims presented for review and affirmed the judgment of sentence. *Commonwealth v. Wells*, 2025 Pa. Super. Unpub. LEXIS 462 (Pa. Super. 2025); *Appendix A*.

(1st claim)

On August 4, 2023 the Trial court ruled that the Defendant's expert is NOT allowed to testify as to the manner of death and that the following conclusions or opinions set forth in the report are INADMISSIBLE:

- (1) which uniformly lead to certification of the manner of death as accidental.
- (2) Therefore, within a reasonable degree of medical and scientific certainty, I believe that the manner of death in this case should be certified as accidental.

Appellate counsel complained of the following matter on appeal:

The trial court erred when it ruled that the Defendant's expert, Karl E. Williams, MD, MPH could not testify as to his conclusion / opinion regarding the manner of death and/or that the death was accidental.

In its Opinion the Superior Court stated:

Well's brief on this issue is woefully deficient and, consequently, we conclude that it is waived. Wells' argument section contains three paragraphs, with boilerplate citations to this Court's standard of review, and no citations to the record. . . . Furthermore, Wells does not indicate where this claim was preserved in the trial court. . . . Accordingly, he has waived this claim for our review. *See Appendix A, p.7-8*.

(2nd claim)

On August 9, 2023 the Trial court refused to allow the first inconsistent and non-incriminating video recorded interview of the Commonwealth's key witness to be played at trial.

Appellate counsel complained of the following matter on appeal:

The trial court erred in not allowing the admission or use of three pre-recorded audio/visual videos of Nector Vasquez for impeachment purposes during cross examination in the Commonwealth's case in chief nor during the defendant's case in chief.

In its Opinion the Superior Court stated:

We conclude that Wells has waived this challenge. In his Rule 1925(b) concise statement, Wells does not state which rule or rules of evidence the trial court purportedly violated. We observe that Wells now raises, for the first time, a challenge under the best evidence rule, which he has waived for failing to include it in his Rule 1925(b) concise statement. . . . Thus, we conclude that Wells' failure to identify what rule of evidence he relies upon, in his Rule 1925(b) concise statement, necessitates waiver. . . . Accordingly, Wells has waived this claim for our review. *See Appendix A, p.8-9.*

According to the Superior Court, counsel's performance was so deficient as to render full and meaningful appellate review impossible.

A failure to file or *perfect* an appeal results in a denial so fundamental as to constitute prejudice *per se*. *See Commonwealth v. Lantzy*, 558 Pa. 214, 225, 736 A.2d 564, 571 (1999). Since the submission of a court-ordered Rule 1925(b) Statement and Brief of Appellant are a prerequisite to appellate merits review, the Rule 1925(b) Statement and Brief of Appellant are elemental to an effective perfection of the appeal. *See Commonwealth v. Lord*, 553 Pa. 415, 417-20, 719 A.2d 306, 307-09 (Pa. 1998). *See BLACK'S LAW DICTIONARY*, p.1173 (8th ed. 2004) (defining the act of perfecting as "taking all [the] legal steps necessary to complete, secure, or record a claim, right, or interest"). Thus, *Lantzy's* reasoning applies by its terms to counsel's dereliction in this case, which left Appellant without an ability to fully challenge his

conviction and sentence by means of the direct appeal. *Accord Roe v. Flores-Ortega*, 528 U.S. 470, 484, 120 S. Ct. 1029, 1039, 145 L. Ed. 2d 985 (2000) (indicating that "when counsel's constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal").

In *Commonwealth v. Wilkerson*, 490 Pa. 296, 416 A.2d 477 (Pa. 1980), the Supreme Court explained:

If counsel fails to raise an issue in post-verdict motions or on appeal, he is deemed to be ineffective only if the issue is of arguable merit. This is so, inter alia, because an accused has no absolute right to raise baseless claims and counsel cannot be faulted for not advancing issues which will not at least arguably obtain some relief for the accused.

On the other hand, an accused has an absolute right to appeal, Pa. Constitution, Article V, § 9, and counsel can be faulted for allowing that right to be waived unless the accused himself effectively waives the right, i.e. for not protecting the accused's right in the absence of an effective waiver. *Id.* at 479.

The PCRA (42 Pa.C.S. 9541-9546) provides the exclusive remedy for post-conviction claims seeking restoration of appellate rights due to counsel's failure to perfect a direct appeal. However, Appellate counsel's failure can not be overcome by the lower court's review of the original appeal. Petitioner did not receive the independent legal review of his case that he was entitled to. *Eskridge v. Washington State Bd. of Prison Terms & Paroles*, 357 U.S. 214, 216, 2 L. Ed. 2d 1269, 78 S. Ct. 1061 (1958) ("The conclusion of the trial judge that there was no reversible error in the trial cannot be an adequate substitution for the right to full appellate review available . . .").

In *United States v. Cronin*, 466 U.S. 648, 80 L. Ed. 2d 657, 104 S. Ct. 2039 (1984), the United States Supreme Court held that ineffective assistance of counsel sufficient to undermine a

defendant's right to counsel under the Sixth Amendment, U.S. Const. amend. VI, may be presumed under circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified.

In the interest of Petitioner's constitutional rights, justice, and judicial economy, the Superior Court could have remanded to amend the appeal or a "remand for the appointment of new appellate counsel to prepare a new appeal in order to effectuate the right to appellate review." *Commonwealth v. Albert*, 522 Pa. 331, 561 A.2d 736, 738 (pa. 1989).

REASONS FOR GRANTING THE PETITION

The right to appeal as guaranteed by the Pennsylvania Constitution, Article V, § 9 is being denied as a direct result of a violation of the United States Constitution amend. VI right to effective counsel.

Waiving claims and affirming the judgment of sentence due to ineffective assistance of counsel drastically curtails the freedom of innocent and invalidly convicted people. How long must a person wait for the lower court to possibly reinstate their appellate rights and why is it up to the lower court when the Appellate court already stated that counsel was ineffective?

When the reviewing panel states in its opinion that counsel's performance was so deficient as to render full and meaningful appellate review impossible it should not "affirm" the judgment of sentence, it should proceed with an action designed to advance judicial economy and correct the violation of the U.S. Const. amend. VI right to effective counsel.

Although reargument is not a matter of right, but of sound judicial discretion, an appellate court may grant it "when there are compelling reasons therefor." **Pa.R.A.P. 2543**. A legitimate claim of constitutional error committed during the appellate process which is supported by credible evidence would ordinarily present a compelling reason warranting reargument. And crucially, an order reinstating a petitioner's right to seek reargument would not offend the judicial hierarchy set forth in the Pennsylvania Constitution, as it would merely present the appellate tribunal with the **opportunity** to reconsider its prior decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Brandon Richard Wells

Date: 11/23/2025