

No.
IN THE
SUPREME COURT OF THE UNITED STATES

JEREMY MARES, Petitioner,
-vs-
PEOPLE OF THE STATE OF ILLINOIS, Respondent.

On Petition For Writ Of Certiorari
To The Appellate Court Of Illinois

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether counsel appointed in a direct appeal from a felony conviction provides constitutionally sufficient representation where he files an unopposed summary motion seeking the recovery of property, but fails to challenge the defendant's conviction or sentence.

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The petitioner, Jeremy Mares, respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The decision of the Illinois Appellate Court (Appendix A) is reported at 2018 IL App (2d) 150565, and is published. No petition for rehearing was filed in the appellate court. The order of the Illinois Supreme Court denying leave to appeal (Appendix B) is reported at 98 N.E. 3d 45 (Ill. 2018).

JURISDICTION

On January 26, 2018, the Appellate Court of Illinois issued its decision. The Illinois Supreme Court denied a timely filed petition for leave to appeal on May 30, 2018. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Fourteenth Amendment to the United States Constitution

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

After a bench trial, Jeremy Mares was convicted of armed violence and aggravated battery. *People v. Mares*, 2018 IL 150565, ¶2. The judge subsequently sentenced Mares to the statutorily required minimum sentence of 10 years' incarceration for armed violence. *Id.* The Office of the State Appellate Defender – the Illinois agency tasked with representing indigent defendants on appeal – was appointed to represent Mares in his direct appeal.¹ *Id.*

On appeal, appointed counsel filed an "Unopposed Motion for Summary Disposition" requesting that Mares be reimbursed for an overcharged clerk's fee; the motion included a statement that counsel had read the record and determined that there were "no other issues to raise on appeal." *Id.* The appellate court granted the motion, issuing its final order and mandate in July 2013. *Id.* Mares subsequently filed a post-conviction petition alleging, *inter alia*, that he did not agree to have his appeal summarily dismissed, and that appellate counsel did not file a motion to withdraw and did not file a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). *Mares*, 2018 IL App (2d) 150565., ¶¶2-3. The petition further alleged that counsel's failure to file a motion to withdraw and accompanying *Anders* brief deprived the appellate court of the opportunity to determine if certain issues had merit. *Id.* Mares' petition was subsequently denied by the circuit court. *Id.*

On appeal from the dismissal of his petition, Mares argued that he was deprived

¹The agency is divided into five offices – one for each of Illinois' five appellate districts. Direct appellate counsel was employed in the agency's Second District office. Undersigned counsel is employed in the agency's Third District office.

of his right to effective assistance of counsel on direct appeal because in only seeking reimbursement of the overcharged clerk's fee, counsel failed to fulfill his obligation to assist Mares in challenging his conviction. *Id.* Mares argued that counsel's determination that he could not challenge Mares' adjudication of guilt or sentence triggered counsel's duty to withdraw from his appointment as Mares' appellate counsel under *Anders v. California*, and *People v. Jones*, 38 Ill. 2d 384 (1967). *Id.*

The appellate majority found that because counsel sought relief from the appellate court on Mares' behalf, *Anders* did not apply – the filing of a summary motion for the return of property amounted to constitutionally sufficient representation for a direct appeal. *Id.*, ¶¶ 9-10; 12-13.

Mares filed a petition for leave to appeal to the Illinois Supreme Court, which that court denied on May 30, 2018. Mares then requested leave to file a motion to reconsider the denial of the petition for leave to appeal, which was denied on July 18, 2018.

REASON FOR GRANTING CERTIORARI

This Court should grant review to address whether mounting a lone attack on fees and costs amounts to constitutionally sufficient representation on direct appeal from a felony conviction where it deprives the defendant of a judicial determination regarding the lawfulness of his conviction and sentence.

Jeremy Mares' direct appeal was terminated without the appellate court ever considering whether he was lawfully convicted and sentenced. Having discovered an accounting error in the mandatory court fees assessed in Mares' case, appointed counsel filed a unopposed motion seeking to correct that error. Counsel informed the appellate court of his conclusion that there were "no other issues to raise on appeal," precluding the court from considering on direct appeal any challenge to the curtailment of Mares' liberty.

At issue is whether direct appellate counsel was relieved of his obligation to comply with the procedure outlined in *Anders v. California*, 386 U.S. 738 (1967), and adopted by the Illinois Supreme Court in *People v. Jones*, 38 Ill. 2d 384 (1967), where he sought compensatory relief but found there were no meritorious issues regarding Mares' conviction or sentence. The appellate majority found that because counsel sought relief from the appellate court on Mares' behalf, *Anders* did not apply – the filing of a summary motion for the return of property amounted to constitutionally sufficient representation for a direct appeal. *People v. Mares*, 2018 IL App (2d) 150565, ¶¶ 9-10; 12-13. But by finding that appointed counsel was not required to comply with *Anders*, the appellate court endorsed a procedure that denies some indigent defendants their right to judicial review of their deprivation of liberty. Such a procedure fails to

provide all criminal appellants pursuing a first appeal as of right the minimum safeguards necessary to make that appeal “adequate and effective” as required by the Fourteenth Amendment. See *Evitts v. Lucey*, 469 U.S. 387, 392 (1985) (“[W]e have held that the Fourteenth Amendment guarantees a criminal appellant pursuing a first appeal as of right certain minimum safeguards necessary to make that appeal ‘adequate and effective.’”) (quoting *Griffin v. Illinois*, 351 U.S. 12, 20 (1956)).

Appellate courts are “an integral part of the...system for finally adjudicating the guilt or innocence of the defendant.” *Griffin*, 351 U.S. at 18. Put another way, “[i]n bringing an appeal as of right from his conviction, a criminal defendant is attempting to demonstrate that the conviction, with its consequent drastic loss of liberty, is unlawful.” *Evitts*, 469 U.S. at 397. A defendant’s right to a direct appeal with effective assistance of counsel derives from the curtailment of his liberty; but it is the court, not counsel, who must decide on direct appeal whether the defendant’s liberty was rightfully curtailed. *Evitts*, 469 U.S. at 396, 403-04. In other words, an “adequate and effective” direct appeal is, at minimum, one in which the defendant has received the assistance of counsel in obtaining a judicial determination regarding the lawfulness of his conviction and sentence.

The prophylactic framework outlined by this Court in *Anders* ensures that an indigent defendant’s right to representation on appeal is not swallowed by the prohibition against frivolous litigation. Counsel may not be relieved from his obligation to represent the defendant based upon his bare assertion that the defendant’s appeal is without merit (*i.e.*, that the defendant’s liberty was rightfully curtailed). *Anders*, 386 U.S. at 744-45. The court – not counsel – must make that determination. But here, the

appellate court has endorsed a procedure that allows counsel to unilaterally decide that the defendant is not entitled to further review of his conviction or sentence. Such a procedure subverts the underlying policy and safeguards inherent in *Anders*. In doing so, it fails to provide all indigent defendants in Illinois with the type of assistance constitutionally required to render the appellate proceedings fair. This Court should issue a writ of certiorari and declare that mounting a lone attack on fees and costs does not amount to constitutionally sufficient representation on direct appeal from a criminal conviction where it deprives the defendant of a judicial determination regarding the lawfulness of his conviction and sentence.

CONCLUSION

For the foregoing reasons, petitioner, Jeremy Mares, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,



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