

18-9454

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DANIEL BROWN

— PETITIONER

(Your Name)

Supreme Court, U.S.  
FILED

MAY 15 2019

OFFICE OF THE CLERK

vs.

COMMONWEALTH OF PENNSYLVANIA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

PENNSYLVANIA SUPERIOR COURT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANIEL BROWN

(Your Name)

REG NO: 54090-066

MOSHANNO VALLEY CORRECTIONAL CENTER

(Address) 555 GEO DRIVE

PHILIPSBURG, PA 16866

(City, State, Zip Code)

(Phone Number)

## **QUESTION(S) PRESENTED**

Whether 42 Pa. C.S. § 9542 of the Pennsylvania Post Conviction Relief Act (PCRA) operate under the Antiterroism and Effective Death Penalty Act (AEDPA) 28 U.S.C. § 2244 as a suspension of the writ of error coram nobis under 28 U.S.C. § 1651(a), by stripping Pennsylvania State Courts jurisdiction of habeas corpus over constitutional questions, is inadequate and ineffective without substitute to test the legality for persons not in custody for purpose of PCRA under AEDPA one year limitation?

## 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:

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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**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

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

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Pennsylvania Superior court appears at Appendix A to the petition and is

reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was June 20, 2018. A copy of that decision appears at Appendix A \_\_\_\_\_.

A timely petition for rehearing was thereafter denied on the following date: July 9, 2018, and a copy of the order denying rehearing appears at Appendix C \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_ A \_\_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **United States Constitution, Amendment V:**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### **United States Constitution, Amendment XIV:**

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which 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.

## STATEMENT OF THE CASE

The privilege of the writ of habeas corpus shall not be suspended, unless in cases of Rebellion or invasion the public safety may require it. United States Const. art. 1, § 9, cl. 2.

A court jurisdiction to issue a writ of error coram nobis derives from the All Writs Act (AWA) 28 U.S.C. § 1651(a) which authorizes courts to issue all writs necessary or appropriate in aid of their respective jurisdiction. (28 U.S.C. § 1651(a)).

In *United States v. Morgan* this Court held that the writ of error coram nobis was available at common law to correct errors of fact. It was allowed without limitation of time for fact that affect the "validity and regularity" of the judgment, and was used both in civil and criminal cases. 346 U.S. 507.

This case presents a question of whether the Pennsylvania State Superior Court of Appeals entered a decision that a writ of error coram nobis is untimely, is in conflict with the decision of the United States Federal Courts, including this Court, and stripped the Pennsylvania State Courts of jurisdiction of habeas corpus that is inadequate and ineffective without substitute to test the legality for persons not in custody for purpose of PCRA and violate the Fifth Amendment due process and Fourteenth Amendment due process.

### 1. The trial court proceeding

On November 10, 1995 Daniel Brown was arrested in Delaware County Pennsylvania and charged with Possession With Intent to

Deliver (PWID) a controlled substance. Mr. Brown was released on bond and on February 13, 1997 the Immigration and Naturalization Services (INS) take Mr. Brown into custody with an Order To Show Cause (OTSC) for deportation.

The Delaware County District Attorney's Office dismissed the charges after learned from the INS that Mr. Brown will be deported on March 31, 1997. The case remained open in error even though charges were dismissed for closure of the case. Mr. Brown unlawfully reentered the United States thereafter and while serving a sentence for unlawful reentry in 2002 Delaware County District Attorney's Office move to prosecute Mr. Brown.

On December 9, 2002 Mr. Brown plead guilty to simple possession with plea agreeemnet for a misdemeanor charged but preserved his argument that the case had remained open in error. Mr. Brown appealed this issue but was lead to believe that the appeal was pending upon to completion of his sentence until 2017 when he first filed a error coram nobis with the trial court.

In Mr. Brown's coram nobis to the trial court he argued that all the charges were dismissed prior to deportation and the guilty plea was obtained in error based upon the case remain open rather than closed; and, (2) he plead guilty to simple possession and the misdemeanor and the docket sheet reflect a felony conviction should be corrected.

The State trial court dismissed the petition as untimely, construing it as a PCRA under the AEDPA statute of limitation for one year. App. B at pg 2. The State trial court also treated the coram nobis without time limitation holding that the facts were known at the time of trial that the case had remained open in error. App. B at pg 4.

## 2. The State Court of Appeals

Mr. Brown appealed to the Pennsylvania State Superior Court of Appeals. Mr. Brown renewed his argument that the conviction should be vacated because the charges were dismissed prior to deportation and remained open in error; and, the trial court should have corrected the error where Mr. Brown plead guilty to misdemeanor and simple possession and the docket sheet indicated Mr. Brown conviction is a felony.

The trial court do not have any transcript or documents pertaining to Mr. Brown's charged or conviction except a judgment of sentence that is handwritten that Mr. Brown was sentenced to 11-23 months. Mr. Brown's argument that the charges were dismissed prior to deportation and that the plead was for simple possession and misdemeanor was supported by affidavit.

By an order dated June 20, 2018 the State Court of Appeals dismissed the petition as untimely as bar by PCRA statute of AEDPA statute of one year limitation. App. A at pg 6.

## REASONS FOR GRANTING THE PETITION

A. The Pennsylvania State Superior Court of Appeals entered a decision in conflict with the decisions of the United States Federal Courts, including this Court on the same important matter which operate as a suspension of the writs.

The Pennsylvania State Superior Court of Appeals construed Mr. Brown's writ of error coram nobis as untimely with a one year statute of limitation under the PCRA and AEDPA citing 42 Pa. C.S. § 9545 is clearly erroneous.

The State Superior Court did not disturbed the trial court's treated the error coram nobis without limitation is also conflicting between the trial court and the State Court of Appeals finding that Mr. Brown was bar by 1year limitation without reversing the trial court's treating the petition without limitation.

Neither did the State Court of Appeals pointed out how does coram nobis fall under the one year limitation of AEDPA. This Court in United States v. Morgan did not reversed its decision to hold otherwise that a writ of error coram nobis is available without limitation which made the State Court of Appeals decision conflicting with this Court's decision on the same important matter.

The State Court of Appeals decision is also conflict with federal court's decision on the same matter. See e.g. Obado v. New Jersey, 328 F.3d 716 (3rd Cir. 20018) holding that "unavailability of habeas corpus does not leave deserving petitioners

without recourse.

The States Superior Court of Appeals erroneous decision is conflicting with all federal courts and even with its trial courts. The State appeal court's decision violated the Fifth and Fourteen Amendment because it leave petitioners as here without recourse nor afforded an substitute remedy to test the legality for persons not in custody for purpose of PCRA to raised constitutional questions.

The Pennsylvania statute 42 Pa. C.S. 9542-46 modified under the AEDPA for purposes of PCRA eliminate writ of error coram nobis. This Court has held that a State modifying the scope of habeas corpus review is constitutional under the suspension clause so long as the modified scope of review, that is, the habeas substitute "is neither inadequate nor ineffective to test the legality of persons's detention." Swain . Pressley, 430 U.S. 372, 381 (3817)

This Court had weighed the adequacy and effectiveness of habeas corpus substitute on only a few occasions, and only once, in Boumediene, has it found a substitute wanting. Boumediene, 553 U.S. 795 (holding that "the [Detainee Treatment Act] review procedures are an inadequate substitue for habeas corpus," and therefore striking down under the Suspension Clause §7 of the Military Commision Act, which stripped federal courts of habeas jurisdiction over guantanamo Bay detainees).

This Court in Swain v. Pressley held that the privilege of the writ of habeas corpus shall not be suspended, unless in cases of Rebellion or invasion the public safety may require it. 430 U.S. 379-380 citing United States Const. art. 1, § 9, cl. 2.

The Pennsylvania code 42 Pa. C.S. § 9542 under the PCRA for purposes of AEDPA 42 Pa. C.S. § 9545 when modified suspended the writ of error coram nobis without substitute. The State trial court, nor the government on appeal in response, nor the State court of appeals does not content that we are in a formal time of suspension.

Mr. Brown has been denied without substitute for a writ to raised constitutional questions. This case present this Court the opportunity to decide whether 42 Pa. C.S. § 9542 of the Pennsylvania Act modified the PCRA under AEDPA 28 U.S.C. § 2244 operate as a unconstitutional suspension of the writ of error coram nobis under 28 U.S.C. § 1651 by stripping the Pennsylvania States courts of jurisdiction of habeas corpus over all constitutional questions.

Without this Court intervention, petitioners as here will have no recourse to raised constitutional question as herein in this case that will continue to violate the Fifth and Fourteen Amendment due process clause.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel K. Brown

Date: May 15, 2019