IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEVEN MYKEL BAILEY,

Petitioner,

vs.

Civil Action No.: 11-1020

MARK V. CAPOZZA, Superintendent, Pittsburgh SCI, and Hon. KATHLEEN G. KANE, Attorney General of Pennsylvania, **et al.,**

Respondents.
_____/

PETITIONER'S SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 AND INCORPORATED MEMORANDUM OF LAW

1. COMES NOW Petitioner, STEVEN MYKEL BAILEY, a person incarcerated in the Commonwealth of Pennsylvania pursuant to a judgment of conviction and sentence thereon, by and through his attorneys, Brownstone, P.A. and Mark K. McCulloch, Esq., files this Supplemental Petition and Incorporated Memorandum of Law In Support Thereof. The contents and claims proffered by Petitioner in his filing, *pro se*, are hereby incorporated by reference and in addition, Petitioner alleges as follows:

2. Petitioner is currently incarcerated within the Commonwealth of Pennsylvania Department of Corrections, serving a life sentence pursuant to a judgment and sentence entered in the Court of Common Pleas of Allegheny County, the Hon. Lester G. Nauhaus, J. presiding (the "trial court"), under Case # CP-02-CR-0011831-2004. He is currently in custody at the Pittsburgh State Correctional Institution, located within the Commonwealth of Pennsylvania and under the jurisdiction of the U.S. District Court for the Western District of Pennsylvania.

3. Petitioner has exhausted all of his state appeals.

4. There are no other petitions or appeals pending in any state court or Federal court relating to the judgment under attack herein.

PROCEDURAL HISTORY

5. Petitioner was charged with one (1) count of criminal homicide, in violation of 18 Pa.C.S.A. § 2501, one (1) count of carrying a firearm without a license, in violation of 18 Pa.C.S.A. § 6106, and four (4) counts of recklessly endangering another person, in violation of 18 Pa.C.S.A. § 2705. Petitioner was represented by Mark Lancaster, Esq. Petitioner went to trial before a jury starting January 4, 2005, and lasting three days. On January 10, 2005, a jury found Petitioner guilty of first-degree murder and all other counts. Petitioner was remanded pending sentencing. On March 14, 2005, Petitioner was sentenced to a mandatory life without parole and five concurrent one- to two-year sentences on the remaining counts.

6. Petitioner retained Thomas Farrell, Esq., and William Difenderfer, Esq., who filed timely post-sentence motions on March 23, 2005. Amended post-conviction motions were filed July 20, 2005. A hearing was held on the post-conviction claims on August 16, 2005 and the motion was denied the same day. A timely appeal was taken to the Superior Court on September 13, 2005 (Dckt. 1598 WDA 2005).

7. The trial court issued a Trial Court Opinion on January 19, 2006. Appellant's initial brief was filed June 19, 2006, an answer was filed on August 16, 2006, and the Superior Court affirmed the judgment and sentence in an opinion and order issued April 17, 2007. A timely Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was filed May 4, 2007 (Dckt. 206 WAL 2007). The Petition was denied December 20, 2007.

8. On April 23, 2008, Petitioner filed, pro se, a petition pursuant to the Commonwealth's Post Conviction Relief Act ("PCRA"), 42 Pa.C.S.A. § 9541 et seq. On May 1,

2008, the trial court appointed Scott Coffey, Esq., to represent Petitioner. A timely Amended PCRA petition was filed October 1, 2008. The Commonwealth answered the amended petition on October 17, 2008. Following an evidentiary hearing on January 9, 2009, the trial court denied relief on January 29, 2009.

9. Petitioner, through Attorney Coffey, filed a timely notice of appeal to the Superior Court (Dckt. No. 312 WDA 2009). The trial court filed his opinion on June 10, 2009. Petitioner's opening brief was filed August 6, 2009, and an answer was filed September 14, 2009. The Superior Court affirmed the lower court order and dismissed the petition on October 1, 2010. A timely Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was filed October 19, 2010 (Dckt. 560 WAL 2010). The Petition was denied March 30, 2011.

10. Petitioner filed a second PCRA petition, pro se, alleging newly discovered evidence. Petitioner retained John Knorr, Esq., to represent him however Mr. Knorr chose not to file an amended petition and simply adopted Petitioner's pro se filing. The only claim pursued was a claim that a trial witness wished to recant; however that witness declined to testify after being advised that he faced possible perjury charges and as a result, the petition was withdrawn via oral motion. While this second petition was pending, Petitioner filed a Petition for Writ of Habeas Corpus, pro se, pursuant to 28 U.S.C. § 2254 in the United States District Court for the Western District of Pennsylvania (Dckt. 11-1020). On August 12, 2011, Magistrate Judge Lisa Pupo Lenihan issued an order directing the Commonwealth to respond to the petition. A response was filed September 27, 2011.

11. Petitioner, pro se, filed a motion to stay the proceedings in the instant matter to permit consideration and resolution of his second PCRA petition. The Court, following a response from the Commonwealth, issued an order on February 12, 2013, to stay the present

proceedings. At some point following this stay, Petitioner's pending PCRA petition was withdrawn and a motion to lift the stay in this Court was presented and granted on October 1, 2013.[1] Undersigned counsel was retained to represent Petitioner in the instant petition. Given the nature of Petitioner's filing, pro se, the interests of justice and fairness warrant the Court's consideration of the instant supplemental petition and memorandum of law.

STATEMENT OF FACTS

12. The facts of the underlying case are summarized as follows and are from the trial court's recitation of facts as presented in its conclusions in denying Petitioner's arguments challenging the sufficiency of evidence from his conviction:

> Petitioner shot and killed the victim, Derrick Steele, on June 8, 2004, at approximately 4:15p.m., at Mr. Bills Tap and Grill bar in Pittsburgh. (TT 52-59)[2]. The shooting occurred shortly after Petitioner's girlfriend, Ms. Tammy Brown, was accosted by Mr. Steele a few blocks from the bar. (TT 246-251).
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> Mr. Steele approached Ms. Brown as she walked on Perrysville Avenue with her friend and four children, and he began yelling and swearing at her, demanding to speak with Petitioner. Mr. Steele threatened to kill Petitioner. As the confrontation escalated, Ms. Brown became hysterical and called Petitioner from her cell phone. When Petitioner answered the phone, he heard Mr. Steele threatening to kill him and Ms. Brown screaming. (TT 246-47, 320).
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> Petitioner said that on June 8, 2004, when he answered Ms. Brown's cell phone call, he heard the victim saying, "Where is your man? … Get your man! … Tell that mother fucker he's dead." (TT 320). He also heard Ms. Brown screaming "get off me, stop hitting me" and he heard his baby crying. This "heated argument" as it was described by the fire station captain who observed it, did not involve physical violence. (TT 149). The argument continued until a police car approached and Ms. Brown and Mr. Steele walked in opposite directions.
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> Ms. Brown walked into a nearby pharmacy with her friend and the children. Petitioner arrived at the pharmacy a minute later and drove Ms. Brown, her friend, and the children to Ms. Brown's house. (TT 295).

[1] Counsel has been unable to locate any motion to withdraw or an order granting the motion to withdraw.

[2] References herein as "TT" refer to the trial transcript record followed by the page number.

> Petitioner is the father of Ms. Brown's youngest daughter. (TT 320). Petitioner drove to find Ms. Brown after receiving her alarming phone call.
>
> Ms. Brown was still traumatized when Petitioner picked her up from the pharmacy. After he dropped Ms. Brown and the others off, Petitioner went to Mr. Bills Tap & Grill bar to find out why the victim was harassing his family. (TT 322). Petitioner saw the victim standing outside of Mr. Bills Tap & Grill with two other men.
>
> Petitioner testified that the victim had threatened to kill him months before the shooting and had even fired a weapon at him during the preceding March (although Petitioner did not report the incident to the police). Petitioner reached across the passenger's seat, aimed a firearm at the men and fired four shots. (TT 137-140). Petitioner testified that at the time he fired his weapon, he believed he saw the victim reach for a gun, so he fired two shots to the left and two more shots as the victim retreated into the bar. (TT 325). Petitioner insisted that he did not want to kill the victim, just scare him. (TT 327).
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> One bullet penetrated the victim's head, killing him instantly, as he was retreating into the bar. (TT 77). The bullet struck the victim as he was inside the door of the bar, in the vestibule area. (TT 61, 67).

STANDARD OF REVIEW

13. To prevail under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a petitioner seeking federal review of his conviction must demonstrate that the state court's adjudication of his federal constitutional claim resulted in a decision that was contrary to or involved an unreasonable application of clearly established U.S. Supreme Court precedent, or resulted in a decision that was based on an unreasonable factual determination in light of the evidence presented in state court. 28 U.S.C. § 2254(d)(1), (2); *Williams v. Taylor*, 529 U.S. 362, 375-76 (2000).

14. The "contrary to" clause of section 2254(d)(1) is violated if the state court reaches a result opposite to the one reached by the U.S. Supreme Court on the same question of law or arrives at a result opposite to the one reached by the U.S. Supreme Court on a "materially indistinguishable" set of facts. *Williams*, 529 U.S. at 405-06. An "unreasonable application" of Supreme Court law occurs if the state court identifies the correct rule of law but applies that principle to the facts of the petitioner's case in an unreasonable way. *Id*. at 413.

15. "Evaluating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Harrington v. Richter*, 131 S.Ct. 770, 786 (2011) (*quoting Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)).

16. It is axiomatic that both the United States Constitution and the Pennsylvania constitutions guarantee each defendant in a criminal prosecution the right to the effective assistance of counsel. U.S. Const. Amend. VI, §1; Art. I, §9, Pa. Constit. The fundamental right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive due process of law in an adversarial system of justice. *United States v. Cronic*, 466 U.S. 648, 658 (1984); Commonwealth v. Pierce, 515 Pa. 153, 165, 527 A.2d 973, 979 (Pa. 1987)("The right to assistance of competent counsel at trial … is a critical element of the panoply of rights encompassed in the concept of a fair trial.")

17. The United States Supreme Court has held that "[t]he benchmark of judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial [court] cannot be relied on having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). Under the *Strickland* standard, ineffective assistance of counsel is made out when the defendant shows that (1) trial counsel's performance was deficient, i.e., that he or she made errors so egregious that they failed to function as the "counsel guaranteed the defendant by the Sixth Amendment," and (2) the deficient performance prejudiced the defendant enough to deprive him of due process of law. *Id.* at 687. Specifically, the Court stressed that "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

would have been different. *Id.* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

18. In the criminal defense setting, counsel must be free to fully advocate on his client's behalf, free from fear of reprisal by the court for advocating what the law allows. Indeed, the United States Supreme Court has indicated that defense counsel is only limited by ethical considerations and the rules of criminal procedure: "[e]thical considerations and rules of court prevent counsel from making dilatory motions, adducing inadmissible or perjured evidence, or advancing frivolous or improper arguments . . ." *McCoy v. Court of Appeals of Wisconsin, Dist. 1*, 486 U.S. 429, 436 (1988).

19. A convicted defendant making a claim of ineffective assistance must identify the particular acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. In turn, a court deciding a claim of ineffective assistance of counsel must then judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. *Strickland* at 690.

> The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.

Id. (emphasis added).

20. The Pennsylvania Supreme Court has adopted a hybrid standard based upon the clear intention of Strickland. To prevail, a Petitioner must satisfy two components. First, there must be a determination that the underlying claim is one of "arguable merit" and then counsel's performance is evaluated for its reasonableness related to the claim. Second, there must be a

showing of prejudice as a result of the ineffectiveness. *Commonwealth v. Douglas*, 537 Pa. 588, 597, 645 A.2d 226, 230 (Pa. 1994), *citing Commonwealth v. Pierce*, 515 Pa. at 159.

GROUNDS OF UNCONSTITUTIONALITY OF PETITIONER'S CONVICTION AND SENTENCE

I. THE EVIDENCE AT TRIAL WAS LEGALLY INSUFFICIENT TO SUPPORT THE CONVICTION FOR FIRST DEGREE MURDER WHERE THE COMMONWEALTH PRESENTED INSUFFICIENT EVIDENCE TO SHOW THAT PETITONER INTENTIONALLY, WILLFULLY, AND WITH PREMEDITATION KILLED THE VICTIM

21. The Due Process Clause of the United States Constitution prohibits the criminal conviction of any person except upon sufficient proof of guilt of every element of the charged offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979); *In re Winship*, 397 U.S. 358 (1970). It thus remains axiomatic that, "[i]t would not satisfy the [U.S. Constitution] to have a jury determine that the defendant is probably guilty." *Sullivan v. Louisiana*, 508 U.S. 275, 278 (1993).

22. Indeed, it is well-settled that habeas relief is mandated if after viewing the evidence adduced at trial, in the light most favorable to the prosecution, it is found that no rational trier of fact could have found proof of guilt beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 324 (1979). As Justice Stewart held:

> [A] federal court **must** entertain a claim by a state prisoner that he or she is being held in "custody in violation of the Constitution or laws or treaties of the United States." Under the *Winship* decision, it is clear that a state prisoner who alleges that the evidence in support of his state conviction cannot be fairly characterized as sufficient to have led a rational trier of fact to find guilt beyond a reasonable doubt has stated a federal constitutional claim. Thus, assuming that state remedies have been exhausted and that no independent and adequate state ground stands as a bar, it follows that such a claim is cognizable in a federal habeas corpus proceeding.

Jackson, 443 U.S. at 321 (internal citations omitted) (emphasis added).

23. Accordingly, in a habeas corpus proceeding such as this, a claim that the Petitioner has been convicted in state court upon insufficient evidence rests on the Due Process guarantee "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof - defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Jackson, 443 U.S.* at 319.

24. In following this guidance, federal courts have consistently held that a defendant's conviction is constitutionally infirm, and must be vacated if attacked on a federal habeas corpus petition where no rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Bowen v. Kemp,* 832 F.2d 546 (11th Cir. 1987) (insufficient evidence of *mens rea* to support petitioner's conviction for murder); *Joseph v. Coyle,* 469 F.3d 441 (6th Cir. 2006) (evidence was insufficient to establish that defendant personally inflicted victim's fatal stab wound to sustain conviction for aggravated murder).

25. For the reasons that follow, it was objectively unreasonable for the Pennsylvania state court to deny Petitioner's post-conviction motion for relief and it was ineffective for Petitioner's appellate counsel not to raise the issue on direct appeal. The Commonwealth did not present sufficient evidence to prove premeditation and that the Commonwealth's evidence did not conclusively rule out Petitioner's reasonable hypothesis of innocence. The *Jackson* standard for reviewing the sufficiency of the evidence in a habeas corpus proceeding must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law. *Jackson,* 443 U.S. at 324, n.16 (indicating that federal courts in reviewing habeas petitions that allege insufficiency of the evidence avoid intrusions upon state power to define criminal offenses by referencing "the substantive elements of the criminal offense as defined by state law").

26. In this case, the state law at issue is section 18 Pa.C.S. §2501, Pennsylvania Code, which states in pertinent part:

> A person is guilty of criminal homicide if he intentionally, knowingly, recklessly, or negligently causes the death of another human being. 18 Pa.C.S. §2501 (a).
>
> A criminal homicide constitutes murder in the first degree when it is committed by an intentional killing. 18 Pa.C.S. §2502 (a).
>
> An "intentional killing" is defined as killing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing. 18 Pa.C.S. §2502 (d).

27. The willful, deliberate and premeditated intent to kill is the element that is unique and distinguishes first-degree murder from other degrees of murder. *Commonwealth v. Ockenhouse*, 562 Pa. 481, 490, 756 A.2d 1130 (Pa. 2000). Further, the use of a deadly weapon on a vital part of the victim's body may constitute circumstantial evidence of a specific intent to kill. Id., at 491, *citing Commonwealth v. Bond*, 539 Pa. 299, 652 A.2d 308, 311 (1995).

28. In this case, the evidence at trial demonstrates Petitioner did not seek out the victim with the specific intent to kill him but rather to confront the victim about the threats the victim made to Petitioner's girlfriend. The evidence at trial demonstrated that the shots fired were in response to the Petitioner seeing the victim reaching for a weapon and placing him in fear. Petitioner never exited his vehicle. The first shots fired were in a completely different direction than where the victim was and the two shots that followed were directed at the building after the victim had already retreated into the bar.

29. The evidence at trial also demonstrates the victim was not standing in the vestibule but rather had reached the interior of the bar by several feet. Petitioner could not see the victim at the time of the shooting, could not determine where the victim was at the time of

the shooting and as a result, there could be no reasonable finding by the jury that Petitioner intended to shoot the victim.

30. The Commonwealth's evidence on the critical element of intent was entirely circumstantial. The most it could prove was that Petitioner fired a weapon, which Petitioner never denied, and that the shots were at the building. Petitioner had no intent to kill the victim and in fact was responding to a perceived threat that the victim was about to pull a gun on him, the same thing the victim had done previously. There was no evidence that Petitioner could see the victim or that the victim was even in close proximity to the gun shots and in fact, the evidence adduced at trial proved just the opposite was true.

31. In every criminal case, the prosecution is required to prove beyond a reasonable doubt each specific element of the charged offense. The trial court, in considering Petitioner's motion for judgment of acquittal, rejected this argument finding the jury could have believed Petitioner killed the victim and that the jury was free to infer the specific intent to kill justifying its verdict. Here, the evidence was insufficient to prove intent to kill as defined by Pennsylvania law. The Commonwealth did not prove Petitioner willfully and intentionally and with premeditation killed the victim. As a result, his conviction and sentence are in violation of his Sixth Amendment rights to due process and must be vacated.

II. PETITIONER RECEIVED CONSTITUTIONALLY DEFICIENT ASSISTANCE OF COUNSEL WHERE TRIAL CONSEL FAILED TO REQUEST SPECIFIC LIMITING INSTRUCTIONS CONCERNING KEY WITNESSES PRESENTED BY THE COMMONWEALTH AND WHERE THERE IS NO REASONABLE BASIS FOR TRIAL COUNSEL'S FAILURE AND WHERE PETITIONER WAS PREJUDICED AS A RESULT.

32. Generally, a review of claims regarding jury instructions, either not given or wrongly given, are reviewed for abuse of discretion. In the case where an instruction was not given and the reason was because trial counsel was ineffective, the court will review under a

plain error standard. *U.S. v. Dobson*, 419 F.3d 231, 236 (3d Cir. 2005). Here, Petitioner claims that as a result of constitutionally infirm assistance of counsel, jury instructions were not requested that should have been requested based upon the evidence at trial and as a result, his conviction is unconstitutional.

33. The Commonwealth's presentation of evidence included testimony from three witnesses, Tammy Brown, Kelly Shipton, and Charmaine Holloway. In the case of Brown and Shipton, the Commonwealth challenged each on alleged statements they had given to law enforcement which each specifically denied at trial they had ever given. Police never reduced their statements to writing or recorded their statements and the Commonwealth never introduced any evidence from those law enforcement officers who may have heard the statements. The only evidence was contained within the Prosecutor's questions themselves.

34. Trial counsel failed to request a specific instruction that the prosecutor's questions, arguably designed to present otherwise inadmissible evidence to the jury, were NOT evidence and that the denials that were clear and unequivocal could be used by the jury only to evaluate the credibility of the witnesses and not as direct proof. There is no reasonable explanation for failing to request the instruction and as a result of counsel's failure, Petitioner was prejudiced because the content of the questions, and NOT the denials, provided the jury the only proof of arguable intent.

35. As it relates to Charmaine Holloway, her testimony focused in rebuttal upon an incident that took place eight months prior to the shooting in which she testified Petitioner had a gun and had threatened to kill the victim. Ms. Holloway had a criminal record that included convictions related to so-called "truth" crimes and therefore her credibility for truthfulness was at issue when she took the stand.

36. Trial counsel never requested a cautionary or limiting instruction related to her testimony despite such an instruction being appropriate. Despite the extraordinary length of time between the incidents and the questionable veracity of the witness, no cautionary instruction was requested or given and there is no reasonable explanation for counsel's failure. Petitioner was prejudiced because this testimony provided the jury with circumstantial evidence of Petitioner's premeditation.

III. PETITIONER RECEIVED CONSTITUTIONALLY DEFICIENT ASSISTANCE OF COUNSEL WHERE TRIAL CONSEL FAILED TO PROPERLY COMMUNICATE A PLEA OFFER TO PETITIONER REQUEST SPECIFIC LIMITING INSTRUCTIONS CONCERNING KEY WITNESSES PRESENTED BY THE COMMONWEALTH AND WHERE THERE IS NO REASONABLE BASIS FOR TRIAL COUNSEL'S FAILURE AND WHERE PETITIONER WAS PREJUDICED AS A RESULT

37. Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. *Missouri v. Frye,* 132 S.Ct. 1399 (2012); *Padilla* v. *Kentucky,* 130 S.Ct. 1473, 1486, 176 L.Ed.2d 284 (2010). During plea negotiations defendants are "entitled to the effective assistance of competent counsel." *McMann v. Richardson,* 397 U.S. 759, 771, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970).

38. To establish *Strickland* prejudice a defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice. *Missouri v. Frye,* 132 S.Ct. 1399 (noting that *Strickland* 's inquiry, as applied to advice with respect to plea bargains, turns on "whether 'the result of the proceeding would have been different' " (quoting *Strickland, supra,* at 694, 104 S.Ct. 2052)); *see also Hill v. Lockhart,* 474 U.S. 52, 59, 106 S.Ct. 366 ("The ... 'prejudice,' requirement ... focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process").

39. Here, Petitioner argues trial counsel failed to fully and properly convey a plea offer from the Commonwealth and that had trial counsel done so accurately and completely, Petitioner would have accepted that offer. Specifically, there was an offer that should Petitioner plead guilty to third-degree murder, he could receive just the maximum sentence of 20-40 years. Trial counsel rejected the offer without ever consulting Petitioner. In explaining his decision, trial counsel said the most Petitioner could be convicted of was involuntary manslaughter and the resulting sentence was anywhere from three to ten years "and I'm going to get you less time than that."

40. Petitioner was denied effective assistance of counsel in violation of his Sixth Amendment rights and was prejudiced as a result of proceeding to a trial by jury. Had Petitioner been properly advised of the plea offer, he would have accepted it. He was denied to right to consider a plea offer and was denied the constitutional right to effective counsel on both the substance of the offer as well as the advantages and disadvantages of taking a plea versus going to trial. Petitioner's sentence and conviction should be vacated and he should be given the opportunity and benefit of pleading guilty to third-degree homicide.

CONCLUSION AND RELIEF REQUESTED

41. For the reasons set forth above, this Court should grant the petition herein in its entirety.

WHEREFORE, Petitioner prays that this Court:

(A) Issue a Writ of Habeas Corpus ordering that the Petitioner be released from his confinement upon a personal recognizance bond; or in the alternative,

(B) Issue a Writ of Habeas Corpus ordering that the Petitioner be released from his confinement unless the judgment of conviction and sentence are vacated and he be restored to pre-trial status; and,

(C) Enjoin Respondents from executing Petitioner's sentence of life in prison;

(D) Dismiss all charges against Petitioner in keeping with the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution;

(E) Grant a hearing on this matter;

(F) Award Petitioner costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

(G) Grant any such other and further relief as this Court may deem just, proper and equitable.

Dated: February 19, 2014

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on February 19, 2014, by operation of the CM/ECF system on all counsel or parties of record on the Service List below.

/s/ Mark K. McCulloch, Esq.
Mark K. McCulloch, Esq.