

No. 18-8134

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED

FEB 12 2019

OFFICE OF THE CLERK

RAMON VASQUEZ
(Petitioner)

v.

COMMONWEALTH OF PENNSYLVANIA
(Respondents)

On Petition For Writ of Certiorari from
the Supreme Court of Pennsylvania's Order
entered on this matter November 16, 2018,

PETITION FOR WRIT OF CERTIORARI

Ramon Vasquez #09-6214
Berks County Jail System
1287 County Welfare rd.
Leesport, Pa. 19533

QUESTION PRESENTED FOR REVIEW

Whether 42 Pa.C.S.A. § 9543 (a)(1)(i), as applied by the court violated Vasquez Substantive Rights of Due Process by impinging collateral civil and criminal consequences upon his fundamental rights and liberty interest over a false conviction?

Suggested Answer (YES)

LIST OF PARTIES

All parties appear in the caption on the cover page.

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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

State Courts:

The opinion of the Superior Court of
Pennsylvania, No. 1132 MDA 2018; was the
highest state court to review the merits,
and appear at Appendix "A" to the petition
and is unpublished, under 188 A3d. 543, 2018-
- Pa.Super. Unpub. LEXIS 837.

The opinion of the Court of Common Pleas,
Pennsylvania, No. 4704-2013; appears at
Appendix "B" to this petition.

The opinion of the Superior Court of
Pennsylvania, No.1171 MDA 2015; appears at
Appendix "C" to this petition and is unpublished
under 144 A3d. 208, 2016 Pa.Super. Unpub LEXIS
967.

JURISDICTION

The date on which the highest state court decided my case was November 16, 2018, a copy of that decision appears at Appendix "E"

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

CONSTITUTIONAL AND STATUTORY PROVISIONS
INVOLVED

14th Amendment of the United States Constitution provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States wherein they reside. 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 equal protection of the law.

Pennsylvania Post Conviction Relief Act- 42 Pa.C.S.A. § 9543 (a)(1)(i) provides relief for ELIGIBILITY; to persons currently serving a sentence.

42 Pa.C.S.A. § 9542 provides Scope of Subchapter; For an action by which persons convicted of crimes they did not commit and persons serving illegal sentence. May obtain collateral relief. the action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including habeas corpus and coram nobis. This subchapter is not intended to limit that availability of remedies in the trial court or on direct appeal from the judgment of sentence, to provide relief from collateral consequences of a criminal conviction. Except as specifically provided otherwise, all provisions of this subchapter shall apply to capitol and non-capitol cases.

STATEMENT OF FACTS

The petitioner Ramon Vasquez, who is currently confined at the Berks County Jail System, 1287 County Welfare rd., Leesport, Pa. 19533. Hereby petitions this honorable court for a Writ of Certiorari, from the Pennsylvania Supreme Court Order entered November 16, 2018, that dismissed his Petition for Allowance of Appeal.

Accordingly, June 19, 2013, Vasquez appeared at the Magisterial District Justice Office ("MDJ") in Reading, Pa. to pay off parking tickets for an ex-girlfriend. While there, Vasquez found out that there was a fraudulent criminal complaint lodged against him for misdemeanor Unauthorized Use of a Motor Vehicle. When Vasquez informed the judge that he wanted to exercise his right to an attorney, he was cut off from exiting the courtroom by the judge. Who, under the assumption of

-his security guard daughter believed that Vasquez was leaving.

As such, both judge and daughter physically assaulted Vasquez in an attempt to restrict his movements. But Vasquez instinctively retreated from the office to get away from being assaulted. The entire incident was captured on video through the digital surveillance system inside the MDJ office. Ironically, that material piece of evidence was never preserved and later suspiciously destroyed.

While outside, both judge and daughter continued to stalk after Vasquez and yelled for people on the street to grab him. An unknown male tried to tackle Vasquez off his motorcycle as Vasquez began to pull off. The commotion caused the motorcycle to lift up and the male thrown off. Disorientated, Vasquez subsequently lost control of his motorcycle and crashed into

at a guardrail. As he picked up his motorcycle another male who was later identified in reports as an off duty police officer. Exited his vehicle, drew his gun upon Vasquez, yelled for Vasquez to get down, struck Vasquez on the face, and simultaneously snatched the keys from the ignition of the motorcycle. In shock, Vasquez took off running.

As such, Vasquez later turned himself in and was charged with Felony two Aggravated Assault, Misdemeanor two Simple Assault, Misdemeanor two Escape, Misdemeanor two Flight to Avoid Apprehension, trial and punishment, Misdemeanor two Resisting Arrest, and a host of summary offenses. Vasquez was then appointed counsel, and through out the course of the proceedings there grew a legitimate conflict between Vasquez and counsel. Namely, over counsels refusal to contend the destruction of the video.

Vasquez attempted to remove counsel in a pro se motion but was unsuccessful.

Accordingly, April 15, 2014, a jury trial was conducted, all the felony and misdemeanor charges were either withdrawn or dismissed with the exception of Flight to Avoid Apprehension, and the summary offenses. Although both counts of Escape, and Flight to Avoid Apprehension stemmed from the events inside the MDJ office. Counsel omitted the count of Flight to Avoid Apprehension in her move for judgment of acquittal on the count of Escape. However, the trial court clearly determined in dismissing the count of Escape that "None of the people present had authority to arrest or detain the Defendant, nobody told him that he was under arrest. he was told that there was a warrant for his arrest, but obviously nobody present had authority to exercise the warrant and

-detain the defendant at the time". See-
(Appendix "F ", Notes of testimony trial
by jury, April 15, 2014, No. 4704-2013;-
pg. 116)

Accordingly, Vasquez was still found
guilty of Flight to Avoid Apprehension
and two summary offenses, At sentencing
when he was offered an opportunity to
address the court he vehemently pointed a
miscarriage of justice in the proceedings.
Whereas (1) the materially exculpatory
evidence of the video was destroyed, (2)
that no one involved had the power to
legally arrest, (3) he had been denied
the right to confront his accuser, and
(4) counsels' ineffectiveness withheld
him from the objective of proving his
innocence. See (Appendix "G ", Notes of
testimony sentencing hearing, April 29,
2014, No. 4704-2013; pg.3-6)

However, the court still said

However, Vasquez was still sentenced to an aggregated term of nine to 24 months incarceration. During the sentencing hearing counsel withdrew her appearance, subsequent counsel was not appointed until eight days later. Therefore, Vasquez was without representation 80% of the time in which to file a timely post-sentence motion. Unfortunately, subsequent counsel refused to provide any legal representation on Vasquez behalf. Several months later Vasquez filed a pro se motion for replacement counsel. The court interpreted it as Vasquez initial Post-Conviction Petition and appointed a third counsel. The third counsel filed to have Vasquez direct appeal rights restored nunc pro tunc, which was granted by the trial court. On appeal counsel challenged the weight and sufficiency of the evidence.

Armed with absolutely no proof, the trial court fallaciously injected evidence on the record. That Vasquez testified, that he fled from the MDJ office on his motorcycle after learning that there was a warrant for his arrest, which was untrue. See (Appendix "D" Trial Court memorandum-opinion, September 18, 2015, No. 4704-2013; pg. 3) Considering that injection as a factor the Superior Court decided to affirm its decision. See (Appendix "C", Superior Court of Pa. memorandum-opinion, March 23, 2016, No.-1171 MDA 2015; pg. 6)

By that time Vasquez finished his sentence. Sensibly, he continuously tried to prove his innocence in a second Post-Conviction Petition, which was later amended into a Writ of Coram Nobis. But the trial court held that Vasquez was facially ineligible for relief because he had-

already completed his sentence. See-
(Appendix "B ", P.C.R.A. Court memorandum-
opinion, August 10, 2017, No. 4704-2013)

As such, Vasquez appealed that deci-
sion to the Superior Court and presented
the following issue, "Whether 42 Pa.C.S. §
9543 (a)(1), as-applied by the P.C.R.A.
Court, presented a substantive liberty
interest upon Vasquez actual innocence to
collateral civil and criminal consequences?

However, the Superior Court overloo-
ked Vasquez issue by reasoning procedural
due process versus substantive due process
using Commonwealth v. Turner, 622 Pa. 318,
80 A3d. 754 (2013) as its controlling
authority. See (Appendix "A ", Superior-
Court of Pennsylvania memorandum-opinion,
March 21, 2018, No. 1132 MDA 2018)

Ultimately, Vasquez still faces court
cost and fines in the amount of 1,296.26\$

-his reputation has been tarnished as a
result of the conviction, his ability to
travel has been impeded because his license
being suspended due to the court cost and
fines.

STATEMENT OF REASONS

42 Pa.C.S.A. § 9543 (a)(1)(i), as applied by the court violated Vasquez Substantive Rights of Due Process by impinging collateral civil and criminal consequences upon his fundamental rights and liberty interest over a false conviction

This Court should GRANT Writ of Certiorari review because, the Due Process Clause of the Federal Constitution's 14th Amendment guarantees more than fair process and the liberty it protects include more than the absence of physical restraint, the due process clause provides heightened protection against government interference with certain fundamental rights and liberty interes. Washington v. Glucksberg, 521 U.S. 702, 138 L.Ed.2d. 772, 117 S.ct. 2258 (1997) As such, the Superior Court overlooked the issue Vasquez presented, by reasoning "Procedural Due Process" versus "Substantive Due Process", using Commonwealth v. Turner, 622 Pa. 318, 80 A3d 754 (2013)

as its controlling authority. See -
(Appendix "I ") a case distinguished from
the instant matter. In Turner the major
premise dealt with Turners' right to be
heard in a post conviction petition.
Whereas she had completed a short sentence
and wanted to challenged the conviction
claiming that her counsel was ineffective.

The Commonwealth argued that Turner
had no protected liberty interest at stake
because she had already finished her sentence.
Whereas the statutes in the post
-conviction relief act indicated under
42 Pa. C.S.A. § 9543 (a)(1)(i) that the
eligibility for defendants currently serving
a sentence fell under that provision.

The Supreme Court decided along lines
with the Commonwealth that there was no
"protected liberty interest" involved be-
cause Turner was no longer incarcerated.

The court also determined that Turner does not assert that she has been denied life or property. As the Due Process Clause protects life, liberty, or property, her argument presumably rest on a purported deprivation of liberty that occurred because Grant precluded her from judicial assessment of her ineffective claim on direct appeal, and the P.C.R.A. precludes collateral review because the conclusion of her sentence.

(id. at 80 A3d. 765)

By contrast, the gravamen of Vasquez issue deals with "Substantive Due Process" and "Actual Innocence", and therefore presents three factors in support of his position. First, the trial courts' injection of fallacious evidence on the record, that Vasquez testified, that he fled from the MDJ Office on his motorcycle after learning that there was a warrant for his arrest. See (Appendix "D ", Trial Court memorandum-

-opinion, September, 18, 2015, No. 4704-2013; pg. 3) which is contrary to Vasquez actual testimony. See (Appendix "F", Notes of Testimony trial by jury, April-15, 2014; pg. 119-128) also See (Appendix "G", Notes of Testimony sentencing-hearing, April 29, 2014, No. 4704-2013; pg. 3-9)

The Pennsylvania Constitution provides in Article 5 § 17 (b) that;

Justices and judges shall not engage in activity prohibited by law and shall not violate any canons of legal or judicial ethics prescribed by the Supreme Court.

The Fourteenth Amendment provides in part "nor shall any state deprive any person of life, liberty, or property without due process of law" and protects "the individual against arbitrary action of government", Kentucky Dept. of Corr.-v. Thompson, 490 U.S. 454, 459; 60, 109-S.ct. 1904, 104 L.Ed.2d. 506 (1989) (citing Turner, supra at 622 Pa. 334-335)

Accordingly, the type of interference admitted by the trial court arbitrarily tipped the scales more favorably towards the Commonwealth. The result influenced the Superior Court to consider such falsity as a factor to affirm the trial courts' decision. See (Appendix "C ", Superior - Court of Pennsylvania memorandum-opinion, March 23, 2016, No. 1171 MDA 2015; Pg. 6)

Such an injection proved to be fundamentally unfair, and shocks the conscious within the concept of ordered liberty and justice that the Due Process Clause is set up to protect against. This abridged Vasquez rights and should not be tolerated by this court because it is both reasonably unethical and unconstitutional.

Secondly, the courts' application of the state post-conviction procedures were inadequate to vindicate Vasquez from a-

false conviction. Unlike Turner, Vasquez sought direct appeal, remained diligent, and continuously sought to prove his innocence in a second subsequent post-conviction petition, which he later amended into a Writ of Coram Nobis. Coram Nobis relief can be sought when no statute provides a remedy. Commonwealth v. Morris, 771 A2d.-721, 739 (Pa. 2001)

As such, within his coram nobis petition Vasquez noted that he was no longer currently serving a sentence. But nonetheless, Vasquez presented extrinsic facts unknown to the court at the time, along with clear and convincing evidence that showed actual innocence and a miscarriage of justice in the proceedings. See (Appendix "H", Vasquez Petition for Writ of Coram Nobis, June 29, 2017, No. 4704-2013; et. seq.)

Accordingly, one of Vasquez arguments-

were the trial courts' ruling on the count of escape, whereas counsel omitted the count of flight to avoid apprehension in her move for judgment of acquittal on escape.

Clearly, the trial court determined that; "None of the people present had authority to detain the defendant, nobody told him that he was under arrest, he was told that there was a warrant for his arrest, but obviously nobody had authority to exercise the warrant and detain the defendant at the time". See (Appendix "F ", Notes of Testimony trial by jury, April 15, 2014, No. 4704-2013; Pg. 116) also see Commonwealth v. Stoppard, 2014 Pa. Super 248; 103 A3d. (2014)

A case similar in part and distinguished in part. In Stoppard the defendant appeared at the MDJ Office on unrelated matters. The court noted that Stoppard had outstanding warrants for burglary and other related -

offenses, and immediately summoned Chief Stanley Jasinski of the Palmyra police dept. In full uniform Jasinski placed Stoppard in handcuffs, Stoppard abruptly turned around and fled. Stoppard was later convicted of escape and flight to avoid apprehension as a result of the events. In the case at bar, there was no law enforcement involved and Vasquez only fled. After he was viciously attacked by the judge and his daughter who, conveniently destroyed the video that captured the entire incident.

Unfortunately, the P.C.R.A. court held that Vasquez was facially ineligible for relief. On appeal the Superior Court reasoned under Turner (supra) that Vasquez was not entitled coram nobis relief, where the p.c.r.a. provided remedy for his claim, and that he had no protected liberty interest at stake because he had already finished his sentence.

Moreover, the Superior Court also held under Turner that 42 Pa. C.S.A. § 9542 (providing that "the action established in this subchapter shall be the sole means of obtaining collateral relief and encompasses all other common law and statutory remedies for the same purpose that exist when this subchapter takes effect, including..... ...coram nobis...") See (Appendix "A ", Superior Court of Pennsylvania memorandum-opinion, March 21, 2018, No. 1132 MDA 2017; pg.3-4)

By contrast, Vasquez offers that the Superior Court has overlooked the first few word in that statute. Whereas[42 Pa.C.S.A. § 9542 provides for an action by which persons convicted of crimes they did not commit..] When actual innocence can be clearly derived upon reviewing the record, then substantive rights should supersede the statutory-

procedures because those rights are constitutionally protected under the 14th amend.

Thirdly, contrary to the Superior Courts' reasoning of "protected liberty interest" established in Turner (supra) The Due Process Clause "protects certain fundamental liberty interest from deprivation by the government", but [o]nly fundamental rights and liberties which are deeply rooted in this nations history and traditions and implicit in the concept of ordered liberty qualify for such protection". *Chaves v. Martinez*, 538 U.S. 760, 155 L.Ed.2d. 984, 123 S.ct. 1994 (2003)

Article 1 § 1 of the Pennsylvania Constitution provides; all men are born equally free and independent, and have certain inherent and indfeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and pursuing their own happiness.

Considering Vasquezs' actual innocence, there continues to be collateral civil and criminal consequences that have attached as

a result of this false conviction.

Consequences that impinge his fundamental rights and liberty interest. (1) Vasquez reputation in the community has been tarnished, this factor may undoubtedly create future bias in the employment field, as well as in the housing markets; (2) The court cost and fines that amount to 1,296.26\$ creates a deprivation of property, and places a substantial burden of economic hardships upon Vasquez; (3) Likewise, Vasquez's ability to travel will be impeded because he will not be able to obtain a valid drivers license until the fines are paid; (4) Pa.-R.Crim.P. 706 et. seq. "commentary", provides under this rule, when a defendant fails to pay the fines and cost, the common pleas judge may issue a bench warrant for collection of the fines and cost...) Therefore, should Vasquez fail to pay these court cost and fines he would undoubtedly face future-

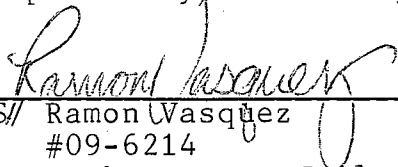
incarcerations as a result, which equate a liberty interest. These consequences have been unfairly placed upon Vasquez over this conviction, and should be reviewed by this court to insure its citizens are provided a safeguard from such encroachments of government.

CONCLUSION

Wherefore, all the above reasons mentioned herein the Petitioner Ramon Vasquez respectfully prays that this honorable court GRANT the foregoing Petition for a Writ of Certiorari.

Respectfully submitted,

Dated: 12, 2019


/s/ Ramon Vasquez
#09-6214
Berks County Jail
1287 County Welfare rd.
Leesport, Pa 19533