"Selective Justice?"

By: Michael Rivera

As a matter of universal principle, I see Justice as the 'Supreme Law of Nature', which is either the reward or the penalty resulting from my own thoughts and actions. However, as a convicted murderer, I have learned that the actual application of social Justice is an illusive, abstract ideal that is often sensationalized by politicians for their own professional gain; all the while selective Justice continues to be unfairly skewed against the economically disadvantaged by the very same governmental agencies responsible for interpreting and dispensing the laws of society as they see fit. Again, as a matter of principle, the Natural Law of Justice requires a certain measure of self-accountability on a personal level, in order for each of us to fulfill our individual responsibilities to ourselves first, and to society in general, secondly. As a matter of social law and order, selective Justice is being arbitrarily doled out by the impersonal judicial constructs that formulate the amoral basis of the mass incarceration of marginalized minorities in this country, which **MUST BE** abolished if we are to fulfill our interpersonal responsibilities to humanity as a whole.

For example, in the Commonwealth of Pennsylvania wherein I pled guilty to Third Degree Murder in January of 2002, Justice is being selectively meted out by the Post-Conviction Relief Act ('PCRA', herein), codified at **42 Pa.C.S. §§ 9541 et seq.** This statutory black hole has become the proverbial stopwatch that records the exact number of days, weeks, and months that a criminal defendant has to properly present and preserve their appellate claims to the court for review before the expiration date of their constitutional rights. In short, the PCRA requires that all claims for appellate review must be presented within one year from the date of sentencing, or those claims are then time-barred from being heard, regardless of their constitutional merit. Which basically means that we have one year to learn what usually takes law students an average of four years, and then we must translate this minimal knowledge of the law into an understandable — and hopefully successful — legal petition to the court, all in the name of constitutionally guaranteed equity.

Unfortunately, the bias inherent to the PCRA is not exclusive to the Pennsylvania appellate court system alone, as its one-year time limitation period parallels the federal Anti-terrorism and Effective Death Penalty Act ('AEDPA', herein), codified at **28 U.S.C. §§ 2241 et seq.** This federal statute also limits the amount of time that criminal defendants, both state and federal, have to challenge the validity of their convictions. However, unlike the PCRA, the AEDPA at least allows for statutory and/or equitable tolling of its time-bar restrictions, before it too prevents 'untimely' claims from being heard, regardless of their constitutional merit. Nevertheless, both the PCRA and the AEDPA exist to put

an end to the criminal appellate process for fiscal reasons, at the cost of the freedom of those of us who cannot afford to pay the high price of selective Justice. This is the venal reality of the broken appellate system as it exists today, which cannot be repaired, reformed, or replaced, without first being ABOLISHED from the root to the fruit. Then, and only then, can the statutes of social law and order be rewritten and re-interpreted to serve a healthy, functional purpose for a society rooted in rehabilitation and re-entry, rather than discriminatory punishment and the bottom dollar.

Ultimately, the fiscal need for the finality of criminal appeals has far outweighed the call for social Justice that the general public is currently demanding; even in the present political climate that is rife with racism, classism, and sexism. The legislative intent of the statutory construction of all appellate boundaries, like the PCRA and the AEDPA, are being misconstrued and misinterpreted to keep poor people who are ignorant of the law and cannot afford to purchase proper representation, from asserting our rights and receiving the constitutionally guaranteed equal protection of the law. This has been the case in Pennsylvania since around **1998**! As Pennsylvania Supreme Court Justice Baer opined in his insightful dissent in **Commonwealth v. Brown**, 596 Pa. 354 (Pa. 2006):

> "Ever since this Court construed the time limits provided by the PCRA, **42 Pa.C.S. §§ 9541, et seq.** as 'jurisdictional' in **Comm. v. Peterkin**, 554 Pa. 547 (Pa. 1998), it has felt compelled to tolerate constitutional violation upon constitutional violation, sacrificing fundamental rights at the altar of finality. The United States and Pennsylvania Constitutions, however, do not countenance finality at the expense of constitutional rights"...

In my opinion, Justice Baer is showing us that there is a dire need to abolish such prejudicial precedent, in order to ensure that the constitutional rights bestowed upon us by the forefathers of this great nation are no longer legislatively curtailed by the partisan politics of today, due to the erosion of checks and balances between the judiciary and legislative branches of government — in both, Pennsylvania and the federal system. A cursory review of the PCRA statute and its subsequent precedent will show that since 1995 that it was enacted, the PCRA has subsumed all other post-conviction remedies for appellate review in Pennsylvania, including the constitutionally guaranteed Writ of Habeas Corpus. And with the AEDPA mirroring the PCRA's time constraints on the federal level, the context of all appellate claims has become more important than the content of such appeals, which in essence nullifies the very same values and principles they claim to represent and uphold. Where is

the fairness for unrepresented appellants with constitutional violations that are presented in court 'too late'? Where is the so-called Justice for those of us being openly discriminated against because of our economic station in life?

By now it is evident that this unjust disservice affects me personally, as I am currently serving an illegal sentence as a result of a negotiated plea agreement that was breached by the Commonwealth at the time I was originally sentenced. However, because I could not afford to pay a professional advocate to present my appellate claims properly in a timely manner, my constitutional rights have now expired (like sour milk!), and my illegal sentence must be served in its entirety, irregardless of the Commonwealth's moral and legally-binding contractual obligations to uphold the validity of my negotiated plea agreement as it was originally written, agreed to, and accepted by the court. Therefore, I highlight the selective Justice I have been subjected to, in hopes that any dialogue and discourse that may evolve from this archive can possibly jump-start the process of abolishing such an obviously broken system, so that the voiceless and forgotten can be heard and remembered as equal members of the same society we are paying our dues to. Because after all, it's just as the Archbishop William Temple once said: "No man is a prisoner and nothing else."

That said, I conclude by thanking you for taking the time to read these thoughts, and hope that somehow we can come together to bridge the ever-widening divide between prisoners and our advocates.

In solidarity,

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