18-6973 ORIGINAL

NO. ____________

Supreme Court, U.S.
FILED
NOV 30 2018
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ANDY EDWARD MINOR -- PETITIONER

VERSUS

JOSEPH CSASZAR, SMCI SUPT. -- RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI

SUPREME COURT OF STATE OF MISSISSIPPI

court of last ruling

PETITION FOR WRIT OF CERTIORARI

Andy E. Minor, #96074
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B... SHOULD MINOR'S CONVICTION BE VACATED AND SENTENCE SET ASIDE DUE TO VINDICTIVE PROSECUTION?

Petitioner says Yes!

C... SHOULD MINOR'S SENTENCE AS A HABITUAL OFFENDER BE SET ASIDE AS ILLEGALLY IMPOSED AS A MATTER OF LAW AND/OR IN THE INTEREST OF JUSTICE?

Petitioner says Yes!

LIST OF PARTIES

All parties appear in the caption of the cover page of this case... With the exception that maybe Respondent Joseph Csaszer, SMCI Superintendent, should be followed by ET'AL (To include all appropriate respondents of MDOC, should there be any).

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.

OPINION BELOW

The opinion of the highest state court to review the merits appears at Appendix A, to the petition and is unpublished.

JURISDICTION

The date on which the highest state court decided Minor's case was October 31, 2018. A copy of that decision appears at Appendix A. This petition is filed within ninety (90) days of said date--and the jurisdiction of this instant court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in pertinent part as follows:

"... Nor shall any state deprive any person of life, liberty, or property, without due process of law."

further,

"The Due Process clause prohibits a prosecutor from using criminal charges in an attempt to penalize a defendant's valid exercise of constitutional or statutory rights."

and further,

"The Due Process clause forbids the judge to rely on materially false or unreliable information in imposing sentence.

U.S. CONST. XIV Am.

STATEMENT OF THE CASE

Petitioner Minor was charged by criminal indictment with the offense(es) of; Shooting into a dwelling; aggravated assault; and possession of a weapon by convicted felon. Said offenses were charged to have occurred on June 29, 2010, and was made pursuant to Miss. Code Ann. §§§ 97-37-29, 97-3-7, and 97-37-5, respectively.

Petitioner Minor entered a plea of not guilty to such charges, and the case was tried to a jury--whereas, in the Circuit Court of Jefferson County, Mississippi, on/or about October 7, 2010, in Cause No. 2010-54-KR. Subsequently thereafter, Petitioner Minor was sentenced to consecutive terms of imprisonment, for a total of forty (40) years as a §99-19-81 habitual offender, without possibility of parole, to be served in the custody of the Mississippi Department of Corrections.

REASONS FOR GRANTING THE PETITION

A.

MINOR'S CONVICTION SHOULD BE VACATED AND SENTENCE SET ASIDE DUE TO HIS ACTUAL INNOCENCE.

Petitioner asserts that he is actually innocent of the offenses resulting in his conviction and sentence. Herein, Petitioner has set forth facts, supported by case law of his actual innocence; see, Fairman v. Anderson, 200 F.3d 813 (5th Cir. 1999). Thus, Petitioner's conviction and sentence should be reversed and set aside with prejudice, as a matter of law and/or in the interest of justice.

In the case sub judice, the State (Prosecutor), failed to set forth essential elements of the crimes in which Petitioner stands convicted of. In this regard, the Mississippi Supreme Court stated as follows:

> "That if the facts and evidence considered challenge to the sufficiency of the evidence, point in favor of the defendant on any element of the offense with such force that reasonable men could not have found beyond a reasonable doubt, that the defendant was guilty."

Thus, the court should reverse and render the cause with instructions; See, Gardner v. Florida, 430 U.S. 349, 360 (1977) and Foman v. Davis, 371 U.S. 178, 182 (1962).

Petitioner is actually innocent, as partially corroborated by the alleged victim's own words, during direct-examination by the Prosecutor-- as follows:

> "I hear this knock on the door, and this dude is trying to come in, and he says that; --all of a sudden there's a shotgun blast."

Trial Transcript, Page 82, Lines 1-4...

Thus, when the shotgun blast was heard, Petitioner was standing at the door knocking (no crime in that--without conceding to any crime at all). The shotgun blast was not fired through the door at which Petitioner was knocking on. Petitioner is actually innocent of the offenses he stands convicted of; See Murray v. Carrier, 477 U.S. 478 (1986) and Herrera v. Collins, 506 U.S. 390, 400 (1995).

Further, Deputy Shelby trial testimony was partially exculpatory, tending to exonrate Petitioner and support this claim of actual innocence, as follows:

Q. What was there determination as to whether or not that was the weapon (a rifle on exhibit), that had been used to cause the injuries?
A. Yes, sir.
Q. What determination did you make?
A. That wasn't the weapon.
Q. Do you know whose weapon that is?
A. From what I was told, it was Mr. Scott's weapon.

Trial Transcript, Page 56, Lines 1-7...

Followed by further testimony in which corroborates Petitioner's actual innocence, as follows:

"had this feeling that this man is coming back from sunday, because of prior history, and had already grabbed my gun."

Trial Transcript, Page 82, Lines 5-7...

Thus, when the shotgun blast was fired (heard), the victim had possession of his own rifle--not Petitioner, as attempted to portray by the Prosecutor. Notwithstanding the fact that this rifle was improperly admitted into evidence (as the weapon used by Petitioner), --4th Amendment and Rules of Evidence violations--it further supports Petitioner's claim of actual innocence; see, Bostick v. Peters, 3 F.3d 1023, 1027 (7th Cir. 1993) and Lawhorn v. Allen, 519 F.3d 1272, 1288 (11th Cir. 2008).

Even though Petitioner has not advanced this claim of actual innocence from the outset--it is properly before this court at this time (Supreme Court of Mississippi denied relief less than ninety (90) days ago). In this regard, any procedural default is excused under the actual innocence exception--because Petitioner's claim is true (supported by the record), and renders conviction(s) void, and cannot be legal cause for incarceration; see, Henderson v. Sargent, 926 F.2d 706, 713 (8th Cir. 1991) and Gonzalez v. Abbott, 967 F.2d 1499, 1504 (11th Cir. 1992).

Applicable herein, in the determination of this specific claim, and petition as a whole, is a precedent taken from the Murray court (Murray-infra, 477 U.S. at 496)... The court stated as follows: "Procedural default would be excused, even in the absence of cause, when a violation of Constitutional magitude had/has probably resulted in a conviction of one (as herein) whom is actually innocent; See, Sawyer V. Whitley, 505 U.S. 333, 346 (1992). See also, Schlup V. Delo, 513 U.S. 298, 329 (1995) and House V. Bell, 547 U.S. 518, 536 (2006).

B.

MINOR'S CONVICTION SHOULD BE VACATED AND SENTENCE SET ASIDE, DUE TO VINDICTIVE PROSECUTION.

In The case sub judice, Petitioner's conviction and resulting sentence was by products of vindictive prosecution... The Grand Jury charged The weapon used in commission of This crime as a shotgun. This raises The question; why The Prosecutor introduced said rifle as evidence against Petitioner?--apparently solely To prejudice The jury against Petitioner. The record clearly and plainly shows That The rifle in question belonged To The alleged victim--That The victim had The rifle in his own hand(s) when Petitioner was allegedly Knocking at The door, and The shotgun blast was heard... Vindictive prosecution; see, U.S. V. Miller, 948 F.2d 631, 633 (10th

Cir. 1991) and U.S. V. Montoya, 45 F.3d 1286, 1299 (9th Cir. 1995).

The factual and material question to be answered is... why would the Prosecutor introduce the rifle as evidence--other in further aid of vindictive prosecution; See, U.S. V. Goodwin, 457 U.S. 368, 373 (1982). See also, U.S. V. Paramo, 998 F.2d 1212, 1220 (3d Cir. 1993) and U.S. V. Stokes, 124 F.3d 39, 45 (1st Cir. 1997).

In the case at bar, the Grand Jury indicted Petitioner for use of a Shotgun--the victim stated it was a shotgun blast... as oppose to, There was no formal nor informal charge of Peti- being in possession of a rifle. The Prosecutor knew that the indictment charge in this case was use of a shotgun--not a rifle, which supports the claim of vindictive prosecution further. Although the line between proper and improper advocacy is not always clear, courts have consistently found certain types of prosecutorial conduct improper; see, Blackledge V. Perry, 417 U.S. 21, 27 (1974) and Bordenkircher V. Hayes, 434 U.S. 357, 363 (1978).

Vindictive prosecution does not necessarily commence during Trial... it can foreseeable commence as early as initial plea-bargaining stage; with idle threats and/or unforeseeable promises (or other subtle means--vindictive prosecution; see, Neal v. Cain, 141 F.3d 207, 214 (5th cir. 1998). At any rate, in a final/formal disposition of this matter, the court should not destine between pre- and post trial vindictiveness--the emphasis to be placed on the vindictive behavior of the prosecutor; see, U.S. v. Garza-Juarez, 992 F.2d 896, 907 (9th cir. 1993). See also, U.S. v. Wells, 262 F.3d 455, 466 (5th cir. 2001) and U.S. v. Suarez, 263 F.3d 468, 479 (6th cir. 2001).

There was no witness testimony, nor any physical evidence that Petitioner possessed or fired a rifle, in this case record. Being without an alleged shotgun in evidence, the prosecutor evidently needed a weapon to display to the jury in the State's case-in-chief, and opted for the on-hand rifle (knowing that said rifle was not owned nor ever possessed by Petitioner. There is no evidence whatsoever in the record that a rifle was used as the assaultive weapon in this case. The rifle was introduced as evidence in this trial to only inflame the passions of the jury against Petitioner, and to further vindictive prosecution; see, U.S. v. Huber, 404 F.3d 1047, 1054 (8th cir. 2005) and U.S. v. Campbell, 410 F.3d 456, 461 (8th cir. 2005).

The most critical question to be answered is, why the prosecutor introduced the rifle as evidence against petitioner... The critical inquiry is whether the evidence (credible or otherwise) shows beyond a reasonable doubt that petitioner committed the crime(s) in question; and, did so under such circumstances that every element of the offense existed. No such essential elements was proved in this case and thus, petitioner's conviction and resulting sentence derived from vindictive prosecution; see, Thigpen v. Roberts, 468 U.S. 27, 31 (1984). See also, U.S. v. Lopez, 474 F.3d 1208, 1211 (9th Cir. 2007) and U.S. v. Poole, 407 F.3d 767, 774 (6th Cir. 2005).

As a further showing of vindictive prosecution, at one stage of the trial, the prosecutor elicited false information -- knowing such evidence to be false, as follows:

Q. Deputy Shelby, you didn't find anything of Andy Minor's there, did you, that you know of?
A. one spent cartridge.
Q. You found a spent cartridge?
A. Yes.

Trial Transcript, Page 56, Lines 21-25...

This exchange was to impress upon the jury that petitioner allegedly had the rifle and cartridges -- knowing this to be false information. The rule-of-thumb is that the prosecutor may not

Knowingly present false Testimony, and has a duty To correct Testimony Known To be false. The Prosecutor well Knew That The spent Cartridge (nor was the rifle), was not even remotely connected To Petitioner in This cause... rathen Than correct This Known false Testimony, the Prosecutor expounded on same more so, implicating To the jury That This Known false Testimony was indeed True-- in further promotion of vindictive prosecution; see, Mooney V. Holohan, 294 U.S. 103, 112 (1935). See also, Napue V. Illinois, 360 U.S. 264, 269 (1959) and U.S. V. Lopez, 474 F.3d 1208, 1211 (9th Cir. 2007).

During closing argument, the Prosecutor once again highlighted this Known false Testimony (evidence) as follows:

PROSECUTOR: Now, That's the injury, causing bodily injury with [t]hat [r]ifle, deadly weapon There.

Trial Transcript, Page 82, Lines 15-16...

The Prosecutor's duty in a criminal prosecution is to seek justice. Therefore, the Prosecutor should prosecute with earnestness and vigor, but may not use improper methods calculated To produce a wrongful conviction--as herein; See, Berger V. U.S., 295 U.S. 78, 88 (1935). See also, U.S. V. Jones, 52 F.3d 924, 926 (11th Cir. 1995) and

U.S. v. Goldberg, 105 F.3d 770, 776 (1st cir 1997).

C.

MINOR'S SENTENCE AS A HABITUAL OFFENDER IS ILLEGALLY IMPOSED AS A MATTER OF LAW AND/OR IN THE INTEREST OF JUSTICE.

In The case sub judice, PeTiTioner was noT properly indicTed as a habiTual offender [Miss. Code Ann. § 99-19-81], . . . as one (1) of The underlying prior felony conviction in which The indictment charged ThaT on February 16, 1994, The said Andy Edward Minor pled guilty in The Circuit Court of Adams County, Mississippi -- in Cause No. 10105, and was senTenced To a prison Term for grand larceny. However, The prior conviction in question ended in a penal sanction of only probation, not a prison senTence. Thus, The habiTual offender portion of PeTiTioner's senTence is illegally imposed as a matter of law, and/or in The interest of justice; see, Carmell v. Texas, 529 U.S. 513, 526 (2000). See also, Crawford v. Washington, 541 U.S. 36, 43 (2004) and Davis v. Washington, 547 U.S. 813 (2006).

The habiTual offender sTaTuTe, -pursuanT To Miss. Code Ann. § 99-19-81, read as follows:

"every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more, in any state or penal institution, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be retuced or suspended, nor shall such person be eligible for parole or probation."

However, this sentence in question, under cause No. 10105, was for sixty (60) months unsupervised probation... not a sentence to a term in a penal institution; see, Ingraham v. Wright, 430 U.S. 651, 671 (1977). See also, U.S. v. Smith, 568 F.3d 923, 928 (11th cir. 2009) and U.S. v. Douglas, 576 F.3d 1216, 1219 (11th cir. 2009).

Black's Law Dictionary defines probation as a court-imposed criminal sentence that subject to stated conditions, releases a convicted person into the community, instead of sending the criminal to jail or prison; see, Probation-- Black's Law Dictionary (10th ed. 2014) and U.S. v. Granderson, 511 U.S. 39, 43 (1994)... Thus, in the instant case, Petitioner's prior grand larceny conviction and sentence of sixty (60) months probation, was not a sentence to a term in a penal institution, and does not satisfy the requirements of Section 99-19-81. Petitioner's sentence as a habitual offender is illegally imposed, based on the trial court's reliance on a conviction and sentence that does not meet the requirements outlined by the plain language of the habitual offender statute; see, Wilkinson v. Austin, 545 U.S. 209, 220 (2005).

At the conclusion of the guilt phase of this criminal prosecution-- the trial court failed to properly conduct a bifurcated trial for sentencing purpose(s). In this regard, a jury is to decide the question of guilt or innocence, and, subsequently the the trial judge is to serve as the finder of fact in determining whether the habitual offender part of the indictment is established by the requisite degree of proof. The court(s) holds that, under §99-19-81, a bifurcated trial is mandatory--as was denied petitioner herein; see, White v. Illinois, 502 U.S. 346, 365 (1992) and Giles v. California, 554 U.S. 353, 378 (2008).

As happened in petitioner's case, there appears to be some tendency to routinely allow the state to produce some documentation of prior offenses, and for the trial court to perfunctorily find the defendant a habitual offender, then routinely pass out the sentence mandated. The courts throughout the State of Mississippi has left no doubt that the requirement of a bifurcated trial is mandatory... and that it means a full two-phase trial prior to any finding that a defendant is a habitual offender. Thus, Petitioner's habitual offender sentence is illegally imposed; see, U.S. V. Tucker, 404 U.S. 443, 447 (1972). See also, U.S. V. Craven, 239 F.3d 91, 103 (1st Cir. 2001) and Torres V. Berbary, 340 F.3d 63, 72 (2d Cir. 2003).

Petitioner has a fundamental constitutional right to be free from an illegal sentence. In the case at bar, Petitioner was sentenced as a habitual offender without a bifurcated sentencing trial. This failure resulted in the trial court improperly relying on Petitioner's prior grand larceny conviction as an underlying predicate of the habitual offender statute-- as Petitioner was sentenced to sixty (60) months probation-- not sixty (60) months to serve in jail or prison. Said probationary sentence could have been denoted and proved, had the trial court properly conducted a bifurcated sentencing trial. In this matter, Petitioner's habitual offender sentence is illegally imposed and should be set aside; see, Melendez-Diaz V. Mass., 557 U.S. 305, 319 (2009) and Bullcoming V. New Mexico, 564 U.S. 647, 651 (2011).

Post-Conviction Motion Amendment as of September 20, 2018.

1. That on/or about October 7, 2010, in Jefferson County, Mississippi Circuit Court Cause No. 2010-54-KR, Petitioner was sentenced to consecutive terms of imprisonment, for a total of forty (40) years, as a §99-19-81, habitual offender.

2. That following an unsuccessful direct appeal-- that on/or about June 25, 2018, in the Supreme Court of Mississippi, Petitioner caused to be filed his Application for Leave, to proceed in the Trial Court with motion for post-conviction collateral relief-- Docket No. 2018-M-00917.

3. That on/or about August 9, 2018, in the Supreme Court of Mississippi, Petitioner caused to be filed his first Motion to Amend the original post-conviction collateral relief motion-- Cause No. 2018-2491.

4. That underlying the consecutive sentences, the State alleged that on August 10, 1989, in Adams County, Mississippi Circuit Court Cause No. 8814, Petitioner was sentenced to five (5) years imprisonment (1 year to serve - remaining balance suspended for 5 years on probation)... and that, on February 15, 1994, in Adams County, Mississippi Circuit Court Cause No. 10105, Petitioner was sentenced to five (5) years (sentence suspended and Petitioner placed on 5 years

unsupervised probation); after the timely payments of specific fees and costs. Said sentence following a conviction for manufacture of a schedule I controlled substance and grand larceny, respectively.

5. That at the imposition of said sentences (1989 and 1994), Petitioner was not under supervision or suspended sentences, for a prior conviction. In this regard, Petitioner's consecutive sentence(s) imposed on October 7, 2010, was in violation of the sentencing statute (Miss. Code Ann. § 99-19-21).

CONCLUSION

The multiple cumulative errors committed throughout the trial court criminal proceedings in this cause, unduly prejudiced Petitioner, thereby preventing him from obtaining a fair trial and due process of law.

When cumulative errors are presented for review, some courts has held that individual errors, not reversible in themselves, may combine with other errors to make-up reversible error.

The question under these cases, and as well as other cases is whether the cumulative effect of all errors committed during the trial