MDY Industries, LLC v. Blizzard Entertainment, Inc. et al Doc. 212

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CLERK U S DISTRICT COURT
DISTRICT OF ARIZONA
BY _____ Z DEPUTY

GEORGE DIAZ QUINONES
A.Z. D.O.C.# 72908
A.S.P.C. EYMAN/RYNNING
P.O. BOX 3100
FLORENCE, AZ. 85232

PRO-SE AND IN PROPER PERSON

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

THIS DOCUMENT IS NOT IN PROPER FORM ACCORDING TO FEDERAL AND/OR LOCAL RULES AND PRACTICES AND IS SUBJECT TO REJECTION BY THE COURT.
REFERENCE: 5.4
(Rule Number/Section)

GEORGE DIAZ QUINONES PETITIONER, PRO-SE/PRO-PER ✓ JAMES KIMBLE ET.AL RESPONDENTS	CASE NO: CIV 07-467-PHX-MHM-MEA PETITIONERS REPLY TO STATES RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW THE PETITIONER, GEORGE DIAZ QUINONES, PRO-SE AND IN PROPER PERSON AND REPLYS TO STATES RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS AS FOLLOWS:

AS IS EVIDENCED BY STATES EXHIBIT N, AND FRONT PAGE OF PETITION FOR APPELLATE COURT REVIEW (THE REMAINDER LIST VIA SHAKEDOWNS QUARTERLY AND WHEN INCIDENTS OCCUR)

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FIRST AND FOREMOST, THE STATE, STATE ATTORNEY GENERAL AND THIS MOST HONORABLE COURT, SHOULD BE AWARE "PRO-SE / PROPER LITIGATION SHOULD BE CONSTRUED AND CONSTRUED LIBERALLY", PETITIONERS, DEFENDANTS; INMATES IN AZ. DEPT. OF CORR. DO NOT HAVE ADEQUATE LAW LIBRARIES FOR THE RESEARCH OR PREPARATION OF, OR ON ANY LEGAL ISSUES, ON FOUR LEVEL OR CLOSE CUSTODY YARDS SUCH AS RUNNING, "DEFENDANT, PETITIONERS, LITIGANTS" MAY REQUEST VISITS TO THE "SO CALLED LAW LIBRARY" ONCE PER WEEK FOR APPROXIMATELY 1 HOUR. THERE ARE NO ARIZONA REPORTERS, PACIFIC REPORTERS, FEDERAL OR U.S. REPORTERS OR U.S. SUPREME COURT REPORTERS, NO SHEPARD'S CITATIONS, AND NO WEEKLY OR MONTHLY LAW REVIEWS AVAILABLE. THE ONLY THINGS AVAILABLE OR OFFERED ARE BASIC FORMS, OLD 28 U.S.C § 2254-2255, 42 U.S.C § 1983, OLD SELF HELP MANUALS WHICH FOCUS MORE ON NEW YORK, NOTARY SERVICE AND PHOTO COPYING, IF THE LIBRARIAN AND PARA-LEGAL APPROVE. AZ. D.O.C. FROWNS UPON INMATES ASSISTING ONE ANOTHER, CONTRARY TO U.S. COURTS OPINIONS GRANTING SAME IN PAST CASE LAW. AND, YOU HAVE TO WAIT AT THEIR WHIM, THE PARA-LEGAL WILL NOT ASSIST YOU IN PREPARATION OR RESEARCH OF ANY LEGAL ISSUES.

AT A.S.P.C. FLORENCE / CENTRAL UNIT WHERE PETITIONER WAS PREVIOUSLY HOUSED AFTER COURT PROCEEDINGS, IF YOU CAN NOT SPECIFICALLY STATE IN A REQUEST WHAT YOU NEED, YOU ARE STILL OUT OF LUCK.

APPELLATE COUNSEL FILED AN ANDERS BRIEF, APPARENTLY DID NOT READ THE TRANSCRIPTS AND IGNORED PETITIONERS LETTERS ON ISSUES.

ACCORDING TO STATES WITNESS TESTIMONY WHICH CONTRADICT ONE ANOTHER NUMEROUS STAFF OF AZ. D.O.C. CLAIM THEY RESTRAINED OR ASSISTED IN RESTRAINING PETITIONER, FACT IS AZ. D.O.C. OFFERED PERJUROUS TESTIMONY

TWO RULE 32 MOTIONS WERE FILED PREMATURELY, DURING APPEAL PROCESS BECAUSE ALL PETITIONER COULD RELY ON WAS "WORD OF MOUTH" FROM INMATES, AS PETITIONER WAS UNABLE TO RESEARCH THE ISSUES.

THE LAW LIBRARY AND PARALEGAL ASSISTANCE PROVIDED BY AZ. DOC AND STAFF ARE MERELY A FARCE.

FIRST AND FOREMOST, PETITIONER IS ACTUALLY INNOCENT OF THE CHARGES FOR WHICH HE WAS CONVICTED AND SENTENCED. PETITIONER DID NOT PARTICIPATE IN, NOR PROMOTE A RIOT AND DID NOT, HAS NOT ASSAULTED ANY D.O.C. STAFF.

PETITIONER'S SENTENCE WHICH HE WAS SERVING PRIOR THE FIGHT TO THE DINING HALL (OF WHICH PETITIONER WAS NOT A PARTICIPANT) AND THE FABRICATED CHARGES AGAINST PETITIONER THEREAFTER, WOULD HAVE LONG AGO EXPIRED, THE CURRENT SENTENCE INFRINGES UPON PETITIONER'S LIBERTY INTEREST.

IT IS EVIDENT FROM THE TRIAL TRANSCRIPTS, AND TESTIMONY OF SGT OBRIEN, THAT SHE GAVE PERJUROUS TESTIMONY, AND THAT COUNSEL SHOULD HAVE MOVED TO IMPEACH HER TESTIMONY. SGT OBRIEN GAVE THREE DIFFERENT VERSIONS OF EVENTS, SHE ALSO TESTIFIED A CO-DEFENDANT HIT HER ON THE LEFT SIDE OF THE FACE BUT, THE RIGHT SIDE SHE STATED WAS SWOLLEN.

TOO MANY CORRECTIONAL OFFICERS PARTICIPATE THEY WERE THE ONES WHO HAD RESTRAINED PETITIONER

THERE ARE SO MANY CONTRADICTIONS IN THE TESTIMONY OF STATES WITNESSES, THAT HAD PETITIONER'S TRIAL BEEN SEVERED FROM THAT OF CO DEFENDANTS, NO REASONABLE JURY COULD HAVE FOUND PETITIONER GUILTY, PETITIONER ALLEGES HAD HIS TRIAL BEEN SEVERED FROM CO DEFENDANTS, THE JURY WOULD HAVE HEARD ALL THIS FABRICATED - PERJUROUS TESTIMONY AND REALIZED THAT AZ. D.O.C AND STATE WISHED ONLY GUILT TO MAKE AN EXAMPLE OF SOMEONE, AND WOULD HAVE FOUND PETITIONER NOT GUILTY.

THE FACT IS THAT A FIGHT OBVIOUSLY OCCURRED BETWEEN TWO OR MORE PERSONS IN THE DINING HALL, STAFF THEN TO DISPERSE CHEMICAL AGENTS IN AN ENCLOSED SPACE, WHICH THOSE THREATEN TO STOP AND LOST CONTROL, PERHAPS AN OFFICER WAS INJURED ATTEMPTING TO BREAK UP THE FIGHT, PETITIONER DOES NOT KNOW AS HE WAS NOT PRESENT.

IN PETITIONERS PETITION FOR WRIT OF HABEAS CORPUS, (DUE TO AL. DEPT. OF CORR. STAFF TOSSING AND MOVING UP LEGAL DOCUMENTS IN QUARTERLY OR OTHER SHAKEDOWNS) MIS NAMED THE OFFICER.

BUT, OFFICER JAROL IN TRIAL TRANSCRIPTS TESTIMONY page 71, lines 5-11 THAT HE ENCOUNTERED SOME INMATES, TOLD SOME OF THEM TO GO TO THEIR HOUSING UNITS AND SOME OTHERS HE TOLD TO GO STAY BY THE RECREATION YARD THIS MUCH OF OFFICER JAROLS TESTIMONY, I PRESUME TO BE TRUTHFUL.

BUT, WITH ALL THE CONFLICTING ORDERS BY DIFFERENT C.O.'S AND THE FACT THAT I SUFFER FROM SCIATICA AND MY BACK WAS GIVING ME PROBLEMS, EXTREME BACK PAIN, BLURRED VISION AND ANXIETY. I WENT WITH SOME OTHERS TO THE REC FENCE ACROSS FROM THE ~~ADM~~ GDP TOWER, WHERE WE HAD BEEN DIRECTED BY OFFICER JAROL "I PRESUME", I RECALL SOMEONE SAYING "CUFF UP", SO I ASSIST MYSELF IN GETTING UP BY HOLDING ON TO THE GATE [THE NEXT THING I KNOW I'M ON THE GROUND ON MY BACK, I ROLL ON MY STOMACH TO PUSH MYSELF BACK UP AND FIRE SAFETY OFFICER WHITT WAS ON MY BACK, CHOKING ME IN A SLEEPER/NECK BREAKER TYPE HOLD WITH AN ARM AROUND THE FRONT ON THE OTHER BEHIND MY NECK LOOKING DOWN. I WAS FACING WEST AND SAW SOME C.O.'S STRUGGLING BY THE LIGHT POLE, C.O.'S SHARP AND SGT WIPER AMONG THE STOCK C.O.'S OVER THERE.

SOME CHEMICALS WERE SPRAYED IN MY EYES AND C.O. WILLIAMS THEN MOVED WITH FIRE/SAFETY OFFICER WHITT CUFFED ME, ASSISTED ME UP, THE FIRE/SAFETY OFFICER WHITT INJURED ME WITH HIS LEG, SLAMMED ME

TO THE GROUND AGAIN, C.O. WILLIAMS AND WHITT LIFTED ME BACK UP AND TOOK ME TO THE CAGES BEHIND THE CROWHAM

FROM EXHIBIT A

SGT. OBRIEN PAGE 68, LINES 22-25 "I GOT HIT WITH A CHEMICAL AGENT ON MY RIGHT SIDE, WHILE I RELEASED FOR JUST A SHORT SECOND. I RELEASED MY GRIP ON HIM, WHICH TIME HE TOOK A SWING AT ME, I STEPPED BACK FROM -- JUST BEING HIT, AND HE HIT ME AGAIN."
(IN REFERENCE TO CO-DEFENDANT SAMANTEGO) LT. NYSWANER ASSISTING

SHE FURTHER TESTIFIES SHE IS TO LEFT, AND LT NYSWANER ON THE RIGHT, THAT SHE REACHES FOR SAMANTEGO'S RIGHT ARM, NYSWANER THE LEFT.

THIS ALLEGED INCIDENT WITH SAMANTEGO, IF YOU BELIEVE OFFICERS IN PART OR IN WHOLE WOULD ACCORDING TO TESTIMONY BE WHAT BROUGHT ON CHARGES AGAINST PETITIONER AND CO-DEFENDANTS BUT, ON PAGE 88, LINES 18-21 "I HAD A BURNING SENSATION ON THE RIGHT SIDE OF MY FACE. I GOT A LITTLE TEARING IN MY EYES. BUT, THE CHEMICAL AGENT THAT WAS DEPLOYED ON ME WAS DEPLOYED AFTER THE FIGHT HAD BEEN GOING ON AT THE REC. PEN" (CONTRADICTING PAGE 68 - 22-25)

AND, REGARDING PETITIONER HAVING HIT C.O. SHARP TWICE, SGT. OBRIEN ON PAGE 114, LINES 5-7 TESTIFIED " I GOT SPRAYED AFTER I GOT HIT, I CAN'T TELL YOU WHETHER IT WAS BEFORE OR AFTER OFFICER SHARP GOT HIT" (THIS WOULD CONTRADICT TESTIMONY SGT OBRIEN GAVE THAT SHE AND LT. NYSWANER WENT TO PICK UP AND CUFF SAMANTEGO, THAT HE MADE STATEMENTS AND HIT HER TWICE, THEN THE OTHER FOUR INMATES CHARGED AT OFFICERS)

PAGE 115, LINES 13-17 SGT OBRIEN WAS QUESTIONED (YOU SAID YOU GOT HIT TWICE IN THE LEFT CHEEK BONE) IS THAT CORRECT AND SHE REPLIED "YES MAAM")

BUT, ON PAGE 141 LINES 19-21 WHEN QUESTIONED BY TUSTO (AND YOU HAD SWELLING ~~ON~~ GOOD TO THE RIGHT SIDE OF YOUR FACE, CORRECT? "YES, SIR")

FROM EXHIBIT B

PAGE 15, LINES 18-23 "Q. WERE HIS FISTS -- WAS HE SWINGING FISTS? A. "YES, SWING FISTS" Q BOTH ARMS? "UH-HUH" THE COURT: IS THAT A "YES"? THE WITNESS "YES, IT IS" THIS FROM C.O. SHARP, CONTRADICTING SGT OBRIEN'S "RIGHT ARM" SPEAKING OF CO DEFENDANT SAMANIEGO

PAGE 16, OFFICER SHARP TESTIFIED HE WAS RESTRAINING PETITIONER QUESTIONED

PAGE 17 OFFICER SHARP LINES 5-7 STATES THAT FIRE SAFETY OFFICER WHITT CAME OVER PULLED PETITIONER'S LEGS FROM UNDER HIM AND (THAT THEY RESTRAINED PETITIONER WITH FLEX CUFFS) AND PAGE 18 THAT HIS RIBS COULD HAVE BEEN INJURED BY FALLING ON RADIO OR HANDCUFFS

PAGE 19 SHARP TESTIFIES HE AND C.O. JAROL WERE ESCORTING THE CAGES

PAGE 22 LINES 10-13 STATES PETITIONER LUNGED TO RIGHT INTO C.O. JAROL BUT, ON PAGE 40, LINES 11-12 Q. DO YOU KNOW WHICH SIDE YOU WERE ON? A "THE RIGHT SIDE. HE WAS ON THE LEFT," NOW CHECK BACK TO PAGE 22 LINES 12-13 "HE WAS ON THE RIGHT SIDE. I WAS ON THE LEFT PETITIONER ASK "[H]OW IS IT POSSIBLE TO LUNGE BOTH TO LEFT AND RIGHT AT ONE PERSON?"

PAGES 50, 51, 54 ADMITS HE NEVER HEARD PETITIONER'S CO-DEFENDANT MAKE STATEMENTS ALLEGED BY SGT OBRIEN

OFFICER JAROL PAGE 71, LINES 5-11 STATES HE SENT SOME INMATES TO HOUSING TOLD OTHERS GO BY REC. FENCE

PAGES 74-75 STATES SAW SGT OBRIEN NOT, WENT TO PULL OC-SPRAY AND INMATE HE WAS GOING TO SPRAY WASN'T THERE

PAGE 76 LINES 15-24 CO. JAROL STATES HE SAW SGT. LOPEZ AND ~~SO~~ GPO ~~[illegible]~~ SHARP WITH AN INMATE ON HIS STOMACH, APPLYING "FLEX CUFFS", HE WENT TO ASSIST, HE AND SHARP LIFTED INMATE TO FEET

PAGE 84, WRIT SAYS HE WAS TOLD IT WAS QUINONES

PAGE 87 SAYS HE TOOK TO CAGES

PAGE 92 STATES HE WAS TO RIGHT OF SGT OBRIEN, HE ALSO DID NOT HEAR PETITIONERS - CO-DEFENDANT MAKE ANY STATEMENTS

PAGE 111 LINE 18 FIRE OFFICER WHITT TESTIFIED HE TOLD INMATES TO PUT HANDS ON FENCE AND CUFF UP

AND PAGE 112 LINE 24 THAT HE DIRECTED TWO OFFICERS TO GRAB CUFF FIRST INMATE (ALLEGEDLY SGT OBRIEN AND LT. NASWANER TO CUFF CO-DEFENDANT SARANDEGO)

PAGE 113 THAT INMATE IN FRONT OF HIM TRIED TO HIT HIM AND ON PAGE 113 LINE 21-23 SAYS SOMEONE JUMPED ON HIS BACK AT THAT MOMENT, THEN HE WAS ABLE TO CUFF THE INMATE

ON PAGES 116-117 HE IDENTIFIES PETITIONER QUINONES AS THE PERSON WHO ENCOUNTERED HIM, THAT HE CUFFED UP

NOW, YOU HAVE CO SHARP, C.O JAROL STATING HE ASSISTED SHARP AND SGT LOPEZ CUFF PETITIONER AND FIRE / SAFETY OFFICER WHITT, ALL SAYING THEY RESTRAINED OR ASSISTED RESTRAINING PETITIONER QUINONES

PAGE 126 STATES HE DOESN'T KNOW WHO ASSISTED HIM ONLY THAT SOMEONE UNKNOWN JUMPED ON HIS BACK

PAGE 121 ADMITS IN REPORT HE PUT HANDS BUT, T.D.'S PETITIONER IN COURT. AND ON PAGE 122 STATES DIDN'T SEE CO SHARP ASSAULTED

PAGE 127 STATES THE MAN WHOM HE HAS ZONED AS PETITIONER DID NOT ATTEMPT TO ASSAULT ANY ONE TO HIS KNOWLEDGE

NOTE: STATE IN ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS HAS NEGLECTED TO INCLUDE TRANSCRIPTS OF NOVEMBER 30th AND TESTIMONY OF LT. NYSWANER

NOV. 30th PAGE 17 LINES 2-6 LT NYSWANER TESTIFIED Q "YOUR FOCUS WAS ON THIS ONE PARTICULAR INMATE?" A. "YES" Q OKAY, DO YOU LATER DETERMINE WHO THAT INMATE WAS, THE NAME OF THAT INMATE" A "I BELIEVE IT WAS QUINONES

NOW, YOU HAVE C.O. SHARP, JAIL-SHARP-SGT LOPEZ, FIRE/SAFETY WITT AND LT. NYSWANER ALL CLAIMING TO HAVE RESTRAINED THE PETITIONER.

NO REASONABLE JURY WOULD HAVE FOUND PETITIONER GUILTY HAD THE TRIAL BEEN SEVERED AND ALL THESE C.O.'S GIVING ALL THE CONTRADICTORY TESTIMONY

FOR THE TRUTH OF THE MATTER, SEE PAGE 4 PARAGRAPH 4, FIRE AND SAFETY OFFICER WITT AND CO WILLIAMS AS STATED ON PAGE 4 PARAGRAPHS 4 AND 5 CUFFED ME AFTER HAVING JUMPED ON MY BACK, STRANGLING ME IN A NOVEL BASEBALL-CHOKE HOLD, NEVER ASSAULTED ANYONE, DID NOT PARTICIPATE IN A RIOT. IT IS APPALLING THAT NO TWO C.O.'S MAKE THE SAME STATEMENT REGARDING PETITIONER

PETITIONER WAS DENIED ADEQUATE ASSISTANCE OF DEFENSE COUNSEL AND A FAIR AND IMPARTIAL TRIAL, INFRINGING UPON PETITIONER ~~[illegible]~~ GOD'S LIBERTY INTEREST

"(PRESENT AT LEAST TO A SMALL DEGREE WHENEVER MULTIPLE MEANS ARE AT ISSUE), [A]ND IN PETITIONER'S CASE, ALSO MULTIPLE DEFENDANTS, THAT JURORS UNLESS REQUIRED TO FOCUS UPON SPECIFIC FACTUAL DETAIL WILL FAIL TO DO SO" SCHAD V. ARIZONA, 501 U.S. AT 632-633; ALSO: ("[I]T IS AN ASSUMPTION OF OUR SYSTEM OF CRIMINAL JUSTICE ... THAT NO PERSON MAY BE PUNISHED CRIMINALLY SAVE UPON PROOF OF SOME ILLEGAL CONDUCT")

SPECIFICALLY IN PETITIONER'S CASE, DEFENSE COUNSEL DID NOT MOVE TO SEVER THE TRIALS, WHICH SUBJECTED THE JURORS TO HEARING DETAILS WHICH DID NOT HAVE RELEVANCE TO PETITIONER'S CHARGES, NUMEROUS WITNESSES WERE CALLED ON TO TESTIFY, [A]ND EVEN THOUGH THEY ALL GAVE CONFLICTING, CONTRADICTORY STATEMENTS OF EVENTS AS RELATED TO DEFENDANT-PETITIONER, THE JURORS EVIDENTLY WERE OVERWHELMED.

SGT OBRIEN GAVE DIFFERENT VERSIONS OF EVENTS AND COUNSEL SHOULD HAVE MOVED TO IMPEACH HER TESTIMONY, ALLEGEDLY SHE HEARD A CO-DEFENDANT MAKE STATEMENTS THAT C.O.'S CAUSE BY DTA NOT HEARD, WITNESSES GIVEN CONTRADICTORY AND ANTIVOUS STATEMENTS REGARDING PETITIONER'S [A]LLEGED INVOLVEMENT IN THE INCIDENT

COUNSEL'S ASSISTANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS DENYING PETITIONER ADEQUATE ASSISTANCE OF DEFENSE COUNSEL, RESULTING IN DENIAL OF DUE PROCESS, EQUAL PROTECTION OF THE LAW AND A FAIR AND IMPARTIAL TRIAL

COUNSEL AS WELL AS THE COURT SHOULD BE AWARE THAT JURY'S ARE PRONE TO CONSIDER A DEFENDANT GUILTY BY ASSOCIATION, IN OTHER CASES BUT, MORE SO IN A CASE WHERE A DEFENDANT IS ALREADY IN PRISON AND IS CHARGED WITH OTHER OFFENSES COMMITTED THERETO

PETITIONER WOULD ASK, WHAT COMPETENT JUDGE, PROSECUTOR OR ATTORNEY WOULD LOOK AT A CLAIM OF INEFFECTIVE / INADEQUATE ASSISTANCE OF DEFENSE COUNSEL AND, NOT COMPREHEND THAT THE DEATH IS A VIOLATION OF CONSTITUTIONALLY GUARANTEED RIGHTS?

"(IN RE, HOCHBERG (1970) 2 CAL 3d 870); STRICKLAND V WASHINGTON (1984) 466 U.S. 668; PEOPLE V FOSSELMAN, (1983) 33 CAL 3d 577; IN RE LAWLER (1979) 23 CAL 3d 190 THE SIXTH AMENDMENT TO THE U.S. CONSTITUTION GUARANTEES CRIMINAL DEFENDANTS THE RIGHT TO COUNSEL, WHICH INCLUDES THE RIGHT TO EFFECTIVE REPRESENTATION (MCMANN V RICHARDSON (1970) 397 U.S. 759)

"A CRIMINAL DEFENDANT'S CLAIM THAT COUNSEL'S ASSISTANCE WAS SO DEFECTIVE AS TO REQUIRE REVERSAL HAS TWO COMPONENTS", THE DEFENDANT MUST SHOW THAT: (1) COUNSELS REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS AND, (2) BUT, FOR COUNSELS ERRORS THE RESULTS OF THE PROCEDURE WOULD HAVE BEEN DIFFERENT (466 U.S. at Pp 688-693)

"REASONABLE PROBABILITY DOES NOT REQUIRE DEFENDANTS TO SHOW THAT COUNSELS CONDUCT MORE LIKELY THAN NOT ALTERED THE OUTCOME OF THE CASE", "INSTEAD REASONABLE PROBABILITY IS MERELY A PROBABILITY THAT IS SUFFICIENT TO UNDERMINE CONFIDENCE IN THE OUTCOME." "TO DO SO HE OR SHE MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE FACTS THAT ESTABLISH A BASIS FOR RELIEF ON HABEAS CORPUS" (PEOPLE V LEDESMA (1987) 43 CAL 3d 171)

A.) DEFENSE COUNSEL AFTER SUPPOSEDLY DEPOSING THE STATES WITNESSES AND HEARING THE CONFLICTING STATEMENTS OF THE ALLEGED OCCURRENCES RELATING THE PETITIONER, AND AS DEFENSE COUNSEL SHOULD HAVE KNOWN THAT WITH ALL BEING TAKEN TOGETHER, THE WITNESS TESTIMONY WOULD BE PREJUDICIAL TO PETITIONER, STATE JURY'S ARE PRONE TO ASSUME ONE IS GUILTY, TWO OR MORE ARE GUILTY, AND THEY ARE ARRANGED TO PRISON, COUNSEL SHOULD HAVE MOVED TO SEVER TRIALS TO INSURE A FAIR AND IMPARTIAL TRIAL

B.) SGT UBALDO GAVE CONFLICTING AND PERSUASIVE TESTIMONY AND DEFENSE COUNSEL FAILED TO IMPEACH HER TESTIMONY AS A WITNESS

C.) JURORS HEARD NUMEROUS WITNESSES OFFER CONFLICTING CONTRADICTORY TESTIMONY AND DEFENSE COUNSEL NEVER PUTTING THE CASE OUT, NOR DID SHE MOVE FOR A JUDGEMENT OF ACQUITTAL, SINCE WITH THE MANY CONFLICTING AND CONTRADICTORY VERSIONS OF PETITIONERS ALLEGED ACTIONS, STATE DID NOT PROVE HIM GUILTY OF THE OFFENSES FOR WHICH HE WAS CHARGED

PETITIONER REITERATES, FOR A TRUTHFUL ACCOUNT OF EVENTS, SEE PAGE 4, PARAGRAPHS 4 AND 5. PETITIONER IS ACTUALLY INNOCENT OF THE CHARGES FOR WHICH HE WAS TRIED, CONVICTED AND SENTENCE, IF MERE PRESENCE IN THE VICINITY OF AN OFFENSE IS A CRIME, THEN APPROX 800-816 OFFICERS WHO WERE AT ASPIL LEWIS / BULKLEY UNIT SHOULD HAVE BEEN SO CHARGED, AFTER ALL, THEY WERE AT BULKLEY UNIT TOO.

PETITIONER STATES THAT COUNSELS ASSISTANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, DENYING PETITIONER THE ASSISTANCE TO WHICH HE IS ENTITLED, THEREBY DENYING PETITIONER DUE PROCESS, EQUAL PROTECTION AND A FAIR AND IMPARTIAL TRIAL

"[T]O RENDER REASONABLY COMPETENT ASSISTANCE, AN ATTORNEY IN A CRIMINAL CASE MUST PERFORM CERTAIN BASIC DUTIES, GENERALLY THE SIXTH AMENDMENT AND ARTICLE 1, SECTION 15 REQUIRE COUNSEL'S DILIGENCE AND ACTIVE PARTICIPATION IN THE FULL AND EFFECTIVE PREPARATION OF ITS CLIENTS CASE, CRIMINAL DEFENSE ATTORNEYS HAVE A DUTY TO INVESTIGATE CAREFULLY ALL DEFENSES OF FACT AND LAW THAT MAY BE AVAILABLE TO THE DEFENDANT ...." (PEOPLE V POPE (1979) 23 CAL 3d 412) "THE REQUIREMENT IS NOT INADEQUATE ASSISTANCE THROUGH TRIAL, A SINGLE INDISCUSABLE ERROR WITHIN WITHDRAWS A POTENTIALLY MERITORIOUS DEFENSE IS SUFFICIENT" (PEOPLE V POPE SUPRA) "IF COUNSELS FAILURE TO PERFORM THOSE OBLIGATIONS RESULTS IN THE WITHDRAWAL OF A CRUCIAL OR

ADEQUATELY MEANINGFUL DEFENSE, THE DEFENDANT HAS NOT HAD THE ASSISTANCE TO WHICH HE IS ENTITLED" (PEOPLE V ROPE (1979) 23 CAL 3d 412)

("WHERE THERE IS NO CONCEIVABLE, RATIONAL, TACTICAL JUSTIFICATION FOR AN OMISSION, NOTHING MORE IS NECESSARY TO ESTABLISH INCOMPETENCE") (PEOPLE V JACKSON (1986) 187 CAL 3d 499, 505-506)

PETITIONER'S CASE IS NOT ONE IN WHICH COUNSEL'S PERFORMANCE CAN BE EXCUSED ON THE GROUND SHE MADE A TACTICAL DECISION. COUNSEL HAD THE OPPORTUNITY TO DEPOSE STATE'S WITNESSES AND SHOULD HAVE REALIZED IN ATTAL OF THIS SORT, WHICH HAD MULTIPLE DEFENDANTS AND ISSUES, THAT FOR PETITIONER TO BE TRIED WITH CODEFENDANTS WOULD BE PREJUDICIAL AND HARMFUL TO DEFENDANT - PETITIONER, AND WITH TOO MANY OFFICIAL PROCLAMATIONS THEY HAD RESTRAINED AND/OR ASSISTED IN RESTRAINING PETITIONER AND, THEREFORE SHOULD HAVE MOVED TO SEVER TRIALS

AND DEFENSE COUNSEL SHOULD HAVE MOVED TO TAKE EVIDENCE OBJECTIONABLY PERJURIOUS TESTIMONY AND/OR SHOULD HAVE BROUGHT TO THE FORE EVIDENCE ALL THE CONTRADICTORY TESTIMONY AND/OR MOVED FOR A DEFINITIVE JUDGMENT OF ACQUITTAL

AND APPELLATE COUNSEL OBVIOUSLY DID NOT READ THE TRANSCRIPTS OR AN ADEQUATE BRIEF WOULD NOT HAVE BEEN SUBMITTED

"THE MERE PRESENCE OF COUNSEL DOES NOT SATISFY THE CONSTITUTIONAL REQUIREMENT FOR ASSISTANCE AT TRIAL" "[T]HE TEXT OF THE SIXTH AMENDMENT ITSELF SUGGESTS AS MUCH, THE AMENDMENT REQUIRES NOT MERELY THE PRESENCE OF COUNSEL TO THE ACCUSED BUT, ASSISTANCE WHICH IS TO BE FOR HIS DEFENSE: THUS THE CORE PURPOSE OF COUNSEL'S GUARANTEE WAS TO ASSURE 'ASSISTANCE' AT TRIAL, WHEN THE ACCUSED WAS CONFRONTED WITH ~~THE~~ BOTH THE INTRICACIES OF THE LAW AND THE ADVOCACY OF THE PUBLIC PROSECUTOR" (U.S. V ASH (1973) 413 U.S. 300; AVERY V ALABAMA, (1940) 308 U.S. 444, 446; U.S V DECUSTAR (1979)

100 S.Ct. 302, 624 F2d 196)

"DUE PROCESS OF LAW CONVEYS NEITHER FIXED NOR FORMAL, NOR NARROW REQUIREMENTS; REFERENCE TO PROBLEM CONFRONTING JUDICIARY TO APPLICATION OF DUE PROCESS CLAUSE IS NOT TO ASK WHERE LINE IS DRAWN AND FOR ME TO BE DRAWN, BUT TO RECOGNIZE THAT IT IS FOR COURT TO DRAW IT BY GRADUAL AND EMPIRICAL PROCESS OF INCLUSION AND EXCLUSION"

(WOLF V COLORADO (1949) 338 U.S. 25)

PETITIONER STATES, DENIAL OF ADEQUATE ASSISTANCE OF COUNSEL RESULTS IN DENIAL OF DUE PROCESS OF LAW, AND DENIAL, IN THE INSTANT CASE, ALSO DENIAL OF EQUAL PROTECTION AND DENIAL OF FAIR AND IMPARTIAL TRIAL

CUMULATIVE ERROR DOCTRINE

"THE CONCEPT OF CUMULATIVE ERROR", AND/OR "THE CONCEPT PREJUDICE AND/OR THE FINDING OF EXISTENCE OF PREJUDICE TO CUMULATIVE EFFECT, OF COURSE IS NOT NEW, UNDER THE "CUMULATIVE ERROR" DOCTRINE, ERRORS THAT ARE INDIVIDUALLY HARMLESS MAY NEVERTHELESS HAVE A CUMULATIVE EFFECT THAT IS PREJUDICIAL"

(IN RE CARLOS AVENA (1996) 12 CAL 4th 694)

1.) IT WAS ERROR TO TRY ALL CONSTRUCTS TO GETHER

2) ERROR FOR COUNSEL NOT TO MOVE FOR SEVERANCE OR THE COURT NOT TO SO RULE SUA SPONTE

3) ERROR FOR COUNSEL NOT TO MOVE TO EXCLUDE SCOTUSBORO'S TESTIMONY

4) ERROR FOR COUNSEL NOT TO MOVE FOR DEFENDANT'S ENDORSEMENT OF ALIBI

RESPECTFULLY SUBMITTED THIS THE 14 DAY OF SEPTEMBER, 2007

George Diaz Quiñones

PETITIONER, PRO-SE / PRO-PER

IN THE COURT OF APPEALS

STATE OF ARIZONA

DIVISION I

STATE OF ARIZONA, Plaintiff, v. (INMATE'S NAME) George Diaz Quinones Defendant	No. ~~CR 2004-008969-005 DT~~ No. CR 04-008969005DT **PETITION FOR REVIEW**

Pursuant to Rule 32.9(c) of the Arizona Rules of Criminal Procedure, Defendant requests that the Arizona Court of Appeals review the decision of the trial court in the above entitled cause entered 8/4 2006. This petition is based on the following memorandum of points and authorities.

DATED this 17th day of Aug, 2006.

x George Diaz Quinones

MEMORANDUM OF POINTS AND AUTHORITIES

I. SYNOPSIS OF THE TRIAL COURT'S RULINGS.

Defendant claims he did not resist or assault any corrections officers, his case should have been severed from his codefendants, and his trial attorney provided ineffective assistance, Pursuant to Rule 32.2(a), Arizona Rules of Criminal Procedure, he is precluded from relief because these claims either were or should have been raised on direct appeal or in the first Rule 32 proceeding

IN THE SUPERIOR COURT of THE STATE OF ARIZONA in AND For THE County of MARICOPA.

STATE of ARIZONA ; No 1CA-CR 05-0428
Plaintiff ; maricopa County Superior
Vs ; Court No CR-2004-008969-005 DT
GEORGE DIAZ Quinones ; MOTION For EVidently
Defendent ; Hearing

Before: THE Honorable Richard J. Trujillo, Judge of The Superior Court of Maricopa County Arizona.

Phoenix, Arizona
August 13th 2006
10:00 o:clock Am

I would like to have my case and evidence be review by Honorable Richard J. Trujillo I have tryed numerous times, To Appeal, Rule 32 and have all parties - Public Defender and or legal Advocate see my case. But only recieved a belligerent outlook and response for all any representing me.

I Have all evidence which includes:

A. PerJury to what witness statements were when on the stand.
B. Inadequate performance of my Public Defenders task at hand.
C. That The Prosecuter engaged in misconduct by offering me a succession of Pleas and then pullin

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them at the last minute by refusing to extend any offer to any of the three defendants unless all three of them agreed to plea guilty

D. conflict of intrest do to the fact that I was not individualy represented, but represented with two other defendents causing conflict in the minds of the Jurors.

E. That THE testimony of the states witnesses was not credible, insofar as different witnesses put him in different places at the sametime (3 Places to be exact) and describing his physical Appearance,

Respectfully Submitted on August 13th 2006 by Defendant:

#92908 GEORGE DIAZ QUINONES

George Diaz Quinones

CERTIFICATE OF SERVICE

I HEREBY CERTIFY UNDER DECLARE THAT I HAVE FURNISHED VIA POSTAGE PRE-PAID U.S. MAIL

TWO VOLUME AND ONE COPY TO THE CLERK OF THE COURT, U.S DISTRICT COURT SUITE 321 401 WEST WASHINGTON ST. SPC 10 PHOENIX, AZ 85003-2119

AND ONE TO RESPONDENTS AT STATE ATTORNEY GENERAL OFFICE COUNSEL FOR RESPONDENTS 1275 W WASHINGTON PHOENIX AZ 85007-2997

ON THIS THE 14 DAY OF SEPTEMBER 2007

(TO R32 Unit

In The Superior Court of The State of Arizona
IN and for the County of Maricopa

FILED
10-29-2006 14:00
MICHAEL K. JEANES, Clerk
By Gomith
Deputy

STATE of ARIZONA Plaintiff vs, George QUINONES Defendant	NO. CR 04-008969005 DT Motion to Request fo 60 Days Extension of time to allow Defendant to file Pro Per Petition for Post-Conviction Relief (Hon. Richard J. Trujillo

Having completed review, my Counsel is unable to find any claims for relief to raise in Post-Conviction relief Proceeding.

Pursuant to Rule 32.4(c)(2) I respectfully requests the Court extend the time for filling a Petition for Post-Conviction Relief for 60 days so I (defendent) may file a Rule 32 petition in propria Persona.

Respectfully submitted this 26 day of August 2006.
By George Quinones
George Quinones

Copy of the forgoing Mailed/delivered this 26 day of August 2006, to:

The Hon: Richard J. Trujillo
Judge of the Superior Court
Central Court Building.

201 West Jefferson
Phoenix, AZ 85003

Gerald Grant
Deputy County Attorney
301 W. Jefferson
Phoenix, Arizona 85003

George Quinones
ADOC # 072908
Arizona State Prison Complex
Eyman - Rynning
P.O. Box 3100
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By George Quinones
George Quinones

RECEIVED
AUG 29 2006
HON. RICHARD J. TRUJILLO