

18-9167
No. _____ ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Supreme Court, U.S.
File No. _____

MICHAEL J. PENDLETON,
PETITIONER

v.

ERIC W. TICE,
RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR WRIT OF CERTIORARI

MICHAEL J. PENDLETON (Pro Se)

Inst. No. DY-1646

SCI-SOMERSET

1600 WALTERS MILL ROAD
SOMERSET, PA. 15510

QUESTION (5). PRESENTED

Did The Commonwealth of Pennsylvania Violate Petitioner's Substantive Due Process Rights when it Convicted and Resentenced Him For a Non-Existent CRIME Not Codified or Backed By State Legislatures Thus Violating the 14th Amendment And Contract Between State And Federal Government?

Answer: Yes!

LIST OF PARTIES

PETITIONER, PRO SE:

MICHAEL J. PENDLETON, # DY-1646, 1600 WALTERS MILL ROAD, SOMERSET,
PA. 15510

FOR RESPONDENT: SCI- SOMERSET SUPERINTENDENT ERIC
W. TICE

PENNSYLVANIA ATTORNEY GENERAL JOSHUA SHAPIRO, 16th FLOOR
STRAWBERRY SQUARE, HARRISBURGH, PA. 17120.

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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 Null and Void Judgment entered by the Pennsylvania State Court.

OPINION BELOW

N/A

Attached as Appendix "A" is the Order from Pennsylvania State Supreme Court Denying Habeas Corpus Petition on September 28, 2018. 2018 Pa. Lexis 5078 (Pa. 2018)

JURISDICTION

The Jurisdiction of the U.S. Supreme Court is Invoked and Authorized By 28 U.S.C. sec. 1257(a)

The Pennsylvania Supreme Court denied Extraordinary Jurisdiction Writ of Habeas Corpus Petition on September 28, 2018 in a Per Curiam Order attached as Appendix "A"

Petitioner Pendleton was convicted and resentenced on April 11, 2018 For A Non-Existent Crime in Pennsylvania which was beyond the scope of the Trial Court's Jurisdiction and "Exceptional/Extraordinary" Circumstances exist which warrants utilization of the U.S. Supreme Court Rules 13.1 and 13.3 and in violation of the 5th and 14th Amendments as read in Fiore v. White, 531 U.S. 225 (2001) and Bunkley v. Florida, 538 U.S. 835 (2003).

This Honorable Court also has jurisdiction to grant a Writ of Certiorari pursuant to Montgomery v. Louisiana, 136 S.Ct. 216 (2016) to review a Pennsylvania Supreme Court denial.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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STATEMENT OF THE CASE

On June 12, 1997, two (2) separate criminal complaints were filed against Pendleton, one by the Pittsburgh Police Department for Criminal Homicide. The other warrant was filed by an unknown Police officer in the Pittsburgh Magistrate Court on the lesser charges (Robbery, one count of carrying a firearm without a license, and Conspiracy to robbery, a prohibited offensive weapon). On June 13, 1997, 14 year old Pendleton turned himself in and was arrested and arraigned on the Homicide charge by Deputy Coroner (Allegheny County Coroner's Office) Dennis King at 2:50 a.m..

On June 13, 1997, Pendleton was charged with Criminal homicide before a Medical Examiner. Pendleton's Inquest was held on June 27, 1997, in the Coroner's Court (No Preliminary was held) and Pendleton was bound over for trial by the Deputy Coroner/ Solicitor. Pendleton's preliminary hearing on the lesser included offenses were held before a Magistrate Judge in the City County Building at 8:30 a.m. on June 20, 1997, then postponed until July 2, 1997.

On August 4, 1997, a criminal information was filed by the Commonwealth as to the Criminal Homicide charge (Criminal case Number 199708053) and on August 6, 1997, a second criminal information was filed against Pendleton as to the lesser included offenses (CC# 199708064). Pendleton was formally arraigned by the Commonwealth, on August 15, 1997, as to the Criminal homicide charge and arraigned on the lesser included offenses on August 19, 1997.

The case proceeded to trial on March 23-24, 1999, before Judge Novak. On March 25, 1999, the jury found Pendleton guilty of all charges. On May 4, 1999, Pendleton was sentenced to Life without Parole for Second Degree Murder (CC#199708053) and 10-20 years for Conspiracy to Robbery, and 10-20 years for Robbery (CC#199708064) to run concurrent and no sentence were imposed on the other lesser charges. On June 3, 1999, the 10-20 year sentence and robbery charge was vacated based on double jeopardy.

On June 30, 1999, A notice of Appeal was filed to the Pennsylvania Superior Court docketed in at 1178 WDA 1999. On April 14, 2000, The Superior Court affirmed the Judgment of sentence. And the Pennsylvania Supreme Court denied allowance of Appeal on August 14, 2000. (See Commonwealth v. Pendleton, 758 A.2d 724 Pa. Super. 2000), appeal denied, 760 A.2d 853 Pa. 2000)).

On June 25, 2002, Pendleton filed a Federal habeas Corpus in the Pennsylvania Western District (Pendleton v. Sobina, 02-168J). And it was dismissed as being time-barred on November 7, 2003. A certificate of appealability was denied on June 7, 2004, as being time-barred. Civil action no. 03-4797 (3rd. Circuit). Pendleton filed many Petitions Between 2005-2016.

On January 30, 2016, Pendleton filed a Subsequent Post-Conviction Relief Act Petition (PCRA) under Montgomery v. Louisiana, 136 S.Ct. 718 (2016). On April 11, 2018, Pendleton was resentenced to 28 years to life for Second Degree Murder and time served for Conspiracy to Robbery charge. A notice of Appeal was filed on July 3, 2018 as to resentencing issues by Pendleton's lawyers (Commonwealth v. Pendleton, 958 WDA 2018). Appellate Brief was filed on April 1, 2019. Pendleton filed a Petition for Extraordinary Writ of Habeas Corpus under 42 Pa. C.S.A. §721 in the Pennsylvania Supreme Court and that was denied on September 28, 2018, by Supreme Court (Per Curiam) (Pendleton v. Hainesworth, 2018 Pa. Lexis 5078 (Pa. Sept. 2018)).

FACTUAL HISTORY

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The Commonwealth attempted to present evidence at trial that Pendleton was involved in the attempted robbery and murder of Kenneth Wright, along with co-defendants Arthur Dunn and Julian Boyer and left him in his car.

The Commonwealth called Detective Christine Williams of the Pittsburgh police who testified that on June 17, 1997 at approximately 1:00 p.m. she responded to a call to the Homicide unit. Upon arrival she observed an automobile with the engine still running, and there was a black male, Kenneth Wright, with his head bent on the steering wheel of the car with an obvious gunshot wound to the back of the neck. (TT:19-20). All of the windows of the car was rolled up except for the front passenger (front passenger) door. The Car was thereafter taken to the county lab for further processing. (TT: 21-22).

The Commonwealth's 2 witnesses further testified that a gunshot was heard when a car came down the street. Two unidentified males were seen jumping from the car, one from the front passenger window and the other from the rear driver's side door whose legs were run over by the back wheel of the car. (TT: 37-38, 41-42).

Robert Levine, a criminalist from the Allegheny County Coroner's Office, testified for the Commonwealth that he examined the car and items following the autopsy of the victim. (TT: 64-65). The muzzle of the shotgun was fired within one foot of the victim's neck. (TT: 68-69). No gun powder residue was in the car or on the hands of the victim. (TT: 73-74, 76). The victim was shot from behind because the hole was in the back (TT: 75).

Leon Rozin, chief forensic pathologist of the Allegheny County Coroner's Office testified that he performed an autopsy on the victim in this case on June 13, 1997 and found that the victim suffered from a shotgun wound to the back of the neck, perforated the first and second vertebra and totally transected the lower portion of the medulla from the cervical spinal cord. Several pellets were collected from the tract of the blast. The trajectory of the blast was from front to back. While Dr. Rozin could not identify the position of the body at the time of the shotgun blast, the cause of death was the result of a single shotgun wound of the nape of the neck. (TT: 81-83).

Detective Dennis Logan of the City of Pittsburgh Police Homicide Squad testified for the Commonwealth that Appellant Pendleton came to his office after midnight on June 13, 1997 with a family friend, police officer William James. Mr. Pendleton, fourteen (14) years of age at the time, was left in an interview room until his father arrived.(TT:-89). Shortly thereafter, Appellant Pendleton's father arrived and was left in the room with his son. Both Pendleton's were then read a "Free Interrogation Warning Form," advised of the charges and explained the "Miranda-Rights". (TT:-90). Pendleton, his father, and the detectives signed the form.(TT:-93).

Detective Dennis Logan of the City of Pittsburgh Police Homicide Squad testified that Pendleton was hanging out with Arthur Dunn (co-defendant) and went to Julian Boyer's house (co-defnedant).(TT:-93). At that time Dunn decided he wanted to go to his aunt's house to get money and a jitney (unlicensed cab) was called. Both boys left with guns, Pendleton with a sawed-off shotgun and Dunn with a .32 caliber pistol. Pendleton got into the front passenger seat of the jitney while Dunn got into the rear driver's seat.

Dunn then told the driver "stop here and give me your money". Both boys had their guns out pointed at victim, Pendleton cocked the shotgun and it went off, striking the victim. Both boys ran from the car.(TT:94-95). Pendleton then asked what gun killed the victim and was informed that he (Detective Logan) didn't know and then said, it was possibly the shotgun. Pendleton denied having the shotgun. That he had the .32 and Dunn the shotgun.(TT:96). Pendleton and his dad were left in the room together and when the Detective returned, Pendleton then agreed that he did have the shotgun. Detective Logan further testified that Pendleton and Dunn were to rob the driver and Boyer was to provide the guns, Dunn and Pendleton went to a vacant house to meet the jitney, attempted to rob the driver and, when Pendleton cocked the shotgun it went off. Pendleton then steered the car which came to rest in front of Boyer's house and both people fled.(TT:97, 100).

As part of the investigation, Detective Logan learned that Boyer was a gang member suspected in several other robberies (TT:103).

The Commonwealth finally presented the testimony of Wayne Reutzel, a latent fingerprint examiner with the Allegheny County Crime Lab. Reutzel testified that he

processed the interior and exterior of the victim's car for latent fingerprints and found a latent print of Pendleton on the exterior of the front passenger's side of the roof.(TT:112). Reutzel also found a latent fingerprint in blood on the left rear passenger's door identified as belonging to Dunn.(TT:113).

The defense presented evidence that co-defendant Julian Boyer(Age 19) was a gang member, known to threaten and involve younger boys in his robberies.(TT:129, 149). Pendleton (Age 14) was not known to be friends with Boyer (TT:130). Defense witness testimony indicated on two incidents within a month before the homicide, Boyer fired a gun at Pendleton.(TT:139).

Take Judicial Notice all courts have relied upon former trial court's factual history and adopted it as it's own in Commonwealth v. Pendleton, 758 A.2d 724 (Pa. Super. 2000)(unpublished memorandum).

REASONS FOR GRANTING THE WRIT

DID THE COMMONWEALTH OF PENNSYLVANIA VIOLATE PETITIONER'S SUBSTANTIVE DUE PROCESS RIGHTS WHEN IT CONVICTED AND RESENTENCED HIM FOR A NON-EXISTENT CRIME NOT CODIFIED OR BACKED BY STATE LEGISLATURES THUS VIOLATING THE FOURTEENTH AMENDMENT AND CONTRACT BETWEEN THE STATE AND FEDERAL GOVERNMENT?

Petitioner, Michael J. Pendleton, is currently illegally and unlawfully restrained of his life, liberty and property and his substantive Due Process Rights continue to be violated because Pendleton is not in custody pursuant to a lawful State court judgment and conviction which is inconsistent with the Federal Due Process Clause under the Fourteenth Amendment to the United States Constitution.

The Pennsylvania State Court System does not have Subject-matter Jurisdiction over Pendleton the Conspiracy Liability holding him in custody is not codified in Pennsylvania's Crimes Code or embedded in a Pennsylvania statute and is used against Pennsylvania Defendants without given Defendants Fair Notice that such instructions would be used in a courtroom trial by the trial court. Violates the Fourteenth Amendment.

There are no defenses to a non-existent crime in Pennsylvania. And even Judges cannot misconstrue a law. Bouie v. City of Columbia, 378 U.S. 347, 355 (1964) ("A violation of the Due Process Clause may be accomplished by a state Judiciary in the course of construing an otherwise valid state court statute").

On August 4, 1997, Pendleton was charged through a Criminal Information with Criminal homicide under Pennsylvania's Criminal Homicide Statute 18 Pa. C.S. §2501(a). And Pendleton was charged as the "Principal" and not as an "Accomplice" or as a "Co-conspirator". See Pendleton v. Hainsworth, 2018 Pa. Lexis 5078 (pa. September 28, 2018) (exhibit "A", Criminal Information).

At Pendleton's March 23-24, 1999, trial, prosecutor Janet Necessary Concluded: "ladies and Gentleman, the evidence and law are clear. The defendant planned this robbery, deliberately took a loaded shotgun, got in the car, put to the victim's head and pulled the trigger. That adds up to nothing less than his guilt less than (1st) First degree murder". Trial Transcripts pages 190, lines 24-25; TT p. 191, lines 3-9.

The trial court gave incorrect and alternative theories on the Second Degree Murder charge: "You may find the defendant guilty of Second Degree Murder, if you are satisfied that the following 3 elements have been proven beyond a reasonable doubt: 1st, that the defendant caused the death of Kenneth Wright; 2nd, that the defendant did so while attempting to commit a robbery; 3rd., that the defendant was acting with malice. (TT p. 215, lines 8-16)

"You may find the defendant guilty of 2nd Degree Murder—that is, felony murder—if you are satisfied that the following 4 elements have been proven beyond a reasonable doubt: " 1st, that the defendant caused the death of Kenneth Wright or that one of the defendant's co-conspirators or partners caused the death of Kenneth Wright; 2nd, that the Defendant or one of his co-conspirators did so while he and the defendant were partners in committing robbery; 3rd, that the act that caused the death of Kenneth Wright was done in Furtherance of the robbery; and 4th, that the defendant was acting with malice" (TT p. 216, lines 23-25, TT P. 217, lines 3-14). See Exhibit "C" in Pendleton v. Hainesworth.

In Commonwealth v. Rawls, 477 A.2d 540, 543 (pa. Super. 1984) The Court held: "Pennsylvania's Felony Murder Statute does not relieve the Commonwealth of its burden to prove that the defendant engaged in

the underlying felony with the requisite intent". Thus, there's no telling which of the 7 elements Pendleton was convicted of. See Pendleton v. Hainesworth, 2018 Pa. Lexis 5078 (Pa. 2018) exhibit "B", March 25, 1999, verdict slip. See Also, the affirmance in Pennsylvania Superior Court Direct Appeal Opinion filed on April 14, 2000 in Commonwealth v. Pendleton, 758 A. 2d 724 (Pa. Super. 2000) (unpublished memorandum). The Court concluded: "Our review of the record reveals no abuse of discretion and 'we find, as did the trial court, that the evidence is overwhelming that Appellant committed the acts with which he was charged'". Accordingly, we affirm the order of the trial court. At p. #7.

Pendleton avers that "Conspiracy Liability" is not the proper bases for a conviction under Pennsylvania's 2nd Degree Murder Statute of 18 Pa. C.S. § 2502(b) because when the Pennsylvania State Legislature enacted the Pennsylvania Crimes Code statute of Title 18 the Legislature enacted §2502(b) to reflect that a in order for a person to be convicted under this statute he he/ she must be either charged as "Principal" or an "Accomplice" when in the perpetration of a felony. See title 18 Pa. C. S.A. § 2502(b). Commonwealth v. Rawls, 477 A.2d 540, 542 (Pa. super. 1984).

Pendleton avers that enforcing a "Conspiratorial Liability" charge is a widespread and systemic problem as a whole in Pennsylvania and is a Substantive Due Process Violation because it is arbitrarily enforced and was applied against Pendleton without Due Process and without Legislative backing because there is no statute or statutory elements to satisfy or prove beyond a reasonable doubt. Fiore v. White, 531 U.S. 225, 228-29 (2001) (Per Curiam).

Pendleton avers that 4 of the 7 elements inconsistent with and not available or recognized by Pennsylvania Law or Federal Constitutional Law. See Commonwealth v. Prosdocimo, 525 Pa. 147, 1550-51 (Pa. 1990) ("explaining the proper elements and instructions to 2nd degree murder and omitting any reference to Conspiracy Liability which is not cognizable under the law"). see Also, Commonwealth v. Knox, 629 Pa. 467, 470-71, 105 A.3d 1194, 1196-97 (Pa. 2014) ("The Pennsylvania Supreme Court rejected a broad common-law approach to the issue of "Accomplice Liability" in favor of adherence to the plain language of being charged under 18 Pa. C.S. §306 with "accomplice liability" and not §2502(b)). N.1 ("Act of December 6, 1972, P.L. 1482").

Pendleton avers that what makes this case "Extraordinary and worth the grant of Certiorari is that the Pennsylvania Superior Court affirmed and adopted the trial court's factual reasoning as its own without looking at the record and/ or identifying what acts former 14 year old Pendleton committed if the case was never proven beyond a reasonable doubt. In Re Winship, 397 U.S. 358, 354 (1970).

Thus, there's a conflict between the Pennsylvania Common law cases laws and Federal case laws and Constitutional laws. Stromberg v. California, 283 U.S. 359 (1931) ("Due Process prohibits alternative theories"); Yates v. United States, 354 U.S. 298 (1957) ("The Due Process Clause requires that the verdict must be set aside if it is 'impossible to tell which ground the jury selected'"); Sandstrom v. Montana, 442 U.S. 510, 526 (1979) ("When a criminal case is submitted to the jury on alternative theories, the unconstitutionality of any one of the theories require that of the resulting conviction by the jury be set aside"; See also, Humanik v. Beyer, 871 F.2d 432, 442 (3rd. cr. 1989) (same)).

In the closely analogous case of Commonwealth v. Chambers, 2018 Pa. Lexis 3665, 188 A.3d 410 (Pa. 2018), The Pennsylvania Supreme Court recently acknowledged, without deciding, that the principle of "conspiratorial liability" is not law in Pennsylvania. "This form of vicarious liability is not codified in Pennsylvania's crimes code". See 18 Pa.C.S. §306 (outlining circumstances in which a person can be liable for conduct of another, which contains no mention of the concept of "conspiratorial liability"), *Id.* at 188 A.3d 408.

Also, 18 Pa.C.S. §903 (setting forth the elements of the substantive offense of "Criminal Conspiracy", and again, omitting any reference to an offender's liability for acts committed by others in further of the conspiracy"). "Yet, the maxim is routinely utilized in courtrooms across Pennsylvania as a basis to convict one person for the acts of another" ... Chambers, *supra*, *Id.* at 408-409. See also, n. 6.

"Nevertheless, I see no wisdom in perpetuating a scheme of judge-made law serving as the sole basis for substantive criminal liability that is so facially in tension with the comprehensive Crimes Code promulgated by the policy-making branch. Chambers, *supra*, 188 at 416 (Chief Justice Saylor Concurring). "The one issue that the majority does not reach: 'Whether criminal convictions can rest upon the theory of conspiratorial liability, when such theory is not provided for expressly in our Crimes Code'. 188 A.3d at 420. (Justice Dougherty dissenting).

"Since the enactment and adoption of the Crimes Code in 1972, no conduct constitutes a crime in Pennsylvania unless it is a crime under title 18 or another statute". The legislature explicitly abolished common-law crimes in §107(B) of the crimes code, 18 Pa. C.S. §107(B). "Pennsylvania is a 'Code Jurisdiction', and it recognizes no common-law crimes" ... Commonwealth v. Booth, 564 Pa. 228, 233 (Pa. 2001). See also, Commonwealth v. McMullen, 961 A.2d 842, 847, 849 (Pa. 2008) ("Only the Pennsylvania Legislature can enact 'substantive law', which declares what acts are crimes and prescribe the punishment for their commission").

"The intention of the legislature is to be collected from the words they employ, and to determine that a case is within the intention of a statute, especially of a penal act, its language must authorize such a determination". "The principle that a case which is within the reason or mischief of a statute is within its provisions cannot be carried so far as to punish a crime not enumerated in a statute, because it is of equal atrocity, or of kindred character, with those which are enumerated". Bouie v. City of Columbia, 378 U.S. 347, 363 (1964).

These cases illustrate the fact that the Pennsylvania Supreme Court is out of step with this Court and other circuits and the Pennsylvania State Legislatures when it comes to statutory Law and Common-law. See Ex Parte Siebold, 100 U.S. 371, 376 (1880) ("A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment"). Certiorari should be granted in this case.

CONCLUSION

For these reasons, a Writ of Certiorari should be immediately issue to review the judgment of the Pennsylvania Supreme Court.

Respectfully Submitted,



Michael J. Pendleton

Petitioner Pro Se

Dated: 4-3-19