

QUESTION(S) PRESENTED

- 1) Did the Trial Court Judge abuse his discretion by allowing me to proceed as a Pro Se Litigant, but denying me a reasonable continuance in the interest of Justice, giving me less than 12-hours to try to develop a defense strategy after having the State turn all of the Discovery papers over to me.
- 2) Was it an 'Abuse of Discretion' on behalf of the Trial Judge to impose two 30-year consecutive sentences upon me for two armed robberies committed with a Plastic Toy Gun, without finding any authorized basis for imposing a consecutive sentence outside of his own subjective feelings that I contributed to the community being "awash with armed robberies and violence."
- 3) Did the Winnebago Sheriff department, along with the 17th Judicial Circuit Court violate my VIII and XIV amendment U.S. constitutional rights, and my right under the Ill. Constitution article I, section 59, when they didn't provide me with a proper Preliminary/Probable Cause hearing and a reasonable bond.

LIST OF PARTIES

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

Honorable Judge Joseph G. McGraw
17th Judicial Circuit Court
Winnebago County

Mr. Joseph P. Bruscati
State's Attorney of Winnebago County

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the Appellate (Second District) court appears at Appendix _____ to the petition and is

- ☐ reported at 308 ILL. APP. 3d 748; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

~~A-F~~
A-F

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 1-18-18.
A copy of that decision appears at Appendix A-3.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

A-F

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution Amendments - IV, V, VI, VIII, XIV.

Illinois Constitution 1970, Article I. Sections 2, 6, 7, 8, 11, 9

Farell v. California, 422 U.S. 806, 818 (1975)

People v. Gibson, 136 Ill. 2d 362, 374-75 (1990)

Guarantee a criminal defendant the right of self-representation.
Page ~~6, 10, 17~~ 6, 10, 17

State of Illinois did not provide petitioner with a proper Probable Cause (Gerstein) hearing within 48-hours of arrest, during arraignment proceedings as mandated by U.S. Const. amendments IV, V, XIV, and Ill. Const. art. I. Secs 2, 6, 7. See

Gerstein v. Pugh, 420 U.S. 103, Page 15, 16.

Right to a preliminary hearing is implement through Illinois Statute 725 ILCS 5/109-1 (a) (1) (3).

The Constitution itself prohibit Excessive Bail.

United States Constitution Amendment VIII; and Illinois Constitution Article I. Section 9. Page 16, 17.

STATEMENT OF THE CASE

Denial of Reasonable Continuance

On 1-21-11, 51-days before my trial date I presented the trial court with a motion for substitution of counsel, stating my initial reasons for not wanting Public Defender Shelton Green to represent me, due to the gross overload of cases that he constantly complained about being burdened with, causing him, I felt, to have very little time and patience to 'effectively' handle my case, which in turn made me feel like he didn't really have my best interest at heart. The judge stated that he would hear my motion at a later date and didn't rule on it until denying it on 3-9-11, informing me that either Mr. Green was going to represent me or no one. At my next court appearance on 3-14-11, the day before trial was scheduled to start, I present the court with a motion of reconsideration for substitution of counsel, along with a request for a 'reasonable continuance' in the 'interest of Justice' in the event that I would have to proceed as a pro se litigant which I did after the judge

STATEMENT OF THE CASE

Continued

Denial of Reasonable Continuance

Flat-out denied both the motion and request. Then ordering the State to turn all of the 'Discovery' papers over to me and once again admonishing me that the trial was set to start tomorrow, the judge totally ignored my Plea's for time needed to review the discovery papers and — angrily accused me of trying to manipulate the court's schedule. As a last attempt effort to try to convince the judge to rule in my favor, I presented him with a 'Wrongful Conviction' case (Johnson v. Halloran, 194 Ill. 2d 493). I stumbled across the night before on the law library computer, involving Shelton Green when he was a supervisor at the Cook County Public defender's felony trial division. Calling both me and Mr. Green up to the bench, the judge dismissed my new complaint as not being apart of the original claims presented in my motion, appointed Mr. Green to be my stand-by Counsel, then abruptly ordered the Jury selection phase of the trial to begin.

REASONS FOR GRANTING THE PETITION

ISSUE - 1

Denial of Reasonable Continuance

Both the United States and Illinois Constitutions guarantee a criminal defendant the right to represent himself in court. (U.S. Const. Amends. VI, XIV; *Faretta v. California*, 422 U.S. 806, 818 (1975); Ill. Const. 1970, Art. I § 8, People v. Gibson, 136 Ill.2d 374-75 (1990)). That right was maliciously violated on 3-14-11 when Judge - Joseph G. McGraw of the 17th Judicial Circuit Court of Winnebago County, permitted me to proceed as a pro se litigant, but denied my motion for a 'reasonable continuance' in the 'interest of justice' once the 'discovery' papers were tendered over to me by the state. The court's mechanical refusal to afford me time to review the discovery papers, and immediately starting trial after having the state to turn the discovery papers over to me, 'embarrassed' me in the preparation of my defense and thereby prejudiced my rights, including my constitutional right to self-representation. *People v. Walker*, 232 Ill.2d 113, 131 (2009). Just as forcing an unprepared attorney to trial violates a defendant's constitutional right to counsel, so should forcing an unprepared pro se defendant to trial violate the constitutional right of self-representation.

E. L. L.

REASONS FOR GRANTING THE PETITION

ISSUE-1 (Cont.)

Denial of reasonable continuance

In Walker, 239 Ill. 2d at 125-26, the trial court believed that it was just a ploy on behalf of the attorney to obtain a continuance on the day of trial when she claimed that she mistakenly believed that the trial date was on January 26th instead of January 20, 1994, and thus she wasn't ready for trial. The judge in response stated that "there isn't a private attorney in the business who hasn't tried to pull something like this, calling it a 'dirty shame' and ordering the trial to commence that day."

The Supreme Court found Plain Error, finding that the trial court completely failed to exercise any discretion when ruling on the request for a continuance. The Supreme Court also found the record devoid of showing any evidence that the Circuit Court considered any of the relevant factors in denying the continuance. Instead the Circuit Court mechanically denied the continuance without engaging in thoughtful consideration of the specific facts and circumstances presented in this matter. So too did the Circuit Court judge in my case find that any request for a continuance was just a ploy to obtain additional unwarranted time. The complexity of the case also weighed in favor of a continuance. I (Merritt) faced eight

REASONS FOR GRANTING THE PETITION

ISSUE #1 (cont.)

Denial of Reasonable Continuance

Civilian witnesses, in addition to several police officers testifying against me.

According to Walker, 235 Ill. 2d 113, 131, 155-56 — The trial court in my case arguably abused its discretion, indeed failed to exercise any rational discretion when it denied my request for a reasonable continuance in the interest of justice, and forced me to trial immediately upon receiving discovery as a prose defendant, with less than 12 hours to prepare for trial.

STATEMENT OF THE CASE

Consecutive Sentencing

On March 16, 2011, and on May 30, 2012 at two separate jury trials, I was found guilty of two separate charges of armed-robbery with a dangerous weapon (a Plastic Toy Gun), and was sentenced to two 30-year consecutive sentences. At the sentencing hearing on 7-18-12, before announcing any term, and upon reviewing the statutory aggravating and mitigating factors involved, the judge stated that he believed that I was a "Changed and Repentant" man he thought would no longer pose any further danger to society, and that he didn't want to impose a sentence of "Natural Life" imprisonment. However, that's exactly what he did anyway when he imposed a consecutive sentence stating that a concurrent sentence would send the wrong message to society and that he didn't want to diminish the seriousness of the crimes that contributed to the community being "swash with violence and armed-robberies."

Yet the judge never found any "Authorized" basis for imposing a consecutive sentence, clarifying that the community needed protection from me.

REASONS FOR GRANTING THE PETITION

ISSUE - 2

Consecutive Sentencing

The 'spirit and purpose' of criminal sentencing in Illinois is established by our Constitution: "A sentence shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Illinois Constitution, 1970, Article I Section 11. Although a judge's discretion within this standard is broad, but broad does not license excessiveness. Judicial discretion must be subject to rational criteria. *Daniels v. Allen*, 344 U.S. 443, 496 (1953). Even a sentence within the statutory range may be excessive if it is greatly at variance with the spirit and purpose of the law. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

To impose a consecutive sentence in an armed-robbery committed with a plastic toy gun and unaccompanied by any verbal or physical aggravating factors is not only greatly at variance with the spirit and purpose of the law, but is without a doubt an abuse of discretion. A sentencing judge must balance relevant factors and make a reasoned decision as to the appropriate punishment in each case.

8/10.

REASONS FOR GRANTING THE PETITION

ISSUE-2 (Cont)

Consecutive Sentencing

People v. Latona, 184 Ill. 2d 260, 272 (1998). The problem with this consecutive 30-year sentence is that the court relied on the judges personal perception that I contributed to the community being "awash in violence and armed-robberies". Somewhat analogous is the case of *People v. Henry*, 254 Ill. App. 3d (899, 1st District 1993), where the accused argued that he was sentenced based on the trial judge's personal view as to the nature of the crime when he stated, "this is really a disgusting crime which is why you are receiving this amount of time. The Appellate court agreed with the accused and held that he was entitled to a new sentencing hearing to ensure that he was not sentenced based merely on the trial judge's subjective feelings. Henry established that there is a limit on the extent to which a court can impose a sentence based on subjective impressions about a crime. I was also sentenced based on the trial judge's subjective perception of more serious crime.

REASONS FOR GRANTING THE PETITION

ISSUE-2 (CONT)

Consecutive Sentencing

There was no evidence that the community was awash in violence and armed-robberies, and even if it were, to fashion a sentence for a defendant who commits a crime with a - Plastic Toy Gun as a means of addressing all of the violent crime woes of a community is an abuse of discretion. In this case at the second hearing (sentencing), the trial judge stated that he did not have a desire to impose a sentence of Natural Life imprisonment, and he noted the appeal of the defense counsel's argument that a consecutive sentence meant Life in prison. However, as a practical matter, the judge imposed a consecutive (Life) sentence anyway. After serving consecutive 30-year terms with day to day credit, I would be 87 years old. According to the Center for Disease Control, the average life expectancy (in 2008) of a black male was 70.6 years. Whereas at the age of 60 at the time of sentencing, I would be expected to live about until I'm 79. However with 30-year concurrent terms with all good-Conduct Credit available, I would have serve 15-years, and a 15-years sentence would absorb almost all of the remainder of life I can reasonably expect to have left to live. Imposition of a functional life sentence, or in my case a consecutive 30-years term has real monetary costs that

Consecutive Sentencing
REASONS FOR GRANTING THE PETITION

ISSUE-2 (cont.)

Far exceed any visceral satisfaction that I have been
punished severely. According to the Annual Report for the
Department of Corrections, the overall per capita cost to
house an inmate is \$21,451. Whereas the number would
be much higher if it reflected the added cost of care for
'Geriatric' prisoners. Burdening Tax Payers of the State by
imposing a sentence which is almost twice the expected
life span of a defendant who committed a couple of
armed-robberies with a Plastic Toy Gun is an abuse of
discretion that this Court can correct under Supreme
Court Rule 615 (b) (4).

STATEMENT OF THE CASE

ISSUE - 3

Probable Cause Hearing

On September 28, 2009, two days after my arrest on the 26th of September, I went to what was call a Video Court where a judge explained my rights to me, that the court would appoint me an attorney if I couldn't afford to hire one; that I have a right to a preliminary hearing that would take place at a later time; that I have a right to Plead not guilty and have a jury or a bench trial and lastly informed me of the offense that I was being charged with and how much time it carried.

REASONS FOR GRANTING THE PETITION

ISSUE-3

Probable Cause Hearing

Illinois Constitution Article I, Section 7, establishes that a preliminary and/or pre-trial Probable Cause determination must be made either through indictment or preliminary hearing within 30-days of arrest if the defendant is not released on bail. No person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of the grand Jury, or the person has been given a Preliminary hearing to establish Probable Cause. In Illinois, prosecution of felonies shall be by indictment or by information. No prosecution can be pursued by information unless a preliminary hearing has been held or waived in accordance with section 109-3, and at that hearing Probable Cause to believe that the defendant committed the offense was found and the provisions of section 109-3-1 of this code have been complied with — (725 ILCS 5/111-2 (a) (b), *People v. Davis*, 397 IL. APP. 3d 1058 at 1059.

In Winnebago County all prosecutions are by indictment which must be within 30-days from the date of arrest. However the initial arraignment that is held pursuant to 725 ILCS 5/113-1 falls short of the Probable Cause Determination required by the United States Constitution Amendments IV and XIV, and the Illinois Constitution Article I.

REASONS FOR GRANTING THE PETITION

ISSUE - 3

Probable Cause Hearing

Sections 2 and 6. In *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), the United States Supreme Court held that it is unconstitutional to hold a person arrested without a warrant for 30 days before a judicial determination of Probable Cause is made, and held that states must provide a judicial Probable Cause Determination within 48 hours of the accused arrest. The Court also stated that in the case of detentions over 48 hours, the government bears the burden of proving an emergency or other extraordinary circumstances which justify the delay. *Id.* at 500 U.S. 57.

The Illinois Supreme Court has also addressed this issue in *People v. Willis*, 215 Ill.2d 517 (2005); *People v. Nicholas*, 318 Ill.2d 104 (2005) and stated referring to 725 ILCS 5/109-1 (West 2006), and the Probable Cause Hearing described in section 109-13, that there (must be) are at least three major problems with the state's argument. First section 109-1 expressly provides that of the purposes of the hearing described therein, in addition to admitting the defendant to bail, is to schedule a preliminary hearing in appropriate cases. 725 ILCS 5/109-1(b) (3) (West 2006). Thus the described in section 109-1 can not itself be the preliminary hearing. The one issue that remains clear is that a criminal defendant in Winnebago County is not provided with a proper Probable

REASONS FOR GRANTING THE PETITION

ISSUE - 3 (Cont.)

Probable Cause Hearing

Cause determination within 48-hours of arrest. Neither does Winnebago County provide a defendant with a "reasonable bond" in accordance with the Eighth amendment of the U.S. Constitution and Illinois Constitution article I. Section 9, which prohibits the use of "Excessive Bail". Excessive money bonds imposed on a poor pre-trial detainee violates the VIII and XIV amendments of the United States Constitution. The fact that an accused individual who has been detained in jail between his arraignment and the final adjudication of his case is more likely to receive a conviction or jail sentence, than an accused individual who has remained free on bail, is recognized by the Supreme Court in *Stack v. Boyle*, 342 U.S. 214.

In closing, I never received a Preliminary/Probable Cause hearing or a Reasonable Bond. My bond was initially set at one million dollars. Then upon requesting a bond reduction, it was raised to three million dollars. It is clear that all of the issues raised here are valid and violate my rights secured by the United States and Illinois Constitutions and applicable statutes.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Phillip T. Merrill

Date: April 10, 2018