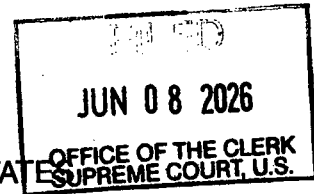


No. 25A1163
26-5848

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Anthony Vore Calby — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Pennsylvania Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony Vore Calby
(Your Name)

P.O. Box 244
(Address)

Collingsville Pennsylvania 19428
(City, State, Zip Code)

(610)
(Phone Number)

2

QUESTION(S) PRESENTED

Q. Did the Supreme Court of Pennsylvania Err, when it decided Per Curiam tht the Appellant Mr. Caiby's Appeal that his PCRA counsel was ineffective per se for not filing his appeal on time colleterally forgoing his meritorious ineffectiveness of trial counsel issues in his first colleteral review thus procedurally barring him from collteral review though his trial counsel had already been found in "*Breach of the Rules of Peofessional Cõduct*" for the Stewardship of his trial. By the same courts Judicial Review Board Supreme Disciplinary Counsel. This tardinesss though forewarned by a Remand, for abandonment from the Pennsylvania. Superior Court and instruction(s) by trial Judge caused his client Mr. Caiby's Appeal to be Quashed forgoing colleteral review.

A. Yes.

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Commonwealth of Pennsylvania

RELATED CASES

- ① Com V. Giby CP-45-CR-00002035-2013
- ② Com V. Giby 3145 EOA 2016 Decided May 7, 2017
- ③ Com V. Giby 872 MAL 2017 185 A.3d 207 (Pa. 2018)

- ④ Com V. Giby CP-45-CR-00002035-2013
- ⑤ Com V. Giby 604 EOA 2020 258 A.3d 504 (Pa. Super. 2021)
- ⑥ Com V. Giby 148 MAL 2023 Decided Oct 6, 2022

- ⑦ Com V. Giby CP-45-CR-00002035-2013
- ⑧ Com V. Giby 2676 EOA 2021 Decided April 2025 339 A.3d 463 (Pa. Super. 2021)
- ⑨ Com V. Caiby 317 MAL 2023 Decided Dec 17, 2023

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A COM V. Gibby 317 MAL 2025 Reconsideration 2-11-26

APPENDIX B COM V. Gibby 317 MAL 2025 12-17-25

APPENDIX C COM V. Gibby 2676 EDA 2024

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

b COM.V. Pierce, 527 A.2d 933, 975-976 (Pa. 1987)	<u>1</u>
d Strickland V. Washington, 466 U.S. 668, 687-688 (1984)	<u>1</u>
c Cox V. Horn, 757 F.3d 113, 119 (3rd Cir. 2024)	<u>1</u>
e Moses V. District Attorney of Philadelphia and Superintendent of Prison, 133 4th 251 (3rd Cir. 2025)	<u>1</u>
f COM.V. Steedly, 128 A.3d 826 (Pa. Super. 2015)	<u>1</u>
g U.S. V. Henry, 447 U.S. 264 (1980)	
h COM.V. Johnson, 966 A.2d 523, 539 (Pa. 2009)	<u>2</u>
i COM.V. Rizer, 804 A.3d 134 (Pa. 2025)	<u>2</u>

STATUTES AND RULES

ART 1 § 9

ART VS 9

42 Pa.C.S. § 9543 et seq

Pa.R.E. 702, 703

Pa.R.Crim.P. 120

Pa.R.Crim.P. 121

Pa.R.Crim.P. 122

Pa.R.Crim.P. 574

OTHER

CASES

- W.M.V. Krug, 249 A.3d 164 (Pa. Super. 2024)⁷
- 19 Baker v. U.S. 109 4th 187 (3rd Cir. 2021)
- 1) North Carolina v. Alford, 400 U.S. 35, 37 (1970)
- 12) Maurberry v. Madison, 5 U.S. 137 (1803)
- 13) Melendez-Diaz v. Massachusetts, 129 U.S. 2527 (2005)
- 14) Crawford v. Washington, 541 U.S. 36, 61 (2004)
- 15) Martinez v. Ryan, 566 U.S. 1 (2012)
- 16) Com v. Bradley, 261 A.3d 381 (Pa. 2021)
- 17) Com. v. Bruton, 158 A.3d 618 (Pa. 2017)
- 18) U.S. v. Frye, 293 F. 1013 (D.C. Cir. 1923)
- 19) Com v. Pope, 365 A.2d 1277 (Pa. 1973)
- 20) Daubert v. Merrell-Dow, 505 U.S. 577 (1993)
- 21) Com v. Zuber, 385 A.2d 441 (Pa. 1978)
- 22) Kraus v. Cyber, Indus, 745 A.2d 606, 615 ()
- 23) Finkoff v. U.S. 566 U.S. 129 (2009)
- 24) Mc Keever v. Warden SCB Gatorford, 486 F.3d 81, 86 (3rd Cir. 2007)
- 25) Com v. Martinez, 42 A.3d 517, 531 (Pa. 2018)

Page Number

2

2

2

1

4

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☐ For cases from **federal courts**:

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

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

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

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

☐ reported at 317 MAL 2020; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the Supreme Court court appears at Appendix B to the petition and is

☐ reported at 317 MAL 2020; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

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

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

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

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

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

☒ For cases from **state courts**:

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

☐ A timely petition for rehearing was thereafter denied on the following date: February 11, 2026, and a copy of the order denying rehearing appears at Appendix A.

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

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

CONSTITUTIONAL AND STUTORY PROVISIONS INVOLVED

The constitutional provisons involved are the 6th Amendment of the United Staes as well as Art V 9 of the Pennsylvania Constitution, also Art 1§9 of the Pennsylvania Constiuyion, and the 14th Amndment of the U.S. Constitution applying these rights to states. The right to effective assistance of counsel was violated as well as 42 Pa.C.S. 9443-9545 et seq. This is the Pennsylvania Collateral Review, knwon as the Post Conviction Relief Act herein after PCRA, at this stage is where all ineffctive assistance of counsel issuses must be raised and only oin these proceedings. The appellant Mr. Caiby did this; however those issues were collateraly defaulted due to his PCRA counsel's ineffectiveness per se.

This ineffectiveness procedurally barred him from gaining relief through meriterious claims of his trial counsel's ineffectiveness. trial counsel had been found to be in "*Braech of the Rules of Professional Conduct*" by the Pennsylvania Supreme Courts Supreme Disciplinary Counsel Reobert J. Killion Judge after a tremendous job by the State Disciplinary Office of District II Brian S. Jordan Esquire's investigation into allegations by the petitioner finding him in breach in C2-16-719.

The claims never though, and breach due to stewardship of his trial had a hearing into exactly why? Though required? The appellant still seeks answers. PCRA counsel attorney Gual violated his 6th amend right to effctive counsel; and so he seeks redress in this court citing some recent rulings that came in while he was still in the mist of litigating tthe issues of his initial PCRA feeling having met all the criteria of those cases he now seeks to have this Honorable court to rule on the ruling(s) by the Pennsylvania Courts that due not comport, but veer though he be on point from the 3rd Circuit, and Supreme Court; precedent going left of stare decisis.

He, now asks this court to rule in his favor and find different due to the above listed violated rights and statutes. thank you have a blessed day.

STATEMENT OF THE CASE

The Appellant Mr. Caiby was appointed PCRA counsel (Post Conviction Relief Act) counsel Donald R. Gual, for *Com V. Caiby* CP-45-CR-0002035-2013, In October of 2018. attorney Gual post-poned this PCRA proceeding, and ammended it though already ammended by Mr. Caiby, it was reschduled by PCRA/trial Judge Jon Mark for Jnuary 2018. In October/November 2019 Judge Jon Mark after Remand from the Pennsylvania Superior Court dismissed Mr. Caiby's PCRA petition. Mr. Caiby asked appointed counsel to appeal; this all occured during tele-conference Judge collual advising of appeal rights from SCI Phoenix not in person hough rule.

Again Mr. Caiby had already had this case Remnded by the bove Court for abdondonment with instructions by Judge Mark to file the Appeal after he first did not though meritorious for the above reason at C2-~~6~~-719, *Anthony Vone Caiby V. Vernon Zachriah Chestnuit Jr.* in the Pennsylvaina Judicial Review Board. This remand was for 30 days to see if attorney Gual had indeed abandoned Mr. Caiby. However even after this he still did not timely file his client Mr. Caby's appeal causing it to be Quashed by that court foregoing his meritorious collateral review on his first PCRA/collatral state review.

Judge Mark determining that attorney Gual did not abandon Mr. Caiby after hearing, however did not see why he did not timely file his appeal causing quashing. Mr. Caiby had been abandoned and was his own *de facto* attorney which the courts called hybrid representation; but if not for this due dilligence and pro se advocacy he would have forgone all of his constitutional rights though appointment of new counsel would have been the more approprite soloution, and the answer when looked at through the lense of *stare decisis* ala precedent within the commonwealth thus this is the issue(s) presented to you today. Also due to this that he had been attacked and injured and spent days in the jails infirmary only getting out on the deadline of 12-5-19; and though represented he was not responsible to file.

A request is thus being respectfully submitted to remandd, and find that Mr. Caiby was abandoned, by his court appointed counsel, and acting pro se though not officially due to said abandonmet had his first state collateral review barred due to his attorney's ineffectiveness per se which need not be proven but observed. We pray you find the same.

REASONS FOR ALLOWANCE OF APPEAL

The issue(s) at hand involve three types of ineffectiveness *Lafler* failure to advise of a deal, and its foregoing as well as receiving a more severe penalty in the way of more time than being a Life sentence instead of a 6-20 year deal. This tied the Judge's hands thus resulting in prejudice. Ineffectiveness *per se* for first not filing an appeal, then after remand, for abandonment not filing in a timely fashion in violation of Art V §9 of the Pennsylvania constitution. Also the *Strickland/Grant* ineffectiveness three pronged in the Commonwealth of Pennsylvania to the federal two; that being 1) Does the claim have arguable merit, 2) did counsel have a reasonable basis for their action or inaction 3) did the petitioner suffer prejudice as a result of this. Prejudice would the outcome of the proceeding have been different absent this answer yes. See: *Com V. Pierce*, 527 A.2d 933, 975-976 (Pa. 1987)

The above be the standard in Pennsylvania the federal being 1) Whether the counsel's performance was deficient in that it fell below of the objective standard of reasonableness and if so 2) whether the petitioner suffered prejudice as a result. Answer Yes. See: *Strickland V. Washington*, 466 U.S. 668, 687-688 (1984)

The third circuit ruled not to long ago in *Moses V. District Attorney of Philadelphia, and Superintendent of SCI Phoenix*, 133 F.4th 251 (3rd Cir. 2025) That when a first time collateral review petitioner has his meritorious ineffectiveness claims procedurally defaulted by counsel, because they are abandoned then that person per *Martinez* can have his constitutional rights to counsel restored.

This is what happened to the petitioner Mr. Caiby although he chose not to go *pro se* he was but in name only just that, as after remand his counsel remained the same; this time filing late to his first not at all causing him to be prejudiced this is ineffectiveness *per se* and so the recent ruling following the above in 317 MAL 2025, and its reconsideration goes contrary to this Circuit's decision a person who was housed in this prison SCI Phoenix as well. Thus the reason for this application for writ of cert to address this issue contrary to rule.

In *Cox V. Horn*, 757 F.3d 113, 119 (3rd Cir. 2014) A state prisoner may get federal relief from the violation of a federal law 757 F.3d at 13. There are three conditions that excuse procedural default first the postconviction counsel's (or the absence of counsel) must have caused the default, id second the petitioner must have defaulted in the initial-review of the collateral proceeding "that is the " first collateral review proceeding in which the claim could have been heard" id and third the underlying claim of trial counsel's ineffectiveness [must be] substantial meaning that the claim has some merit" quoting *Martinez* 566 U.S. at 14.

All three prongs are met and so the case should have proceeded. This state's Supreme Court (Pennsylvania) has not settled this issue though the same was before it with *Com V. Caiby* CR-2035-2013 so we now look at the law though this case be decided post *Moses*, both of them

were housed in the same local SCI @ Phoenix.

Anthony Vone Caiby the petitioner's trial counsel Vernon Z. Chestnut Jr. was ineffective, under *Lafler* because he misinformed him deliberated or not about the commonwealth's 6-20 year offer same as the other three person's sadly one of them Lisa Marie Stavish is not longer among us resting in a better place. He instead told him that the deal was 20-40 years, causing him to reject this proffer; this made him ineffective. See: *Com V. Steckly*, 128 A.3d 826 (Pa. Super. 2015) the commonwealth's interpretation of *Lafler V. Cooper*, 566 U.S. 156 (2012) The standard in *Steckly* is 1) But for the ineffective advice of trial counsel that there is a reasonable probability that he would have accepted the plea. 2) the trial court would have accepted the terms of the plea agreement and sentenced the Appellee accordingly and (3) there can be no dispute that he pleads offer 6-20 instead of Life was less severe penalty.

Mr. Caiby would have accepted the plea and pled *nolo contendere* like he did in his resisting arrest case CR-2350-2015 *Com V. Caiby* ala. *North Carolina V. Alford*, 400 U.S. 35, 37 (1970) As the 6th Amendment right to effective assistance of counsel extends to plea bargaining Mr. Caiby's right to effective counsel was violated due to no fault of his own though he had a rule based right to counsel under Pa. R. Crim.P. 120, 121, & 122 he was abandoned as well. Art 1 9 of the Pa. Constitution.

The relationship with attorney Chestnut, Mr. Caiby's trial counsel occurred in March of 2013 when he was placed in the cell with Dominique "Bully" Smith in the Monroe County Correctional Facility (herein after M.C.C.F.) Ironically he (Mr. Caiby), and Mr. Smith also shared the same attorney Michael A. Ventrella, a *False Light Tort* in August ran in the local paper *The Pocono Record* strained that relationship where he Mr. Caiby eventually retained attorney Chestnut) First though attorney Chestnut solicited himself via visit to Mr. Caiby though odd it turned out to be a sign of things to come; culminating in C2-6-719 Complaint against Vernon Z. Chestnut Jr. Which led to him being found in "*Breach of the Rules of Professional Conduct*" Quick note this false light tort led to a lot of subversive tactics, and other violations. as in *U.S. V. Henry*, 447 U.S. 264 (1980) and others

In, *Com V. Krug*, 249 A.3d 164 (Pa. Super 2024) The commonwealth ruled the same as in the above, however the petitioner never, had a PCRA hearing into this nor was he afforded the opportunity to testify about not getting the correct offer from trial counsel; though the opportunity was there leaving the appeals courts with a cold record though he there available to testify. See" *Com V. Johnson*, 966 A.2d 523, 539 (Pa. 2009), the reason why PCRA hearings are held in the first place. See: *Com V. Rizer*, 304 A.3d 134 (Pa. 2023) also *Baker V. U.S.* 109 4th. 187 (3rd Cir. 2021)

ut for counsel's erroneous advice would have accepted the plea offer, this caused prejudice. Why no hearing was held into whether or not Mr. Chestnut was found in "*Breach the of the Rules of Professional Conduct*" and if there is a reasonable probability that there would have been a different outcome in his trial if he would have is elementary; as he would have taken the plea as offered not as told which is collateral estoppel, and caused him because he was mis-informed to not accept the plea though not offered in the open, so as he knew it to be exact; he found out again via letter which is exhibited at N/L 1-2

Despite Mr. Caiby's due diligence he could not find out espically without hearing why attorney Chestnut was found in breach. Caiby found out about this plea offer while on direct appeal; during the disciplinary hearing proceedings into attorney Chestnut's handling of his trial at C2-16-719 Complaint against Vernon Z. Chestnut, Jr. Once he got this letter he promptly wrote to his appellate counsel John J. Waldron. This constituted newly discovered evidence, but he couldnt act on it as all ineffectiveness claims have to be done collaterally.

This complaint was being handled by Brian S. Jordan in the Pennsylvania State Disciplinary Board who did a tremendous job uncovering what was alleged and found to be true; eventually finding him in breach for the stewardship of Mr. Caiby's trial. Attorney Chestnut was represented by Robert J. Tintamin of *Fox Rothschild*. Robert J. Killion, Judge of the Pennsylvania Supreme Court was the Supreme Disciplinary Counsel, and attorney Chestnut was found in breach. Again as to the exact reason why the court though charged to and attorney Chestnut being present did not seek why he specifically was leaving the record cold in contrast to their noral *modus*.

When attorney Gual took up the petitioner Mr. Caiby's PCRA, appointed by the court he replaced attorney Waldron his direct appeal, and final review PAA to the Pa. Supreme Court, this seemed odd as he was not familiar with the record, and there was no problem between Mr. Caiby, and attorney Waldron. Attorney Gual also ammended his PCRA though he ammended it himself, as you must go pro se first in Pennsylvania initially, and then apply for counsel; criteria met then counsel is appointed. Mr. Caiby explained to attorney Gual upon meeting him that he had been told something different by his trial attorney Mr. Chestnut, a 20-40 year deal enstaed of a 6-20 year deal like his other co-defendants. He also explained to him that the Monroe County court of Common Pleas recorded all within its walss a disclaimer warns of such, and so he sould supeona that recording as proof of such mis-direction, plus gave a copy of the letter exhibited as documentary evidence despite this none of those involved were called and no hearing was held; to ssertain the truth agin keeping the record cold though opportunity there, and occassion.

to ascertain the truth keeping the record cold though opportunity there and occasion. Mr. Caiby contends that he would have taken the plea, and been willing to plead *nolo contendere* ala *North Carolina V. Alford*, 400 U.S. 25, 37 (1970) This not telling Mr. Caiby about this plea amounted to promissory estoppel, as Mr. Caiby did not accept the misinformed of plea as promissory estoppel can make you either take a plea due to the wrong advice or as in the petitioner Mr. Caiby's case (not take) a plea this was gain done by his trial counsel attorney Chestnut. Again the case was remanded to see if Mr. Caiby had been abandoned 604 EDA 2020, by the Pa. Superior court to see if Mr. Caiby had been abandoned by his PCRA counsel attorney Gual, who had failed to file his appeal as requested, at a hearing Judge Mark determined that he had not and instructed attorney Gual to file his appeal he did so late procedurally defaulting, leading to quashing, and prejudice. Quashing one of the reasons a PAA (Petition for application of Appeal) to the Supreme Court of Pennsylvania be accepted; all prerequisites were met however it was not accepted. This ruling is contrary to federal law, and the precedent of this circuit Third see: *Moses V. District Attorney of Philadelphia, and SCI Phoenix Superintendent*, 133 F.4th 251 (3rd Cir 2025) and *Martinez Supra*,

The proper remedy would have been as in *Com V. Bradley*, 261 A.3d 381 (Pa. 2021) stating that first time PCRA petitioner's have an enforceable right to effective counsel; so the PCRA court should've been reversed and the case remanded to counsel, and then new counsel appointed to present Mr. Caiby meritorious ineffectiveness of counsel claims, as attorney Gual for not filing his appeal as instructed was ineffective *per se*. Mr. Caiby had several meritorious claims of trial counsel's ineffectiveness, but he kept within the scope of *Lafley* as instructed and wittled them down to comport with rule(s) as required. The irony is that if you read both the *Moses*, and the *Bradley* cases both decided prior to the case at bar they instruct essentially the same, and both were remanded as well.

Looking at them both *Moses*, and *Bradley* you see that in an initial PCRA state collateral proceeding the remedy is to excuse collateral default due to counsel's ineffectiveness, where abandoned as in *Martinez*, going one further to the unrepresented as in *Moses*, Mr. Caiby acquired the information about the 6-20 year deal via correspondence in C2-16-719 his meritorious action against his trial counsel in the Pennsylvania Judicial Review Board Disciplinary action against trial counsel attorney Chestnut who was in contempt by the trial court for most of his representation of Mr. Caiby. This constituted newly discovered evidence per *Com V. Bruton*, 58 A.3d 658 (Pa. 2017) However he had to

wit until collateral review to use it only to have it quashed in his first opportunity due to his counsel's ineffectiveness per se (need not be proven). This caused him prejudice.

This also satisfies *Com V. Cox*, 757 F.3d 113, 119 (3rd. Cir. 2014) A state prisoner may get federal relief from the violation of a federal law . If there are three conditions met that excuse procedural default. First the post-conviction counsel's (or absence of counsel) must have caused the default; id. second the petitioner must have defaulted in the initial-review collateral proceeding; that is the first collateral proceeding claim could have been heard id third the underlying claim of trial counsels ineffectiveness [must be] substantial meaning the claim has some merit *Martinez* 566 U.S. at 14. This is precisely what is being alleged here that the petitioner Mr. Caiby was procedurally barred in his first PCRA it was caused by his counsel and that C2-16-719, bolsters that contention that trial counsel was ineffective found to be in breach of the rules by that very court the Supreme Court of Pennsylvania.

All constitutional violations require remedy See: *Maurberry V. Madison*, 5 U.S. 137 (1803) Mr. Caiby had a 6th amendment right to effective assistance of counsel, and a rule based one as well in Pennsylvania, as well as a constitutional right under the Pennsylvania constitution Art V § 9. Therefore he should have been granted relief.

Some of the things that Mr. Caiby had were the use of luminol, and phenol phaline, and the testimony that they were definitive, and not indicating, in need of further testing which was not provided at his trial though he did not waive this right under Pa. R. Crim.P. 574, and was a violation of his right to have expert witness presents in *Melendez-Diaz V. Massachusettes*, 129 U.S. 2527 (2009) as this was gathered, to be used in a further proceeding that testified to should have invoked the confrontation clause of, *Crawford V. Washington*, 541 U.S. 36, 61 (2004) No one from the state Police Crime Lab as a Forensic Biologist came, and provided any confirmatory testimony, only crime scene gatherers. Attorney Chestnut having been in both the sex crimes, and the homicide divisions of the Philadelphia District Attorney's Office should have had an intimate knowledge of these substances, and there false positives e.g. something other than an indication of blood triggering them like grape jelly. However, he never objected at trial or prior via motion in limine to their admissibility.

This struck as odd as it goes to admissibility which is reversible, not testimonial which is them

believing all part or none of a witnesses testimony; this was prejudicial espically in light of the fact that the Commonwealth relied heavily on this expert testimony. for the Commonwealth to present presumptive evidence as if conclusive was misleading. espically in the Commonwealth of Pennsylvania where the standard is still the antiquated, *U.S. V. Frye*, 293 F. 1013 (D.C. Cir. 1923) adopted by Pennsylvania in *Com V. Topa*, 369 A.2d 1277 (Pa. 1977), where the experts in a particular field would rely on that type of data to form an opinion clearly this did not. *Daubert V. Merrel-Dow*, 509 U.S. 577 (1993) is more instructive, and allows a fact finder to be guided independently; espically since the defense presented no expert to refute the allegations.

The irony in all of this is that attorney Chestnut was an expert himself curriculum vitae not entered. As he was a prosecutor in the Philadelphia county DA's office trying sex crimes, and homicides; this is what the Judicial Review Board saw along with the other claims before it in finding him in breach. For him to not challenge this in a *motion in limine* to exclude or object to preserve, and expose the fail rates was prejudicial, and could not have been rationale. I say that as he had to be practiced Philadelphia proudly having more homicide, and crimes then the other 67 counties combined save none in Pennsylvania; this they saw too. though until)) this day despite due diligence no specifics have been said..

They presented evidence again as if conclusive as blood without any confirmatory lab test, for blood Bordet test (human blood [he had a female dog{residence owner}) or the alleged victims blood. A false positive is an indication that it could be blood, a confirmatory test is then needed to say definitively if it is who it is, and if its human none of this was done, or even objected to. This was prejudicial. Attorney Chestnut had to know this through experience i a novice later did so though self teaching so to say that he did not is ? All of this was gathered to be used at a future proceeding none of it waived under Pa.R.Crim.P. 574 waiver of expert this was a confrontation violation of the 6th amendment under *Crawford V. Washington*, 541 U.S. 36, 61 (2004) as well as *Melendez-Diaz V. Massachusetts*, 29 U.S. 2527 (2009). Pa.R.E. Pennsylvania Rules of Evidence could have used to exclude too 702,703,704.

This as you can see are valid issues as well as me getting sliced twice in the county, and a bunch of times up state as to why its still unknown; though I reported it to the court and on the witness stand at my PCRA hearing in January 2019. See: Exhibits _____. There were also subversive tactics at play,

and all types of other dirty tactics of the *U.S. V. Henry*, 447 U.S. 264 (1980) et seq. type. Mr. Caiby sought proof via records for this in several RTKL (Right-To-Know-Law) filings which were Granted by the Pennsylvania Office of Open Records, which purpose is to shed light on public wrong doing, and abuse(s) See: Exhibit M/ψ List of actions.

This all, and more were whittled to comport with *Lafler* narrowed to that scope it was designed as instructed to ease the proceeding, and find an appropriate out-come. This did not happen as it was collaterlly defaulted. Mr. Caiby had to rresort to hybrid representation as though represented by appointed counsel it was *de facto* in name only as he had been abandoned despite this tremendous handi-cap he schleped on, as this quasi pro se representation be his only option. Mr. Caiby got his case remanded by grace by the Pennsylvania Supreme Court as his rule based right to appointed counsel under Pa.R.Crim.P. 122, had been violated, which is too Final Determination a Petition of Allowance of Appeal herein after PAA. He was granted new counsel to do so, but how could you get a PAA though quashing be one of the criterion that allows for exception of a petition, it was not given 148 MAL 2023.

In any event Mr. Caiby relied upon the erroneous advice of counsel who told him one thing when it was another this caused him to not except the plea offer as mentioned this was promissary estoppel, See: *Com V. Zuber*, 385 A.2d 441 (Pa.1976) this is contract la w as recognized by this court. In oder to proove promissary estoppel the agrieved prty must prove tht (1) the promisser acted in acted in a manner that he or she should have reasonably expected to induce the oher party into taking (or not taking) certain; (2) the agrieved prty actually took such action and (3) an injustice would result if the assurance that induced the action as was not enforced see: *Krause V. Cyclops Indus*, 745 a.2d 606, 610 (Pa. 2000) an appllied contract law to criminal law in *Puckett V. U.S.* 566 U.S.129 (2009) by the Third Circuit in *McKeever V. Warden SCI Graterford*, 486 F.3d 81, 86 (3rd Cir. 2007), and by the Pa. Supreme Court in, *Com V. Martinez*, 47 A.3d 517, 531 (Pa. 2018).

promissary estoppel (1924) the priciple that the promise made without consideration may be enforced to prevent injustice if the promissor should have reasonably expected the promisee to rely on the promise and the promisee actually did rely on the promise to his or her detriment. this is what is alledge to have happened in this case an offer was made trial counsel fresh from this offer mis-informs mistaken or not this causes a rejection of that offer, proceeding to trial a sentence is given that is way

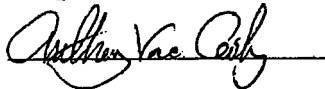
more then the offer. The appellant find out during direct appeal at a disciplinary complaint exchange of info exhibited. He informs all intrested parties as required but must wait until collateral review to presnt. That come he has it forgone due to PCRA counsels ineffectiveness per se,

This was due to no fault of his own; and even if he were to have had filed himself he had exceptopnal circumstances occur when he was assaulted on 11-25-19, by his cellmate Michael king HA-2263 in SCI Phoenix G blk A-side A205 cell Pa D.O.C. Tape No. 778394423567129076543-9-1-16-Present. He awaits surgery to repair damage inflicted to date, and spent time in the prison infirmary until 2-5-19 ironically the petitions deadline counsel missed. Penalized none-the-less. This was done though D-Coded no cellmate (per Pa.D.O.C. Policy). see: Exhibit No.

—

This being said you can see that relief is appropriate in this case that being remand with findings consistant; that being collteral PCRA counsel Donald Gual's ineffectiveness per se; for failure to file direct appeal. then the oportunity be given to except the correct deal of 6-20 years.

Respectfully Submitted,

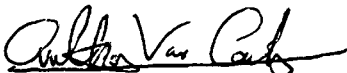


Anthony Vone Caiby

C.c. file

CONCLUSION

When a prisoner procedurally defaults on a substantial trial counsel ineffectiveness Because, his post-conviction counsel errs, we may excuse that default as an equitable matter as in *Martinez* we can do so because the "initial-review collateral proceeding, if under-taken without counsel or with ineffective counsel may not {be} sufficient to ensure that a prisoner deprived of his sixth amendment right at trial receives proper consideration of his claim(s)" *id.* Excluding from the equitable rule prisoners whose lawyers abandon them is inconsistent with *Martinez*. The petitioner Mr. Caiby was deprived of his right to show that his trial counsel was ineffective by the ineffectiveness of his PRCA/collateral counsel's ineffectiveness *per se* which need not be proven only shown, this prongless standard is shown by his non-filing, and tardiness after remand prejudging the petitioner the issue today, need settled. Therefore the Petitioner Mr. Caiby respectfully asks this Honorable court to Remand to the Pennsylvania Supreme Court with instruction to that Court/Commonwealth to reoffer the deal *per Lafler*.


Anthony Vore Caiby
per se