UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

APPLICATION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 BY A PERSON IN STATE CUSTODY

MALEEK JONES, #179912, Petitioner,
Full Name and Prisoner Number

Case No. 3:13-CV-1003 JCH
(To be supplied by the Court)

C.C.I. CHESHIRE
Complete Prison Address (Place of Confinement)

900 HIGHLAND AVENUE

CHESHIRE, CT 06410

v.

COMMISSIONER OF CORRECTIONS, Respondent,
(Name of Warden or authorized person having custody of petitioner)
(Do not use *et al.*)

and

_____, Additional Respondent.
(List additional persons having custody of petitioner, if any)

Note: If the applicant is attacking a judgment which imposed a sentence to be served in the future, applicant must fill in the name of the state where the judgment of conviction was entered. If the applicant has a sentence to be served in the future under a federal judgment, which he/she wishes to attack, he/she should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.

CONVICTION UNDER ATTACK

1) Name and location of the court which entered the judgment of conviction under attack SUPERIOR COURT NEWHAVEN, 235 CHURCH ST NEW HAVEN, CT.

2) Date judgment of conviction was entered MARCH 29, 1995

3) Case number (in state court) CR92-6362355

4) Type and length of sentence imposed 65 YRS

5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion? Yes ✓ No ___

6) Nature of the offense involved (all counts) MURDER, 53a-8 53a-54a CONSPIRACY to COMMIT MURDER, 53a-54a(a), CARRYING PISTOL W/O PERMIT, 29-35

7) What was your plea? (check one)
Not Guilty ✓ Guilty ___ Nolo Contendere ___

8) If you entered a guilty plea to one count or indictment, and a not guilty plea to another court or indictment, give details:

9) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement

10) Kind of trial (check one) Jury ✓ Judge only ___

11) Did you testify at trial? Yes ___ No ✓

DIRECT APPEAL

12) Did you appeal from the judgment of conviction? Yes ✓ No __

13) If you did appeal, give the name and location of the court where the appeal was filed, the result, the case number and date of the court's decision (or attach a copy of the court's opinion or order):

APPELLATE/SUPREME COURT, 231 CAPITOL AVENUE, HARTFORD, CT, AFFIRMED, A.C. #16447, 8-09-97, 46 CONN. APP. 640 (1997) CERT. DEN 243 CONN. 941, 704 A.2d. 797 (1997)

14) If you did not appeal, explain briefly why you did not:

a) Did you seek permission to file a late appeal? Yes __ No ✓

POST-CONVICTION PROCEEDINGS

15) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ✓ No __

16) If your answer to 15 was "Yes," give the following information:

a) FIRST petition, application or motion.

1. Name of court NEW HAVEN SUPERIOR COURT
2. Nature of proceeding STATE HABEAS CORPUS
3. Claims raised INEFFECTIVE ASSISTANCE (TRIAL COUNSEL), DUE PROCESS (STATE/FEDERAL), ACTUAL INNOCENCE
4. Did you receive an evidentiary hearing on your petition, application or motion? Yes ✓ No __
5. Result DISMISSED, JONES V. WARDEN CV98-0411365

6. Date of result August 13, 2009

7. Did you appeal the result to the highest state court having jurisdiction? Yes ✓ No __ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order)

Appellate Court / Supreme Court - 231 Capitol Ave - Hartford, CT
5/17/12
PS A.C. 35519, April 3, 2012, P.O.C. [PSC-11-0433, denied July 18, 2012

8. If you did not appeal, briefly explain why you did not _____

b) As to any SECOND petition, application or motion, give the following information:

1. Name of court Appellate Court / Supreme Court 231 Capitol Ave Hftd, CT
8/5/11

2. Nature of proceeding Writ of Error

SEE ATTACHED *(A1)

3. Claims raised The Appellate Court's denial to permit Petitioner (pro se) to submit "his own" brief, and under objection, relied on the brief of counsel who no longer represented pro se petitioner, violating const. right of access to the court

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes __ No ✓

5. Result Dismissed

6. Date of result January 5, 2012

7. Did you appeal the result to the highest state court having jurisdiction? Yes __ No ✓ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) ___

8. If you did not appeal, briefly explain why you did not THE SUPREME COURT IN WHICH THE WRIT WAS FILED IS THE STATE'S HIGHEST COURT

c) As to any THIRD petition, application or motion, give the following information:

1. Name of court SUPREME COURT/APPELLATE COURT

2. Nature of proceeding PETITION FOR CERTIFICATION

3. Claims raised SEE ATTACHED *(A2)

4. Did you receive an evidentiary hearing on your petition, application or motion? Yes __ No ✓

5. Result DISMISSED

6. Date of result July 18, 2012

7. Did you appeal the result to the highest state court having jurisdiction? Yes __ No ✓ If you did appeal, give the name of the court where the appeal was filed, the result, the case number, citation and date of the court's decision (or attach a copy of the court's opinion or order) ___

8. If you did not appeal, briefly explain why you did not THE COURT IN WHICH THE PETITION WAS FILED IS THE STATE'S HIGHEST COURT

CLAIMS

17) State concisely every claim that you are being held unlawfully. Summarize briefly the facts supporting each claim. If necessary, you may attach extra pages stating additional claims and supporting facts. You should raise in this petition all claims for relief which relate to the conviction under attack.

In order to proceed in federal court, you ordinarily must exhaust the remedies available to you in the state courts as to each claim on which you request action by the federal court.

Claim One: SEE ATTACHED *(A3) (DIRECT APPEAL CLAIM)

(1) **Supporting Facts:** (Without citing legal authorities or argument state briefly the facts in support of this claim) ON 3-28-95 T-14, DURING THE DEFENSE CASE, THE PETITIONER ASKED PERMISSION TO ADDRESS THE COURT. THE PETITIONER, FOUND INDIGENT BY THE COURT AND REPRESENTED AT TRIAL BY APPOINTED COUNSEL, TOLD THE TRIAL JUDGE IN OPEN COURT THAT THE INVESTIGATION AND PREPARATION OF HIS CASE WAS INSUFFICIENT, THAT APPOINTED COUNSEL HAD NOT RESPONDED TO HIS REQUEST TO OBTAIN INFORMATION, AND THAT INVESTIGATION OF HIS CASE HAD TERMINATED A YEAR AND A HALF PRIOR TO TRIAL BECAUSE HIS FAMILY WAS NOT ABLE TO PAY NOW. THE INVESTIGATION CONSISTED OF THREE(3) STATEMENTS. THE INVESTIGATOR WHO TERMINATED HIS INVESTIGATION HAD EARLIER DURING THE PETITIONER/APPELLANTS (-contd.-) * A#H

(2) Statement of exhaustion of state remedies as to claim one:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ✓ No ___

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not _____

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ✓ No ✓

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

_____

_____

(e) Did you receive an evidentiary hearing on your motion or petition? Yes ✓ No __

(f) Did you appeal from the denial of your motion or petition? Yes ✓ No __

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes __ No __, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

_____

_____

_____

(h) If your answer to question (e), (f) or (g) is "No," briefly explain _____

_____

Other Remedies

(i) Describe all other procedures (such as administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

_____

_____

_____

(DIRECT APPEAL CLAIM)

Claim Two: WHETHER THE APPELLATE COURT CORRECTLY HELD THAT THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN EXCLUDING DEFENSE WITNESS LEE BEMBER'S TESTIMONY OF A THIRD PARTY'S CONFESSION THAT HE SHOT THE VICTIM, AND THAT THE DEFENDANT'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE WAS NOT COMPROMISED BY THIS EXCLUSION

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim) ON MARCH 27, 1995 Pg 23 (TT 3-27/23) THE TRIAL COURT EXCLUDED LEE BEMBER'S TESTIMONY BASED ON ITS FINDING THAT THE INFORMATION WAS NOT TRUST WORTHY, THAT THERE WAS SUFFICIENT TIME BETWEEN THE ACCUSATION AND PEPPA'S STATEMENT TO BEMBER, TO ALLOW PEPPA TO "FORMULATE AN EXPRESSION OF SELF-INTEREST." THE TRIAL COURT MADE NO SPECIFIC FINDINGS TO SUPPORT ITS CONCLUSION THAT PEPPA'S EXTRAJUDICIAL CONFESSION WAS NOT TRUSTWORTHY. DEFENSE COUNSEL PRESERVED THIS ISSUE THROUGH AN EVIDENTIARY OFFER OF PROOF AND ARGUMENT TO THE COURT OUTSIDE THE PRESENCE OF THE JURY (TT 3-24/30-53, AND 3-27/2-28). IN AN OFFER OF PROOF OUTSIDE OF PRESENCE OF JURY, LEE BEMBER RELATED THAT: "WELL, AFTER THE MURDER HAPPENED, WELL, I DIDN'T REALLY KNOW WHAT HAPPENED. ME AND PEPPA WAS AT A PAY PHONE AT ORCHARD AND EDGEWOOD AVENUE. TWO GIRLS APPROACHED ME, TWO GIRLS I NEVER SEEN BEFORE AND TOLD ME, OH, YOU REDLINE MOTHER FUCKERS KILLED MY BROTHER, AND BOOM, PEPPA'S LIKE LET'S LEAVE, LETS GO GET STRAPPED, MEANING LET'S GO GET OUR GUNS, WHICH WE DID, WHEN (-CONT'D-) *(A7)

(2) Statement of exhaustion of state remedies as to claim two:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ✓ No __

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not _____

_____

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ✓ No __

(d) If your answer to (c) is "Yes," state the type of motion or petition, the

name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

PETITION FOR HABEAS CORPUS (STATE) CV980411361, JONES V WARDEN, DENIED, AUGUST 13, 2009

(e) Did you receive an evidentiary hearing on your motion or petition?
Yes ✓ No ___

(f) Did you appeal from the denial of your motion or petition?
Yes ✓ No ___

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes ___ No ✓, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

APPELLATE/SUPREME COURT 231 CAPITOL AVENUE, HARTFORD, A.C. 31519, APRIL 3, 2012 AFFIRMED

(h) If your answer to question (e), (f) or (g) is "No," briefly explain _____

Other Remedies

(i) Describe all other procedures (such as administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

(STATE HABEAS CLAIM)

Claim Three: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, ACTUAL INNOCENCE

(1) Supporting Facts: (Without citing legal authorities or argument state briefly the facts in support of this claim) THE PETITIONER'S CLAIM OF ACTUAL INNOCENCE IS NOT FREE-STANDING AS MILLER AND HERRERA V COLLINS SUGGEST, THE PETITIONER INSTEAD CLAIMS THAT TRIAL COUNSEL WAS INEFFECTIVE IN FAILING TO BRING FORWARD THAT EVIDENCE OF INNOCENCE AT THE TRIAL. SUPPLEMENTING THE FACTS PRESENTED AT HABEAS TRIAL, SEE ATTACH (*A8)(P.1-10). TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO SUBPOENA THE FIELD NOTES OF NHPD DETECTIVE T. TROCCHIO, SEE SUPPLEMENTAL FACTS (*A9). TRIAL COUNSEL FAILED TO PURSUE EVIDENCE OF A PHYSICAL INJURY OF THE PETITIONER AT THE TIME THE CRIME WAS COMMITTED AND EVIDENCE OF A PHYSICAL DESCRIPTION OF THE PERPETRATORS THAT DID NOT MATCH THE PETITIONER AND DID NOT INTERVIEW OR SUBPOENA THE EYEWITNESS WHO GAVE THE DESCRIPTIONS, WHO ALSO DID NOT (-CONT'D-)

(2) Statement of exhaustion of state remedies as to claim three:

Direct Appeal

(a) If you appealed from the judgment of conviction, did you raise this issue? Yes ✓ No ___

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not ___

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ✓ No ___

(d) If your answer to (c) is "Yes," state the type of motion or petition, the name and location of the court where the motion or petition was filed, the case number (if known), the result and the date of the court's decision

NEW HAVEN SUPERIOR COURT 235 CHURCH STREET, NEW HAVEN, CT CV98041136, DISMISSED AUGUST 13, 2009

(e) Did you receive an evidentiary hearing on your motion or petition?
Yes ✓ No __

(f) Did you appeal from the denial of your motion or petition?
Yes ✓ No __

(g) If your answer to (f) is "Yes," state whether this issue was raised in the appeal, Yes ✓ No __, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order)

APPELLATE COURT/SUPREME COURT 231 CAPITOL AVE, HARTFORD, CT A.C. 31519, APRIL 3, 2012, (SEE ATTACH)

(h) If your answer to question (e), (f) or (g) is "No," briefly explain _____

Other Remedies

(i) Describe all other procedures (such as administrative remedies, etc.) you have used to exhaust your state remedies as to the issue

18) Have all claims for relief raised in this petition been presented to the highest state court having jurisdiction? Yes ✓ No __

19) If you answered "No" to question 18, state which claims have not been so presented
and briefly give your reasons(s) for not presenting them _____

20) If any of the claims listed in this application were not previously presented in any other court, state or federal, state briefly what claims were not so presented, and give

your reasons for not presenting them _____

_____

_____

21) Have you previously filed any type of petition, application or motion in a federal court regarding the conviction under attack? Yes __ No ✓

If "Yes," answer the following and attach a copy of the court's decision for each petition, application, or motion filed:

a) Name and location of court _____

b) Type of proceeding _____

c) The issues raised _____

d) The result _____

SUCCESSIVE APPLICATIONS

This court is required to dismiss any claim presented in a second or successive petition that the federal court of appeals has authorized to be filed unless the applicant shows that each claim satisfies the requirements of 28 U.S.C. § 2244, ***as amended*** by Title I of the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 106, 110 Stat. 1214 (Apr. 24, 1996).

22) If you are raising a claim which you have not presented in a prior application, have you obtained an order from the United States Court of Appeals for the Second Circuit authorizing this district court to consider the application? Yes __ No ✓
If "Yes," please attach a copy of the order.

23) Do you have any petition, application, motion or appeal now pending in any court, either state or federal, regarding the conviction under attack? Yes ✓ No __. If "Yes," state the name of the court, case file number (if known), and the nature of the proceeding ROCKVILLE SUPERIOR COURT 20 PARK STREET PO BOX 980, ROCKVILLE, CONNECTICUT 06066-0980, CV12-4004861-S

LEGAL REPRESENTATION

24) Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing PUBLIC DEFENDERS OFFICE)

(b) At arraignment and plea NEW HAVEN PUBLIC DEFENDERS OFFICE (THOMAS ULLMANN

(c) At trial LEO E. AHERN

(d) At sentencing LEO E. AHERN

(e) On appeal SUSAN HANKINS

(f) In any post-conviction proceeding BRUCE B. MCINTYRE

(g) On appeal from any adverse ruling in a post-conviction proceeding LALJEEBHAI R. PATEL/PRO-SE

OTHER CONVICTIONS

25) Were you sentenced on more than one count of an indictment or on more than one indictment, in the same court and at the same time? Yes ✓ No __

26) Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes __ No ✓

(a) If so, give name and location of court which imposed sentence to be served in the future _____

_____

(b) and give date and length of service to be served in the future _____

_____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future? Yes __ No __

Wherefore, petitioner prays that the court grant him such relief to which he may be entitled in this proceeding.

_____
Signature of Attorney (if any)

Malcolm Jones
Petitioner's Original Signature

_____

_____

_____
Attorney's Full Address and
Telephone Number

179912
Petitioner's Inmate Number

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the petitioner in this action, that he/she has read this petition and that the information contained in the petition is true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Executed at Corrigan Radgowski Correctional Center on July 8, 2013
(Location) (Date)

Malcolm Jones
Petitioner's Original Signature

MALEEK JONES #179912
PETITIONER
(ATTACHMENT) Pg. 4 OF WRIT APPLICATION #(A1)

3. CLAIMS RAISED, REQUESTING THE SUPREME COURT TO EXERCISE ITS SUPERVISORY AUTHORITY TO PERMIT THE APPELLANT/PETITIONER (PRO SE) TO SUBMIT APPELLANT'S PRO SE BRIEF NUNC PRO TUNC. THE APPELLATE COURT HAD GRANTED PETITIONER/APPELLANT'S MOTION TO FILE "HIS OWN" APPELLATE BRIEF, DECEMBER 15, 2010, AFTER PREVIOUS UNDERSIGNED COUNSEL WAS PERMITTED LEAVE, VIA MOTION BY THE APPELLANT. THE COURT ORDERED THE BRIEF BE FILED ON OR BEFORE JANUARY 18, 2011, LESS THAN 30 DAYS FROM THE DATE OF GRANTING (12·15·10). THIS TIMELINE EXTENDED THROUGH THE CHRISTMAS AND NEW YEAR HOLIDAYS. THE ISSUES IN THE BRIEF WERE TOO COMPLEX AND EXTENSIVE AND PETITIONER WAS UNABLE TO MEET THE ORDER DATE BY 8 DAYS, DUE TO CIRCUMSTANCES BEYOND HIS CONTROL, AS EXPLAINED IN TIMELY MOTION FOR EXTENSION OF TIME, 12·28·10 AND 1·6·11, THE LATTER DATE INCLUDED EXTENSION OF TIME FOR ARTICULATION. THE STATE OBJECTED AND THE COURT DENIED THE MOTIONS AND THE BRIEF AS UNTIMELY. THEREBY LEAVING THE PETITIONER'S APPEAL TO BE BASED ON THE BRIEF OF COUNSEL WHO WAS PERMITTED LEAVE, WHO NO LONGER REPRESENTED PETITIONER/APPELLANT DUE TO CONFLICTS OVER WHAT ISSUES WOULD BE INCLUDED IN BRIEF. UNDERSIGNED COUNSEL WAS PERMITTED LEAVE ON OCTOBER 21, 2010, NEW HAVEN SUPERIOR COURT, SKOLNICK J.

Pg. 5 c) #(A2)
#3. WHETHER THE APPELLATE COURT DENIED/VIOLATED THE APPLICANTS STATE/FEDERAL ACCESS TO THE COURTS, WHEN IT FAILED TO ALLOW THE APPELLANT TO FILE AND RELY ON "HIS OWN" BRIEF (PRO SE), BUT INSTEAD COMPELLED THE PETITIONER APPELLANT TO RELY ON THE BRIEF OF COUNSEL WHO NO LONGER REPRESENTED APPLICANT ON APPEAL. THIS PUT THE APPELLANT AT A DISADVANTAGE WHERE THERE WAS NO ORAL ARGUMENT ON THE BRIEF OF COUNSEL WHO WAS EXCUSED, SUBJECT TO A BRIEF APPELLANT OBJECTED TO.

a) WHETHER THE APPELLATE COURT ERRED IN ITS PER CURIAM RULING OF THE UNDERLYING CLAIMS BEFORE THE COURT, CONCLUDING THE HABEAS COURT'S DETERMINATION THAT TRIAL COUNSEL WAS NOT DEFICIENT, AND THAT DEFICIENT PERFORMANCE OF TRIAL COUNSEL DID NOT PREJUDICE PETITIONER, AND IN DENYING THE APPELLANT'S CLAIM OF INNOCENCE.

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912

PETITIONER

(-cont'd- ATTCH, Pg 6 of WRIT APPLICATION) * (A3)

CLAIM ONE: WHETHER THE APPELLATE COURT CORRECTLY REFUSED TO REVIEW THE APPELLANT'S CLAIM THAT THE TRIAL COURT WAS DERELICT IN FAILING TO INQUIRE INTO THE APPELLANT'S MIDTRIAL ASSERTION TO THE COURT THAT AS A RESULT OF THE APPELLANT'S INDIGENCE HE WAS DENIED INVESTIGATION AND PREPARATION OF HIS CASE, AND THEREBY DENIED HIS DUE PROCESS RIGHTS TO EFFECTIVE REPRESENTATION, ASSISTANCE OF COUNSEL, AND A FAIR OPPORTUNITY TO DEFEND AGAINST THE STATE'S ACCUSATIONS AND HIS RIGHT TO EQUAL PROTECTION OF THE LAWS. SEE TRIAL TRANSCRIPT (TT 3-28-95 14-17).

SUPPORTING FACTS: (-CONT'D-) * (A4) TRIAL, IN A PROCEEDING OUTSIDE THE JURY'S PRESENCE, ADMITTED THAT HE HAD TESTIFIED AT TRIAL UNDER OATH FALSELY, THAT HE HAD MISREPRESENTED HIS CREDENTIALS AND EXPERIENCE IN HIS TESTIMONY BEFORE THE JURY (TT 3-22/3-6, 3-23/3-16. DESPITE THE GRAVITY OF THESE ALLEGATIONS, THE TRIAL COURT DID NOT RESPOND TO THE PETITIONER'S COMPLAINT OF INADEQUATE REPRESENTATION, OTHER THAN TO SAY "ALL RIGHT." THE PETITIONER TOLD THE COURT HE HAD ONLY SEEN BALLISTICS REPORTS IN MARCH 1995, THE MONTH OF TRIAL. THE COURT RESPONDED THAT IF THE PETITIONER HAD ANY PROBLEMS WITH WHAT WAS OR WAS NOT PRODUCED TO HIM, THE PETITIONER COULD "REFLECT ON THAT, AND CONSIDER IT." (TT 3-28/15-16). THE COURT ADDED, "BUT WE'RE NOT GOING TO GET INTO THAT NOW." THE PETITIONER, SEEKING CLARIFICATION, RESPONDED "SO THAT'S GOING TO BE AFTER MY CASE IS HEARD TO THE JURY, OR WHATEVER." THE PETITIONER THEN VOICED HIS SPECIFIC CONCERNS ABOUT THE LACK OF INVESTIGATION AND PREPARATION OF HIS CASE AND THE TERMINATION OF INVESTIGATION BECAUSE OF HIS INDIGENCE: SEE ATTACHMENT #(A5) FOR REFERENCE FOOTNOTE 11, AND A PORTION OF THE APPELLATE COURT'S OPINION AND THE PETITIONER'S OPEN-COURT ADDRESS TO THE COURT:

ADDITIONALLY, THE PETITIONER'S CLAIM WAS SUFFICIENT IN AND OF ITSELF TO REQUIRE THE COURT'S EXAMINATION, BECAUSE IT IMPLICATED THE ADEQUACY OF AN INDIGENT DEFENDANT'S REPRESENTATION BY APPOINTED COUNSEL AND THE INVESTIGATION OF HIS DEFENSE. THE ALLEGATIONS SUGGESTED IMPROPRIETY ON THE PART OF AN INVESTIGATOR

(-cont'd-)

MALEEK JONES
PETITIONER

(-CONT'D- ATTACHED, PG 6 OF WRIT APPLICATION) #(A5)

SUPPORTING FACTS: HIRED BY THE PUBLIC DEFENDER (SPECIAL) RECEIVING PAYMENTS FROM AN INDIGENT DEFENDANT, AND THE DERELICTION OF THE APPOINTED COUNSEL HANDLING HIS CASE, WHICH WARRANTED FURTHER INVESTIGATION BY THE COURT. SEVERAL CIRCUMSTANCES ON THE RECORD GAVE CREDENCE TO THE PETITIONER'S PLEA TO THE COURT AND LENT WEIGHT TO HIS CHARGES. THE PETITIONER'S STATEMENT WAS NOT MADE TO GAIN A STRATEGIC ADVANTAGE. THE COMPLAINT WAS MADE AT A TIME WHEN THE TRIAL COURT COULD STILL HAVE AFFORDED THE PETITIONER A REMEDY APPROPRIATE TO WHATEVER CIRCUMSTANCES IT FOUND. IT BROUGHT TO THE COURT'S ATTENTION THE PROBLEMS THAT HE WAS ENCOUNTERING IN THE DEFENSE OF HIS CASE WITH HIS APPOINTED COUNSEL AND INVESTIGATOR. THE TRIAL COURT HAD AN OBLIGATION (CONSTITUTIONAL) TO INQUIRE AND TO ASCERTAIN AT A MINIMUM WHAT STEPS WERE TAKEN BY APPOINTED DEFENSE COUNSEL AND HIS INVESTIGATOR, AND WHETHER LACK OF FUNDING HAD TERMINATED OR CURTAILED INVESTIGATIVE EFFORTS. IT DID! APPOINTED COUNSEL ADVISED INDIGENT DEFENDANT'S MOM TO HIRE INVESTIGATOR WHILE UNAWARE OF THE P.D. OFFICE'S POLICY ON INVESTIGATIVE EXPENDITURES. APPOINTED COUNSEL DID NOT KNOW INVESTIGATIVE FUNDS WERE AVAILABLE, SEE #(A6). THE PETITIONER WAS PREJUDICED BY LACK OF INVESTIGATION, WHICH WAS INSTRUMENTAL IN ESTABLISHING THE PETITIONER DID NOT PARTICIPATE IN THIS CRIME AS ALLEGED. THIS LACK ALLOWED THE NEW HAVEN POLICE DEPARTMENT TO OBTAIN AN ARREST WARRANT BASED ON FABRICATED EVIDENCE, A WARRANT THAT WAS INFIRM, NEVER ALLEGING THE PETITIONER VIOLATED A C.G.S., THE PETITIONER'S WARRANT GAVE COMMAND TO ARREST SOMEONE OTHER THAN PETITIONER. TRIAL COUNSEL NEVER CAUGHT THIS DUE PROCESS VIOLATION. ALLOWED THE STATE TO WITHHOLD A BALLISTIC REPORT FROM THE DEFENSE THAT REFUTED THEIR THEORY (TT3.28/2-12). NO INDEPENDANT CRIME SCENE INVESTIGATION TO PROVE THE STATE'S THEORY WAS A PHYSICAL IMPOSSIBILITY GIVEN THE PHYSICAL EVIDENCE ON RECORD. WHEREFORE, THE PETITIONER BELIEVES THE APPELLATE COURT'S DECISION NOT TO HEAR THIS CLAIM ON DIRECT APPEAL INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW AND THAT COURT'S DECISION SHOULD BE REVERSED AND A NEW TRIAL SHOULD BE GRANTED. 6TH AND 14TH AMENDMENT U.S. CONSTN.

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912
PETITIONER

(ATTACHMENT, -cont'd- Pg. 8 OF WRIT APPLICATION)

(1) SUPPORTING FACTS: #(A7) WHEN WE GOT IN MY HOUSE HE TOLD ME, YO, UM, LAST NIGHT ME AND T.Y. CAUGHT A BODY, MEANING THAT THEY KILLED THIS DUDE LAST NIGHT." TYRONE "T.Y." SPEARS WAS INITIALLY CHARGED ALONG WITH THE PETITIONER, MALEEK "NATURAL" JONES, AS A CO CONSPIRATOR UNTIL HE PLED OUT EIGHT MONTHS PRIOR TO PETITIONER'S TRIAL, TO A LESSER INCLUDED CHARGE, WHICH WAS CONTINGENT ON IMPLICATING THE PETITIONER, ALTHOUGH ALL OF THE INITIAL EVIDENCE IN THIS CASE FINGERED SPEARS (TY) AS THE LONE TRIGGER-MAN. BEMBER HAD SAID HE'D GIVEN THE ABOVE INFORMATION TO POLICE THE SAME DAY AS SHOOTING AND "SIGNED A PIECE OF PAPER AND EVERYTHING ELSE." PEPPER ADMITTED TO BEMBER HOURS AFTER THE SHOOTING THAT PEPPA WAS INVOLVED IN THE MURDER AND THAT T.Y. WAS ALSO INVOLVED, BUT THE PETITIONER'S NAME "NEVER CAME UP!" TT 3-24/33. THE STATE OBJECTED TO LEE BEMBER'S PROFFERED TESTIMONY. THE COURT DEFERRED ITS RULING PENDING THE RECEIPT OF TESTIMONY FROM DET. TROCCHIO, WHO HAD INTERVIEWED LEE BEMBER ABOUT THE SHOOTING. THE PETITIONER'S TRIAL ATTORNEY PRESENTED BOTH AN ALIBI DEFENSE AND THE DEFENSE THAT THE CRIME WAS COMMITTED ONLY BY SPEARS AND PEPPER AND THAT SPEARS ALONE SHOT THE VICTIM. THE TRIAL COURT ERRONEOUSLY PRECLUDED THE PETITIONER FROM OFFERING LEE BEMBER'S TESTIMONY THAT ON THE DAY OF THE SHOOTING, PEPPA TOLD LEE BEMBER HE AND SPEARS WERE TOGETHER AND SPEARS SHOT THAT DUDE. THE PRECLUSION OF PEPPA'S THIRD PARTY DECLARATION TO LEE BEMBER ON THE DAY OF THE SHOOTING, OF THE CRIMES CHARGED AGAINST THE PETITIONER, DENIED THE PETITIONER HIS CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE. UNDER THE CIRCUMSTANCES OF THIS CASE THE PRECLUSION WAS EVIDENTIARY ERROR AND AN ABUSE OF DISCRETION. THE PETITIONER CLAIMED THE EVIDENCE WAS ADMISSIBLE AS A DECLARATION AGAINST PENAL INTEREST AND UNDER THE SPONTANEOUS OR EXCITED UTTERANCE AND NECESSITY OR RESIDUAL EXCEPTIONS TO THE ~~HEARSAY~~ RULE AGAINST HEARSAY. TT 3/24/37-38, 3/27 T 16-23. THE APPELLATE COURT DECIDED IN ST. V JONES, 46 CONN. APP. 640 (1997), THE PETITIONER'S TRIAL COUNSEL BROUGHT THE CLAIM UNDER THE WRONG EXCEPTION, THAT IF SHOULD (-CONT'D-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912
PETITIONER

(ATTACHMENT, Pg 8 of WRIT APPLICATION)

SUPPORTING FACTS: #(A7) HAVE BEEN BROUGHT UNDER THE RESIDUAL OR CATCH-ALL EXCEPTION TO THE HEARSAY RULE. THE PETITIONER CLAIMS IF STILL SHOULD HAVE COME IN AS A DECLARATION AGAINST PENAL INTEREST. IT MET ALL FOUR PRONGS OF THE TEST OF ADMISSIBILITY IN ST V DEFREITAS, AND PAYNE, AS WELL AS ~~U.S.V~~ CHAMBERS V MISSISSIPPI, AND RULE 804 (b)(3) OF THE FEDERAL RULES OF EVIDENCE. THE PETITIONER CLAIMED CONSTITUTIONAL AS WELL AS EVIDENTIARY ERROR. THE EXCLUSION OF THE RIGHT TO PRESENT EVIDENCE OF A THIRD PARTY CULPRIT INFRINGED ON THE PETITIONER'S RIGHT TO PRESENT A DEFENSE AND FOR THIS REASON A CONSTITUTIONAL STANDARD OF REVIEW MUST BE USED. TO THE EXTENT THE ERROR IS TO BE FOUND EVIDENTIARY, IT WAS HARMFUL UNDER ANY FORMULATION OF THE STANDARD. LEE BEMBER'S TESTIMONY CONCERNING PEPPER'S ADMISSION WAS CRITICALLY RELEVANT TO ESTABLISH THE DEFENSE OF A THIRD PARTY CULPRIT. UNDER THE FOUR CONSIDERATIONS DEEMED RELEVANT TO AN EVALUATION OF TRUSTWORTHINESS ARE (1) THE TIME THE DECLARATION IS MADE AND TO WHOM THE PARTY. HERE THE DECLARATION WAS MADE SHORTLY AFTER THE SHOOTING, WITH VIRTUALLY NO DELAY. PEPPER'S CONFESSION TO LEE BEMBER WAS MADE ON THE SAME DAY OF THE SHOOTING, EIGHT HOURS AFTERWARDS, RIGHT AFTER TWO WOMEN CONFRONTED BEMBER AND PEPPER. IN ST V GOLD, 180 CONN 619 (1980), (634), THE COURT MADE/HELD A DECLARATION AGAINST INTEREST MADE EVEN THREE MONTHS AFTER CRIME TO BE "RELATIVELY CLOSE" TO WHEN THE CRIMES OCCURRED. HERE, THE TIMING OF PEPPER'S DECLARATION SUPPORTED A FINDING OF TRUSTWORTHINESS, SINCE IT WAS MADE NOT ONLY MERE HOURS AFTER CRIME, BUT IMMEDIATELY ON THE HEELS OF AN ACCUSATION BY TWO WOMEN. THE DECLARATION WAS MADE TO A PERSON WHOM PEPPER WOULD NATURALLY CONFIDE. PEPPER AND BEMBER WERE BOTH ASSOCIATED IN JOINT DRUG OPERATION RUN BY BEMBER'S SISTER EARNESTINE BEMBER (TT 3-24/Pg 33). IN GOLD, THE COURT FOUND STATEMENTS MADE TO ANOTHER MEMBER OF DECLARANT'S MOTORCYCLE GANG THE DAY AFTER MURDER TO BE TRUSTWORTHY. (2) THE EXISTENCE OF CORROBORATING EVIDENCE. THE CIRCUMSTANCES TO WHICH PROVOKED

(-CONT'D-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, # 179912
PETITIONER

(cont'd ATTCH, Pg 8 of WRIT APPLICATION

SUPPORTING FACTS: (-cont'd-#(A7) PEPPER TO TELL BEMBER SPEARS SHOT THE VICTIM CORROBORATE THEIR VERACITY. PEPPER WAS ACCUSED IN BEMBERS PRESENCE AND REACTED BY ARMING HIMSELF. HIS STATEMENT WAS NOT AS A RESULT OF BEMBER QUESTIONING HIM BUT WAS INSTEAD SPONTANEOUS CONFIDENCES VOLUNTEERED AS A RESULT OF THE WOMEN'S ACCUSATIONS. PEPPA WAS PLACED IN THE VICINITY OF THE CRIME BY THE STATE'S KEY WITNESS TYRONE "TY" SPEARS. PRIOR TO CUTTING A DEAL TO TESTIFY AGAINST THE PETITIONER, SPEARS CONSISTENTLY SAID HE WAS WITH PEPPA AT THE TIME SHOTS WERE FIRED. ON TWO SEPARATE OCCASIONS SPEARS TOLD POLICE AND INVESTIGATOR HE WAS WITH PEPPER, NOT THE PETITIONER (TT 3·21·/P152. SPEARS TOLD EARNESTEIN BEMBER HE WAS WITH PEPPER WHEN SHOOTING OCCURRED. UNTIL HIS PLEA NEGOTIATIONS, SPEARS NEVER INCULPATED PETITIONER OR PLACED HIM AT THE SCENE AS SPEARS DID PEPPER. THE PHYSICAL EVIDENCE CORROBORATED PEPPER'S LONE-SHOOTER EXTRAJUDICIAL DECLARATION "LAST NIGHT ME AND "TY" WERE TOGETHER AND 'HE' SHOT THAT DUDE," NOT SPEARS' MULTIPLE-SHOOTER TESTIMONY, SINCE ALL OF THE BULLETS RECOVERED WERE PROVED TO BE FIRED FROM THE SAME GUN. (TT 3·23·95 P. 17). POLICE AND BALLISTICS EXPERT TESTIMONY PROVIDED NO SUPPORT FOR THE STATE'S THEORY (THIS REPORT WAS WITHHELD BY THE STATE ACCORDING TO ATTORNEY [TRIAL], TT 3·28· P. 2-12, THIS SUPPRESSION IS CLAIMED TO BE A CONSTITUTIONAL VIOLATION AS WELL, IT WAS AN IMPEDIMENT IN PROVING THE PETITIONER'S DEFENSE AND INNOCENCE, ~ THAT THERE WERE THREE SHOOTERS, SHOOTING FROM BOTH SIDES OF THE CAR. DESPITE KEY PROSECUTION WITNESS SPEARS' TRIAL TESTIMONY THAT HE FIRED FOUR BULLETS AT FRONT AND AND PASSENGER PARTS OF THE CAR, THERE WERE NO BULLET HOLES ON THE PASSENGER SIDE OR FRONT OF THE CAR, AND THE VICTIM'S INJURIES WERE SUSTAINED ONLY FROM LEFT AND BEHIND THE VICTIM. NO OTHER DISCHARGED BULLETS WERE RECOVERED DURING SUCCESSIVE SEARCHES OF THE SURROUNDING AREA. (TT 3·21·95, P 51-56, TT 3·22·95, P. 44-46). 3) EXTENT TO WHICH STATE "DEC" IS AGAINST THE DECLARANT'S PENAL INTEREST: SPEARS HAD ALREADY STATED HE AND PEPPER WERE TOGETHER WHEN SHOTS RANG OUT. PEPPER'S DECLARATION, THAT HE WAS WITH SPEARS WHEN

(-cont'd-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912
PETITIONER
(ATTACHMENT, P. 8 OF WRIT APPLICATION

SUPPORTING FACTS: (-CONT'D-(#A7) SPEARS "SHOT THAT DUDE." PEPPER'S DECLARATION MADE NO MENTION OF DISSUADING SPEARS FROM THE SHOOTING OR NOT BEING COMPLICIT AS AN ADETTOR, THEREBY IMPLICATING HIMSELF IN A MURDER. DECLARATIONS AGAINST INTEREST - "AN EXCEPTION FOUNDED ON THE ASSUMPTION THAT A PERSON IS UNLIKELY TO FABRICATE A STATEMENT AGAINST HIS OWN INTEREST AT THE TIME IT IS MADE." 4) THE DECLARANT'S AVAILABILITY AS A WITNESS: RULE 804(a)(4) SPECIFICALLY LISTS DEATH AS MEETING REQUIREMENT OF UNAVAILABILITY. THE STATE HAD ACKNOWLEDGED IT WAS "PROBABLY FAIR" TO SAY UNAVAILABILITY BY DEATH WAS ESTABLISHED, TT 3:24-95, P. 46). THE EXCLUDED EVIDENCE WAS EXCULPATORY TO THE PETITIONER'S DEFENSE. IT'S HIGHLY PROBATIVE VALUE DICTATES IT SHOULD HAVE BEEN INCLUDED IN FACT-FINDING PROCESS AT TRIAL. THE PREJUDICE CAUSED BY THE EXCLUSION WAS SUBSTANTIAL UNDER EITHER A CONSTITUTIONAL OR EVIDENTIARY REVIEW. BASED ON THIS EXCLUSION, THE PETITIONER'S CONSTITUTIONAL RIGHT TO PRESENT A DEFENSE WAS COMPROMISED, AND THE PETITIONER REQUESTS A NEW TRIAL. "THE RIGHT OF AN ACCUSED IN A CRIMINAL TRIAL TO DUE PROCESS IS, IN ESSENCE, THE RIGHT TO A FAIR OPPORTUNITY TO DEFEND AGAINST THE STATE'S ACCUSATIONS." CHAMBERS V. MISSISSIPPI, 410 U.S. 284, 294 (1973). "INVIDIOUS DISTINCTIONS, SUCH AS BETWEEN RICH AND POOR, IMPLICATE CONSTITUTIONAL GUARANTEES OF DUE PROCESS AND EQUAL PROTECTIONS OF THE LAWS." UNDER BOTH STATE AND FEDERAL LAW THE STATE MUST PROVIDE AN INDIGENT DEFENDANT WITH STATE FUNDING FOR INDEPENDANT SERVICES NECESSARY TO HIS DEFENSE. SEE STATE V CLEMONS, 148 CONN. 395, 402-03 (1975). WHERE INVESTIGATION IS INADEQUATE, REPRESENTATION CANNOT BE EFFECTIVE. STRICKLAND V WASHINGTON, 466 U.S. 668 (1984). A DEFENSE LAWYER'S FAILURE TO INVESTIGATE MAY CONSTITUTE CONSTITUTIONALLY DEFICIENT REPRESENTATION.

SUPPORTING FACTS: - CONT'D - PG 10 OF WRIT APPLICATION - PICK OR IDENTIFY THE PETITIONER AS ONE OF THE PERSON'S SHE SAW/WITNESS SHOOTING AT THE VICTIM, WHOM SHE WAS WITH MINUTES PRIOR TO SHOOTING, WHOSE ACCOUNT OF THE SHOOTING CONTRADICTS BOTH THE STATEMENTS OF JAMES BAILEY, USED FOR PROBABLE CAUSE FOR AN ARREST WARRANT, AND THE STATE'S KEY WITNESS SPEARS' MULTIPLE-SHOOTER

(-CONT'D-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C § 2254

MALEEK JONES
PETITIONER

(-CONT'D- ATTCH, P. 10 OF WAIT APPLICATION

SUPPORTING FACTS: (-CONT'D-) 3 (THREE) THEORY. HOWEVER, IT CORROBORATES THE HABEAS TRIAL CONFESSION AND RECANTATION OF SPEARS, SEE #(A8), LEE BEMBERS EXCLUDED TESTIMONY CONCERING THIRD PARTY DECLARATION OF "ONE SHOOTER," AND THE PHYSICAL EVIDENCE, THE SUPPRESSED/WITHHELD BALLISTIC REPORT OF FORENSIC EXPERT (STATE) JAMES STEVENSON (TT 3-23-95, P. 17). TRIAL COUNSEL WAS UNABLE TO PRESENT TESTIMONY TO THE JURY OF A STATEMENT AGAINST PENAL INTEREST CONCERNING THE STATE'S ONLY WITNESS WHO COULD PLACE THE PETITIONER AT THE CRIME SCENE (HABEAS TRIAL BRIEF, H.T.B. P. 26-27). THIS TESTIMONY WAS CRITICAL TO THE PETITIONER'S DEFENSE OF ALIBI AND INNOCENCE, FOR WHICH HE WAS PREJUDICED. TRIAL COUNSEL'S INVESTIGATION AND PREPARATION FOR TRIAL PRIOR TO TRIAL WAS INEFFECTIVE IN TERMS OF EXPLOITING THE WEAKNESSES IN THE STATE'S CASE. (H.T.B. 27-31). TRIAL COUNSEL FAILED TO ADEQUATELY PURSUE PRIOR INCONSISTENT STATEMENTS OF MR. SPEARS (H.T.B. 31-32). TRIAL COUNSEL FAILED TO PROVIDE APPROPRIATE ADVISE CONCERNING WAIVING OF PROBABLE CAUSE. SEE H.T.B P. 33 AND (TT 3-28-95, P 12) P. 3 COUNSEL ADMITS NOT HAVING REPORT AT PROBABLE CAUSE HEARING AND P. 8 OF SAME TRANSCRIPT (TT 3-28-95 P. 2-12) ADMITS HAD HE HAD THE REPORT HE WOULD HAVE NEVER ADVISED CLIENT TO WAIVE P.C.H., HIS WORDS. AS A RESULT, THE PETITIONER WAS ILL ADVISED AND HELD ON FALSE STATEMENT OF JAMES "MEMPHIS" BAILEY, IN WHICH THE REPORT REFUTED. THE STATE CAPITALIZED OFF OF THIS FAILURE TO DISCLOSE AS WELL AS COUNSEL'S NEGLIGENCE IN NOT OBTAINING THE REPORT OR DOING HIS OWN INVESTIGATION. THIS PREJUDICED THE PETITIONER. TRIAL COUNSEL FAILED TO ADEQUATELY INVESTIGATE THE PHYSICAL EVIDENCE (H.T.B. P. 35, AND TT 3-28-95, P. 11) INVESTIGATION (EXPERT) INTO THE PHYSICAL EVIDENCE WAS HIGHLY RELEVANT IN THAT IT WOULD HAVE SHOWN/PROVED TYRONE SPEARS' TRIAL TESTIMONY OF THREE SHOOTERS TO BE FALSE, WHICH WENT TO THE VERY HEART OF THE STATE'S. IT WOULD HAVE CORROBORATED THE EVIDENCE THAT SUPPORTS THE PETITIONER'S

(-CONT'D-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912

PETITIONER

(-cont'd- ATTACH, P. 10 of WRIT APPLICATION

SUPPORTING FACTS: -cont'd- DEFENSE AND INNOCENCE. TRIAL COUNSEL MISADVISED THE PETITIONER CONCERNING THE DECISION TO TESTIFY OR NOT (H.T.B. P. 35-37). A READING OF THE TRIAL TRANSCRIPT OF TT 3.28.95, P. 12-21 REVEALS THAT THE PETITIONER WANTED TO TAKE THE STAND AND TESTIFY. THE PETITIONER HAD INITIALLY AGREED AND THEN DISAGREED NEARLY FIVE TIMES UNTIL HE WAS DISSUADED BY TRIAL COUNSEL BECAUSE OF A PENDING CASE. THE JURY ONLY GOT AN EXPARTE VERSION/TESTIMONY BY THE STATE'S WITNESS. TRIAL COUNSEL FAILED TO TAKE ANY ACTION CONCERNING A SLEEPING JUROR. COUNSEL INITIALLY TOLD THE BAR ASSOCIATION HE DID NOT RECALL THE ISSUE BUT AT HABEAS TRIAL IN 2009, HE CLAIMED HE REMEMBERED CLIENT/PETITIONER MENTIONING IT BUT HE DID NOT WITNESS IT. THE STATE MENTIONED IT IN ITS CLOSING ARGUMENTS. TRIAL COUNSEL CALLED A WITNESS WHO GAVE TESTIMONY IN DIRECT CONTRADICTION TO ANOTHER WITNESS (H.T.B. P. 38-39), T.T. 3.24.95, P 22, TRIAL COUNSEL'S LACK OF TRIAL PREPARATION, WITNESS PREPARATION, PREJUDICED THE PETITIONER'S DEFENSE, A DEFENSE HE RAISED, BY HAVING A WITNESS HE PUT ON KNOCK DOWN WHAT HE TERMED THE PETITIONER'S DEFENSE WAS PREDICATED ON. SEE H.T.B. P. 43, AND HABEAS TRIAL TRANSCRIPT (H.T. 4.17.09, P. 64). TRIAL COUNSEL ONLY MET EACH WITNESS FOR THE FIRST TIME FIVE MINS. BEFORE THEY WERE PUT ON THE STAND, EACH WITNESS, T.T. 3.24.95, P.8, TT 3.27, P. 83 AND 98. TRIAL COUNSEL EVEN FILED A LATE NOTICE OF ALIBI, SEE T.T. 3.27.95, P. 24-27. TRIAL COUNSEL FAILED TO OBJECT WHEN THE STATE'S ATTORNEY EXPRESSED HIS PERSONAL OPINION. (H.T.B P. 39-40) DURING CLOSING ARGUMENTS THE STATE'S ATTORNEY COMMENTED ON ONE ASPECT OF THE LETTERS IN WHICH THE PETITIONER WROTE TO MR. SPEARS IN TERMS OF "CRACKERS" AND BLACK PEOPLE. (TT 3.28.95, P. 40) THE STATE'S ATTORNEY THEN WENT ON TO IDENTIFY HIMSELF AS ONE

(-cont'd-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912

PETITIONER

(-cont'd- ATTACH, Pg 10 OF WRIT APPLICATION)

SUPPORTING FACTS: (-cont'd-) OF THOSE CRACKERS," I GUESS I'M PART OF THAT GROUP. DAMN RIGHT.. THATS RIGHT." IN INJECTING HIMSELF INTO HIS ARGUMENT ON A RACIALLY CHARGED SUBJECT, THE STATE'S ATTORNEY ACTED IMPROPERLY. TRIAL COUNSEL DID NOT PROTECT HIS CLIENT FROM THIS TRIAL ERROR VIA AN OBJECTION TO STRIKE OR PRESERVE ALLOWING IT TO INFECT THE TRIER(S) AND POISON THE INTEGRITY OF THE FAIRNESS OF THE TRIAL PROCESS VIOLATING THE PETITIONER'S FEDERAL CONSTITUTIONAL RIGHT TO A FAIR TRIAL, WHICH ALSO RENDERED COUNSEL INEFFECTIVE. U.S. v CHILDRESS, 58 F. 3d 693 (D.C. CIR. 1995)) PROSECUTOR MAY NOT USE BULLY PULPIT OF CLOSING ARGUMENT TO INFLAME PASSIONS OR PREJUDICES OF JURY TO ARGUE FACTS NOT IN EVIDENCE.

CLAIM FOUR: BRADY VIOLATION, BY THE STATE OF CONNECTICUT, STATE'S ATTORNEY IN THE CASE OF: CR 6362355

SUPPORTING FACTS: AT THE PETITIONER'S/APPLICANTS HABEAS TRIAL (H.T. 3-26/09, PG. 9) INSPECTOR TROCCHIO, NOW WITH THE STATE'S ATTORNEY'S OFFICE, TESTIFIED AS ONE OF THE LEAD DETECTIVES IN THE TRIAL AGAINST THE PETITIONER. HE HAD WITH HIM FIELD NOTES HE TESTIFIED AT THE PETITIONER'S TRIAL, WHEN ASKED BY TRIAL ATTORNEY DID HE HAVE THEM STILL, HE REPLIED, "NO SIR." (T.T. 3-27-95, P. 9) FOR THE ACTUAL EXCHANGE. SEE ALSO A#9 OF THE HABEAS TRIAL BRIEF (H.T.B. P. 16-19). THE SUPPRESSION OF THESE NOTES PREJUDICED THE PETITIONER IN SEVERAL ASPECTS. 1) IT WAS THE TESTIMONY OF DET. TROCCHIO THAT WAS KEY IN THE TRIAL COURT EXCLUDING THE THIRD PARTY DECLARATION OF SOMEONE OTHER THAN THE PETITIONER COMMITTING THIS CRIME. AT ISSUE WAS WHAT DID LEE BEMBER ACTUALLY SAY TO TROCCHIO IN AN INTERVIEW, WHICH TROCCHIO STATED HE WROTE DOWN IN THE FIELD NOTES (T.T. 3-27-/9). THE TRIAL COURT MADE A RULING EXCLUDING THE DECLARATION HAVING NEVER SEEN THE NOTES, WHICH STATE EXACTLY WHAT WAS SAID, NOT MEMORY. THIS NEW REVELATION BRINGS TO LIFE AND SUPPLEMENTS CLAIM #2 (TWO) OF ~~THIS~~ WRIT APPLICATION

(-cont'd-)

APPLICATION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254

MALEEK JONES, #179912
PETITIONER
(-CONT'D- ATTCH. P. EXTENSION, CLAIM FOUR)

SUPPORTING FACTS: -CONT'D- NOT ONLY WAS THIS A SUPPRESSION OF KEY EXCULPATORY EVIDENCE IT WAS ALSO ~~PERJURY~~ FALSE TESTIMONY ON THE PART OF DET. TROCCHIO.
2) ~~THE~~ SUPPRESSION OF THE FIELD NOTES (EX 14, H.T.) ~~CONTA~~ THE NOTES CONTAINED OTHER INFORMATION THAT THE JURY SHOULD HAVE CONSIDERED ~~THAT~~ WOULD HAVE IMPEACHED ~~THE~~ STATE'S ONLY MATERIAL WITNESS. AT THE CRIMINAL TRIAL, STATE WITNESS SPEARS TESTIFIED ~~THE~~ PETITIONER HAD NO INJURY TO HIS LEFT HAND, INFORMATION IN THE NOTES, WHICH WAS LEFT OUT OF ~~THE~~ POLICE REPORTS AND STATEMENTS, ESTABLISHED THE PETITIONER DID HAVE A SPLINT/CAST ON ON THE NIGHT IN QUESTION. SPEARS ALSO RECANTED AND ADMITTED AT HABEAS TRIAL PETITIONER DID HAVE AN INJURY. THE ABSENCE OF THE NOTES DENIED THE PETITIONER A VITAL ASPECT OF HIS DEFENSE. TRIAL COURT ERRONEOUSLY EXCLUDED THIS TESTIMONY, EXCULPATORY, IMPEACHABLE IN NATURE, HAVING NEVER SEEN THE NOTES. THIS PREJUDICED THE PETITIONER. "POLICE ARE TREATED AS AN ARM OF THE PROSECUTION FOR BRADY PURPOSES, AND THE TAINT ON THE TRIAL IS NO LESS IF THEY, RATHER THAN THE STATE'S ATTORNEY, WERE guilty OF THE NON DISCLOSURE." "[T]HE UNMISTAKABLE TONE OF BRADY, IS THAT EVIDENCE REQUIRED TO BE DISCLOSED MUST BE DISCLOSED AT A TIME WHEN IT CAN BE USED." BRADY V MARYLAND, 373 U.S. 83 (1963) (SEE #A8. P.g 18). CHAMBERS, 410 US 302. THE COMPULSORY PROCESS RIGHT ALSO GUARANTEES DEFENDANTS THE RIGHT TO HAVE THE JURY HEAR ALL MATERIAL AND RELEVANT ~~TESTIMONY~~. CHAMBERS, AT 297, A DEFENDANT IS ENTITLED TO DEFEND AGAINST CRIMINAL CHARGES BY OFFERING EVIDENCE TENDING TO SHOW SOMEONE ELSE COMMITTED THE CRIME.

DIRECT APPEAL
(a) IF YOU APPEALED FROM THE JUDGMENT OF CONVICTION, DID YOU RAISE THIS ISSUE?
YES ___ NO ✓

(b) THE BRADY VIOLATION WAS NOT REVEALED UNTIL HABEAS TRIAL AT THE NEW HAVEN SUPERIOR COURT, MARCH 26, 2009, DIRECT APPEAL WAS IN 1997.

(-CONT'D-)

MALEEK JONES, #179912
PETITIONER
(-cont'd - attch CLAIM FOUR EXTENSION)
OF WRIT APPLICATION

POST-CONVICTION PROCEEDINGS

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial? YES ✓ NO —

(d) if yes, state the type of motion or petition, the name and location of the court where the motion was filed, the case number (if known) the result and date of the court's decision. HABEAS CORPUS PETITION NEW HAVEN SUPERIOR COURT, 235 CHURCH ST. NEW HAVEN, CV980411361, ~~Sept. 9, 2009~~. AUGUST 13, 2009.

(e) Did you receive an evidentiary hearing on your motion? YES ✓ NO —

(f) Did you appeal from the denial of your motion? YES ✓ NO —

(g) if your answer to (f) is "Yes", state whether this is was raised in appeal,
YES — NO ✓
APPELLATE COURT / SUPREME COURT, 231 CAPITOL AVE, HARTFORD, CT, A.C. 31519
APRIL 3, 2012 (SEE ATTACH)

(h) if your answer to question (e), (f) or (g) is "NO" briefly explain why SEE A#2
PETITIONER, PRO SE, WAS FORCED TO RELY ON PREVIOUS UNDERSIGNED COUNSEL'S APPELLATE BRIEF, ALTHOUGH COUNSEL HAD BEEN REMOVED, AT ISSUE WAS, PETITIONER WANT THIS ISSUE PRESENTED TO APPELLATE COURT - APPELLATE COUNSEL'S BRIEF DID NOT CONTAIN IT. PETITIONER SOUGHT ARTICULATION AND ALSO INCLUDED IN "HIS OWN" BRIEF but THE COURT REFUSED PETITIONER'S BRIEF. SEE #A2

(i)

18 YES

FINALLY, THE PETITIONER WOULD LIKE TO RESPECTFULLY REQUEST THE HONORABLE JUSTICES AND/OR THEIR ASSISTANCE TO CONSIDER THIS APPLICATION FOR WRIT LIBERALLY ON THE MERITS AND SUBSTANCE, NOT PRESENTATION. THE PETITIONER APPLICANT/FILED UNDER DURESS, WITHOUT ALL OF HIS LEGAL MATERIAL BASED ON SPACE RESTRAINTS, BEING HOUSED IN A COUNTY JAIL/CENTER WITH NO LAW LIBRARY.

#(A2)

S.C. #~~110522,~~ A.C. #31519

MALEEK JONES — SUPREME COURT

Vs — STATE OF CONNECTICUT

COMMISSIONER OF CORRECTIONS — MAY 17, 2012

PETITION FOR CERTIFICATION

The Petitioner-appellant, Maleek Jones, respectfully requests this Court to grant certification for review of the affirmance of his conviction in Jones v. Commissioner of Corrections, A.C. 31513, CV98-0411361-S (2012), (decision released 4/3/12, Motion for Extension of Time was filed April 7, 2012, granted until May 22, 2012. Practice Book § 84-1 to 84-8.

A. STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioner-appellant asks this Court to review the Appellate Court's decision asking:

(a) WHETHER THE APPELLATE COURT VIOLATED THE APPELLANT'S ACCESS TO THE COURT IN VIOLATION OF ARTICLE 1 § 8, ARTICLE 1 § 10, AND ARTICLE 1 § 20, OF THE CONNECTICUT CONSTITUTION AND THE 6TH, 8TH and 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION WHEN IT FAILED TO ALLOW THE APPELLANT TO FILE HIS OWN BRIEF, BUT INSTEAD FORCED THE APPELLANT TO RELY ON THE BRIEF OF COUNSEL WHO NO LONGER REPRESENTED THE APPELLANT.

(b) WHETHER THE APPELLATE COURT ERRED IN ITS PER CURIAM RULING OF THE UNDERLYING CLAIMS BEFORE THE COURT, CONCLUDING THE HABEAS COURT'S DETERMINATION THAT TRIAL COUNSEL WAS NOT DEFICIENT, AND THAT DEFICIENT PERFORMANCE OF TRIAL COUNSEL DID NOT PREJUDICE PETITIONER, AND IN DENYING THE APPELLANT'S CLAIM OF INNOCENCE.

Judicial District of New Haven
SUPERIOR COURT
FILED
MAY 23 2012
CHIEF CLERK'S OFFICE

fees waived
4/23/12
(Silbert, J)

B. STATEMENT FOR BASIS OF CERTIFICATION

Pursuant to Practice Book § 81-2, certification by the Supreme Court is appropriate for the following reasons :

(1) Where the appellate court has decided a question of substance not theretofore determined by the Supreme Court or has decided it in a way probably not in accord with applicable decisions of the Supreme Court.

(2) Where the decision under review is in conflict with other decisions of the appellate court.

(3) Where the appellate court has so far departed from the accepted and usual courses of judicial proceedings, or has so far sanctioned such a departure by any other court, as to call for an exercise of the Supreme Court's supervision.

(4) Where a question of great public importance is involved.

C. SUMMARY OF CASE AND RELEVANT FACTS

The Petitioner was convicted of the crimes of murder[1], Conspiracy to commit murder[2], and carrying a pistol without a permit[3]. Attorney Leo Ahern (Here in after referred to as "trial counsel") was appointed as Special Public Defender to represent the Petitioner. The Petitioner elected a trial by jury before Ripley, J., and was convicted on all counts and sentenced to a total effective sentence of Sixty Five (65) years. The conviction was upheld on appeal in State of Connecticut v. Maleek Jones, 46 Conn. App. 640; 700 A2d 710 (1997); cert. Denied 243 Conn. 941 704 A2d 797 (1997).

The Petitioner filed a pro se petition for Writ of Habeas Corpus on April 1, 1998. Several amended petitions were filed. A Fifth Amended Petition, dated February 6, 2009,

[1] Murder C.G.S. 53a – 54a (a) and C. G. S. § 53a – 8;
[2] Conspiracy to commit murder, C.G.S. § 53a-48 (a) and 53a-54a (a); and
[3] carrying a pistol without a permit, C.G.S. § 29-35.

was filed by Petitioner's court appointed counsel Bruce McIntyre. A return, dated March 4, 2009, was filed by the respondent.

The Habeas trial occurred before Judge David Skolnick on March 25, 2009, March 26, 2009, and April 17, 2009. The Petitioner and respondent's post trial briefs were filed in June, 2009.

The Fifth Amended Petition contained three counts. In Count One, the Petitioner claimed Ineffective Assistance of his trial counsel, Attorney Leo Ahern. In Count Two, the Petitioner claimed violation of his right to Due Process, and in Count Three, the Petitioner claimed Actual Innocence. The Habeas Court (Skolnick, J.) dismissed the Petitioner's petition for writ of habeas corpus on August 13, 2009. Jones v. Warden, 2009 Conn. Sup. 13736. On September 8, 2009, the Court (Skolnick, J.) granted the Petitioner's Petition for Certification certifying that, "a question is involved in the decision on the petition for habeas corpus which ought to be reviewed by the Appellate Court, " hence the appeal.

D. ARGUMENT

(a) The Petitioner-appellant argues the Appellate Court committed error when it refused to allow the Petitioner to file his pro se brief because of his failure to comply with practice book rules.

The Court on December 15, 2010, granted the Petitioner's motion to file a pro se brief ordered on or before January 18, 2011, after the Petitioner was permitted to proceed pro se by the trial court, Skolnick, J, October 21, 2010.

The Petitioner was given less than 30 days to draft an entire brief. This effort was impeded by the holidays, the weather, and personal leave days by staff that handle legal mailing. A timely motion for extension of time was filed on December 28, 2010, when it

became apparent that the Petitioner would be unable to meet the deadline by the ordered due date.

In addition, at the time, the Petitioner unskilled in jurisprudence, was informed a motion for articulation should be filed before filing the brief, in order to preserve A Brady claim and other issues. A motion for articulation was filed, which was the basis of counsel being removed. The motion for extension of time and motion for articulation were denied by the Court as a result of an objection by opposing counsel. Within the ordered allotted time the resource center was closed. The librarian was out for three weeks as well along with the staff in the unit that handle out-going legal mail. Earlier in the month of December the institution was on lock down for an entire week and afterwards a modified lock-down ensued.

The Petitioner proceeded to hand write the entire brief. The hand written brief was submitted one week later when staff returned to the facility. The Petitioner explained this in each motion he filed and the court in denying the brief and motions, refused to take this into account.

The State contended the brief did not comply with the format rules of the Practice Book. The Petitioner has no access or benefit of a law library, the facilities resources, or control over his personal movement within the facility.

Notwithstanding, the Petitioner contends, given a sufficient amount of access and time he could have put forth a more meaningful effort to meet the rules.

This Court should grant review of this issue.

(b) The Petitioner further argues it is unfair and a form of judicial usurpation for the Appellate Court on one hand to grant the Petitioner's motion to file his own brief, then

based on circumstances beyond the Petitioner's control take it away by failing to accept the pro se brief on its face because it was filed eight (8) days late. The Petitioner was forced to rely on the brief of counsel who was removed because of a conflict directly related to the issues that would be contained in the brief. This usurpation denied the Petitioner the right to litigate "his" claims and to have an adversarial testing process for appeal.

The Petitioner did not waive counsel to proceed pro se in order to argue counsel's brief, he did so under duress and in order to put forth an important and viable issue(s) to preserve a complete and adequate record for review or exhaustion. Said issue(s) (Brady/Notes claim) was properly preserved, briefed and argued at the habeas trial but not articulated in the memorandum of decision. The Habeas Court's Memorandum of Decision did not address or mention several claims raised and briefed by Petitioner by and through counsel; namely, the issue of the detective field notes/ a Brady claim (p.16-19 Petitioner's P.T.B., see atth.). In accordance with his responsibility to perfect the record for appeal, Petitioner requested counsel and by motion of articulation of the decision to ensure that the Appellate Court would hear the merits of all claims raised in this appeal. The Petitioner-appellant respectfully requested that the Superior Court comply with Conn. P.B. 64-10 (a), which requires court's to articulate the legal and factual basis for their decisions when rendering judgment. Although the court filed a memorandum of decision, a further articulation of the court's decision to deny the Petitioner-appellant's Writ of Habeas Corpus was needed to allow the Petitioner-appellant to fulfill his responsibility pursuant to P.B. §§ 61-10, to provide an adequate record for meaningful review. Rosenblit v. Danaher, 206 Conn. 125, 148 (1988). In the Brady claim, the Petitioner was prejudiced by the suppression of Officer T. Trocchio's field notes which contained impeachment and

exculpatory evidence. (see appendix) This suppression led to the trial court excluding favorable exculpatory testimony having never seen the notes. There was also impeachment value in the notes that the fact finder should have been presented with.

The Court ordered the Petitioner's brief to be filed in less than thirty (30) days. Both prior counsel and the State had 150 days to file their respective briefs. The Petitioner was granted the right to proceed pro se and that right extends to effectively representing himself;

"Our United States Supreme Court has long recognized that the right to counsel would be meaningless if it did not require effective assistance, Powell v. Alabama, 287 U.S. 45, 71-2 (1932)".

The Petitioner in this matter elected to go pro se and file his own brief exclusive of counsel's brief. The trial court, Skolnick, J., who dismissed the Petitioner's writ of habeas corpus, allowed counsel to withdraw from the appellant's appeal. However, the court did not hold an adequate hearing as to the conflict regarding the Petitioner and Counsel over which led to the Court granting counsel's removal. St. V. Pascucci, 161 Conn. 382 at 384 (1965). The Petitioner's conflict with counsel did not arise out of an issue of frivolity. The Petitioner had viable issues as the trial court acknowledged in certifying the Petitioner's appeal.

The Petitioner was deemed pro se but denied the right to submit a brief on his own behalf or litigate his own claims for which the Court still relied on the brief of counsel who had been waived over briefing issues. The Appellate Court in ordering the brief of counsel should have at a minimum permitted counsel to argue "his own" brief since the Court was relying on the brief. By not doing so this put the onus on the Petitioner and put the Petitioner at an unduly disadvantage where if the Petitioner decided to orally argue this

brief he could no longer file a claim against himself. This prohibited the Petitioner from oral argument or a reply brief. Having laid the foundation The Petitioner argues he attempted to file a motion to supplement a brief in lieu of counsel March 31, 2010, one week after counsel prematurely filed his brief against the Petitioner's consent without first filing a motion for articulation on the Brady, Warrant/Probable Cause, and prejudicial remarks of A.D.A. claims. This put both opposing counsel and the Court on notice of a possible conflict. However, the motion was denied. Stating Petitioner was represented by counsel and could not file a hybrid brief, C.P.B. § 62-9a. (See appendix)

The Petitioner was not given any latitude or consideration. Each motion he filed was opposed and later denied by the appellate court. Boguslavsky v. Kaplan, 159 F.3d 715 (2nd Cir 1998) "Pro se litigant is allowed some degree of flexibility in pleading his action." The Petitioner never agreed with appellate counsel to abandon, ineffective claims related to physical evidence, prior inconsistent statements, waiver of probable cause hearing, challenges to Bember's testimony, objections to a prejudicial letter, sleeping juror, the residual exception and the warrant, as noted in the state's brief, pg. 3, Ft n. [4]. The Petitioner's "own" brief included these claims amalgamated into a totality argument. The state acknowledged the Petitioner's intent was to file a pro se brief exclusive of previous undersigned counsel as noted in State's brief April 4, 2011, the Petitioner's reply to state's objection, November 15, 2010, and each motion the Petitioner submitted thereafter. After the petitioner had no other recourse – he filed a petition for writ of error – asking a higher authority to intervene – the state objected, amongst other grounds, the Court lacked subject matter jurisdiction, and the Supreme Court dismissed the writ.

The Court should grant certification to review this claim.

E. THE APPELLATE COURT ERRONEOUSLY CONCLUDED THAT TRIAL COUNSEL WAS NOT DEFICIENT AND THAT DEFICIENT PERFORMANCE OF TRIAL COUNSEL DID NOT PREJUDICE THE PETITIONER.

Summerville v. Warden, 29 Conn. App. 162, 179, 180 1993

Our Supreme Court noted that while Habeas Corpus cannot be utilized as a substitute for an appeal, it can be used when the judgment of conviction and sentence is the culmination of a proceeding that fails to meet the constitutional requirement of a fair trial. Valeriano v. Bronson, 209 Conn. 79, 96-98, 546 A.2d 1380 (1988) (Shea J., concurring)

There was considerable testimony and evidence presented at the habeas trial to show that counsel was not adequately prepared for the trial. The Petitioner was convicted based on an incident that occurred on October 14, 1992, at or around 1:30 – 2 a.m. outside the Main Entrance of the Hospital of St. Raphael's. The victim of a shooting was said to have been exiting the hospital in his vehicle as witnessed by a female employee he had just visited. As his vehicle approached the street from the horseshoe driveway, two individuals approached the driver's side of the vehicle and one began to fire at the driver's window. As a result, the victim sustained multiple gun shot wounds, one to the head being the fatal shot. This female witness, Sheila McCray, was brought the Petitioner's photo and did not identify the Petitioner as one of the persons she witnessed. Attorney Ahern admitted at the habeas trial he made a mistake in not seeking McCray out or interviewing this exculpatory disinterested eyewitness. The State's theory by and through their sole material witness, Tyrone "Ty" Spears, was that there were 3 shooters all firing 357 revolvers at the victim in his vehicle. Two shooters from driver's side point blank range. The Petitioner allegedly being closest to driver's side and Spears, who testified he fired 4 shots from 150 ft away at the front passenger side. Spears' trial testimony was refuted by the state's ballistic and crime scene investigation that determined no shots were fired from

Spears' position. Four bullets were located and the three (3) recovered were fired from the same weapon. Spear's trial testimony suggested he was firing directly in the line of fire as his two alleged buddies firing on driver's side. Spears recanted that testimony at the habeas trial and stated he was coerced and the Petitioner was not involved in the shooting as he initially told the authorities and investigators. Ballistics supported Spears confession and recantation and there was no evidence Spears allegedly being labeled a snitch influenced his confession/recantation after 14 years as disclosed in the habeas court's memorandum or opposing counsel's argument. Attorney Ahern failed to provide an investigation being unaware of funds available for investigative services at the P.D.'s Office. He failed to meet or interview any of the witnesses before trial. His only meeting was 5 minutes before they were put on the stand. Even alibi who he said the case was predicated. He only met her five minutes the morning he put her on the stand. Failed to obtain medical records of the Petitioner's injury, which was on D.O.C. records and the Hospital of St. Raphael's records. There was even a photo of the Petitioner's hand wrapped in a soft cast/sling up to his shoulder taken the evening of October 13, 1992, (H.T. Ex 4&6), that the Petitioner's child's mother was in possession of.

The aforementioned acts and omissions on the part of trial counsel prejudiced the petitioner in several ways.

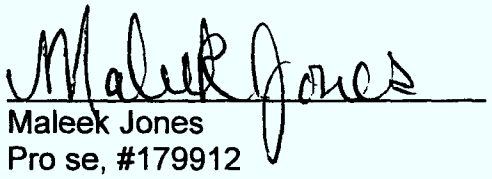
Further, the Petitioner's claim of innocence was not free-standing as counsel's brief relied on Miller v. Commissioner, 83 Conn. App. 543 851 A.2d 313 cert. Denied, 271 Conn. 914 (2004. The Petitioner's claim of innocence included a State and Federal Constitutional claim of ineffective assistance counsel. This discrepancy conflicted with the Petitioner's interest.

The Petitioner, respectfully submits that taking into account all of the evidence, both the evidence adduced at the original trial and the evidence adduced at the habeas corpus trial – he is innocent of the crime for which he stands convicted, under the Schlup, standard of innocence. Carey v. Commissioner of Correction, 86 Conn. App. 180, 182 (2004), citing Strickland, supra. The Petitioner, respectfully submits, that the appellate court erred in affirming the habeas court's denial of the petition for writ of habeas corpus, and requests this Court to grant certification to review this claim.

Whether Attorney Ahern performed deficiently did not receive adequate review by the habeas court. In light of the evidence presented before the habeas court, the findings of fact upon which the court based its denial of the Petitioner's petition for writ of habeas corpus constitute clear error.

Wherefore, for the reasons stated above, the Petitioner-appellant respectfully requests this Court to certify this case for review.

RESPECTFULLY SUBMITTED
The Petitioner



Maleek Jones
Pro se, #179912
900 Highland Avenue
Cheshire, CT 06410

JOSEPH ANCONA *v.* COMMISSIONER OF CORRECTION
(AC 33022)

Lavine, Alvord and Schaller, Js.

Argued March 13—officially released April 3, 2012

Petitioner's appeal from the Superior Court in the judicial district of Tolland, *Fuger, J.*

Per Curiam. The appeal is dismissed.

STATE OF CONNECTICUT *v.* OSCAR L. ANDERSON
(AC 33622)

Lavine, Alvord and Espinosa, Js.

Argued March 19—officially released April 3, 2012

Defendant's appeal from the Superior Court in the judicial district of Waterbury, *Damiani, J.*

Per Curiam. The judgment is affirmed.

GREEN ACRES ASSOCIATES, LLC *v.* MILAN CAIS
(AC 33514)

Gruendel, Robinson and Peters, Js.

Argued March 14—officially released April 3, 2012

Defendant's appeal from the Superior Court in the judicial district of Middlesex, Housing Session, *Holzberg, J.; Olear, J.; Wiese, J.*

Per Curiam. The judgment is affirmed.

MALEEK JONES *v.* COMMISSIONER OF CORRECTION
(AC 31519)

Gruendel, Robinson and Peters, Js.

Argued March 14—officially released April 3, 2012

Petitioner's appeal from the Superior Court in the judicial district of New Haven, *Hon. David W. Skolnick,* judge trial referee.

Per Curiam. The judgment is affirmed.

KIMBERLY ALBRIGHT-LAZZARI ET AL. *v.* FREEDOM OF INFORMATION COMMISSION ET AL.
(AC 33446)

Beach, Alvord and Espinosa, Js.

incident is extremely important as exhibited by, it looks like Plaintiff's-4, where it shows a heavily bandaged left arm, which would not be readily apparent at the time of trial." ~~(A48-A49)~~.

"Also, there's no way to adequately prepare for a trial if you haven't spoken to the witnesses prior to the time of trial. You, you can't take and digest and cross reference that information that morning. There's also testimony that he didn't speak to other potential witnesses, family members. .... Even during the course of the trial, I noted during my review of the trial transcript that Mr. Ahern only filed a notice of alibi on March 27th, well into the trial, when he testified that the particular issue of the alibi was something that he was considering all along. I don't know and can't explain why that particular issue was not brought up until several days after testimony started, but for a lack of preparation." ~~(A[illegible])~~

#(45)

It is pertinent in this context to reference footnote 11, and a portion of the Appellate Court's opinion, in the Appellate Court decision, State of Connecticut v. Maleek Jones, *supra*, 46 Conn. App. 659-661 (1997), which is reproduced below.

Footnote 11:

> The following occurred when the defendant was permitted to address the trial court:
>
> "The Defendant: The first thing I wanted to say was about the ballistics test. I just got those papers in March of 1995. I never seen the ballistics findings about --
>
> "The Court: What's this? The
>
> "The Defendant: The ballistic findings --
>
> "The Court: See, I don't know anything about any of the evidence in this case, Mr. Jones.
>
> "The Defendant: Well, I'm saying that my lawyer said that he filed for a motion for discovery in December, 1992. I never got a ballistics test that was tooken [sic] in October until just now, March of 1995. Now, the police, they used this guy saying he seen us commit a crime or whatever, and he was the person that they

got probable cause to get an arrest warrant, or whatever, and now they not using him in the trial, and I don't feel like that's right, you know. And then he's saying that we have to call him as a witness. He was a state witness, not a defense witness. Also, this girl, Sheila McCray, was supposed to have been with the victim at the time that this crime took place and she saying she seen exactly what happened and the State didn't call her neither. I don't feel like that's fair.

"The Court: Well, Mr. Jones, you've been represented by counsel here, competent counsel, and we've been going through this trial. And if you have any problems with what has been produced or what hasn't been produced, you're going to have time to reflect on that, and consider it. And then you can take any appropriate action that suits your purpose. But we're not going to get into that now.

"The Defendant: So that's going to be after my case is heard to the jury, or whatever.

"[Defendant's Counsel]: May I consult with my client?

"The Court: Sure."

Consultation with client.

"The Defendant: Also, I was suppose to be represented by a private investigator who, you know, in the course of my trial, he stopped representing me because he's saying that my family couldn't pay him now. From my understanding, I didn't feel like we were supposed to have to pay him because I have a special public defender. You know what I'm saying. That's saying that I couldn't pay for a lawyer. Now, this man stopped representing me a year and a half ago, and I had made -- I had wrote my lawyer many letters asking him could he get ballistics findings and stuff like that. For me now, I went through this whole course of the trial without nobody investigating my case. You know. So, I feel like I'm not being -- you know what I'm saying. I'm not having a fair trial here. I don't feel that that's right. That I had to go through my whole trial without nobody investigating or nothing. You know. That's all I wanted to say.

"The Court: All right. . . ."

"We have long held that the proper forum in which to address claims of ineffective representation of counsel is in the habeas forum or in a petition for a new trial, rather than on direct appeal. We have also consistently recognized that the constitutional right to adequate assistance of counsel subsumes a competent pretrial investigation. We conclude, thus, that the defendant's claim is one of ineffective

assistance of counsel since it raises an issue of the competency of the pretrial investigation. In accordance with our prior precedent, we further conclude that this issue must first be resolved in a habeas corpus proceeding. ....As our Supreme Court has stated, an ineffective assistance claim "should be resolved, not in piecemeal fashion, but as a totality after an evidentiary hearing in the trial court where the attorney whose conduct is in question may have an opportunity to testify." (all citations omitted) State of Connecticut v. Maleek Jones, *supra*, 46 Conn. App. 660-661 (1997)

IV. ARGUMENT:

A. APPELLATE STANDARD OF REVIEW

ACTUAL INNOCENCE

"Our Supreme Court has concluded that the proper standard for evaluating a freestanding claim of actual innocence..... is twofold. First, the petitioner must establish by clear and convincing evidence that, taking into account all of the evidence--both the evidence adduced at the original criminal trial and the evidence adduced at the habeas corpus trial--he is actually innocent of the crime of which he stands convicted. Second, the petitioner must also establish that, after considering all of that evidence and the inferences drawn therefrom as the habeas court did, no reasonable fact finder would find the petitioner guilty of the crime." *Miller v. Commissioner of Correction*, 242 Conn. 745, 747, 700 A.2d 1108 (1997).

"Our Supreme Court has deemed the issue of whether a habeas petitioner must support his claim of actual innocence with newly discovered evidence an open question in our habeas jurisprudence. . . . This court, however, has held that a claim of actual innocence must be based on newly discovered evidence. . . .[A] writ of habeas corpus cannot issue unless the petitioner first demonstrates that the evidence put forth in support of his claim of actual innocence is newly discovered. . . . This evidentiary burden is satisfied if a petitioner can demonstrate, by a preponderance of the evidence, that the proffered evidence could not have been discovered prior to the petitioner's criminal trial by the exercise of due diligence." (Citations omitted; internal quotation marks omitted.) *Johnson v. Commissioner of Correction*, 101 Conn. App. 465, 470-71, 922 A.2d 221 (2007)" Actual innocence standard and criteria as reiterated in Weinberg v. Commission of Correction, 112 Conn. App. 100, 962 A.2d 155; Cert. Denied 291 Conn. 904, 967 A.2d 1221 (2009)

carrying a pistol without a permit. The Petitioner received a total effective sentence of sixty-five years to serve.

The Petitioner filed a petition for a writ of habeas corpus on April 4, 1998. The petition actually tried was filed on February 6, 2009 and the mat.t.er came to trial before the Honorable David Skolnick on March 25, 26, and April 17, 2009.

I. FACTS

A brief preliminary statement of facts is set forth below; however, additional facts will be presented throughout the trial brief. The history of the case is complex and so the selection of detailed facts is reserved for specific sections of the brief.

The Petitioner was shot in the hand on September 27, 1992. He sought. medical treatment at that time and continued to seek medical treatment at all times relevant to the habeas petition.

On the night of October 14, 1992 a young man was shot and killed in New Haven. The Petitioner was arrested for that shooting.

The Petitioner was represented by Attorney Leo Ahern. The Petitioner went to jury trial and was convicted of murder, conspiracy to commit murder and

2. Tyrone Spears.

In his summation to the jury in 1995, Attorney Ahern summed up the critical importance of Tyrone Spears in this case as follows:

> "This is what we call a one-witness case. That's what this case is. It's not a physical evidence case. It's a one-witness case. One-witness case. If this one witness is believed by you to be telling the truth beyond a reasonable doubt, then my client is going to be convicted of murder." (Ex. X, trial transcript [hereinafter t.t.] 3-29-95, p. 61)

3. The Testimony of Mr. Spears at the Habeas Trial Displayed Indicia of Reliability and Supports the Petitioner's claim of Actual Innocence

The assessment by Attorney Ahern is still valid after the habeas trial. Mr. Spears remains the only person who could have put the Petitioner at the scene, let alone at the scene and shooting someone. In fact, at the habeas trial, Mr. Spears recanted the testimony he had given at the criminal trial. This was information not available to the Petitioner at the criminal trial and supports his claim of actual innocence in several respects.

Mr. Tyrone Spears was a co-defendant with the Petitioner. Mr. Spears pled to a reduced charge of Manslaughter in August of the year preceding the trial of the. Petitioner and then testified for the State at the trial of the Petitioner. The testimony of Mr. Spears on March 24, 1995 (Ex. U) is the only evidence the State of

Connecticut presented to the jury that put the Petitioner at the scene at the time of the crime. Evidence was produced at both the criminal trial in 1995, and the habeas trial in 2009 that the Petitioner had been in the area of the crime before the crime, but not at the time of the crime.

Mr. Spears testified at the habeas trial and was again subjected to cross examination. Mr. Spears recanted his previous testimony and exonerated the Petitioner.

At the habeas trial, Mr. Spears testified that he was alone on the street when the victim's vehicle was observed and that he had been fighting with the people he associated with the vehicle, and he alone fired at the vehicle. Mr. Spears did not know who was in the vehicle. (habeas transcript [hereinafter h.t.] 3-26-09, p. 92)

Mr. Spears testified at that time that he had been smoking a lot of PCP every day (h.t. 3-26-95, p. 95) and sometimes it slowed him down or it made everything spin and made his vision blurry and it affected his ability to think. (h.t. 3-26-09, p. 96) Mr. Spears testified that around the time of the criminal trial he said a lot of things. (h.t. 3-26, p. 90)

At the time of the criminal trial, Mr. Spears was a young man of 19 years (Ex. Q, t.t. 3-21-95, p. 3). He had left home at the age of 13 years (Ex. Q, t.t. 3-21-

95, p. 6), and he had been "kicked out" of school in the ninth grade. (Ex. Q, t.t. 3-21-95, p. 5) He had never held a "legitimate job", but rather subsisted by selling drugs. (Ex. Q, t.t. 3-21-95, p. 15)

Mr. Spears initially refused to testify on March 20, 1995, but was visited by the state's attorney and pressured into testifying because of fear that he would do more time. (h.t. 3-26-09, p. 88) At the habeas trial Mr. Spears also testified that at the time of the criminal trial he was angry at the Petitioner because he felt abandoned by the Petitioner. (h.t. 3-26-09, p. 88)

Mr. Spears had also wanted to confer with his attorney before he testified. (Ex. Q, t.t. 3-21-95, pp. 125-126) His did not get that opportunity. (h.t. 3-26-09, p. 112)

Mr. Spears testified that he followed the prosecutor's cue about what to say. Mr. Spears testified at the habeas trial that he had, at first, not implicated the Petitioner, but the State did not believe him and he implicated the Petitioner in order to help himself. (h.t. 3-26-09, p. 104)

At the criminal trial, Mr. Spears testified that he, the Petitioner, and Pepper went to an apartment which was already occupied by an Eric "Bonner" Johnson (See h.t., 3-25-09, p. 14) and a person he identified only as "Young." (Ex. Q, 3-21-

95, page 37) Testimony at the habeas trial from the Petitioner, his mother, and his sister placed "Bonner" at the home of Denise Jackson, mother of the Petitioner, in New York at the time of this crime. (h.t. 3-25-09, pp. 32 and 37 and h.t. 3-26-09, p. 72) Further, "Bonner" was then suffering from an injury and had a cast on his foot. (h.t., 3-25-09, p. 146) At the habeas trial, Mr. Spears testified that he had made up knowing "Bonner" (who was a real person) (h.t. 3-26-09, p 97) and Mr. Spears also admitted that he had completely made up the person he named as "Young" (who did not exist) at the criminal trial (h.t. 3-26-09, p 97) .

Mr. Spears's habeas trial version of the actual conduct of the murder matches much more closely with the physical evidence presented at trial. At the criminal trial, Mr. Spears testified that he, Pepper, and the Petitioner all shot at the vehicle. His position then was that Pepper and the Petitioner were on one side of the car and he was on the other side of the car and that all three were shooting at the car. (Ex. Q, 3-21-95, pp. 51- 56).

On March 22, 1995, Detective Caporale testified. He testified he was a member of the New Haven Police Department in 1992 and that he had been summoned to this scene. (Ex. R, t.t. 3-22-95, p. 44) He searched for "ballistics, shell casings, lead projectiles, blood, any physical evidence that would be assisting

the scene." (Ex. R, t.t. 3-22-95, p 45) No shell casings or other ballistic information were found around the car, up a driveway opening onto Chapel Street or in the area of Chapel Street in the area that opened from the St. Raphael's U-shaped driveway. No ballistics evidence was located. The search was first conducted by flashlight and then later on in daylight. (Ex. R, t.t. 3-22-95, p. 45 – 46)

According to Detective Corporale there were three bullet holes the driver's side of the vehicle, (Ex. R, 3-22-95, p. 53) and there was one bullet hole in the rear window of the vehicle, (Ex. R, t.t. 3-22-95, p. 49) for a total of four shots. Mr. Spears testified at the criminal trial that he had fired four shots at the vehicle, but was not concerned about hitting his friends on the other side of the car. (Ex. R, 3-21-95, p. 159)

At the criminal trial, Mr. Spears testified that the car was moving slowly coming out from the driveway (ex. Q, 3-21-95, p. 54) and he fired four shots (ex. Q, 3-21-95, p. 63). There are four holes in the car beginning toward the front and ending at the back – just as if the car were moving slowly across the front of the shooter and then past the shooter. Hindsight from the habeas trial suggests that he was not concerned with hitting his friends because they were not present at the scene.

According to Mr. Spears' criminal trial testimony there were three shooters all firing at a vehicle from two sides of the vehicle and then also from the front and the rear. (Ex R, t.t. 3-21-95) The Petitioner respectfully suggests that since only four shots hit the vehicle (three of which were along one side, and the fourth in the rear), that the remaining projectiles (if one credits Mr. Spears's trial testimony) had to go somewhere. The police searched, but found no signs of damage to buildings and glass, nor any embedded rounds in the buildings only a few feet from the circular driveway at the hospital. The police also searched along the street and found no damage to cars or other physical objects and no bullet holes in the street. (Ex. R., t.t. 3-21-95, pp. 86-87)

The habeas trial testimony of Mr. Spears was new information since the criminal trial. It was information not available to the Petitioner at the time of the criminal trial. Mr. Spears was a 19 year old adolescent who had been on his own since the age of 13 armed with an education that ended somewhere in his ninth school year, who found himself in a very untenable position. Mr. Spears explained at the habeas trial that he felt abandoned by his friend, a man with whom he shared a "really good friendship" (Ex. Q, t.t. 3-21-95, p. 13) and was angry. Mr. Spears, at the time of the criminal trial, was an adolescent stuck in an unenviable situation who

wanted to talk to his lawyer before testifying but was not afforded that opportunity. (Ex. Q, t.t. 3-21-95, pp. 125-126; h.t. 3-26-09, p. 112) Mr. Spears habeas trial transcript should be credited by the court.

4. In the Event the Court Does Not Credit the Habeas Trial Testimony of Mr. Spears.

The Petitioner urges the court to credit the habeas trial testimony of Mr. Spears; however, the State can be reasonably expected to urge the court to discount the habeas testimony. Ortega v. Duncan, 01-22629 (2nd Cir. 6-17-2-3) addresses the situation in which a witness recants prior testimony while not convincing the court that his recantation is credible. It provides guidance in terms of how to view the testimony of the non-credible witness.

The Ortega., supra. case dealt with a court's determination that since the recantation testimony of the witness was not credible, then the trial testimony must have been credible. The Ortega, supra. court held that it was error for the district court to focus solely on the issue of the witness's recantation. Ortega, supra. The court indicated that:

> "While a recantation must be '"looked upon with the utmost suspicion, '"Sanders v. Sullivan, 863 F.2d 218, 225 (2d Cir. 1988) ("Sanders I") (internal quotation marks and citations omitted, its lack of veracity cannot, in and of itself, establish whether testimony given at trial was in fact truthful. Rather, the court must weigh all

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ought not to credit any of his testimony and the petition for writ of habeas corpus should be granted on the basis of actual innocence of the Petitioner.

III. INEFFECTIVE COUNSEL.

Ineffective representation may result from one or more acts of trial counsel. The effects of commission or omission are cumulative in the evaluation of the effectiveness of the representation. Lindstadt v. Keane, 239 F.3rd 191, (2nd Cir. 2001).

1. SUPPLEMENTAL FACTS:

Detective Trocchio's Field Notes

The field notes of the then detective for the New Haven Police Department play an important part in this case. Attorney Ahern was unable to establish exculpatory facts which were available at the time of the trial because he did not obtain the detective's field notes. Further, Attorney Ahern attempted to establish the fact that there was a factual basis for the admission of a statement made against the penal interest of a declarant, but was unable to do so in the absence of the detective's field notes. At the criminal trial, Detective Trocchio testified that he no longer possessed his field notes:

A#9

• "Q. Do you still have those notes?

A. No, sir." (ex. W, t.t.3-27-95, p. 9)

At the habeas trial, those field notes were present. (h.t. 3-260-9, p. 9) and were entered into evidence. (Ex. 14) Trial counsel did not subpoena Detective Trocchio's field notes. (h.t. 3-26-09, p. 135)

The Petitioner respectfully requests that the court permit amendment of the pleadings in order that the legal issue raised by the mid-trial production of the detective's field notes may be addressed and decided in this case. As the parties both questioned the detective about the history of the notes, there can be no prejudice from the court's now considering the legal claim. They were not produced at the criminal trial because the state's response to Trial Counsel's motion for discovery to which counsel referred during the trial (ex. W, 3-28-95, p. 2) was incomplete, intentionally or otherwise. In light of the response of Detective Trocchio in the criminal trial transcript, the notes were not sought for this case and the motion for discovery itself was not placed into evidence.

The court has discretion to permit the amendment of the pleadings to conform to the evidence presented at the trial. Town of Canterbury v. Deojay, 114 Conn.App. 695 (2009). Here, the court should consider that the evidence in the

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field notes is exculpatory and was suppressed during trial such that the Petitioner is entitled to the Writ under clearly established federal such as Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitley, 514 U.S. 419 (1995) and Strickler v. Green, 527 U.S. 263 (1993). At the habeas trial, former Detective Trocchio testified that he meant he did not have them with him at that time; however, that is not what the words say.

The record is adequate and the parties contested the evidence as to all three elements of the claim: (1) that the evidence at issue was favorable to the Petitioner either as being both exculpatory and impeaching; (2) that the evidence was suppressed by the state (here, the police) either willfully or inadvertently; and (3) that prejudice ensued.

It would work a great injustice to prevent the Petitioner from litigating this claim in the present case. There was no way for him to know of or discover the existence of these notes nor any reason to look for them since the officer had testified in the criminal trial that he "no longer" had them. No injustice could inure to respondent since the state's attorney who represents the state in this case thoroughly addressed that prior testimony in her questioning of the witness.

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Because the notes do exist and the officer does still have them these many years later, it is clear that they were and have remained in the state's control at all times. The never previously were disclosed and the elements to which they are material already was at issue in the case.

2. **Evidence of Physical Injury of the Petitioner at the time the Crime was Committed and Evidence of a Physical Description of the Perpetrators that was not pursued by Trial Counsel**

Officer Losty of the New Haven Police Department testified on March 17, 1995. He testified that he had responded to the scene at 2:10 am on the morning of October 14, 1992. (Ex. P, 3-17-92, p. 31) The officer also testified at the habeas trial on March 25, 2009. At the habeas trial Officer Losty testified that he had conducted an initial investigation, and that that investigation produced descriptions of two perpetrators from an eyewitness. The descriptions of the two suspects taken from a witness at the scene were broadcast over the New Haven Police Department radio net:

#1: Subject number one was described as a black male, dark skin, 24 or 25 years of age, 6'1", 130 to 140 pounds, thin to medium build, clean-shaven, and wearing a black knit cap, a black waist length jacket, in parentheses, no hood, no distinguishing characteristics, over a white tee shirt, black jeans and black sneakers.