

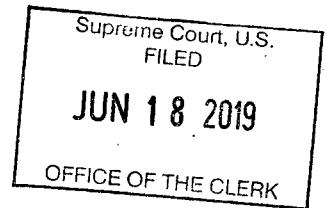
18-8828

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

ZKB

DANTE OVERBY - PETITIONER



V.

PENNSYLVANIA - RESPONDEANTS

DOCKET NUMBER: 18-8828

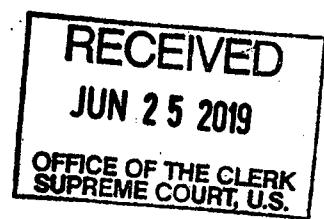
PETITION FOR REHEARING PURSUANT TO

SUPREME COURT RULE 44

Now comes Dante Overby, "Petitioner" in the above captioned matter, to this Honorable Court seeking a rehearing pursuant to Rule 44.

Petitioner attests to the following:

1. "[A] state court -- has decide - important[s] question of



federal law that has not been, but should be, settled by this Court". Supreme Court Rule 10(c).

2. One such question involves Petitioner filing a Motion to dismiss for both state and federal speedy trial violations, where the only person/witness who could prove his innocence went missing during pre-trial delays, and the state court not providing a hearing nor a remedy on an issue that is deemed "Fundamental". Barker v. Wingo, 407 U.S. 514, 515 (1972).

The question raised in Petitioner's Petition for Writ of Certiorari relating to this issue is of National importance because, if a state court is allowed to delay a criminal trial until defendant's is hampered, deliberately bypass the speedy trial rundate and then ignore a Defendant's Motion for redress of that issue, the Constitutional protections afforded become largely meaningless.

Petitioner has been deprived of his right to a speedy trial, which is "guaranteed the accused by the Sixth Amendment of the

Constitution", ID, and no court, state nor federal has even attempted to afford Petitioner redress for these rights that he was deprived of.

3. Another such question is related to guilty pleas entered based on an illusory promise from the Trial Court and prosecutor, where Petitioner was denied relief on appeal but remains in custody pursuant to a constitutionally deficient guilty plea.

Under well established Pennsylvania law, "[a] guilty plea constitutes a waiver of all nonjurisdictional defects and defenses", Commonwealth v. Montgomery, 401 A.2d 318, 319 (Pa. 1979), and because Petitioner was allowed to enter a conditional guilty plea which expressly preserved the right to appeal a violation of his speedy trial rights, he is in custody pursuant to a "facially invalid" guilty plea, Commonwealth v. Terreforte, 546 A.2d 479, 481 (Pa. Super. 1989), a right which Petitioner was not afforded. see Appendix F of the Petition for Certiorari ("the Petition")("Moreover, [Petitioner] pled guilty in

this case and therefore waived any right to raise a Rule 600 claim").

Thus "[i]t follows that [since] the Prosecutio [and the Court] breached its promise with respect to an executed plea agreement, the [Petitioner pled] guilty on a false premise -- his conviction cannot stand". Mabry v. Johnson, 467 U.S. 504, 509 (1984).

This issue is important on the National level because, if a Trial court and Prosecutor, together, are allowed to induce a Defendant to plead guilty on an illusory promise¹, *then there is no such thing as an impartial judge*, something every Defendant is entitled to under the U.S. Constitution. see Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 878 (2009) ("Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the Defendant, or which might lead him not to hold the balance

1. An illusory promise is defined as "a promise that appears on its face to be so insubstantial as to impose no obligations on the promisor; an expression cloaked in promissory terms but actually contains no commitment by the promisor". *Promise*, Black's Law Dictionary (10th ed. 2014).

nice, clear and true between the State and the accused, denies the latter due process of law").

4. On the deprivation of a full and fair hearing, Respondents keep asserting that Petitioner received review of *his* speedy trial issues for the proposition that Petitioner received what was promised to him in the plea agreement, which is not true. Respondents posit the view that the issues reviewed, on the merits, were the issues that Petitioner raised and preserved for review in the Trial Court, but the record proves otherwise. On Direct Appeal, the Pennsylvania Superior Court was clear about what they were reviewing the merits of, "[w]e now proceed to an independent evaluation of the record *in order to determine the accuracy of counsel's averment that this appeal is wholly frivolous*", see Appendix F of the Petition. Further, if this Court were to compare the issue reviewed by the Superior Court in

Appendix F of the petition to the Motion Petitioner filed in the Trial Court to preserved his right to review in Appendix H of the Petition, it would see a stark difference in the two.

This issue is of National importance because, if a reviewing Court can review an issue raised by a lawyer who is attempting to be removed from the case, while at the same time that court is still considering that issue to be the Petitioner's issue, although *Petitioner was granted leave to proceed pro se*, then Petitioner was deprived of his Sixth Amendment right to "to make one's own defense personally", Faretta v. California, 422 U.S. 806, 819 (1975). Thus, Petitioner did not receive review of the issues *he* raised on Direct Appeal and was deprived of a full and fair hearing. see Townsend v Sain, 372 U.S. 293, 313-314 (1963) ("There cannot be even the semblance of a full and fair hearing unless the state court actually reached and decided the issues of fact *tendered by the Defendant*. -- *No relevant findings have been made unless the state court decided the constitutional claims tendered by the defendant on the merits*").

5. Petitioner had established prejudice even though the pCRA Court did not address the prejudice prong of the ineffectiveness claim, however, Petitioner believes that the presumption of prejudice is warranted instantly because there was a total collapse of the adversarial process. The Trial court and the Prosecutor induced Petitioner to plead guilty based upon what the PCRA Court defined as an "illusory promise", Appendix B of the Petition, Page 6. The PCRA Court also found that "[t]he plea court accepted a guilty plea conditioned on the Commonwealth's illusory promise to not object to an appellate claim of a pre-trial challenge *even though the court was without authority to preserve what, as a matter of law, was waived*", ID at 7, and that "Petitioner's counsel further mislead Petitioner when counsel failed to competently advise his client and provide sound legal advice on the impact of Petitioner's guilty plea on his pre-trial challenges". ID. Every aspect of the adversarial process designed to protect Petitioner's rights had collapsed in this

instance.

In the National context, Petitioner believes that, every criminal Defendant/Petitioner who was induced into entering a guilty plea under false pretences should have that plea withdrawn whether or not prejudice is shown, since it is still involuntary, and this Court's precedent on the voluntariness of guilty pleas has been unwaivering that guilty pleas are valid if they are "voluntary" and "intelligent", see Boykin v. Alabama, 395 U.S. 238, 242 (1969); Machibroda v. United States, 368 U.S. 487, 493 (1962); Walker v. Johnston, 312 U.S. 275, 286 (1941); Kercheval v. United States, 274 U.S. 220, 223 (1927). Further, the prejudice from an involuntary plea is obvious. see McCarthy v. United States, 394 U.S. 459, 466 (1969) ("An unknowing or *involuntary* guilty plea violates 'due process and is therefore void").

Thus, rather than leaving a Criminal Defendant/Petitioner in custody in violation of Due Process, when the prejudice is obvious, once the plea is deemed involuntary, it should be

withdrawn, without the requirement of showing prejudice, since the plea is "void" anyway. ID.

6. On the point of Double Jeopardy, Petitioner's conviction is the product of Prosecutorial and Judicial overreaching that prejudiced him to the point of the denial of a fair trial, and this Court's precedent is clear that retrial is barred where the error is "motivated by bad faith or undertaken to harass or prejudice the defendant". United States v. Dinitz, 424 U.S. 600, 611 (1976). Instantly, although there was well-established caselaw stating that once a Defendant pleads guilty, he waives the right to challenge all nonjurisdictional issues, Commonwealth v. Montgomery, 401 A.2d 318, 319 (Pa. 1979), the Learned Trial Judge assured Petitioner that he "would have a right that most defendants won't have if [he] plead guilty", Appendix D of the Petition, Page 11, which, in hindsight, gives off the impression that The Learned Trial Judge knew what he was doing was wrong, and hence, in "bad faith". Dinitz, *supra*.

Thus, because Petitioner was induced into "enter[ing] a conditional guilty plea which -- the Prosecution and the Court undoubtedly knew was illegal", Commonwealth v. Terreforte, 564A.2d 479, 483 (Pa. Super. 1989), Petitioner's guilty plea is the result of judicial and prosecutorial overreaching and a second trial is barred by the Double Jeopardy Clause, but the PCRA Court erroneously dismissed Petitioner's Double Jeopardy Motion without a hearing.

7. Petitioner understands that "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion", Supreme Court Rule 10, but this is Petitioner's last resort as, He has exhausted all of his state and federal avenues of review in seeking relief and Petitioner respectfully requests that this Honorable Court rectify this constitutionally defective situation.

RELIEF SOUGHT

Petitioner is seeking relief in the form of an Order granting

him review of his Petition for Writ of Certiorari.

CONCLUSION

Petitioner respectfully requests this Honorable Court to grant him the relief sought.

RESPECTFULLY SUBMITTED,

JUNE 15TH, 2019



DANTE OVERBY - GZ-5437

SCI - PHOENIX

1200 MOKYCHIC DRIVE

COLLEGEVILLE, PA 19426

IN THE SUPREME COURT OF THE UNITED STATES

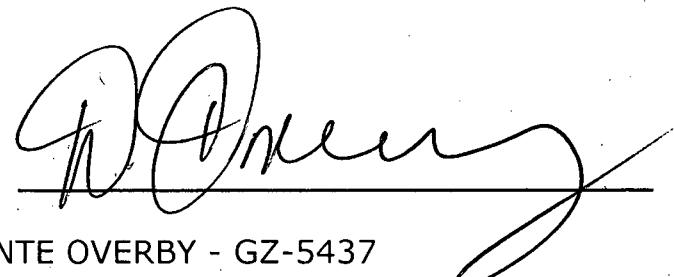
CERTIFICATION OF PETITIONER

Now comes Dante Overby, Petitioner, to this Honorable Court certifying that the following is true and correct:

- This Petition for Rehearing is presented in good faith and not for delay;
- And that the Petition for Rehearing is restricted to grounds specified in Supreme Court Rule 44.2.

The information contained herein is true and correct to the best of my knowledge and is subject to penalty of perjury.

Executed on July 7th, 2019



DANTE OVERBY - GZ-5437

SCI - PHOENIX

1200 MOKYCHIC DRIVE

COLLEGEVILLE, PA 19426

RE: OVERBY V. PENNSYLVANIA, No. 18-8828