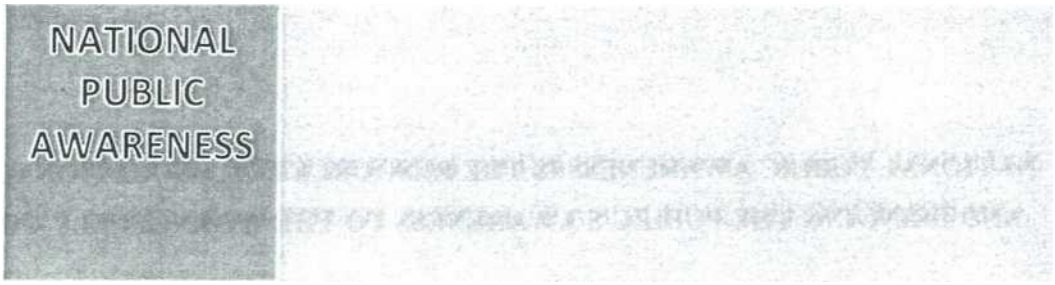

N.P.A.'s WRIT WRITER MANUAL

A comprehensive educational manual on researching, preparing and writing extraordinary writs of habeas corpus and other necessary motions and pleadings in litigating criminal conviction challenges with included templated motions, pleadings and case references with instructions in self-litigating and writ writing

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Discussion on possible defenses, pleadings and other matters that may arise or present themselves follow until conclusion,

"NO SOL VENTS ARE NEEDED TO BRING THESE WORDS TO LIGHV[f]
Encouraged and motivated by Judge [f]s Paul T. Farrell and Christopher D. Chiles

Jesse Dreyfuse

This manual is written from the perspective of a writ writer prisoner and detainee. It is organized according to the succession of the steps that the petitioning party typically follows in litigating a habeas corpus or similar case. It begins with the state post-conviction proceedings that generally precede the filing of an appellate petition. It then addresses the legal issues and strategic considerations affecting the drafting and filing of a petition and ancillary motions (Foe example, applications for appointment of counsel and numerous other pleadings and necessary motions necessary in litigation of habeas proceedings.

The manual thereafter discusses the various pleadings that may be filed, the proceedings that may be held, the defenses that may be encountered, the burdens of persuasion and other decisional rules that may apply and the relief that may be obtained in the court once a petition has been filed.

The manual concludes by more specifically addressing original habeas corpus proceedings, although much of what is said in the preceding chapters applies to habeas corpus and other filings, the chapters following discuss the unique aspects of these types of proceedings including template motions, pleadings and filings which have prevailed in the self-litigation of an inmate writ writer.

This format has many advantages for self-represented convicted persons, law students, lawyers and Judges involved in habeas corpus proceedings: It enables them to easily find the law they need at the relevant stage of the case, It also avoids the consequences of learning what a tiger looks like from behind only to encounter the beast for the first time head on.

On the other hand the format risks the degree of redundancy because certain doctrines (exhaustion, procedural default and successive petitions, for example) are relevant at more than one stage of the post-conviction case.

To minimize this confusion, The writ writer places the primary treatment of *a* particular issue in the most logical location and includes a vast reference of cases that have prevailed with the assignments of error(s) and a basic explanation of the underlying issue(s) presented which won the litigant(s) relief(s), The listing is included for research and educational purposes to effectively self-litigate in the state courts.

This manual is about researching, writing and litigating habeas corpus proceedings in that it analyzes procedures and remedies available to state prisoner's seeking habeas corpus relief(s). Although it discusses state remedies for state prisoners which allows them to identify the ways in which the state proceedings are litigated, It also provides a simplistic listing of template motions, pleadings and other filings that are necessary in litigation that have been perfected by the writ writer in successfully challenging a wrongful murder conviction as a self-represented litigant.

The writ writer's first chapter of this manual is formatted to educate the reader on the basic assignments of errors which are cognizable for habeas relief(s) and how to identify and raise each of the listed assignments of errors in a properly written habeas corpus petitioner's brief.

The manual provides an indexed reference of the case examples that have prevailed and is recommended for research and education, whether a law student, practicing attorney, seated Judge or a convicted person behind prison walls, This manual will educate everyone on the self litigations and filing of the extraordinary writ of habeas corpus and the required motions and pleadings to prevail in securing reliefs.

The following chapters are dedicated to the many diverse and necessary motions, pleadings and filings that will present themselves as required throughout the habeas corpus proceedings, Sagacity is the key to prevailing in being GRANTED reliefs from a wrongful conviction, Being educated, prepared and aware of strategic filings is the key to success in self-litigating successfully.

The writ writer of this manual has himself researched, written and perfected all of the template styled motions, pleadings and filings contained in this manual and all are his original independent work product, None are copied or plagiarized and each has prevailed in the self-litigation of habeas corpus proceedings.

- ***This manual and its contents are only for educational purposes and are not meant or intended to practice law, But to provide basic rudimentary understandings of the language and procedures of the law involved in litigating post*conviction habeas corpus proceeings.***

IDENTIFYING AND UNDERSTANDING THE 54 COMMON ASSIGNMENTS OF ERRORS TO RAISE IN PETITION FOR WRIT OF HABEAS CORPUS

In general, post-conviction habeas corpus statutes contemplates that every person convicted of a crime shall have a fair trial in the circuit court, an opportunity to apply for an appeal to this Court, and one omnibus postconviction habeas corpus hearing at which he or she may raise any collateral issues which have not previously been fully and fairly litigated.

What constitutes full and fair litigation of an issue? Frequently habeas corpus petitioners seek collateral review of evidentiary or constitutional questions, such as the admissibility of a confession or failure to exclude physical evidence, when those issues were fully and fairly litigated during the trial and a record of the proceedings is

available. In that event *a* court may apply rules of res judicata in habeas corpus because the issue has actually been fully litigated.

Incarceration presents a substantial opportunity for education in the criminal law, and a person who has actually received ineffective assistance of counsel may discover that fact only upon consultation with some of our better inmate practitioners who have acquired writ writer status. While the court held in Ford v. Coiner, 156 W. Va. 362,196 S.E.2d 91 (1972) that the burden of proof rests on the petitioner to rebut the presumption that he intelligently and knowingly waived any contention or ground for relief which he could have advanced upon direct appeal, when the petitioner makes a prima facie case that he was denied a fair trial or his constitutional rights, the court is obligated at some point to afford him an opportunity to offer proof to meet the burden of Ford, supra.

Once a defendant begins to research and write a pro se habeas corpus petition the petitioner must raise all issues which are known to them or which, with reasonable diligence, would become known to him. That is a reasonable rule of procedure since the universe of all grounds for successful collateral attack on underlying convictions is comparatively small. In order to insure that the entire applicant's possible contentions are fully considered at the omnibus habeas corpus hearing.

The applicant must evaluate the record and understand that an omnibus habeas corpus hearing will render a final decision and that subsequent habeas corpus petitions will be summarily denied unless they address one of the narrow exceptions. The petitioner needs to identify, raise and present every potential ground for collateral attack that is conceivably applicable to his case of which the legal literature is currently aware.

The only way to properly evaluate the record so to disseminate and identify all potential grounds for relief is to begin learning the language and proceedings of laws in the state where the conviction being challenged, This is accomplished by researching each of the common 54 Habeas Corpus assignments of errors provided, It is recommended that the research begin with the 1st ground listed and following through to the lists end, By researching and reading the cases addressing each of the assignments of errors it is suggested that the litigant read cases that have prevailed in being reversed, remanded and vacated to understand how the assignment of error was applied and presented to the court and why it was founded to be a constitutional violation that constituted a reversal, remand or the vacating of the conviction.

Do Not focus only on cases that have prevailed in being granted reliefs and attempt to apply the same issues and strategies to assignments that are discovered in the case you are working on, *Read and study* the cases that were affirmed and denied reliefs as those are the ones that will show the litigant what not to do, look for the mistakes made by others when they presented issues to the courts that were misplaced or not in compliance to standards and prerequisites in showing prejudice suffered.

Always search out the federal controlling laws and authorities to each of the assignments of errors and always include a citation of *BOTH,* State and Federal constitutional violations suffered and include the memorandum of the controlling federal and state laws in the habeas corpus petitioner's brief, *Remember,* The citation of BOTH, State and Federal constitutional violations suffered that you include in the memorandum of the controlling federal and state laws is the "Legal Argument" that is to be proffered before the court during the final Omnibus Discovery Hearing, Learn it, Speak it, Practice it and look for as many cases to cite on the issue as possible during the argument at hearing, You only have one chance to get it right and to show the laws that you are citing demand that justice provide relief.

Each of the following prominent grounds which have been concluded are the most frequently raised. Several of these grounds have never risen to the requisite constitutional dimension to be sufficient for habeas corpus relief in all State Courts; being over-inclusive we have listed all grounds which might be considered sufficient. The petitioner and or writ writer should use his or her own imagination in developing further grounds: (1) trial court lacked jurisdiction; (2) statute under which conviction obtained unconstitutional; (3) indictment shows on face no offense was committed; (4) prejudicial pre-trial publicity; (5) denial of right to speedy trial; (6) involuntary guilty plea; (7) mental competency at time of crime; (8) mental competency at time of trial cognizable even if not asserted at proper time or if resolution not adequate; (9) incapacity to stand trial due to drug use; (10) language barrier to understanding the proceedings; (11) denial of counsel; (12) unintelligent waiver of counsel; (13) failure of counsel to take an appeal; (14) consecutive sentences for same transaction; (15) coerced confessions; (16) suppression of helpful evidence by prosecutor; (17) State's knowing use of perjured testimony; (18) falsification of a transcript by prosecutor; (19) unfulfilled plea bargains; (20) information in pre-sentence report erroneous; (21) ineffective assistance of counsel; (22) double jeopardy; (23) irregularities in arrest; (24) excessiveness or denial of bail; (25) no preliminary hearing; (26) illegal detention prior to arraignment; (27) irregularities or errors in arraignment; (28) challenges to the composition of grand jury or its procedures; (29) failure to provide copy of indictment to defendant; (30) defects in indictment; (31) improper venue; (32) pre-indictment delay; (33) refusal of continuance; (34) refusal to subpoena witnesses; (35) prejudicial joinder of defendants; (36) lack of full public hearing; (37) nondisclosure of Grand Jury minutes; (38) refusal to turn over witness notes after witness has testified; (39) claim of incompetence at time of offense, as opposed to time of trial; (40) claims concerning use of informers to convict; (41) constitutional errors in evidentiary rulings; (42) instructions to the jury; (43) claims of prejudicial statements by trial judges; (44) claims of prejudicial statements by prosecutor; (45) sufficiency of evidence; (46) acquittal of co-defendant on same

charge;
(47) defendant's absence from part of the proceedings;
(48) improper communications between prosecutor or witnesses and jury; (49) question of actual guilt upon an acceptable guilty plea; (50) severer sentence than expected; (51) excessive sentence; (52) mistaken advice of counsel as to parole or probation eligibility; (53) amount of time served on sentence, credit for time served; 54) Bill of attainder, Not Sentenced.
In identifying the assignments of error(s) that exists in a convicted individuals case it is necessary to get a full and complete copy of the criminal case file of the underlying conviction, This includes a copy of the case file that trial counsel possesses / possessed, the case file of the circuit courts clerk's office and the criminal pretrial 'discovery' which contains all witness statements, police, first responder and investigator's reports, crime scene photos, video's, diagrams, and where applicable autopsy, medical examiner reports, notes, death summary reports, medical records and test results and of course the transcripts of the criminal proceedings involving the conviction to be challenged.

Acquiring the case file(s) and contents necessary to disseminate and identify every potential assignment of error for presentment in a petition for writ of habeas corpus is a task that sounds more complex than it actually is, The author writ writer has included templated motion(s) that have prevailed in securing the documents above detailed in the following chapters and each is his exclusive original work product.

Emphasis is added to the importance of the 'ERRORS' list being applied to researching the case file(s) and their contents, when something doesn't look right it normally isn't, Make note of every potential 'ERROR' as it becomes aware to you, research the terms and then compare the 'ERROR(s)' suspected to what research results are obtained, Google, Lexis Nexis, West Law and Ballentine's law dictionaries are the best research tools available and should be used when identifying any assignment of error and claim for habeas corpus reliefs.

If a public defender panel attorney was appointed to the defendant always obtain a copy of the public defenders billing sheets, These will reflect the hourly work product performed and billed for by the attorney for the services he or she did, or did not perform, Remember, the fulcrum of any ineffective assistance of counsel claim is the adequateness of counsel's investigation, Counsel must at a minimum investigate "facts and law' relevant to a defendants' case to best determine how to represent the matters and the courts of every State have no problem reversing when an inadequate or no investigation has been performed, If there is no billing for an investigation, one was never performed, what does not exist in record does not exist in law and no lawyer works for free, The billing sheets can be easily obtained with use of one of the included templated motions in this manual.

Set out below is a non-exhaustive inventory of 'potential[7] sources of factual information in support of claims for post-conviction relief in state or federal court. The overly inclusive listing will help identify some of the types of claims about which the respective sources are likely to provide information, these sources are examples of potentially viable individuals and records and physical items that should be examined. When interviewing a potential source of factual information, always ask the source for any records or other physical items in that person's possession that may relate to the client or the case.

Potential sources of factual information include:
(1) The Defendant.
(2) Members of the Defendants family, including:
(a) Family members in contact with the client since trial;
(b) Family members who attended the trial (and/or pretrial hearings; the sentencing; post-verdict proceedings);
(c) Family members in contact with the client at the time of arrest and pretrial incarceration;
(d) Family members in contact with the client at the time of the offense
(e) Family members in contact with the client at any time prior to the offense.
(3) Participants in petitioner's defense, including:
(a) Trial counsel
(b) Appellate counsel
(c) Post-conviction counsel
(d) Para professions Is who assisted prior counsel
(e) Investigators who assisted prior counsel
(f) Expert witnesses consulted or presented in court by prior counsel or by the prosecution.
(4) Codefendants, codefendants' trial counsel, and other members of codefendants' defense team.
(5) Acquaintances of petitioner falling into categories (and with regard to claims) similar to those in paragraph (2) above, including:
(a) Friends;
(b) Companions at the time of the offense;
(c) Teachers;
(d) Counselors;
(e) Coaches;
(f) Employers and fellow employees;
(g) Spiritual advisors and church members;
(h) Medical doctors and other health professionals;
(i) Mental health professionals;
(j) Social workers and private social service personnel;
(k) Parole and probation officers;
(l) Jail or prison officials.
(6) Law enforcement personnel who prepared or presented the case for the state or were present at trial, including:
(a) Investigating police officers;
(b) Officers in charge of retrieving or storing the physical evidence;
(c) Personnel responsible for conducting forensic analyses for the state;
(d) Secretarial personnel responsible for typing up waiver forms, confessions, witness statements, and the like;
(e) Pathologist or medical examiner;
(f) Prosecutors;
(g) Jail personnel;
(h) Courtroom security personnel;

(i) Court martial, bailiff, clerk, and court reporter.
(7) Prosecution and defense witnesses at trial as well as potential witnesses who were never called to the witness stand by either side.
(8) The jurors.
(9) Newspaper or media reporters falling into categories (and with regard to claims) similar to those in paragraph (2) above.
(10) The record in the case and in the cases of any codefendants, including:
(a) The "technical record," charging papers, clerks file, motions file, briefs file, clerk's correspondence file, and the docket sheet;
(b) Pretrial hearing and other transcripts, including the:
(i) Coroner's inquest;
(11) Grand jury proceedings;
(iii) Arraignment;
(iv) Preliminary hearing;
(v) Bail hearing;
(vi) Pretrial suppression hearings;
(vii) Evidentiary or other hearings on pretrial matters;
(c) Discovery documents, including deposition transcripts, interrogatory answers, witness statements, confessions, expert reports and underlying notes and records, physical evidence, and answers to discovery motions;
(d) The record of proceedings on the petitioner's plea of guilty;
(e) The guilt/innocence trial record, including:
(i) Transcript of introductory statements to, admonitions to, and voir dire of prospective jurors;
(ii) Transcript of opening statement of the court;
(iii) Transcript of opening arguments of counsel;
(iv) Transcript of evidence;
(v) Transcript of voir dire examinations of witnesses outside the presence of the jury;
(vi) Transcript of bench conferences;
(vii) Trial exhibits admitted into evidence and ones offered but excluded;
(viii) Transcript of proceedings on motion for directed verdict;
(ix) Transcript of closing arguments of counsel;
(x) Transcript of conference on jury instructions;
(xi) Transcript of jury instructions;
(xii) Written jury verdict;
(xiii) Transcript of announcement of verdict and polling of jury;
(f) Records of proceedings with regard to multiple or habitual offender status, use of firearm

Jackson v. Conway, 763 F.3d 115 (2d Cir. 2014)' cert, denied, 575 U.S. 919 (2015) (Child Protective Services caseworkers post-arrest questioning of defendant in connection with an independent civil investigation for possible family court action violated Miranda; While her investigation was civil in nature, [Miranda applied nonetheless because] if she discovered during the course of that investigation that [defendant] sexually abused [complainant], [Child Protective Services worker] was required by New York law to report that finding to the appropriate local law enforcement authorities.).

Lujan v. Garcia, 734 F.3d 917 (9th Cir. 2013), cert, denied, 574 U.S. 1005 (2014) (erroneous admission of inadequately Mirandized confession could not be rendered harmless by defendants testifying at trial to explain the details of the offenses and the circumstances of his confession: Under the Harrison [v. United States, 392 U.S. 219 (1968)] exclusionary rule, when a criminal defendants trial testimony is induced by the erroneous admission of his out-of-court confession into evidence as part of the governments case-in-chief, that trial testimony cannot be used to support the initial conviction on harmless error review, because to do so would perpetuate the underlying constitutional error.).

Young v. Conway, 698 F.3d 69 (2d Cir. 2012), cert, denied, 571 U.S. 1015 (2013) (in-court identification should have been suppressed along with lineup identification as fruits of unconstitutional arrest without probable cause).

Doody v. Ryan, 649 F.3d 986 (9th Cir.) (en banc), cert, denied, 565 U.S. 959 (2011) (confession, obtained from sleep-deprived juvenile by tag team of detectives in relentless, nearly thirteen-hour interrogation, was involuntary, and therefore inadmissible and was also obtained in violation of Miranda v. Arizona because Miranda warnings were inadequate).

Wood v. Ercole, 644 F.3d 83 (2d Cir. 2011) (confession should have been suppressed because accuseds reply to police question was sufficient to invoke right to counsel and accordingly should have cut off interrogation).

Ayers v. Hudson, 623 F.3d 301 (6th Cir. 2010) (police violated right to counsel by intentionally creat[ing] a situation likely to induce [accused] to make incriminating statements to jailhouse informant).

Smiley v. Thurmer, 542 F.3d 574 (7th Cir. 2008) (state courts misapplied Supreme Court doctrines on interrogation to admit statement taken without Miranda warnings).

Anderson v. Terhune, 516 F.3d 781 (9th Cir.) (en banc), cert, denied, 555 U.S. 818 (2008) (confession should have been suppressed by defendants silence by responding to police officers continued questioning).

Arnold v. Runnels, 421 F.3d 859 (9th Cir. 2005) (police violated Miranda by tape-recording interrogation after defendant, who had waived Miranda rights, unequivocally objected to tape-recording).

Guidry v. Dretke, 397 F.3d 306 (5th Cir. 2005), cert, denied, 547 U.S. 1035 (2006) (confession should have been suppressed because police officers failed to honor assertion of right to counsel and falsely informed accused that attorney had encouraged him to speak with police).

Gibbs v. Frank, 387 F.3d 268 (3d Cir. 2004) (introduction, at retrial, of petitioners inculpatory statements to state psychiatrist during court-ordered evaluation that preceded prior trial, violated 5th Amendment because waiver of right to silence had been conditioned on statements being admissible only if accused placed mental state at issue in trial and no such defense was employed in retrial).

Abela v. Martin, 380 F.3d 915 (6th Cir. 2004) (confession should have been suppressed because petitioners naming of attorney, showing attorneys business card, and stating that maybe I should talk to [named] attorney constituted adequate assertion of right to counsel).

Taylor v. Maddox, 366 F.3d 992 (9th Cir.), cert, denied, 543 U.S. 1038 (2004) (confession was extracted from 16-year- old in violation of Miranda and also Due Process Clause).

Hart v. Attorney General, 323 F.3d 884 (11th Cir.), cert, denied, 540 U.S. 1069 (2003) (statement should have been suppressed on Miranda grounds because petitioner, then
17 years old, did not knowingly, voluntarily and intelligently waive right to counsel).

Lam v. Kelchner, 304 F.3d 256 (3d Cir. 2002) (statements were unconstitutionally coerced by undercover officers posing as gang members).

Raheem v. Kelly, 257 F.3d 122 (2d Cir. 2001), cert, denied, 534 U.S. 1118 (2002) (identification testimony of two witnesses should have been suppressed as fruits of suggestive lineup).

McGraw v. Holland, 257 F.3d 513 (6th Cir. 2001) (police violated Miranda by failing to scrupulously honor accuseds assertion of right to silence).

Wray v. Johnson, 202 F.3d 515 (2d Cir. 2000) (showup identification procedure was impermissibly suggestive).

Henry v. Kernan, 197 F.3d 1021 (9th Cir. 1999), cert, denied, 528 U.S. 1198 (2000) (police coerced confession by using slippery and illegal tactics, including responding to petitioners request for counsel by saying Listen, what you tell us we cant use against you right now. Wed just would like to know.).

Alvarez v. Gomez, 185 F.3d 995 (9th Cir. 1999) (despite petitioners thrice-repeated questions [about consulting lawyer, which,] when considered together, constituted an unequivocal request for an attorney, police unconstitutionally continued interrogation).

Washington v. DeMorales, 1997 U.S. App. LEXIS 22861 (9th Cir. Aug. 28, 1997), cert, denied, 522 U.S. 1076 (1998) (police violated Miranda rule following accuseds assertion of right to silence).

Shillinger v. Haworth, 70 F.3d 1132 (10th Cir. 1995) (deputy sheriffs listening in on and reporting to prosecutor substance of defense counsels jailhouse conversations with client violated 6th Amendment right to counsel).

Roberts v. Maine, 48 F.3d 1287 (1st Cir. 1995) (although 6th

Amendment right to counsel had not yet attached, police violated Due Process Clause by refusing to honor [petitioners] reasonable request to call an attorney after giving him misleading information about consequences of refusal to take blood/alcohol test).

Kordenbrock v. Scroggy, 919 F.2d 1091 (6th Cir. 1990) (en banc), cert, denied, 499 U.S. 970 (1991) (confession obtained after police ignored petitioners statements that he did not want to talk and wanted interrogation to cease and after police threatened to arrest petitioners girlfriend (against whom they had no evidence) and to send petitioner to Ohio where, police said, he could be held incommunicado for days and put through an ordeal [he] may not forget for a long time).

Cervi v. Kemp, 855 F.2d 702 (11th Cir. 1988), cert, denied, 489 U.S. 1033 (1989) (rule of Edwards v. Arizona, 451 U.S. 477 (1981), violated when Georgia police officer interrogated petitioner in Iowa jail after he requested appointment of counsel with regard to extradition to Georgia).

Christopher v. Florida, 824 F.2d 836 (11th Cir. 1987), cert, denied, 484 U.S. 1077 (1988) (rule of Michigan v. Mosley, 423 U.S. 96 (1975), violated when police failed to terminate interrogation after petitioner asserted right to silence).

Felder v. McCotter, 765 F.2d 1245 (5th Cir. 1985), cert, denied, 475 U.S. 1111 (1986) (police interrogated defendant after 6th Amendment right to counsel had attached and without adequate waiver of right to presence of counsel).

Jurek v. Estelle, 623 F.2d 929 (5th Cir. 1980) (en banc), cert, denied, 450 U.S. 1001 (1981) (police obtained two vastly different confessions from mentally deficient petitioner during 42-hour period of interrogation without counsel;

(2)Claims attacking the validity of the charging paper or the underlying charge on procedural or substantive grounds:

(a)Claims, arising under Bailey v. United States, 516 U.S. 137 (1995) that conduct of section 2255 movant did not satisfy definition of use of firearm for purposes of federal criminal statute:

United States v. Guess, 203 F.3d 1143 (9th Cir. 2000).

United States v. Romero, 183 F.3d 1145 (9th Cir. 1999).

United States v. Ponce, 168 F.3d 584 (2d Cir. 1999).

United States v. Pearce, 146 F.3d 771 (10th Cir. 1998).

United States v. Gobert, 139 F.3d 436 (5th Cir. 1998).

United States v. Carter, 117 F.3d 262 (5th Cir. 1997).

Stanback v. United States, 113 F.3d 651 (7th Cir. 1997).

Lee v. United States, 113 F.3d 73 (7th Cir. 1997).

United States v. McPhail, 112 F.3d 197 (5th Cir. 1997.

United States v. Garcia, 77 F.3d 274 (9th Cir. 1996).

(bJClaims, arising under McNally v. United States, 483 U.S. 350 (1987), that conviction of fraud cannot be predicated on theory of depriving another of intangible right:

United States v. Bruno, 903 F.2d 393 (5th Cir. 1990).

Callanan v. United States, 881 F.2d 229 (6th Cir. 1989).

Toulabi v. United States, 875 F.2d 122 (7th Cir. 1989).

United States v. Mitchell, 867 F.2d 1232 (9th Cir. 1989).

Magnuson v. United States, 861 F.2d 166 (7th Cir. 1988).

United States v. Shelton, 848 F.2d 1485 (10th Cir. 1988).

Ward v. United States, 845 F.2d 1459 (7th Cir. 1988).

(c) Other claims relating to the validity of the charging paper or the underlying charge:

United States v. Taylor, 142 S. Ct. 2015 (2022) (granting successive section 2255 motion and vacating felony conviction on ground that attempted Hobbs Act robbery does not qualify as a crime of violence under 18 U.S.C. 924(c)(3)(A) because no element of the offense requires the government to prove that the defendant used, attempted to use, or threatened to use force.).

Vasquez v. Hillery, 474 U.S. 254 (1986) (grand jury selection process systematically excluded blacks).

Crist v. Bretz' 437 U.S. 28 (1978) (double jeopardy violation).

Castaneda v. Partida, 430 U.S. 482 (1977) (Mexican- American petitioner suffered intentional discrimination in grand jury selection process; only 39 percent of those summoned for grand jury service were Mexican-American although that group accounted for 79 percent of county population).

Smith v. Goguen, 415 U.S. 566 (1974) (petitioner convicted under Massachusetts vague flag-misuse statute).

Armendariz v. Vigil, 834 Fed. Appx. 454 (10th Cir. 2020), cert, denied, 141 S. Ct. 2689 (2021) (convictions for attempted first-degree murder and aggravated battery violated Double Jeopardy Clause because highest court of New Mexico [has] determined the state legislature did not intend multiple punishments for attempted murder and aggravated battery arising from the same conduct).

Seay v. Cannon, 927 F.3d 776 (4th Cir. 2019), cert, denied, 140 S. Ct. 2633 (2020) ([W]e conclude that the government failed to satisfy its high burden of showing manifest necessity for a mistrial. The record shows that the government allowed the jury to be empaneled knowing that the crucial witness might not appear to testify. Additionally, the state trial court failed to consider possible alternatives to granting the governments mistrial motion.).

Gouveia v. Espinda, 926 F.3d 1102 (9th Cir. 2019), cert, denied, 140 S. Ct. 886 (2020) (grant of mistrial on prosecutors motion when members of jurywho had deliberated and reached verdict but had not

yet announced itexpressed concern for their safety because of menacing-looking man on the prosecution side of the courtroom, was not justified by manifest necessity and accordingly Double Jeopardy Clause barred retrial).

Golb v. Attorney General, 870 F.3d 89 (2d Cir. 2017), cert, denied, 138 S. Ct. 988 (2018) (conviction of impersonation violated Shuttlesworth v. City of Birmingham, 382 U.S. 87 (1965), because unconstitutional overbreadth of charging statutes injury element was not narrowed and cured by state high court until direct appeal in petitioners own case, and jury may well have impermissibly convicted Golb based on impermissibly overbroad literal terms of the statute that the [state high court] subsequently narrowed).

Magnan v. Trammell, 719 F.3d 1159 (10th Cir. 2013) (Oklahoma state courts lacked jurisdiction because crimes occurred on Indian land and thus exclusive jurisdiction over th[e] crimes rests with the United States).

McDaniels v. Cambridge Springs SCI, 700 Fed. Appx. 119 (3d Cir. 2017), cert, dismissed, 138 S. Ct. 1324 (2018) (acquittal in first trial constituted double jeopardy bar to retrial even though state appellate court allowed prosecutorial appeal of acquittal and set verdict aside on ground that trial judge had exceeded authority by reconvening jury and accepting acquittal verdict after initially declaring jury to be deadlocked and discharging jury).

Wilkinson v. Gingrich, 806 F.3d 511 (9th Cir. 2015) (Double Jeopardy Clauses collateral estoppel principle precluded perjury prosecution of petitioner for allegedly testifying falsely in prior traffic court trial that ended in acquittal; traffic court necessarily decided, in Wilkinsons favor, an issue that was critical to both the traffic court and perjury proceedingsthat Wilkinson was not the driver of the speeding car).

Wood v. Milyard, 721 F.3d 1190 (10th Cir. 2013) (double jeopardy violation).

Brazzel v. Washington, 491 F.3d 976 (9th Cir. 2007) (conviction on lesser alternative offense in first trial amounted to implied acquittal of more serious charge in indictment and barred retrial on latter charge).

Walck v. Edmondson, 472 F.3d 1227 (10th Cir. 2007) (joining several of our sister circuits in holding that section 2241, not section 2254, is the proper avenue by which to challenge pretrial detention, including when such challenges are based on double jeopardy grounds, and granting writ on double jeopardy grounds because prior trial ended in judges granting prosecutions request for mistrial over defense counsels objection without manifest necessity and without considering reasonable alternatives).

Damian v. Vaughn, 186 Fed. Appx. 775, 2006 U.S. App. LEXIS 15869 (9th Cir. June 21, 2006) (retrial on indictment that included two counts that had resulted in acquittal in previous trial violated Double Jeopardy Clause).

Stow v. Murashige, 389 F.3d 880 (9th Cir. 2004) (reclassifying state prisoners section 2254 petition which raised a double jeopardy challenge to his pending retrial as section 2241 petition because petitioners status was that of a pretrial detainee and not state prisoner, finding AEDPA inapplicable because petition is governed by section 2241, and granting writ [b]ecause Stows impending retrial on the charges of attempted second degree murder would violate double jeopardy).

Dye v. Frank, 355 F.3d 1102 (7th Cir. 2004) (charge of possession with intent to deliver cocaine was barred by Double Jeopardy Clause which was civil penalty so punitive in purpose and effect that it constituted a criminal punishment).

McCoy v. Stewart, 282 F.3d 626 (9th Cir.), cert, denied, 537 U.S. 993 (2002) (conviction of participating in a criminal street gang, based on petitioners having advised gang members about how to operate organization, violated First Amendment).

Morris v. Reynolds, 264 F.3d 38 (2d Cir. 2001), cert, denied, 536 U.S. 915 (2002) (state trial court violated Double Jeopardy Clause by reinstating dismissed felony charge after having already accepted petitioners guilty plea to lesser included misdemeanor charge).

Huss v. Graves, 252 F.3d 952 (8th Cir. 2001), cert, denied, 535 U.S. 951 (2002) (Double Jeopardy Clause precluded prosecution following bench trial on stipulated record that ended in trial judges de facto declaration of mistrial).

Prou v. United States, 199 F.3d 37 (1st Cir. 1999) (untimeliness of governments filing of charging paper alleging grounds for sentencing enhancement requires that section 2255 movants sentence be vacated and that movant be remand[ed] for resentencing without the statutory enhancement).

Johnson v. Karnes, 198 F.3d 589 (6th Cir. 1999) (Double Jeopardy Clause barred prosecution because prior trial ended in declaration of mistrial, over defense objection, without manifest necessity).

Long v. Humphrey, 184 F.3d 758 (8th Cir. 1999) (same as Johnson v. Karnes, supra).

Bean v. Calderon, 163 F.3d 1073 (9th Cir. 1998), cert, denied, 528 U.S. 922 (1999) (joinder and consolidated trial of unrelated murder incidents violated due process by allow[ing] the jury to rely upon [very strong] evidence [in one case] to strengthen the otherwise weak [evidence in other] case).

Harpster v. Ohio, 128 F.3d 322 (6th Cir. 1997), cert, denied, 522 U.S. 1112 (1998) (retrial would violate double jeopardy because previous mistrial based on potential juror bias was not compelled by manifest necessity).

Love v. Morton, 112 F.3d 131 (3d Cii\ 1997) (double jeopardy violation).

United States v. Silvers, 90 F.3d 95 (4th Cir. 1996) (district courts reimposition of already-served sentences violated double jeopardy).

Forgy v. Norris, 64 F.3d 399 (8th Cir. 1995) (charging instruments failure to specify predicate crime for burglary charge violated due process right to fair notice of charges).

McIntyre v. Caspari, 35 F.3d 338 (8th Cir. 1994), cert, denied, 514

U.S. 1077 (1995) (double jeopardy violation).

Redner v. Dean, 29 F.3d 1495 (11th Cir. 1994), cert, denied, 514 U.S. 1066 (1995) (county licensing ordinance regulating adult entertainment establishments that feature nude dancing violated First Amendment).

Malinovsky v. Court of Common Pleas, 7 F.3d 1263 (6th Cir. 1993), cert, denied, 510 U.S. 1194 (1994) (Double Jeopardy Clause bars retrial of petitioner because first trial ended in mistrial, declared over petitioners objection and without manifest necessity).
United States v. Horodner, 993 F.2d 191 (9th Cir. 1993) (double jeopardy).

Sa be I v. Stynchcombe, 746 F.2d 728 (11th Cir. 1984) (overturning conviction under state statute criminalizing abrasive speech).

Monroe v. State Ct., 739 F.2d 568 (11th Cir. 1984) (state flag desecration statute unconstitutional as applied to petitioner).

(3)Claims attacking prosecutorial or police suppression of evidence or other discovery-related practices:

Banks v. Dretke, 540 U.S. 668 (2004) (State persisted in hiding [prosecution witnesss] informant status and misleadingly represented that it had complied in full with its Brady disclosure obligations and prosecutors failed to correct witnesss misrepresent[ations] [of] his dealings with police in testimony at guilt and penalty phases of trial: When police or prosecutors conceal significant exculpatory or impeaching material in the States possession, it is ordinarily incumbent on the State to set the record straight.).

Kyles v. Whitley, 514 U.S. 419 (1995) (Because the net effect of the evidence withheld by the State in this case raises a reasonable probability that its disclosure would have produced a different result, Kyles is entitled to a new trial.).

Fontenot v. Crow, 4 F.4th 982 (10th Cir. 2021) (State violated Brady by suppressing police reports, witness statements and information that cast[ ] serious doubt on whether petitioner was individual seen by prosecution witnesses, carrie[d] impeachment value regarding one of the States key witnesses, point[ed] to an alternate suspect, raisefd] an opportunity to attack the thoroughness and even the good faith of the investigation, could have aided in establish[ing] Mr. Fontenots alibi, and could have helped show that police had each detail contained in the confessions by the time of the arrests and thus had ability to fe[e]d these highly specific facts to Mr. Fontenot during the interrogation).

Phillips v. Valentine, 826 Fed. Appx. 447 (6th Cir. 2020), cert, denied, 142 S. Ct. 70 (2021) (prosecution denied existence of X-ray of deceaseds skull that was discovered years later by defense and provided basis for expert testimony supporting claim of self-defense or at least refuting prosecutions theory of wanton murder).

Carusone v. Warden, 966 F.3d 474 (6th Cir. 2020) (prosecutions felony murder theory at trialthat Carusone plunged [a] knife into the victims heart was plainly discredit[ed] by medical records that the State admits it wrongfully suppressed before trial).

Jimerson v. Payne, 957 F.3d 916 (8th Cir. 2020) (prosecutor and law enforcement [violated Arizona v. Youngblood by] act[ing] in concert to not only conceal the contents of the recording [of jailhouse informants conversation with coperpetrator who implicated petitioners] but also effectively conceal[ing] the fact that a recorded conversation took place).

United States v. Butler, 955 F.3d 1052 (D.C. Cir. 2020) (granting section 2255 relief because FBI forensic experts testimony that hairs found on the victim were microscopically identical to Butlers hair was false and exceeded the limits of science, and the prosecution knew or should have known as much at the time of [Butlers] trial).

United States v. Ausby, 916 F.3d 1089 (D.C. Cir. 2019) (The government now concedes that the testimony of the forensic expert [who testified that hairs found at the crime scene were microscopically identical to Ausbys hair] was false and misleading and that the government knew or should have known so at the time of Ausbys trial.).

Fernandez v. Capra, 916 F.3d 215 (2d Cir. 2019) (prosecution presented false testimony by eyewitness, who later recanted his identification and testified to police officers coercion to lie about identification).

Sims v. Hyatte, 914 F.3d 1078 (7th Cir. 2019) (prosecution withheld evidence that the only witness who could identify the shooter was hypnotized before trial to enhance his recollection of the shooting; Given the well-known problems that hypnosis poses for witnesses memories, we can be confident that [witnesss] identification testimony would have been subjected to withering cross- examination.

Floyd v. Vannoy, 894 F.3d 143 (5th Cir.) (per curiam), cert, denied, 139 S. Ct. 573 (2018) (prosecution failed to disclose lab reports indicating that fingerprints lifted at the crime scene did not match accuseds; prosecution cannot demonstrate compliance with Bradys disclosure requirement by asserting a possibility [that accused and defense counsel] could deduce that, based on the general evidence provided to him, additional evidence likely existed).
Williams v. Williams, 714 Fed. Appx. 958 (11th Cir. 2017) (per curiam) (prosecutor violated Brady v. Maryland and United States v. Bagley by failfing] to disclose impeachment evidence favorable to Williams during his trial, specifically [prosecutor] Higgins promise to talk to the prosecutor handling [prosecution witness] Fitzgeralds case if he testified against Williams. Because Brady applies to the suppression of favorable impeachment evidence. Browning v. Baker, 875 F.3d 444 (9th Cir. 2017), cert, denied, 138 S. Ct. 2608 (2018) (prosecution and police suppressed evidence that (1) bloody footprintswhich did not match the shoes Brown was wearing when he was arrested we re at crime scene when police first arrived and thus could not have been left by paramedics and detectives during investigation of crime scene, as prosecutor suggested to jury at trial; (2) key prosecution witness had expectation of a potential benefit [of prosecutorial assistance in obtaining more lenient sentence in witnesss own pending case] in exchange for his testimony; and (3) victims description of perpetrators hairstyle differed from what officer recounted at trial and was inconsistent with accuseds appearance at time).

Bridges v. Secretary, 706 Fed. Appx. 75 (3d Cir. 2017) (prosecution suppressed police reports indicating that key prosecution witness was associated with numerous shooting incidents in the time period leading up to Bridgess trial and that the police were aware of allegations that Robles was a drug dealer [but] looked the other way with respect to Robless criminal conduct so that they could obtain information from Roblesevidence [which] could have been used [by defense] to impeach Robles because it provided a basis to question whether Robles was motivated to testify in favor of the prosecution to ensure that the police did not pursue criminal charges against him).

Haskell v. Superintendent, 866 F.3d 139 (3d Cir. 2017) (prosecutor, who knew that states witness expected to receive help in her own pending criminal matters in exchange for her testimony, failed to correct witnesss testimony that she expect[ed] nothing in return from the Commonwealth in exchange for her testimony, and even went on to rely on [witnesss statement] and vouch for [witness] in his closing argument).

Thomas v. Westbrooks, 849 F.3d 659 (6th Cir.), cert.denied, 138 S. Ct. 390 (2017) (prosecutor suppressed evidence that the key witness against [defendant] had been paid $750 by the Federal Bureau of Investigation prior to trial).

Dennis v. Secretary, 834 F.3d 263 (3d Cir. 2016) (en banc) (The suppressed Brady materiala receipt corroborating Denniss alibi, an inconsistent statement by the Commonwealths key eyewitness.

Fuentes v. Griffin, 829 F.3d 233 (2d Cir. 2016) (prosecutor violated Brady by suppressing psychiatric report about complainant that would have, inter alia, provided a way [for defense counsel] to cross-examine [complainant] G.C. as to her mental state

McCormick v. Parker, 821 F.3d 1240 (10th Cir. 2016) (prosecution witness Ridling examined [complainant] M.K. at the behest of law enforcement as part of a criminal investigation into M.K.s allegation that McCormick sexually abused her and later testified falsely that she[Ridling] was a certified sexual assault nurse examiner (SANE nurse) at the time of trial; under these circumstances, Ridling was part of the prosecution team for Brady purposes [, and] we must impute her knowledge of her own lack of certification to the prosecutor, even though petitioner doesnt point to any evidence that indicates the prosecutor actually knew about Ridlings lapsed credentials).

Shelton v. Marshall, 796 F.3d 1075 (9th Cir.), amended, 806 F.3d 1011 (9th Cir. 2015) (prosecution committed Brady error by concealing from the defense and the jury its deal precluding an examination of the mental competency of its star witness, whose mental competence prosecution had serious doubts about, and whose testimony was central to the prosecutions case that Shelton premeditated and deliberated regarding Thorpes murder).

Barton v. Warden, 786 F.3d 450 (6th Ck. 2015) (per curiam), cert, denied, 577 U.S. 1216 (2016) (prosecution, which presented an unsupported, shifting, and somewhat fantastical story at trial, failed to disclose to defense counsel evidence that would have impeached the sole witness against [accused]).

Lewis v. Connecticut Commr of Correction, 790 F.3d 109 (2d Cir. 2015) (State failed to disclose to the defense that Ruiz [key witness on whom governments case against Lewis depended almost entirely] had repeatedly denied having any knowledge of the murders and only implicated Lewis after a police detective promised to let Ruiz go if he gave a statement in which he admitted to being the getaway driver and incriminated Lewis and another individual).Comstock v. Humphries, 786 F.3d 701 (9th Cir. 2015) (prosecutor in burglary case involving theft of ring withheld from defense counsel that complainant had serious doubts about whether his ring was actually stolen and said that ring might have been lost outside, not stolen, just as Comstocks lawyer argued to the jury).

Bies v. Sheldon, 775 F.3d 386 (6th Cir. 2014) (state violated Brady v. Maryland by fail[ing] to turn over hundreds of pages of evidence gathered during the murder investigation, includ[ing] a substantial collection of tips, leads, and witness statements relating to other individuals who had been investigated for the murdertwo of whom had apparently confessed to the crime, and neither of whom was ever ruled out as the perpetrator, and State also withheld witness statements that undermine the States theory of the case and information that could have been used to further impeach two of the States witnesses).
Gumm v. Mitchell, 775 F.3d 345 (6th Cir. 2014) (same as Bies v. Sheldon, supra, involving Gumms co-defendant).

Amado v. Gonzalez, 758 F.3d 1119 (9th Cir. 2014) (prosecution failed to disclose that primary witness for prosecution had pled guilty and was on probation for robbery and that witness was former member of gang whose members were targets of gang-related homicide for which petitioner was being prosecuted).

Lambert v. Beard, 537 Fed. Appx. 78 (3d Cir. 2013), cert, denied, 572 U.S. 1096 (2014) (prosecutor failed to disclose that witness, upon whom Commonwealths case against Lambert rested almost entirely and who testified in exchange for open guilty plea, naming Lambert as coperpetrator in crime, had previously identified not Lambert, but another man).

Dow v. Virga, 729 F.3d 1041 (9th Cir. 2013) (prosecutor knowingly elicited and then failed to correct false testimony by police detective, who falsely testified that accusedrather than defense counselwas source of request that each of the participants in a lineup wear a bandage under his right eye at the location at which [accused] had a small scar under his, and prosecutor thereafter told the jury during closing argument that [accused] had demonstrated consciousness of guilt by trying to hide his scar in order to prevent the sole eyewitness from identifying him).

Aguilar v. Woodford, 725 F.3d 970 (9th Cir. 2013), cert, denied, 572 U.S. 1110 (2014) (prosecutor suppressed information that police dogwhose scent evidence was the only evidence at trial linking Aguilar to the getaway car, as well as the only evidence corroborating strikingly weak eyewitness identificationshad a history of mistaken identifications).

Browning v. Trammell, 717 F.3d 1092 (10th Cir. 2013) (prosecution withheld psychiatric records of most important [prosecutorial] witness at trial, showing that witness blurs reality and fantasy, projects blame

onto others, and is perhaps even homicidal, all of which would have supported accuseds ability to impeach [witnesss] credibility and portray her as a participant in the crime).

Milke v. Ryan, 711 F.3d 998 (9th Cir. 2013) (state knew about but didnt disclose police detectives long history of lying under oath and other misconduct, even though trial was, essentially, *a* swearing contest between detectives claim that accused had confessed and accuseds denial that unrecorded confession ever took place).

Munchinski v. Wilson, 694 F.3d 308 (3d Ck. 2012) (prosecutors withheld almost a dozen articles of exculpatory evidence; [t]he scope of the Brady violations here is staggering).

Wolfe v. Clarke, 691 F.3d 410 (4th Cir. 2012) (prosecution suppressed plainly momentous written police report reflecting thatbefore [states key witness] ever asserted that [accused] hired him to murder [decedent][police detective] advised [states key witness] that he could avoid the death penalty by implicating [accused]).

Phillips v. Ornoski, 673 F.3d 1168 (9th Cir. 2012), cert, denied, 569 U.S. 968 (2013) (prosecutions failure to reveal that a key prosecution witness received significant benefits in exchange for her testimony after the witness falsely testified she had been promised no such benefits, coupled with the prosecutors false representation to the jury that there was no agreement promising such benefits deprived petitioner of, and willfully misl[ed] the jury as to, critical evidence that was material to the special circumstance finding that the murder was committed during the course of a robbery ； rather than vice versa)).

Guzman v. Secretary, 663 F.3d -336 (11th Cir. 2011) (testimony by states key witness and lead investigator about states deal with witness omitted payment of $500 reward shortly before witnesss grand jury testimony, and prosecutor failed to correct omission).

Sivak v. Hardison, 658 F.3d 898 (9th Cir. 2011) (prosecution failed to correct perjurious testimony by jailhouse informant, who claimed that cooperation with state was motivated solely by desire to protect wife and children, thereby concealing that prosecution had arranged dismissal of informants charges in neighboring county and had assisted in arranging parole, and that informant had previously received cash payment for providing information in another case in another State).

LaCaze v. Warden, 645 F.3d 728 (5th Cir. 2011), amended on denial of rehearing en banc, 647 F.3d 1175 (5th Cir.
2011), cert, denied, 565 U.S. 1174 (2012) (prosecution failed to disclose that plea deal given to states key witness went beyond reduction of charges and included assurance that witnesss son would not be prosecuted as accessory).

Breakiron v. Horn, 642 F.3d 126 (3d Cir. 2011) (prosecution failed to disclose that jailhouse informant had sought a deal in exchange for his testimony and was a suspect in an investigation pending when he testified and had been convicted of an impeachable crimen falsi).

Maxwell v. Roe, 628 F.3d 486 (9th Cir. 2010), cert, denied, 565 U.S. 1138 (2012) (prosecution failed to disclose multiple pieces of critical impeachment information that could have been used to undermine the credibility of [jailhouse informant]).

Goudy v. Basinger, 604 F.3d 394 (7th Cir. 2010) (prosecution failed to disclose three eyewitness statements that implicated one of its main witnesses).

Robinson v. Mills, 592 F.3d 730 (6th Cir. 2010) (prosecution suppressed evidence of key witnesss status as paid police informant, which could have supported the assertion that [witness] was biased in favor of the local authorities and caused jury to be suspicious of [witness] and cautious about her testimony).

Simmons v. Beard, 590 F.3d 223 (3d Cir. 2009), cert, dismissed, 559 U.S. 965 (2010) (prosecution suppressed evidence of (i) police pressure on accuseds girlfriend, who changed account that previously had been favorable to accused, (ii) grounds for impeaching credibility of key prosecution eyewitness, (iii) lab reports that could have been used to raise questions about eyewitnesss credibility, and (iv) eyewitnesss failure to identify accused in mug book prior to witnesss subsequent lineup identification).

Wilson v. Beard, 589 F.3d 651 (3d Cir. 2009) (in case in which prosecutions case rested on three eyewitnesses and prosecution presented no physical evidence implicating Wilson, prosecutor suppressed significant impeachment evidence about each witness, including prior criminal history, mental health problems that included distorted perceptions and memory loss, and evidence contradicting police officers testimony that witness who was police informant had never received financial compensation for information).

Douglas v. Workman, 560 F.3d 1156 (10th Cir. 2009) (per curiam) (prosecutor elicited testimony from complainant denying any benefits in exchange for testimony, and prosecutor extensively argued in closing that complainant had neither requested nor received benefits for testifying, even though complainant had initially declined to testify . Drake v. Portuondo, 553 F.3d 230 (2d Cir. 2009) (prosecutor, who presented medical expert to testify about a fictional syndrome to explain motive for commission of crime, knew th^t portion of [experts] testimony [about circumstances under which expert reached conclusion] was false and knew that [experts] testimony about his scholarship was intentionally misleading).

Mahler v. Kaylo, 537 F.3d 494 (5th Cir. 2008) (prosecution failed to disclose prior statements by prosecution witnesses that supported petitioners claim of self-defense and directly undermine[d] the prosecution witnesses testimony that the struggle had ended before petitioner

DAmbrosio v. Bagley, 527 F.3d 489 (6th Cir. 2008) (prosecution failed to disclose evidence that would have contradicted or weakened the testimony of the prosecutions only eyewitness to the murder and that demonstrate[d] a motive on the part of another individual to kill victim).

Jackson v. Brown, 513 F.3d 1057 (9th Cir. 2008) (prosecutor violated Brady v. Maryland by failing to disclose benefits promised to prosecution witnesses to induce them to testify, and prosecutor also

violated Napue v. Illinois by failing to correct witnesses testimony denying promises of benefits for cooperation).

Trammel v. McKune, 485 F.3d 546 (10th Cir. 2007) (prosecution failed to disclose physical evidence supporting defenses theory that key prosecution witness was actual perpetrator).

Graves v. Dretke, 442 F.3d 334 (5th Cir.), cert, denied, 549 U.S. 943 (2006) (prosecutor suppressed pretrial statements by key prosecution witness who, although testifying at trial that he committed murders with petitioner, had said in one pretrial statement that he acted alone and said in another pretrial statement that his accomplice was his own wife).

Wai Silva v. Brown, 416 F.3d 980 (9th Cir. 2005) (prosecution secretly conditioned star prosecution witnesss plea agreement on witnesss refraining from psychiatric evaluation before testifying so that jury would never learnf] of the considerable question as to [witnesss] competence to testify).

Hayes v. Brown, 399 F.3d 972 (9th Ck. 2005) (en banc) (prosecutor made a deal with [witnesss] attorney for the dismissal of pending felony charges after his testimony, but specifically represented to the judge that there was no such deal, elicited sworn testimony from [witness] at trial that there was no such deal, both on direct and re-direct examination, and failed to correct the record at trial to reflect the truth).

Slutzker v. Johnson, 393 F.3d 373 (3d Cir. 2004) (state suppressed police reports showing that key prosecution witness, who testified at trial 15 years after crime that she had seen petitioner talking to victims wife, had told police shortly after homicide that the man whom she had seen definitively was not [petitioner]).

Norton v. Spencer, 351 F.3d 1 (1st Cir. 2003), cert, denied, 542 U.S. 933 (2004) (prosecutor failed to disclose that child victims account of sexual offense was refuted by victims cousin, who had originally also claimed to be victim of sexual offense by accused but then admitted to fabricating claim at other childs insistence and stated that other child had also fabricated his allegations).
Castleberry v. Brigano, 349 F.3d 286 (6th Cir. 2003) (prosecution did not disclose to defense counsel that victims description of assailant differed from petitioners appearance in important respects, that states primary witness had been overheard plotting to rob victim before crime occurred, and that victims neighbors reported seeing two men who did not match petitioners appearance at crime scene immediately before gun was fired).

Monroe v. Angelone, 323 F.3d 286 (4th Cir. 2003) (prosecution suppressed wealth of exculpatory evidence including impeachment material, leads implicating other suspects, official documents labeling [victims] death a suicide, and statements suggesting that [victim] may have been suicidal).

Scott v. Mullin, 303 F.3d 1222 (10th Cir. 2002) (state failed to disclose that prosecution witness had previously confessed to murder for which petitioner was convicted and sentenced to death).

Sawyer v. Hofbauer, 299 F.3d 605 (6th Cir. 2002) (prosecution withheld police laboratory test results showing that semen stain on victims underwear was inconsistent with accuseds blood type).

Jenkins v. Artuz, 294 F.3d 284 (2d Cir. 2002) (prosecutor failed to correct crucial witnesss perjurious denial of deal for testimony, and prosecutor exacerbated problem by using redirect examination to give false impression that prosecutors own lack of involvement in arranging deal signified that no such deal had been made by other prosecutor).

Benn v. Lambert, 283 F.3d 1040 (9th Cir.), cert, denied, 537 U.S. 942 (2002) (prosecution failed to disclose (1) evidence undermining jailhouse informant, whose testimony was critical because it directly contradicted [petitioners evidence that he acted in self-defense [and] provided the only direct evidence of the aggravating factor, and who was the only witness to testify to the states primary theory, and (2) experts findings that could have served to rebut the arson/insurance-fraud theory.

Killian v. Poole, 282 F.3d 1204 (9th Cir. 2002), prosecution failed to disclose letters by states star witness admitting perjury to gain sentencing concessions and revealing information that would have supported defense theory that crime was committed by witnesss wife, not accused).

DiLosa v. Cain, 279 F.3d 259 (5th Cir. 2002) (prosecutor argued at trial that defenses attribution of crime to other perpetrator was refuted by absence of physical evidence, even though prosecution had withheld disclosure of physical evidence that directly supported accuseds account of events; [t]he state thus based its case on the non-existence of evidence it knew existed).

Leka v. Portuondo, 257 F.3d 89 (2d Cir. 2001) (prosecution failed to disclose, and for a critical time actively suppressed, eyewitness evidence of off-duty police officer who observed incident and would have contradicted prosecution witnesses account).

Boyette v. LeFevre, 246 F.3d 76 (2d Cir. 2001) (prosecutor in single-witness identification case withheld police reports showing that complainant who claimed certainty about neighbors identity as perpetrator had initially expressed uncertainty, that complainants account of attack was refuted in part by physical evidence, and that police had identified alternative suspect).

White v. Helling, 194 F.3d 937 (8th Cir. 1999) (prosecutor withheld police documents showing that eyewitness, whose testimony about petitioners actions during crime were central to rebutting petitioners duress defense, had initially attributed those actions to other perpetrator, who had confessed and corroborated witnesss initial account).

Spicer v. Roxbury, 194 F.3d 547 (4th Cir. 1999) (prosecutor failed to disclose that key eyewitness, who was acquainted with defendant and testified that he saw him run from crime scene, had previously denied seeing defendant on day of crime).

Fairman v. Anderson, 188 F.3d 635 (5th Cir. 1999) (prosecutor knowingly used false testimony by sole eyewitness, who was told by police that he would be charged with murder unless he refuted

accuseds claim of self-defense).

Crivens v. Roth, 172 F.3d 991 (7th Cir. 1999) (prosecutor failed to inform defense counsel that key eyewitness had criminal history and also had used alias in past, thereby demonstratfing] a propensity to lie to police officers, prosecutors, and even judges).

Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997) (en banc), cert, denied, 523 U.S. 1133 (1998) (prosecutor failed to disclose information in states files showing that prosecutions central witness who later confessed to murder for which petitioner was tried.

East v. Johnson, 123 F.3d 235 (5th Cir. 1997) (prosecutor suppressed information raising substantial questions about sanity and credibility of crucial sentencing hearing witness.

United States v. Pelullo, 105 F.3d 117 (3d Cir. 1997) (prosecution withheld documents that could have been used to impeach all three of governments primary witnesses).

Guerra v. Johnson, 90 F.3d 1075 (5th Cir. 1996) (police coerced two eyewitnesses, who initially told police that fatal shots were fired by petitioners companion, into corroborating prosecutions theory that petitioner fired shots; police told one witness that her common-law husband was at risk of parole revocation if she did not cooperate and told other witness that her infant daughter could be taken from her if she refused to cooperate).

United States v. Smith, 77 F.3d 511 (D.C. Cir. 1996) (prosecutor failed to disclose that prosecution witnesss cooperation agreement included dismissal of two felonies that together could have resulted in sentence of up to 35 years).

Riggins v. Rees, 74 F.3d 732 (6th Cir. 1996) (states refusal to provide petitioner with transcripts, rather than merely court reporters tape recordings, of previous two trials which ended in mistrial violated Equal Protection Clause).

Love v. Johnson, 57 F.3d 1305 (4th Cir. 1995) (trial judge violated Due Process Clause by quashing petitioners pretrial subpoenas duces tecum for state agency records without first conducting in camera inspection of subpoenaed records to determine whether portions were material and favorable to the defense).

Banks v. Reynolds, 54 F.3d 1508 (10th Cir. 1995) (prosecution suppressed evidence that at least three other men were previously arrested for crime with which petitioner was charged, that two of them had been positively identified by eyewitnesses, and that cell-mate of one of previously arrested suspects claimed that suspect had confessed to crime).

Devose v. Norris, 53 F.3d 201 (8th Cir. 1995) (petitioner was entitled under Roviaro v. United States, 353 U.S. 53 (1957), to disclosure of identity of confidential informant, particularly given that informant was eyewitness to the offense [and therefore] could have shed sorely needed light on the events that took place).

Smith v. Secretary of New Mexico Dept of Corrections, 50 F.3d 801 (10th Cir.), cert, denied, 516 U.S. 905 (1995) (prosecutor failed to disclose that individual whom defense claimed was actual murderer was found in possession of bloody clothes, made statements indicating motive for murders, was using false name, and had prior record under real name).

Orndorff v. Lockhart, 998 F.2d 1426 {8th Cir. 1993), cert, denied, 511 U.S. 1063 (1994) (prosecutor failed to inform defense that key witness in favor of death penalty was hypnotized prior to trial, preventing fair cross-examination concerning discrepancies between witnesss prehypnotic and posthypnotic statements to police).

Jean v. Rice, 945 F.2d 82 (4th Cir. 1991) (prosecution suppressed tape recordings and records showing that both of prosecutions key witnesses changed their accounts before trial under hypnosis performed by police captain whose only training in this area had been a two-week course in investigative hypnosis).

Kordenbrock v. Scroggy, 919 F.2d 1091 (6th Cir. 1990) (en banc), cert, denied, 499 U.S. 970 (1991) (police suppressed tape-recorded version of confession and pieced together written statement that gave description of crime different from description in actual confession).

United States v. Weintraub, 871 F.2d 1257 (5th Cir. 1989) (prosecutor withheld police reports that were material to sentencing in that they refuted prosecution witnesss account of quantity of drugs involved in narcotics crimes of which section 2255 movant was convicted).

McDowell v. Dixon, 858 F.2d 945 (4th Cir. 1988), cert, denied, 489 U.S. 1033 (1989) (police withheld fact that chief prosecution witness, who at trial identified petitioner, an African American, as the assailant, told police the assailant was white).

Troedel v. Dugger, 828 F.2d 670 (11th Cir. 1987), affg 667 F. Supp. 1456 (S.D. Fla. 1986) (prosecutor suborned testimony of expert witness at separate trials of two codefendants that each codefendant had to have been sole triggerman in single killing with which both were charged and for which Troedel was sentenced to death).

Carter v. Rafferty, 826 F.2d 1299 (3d Cir. 1987), cert, denied, 484 U.S. 1011 (1988) (prosecution suppressed statement of its most crucial witness corroborating other witnesses trial testimony favorable to defendant; on retrial, charges dropped and petitioner released).

Bowen v. Maynard, 799 F.2d 593 (10th Cir.), (prosecutor suppressed sheaf of investigative reports establishing that someone other than petitioner had murdered victim and that investigating officer with grudge against petitioner had maliciously framed him).
Brown v. Wainwright, 785 F.2d 1457 (11th Cir. 1986) (state deliberately withheld fact that chief witness against petitioner repeatedly failed polygraph test;

Lindsey v. King, 769 F.2d 1034 (5th Cir. 1985) (prosecutor concealed statements to police in which witness, who identified petitioner at trial as perpetrator, admitted he did not see perpetrators face).

Walker v. Lockhart, 763 F.2d 942 (8th Cir. 1985) (en banc), cert, denied, 478 U.S. 1020 (1986) (prosecutorial suppression of exculpatory evidence).

Blake v. Kemp, 758 F.2d 523 (11th Cir.), cert, denied, 474 U.S. 998 (1985) (states withholding of important evidence relating to petitioners sanity until day before trial precluded meaningful opportunity to prepare and present insanity defense).

Monroe v. Blackburn, 748 F.2d 958 (5th Cir. 1984), cert, denied, 476 U.S. 1145 (1986) (state failed to disclose that police obtained information after completion of trial that someone other than petitioner may have committed murder).

Chaney v. Brown, 730 F.2d 1334 (10th Cir.), cert, denied, 469 U.S. 1090 (1984) (prosecution suppressed evidence showing that petitioner did not commit killing for which he was sentenced to death).

White v. Estelle, 685 F.2d 927 (5th Cir. 1982) (prosecution concealed whereabouts of undercover police officer whose testimony would have created reasonable doubt as to petitioners guilt).

Chavis v. North Carolina, 637 F.2d 213 (4th Ck. 1980) (prosecutor suppressed corrected statement of crucial witness and witnesss psychiatric records).

Freeman v. Georgia, 599 F.2d 65 (5th Cir. 1979), cert, denied, 444 U.S. 1013 (1980) (police detective knowingly concealed whereabouts of eyewitness to crime, visited her frequently before and near time of trial, and married her one year after trial).

Lockett v. Blackburn, 571 F.2d 309 (5th Cir.), cert, denied, 439 U.S. 873 (1978) (prosecutor paid two defense witnesses to leave jurisdiction).

Barbee v. Warden, 331 F.2d 842 (4th Cir. 1964) (police suppressed results of fingerprint and ballistics tests that cast doubt upon whether gun allegedly used by petitioner was murder weapon).

Miller and Jent v. Wainwright, Nos. 86-98-Civ.-T-13 and 85 1910-Civ.-T-13 (M.D. Fla. Nov. 13, 1987), at 78,1113 (prosecutor exhibited callous and deliberate disregard for the fundamental principles of truth and fairness that underlie our criminal justice system by suppressing police reports identifying numerous witnesses who were fishing at location where victims body was found at only time when capitally sentenced petitioners (who otherwise had airtight alibi defenses) could have deposited victims body and who saw nothing amiss; charges dropped on retrial).

(4) Claims relating to the denial of expert assistance:

McWilliams v. Dunn, 137 S. Ct. 1790 (2017) (Ake v. Oklahoma clearly establishes that when its threshold criteria are met, a State must provide a mental health professional capable of performing a certain role:
conduct[ing] an appropriate examination and assist[ing;in evaluation, preparation, and presentation of the defense ; petitioner failed to receivef] th[is] minimum to which Ake entitles him because, even assum[ing] that Alabama met the examination portion of [Akes] requirement by providing for [State Department of Mental Health neuropsychologist] Dr. Goffs examination of McWilliams, [njeither Dr. Goff nor any other expert helped the defense evaluate Goffs report or McWilliams extensive medical records and translate these data into a legal strategy. Neither Dr. Goff nor any other expert helped the defense prepare and present arguments that might, for example, have explained that McWilliams purported malingering was not necessarily inconsistent with mental illness (as an expert later testified in postconviction proceedings). Neither Dr. Goff nor any other expert helped the defense prepare direct or cross-examination of any witnesses, or testified at the judicial sentencing hearing himself.). See also McWilliams v. Commissioner, 940 F.3d 1218 (11th Cir. 2019) (on remand from Supreme Court in McWilliams v. Dunn, supra, to determine whether Ake violation was prejudicial, court of appeals concludes that violation constituted structural error, and that McWilliams is entitled to the habeas writ anc a new sentencing hearing. For discussion of court of sppe.Jss structural error analysis, see infra 31.3 n.27.

Powell v. Collins, 332 F.3d 376 (6th Cir. 2003) (denial of request for independent mental health expert and continuance for purpose of conducting psychological testing violated Ake v. Oklahoma, 470 U.S. 68 (1985): an indigent criminal defendants constitutional right to psychiatric assistance in preparing an insanity defense is r ; ot satisfied by court appointment of a neutral psychiatristi.e., one whose report is available to both the defense and prosecution).

Schultz v. Page, 313 F.3d 1010 (7th Cir. 2002), cert, denied, 538 U.S. 1057 (2003) (denial of request for evaluation of accuseds sanity at time of offense violated Ake v. Oklahoma notwithstanding that competency evaluation ordered by court near the time of trial did not suggest basis for raising insanity defense: it is difficult to understand why the [state] appellate court considered a fitness examination sufficient for purposes of determining Schultzs sanity at the time of the crime (emphasis in original)).
Brown v. Champion, 1998 U.S. App. LEXIS 30723 (10th Cir. Dec. 2, 1998) (trial court violated Ake v. Oklahoma, 470 U.S. 68 (1985) by denying request for funding for independent psychiatrist to assist with insanity defense).

Starr v. Lockhart, 23 F.3d 1280 (8th Cir. 1994) (indigent petitioner denied expert needed to prove diminished capacity mitigating circumstance).

Liles v. Saffle, 945 F.2d 333 (10th Cir. 1991), cert, denied, 502 U.S. 1066 (1992) (due process violated by denial of motion for psychiatric assistance in preparing and presenting insanity defense at trial and in refuting claim of future dangerousness at capital sentencing hearing).

Smith v. McCormick, 914 F.2d 1153 (9th Cir. 1990) (trial judge violated rule of Ake v. Oklahoma, 470 U.S. 68 (1985), by denying request for defense expert and instead appointing court expert who would report directly to judge).

Buttrum v. Black, 908 F.2d 695 (11th Cir. 1990) (trial courts limited grant of psychiatric assistance deprived petitioner of psychiatric testing and testimony needed to present adequate defense at capital sentencing hearing).

Christy v. Horn, 28 F. Supp. 2d 307 (W.D. Pa. 1998) (trial court

violated Ake v. Oklahoma, 470 U.S. 68 (1985) by denying defense request for independent psychiatrist at guilt and penalty stages and by instead limiting accused to court-appointed psychiatrists who could not perform functions of experts employed by defense, namely, (i) marshaling the facts to assist in developing mental defenses for use at trial, and (ii) testifying at sentencing phase to impact of Christys mental impairments on his conduct throughout his lifetime and particularly on the night in question).

(5) Claims relating to accuseds incapacity to stand trial:

Taylor v. Davis, 747 Fed. Appx. 577 Taylors due process rights were violated when the state court failed to hold a competency hearing sua sponte and that it was infeasible to conduct a retrospective competency hearing, given the passage of 30 years from the date of the trial and the paucity of contemporaneous medical evidence regarding Taylors competency).

Anderson v. Gipson, 902 F.3d 1126 (9th Cir. 2018) (it was error [and due process violation] for the state trial judge not to sua sponte order a competency hearing given the numerous signs of Andersons mental incompetency, including his suicide attempt on the eve of trial; The issue before us is not whether Anderson is competent today, or whether a courtupon review of a stale recordbelieves he was competent a decade ago. The question is whether his behavior at trial, including his suicide attempt, created a bona fide doubt as to his mental competency. Upon the conclusion that it did, federal authority is clear:.

McManus v. Neal, 779 F.3d 634 (7th Cir. 2015) (regimen of mind-altering medications administered during trial to petitioner, who decompensated soon after the trial testimony got underway, alone created substantial doubt about McManuss mental fitness for trial, but the judge never ordered a competency evaluation and instead focused on getting McManus fixed up enough to complete the trial).

Maxwell v. Roe, 606 F.3d 561 (9th Cir. 2010) (trial court violated Due Process Clause by failing to conduct competency hearing sua sponte under circumstances that would have caused reasonable trial judge to have bona fide doubt about accuseds ability to consult with his lawyer with a reasonable degree of rational understanding.

McMurtrey v. Ryan, 539 F.3d 1112 (9th Cir. 2008) (McMurtreys due process rights were violated when the state trial court failed to hold a hearing to determine whether he was competent to stand trial and be sentenced, given that bona fide doubt existed as to McMurtreys competence to stand trial and be sentenced).

Johnson v. Norton, 249 F.3d 20 (1st Cir. 2001) (trial court failed to hold competency hearing sua sponte despite knowledge that petitioner had been struck on head on morning of jury selection and subsequently lost consciousness and had to be hospitalized).

McGregor v. Gibson, 248 F.3d 946 (10th Cir. 2001) (en banc) (state court employed unconstitutional standard to determine competency to stand trial and meaningful retrospective competency determination cannot be made).

Torres v. Prunty, 223 F.3d 1103 (9th Cir. 2000) (trial court denied hearing on competency to stand trial despite accuseds unusual and self-defeating behavior in the courtroom and defense counsels report that accused believed that counsel and judge were involved in conspiracy against himJBarnett v. Hargett, 174 F.3d 1128 (10th Cir. 1999) (trial court apparently failed to hold pretrial competency hearing; even if hearing had been held, competency standard employed by state courts at time was unconstitutional).

Blazak v. Ricketts, 1 F.3d 891 (9th Cir. 1993), cert, denied, 511 U.S. 1097 (1994) (trial court failed to conduct competency hearing despite petitioners history of mental illness and finding of incompetency to stand trial at prior trial on unrelated charges).

Lafferty v. Cook, 949 F.2d 1546 (10th Cir. 1991), cert, denied, 504 U.S. 911 (1992) (state trial courts finding of competency to stand trial relied on legal standard inconsistent with due process; incompetency.

Wallace v. Kemp, 757 F.2d 1102 (11th Cir. 1985) (capitally sentenced petitioner found to have been incompetent to assist attorney at trial; on retrial after being restored to sanity, petitioner was acquitted).

Strickland v. Francis, 738 F.2d 1542 (11th Cir. 1984) (evidence did not support special jurys finding that petitioner was competent to stand trial; state violated due process by subjecting incompetent petitioner to trial).

(6) Claims challenging denial of a change of venue, jury-selection procedures, other jury-related practices, or neutrality of judge:

Miller-El v. Dretke, 545 U.S. 231 (2005) (granting habeas corpus relief under 28 U.S.C. 2254(d)(2) on claim of racial discrimination in jury selection in violation of Batson v. Kentucky, 476 U.S. 79 (1986), because state courts conclusion that the prosecutors [peremptory] strikes of [two African American venirepersons] were not racially determined is shown up as wrong to a clear and convincing degree).

Bracy v. Gramley, 520 U.S. 899 (1997) (because judge who presided at trial at which petitioner was convicted and sentenced to die took bribes in return for leniency in many cases besides petitioners, sometimes exhibited bias against defendants like petitioner who did not pay bribes, and had incentive to compensate for leniency in cases in which bribes were paid by being excessively harsh in other cases, district court abused discretion in denying petitioner discovery of documents in governments control that might show that judge was biased in favor of state in petitioners case).

English v. Berghuis, 900 F.3d 804 (6th Cir. 2018) (Sixth Amendment right to an impartial jury was violated as a result of a jurors failure to disclose her own sexual assault on voir dire.

Amadeo v. Zant, 486 U.S. 214 (1988) (jury selection pursuant to deliberate scheme devised by district attorney and jury commissioners to underrepresent African
Americans and women; scheme memorialized in handwritten note found after trial and appeal in office of clerk of court).

Turner v. Murray, 476 U.S. 28 (1986) (capital defendant charged with interracial crime entitled to have prospective jurors informed of victims race and questioned on subject of racial bias).

Sheppard v. Maxwell, 384 U.S. 333 (1966) (massive, pervasive and prejudicial pretrial publicity and circus-style atmosphere at trial).

Irvin v. Dowd, 366 U.S. 717 (1961) (failure to grant second change of venue despite widespread and inflammatory publicity; 8 of 12 jurors seated admitted to belief that defendant was guilty).

Porter v. Coyne-Fague, 35 F.4th 68 (1st Cir. 2022) (prosecutor used peremptory challenge to strike only African American person in venire, giving frankly raceexplicit explanation [that leaves [court] with the strong belief that the prosecutor struck Juror 103 substantially because of his race).

Bryant v. Stephan, 17 F.4th 513 (4th Cir. 2021) (en banc) (per curiam), cert, denied, 142 S. Ct. 2731 (2022) (en banc circuit court of appeals, by an equally divided court, vacates panel opinion denying writ and affirms judgment of district court, which granted writ on, inter alia, claim that petitioner was denied his right to a fair trial before an impartial jury under the Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution when he was convicted and sentenced to death by a hearing-impaired juror who did not hear portions of the trial testimony, Bryant v. Stirling, 2019 U.S. Dist. LEXIS 44430 (D.S.C. March 19, 2019)).

Gacho v. Wills, 986 F.3d 1067 (7th Cir. 2021) (judge took a bribe from Gachos codefendant and promised to rig the joint trial in his favor, then reneged to evade detection. Under these circumstances Ga:nono less than Titonewas deprived of his due-process rig t to trial before an impartial judge.; acute conflict between [Judge] Maloneys duty of impartiality and his personal interest in avoiding criminal liability created a constitutionally unacceptable likelihood of compensatory bias in Gachos case).

Mitchell v. Genovese, 974 F.3d 638 (6th Cir. 2020) (prosecutor in trial of African American man charged with raping and robbing two white women violated Batson v. Kentucky by using peremptory challenge to strike potential African American juror for ostensible reason that district court found not worthy of belief).

Echavarria v. Filson, 896 F.3d 1118 (9th Cir. 2018), cert, denied, 139 S. Ct. 2613 (2019) (The risk of bias in this case deprived Echavarria of the fair tribunal to which he was constitutionally entitled: trial judge personally had been criminally investigated by the very FBI agent that Echavarria was accused of killing, and the case required Judge Lehman to determine, inter alia, whether FBI agents had known about or been involved in the use of torture in obtaining Echsvarrias confession; average judge in [trial judges] position would have feared that the FBI might reopen its investigation or renew its advocacy for state prosecution if he made rulings favorable to Echavarria).

Currie v. McDowell, 825 F.3d 603 (9th Cir. 2016) (prosecutor removed one African American juror via peremptory strike, stating reasons for striking this juror [that] were all flawedeach reason was either unreasonable, demonstrably false, or applied just as well to the non-black jurors [whom prosecutor] allowed to remain on the jury).

Shirley v. Yates, 807 F.3d 1090 (9th Cir. 2016) (petitioners prima facie showing that prosecutors peremptory strike of African-American venireperson was motivated in substantial part by race was not adequately rebutted by prosecutor, who could not recall his actual reason for striking the juror in question, and who could do no more than express vague, general preference for jurors with highly indefinite attributes or qualities as opposed to a regular practice of striking veniremembers for a specific reason).

Crittenden v. Chappell, 804 F.3d 998 (9th Cir. 2015) (prosecutors peremptory strike of sole African-American prospective juror, which was substantially motivated by race, violated Batson v. Kentucky).

Garcia-Dorantes v. Warren, 801 F.3d 584 (6th Cir. 2015), cert, denied, 578 U.S. 965 (2016) (computer glitch that had systematically excluded African-Americans from the jury pool resulted in violation of 6th Amendment fair-cross- section right: absolute disparity for African-Americans of 3.45% and corresponding 42% comparative disparity are sufficient to satisfy the Duren [v. Missouri, 439 U.S. 357 (1979)] second prong).

Drain v. Woods, 595 Fed. Appx. 558 (6th Cir. 2014) (trial judges response to acknowledged Batson violationsallow[ing] voir dire to proceed with the sole requirement that the prosecutor request permission from the court before using any more peremptory challenges against black juurorswas plainly inadequate to cure the Batson violation; if improperly struck jurors were not available to be reinstated on the jury, only remaining remedy for the Batson violation would be to discharge the entire venire and state the process anew).

Woodfox v. Cain, 772 F.3d 358 (Sth Cir. 2014), cert, denied, 577 U.S. 816 (2015) (petitioner successfully made out a prima facie case of discrimination in the selection of the grand jury foreperson, which State failed to rebut by demonstrating the use of race-neutral criteria in the selection of grand jury forepersons).

Castellanos v. Small, 766 F.3d 1137 (9th Ck. 2014) (Batson violation is found because, although prosecutor claimed that peremptory strike of Hispanic female venireperson was due to venirewomans not hav[ing] any children [and] [t]he victim here is going to be a child testifying, prosecutors assertion was belied by the record, which showed that venirewoman responded that she had two adult children and prosecutor even asked about the occupations of her adult children, and she answered, and was further refuted by side-by-side comparison of venirewoman with three others who had no children but were ultimately permitted to serve on the jury, as was venireperson who didnt even answer the question about whether he had adult children).

Lark v. Secretary, 566 Fed. Appx. 161 (3d Cir. 2014) (mem.), cert, denied, 574 U.S. 1108 (2015) (petitioner established by a preponderance of the evidence that the Commonwealth had struck five Black potential jurors because of their race).

Sampson v. United States, 724 F.3d 150 (1st Cir. 2013) (granting new capital sentencing hearing because juror dishonesty during the voir dire process antecedent to the penalty-phase hearing deprived [section 2255 movant] of an impartial jury).

Adkins v. Warden, 710 F.3d 1241 (11th Cir.), cert, denied, 571 U.S. 944 (2013) (petitioner has met his burden at Batsons third step and shown purposeful discrimination by prosecutor in using peremptory strike: record of the voir dire and the Batson hearing support the

conclusion that [venireperson] was not excused for any legitimate reason and was removed because of his race).

Harris v. Hardy, 680 F.3d 942 (7th Cir. 2012) (prosecutor violated Batson v. Kentucky by exercis[ing] 17 of its 20 peremptory challenges on African Americans, and States proffered reasons are simply unbelievable given that comparative juror analysis shows that the purported reasons for striking certain African-Americans were not equally applied to non-African-Americans).

Rice v. White, 660 F.3d 242 (6th Cir. 2011), cert, denied, 567 U.S. 914 (2012) (trial court breached its constitutional duty at step three of Batson to determine if the defendant has established purposeful discrimination, and
[c]ompound[ed] this error by acting on apparent!] belie[f] that any Batson violation could be cured by seating proportionate share of African-Americans).
Love v. Cate, 449 Fed. Appx. 570, 2011 U.S. App. LEXIS 18445 (9th Cir. Aug. 31, 2011) (prosecutor violated Batson by using peremptory strike in race motivated manner to remove only black venire-member: although prosecutor claimed that peremptory strike was based on venirepersons job as social worker, prosecutor did not dismiss non-black veniremembers.

Hayes v. Thaler, 361 Fed. Appx. 563, 2010 U.S. App. LEXIS 1152 (5th Ck. Jan. 19, 2010) (prosecutors explanations for use of peremptory challenges to strike African American prospective jurors were implausible or invalid and, therefore, were pretexts for discrimination).

Ali v. Hickman, 571 F.3d 902 (9th Cir. 2009) (prosecutor peremptorily struck the only two African-American members of the jury pool and comparative juror analysis, in combination with other facts in the record, demonstrates that the prosecutors purported race-neutral reasons for striking at least one of the jurors were pretexts for racial discrimination).

McGahee v. Alabama Dept of Corr., 560 F.3d 1252 (11th Cir. 2009) (prosecution violated Batson v. Kentucky by using 16 of its 24 peremptory strikes to remove all African American venirepersons whom prosecutor was unable to disqualify for cause).

Reed v. Quarterman, 555 F.3d 364 (Sth Cir. 2009) (granting writ on Batson v. Kentucky claim because States proffered reasons for striking at least two of the prospective black jurors were pretexts for discrimination).

Paulino v. Harrison, 542 F.3d 692 (9th Cir. 2008) (state failed to satisfy burden of production under second stage of Batson inquiry by presenting testimony of prosecutor, who had no independent recollection of her actual reasons for striking the [African American jurors] and who offered nothing more than pure speculation).

Green v. LaMarque, 532 F.3d 1028 (9th Cir. 2008) (prosecutor, who used peremptory challenges to exclude from the jury all six African-Americans on the jury panel, offered race-neutral reasons but court of appeals concludes that same reasons also applied to unchallenged white jurors and [t]his disparity in treatment convinces us the non-racial reasons claimed by the prosecutor were pretexts; granting writ [b]ecause the elimination of even a single juror due to race taints the trial).

White v. Mitchell, 431 F.3d 517 (6th Cir. 2005), cert, denied,(trial judge improperly failed to excuse juror for cause despite statements indicating that juror had a strong inclination toward imposing the death penalty.

Daniels v. Woodford, 428 F.3d 1181 (9th Cir. 2005), cert, denied, 550 U.S. 968 (2007) (trial court violated due process right to a fair and impartial jury by denying motion for change of venue in case in which eighty-seven percent of the jury pool recognized the case from the media coverage and [t]wo-thirds of those empaneled remembered the case from the .press accounts).

Harrison v. McBride, 428 F.3d 652 (7th Cir. 2005) (petitioner was deprived of due process right to trial by a judge free from actual bias).

Wilson v. Beard, 426 F.3d 653 (3d Cir. 2005) (relevant evidence bearing on prosecutors use of peremptory challenges to strike nine African American venirepersons makes it virtually impossible to conclude that [prosecutor] did not strike at least one of the jurors for an impermissible reason).

Holloway v. Horn, 355 F.3d 707 (3d Cir.), cert, denied, 543 U.S. 976 (2004) (prosecutors use [of] eleven of twelve strikes against African-American veniremen presents pattern [that] was certainly strong enough to suggest an intention of keeping blacks off the jury, prosecutors explanation of reason for striking particular venireperson does not indicate that [prosecutor] harbored anything but a discriminatory intent, and non-racial reasons proffered by state are immaterial because Batson is concerned with uncovering purposeful discrimination, and where a prosecutor makes his explanation for a strike a matter of record, our review is focused solely upon the reasons given).

Aki-Khuam v. Davis, 339 F.3d 521 (7th Cir. 2003) (trial courts misunderstanding and misapplication of Batson v. Kentucky violated Due Process snd Equal Protection Clauses).

Lancaster v. Acs ms, 324 F.3d 4.3 (6th Cir.), cert, denied, 5«W U.S. 1004 (2003) (state COL t inquiry into prosecutors reasons for using peremptory challenges to remove African American venirepersons failed to satisfy Batson v. Kentucky).

Bui v. Haley, 321 F.3d 1304 (11th Cir. 2003) (same as Lancaster v. Adams, supra).

Riley v. Taylor, 277 F.3d 261 (3d Cir. 2001) (en banc) (petitioner presented prima facie case under Batson v. Kentucky that prosecutor used peremptory challenges in unconstitutional race-based manner and reviewing state court failed to conduct requisite three-step Batson inquiry in proper manner).

Szuchon v. Lehman, 273 F.3d 299 (3d Cir. 2001) (exclusion of venireperson violated Witherspoon v. Illinois, 391 U.S. 510 (1968) because venireperson merely said I do not believe in capital punishment and [njeither the [prosecution] nor the trial court questioned [the juror] about his ability to set aside his beliefs or otherwise perform his duty as a juror; accordingly, only supportable inference on this record is that [juror] was excluded because he

voiced opposition to the death penalty). Rideau v. Whitley, 237 F.3d 472 (5th Cir. 2000), cert, denied, 533 U.S. 924 (2001) (petitioner proved prima facie case of discrimination against African Americans in grand jury venire selection and composition and state produced no rebuttal evidence).

Green v. White, 232 F.3d 671 (9th Cir. 2000) (venireperson lied about disqualifying criminal history on jury questionnaire and during voir dire).

Gall v. Parker, 231 F.3d 265, 331 (6th Ck. 2000), cert, denied, 533 U.S. 941 (2001) (rule of Witherspoon v. Illinois, 391 U.S. 510 (1968) precluded removal of venireperson who expressed uncertainty as to how the option of a death sentence would affect his decision but told the judge that he believed he could and would follow the law as instructed and not once stated that his beliefs would deter him from serving as an impartial juror).

McClain v. Prunty, 217 F.3d 1209 (9th Cir. 2000) (prosecutors claimed bases for using peremptory challenges to exclude African American venirepersons were pretextual and objectively contrary to the facts; state trial courts factual findings crediting prosecutors explanation constituted an unreasonable determination of the facts under 28 U.S.C. 2254(d)(2)).

Ricardo v. Rardin, 1999 U.S. App. LEXIS 18271 (9th Cir. Aug. 2,1999), cert, denied, 528 U.S. 1047 (1999) (prosecutor used peremptory challenges to strike both African American venirepersons, and [njeither explanation given by the prosecutor was race neutral as a matter of law).

Nevers v. Killinger, 169 F.3d 352 (6th Cir.), cert, denied, 527 U.S. 1004 (1999) (state court improperly deemed jurys exposure to potentially prejudicial information in news reports and other sources to be harmless beyond reasonable doubt without accord[ing] Nevers his due process right to have a factual determination made regarding the effect of the extraneous information on the jurys deliberations).

Mahaffey v. Page, 162 F.3d 481 (7th Cir. 1998), cert, denied, 526 U.S. 1127 (1999) (prosecutor exercised seven of its thirteen total challenges to exclude every member of [petitioners] own race from jury).

Coulter v. Gilmore, 155 F.3d 912 (7th Cir. 1998) (trial courts inquiry into prosecutors use of peremptory challenges failed to provide scope of constitutional scrutiny required by Batson v. Kentucky, 476 U.S. 79 (1986)).

Mach v. Stewart, 137 F.3d 630 (9th Cir. 1998) (jury was tainted by exposure during voir dire to repeated statements by prospective juror, a social worker, that childrens claims of sexual abuse, like those in case on which jury was about to sit, had been confirmed in every case she had seen).

Turner v. Marshall, 121 F.3d 1248 (9th Cir. 1997), cert, denied, 522 U.S. 1153 (1998), partially overruled by Tolbert v. Page, 182 F.3d 677 (9th Cir. 1999) (en banc) (prosecutors use of peremptory challenges to strike African American members of venire was not justified by stated reason, which was found to be pretext).

Ford v. Norris, 67 F.3d 162 (8th Cir. 1995) (prosecutors intentional use of peremptory challenges to exclude African Americans from jury violated rule of Swain v. Alabama, 380 U.S. 202 (1965)).

Miller v. Lockhart, 65 F.3d 676 (8th Cir. 1995) (same as Ford v. Norris, supra).

Devose v. Norris, 53 F.3d 201 (8th Cir. 1995) (prosecutors use of peremptory challenges to exclude African American venirepersons violated Batson v. Kentucky, 476 U.S. 79 (1986), because ostensibly race-neutral rationale for excluding venirepersons was pretextual).

Simmons v. Beyer, 44 F.3d 1160 (3d Cir.), cert, denied, 516 U.S. 905 (1995) (prosecutors use of peremptory strikes to exclude African American venirepersons violated Batson v. Kentucky, supra).

Cochran v. Herring, 43 F.3d 1404 (11th Cir.), modified, 61 F.3d 20 (11th Cir 1995), cert, denied, 516 U.S. 1073 (1996) (Batson violation).

Johnson v. Vasquez, 3 F.3d 1327 (9th Cir. 1993) (prosecutor, who used peremptory challenge to exclude only African American member of venire, was unable to provide credible race-neutral explanation).

Pilchak v. Camper, 935 F.2d 145 (8th Cir. 1991) (deputy sheriff who investigated case also personally picked jury venire).

Knox v. Collins, 928 F.2d 657 (5th Cir. 1991) (per curiam) (in exercising peremptory challenges, counsel reasonably relied on judges subsequently withdrawn promise to instruct jury at sentencing about limited eligibility for parole in event of life sentence).
Woods v. Dugger, 923 F.2d 1454 (11th Cir. 1991) (combination of extensive pretrial publicity and presence of numerous uniformed prison guards in audience to show solidarity with decedent, who was prison guard).

Berryhill v. Zant, 858 F.2d 633 (11th Cir. 1988) (underrepresentation of women on master jury list).

Coleman v. Kemp, 778 F.2d 1487 (11th Cir. 1985), cert, denied, 476 U.S. 1164 (1986) and Isaacs v. Kemp, 778 F.2d 1482 (11th Cir. 1985), cert, denied, 476 U.S. 1164 (1986) (petitioners tried in small town where prejudicial publicity compromised nearly every juror, many of whom attended victims funeral).

Davis v. Kemp, 752 F.2d 1515 (11th Cir.) (per curiam), cert, denied, 471 U.S. 1143 (1985) (reinstating in pertinent part, Davis v. Zant, 721 F.2d 1478 (11th Cir. 1983)) (underrepresentation of African Americans and women in traverse jury pool).

Gibson v. Zant, 705 F.2d 1543 (11th Cir. 1983) (underrepresentation of African Americans and women in venire for both grand and petit juries).

Hance v. Zant, 696 F.2d 940 (11th Cir.), cert, denied, 463 U.S. 1210 (1983) (exclusion of two venirepersons violated rule of Witherspoon v. Illinois, 391 U.S. 510 (1968), because their responses regarding the death penalty were not automatic and unequivocal and they expressed uncertainty about their convictions and ambiguity about their feelings).

Thompson v. White, 680 F.2d 1173 (8th Cir. 1982), cert, denied, 459 U.S. 1177 (1983) (petitioners convicted by jurors handpicked by local sheriff).

Machetti v. Linahan, 679 F.2d 236 (11th Cir. 1982), cert, denied, 459 U.S. 1127 (1983) (right to representative jury violated by procedure permitting women but not men to avoid jury service by sending notice to jury commissioners).

Moore v. Estelle, 670 F.2d 56 (5th Cir.), cert, denied, 458 U.S. 1111 (1982) (rule of Witherspoon v. Illinois precluded exclusion of venireperson who expressed opposition to death penalty but said she would do it right if you make me do it).

Granviel v. Estelle, 655 F.2d 673 (5th Cir. 1981), cert, denied, 455 U.S. 1003 (1982) (venirepersons statements that he did not think he could vote in favor of death and did not feel entitled to take another persons life insufficient to justify exclusion under rule of Witherspoon v. Illinois, supra).

Henson v. Wyrick, 634 F.2d 1080 (8th Cir. 1980), cert, denied, 450 U.S. 958 (1981) (similar to Thompson v. White, supra).

Burns v. Estelle, 626 F.2d 396 (5th Cir. 1980) (en banc) (venirepersons statements about death penalty fell short of unequivocal avowals disqualifying her under rule of Witherspoon v. Illinois, supra).

Bailey v. Henslee, 287 F.2d 936 (8th Cir.), cert, denied, 368 U.S. 877 (1961) (racial discrimination in selection of all- white jury for black petitioner sentenced to death for rape).

(7) Claims relating to a guilty plea:

Bitzer v. Superintendent, 820 Fed. Appx. 116 (3d Ck. 2020) (prosecution breached its obligations in violation of Santobello [v. New York, 404 U.S. 257 (1971)] by making representations at sentencing that were inconsistent with what Bitzer reasonably understood to be the terms of his plea agreement).

Hicks v. Franklin, 546 F.3d 1279 (10th Cir. 2008) (guilty plea was constitutionally inadequate because petitioner did not receive true notice of essential element of crime and in fact received misleading instruction from the court).

Jamison v. Klem, 544 F.3d 266 (3d Cir. 2008) (guilty plea was not adequately knowing and intelligent because accused was never advised of mandatory minimum sentence).

Nara v. Frank, 488 F.3d 187 (3d Cir. 2007), cert, denied, 552 U.S. 1309 (2008) (petitioner was mentally incompetent to enter guilty plea).

Davis v. Woodford, 446 F.3d 957 (9th Cir. 2006) (sentencing thct treated prior robbery conviction to which petitioner had pled guilty as eight strikes under Californias Three Strikes Law because eight robberies had been involved violated plea agreement and Due Process Clause because state [had] expressly agreed [at time of plea] to treat the robbery conviction a: only one strike for purposes of later recidivist ser encing).

Hanson v. Phillips, 442 F.3d 7b: (2d Ck. 2006) (record does not affirmatively disclose that anson intelligently and voluntarily pleaded guilty, as • • quired under Boykin [v. Alabama, 395 U.S. 238 (1969)]).

Buckley v. Terhune, 441 F.3d 688 (9th Cir\ 2006) (en banc), cert, denied, 550 U.S. 913 (2007) (sentence of indeterminate prison term of fifteen years to life violated petitioners due process right to enforce the provisions of his plea agreement because bargained-for sentence, to which he was constitutionally entitled, was a maximum of fifteen years).

Burt v. Uchtman, 422 F.3d 557 (7th Cir. 2005) (trial court violated Due Process Clause by accepting petitioners midtrial guilty plea without sua sponte ordering renewed competency hearing given that trial judge was aware of petitioners below-average intelligence, history of psychological problems, and treatment with large doses of psychotropic medications, and given that plea was sudden unexplained [and] against the advice of counsel).

Brown v. Poole, 337 F.3d 1155 (9th Cir. 2003) (granting writ and ordering released from custody forthwith because state breached oral plea agreement that petitioner would only have to serve half of 15-year minimum if petitioner maintains clean prison record).

Ivy v. Caspari, 173 F.3d 1136 (8th Cir. 1999) (guilty plea was not voluntary, knowing and intelligent because petitioner was 16 years old, had no prior experience with criminal justice system, had been diagnosed by psychiatrist as having mental illness, was not advised [by judge] that intent was an element of the underlying offense, was not adequately aware of mental defense that could have been based on psychiatrists finding, and erroneously believed at time he pleaded guilty that he was eligible for death penalty).

Wilkins v. Bowersox, 145 F.3d 1006 (8th Cir. 1998), cert, denied, 525 U.S. 1094 (1999) (guilty plea, waiver of counsel, and waiver of right to present mitigating evidence at capital sentencing hearing were not voluntary, knowing, and intelligent because petitioner was 16 years old, had limited education, and was mentally disturbed).

United States v. Wolff, 127 F.3d 84 (D.C. Cir. 1997), cert, denied, 524 U.S. 929 (1998) (government conceded that it breached plea agreement).

United States v. Brown, 117 F.3d 471 (11th Cir. 1997) (guilty plea was rendered invalid by holding in Ratzlaf v. United States, 510 U.S. 135 (1994) that crime of currency structuring requires knowledge of illegality).

United States v. Guerra, 94 F.3d 989 (5th Cir. 1996) (guilty plea was not knowing and voluntary because district court misinformed section 2255 movant as to possible maximum sentence).

United States v. Taylor, 77 F.3d 368 (11th Cir. 1996) (government breached plea agreement by expressing agreement with presentence reports recommended sentence which was higher than bargained-for sentence).

United States v. Neely, 38 F.3d 458 (9th Cir. 1994) (guilty plea was

not voluntary because district court failed to inform section 2255 movant that federal sentence could be served consecutively to any state sentence subsequently imposed).

United States v. De la Fuente, 8 F.3d 1333 (9th Cir. 1993) (government breached plea agreement by failing to recommend sentence below mandatory minimum).

United States v. Roberts, 5 F.3d 365 (9th Cir. 1993) (district court violated Fed. R. Crim. P. 11 by failing to advise movant of term of supervised release).

United States v. Garfield, 987 F.2d 1424 (9th Cir. 1993) (district court improperly participated in plea negotiations in violation of Fed. R. Crim. P. 11(e)(1), and failed to make adequate findings regarding disputed information in the presentence report, as required by Fed. R. Crim. P. 32(c)(3)(D)).

United States v. Garcia, 956 F.2d 41 (4th Cir. 1992) (government breached plea agreement, which had specified that section 2555 movant would not be required to cooperate with law enforcement, by subpoenaing movant to testify before grand jury).

United States v. Fuller, 941 F.2d 993 (9th Cir. 1991) (guilty plea was involuntary because section 2255 movant was denied right to counsel during plea negotiations and consequently was unable to understand charges and consequences).

Nevarez-Diaz v. United States, 870 F.2d 417 (7th Cir. 1989) (guilty plea hearing was defective because section 2255 movant did not understand nature of charges).

Brunelle v. United States, 864 F.2d 64 (8th Cir. 1988) (government breached plea agreement).

Montgomery v. United States, 853 F.2d 83 (2d Cir. 1988) (section 2255 movants guilty plea was accepted by district court without adequate basis, in violation of Fed. R. Crim. P. n(f)).

Fair v. Zant, 715 F.2d 1519 (11th Cir. 1983) (state trial judge informed capitally sentenced petitioner that guilty plea could later be withdrawn upon hearing sentence, then refused to withdraw it on petitioners request).

(8) Claims relating to evidence, procedures, and practices st trial:

Wainwright v. Greenfield, 474 U.S. 284 (1985) (state permitted to use, as evidence of petitioners guilt, fact that petitioner exercised right to silence after police officers thrice told him he could refuse to talk to them without suffering adverse consequences).

Miller v. Pate, 386 U.S. 1 (1967) (prosecutor claimed at trial that principal item of evidence, a pair of shorts, was stained with blood when he knew that substance on shorts

Wilber v. Hepp, 16 F.4th 1232 (7th Cir. 2021), cert, denied, 142 S. Ct. 1443 (2022) (shackling of petitioner during closing arguments at trial, without articulation by either trial judge or appellate court of a reason why Wilber had to be visibly restrained in the jurys presence, violated Deck v. Missouri, 544 U.S. 622 (2005), and was necessarily prejudicial).

Plymail v. Mirandy, 8 F.4th 308 (4th Cir. 2021) (prosecutors statements [in closing argument in sexual assault trial] exhorting the jury to protect women and send a message to the community and to sadomasochistic persons rendered the trial so fundamentally unfair as to deny Plymail due process of law).

Garlick v. Lee, 1 F.4th 122 (2d Cir. 2021), cert, denied, 142 S. Ct. 1189 (2022) (trial court violated Confrontation Clause by permitting prosecutor to introduce into evidence autopsy reportprepared at the request of law enforcement during an active homicide investigation through a witness who had not participated in the autopsy or in the preparation of the autopsy report).

Evans v. Jones, 996 F.3d 766 (7th Cir. 2021) (prosecutor violated Due Process Clause by asserting in closing argument that key prosecution witness changed his story in defendants favor due to defense intimidation even though there was insufficient evidence in the record to support prosecutors assertion).

Miller v. Genovese, 994 F.3d 734 (6th Cir. 2021) (trial court violated Confrontation Clause by allowing prosecution to introduce witnesss testimony from prior trial at retrial based on her unavailability while precluding defense from introducing portion of witnesss prior cross-examination in which witness admitted to testifying in prosecutions favor to avoid additional jail time: The confrontation guarantee that Sir Raleighs trial inspired is not just the right to cross- examine; equally important, it is the right to share with the jury the information the cross-examination reveals.).

Kipp v. Davis, 971 F.3d 939 (9th Cir. 2020) (trial court violated Due Process Clause in first-degree murder and attempted rape trial by allowfing] the prosecution to present evidence of [accuseds commission of] an unadjudicated murder and rape, which prosecution relied on as other acts evidence to show that accused committed charged crimes and intenfded] to commit rape and to kill).

Stermer v. Warren, 959 F.3d 704 (6th Cir. 2020) (In his closing arguments, the prosecutor repeatedly branded Stermer a liar, misrepresented her testimony, and disparaged her while bolstering other witnesses.;. prosecutors comments regarding Stermers credibility were improper, and their frequency, their context, and the weight of the evidence against Stermer all show she was denied a fair trial).

Reiner v. Woods, 955 F.3d 549 (6th Cir. 2020) (trial court improperly allowed prosecution to introduce hearsay statements by deceased person, which served as the linchpin of the governments case, connecting Reiner to the fruits of the crime in a way no other evidence, testimonial or physical, could).

Johnson v. Superintendent, 949 F.3d 791 (3d Cir. 2020) (admission of co-defendants confession, which had originally identified Johnson as the shooter but was modified to substitute phrase the other guy for Johnsons name, violated Bruton v. United States and Confrontation Clause because repeated missteps and mistakes made it increasingly clear to the jury that Johnson was indeed the other guy).

Scrimo v. Lee, 935 F.3d 103 (2d Cir. 2019) (petitioner was deprived of the constitutional right to a meaningful opportunity to present a complete defense when the trial court excluded, as collateral, evidence relevant to establishing that the States main witness was the murderer).

Mordick v. Valenzuela, 780 Fed. Appx. 430 (9th Cir. 2019) (trial court violated Chambers v. Mississippi and accuseds right to present a defense by applying hearsay and reliability rules to exclude defense witnesses testimony that was exculpatory and sufficiently trustworthy).

Orlando v. Nassau County District Attorneys Office, 915 F.3d 113 (2d Cir. 2019), cert, denied, 140 S. Ct. 2792 (2020) (trial court violated Confrontation Clause by allowing interrogating officer to recount confession by nontestifying co-perpetrator which inculpated accused, and allowing officer to vouch[ ] for its veracity, while instructing jury to consider testimony on'y for non-hearsay purpose of considering the circumstances under which the defendant himself may have made statements [in response to officers telling accused about co-perpetrators statement] and for no other purposes).

Issa v. Bradshaw, 904 F.3d 446 (6th Cir. 2018), cert.

239 S. Ct. 2616 (2019) trial court violated € .>• : ∝.: cation Clause by 3l'ov; :g prosecution to introduce oui : ccurt statements by eK.- ^ed co-perpetrator who ∝. . J to take witness stand 'ter prosecution revoked -*tss* immunity).

Rhoces v. Dittman, 903 F.3d 646 (7th Cir. 2018) (trial judge violated Confrontation Clause by foreclosing portions of defense cross-examination that could have refuted prosecutions theory of accuseds motive for committing .'crime: We recognize that trial courts deal, all the time, •vith efforts by guilty defendants to change the subject of the trialto put on trial the police, or the victim, or society st large. Trial ju^ ; ;es are entitled to insist that evidence be relevant and to impose reasonable limio on such efforts to change the subject.

Richardson v. Griffin, 866 F.3d 836 (7th Cir. 2017) (trial court violated Confrontation Clause by allowing detective to describe the course of his investigation, which included testimonial, out-of-court statements of witnesses who fingered [accused] as the shooter).

Kubsch v. Neal, 838 F.3d 845 (7th Cir. 2016) (en banc), cert, denied, 137 S. Ct. 2161 (2017) (trial courts exclusion of evidence that was vitai to the defense based on states hearsay rule [and] the states [evidentiary] rule requiring vouching [by witness] before recorded recollections may be introduced violated Chambers v. Mississippi and followup Supreme Court decisions requiring state evidentiary rules to yield to the defendants fundamental due-process right to present *a* defense).

Alvarez v. Lopez, 835 F.3d 1024 (9th Cir. 2016) (Indian Community denied Alvarez his right under İCRA [Indian Civil Rights Act] to be tried by a jury by failing to inform him that he could receive a jury trial only by requesting one).

Ardoin v. Arnold, 653 Fed. Appx. 532 (9th Cir. 2016) (trial court violated Ardoins Sixth Amendment right to counsel during closing argument by refusing to reopen closing arguments after authorizing jury, during deliberations, to consider felony murder theory that previously had applied only to co-defendant, thereby depriving petitioners counsel of any opportunity whatsoever to argue felony murder after learning that the jury could convict on that theory).

Brown v. Superintendent, 834 *F.3d* 506 (3d Cir. 2016), cert, denied; 137 S. Ct. 1581 (2017) (prosecutor violated Bruton v. United States by disclosing to jury in closing argument that sanitized references in co-defendants confession to the other guy actually referred to petitioner; although [tjhere are some circumstances when the prosecution can commit what otherwise would be a constitutional violation but nonetheless escape a mistrial through limiting instructions!,] in cases falling within the ambit of Bruion and its progeny, limiting instructions cannot cure the error).

Colon v. Rozum, 649 Fed. Appx. 259 (3d Cir. 2016), cert, denied, 137 S. Ct. 1579 (2017) (introduction into evidence of non-testifying co-defendants statement violated
Confrontation Clause, even though statement had been redacted to replace [] Colons name with the words another person and other person, because jury knew that: there were only three people in the car at the time of the crime and, [b]y a process of elimination, it was easy for the jury to infer that Colon was the person referenced when Gonzales was asked if the other person heard Betancourt say that he was gonna rob somebodys purse and stuff like that).

Deck v. Jenkins, 814 F.3d 954 (9th Cir. 2016) (prosecutors uncorrected misstatements during closing argument about state law of attempt violated due process).

McCarley v. Kelly, 801 F.3d 652 (6th Cir. 2015), cert, denied, 579 U.S. 938 (2016) (trial court violated Confrontation Clause by allowing prosecution to present out-of-court statements of murder victims three-year-old son through testimony of child psychologist who obtained statements in clinical interviews).

Washington v. Secretary, 801 F.3d 160 (3d Cir. 2015), cert, denied, 578 U.S. 956 (2016) (admission into evidence of a confession by a non-testifying codefendant that redacted James Washingtons name and replaced it with generic terms describing Washington and his role in the charged crimes violated Confrontation Clause because there were two obvious alterations that notified the jury that Washingtons name was deleted).

Nappi v. Yelich, 793 F.3d 246 (2d Cii\ 2015) (trial judge violated Confrontation Clause by precluding defense counsel from cross-examining accuseds wife about her romantic relationship with another man to show that wife had motive to implicate Nappi in the illegal possession of a weaponwhich she knew was a violation of his parole).

Camp v. Neven, 606 Fed. Appx. 322 (9th Cir. 2015) (by allowing the State to present unnoticed expert rebuttal testimony when Camp was required to disclose his own expert testimony on the same issues, pursuant to statutory requirement of discovery that applies to States case in chief and defense case but not to States rebuttal case, trial judge created non-reciprocal disclosure obligation that violated accuseds due process rights under Wardius v. Oregon, 412 U.S. 470 (1973)).

Blackston v. Rapelje, 780 F.3d 340 (6th Cir.), cert, denied, 577 U.S. 1019 (2015) (trial court violated Confrontation Clause by permitting readback of two unavailable witnesses testimony from previous trial of petitioner on same charges while at the same time denying Blackston ti»e right to impeach their testimony with evidence of their subsequent recantations).

Gumm v. Mitchell, 775 F.3d 345 (6th Cir. 2014) (prosecutor relentlessly pressed witnesses to obtain highly inflammatory and unreliable testimony and then used the inflammatory information in the rebuttal closing arguments to the jury to argue that Petitioner is a sexual deviant who likely committed the crimes).

Alvarez v. Ercole, 763 F.3d 223 (2d Cir. 2014) (trial court violated 6th Amendment and due process right to present defense by misapplying hearsay rule to prohibit defense cross-examination of lead detective.

Eley v. Erickson, 712 F.3d 837 (3d Cir.), cert, denied, 571 U.S. 883 (2013) (trial court violated Confrontation Clause by denying severance and allowing admission of jailhouse informants account that non-testifying co-defendant confessed to committing charged crime with other two individuals, which jury doubtless would have understood to refer to petitioner and third co-defendant).

Gongora v. Thaler, 710 F.3d 267 (5th Cir. 2013) (per curiam), cert, denied, 571 U.S. 1157 (2014) (prosecutors closing argument contained extraordinarily extensive comments on Gongoras failure to testify).

Ortiz v. Yates, 704 F.3d 1026 (9th Cir. 2012) (trial court violated Sixth Amendment right to confront adverse witnesses by precluding defense counsel from asking states central witness whether she was afraid to deviate from her initial incriminating statement to the police because of threats allegedly made against her by the prosecutor).

Cudjo v. Ayers, 698 F.3d 752 (9th Cir. 2012), cert, denied, 569 U.S. 1013 (2013) (trial court violated due process doctrine of Chambers v. Mississippi by excluding defense witness who would have testified to hearing actual perpetrator confess to crime that petitioner was charged with committing).

Harris v. Thompson, 698 F.3d 609 (7th Cir. 2012), cert, denied, 569 U.S. 1017 (2013) (trial court violated 6th Amendment right to present defense by excluding critical exculpatory evidence of 6-year-old based on finding that witness was incompetent to testify).

Simpson v. Warren, 475 Fed. Appx. 51, 2012 U.S. App. LEXIS 7184 (6th Cir. April 10, 2012) (cumulative effect of the prosecutors improper and flagrant questioning and his prejudicial comments during closing arguments deprived Petitioner of a fair trial).

Merolillo v. Yates, 663 F.3d 444 (9th Cir. 2011), cert, denied, 568 U.S. 927 (2012) (admission at trial of the nontestifying autopsy pathologists opinion violated Sixth Amendment right to confront witnesses).

Ocampo v. Vail, 649 F.3d 1098 (9th Cir. 2011), cert, denied, 567 U.S. 952 (2012) (Confrontation Clause was violated by detectives references to non-testifying witnesss out-of- court statements corroborating other witnesses identifications of accused as shooter).

Adamson v. Cathel, 633 F.3d 248 (3d Cir. 2011) (trial court violated Tennessee v. Street, 471 U.S. 409 (1985) by admitting statements of non-testifying acccmpliceswhich prosecution introduced for purpose of impeaching Adamsons testimony that his own confession that statements could only be considered for impeachment and not as substantive evidence of guilt).

Secretary, Fla. Dept of Corr. v. Baker, 406 Fed. Appx. 416, 2010 U.S. App. LEXIS 26216 (11th Ci* Dec. 27, 2010) (per curiam) (trial court violated Confrontation Clause and due process by precluding impeachment of child complainant in sex offense with prior allegations of sexual assault, none of which was prosecuted, and three of which complainant admitted to have been false).

Maxwell v. Roe, 628 F.3d 486 (9^th Cir. 2010), cert, denied, 565 U.S. 1138 (2012) (conviction based on false materia! evidence violated due process).

Hurd v. Terhune, 619 F.3d 1080 (9th Cir. 2010) (trial court violated Doyle v. Ohio, 426 U.S. 610 (1976) by allowing prosecution to introduce evidence of accuseds postMiranda silence and to refer to it in closing argument).

Miller v. Stovall, 608 F.3d 913 (6th Cir. 2010) (trial court violated Confrontation Clause by admitting suicide note of defendants dead lover which implicated defendant in lovers killing of defendants spouse).

Lunbery v. Hornbeak, 605 F.3d 754 (9th Cir.), cert, denied, 562 U.S. 1102 (2010) (trial judge violated Chambers v. Mississippi, 410 U.S. 284 (1973) by applying hearsay rule strictly to exclude exculpatory statement that bore substantial guarantees of trustworthiness and was critical to [accuseds] defense).

Jones v. Cain, 600 F.3d 527 (5th Cir. 2010) (admission of recorded testimony from a deceased witness violated Confrontation Clause).

Ward v. Hall, 592 F.3d 1144 (11th Cir.), cert, denied, 562 U.S. 1082 (2010) (constitutional right to a fair trial and a reliable sentence were violated when a bailiff improperly responded to a jurors question about parole during the penalty phase of trial).

Jensen v. Romanowski, 590 F.3d 373 (6th Cir. 2009) (trial judge violated Confrontation C；ause in child sexuaf assrult trial by acmitting pciice officers account of interview^ child ccrr;p；ainant prior case in v/hich petitioner was accused of sexual ossauli).

Earhart v. Konteh, 589 F.3d 337 (6th Cir. 2009), cert, denied, 562 U.S. 874 (2010) (admission of the videotape deposition [of child complainant] without a proper finding that the witness was constitutionally unavailable violated Earharts right to confrontation).

Bobadilla v. Carlson, 575 F.3d 785 (Sth Cir. 2009), cert, denied, 558 U.S. 1137 (2010) (trial judge violated
Confrontation Clause in child sexual assault trial by admitting videotaped interview of 3-year-old complainant and testimony by social worker who conducted interview)

Holley v. Yarborough, 558 F.3d 1091 (9th Cir. 2009) (triai court violated Confrontation Clause in sex offense trial by preclud[ing] the

introduction of impeachment evidence and preventing] [defense counsels] cross-examination of the alleged victim about her prior statements, including statements about sex and indications that others had made sexual advances toward her).

Slovikv. Yates, 556 F.3d 747 (9th Cir. 2C09) (trial court violated Confrontation Clause by preventing defense, counsel from impeaching prosecution witness with extrinsic evidence refuting witnesss denial that he was currently on probation).

Vazquez v. Wilson, 550 F.3d 270 (3d Ck. 2008) (trial court violated Confrontation Clause by permitting prosecution to introduce statement of non-testifying codefendant which, although redacted to remove express references to petitioner, almost certain[ly] would have been construed by jury as inculpating petitioner).

Brinson v. Walker, 547 F.3d 387 (2d Cir. 2008) (trial judge violated Confrontation Clause by precluding defense cross- examination of complainant with prior bad act that defense counsel sought to elicit to show complainants racial animus and to support defense theory that complainant fabricated charges against accused).

Taylor v. Cain, 545 F.3d 327 (5th Cir. 2008) (trial court violated Confrontation Clause by permitting prosecution to elicit from detective that unidentified, nontestifying witness identified the defendant as the perpetrator).

Fratta v. Quarterman, 536 F.3d 485 (5th Cir. 2008) (trial court violated Confrontation Clause by permitting prosecution to introduce custodial statements by petitioners co-defendants and hearsay account of co-defendants statement to girlfriend).

Barbe v. McBride, 521 F.3d 443 (4th Cir. 2008) (Sixth Amendment confrontation [clause] was indisputably contravened by the state circuit courts application of □ per se rule restricting cross-examination of the prosecutions expert [licensed clinical counselor who nad met vjith victim on several occasions] under the state rape shieid law).

Gray v. Moore, 520 F.3d 616 (6th Cir.), cert, denied, 555 U.S. 894 (2008) (trial court violated petitioners constitutional rights to due process, to be present at his trial, and to confront the witnesses against him, when it removed him from the courtroom without warning him of the consequences of his actions).

Parle v. Runnels, 505 F.3d 922 (9th Cir. 2007) (cumulative effect of multiple evidentiary errors violated due process).

Girts v. Yanai, 501 F.3d 743 (6th Cir. 2007), cert, denied, 555 U.S. 819 (2008) (prosecutors closing argument, which referred three times to accusedstcnstitutionally protected silence, constituted flagrant prosecutorial misconduct).

Ferensic v. Birkett, 501 F.3d 469 (6th Cir. 20C7) (trial courts exclusion of defense expert on eyewitness identifications and lay witness whom defense sought to cal! violated.6th Amendment right to present defense).

Vasquez v. Jones, 496 F.3d 564 (6th Cir. 2007) (trial court violated Confrontation Clause by preventing defense counsel from responding to prosecutions introduction of preliminary hearing transcript of unavailable prosecution witness by introducing impeaching evidence of witnesss prior convictions).

Winzer v. Hall, 494 F.3d 1192 (9th Cir. 2007) (trial court violated Confrontation Clause by finding that [alleged victims] report [to police officer] was [admissible as] a spontaneous declaration or excited utterance).

Lyell v. Renico, 470 F.3d 1177 (6th Cir. 2006) (trial judge made a fair trial impossible by sua sponte interrupt[ing] the prosecution to assist it, sua sponte interrupt[ing] [defense counsels] questioning in a way that undermined his presentation of the case (frequently during the cross- examination of the central witness in the case), failing] to interrupt in a like manner during the prosecutions questioning (at least in a way that undermined its case), stat[ing] or impl[ying] her disapproval of [petitioners] theory of the case[,] and ma[king] clear her disapproval of defense counsel [and] issu[ing] a contempt order against Lyells counsel in front of the jury).

Gaston v. Brigano, 208 Fed. Appx. 376, 2006 U.S. App. LEXIS 30219 (6th Cir. Dec. 7, 2006) (admission of audiotape of child witnesss statements violated Confrontation Clause).

Stevens v. Ortiz, 465 F.3d 1229 (10th Cir. 2006), cert, denied, 549 U.S. 1281 (2007) (trial court violated
Confrontation Clause by permitting prosecution to introduce, at trial, co-defendants custodial statement implicating petitioner). •

Stallings v. Bobby, 464 F.3d 576 (6th Cir. 2006) (trial court violated Confrontation Clause by allowing prosecution to introduce co-arrestees statement implicating petitioner).

Fulcher v. Motley, 444 F.3d 791 (6th Cir. 2006) (admission, at trial, of tape-recorded statements by accuseds girlfriend in police station interview violated Confrontation Clause).

Ben-Yisrayl v. Davis, 431 F.3d 1043 (7th Cir. 2005) (prosecutors closing argument violated Fifth Amendment by encouraging jury to infer guilt from accuseds failure to testify).

Kittelson v. Dretke, 426 F.3d 306 (5th Cir. 2005) (per curiam) (trial court violated Confrontation and Due • Process Clauses by curtailing defenses cross-examination of two key prosecution witnesses and preventing defense counsel from eliciting favorable evidence from defense witnesses).

Fowler v. Sacramento County Sheriffs Dept, 421 F.3d 1027 (9th Cir. 2005) (trial court violated Confrontation Clause by preventing defense counsel in sexual molestation trial from cross-examining complainant about two prior unfounded complaints).

Christie v. Hollins, 409 F.3d 120 (2d Cir. 2005) (trial court violated due process right to present defense by preventing petitioner from introducing prior testimony of unavailable defense witness, based on trial courts unsupported view that defense counsel had not been adequately diligent in trying to secure witnesss attendance).

Howard v. Walker, 406 F.3d 114 (2d Cir. 2005) (trial court violated 6th Amendment by curtailing defense cross- examination of states expert

and by impeding defense from presenting expert of its own).

Ruimveld v. Birkett, 404 F.3d 1006 (6th Cir. 2005) (during trial, petitioner was unconstitutionally shackled in view of the jury, despite the fact that he did not pose any special risk of flight or violence).

Murillo v. Frank, 402 F.3d 786 (7th Cir. 2005) (admission of hearsay statement made by another suspect during custodial interrogation violated Confrontation Clause).

White v. Coplan, 399 F.3d 18 (1st Cir.), cert, denied, 546 U.S. 972 (2005) (trial court violated Confrontation Clause by preventing defense counsel from cross-examining complainants in sexual assault trial about prior false accusations of sexual assault by other individuals).

Dorchy v. Jones, 398 F.3d 783 (6th Cir.,2005) (admission of ..t unavailable eyewitnesss testimony given at co-defendants trial violated Confrontation Clause).

Guidry v. Dretke, 397 F.3d 306 (5th Cir. 2005), cert, denied, 547 U.S. 1035 (2006) (admission of hearsay statement violated Confrontation Clause).

Chia v. Cambra, 360 F.3d 997 (9th Cir. 2004), cert, denied, 544 U.S. 919 (2005) (trial court violated Chambers v. Mississippi, 410 U.S. 284 (1973) by excluding four statements of codefendant, which exculpated petitioner while inculpating declarant).

Brown v. Keane, 355 F.3d 82 (2d Cir. 2004) (admission of anonymous 911 call under state hearsay law exception for present sense impression violated Confrontation Clause).

Haji v. Director of Corr., 343 F.3d 976 (9th Cir. 2003) (per curiam) (false and material evidence was admitted at Halls trial in violation of his due process rights).

Hill v. Hofbauer, 337 F.3d 706 (6th Cir. 2003) (admission of nontestifying codefendants confession, which inculpated petitioner, violated Confrontation Clause).

Alcala v. Woodford, 334 F.3d 862 (9th Cir. 2003) (trial courts exclusion of testimony of defense psychologist that prosecutions key witness had been hypnotically influenced in various interviews with police investigators violated petitioners due process right to a fundamentally fair trial and to present crucial witnesses in his defense).

Ward v. Sternes, 334 F.3d 696 (7th Cir. 2003) (trial court failed to conduct adequate colloquy to ensure that defendant with brain damage was knowingly and intelligently waiving right to testify on advice of counsel).

Cotto v. Herbert, 331 F.3d 217 (2d Cir. 2003) (trial court violated Confrontation Clause by barring defense from cross-examining prosecution witness whom defendant had allegedly intimidated into altering account of events).

Ellis v. Mullin, 326 F.3d 1122 (10th Cir. 2002), cert, denied, 540 U.S. 977 (2003) (trial court violated Chambers v. Mississippi, 410 U.S. 284 (1973) by excluding psychiatrists report, which, although addressed to issue of competency to stand trial, contained mental health evidence supporting accuseds insanity defense).

Cook v. McKune? 323 r.3d 825 (iGth Cir. 2003) (prosecutors introduction of preliminary hearing testimony of abssnt witness violated Confrontation Clause because' rtate ：)ad not mads adequate efforts to secure witnesss presence at trial).

Cargle v. Mullin, 317 F.3d 1196 (10th Cir. 2003) (prosecutors argument at guilt-innocence stage of capital case that his office prosecutes only those who are guilty infringe[d] upon the role of the jury as fact finder and determiner of guilt and innocence, and prosecutor also improperly usad coperpetrators.

Lewis v. Wilkinson, 307 F.3d 413 (6th Cir. 2002) (trial judge violated Confrontation Clause by applying rape shield law to bar defense counsei from cross-examining complainant with diary passages supporting consent defense).

Ryari v. Miller, 303 F.3d 231 (2d Cir. 2002) (prosecution violated Confrontation Clause by using direct examination questions to created the impression for the jury that coperpetrators statements led the police to focus on [petitioner] as a suspect, thereby plain[ly] impl[ying] that [co-perpetrator] accused [petitioner]).

Little v. Kern Cnty. Super. Ct., 294 F.3d 1075 (9th Cir. 2002) (per curiam) (summary hearing for criminal contempt violated Due Process Clause because of lack of specific notice of the contempt charges and the time of the hearing and because of judges bias and personal ambroilment).

Greene v. Lambert, 288 F.3d 1081 (9th Cir. 2002) (trial court violated right to present defense by wholly excluding testimony, either from accused or from victimwho was accuseds therapistabout accuseds Dissociative Identity Disorder).

Staple ton v. Wolfe, 288 F.3d 863 (6th Cir. 2002) (trial court violated Confrontation Clause by admitting audiotaped custodial statements of codefendant).

Calvert v. Wilson, 288 F.3d 823 (6th Cir. 2002) (admission of audiotaped confession of accuseds codefendant violated Confrontation Clause).

Killian v. Poole, 282 F.3d 1204 (9th Cir. 2002), cert, denied, 537 U.S. 1179 (2003) (prosecutions star witness testified perjuriously at trial, prosecution failed to provide defense with letters in which witness admitted perjury to gain sentencing concessions, and prosecution improperly referred to accuseds post-arrest silence in cross- examination and closing argument).

Riley v. Taylor, 277 F.3d 261 (3d Cir. 2001) (en banc) (prosecutors opening statement, which was misleading as to the scope of appellate review, violated Caldwell v. Mississippi, 472 U.S. 320 (1985)).

Thomas v. Hubbard, 273 F.3d 1164 (9tn Cir. 2001/, overruled in part cn ocher grounds, Payton v. Weedford, 299 F.3d 815 (9th Cir. 2002) (en banc), vacJ Ji renivudec.

538 U.S. 975 (2003) (cumulative effect or three trial errorsadmission of triple hearsay, prosecutcriai misconduct in eliciting defendants prior canwetkjni^^ violation of pretrial ruling, and improper limitation of defenses cross-examination of investigating officerproduced trial that was so infected with unfairness as to make the resulting conviction a denial of due process). »

Brumley v. Wingard, 269 F.3d 629 (6th Cir. 2001) (tria/ courts admission of videotaped deposition of out-of-state incarcerated witness, without first determining that the deponent was unavailable in the constitutional sense, violated Confrontation Clause).

Moore v. Morton, 255 F.3d 95 (3d Cir. 2001) (prosecutors inflammatory and highly prejudiciai argument was designed to play on racial prejudice and sympathy for the victim).

Heliums v. Williams, 16 Fed. Appx. 905, 2001 U.S. App. LEXIS 17697 (10th Cir. Aug. 8, 2001) (prosecutions expert witnesses, who had examined child complainant in sexual abuse case, impermissibly vouched for the victims credibility by indicating that they believed her testimony).

Agnew v. Leibach, 250 F.3d 1123 (7th Cir. 2001) (trial court refused to grant mistrial when deputy, who had served as bailiff for first day of two-day trial, was called to witness stand by prosecution).

Newman v. Hopkins, 247 F.3d 848 (8th Cir. 2001), cert, denied, 536 U.S. 915 (2002) (state courts application of per se rule to exclude voice exemplar, proffered by petitioner to support misidentification defense by showing that petitioner did not have accent, violated right to present defense).

Noble v. Kelly, 246 F.3d 93 (2d Cir.) (per curiam), cert, denied, 534 U.S. 886 (2001) (trial court violated 6th Amendments Compulsory Process Clause by excluding defense alibi witness on ground that defense counsel failed to comply with alibi notice rule).

DePetris v. Kuykendall, 239 F.3d 1057 (9th Cir. 2001) (trial courts exclusion of victims handwritten journal and preclusion of testimony by accused about journals effect on perceived need for self-defense unconstitutionally inhibited right to present defense).

Vincent v. Sea bold, 226 F.3d 681 (6th Cir. 2000), cert, denied, 532 U.S. 1063 (2001) (trial court violated Confrontation Clause by relying on statement against penal interest principle to introduce hearsay statements by co-perpetrator who attemptfed] to distance [himself] from the murder and minimize his participation in the crime by blaming petitioner).

Smith v. Groose, 205 F.3d 1045 (8th Cir.), cert, denied, 531 U.S. 985 (2000) (prosecutor violated due process by using inherently factually contradictory theories of case at separate trials of petitioner and alleged coperpetrator).

Gordon v. Kelly, 2000 U.S. (prosecutor violated due process by using witness examinations and closing arguments to suggest that witnesses feared petitioner and that he was responsible for death of crucial eyewitness). Conde v. Henry, 198 F.3d 734 (9th Cir. 2000) (trial judge precluded defense counsel from arguing theory of case to jury in closing argument).

Henry v. Kernan, 197 F.3d 1021 (9th Cir. 1999), cert, denied, 528 U.S. 1198 (2000) (trial court improperly allowed prosecutor to use petitioners unconstitutionally coerced confession to impeach him at trial).

Rhoden v. Rowland, 172 F.3d 633 (9th Cir. 1999) (petitioner was shackled throughout trial, in view of jurors, even though no compelling security need for shackles was established).

Gonzales v. Lyttle, 167 F.3d 1318 (10th Cir. 1999) (trial was fundamentally unfair because judge allowed prosecution to present preliminary hearing testimony of unavailable witness linking petitioner to crime but did not permit defense to inform jury that witness subsequently recanted under oath).

English v. Artuz, 164 F.3d 105 (2d Cir. 1998) (trial court violated right to public trial by closing proceedings during testimony of undercover officer).

Harrison v. Chandler, 1998 U.S. App. LEXIS 27744 (6th Cir. Oct. 26,1998) (per curiam) (trial court violated Confrontation Clause by introducing police officers hearsay account of statement by petitioners nontestifying coperpetrator).

Eslaminia v. White, 136 F.3d 1234 (9th Cir. 1998) (jurys exposure to unadmitted, prejudicial statement of petitioners brother, which was on reverse side of police audiotape introduced into evidence, deprived petitioner of rights to confrontation, cross-examination, and assistance of counsel).

Hill v. Turpin, 135 F.3d 1411 (11th Cir. 1998) (prosecutor repeatedly referred to petitioners post-Miranda silence and requests for counsel).

Snowden v. Singletary, 135 F.3d 732 (11th Cir.), cert, denied, 525 U.S. 963 (1998) (trial on charges of sexual abuse of child violated due process right to fair trial because prosecutor presented and relied heavily on inaccurate expert testimony that 99.5% of children tell the truth when making accusations of abuse).

Jones v. Vacco, 126 F.3d 408 (2d Cir. 1997) (trial judge improperly barred petitioner from conferring with counsel during overnight recess in midst of petitioners cross-;,. 4 examination).

Lindh v. Murphy, 124 F.3d 899 (7th Cir. 1997), cert, denied, 522 U.S. 1069 (1998) (at insanity phase of trial, judge violated Confrontation Clause by forbidding petitioners counsel to cross-examine states psychiatrist on biases created by threatened prosecution of psychiatrist for sexually abusing patients).

Lyons v. Johnson, 99 F.3d 499 (2d Cir. 1996) (denial of defense request that jury view person whom defense claimed was actual perpetrator violated due process right to fair trial).

Justice v. Hoke, 90 F.3d 43 (2d Cir. 1996) (exclusion of defense witnesses testimony casting doubt on complainants credibility and supporting defense theory of fabrication violated 6th Amendment right to present defense).

Ayala v. Speckard, 89 F.3d 91 (2d Cir. 1996) (closure of courtroom to protect identity of undercover officer violated petitioners right to public trial).

Gravley v. Mills, 87 F.3d 779 (6th Ck. 1996) (prosecutor violated due process by repeatedly making improper references to petitioners post-arrest silence in cross- examination and closing argument).

Delguidice v. Singletary, 84 F.3d 1359 (11th Cir. 1996) (introduction at trial of uncounseled statements petitioner made to psychiatrist during competency evaluation in another case, without notification or waiver of right to silence, violated rule of Estelle v. Smith, 451 U.S. 454 (1981))

Yohn v. Love, 76 F.3d 508 (3d Ck. 1996) (ex parte communication between prosecutor and state supreme court justice, resulting in trial judges reversal of ruling that had originally fsvored defense, violated Due Process Clause and 6th Amendment right to counsel).

Off or v. Scott, 72 F.3d 30 (5th Cir. 1995) (introduction of videotaped interview of child complainant violated Confrontation Clause).

FranHin v. Duncan, 70 F.3d 7S:9th Cir. 1995) (per curiam) (crc<ccut9ʳs Tefcrer;ce in c;osir^ argument to post- ：v'irunn^ coupled with jury instructior» informing fury ihtit ccnsfeuea as"acrDpt!ve admission, •roimenchr.?nt r□ remain silent).

Riley v. Deeds, 56 F.3d 1117 (9^1 Cir. i995J (read-back of complainants direct examination testimony, authorized by judges law clerk in response to jurors request and conducted in judges absence, violated Due Process Clause).
Wigglesworth tf. Oregon, 49 F.3d 578 (9th Cir. 1995) (statutorily juthorized procedure of admitting certified copy of drug analysis report, subject to defendants subpoenai.ig and cross-examining chemist who prepared report, violated Due Process Clause by reliev[ing] the state of its burden of proof on an essential element of its case).

Webb v. Lewis, 44 F.3d 1387 (9th Cir. 1994), cert, denied, 514 U.S. 1128 (1995) (introduction of videotaped interview of child victim of sexual abuse violated Confrontation Clause).

United States v. Ross, 40 F.3d 144 (7th Cir/1994) (per curiam) (granting section 2255 relief because[1] post-trial decision in Staples v. United States, 511 U.S. 600 (1994), established that instruction on mens rea element of offense was erroneous).

Davis v. Zant, 36 F.3d 1538 (11th Cir. 1994) (prosecutors repeated and clearly intentional misrepresentations in objection and closing argument rendered trial fundamentally unfair in violation of Due Process Clause).

Maurer v. Department of Corrections, 32 F.3d 1286 (8th Cir. 1994) (admission of testimony by prosecution witnesses that complainant seemed sincere when she said she was raped rendered trial fundamentally unfair in violation of Due Process Clause).

Vidal v. Williams, 31 F.3d 67 (2d Cir. 1994), cert, denied, 513 U.S. 1102 (1995) (trial court violated petitioners Sixth Amendment right to public trial by closing courtroom, and excluding petitioners parents, during undercover officers testimony).

Pelaez v. United States, 27 F.3d 219 (6th Cir. 1994) (retroactively applying Crosby v. United States, 506 U.S. 255 (1993), which precludes trial in absentia if accused was not present at commencement of trial).

Bonner v. Holt, 26 F.3d 1081 (11th Cir. 1994), cert, denied, 514 U.S. 1010 (1995) (jury was improperly exposed to inadmissible extra-record evidence when prosecutor stated to judge in jurys presence that petitioner was habitual offender).

Martin v. Parker, 11 F.3d 613 (€th Cir. 1993) (per curiam) (due process right to fair trial violated by prosecutors references to petitioners prior bad acts and closing argument comparing petitioner to Hitler).

Carter v. Sowders, 5 F.3d 975 (6th Cir. 1993), cert, denied, 511 U.S. 1097 (1994) (admission, at trial, of pretrial deposition of paid police informant violated petitioners 6th Amendment right to confrontation because, contrary to findings of state court and district court, neither petitioner nor counsel validly waived petitioners 6th Amendment right to attend deposition).
Shaw v. Collins, 5 F.3d 128 (5th Cir. 1993) (Confrontation Clause violated by introduction of videotaped testimony of prosecution witness who did not testify at trial).

Lowery v. Collins, 988 F.2d 1364 (5th Cir.), supplemented on rehg, 996 F.2d 770 (5th Cir. 1993) (introduction of videotaped interview of child complainant violated petitioners right to confrontation).

Derden v. McNeel, 938 F.2d 605 (5th Ck. 1991) (petitioner denied fair trial by combination of judges repeated admonitions to defense counsel and accused (thereby encourag[ing] a predisposition of guilt by the jury), prosecutors failure to disclose impeachment evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963), and prosecutors violations of state law standards for voir dire questions and introduction of other crimes evidence).

Gaines v. Thieret, 846 F.2d 402 (7th Cir. 1988) (per curiam) (introduction of hearsay statement of petitioners brother, implicating petitioner as triggerman, violated Confrontation Clause).

Brown v. Lynaugh, 843 F.2d 849 (5th Cjr. 1988) (presiding judge took witness stand and provided prosecutions principal evidence against petitioner).

Walker v. Lockhart, 763 F.2d 942 (8th Cir. 1985) (en banc), cert, denied, 478 U.S. 1020 (1986) (trial before biased judge).

Albert v. Montgomery, 732 F.2d 865 (11th Cir. 1984) (petitioner convicted based on evidence of prior offense of which petitioner previously had been acquitted).

Anderson v. Warden, 696 F.2d 296 (4th Cir. 1982) (en banc), cert, denied, 462 U.S. 1111 (1983) (judge took witnesses to chambers and pressed them to change their testimony).

Chavis v. North Carolina, 637 F.2d 213 (4th Cir. 1980) (petitioner denied opportunity to cross-examine critical prosecution witnesses about special treatment witnesses received).

Smith v. Smith, 454 F.2d 572 (5th Cir. 1971), cert, denied, 409 U.S. 8S5 (1972) (state law shifted burden of proving alibi defense to petitioner).

MacKenna v. Ellis, 280 F.2d 592 (5th Cir. 1960), cert, denied, 368 U.S. 877 (1961) (advance of trial date without notice forced petitioner to trial without defense witnesses).

(9) Claims relating to the jury instructions, deliberations, and verdict:

(a) Claims, arising under Sandstrom v. Montana, 442 U.S. 510 (1979), that jury instructions on malice or intent violated due process by relieving state of proving every element beyond reasonable doubt:

Yates v. Evatt, 500 U.S. 391 (1991) (jury instructions on malice violated due process by relieving state of burden of proving every element of crime beyond reasonable doubt).

Francis v. Franklin, 471 U.S. 307 (1985) (instruction that person is presumed to intend the natural and probable consequences of his acts unconstitutionally gave , defendant burden of proof on element of intent to kill).

Chambers v. McDaniel, 549 F.3d 1191 (9th Cir. 2008) (instructions permitted the jury to convict [petitioner] without a finding of the essential element of deliberation).

Medley v. Runnels, 506 F.3d 857 (9th Cir. 2007) (en banc), cert, denied, 552 U.S. 1316 (2008) (state trial court violated due process by instructing the jury that a flare gun is a firearm, thus taking from the jury the determination of an element of the offense).

Polk v. Sandoval, 503 F.3d 903 (9th Cir. 2007) (jury instruction in first-degree murder case violated due process by dictating finding of deliberateness if jury found premeditation).

Stark v. Hickman, 455 F.3d 1070 (9th Cir. 2006) (trial courts instruction during the guilt phase of the trial that the jury was to conclusively presume petitioner was sane unconstitutionally shifted the burden of proof to the defendant).

Powell v. Galaza, 328 F.3d 558 (9th Cir. 2002) (jury instruction improperly removed the element of specific intent the only contested issuefrom the jurys consideration and in effect commanded a directed verdict for the state).

Robertson v. Cain, 324 F.3d 297 (5th Cir. 2003) (jury instruction on the law of principals improperly reliev[ed] the prosecution of the burden of proving an essential element of the crime (namely, the defendants specific intent to kill)).

Caldwell v. Bell, 288 F.3d 838 (6th Cir. 2002) (there is a reasonable likelihood that jurors concluded that use of a deadly weapon raised a presumption of malice for first- degree murder as well as second-degree murder).

Gall v. Parker, 231 F.3d 265 (6th Cir. 2000), cert, denied, 533 U.S. 941 (2001) (although jury instructions correctly stated that prosecution bore burden of proving absence of extreme emotional disturbance beyond reasonable doubt, state supreme courts review of sufficiency of evidence unconstitutionally shifted burden on element to accused). Patterson v. Gomez, 223 F.3d 959 (9th Cir. 2000), cert, denied, 531 U.S. 1104 (2001) (instruction directing jury to presume that petitioner was sane unconstitutionally relieved state of burden to prove mental state for first- degree murder).

Smith v. Horn, 120 F.3d 400 (3d Cir. 1997), cert, denied, 522 U.S. 1109 (1998) (jury instructions on accessorial liability allowed jury to convict on first-degree murder without finding beyond reasonable doubt that petitioner had specific intent to kill). ?

Houston v. Dutton, 50 F.3d 381 (6th Cir.), cert, denied, 516 U.S. 905 (1995) (instruction shifting burden of disproving malice to defendant violated Sandstrom v. Montana, 442 U.S. 510 (1979), and was not harmless error because instruction infected jurys findings of premeditation and deliberation as well as malice).

Corn v. Kemp, 837 F.2d 1474 (11th Cir.) (per curiam), cert, denied, 486 U.S. 1023 (1988) (instruction shifting burden of proof of intent to kill to defendant was not harmless error because intent to kill was issue at trial notwithstanding insanity defense).

Godfrey v. Kemp, 836 F.2d 1557 (11th Cir.), cert, dismissed, 487 U.S. 1264 (1988) (instruction shifting burden of proof of intent to kill to defendant was not harmless error because defendant presented to the jury competent evidence tending to show a lack of mental capacity to form criminal intent).

Dick v. Kemp, 833 F.2d 1448 (11th Cir. 1987) (instruction shifting burden of proof of intent to kill to defendant was not harmless error notwithstanding defendants postarrest statement admitting shooting, because intent was still at issue).

Bowen v. Kemp, 832 F.2d 546 (11th Cir. 1987) (en banc), cert, denied, 485 U.S. 940 (1938) (intent to kill) (similar to Corn v. Kemp, supra).

Hyman v. Aiken, 824 F.2d 1405 (4th Cir. 1987) (instruction shifting burden of proof of malice to defendant was not harmless error because jury could have credited evidence that petitioners intoxication of crime prevented him from forming inten: to ccr*:rait murder).

3rcoks v. Rernp, 809 F.2d 700 (llch Cir.) (en banc), cdn. i enied ; U.S ; 1010 (19.87J (rsin'stating^Brooks v.- Kcimp,< ^62 F.2d 1383 (11th *Cit.* 1355S).*3n banc.)) (instruction that law presumes every homicide to ba malicious until the contrary appears unconstitutionally gave defendant burden of proof on element of maBce).

Thomas v. Kemp, 800 F.2d 1024 (11th Cir. 1986) (per cunam),

cert, denied, 481 U.S. 1041 (1987) (reinstating, in)part, Thomas v. Kemp, 766 F.2d 452 (11th Cir. 1985)) [H] (instruction shifting burden of proof of intent to kill to defendant was not harmless error because defendant presented evidence that drug ingestion at time of crime prevented formation of intent to commit kidnapping snd armed robbery, the alleged acts underlying charge of capital felony murder).

Fiowers v. Blackburn, 779 F.2d 1115 (5th Cir.), cert, denied, 475 U.S. 1132 (1986) (instruction that all participants in crime are principals, and equal offenders, and subject to the same punishment unconstitutionally gave defendant burden of proof by permitt[ir.g] the State .to secure a / conviction by showing that either [petitioner or the coperpetrator] had the requisite specific intent to kili).

Drake v. Kemp, 762 F.2d 1449 (11th Cir. 1985), cert, denied, 478 U.S. 1020 (1986) (same instruction as one struck down in Francis v. Franklin unconstitutionally gave defendant burden of proof on intent to aid and abet armed robbery and murder).

Clark v. Louisiana State Penitentiary, 694 F.2d 75 (5th Ck. 1982) (instruction on criminal conspiracy unconstitutionally gave defendant burden of proof on element of intent to kill or inflict great bodily harm by allowing jury to attribute the murderous act of one conspirator to the other even if conspiracy only related to underlying armed robbery and co-conspirators wanton act of murder was not foreseeable and necessary to the robbery).
Mason v. Balkcom, 669 F.2d 222 (5th Cir. 1982), cert, denied, 460 U.S. 1016 (1983) (instructions that person is presumed to intend natural and probable consequences of his conduct and that person who kills with a deadly weapon [is presumed to have] an intention to kill unconstitutionally gave defendant burden of proof because defendants claim of self-defense admit[ced] the facts that activated these presumptions).

(b) Other claims relating to jury instructions:

ONeal v. McAninch, 513 U.S. 432 (1995) (acceoting court of appeals assumption that combination of in -aiid instruction and improper argument by counsel mental element of offense warranted habeas corpus, relief).

Reyos v. Madden, 780 Fed. Appx； 436 (9th C7. here was instructed on alternative theories of guilt, one of which is concededly invalid, and jury may have relied on [the] invalid one in returning general verdict cf guj't).

Bennett v. Superintendent, S86 F.3d 263 (3d Cir. 2018) (jury instructions on conspiracy and accomplice liability violated due process by allowing jury to convict petitioner as accessory before fact of first-degree murder v/ithout having intent to kill, which state law prescribes as mens rea for first-degree murder; Constitution requires proof beyond a reasonable doubt of every element necessary to constitute the crime, and thus trial courts failure to inform jur/ of intent-to-kill requirement relieved the
Commonwealth of its burden of proving specific intent, in violation of [petitioners] right to due process).

Hali v. Haws, 861 F.3d 977 (9th Cir. 2017) (sUndard state jury instruction that allowed the jury to infer gulltof murder from evidence that defendants were in possession of recently stolen property plus slight corroborating evidence violated Due Process Clause because presumed fact does not follow from the facts established). Langford v. Warden, 665 Fed. Appx. 388 (6th Cir. 2016), cert, denied, 137 S. Ct. 2187 (2017) (trial judge failed to instruct the jury on the mens rea for complicity).

Elvik v. Baker, 660 Fed. Appx. 538 (9th Cir. 2016) (trial courts failure to instruct jury on statutory presumption that children (between the ages of eight years and fourteen years) lack the capacity to distinguish right from wrong impermissibly relieved the government of its burden of proving an element of the crime).

Riley v. McDaniel, 786 F.3d 719 (9th Cir. 2015), cert, denied, 577 U.S. 1229 (2016) (jury instruction relieved the state of its burden to prove element of the offense, thereby violating Due Process Clause, by advising the jury that if it finds premeditation, it has necessarily found deliberation).

Williams v. Trammell, 539 Fed. Appx. 844 (10th Cir. 2013), cert, denied, 571 U.S. 1244 (2014) (trial court violated Beck v. Alabama, 447 U.S. 625 (1980) by failing to instruct jury on lesser-included offense of second-degree depraved-mind murder).

Dixon v. Williams, 750 F.3d 1027 (9th Cir. 2014) (selfdefense instructions misstatement of applicable standard violated due process by reduc[ing] the States burden for convicting Dixon of murder instead of voluntary manslaughter).

Doe v. Busby, 661 F.3d 1001 (9th Cir. 2011) (jury instruction impermissibly lowered prosecutions burden of proof, thereby violating Due Process Clause, by permitt[ing] a murder conviction based on a preponderance of the evidence that prior uncharged crimes occurred).

Hooks v. Workman, 606 F.3d 715 (10th Cir. 2010) (Allen charge given by the trial court in the midst of penaltyphase deliberations, when considered in the context of all surrounding circumstances, coerced the jury into returning death sentences).

Phillips v. Workman, 604 F.3d 1202 (10th Cir. 2010) (trial courts refusal to give instruction on lesser included noncapital offense violated rule of Beck v. Alabama, 447 U.S. 625 (1980)).

Richie v. Workman, 599 F.3d 1131 (10th Cir. 2010) (trial judge violated Beck v. Alabama, 447 U.S. 625 (1980) by refusing to give instruction on lesser included noncapital offense).

Smith v. Curry, 580 F.3d 1071 (9th Cir. 2009), cert, denied, 562 U.S. 1021 (2010) (trial judge coerced guilty verdict by responding to holdout jurors known concerns by giving supplemental instruction.
Taylor v. Workman, 554 F.3d 879 (10th Cir. 2009) (denial of jury instruction on lesser included noncapital offense violated Due Process Clause).

Harris v. Alexander, 548 F.3d 200 (2d Cir. 2008) (trial court violated due process by refusing to instruct jury on accuseds theory of case).

Clark v. Brown, 450 F.3d 898 (9th Cir.), cert, denied, 549 U.S. 1027 (2006) (state trial courts failure to give a felonymurder special circumstance jury instruction violated Clarks due process right to present a complete defense).

Laird v. Horn, 414 F.3d 419 (3d Cir. 2005), cert, denied, 546 U.S. 1146 (2006) (jury instruction on accomplice liability violated Due Process Clause by relieving prosecution of burden of establishing that petitioner had specific intent to kill).

Jackson v. Edwards, 404 F.3d 612 (2d Cir. 2005) (trial courts denial of defenses request for instruction on justification violated Due Process Clause).

Gibson v. Ortiz, 387 F.3d 812 (9th Cir. 2004), overruled in part on other grounds by Byrd v. Lewis, 566 F.3d 855, 866 (9th Cir. 2009) (instruction on prior sexual offenses had unconstitutional effect of allowfing] the jury find Gibson guilty of the charged offenses by relying on facts found only by a preponderance of the evidence).

Bartlett v. Alameida, 366 F.3d 1020 (9th Cir. 2004) (per curiam) (trial court violated Lambert v. California, 355 U.S.
225 (1957) by instructing jury in trial for failure to reregister as sex offender that actual knowledge [of obligation to register] was not an element of the crime). Mollet v. Mullin, 348 F.3d 902 (10th Cir. 2003) (trial court violated Simmons v. South Carolina, 512 U.S. 154 (1994) by denying defense counsels request for instructions explain[ing] the distinguishing feature under Oklahoma law between life imprisonment and life imprisonment without parole and instead instruct[ing] the jury that
parole was not to be considered).

Ho v. Carey, 332 F.3d 587 (9th Cir. 2003) (trial court violated constitutional right to have a jury decide every element of the offense of second-degree murder based on implied malice [by] erroneously instruct[ing] jury that offense was a general-intent crime).

Patterson v. Haskins, 316 F.3d 596 (6th Cir. 2003) (trial courts failure to instruct on proximate causation element of involuntary manslaughter violated due process, notwithstanding inclusion of instruction on same element with regard to two other charged offenses).

Bradley v. Duncan, 315 F.3d 1091 (9th Cir. 2002), cert, denied, 540 U.S. 963 (2003) (trial courts refusal to instruct on state law defense of entrapment violated due process right to present a full defense).

Cockerham v. Cain, 283 F.3d 657 (5th Cir. 2002) (jury instructions, which could have been understood by jury to allow conviction without proof beyond reasonable doubt, violated Cage v. Louisiana, 498 U.S. 39 (1990) (per curiam)).

Davis v. Strack, 270 F.3d 111 (2d Cir. 2001) (trial court violated due process by refusing to charge jury on defense of justification).

Johnson v. Gibson, 254 F.3d 1155 (10th Cir.), cert, denied, 534 U.S. 1029 (2001) (judges instruction to jury that [i]t is inappropriate for you to consider whether sentence of life imprisonment without parole absolutely bars possibility of parole violated rule of Simmons v. South Carolina, 512 U.S. 154 (1994) and Shafer v. South Carolina, 532 U.S. 36 (2001)).

Barker v. Yukins, 199 F.3d 867 (6th Cir. 1999), cert, denied, 530 U.S. 1229 (2000) (judges refusal to give requested selfdefense instruction violated due process right to present defense).

Conde v. Henry, 198 F.3d 734 (9th Cir. 2000) (trial judge refused to instruct jury on theory of defense and defined crime in manner that reduced prosecutions burden of proof).

Hogcin v. Gibson, 197 F.3d 1237 (10th Cir. 1999), cert, denied, 532 U.S. 24t)/(2G00) (trial courts refusal to give ir strucikmn Issser^neiudsc r-.sncapital offanse vioiuted, rule of Bsdvv. AFabama, 44 AU.5. 625 (1980)).<

Keating v. Hood, 191 F.3d 1053 (9th Cir. 1999), cert, denied, 531 U.S. 824 (2000) (instructions omission of mens rea element violated due process).

'Morris v. Cain, 186 F.3d 581 (Sth Cir. 1999) (instruction 'defining reasonable doubt diluted prosecutions burden of ‘proof,.

Lucas v. CDea, 179 F.3d 412 (6th Cir. 1999) (variance between indictment and jury instruction produced constructive amendment of indictment, depriving petitioner of due process right to notice of charges by expos[ing] [him] to charges for which he had no notice and thus no opportunity to plan a defense).

Hanna v. Riveland, 87 F.3d 1034 (9th Cir. 1996) (instruction on permissive inference unconstitutionally relieved prosecution of its burden on element of crime).

Harmon v. Marshall, 69 F.3d 963 (9th Cir. 1995) (per curiam) (failure to instruct on elements of offense was per se prejudicial error).

Cordova v. Lynaugh, 838 F.2d 764 (Sth Cir.), cert, denied, 486 U.S. 1061 (1988) (denial of jury instruction on lesser included noncapital offense violated Due Process Clause and 8th Amendment).

Potts v. Kemp, 814 F.2d 1512 (11th Cir. 1987) (reinstating, in pertinent part, Potts v. Zant, 734 F.2d 526, 52930 (11th Cir. 1984)) (failure to instruct on definition of essential element of capital murder violated due process).

Vickers v. Ricketts, 798 F.2d 369 (9th Cir. 1986), cert, denied, 479 U.S. 1054 (1987) (trial courts refusal to give instruction on lesser included noncapital offense violated rule of Beck v. Alabama, 447 U.S. 625 (1980)).

Carter v. Montgomery, 769 F.2d 1537 (11th Cir. 1985) (jury instruction relieved state of burden of proving all elements of the crime).

(c) Claims relating to jury deliberations or verdict:

Nian v. Warden, 994 F.3d 746 (6th Cir. 2021) (state court violated 6th

and 14th Amendments by relying on state rule of evidence to preclude petitioner from challenging conviction by presenting juror testimony that another juror introduced extraneous information in the form of Nians criminal record and national origin into deliberations).

Barnes v. Thomas, 938 F.3d 526 (4th Cir. 2019), c?rt. denied, 141 S. Ct. 446 (2020) ([D]uring [capital] sentencing deliberations, a juror improperly consulted %/ith her pastor about whether she could vote to impose ths de^th without running afoul of her religious beliefs. She then relayed his guidance to the entire jury.).
Caliendo v. Warden, 365 F.3d 691 (9th Cir.), cert, denied, 543 U.S. 927 (2004) (state appellate court violated Mattox v. United States, 146 U.S. 140 (1892) by failing to apply rebuttable presumption of prejudice in assessing claim of juror misconduct based on 20-minute conversation between three jurors and key prosecution witness).

Weaver v. Thompson, 197 F.3d 359 (9th Cir. 1999) (bailiffs statement to deliberating jurors that they had to reach verdict on all counts amounted to an improper de facto Allen charge in violation of due process).

Smalls v. Batista, 191 F.3d 272 (2d Cir. 1999) (Allen charge unconstitutionally coerced deadlocked jurors by stating three times that they had a duty and responsibility to convince other jurors that their views were correct and by failing to caution the jurors never to abandon their conscientiously held beliefs, even if holding firm will result in a deadlock).

Pham v. Kernan, 1998 U.S. App. LEXIS 31015 (9th Cir. Dec. *7,*1998) (juror impermissibly provided other members of jury with extrinsic information about site where victims body was buried, which bore on petitioners ability to commit crime).

Lawson v. Borg, 60 F.3d 608 (9th Cir. 1995) (jurors statement to other jurors that petitioner had reputation for violence constituted harmful due process violation because extrinsic information directly related to a material issue in the case: intent to commit robbery).

Jiminez v. Myers, 40 F.3d 976 (9th Cir.), cert, denied, 513 U.S. 810 (1994) (trial judge coerced jury into convicting by twice requiring that jurors continue deliberations after they declared they were hopelessly deadlocked, inquiring into jurors numerical division, and failing to give cautionary instruction not to succumb to majority pressure).

(10) Due process claim that evidence was constitutionally insufficient to sustain verdict of guilty:

Fiore v. White, 531 U.S. 225 (2001) (per curiam) (granting federal habeas corpus relief because prosecution failed to present sufficient evidence to prove element of crime and therefore petitioners conviction is not consistent with the demands of the Federal Due Process Clause).

Maquiz MacDonald v. Hedgpeth, 907 F.3d 1212 (9th Cir. 2018) (no rational juror could have found from the evidence presented at trial that all allegations required for the gang sentencing enhancement were true for Maquizs 2001 robbery).

Tanner v. Yukins, 867 F.3d 661 (6th Ck. 2017), cert, denied, 138 S. Ct. 1283 (2018) (state supreme court unreasonably applied Jackson v. Virginia in finding that there was sufficient evidence to convict Tanner: None of the evidence that implicates Tanner is sufficient to overcome the reasonable doubt created by the presence of a unknown womans blood on the victims shirt. This is particularly true given that witnesses observed unknown individuals outside of Barneys around the time of the murder.).

Lee v. Superintendent, 798 F.3d 159 (3d Cir. 2015) (given states concessions that fire science evidence prosecution presented at trial has been shown by scientific developments since Lees trial to be invalid, and furthermore that subsequent scientific developments and retesting of surviving materials from the crime scene have undermined the reliability of chromotography evidence on which prosecution relied at trial, court of appeals concludes that remaining evidence was not sufficient to prove guilt beyond a reasonable doubt).

Owens v. Duncan, 781 F.3d 360 (7th Cir. 2015), cert, dismissed, 577 U.S. 189 (2016) (judge in bench trial violated due process and right to have ones guilt or innocence adjudicated on the basis of evidence introduced at trial by basing verdict of guilty on ungrounded conjecture with no evidentiary support).

Langston v. Smith, 630 F.3d 310 (2d Cir.), cert, denied, 565 U.S. 928 (2011) (evidence was constitutionally insufficient to support conviction of felony assault on theory that assault was in furtherance of only felony with which petitioner was charged, criminal possession of weapon).

Robertson v. Klem, 580 F.3d 159 (3d Cir. 2009) (trial evidence, which was sufficient to convict Robertson of a single conspiracy, was insufficient to support Robertsons conviction on two counts of conspiracy to commit murder because the Commonwealth failed to prove that the murders at issue, which involved the same conspirators, the same murder weapon, and occurred at the same time and place, were the result of separate agreements or conspiratorial relationships).

OLaughlin v. OBrien, 568 F.3d 287 (1st Cir. 2009), cert, denied, 558 U.S. 1158 (2010) (the many strands of circumstantial evidence the prosecution has presented were far from sufficient to establish OLaughlins guilt under Jackson [v. Virginia]).

Kamienski v. Hendricks, 332 Fed. Appx. 1147 (2010) (state appellate court unreasonably applied Jackson v. Virginia by reversing trial courts post-verdict entry of judgment of acquittal for accessory who had neither the mental state required for a conviction of first degree murder or. the knowledge required for a conviction of felony murder).

Newman v. Metrish, 543 F.3d 793 (6th Cir. 2008), cert. denied, 558 U.S. 1158 (2010) (circumstantial evidence, presented by prosecution at trial did not satisfy constitutional standard of sufficiency).

Perez v. Cain, 529 F.3d 588 (5th Cir.), cert, denied, 555 U.S. 995 (2008) (accused established at trial that he was insane at the time of the offense and that no rational juror could have found otherwise).

Smith v. Patrick, 508 F.3d 1256 (9th Cir. 2007) (per curiam) (opinion

of the prosecution experts that [petitioners] shaking of the infant had caused death was wholly unsupported by the physical evidence and thus evidence did not meet the standard of Jackson v. Virginia). [1] ••

Torres v. Lytle, 461 F.3d 1303 (10th Cir. 2006) (although، retaliating against a witness charge required that retaliation was for victims provision of information regarding felony offense, evidence at trial indicated that threat of retaliation was for complainants testimony against petitioner in misdemeanor trial).

Brown v. Palmer, 441 F.3d 347 (6th Cir. 2006) (evidence was insufficient to support convictions of armed robbery and carjacking on theory of aiding and abetting).

Juan H. v. Allen, 408 F.3d 1262 (9th Cir. 2005), cert, denied, 546 U.S. 1137 (2006) (evidence was insufficient to support delinquency adjudication for aiding and abetting murder and attempted murder).

McKenzie v. Smith, 326 F.3d 721 (6th Cir. 2003), cert, denied, 540 U.S. 1158 (2004) (evidence in trial for assault with intent to murder was insufficient to establish, beyond a reasonable doubt, that McKenzie was the perpetrator of the assault).

Donahue v. Cain, 231 F.3d 1000 (Sth Cir. 2000) (evidence was insufficient to support conviction of attempted first- degree murder of peace officer because prosecution failed to prove adequately that petitioner had actual or implied knowledge that complainant was peace officer).

5iddiqi v. United Stages, 98 F.3d 1427 (2d Cir. 1999) (section 2255 movants conviction had no legitimate factual or legal basis and, but for the conduct of the prosecution in adopting shifting and at times misleading positions, no conviction would have been obtained or succsssfully defended on apoesilr

JeBsth v: Gcmsz; 1337 U.S.- App. LEXIS 2G922 (9th Cir. A'jg' 4,U.S. 953 (19971 (ev?dt*nG2' insti ivisient ro siotainTi^iGtio n of.atterrrpted ar'ered to. prove'Specific : intent to steal was the naked fact of STJ attempted entr/).

Mitchell v. Prunty, 107 F.3d 1337 (Sth Cir.), cert, denied, 522 U.S. 913 (1997),[5] overruled in part by Santamaria v. Horsley, 133 F.3d 1242 (9th Cir.), modified, 138 F.3d 1280 (9th Cir.), cert, denied, 525 U.S. 824 (1998) (insufficient Evidence to sustain charges of aiding and abetting
Murder).
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Martinaau v. Angelone, 25 F.3d 734 (9th Cir. 1994) (Nevada Supreme Courts ruling that evidence was insufficient to support petitioners conviction of involuntary manslaughter of their infant child also compelled finding th?t evidence was insufficient to sustain conviction of child abuse for delay in seeking medical care for child).

Evans-Smith v. Taylor, 19 F.3d 399 (4th Cir.), cert, denied, 513 U.S. 919 (1994) (although timing and circumstances of murder pointed to petitioner and he gave contradictory statements to police and apparently attempted to induce friends to support false alibi, prosecutions entirely circumstantial case was insufficient to allow rational trier of fact to find guilt beyond reasonable doubt).

Kelly v. Roberts, 998 F.2d 802 (10th Cir. 1993) (petitioner convicted of aggravated robbery on aiding and abetting theory that he was getaway driver but [o]ther than the prosecutors speculative and unsupported arguments to the jury, the record is completely devoid of any fact linking a car [or petitioner] to the crime; Mr. Kelly has been in custody nearly ten years for a crime the State failed to prove.).

Fagan v. Washington, 942 F.2d 1155 (7th Cir. 1991) (evidence was insufficient under Jackson v. Virginia, 443 U.S. 307 (1979), to sustain conviction of murder on aiding and abetting theory because there was no evidence in record that fatal shot fired during melee came from gun held by either petitioner or any member of his gang).

Singer v. Court of Common Pleas, 879 F.2d 1203 (3d Cir. 1989) (conviction of aggravated assault on police officer in course of arrest violated Jackson v. Virginia because prosecution failed to present constitutionally sufficient evidence of statutory element of lawfulness of underlying arrest).

(II)Claims arising at sentencing:

(a)Capital cases:

(i) Claims of improper introduction of uncounrsled statements to state psychiatrist:

Estelle v. Smith, 451 U.S. 454 (1981; (state-employeC psychiatrist permitted to testify, pr death penalty pnase based on petitioners pretrial statements-that w«2 wiot* freely and voluntarily given and that were made without counsel or waiver of counsel).
Petrocelli v. Baker, 869 F.3d 710 (9th Cir. 2017), cert, denied, 138 S. Ct. 984 (2018) (The parallels between Estelle [v. Smith] and this case are striking: psychiatrist, who was acting as an agent of the state, visited the defendant in jail to determine his competency to stand trial, failed to provide Miranda warnings, and obtained statements that psychiatrist used during the penalty phase of defendants trial [to testify] that the defendant W3S incurable).

Gardner v. Johnson, 247 F.3d 551 (5th Cir. 2001) (psychiatrists pre-examination warnings were insufficient to apprise petitioner of possible use of statements at capital sentencing proceeding).

Vanderbilt v. Collins, 994 F.2d 189 (5th Cir. 1993) (at resentencing, state elicited statements petitioner made at time of first trial to psychiatrist appointed, at defense request, to assess petitioners sanity and competency).

Butt rum v. Black, 908 F.2d 695 (11th Cir. 1990) (state-hired psychiatrists use of petitioners uncounseled statements during competency evaluation to show future dangerousness violated Estelle v. Smith, supra).

Muniz v. Procunier, 760 F.2d 588 (5th Cir.), cert, denied, 474 U.S. 934 (1985) (psychiatrist interviewed petitioner at direction of prosecutor without notice to defense counsel and without administering Miranda warnings, in violation of rule of Estelle v. Smith, supra).

White v. Estelle, 720 F.2d 415 (5th Cir. 1983) (judge granted states motion for psychiatric examination of petitioner but neither petitioner

nor counsel was advised that statements might be used as proof of future dangerousness at capital sentencing hearing).

Green v. Estelle, 706 F.2d 148 (5th Cir. 1983) (per curiam) (finding violation of rule of Estelle v. Smith despite absence of contemporaneous objection because of state law exception to procedural rule).

Gholson v. Estelle, 675 F.2d 734 (5th Cir. 1982) (uncounseled statements elicited in court-ordered psychiatric examination and also in additional interview conducted by another state psychiatrist without notice to defense counsel or judge violated rule of Estelle v. Smith, supra).

Battie v. Estelle, 655 F.2d 692 (5th Cir. 1981) (petitioner did net waive chim under Estelle v. Smith by requesting psychiatric examination to determine competency tc stand trial and sanity at time of offense).

(ii) Claims relating to aggravating circumstances:

Stringer v. Black, 503 U.S. 222 (1992) (petitioner sentenced to death based on unconstitutionally vague especially heinous, atrocious, or cruel aggravating circumstance; state supreme court affirmed after invalidating aggravating circumstance without reweighing remaining aggravating and mitigating circumstances).

Maynard v. Cartwright, 486 U.S. 356 (1988) (petitioner sentenced to death based on unconstitutionally vague especially heinous, atrocious, or cruel aggravating circumstance). p:

Rogers v. McDaniel, 793 F.3d 1036 (9th Cir. 2015) (capital penalty-phase jury instruction on depravity of mind aggravating factor was unconstitutionally vague). 1

Pensinger v. Chappell, 787 F.3d 1014 (9th Cir. 2015) (trial court violated Pennsingers constitutional rights by failing to instruct the jury sua sponte in accordance with [state court decision holding that] kidnap-murder special circumstance requires proof).

Robinson v. Schriro, 595 F.3d 1086 (9th Cir.), cert, denied,562 U.S. 1037 (2010) (Arizona state courts arbitrarily and capriciously applied the aggravating circumstance of especially cruel, heinous or depraved conduct to Robinson).

Daniels v. Woodford, 428 F.3d 1181 (9th Cir. 2005), cert, denied, 550 U.S. 968 (2007) (trial court failed to instruct the jury that it could only consider the multiple-murder special circumstance as a single factor in aggravation).

Valerio v. Crawford, 306 F.3d 742 (9th Cir. 2002) (en banc), cert, denied, 538 U.S. 994 (2003) (instruction at capital sentencing phase on torture, depravity of mind, or mutilation of victim was unconstitutionally vague and state supreme court failed to cure error on direct appeal by reweighing remaining aggravating and mitigating circumstances).

Hochstein v. Hopkins, 113 F.3d 143 (8th Cir.), modified, / 122 F.3d 1160 (8th Cir.), cert, denied, 522 U.S. 959 (1997" (petitioner sentenced to death based on unconstitutionaHy vague exceptional depravity aggravating circumstance).-

McKenna v. McDaniel, 65 F.3d 1483 (9th Cir. 1995), cert, denied, 517 U.S. 1150 (1996) (instruction on depravity of mind aggravating circumstance was unconstitutionally vague).

Houston v. Dutton, 50 F.3d 381 (6th Cir.), cert, denied, 516 U.S. 905 (1995) (heinous, atrocious or cruel jury instruction was too vague and uninformative to properly guide the jury in reaching a death verdict).

Wade v. Calderon, 29 F.3d 1312 (9th Cir. 1994) (sentence . of death based on unconstitutionally vague special . circumstance of torture-murder).

,A « ■' H Beam v. Paskett, 3 F.3d 1301 (9th Cir. 1993),*cert denied, 511 U.S. 1060 (1994) (death sentence premised in part orft? trial judges distaste for petitioners prior history of - nonviolent abnormal sexual relationships, including homosexuality and relationships with women substantially younger and older than petitioner).

King v. Puckett, 1 F.3d 280 (5th Cir. 1993) (death sentence rested upon Mississippis unconstitutionally overbroad especially heinous, atrocious or cruel aggravating factor).

Duest v. Singletary, 997 F.2d 1336 (11th Cir. 1993), cert, denied, 510 U.S. 1133 (1994) (death sentence premised on prior conviction that was overturned on appeal).

Rust v. Hopkins, 984 F.2d 1486 (8th Cir. 1993) (three-judge capital sentencing panel violated due process by failing to apply state law rule that aggravating circumstances must be proven beyond reasonable doubt; error was not cured by Nebraska Supreme Courts reweighing of circumstances on appeal because such reweighing exceeded permissible scope of principle of Stringer and deprived petitioner of state-created two-tiered process of sentencing followed by appellate review).

Smith v. Black, 970 F.2d 1383 (5th Cir. 1992) (on remand from Supreme Court in light of Stringer v. Black, court concludes that use of Mississippis vague especially heinous, atrocious and cruel aggravating circumstance rendered petitioners death sentence unconstitutional).

(A)Claims that trial court improperly restricted consideration of mitigating factors:

Abdul-Kabir v. Quarterman, 550 U.S. 233 (2007) (trial judges instructions to the Texas [capital sentencing] jury violated 8th and 14th Amendments by creating reasonable likeSihood that jurors [were prevented] from giving meaningful consideration to constitutionally relevant mitigating evidence).

Brewer v. Quarterman, 550 U.S. 286 or (2007) (same as Abdul-Kabir v. Quart'jrman, su;ra).

Per-ry v; JGhnsi?uv : 532. 782,(2001) (same as Penry v..

LynJnf^rto^theiextcnt^Tcxas Couitof Grimin3l . Appels coRdudsdithatihe^ubstance of^heijury- instructions given at Pemys second sentencing hearing satisfied our mandate in Penry 1' that determination was objectively unreasonable under AEDPAs section 2254(d)(1)).

Parker v. Dugger, 498 U.S. 308 (1991) {trial court sentenced petitioner to death on basis of asserted absence of mitigating circumstances, though mitigating t^rcumstances manifestly were present).

Hitchcock v. Dugger, 481 U.S. 393 (1987) (petitioner sentenced to die by jury unconstitutionally instructed that, in passing on sentence, it could not consider fact that petitioner was brain damaged, had cooperated fully with police, and was capable of rehabilitation).

Penry v. Lynaugh, 492 U.S. 302 (1989) (petitioner sentenced to-die by jury unconstitutionally instructed in manner that prevented it from considering in mitigation, and only permitted it to consider in aggravation, fact that Penry was retarded).

Alien v. Stephan, 42 F.4th 223 (4th Cir. 2022) (During the penalty phase, the government and defense experts agreed that Allen suffered persistent childhood abuse; they also agreed that he had at least one mental illnessrumination disorderand disagreed as to anotherschizophrenia. Yet, the sentencing judge concluded that Allen was [not] conclusively diagnosed as mentally ill and found no conclusive proof of mitigating circumstances.; When the record is read in its entirety, it is clear that the sentencing judge considered Allens disputed schizophrenia diagnosis only and paid no mind to the several uncontroverted mitigators.; the [sentencers] failure to consider all of the mitigating evidence risks erroneous imposition of the death sentence, in plain violation of Lockett).

Spreitz v. Ryan, 916 F.3d 1262 (Sth Cir. 2019), cert, denied, 141 S. Ct. 1521 (2021) (Arizona Supreme Court violated Eddings v. Oklahoma, 455 U.S. 104 (1982), by reviewing petitioners death sentence under then-existing causal nexus test, which prohibited state courts from treat[ins) as a mitigating factor a family background or a mental condition that was not causally connected to a defendants crime, and that accordingly prevented state supreme court from considering mitigating evidence of petitioners longstanding alcohol and substance abuse).

Lawlor v. Zook, 909 F.3d 614 (4th Cif,2018) (trial court improperly excluded specialized and relevant testimony c; a qualified [defense] witness who would have explained that Lawlor represents a very low risk for committing acts of violence while incarcerated, where the jur;s oniy choices were life in prison without parole (LV7OP) or death).

Bigby v. Cockrell, 340 F.3d 25S (5;th<< : ir-: 2Q32l ^struGfenK[5];- prevented jury from giving rniiigsting effest-to evidence petitioners mental illness).

(iii) Claims relating to ineffective assistance of counsel

Blue v. Cockrell, 298 F.3d 318 (5th Cir. 2002), overruled in part on other grounds by Tennard v. Dretke, 542 U.S. 274 (2004) (capital-sentencing instruction unconstitutionally limited jurys consideration of mitigating evidence of mental retardation and physical and sexual abuse).

Paxton v. Ward, 199 F.3d 1197 (10th Cir. 1999) (trial court improperly applied per se rule barring polygraph evidence to prevent accused from showingcontrary to prosecutors implicationthat prior homicide charge was dismissed because in the district attorneys view he had been cleared by a polygraph examination).

Rupe v. Wood, 93 F.3d 1434 (9th Cir.), cert, denied, 519 U.S. 1142 (1996) (trial court improperly excluded[1] polygraph examination of states key witness showing that witness bore greater culpability for killing than he <
admitted and that petitioner did not play as great a role in the offense as the prosecution would like the jury to believe).

Smith v. Singletary, 61 F.3d 815 (11th Cir. 1995) (per curiam), cert, denied, 516 U.S. 1140 (1996) (trial judge improperly excluded mitigating evidence, and instructions curtailed sentencer consideration of mitigating evidence that was admitted).

Gore v. Dugger, 933 F.2d 904 (11th Cir. 1991) (per curiam),cert, denied, 502 U.S. 1066 (1992) (unconstitutional exclusion of nonstatutory mitigating evidence of alcohol and drug ingestion at time of killing).

Jackson v. Dugger, 931 F.2d 712 (11th Cir.), cert, denied, 502 U.S. 973 (1991) (jury unconstitutionally instructed, and sentencing judge believed, that nonstatutory evidence of good record of military service could not be considered).

Aldridge v. Dugger, 925 F.2d 1320 (11th Cir. 1991) (jury instruction limiting mitigating circumstances to statutory factors violated Hitchcock even though petitioner declined to present any non-statutory mitigating evidence because tactical choice was reasonable response to restrictive state law at time).

Booker v. Dugger, 922 F.2d 633 (11th Cir.), cert, denied, 502 U.S. 900 (1991) (capital sentencing jury instructed that it could not take into consideration nonstatutory mitigating evidence of petitioners schizophrenia and organic brain damage).

Smith v. McCormick, 914 F.2d 1153 (9th Cir. 1990) (Montana death penalty statute, as applied, unconstitutionally limited nonstatutory mitigating circumstances to those sufficiently substantial to call for leniency).

Delap v. Dugger, 890 F.2d 285 (11th Cir. 1989), cert, denied, 496 U.S. 929 (1990) (instructions violated Hitchcock by precluding jury consideration of nonstatutory mitigating evidence of petitioners organic brain damage).

Knight v. Dugger, 863 F.2d 705 (11th Cir. 1988) (rule of Lockett v. Ohio violated because sentencing judge, prosecutor, and defense counsel believed that mitigating circumstances must be limited to statutory roster).

Ruffin v. Dugger, 848 F.2d 1512 (11th Cir. 1988) (per curiam), cert, denied, 488 U.S. 1044 (1989) (judge unconstitutionally instructed jury to consider only statutory mitigating circumstances).

Stone v. Dugger, 837 F.2d 1477 (11th Cir. 1988), cert, denied, 489 U.S. 1071 (1989) (jury unconstitutionally instructed, and sentencing judge believed, that mitigation was limited to statutory factors).

Messer v. Florida, 834 F.2d 890 (11th Cir. 1987) (jury unconstitutionally instructed, and sentencing judge believed, that mitigating evidence of petitioners mental problems could only be considered to extent it bore on statutory mitigating factor).

Armstrong v. Dugger, 833 F.2d 1430 (11th Cir. 1987) (jury unconstitutionally instructed, and sentencing judge believed, that mitigating circumstances must be limited to statutory list).

Hargrave v. Dugger, 832 F.2d 1528 (11th Cir. 1987) (en banc), cert, denied, 489 U.S. 1071 (1989) (jury unconstitutionally instructed, and sentencing judge believed, that nonstatutory mitigating evidence of steady employment, below-average intelligence, and history of drug abuse could not be considered).

Songer v. Wainwright, 769 F.2d 1488 (11th Cir. 1985) (en banc), cert, denied, 481 U.S. 1041 (1987) (per curiam) (sentencing judge unconstitutionally limited mitigating circumstances to factors enumerated in statute):

Washington v. Watkins, 655 F.2d 1346 (5th Cir. Unit A 1981), cert, denied, 456 U.S. 949 (1982) (jury instructions unconstitutionally prevented jury from giving weight to nonstatutory mitigating evidence of steady domestic relationship, fulfillment of parental responsibilities, and good employment history).

Rogers v. Dzurenda, 25 F.4th 1171 (9th Cir. 2022) (two public defenders, one of whom was appointed as petitioners counsel a mere four months after parsing th? Nevada bar exam and other of whom was equally inexperienced in presenting an insanity defense, were ineffective in preparing and executing-insanity defense.

Bryant v. Stephan, 17 F.4th 513 (4th Cir. 2021) (en banc) . (per curiam), cert, denied, 142 S. Ct. 2731 (2022) (en banc circuit court of appeals, by an equally divided court, _ vacates panel opinion denying writ and affirms judgment . of district court, which granted writ on, inter alia, claim that petitioner was denied the effective assistance of counsel as guaranteed by the Sixth Amendment when trial • counsel failed to insist on the removal of OJuror in light of her hearing impairment (Bryant v. Stirling, 2019 U.S. Dist. LEXIS 44430 (D.S.C. March 19, 2019)).

Duarte v. Williams, 2021 U.S. App. LEXIS 27286 (9th Cir. Sept. 10, 2021) (Duartes trial counsels performance was deficient. Counsels ignorance of the law and failure to object to an unlawful jury instruction, burden of prooffell below an objective standard of reasonableness'. Despite ■ the deference accorded to counsel to make strategic decisions, the erroneous jury instructions permitted the jury to convict Duarte on an impermissible legal theory, so the failure to object cannot be characterized as strategic.).

Hughes v. Vannoy, 7 F.4th 380 (5th Cir. 2021) (counsel was ineffective in never attempt[ing] to interview eyewitness who was cornerstone of the States case).

Massey v. Superintendent, 2021 U.S. App. LEXIS 20533 (3d Cir. July 12, 2021) (defense counsel in homicide trial refused an instruction on imperfect self-defense, or voluntary manslaughter, and requested that the jury be instructed on involuntary manslaughter instead, even after having been corrected on the law by the presiding judge and the prosecutor that such a charge [of involuntary manslaughter] was legally unsound based on the evidence he had presented throughout trial; Although competent counsel is entitled to make a strategic decision to decline a particular jury instruction, the record simply does not support a finding that trial counsels decision in this case was based in sound strategy. Rather, a plain reading of the charge conference transcript indicates that trial counsel lacked a fundamental understanding of the essential legal differences between voluntary and involuntary manslaughter.).

Wright v. Clarke, 860 Fed. Appx. 271 (4th Cir. 2021) (defense counsel in robbery trial was ineffective in failing to object to jury instruction on grand larceny, which is not a lesser included offense of robbery under Virginia law; although state courts attributed counsels failure to .'•craitgV/.ccunse! \vasii ; £3vzare jrapplicable law.

v.. jess--£»3i 5S-2 {7th'Cir. 2020Hrounsel was:

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pnkPufily based : on imprG&abie'

assumption [ajnd when that uHikely strategy blew up; counsel had no Plan B).

Tyson v. Superintendent, 976 F.3d *382* (3d Cir. 2020), cert, denied, 141 S. Ct. 1737 (2021) (counsel was ineffective in feeing ta object.to jury instructions that allowed jury to tonvictf] Tyson as an accomplice to first-degree murder Without finding he possessed the specific intent to kill; While we recognize there are countless ways to provide effective assistance in any given case, wr? cannot fathom a strategic reason for counsels failure to object to an instruction that eliminates the states burden to prove an demerit of a crime that carries a mandatory sentence of !ife imprisonment.);

Stermer v. Warren, 959 F.3d 704 (6th Cir. 2020) (defense counsel did not object as prosecutor, [i]n his closing arguments, repeatedly branded Stermer a liar, misrepresented her testimony, and disparaged her whiie bolstering other witnesses).

United States v. Nolan, 956 F.3d 71 (2d Cir. 2020) (granting section 2255 relief because, even though many of the typical causes of mistaken eyewitness identifications were apparent, defendants trial counsel did almost nothing to challenge the introduction of such identifications or combat these problems; In particular, defense counsel abandoned a pre-trial motion to preclude the eyewitness identifications for reasons that counsel has failed to explain. And both then and after the testimony had been introduced at trial, defense counsel failed to call or even consult an expert witness who could have informed the judge and jury about the multiple, well-established ways in which these identifications were unreliable.).

Pierce v. Administrator, 808 Fed. Appx. 108 (3d Cir. 2020) (Pierces counsel failed to discuss with [him] his right to testify, and Pierce misunderstood the process for testifying).

Cook v. Foster, 948 F.3d 896 (7th Cir. 2020) (counsel undermined defense that state identified the wrong man by failing to locate and subpoena individual whom petitioner had identified as actual perpetrator, failing to object to hearsay testimony that ce!l phone records placed petitioner near scene of crime, and failing to bring out evidence that co-defendants who implicated petitioner had received de facto immunity in exchange for testimony).

Fisher v. Commissioner, 790 Fed. Appx. 493 (3d Cir. 2x2.0). (mem.) (affirming district courts grant of habsas corpus, relief, which state conceded during oral argument snojid? be affirmed; district court ruled, inter alia, that trial counsel was ineffective at guilt phase in failing to object to constitutionally infirm instruction on reasonable doubt standard (Fisher v. Beard, 2018 U.S. Dist. LEXIS 125279 (E.D. Pa. July 25, 2018)).

Eliis v. Harrison, 947 F.3d 555 (9th Cir. 2020) (en banc) (writ is granted based on States concession that habeas relief is warranted and that Elliss conviction should be overturned, and States waiver of exhaustion and Teague defenses; courts decision does not describe clairn(s) on which relief was granted, biU concurring opinion explains that Vial counsel was a virulent racist whose extreme racism rendered Elliss trial unfair and its result unreliable, and that it would have been impossible for [counsel] to represent Ellis [who is African American] fairly (Nguyen, J., joined by Thomas & Murguia, JJ., concurring in majoritys summary order granting relief)).

Jones v. Zatecky, 917 F.3d 578 (7th Cir. 2019) (counse fail[ed] to object to an untimely amendment to his ', [clients] charges, which add[ed] a new and highly consequential charge on which Jones was ultimately convicted).

Workman v. Superintendent, 915 F.3d 928 (3d Cir. 2019) (Counsel failed to present a case on behalf of his client and, when cross-examining the Commonwealths witnesses, failed to modify his theory of the case to account for the evidence presented by the Commonwealth. Workmans counsel wholly failed to rebut the Commonwealths evidence; Counsel also requested jury instructions on [lesser included offenses, but] did nothing to support a conviction for those lesser offenses.).

Brewster v. Hetzel, 913 F.3d 1042 (11th Cir. 2019) (counsel was ineffective in failing to object and move for mistrial when judge coerced deadlocked jury into reaching verdict: The fundamental error that Brewsters counsel let go was one that any reasonable counsel would not have overlooked or thought unworthy of pursuing. It was obvious error that unfolded over a period of two days in a course of action that grew progressively worse. Counsel had plenty of time to recognize the error and react.; states argument that counsels conduct was strategic is rejected because [tjactical decisions need rational reasons behind them and there was no conceivable reason, no reasonable strategy, for sitting silent and seeing how things would turn out).

York v. Ducart, 736 Fed. Appx. 628 (9th Cir. 2018) (counsels failure to review the prosecutions evidence, and in turn to introduce cell phone records that would have severely undermined the testimony of the states key witness.

Price v. Warren, 726 Fed. Appx. 877 (3d Cir. 2018) (counsel failed to attack the chain or custody of key prosecution evidencecigarette butt with his [clients] DNA on it, which was sole piece of evidence squarely linking him to the robberieseven though chain of custody of this cigarette butt was poorly documented, raising the possibility that the butt with Prices DNA on it did not come from the crime scene).

Bryant v. Thomas, 725 Fed. Appx. 72 (2d Cir. 2018) (counsel was ineffective in failing to investigate or challenge prosecutions serology evidence: Bryants trial counsel not only failed to pursue a blood test, but also failed to consult an expert or otherwise understand the nature of the serological evidence.; although Bryant confessed to the crime before later asserting his innocence, blood testing Bryant presented a no-risk strategy, that might well have yielded decisively exculpatory evidence).

Hendrix v. Palmer, 893 F.3d 906 (6th Cir. 2018) (counsel was ineffective in failing to move to suppress statement on grounds that were indisputably meritorious; Hendrixs counsel had access to all the facts that should have led him to conclude that the statements were inadmissible, and not filing a motion to suppress had no conceivable strategic benefit for Hendrix).

Rivera v. Thompson, 879 F.3d 7 (1st Cir. 2018) (trial counsels failure to move to suppress Riveras statements to the police officer constituted ineffective assistance of counsel under clearly established law).

Browning v. Baker, 875 F.3d 444 (9th Cir. 2017), cert, denied, 138 S. Ct. 2608 (2018) (trial counsel unreasonably failed to investigate Brownings case, including fail[ing] to interview [police officer] prior to calling [officer] to testify at trial; faiifing] to investigate the source of the bloody shoeprints at crime scene, based on counsels assumption that accused was guilty and that shoeprints accordingly must have been left by paramedics or responding officers during investigation rather than by actual perpetrator before police arrived; and failing to send investigator to interview key prosecution witnesses).

Bey v. Superintendent, 856 F.3d 230 (3d Cir. 2017), cert, denied, 138 S. Ct. 740 (2018) (counsel was ineffective in failing to object to faulty jury instruction on eyewitness identification testimony that could have been understood by reasonable juror as mandatory presumption that shifted to the defendant the burden of persuasion on [an] element of the offense).

Weeden v. Johnson, 854 F.3d 1063 (9th Cir. 2017) (counsel failed to seek psychological evaluation of 14-year-old client to examine whether young age and cognitive deficits prevented accused from forming requisite mens rea).

Hardy v. Chappell, 849 F.3d 803 (9th Cir. 2017) (counsel rendered deficient performance by failing to investigate and present evidence that [prosecutions star witness] was ■ likely the actual killer).

McKernan v. Superintendent, 849 F.3d 557 (3d Cir. 2017) (counsel was ineffective in failing to recognize trial judges loss of impartiality (due to criticisms of judge on website) and to move for recusal of judge).

Jones v. Calloway, 842 F.3d 454 (7th Cir. 2016) (counsel rendered ineffective assistance by fail[ing] to present the testimony of Michael Stone, a codefendant confessed to the crime and has consistently maintained that heand he aloneshot Gardner, and whose story matched the physical evidence and some (though not all) of the eyewitness testimony, and who was willing to testify for Jones had he been asked; Trial counsels failure to call Stone cannot reasonably be classified as *a* mere matter of trial strategy within the range of objectively reasonable professional judgments.)..

Reddy v., Kelly, 657 Fed. Appx. 531-(6th Cir. 2016) (Despite obtaining [psychiatric] report [prior to trial], [counsel] offered no evidence of PTSDorany psychiatric evidenceat trial [to support finding of manslaughter instead of murder]. Evidence of PTSD would have been vital to Reddys defense.

United States v. Bankston, 820 F.3d 215 (6th Cir. 2016) (counsel was ineffective in failing to move for dismissal of charge of false statements to judge that was inapplicable to case because statute expressly exempts from criminal liability statements made to a judge in the course of judicial proceedings).

Dendel v. Washington, 647 Fed. Appx. 612 (6th Cir.) (per curiam}, cert, denied, 137 S. Ct. 375 (2016) (counsel failed to adequately investigate into the cause of [victims] death, and consequently failed to find available expert evidence that [victims] death could have been caused by a combination of drugs).

Moore v. Secretary, 640 Fed. Appx. 159 (3d Cir.), cert,

denied, 137 S. Ct. 73 (2016) (Moores counsel acted unreasonably in (1) failing to cross-examine [coperpetrator who pled guilty and testified for prosecution] adequately about the benefits he received in exchange for his testimony and (2) failing to investigate adequately [whether to present other co-perpetrator] as an exculpatory witness).

United States v. Freeman, 818 F.3d 175 (Sth Ck. 2016) (counsel was ineffective in failing to challenge count added by superseding indictment as barred by statute of limitations; Although counsels affidavit stated that ha considered the issu.2, tho record is silent as to the extent c-f counsel rrscercl'. Zven minimal reseerch would have-, r®veiled ৮ comp2!lb7 ᐟ : rrgurnGnt for dismissal of cou?it).

Casi>r odifn.$&3 v- Uniiec States ᐟ-3m3cM!6(4st<kr 2016) (defense counsel was ineffective :n failing to tell defendant, that he had a right to testify and to obtain his informed consent to remaining silent at trial.

Yun Hseng Liao v. Junious, 817 F.3d 678 (9th Cir. 2016) ᶠ(trial counsel, upon receiving court clerks erronaous report ;that request for funding for essential medical examination ᶜᶠᶜof accused had been denied, did not conduct[] any further inquiry into the status of h»s motion and instead
• proceeded to tr:al without the benefit of the medical examination).

Gruaninger v. Director, 813 F.3d 517 (4th Cir. 2016) (counsels failure to move to suppress his [clients] confession under Edwards v. Arizona, 451 U.S. 477 (1981), which prohibits police interrogation after an invocation of Miranda rights, constituted ineffective assistance of counsel; states claim of strategic judgment is rejected because on this record, it is hard to discern any tactics at all. Glower did not, in fact, forgo an Edwards objection; he raised the Edwards issue on the first day oft ria I. Theonly thing forgone was the opportunity to make his Edwards argument in a timely manner and in writing, as required by local rulesor, once that opportunity was lost, to accept the invitation of the trial judge to object at trial when the confession was introduced.).

McShane v. Cate, 636 Fed. Appx. 410 (9th Cir. 2016) (counsel was ineffective in provid[ing] no evidence at trial of McShanes history of mental illness to support counsels trial strategy of portray[ing] him as guilty only of either voluntary or involuntary manslaughter rather than murder).

Crace v. Herzog, 798 F.3d 840 (9th Cir. 2015) (trial counsel was deficient for failing to request a jury instruction on unlawful display of a weapon, a lesser included offense of second degree assault, which trial court would have been obligated to give if Craces counsel had requested it; had that instruction been given, there is a reasonable probability that the jury would have convicted Crace only of that [misdemeanor] offense, thereby avoiding third felony strike that resulted in Craces being sentenced to life imprisonment without possibility of parole).

Gabaree v. Steele, 792 F.3d 991 (8th Cir. 2015), cert, denied, 577 U.S. 1182 (2016) (trial counsel in child sexual abuse trial, in which main evidence against Gabaree was testimony of two child complainants, and then was no medical evidence nor eyewitness accounts to support their testimony, was ineffective in failing to object to inadmissible bolstering by physician and inadmissible propensity evidence by child psychologist).

Thomas v. Clements, 789 F.3d 760 (7th 2015), ccrt. denied, 577 U.S. 1230 /2016) (counsal.was ；neffectiv*^:n failing to consult with or even consider fcn?ns;c to support defense that accused unintentionaliy causad victims death by strangulation, Especially whan trr^siat^rs expert testified that there was no evidence of external bruising).

Zapata v. Vasquez, 788 F.3d HOC (9th Cir. 2015) (trial counsels failure to object to egregious prosecutorial misconduct during closing argument constituted ineffective assistance of counsel).

Smith v. Jenkins, 609 Fed. Appx. 285 (6th Cir. 2015) (trial counsel was ineffective for not investigating or presenting evidence that Bisers death resulted from a pre-existing medical condition, not Smiths punch).

Raether v. Meisner, 608 Fed. Appx. 409 (7th Cir. 2C1E) (counsels fail[ure] to make use of the crucial [prosecution] witnesses prior inconsistent statements in cross- examination rendered counsels representation deficient; although counsel testified that his choice was strategic, counsels preparation rendered this strategic choice patently unreasonable).

Lee v. Clarke, 781 F.3d 114 (4th Cir. 2015) (trial counsel in second-degree murder trial was deficient in failing to request jury instruction defining heat of passion, which competent attorney would have requested given testimony that arose during Lees trial).

Rivas v. Fischer, 780 F.3d 529 (2d Cir. 2015) (when chief medical examiner changed his estimate as to the time of death six years after the fact, seemingly on the basis of no new evidence, to time when defendant had an incomplete alibi, any reasonable attorney [would have] conclude[d] that investigating the basis of [the medical examiners] new findings was essential, and thus defense counsels failure to investigate further violated duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary).

Drain v. Woods, 595 Fed. Appx. 558 (6th Cir. 2014) (defense counsels failure to object to the manner in which the trial court dealt with the Batson violation constitute[d] deficient counsel).

Grumbiey v. Burt, 591 Fed. Appx. 488 (6th Cir. 2015) (trial counsel was ineffective for failing to move to suppress evidence illegally seized from Grumbleys home; we cannot know what Grumbleys trial counsels reasons were for not filing a motion to suppress [but] it is difficult to conceive of a legitimate trial strategy or tactical advantage to be gained by not filing a motion to suppress).

Mosley v. Butler, 762 F.3d 579 (7th Cir. 2014) (defense counsel failed to investigate potential witness whose testimony would have bolstered sole witness called by defense counsel, and so omitted witness from trial without making informed decision).

Vega v. Ryan, 757 F.3d 960 (9th Cir. 2014) (per curiam) (trial counsel was constitutionally ineffective when he failed to review Vegas client file and, as a result, failed to call as a witness a Catholic priest to

whom the victim had recanted her allegations of her stepfathers sexual abuse).

Peoples v. Lafler, 734 F.3d 503 (6th Cir. 2013) (trial counsel was constitutionally ineffective for failing to impeach the credibility of the[] two [key prosecution] witnesses based on known false testimony).

United States v. Liu, 731 F.3d 982 (9th Cir. 2013) (granting section 2255 relief because trial counsel fail[ed] to raise an obvious statute-of-limitations defense).

Griffin v. Harrington, 727 F.3d 940 (9th Cir. 2013) (trial counsel was ineffective in failing to object to unsworn testimony by prosecution witness that opened door to prosecutions introduction of recorded witness statement identifying accused as triggerman, the only evidence that named him as Brooks killer).

Newman v. Harrington, 726 F.3d 921 (7th Cir. 2013) (trial counsels failure to investigate Newmans fitness [for trial] and request a fitness hearing was constitutionally deficient, and based on the entire record, there is a reasonable probability that Newman would have been found unfit to stand trial).

Grant v. Lockett, 709 F.3d 224 (3d Cir. 2013) (trial counsel did not adequately investigate the criminal history and parole status of the Commonwealths key witness, and thus failed to learn information that could have been used to impeach witness).

Cannedy v. Adams, 706 F.3d 1148 (9th Cir. 2013), cert, denied, 571 U.S. 1170 (2014) (trial counsel failed to interview witness who was clearly identified by petitioner as potential source of information about [complainants] motive for falsely accusing Petitioner).

McClellan v. Rapelje, 703 F.3d 344 (6th Cir. 2013) (trial counsel did not interview numerous eyewitnesses who would have testified that McClellan acted in self defense).

Harris v. Thompson, 698 F.3d 609 (7th Cir. 2012), cert, denied, 569 U.S. 1017 (2013) (trial counsels ineffective handling of hearing on 6-year-old defense witnesss competency to testify resulted in exclusion of witnesss critical exculpatory evidence, which probably would not ’’ have occurred [i]f counsel had taken simple and obvious * steps to prepare for the hearing).

Toliver v. Pollard, 688 F.3d 853 (7th Cir. 2012) (trial counsel failed to present two witnesses who could have corroborated accuseds testimony that he had not instructed [his brother] to shoot [decedent]).

Foster v. Wolfenbarger, 687 F.3d 702 (5th Cir. 2012), cert, denied, 568 U.S. 1228 (2013) (trial counsel ineffectively failed to investigate and present alibi defense).

Thomas v. Chappell, 678 F.3d 1086 (9th Cir. 2012), cert, denied, 568 U.S. 1186 (2013) (trial counsel failed to investigate and present available evidence that would have corroborated defense theory that murder was *>1* committed by someone other than.accused).

Cornell v. Kirkpatrick, 665 F.3d 369 (2d Cir. 2011) (trial counsel ineffectively failed to object to venue under state law rule that would have prevented conviction on counts relating to one of two victims).

Elmore v. Ozmint, 661 F.3d 783 (4th Cir. 2012) (gross failure of Elmores 1984 trial lawyers to investigate the States forensic evidence had a palpably adverse effect on the defense).-

Tice v. Johnson, 647 F.3d 87 (4th Cir. 2011) (counsel failed to investigate facts already in the litigation file and failed to file motion (to suppress a statement) which, if it had been made, the trial court woujd have little choice but to grant). i

Breakiron v. Horn, 642 F.3d 126 (3d Cir. 2011) (counsel failed to take corrective action after venire member referred to accuseds prior criminal history while in presence of another vernireperson who was later seated as juror; counsel also failed to request jury instruction on lesser included offense).

Showers v. Beard, 635 F.3d 625 (3d Cir. 2011) (counsel was ineffective in failing to enlist expert witness to rebut prosecutions expert on key issue and relying instead on ill- informed cross-examination of prosecutions expert).

Couch v. Booker, 632 F.3d 241 (6th Cir. 2011) (counsel rendered ineffective assistance by failing to investigate a causation defense).

Hodgson v. Warren, 622 F.3d 591 (6th Cir. 2010) (counsel was ineffective in failing to request adjournment in order to try to locate exculpatory eyewitness who was under subpoena but failed to appear).

Bsllizia v. Florida Dept of Corr.z 614 F.3d 1326 (11th Cir. 2010) (per curiam) (trial counsel was ineffective for failing to move for a judgment *of* acquittal based upon the insufficiency of the States evidence of element of crime that triggered twenty-five year mandatory minimum sentence).

•A’：iite v. Thaler, ulO f.3d 899 (Sth Cir. 2010) (counsel rendered ineffective ‘assistance by (1) [questioning r .Titionercn sirect axam:natian] regarding his pcst-arrest • signee, which a Hewed the prosecutor to impeach him with his failure to tell the police his exculpatory version of the events, and (2) failing to file a motion in limine or object to evidence of the murder victims pregnancy).

English v. Romanowski, 602 F.3d 714 (6th Cir. 2010) (counsel fa"[ed] to adequately investigate before making subsequent!y unfulfilled promise to jury in opening statement to call accuseds girlfriend to witness stand to corroborate self-defense claim).

Gentry v. Sevier, 597 F.3d 838 (7th Cir. 2010) (counsel was ineffective in failing to move to suppress or object to the admission of evidence on 4th Amendment grounds).

Bigelow v. Havilsnd, 576 F.3d 284 (6th Cii\ 2009) (counsel did not reasonably investigate his [clients] alibi defense: An attorneys duty of investigation requires more than simply checking out the witnesses that the client himself identifies. And that is especially true here since Rost knew that Bigelow sufferedfrom an untreated mental illness, [and] that his recollection [was] not fully with him regarding the Jurie

1993 period because he was not taking his medication at the time. Rost had no reasonable basis for assuming that Bigelows lack of information about still more witnesses meant that there were none to be found.).

DeShields v. Shannon, 338 Fed. Appx. 120, 2009 U.S. App. LEXIS 15410 (3d Cir. July 10, 2009) (cumulative effect of counsels failures amounted to ineffective assistance even if failures, [t]aken individually, would perhaps be insufficient for us to conclude that his performance was constitutionally deficient: counsel failed to confront eyewitness with the clear contradiction between her trial testimony and the statement she made to [police officer] on the night of the incident; counsel failed to introduce evidence that [accuseds] clothing was tested for gun shot residue and the results were inconclusive;

Wilson v. Mazzuca, 570 F.3d 490 (2d Cir. 2009) (defense counsel, who elicited testimony damaging to accused and opened door to introduction of other damaging evidence, misinterpreted and misunderstood the law, failed to pay attention, acted recklessly, and did not appreciate the consequences of his decisions, even though in many cases he was explicitly warned of the risks by the trial court).

Richards v. Quarterman, 566 F.3d 553 (Sth Cir. 2005) (counsel rendered ineffective assistance of counsel by failing to presentand, through hearsay objections, preventing the prosecution from presentingcrucial exculpatory evidence and by failing to request instruction on lesser included offense, failing to make use of clisnts medical records, and failing to interview important witnesses before trial).

Hummel v. Rosemeyer, 564 F.3cJ 290 (3d Cir.), cartLt^nied; 558 U.S. 1063 (2009) (counsel was affective in siipulatinfi to accuseds competency and failing to utilize std procedures for ascertaining competency).

Brown v. Smith, 551 F.3d 424 (6th Cir. 2008) (counsel v/as ineffective in failing to investigate and obtain counseling records that could have been used to impeach complainant).

Avery v. Prelesnik, 548 F.3d 434 (6th Cir. 2003), cert, denied, 558 U.S. 932 (2009) (counsel failed to investigate and interview potential alibi witnesses).

Poindexter v. Booker, 301 Fed. Appx. 522, 2003 U.S. App. LEXIS 24221 (6th Cir. Nov. 24, 2003) (counsel was ineffective in failing to investigate and present alibi, and in failing to exercise option under state law to reopsn testimony when additional defense witnesses arrived in court during closing arguments).

Bell v. Miller, 500 F.3d 149 (2d Ck. 2C07) (trial counsel was ineffective in failing to consult with a medical expert to ascertain the possible effects of trauma and pharmaceuticals on key prosecution witness whose memory was obviously impacted by medical trauma and prolonged impairment of consciousness and whose all- important identification [was] unaccountably altered after the administration of medical drugs).

Richey v. Bradshaw, 498 F.3d 344 (6th Cir. 2007) (trial counsel was ineffective in relying on defense experts opinion to forego defense without consult[ing] with that expert to make an informed decision about whether [the] particular defense [was] viable).

Ramonez v. Berghuis, 490 F.3d 482 (6th Cir. 2007) (trial counsels decision not to pursue at all until it was too late) any investigation regarding three potentialwitnesses was objectively unreasonable.

Lafler v. Cooper, 566 U.S. 156,170 (2012) (in cases in which habeas corpus petitioner /zdecline[d] a plea offer as a result of ineffective assistance of counsel and then receive[d] a greater sentence as a result of trial," and in which petitioner "has shown a reasonable probability that but for counsel's errors he would have accepted the plea," "court may exercise discretion in determining whether the defendant should receive the term of imprisonment the government offered in the plea, the sentence he received at trial, or something in between");

Raygoza v. Hulick, 474 F.3d 958 (7th Cir.), cert, denied, 552 U.S. 1033 (2007) (counsel was ineffective in failing to investigate and present alibi defense).

Higgins v. Renico, 470 F.3d 624 (6th Cir. 2006) (counsel was ineffective in forgoing cross-examination of key prosecution witness; states claim of tactical judgment is rejected as too implausible to accept: there simply was no conceivable tactical justification for fail[ing] to cross- examine the key witness in the case).

Lankford v. Arave, 468 F.3d 578 (9th Cir. 2006), cert, denied, 552 U.S. 943 (2007) (counsel proposed accomplice instructions based on federal law, thereby omitting more protective state law requirement of corroboration of accomplice testimony).

Stewart v. Wolfenbarger, 468 F.3d 338 (6th Cir. 2006) (counsel was ineffective in failing to file proper alibi notice and failing to investigate potential witness).

Goodman v. Bertrand, 467 F.3d 1022 (7th Cir. 2006) (counsels failure to subpoena witness, along with inadequate objections and actions to preserve record, and opening of door to admission of petitioners prior convictions constituted pattern of deficiencies that were prejudicial when considered in their totality).

Stanley v. Bartley, 465 F.3d 810 (7th Cir. 2006) (counsel prepared for the trial by reading the statements that prospective witnesses had given the police [but] did not interview any of them).

Reynoso v. Giurbino, 462 F.3d 1099 (9th Cir. 2006) (counsel was ineffective in failing to conduct investigative interviews of two alleged eyewitnesses and failing to cross-examine these witnesses: Although trial counsel is typically afforded leeway in making tactical decisions regarding trial strategy, counsel cannot be said to have made a tactical decision without first procuring the information necessary to make such a decision.).

Adams v. Bertrand, 453 F.3d 428 (7th Cir. 2006) (counsel failed to find and present pivotal witness because counsel committed to a predetermined strategy without a reasonable investigation).
Sanders v. Ryder, 183 Fed. Appx. 666, 2006 U.S. App. LEXIS 16991 (9th Cir. June 7, 2006) (counsel was ineffective in child molestation case in fail[ing] to consult or hire a child abuse interview

expert regarding proper interview techniques or a DNA expert [and in] failfing] to interview the states DNA forensic expert and in failing to use pretrial hearing on childs competency as witness to challenge admissibility of childs hearsay statements to parent).

Virgil v. Dretke, 446 F.3d 598 (5th Cir. 2006) (counsel was ineffective in failing to use a peremptory or for-cause challenge to strike two jurors who expressly state[ed] an inability to serve as fair and impartial jurors and who unequivocally expressed bias against Virgil).

Rolan v. Vaughn, 445 F.3d 671 (3d Cir. 2006) (counsel was ineffective in failing to investigate witnesses named by accused as able to support self-defense claim).

Smith v. Lafler, 175 Fed. Appx. 1, 2006 U.S. App. LEXIS 6667 (6th Cir. March 15, 2006) (counsel was ineffective in failing to investigate complainants prior in-patient. treatment in psychiatric facility which would have led to counsels discovery of report containing prior inconsistent statements by complainant).

Nelson v. Washington, 172 Fed. Appx. 748, 2006 U.S. App. LEXIS 5711 (9th Cir. March 6, 2006) (counsel was ineffective in failing to investigate whether complainants claim of sexual abuse was fabricated or, even if crime had occurred, whether perpetrator was someone other than petitioner).

Cox v. Donnelly, 432 F.3d 388 (2d Cir. 2005) (counsel was ineffective in failing to object to an unconstitutional charge on the key issue of intent to kill).

Daniels v. Woodford, 428 F.3d 1181 (9th Cir. 2005), cert, denied, 550 U.S. 968 (2007) (counsel failed to explain to client why clients testimony at guilt phase was essential to viable defense and failed to deal with breakdown in communications with client by notifying trial judge of problem or seeking assistance from private attorney whom petitioner trusted and who was available).

Thomas v. Varner, 428 F.3d 491 (3d Cir. 2005), cert, denied, 549 U.S. 1110 (2007) (counsel was ineffective in failing to file meritorious motion to suppress identification evidence).

Draughon v. Dretke, 427 F.3d 286 (5th Cir. 2005), cert, denied, 547 U.S. 1019 (2006) (counsel failed to obtain forensic examination of physical evidence that would have contradicted states theory of how fatal shooting occurred and would have countered states argument that petitioner intended to kill victim).

Gersten v. Senkowski, 426 F.3d 588 (2d Cir. 2005), cert, denied, 547 U.S. 1191 (2006) (counsel was ineffective in failing to investigate medical and psychological evidence that would have supported strong affirmative case that the charged crime [of sexual abuse and endangering welfare of child] did not occur and [that] the alleged victims story was incredible in its entirety; states claim of strategic decision on the part of defense counsel is rejected because [djefense counsel may not fail to conduct an investigation.

Hodge v. Hurley, 425 F.3d 368 (6th Cir. 2005) (trial counsels failure to object to any aspect of the prosecutors egregiously improper closing argument was objectively unreasonable).

Man.in •. Gn.sjanL, 424 r.3d f-88 (/th Cir. 2005) (defense counsel uefirientty7jr failing to make the' oropir 3r/ir^{v}iai^<?/ifi3drrii£3il4e, prajudictnl testin)®nv Dy r.nicv^-fcr a^mistfiab ☆er'UYt proper antrprejudiciaibGiosipg^ argument).

Smith v. Dretke, 417 f.3d 438 (5th Cir. 2005) (counsel was ineffective in failing to present testimony by witnesses who could have supported self-defense theory by corroborating accureds testimony about decedents violent nature).

White v. Roper, 416 F.3d 728 (8th Cii'. 2005), cert, denied, 545 U.S. 1157 (2006) (counsal fat.ed to investigate adequately and thus failed to CGJI two witnesses who would have directly supported defenses theory of mistaken identification).

Tenny v. Dretke, 416 F.3d 404 (5th Cir. 2005) (counsel failed to investigate and present self-defense claim adequately).

Henry v. Poole, 403 F.3d 48 (2d Cir. 2005), cert, denied, 547 U.S. 1940 (2006)'(coL'nsel was ineffective in presenting witness who gave alibi for the wrong date and then adher[ing] to the slibi defense and ui'gfingj the jury-,. to accept it).

United States v. Jones, 403 F.3d 604 (8th Cir. 2005) (counsel was ineffective in failing to challenge the indictment as multiplicitous).

Towns v. Smith, 395 F.3d 251 (6th Cir. 2005) (trial counsel rendered ineffective assistance by failing to investigate a witness who had admitted to the police that he had been involved in the crimes and that [petitioner] had played no part).

Jacobs v. Horn, 395 F.3d 92 (3d Cir.), cert, denied, 546 U.S. 962 (2005) (trial counsel rendered ineffective assistance during the guilt phase by failing to adequately investigate, prepare, and present mental health evidence in support of his diminished capacity defense).

Owens v. United States, 387 F.3d 607 (7th Cir. 2004) (counsels motion to suppress tangible evidence erroneously forfeited meritorious claim).

Miller v. Webb, 385 F.3d 666 (6th Cir. 2005) (counsel was ineffective in failing to challenge, for cause, juror who stated that she thinks she can be fair, but immediately qualifie[d] it with a statement of partiality; decision whether to seat a biased juror cannot be a discretionary or strategic decision).

Earls v. McCaughtry, 379 F.3d 489 (7th Cir. 200*») (trial counsel was ineffective in failing to object to social workers opinion that child complainant was truthful ana failing to redact videotape of social workars intan.-isw of comphinant to remove prejudicial statements by social worker; We can think of no strategic reason 'yhy tar*: counsel would not have objected).

Clinkscale v. Carter, 375 F.3d 430, 443 (6th Cir. 2004), cert, denied, 543 U.S. 1177 (2005) (counsel was ineffective in failing to file notice of alibi defense until a few days before trial even though accused informed counsel of alibi promptly and defense investigator reported

existence of at least three alibi witnesses: even if Clinkscales attorneys subjectively believed that failing to file an alibi notice on time was in some way strategicwhich is doubtful such a strategy cannot, under the circumstances presented in this case, be considered objectively sound or reasonable).

Soffar v. Dretke, 368 F.3d 441 (5th Cir. 2004) (defense counsel have offered no acceptable justification for their failure to take the most elementary step of attempting to interview the single known eyewitness to the crime; counsel also failed to consult!] a ballistics expert for assistance in mak[ing] a strategic decision as to whether such information would have helped Soffars defense).

Reagan v. Norris, 365 F.3d 616 (8th Cir. 2004) (trial counsel failed to object to jury instruction that omitted essential mens rea element of charged offense).

Harris v. Cotton, 365 F.3d 552 (7th Cir. 2004) (trial counsel was ineffective in failing to obtain toxicology report showing that decedent, who was shot by petitioner in altercation, was under the influence of alcohol and cocaine at time of death).

A.M. v. Butler, 360 F.3d 787 (7th Cir. 2004) (trial counsel in juvenile delinquency proceeding was ineffective in failing to move for suppression of petitioners confession, which could have been challenged under Miranda and due process doctrine of involuntariness and as fruit of unlawful arrest).

McFarland v. Yukins, 356 F.3d 688 (6th Cir. 2004) (trial counsel, who represented both petitioner and her daughter at trial, was ineffective in opting to present a common defense that neither client possessed the drugs, instead of contending that [daughter] was the owner).

Young v. Dretke, 356 F.3d 616 (5th Cir. 2004) (constitutionally effective counsel would have moved to dismiss the [untimely] indictment [on state law grounds] and the state court would have been required to dismiss the prosecution with prejudice).

Riley v. Payne, 352 F.3d 1313 (9th Cir. 2003), cert, denied, 543 U.S. 917 (2004) (counsel failed to interview eyewitness in order to make an informed judgment about whether [witnesss] testimony would help [accuceds] claim of self-defense and corroborate accuseds claim that victim was in:t·a! aggressor).

Davis v. Secretary, Dept of Corr., 341 F.3d 1310 (11th Cir. 2003) (per curiam) (trial counsel performed deficiently in failing, as required by Floridas rule, to renew Daviss Batson [v. Kentucky] challenge before accepting the jury).

Joshua v. DeWitt, 341 F.3d 430 (6th Cir. 2003) (counsel was ineffective in failing to litigate 4th Amendment issue, which reasonable trial attorney would have raised based on applicable law and facts of case, given that there is nothing in the record to reflect that trial counsel considered and declined to raise [issue] for strategic reasons).

Anderson v. Johnson, 338 F.3d 382 (5th Ck. 2003) (counsel was ineffective in failing to interview eyewitness and instead rel[ying] exclusively on the investigative work of the State and assumptions divined from a review of the States files: there is no evidence that counsels decision to forego investigation was reasoned at all, and it is, in our opinion, far from reasonable).

Alcala v. Woodford, 334 F.3d 862 (9th Cir. 2003) ([t]rial counsel made a sound strategic choice to present an alibi defense, but nonetheless failed in his duty to present that defense reasonably and competently because counsel failed to present best alibi witness and records.

Matthews v. Abramajtys, 319 F.3d 780 (6th Cir. 2003) (counsel failed to capitalize on flaws in the states case regarding identification of petitioner as perpetrator and failed to present potential alibi witnesses, whose testimony would have been quite useful, even if not conclus[ive]).

Holmes v. McKune, 59 Fed. Appx. 239, 2003 U.S. App. LEXIS 1769 (10th Cir. Jan. 31, 2003) (counsels failure to investigate and present available alibi testimony violated even minimal, pre-Strickland standard of ineffective assistance).

Cargle v. Mullin, 317 F.3d 1196 (10th Cir. 2003) (counsel failed to interview or call at least six witnesses who could have provided testimony undermining states two star witnesses, erroneously agreed to forgo impeachment of immunized coperpetrator with deferred sentence on unrelated charges that provided additional incentive to cooperate with prosecution, failed to challenge prosecutions bolstering of states witness with incredible i testimony of police detective, disparaged counsels own client in course of attacking confession, and failed to object to instances of prosecutorial misconduct).

Catalan v. Cockrell, 315 F.3d 491 (5th Cir. 2002) (counsel, who was appointed on day of trial to replace lawyer with potential conflict of interest, declined to seek statutorily available ten-day preparation period and re'ied instead on hour-long consultation with previous lawyer, thereby failing to learn of facts and evidence helpful to [petitioners] defense).

Pirtle v. Morgan, 313 F.3d 1160 (9th Cir. 2002), cert, denied, 539 U.S. 916 (2003) (counsel, who had presented ' expert testimony on accuseds lack of capacity to premeditate due to seizures caused by chronic drug use, * failed to request jury instruction on diminished capacity _ and instead merely requested instruction on intoxication). "

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Miller v. Dormire, 310 F.3d 600 (8th Cir. 2002) (trial * counsel waived right to jury trial without clients consent or understanding).

Luna v. Cam bra, 306 F.3d 954 (9th Cir.), amended, 311 F.3d 928 (9th Cir. 2002) (counsel failed to investigate or present evidence corroborating petitioners alibi defense and also failed to interview individual who ultimately confessed to committing crime with which petitioner was . charged).

Brqwn v. Sternes, 304 F,3d 677 (7th Cir. 2002) (counsels failure to investigate adequately resulted in failure to discover [accuseds] documented history of schizophrenia and treatment and in counsels consequent failure to request a hearing to determine [accuseds] competency to stand trial,

(g) Record of proceedings on sentence, including:
(i) Presentence report;
(ii) Transcript of presentencing conference;
(iii) Transcript of sentencing hearing, including analogues to the records delineated in paragraphs (10)(a)-
(e) above;
(iv) Order imposing sentence or the transcript of announcement of sentence;
(v) Any post-trial or post sentencing reports that judges file in capital cases pursuant to a state statute or court rule;
(h) Post-trial, pre-appeal records, including:
(i) Records relating to bail pending appeal and any hearing on the subject;
(ii) Records relating to indigence status on appeal;
(iii) Records relating to request for stay of sentence or execution pending appeal;
(iv) Records relating to motions for new trial, for reduction in sentence, and the like;
(i) Appellate records, including:
(i) Notice of appeal and any other formal statement of issues on appeal, assignment of errors, petition for appeal, petition for certiorari, application for permission to appeal, and the like;
(ii) Motions to appellate court;
(iii) Opening, reply, and supplemental briefs and letters containing supplemental authority or other communications by any party with the court;
(iv) Transcript of oral argument;
(v) Opinion and orders of appellate court;
(vi) Motion for rehearing or reconsideration;
(vii) Records relating to request for stay of sentence or execution pending subsequent appeal or the filing of a petition for a writ of certiorari;
(j) Petition for writ of certiorari to the United States Supreme Court and supporting documents, including applications for leave to proceed in forma pauperis and for stay of sentence or execution.
(11) The state post-conviction record, including:
(a) Pleadings, answer, reply;
(b) Motions;
(c) Discovery requests and documents;
(d) Hearing, argument, and proffer transcripts;
(e) Exhibits;
(f) Memoranda of law, briefs;
(g) Orders, rulings, opinions;
(h) Post-conviction appellate record.
(12) Trial and appellate counsel's files, including:
(a) Correspondence with the client and the clients family;
(b) Correspondence with the prosecutor;
(c) Correspondence with witnesses and potential witnesses, including expert witnesses;
(d) Correspondence with the court;
(e) Other correspondence;
(f) Notes from investigation;
(g) Legal notes and memoranda;
(h) Expert reports not utilized at trial
(i) Any other document, computer file, audiotape, or videotape generated in the case by former counsel.
(13) Law enforcement files, documents, and other evidence:
(a) Police reports;
(b) Police, "911," arrest, property, inventory, and other logs;
(c) Police and prosecutors[7] witness interview notes and reports;
(d) Pathologist's, coroner's, polygraph examiner's, and other forensic reports and underlying data, notes and records, including as to experts or information not presented at trial;
(e) Examination of the property locker or cage, including for evidence not presented at trial
(f) Photographs of the scene of the offense;
(g) Mug shots of the petitioner at the time of the arrest;
(h) Reports on medical, psychiatric, physical, or forensic examinations of or operations performed on petitioner;
(i) Jail records, especially regarding petitioner's location at relevant times; medical condition or treatment of petitioner, or drugs administered to her; and fact and frequency of visitation by trial counsel, law enforcement officials, witnesses, family members, friends, and others;
(j) Prosecutor's file on the case, including interview notes; notes on exercise of prosecutorial discretion to charge, accept plea, strike prospective jurors peremptorily, recommend sentence, or seek the death penalty; expert reports; correspondence with petitioner, witnesses, the victim's family;
(k) FBI, DEA, Bureau of Alcohol, Tobacco and Firearms, Secret Service, and other federal investigative files, including on cases tried in state courts;
(l) Police or prosecutorial policy statements, manuals, files, logs, reports, statistical (especially racial, ethnic, gender, socio-economic, and geographic) data (not necessarily specific to any individual case) regarding exercise of prosecutorial discretion as to:
(i) Who, and what reported offenses, to investigate;
(ii) Whether, when, and what offenses to charge;
(iii) When to negotiate and what pleas to accept;
(iv) When to invoke "multiple or habitual offender," "use of firearm," and other enhancement possibilities;
(v) What sentencing alternatives to recommend;
(vi) When to seek the death penalty;
(vii) How to exercise peremptory challenges of prospective jurors;
(viii) How to select grand and petit juries;
(ix) When and how police officers and prosecutors suspected of abusive law-enforcement practices are disciplined;
(x) What information in law enforcement files is disclosed to defendants.
(14) Inspection of the scenes of the offense and of the arrest, police searches, and other investigatory procedures.
(15) Records relating to the client's character and background, including records relating to:

(a) Elementary, secondary, vocational, college, graduate and other education;
(b) Medical or physical condition;
(c) Mental health;
(d) Substance abuse;
(e) Employment;
(f) Contact with juvenile, child abuse, welfare, drug abuse, housing, employment, and other social service agencies;
(g) Military, law enforcement, or other governmental service;
(h) Incarceration or other institutionalization;
(i) Parole, probation, or supervised release status;
(j) Arrests, convictions, and sentences.
(16) Correspondence, photographs, and memorabilia relating to petitioner's childhood, family life, and background.
(17) Newspaper articles and media audiotapes and videotapes regarding:
(a) The clients background and record;
(b) The offense;
(c) The police investigation, Including confessions, lineups, show-ups, physical examinations of the defendant or witnesses (including the taking of hair, fingernail, blood or other samples), fingerprints, gunpowder tests, handwriting samples, polygraph examinations, and the like;
(d) Pretrial proceedings in the defendants and codefendants[7] cases;

Don't be overwhelmed with the listing(s) set out above, The listing provides us with what we can and should always review when identifying and researching any of the 54 assignments of errors to raise within the habeas corpus petition, Always look for discrepancies and when anything presents itself that doesn't look right make note, research and then search for cases that have raised similar or the same issue(s).

Remember, identifying the assignments of error(s) that exists in a particular convicted individuals case it is necessary to get a full and complete copy of the criminal case file of the underlying conviction, This includes a copy of the case file that trial counsel possesses / possessed, the case file of the circuit courts clerk's office and the criminal pretrial 'discovery' which contains all witness statements, police, first responder and investigator's reports, crime scene photos, video's, diagrams, and where applicable autopsy, medical examiner reports, notes, death summary reports, medical records and test results and of course the transcripts of the criminal proceedings involving the conviction to be challenged, The templated motion(s) included in this manual will get most, if not all of the documents and records listed for review and research.

In identifying viable claims for reliefs applicable to a defendant's particular case it should first start at the onset of the criminal proceedings, Review the arrest warrant(s), police, witness and other statement(s) and also obtain a copy of the Grand Jury transcripts also called the 'Grand Jury Minutes', (A proper motion for the production of grand jury minutes is included in the "Motions' section of this manual), What was proffered before the Grand Jury to obtain the criminal indictment may be the key to identifying police and or prosecutorial misconducts by their knowing use of false fabricated evidence and perjured testimony of material matters to improperly secure the criminal indictment, Understand that the knowing use of false fabricated evidence and perjured testimony in any felony criminal proceeding is legally defined as "Prosecutorial Misconduct' But more so, The knowing use of perjured testimony by a prosecuting attorney or any law enforcement personnel is "Criminalized Prosecutorial Misconduct', Fora prosecutor to 'knowingly' use and present false fabricated evidence and or perjured testimony that prosecutor must first "suborn' the perjured testimony, "subornation of perjury' in felony criminal proceedings is a felony offense itself in every state, Start identifying potential issues and claims for relief(s), (legally defined as assignments of errors) at the beginning of the defendant's criminal proceedings and work slowly to the conclusion.

In reviewing the criminal case history be sure to look at all of the pre-trial pleadings, filings and motions contained within the clerks records and take the time to research each one, (Examples are motion(s) for bail, production of discovery, for exclusion of evidence, for inclusion of evidence... etc., look at the specific rule(s) of criminal procedure which the pleading, filing or motion was grounded upon and make sure it was properly presented and also litigated, Always look for the decision issued for any pleading, filing and motion placed before the court for decision, A shelved filing may be the key to a procedural error claim.

Transcripts of all pre-trial, trial and post-conviction proceedings are absolutely MUST read, When first becoming familiar with disseminating transcripts take time to research 'EVERY' phrase, term and other unfamiliar wording and learn the language of the law cited, Like in any profession there is a language specific to such, learning the language and proceedings of law are the key to proper litigation(s), Just as learning the language and proceedings of navigation are required to becoming a successful ship's captain, If a person cannot chart a course for open sea and set the datum they can't possibly get to the destination port, Same applies to law, This is not an easy task, This manual is meant to ease the pains in learning the necessary language and proceedings of law.

The following listing provides a simplistic definition of each of the 54 assignments of errors, This is to help in understanding what each of the 'legal terms' mean, The language of law applicable to the assignment(s) of error(s) that are potentially viable for relief.

(1) trial court lacked jurisdiction; Jurisdiction has several components, One is the geographical jurisdiction of where the underlying criminal event occurred, such as in Carthorse County, a jurisdictional issue would arise if the criminal event occurred in Carthorse County, U.S.A, but the criminal proceedings were held in Duckbill County, U.S.A, without a change of venue being granted for good cause, Jurisdictional issues can also arise by the criminal court lacking jurisdiction to convict or sentence a defendant because of ineffective assistance of trial counsel or other procedural, structural or statutory errors.

(2) Statute under which conviction obtained unconstitutional; The unconstitutional statute which a person was convicted under is an obvious error which only requires a reading of the actual criminal code of the underlying charge, Example; "The statute under which the conviction was obtained, W. Va. Code, 60A-4-401(a) Provides; "§ 60A-4-401. Prohibited acts; penalties (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance. [1971]" is unconstitutional because it does not set forth definite standards for proving "intent to deliver;" This is an unusual claim as it reflects directly back to the legislative intent and language set forth within the statute itself.

(3) indictment shows on face no offense was committed; Indictments are secured upon the evidence and testimony of 'Material Matters[7] that constitute a criminal offense has been committed, The test of the sufficiency of the indictment on a claim to vacate a sentence is whether the indictment by any reasonable construction can be said to charge the offense for which the sentence was imposed. Example; For an indictment to state John Doe did commit the felony offense of arson when he lit his pipe after dinner, There is no actual arson offense committed.

(4) prejudicial pre-trial publicity; Prejudicial pre-trial publicity is a common assignment of error in any high profile case especially in smaller communities, the more heinous the offense the more media attention it gets, When there is an obvious showing of relentless media coverage on a particular criminal case it has the potential to create prejudicial pre-trial publicity and causes a serious potential in a defendants inability to seat an unbiased panel of juror's in the trial setting.

(5) Denial of right to speedy trial; All State(s) and Federal criminal rules of procedure provide for a specific time frame for which a criminal defendant must be afforded their right to a criminal trial.

(6) involuntary guilty plea; An involuntary guilty plea can be by threat, coercion or promises made by law enforcement or prosecutor's which were misleading, Example, "Plead guilty and the sentence will be only for 60 days and after making the plea receiving a sentence of 3 years", An involuntary plea can also be ascertained by erroneous advice of counsel, Example, "Attorney Doe said if she pled guilty to one count of forgery the remaining 10 charges would be dismissed and then the court convicted on all 11 charges". Another serious issue on an involuntary plea is where Counsel misinforms a defendant of the law relating to the charge(s) and the potential sentencing, This often raises the same issue in consolidation to the ineffective assistance of counsel later listed.

(7) mental competency at time of crime; Obviously a person's mental state at the time of an alleged criminal event is easy to identify, look for previous psychiatric and mental illness, chronic drug and or alcohol addiction or serious head injuries which the defendant may have suffered which could result in their suffering a "Diminished Capacity' that negates criminal responsibility due to incompetency.

(8) mental competency at time of trial cognizable even if not asserted at proper time or if resolution not adequate; This claim is self-explanatory and involves the same foundations as the competency at time of the crime assignment.

(9) incapacity to stand trial due to drug use; Another obvious assignment as if a defendant is heavily medicated by medical staff or self-medicated by drug addiction to the point of not being able to cognizably participate and understand the criminal proceedings there was the incapacity to stand trial.

(10) language barrier to understanding the proceedings; This assignment is another common error raised as most defendants have little or no understanding of either the language or proceedings of law, When Counsel fails to explain the proceedings and terminology there exists a 'Barrier[7] This assignment can also apply to any non-English speaking persons where a translator was not assigned to interpret for the defendants understanding.

(11) denial of counsel; This assignment is common where a Defendant is being interviewed or interrogated by law enforcement personnel without the presence of an attorney and also where a defendant asks the court for the appointment of a lawyer in criminal proceedings and none is provided.

(12) Unintelligent waiver of counsel; The unintelligent waiver of counsel occurs where a defendant waives the right to an attorney without being duly cautioned as to the potential prejudice that could result.

(13) failure of counsel to take an appeal; Where any convicted person whether by plea agreement, Jury trial or bench trial asks counsel to file an appeal one must be filed, When a lawyer fails to file an appeal it is a viable issue and usually prevails in a reversal for the filing of an appeal.

(14) consecutive sentences for same transaction; This is a basic double jeopardy assignment, United States Constitution provides, in part, that no person "shall... be subject for the same offense to be twice put in jeopardy of life or liberty for the same offence." There also stands what is called a "same transaction test" This test looks to the criminal act itself. If the offense charged arose out of a single criminal transaction or occurrence, then the accused may be charged with only one offense.

(15) coerced confessions; a coerced confession is one that was induced by threat, promise or misleading tactics.

(16) suppression of helpful evidence by prosecutor; Suppression of evidence is defined as "prosecutorial misconduct" and is raised as a ᶻBrady\ 'Giglio' or 'Arizona Youngblood' assignment, These cases are 'MUST' reads and require researching for becoming acclimated with the language of law as well as identifying the many forums where evidentiary

issues present themselves.

(17) State's knowing use of perjured testimony; The states knowing use of perjured testimony is always grounded on a 'Prosecutorial Misconduct' claim, There are several forums, (Police affidavits for warrant(s)$_z$ Grand Jury proceedings, Preliminary hearing proceedings, pre-trial, trial and post-conviction proceedings) where the knowing use of perjured testimony could occur, these claim(s) are raised under the 'MUST' read cases of 'Napue' and the 'Mooney' Principle that state's knowing use of perjured testimony denies due process of law to an accused applies even though false testimony goes only to witness' credibility. 'Mottram claim', Each is always raised as a 'Prosecutorial Misconduct' claim.

(18) falsification of a transcript by prosecutor; An obvious assignment, basically entails the uttering and or forgery of a Court document, and is raised as a 'Prosecutorial Misconduct' claim.

(19) unfulfilled plea bargains; Also defined as 'Breach of Plea' and stands viable where any term or condition set forth within the plea agreement entered into and accepted by the court is not strictly adhered to.

(20) Information in pre-sentence report erroneous; Another obvious assignment as any incorrect information contained within the in pre-sentence report has the potential to influence the criminal proceedings in several forums, (Plea negotiations, Juror's decisions and sentencing).

(21) ineffective assistance of counsel; This assignment of error is the most common of all assignments raised, There is a broad range of situations that constitute the ineffective assistance of counsel, a few Examples are; "In the determination of a claim that an accused was prejudiced by ineffective assistance of counsel violative of the Sixth Amendment to the United States Constitution, courts should measure and compare the questioned counsel's performance by whether he exhibited the normal and customary degree of skill possessed by attorneys who are reasonably knowledgeable of criminal law, This covers a large number of potential errors, Counsel's providing bad advice under a mistake of law, Counsel's failing to adequately investigate facts and law relative to a particular case and the listing goes on...)

(22) double jeopardy; Simplistic assignment, Double jeopardy (SEE ASSIGNMENT 14).

(23) irregularities in arrest; Usually presented as a 'Probable cause' assignment under the 4th amendment of the U.S. Constitution, Can involve many complex issues such as pre-arrest interrogations, Police Brutalities, Threats and other inappropriate misconducts as well as Jurisdictional' issues, Faulted arrest and or search warrants...

(24) excessiveness or denial of bail; This assignment is uncommon and is broad from state to state, look at local statute's to identify a potential assignment.

(25) no preliminary hearing; This is an inalienable right under the 5th and 14th amendments of the U.S. Constitution where the hearing to which an accused is entitled on preliminary examination, leading to his commitment, his release on bail if the offense is bailable, or his discharge from custody for want of evidence to bind him over.

(26) illegal detention prior to arraignment; This assignment addresses the failure to obtain a warrant, probable cause and in not informing the defendant of the renowned 'Miranda Warning' of the right to remain silent.

(27) irregularities or errors in arraignment; This is also a broad ranged assignment, States differ in the time standards and deadlines in affording a defendant arraignment as well as confronting witnesses in the proceedings, review local state statutes regarding the arraignment proceedings.

(28) challenges to the composition of grand jury or its procedures; This assignment has a long list of possible claims, from the improper number of grand jury members, the composure of members who are law enforcement, court or first responder personnel, The "Criminalized" prosecutorial misconduct of the states knowing use of perjured testimony by 'suborning' perjured testimony...

(29) failure to provide copy of indictment to defendant; Obviously this assignment addresses the failure to provide the copy of the indictment passed to the defendant in the pre-trial stage.

(30) defects in indictment; This assignment is also on a broad stance, from the knowing use of perjured testimony, procedural error(s), facts and verbiage and surplusage as well as inaccurate times, dates, addresses, etc....

(31) improper venue; Taking the case to a different county where the criminal event had not occurred, Venue stands in the county or district wherein a cause is to be tried. The county or district in which an indictment is returned. In the original meaning, the county district, or neighborhood from which the jury was to come. Not to be confused with "jurisdiction/' since jurisdiction may not be conferred by consent or waiver, whereas the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by failure to make a timely objection, thereby permitting the court to proceed and render a valid judgment.

(32) pre-indictment delay; Another assignment in which states differ upon the time standards and deadlines set forth by the legislature which requires researching the sate statute where the conviction occurred.

(33) refusal of continuance; Simplistic assignment as it addresses the refusal for a continuance in all forums, (pretrail, trial, pre-sentencing...etc...)

(34) refusal to subpoena witnesses; This assignment generally

reflects back to an ineffective assistance of counsel assignment, It also can be addressed as a prosecutorial misconduct claim.

(35) prejudicial joinder of defendants; This assignment addresses multiple defendants of a criminal event being forced to stand trial at the same time.

(36) lack of full public hearing; This assignment addresses the court's not holding every stage of the criminal proceedings in an 'Open" court setting.

(37) nondisclosure of Grand Jury minutes; This is an important assignment as every defendant needs to be provided a copy of the grand jury transcripts in order to identify any police, prosecutorial or other misconducts that may have occurred during the proceedings and also in identifying any false, fabricated evidence or perjured testimony used to improperly procure the indictment, A motion for the production of grand jury minutes is included in the manuals Motions section.

(38) refusal to turn over witness notes after witness has testified; Obvious assignment that needs no explanation.

(39) claim of incompetence at time of offense, as opposed to time of trial; Review assignments?, 8, and 9.

(40) claims concerning use of informers to convict; This assignment is very broad and addresses many diverse issues, Codefendants receiving immunity or lesser severe sentences or money for testimony, etc....

(41) constitutional errors in evidentiary rulings; This entails a thorough review of all pleadings, motions and filings as well as the decisions issued regarding any and all evidence as well as expert witness testimony.

(42) instructions to the jury; Instructions are "MUST read and research, many times jury instructions are open ended or even not in line with lawful citation or authorities, always look for defects and verbiage NOT compliant to the laws relating to the instructions.

(43) claims of prejudicial statements by trial judges; This assignment is obvious and needs no example.

(44) claims of prejudicial statements by prosecutor; This assignment is obvious and needs no example.

(45) sufficiency of evidence; This entails a thorough review of all pleadings, motions and filings as well as the decisions issued regarding any and all evidence as well as expert witness testimony.

(46) acquittal of co-defendant on same charge; This assignment is obvious and needs no example.

(47) defendant’s absence from part of the proceedings; This assignment is obvious and needs no example.

(48) improper communications between prosecutor or witnesses and jury; The only time a prosecutor is to communicate with any juror is during the in court proceedings at trial and there is to be NO suggestions or comments regarding the guilt or innocence of a defendant.

(49) question of actual guilt upon an acceptable guilty plea; This often comes as a 'consolidated' assignment to an ineffective assistance of counsel claim and can be lodged as a 'Laffler Cooper' 'Missouri Frye' claim.

(50) severer sentence than expected; as "Breach of Plea' and stands viable where any term or condition set forth within the plea agreement entered into and accepted by the court is not strictly adhered to, and also a potential ineffective assistance of counsel assignment as improper advice as to the sentence that could be imposed.

(51) excessive sentence; This assignment is obvious and needs no example.

(52) mistaken advice of counsel as to parole or probation eligibility; This assignment is obvious and needs no example.

(53) amount of time served on sentence, credit for time served; This assignment is obvious and needs no example.

54) Bill of attainder, Not Sentenced; This assignment is unusual but none the less important for review and research, Often a defendant who is convicted is not sentenced and only 'committed' to the supervision of prison officials, This is legally defined as the state into which the offender was placed by operation of law when sentence was pronounced against him for a capital offense, by the ancient common law. 2. The three principal incidents of attainder were forfeiture of property, corruption of blood, and civil death. When NO sentence has been imposed a defendant is NOT allowed to file an appeal, This is in fact 'Civil Death', where the defendant suffers the extinction of all civil rights, such as filing any pleadings, motions or appeals challenging the conviction for which no sentence was properly imposed.

This listing is not absolute and there are many other ways to apply these assignments as the situation presents itself, What is provided is a basic guideline for those who are unfamiliar with the assignments of error(s) that are commonly raised in challenging a conviction, Always look for different ways to present ary issues in consolidated claims, Example, Ineffective Assistance of Counsel, Breach of Plea and excessive sentence, 3 separate assignments based upon a single issue, Take your time in studying the assignments and research cases that address each, This will show how the claims were presented and under what assignment(s) of error(s) were determined as issues.

Always make note of the state and constitutional violations claimed in the cases researched for each of the assignments of error(s), For example, Ineffective
Assistance of Counsel is violative of the 6th Amendment of the

U.S. Constitution, The state's knowing use of perjured testimony and prosecutorial misconduct is violative of the 5th and 14th Amendments of the U.S. Constitution and an improper search, seizure is violative of the 4th amendment of the U.S. Constitution. Each state has it's own Constitution which will reflect off of the U.S. Constitutions Amendments, Be sure to research each of the state constitutions applicable articles that coincide with the U.S. Constitutional violations identified to the specific assignment of error(s) being claimed, Remember, A Petitioner MUST seek reliefs under Constitutional violations proven and identified, No citation of the constitutional violation(s) suffered means No claims for reliefs being GRANTED.

Any incarcerated convicted person who is considering challenging their conviction and every law student as well as practicing criminal defense lawyers should thoroughly review this manual as well as understanding each of the assignments of error(s) listed and the applicable issues and claims for relief(s), The convicted self-represented litigator, (Known as the Petitioner) should always be overly attentive and study daily as much as possible, research, research, and research, write, read and then rewrite, never be comfortable with a first or even a second draft of any pleadings, motion(s) or filing(s) and never allow oneself to get off base or lost in the assignment or issue being presented, Only address what the facts prove, never make a bald assertion, If it doesn't exist on record it does not exist in law and there is no argument that can be presented that is grounded in facts and law if the record does not reflect the contentions raised.

The motion(s) included in the motion section of this manual will provide every law student, lawyer, judicial official as well as the convicted litigating petitioner the education and understanding of exactly how to write each of the motion(s) which will be required to successfully litigate Habeas Corpus proceedings.

For those who are just beginning to study and to self* litigate a Habeas Corpus proceeding it is important not to allow yourself to get tunnel vision and stuck on a single issue, Remember, the convicted person themselves knows what has, and what has not occurred in the criminal proceedings, If you are the defendant make a list of what you feel was done improperly before you begin researching, then as you disseminate the record and case file apply your list to the one of potential assignments that show themselves.

The following chapter will provide the reader with an extensive listing of assignments of errors and claims for habeas corpus relief(s) which have prevailed in relief(s) being granted, These cases are included to educate the reader on the basic(s) of assignments and the issues presented, It is important to read any of the cases which have an appearance to being applicable to any assignment(s) identified after reviewing the criminal case file contents and procedural history of the convicted individuals case the reader is researching.

The following is only meant for education and research purposes, Keep in mind that there will be many other cases cited within the body of the ones provided in the listing that will further educate in the proper assessment and presentment of the assignments(s) of errors and claims for reliefs which are possible.

White v. Godinez, 301 F.3d 796 (7th Cir. 2002) (lack of adequate consultation with client and investigation caused counsel to forgo potentially viable defense in favor of approach that was less likely to prevail).

Rios v. Rocha, 299 F.3d 796 (9th Cir. 2002) (counsel was ineffective in committing to unconsciousness defense before obtaining facts necessary to gauge whether to present alternative or additional defense of misidentification).

Beltran v. Cockrell, 294 F.3d 730 (5th Cir. 2002) ([djefense counsels unreasonable strategic decisions and investigative failures, which led to failure to elicit evidence suggesting that codefendant was primary actor in capital murder, amounted to ineffective assistance of counsel).

Ouber v. Guarino, 293 F.3d 19 (1st Cir. 2002) (counsel committed unacceptable error in professional judgment in advis[ing] the petitioner against testifying after counsel had already given opening statement that repeatedly promised that the petitioner would testify and exhorted the jurors to draw their ultimate conclusions based on her credibility).

Jennings v. Woodford, 290 F.3d 100S (9th Cir： 2002), cert, denied, 539 U.S. 958 (2003) (counsel was ineffective in concentrating exzlusivaly on alibi defense and thereby investigate and prescr,t available mental heaixh' 'zv'oence that petitioner lacked capacity to form mens rca ^urci&r}.

Everett v. Beard, 290 F.3d 500 (3d Cir. 2002), cert, denied, 537 U.S. 1107 (2003) (trial counsel was ineffective in failing to object io jury instructions permitting conviction of getaway driver without finding of intent to kill).

Hsherv. Gibson, 282 F.3d 1283 (10th Ck. 2002) (trial d?>unsel was ineffective in failing to conduct pretrial . i?iVestigation and, at trial, failing to advance defense theory, forgoing opening statement and dosing argument, eliciting information damaging to defense, ma[king] no attn.npt whatsoever to draw the jurys attention to any gaps in the states evidence, and engaging in behavior that revealed counsels animosity toward his client).

Dixon v. Snyder, 266 F.3d 693 (7th Cir. 2001) (trial counsel, who assumed that conviction was precluded by eyewitnesss recantation, failed to realize that state law parmitted prosecution to introduce eyewitnesss pretrial identification of accused as substantive evidence, then failed to respond to prosecutions introduction of statement by introducing eyewitnesss recantatfons of earlier identification). ' "

Northrop v. Trippett, 265 F.3d 372 (6th Cir. 2001), cert, denied, 535 U.S. 955 (2002) (counsel failed to file meritorious motion to suppress physical evidence;

Burns v. Gammon, 260 F.3d 892 (8th Cir. 2001) (trial counsels failure to object to prosecutors closing argument derogating [petitioners] constitutional right to a jury trial and to confront witnesses allowed, and in fact, invited the jury to punish [petitioner] for exercising his constitutional rights, and [t]here was no reasonable tactical basis for failing to make a constitutional objection to th[e] argument).

Pavel v. Hollins, 2001 U.S. App. LEXIS 16809 (2d Cir. July 25, 2001) (counsel was ineffective in failing to prepare defense because of assumption that weakness of prosecutions case would result in dismissal; failure to call witnesses who would have supported accuseds account, although strategic in some senses of the word, was not the sort of conscious, reasonably informed decision made by an attorney with an eye to benefitting his client that the federal courts have denominated strategic and have been especially reluctant to disturb; counsels failure to ca'l expert could not be deemed strategic because counsel failed to consult with expert beforehand and lackad education [and] experience necessaiy to make determination without advice from expert).

Hughes v. United States, 258 F.3d 453 (6tn Cir. 2001) (counsel failed to respond to venirepersons expression of doubt about capacity for fairness by seeking removsl for cause or exercising peremptory strike or even tv as^inc follow-up questions; no sound ^rial strat a vculj sujiporr counsels effective waiver,of Pedtioners basic i/xtiY Amendment right to trial by ijnpartral juiv);

Miller v. Anderson, 255 F.3d 455 (7th Cir.), vaca on vther grounds, 268 F.3d 485 (7th Cir. 2001) (counsel was ineffective in calling witness whose testimony opened door to cross-examination about accuseds prior convictions: The fact that [this] was a tsctic obviously does not immunize it from review in a challenge to the lawyers effectiveness.; counsel also was ineffective in failing tc consult experts to prepare to challenge states scientific and physical evidence).

Wilcox v. McGee, 241 F.3d 1242 (9th Cir. 2G01) (per curiam) (counsel failed to raise obvious and maritciious double jeopardy challenge to re-;ndictmant).

Lindstadt v. Keane, 239 F.3d 191 (2d Cii\ 2001) (representation was rendered ineffective by cumulative effect of four errors: failure to exploit important ■ discrepancy in prosecution witnesses accounts; failure to raise available challenge to prosecutions physical evidence; commant in opening statement that amounted to concession that clients taking witness stand would signal that prosecution had satisfied burden of proving charges; failure to offer adequate arguments for relevance of important defense testimony).

Additionally, Petitioner swears under the penalty of peijury that he does not possess any cash or surety to retain private counsel to represent him. Furthermore, Petitioner has been incarcerated since his arrest, and is unable to work for any substantial income in the attempt to retain private counsel.

Therefore, for the above stated reasons Petitioner prays that this Honorable Court will not only grant Petitioner's Habeas Corpus, but will enter an order appointing experienced counsel to represent him in, but not limited to, preparing an Amended Petition, and Memorandum of Law supporting thereof, and any other documents to help this Court in determining whether or not to grant any relief that is deemed just, fair, and appropriate in the instant case at bar.

CERTIFICATE OF SERVICE

I, hereby affirm service of the motion for appointment of counsel upon the County Circuit Clerk, on the date below notarized.

Petitioner/Defendant

Sworn to Before me on, _____

NOTARY PUBLIC,
My commission expires: /_____/

IN THE **COUNTY CIRCUIT COURT OF WEST VIRGINIA**

_____
Petitioner,

V. **Case No.**

_____
Respondent,

NOTICE OF EXPRESS INFORMED CONSENT REQUIRED

Comes the Petitioner,_____,Serving formal notice of his express informed consent being required upon Attorney_____and the_____County Circuit Court and Lawyer Disciplinary Counsel as follows;

Attorney_____,You are hereby served the directives that I will not agree or allow you to alter, amend, change or otherwise any of my filings or pleadings in the instant matters and that you are NOT to file ANY pleadings, motions or otherwise in the case sub judice without firstly obtaining my express informed consent, in writing.

By this directive and in compliance to the Rules of Professional Conduct, You, Attorney _,are required to obtain my express informed consent, In writing, As a client before accepting, continuing or pursuing any course of action or conduct in the case sub judice. SEE e.q. Rules of Professional Conduct 1.2(C), 1.6(a) and 1.7(b).

These Rules require that my express informed consent be confirmed in writing- SEE Rules 1.7(b) and 1.9(a) for the definition of conformed in writing, SEE paragraphs (a) and (b) 'Other Rules' that require a client's consent be obtained, In writing, Signed by the client, You may review Rules 1.8(a) and 1.8(g) for the definition of'Signed'.

I include formal notice of initiating Lawyer Disciplinary complaints and American Bar Association action(s) against Attorney Benjamin Freeman should he not adhere to the directives as detailed within the body of this formal notice of express informed consent being required.

CERTIFICATE OF SERVICE

I,_____,Affirm service by U.S. Mail of the instant pleadings, upon the __County Circuit Clerk, Attorney_____, and the Lawyer Disciplinary
Review Counsel, On the date below notarized.

_____

Petitioner/Affiant

Sworn to before me on, /_____/

_____

NOTARY PUBLIC

My commission expires. _____

IN THE CIRCUIT COURT OF COUNTY OF WEST VIRGINIA

_____

Plaintiff;

vs. Civil Action, No._____; _____

_____
Defendant

To the Named Defendant:
Each Named Defendant is sued in his or her individual capacity

SUMMONS

IN THE NAME OF THE STATE OF WEST VIRGINIA, you are hereby summoned and required to serve upon _____, plaintiffFs attorney whose address is _____, or serve upon the plaintiff if stated, whose address is_____; an answer, including any related counterclaim you may have, to the complaint filed against you in the above-styled civil action, a true copy of which is herewith delivered to you. You are required to serve your answer within ***twenty (20) days*** after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint and you will be thereafter barred from asserting in another action any claim you may have which must be asserted by counterclaim in the above-styled civil action.

DATED: / /_____

_____
Clerk of Court

ACKNOWLEDGEMENT OF RECEIPT OF SUMMONS AND COMPLAINT

I declare, under penalty of perjury, that I have received a copy of the summons and of the complaint in the above-styled captioned matter at:

_____ _____
NAME Signature

_____ _____
Authority to Receive Relationship to Entity/
Service of Process

IN THE_____COUNTY CIRCUIT COURT CLERKS OFFICE

_____
Requestor, Defendant,

IN RE: Case No:__-___-____

_____County Circuit Clerk,
Respondent/Custodian,

LAWFUL REQUEST FOR RECORDS

Comes the Requestor, Defendant,_____,moving this Circuit Court Clerk by lawful demand and request for the provision of copies, in complete of the following documents, pursuant to W.Va. CODE 51-4-2.

1) _____ :

_____

_____

LEGAL STANDARDS

51-4-2. Inspection of records and papers; copies. The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided.

CONCLUSION

Copies of the documents are to be provided to the requestor, by U.S. Mail at the address of;

_____
_____
_____
CITY STATE ZIPCODE

CERTIFICATE OF SERVICE

I, hereby affirm service of the instant lawful demand for the above described documents upon the _____County Circuit Clerk, on the date below notarized.
Sworn to Before me on, _____

_____
Requestor/Defendant

_____
NOTARY PUBLIC,
My commission expires: / /

IN THE CIRCUIT COURT OF **COUNTY OF WEST VIRGINIA**

_____	
Petitioner,	
V.	
	Case No.
_____	
Respondent	

MOTION FOR THE APPOINTMENT OF EXPERT WITNESS

Comes now,_____, (Petitioner hereinafter), Pro Se, respectfully presenting this Motion pursuant to West Virginia Rule 706 of the W.Va. Trial Court Rules subsections (a) and (b). for the appointment and payment of an expert witness,_____, regarding the matters and issues of the case sub judice.

RELEVANT LEGAL STANDARDS

Rule 706. Court-appointed expert witnesses, (a) Appointment. — The court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed and may request the parties to submit nominations. The court may appoint any expert witnesses agreed upon by the parties and may appoint expert witnesses of its own selection. An expert witness shall not be appointed by the court unless he or she consents to act. A witness so appointed shall be informed of his or her duties by the court in writing, a copy of which shall be filed with the clerk, or at a conference in which the parties shall have opportunity to participate. A witness so appointed shall advise the parties of his or her findings, if any; the witness' deposition may be taken by any party; and the witness may be called to testify by the court or any party. The witness shall be subject to cross-examination by each party, including a party calling the witness.

West Virginia Rule 706 of the W.Va. Trial Court Rules subsection (b) Compensation. — Expert witnesses so appointed are entitled to reasonable compensation in whatever sum the court may allow. The compensation thus fixed is payable from funds which may be provided by law in criminal cases and civil actions. In other civil actions and proceedings the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs.

RELEVANT BACKGROUND

Petitioner seeks the appointment and payment of an expert witness in the field and sciences of _____to allow a meaningful and proper review and explanation of the serious and complex issues involving___, which are not possible by lay witness testimony nor a witness affidavit.

RELIEFS SOUGHT

Petitioner seeks the Appointment and payment of an expert witness accredited and certified in the sciences and law of_____To after review of the record issue a report based on the findings and facts contained therein and for the record of the report to be spread upon the record to eliminate all confusions in the complex matters.

CERTIFICATE OF SERVICE

I, hereby affirm service of the motion for appointment and payment of an expert witness upon the _____County Circuit Clerk, on the date below notarized.

_____
Petitioner/Defendant

Sworn to Before me on, _____

_____
NOTARY PUBLIC,
My commission expires: /_____/

IN THE **COUNTY CIRCUIT COURT OF WEST VIRGINIA**

_____,____
Petitioner,

V. **Case No:**

The Honorable_____, Judge of the Circuit Court of_____County, Respondent,

MOTION TO DISQUALIFY PRESIDING JUDGE

Comes the Petitioner,__, Moving this Honorable Court by Motion for the disqualification of the Honorable _____, Judge of the Circuit Court of_____County from the Habeas Corpus Proceedings initiated wherein Judge_____is named as a 'Party' who violated the constitutional rights of the Petitioner, The instant pleadings are hereby presented pursuant to W.Va. Trial Court Rule 17.01 and its respective subparts.

RELEVANT LEGAL STANDARDS

West Virginia Trial Court Rule 17.01 provides that "[u]pon a proper disqualification motion, as set forth in this rule, a judge shall be disqualified from a proceeding only where the judge's impartiality might reasonably be questioned, in accordance with the principles established in Canon [2.11] of the Code of Judicial Conduct."

West Virginia Trial Court Rule 17.01. Motions for Disqualification.

Upon a proper disqualification motion, as set forth in this rule, a judge shall be disqualified from a proceeding only where the judge's impartiality might reasonably be questioned, in accordance with the principles established in Canon 2, Rule 2.11 of the Code of Judicial Conduct.

(1) State the facts and reasons for disqualification, including the specific provision of Canon 2, Rule 2.11 of the Code of Judicial Conduct asserted to be applicable;

W.VA. Code of Judicial Conduct; Rule *2 Al*— Disqualification (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

It was held in the case of Williams v. Brannen, 116 W. Va. 1, 178 S.E. 67 (1935), supra, that no man can

be a judge in his own case, and that this maxim applies in a case where a judge or inferior judicial officer is interested, as well as in a case in which he is a party.

The second point of the syllabus of the case of Williams v. Brannen, supra, quoting from the case of Tumey v. Ohio, supra, clearly sets out this principle wherein it was stated: "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law."

The common law principle which remains today in full force and effect in West Virginia that no man can be judge of his own case applies as well to a case in which a judge or magistrate is interested as to one in which he is a party.

FACTS AND REASONS SO STATED IN SUPPORT OF DISQUALIFICATION

Relator, Petitioner herein affies that Judge_____is named as a 'Party' in a Petition for Writ of Habeas Corpus, To Wit; within the assignments of errors presented the issue of Judicial Misconduct names Judge____as the 'Party' who violated the Constitutional rights of the Relator, Petitioner, which certainly causes Judge_____to harbor a personal bias or prejudice concerning your Relator, Petitioner as well as personal knowledge* of facts that are in dispute in the proceeding wherein Judge ____is named as a violating "party" of the Relator, Petitioner's Constitutional rights.

CERTIFICATION

Relator, Petitioner provides certification pursuant to West Virginia Trial Court Rule 17.01, (2), that he has read the motion; that after reasonable inquiry, to the best of his knowledge, information, and belief, it is well grounded in fact and is warranted by either existing law or a good faith argument for the extension, modification, or reversal of existing law; that there is evidence sufficient to support disqualification; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, as affirmed by his notarized signature at conclusion of the Motion Sub Judice.

Relator, Petitioner now concludes that the instant pleadings are presented in good faith, are not intended for an improper purpose and are ripe for the review and decision of the States Highest Court's Chief Justice,

Respectfully.

CONCLUSION / RELIEFS SOUGHT

Relator, Petitioner seeks the Disqualification, Or, In the alternative, The voluntary Recusal of Judge_____from the Habeas Corpus proceedings which your Relator, Petitioner has initiated wherein Judge_____is in fact named as a "Party" who violated the Constitutional rights of your Relator, Petitioner as detailed within the assignment(s) of errors presented therein the body of the Petition, So as to eliminate the appearance of impropriety in the proceedings in line with the common law principle which remains today in full force and effect in West Virginia that no man can be judge of his own case applies as well to a case in which a judge or magistrate is interested as to one in which he is a party.

_____

PETITIONER

Sworn to before me, On, /_____/ ___

_____

NOTARY PUBLIC

My Commission Expires /_____/_____

CERTIFICATE OF SERVICE

I,_____, Affirm service, By U.S. Mail, of the instant Motion for the Disqualification of Judge__, On the date above notarized upon;

1) Judge_____ ;

2) The_____County Circuit CJerk; and

3) The Chief Justice of the West Virginia supreme Court of Appeals.

IN THE CIRCUIT COURT OF **COUNTY OF WEST VIRGINIA**

Petitioner,

V. **Case No.**

Respondent

MOTION FOR STATUS HEARING

Comes now,_____,(Petitioner hereinafter), Pro Se, respectfully presenting this Motion for a status hearing to be had regarding the matters and issues of the case sub judice.

RELEVANT LEGAL STANDARDS

W. Va. Const, art. Ill, § 17 provided that justice was to be administered without sale, denial, or delay, that Canon 3B(8) of the West Virginia Code of Judicial Conduct provided that a judge was to dispose of all judicial matters promptly, efficiently, and fairly, and that judges had an affinnative duty to render timely decisions on matters properly submitted within a reasonable time following their submission.

RELEVANT BACKGROUND

Petitioner has the current Habeas Corpus proceedings pending before this Court for which have became stale and without action and are nearly leveling upon a due process violation by the case being inactive.

RELIEFS SOUGHT

Petitioner seeks a status hearing be had into the instant matters and that a strict scheduling ORDER beissued to insure the compulsory process of the Habeas proceedings sub judice do not become inactive and to insure that the case is brought to ***a*** timely resolve.

CERTIFICATE OF SERVICE

I, hereby affirm service of the motion for appointment and payment of an expert witness upon the

_____County Circuit Clerk, on the date below notarized.

Petitioner/Defendant

Sworn to Before me on, / /_____

NOTARY PUBLIC,
My commission expires: / /

IN THE **COUNTY CIRCUIT COURT OF WEST VIRGINIA**

_____

Defendant/Petitioner,

V. **(Underlying Criminal Case No.)**

STATE OF WEST VIRGINIA,

MOTION FOR THE APPOINTMENT OF COUNSEL TO PERFECT AND FILE A MOTION FOR THE PERFORMANCE OF DNA TESTING

Comes the Defendant,_____, Moving this honorable court by motion for the appointment of counsel to perfect and file a motion for the performance of DNA testing pursuant to

W. Va. CODE 15-2B-14,(a),(b),l.

DEFENDANT'S STATEMENT IN SUPPORT OF MOTION

Defendant provides the following statement in compliance to W.Va. CODE 15-2B-14,(a),(b),l. as:

I,_____affirm that I am not the perpetrator of the sexual assault for which I was wrongfully convicted and include that DNA testing is relevant in asserting my actual innocence.

I further assert that I have not before been appointed counsel under W.Va. CODE 15-2B-14 or it's respective subparts. .

VERIFICATION

I,_____herby verify the instant pleadings, under the penalties of peijury, pursuant to W.Va. CODE 15-2B-14, 4,(c),(l).

(A) The Identity of the actual perpetrator of the underlying criminal conviction has not been scientifically authenticated in accordance to present day scientific standards; More so, Previous testing's showed that 1, the Defendant, was not the contributor of the DNA material(s) tested.

(B) In light of the evidence ascertained by the perfbrtnance of DNA testing there would certainly be a reasonable probability in

My, the Defendant's conviction being rescinded and a verdict of not guilty would have been issued if present day testing standards would have been performed prior to the criminal trial proceedings which resulted in a wrongful conviction being secured upon faulted scientific testing(s).

(C) Identifies that all previous testing(s) standards and material(s) need tested by todays scientific standards and that the source and type(s) of testing(s) are to be described by Appointed Counsel.

(D) Includes that there has been prior conflicting results of DNA testing(s) by the outdated standards of the times of the underlying conviction, Both Showing, I, Your Defendant was not the contributor of the DNA material(s) tested, And, That the DNA material(s) tested showed that I, Your Defendant, could have been possibly the contributor of the DNA material(s) tested by the same outdated standards of testing.

(E) I,_____ ____ aver that no testing has been previously motioned for under the section(s) of W.Va. CODE 15-2B-14 or its respective subparts.

CONCLUSION / RELIEF(S) SOUGHT

Defendant herein,_____seeks the reliefs in this honorable Court GRANTING the instant Motion and appointing experienced qualified Counsel to perfect and file a motion for the performance of DNA testing pursuant to W.Va. CODE 15-2B-14,(a),(b),l.

CERTIFICATE OF SERVICE

I,_____, Affirm service by U.S. Mail of the instant pleadings, upon the_____ County Circuit Clerk, and The_____County Prosecuting Attorney, On the date below notarized.

_____

Petitioner/Affiant

Sworn to before me on, /_____/____

NOTARY PUBLIC
My commission expires. _____

IN THE COUNTY CIRCUIT COURT OF WEST VIRGINIA

_____,
Petitioner,

V. **Case No:**

_____ ,
Respondent,

MOTION FOR LEAVE OF COURT TO CONDUCT DISCOVERY

Comes the Petitioner, ,Moving this Honorable Court by Motion for leave of Court to conduct Discovery in the Habeas Corpus proceedings sub judice and presents such pursuant to Rule 7 of the W.Va. Rules governing post-conviction Habeas Corpus proceedings and Rule 26 of the W.Va. R. Civ. Proc.

RELEVANT LEGAL STANDARDS

Rule 7. Discovery.

(a) Leave of court required. In post-conviction habeas corpus proceedings, a prisoner may invoke the processes of discovery available under the West Virginia Rules of Civil Procedure if and to the extent that, the court in the exercise of its discretion, and for good cause shown, grants leave to do so. If necessary for effective utilization of discovery procedures, counsel shall be appointed by the court for a petitioner who qualifies for the appointment of counsel under Rule 3(a).

(b) Requests for discovery. Requests for discovery shall be accompanied by a statement of the interrogatories or requests for admission and a list of the documents, if any, sought to be produced.

Rule 26 of the W.Va. R. Civ. Proc. General provisions governing discovery, (a) Discovery methods.— Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examination; and requests for admission.

(b) Discovery scope and limits. — Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In general. — Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody,

condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

(A) The discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the ease, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) Insurance agreements. — A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy pa!: or all of a judgment which may be entered in the action or to indemnify or reimburse for payn^ms made tc- satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as pan of an insurance agreement.

(3) Trial preparation: materials. — Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it; or

(B) A stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial preparation: experts. — Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the

grounds for each opinion.

(ii) A party may depose any person who has been identified as an expert whose opinions may be presented at trial.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result:

(i) The court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and

(ii) With respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Protective orders. — Upon motion by a party or by the person from whom discovery is sought, including a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the court;

(6) That a deposition after being sealed be opened only by order of the court;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be open as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and sequence of discovery. — Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. — A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement that party's response with respect to any question directly addressed to:

(Tne identity and location of persons having knowledge of discoverable matters, and

' £) identity of each person expected to be called as an expert witness at trial, the subject matter whica ib.e expert is expected to testify, and the substance of the expert's testimony.

(2) A is uncier a duty seasonably to amend s prior response if the party obtains information upon the basis of which:

(A) The party knows that the response was incorrect when made, or,

(B) The party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time pricr to trial through new requests for supplementation of prior responses.

If supplementation is not made as required by this Rule, the court, upon motion or upon its own initiative, may impose upon the person v/ho failed to make the supplementation an appropriate sanction as provided for under Rule 37.

(f) Discovery conference. — At any time after commencement of an action the court may direct the attorneys for the parties to appear before it personally or by telephone for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes:

(1) A statement of the issues as they then appear;

(2) A proposed plan and schedule of discovery;

(3) Any limitations proposed to be placed on discovery;

(4) Any other proposed orders with respect to discovery; and

(5) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

Each party and the party's attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes; establishing a plan and schedule for discovery; setting limitations on discovery, if any; and, determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 16. ;

(g) Signing of discovery requests, responses, and objections. — Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's

individual name, whose address shall be stated. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that the attorney or party has read the request, response, or objection, and that to the best of the attorney's or party's knowledge, infonnation, and belief formed after a reasonable inquiry it is:

(1) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(2) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and .

(3) Not unreasonable or unduly burdensome or expensive, given the needs of the case,, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

Discovery methods are available as follows under Rule 26.

Rule 27. Depositions

Rule 33. Interrogatories to parties.

Rule 34. Production of documents and things and entry upon land for inspection and other purposes.

STATEMENT SETTING FORTH DISCOVERY METHOD SOUGHT

Petitioner herein affirms and states that Discovery by the means of Depositions, Interrogatories or the Production of documents and things and entry upon land for inspection and other purposes, **(CHOOSE THE ONE SOUGHT)** is necessary for the full and proper development of the issue by the record of **(IDENTIFY ASSIGNMENT OF ERROR HERE),** And moves this honorable Court by leave to conduct the same as requested.

RELIEFS SOUGHT

Petitioner seeks an ORDER be issued GRANTING the Petitioner leave of Court to conduct the discovery as described above to properly develop the issue of **(IDENTIFY ASSIGNMENT OF ERROR HERE)** and for such leave to be issued a scheduling ORDER to insure the matters be resolved in a timely manner.

PETITIONER

Sworn to before me, On, / /

NOTARY PUBLIC

My Commission Expires / /_____

IN THE CIRCUIT COURT OF
COUNTY OF WEST VIRGINIA

Petitioner,

V.

Case No.

Respondent

MOTION FOR ENTRY OF JUDGMENT

Comes now,_____,(Petitioner hereinafter), Pro Se, respectfully presenting this Motion for the Entry of judgment pursuant to West Virginia Rule 58 of the W.Va. Rules of civil procedure regarding the matters and issues of the case sub judice.

RELEVANT LEGAL STANDARDS

Rule 58. W.Va. R. Civ. Proc. Entry of judgments.

Subject to the provisions of Rule 54(b), the court shall promptly settle or approve the form of the judgment and sign it as authority for entry by the clerk. The clerk, forthwith upon receipt of the signed judgment, shall enter it in the civil docket as provided by Rule 79(a). The notation of a judgment in the civil docket as provided by Rule 79(a) constitutes the entry of the judgment; and the judgment is not effective before such entry. The entry of judgment shall not be delayed for the taxing of costs or to permit a motion for a new trial or any other motion permitted by these rules.

RELEVANT BACKGROUND

Petitioner has filed, litigated and brought the instant case to resolve and the matters are now rested and matured for this Honorable Courts final decision and ORDER(s) For which is now being sought respectively.

RELIEFS SOUGHT

Petitioner seeks the Entry of Judgment be issued in the case sub judice to bring the matters to final resolve and to afford the Petitioner the procedural due process as provided in art. Ill, 17 of the W.Va. State Constitution and the 14th Amendment of the U.S. Constitution.

CERTIFICATE OF SERVICE

I,_____, hereby affirm service of the motion for Entry of Judgment upon the ___County Circuit Clerk and_____County Prosecuting Attorney on the date below notarized.

_____
Petitioner/Defendant

Sworn to Before me on, _____

_____
NC f AHY PUBLIC,
expires:/ /

IN THE **COUNTY CIRCUIT COURT OF WEST VIRGINIA**

_____,

Applicant,

Case No:

APPLICATION TO PRESENT COMPLAINT TO THE GRAND JURY

Comes the Applicant,_____, Moving this Court by application to present complaints to the next session of the_____County Grand Jury pursuant to W.Va. Constitution Article 3, § 17 and the prerequisites set forth in Dreyfuse, In re Application to Present Complaint to the Grand Jury, 243 W. Va. 190, 842 S.E.2d 743 (2020).

LEGAL STANDARDS

''By application to the circuit judge, whose duty is to insure access to the grand jury, any person may go to the grand jury to present a complaint to it. W. Va. Const, art. 3, § 17." Syl. Pt. 1, State ex rel. Miller v. Smith, 168 W. Va. 745, 285 S.E.2d 500 (1981).

"Under West Virginia Constitution art. Ill, § 17, the right of self-representation in civil proceedings is a fundamental right which cannot be arbitrarily or unreasonably denied." Syl. Pt. 1, Blair v. Maynard, 174 W. Va. 247, 324 S.E.2d 391 (1984).

"The fundamental right of self-representation recognized in West Virginia Constitution art. Ill, § 17 may not be denied without a clear showing in the record that the pro se litigant is engaging in a course of conduct which demonstrates a clear intention to obstruct the administration of justice." Syl. Pt. 2, Blair v. Maynard, 174 W. Va. 247, 324 S.E.2d 391 (1984).

VERIFIED CRIMINAL COMPLAINT FOR PRESENTMENT TO GRAND JURY

I,_____,Hereby verify by my notarized signature in conclusion of this complaint that the following is true and correct under the penalties of false swearing and perjury;

On, Or About, / / , In the County of,_____,In the State of West Virginia, the criminal offense(s) of (Subornation of perjury, perjury and obtaining services) were committed before the_____County Grand Jury where Prosecutor_____ did present, procure and suborn the false fabricated and peijured testimony of Officer _____regarding the material matters of_____, which

both, Prosecutor_____and Officer_____knew were false, fabricated and untrue and were deliberately presented to improperly procure a criminal indictment.

_____ and Officer both, had the evidence in witness statements and other relevant evidence presented as EXHIBIT-B and other included evidence that supports the knowledge of the falsities presenled to the grand jury prior to the subornation and peijured testimony provided meant and devised to improperly procure a criminal indictment by false pretrenses, And the instant complaint is supportive of grand jury investigations into the criminalized police and prosecutorial mi sconducts as aileged and supported by existing evidence.

_____
APPLICANT

Verified to Before me on, _____

_____
NOTARY PUBLIC^
My commission expires:___/___/____

Indictment for § 62-9-17. Perjury.

That on the_____day of .....,Twenty, twenty_____,in the said county of_____, before the

court of said county, on an issue within the jurisdiction of the said court duly joined, thereof before a grand jury of the county, between the State of West Virginia, plaintiff, and

_____,the defendant, for a felony, Officer,_____was in due form of law swom by said court (or clerk or whoever administered the oath to the witness), having competent authority to administer to him the oath to speak the truth, the whole truth and nothing but the truth, touching the matters then and there in controversy between the State of West Virginia and the said _____,Whereupon, and upon said presentment of evidence before the grand jury, it became then and there a material question to said issue upon said matters, whether (here say what the material question was in detail), and to this material matter the said Officer___ then and there willfully, falsely, corruptly and feloniously did testify and say, in substance and effect, that (here set out the testimony of Officer)(on said material issue as nearly exact as the same can be done); whereas, the said Officer , in truth and in fact, well knew that the said statement and testimony (here state clearly the proper denial of the truth, stating the allegation to suit the particular case), against the peace and dignity of the State.

Found upon the testimony of_____,duly swom in open court to testify the tmth and sent before the grand jury this the_____.day of__,20_____.
(Signed)._____
Prosecuting Attorney.

$

(((Said indictment shall have legibly indorsed on the reverse side thereof the words)))
"State of West Virginia versus_____.Indictment for § 62-9-17. Peijury.

_____

Foreman of the Grand Jury

Indictment for subornation of perjury.

That on the_____day of .....,Twenty, twenty_____,in the said county of_____. before the court of said county, on an issue within the jurisdiction of the said court duly joined, thereof before a grand jury of the county, between the State of West Virginia, plaintiff, and

_____, the defendant, for a felony, Prosecuting Attorney_____was in due form of law sworn by said court (or clerk or whoever administered the oath to the witness), having competent authority to administer to him the oath to speak the truth, the whole truth and nothing but the truth, touching the matters then and there in controversy between the State of West Virginia and the said _____, Whereupon, and

upon said presentment of evidence before the grand jury, it became then and there a material question to said issue upon said matters, whether (here say what the material question was in detail), and to this material matter the said Prosecuting Attorney

_____did procure and suborn the peijured testimony of Officer

_____, Who then and there willfully, falsely, corruptly and feloniously did testify and say, in substance and effect, that (here set out the testimony of Officer)(on said material issue as nearly exact as the same can be done); whereas, the said Prosecuting Attorney_____and C_, in truth and in fact, well knew that the sai<l ste.tement and te<-.biG-r\y (here «rate dearly the proper denial of the truth, stating the allegation to suil ths partkular ?asg -, the and dignity of the State.

Found upon the testimony of_____, duly sworn in open court to testify the truih and sent before the grand jury this the_____.day of_____, 20__.

(Signed).

Prosecuting Attorney.

"State of West Virginia versus_____.Indictment for § 62-9-17 Indictment for subomction of peijury.

_____

Foreman of the Grand Jury

62-9-12. Indictment for false pretenses.

That Prosecuting Attorney_____,on the_____day of_____,Twenty, twenty_____,in the said county of_____,did unlawfully, fraudulently, designedly and feloniously falsely pretend to the Grand Jury that (here set out the fraudulent misrepresentations), by means of which fraudulent and false pretenses the said Prosecuting Attorney_____did then and there feloniously and unlawfully obtain (an improperly procured indictment by the presentment of false fabricated evidence and testimony of material matters) against the peace and dignity of the State.

Found upon the testimony of_____,duly sworn in open court to testify the truth and sent before the grand jury this the_____.day of_____,20___.

(Signed)._____

Prosecuting Attorney.

"State of West Virginia versus_____.62-9-12. Indictment for false pretenses.

i i_____

Foreman of the Grand Jury

62-9-12. Indictment for false pretenses.

That Officer_____,on the_____day of_____,Twenty, twenty_____,in the said county of _____,did unlawfully, fraudulently, designedly and feloniously falsely pretend to the Grand Jury that (here set out the fraudulent misrepresentations), by means of which fraudulent and false pretenses the said Officer_____did then and there feloniously and unlawfully obtain (an improperly procured indictment by the presentment of false fabricated evidence and testimony of material matters) against the peace and dignity of the State.

Found upon the testimony of_____,duly sworn in open court to testify the truth and sent before the grand jury this the_____.day of_____,20___.

[f] Signed)._____

"S-'are ***''it'*** '.V-;?': /irgrnia ■-..rsus_____.62-9-12. Indictment for false pretenses.

_____ _____

Foreman of the Grand Jury

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE ex. rel._____,
Requestor / Petitioner,

V.) **CASE NO:**

Honorable Judge_____,
Sole Respondent,

PETITION FOR WRIT OF MANDAMUS

Comes the Relator, Petitioner,_____, Moving this Honorable High Court for Writ of Mandamus to issue against the Respondent_____County Circuit Court Judge to compel the non-discretionary duty to comply with W. Va. Const, art. Ill, § 17 and Canon 3B(8) of the West Virginia Code of Judicial Conduct in issuing a decision and final ORDER on Habeas Corpus proceedings and your Relator, Petitioner presents the instant action pursuant to Rule 16 of the V'.Va. Rules of Appellate Procedure.

QUESTIONS PRESENTED

1) Does W. Va. Const, art. Ill, § 17 provided that justice was to be administered without sale, denial, or delay?

2) Does Canon 3B(8) of the West Virginia Code of Judicial Conduct provided that a judge was to dispose of all judicial matters promptly, efficiently, and fairly, and that judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission?

3) Is it held that "A writ of mandamus will not issue unless three elements coexist—(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy."

Syl. pt. 2, State ex rel. Kucera v. City of Wheeling, 153 W. Va. 538, 170 S.E.2d 367 (1969).

STATEMENT OF THE CASE

Relator, Petitioner filed and a Petition for Writ of Habeas Corpus which has been fully litigated and

matured for decision and a final ORDER that contains the concise findings of facts and conclusions of law which has now suffered an inordinate delay that has reached the magnitude of a procedural dupe process violation in of itself.

Relator, Petitioner filed and a motion for entry cf judgment in the habeas proceedings at issue which has also went without action or decision and now the Relator, Petitioner is without any other available remedies in compelling the lower court to issue the final ORDER in the Habeas except by presenting the instant extraordinary writ.

SUMMARY OF ARGUMENT

Rekitor, Petitio.'ier coi?!ends that he is being denied the state constitutional rights uadei W. W Co.>stiiudcr: Art. HL section 17 holding that; "[t]he courts of this state shall be ppeu. every person, for an injury done to him, in his person, property or reputation, shall liave remedy by due course of law; and justice shall be administered w'ithout sale, denial or delay.

- Canon 3B(8) of the West Virginia Code of JudiciaLConduct provided that a judge was to dispose of all judicial matters promptly, efficiently, and fairly, and that judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time fbliowing their submission.

The lower Court’s not issuing a final ORDER in the Habeas corpus proceedings at issue is a clear violation of W.VA. Constitution Art. Ill, Sub section 17 and Canon 3B(8) ofthe West Virginia Code of Judicial Conduct in denying the Relator, Petitioner the procedural due process of law as proscribed in both, the State and Federal Constitutions.

STATEMENT REGARDING ORAL ARGUMENT

Relator, Petitioner affies that oral arguments in the case sub judice are not necessary as the reliefs sought are well grounded in facts and supporting law.

ARGUMENT

Relator, Petitioner filed and a Petition for Writ of Habeas Corpus which has been folly litigated and matured for decision and a final ORDER that contains the concise findings of facts and conclusions of law which has now suffered an inordinate delay that has reached the magnitude of a procedural dupe process violation in of itself.

Relator, Petitioner contends that he is being denied the state constitutional rights under W.VA. Constitution Art. Ill, Sub section 17 holding that; "[t]he courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

Canon 3B(8) of the West Virginia Code of Judicial Conduct provided that a judge was to dispose of all judicial matters promptly, efficiently, and fairly, and that judges have an affirmative duty to render timely decisions on matters properly submitted within a reasonable time following their submission.

The lower Court's not issuing a final ORDER in the Habeas corpus proceedings at issue is a clear violation of W.VA. Constitution Art. Ill, Sub section 17 and Canon 3B(8) of the West Virginia Code of Judicial Conduct in denying the Relator, Petitioner the procedural due process of law as proscribed in both, the State and Federal Constitutions.

"A writ of mandamus will not issue unless three elements coexist—(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syl. pt. 2, State ex rel. Kucera v. City of Wheeling, 153 W. Va. 538, 170 S.E.2d 367 (1969), Relator, Petitioner herein has met the pre-requisites in the instant mandamus issuing as Respondent Judge has a non-discretionary duty to adhere and comply with the constitutional and ethical mandates set forth in W.VA. Constitution Art. Ill, Sub section 17 and Canon 3B(8) of the West Virginia Code of

Judicial Conduct in issuing a decision and final ORDER containing a concise findings of facts and conclusions of law regarding each of the contentions raised within the Habeas Petition so as to afford the Relator, Petitioner the inalienable constitutional right of procedural due process of law.

CONCLUSION/RELIEFS SOUGHT

Relator, Petitioner herein has met the pre-requisites in the instant mandamus issuing and seeks an ORDER directing the Respondent Judge to show cause, If he can, as to how he may legally and constitutionally not adhere and comply with the statutory mandates set forth in W.VA. Constitution Art. Ill, Sub section 17 and Canon 3B(8) of the West Virginia Code of Judicial Conduct in issuing a decision and final ORDER containing a concise findings of facts and conclusions of law regarding each of the contentions raised within the Habeas Petition.

Relator, Petitioner herein has met the pre-requisites in the instant mandamus issuing and seeks an ORDER be issued directing the Respondent Judge to adhere to the statutory mandates set forth in W.VA. Constitution Art. Ill, Sub section 17 and Canon 3B(8) of the West Virginia Code of Judicial Conduct in issuing a decision and final ORDER containing a concise findings of facts and conclusions of law regarding each of the contentions raised within the Habeas Petition.

VERIFICATION

Relator, Petitioner provides his verification of the action Sub Judice as required by West Virginia Code 53-1-3.

CERTIFICATE OF SERVICE

I,_____,Affirm service of the instant Petition upon the W.Va Supreme Courts Clerk, and upon the Respondent Judge,_____,and the West Virginia Attorney General's offices On the date below notarized.

_____

PETITIONER / RELATOR

Sworn to before me on, /_____/

_____

NOTARY PUBLIC

My commission expires; /_____/_____

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE ex. rel. ,_____
Requestor / Petitioner,

V.) **CASE NO:**

Honorable Judge_____,
Sole Respondent,

TABLE OF AUTHORITIES

- Rule 16 of the W.Va. Rules of Appellate Procedure.
- W.VA. Constitution Art.III, Sub section 17
- Canon 3B(8) of the West Virginia Code of Judicial Conduct
- State ex rel. Kucera v. City of Wheeling, 153 W. Va. 538, 170 S.E.2d 367 (1969),
- West Virginia Code 53-1-3.

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE ex. rel. ■ ■ **. .. 9**

Requestor / Petitioner,

V.) **CASE NO:**

Honorable Judge

Sole Respondent,

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HABEAS CORPUS MATURED

EXHIBIT-B

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IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE ex. rel._____,
Requestor / Petitioner,

v.) **CASE NO:**

Honorable Judge_____,
Sole Respondent,

APPENDIX OF EXHIBITS

EXHIBIT-A

EXHIBIT-B

IN THE COUNTY CIRCUIT COURT OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

V. **CASE NO: _-F-_____**

(Honorable Judge_____)

_____

Defendant,

AGREED ORDERS

The agreed ORDERS, Entered into this____Day of_____, 2023, Between the State of West Virginia by special prosecuting Attorney_____, Attorney____, Counsel for the Defendant/Petitioner_____and the Petitioner / Defendant himself herein, as follows;

I) It is agreed by, and between the parties Hereto, That the_____convictions of Case No: __-F-____shall be overturned and vacated and the criminal indictments be dismissed without prejudice.

II) It is agreed by, and between the parties, That the Defendant will enter a plea of No Contest, to the felony charge by information, To_____

III) It is agreed by, and between the parties, That in return for the Defendant's plea of No Contest, to the felony charge by information, to_____, The State will refrain from any further prosecution against the Defendant, for any other possible charges arising from the same set of circumstances surrounding the case at issue and that the State will not pursue, initiate or prosecute recidivist charges against the Defendant.

IV) It is agreed by, and between the parties, That the Defondant will be charged and convicted under the terms of this agreement, by information rather than indictment and that the Defendant voluntarily, freely and intelligently, with the advice of Counsel, Waives Indictment, To be prosecuted by Plea Agreement in accordance to Rule 7 of the West Virginia Rules of Criminal Procedure.

V) It is agreed by, and between the parties,, That the Global Plea Agreement as detailed shall be 'Binding' pursuant to Rule 1 l,(e),(1),(c) of the West Virginia Rules of Criminal Procedure setting forth if accepted, The Court will be bound to the disposition set forth herein, and should the Court reject this agreement, The Defendant shall retain the right to withdraw from the plea agreement and be returned to his pre-indictment position.

VI) It is agreed by, and between the parties, That in return for the Defendant's Plea of 'No Contest' Understood as an Alford/Kennedy plea, to the felony charge of_____. By Information. The Defendant shall be convicted and sentenced to a term of _____ years imprisonment.

VII) It is agreed by, and between the parties, That the Defendant receive credit for time served, from initial arrest thru present date and that by the Defendant's credit for time served, He be forever Discharged, Unconditionally from the custody of the W.V.D.C.R. under the sentence imposed as the sentence being sen ed in ti .ll by the good time included pursuant W.Va. CODE S 15A-4-17. (c)Each eligible imnate committed to the custody of tlie commissioner and incarcerated in a iacility pursuant io that commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence which are credited by the sentencing court to his or her sentence.

The Parties so AGREE and ENTER to the above terms by affirmation and signatures below on This, The ___ Day of_____, 2023;

,_____

_____
Prosecuting Attorney;

Attorney For Defendant;

_____ ,_____
Defendant.

FINDINGS AND CONCLUSIONS

Upon mature consideration of which, and taking into consideration of the entirety of the record thus far

generated, The Court does Hereby make the findings of fact and conclusions of law in the matters Sub Judice as;

1) That this Court has determined that it continues to have statutory and rule based jurisdiction and venue over the primary part, or portion of the subject matter, and that the parties to this dispute have presented 'AGREED ORDERS' to bring the matters to final resolve; And

2) That this Court has held numerous hearings by Criminal and Post-Conviction Habeas Corpus proceedings in accordance to the rules of those proceedings; And

3) That this Court finds the Defendant,_____did receive the ineffective Assistance of Counsel in the criminal proceedings and trial of the Court's appointed Counsel, Attorney _____which constitutes the REVERSAL of the criminal conviction in accordance to the standards set forth in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984): That; (1) Counsel's perfonnance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

4) That this Court, After conducting a Plea colloquy pursuant to Rule 11 of the W.Va. Rules of Criminal Procedure, Finds the Defendant affirmed his waiver of indictment, Voluntarily, Freely, Intelligently and with the advice of Counsel, To enter into a Plea Agreement to the charge of_____, By information.

5) That this Court. Further acquired the Defendant's affirmation that he Voluntarily, Freely, Intelligently and with the advice of Counsel, ENTERS A PLEA OF NO CONTEST, To the charge, By information, To the felony offense of_____, To be sentenced to a term of_____years imprisonment, And that the Defendant will be credited with time served from his initial arrest on___thru present date; And

WHEREUPON, Based upon the foregoing, The Court hereby GRANTS the Agreed ORDERS as follows;

A) That the convictions of criminal case number _-F-_____be VACATED AND REVERSED and that the matters return to pretrial positioning.

B) That the Court accepts the Defendant's Plea of NO CONTEST to the felony charge, by information of

C) That the Court Hereby CONVICTS the Defendant,_____for _____and sentences him to ***a*** term of____years imprisonment, and credited with time served from initial arrest to present date.

D) That the Court Decrees that by being credited with time served and the Good Time as provided by the legislative mandate of W.VA. CODE § 15A-4-17(c), The Defendant,_____is HEREBY DISCHARGED from the sentence as served in full and is HEREBY released unconditionally from tl)e custody and control of the W.V.D.C.R. On this date of ORDER and DECREE.

E) That it is noted on the record that the matters are HEREBY resolved by Agreed ORDERS in the interest of Justice and Judicial economy.

It is further ORDERED, ADJUDGED and DECREED, That the Clerk of this Circuit Court SHALL provide notice and service of this Final ORDER, Upon all Parties hereto, In accordance to Rule 10.01 thru 12.06 of the W.Va. Trial Court Rules, By U.S.P.S. 1st class mail, By hand delivery or facsimile transmission unto the respective Parties, Namely, The W.V.D.C.R. and Staff and the Defendant, _____be RELEASED from custody, to go without day.

All of which is hereby ORDERED, ADJUDGED and DECREED,

ISSUED On this, The____Day of,_____, 2023,

_____
(Presiding Judge)

Keeping in mind the many necessary pleadings, motions and filings that will present themselves as necessary to properly litigate a Habeas Corpus proceeding it is important to become acquainted with the rules of procedure which govern the litigation process, Beginning with the State rules governing post-conviction habeas corpus proceedings in the state where the conviction is being challenged and the state rules of civil procedure it will be required reading, It will also be necessary for the Writ Writer to become familiar with the many filings, pleadings and motions which are not provided within this manual as they present themselves as being required, The template formed motions and filings included in this manual are the commonest of required filings, Each has its own reasoning and purpose in the litigation process and is recommended for researching and educating oneself with the pleadings.

Sagacity and preparation is always the key to successful litigation in Habeas Corpus proceedings and being prepared for defenses and arguments in opposition by the State's Attorney who will be litigating against the
Petitioner being GRANTED reliefs is the result of becoming educated and practicing researching methods which bring defenses and arguments in oppositions to the assignments of errors being presented, Always prepare for argument and study the potential arguments which may present themselves to each assignment of error to be presented.

Some of the first oppositions a Petitioner will face is the State's Attorney moving for summary dismissal, more oft than naught the reasoning will be grounded on an 'unsupported' claim or assignment being presented, This usually occurs when there is no supporting exhibits or an affidavit to base the assignment upon being included for the initial review of the Court.

Always support every claim and assignment of error with factual exhibits of record, Always include an affidavit written by the Petitioner in his, or her own words that details the error and constitutional violations suffered and the prejudice of the violation(s).

Another situation may present itself where the court prepares and enters an order for summary dismissal of the petition if the contentions in fact or law relied upon in the petition have been previously and finally adjudicated or waived. The court's summary dismissal order shall contain specific findings of fact and conclusions of law as to the manner in which each ground raised in the petition has been previously and finally adjudicated and/or waived.

MOTION FOR PRODUCTION OF GRAND JURY MINUTES,
These are also one of the first necessary documents a litigator needs to obtain, The grand jury minutes (transcripts) will reflect exactly what was and what was not presented before the grand jury to procure the criminal indictment(s), Once the grand jury minutes are received look for falsities of facts and material

If the petition contains a mere recitation of grounds without adequate factual support, the court may enter an order dismissing the petition, without prejudice, with directions that the petition be re-filed containing adequate factual support.

When in doubt as to whether an issue or assignment of error is adequately supported by exhibit arises, It is not adequately supported, rethink the claim(s) and find the factual documents that support the issue and assignment, There is no room for filing a faulted claim and doing a shoddy job in preparing and presentation, the writ is a basic fight not only for justice but for freedom, Liberty is priceless and no matter who the writ will represent it is a matter that involves a life and must be presented as exactly that, A fight for life, A soldier doesn't go to the battle without weapons and training and a Writ writer does not make frivolous filings or present bald assertions.

Understand that the state's attorney is an adversary, they are charged with arguing against the court's GRANTING reliefs, No Judge or prosecuting attorney will admit that a constitutional violation that demands a reversal of a conviction happened on their watch or in their court and they will argue vehemently against every assignment of error and issue presented, Expect nothing less than the attempts in delays and smoke screens, excuses will arise such as family illnesses, unexpected personal natural disasters and even blatant moves for continuances without any good cause being shown to deter the proceedings from moving in an efficient manner, These stall tactics are refined and practiced in every court across the country and the flaw in the criminal justice system that correlates with the post-conviction habeas corpus proceedings is the same, no time standards being adhered to even when statute provides for such.

Let's make a quick review of the template motions as provided;

LAWFUL REQUEST FOR ATTORNEY'S BILLING SHEETS,
This is one of the first motions that need filed, Every Court appointed lawyer must keep a concise record of the hourly work product performed in the Defendants case, This will reflect the actual time spent 'Investigating' facts and law relevant to the Defendant's representation, Once the Attorney's Billing sheets (vouchers) are received add up all of the time claimed under the billing code for 'Investigation(s)' This is generally under (I), No billings for an investigation means no investigation was performed.

matters and also for perjured testimony being provided by law enforcement or other witnesses, 'Material Matters' are false matters considered to be capable of influencing the grand jury's decision, and if a litigant can show by the record that the testimony and evidence presented to the grand jury was perjured there are criminal liabilities that the Prosecuting Attorney and witnessing police officer can face by filing an application to present complaints to the grand jury as is included in a later template.

MOTION FOR PRODUCTION OF CRIMINAL CASE FILE, This also is one of the first 4 motions that are a must to file, The entire criminal case file is mandated for the proper dissemination, identification and presentment of each contention to raise in every cognizable assignment of error seeking habeas reliefs, As outlined in the extensive listing of documents 3nd resources for review, Most will be included in the case file.

MOTION FOR PRODUCTION OF CASE FILE CONTENTS, This is the last of the first 4 required motions to file and is meant to be provided a complete copy of the criminal case file that was in the possession of Court appointed counsel during the criminal proceedings which resulted in the conviction(s) being secured.

MOTION FOR THE APPOINTMENT OF HABEAS COUNSEL, This motion is self-explanatory, It will get the litigant a lawyer appointed to represent the habeas proceedings.

NOTSCE OF EXPRESS INFORMED CONSENT REQUIRED, This is the litigants insurance policy that makes it necessary for the court's appointed Jawyer to obtain the litigants express informed consent in writing before the lawyer can co anything in the case, it makes the litigant an active participant and gives the 'Petitioner' authority over what is, and what is not presented in the Petitioner's brief and insures the litigant is not sold out at the last minute by an amendment cr change in pleadings.
SUMMONS, This is also self-explanatory, The need will arise for summons and this is the basic format of the document.

LAWFUL REQUEST FOR RECORDS, This is an invaluable pleading in that it will get every document needed as they present themselves as being necessary, Often this will be needed for documents contained within a Co-Defendant's case file and other situations.

MOTION FOR THE APPOINTMENT OF EXPERT WITNESS, Self-explanatory, The need may arise for an expert witness in medical, scientific, technological, firearms arson and even an ineffective assistance of counsel expert... etc... This is the template format to motion for the appointment and payment of the expert witness.

MOTION TO DISQUALIFY PRESIDING JUDGE, Should there exist a claim and assignment of error of Judicial Misconduct" as is outlined in the EXAMPLE habeas brief, A Motion to disqualify the Judge from presiding over the habeas proceedings is a necessity and is the proper way to address the matter.

MOTION FOR STATUS HEARING, When delays present themselves or the Court appointed lawyer falters it will be necessary to motion the court for a status hearing to resolve the matter.

MOTION FOR THE PERFORMANCE OF DNA TESTING, This is an invaluable pleading where DNA evidence was at issue in the underlying criminal conviction, It will get a DNA Attorney appointed to secure DNA testing and then file appropriate pleadings afterwards if there is any substance or newly discovered evidence resulting from the DNA testing.

MOTION FOR LEAVE OF COURT TO CONDUCT DISCOVERY, This is required when the litigant desires to conduct discovery in the habeas proceedings by conducting interrogatories, admissions or taking depositions of witnesses or participants of the criminal proceedings or investigation of the underlying criminal case, Review the Rules of Discovery and research each of the different forums of Discovery to determine which is appropriate.
MOTION FOR ENTRY OF JUDGMENT, This is the motion to file once that case has concluded and the Omnibus Discovery hearing was held, At this point the case is matured and ripe for the court to issue its decision and final ORDER, Be certain to file this motion as it may be needed to show diligence in a mandamus proceeding if necessary.

APPLICATION TO PRESENT COMPLAINT TO THE GRAND JURY, This is a unique filing that will allow criminal investigation and charges to be brought against the Prosecuting Attorney, Police Officers(s) and witnesses who procured and provided false fabricated evidence and perjured testimony to the grand jury of material matters in order to procure the indictment 'under false pretenses'. The indictments and verified complaint *MUST* be attached to the Application to

present complaints to the grand jury and it must be filed in the county where the initial indictment(s) were improperly procured, Research "Dreyfuse, In re Application to Present Complaint to the Grand Jury, 243 W. Va. 190, 842 S.E.2d 743 (2020)." to fully understand the proceedings, Criminalized prosecutorial misconduct is subornation of perjured testimony and a Prosecuting Attorney can be criminally indicted and convicted for such, Just as for the offense of obtaining services under false pretenses. Includes (Indictment for subornation of perjury. Indictment for subornation of perjury. Indictment(s) for false pretenses.)

PETITION FOR WRIT OF MANDAMUS, A writ of mandamus is the appropriate filing to compel a timely decision in Habeas Corpus proceedings and is always based upon the due process clauses of the State and Federal Constitutions, As Justice shall be served without sale, denial or delay. This is the template to compel the court to issue its decision and final ORDER in the habeas corpus proceedings and the motion(s) for status hearing(s) and for Entry of Judgment will be required as exhibits to prove there exists no other remedies to the litigant other than the extraordinary writ of mandamus.

PROPOSED AGREED ORDERS, The example of proposed agreed orders is for the litigant/Defendant who believes it is in his or her best interest to enter into a plea agreement rather than take a chance at trial, The proposed agreed orders are a basic 'mediation' tool, Once they are served upon the prosecution and court they will set the stage for what is an agreeable resolution to the matters, Remember, not to put out the 'ONLY DEAL' the litigant is willing to accept.

It is also important to keep in mind that just because a litigant presents proposed agreed ORDERS it does not mean that the prosecution nor the Court has an obligation to consider this attempted resolution, However, If the Habeas demands reliefs be provided the proposed agreed ORDERS will get the ball moving towards an amicable resolution to the matters.

Discussing, researching and considering the many defenses and other matters which may arise during the litigation of post-conviction habeas corpus proceedings it is imperative to be prepared, It is mentioned that there are several other "motions and pleadings' that were not included in this manual as they are considered by the writ writer to be impractical, For instance, A motion to expand record pursuant to rule 9 of the W.Va. Rules governing post-conviction proceedings is unnecessary if the litigant simply writes and files an 'Amended' pleading to the habeas brief already before the court, Never become lazy, If it may be necessary to file what appears to be an impractical motion, then it is not impractical, Always be overly litigious rather than lacking and unprepared, Put pen to paper and push it to the courts, establishing 'Deep Record' comes only by pushing paper in as many possible forums available that address a single or consolidated issue, Be imaginative and original in the presentments and filings, No two Litigants or Writ Writers are the same and the uniqueness of the issue(s) and assignments presented may be a case of first impression of such importance that the claim may set a legal precedent in the Court's mandating relief(s) be GRANTED or in setting out new prerequisites and standards in presenting a similar claim.

In identifying the cognizable assignments of errors and the issue(s) presented within the Habeas Petitioner's brief be certain to research the defenses and objections that the state may or could argue in opposition to being GRANTED reliefs, These arguments and defenses are found in the cases which have NOT prevailed in reliefs as well as those which have, Always read the 'Syllabus" contained within the cases researched, These are the "black letter law(s)" setting out the prerequisites and standards associated with the assignments of errors and issues that are being litigated, The syllabus will give a basic outline of what, or what not will be considered the proper presentment that demands reliefs and also the 'standards[7] and 'tests' that the litigant will have to meet in order for the claim to survive.

EXTRAORDINARY WRIT OF MANDAMUS OUTLINED FOR UNDERSTANDING THE POWER OF THE WRIT

The Petition for Writ of Mandamus is a powerful tool in seeking the judicial relief(s) to which one is constitutionally, legally and ethically entitled, The writ is presented to compel a judicial or other state official to perform a non-discretionary duty such as compelling a Judge to make timely decisions in matters properly presented to the court, To compel a circuit clerk to provide the documents lawfully requested or any other state official to perform any duty outlined within a state code, law or constitution for which they refuse to act.

A writ of mandamus is the writ which a litigant should use their imagination in preparing and writing, Every extraordinary writ is unique in they are seeking relief(s) addressing a distinct issue or issues that are legally entitled reliefs by the intervention of the Court, Research the local state code(s) and rules for the state where the litigation will take place and apply them to the Mandamus brief.

It is recommended that the writ writer self-litigant read and research the 'Old School' citations of the revered Judge Learned Hand, This is because Justice Hand was every

prosecutor's friend and every defense lawyer's nemesis, Judge Learned Hand only afforded a convicted person the minimal constitutional reliefs and was not coddling to the self-litigant, When reading the many cases one will begin to identify the 'Proffers' of Judge Learned Hand that demand reliefs for constitutional violations and the citation of those writings by Judge Learned Hand that supports the litigants argument wili have a notable impact on the court and prosecution, Simply put, In the ringing words of the revered Honorable Judge Learned Hand, "A Judge is charged to see that the law is properly administered, and it is a *'Duty'* which he cannot discharge by remaining inert", This is a powerful citation of authority.

The definition of Writ of Mandamus: A command by order or writ issuing from a court of law of competent jurisdiction, in the name of the state or sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person, requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law.

A writ of mandamus was originally a prerogative writ, but in this country, in modern practice, it is nothing more than an action at law between the parties and is not now regarded as a prerogative writ. Since mandamus was originally a prerogative writ, issuing in the king's name, it was not a civil action, but the character of the proceeding and the nature of the writ have been so changed by statute that in most of the states of the Union it is now regarded as a civil proceeding. Nevertheless the supreme court has repeatedly held that it is not a suit of a civil nature at common law or in equity within the meaning of the acts of Congress defining the jurisdiction of the federal courts.

IDENTIFYING, RESEARCHING AND WRITING A MOTION TO RESCIND AND DISMISS AN IMPROPERLY PROCURED INDICTMENT

There is no Motion to Rescind and Dismiss an Improperly Procured Indictment included in the templated motion section of this manual, as it was previously discussed at the beginning of this manual there is a pattern of redundancy and 'out of order' to some of the filings and information provided herein, as we have covered the basics for the education in the preparation, research and writing of a Petition for Writ of Habeas Corpus and the many necessary motions, pleadings and filings that will present themselves in the litigations of Habeas Corpus proceedings it is now time to cover the basics in identifying, researching and writing a Motion to Rescind and Dismiss and Improperly Procured Indictment.

The writ Writer of the manual expresses the importance in filing the 'Criminal Proceeding Motion' as well as including the assignment of error of an improperly procured indictment in the Habeas brief as an assignment of error should one be applicable to the litigant, An improperly procured indictment can be attacked by both, criminal proceeding motion and as a Habeas Corpus assignment of error which is also what is defined as establishing the 'deep record' of the constitutional violation in the state court for preservation of federal court review, if necessary. The Motion to rescind and dismiss an iproperly procured indictment follows.

*** Again, it is stressed that this manual is for EDUCATIONAL PURPOSES ONLY and is not intended for the practice of law but to provide the self-litigant with the basic understandings of the language and proceedings of law.***

IN THE COUNTY CIRCUIT COURT OF WEST VIRGINIA

_____,
Defendant,,

V. **Case No:**

STATE OF WEST VIRGINIA,

MOTION TO RESCIND AND DISMISS IMPROPERLY PROCURED INDICTMENT

Comes the Defendant, ,Moving this Honorable Court by Motion to Rescind and dismiss an improperly procured indictment pursuant to the prerequisites set forth in Syllabus point 3, in part, State ex rel. Pinson v. Maynard, 181 W. Va. 662, 383 S.E.2d 844 (1989).

RELEVANT LEGAL STANDARDS

'Except for willful, intentional fraud[,] the law of this State does not permit the court to go behind an indictment to inquire into the evidence considered by the grand jury, either to determine its legality or its sufficiency.' Syl,, Barker v. Fox, 160 W. Va. 749, 238 S.E.2d 235 (1977)." Syl. Pt. 2, State ex rel. Pinson v. Maynard, 181 W. Va. 662, 383 S.E.2d 844 (1989),

"Once the defendant establishes a prima facie case of willful, intentional fraud in obtaining an indictment[,] he is entitled to a hearing with compulsory process." Syllabus point 3, in part, State ex rel. Pinson v. Maynard, 181 W. Va. 662, 383 S.E.2d 844 (1989).

'[DJismisal of [an] indictment is appropriate only 'if it is established that the violation substantially influenced the grand jury's decision to indict' or if there is 'grave doubt' that the decision to indict was free from substantial influence of such violations.' Bank of Nova Scotia v. United States, 487 U.S. 250, 261-62, 108 S. Ct. 2369, 101 L. Ed. 2d 228, 238 (1988).

RELEVANT BACKGROUND

The Defendant herein presents the prima facie showing of the indictment for the above styled criminal case number being obtained and procured by the deliberate presentment of false fabricated evidence and peijured testimony being suborned by Prosecutor,_____Where Officer, _____did knowingly and intentionally provide the false fabricated evidence by his testimony of the material matters that on, or about, The Defendant did (**EXPLAIN THE__ FALSITIES PRESENTED IN THE SAME FORMAT AS IN THE VERIFIED COMPLAINT IN THE APPLICATION TO PRESENT COMPLAINTS TO THE GRAND JURY).**

Defendant presents the prima facie showing of the willful intentional fraud in the deliberate presentment of false fabricated evidence and peijured testimony to procure the indictment at issue by EXHIBIT-A, The Grand Jury Minutes of the proceedings and EXHIBIT-B, The record of the falsities being known prior to and during the grand jury proceedings where the fraud was perpetrated to procure the indictment at issue.

RELIEFS SOUGHT

Defendant seeks the provision of a hearing with compulsory process to spread upon the record the willful intentional fraud that was committed in procuring the indictment at issue and for an ORDER that rescinds, dismisses and quashes the criminal indictment(s) at issue.

CERTIFICATE OF SERVICE

I, hereby affirm service of the motion upon the_____County Circuit Clerk, and the _____County Prosecuting Attorney on the date below notarized.
Sworn to Before me on, /_____/20___

_____
Defendant

_____
NOTARY PUBLIC,
My commission expires: / /

Discussing the filing of a Motion to rescind and dismiss and improperly procured indictment it is important to know that the Defendant MUST make a prima facie showing of willful, intentional fraud being committed by the Prosecution and or the testifying witness to procure the indictment, 'Prima Facie' meand clear upon its face, Essentially making it necessary by a showing of the grand jury minutes (transcripts) and supporting record that false fabricated evidence and or peijured testimony was deliberately presented.

An EXAMPLE of this would be If Prosecutor Double Down had received the medical records of the alleged victim of an attack on a date prior to the grand jury proceedings and the records were absent of any multiple facial fractures a major skull fracture or an exposed brain injury and then that Prosecutor procured the testimony of Officer Unew who detailed before the grand jury that on the 10th day of December 2525 The Defendant did obtain a black aluminum baseball bat and repeatedly strike the victim about the face and head causing him to suffer multiple facial fractures, a major skull fracture and and exposed brain injury that resulted in the victims slipping into a coma until he died as a result of those NONEXISTING INJURIES, This would be a prima facie showing of willful intentional fraud as required to challenge the indictment, The litigator would need to present the medical records, grand jury transcripts and then present the argument before the court at a hearing where witnesses, (Such as the prosecutor or witness who provided the falsities) could be subpoenaed, Remember, An improperly procured indictment can be dismissed even after conviction.

Discussing the Habeas Proceedings it is important to firstly write the writ, the writ is the Petitioner's brief and is the forum to present and raise the issues and assignments of errors that demand reliefs in the conviction(s) being overturned, vacated or reversed for new Trial proceedings,

After the writ is filed and Counsel is appointed be certain to file the notice of express informed consent being required to insure nothing is filed without the litigant's express informed consent.

After the court reviews the writ there will be an ORDER issued for the state to respond, at this point the litigant can motion for leave to conduct discovery as well as motion for the appointment of an expert witness to support the viable claims for reliefs which exist, Also it is imperative for the litigant to learn the discovery methods, Discovery is a tool that will assist in developing the facts that support the demand for reliefs.

There will be several hearings had and to bring the case to a final resolve an Omnibus Discovery Hearing will take place, This is where the Court holds an in depth hearing where witnesses, deposition testimony, evidence and arguments are placed before the Court by both parties, the state and the petitioner and there may be a secondary hearing thereafter to develop any issue or claims that were not addressed so as to allow the court the ability to make a concise findings of facts and conclusions of law in whether to GRANT reliefs to the petitioner.

Once the case is matured and ripe for decision it takes a Court an average of three months to issue a final ORDER on the case, If there is no ORDER issued by the fourth month a motion for status and a motion for the Entry of Judgment should be filed, and if no ORDER is issued within the sixth month of the final hearing it is time to file a Petition for Writ of Mandamus to compel the Court to issue the final ORDER.

Keep in mind that this is not chiseled in stone, The proceedings may come with glitches such as appointed Counsel removing themselves, Prosecutor's being replaced, natural disasters such as the covid pandemic can result in years of delays as well as the standardized tactical delays that the state will cause, always cancelling hearings and being late in filing responses, Always be vigilant and address those types of issues with the higher court by mandamus proceedings, Delays injustice are the denial of Jusice and procedural due process.

Being overly litigious is often considered a negative by the prosecution and most judges, after all most judges were firstly prosecuting attorneys' and when they see an inmate litigator who has arose to writ writer status and is capable of representing matters within the court that have merit and are based upon evidence and existing law they court takes notice and the prosecution will vehemently fight and title the litigator as overly litigious or even a prolific filer, Do not allow these titles to discourage you as a litigant, It means the litigant is being effective and the filings are being taken serious, After all, How could any wrongfully convicted person be overly litigious, Fighting for one's freedom and life is not to be done in half hazard and it is necessary to be relentless in filing when the litigant is fighting for justice, freedom and their life.

This is the conclusion of the manual and is hoped to help educate and assist in writing the writ and to understand the necessary filings, pleadings and proceedings of Habeas Corpus.

WRIT WRITER'S MESSAGE,

This Manual and the work product contained within is donated and dedicated to the National Public Awareness Wrongful Conviction Advocacy Non-Profit Organization, (N.P.A. Hereinafter).

All intellectual and literary property rights have been donated exclusively to N.P.A. and are the lawful property of N.P.A., Any financial benefit(s) that may present themselves by this work is for the ongoing advocacy, education and public awareness campaign in supporting the wrongfully convicted.

The good works of N.P.A. has gained worldwide recognition and brought the public's awareness to the wrongfully convicted and their epic fights for justice as well as providing education and support to the self-litigating persons challenging injustices suffered.

This manual is designed for educational purposes in bringing familiarity to the language of law and proceedings involved in litigating post-conviction habeas corpus proceedings and the numerous pleadings that will be necessary to write the writ and to litigate to conclusion.

The support and help of N.P.A. has made this manual possible and it is meant to help the wrongfully convicted men and women who are without the means to afford to hire private counsel to assist in litigating habeas proceedings.

My sincerest gratitude, appreciation and thanks go out to N.P.A. Staff and its members, Truth injustice comes from bringing the publics awareness to the wrongfully convicted.

Jesse Dreyfuse,

Visit https://justiceforiessedreyfuse.com and find National Public Awareness online to read the phenomenal stories of the fight for justice and freedom of the wrongfully convicted.

Contact the wrongful conviction advocacy organization at Npapublicawareness@yahoo.com

Washington v. Hofbauer, 228 F.3d 689 (6th Cir. 2000) (trial counsels failure to object to clear misconduct by prosecutor amounted to ineffective assistance of counsel: One of defense counsels most important roles is to ensure that the prosecutor does not transgress th[e] bounds [of proper conduct].).

Delgado v. Lewis, 223 F.3d 976 (9th Cir. 2000) (trial counsels repeated failure to appear at important court proceeding[s], inability to make any representations to the court based on personal knowledge, and failure to advocate zealously on clients behalf amounted to constructive withdrawal from the representation).

Washington v. Smith, 219 F.3d 620 (7th Cir. 2000) (counsel failed to subpoena crucial but difficult-to-find alibi witness until second day of four-day trial and failed to interview and present testimony of other alibi witnesses).

Flores v. Demskie, 215 F.3d 293 (2d Cir.), cert, denied, 531 U.S. 1029 (2000) (counsel incompetently waived potential challenge to states failure to comply with statutory requirement for disclosure of witnesses prior statements, which would have entitled the petitioner to a new trial had it been raised before the trial court [and] would have constituted per se reversible error on direct appeal).

Stouffer v. Reynolds, 214 F.3d 1231 (10th Cir. 2000) (counsel prejudiced petitioner because he never made an opening statement, exhibited ineptness at direct questioning without use of leading questions, was unable to conduct effective cross-examination of the States witnesses, failed to lay proper grounds for admission into evidence [of] a certified copy of an exhibit impeaching a key prosecution witness, cross-examined four prosecutorial forensic experts without attempt[ing] to interview these witnesses before trial, failed to file an application for funds to hire experts to examine the opinions of the States expert witnesses, failed to present testimony by defense investigator who viewed the crime scene and discovered numerous [factual] inconsistencies with the States theory of the case, and presented closing arguments which were ineffective at proffering any semblance of a defense theory).

Combs v. Coyle, 205 F.3d 269 (6th Cir.), cert, denied, 531 U.S. 1035 (2000) (counsel prejudicially failed to object to prosecutions use of petitioners pretrial silence as substantive evidence of guilt and also failed to question defense expert sufficiently to anticipate that experts answers on cross-examination could refute central defense theory).

Horton v. Massie, 2000 U.S. App. LEXIS 1232 (10th Cir. Jan. 31, 2000) (counsel failed to call witnesses who could have corroborated petitioners account, failed to investigate and present significant evidence that the States key witnesses collaborated with one another.

Hernandez v. Cowan, 200 F.3d 995 (7th Cir. 2000) (counsel, who moved for severance unsuccessfully on one ground, failed to recognize alternative, compelling ground for severance that would have been apparent if counsel had attended codefendants suppression hearing or read transcript of hearing).

Maxwell v. Mahoney, 1999 U.S. App. LEXIS 26592 (9th Cir. Oct. 20,1999) (although prosecutions otherwise weak case relied heavily on police discovery of knife in petitioners automobile, defense counsel failed to do any investigation concerning the knife, failed to object to the admission of the knife into evidence, offered no explanation of the bloodstains on the knife, and failed to introduce into evidence the analysis by the States Criminal Investigation Lab, which showed that blood on knife was rabbit blood and hair fragments were deer hair).

Hull v. Kyler, 190 F.3d 88 (3d Cir. 1999) (petitioner was denied effective assistance at pretrial competency hearing because counsel failed to cross-examine psychiatrist who testified for state and also failed to present available evidence of incompetency). “

Lord v. Wood, 184 F.3d 1083 (9th Cir.), cert, denied, 528 U.S. 1198 (2000) (defense counsel failed to present testimony of three witnesses with highly exculpatory information and decided against calling them as witnesses without first personally interviewing them).

Tucker v. Prelesnik, 181 F.3d 747 (6th Cir. 1999) (counsel was ineffective in failing to obtain medical records of complainant, who was in coma for six months following charged assault and whose medical records would have demonstrated that complainants memory of assault was faulty). . , '-■

Steinkuehler v ; Meschner, 176 F.3d.441 (8th Cir. 1999) (counsel failed to impeach sheriffwhose testimony about petitioners relative sobriety at time of arrest refuted intoxication defensewith sheriffs statement to jail supervisor that she should have claimed memory loss rather than admitting in deposition that petitioner was . intoxicated).

McGurk v. Stenberg, 163 F.3d 470 (8th Cir. 1998) (petitioner, who was convicted of misdemeanor in bench trial, was never advised by counsel that offense was eligible for jury trial). * » ..

Pitts v. LeCureux, 1998 U.S. App. LEXIS 17112 (6th Cir. July 22,1998) (counsel was ineffective in failing to file notice of intent to present alibi defense, which resulted in preclusion of two alibi witnesses in trial in which • prosecutions evidence was entirely circumstantial).

Seidel v. Merkle, 146 F.3d 750 (9th Cir. 1998), cert, denied, 525 U.S. 1093 (1999) (trial counsel failed to investigate petitioners serious mental health problems, thereby forgoing mental defense that might have complemented self-defense theory).

Tejeda v. DuBois, 142 F.3d 18 (1st Cir. 1998) (combination of trial judges rulings, counsels angry reactions to those rulings, and visible manifestations of critical deterioration in the lawyers relationship with the trial judge resulted in fragmentary and disjointed defense).

Brown v. Myers, 137 F.3d 1154 (9th Cir. 1998) (counsel failed to investigate and present available testimony supporting petitioners alibi).

Holsomback v. White, 133 F.3d 1382 (11th Ck. 1998) (in preparing for trial in sexual offense case in which there was no medical evidence to substantiate victims allegations, counsel was ineffective in failing to subpoena medical records and consult physician to ascertain significance of absence of corroborative medical evidence; counsels claim of strategic choice is rejected because informed tactical decision could not be made without adequate investigation).

Bloom v. CrJderon, 132 F.3d 1237 (Sth Cir.}, cert, denied, ^23 U.S. 13/3 (1998) (counsel retained psychiatric expert for ins jnitv defense orJy days before trial and faiied tc prov-Je ewr^rtand oiners who evatuated petitioner with r2!evönt, ^c.diiy available informatron that.would have • .Hade aU^noses rriGro favorable to petitioner).

Rickman v. Bell, 131 F.3d 1150 (6th Cir. 1997), cert, denied, 523 U.S. 1133 (1998) (counsels total failure to actively advocate his clients cause and repeated expressions of contempt for his client for his alleged actions had effect of pr0vid[ing] [petitioner] not with a defense counsel, but with 3 second prosecutor).

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Gr-5seclose v. Bell, 130 F.3d 1161 (6th Cir. 1997), cert, denied, 523 U.S. 1132 (1998) (counsel failed tc develop defense theory and to conduct any meaningful adversarial challenge, as shown by hif failure to cross-examine more than ha!f of the prosecutions witnesses, to object to any evidence, to put on any defense witnesses, to mske a closing argument, and, at sentencing, to put on any meaningful mitigation evidence; instead, counsel effectively abdicated clients case to counsel for codefendant, whose defense was antagonistic to petitioners).

Johnson v. Baldwin,'114 F.3d 835 (9th Cir. 1997) (counsels failure to investigate adequately resulted in defenses presentation of weak, unbelfevable alibi defense).

Williamson v. Ward, 110 F.3d 1508 (10th Cir. 1997) (counsel, who received no funding for expert or investigative services and who was paid statutory maximum of $3200, failed to investigate videotaped statement by another person confessing to crime and also failed to investigate extensive evidence of petitioners mental illness and likely incompetence to stand trial).

United States v. Kauffman, 109 F.3d 186 (3d Cir. 1997) (counsel prejudicially failed to investigate insanity defense despite letter from psychiatrist who described section 2255 movant as manic and psychotic at time of crime).

Berryman v. Morton, 100 F.3d 1089 (3d Cir. 1996) (counsel failed to use inconsistent testimony to impeach complainants identification, opened door to irrelevant and prejudicial evidence of police investigation of unrelated homicide and robbery, and failed to investigate potential defense witnesses).

Freeman v. Class, 95 F.3d 639 (8th Cir. 1996) (counsel was ineffective in, inter alia, introducing police report that contained prejudicial hearsay, failing to request cautionary instruction regarding accomplice testimony, and failing to object or move for mistrial in response to prosecutors comment on post-Miranda silence).

Baylor v. Estelle, 94 F.3d 1321 (9th Cir. 1995), cert, deniac, 520 U.S. 1151 (1997) (counsel was ineffective in facing tc pursue adequate investigation of potential exciduatory serological evidence in sexual assault case)/

Luchenburg v. Smith, 79 F.3d 388 (4th Ci:.. 1S96) (ccunsel was ineffective in failing to request instruction to clarif/ findings jury had to make in order to convict).

Tippins v. Walker, 77 F.3d 682 (2d Cir. 1996) (counsels sleeping for numerous extended periods of time [at tria!] during which the defendants interests were at stake was per se prejudicial deprivation of effective assistance).

Deluca v. Lord, 77 F.3d 578 (2d Cir.}, cert, denied, 519 U.S. 824 (1996) (counsel failed to conduct adequate investigation of possible defense of extreme emotional disturbance which could have reduced murder charge to first-degree manslaughter).

United States v. Span, 75 F.3d 1383 (9th Cir. 1996) (counsel failed to propose proper jury instructions on movants only defense).

Crotts v. Smith, 73 F.3d 861 (9th Cir. 1995) (trial counsel was ineffective in failing to object to highly prejudicial evidence which likely would have been excluded if objection had been made).

Driscoll v. Delo, 71 F.3d 701 (8th Cir. 1995), cert, denied, 519 U.S. 910 (1996) (counsel was ineffective in failing to prepare to cross-examine prosecution serologist on critical evidence and in failing to impeach key prosecutorial eyewitness with prior inconsistent statements).

Harris v. Wood, 64 F.3d 1432 (9th Cir. 1995) (counsel was ineffective in, inter alia, failing to interview majority of witnesses identified in police reports, advising defendant to provide statement to prosecution without receiving any promise of reduction of charges, failing to file suppression motions, failing to propose or object to jury instructions, and failing to raise and preserve meritorious issues for appeal).

Williams v. Washington, 59 F.3d 673 (7th Cir. 1995) (counsel failed to seek out or interview witnesses other than two clients, did not visit scene of crime, and was insufficiently familiar with documents in case to make adequate judgments about whether to object to admission).

Genius v. Pepe, 50 F.3d 60 (1st Cir. 1995) (counsel did not pursue potential insanity defense by seeking independent psychiatric examination; although petitioner had been found competent to stand trial, facts suggesting possibility of incompetency should have flagged the possibility of meritorious insanity defense).

Tomlin v. Myers, 30 F.3d 1235 (9th Cir. 19S4) (counsel bailed to file identification suppression motion to challenge obvious violation of petitioners right to counsel at lineup; absent some indication the motion would have been lacking in merit[,] the failure to bring to the courts attention a major constitutional error in the prosecutions case

is not the product of reasonable professional judgment).

Sanders v. Ratelle; *21* F.3d 1446 (9th Cir. 1994) (counsels failure to interview, subpoena, or take statement against penal interest from petitioners brother, notwithstanding reliable indications that brother was actual perpetrator, was unfathomable and evidenced a gargantuan indifference to the interests of his client).

Mason v. Scully, 16 F.3d 38 (2d Cir. 1994) (counsel ineffective in failing to object, on hearsay and Confrontation Clause grounds, to critical testimony by police detective about inculpatory statement by nontestifying codefendant).

Foster v; Lockhart, 9 F.3d 722 (8th Cir. 1993) (counsels decision not to investigate potentially viable defense was unreasonable and could not be justified as tactical decision to focus exclusively on alternative defense).

Gray v. Lynn, 6 F.3d 265 (5th Cir. 1993) (trial counsel was ineffective in failing to object to obvious defect in jury instruction on elements of offense).

Ward v. United States, 995 F.2d 1317 (6th Cir. 1993) (counsel opened door to prosecutions introduction of otherwise inadmissible bad character evidence, made illogical and incomprehensible comments on record, and acted with inappropriate hostility and paranoia towards government).

Pilchak v. Camper, 935 F.2d 145 (8th Ck. 1991) (ineffective assistance by attorney suffering from Alzheimers disease at the time of trial, leading to disorientation, loss of memory, inability to concentrate and peculiar exhibitions of judgment).

Henderson v. Sargent, 926 F.2d 706 (8th Cir.), amended, 939 F.2d 586 (8th Cir. 1991), cert, denied, 502 U.S. 1050 (1992) (counsels failure to pursue available theory that killing was committed by someone other than petitioner cannot be justified as a strategic decision).

Smith v. Dugger, 911 F.2d 494 (11th Cir. 1990) (counsel failed adequately to investigate possible grounds for moving to suppress petitioners confessions, which were critical to the states case).

Chambers v. Armontrout, 907 F.2d 825 (8th Cir.), cert, denied, 498 U.S. 950 (1990) (counsel failed to interview and call witness who would have supported petitioners claim of self-defense).

United States v. Gray, 878 F.2d 702 (3d Cir. 1989) (counsel prejudicially failed to hire investigator or conduct any pretrial investigation, including contacting potential-witnesses).

Magill v. Dugger, 824 F.2d 879 (11th Cir. 1987) (counsel, who took over case at last minute, did not prepare for trial and did not adequately study preceding counsels file, thereby prejudicing sentencing verdict that was largely dependent on evidence and arguments at trial).

Smith v. Wainwright, 799 F.2d 1442 (11th Cir. 1986) (death-sentenced petitioners attorney failed to inform jury that only witness against petitionerthe admitted killer, who testified in return for lesser chargedid not link petitioner to murder in detailed confession to police).

Summit v. Blackburn, 795 F.2d 1237 (5th Cir. 1986) (counsels failure to invoke state law corpus delicti rule to prevent petitioners conviction of attempted armed robbery solely on basis of uncorroborated confession prejudiced petitioner>at penalty stage by permitting conviction for capital felony murder).

Dillon v. Duckworth, 751 F.2d 895 (7th Cir.), cert, denied, 471 U.S. 1108 (1985) (because of inexperience, personal crises, and judges denial of continuance request, counsel failed to pursue available avenues for investigation, waived alibi defense by failing to file notice in timely fashion, and never attempted to plea bargain).

House v. Balkcom, 725 F.2d 608 (11th Cir.), cert, denied, 469 U.S. 870 (1984) (capitally sentenced petitioners counsel filed no pretrial motions, sought no defense witnesses, failed to interview petitioners family or states witnesses, did not visit crime scene, made no use of possibly exculpatory evidence available from states own scientific tests, and failed to move for new trial based on evidence that victims were alive after last time petitioner could have been in contact with them).

Francis v. Spraggins, 720 F.2d 1190 (11th Cir. 1983), cert, denied, 470 U.S. 1059 (1985) (counsels concession of clients guilt in closing argument could not be justified as strategic decision to maintain credibility at upcoming capital sentencing hearing).

Goodwin v. Bdkcom, 684 F.2d 794 (11th Cir. 1982), cert, denied, 460 U.S. 1C98 (1983) (trial counsel knew juryselection procedures were unconstitutional but failed to challenge them because h? did not want to jeopardize relauonshipv.^h trial-judged

Yojng v. ^cint, 677 '.2d 7D2 (11th Cir. 1932), cert, denied,, 464 i.i.S. 1057 (158.4} {ccunsei udopredn unsupporva ueffjnse 9ii coL：nts；ignered the oovcousxd:enses?the nalice murder and armed robbery charges, and conceded his clients guilt of all three crimes for which he was charged in the guilt phase of the trial [out of a] mistaken belief that such an action was strategically necessary in order to make a strong plea for mercy).

MscKenna v. ^H:s, 280 F.2d 592 (5th Cir. 1960), cert, denied, 358 877 (1961) (inexperienced counsel, appointed over petitioners protest, were seeking employment at time from district attorney and failed to interrogate witnesses, secure witnesses for trial, appiy for continuance, or protect c'ient from hasty trial).

(cjhisffective assistancs with regard to guiity plea:

Lee v. United States, 137 S. Ct. 1953 (2017) (section 2255 motion) (counsels erroneous advice to client that guilty plea would preclude deportation, which led to clients pleading guilty, was prejudicial and resulted in denial of effective assistance of counsel and even though

guilty plea carried a lesser prison sentence than he would hava faced at trial; common sense recognizes that there is more to consider than simply the likelihood of success at trial; [t]he decision whether to plead guilty also involves assessing the respective consequences of a conviction after trial and by plea.

Lafler v. Cooper, 566 U.S. 156 (2012) (petitioner was denied effective assistance of counsel in plea bargaining by attorneys misadvising petitioner to reject plea offer based on view of law by counsel that state conceded was deficient, which resulted in petitioners rejecting plea, being convicted at trial, [and] receiv[ing] a minimum sentence 3 times greater than he would have received under the plea).

DelaRosa v. Myrick, 2021 U.S. App. LEXIS 24803 (9th Cir. Aug. 19, 2021) (counsel was ineffective in fail[ing] to accurately advise DelaRosa regarding the terms and conditions of the plea offer: counsel repeatedly advised him that the plea agreement included a term that would allow him to begin his sentence at state youth authority but plea agreement provided for merely recommendation, not such a promise, and determination of initial placement appears to have been within the sole discretion of youth authority and state department of corrections).

United States v. Akande, 956 F.3d 257 (4th Cir. 2020) (counsel erroneously advised client that pretrial suppression ruling could be preserved for appeal even after guilty plea by means of open plea (which was not a correct statement of the law, because a defendant cannot . challenge a pretrial suppression ruling on appeal after entering an open plea), and district courts \/arnj?;gs [during plea colloquy] were too gene ral to cure p：ea counsels misadvice).

Dodson v. Ballard, 800 Fed. Appx； 171 (4tn Cir. 2020) (counsel rendered deficient performance v/hzn ne misadvised Dodson about the elements of the statutory burglary offense and the strength of Dodsons case, and Dodson suffered prejudice in relying on counsels advice to reject the states plea offer; based on Dodsons history of accepting plea offers [having pleaded guilty to all three of his prior felony offenses] and the save re sentencing disparity he faced by proceeding to trial, Dodson has established a reasonable probability that he would have accepted the states offer and pleaded guiity had Lambert not rendered constitutionally deficient performance!.

Byrd v. Skipper, 940 F.3d 248 (6th Cir. 2019), cert, d^njed, 140 S. Ct. 2803 (2020) (defense counsel never initiated p!ea negotiations with the prosecutors office because counsel vastly overestimate[d] the strength of the abandonment defense; although district court found that it was not clear that Byrd would have accepted a p'ea, court of appeals concludes that Byrds interest in proceeding to trial was rooted in misinformation gleaned from his counsels faulty advice, making it an unreliable metric of reasonably probable outcomes).

United States v. Shepherd, 880 F.3d 734 (5th Cir. 2018) (counsel was ineffective in advising accused to plead guilty to failing to register as sex offender without counsels adequately researching whether interplay of statutes in prior States in which accused had been convicted of sex offenses with statutes in State to which accused had moved actually required registration in new State of residence).

Sullivan v. Secretary, 837 F.3d 1195 (11th Cir. 2016) (petitioner received ineffective assistance of counsel when his trial attorney advised him to turn down the States plea offer and proceed to trial based on a fundamental misunderstanding of the relevant state law: counsel advised client to rely at trial on defense of voluntary intoxication but legislature had previously eliminated that defense).

United States v. Rodriguez-Vega, 797 F.3d 781 (9th Cir 2015) (counsel was ineffective in stating to client that guilty plea created potential of removal rather than advising client that her conviction rendered her removal virtually certain, or words to that effect; although defendant received notice that she might be removed from a provision in the plea agreement and the courts plea colloquy under Federal Rule of Criminal Procedure 11 [J [t]he governments performance in including provisions in the plea agreement, and the courts performance at the plea colloquy, are simply irrelevant to the question whether counsels performance fell below an objective standard of reasonableness).

United States v. Bui, 795 F.3d 363 (3d Cir. 2015) (Buis counsel was ineffective with respect to his advice regarding the availability of [sentence reduction under 18 U.S.C.] 3553(f) if client accepted plea offer' and there is a reasonable probability that' but for counsels errors, he would not have pled guilty because Bui gained no benefit from his plea agreement other than potential sentence reduction).

Pidgeon v. Smith, 785 F.3d 1165 (7th Cir. 2015) (prisoner pleaded guilty to sexual assault based on counsels advice that he would [otherwise] face a mandatory sentence of life imprisonment without the possibility of parole due to prior serious felony conviction, but actually prior conviction did not qualify as a serious felony offense, meaning that Pidgeon did not face the possibility of life imprisonment, and Pidgeon alleges that he would not have accepted the plea agreement had he received correct legal advice); *•

Heard v. Addison, 728 F.3d 1170 (10th Cir. 2013) (counsel provided ineffective assistance in failing to advise [Heard] of viable defenses to the charges against him, and but for counsels deficient performance, Heard would not have pled guilty to these offenses).

Johnson v. Uribe, 700 F.3d 413 (9th Cir. 2012), cert, denied, 571 U.S. 1015 (2013) (counsel failed to advise client that sentence stipulated in guilty plea, to which client was ultimately sentenced, exceeded what was authorized by California law for charged crimes and enhancements and thus was unlawful).

United States v. Akinsade, 686 F.3d 248 (4th Cir. 2012) (granting co ram nobis relief to lawful permanent resident who pled guilty to crime that could result in deportation after being misadvised by counsel that deportation could occur only after conviction of two felonies).

United States v. Juarez, 672 F.3d 381 (Sth Cir. 2012) (section 2255 movant, who pled guilty to lying about United States citizenship and illegal re-entry after deportation following conviction of aggravated

felony, was misadvised by counsel who failed to independently research and investigate the derivative citizenship defense, which is a defense to the alienage element of both crimes to which Juarez pled guilty). <

Tovar Mendoza v. Hatch, 620 F.3d 1261 (10th Cir. 2010) (petitioners no contest plea was product of counsels blatant and significant misrepresentations about the amount of time [petitioner] would spend in prison).

Bauder v. Dept of Corr., 619 F.3d 1272 (11th Cir. 2010) (per curiam) (counsel misadvis[ed] Bauder regarding th? possibility of being civilly committed as a result of pleading to a charge of aggravated stalking of a minor, erroneously telling client that pleading to the criminal charge would not subject Bauder to civil commitment).

Dasher v. Attorney General, 574 F.3d 1310 (11th Cir. 2009) (Dashers counsel gave plainly inadequate advice in advising client to plead guilty without an agreement and throw himself at the mercy of the judge given that Dasher was clearly risking a sentence of substantially more than [plea agreement that had been offered] and there was certainly no reason to believe he would do better).

Julian v. Bartley, 495 F.3d 487 (7th Cir. 2007) (counsel was ineffective during plea negotiations when that counsel misinterpreted the Supreme Court decision in Apprendi v. New Jersey and [consequently] informed Julian that the maximum sentence he could receive would be thirty, rather than sixty years in prison), A

Dando v. Yukins, 461 F.3d 791 (6th Cir. 2006) (counsel was ineffective in advising petitioner to plead no contest without first consulting mental health expert to assess availability of evidence for duress-defense based on Battered Woman Syndrome). • ••

Satterlee v. Wolfenbarger, 453 F.3d 362 (6th Cir. 2006), cert, denied, 549 U.S. 1281 (2007) (counsel failed to inform petitioner of day-of-trial plea offer and petitioner consequently proceeded to trial and received sentence that was higher than plea offer).

Maples v. Stegall, 427 F.3d 1020 (6th Cir. 2005) (counsel was ineffective in erroneously advising petitioner that guilty plea preserved speedy trial claim for appeal).

Burt v. Uchtman, 422 F.3d 557 (7th Cir. 2005) (counsel was ineffective in failing to request renewed competency examination when client, who was of below-average intelligence and had history of psychological problems and was taking large doses of psychotropic medications, abruptly decided mid-trial to take guilty plea against advice of counsel).

United States v. Kwan, 407 F.3d 1005 (9th Cir. 2005) (granting co ram nobis relief to resident alien who challenged convictionwhich was basis for pending deportationon ground that Kwans counsel was constitutionally ineffective in affirmatively misleading him as to the immigration consequences of his conviction).

Nunes v. Mueller, 350 F.3d 1045 (9th Cir. 2003), cert, denied, 5^*3 U.S. 1033 (2004) (tria! counsel was ineffective ?n faiiing to inform fclientj fully cf the actual terms of the f i off-F f.-iada by the prosecution).

Me ore *'f.* Bryant, 233 (7t:i Cir: 2003) (Where m roneeus sdvice is provided.regarding the sentence likely.. to be served if the defendant chooses to proceed to trial, and that erroneous advice stems from the failure to review the statute or caselaw that the attorney knew to be relevant, the attorney has failed to engage in the type of good-faith analysis of tha relevant facts and applicable J^'gal principles that effective assistance requires). ∝′
Miller v. Straub, 299 F.3d 570 (6th Cir. 2002), cert, denied, 537 U.S. 1179 (2003) (counsel was ineffective in advising Jiant to plead guilty in order to obtain juvenile sentence without informing client that state could appeal and seek aitornate sentence of life imprisonment without possibility cf p?role; defense counsels failure to consider a prosecutors right to appeal is not a tactic or strategy).

Magana v. Hofbauer, 233 F.3d 542 (6th Cir. 2001) (counsel was ineffective in advising client to reject plea offer, based on mistaken view that maximum possible sentence upon conviction at trial would be identical to sentence offered in plea deal).

Wanatee v. Ault, 259 F.3d 7Q0 (Sth Cir. 2001) (counsel was ' ineffective in failing to advise client that going to trial exposed petitioner to potential sentence of life without parole, whereas plea offer would have ensured parole eligibility).

Mask v. McGinnis, 233 F.3d 132 (2d Cir. 2000), cert, denied, 534 U.S. 943 (2001) (counsel failed to realize and to advise prosecutor that, contrary to her statement during plea bargaining, petitioner was not subject to harsh sentencing provisions for violent persistent offenders).

Phillips v. Mills, 1999 U.S. App. LEXIS 20628 (6th Cir. Aug. 25,1999) (counsel failed to conduct reasonably adequate investigation before advising petitioner to plead guilty).

Ivy v. Caspari, 173 F.3d 1136 (8th Cir. 1999) (in advising petitioner about plea offer, counsel failed to give adequate explanation of elements of offense, did not alert petitioner to possible mental defense, and erroneously advised petitioner that he was eligible for death penalty if he did not plead guilty).

United States v. Alvarez-Tautimez, 160 F.3d 573 (9th Cir. 1998) (counsel failed to move to withdraw guilty plea following grant of codefendants motion to suppress, even though plea had not yet been accepted by the district court, giving section 2255 movant an absolute right to withdraw it).

United States v. Gordon, 156 F.3d 376 (2d Cir. 1998) (in advising client about guilty plea, counsel grcsrly underestimated maximum sentencin^^xposure
Sentencing Guidelines if client opted *fc*[r]

Meyers v. Gillis, 142 F.3d 664 (3d Cir. 199S) {in.; ; capital murder defendant to plead :: murder with life sentence, counsel inform would be eligible for parole but sentence cttually imprisonment without parole, and parole was possible only in event of Governors commutation).

Boria v. Keane, 99 F.3d 492 (2d Cir. 1996} (counse! was ineffective in failing to counsel client about wisdom of accepting plea bargain which would have substantially reduced sentence).

Dickerson v. Vaughn, 90 F.3d 87, (3d Cir. 1996) (petitioners pled nolo contendere based on counsels erroneous advice that pretrial ruling on double jeopardy could be appealed after plea).

Agan v. Singletary, 12 F.3d 1012 (11th Cir. 1S94) (counsel, whose client pled guilty, was ineffective in failing to make an independent examination of the facts and circumstances in order to offer an informed opinion as to the best course to follow (in that counsel only spent seven (7) hours conducting any sort of external investigation of the case, ignoring a potentially fruitful lead that would have created substantial questions as to the identity of the actual perpetrator(s)) and also ineffective in failing to investigate [the] clients competency to plead guilty (in that counsel ignored indications of mental unfitness because client refused to submit to psychiatric examination)).

Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988) (counsel did nothing to assist petitioner in efforts to withdraw guilty plea before sentencing and made statements to media indicating that motion to withdraw plea was meritless).

Holtan v. Parratt, 683 F.2d 1163 (8th Cir. 1982)' cert, denied, 459 U.S. 1225 (1983) (counsel failed to comply with petitioners instruction to seek withdrawal of nolo contendere plea).

(d)Ineffective assistance at sentencing:
Porter v. McCollum, 558 U.S. 30 (2009) (per curiam) (counsel at capital sentencing hearing failed to uncover and present any evidence of Porters mental health or mental impairment, his family background, or his military service. The decision not to investigate did not reflect reasonable professional judgment. Porter may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct some sort of mitigation investigation.).

Rompilia v. Beard, 545 U.S. 374 (2005) (We hold that even when a capital defendants family members and the defendant himself have suggested that no mitigating evidence is available, his lawyer is bound to make reasonable efforts to obtain and review material that counsel knows the prosecution will probably rely on as evidence of aggravation at the sentencing phase of trial.; trial attorneys were deficient in failing to examine the cour file on Rompilias prior conviction, given that prosecution was going to use the dramatic facts of a similar prior offense, and [accordingly] Rompilias counsel had a duty to make all reasonable efforts to learn what they could about the offense[,] [which] certainly included obtaining the Commonwealths own readily available file on the prior conviction to learn what the Commonwealth knew about the crime, to discover any mitigating evidence the Commonwealth would downplay and to anticipate the details of the aggravating evidence the Commonv/ealth would emphasize, and trial counsels omission was prejudicial in that review of file would have revealed range of mitigation leads that no other source had opened up).

Wiggins v. Smith, 539 U.S. 510 (2003) (trial counsels limited investigation of mitigating evidence violated petitioners right to effective assistance of counsel at capital sentencing phase notwithstanding counsels claim of strategic decision to curtail investigation and concentrate on other types of appeals to sentencing jury, because counsels decision to end their investigation when they did was neither consistent with the professional standards that prevailed [at time of sentencing], nor reasonable in light of the evidence counsel uncovered in the social services recordsevidence that would have led a reasonably competent attorney to investigate further).

Williams v. Taylor, 529 U.S. 362 (2000) (counsel did not begin to prepare for th[e] [sentencing] phase until a week before the trial[,] failed to conduct an investigation that would have uncovered extensive records graphically describing Williams nightmarish childhood, failed to introduce available evidence that Williams was borderline mentally retarded and did not advance beyond sixth grade in school[,] [and] failed to seek prison records recording Williams commendations for [good conduct while in prison]).

Rogers v. Mays, 2022 U.S. App. LEXIS 21433 (6th Cir. Aug. 3, 2022) (counsel fail[ed] adequately to challenge the semen evidence underlying rape charge, and we cannot be confident that, in the absence of counsels errors, Rogers would have been convicted of rape. Eliminating the statutory aggravator for rape would have removed the most powerful aggravating factor and would have likely caused the jury to weigh the aggravating and mitigating factors differently.).

Sanders v. Davis, 23 F.4th 966 (9th Cir. 2022) (Counsel had no prior experience in capital defense, made no effort to educate himself about the penalty phase, and made next to no effort to prepare for the penalty phase until days before it began. Unsurprisingly given this lack of knowledge, [counsel] conducted a bare bones investigation and failed to adequately inform and advise [petitioner] about the penalty phase, instead treating petitioners declaration that he viewed a life without parole (LWOP) sentence as unacceptable and c'id no* wrnt to present a penalty defense as a personal choice thst was not [counsels] role to challenge; counsels deficient performance prejudiced [petitioner], because there is a reasonable likelihood that [petitioner] would have allowed the presentation of a penalty defense had [counsel] reasonably informed and advised him, and because there is a reasonable likelihood that at least one juror would have changed her mind and voted to impose an LWOP sentence.). '

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Noguera v. Davis, 5 F.4th 1020 (9th Cir. 2021), cert, denied, 142 S. Ct. 1695 (2022) (counsel failed to investigate and present mitigating evidence pertaining to [petitioners] background; [c]ounsels failure to investigate Nogueras background led to the failure to uncover an abundance of relevant and compelling mitigating evidence.). ■ - - ' • -

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Jones v. Ryan； 1 F.4th 1179 (9th Cir. 2021) (counsel was on notice that Jones may have been mentally impaired, yet counsel failed to investigate Joness mental condition as a mitigating factor, and he failed to obtain a defense mental health expert; Counsel should have obtained a defense mental health expert well before the start of the guilt phase of Joness trial, but instead, he waited to make this request until after Jones had already been convicted;

Lewis v. Zatecky, 993 F.3d 994 (7th Cir. 2021), cert, denied, 142 S. Ct. 897 (2022) (counsels failure of representation [at non-capital sentencing] [was] so serious that counsel entirely failed to function as the clients advocate, so prejudice had to be presumed under United States v. Cronic: Attorney Raffs assistance during the entire sentencing phase was nothing but a statement that he was bowing out. He uttered two short sentences: Judge, Im going to defer to Mr. Lewis if he has any comments. I dont have anything to add. This went beyond a failure to conduct adversarial testing; it was an announcement of abandonment.).

United States v. Barrett, 985 F.3d 1203 (10th Cir. 2021) (In mitigation, defense counsel introduced testimony [at capital sentencing hearing] that [section 2255 movant] was a loved family member and good person who was sorry for his crime, but counsel did not introduce evidence that he experienced abuse as a child; suffered from braindamage, bipolar disorder, and post-traumatic stress disorder (PTSD); and struggled to exercise judgment in pressured situations.).

Andrews v. Davis, 944 F.3d 1092 (9th Cir. 2019) (en banc) (Andrewss counsel introduced almost no evidence in mitigation at the penalty phase, and did nothing to countcroa'aace the prosecuccrs v^nv of their client or to scrrrr. -Andrews as *'i* human being; c. I be it one who aad violent crimes).

>r?rv. Commissioner, 790 493 (3d Cir. 2020). ; r./: :.n(ufri rmi r.g cnst^ci: xc gra nt o /habeas carpus relief, which state conceded during oral argument should be affirmed; district court ruled, inter alia, that trial counsel was ineffective at capital sentencing phase in facing to investigate mental health evidence, including PTSD stemmingJrom military service (Fisher v. Beard, 2018 U.S. Dist. LEXIS 125279 (E.D. Pa. July 25, 2013)).

jsffeuon v. GDCP Warden, 941 F.3d 452 {11th C:r. 2019) {defense lawyers failed to adequately investigate [petitioners] mentsl health, and, in particular, whether he suffered from organic brain damage at the time of the kilHng: they ignored the unambiguous written recommendation of their retained psychologist that a neuropsychological evaluation be conducted in order tu^ rule out an organic etiology and explain Jeffersons mental health and behavior at the time he committed the homicide, and [t]hey also ignored a series of red flags that suggested that Jeffersons aberrant behavior was the result of organ;e brain damage sustained 3t the age of two when his head was run over by an automobiie).

Avena v. Chappell, 932 F.3d 1237 (9th Cir. 2019), cart., denied, 140 S. Ct. 1137 (2020) (counsel rendered deficient performance by failing adequately to investigate Avenas good character and social history, and he has no reasoned or tactical excuse for not doing so.

Williams v. Stirling, 914 F.3d 302 (4th Cir.), cert, denied, 140 S. Ct. 105 (2019) (counsels investigation into potentially mitigating evidence of FAS [Fetal Alcohol Syndrome] failed to meet an objective standard of reasonableness. By counsels own PCR-court admission, their failure to further investigate signs of FAS fell below the then-current standard for mitigation investigations; most of trial counsels decisions and actions on issues unrelated to FAS did bear the hallmarks of effective assistance: trial counsel had experience in capital cases; counsel consulted with numerous experts in developing a mitigation case; and counsel spent a significant amount of time developing mitigation arguments. But as Wiggins [v. Smith] makes abundantly clear, an inadequate investigation into potentially mitigating evidence can be, by itself, sufficient to establish deficient performance).

Richardson v. Superintendent, 905 F.3d 750 (3d Cir. 2018) (post-sentencing counsel was ineffective in failing to file post-sentencing motion to challenge trial courts failure to conduct a colloquy before allowing defendant to waive counsel on second day of his sentencing and thereafter proceed without counsel at remainder of sentencing hearing; although Supreme Court in Marshall v. Rodgers, 569 U.S. 58 (2013) declined to decide whether there is a right to counsel to file a post-sentencing motion, postsentencing motions are a critical stage under the S;xth Amendment in Pennsylvania state court, and accordingly defendants h3ve a right to counsel 3t that stage).

Abdul-Salaam v. Secretary, 855 ?.3d 254 (3d Cir. 2018), cert, denied, 139 S. Ct. 851(2019) (because trial counsel could not have had a strategic reason not to investigate Abdul-Salaams background school and juvenile records, to acquire a meptal health evaluation, or to interview more family members about his childhood abuse and poverty, counsels performance [at penalty stage of capital trial] was deficient; there is a reasonable probability that the unpresented evidence would have caused at least one juror to vote for a sentence of life imprisonment instead of the death penalty).

White v. Ryan, 895 F.3d 641 (9th Cir. 2018) (We hold Whites counsel performed deficiently [at capita! resentencing hearing] by failing to challenge evidence that White committed the murder for pecuniary gain [due to counsels mistaken belief that the issue already had been conclusively decided in a prior appeal}, and by failing to conduct an adequate investigation of mitigating factors, including the unreasonable decision not to hire any experts to assist with the penalty phase; but for counsels errors, it is reasonably likely that the result would have been different because [t]his was a relatively weak case for imposition of the death penalty).

Baer v. Neal, 879 F.3d 769 (7th Cir.), cert, denied, 139 S. Ct. 595 (2018) (at the penalty phase, Baers counsel failed to challenge crucial misleading jury instructions and a pattern of prosecutorial misconduct, and the state court unreasonably applied Strickland in denying Baer relief).

Stephenson v. Neal, 865 F.3d 956 (7th Cir. 2017) (counsel was ineffective at capital sentencing phase of trial in failing to object to his clients having to wear a stun belt, given the absence of any reason to

think his client would go berserk in the courtroom).

Phillips v. White, 851 F.3d 567 (6th Cir. 2017) (Phillipss counsel was ineffective [i]n failing to mount a defense during a capital sentencing, [and] he [thereby] effectively deprived Phillips of counsel throughout a critical stage of trial.).

United States v. Abney, 812 F.3d 1079 (D.C. Cir. 2016) (counsel in drug case was ineffective in failing to seek continuance of sentencing until after effective date of Fair Sentencing Act, which was passed by Congress five days before sentencing; although it was an open question whether the reductions in the FSA would apply to pre-FSA conduct where the defendant was sentenced after the FSA took effect, it was at least reasonably probableif not more likely stilithat courts would interpret the FSAs new [more dsfsndant-favorable] mandatory minimums to apply to defendants sentenced after its effective date).

Hardwick v. Secretary, 803 F.3d 541 (11th Cir. 2015), cert, denied, 137 S. Ct. 41 & 61 (2016) (counsel was ineffective in failing to obtain any of Hardwicks life-history records or conduct a life-history investigation even though Hardwicks attorney had ample information signaling the existence of potential significant mitigation evidence: He knew that Hardwick had been raised in an abusive environment and has been in and out of foster and boys homes; knew that Hardwick had been abusing drugs and alcohol for over a decade; and knew of Hardwicks particularly heavy usage of quaaludes, marijuana, and alcohol immediately prior to the murder.).

Saranchak v. Secretary, 802 F.3d 579 (3d Cir. 2015), cert, denied, 577 U.S. 1237 (2016) (Counsels investigation here [for capital penalty phase of trial] fell woefully short, under standards expressed both in clear Supreme Court precedent and as set forth by the ABAs professional guidelines. Even assuming the [state court] was correct that counsel learned nothing from Saranchak, his girlfriend, or his mother regarding Saranchaks mental health, his abusive upbringing, or his dysfunctional family, counsel nevertheless learned from Kruszewski [neutral expert appointed to evaluate Saranchaks competency to stand trial] about Saranchaks previous psychiatric hospitalization as well as his suicide attempt and depression. Yet counsel did not retain an expert on Saranchaks behalf or seek further medical evaluation.

Instead, counsel was content with the court-appointed experts investigation of only Saranchaks competency to stand trial. Counsel did not even obtain the records regarding the psychiatric hospitalization that was reflected in Kruszewskis report, much less Saranchaks school records or other hospitalization records.).

Bemore v. Chappell, 788 F.3d 1151 (9th Cir. 2015), cert, denied, 577 U.S. 1182 (2016) (counsel decided to present her good guy mitigation defense without first investigating appropriately the mental health alternative and, when mental health mitigation strategy become apparent, counsel precipitously pushed that possibility aside as inconsistent with the sun child aspect of her planned good guy mitigation presentation).

Pruitt v. Neal, 788 F.3d 248 (7th Cir. 2015), cert, denied, 577 U.S. 1181 (2016) (trial counsel were ineffective in their investigation and presentation of evidence that Pruitt suffered from schizophrenia).

Doe v. Ayers, 782 F.3d 425, 42829 (9th Cir. 2015) (counsels investigation for penalty phase of capital case was facially inadequate: counsel failed to obtain Does prison file, which contained readily apparent and powerful mitigating evidence, did not conduct follow-up investigation to explore indications that Doe was beaten as a child and may have suffered more from mental health problems and substance abuse than he was willing to admit, and did not retain an expert to conduct a penalty-phase investigation).

DeBruce v. Commissioner, 758 F.3d 1263 (11th Cir. 2014) (counsel fail[ed] to investigate DeBruces mental health and background in search of mitigating evidence to present at capital sentencing phase of trial). •.,

Cauthern v. Colson, 736 F.3d 465 (6th Cir. 2013) (counsel . failed to investigate possible mitigating evidence of childhood circumstances by interviewing defendants nearest relatives).

Gonzalez v. United States, 722 F.3d 118 (2d Cir. 2013) (counsel did not accompany Gonzalez when Gonzalez was interviewed by the Probation Department, did not provide client with copy of presentence report, spent no more than 15 minutes with Gonzalez discussing the [presentence report], failed to submit to the court a sentencing memorandum, and failed to seek a downward departure under federal sentencing guidelines).

Stankewitz v. Wong, 698 F.3d 1163 (9th Cir. 2012) (counsel failed to investigate and present readily available mitigation evidence).

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Hooks v. Workman, 689 F.3d 1148 (10th Cir. 2012) (counsel presented woefully inadequate mitigation presentation although [e]ven the most minimal investigation would have uncovered a life story worth telling, failed to cross-examine prosecutions witness to show that prior conviction was not as aggravating as witness portrayed, and bolstered the prosecutions case in aggravation by effectively conceding the continuing threat aggravator in his opening statement).

Winston v. Pearson, 683 F.3d 489 (4th Cir. 2012), cert, denied, 568 U.S. 1205 (2013) (trial attorneys were ineffective for failing to argue to the jury during sentencing that Winston is mentally retarded so as to invoke Atkins v. Virginias categorical prohibition of death penalty for mentally retarded offenders).

Blystone v. Horn, 664 F.3d 397 (3d Cir. 2011) (trial counsel was ineffective for failing to investigate, develop, or introduce expert mental health testimony and institutional records in mitigation).

Sowell v. Anderson, 663 F.3d 783 (6th Cir. 2011) (counsel did not conduct an investigation into Sowells background or interview any of his family members despite reports of several court-appointed mental

health experts, which hinted at Sowells difficult upbringing, 2nd thus counsel did not iearn about his severely impoverished and abusive childhood).

Foust". Houk, 655 3d 524 (6th:Qr. 2011|(Fousts. ^Uurnsys.did net interviev/'any.potentisl [mrtigetionj witnesses, did not gather any records from Childrens Services, despite [defense psychologist] Karpawichs repeated reminders' did not prepare Fousts parents or Karpawich in advance of their testimony at the mitigation hearing, and hired Karpawich in lieu of a trained mitigation specialist, eventhough Karpawich informed the attorneys that he was noiia trained mitigation specialist).

Ccoper v. Secretary, 646 F.3d 1328 (11th Cir. 2011) (Coopers attorneys did not conajct an adequate background investigation and unreasonably decided to end the background investigation after only talking to Cooper, Coopers mother and [clinical psychoiogist/neuropsychologist] Dr. Merin).-

Johnson v. Secretary, 643 F.3d 907 (11th Cir. 2011) (failure to adequately investigate Johnsons background and resulting failure to present the non-statutory mitigating circumstances evidence).

Kindler v. Horn 642 F.3d 398 (3d Cir. 2011), cert, denied, 565 U.S. 1173 (2012) (reaffirming, in pertinent part, Kindler v. Horn, 542 F.3d 70 (3d Cir. 2008), vacd, 558 U.S. 53 (2009)) (granting writ because, inter alia, Kindler was denied effective assistance of counsel during the penalty phase).

Ferrell v. Hall, 640 F.3d 1199 (11th Cir. 2011) ([njeither the jury nor the sentencing judge was ever told, because defense counsel never discovered that Ferrell suffers from extensive, disabling mental health problems and diseases and was subjected to physical abuse as child and grew up in conditions of extreme privation).

Goodwin v. Johnson, 632 F.3d 301 (6th Cir. 2011) (trial counsel chose to forgo presenting mitigation evidence [due to] incomplete, erroneous information and unsupported supposition).

Griffin v. Pierce, 622 F.3d 831 (7th Cir. 2010), cert, denied, 562 U.S. 1250 (2011) (counsel failed to conduct any investigation into mitigation, presenting only testimony of defendant and witness with whom Griffins counsel had never spoken until just a few minutes before she testified).

Theus v. United States, 611 F.3d 441 (8th Cir. 2010) (counsel failed to object to district courts error in imposing a ten-year mandatory minimum sentence for a quantity of cocaine that required only a five-year minimum sentence).

Rollins v. Horn, 386 Fed. Appx. 267, 2010 U.S. App. LEXIS 13824 (3d Cir. July 7, 2010) (per curiam) (Rollins attorney performed deficiently by failing to adequately investigate and present evidence of mitigating circumstancss).

Robinson v. Schriro, 595 F.3d 10S6 (9th Cir.}, d.t c!e"iad, 562 U.S. 1037 (2010) (counsel dfd not conduct investigation, thereby frying to iaarnf] of
Robinsons character and b?r.kt：rrouna that-would nave provided classic mitigation evidence).

Johnson v. Mitchell, 585 F.3d 923 (6th Cir. 2009) (in retrial of case in which previous counsel had been found ineffective, new counsel felt there was no need for any new investigation and thus interviewed no witnesses and did not request the assistance of an investigator; utter lack of meaningful mitigation investigation compels the conclusion that the representation was deficient).

Libberton v. Ryan, 583 F.3d 1147 (9th Cir. 20CS), cen. denied, 560 U.S. 979 (2010) (counsel, who spent very little time preparing for sentencing and did not pursue [potentially mitigating] evidence, called only two mitigating witnesses, both of whom were only tenuously related to Libberton; [n]o possible strategy could justify this lack of diligence in pursuing mitigating evidence).

Hamilton v； Ayers, 583 F.3d 1100 (9th Cir. 2009) (counsel, who had never before tried capital case, failed to investigate and present available mitigating evidence; Defense counsel did not even exhaust the few sources of information of which he was aware. Rather, he effectively abandoned his investigation after having acquired only rudimentary knowledge of [the defendants] history from a narrow set of sources.).

Adams v. Quarterman, 324 Fed. Appx. 340, 2009 U.S. App. LEXIS 8693 (5th Cir. April 22, 2009) (per curiam) (counsel failed to develop and present available mitigating evidence; [ejven if Adams had instructed [counsel] not to contact family members and presumably not to present mitigating evidence derived directly from them, [counsel] was not relieved of conducting a mitigation investigation; [w]hen, as here, counsel does not conduct an investigation sufficient to enable him to reach an informed decision, we must reject the assertion that counsel made a strategic choice not to emphasize the defendants background).

Walbey v. Quarterman, 309 Fed. Appx. 795, 2009 U.S. App. LEXIS 942 (5th Cir. Jan. 19, 2009) (per curiam) (counsel was ineffective in failing to investigate and present available mitigating evidence: Supreme Courts decision in Williams [v. Taylor] stands for the proposition that counsel can be prejudicially ineffective even if some of the available mitigation evidence is presented and even if there is psychiatric testimony).

Sechrest v. Ignacio, 549 F.3d 789 (9th Cir. 2008), cert, denied, 558 U.S. 938 (2009) (counsel was ineffective in permitting prosecution to review confidential report of mental health expert whom defense had decided not to call as witness, and by stipulating to prosecutors calling expert as witness for prosecution at capital sentencing hearing, and by failing to prepare adequately to cross- examine expert).

Johnson v. Bagley, 544 F.3d 592 (6th Cir. 2008) (At a surface level, it appears that Johnsons counsel [followed ABA Guidelines on death-penalty representation in] consider[ing] all of the[] [Guidelines] options [for witnesses and evidence to introduce at the penalty phase of a capital case] but counsel chose not to interview petitioners mother based on counsels conclusion that mother would be a bad

mitigation witness, which is no explanation for not interviewing her first; counsels failure to read extensive social services records on petitioner left counsel unaware of different mitigation strategy and led to counsels submitting records to jury that directly contradicted counsels mitigation argument; and record suggests that these investigative blunders occurred because no one who participated in Johnsons penaltyphase defense made any deliberate decisions about the scope of the investigation, let alone the reasonable ones Strickland requires).

Mason v. Mitchell, 543 F.3d 766 (6th Cir. 2008), cert, denied, 558 U.S. 1007 (2009) (trial counsel provided ineffective assistance by failing to interview Masons family members and investigate the obvious red flags contained in state records suggesting that Masons childhood was pervaded by violence and exposure to drugs in the home from an early age).

Williams v. Allen, 542 F.3d 1326 (11th Cir. 2008), cert, denied, 556 U.S. 1253 (2009) (counsels investigation was constitutionally inadequate: despite the availability of several of Williams family members, trial counsel sought mitigating evidence exclusively from petitioners mother and thereby obtained an incomplete and misleading understanding of Williams life history; counsels failure to pursue this additional evidence cannot be characterized as the product of a reasonable strategic decision. Counsel uncovered nothing in their limited inquiry into Williams background to suggest that further investigation would have been fruitless.).

Bond v. Beard, 539 F.3d 256 (3d Cir. 2008), cert, denied, 558 U.S. 835 (2009) (counsel waited until the eve of the penalty phase to begin their preparations, causing them to fail to inquire meaningfully into Bonds childhood and mental health, and depriving defenses mental health expert of sufficient information to evaluate Bond accurately; We will not excuse this conduct on the ground ? that Bond and his family members did not tell counsel that . i. his background provided fertile territory for mitigation

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arguments. Neither Bond nor his family had a duty to ■ instruct counsel how to perform such a basic element of competent representation as the inquiry into a defendants background.).

Jells v. Mitchell, 538 F.3d 478 (6th Cir. 2008) (trial counsel was ineffective in (1) failing to prepare for the mitigation phase of the case until after [petitioner] was convicted; [and] (2) failing to utilize a mitigation specialist to gather information about [petitioners] background, including his educational, medical, psychological, and social history).

Burdge v. Belleque, 290 Fed. Appx. 73, 2008 U.S/App. LEXIS 17889 (9th Cir. Aug. 15, 2008) (counsel was ineffective in failing to object to trial courts application of habitual offender statute that was Inapplicable to

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petitioners situation; counsels failure to object cannot be characterized as the product of sound strategy since [n]othing in the record indicates that counsel carefully considered whether to object but ultimately decided . against it).

Correll v. Ryan, 539 F.3d 938 (9th Cir. 2008), cert, denied, 555 U.S. 1098 (2009) (counsel was ineffective in failing to investigate and present mitigating evidence: To the extent that there was any strategy involved in the penalty phase presentation, it cannot be considered a reasonable strategy by any objective measure.)

Gray v. Branker, 529 F.3d 220 (4th Cir. 2008), cert, denied, 556 U.S. 1106 (2009) ([cjounsel rendered ineffective assistance by failing to-investigate and develop, for sentencing purposes, evidence that Gray suffered from a severe mental illness).

Duncan v. Ornoski, 528 F.3d 1222 (9th Cir. 2008), cert, denied, 556 U.S. 1131 (2009) (counsels failure to investigate and present potentially exculpatory serological evidence prejudiced Duncan with respect to the jurys special circumstance finding and requires vacatur of capital sentence).

Lawhorn v. Allen, 519 F.3d 1272 (11th Cir. 2008) (counsel was ineffective in waiving closing argument in capital sentencing hearing; although counsel claimed strategic reason for waiver, counsel failed to adequately investigate or research the law and was thus unable to make a strategic decision as to whether to waive argument).

Morales v. Mitchell, 507 F.3d 916 (6th Cir. 2007) (trial counsel conducted an inadequate investigation in preparation for the penalty phase: defense counsel failed to interview key witnesses for both the prosecution and the defense. Moreover, defense counsel did not hire a mitigation specialist or investigator and did not himself contact any of Moraless family members other than Mcraless father, even though numerous other family members were willing to testify.).

Haliym v. Mitchell, 492 F.3d 680 (6th Cir. 2007) (counsel failed to follow up with obvious avenues of investigation that wou;d have produced vaNabL? mitigating evidence).

L\M ; bri^ht v. fchriro, 499 F.3d : 103 (9th Cir. 2007), cart. d2D!2d, 552 U.S. 1097 (2003) (counsel failed to do even s i ainirT.al invcsiigauon c; classic mitigation evidence/' ,;ov«vnhstanaiiig-ths fact tnat he knew such evidence potentially existed).

Stevens v. Mc3ride, 489 F.3d 883 (7th Cir. 2007), cert, denied, 553 U.S. 1034,1048 (2008) (counsel were ineffective in failing to investigate and present mitigation evidence on [petitioners] mental state, relying exclusively on psychologist whom counsel had come to regard as a queck, and caking psychologist to witness st3nd without knowing anything about the content of [psychologists] planned testimony, thereby activating duty to provide prosecutor with psychologists extremely detrimental written report).

Miller v. Martin, 481 F.3d 468 (7th Cir. 2007) (counsel was ineffective in standing mute at sentencing based on counsels assumption that conviction would be overturned on appeal).

Anderson v. Sirmons, 476 F.3d 1131 (10th Gr. 2007) (trial counsels failure to investigate and obtain readily available evidence in

mitigation fell well below the prevailing professional norms and amounted to deficient performance; Trial counsel did not undertake a strategic decision in this case to om;t the mitigation evidence identified above; counsel simply did not investigate and therefore did not know such evidence was available.).

Outten v. Kearney, 464 F.3d 401 (3d Cir. 2006) (counsel was ineffective in failing to investigate and present mitigating evidence: counsels effort fell well short of the national prevailing professional standards articulated by the American Bar Association and was, therefore, unreasonable).

Frierson v. Woodford, 463 F.3d 982 (9th Cir. 2006), cert, denied, 551 U.S. 1134 (2007) (counsel was ineffective in failing to investigate and present mitigating evidence and in inducing and failing to challenge [defense witnesss] invocation of his Fifth Amendment right to selfincrimination and thereby losing best opportunity to refute prosecutions argument that petitioner committed another, prior murder).

Williams v. Anderson, 460 F.3d 789 (6th Cir. 2006) ([d]efense counsels complete failure to investigate before deciding not to present mitigating evidence is deficient performance as a matter of law under Strickland; counsels decision to focus on residual doubt alone could not constitute a reasonable trial strategy because defense counsel never conducted an investigation into mitigation before deciding to pursue residual doubt).

Hovey v. Ayers, 458 F.3d 892 (9th Cir. 2006) (counsel was ineffective in failing to adequately prepare Hoveys penalty-phase expert witness sufficiently by prcvidj'ig- hospital records and other documentation supporting t'?a diagnosis and infermation about petitioners conduct during months leading up to commission of crirna: Regardless of whether a defense expert requestsspscr.l: information relevant to a defendants backgrocno, it »S' defense counsels duty to seek out such evidence arc! bring it to the attention of the experts).

Poindexter v. Mitchell, 454 F.3d 564 (6th Cir. 2006) (counsel was ineffective in failing to investigate and present available mitigating evidence: counsels allegedly strategic decision to limit mitigation to certain family members, friends, and petitioner himself was unreasonable since [it] was the product of an incomplete investigation).

Dickerson v. Bagley, 453 F.3d 690 (6th Cir. 200G) (counsel did not properly conduct a mitigation investigation and consequently did not learn of clients borderline IQ and other mitigating aspects of family, educational, social and medical history).

Daniels v. Woodford, 428 F.3d 1181 (9th Cir. 2005), cert, denied, 550 U.S. 968 (2007) (counsel failed to prepare adequately for sentencing phase, including failing to follow up on psychological screening that showed mental disorder, fail[ing] to review family and social history which described a history of mental illness, and failing to investigate effects of prescribed medication and illegal substances on clients state of mind at time of crime).

Marshall v. Cathel, 428 F.3d 452 (3d Cir. 2005), cert, denied, 547 U.S. 1035 (2006) (numerous failures in investigating and preparing for the penalty phase of the case, and in putting on and arguing a case for life).

Summerlin v. Schriro, 427 F.3d 623 (9th Cir. 2005), cert, denied, 547 U.S. 1097 (2006) (counsel was ineffective in failing to investigate and present available mitigating evidence regarding abuse that petitioner suffered as child and petitioners functional mental retardation and previous diagnosis of paranoid schizophrenia).

Miller v. Dretke, 420 F.3d 356 (Sth Cir. 2005) (counsel failed to investigate potential mitigating evidence by interviewing physicians who had treated petitioner for mental and emotional injuries stemming from earlier car accident, and counsel made his decision not to call physicians as witnesses without speaking to them).

Harries v. Bell, 417 F.3d 631 (6th Cir. 2005) (counsel was ineffective in failing to conduct a thorough investigation of Harness mental health or to consult mental health expert even though Harriess mother alerted them that Harries suffered from mental illness and in failing to adequately investigate Harriess family background, despite indications of Harriess troubled childhood; counsels explanation that failure to investigate stemmed from clients opposition and from counsels doubts about persuasiveness of such mitigating evidence is rejected by court of appeals based on prior circuit caselaw rejecting such rationales).

Cancan v. McBride, 395 F.3d 376 (7th Cir. 2005) (counsel was ineffective in failing to consult with [petitioner] regarding his right to testify at the penalty phase of the trial).

Smith v. Mullin, 379 F.3d 919 (10th Cir. 2004) (counsel was ineffective in failing to present mitigating evidence of petitioners brain damage, mental retardation and troubled background at capital sentencing hearing: While the same constitutional principles that guide[] our examination of [counsels] guilt stage performance apply to his performance at sentencing, we are particularly vigilant in guarding th[e] right [to effective assistance of counsel] when the defendant faces a sentence of death. Our heightened attention parallels the heightened demands on counsel in a capital case, (citing ABA Standards for Criminal Justice)).

Lewis v. Dretke, 355 F.3d 364 (5th Cir. 2003) (per curiam) (counsel was ineffective in failing to investigate mitigating evidence of [clients] abusive childhood; counsels claim of strategy is rejected because [njothing in counsels testimony supports the theory of their decision having been tactical:

Hamblin v. Mitchell, 354 F.3d 482 (6th Cir. 2002), cert, denied, 543 U.S. 925 (2004) (counsels failure to investigate and prepare for the sentencing phase of the case violates the ABA standards [which, under Wiggins v. Smith, provide the guiding rules and standards to be used in defining the prevailing professional norms in ineffective assistance cases] and applicable case law; trial counsels claim of strategic reasons for failing to investigate does not make sense, and trial counsels claim that he followed his clients wishes cannot excuse failure, including because ABA Guidelines state that investigation

regarding penalty should be conducted regardless of any statement by the client that evidence bearing upon penalty is not to be collected or presented).

United States v. Conley, 349 F.3d 837 (5th Cir. 2003) (trial counsel was ineffective in failing to object to sentence that exceeded statutory maximum).

Frazier v. Huffman, 343 F.3d 780 (6th Cir. 2003), supplemented, 348 F.3d 174 (6th Cir. 2003), cert, denied, 541 U.S. 1095 (2004) (trial counsel was ineffective in failing to investigate and present evidence of [petitioners] brain impairment: We can conceive of no rational trial strategy that would justify the failure to investigate and present evidence of [petitioners] brain impairment, and to instead rely exclusively on the hope that the jury would spare his life due to any residual doubt about his guilt.).

United States v. Horey, 333 F.3d 1185 (10th Cir. 2003) (counsel in federal sentencing hearing was ineffective in failing to object to an indisputably inapplicable career offender enhancement that increased both Mr. Horeys total offense level and his criminal history category 'increasing the applicable guideline range minimums).

Powell v. Collins, 332 F.3d 376 (6th Cir. 2003) (attorney who spent less than two full business days preparing [for capital sentencing stage of trial], waiting until after the conclusion of the guilt phase to do so, was ineffective in failing to develop and present mitigating evidence, and deficiencies could not be justified as strategic decisions because counsel had not conducted sufficient investigation to assess strategy reasonably).

Cargle v. Mullin, 317 F.3d 1196 (10th Cir. 2003) (counsel performed no investigation in preparation for capital sentencing phase and consequently failed to present available evidence of petitioners difficult childhood and good personal traits, with result that jury heard only brief, personally remote, and fairly generic testimony from petitioners pastor, who simply could not relate the individualized, humanizing facts that other potential witnesses could have provided; counsel also failed to call petitioner to witness stand to express remorse or to otherwise suggest why he should not be defined solely by the terrible act of which he stood convicted).

Douglas v. Woodford, 316 F.3d 1079 (9th Cir.), cert, denied, 540 U.S. 810 (2003) (counsel was ineffective in presenting only minimal mitigating evidence and suggesting in very general terms that petitioner had difficult childhood; counsels failure to develop and present mitigating evidence could not be justified by petitioners refusal to cooperate with counsels investigation and could not be attributed to strategic decision given counsels lack of information needed for evaluating strategy).

Hooper v. Mullin, 314 F.3d 1162 (10th Cir. 2002), cert, denied, 540 U.S. 838 (2003) (trial counsels presentation of psychologists at sentencing hearing was disastrous and undermined defenses theory of mitigation because counsel presented mental health evidence without adequate investigation, in an unprepared and ill-informed manner).

Brownlee v. Haley, 306 F.3d 1043 (11th Cir. 2002) (counsel failed to investigate, obtain, or present mitigating evidence, despite availability of powerful mitigating evidence of [petitioner]s borderline mental retardation, psychiatric disorders, and history of drug and alcohol abuse).

Simmons v. Luebbers, 299 F.3d 929 (8th Cir. 2002), cert. ■ denied, 538 U.S. 923 (2003) (counsel was ineffective in fail[ing] to present any meaningful mitigating evidence despite availability of mental health evidence; state supreme courts view of attorneys penalty phase actions [as] part of a sound trial strategy is rejected because there was no justifiable reason to prevent the jury from learning about Simmonss [mitigating] childhood experiences).

Carpenter v. Vaughn, 296 F.3d 138 (3d Cir. 2002) (counsel was ineffective in failing to object to highly misleading answer given by the trial judge in response to a jury question about the availability of parole if Carpenter was sentenced to life imprisonment).

Karis v. Calderon, 283 F.3d 1117 (9th Cir. 2002), cert, denied, 539 U.S. 958 (2003) (counsel was ineffective in failing to investigate and present mitigating evidence: a substantial mitigating case may be impossible without a life-hi story investigation).

Silva v. Woodford, 279 F.3d 825 (9th Cir.), cert, denied, 537 U.S. 942 (2002) (counsel ineffectively elected to abandon!] the investigation into [petitioners] backgroundincluding his family, criminal, substance abuse, and mental health history based entirely on an overbroad acquiescence in his clients demand that he refrain from calling his parents as witnesses: if a client forecloses certain avenues of investigation, it arguably becomes even more incumbent upon trial counsel to seek out and find alternative sources of information and evidence.

Mayfield v. Woodford, 270 F.3d 915 (9th Cir. 2001) (en banc) (counsel neither adequately investigated and prepared for the penalty phase [counsel billed only 40 hours in preparation for both the guilt and penalty phases of trial [,] had only one substantive meeting with his client, the morning the trial began, and did not discuss with him possible witnesses or trial strategies^] [and] spent less than half the defense investigation budget authorized] nor presented and explained the significance of all the available mitigating evidence to the jury).

Ainsworth v. Woodford, 268 F.3d 868 (9th Cir. 2001) (counsel engaged in minimal preparation, interview[ing] one defense witness for only ten minutes on the morning she was scheduled to testify; failed to examine [petitionerjs [readily available] employment records, medical records, prison records, past probation reports, and military records; abdicated the investigation of [petitioners psychosocial history to one of [his] female relatives; failed to present evidence of [petitioners positive adjustment to prison life during his previous incarcerations; and, due to lack of preparation, conducted direct examination of witness that opened door to damaging cross-examination about petitioners intention to commit other crime).

Coleman v. Mitchell, 268 F.3d 417 (6th Cir. 2001), cert, denied, 535

U.S. 1031 (2002) (counsel failed to [develop and] present any aspects of Petitioners personal history, which included extensive physical and psychological abuse in childhood, prior hospitalizations for head injuries, and possible psychological and organic brain disorders; counsels claim that mitigating evidence was omitted in order to honor Petitioners wishes is rejected as baseless).

Jermyn v. Horn, 266 F.3d 257 (3d Cir. 2001) (counsel, who had been out of law school for less than two years, failed to investigate the circumstances surrounding [petitioners childhood, even though counsel was informed by defense expert prior to trial that petitioner had been abused as a child, and that the abuse was a critical component to understanding [his] mental illness; counsel practically concedes that his course of conduct was not based on his exercise of sound professional judgment!,] [and] that he had no tactical reason for failing to investigate).

Battenfield v. Gibson, 236 F.3d 1215 (10th Cir. 2001) (counsels failure to investigate available mitigating evidence could not be excused either by claim of strategic judgment to rely on appeal to jurors sympathy and mercy or by accuseds statement at trial that he did not want to present any mitigating evidence).

United States v. Frank, 230 F.3d 811 (5th Cir. 2000) (counsel failed to raise available challenge to application of Federal Sentencing Guidelines to enhance sentence).

Lockett v. Anderson, 230 F.3d 695 (5th Cir. 2000) (counsel failed to conduct adequate investigation into available mitigating evidence).

Carter v. Bell, 218 F.3d 581 (6th Cir. 2000) (counsel prejudicially failed to investigate mitigating evidence and relied exclusively on possibility of residual doubt at sentencing; although counsel advanced several reasons for adopting their strategy, their reasons do not excuse their deficiency; nor does clients unwillingness to rely on mental health problems justify counsels failure to investigate potentially mitigating psychological evidence).

Jackson v. Calderon, 211 F.3d 1148 (9th Cir. 2000), cert, denied, 531 U.S. 1072 (2001) (counsels total investigation for purposes of the penalty phase took less than two hours some weeks before the trial began and consisted of interviews of petitioners mother and estranged wife and review of his juvenile and military records; [n]o attempt was made to compile a social history of Jackson, to indicate the conditions in which he had been brought up and lived).

Moore v. Johnson, 194 F.3d 586 (5th Cir. 1999) (counsel fail[ed] to investigate, develop, or present available mitigating evidence relating to Moores background and also undermined penalty stage presentation in various ways during guilt-innocence stage).

Smith v. Stewart, 189 F.3d 1004 (9th Cir. 1999), cert, denied, 531 U.S. 952 (2000) (counsel, who had never tried a death penalty case before, failfed] to investigate Smiths background and mental illness and relied exclusively on record of mitigation testimony from first sentencing which had resulted in trial courts imposition of death sentence).

Parker v. Bowersox, 188 F.3d 923 (8th Cir. 1999), cert, denied, 529 U.S. 1038 (2000) (counsel failed to present testimony of witness who cou'd have rebutted factual predicate of aggravating circumstances).

Collier v. Turpin, 177 F.Bd 1184 (11th Cir. 1999) (although defense attorneys presented ten witnesses at capitalsentencing hearing, lawyers ineffective preparation and selection of witnesses resulted in hollow shell of mitigation, omitting particularized circumstances of [petitioners] past and of his actions on the day of the crime that would have allowed [jurors] fairly to balance the seriousness of his transgressions with the conditions of his life).

United States v. Granados, 168 F.3d 343 (8th Cir. 1999) (counsel failed to object to presentence reports classification of crime in higher Sentencing Guidelines category than parties had stipulated in plea agreement).

Bean v. Calderon, 163 F.3d 1073 (9th Cir. 1998), cert, denied, 528 U.S. 922 (1999) (counsel failed to prepare mental health experts for testifying and failed to conduct adequate investigation of possible mitigating evidence: When experts request necessary information and are denied it, when testing requested by expert witnesses is not performed, and when experts are placed on the stand with virtually no preparation or foundation, a capital defendant has not received effective penalty phase assistance of counsel.).

Dobbs v. Turpin, 142 F.3d 1383 (11th Cir. 1998) (counsel failed to investigate and present mitigating evidence, and counsels closing argument was inadequate; counsels claim that omission of mitigating evidence was strategic is rejected because informed choice required adequate investigation).

Smith v. Stewart, 140 F.3d 1263 (9th Cir.), cert, denied, 525 U.S. 929 (1998) (counsel did not perform any real investigation into mitigating circumstances even though that evidence was rather near the surface and, at capitalsentencing hearing, presented no mitigating evidence or argument).

Austin v. Bell, 126 F.3d 843 (6th Cir. 1997), cert, denied, 523 U.S. 1079 (1998) (counsel did not present any mitigating evidence because he did not think it would do any good; counsels reasoning does not reflect a strategic decision, but rather an abdication of advocacy).

Patrasso v. Nelson, 121 F.3d 297 (7th Cir. 1997) (counsel failed to investigate and do other preparation needed to challenge prosecutions case and present case in mitigation).

Hall v. Washington, 106 F.3d 742 (7th Cir.), cert, denied, 522 U.S. 907 (1997) (finding of ineffective assistance at sentencing based on first, counsels total failure to contact [petitioner] in preparation for the sentencing hearing and their consequent failure to present his mitigation witnesses, and second, counsels failure in his closing argument to offer any reason other than blatant disregard of Illinois law for sparing Halls life).

Emerson v. Gramley, 91 F.3d 898 (7th Cir. 1996), cert, denied, 520 U.S. 1122 (1997) (counsel failed to investigate mitigation and failed to warn petitioner that death sentence was virtually certain if no mitigating evidence was presented).

Glenn v. Tate, 71 F.3d 1204 (6th Cir. 1995), cert, denied, 519 U.S. 910 (1996) (counsel made virtually no attempt to prepare forthe sentencing phase of the trial until after the jury returned its verdict of guilty, failed to provide experts with information that would have been helpful to defendant, and failed to draw jurys attention to mitigating aspect of defendants mental condition).

Clabourne v. Lewis, 64 F.3d 1373 (9th Ck. 1995) (counsel failed to call any witnesses or to introduce evidence of defendants history of mental illness and committed a commensurate error by passing up opportunity to furnish prosecution experts with information that would have led to their diagnosing defendants mental illness).

Hendricks v. Calderon, 64 F.3d 1340 (9th Cir. 1995), cert, denied, 517 U.S. 1111 (1996) (despite evidence that defendant was mentally impaired, counsel failed to investigate defendants mental condition as possible mitigating factor at sentencing).

Antwine v. Delo, 54 F.3d 1357 (8th Cir. 1995), cert, denied, 516 U.S. 1067 (1996) (given indications in police report that petitioner had been acting strangely a few days before the offense, trial counsel should not have credited result of court-ordered mental examination by state psychiatrist and should have invoked petitioners state law right to independent, second mental examination).

Baxter v. Thomas, 45 F.3d 1501 (11th Cir.), cert, denied, 516 U.S. 946 (1995) (because trial attorneys did not obtain petitioners school and hospital records, they failed to find and present evidence of petitioners psychiatric problems and prior commitment to psychiatric institution).

Jackson v. Herring, 42 F.3d 1350 (11th Cir.), cert, denied, 515 U.S. 1189 (1995) (counsel, who had a small amount of information regarding possible mitigating evidence regarding Jacksons history, inexplicably failed to follow up with further interviews and investigation).

Wade v. Calderon, 29 F.3d 1312 (9th Cir. 1994), cert, denied, 513 U.S. 1120 (1995) (counsel abandoned a potentially forceful mitigating circumstance in favor of exclusive reliance on a theory which the jury had rejected twice before [on issues of guilt and insanity], and which was presented in a manner that clearly risked alienating the jury).

Hill v. Lockhart, 28 F.3d 832 (8th Cir. 1994), cert, denied, 513 U.S. 1102 (1995) (although receiving information that petitioner was previously hospitalized, counsel made no effort to obtain medical records, which would have shown that petitioner had long history of mental problems and needed antipsychotic medication).

Starr v. Lockhart, 23 F.3d 1280 (8th Cir. 1994) (incompetent counsel failed to make obviously meritorious challenge to legality of aggravating circumstance on which jury based death sentence).

Deutscher v. Angelone, 16 F.3d 981 (9th Cir. 1994) (reaffirming previous determination in Deutscher v. Whitley, 884 F.2d 1152 (9th Cir. 1989), that counsel was ineffective in failing to investigate and present mitigating evidence of petitioners mental problems).

Neary v. United States, 998 F.2d 563 (8th Cir. 1993) (counsel advised section 2255 movant to waive governments noncompliance with statutory requirements for enhancing sentence).

Mak v. Blodgett, 970 F.2d 614 (9th Cir. 1992) (per curiam) (counsel failed to present evidence that would have humanized petitioner, including available expert testimony regarding cultural conflicts experienced by young immigrants attempting to assimilate into new culture).

Horton v. Zant, 941 F.2d 1449 (11th Cir. 1991), cert, denied, 503 U.S. 952 (1992) (ineffective attorneys pretrial investigation of mitigating circumstances consisted of phone call to petitioners mother the night before penalty trial asking her if she planned to attend; in summation, attorney said that the one you judge is a worthless man. [I] hate my client).

Kenley v. Armontrout, 937 F.2d 1298 (8th Cir.), cert, denied, 502 U.S. 964 (1991) (counsel failed to investigate available mitigating evidence of petitioners mental problems because of erroneous belief that evidence was too old and insubstantial).

Brewer v Aiken, 935 F.2d 850 (7th Cir. 1991) (counsel failed to investigate and find readily available mitigating evidence of petitioners low I.Q., susceptibility to influence of companions, and disadvantaged background).

Cunningham v. Zant, 928 F.2d 1006 (11th Cir. 1991) (counsel failed to present significant mitigating evidence regarding petitioners mild retardation, limited education, and poverty-stricken socioeconomic background).

Chambers v. Armontrout, 907 F.2d 825 (8th Cir.), cert, denied, 498 U.S. 950 (1990) (counsel failed to interview and call witness who would have supported petitioners claim of self-defense and thereby provided basis for mitigation).

Harris v. Dugger, 874 F.2d 756 (11th Cir.), cert, denied, 493 U.S. 1011 (1990) (no mitigation investigation conducted because [e]ach lawyer believed the other was responsible for preparing the penalty phase).

Kubat v. Thieret, 867 F.2d 351 (7th Cir.), cert, denied, 493 U.S. 874 (1989) (counsel contacted only 2 of 15 possible character witnesses, did not present the two at sentencing, and failed to object to instruction that misstated state law by requiring findings of mitigating circumstances to be unanimous).

Osborn v. Shillinger, 861 F.2d 612 (10th Cir. 1988) (counsel failed to investigate and prepare for sentencing hearing because he was confident he could negotiate sentence less than death).

Evans v. Lewis' 855 F.2d 631 (9th Cir. 1988) (counsel failed to investigate available mitigating evidence of history of mental problems and prior hospitalizations).

Middleton v. Dugger, 849 F.2d 491 (11th Cir. 1988) (counsel conducted only minimal investigation into petitioners background despite strong indications of available mitigating evidence).

Stephens v. Kemp' 846 F.2d 642 (11th Cir.), cert, denied' 488 U.S. 872 (1988) (counsel failed to investigate, present, or argue available mitigating evidence of petitioners history of mental problems).

Armstrong v. Dugger, 833 F.2d 1430 (11th Cir. 1987) (counsel failed to discover available witnesses because he limited investigation of case for mitigation to interviews of petitioner, his parents, and his parole officer).

Woodard v. Sargent, 806 F.2d 153 (8th Cir. 1986) (counsel failed to request that jury be instructed on mitigating circumstance that was adequately supported by evidence in record).

Thomas v. Kemp, 796 F.2d 1322 (11th Cir.), cert, denied, 479 U.S. 996 (1986) (incompetent attorney failed to discover, or seek sentence less than death based on, defendants long and well-documented history of mental disorder).

Jones v. Thigpen, 788 F.2d 1101 (5th Cir. -1986), cert, denied, 479 U.S. 1087 (1987) (counsel conducted no investigation in mitigation of death penalty and did not realize, or inform jury, that his client had an I.Q. below 41).

Johnson v. Kemp, 781 F.2d 1482 (11th Cir. 1986) (per curiam), affg Johnson v. Kemp, 615 F. Supp. 355 (S.D. Ga. 1985) (in investigating case for mitigation, counsel only spoke to petitioner and his parents and did not ask them for names of witnesses or other specific sources *of* mitigating evidence).

Blake v. Kemp, 758 F.2d 523.(11th Cir.), cert, denied, 474 U.S. 998 (1985) (counsel failed to prepare for penalty phase before trial and then could not obtain continuance of sentencing hearing after trial ended in conviction);

Tyler v. Kemp, 755 F.2d 741 (11th Cir.) (per curiam), cert, denied, 474 U.S. 1026 (1985) (counsel only interviewed members of petitioners family and failed to make clear that he was seeking mitigating evidence for sentencing and not just evidence relating to guilt phase).

King v. Strickland, 748 F.2d 1462 (11th Cir. 1984), cert, denied, 471 U.S. 1016 (1985) (counsel did not search for evidence or even discuss potential case for mitigation with client and counsels closing argument probably caused his client more harm than good).

As the listing provides a detailed and comprehensive review of the cases that have prevailed with the explanation of the assignment(s) of errors, Remember, this is not an exclusive listing, it is a basic guideline for education in identifying and applying the assignments and is invaluable as a research guide.

The cases that have prevailed are examples of the assignments of errors being properly presented in argument and supporting authorities, Importantly, Do not only research and read the cases that have prevailed, it is important to read cases with similar assignments of errors which have not prevailed, "Reversed", ''Remanded", "Vacated", are all wins, meaning cases that have prevailed, "Affirmed" are cases that have not prevailed, *Read both,* as it is important to understand how the assignment(s) did not prevail, what was flawed or misplaced in the citation of authorities in support of relief(s) as well as the issue(s) that may have been misplaced as a proper assignment, Learn from the mistakes as well as the wins.

The next section will cover the basics in understanding and presenting the assignments in a petition's writing and will provide a guideline for the proper format and wording.

Firstly it must be understood that Habeas Corpus proceedings are always considered 'Civil' in nature, This means that every State's Post^Conviction Habeas Corpus proceedings are governed by the basic standards of civil proceedings, Every State has it's own specific set of rules and most, if not all, mirror the Federal rules of Habeas Corpus as well as the Federal Rules of Civil procedure, You will find that the following EXAMPLE Habeas Corpus Petitioner's Brief is based in West Virginia state law as well as the Federal citations and *both,* State and Federal constitutional right violations.

The state code(s) and laws cited in the EXAMPLE are easily compared and identified to those in every other state for application in the state for which the petition is being written and filed, A review of the state code(s) and rules governing post-conviction habeas corpus proceedings will provide the litigant with the appropriate citation of the controlling authorities in the state which the pleading will be filed.

In reviewing the EXAMPLE Habeas brief that follows take notice of the 'CERTIFICATION' presented to Rule 11(b) of the W.Va. Rules of Civil Procedure, All State rules of civil procedure mirror the Federal Rules and normally reject the sanieTale nnniber. Be sure to review and then apply the correct nJe ; ; unibcr applicable in the state for v/nich tie brie:'wi" *c-2* nled arrd he certain to include the certfcafion a[1] the opening of Lie writ.

lie'/iew.thi: 'ASSIGNMENTS OF ERRORS PRESENTED' in the EXAMPLE Habeas brief and the identification of both, The state and federal constitutional rights violated by the error assigned, As the prior extensive listing of the common 54 assignments of errors have been defined, applying the appropriate state and federal constitutional errors to the assignments is mandated, a quick review of the state constitution which the Petition is being filed will provide the appropriate state citation of the article or amendments the supporting Federal constitutional violation, Always include *BOTH,* state and federal Constitutional citations in every assignment of error presented.

As the reader will find the 'RELEVANT LEGAL STANDARDS' directly below each of the assigned error in the

EXAMPLE brie[r] it be understood how to apply state and federal cita“ w of authorities (case laws) that support'die constitutioiiul violation(s) suffered and how the laws cited set cut the foundation of the relevant background for which the constitutional violations were committed, 'When writing the Relevant Legal Standards always base those controlling authorities (Case Laws Used) upon the Relevant Background for which the constitutional violations were committed.

Upon conclusion of the ‘RELEVANT LEGAL STANDARDS’ the reader will find the ‘RELEVANT BACKGROUND’, This is a factual summary of the events that led up to and wherein the constitutional violation(s) as presented in the ‘ASSIGNMENTS OF ERRORS PRESENTED’ were firstly identified with the corresponding constitutional violations suffered, Every Relevant Background will be different for every petitioner as no two people can suffer the exact same injustices in the exact same manner, Always use facts that are able to be supported by the record and exhibit(s) and never make any assertion that you cannot support by the record.

Each assignment of error always ends with the “RELIEF’S SOUGHT’, this is where the plain and concise explanation of the constitutional errors suffered as explained within the ‘Relevant Background’ are stated in support of being GRANTED Reliefs), Always cite the appropriate constitutional violations that correspond to the relevant background, Without the precise inclusion of the constitutional violations suffered the court may not
GRANT reliefs under the premise that the petitioner did not provide a claim for which reliefs) could be GRANTED, Specifically the citations of the constitutional violations suffered that demand reliefs).

The EXAMPLE brief is for educational purposes and is not an actual filing, it lays out the format in writing a proper petition for writ of habeas corpus and provides a simplistic understanding of the way(s) to build the relevant legal standards around the relevant background and then presenting the appropriate reliefs sought for the constitutional violations that were suffered in the underlying criminal proceedings.

Be sure to include an ‘Appendix of Exhibits’ that supports the assignments of errors presented, Transcripts, Police reports, witness statements etc... If the assignment details a factual constitutional violation which is supported by the fact(s) by record always include the record of the violation as an Exhibit and provide such in the Appendix of Exhibits.

Also and importantly, Always include an ‘Affidavit’ by the Petitioner wherein they themselves, in their own words and verbiage provide a summary of what occurred during the criminal proceedings that supports a constitutional violation being committed, Including what, or what not, was explained or recomniended by Counsel or the court.

IN THE CARTHORSE COUNTY CIRCUIT COURT OF WEST VIRGINIA

JOHN DOE,
Petitioner,
v.

Case No:

WARDEN DOE,
Respondent,

EXAMPLED PETITION FOR WRIT OF HABEAS CORPUS

Comes the Petitioner, John Doe, Moving this Honorable Court by Petition for Writ of Habeas Corpus pursuant to W.VA. CODE 53-4A-1 and the W.Va. Rules Governing Post-Conviction Habeas Corpus Proceedings.

CERTIFICATION

Petitioner provides certification of the instant action pursuant to Rule 11(b) of the W.Va. Rules of Civil Procedure as;

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existmg law or by a non frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, of specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

ASSIGNMENTS OF ERRORS PRESENTED

1) Denial of issues on Appeal, By Court Appointed Counsel's Ineffective Assistance of Counsel, Violative of W.VA. Constitution Art. Ill § 4 and Art. Ill § 17 and the 5th & 6th Amendments of the U.S. Constitution.

'< LEGAL STANDARDS

"One cohvicted of a crime is entitled to the right to appeal that conviction and where he is denied his right to appeal such denial constitutes a violation of the due process clauses of the state and federal constitutions and renders any sentence imposed by reason of the conviction void and unenforceable." Syllabus, State ex rel. Bratcher v. Cooke, 155 W. Va. 850, 188 S.E.2d 769 (1972).

This Court has directed circuit courts to provide such relief when defendants have requested resentencing for the purpose of appeal prior to or as part of a petition for writ of habeas corpus. See State v. Echard. No. 11-1047, 2012

W. Va. LEXIS 565, 2912 WL 3104241 (W. Va. May 29, 2012)(memorandum decision); State v. Joseph C., No. 19-0584, 2020 W. Va. LEXIS 626, 2020 WL 5269751 (W. Va. Sept. 4, 2020)(memorandum decision); State v. Higgins, No. 19-0893, 2020 W. Va. LEXIS 594, 2020 WL 5092917 (W. Va. Aug. 28, 2020)(memorandum decision); State v. Dumire, No. 19-0898, 2020 W. Va. LEXIS 722, 2020 WL 6482747 (W. Va. Nov. 4, 2020)(memorandum decision).

Syl. Pt. 1, Billctti v. Dodrill, 183 W. Va. 48, 394 S.E.2d 32 (1990). "The constitutional right to appeal cannot be destroyed by counsel's inaction or by a criminal defendant's delay in bringing such to the attention of the court, but such delay on the part of the defendant may affect the relief granted." Syl. Pt. 8, Rhodes v. Leverette, 160 W. Va. 781,239 S.E.2d 136(1977).

Ordinarily, the appropriate relief for the denial of the right to appeal is a resentencing, to begin anew the four-month appeal time pursuant to Rule 5(f) of the West Virginia Rules of Appellate Procedure and West Virginia Code § 58-5 4,and Uie appointment of appellate counsel. See Carter v. Bordenkircher, 159 W. Va. 717, 726, 226 S.E.2d 7i 1, 717 J976).Higgins, 2020 W. Va. LEXIS 594, 2020 WL 5092917, at *2.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 145 L. Ed. 2d 985 (2000).

When "determining whether a rational defendant would have wanted to appeal, [the Fourth Circuit] consider[s]... whether the defendant's conviction{2022 U.S. Dist. LEXIS 7} followed a trial or a guilty plea; whether the defendant received the sentence bargained for as part of the plea; and whether the plea expressly reserved or waived some or all appeal rights." United States v. Cooper, 617 F.3d 307, 313 (4th Cir. 2010).

A defendant has a right to pursue a direct appeal^ even if frivolous, which counsel must assist as "an active advocate in behalf of his client." Although eounse] need not press particular issues of defendant's choosing, by, implication counsel must consult with defendant to identify whether there are any meritorious issues to appeal

A discussion with defendant regarding a direct appeal and what issues to pursue, if any, is critical, as multiplying assignments of error will dilute and weaken a good case and will not save a bad one. :

Defendant's need for the assistance of an advocate who can examine the record with a view to selecting the most

promising issues for review, cannot be overstated, and is a necessary component of the "particular duty to consult with the defendant on important decisions" identified in Strickland. The ruling that counsel generally, but not invariably, has a duty to consult with his client regarding whether to pursue an appeal is thus dictated by Strickland. Frazer v. South Carolina, 2006 U.S. Dist. LEXIS 72102 (D.S.C., Oct. 2, 2006); South Carolina appeals the district court's order granting relief on Frank Frazer's petition for a writ of habeas corpus. The court granted relief solely as to Frazer's claim that his attorney failed to consult with him regarding a direct appeal following his sentencing on state trafficking charges in 1994, and that as a result he lost his right{2005 U.S. App. LEXIS *2}* to appeal. Although the state courts that reviewed this claim concluded that the Sixth Amendment did not require Frazer's counsel to consult with him regarding an appeal, the district court found this conclusion was unreasonable under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984),

The necessity of counsel's consultation with the defendant regarding the fundamental decision of whether to appeal is clear from Strickland and cases preceding it that address the nature of the defendant's right to a direct appeal. A defendant has a right {2005 U.S. App. LEXIS 13} to pursue a direct appeal, even if frivolous, which counsel must assist as "an active advocate in behalf of his client." Anders v. California, 386 U.S. 738, 744, 87 S. Ct. İ396, 18 L. Ed. 2d 493 (1967). Although counsel need not press particular issues of the defendant's choosing, by implication counsel must consult with the defendant to identify whether there are any meritorious issues to appeal. Barnes. 463
U.S. at 752. Indeed, a discussion with the defendant regarding a direct appeal and what issues to pursue (if any) is critical, as "multiplying assignments of error will dilute and weaken a good case and will not save a bad one." The defendant's need for the assistance of an advocate who can "examine the record with a view to selecting the most promising issues for review," id., cannot be overstated, and is a necessary component of the "particular duty to consult with the defendant on important decisions" identified in Strickland. 466 U.S. at 688. Flores-Ortega's distillation that counsel generally (but not invariably) has a duty to consult with his client regarding whether to pursue an appeal is{2005 U.S. App. LEXIS 14} thus dictated by Strickland.

Defendant's need for the assistance of an advocate who can examine the record with a view to selecting the most promising issues for review, cannot be overstated, and is a necessary component of the "particular duty to consult with the defendant on important decisions" identified in Strickland. The ruling that counsel generally, but not invariably, has a duty to consult with his client regarding whether to pursue an appeal is thus dictated by Strickland. In cases where the appellate record is unclear as to whether the petitioner requested trial counsel to file an appeal, we have directed that a hearing be held to determine if such a request was made. See State ex rel. Lewis v. Ballard, No. 12-0137, 2013 W. Va. LEXIS 298, 2013 WL 1286150 (W. Va. March 29, 2013) (memorandum decision). In Lewis, we further directed that, if the petitioner showed that he asked his attorney to file an appeal, the circuit coui i was to resentence him for purposes of appeal and appoint appellate counsel. 2013 W. Va. LEXIS 298, [WL] at *1 (citing Carter, 159 W. Va. at 717, 226 S.E.2d at 712-13, syl. pt. 2).

RELEVANT BACKGROUND

Petitioner was court appointed Attorney Dewy Cheatum Andhow in the underlying felony criminal case numbers xx-F-CO; yy-F-00; zz-F-00: and aa-F-00 to the multi count of offenses being contained within a single case number, under Attorney Dewy Cheatum Andhow's directions entered into a plea agreement on December 25‘h 2020 Pursuant to the agreement, petitioner agreed to plead guilty or no contest to felony offense of conspiracy to transport a controlled substance in a jail, and a felony drug conspiracy, a felony offense of possession of a weapon in jail, and felony offense conspiracy to transport a controlled substance into a jail. In return, the State agreed to dismiss the remaining charges against petitioner. The plea agreement included a sentencing provision, pursuant to Rule 11(e)(1)(C) of the West Virginia Rules of Criminal Procedure, making certain sentencing stipulations binding if the circuit court accepted the agreement. Per the agreement, for his state convictions, petitioner would be sentenced concurrently to the Federal sentence the Petitioner was already serving as Fed Case No.001; 1-5 years in prison; Fed Case No.002; 1-5 years in prison; Fed Case No.003 ; Ito 5 years in prison; and Fed Case No.004; 1-5 years in prison.

By the terms of the agreement, these sentences would run concurrently to the federal sentence which the Petitioner was serving. The agreement left, to the discretion of the circuit couil, whether the sentences in the state court would run concurrently or consecutively v/ith one another. Finally; the parties agreed that the overall resulting sentence would not include a recidivist charge.

A hearing was held on the proposed plea agreement on November 24th 2022,. During the hearing the circuit court engaged in a lengthy colloquy with petitioner, in which petitioner was questioned regarding his understanding of the proceedings, his criminal and personal history, and his prior involvement in substance abuse treatment.

Petitioner was provided a detailed recitation of the facts the State would have been able to prove had the matter proceeded to trial. At the conclusion of the hearing, petitioner pled no contest to each of the five charges outlined in the plea agreement and the court accepted the plea.

After accepting the plea agreements, the court proceeded directly to sentencing. Petitioner immediately after his being sentenced instructed Attorney Dewy Cheatum Andhow that he wanted a direct appeal filed as there was an appearance of the plea agreement being entered into under faulted advice by Attorney Dewy Cheatum Andhow.

Attorney Dewy Cheatum Andhow informed your Petitioner that once a criminal Defendant enters into a plea agreement there is no right to an Appeal and that he would never raise any issue(s) regarding Attorney Dewy Cheatum Andhow's ineffectiveness and that he would never raise an issue against himself in any Court.

Attorney Dewy Cheatum Andhow rather than file the notice of intent to appeal as directed by the Petitioner filed a Motion for reduction of sentence pursuant to rule 35(b) of the W.Va. Rules of criminal procedure, The Motion for reduction of sentence was ultimately denied by the Court the Attorney Client relationship was concluded.

RELIEFS SOUGHT

Petitioner seeks the reliefs of an ORDER being issued declaring the conviction void and unenforceable as the denial of the right to appeal a criminal conviction with the effective assistance of counsel was a clear violation of W.VA. Constitution's Art. Ill § 4 and Art. Ill § 17 and the 5th and 6th Amendments of the U.S. Constitution, or in the alternative that the case be REVERSED and REMANDED with DIRECTIONS that the lower Court hold an immediate hearing with compulsory process to determine if necessary if the Petitioner had instructed Attorney Dewy Cheatum Andhow to file an appeal and that the Petitioner be a resentenced, to begin anew the four-month appeal time pursuant to Rule 5(f) of the West Virginia Rules of Appellate Procedure and West Virginia Code § 58-5-4, and that the Petitioner be appointed appellate counsel to perfect and file a Direct Appeal in the criminal case proceedings at issue.

2) Ineffective Assistance of Counsel in failing to investigate the law and Counsel's mistake in law that caused the Petitioner to accept a plea rather than stand trial which resulted in a significantly more severe conviction and sentence due to Counsel's erroneous advice under his mistake in law that caused the "Conviction by Ambush" to occur, Vioiative of W.VA. Constitution Art. Ill § 4 and the 6th Amendment of

the U.S. Constitution.

LEGAL STANDARDS

"A charge of ineffective assistance of counsel is not one to be made lightly. It is a serious charge which calls into question the integrity, ability and competence of a member of the bar.

We suggest that counsel consider carefully the facts of a case before raising this issue, keeping the Code of Professional Responsibility readily in mind." .The burden of persuasion placed on the petitioner is indeed a heavy one and, under our jurisprudence, we are prevented from reversing convictions on this ground unless two components are satisfied. To prevail on his ineffective assistance of counsel claim, the petitioner must show both deficient performance and prejudice; that is, the petitioner {465 S.E.2d 422} must demonstrate: (1) that his counsel's performance fell below "an objective standard of reasonableness" and (2) that it is reasonably orobable that "l it for counsel's unprofessional eiTors the result of the proceedings would have been different." Syl. pt. 5, in part.
State v. Miller, __ W. Va. ___, 459 S.E.2d 114 (1995). In Miller, this Court recently set forth the standard of review applicable to claims of ineffective assistance of counsel. In Syllabus Points 5 and 6 of Miller, we stated:. "Lrihe West Virginia courts, claims of ineffective assistance of counsel are to be governed by the two-pronged test established in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984):

(i) Counsel's performance was deficient under an objective standard of reasonableness; and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

In reviewing counsel's performance, courts must apply an objective standard and determine whether, in light of all the circumstances, the identified acts or omissions were outside the broad range of professionally competent assistance while at the same time refraining from engaging in hindsight or second-guessing of trial counsel's strategic decisions. Thus, a reviewing court asks whether a reasonable lawyer would have acted, under the circumstances, as defense counsel acted in the case at issue."

An ineffective assistance of counsel claim presents a mixed question of law and fact; we review the circuit court's findings of historical fact for clear error and its legal conclusions de novo. This means that we review the ultimate legal claim of ineffective assistance of counsel de novo and the circuit court's findings of underlying predicate facts more deferentially. In reviewing these multiple claims, we consider the entire trial transcript along with the transcript of the habeas corpus hearing. See Dobbs v. Zant, 506 U.S. 357, 113 S. Ct. 835, 122 L. Ed. 2d 103 (1993) (reviewing court must

consider entire trial transcript when reviewing claim of ineffective assistance of counsel).

The fulcrum for any ineffective assistance of counsel claim is the adequacy of counsel's investigation. Although there is a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance, and judicial scrutiny of counsel's performance must be highly deferential, counsel must at a minimum conduct a reasonable investigation enabling him or her to make informed decisions about how best to represent criminal clients. Wickline v. House, 188 W. Va. 344, 424 S.E.2d 579 (1992) (per curiam); State ex rel. Kidd v. Leverette, 178 W. Va. 324, 359 S.E.2d 344 (1987).

Thus, the presumption is simply inappropriate if counsel's strategic decisions are made after an inadequate investigation. Wajda v. U.S., 64 F.3d 385, 387 (8th Cir. 1995).

As suggested in Strickland, "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S: at 691, 104 S. Ct. at 2066, 80 L. Ed. 2d at 695. Courts applying the Strickland standard have found no difficulty finding ineffective assistance of counsel where an attorney neither conducted a reasonable investigation nor demonstrated a strategic reason for failing to do so. See Sanders v. Ratelle, 21 F.3d 1446 (9th Cir. 1994).

RELEVANT BACKGROUND

Petitioner was court appointed Attorney Dewy Cheatum Andhow in the underlying felony criminal case as defense counsel, Wherein Attorney Dewy Cheatum Andhow refused to conduct any investigations as was requested by your Petitioner and proffered that no investigations would be performed as Attorney Dewy Cheatum Andhow would no[t] be able to prepare the case for trial and clarified that should the Petitioner not accept a plea deal and decide to exercise his constitutional right to a jury trial he would have to do so with a lawyer other than Attorney Dewy Cheatum Andhow as he was unable to prepare a defense for a trial setting.

Attorney Dewy Cheatum Andhow explained tW he was unable tG-commit the time necessary tG conduct an investigation into the facts and law relevant to th/j Petitioner'sxase due to the ovenvhelming indigent criminal client、case load which he was under appointments to represent.

As clearly established by the record of the billing sheets/vouchers submitted by Attorney Dewy Cheatum Andhow for the actual; hourly work product performed in the criminal proceedings at issue, There was absolutely no investigations performed, (SEE EXHIBIT-A, BILLING SHEETS)

It is also clear that Counsel had no intentions of conducting the minimally required independent investigation and relied solely upon the State's evidence and picture painted by law enforcement.

Rather than enveloping a factual basis in both, the relevant law and available evidence in consolidation of favorable witness statements and accounts of the alleged criminal events to determine if a viable criminal defense in a trial setting, Attorney Dewy Cheatum Andhow talked his client into accepting a plea deal.

Alice r Johnson, 333 F.3d 382, 392 (jth Cir. 2003) rindin;> deficient perfomiancc inaiin -e application of clearly fexy *by*. state ccirr ■ veunsei mtied on Gi?- investigative *nd* iriake any tc :nierziew. ennsr of eyewitnesses co rhe crime.

As the billing sheets/vcuchers submitted by Attorney Dewy Cheatum Andhow for the hourly work product which he actually performed in the underlying criminal proceedings clearly reflect Attorney Dewy Cheatum Andhow failed completely in perfonning any investigations whatsoever, Accordingly, As West Virginia Courts are in fact Courts of record, Wha(does net appear on record docs not exist in law, Therefore no investigation by Counsel can be claimed. It remains inviolate to this c ly that what does not exist in record does not exist in law, and it cannot be said that even a minimal investigation was perfonned as set forth in the standards of Wickline v. House, 188 *W.* Va. 344. 424 S.E.2d 579 (1992) (per curiam); State ex rel. Kidd v. Leverette, 178 W. Va. 324, 359 S.E.2d 344 (1987).

Thus, the presumption is simply -iiiappropriate if counsel's Sii ategic decisions are made after an ina<lequ ; ite investigation. Wajda v. U.S." 64 F.3d385, 387 (8th Cir. 1995). and Strickland Supra.

RELIEFS SOUGHT

Petitioner seeks the reliefs of this Court Reversing the conviction(s) in the criminal case sub judice and that the Petitioner

be returned to his pre-trial positioning and that the matter be Remanded for a New criminal trial proceeding to neutralize the taint of the Ineffective Assistance of Counsel suffered by failing to investigate the law and Counsel's obvious mistake in law that caused the Petitioner to accept a plea deal rather than going to trial which resulted in a significantly more severe conviction and sentence due to Counsel's erroneous advice under his mistake in law that caused the "Conviction by Ambush" to occur, Violative of W.VA. Constitution Art. Ill 1 § 4 and the 6th Amendment of the U.S. Constitution.

3) Ineffective Assistance of Counsel in failing to investigate the law and to prepare a Defense under the Defendant's suffering a diminished capacity, Violative of W.VA. n Constitution Art. Ill § 4 and the 6th Amendment of the U.S. Constitution.

LEGAL STANDARDS

Diminished capacity constitutes a partial defense in that it allows a defendant to introduce "expert testimony regai-iing a mental disease or defect that rendered the defendant incapable, at the time the crime was committed, of forming a mental state that is an element of the crime charged," but "does not preclude a conviction loi a lesser included offense." Syl. Pt. 3, State v. Joseph, 214 W. Va. 525, 590 S.E.2d 718 (2003).

West Virginia Code § 27-6A-4 provides, in relevant part, as follows: ;r,

(a) If the court of record finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's criminal responsibility or diminished capacity will be a significant factor in his or her defense, the court shall appoint one or more qualified forensic psychiatrists or qualified forensic psychologists to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial that no crimina'. responsibility or diminished capacity evaluation may be conducted.

The forensic evaluation may notybe conducted at a state inpatient piental health facility unless the defendant has been ordered to a mental health facility in accordance with subsection (c), section two [§ 27-6A-2] of this article or subsection (f) or (h), section three [§ 27-6A-3] of this article.

To the extent possible, qualified forensic evaluators who. have conducted evaluations of competency under subsection (a), section two of this chapter shall be used to evaluate criminal responsibility or diminished capacity under this subsection.

(b) The court shall require the party making the motion for the evaluations, and other parties as the court considers

appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluation within ten business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police., investigative reports and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical or social records that are considered relevant;

(y) ■ coo--' *Gi* the deiend^nt s criminal record: and

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(c) A qualified forensic evaluator shall schedule and arrange within fifteen days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and defendant
? interview and shall, within ten business days of the date of the completion of any evaluation, provide to tiie court of record a written, signed report of his or her opinion on the issue of criminal responsibility and if ordered, on diminished capacity.

The cou.t may extend the ten-day period for filing the report if a qualified forensic evaluator shows good cause *io* extend the period, but in no event may the period exceed thirty days.

If there are no objections by the State or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion-may otherwise be made luiown to the. court ^nd interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic evaluations performed pursuant to , subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity,

The court may order the defendant be admitted to a mental health facility designated by the department for a period not to exceed fifteen days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by one or more qualified forensic psychiatrists or one or more qualified forensic psychologists. At the conclusion of the observation period, the court shall enter a disposition order and the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

W. Va. Code § 27-6A-2(a) states that a competency evaluation should be granted if there is reasonable cause to believe that the defendant is incompetent or suffers from sufficient mental problems to raise an issue of crinjinal responsibility or diminished capacity.

In discussing diminished capacity, the Court has held that "[t]he diminished capacity defense is available in West^ Virginia to permit a defendant to introduce expert testimony regarding a mental disease or defect that rendered the.. defendant incapable, at the time the crime was committed, of forming a mental state that is an element of the crime charged."

It is undisputed that petitioner's Counsel presented no expert evidence in support of his claim of diminished capacity, As such, it is clear that Attorney Dewy Cheatum failed to establish an evidentiary basis for this defense.

Moreover, in discussing voluntary intoxication as it relates to the instant case, the Court has stated that "the level of intoxication must be 'such as to render the accused incapable . . . of acting with malice, premeditation or deliberation."' State v. Joseph, 214 W. Va. 525, 531, 590 S.E.2d 718, 724 (2003) (quoting State v. Keeton, 166 W. Va. 77, 83, 272 S.E.2d 817, 821 (1980)).

"The diminished capacity defense is available in West Virginia to permit a defendant to introduce expert testimony regarding a mental disease cr defect that rendered the defendant incapable, at the time the crime was committed, of forming a mental state that is an element of the crime charged. This defense is asserted ordinarily when the offense charged is a crime for which there is a lesser included offense.

This is so because the successful use of this defense renders the defendant not guilty of the particular crime charged, but does not preclude a conviction for a lesser included offense." Syl. pt. 3, State v. Joseph, 214 W. Va. 525, 590 S.E.2d 718 (2003).

State v. Michael, 74 W. Va. 613,82 S.E. 611 (1914); State v. Galford, 87 W. Va. 358, 105 S.E. 237 (1920). It is important to note that provocation is not a defense to the crime, but merely reduces the degree of culpability and this is the reason why Mullaney [v. Wilbur, 421 U.S. 684, 44 L. Ed. 2d 508, 95 S. Ct. 1881 (1975)]

RELEVANT BACKGROUND

PeJdoner istory of his suffering chronic drug and alcohol abuse, The numerous oiki

; cciT- fvo;defies as w^IJ as the records of the. Petitioner's failed suicide attempt ,zLd ir

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predetermination in ordering a psychiatric evaluation pursuant to West Virginia Code § 27-6A-4 to determine:the mental state of ihe Petitioner during the time of the criminal offenses being committed.

> Attorney Dewy Cheatum Andhow plainly knew of the extensive mental issues that the Petitioner suffered by his • chronic drug and alcohol abuse and was also aware of the diminished capacity which the Petitioner was under by his gross voluntaiy intoxication during the alleged criminal events and refused to move the court for the reiitioner to be provided a psychiatric evaluation pursuant to West Virginia Code § 27-6A-4 stating that the prosecution would argue against an evaluation and that the Court was insensitive towards drug addicts since the influx of drug related crimes have over ran the judicial system in the state.

RELIEFS SOUGHT

Petitioner seeks the reliefs of this Court Reversing the conviction(s) in the criminal case sub judice and that the Petitioner be returned to his pre-trial positioning and that the matter be Remanded for a New criminal trial proceeding to neutralize the taint of the Ineffective Assistance of Counsel suffered by failing to move for a psychiatric evaluation pursuant to West Virginia Code § 27-6A-4 which would have negated responsibility and the actual criminal conviction and sentence(s) being less severe than that which resulted by Counsel's ineffective assistance, Violative of W.VA. Constitution Art. Ill 1 § 4 and the 6th Amendment of the U.S. Constitution.

4) Trial Court Lacked Jurisdiction to enter a valid judgment of conviction and sentence upon the Petitioner due to the improperly procured indictment as well as the ineffective assistance of counsel, W.VA. Constitution Art. Ill § 10 and the 5th and 14th Amendments of the U.S. Constitution.

By the above cited Ineffective assistance of counsel of Attorney Dewy Cheatum Andhow which resulted in the catastrophic deficient performance and incompetent legal representation in the criminal proceedings at issue, the r-i?l Coun lacked iurisdrction to convict and impose a criminal sentence against the Petitioner.

LEGAL STANDARDS

Syl. pt. 25 of State v. Thomas, W.Va., 203 S.E.2d 445 (1974) Provides; A trial court lacks jurisdiction to enter a valid judgment of conviction against an accused who was denied effective assistance of counsel and a judgment so, entered is void.

RELIEFS SOUGHT z

Petitioner seeks the reliefs of this Court Reversing the conviction(s) in the criminal case sub judice and that the Petitioner be returned to his pre-trial positioning and that the matter be Remanded for a New criminal trial proceeding to neutralize the taint of the Ineffective Assistance of Counsel suffered, Violative of W.VA. Constitution Art. Ill 1 § '4 and the 6th Amendment of the U.S. Constitution:

5) Judicial Misconduct and the denial *of* procedural due process of law violative W.VA. Constitution Art. Ill § 4 and Art. Ill § 17 and the 5th, 14th Amendments of the U S. Constitution.

LEGAL STANDARDS

W. Va. Code § 27-6A-2(a) states that a competency evaluation should be granted if there is reasonabie cause to believe that the defendant is incompetent or suffers from sufficient mental problems to raise an issue of criminal responsibility or

diminished capacity.

Because of the importance we place upon protecting the rights of the mentally ill, we have underlined the duty of a judge to order an evaluation when conditions warrant:

’’When a trial judge is made aware of a possible problem with defendant’s competency, it is abuse of discretion to deny a motion for psychiatric evaluation. To the extent State v. Arnold, 159 W. Va. 158, 219 S.E.2d 922 (1975), differs from this ruie, it is overruled." Syl. pt. 4, State v. Demastus, 165 W. Va. 572, 270 S.E.2d 549 (1980).

bsv i; disc identified the factors a judge is io consider when weighing a defendant's mental condition: uGfje *iv.\y r.i. ∝'* Lsvare of e po : : sible problem with.defendant’s co npetency by such factors as: a lawyer's rec ; r^t.::ta<n caiiuenung ; f client a.JiistoLv' : of niental Jliness or behavioral abnoniiaiities: confinement for mental disturbance; documented proof of mental disturbance; evidence of irrational behavior; demeanor observed by the judge; and, psychiatric and lay testimony about competency. State v. Paynter. 206 W, Va. 521 ? 528, 526 S.E.2d 43, 50 (1999) (citing State v. Arnold, 159 W. Va. 158, 219 S.E.2d 922 (1975).

A person cannot be tried, sentenced or punished while mentally incapacitated, and adequate state procedures must ezGsl to make certain that a legally incompetent accused is not convicted. It is legally impermissible for a person v/ho *s mentally incompetent to be tried, convicted or sentenced. This is a fundamental guarantee of due process. A circuit court's failure to follow the proper statutory procedures to, preserve this fundamental due process guarantee . affects a defendant’s substantial rights. Such failure creates a greater risk that mentally incompetent individuals wijl be improperly subjected to trials v/horein they may be convicted and sentenced in violation, of their due process rights, thus, seriously affecting the fairness, integrity and public reputation of judicial proceedings.

The court erred in failing to follow the requirements of W. Va. Code § 27-6A-1. Second, in light of the plain language of the relevant portion of W. Va. Code § 27-6A-1 and existing case law on this topic (which is also discussed below), we find the error was plain. Third, we have previously stated that "a person cannot be tried, sentenced or punished while mentally incapacitated," and "adequate state procedures must exist to make certain that a legally incompetent accused is not convicted."

State v. Demastus, 165 W. Va. 572, 582, 270 S.E.2d 649, 656 (1980) (citing State v. Harrison, 36 W. Va. 729, 15 S.E. 982 (1892), Bishop v. United States, 350 U.S. 961,76 S. Ct. 440, 100 L. Ed. 835 (1956), Pate v. Robinson, 383 U.S. 375, 386, 86 S. Ct. 836, 842-43, 15 L. Ed. 2d 815, 822-23 (1966), and Martin v. Estelle, 492 F.2d 1120 (5th Cir. 1974)). It has also been said that "it is legally impermissible for a person who is mentally incompetent to be tried, convicted or sentenced. This is a fundamental guarantee of due process." --

2 Franklin D. Cleckley "Handbook on West Virginia Criminal Procedure" 11-125 (2d ed. 1993) (citing State v. Cheshire, 170 W. Va. 217, 292 S.E.2d 628 (1982), State v. Bias, 177 W. Va. 302, 352 S.E.2d 52 (1986) and State *v?'* ALmcld. 159 W. Va. 158. 219 S.E.2d 922 (1975). overruled on other grounds by Staie v. Dernasais i6? Y: 57L.

270 S.E.2d 649). A circuit court's failure to follow the proper statutory procedures to preserve this fui'daf-ieutai di:e process guarantee affects a aefendant's substantial rights. Lastly, such failure creates a greater that mental." incompetent individuals will be improperly subjected to trials wherein they may be convicted and sentenced in violation of their due process rights, thus, seriously affecting the fairness, integrity and public reputation of judicial w proceedings.

Though no satisfactory comprehensive definition or description of due process of law has been formulated, and probably cannot be, certain principles relating to its application have been determined by carefi.il consideration 2nd adjudication. Thus, it is well settled that, to deprive a person of life, liberty or property, which includes the right to engage in a lawful business, due process requires that a trial or hearing must be fair, unbiased and by an impartial tribunal, whether the tribunal be administrative or judicial, and that the power exercised by the tribunal must not be exercised in an arbitrary or capricious manner.

t

RELEVANT BACKGROUND

The instant case consists of the presiding Judge and Petitioner's Court Appointed Attorney Dewy Cheatum Andhow being fully aware of the Petitioner's chronic addiction and being under a severe diminished capacity resulting from the abuse of heroin as the presiding Judge, who himself was aware of the Petitioner's being severely intoxicated in his

Courtroom while under the influence of the heroin allegedly smuggled into the regional jail by the Petitioner's actual overdosing during the criminal proceedings and being removed from the court by paramedics to the emergency rcoir and then being hospitalized for nearly a week from the overdose effects.(SEE EXHIBIT'S) Records of psychiatric hospitalizations and treatment.

Fhe record is clear of the presiding Judge and Attorney Andhow being aware of the Petitioner's severe gross intoxication while in the Courtroom during the criminal proceedings as well as his being under a severe gross voluntary intoxication during the alleged criminal event where the controlled substance was intioduced into the regional jaii through a broken vzindow for which the Petitioner was criminally charged.

J • ■41. i jnore the z-QSS voiunlar/ 'ntoxicalion, while on record of tli-e chi.ordc

>2: j r ^i Joner he was in inc Courtroom before hin)m the Cninimni

and knov. ingly committed the unethical and judicial misconduct in not ordering a psychiatric evaiuanon win te <bcv)g aware of a possible problem with the Petitioner's competency, sua sponte, pursuant to W. Va. Code § 27-6 A-2 and its respec tive subparts. (SEE EXHIBIT-C) Transcripts of hearing stopped because of overdose.

The unethical Judic'^1 misconduct on part of the presiding Judge in the criminal proceedings at issue as claimed heicin consdtu^e the immediate self^disquahfication and voluntary recusal of Judge Michael Lorensen from the instant cr ; se.

RELIEFS SOUGHT

Petitioner seeks the.reliefs of this Court reversing the conviction and vacating the sentence imposed under ths plea agreement entered into while suffering the severe diminished^capacity and gross voluntary intoxication which was not recognized and ORDERED for a psychiatric evaluation by the Court's presiding Judge, Violative of W.Va. Constitution Art. Ill § 17 and die 5th Amendment of the U : S. Constitution.

VERIFICATION

Petitioner presents the above assignments of errors for full adjudication pursuant to Rule 9 of the W.Va. Rules Governing Post-Conviction Habeas Corpus Proceedings, That "The court shall draft a comprehensive order including: (1) findings as to whether a state and/or federal right was presented in each ground raised in the petition;

(2) findings of fact and conclusions of law addressing each ground raised in the petition;

CERTIFICATE OF SERVICE

I. Jon Doe, Affirm service, By U.S.Mail, of the Pro Se included Habeas Assignments of errors, On the date notarized, Upon the following;

1) The Carthorse County Circuit Clerk; and

2) The Carthorse County Prosecuting Attorney

Petitioner

Sworn to before me on, /_____/2999

NOTARY PUBLIC

!<'V commission expires. _ __ . _

IN TKE CARTHORSE COUNTY CIRCUIT COURT OF WEST VIRGINIA

JOHN DOE,
Petitioner, v.

Case No:

WARDEN DOE,
Respondent,

APPENDIX OF EXHIBITS

EXHIBIT-A Billings sheet vouchers of Court Appointed Counsel

EXHIBJT-B Transcripts of court proceedings where overdose occurred

EXHIBIT-D Medica! records of hospitalization

AFFIDAVIT

IN THE CARTHORSE COUNTY CIRCUIT COURT OF WEST VIRGINIA

JOHN DOE,
Petitioner, v.

Case No:

WARDEN DOE,
Respondent,

AFFIDAVIT OF PETITIONER

1, John Doe, Affirm by my signature in conclusion that the following is true and correct to the best of my knowledge under the penalties of false swearing and peijury;

1) I overdosed in the courtroom on heroin in front of the Judge and my lawyer on December 25th, 2020.

I asked for a mental evaluation and was told the Judge would never entertain one and was told by my court appointed co.:nse? that if I did not accept the states plea offer that I would have to find some other :hwyer ‘ i he did -.oi have the !inr、or resources to p[prepare for a trial.

KJV {piled anc . .'L's^d to file « direct appeal and also terminated representation without provicL?/ ! • .e my entire case file.

Further the Affiant sayeth Naught.

Petitioner/ Affiant Date Executed

The EXAMPLE brief sets out the correct formatting and presentments of the assignments of errors, relevant legal standards, relevant background and reliefs sought in a Habeas Corpus Petitioner's Briefs Note that the EXAMPLE is exactly that, only an example, When writing a writ always set up the relevant legal standards to support the relevant background of the constitutional violations suffered, This is where the research comes into play and is mandated.

The listing of cases that have prevailed will guide in preparing a solid relevant legal standard after the relevant background is understood and the constitutional error is identified, Rather than presenting the relevant background first it is best to lay out the relevant legal standards at the onset and then detailing the relevant background for which the constitutional error(s) that demand reliefs) were committed.

NECESSARY SAMPLES OF TEMPLATE!) MOUONS AND PLEADINGS 1HAT WILL BL RLQUIRLD IN IJTIGATING 1HL HABEAS CORPUS

The following section provides the necessary template Motions and pleadings required to litigate habeas corpus proceedings, Firstly the writ writer needs to obtain the Grand Jury minutes, Appointed Lawyers hourly work product billing sheets, case file(s) and court record(s), These will be obtained by writing and filing the following included motion(s) and lawfill requests for documents.

The necessity for the Grand Jury minutes is to determine whether the Grand Jury was provided any false fabricated evidence or peijured testimony, Should that had occurred then the indictment was improperly procured and should be attacked for dismissal by criminal proceeding motion and also by Habeas petition as Judge Learned Hand set out in U.S. V. Mechanik that "an improperly procured indictment MUST be dismissed even after a conviction, in the interest of Justice"

The necessity for acquiring the billing sheets and vouchers of Court Appointed Counsel's hourly work product performed in the criminal case at issue is necessary to show whether or not Counsel had performed an adequate investigation, Counsel must conduct appropriate investigations, both factual and legal, to determine if matters of defense can be developed, and to allow himself enough time for reflection and preparation for trial.

Study 'Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)' in setting out the applicable claim(s) for ineffective assistance as was provided in the example brief

The necessity for acquiring the case file from the Court's appointed counsel is also a necessity in establishing what Counsel did, or did not, identify, raise or address in the criminal proceedings and also may show evidence that does or did not exist during the trial proceedings, including police reports, notes, crime scene photos, video's and diagrams and witness statements and any other evidence or discovery that was provided to the lawyer.

The necessity for acquiring the case filefs) from the Court's Circuit clerk's office is a necessity in establishing what the Court's record actually consists o(What evidence is documented, Who the prosecutions witness listing identifies, what motions, pleadings and filings were, or were not filed by *both,* the prosecutor and Court Appointed Counsel and the transcripts of all pretrial and following criminal proceedings.

A motion for the Appointment of Habeas Counsel is required to allow assistance by a learned attorney in litigations and filing a Notice of express informed consent being required insures that the lawyer will not amend, change or alter any of the writings the litigant presents and that the lawyer cannot make any amendments or file any motions, pleadings or otherwise until the lawyer consults with the litigant and then obtains the express informed consent, in writing to act in the case.

Summons and the request for documents from a Circuit clerk are necessary throughout the litigations and to be provided updated copies of all filings by the state as recorded on the habeas case numbers docket sheet.

A motion for the appointment and payment of an expert witness will present itself where the litigant may need an expert witness in the sciences of law to establish the ineffective assistance of counsel suffered and the prejudice which demands reliefs or a medical expert or other expert in the sciences of technology such as cell phone, computer, firearms, DNA, etc...

A motion to disqualify a Judge or prosecutor may be necessary where there is an appearance of impropriety or the existence of bias or prejudice towards the litigant by the Judicial or court official.

The template motion(s) are samples of the formatting of the issues addressed and are meant for educational purposes only

TEMPLATED MOTIONS AND NECESSARY PLEADINGS IN LITIGATING A HABEAS CORPUS

"NO SOL VENTS ARE NEEDED TO BRING THESE WORDS TO LIGHT"
Encouraged and motivated by Judge's Paul T. Farrell and Christopher D. Chiles

Jesse Dreyfuse

IN THE _____ 9 COUNTY CIRCUIT COURT CLERKS OFFICE

_____
Requestor, Defendant,

IN RE: Case No:__-___-____

_____County Circuit Clerk,
Respondent/Custodian,

LAWFUL REQUEST FOR ATTORNEY'S BILLING SHEETS

Comes the Requestor, Defendant,_____,moving this Circuit Court Clerk by lawful demand and request for the provision of copies, in complete of the following documents, pursuant to W.Va. CODE 51-4-2.

1) Copies of the Billing Sheets/Vouchers submitted and approved for payment to Court Appointed Counsel,_____,in complete, of Criminal Case Number:____-__-____

LEGAL STANDARDS

51-4-2. Inspection of records and papers; copies. The records and papers of every court shall be open to the inspection of any person, and the clerk shall, when required, furnish copies thereof, except in cases where it is otherwise specially provided.

CONCLUSION

Copies of the documents are to be provided to the requestor, by U.S, Mail at the address of;

_____
_____
_____
CITY STATE ZIPCODE

CERTIFICATE OF SERVICE

I,_____hereby affirm service of the instant lawful demand for the above described documents upon the_____County Circuit Clerk, on the date below notarized.
Sworn to Before me on, _____

_____
Requestor/Defendant

_____
NOTARY PUBLIC,
My commission expires: _/ I_

IN THE COUNTY CIRCUIT COURT OF WEST VIRGINIA

STATE OF WEST VIRGINIA,

V. **IN RE: Case No:**

Defendant,

MOTION FOR PRODUCTION OF GRAND JURY MINUTES

Comes the Defendant,_____,Moving this Honorable Court by Motion for the production of the Grand Jury Minutes in the above styled case number pursuant to W.Va. Rules of Criminal Procedure, Rule 26.2(f).

RELEVANT LEGAL STANDARDS

As used in W. Va. R. Crim. P. 26.2, a statement of a witness means a written statement made by the witness that is signed or otherwise adopted or approved by him; a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical or other recording or a transcription thereof, or a statement, however taken or recorded or a transcription thereof, made by the witness to a grand jury. W. Va. R. Crim. P. 26.2(f).

Jencks Act Under W. Va. R. Crim. P. 26.2, a prosecutor is required to disclose statements to which he or she has access, even though not in possession. Under the "in possession of' language of W. Va. R. Crim. P. 26.2(f), a prosecutor is required to disclose statements to which he has access even though he does not have the present physical possession of the statements.

W. Va. R. Crim. P. 26.2(f) provides: Definition. As used in this rule, a "statement" of a witness means: (1) A written statement made by the witness that is signed or otherwise adopted or approved by him;

(2) A substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; (3) A statement, however taken or recorded or a transcription thereof, made by the witness to a grand jury.

CONCLUSION / RELIEFS SOUGHT

Defendant herein seeks the immediate provision of the Grand Jury Minutes in the above styled criminal case No:_____as provided for in W. Va. R. Crim. P. 26.2(f) and that the documents be provided to him by U.S. Mail at the following Address;

_____ ,#

CERTIFICATE OF SERVICE

I, hereby affirm service of the instant lawful demand for the above described documents upon the _____ _____ County Circuit Clerk, and the_____County Prosecuting Attorney on the date below notarized.

Sworn to Before me on, / /

_____

Requestor/Defendant

_____

NOTARY PUBLIC,
My commission expires: /_____/

IN THE COUNTY CIRCUIT COURT OF WEST VIRGINIA

_____ **Defendant,**
V. **IN RE: Case No:**
STATE OF WEST VIRGINIA;
_____,Attorney Respondent,

MOTION FOR PRODUCTION OF CRIMINAL CASE FILE

Comes the Defendant,_____,Moving this Honorable Court by Motion for the production of the criminal case file in the possession of Attorney_Who was Court appointed as Counsel to the Defendant in criminal case no.: _____-_____- ,Defendant presents the instant pleading pursuant to W.VA. Rules of Professional Conduct, Rule 1.16 and Art. Ill, 17 of the W.Va. Constitution and the 14th Amendment of the U.S. Constitution.

RELEVANT LEGAL STANDARDS

Rule 1.16(d) of the W.Va. Rules of Professional Conduct provides; "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, ***surrendering papers and property to which the client is entitled*** and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other iaw."To file a pro se habeas corpus petition the petitioner must raise all issues which are known to him or which, with reasonable diligence, would become known to him. That is a reasonable rule of procedure since the universe of all grounds for successful collateral attack on underlying convictions is

comparatively small.

"Upon request, an indigent defendant in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record." Syllabus point 1, Call v. McKenzie, 159 W. Va. 191,220 S.E.2d 665 (1975). The Court, in Call, established that an indigent criminal defendant who has entered a plea of guilty is entitled to a free copy of the record of his or her case. The Court in Call stated that "henceforth an indigent criminal defendant shall always be entitled, upon request, to a free transcript of the entire record of his case." Id. at 193, 220 S.E.2d at 668. The Court then expressly held that, "[u]pon request, an indigent **defendant** in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record." Syl. pt. 1, Call, 159 W. Va. 191,220 S.E.2d 665.11 Call further observed that this is a constitutional right, commenting that "the denial of a free transcript to [Mr. Call] is unconstitutional." Id. at 193, 220 S.E.2d at 668.12 The Call opinion acknowledged that Mr. Call sought his trial record "to prepare his case on habeas corpus." Call, 159 W. Va. at 193, 220 S.E.2d at 668.

RELEVANT BACKGROUND

Defendant was Court appointed Attorney_____as Defense Counsel in the above styled criminal case number, To Wit; The Attorney / Client relationship has been terminated and your Defendant now seeks the surrender of the entire criminal case file and its contents, including all discovery, witness statements, police and investigators notes and reports, photographs, video and audio recordings, filings, transcripts, and copies of the hourly work product billings and vouchers Counsel submitted for services in the Defendant's criminal case.

"[u]pon request, an indigent defendant in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record." SEE Call v. McKenzie, 159 W. Va. 191, 220 S.E.2d 665 (1975).

Defendant acting as a 'Self Represented' pro-se litigant avers the necessity with the legal and constitutional

rights to being provided the above styled criminal case file so that he may effectively disseminate and identify all potential grounds and issues for post-conviction habeas corpus reliefs as mandated in W.Va. CODE 53-4A-1 and the W.Va. Rules Governing post-conviction habeas corpus reliefs and the prerequisites set forth in , Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981) Defendant includes that the denial of the above lawfully requested criminal case file would be a clear denial of procedural due process in deterring and denying the Defendant to identify any and all grounds and issues for presentment in a Petition for Writ of Habeas Corpus as a 'Self Represented' litigant and violative of the 14th Amendment of the U.S. Constitution and Art. Ill, 17 of the W.Va. State Constitution.

RELIEFS SOUGHT

Defendant seeks the reliefs of this Honorable Court issuing an ORDER directing that the entire criminal case file and its contents be immediately provided to the Defendant by previous appointed Counsel, Attorney_____and that the case file be provided by U.S. Mail to the Defendant at the address of_____, Return receipt certified.

CERTIFICATE OF SERVICE

I, hereby affirm service of the motion for appointment of counsel upon the _____County Circuit Clerk, on the date below notarized.
Sworn to Before me on, _____

_____
Petitioner/Defendant

_____
NOTARY PUBLIC, My commission expires: / /

IN THE COUNTY CIRCUIT COURT OF WEST VIRGINIA

_____
Defendant,

V. **IN RE: Case No:**

STATE OF WEST VIRGINIA;

_____ County Circuit Clerk,

Respondent(s),

MOTION FOR PRODUCTION OF CASE FIFE CONTENTS

Comes the Defendant,_____,Moving this Honorable Court by Motion for the production of the criminal case file in the possession of the_____County Circuit Court's Clerk in criminal case no.: _____-—-_____,Defendant presents the instant pleading pursuant to Art. Ill, 17 of the W. Va. Constitution and the 14th Amendment of the U.S. Constitution.

RELEVANT LEGAL STANDARDS

To file a pro se habeas corpus petition the petitioner must raise all issues which are known to him or which, with reasonable diligence, would become known to him. That is a reasonable rule of procedure since the universe of all grounds for successful collateral attack on underlying convictions is comparatively small.

"Upon request, an indigent defendant in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record." Syllabus point 1, Call v. McKenzie, 159 W. Va. 191, 220 S.E.2d 665 (1975). The Court, in Call, established that an indigent criminal defendant who has entered a plea of guilty is entitled to a free copy of the record of his or her case.

The Court in Call stated that "henceforth an indigent criminal defendant shall always be entitled, upon request, to a free transcript of the entire record of his case." Id. at 193, 220 S.E.2d at 668. The Court then expressly held that, "[ujpon request, an indigent **defendant** in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record." Syl. pt. 1, Call, 159 W. Va. 191, 220 S.E.2d 665.11 Call further observed that this is a constitutional right, commenting that "the denial of a free transcript to [Mr. Call] is unconstitutional." Id. at 193, 220 S.E.2d at 668.12 The Call opinion acknowledged that Mr. Call sought his

trial record "to prepare his case on habeas corpus." Call, 159 W. Va. at 193, 220 S.E.2d at 668.

RELEVANT BACKGROUND

Defendant was convicted of the underlying criminal offenses in the above styled criminal case number(s) which is now under the imposed prison sentence issued by this Court which the Defendant, As a "Self Represented" person intends to litigate post-conviction habeas corpus proceedings.

"[u]pon request, an indigent defendant in a criminal case who enters a guilty plea is entitled to a transcript of all proceedings against him, including the indictment, pre-trial motions, pre-trial hearings, and any other matter of record." SEE Call v. McKenzie, 159 W. Va. 191,220 S.E.2d 665 (1975).

Defendant acting as a 'Self Represented' pro-se litigant avers the necessity with the legal and constitutional rights to being provided the above styled criminal case file so that he may effectively disseminate and identify all potential grounds and issues for post-conviction habeas corpus reliefs as mandated in W.Va. CODE 53-4A-1 and the W.Va. Rules Governing post-conviction habeas corpus reliefs and the prerequisites set forth in , Losh v. McKenzie, 166 W. Va. 762, 277 S.E.2d 606 (1981)

Defendant includes that the denial of the above lawfully requested criminal case file would be a clear denial of procedural due process in deterring and denying the Defendant to identify any and all grounds and issues for presentment in a Petition for Writ of Habeas Corpus as a 'Self Represented' litigant and violative of the 14th Amendment of the U.S. Constitution and Art. Ill, 17 of the W.Va. State Constitution.

RELIEFS SOUGHT

Defendant seeks the reliefs of this Honorable Court issuing an ORDER directing that the entire criminal case file and its contents be immediately provided to the Defendant by_____County Circuit Court's Clerk and that the and that the case file be provided by U.S. Mail to the Defendant at the address of _____,Return receipt certified.

CERTIFICATE OF SERVICE

I, hereby affirm service of the motion for appointment of counsel upon the _____County Circuit Clerk, on the date below notarized.
Sworn to Before me on, / /_____

_____
Petitioner/Defendant

_____
NOTARY PUBLIC,
My commission expires: / /_____

IN THE CIRCUIT COURT OF **COUNTY OF WEST VIRGINIA**

Petitioner,

V.

Case No.

Respondent

MOTION FOR THE APPOINTMENT OF HABEAS COUNSEL

Comes now,_____,(Petitioner hereinafter), Pro Se, respectfully presenting this Motion pursuant to West Virginia Code 29-21 -2 and 53-4A-1; and Rule 4(b) of West Virginia Rules Governing Post-Conviction Habeas Corpus Proceedings.

Petitioner moves this Honorable Court to grant said Petition for Habeas Corpus, and grant an experienced counsel to represent in filing an amended Petition for Writ of Habeas Corpus to apply for relief.

Petitioner recognizes that although there is no Constitutional right to Court appointed Counsel as opined by the Supreme Court of Appeals in **State ex rel Mugnano v. Painter,** 575 S.E. 2d 590 (W.Va. 2002). However, West Virginia Code 50-4-3; Rule 17 of the West Virginia Rules of Civil Procedure and West Virginia Rules Governing Post-Conviction Habeas Corpus Relief in West Virginia may require this court to appoint counsel when a hearing is held and the Petitioner is indigent as held in **Wood v. Wainright,** 597 f. 2d 1054 (5th Circuit 1979); **Craigo v. Marshall,** 331 S.E. 2d 510 (W.Va. 1985). Petitioner asserts that based upon the potential viable grounds that may be presented in an Amended habeas petition along with the complexity and circumstances of this case, this Court has the authority to find, that in the interest of Justice, pursuant to the Constitution of Wes Virginia, and the United States Constitution to grant Petitioner's Motion for Habeas Corpus Counsel an appoint competent counsel to represent Petitioner.

Because of the wide range of claims cognizable in habeas corpus proceedings and the infinite number of factual variations possible with regard to each claim, any list of the substantive grounds for habeas corpus relief is necessarily incomplete. Rather than attempting to inventory all, or even most, of the claims that could be raised in a habeas corpus petition, this section provides a rough indication of the range and variety of substantive claims by listing and briefly describing some of the claims that have resulted in courts granting of habeas corpus relief over the last four decades. The list is arranged in approximately the order in which the constitutional issues are likely to have arisen as a petitioners case moved through the various stages of the underlying criminal proceeding from arrest through trial and appeal. At the end of the list is a collection of cases in which a writ of habeas corpus was granted because of ineffective assistance of counsel (before, at, or after trial or at sentencing or upon appeal) and other claims relating to the right to counsel.

(1) Claims attacking a search or seizure, interrogation, identification procedure, or other investigative practice employed by a law enforcement official or other agent of the state:

Withrow v. Williams, 507 U.S. 680 (1993) (affirming grant of habeas corpus relief because police used trickery in securing confession from petitioner).

Miller v. Fenton, 474 U.S. 104 (1985) (petitioner convicted on basis of involuntary confession that police extracted by intensively interrogating him while he was in state of physical shock and by telling petitioner he would not be punished if he confessed).

United States v. Henry, 447 U.S. 264 (1980) (police violated 6th Amendment right to counsel by using paid informant to extract statement from already-indicted, incarcerated section 2255 movant).

Brewer v. Williams, 430 U.S. 387 (1977) (police driving petitioner across Iowa after petitioners arraignment and aware of petitioners background as former mental patient and his deep religious convictions obtained confession by violating promise to counsel not to interrogate petitioner and by giving petitioner an impassioned speech stating that kidnapping victim was entitled to a Christian burial).

Davis v. North Carolina, 384 U.S. 737 (1966) (confessions obtained after petitioner held incommunicado for 16 days in small cell on meager diet that resulted in 15-pound weight loss).

Jackson v. Denno, 378 U.S. 368 (1964) (denial of fair hearing and of reliable determination of voluntariness of confession).

Fay v. Noia, 372 U.S. 391 (1963) (confession resulting from lengthy incommunicado police interrogation of petitioner).

Hendrix v. Palmer, 893 F.3d 906 (6th Cir. 2018) (police violated Edwards v. Arizona by re-interrogating petitioner after he invoked his Fifth Amendment rights; prosecutions use of petitioners post-Miranda partial silence violated Doyle v. Ohio).

Rodriguez v. McDonald, 872 F.3d 908 (9th Cir. 2017) (police interrogators failed to honor 14-year-old petitioners invocation of right to counsel).

Dearstyne v. Mazzuca, 679 Fed. Appx. 21 (2d Cir. 2017) (after a careful review of the entire record, we cannot conclude that the trial judges resolution of the issue of voluntariness as a matter of federal law appear[s] from the record with unmistakable clarity. Consequently, we find that the state trial courts procedure did not comport with Jackson v. Denno and its progeny.).

Reyes v. Lewis, 833 F.3d 1001 (9th Cir. 2016) (police detectives deliberately employed the two-step interrogation technique condemned in [Missouri v.] Seibert, 542 U.S. 600 (2004), and far from taking curative measures, they took affirmative steps to ensure that Reyes did not understand the import and effect of the Miranda warning he was finally given at the Riverside police station).

Jones v. Harrington, 829 F.3d 1128 (9th Cir. 2016) (police violated Miranda by continuing interrogation after petitioner invoked right to silence by saying I dont want to talk no more).

Simpson v. Warden, 651 Fed. Appx. 344 (6th Cir. 2016) (interrogating officer impermissibly discouraged Simpson from exercising his Miranda-guaranteed right to counsel).

Garcia v. Long, 808 F.3d 771 (9th Cir. 2015) (police violated Miranda by conducting interrogation after petitioner asserted right to silence by responding to officers question do you wish to talk to me? with a simple no ; notwithstanding other statements Garcia made during the interview, no meant no).

Sharp v. Rohling, 793 F.3d 1216 (10th Cir. 2015) (confession was rendered involuntary by interrogating officers promise of leniencyno jailand help finding shelter for [defendant] and her children to live).

Sessoms v. Grounds, 776 F.3d 615 (9th Cir.) (en banc), cert, denied, 577 U.S. 913 (2015) (defendants question to the interrogating officers There wouldnt be any possible way that I could have aa lawyer present while we do this?, which should have cut off any further questioning).