

ORIGINAL

NO. 18 - 9318

IN THE SUPREME COURT OF THE UNITED STATES

DARNELL DUNLAP,

Petitioner,

v.

THE STATE OF MICHIGAN,

Respondent.

On Petition for Writ of Certiorari to the
Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

Darnell Dunlap #174326
In Propria Persona
Chippewa Correctional Facility
4269 West M-80
Kincheloe, Michigan 49784

QUESTION(S) PRESENTED

I. WHETHER THE STATE COURTS REFUSAL TO PROVIDE INDIGENT APPELLANTS WITH A COMPLETE COPY OF THE RECORD/TRANSCRIPTS FROM ALL PRE CONVICTION PROCEEDINGS TO PERMIT PROPER CONSIDERATION OF (HIS) CLAIMS VIOLATES THE XIV AMENDMENT OF THE US CONSTITUTION AND THE HOLDING OF GRIFFIN V. ILLINOIS?

Petitioner answers "yes"

The State answers "no"

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:

- 1) Trial court opinion and order denying Motion for Production of Transcripts; July 23, 2016 case No. 08-223861-FC.
- 2) Michigan Court of Appeals order denying Motion to Compel the trial court's production of transcripts dated; March 22, 2018 case No. 340776.
- 3) Michigan Supreme Court order denying application for leave to appeal Michigan Court of Appeals order denying Motion to Compel the Trial Court's production of transcripts dated; February 4, 2019 case No. 157570.

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APPENDIXI'S ATTACHED HERETO

- A) Motion for Production of Transcripts filed in the Trial Court, No. 08-223861-FC.
- B) Opinion and order denying motion filed in Trial Court, No. 08-223861-FC.
- C) Motion to Compel the trial court's production of transcripts filed in the Michigan Court of Appeals No. 340776.
- D) Michigan Court of Appeals standard order denying the Motion to Compel the trial court's production of transcripts No. 340776, dated: March 22, 2018
- E) Application for Leave to Appeal filed in the Michigan Supreme Ct., No. 157570
- F) Michigan Supreme Ct. standard order denying Application for Leave to Appeal No. 157570, dated: February 4, 2019.
- G) Investigation Request to the State Court Administrator.

STATEMENT OF JURISDICTION

The Michigan Supreme Court entered its final order on February 4, 2019 case No. 157570 this Court has jurisdiction pursuant to 28 U.S.C. §1254(1) and 28 USC §2241 (1) to grant Certiorari and or a Writ of Habeas Corpus to a prisoner held in violation of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV

1868

Citizenship; security of persons and property, due process and equal protection clauses.
Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State 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 the equal protection of the laws.

STATUTES AND RULES

28 U.S.C. §1254(1)
28 U.S.C. § 2241 (1)

STATEMENT OF THE CASE

The Petitioner was convicted of Second Degree Murder contrary to MCL 750.317 following a jury trial before Honorable Judge Leo Bowman and sentenced as a third offence habitual offender MCL 769.11, to serve 25 years to 40 years. The defendant was represented by Attorney Michael J. McCarthy and the people were represented by Assistant Prosecuting Attorney John A. Blanchard. Mr. Dunlap timely filed a claim of appeal and the State Appellate Defenders Office was appointed and assigned Ms. Gail Rodman whom timely filed a brief in the Court of Appeals.

The Michigan Court of Appeals denied Petitioner's appeal in an order and opinion issued on September 21, 2010. On February 7, 2011 the Michigan Supreme Court denied Petitioner's Application for Leave to Appeal. Petitioner filed a MCR 6.500 et seq. Motion for Relief from Judgment in the Trial Court which was denied. The Michigan Court of Appeals denied leave to appeal that decision on July 8, 2013. On November 25, 2013 the Michigan Supreme Court denied Petitioner's Application for Leave to Appeal. Petitioner filed a habeas Petition raising the same issues as raised in the state court. April 21, 2016, the Eastern District, in docket no. 14-cv-11537, denied the petition for a writ of habeas corpus with prejudice, denied a certificate of appealability, granted permission to appeal in forma pauperis, and denied Petitioner's motion to amend Issue IV (Dkt. 24) as moot.

Petitioner filed a notice of appeal and requested a certificate of appealability. The 6th Circuit Court of Appeals found that the District Court correctly adjudicated Petitioner's claims under the strictures of the AEDPA.

Petitioner timely filed for Certiorari review to the 6th Circuit Court of Appeals in this Court and was denied on April 17, 2017. Reconsideration of that decision was sought and subsequently

denied on June 19, 2017.

Petitioner initiated an original proceeding in the Michigan Court of Appeals by submitting a Motion to Compel preparation of the transcripts by the Trial Court. The Michigan Court of Appeals interpreted the pleading as a delayed application for leave to appeal, and past on the constitutional question by denying “for lack of merit in the grounds presented.”

Petitioner has made numerous attempts to obtain portions of the state court record in order to fairly present his Constitutional claims for review. These attempts have been made since the date of conviction, and are evidenced and documented dating back to the time of the state courts first denial of relief on direct review. These attempts have also been made in the Federal District Court to no avail.

The Petitioner Submits that He has made these attempts as fully outlined in his Request for Investigation to the State Court administrator attached as Appendix G. These attempts to garner the state court record persists to date, with the last attempt having been denied by the Trial Court on January 14, 2019.

I. MR. DUNLAP WAS DENIED HIS XIV AMENDMENT CONSTITUTIONAL RIGHT TO A COMPLETE COPY OF THE RECORD/TRANSCRIPTS FROM ALL PRE CONVICTION PROCEEDINGS TO PERMIT PROPER CONSIDERATION OF (HIS) CLAIMS CONTRARY TO GRIFFIN V. ILLINOIS

In this case the Petitioner has tried to obtain the record on appeal throughout his appeal process as outlined in his application filed in the Court of Appeals, with added support and more fully detailed in his request for investigation presented to the State Court Administrator, Mr. Milton L. Mack Jr. (Appendix A, C and G.)

The issues of constitutional law involved in this case are issues that have long been settled by this Court in *Griffin V Illinois*, 351 US 12; 76 S Ct 585; 100 L Ed 891 (1956) and the Michigan Court of Appeals in *People V Cross* 30 Mich. App. 326; 186 NW2d 398(1971) which was affirmed by the Michigan Supreme Court, 386 Mich. 237. The Court of Appeals decision to state that the claim made in Petitioner's application and motion to compel treated as a brief in support lacks merit is in direct conflict with the state and Federal holdings and rulings. (Appendix C and D).

Petitioner has had his many other pleadings and request denied in numerous arbitrary, forms of reasoning, even to the point of having his pleadings and request misinterpreted. (Appendix D, E and F). The Courts have consistently failed to subject the request to the proper standards of law and failed to determine the applicability of the MCR's, such as *MCR 6.433 (C) (1) and (4)* which clearly mandate the furnishing of the record on appeal to indigent Appellant-Defendants. Further this Court in *Griffin v Illinois*, 351 US 12; 76 S Ct 585; 100 L Ed 891 (1956) made entitlement to the record to indigents mandatory, once the state provides an appeal process, and deemed the denial, a 14th amendment due process violation.

It is well-established that the state and federal right of due process of law is violated when the ability of an accused to present a defense is undermined by his poverty. *US cons; Am V, XIV; const 1963 art 1 §§ 15, 20; Gideon v Wainwright*, 372 US 335 (1963); *Powell v Alabama*, 287 US 45 (1932).

Indigent prisoners are constitutionally entitled to "the basic tools of an adequate defense or appeal. When those tools are available for a price to other prisoners." *Britt v North Carolina*, 404 US 226, 227, 92 S Ct. 431, 30 L Ed.2d 400 (1971), citing *Griffin v Illinois*, 351 US 12, 76 S Ct 585, 100 L Ed 891 (1956); *Ake v Oklahoma*, 470 US 68; 105 S Ct 1087; 84 Led 2d 58 (1985). The Supreme Court in Ake held that the due process clause of the fourteenth Amendment requires a state to "take steps to insure that the defendant has a fair opportunity to present a defense." The Court stated:

We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Thus, while the Court has not held that a State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, it has often reaffirmed that fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system." To implement this principle, we have focused on identifying the

"basic tools of an adequate defense or appeal," and we have required that such tools be provided to those defendants who cannot afford to pay for them. *Ake*, 470 US at 77, 105 SCt 1087 (internal citations omitted).

Protection guarantees, a complete record is essential to an appeal, regardless of the economic status of the appellant. *In Mayer v Chicago*, 404 US 189, 193-194; 92 S Ct 410; 30 L Ed 2d 372 (1971), the Court wrote:

Therefore, '(i)n all cases the duty of the State is to provide the indigent as adequate and effective an appellate review as that given appellants with funds. * * *' Draper v. Washington, 372 U.S. 487, 496, 83 S.Ct. 774, 779, 9 L.Ed.2d 899 (1963). In terms of a trial record, this means that the State must afford the indigent a "record of sufficient completeness" to permit proper consideration of (his) claims.' Id., at 499, 83 S.Ct., at 781 (quoting Coppedge v. United States, 369 U.S. 438, 446, 82 S.Ct. 917, 921, 8 L.Ed.2d 21 (1962)).

CONCLUSION

CONCLUSION AND REASONS FOR GRANTING PETITION

In order for Mr. Dunlap to have an adequate appeal, Mr. Dunlap required his transcripts. The failure of the state court to provide Mr. Dunlap his transcripts deprived him of any true opportunity to establish and prove his claimed state and federal violations which ultimately deprived the Petitioner of his federal state his right to due process of law and an adequate appeal.

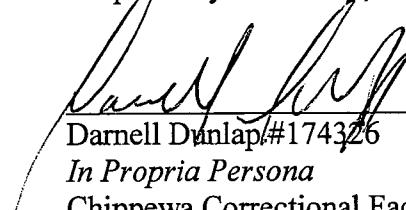
Mr. Dunlap requests that this Honorable Court grant his Petition for Certiorari for the reasons stated in issue I above, because the Michigan state court's determination of the above claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States", and/or

“resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding”, as detailed above.

WHEREFORE, for all the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this petition for writ of certiorari, or any other relief that this Court deems equitable.

Respectfully Submitted,

Date: 5/6/19


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