IN THE
SUPREME COURT OF THE UNITED STATES

No._____

NORMAN GREGORY,
Petitioner

vs.

WILLIAM J. LOVE, et al.,
Respondent(s)

C.A. Nos. 99/3359/99-3360
(W.D. Pa. Civ. No. 99-cv-0534)

APPLICATION FOR RULE 22 et al.,

COMES NOW, the petitioner in the above-captioned cause, hereby timely request the U.S. Clerk in pursuant of Supreme Court's Rule 22, appealing from the Third Circuit of Appeals final Order and statement of Sept, 17, 1999. Of a entitled application to proceed in light of the same court's earlier Order dated May 25, 1999 in conflict of reversed provisions regarding Motion under § 2244, ordering it shall not apply in this case.

Petitioner strongly feels the lower court's application and ruling, was fundamentally unfair, unjust, and without jurisdiction to assert beyond due process.

Petitioner is hereby requesting submitted Rule 22, be allotted to specfied JUSTICE DAVID H. SOUTER, or in the alternative, if not available allotted to secondary JUSTICE ANTHONY M.KENNEDY, See. Sumner v. Mata, 101 S. Ct 764, 767 [1] (1981).

Petitioner wish to expand application further for, Supreme Court's Rule 20, upon provisions for Extraordinary Writ pursuant of procedures authorized by 28 U.S.C. § 1651(a), discretionary and sparingly exercised. As justification for granting of such a petition there under, exceptional circumstances granting such writ, will be in aid of the Court's Appellate Jurisdiction which appear to warrant the exercise of the court's discretionary powers, and the adequate relief being averted cannot be obtained in any other form, or from any other court.

This application was approved in forma pauperis, meeting Rule 39, with respect to which the writ is sought, to resolved whether to decisions rendered in the lower court's, was decided in conflict with this court, and other appellate court's mandates, in similarly or the same situated cases

Petitioner, request this application for relief under the all Writs Act, has met appropriate provisions of exceptional circumstances upon procdures dictating fact and law accordingly.

Respectfully Submitted

/s/ Norman Gregory

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

NORMAN GREGORY, ---PETITIONER

VS.

WILLIAM J. LOVE, et al., ---RESPONDENT(S)

PETITION FOR WRIT IN AID OF APPELLATE JURISDICTION AND/OR WRIT OF CERTIORARI

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(Name of Court that last ruled on merits of the case)

(C.A. Nos. 99-3359/99-3360)
(W.D. Pa. Civ. No. 99-cv-0534)

Norman Gregory
(Your Name)

370 Prison Road, # AP-8138
(Address)

WAYNESBURG, PA 15370-9941
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

THAT:

The entirety of state process was rendered ineffective to protect petitioner's constitutionally guaranteed Due Process Rights. Thusly, invoked a Fundamental Miscarriage of Justice. 28 U.S.C.A. § 2254(a)(b)(c)(d))1 to 8)(e)(f).

LIST OF PARTIES

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

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

WILLIAM J. LOVE, Superintendent.

ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA
564 FORBES AVE, MANOR BUILDING
PITTSBURGH, PA 15219-2903

DISTRICT ATTORNEY OFFICE
401 ALLEGHENY COUNTY COURTHOUSE
PITTSBURGH, PA 15219

TABLE OF CONTENTS

OPINIONS BELOW 1,

JURISDICTION ..... i, 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... VI, 3,

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE EXTRAORDINARY WRIT 16

CONCLUSION 37

INDEX TO APPENDICES

APPENDIX A : Magistrate Judge's report & recommendation of April 13, 1999, C.A. N. 99-0534, recommended petition of habeas corpus be transferred to the United States Court of Appeals for the Third Circuit as an Application to file a successive petition at 28 USCA § 2244(b)(3).

APPENDIX B : The United States District Court Judge Donald E. Ziegler's Memorandum Order of May 11, 1999, denied after a claimed 'de novo review" and adopted as the opinion of the court.

APPENDIX B- Magistrates Report, No.95-937-3/5/96---Memorandum Order 3/29/96.

APPENDIX C : Magistrate Judge's report & recommendation of May 27, 1992, C.A. No. 91-889, recommended petition for writ of habeas corpus be dismissed, with a certificate of probable cause denied, because petitioner has not exhausted available state court remedies. (Appendix continued (C) below.)

APPENDIX D : The United States Court Of Appeals for Third Circuit assessing (W.D. Pa. 99-cv-0534), that issued an (stare decisis) ORDER dated May 25, 1999, upon two issued numbers, first, No. 99-3359/for transferred successive petition, § 2244, et al., ORDERING it **shall not apply**; secondly, No. 99-3360 for habeas corpus § 2254, **shall apply.**

APPENDIX E : The U.S. Court Of Appeals 3rd Cir. submitted a additional hybrid Order dated Aug, 30, 1999, for same session foregoing matters reversing successiveness, was reasserted without analytical framework, claiming present § 2254, denied---based upon first habeas denial on the merits. Retroactively bar asserting case of Minarik 166 F.3d 591, 599-608 (3rd Cir. 1999).

APPENDIX F : The U.S. Court Of Appeals Clerk of court issued a statement of Sept, 17, 1999, advised that petition for "Rehearing" for No. 99-3360, under 28 USCA § 2254, granted or denied for Appealability no action shall be be taken. And matters are not subject for certiorari. Under 28 USCA § 2244(b)(3)(E).

App. C, continues; The U.S. District Ct. Judge Glenn, memorandum orderof June 22, 1992, dismissed petition adopted as the opinion of the court. (Claiming at page one of report, which suppressed petitioner's "OBJECTIONS" at No. 91-889), Who claimed no Objections were filed, (petitioner did file Objections, dated June 7, 1992, hereto shown at (Ex. DC-1), (certified mail No. P 800 769 009)(claimed habeas was denied as **mixed petition** at report at dated 4/13/99, p. 2, and n. 1.

HISTORICAL FACTS OF THE CASE

Petitioner, pro se, and forma pauperis, pursuant of Supreme Court's Rules 20 & 22, and 28 U.S.C. 1651(a), in aid of jurisdiction agreeable to the usages and prinicples of fact and law bought under the all Writs Act, for just reasons accordingly.

On July 20, 1999, petitioner submitted a petition under U.S.C.A. Sec. § 2254 et al., to district court receiving magistrate's formulated report and recommendations at 4/13/99, which recommended habeas corpus be transferred to the U.S. Third Circuit of Appeals as an application to file a successive petition, pursuant to 28 U.S.C. § 2244(b)(3). Said transfer specifically stipulated, for authorizing district court to adjudicate said habeas, assessing content of report consolidated all previous habeas filing at p. 2, and n. 1, and p. 3), which incorporated the following: ....

> ..."Previcusly, petitioner had filed a petition dkt at Civ. A. No.89-895 [2] which was denied on March 5, 1990, based upon a report and recommendation concluded that the entire petition was an attack upon **the validity of his** nolo contendere plea, **because of his drugged condition at the time** it was entered and that this issue had been litigated in the state court's and was entitled **to a presumption of correctness.** In addition, petitioner filed a petition dkt at Civ. A. No. 91-889, which was dismissed as **a mixed petition** thereto at 6/22/92, on a report and recommendation dated 5/27/92. [Appendix C], which claims at No. 91-889, that **(NO OBJECTIONS)** were ever filed to said matters, --And petitioner submits [App. C-1] of that "Objecticns OMITTED."

The district court's final Order dated May 11, 1999, [App. B], affirmed, the entire report as by "de novo" but petitioner has never been called down for anytype of federal hearing, indicated by report throughout this entire appeal to date.

Subsequently, upon transferred actions to Third Circuit the Clerk

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[2] Report and Recommendation No. 89-895, was lost through Institutional security search for contraband, without petitioner's presence between three differrent Department of Corredtions, SCI-PGH, SCI-Huntingdon, SCI-GBG, and thereby lost.

of court consolidated two combined very different statutes, upon first, 28 U.S.C. § 2244(b), "successive petition" at No. 99-3359, and; related second, 28 U.S.C.A. § 2254 et al., "habeas corpus" at No. 99-3360.

The court submitted an controlling ORDER dated May 25, 1999, [App. D], addressing both statutes upon; first, number 99-3359 set forth for § 2244 **which ORDERED time frame set forth shall not apply.** Further stating upon;

SECOND, number 99-3360 set for § 2254 et al., "habeas corpus" **this time frame of case shall apply.**

Petitioner hereby request this Supreme Court to call down the complete record, of consolidated historical facts of this case.

Viewing the assessment which Ordered reversal upon No. 99-3359, (successive petition), not to apply. Subsequently, left only transferred habeas, for third circuit to submit a authorization Order back to district court for said habeas adjuication therefrom.

But 97 days later of same session, the third circuit submitted a piecemeal additional ORDER dated Aug, 30, 1999, [App. E], completely out of sink, in effect overreaching said first ORDER, which reactivated (successiveness), without an analytical framework.

The hybrid interlocutory "ORDERS" appear in conflict with procedures, and principles of law, required for full legal defining specification, addressing each action taken upon each Order in conflict of the other.

And viewing said Order of 8/30/99, without a analytical framework, petitioner feels consolidated matters were decide in bad faith, and abusing discretion without clarifying each position set forth.

Where further unlawfully reapplying (successiveness), upon habeas

which in fact the whole main purpose for transferred habeas, for authorization Order back to district court was averted, using cited case of In Re Minarik, 166 F. 3d 599-608 (3rd Cir, 1999), claiming a legal interpretation contrary to Minarik, to bar habeas petition was not impermissibly retroactive at all, to further assert that certificate of appealability, for transferred habeas was denied.

Petitioner filed a "Rehearing" dated Sept, 14, 1999, attacking the inconsistency of contrary submission, showing omissions and misstatements in conflict with procedural due process being denied access to the court's. However, the U.S. Clerk of the court issued a dated reply at Sept, 17, 1999, [App. F], stating, (No action would be taken upon petitioner's Rehearing therefrom), reincorporated reversed actions of (successiveness) used through U.S.C. § 2244(b)(3)(F).

Which is essentially inconsistent viewing stare decisis, first Order at May 25, 1999, absent legal analysis moot---which would tend to show hybrid Order of 8/30/99, inappropiately inconsistent beyond all sound discretion, denying "minimum standards" for fundamental fairness, in conflict with due process, citing; Minarik, thereto.

Petitioner feels material fact(s) and law(s) involved, was wrongfully suppressed, as has been from the outset of this conviction, upon inconsistencies of omissions compounding all abuse of discretion therefrom at Order dated 8/30/99.

Those inconsistencies and omissions, directly correlated the totality of magistrate's 4/13/99 report, finding FRAP 16 (b), "Omission from the record, and Misstatements, may not be averted and allow any Omissions, may be corrected anytime."

The magistrate's report set forth at 4/13/99, consolidated **all**

prior habeas corpus, at p. 2, and n. 1,----referring to **the entire conviction** of March 2, 1983, claiming a extensive hearing took place upon a evaded [q]uestion of petitioner's competency to stand trial, yet claimed was resolved. And at n. 1, claiming first habeas had resolved matters, concluding that **the entire petition** was on attack upon **the validity of his nolo contendere** plea, [resolved] because of **his drugged condition** at the time it was entered, and the issue had been litigated in the state courts, and was entitled to a presumption of correctness. Additionally, at second habeas dkt at Civ. A. No. 91-889, was dismissed as a MIXED PETITION, where further at p. 3, the commonwealth's quoted illegal reinterpratation of 3rd PCRA, which altered petitioner's facts submitted, [**of denied counsel,**] into counsel's [ineffectiveness], for somehow abvising him to plead nolo contendere, suggesting be denied on the merits.

The magistrate's report set forth at 4/13/99, correlated a extensive ambiguous finding, not found by record clearly erroneous, establishing provisions mandated for magistrate's 28 U.S.C. § 636(b)(1) & ((3)), of defined reasons for [Evidentiary Hearing] averted through district court's final Order, Yet it claimed the court conducted a " de novo " defined review.

Petitioner wish to establish entitlement for extraordinary writ in aid of appellate jurisdiction, pursuant for 28 U.S.C. § 1651(a), to correct a fundamental ongoing miscarriage of justice, warranting the exercise of this court's discretionary powers Rule 20. 1. demonstrating that adequate relief cannot be obtained in any other form, or from any other court hereto shown.

And those Omissions formulated are as followed:

a) The magistrate's report of 4/13/99, p. 2, 1st paragraph) ambiguous generalization referred out of context of the facts, regarding NTs. March 2, 1983, reasons for petitioner's consumption of his neuroleptic daily medication of "Stelazine" --defined NTs p. 10, used in the treatment

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

NORMAN GREGORY, Petitioner	)	
vs.	)	Civil Action No. 99-0534
	)	Judge Donald E. Ziegler\
WILLIAM J. LOVE, Superintendent, Respondent and THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, Additional Respondent	)	Magistrate Judge Sensenich

CORRECTED MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(with Attachments Referred to in Footnote 2)

I. RECOMMENDATION

It is recommended that the petition for writ of habeas corpus be transferred to the United States Court of Appeals for the Third Circuit as an application to file a successive petition pursuant to 28 U.S.C. § 2244(b)(3).

II. REPORT

Petitioner Norman Gregory, a state prisoner incarcerated at the State Correctional Institution at Greensburg, Pennsylvania, brings the instant petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his plea of nolo contendere to numerous charges and his sentence of 17-1/2 to 50 years imprisonment, imposed by the Court of Common Pleas of Allegheny County on February 15, 1984. On November 10, 1982, petitioner was charged with two counts of rape, one count of attempted rape, three counts of indecent assault, two counts of terroristic threats,

three counts of recklessly endangering another person, two counts of simple assault, one count of false imprisonment, four counts of robbery, and two counts of burglary. On March 2, 1983, an extensive hearing took place, at which the question of petitioner's competency to stand trial was resolved and petitioner, represented by attorney Timothy J. Sullivan, pleaded nolo contendere to all of the charges.

On June 21, 1995, Petitioner filed a petition for writ of habeas corpus attacking the conviction challenged herein,[1] which was docketed at Civ. A. No. 95-937. On March 29, 1996, an order was entered denying the petition and denying a certificate of probable cause, based on a report and recommendation dated March 5, 1996.[2] The report and recommendation concluded that: 1) to the extent that Petitioner intended to state only a single claim, that the "entirety of state process" was rendered ineffective to protect his rights, this denial of due process claim had been exhausted but should be denied on the merits because he had filed three PCRA

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1. Previously, Petitioner had filed a petition docketed at Civ. A. No. 89-895, which was denied on March 5, 1990 based upon a report and recommendation dated January 24, 1990. The report and recommendation concluded that the entire petition was an attack upon the validity of his nolo contendere plea because of his drugged condition at the time it was entered and that this issue had been litigated in the state courts and was entitled to a presumption of correctness. In addition, Petitioner filed a petition docketed at Civ. A. No. 91-889, which was dismissed as a mixed petition on June 22, 1992, based on a report and recommendation dated May 27, 1992.

2. Copies of the Report and Recommendation and order adopting it are attached hereto.

petitions, participated in two hearings on those petitions and had received two written opinions each from the Court of Common Pleas and the Pennsylvania Superior Court; 2) Petitioner's claim that Mr. Sullivan was ineffective for advising him to plead nolo contendere should be denied on the merits because, given the volume of evidence the district attorney had against Petitioner relating to his attacks on six different women and given his inability to present a defense to this evidence, he did not demonstrate that counsel's recommendation fell below an objective standard of reasonableness or that there was a reasonable probability that if he had gone to trial he would have been acquitted; and 3) in the alternative, to the extent Petitioner's intent was to raise again the issue of his competency to stand trial, an issue raised and denied on the merits in Civ. A. No. 89-895, the petition should be dismissed as a successive petition.

Petitioner appealed the denial of the habeas corpus petition, but on January 28, 1997, the Court of Appeals for the Third Circuit denied his request for a certificate of probable cause. Petitioner then filed a petition for writ of certiorari in the Supreme Court of the United States. The petition was denied on October 6, 1997. Gregory v. Love, 118 S. Ct. 188 (1997).

On December 18, 1997, Petitioner filed a petition for writ of habeas corpus attacking the conviction challenged herein, which was docketed at Civ. A. No. 97-2310. On March 16, 1998, an

order was filed, transferring the petition to the United States Court of Appeals for the Third Circuit as an application to file a successive petition pursuant to 28 U.S.C. § 2244(b)(3). The order adopted a report and recommendation dated December 22, 1997 and denied Petitioner's objections thereto. On June 23, 1998, the Court of Appeals denied the application for leave to file a second or successive motion under 28 U.S.C. § 2254, and denied the request for a certificate of appealability.

Petitioner's current application relating to the same conviction would thus be a successive petition. No further filings have taken place in the state courts. Rather, the present petition, filed on April 7, 1999, argues once again that "The entirety of state process was rendered ineffective to protect petitioner's constitutionally guaranteed rights. Invoking a miscarriage of justice." (Pet. ¶ 13.) Petitioner has attached a nineteen-page "Memorandum of Fact" along with three exhibits. However, the procedure for handling this successive petition is the same as it was when he filed No. 97-2310.

On April 24, 1996, the President signed into law the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (the AEDPA), which revises many of the procedures for federal habeas corpus proceedings. Section 106(b) amends 28 U.S.C. § 2244(b) to read as follows:

> (A) Before a second or successive application permitted by this section is

filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

28 U.S.C. § 2244(b)(3) (amended Apr. 24, 1996).

Petitioner has not filed a motion in the Court of Appeals for the Third Circuit for an order authorizing this Court to consider his present application. This application should be transferred to the Court of Appeals to consider his application.

Therefore, it is recommended that the petition for writ of habeas corpus be transferred to the United States Court of Appeals for the Third Circuit as an application to file a successive petition pursuant to 28 U.S.C. § 2244(b)(3).

In accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.1.4(B) of the Local Rules for Magistrates, the parties are allowed ten (10) days from the date of service to file objections to this report and recommendation. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to file timely objections may constitute a waiver of any appellate rights.

ILA JEANNE SENSENICH
U.S. Magistrate Judge

Dated: April 13, 1999

cc: The Honorable Donald E. Ziegler, Chief Judge
United States District Court

Norman Gregory, AP-8138
S.C.I. Greensburg
R.D. 10, Box 10
Greensburg, PA 15601
(CERTIFIED MAIL, RETURN RECEIPT REQUESTED)

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

NORMAN GREGORY, Petitioner	)	
vs.	)	Civil Action No. 99-0534 Judge Donald E. Ziegler\
WILLIAM J. LOVE, Superintendent, Respondent and THE ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA, Additional Respondent	)	Magistrate Judge Sensenich

MEMORANDUM ORDER

Petitioner's petition for writ of habeas corpus was received by the Clerk of Court on April 17, 1999, and was referred to United States Magistrate Judge Ila Jeanne Sensenich for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The magistrate judge's report and recommendation, filed on April 13, 1999,[1] recommended that the petition for writ of habeas corpus be transferred to the United States Court of Appeals for the Third Circuit as an application to file a successive petition pursuant to 28 U.S.C. § 2244(b)(3). Petitioner was allowed ten (10) days from the date of service to file objections.

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[1]The attachments to the Report and Recommendation dated April 13, 1999 were inadvertently omitted when the document was filed. Thus, a Corrected Magistrate Judge's Report and Recommendation, with the referenced attachments, was filed on May 11, 1999.

Service was made on him by delivery to the State Correctional Institution at Greensburg, where he is incarcerated. He filed objections on April 22, 1999. After de novo review of the pleadings and documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 11th day of May, 1999;

IT IS HEREBY ORDERED that the petition for writ of habeas corpus is transferred to the United States Court of Appeals for the Third Circuit as an application to file a successive petition pursuant to 28 U.S.C. § 2244(b)(3).

The report and recommendation of Magistrate Judge Sensenich, dated April 13, 1999, is adopted as the opinion of the court.

Donald E. Ziegler, Chief Judge
United States District Court

cc: Ila Jeanne Sensenich
U.S. Magistrate Judge

Norman Gregory, AP-8138
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(APP. B)