

No. _____

18-9480

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Gregory STANLEY Roberts — PETITIONER

(Your Name)

INSEURCO INSURANCE SERVICES — RESPONDENT(S)

FILED
MAY 28 2019
CLERK, SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregory S. Roberts

(Your Name)

1617 Edge Hill Road

(Address)

Abington, Pennsylvania 19001

(City, State, Zip Code)

Q15-572-0134

(Phone Number)

RECEIVED
MAY 30 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

//

GREGORY STANLEY ROBERTS
pro se Petitioner,

INSERVCO INSURANCE SERVICE.inc
Respondent.

Motion for leave to Proceed in *Forma Paupers*-Rule39

//

PETITION FOR A WRIT OF CERTIORARI

//

Gregory Stanley Roberts
1617 Edge Hill Road
Abington, Pa 19001
215-572-0134

QUESTIONS PRESENTED

1. The petitioner was injured on three occasions while performing his duties at Bensalem Youth Development Center. (DPW). The second injury, the agency determined that Workers Compensation Insurance Service should approve Act 534 benefits. At this time light duty work was available. Why did the Insurance Service deny Act 534 and light duty? *see appendix I.*
2. Six months before I retired, my Employer and the Insurance Carrier requested that I have a Independant Medical Examination of their choice. My examination determined that I should be on Modified duty. Why did the Insurance Carrier deny this duty? *see appendix G.*
3. Workers' Compensation Appeal Board in a order, **DENIED** the Defendant right to appeal decision dated, 7/28/2010. The respondent ignored the Order and three weeks later filed this matter to Commonwealth Court of Pa, 8/17/2010. Can the defendant file an Appeal without authority? *see appendix F. page8*
4. June 21, 2011, I received a Memorandum Opinion from the Commonwealth Court. Stated, Petitioner Department of Public Welfare/Norritown State Hospital v. Respondent Worker's Compensation Appeal Board(Roberts) Dated 10, 2010. At no time the petitioner(Roberts) was employed at Norristown State Hospital. Should submiting a wrong litigant void this appeal? *see appendix A.*
5. The Factual Background in this matter was litigated in the United States District Court February 21, 2002. Pennsylvania Department of Public Welfare did pay settlement in this matter in 2003. To re-litigated this matter in 2010, would this

QUESTIONS PRESENTED- Continued

action constitute **res-judicata, collateral estoppel?** After 10 years should this claim be barred due to **Statue of Limitation?** see appendix.C

6. The 14th Amendment limits the action of state and local officials. Equal protection under the law to all citizens, which include **(Due Process)**. I was not informed that this matter was being litigated in the Commonwealth Court until I received the suspension memorandum June 2011. This action shows continued retaliation and abuse of the respondent, with the assistance of my attorney. Should I believe in the legal principle of full, fair and transparency?
7. Is it fair to not view the defendant's appeal or to see my attorney's response to the appeal? Is it fair that my attorney neglected to inform his client that he lost my files? Is it fair that after repeatedly asking for my files, I had to request the respondent's appeal and my attorney's response from Jenkins Law Library for \$80.00? Is it fair to request my attorney to appeal the decision to suspend my benefits and he choose to file a penalty petition? see appendix K.
8. My Insurance Carrier's argument of, I voluntarily left the work-force when I retired. Evidence will show that my employer Barred me from entering my place of employment. If the Insurance Carrier denies me the 534 Act, denies my modified duties and my employer denies me access to work, is there another choice other than retirement? see appendix J.
Is it fair that the Commonwealth Court was unaware of all above?
9. After pointless pages on a Appeal to the Commonwealth

Court, why did the respondent claim to have offered \$90.000 Authority to petitioner? see appendix.E

!0. All Questions above was concealed from the Court of the Commonwealth of Pa. Therefore all proceedings that followed never received this evidence. Would concealing consequential evidence alter a decision?

iii

LIST OF PARTIES

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in court whose judgment is the subject of this petitin is as follows:

Pennsylvania Department of Public Welfare
1171 South cameron Street, Room 103
Harrisburg, PA 17104-2501

O'Brien, Rulis & Bochicchio LLC
J. Brendan O'Brien, Esq.
1515 Market Street, Suite 1518
Philadelphia, PA 19102

Kenneth S. Saffen
815 Greenwood Ave, Suite 22
Jenkintown, PA 19046-2800

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY.....	2
PROVISIONS INVOLVED.....	2
STATEMENT OF ISSUES.....	2
STATEMENT OF THE CASE.....	2-7
REASONS FOR GRANTING THE PETITION.....	8,9
CONCLUSION.....	10,11

APPENDIX

Commonwealth Court of Pennsylvania, Opion, June 21, 2011 and Order.....	App.A
United States Third Circuit Court.....	App.B
United States District Court Memorandum dated 2/21/2002 and 9/19/2011.....	App.C
Worker Compensation May 19, 2000 Order an a Interlocutory Order.....	App.D
\$90,000 Authority.....	App.E
Worker's Compensation Appeal Board, Opinion July 28, 2010 page 8.....	App.F
Independant Medical Evaluation.....	App.G
Respondents Defense.....	App.H
Employer request of appove 534 Act	
Proof of available Modified duty.....	App.I
Proof that Petitioner was Barred from	

entering work of employment.....App.J
Attorney failure to Appeal, E-Mails to Attorney
Receipt for Jenkins Law Library.....App.K

VI

TABLE OF AUTHORITIES

Cases:

Roberts v. Pennsylvania Department of Public Welfare
199 F. Supp. 2d 249 (E.D.Pa.2002)

Shuste v. WCAB (Pennsylvania Human Relation Cmmm)
745 A.2d 1282 (Pa. Cmwlth. 2000) dated 7/28/2010(app b.page 8)

Southeastern Pa. Transportation Authority v. WCAB
(Henderson), 543 Pa. 74 (1995)

Strickland v. Washington, 466 U.S. 668 (1984)

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. I	2
U.S. Const. amend. VI.....	2
U.S. Cosnt. amend. XIV.....	2

1.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully hopes and prays that a
writ of certiorari issue to review the judgment below.

.....//.....

OPINIONS BELOW

The opinion of the United States Third Circuit Court of
Appeal to review the merits appears at Appendix B. of the original
filing to the petition and has been designated for publication
but in not yet reported. Appendix B

The opinion of the Pa Commonwealth Court appears
at Appendix A of the original filing to the petition and
has been designated for publication but is not yet reported.

JURISDICTION

The date on which the United States Third Circuit Court of
Appeals decided my case was April 4 2019. A copy of that
decision appears at Appendix B.of the original filing.

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

2.

**CONSTITUTIONAL AND
STATUTORY PROVISIONS INVOLVED**

First, Six Amendment Rights & Fourteenth Amendment Rights
Statue of Limitatiion supported by continued Retaliation

Shuster v. W.C.A.B. (Pennsylvaniial Human Relation Comm'n)
745 A.2d 1282 (Pa.Cmwlth.2000)

SEPTA v. W.C.A.B. (Henderson), 543 Pa. 74 (1995)

Strickland v. Whashington, 466 U.S. 688 (1984)

Roberts v. Pennsylvania Department of Public Welfare-United States District Court
E.D Pa-CIV.A99-3836. 2003 DPW offered plaintiff a settlement and plaintiff accepted
the offer for violation of the above Constitutional Right. Same Factual Background as
before this court.

STATEMENT OF THE ISSUES

1. Did the Commonwealth Court err in holding the Petitioner voluntarily withdrew from the workforce when he retired?

STATEMENT OF THE CASE

On June 6, 1997, while on duty at Bensalem Youth Development Center (hereinafer referred to as "BYDC") was assaulted by a client. According to policy, officials referred Claimant to theirmedical facility at Warminster General Hospital. The physician duty evaluated the Claimant and determined that Claimant needed medical treatment and return on modified duty basis. On June 9, 1997, Claimant was suspended with out pay pending investigation of assault. Claimant's medical treatment was discontinued. Claimant was

fortunate to receive medical treatment from Dr. Murphy. On July 11, 1997, Claimant was terminated from his position of BYDC. On November 11, 1997, a EJAC Hearing was held in Harrisburg, Pennsylvania, and Claimant was reinstated. Claimant return with a doctor's note that state total incapacitation. Officials at BYDC denied the doctor's request and Claimant was forced to return to full-time duty, without restrictions. At this time, Claimant was prescribed celebrex for the pain by Dr. Murphy. Claimant was prescribed colonospasm for shakes by Dr. Cohen. Claimant has severe pain in his neck and, at times, his left side of his face would have paralysis. Dr. Kanoff and Dr. Zohar also requested that Claimant receive sedentary duty. BYDC insisted full duty, full-time without restrictions.

Judge Joseph E. Hagan entered an Interlocutory Order, "In the course of this litigation, the parties are directed to adhere strictly to the provision of Pa. Workers Compensation Act. The parties are reminded that there is no provision in the Act requiring a 'full release without restrictions/without residuals' by a physician before worker may return to work. If a physician releases a worker to work and such work is available, the failure to permit the return to work or the insistence upon unreasonable or unauthorized requirements prior to the return to work may result in the imposition of penalties or the finding an unreasonable contest necessitating the award of attorney's fees as a cost of litigation. You may not appeal this Interlocutory Order." Evidence will show that sedentary or modified duty

was available, yet I was denied. Claimant was forced to return to full duty, full-time without restriction.

On March 31, 1998, while on-duty, a client assaulted Claimant in the lavatory, choked him so hard he left his finger prints on Claimant's neck which aggravated existing injury. Claimant was also hit repeatedly on the top of his head and kicked in the groin. The incident was reported, the agency advised Claimant to seek treatment at Warminster General Hospital. Claimant received a memo from the agency on April 6, 1998, which stated that they determined that 534 benefits should be approved.

On April 11, 1998, Dr. Murphy cleared Claimant to return to restricted duty on a trial basis. Claimant was forced to return to full duty, full-time without restrictions. On August 9, 1998, while momentarily alone, Claimant attempted to restrain two 19-year-old clients from assaulting each other. Claimant's co-worker restrained one of the clients and Claimant had the other. Before co-worker could secure his client, Claimant's client elbowed Claimant in the head knocking his head into a steel door. He felt nausea and a slight pain to his neck. Claimant reported the incident, left the facility and went directly to Dr. Murphy. On September 14, 1998, a meeting was held by BYDC officials regarding Claimant's status. With all the injuries that Claimant sustained, they decided that Claimant can return to work full duty, full-time without restrictions. The same day, September 14, 1998, a memo was posted at the Security Staff Control Center, which indicated, "Gregory S. Roberts, would not be permitted on

agency's grounds." Claimant returned to work on August 17, 1998, with a note from Dr. Murphy, which stated, "Against my medical advice, Gregory S. Roberts may return to work, full duty, full-time without restrictions."

A meeting was held by BYDC officials and a union representative who determined that the note from Dr. Murphy was not acceptable, because Claimant's doctor did not release him to full-time duty. Claimant received a letter from BYDC officials which stated that allowing Claimant to return to work will be a threat to himself, co-workers and students. On September 17, 1998, another memo was forwarded to the Security Staff Control Center, which indicated, "Gregory S. Roberts, is not permitted to enter the facility grounds until further notice. Failure to following the directive may result in disciplinary action and/or including removal."

On June 9, 1998, Claimant returned to work with another note from Dr. Murphy, which indicated patient was no longer under his care and patient may return to work. This note was not acceptable. For no reason, official called the State Trooper and Claimant was escorted off the BYDC grounds in front of his co-workers. It appears efforts to force Dr. Murphy to go against his medical opinion was unsuccessful.

Claimant believed he had no choice but to retire. His health and his freedom were at risk.

At the Deposition of the IME doctor on June 5, 2003, Richard J. Levenberg, M.D., stated that he found

Claimant to be capable of full-time sedentary work. It appears that this a very important witness because on January 28, 1999, six months prior to Claimant retiring, the Employer requested that Claimant receive an Independent Medical Examination from doctor, Richard J. Levenberg, M.D., who found Claimant to be capable of full-time sedentary work. And yet, Claimant was denied sedentary work when, in fact, sedentary work was available. Certainly, there is sedentary work in a facility as vast as the Department of Public Welfare, however, at no time was Claimant ever offered or suggested to have any type of light duty or alternative work within the restrictions laid out by Dr. Murphy. It is for this reason that Judge Burman originally accepted Claimant's argument with regard to this and said that any modification or suspension of his benefits was inappropriate considering there was vast job opportunities available and none were offered to Claimant. The Appeal Board affirmed this decision only to be reversed by the Commonwealth and then remanded to the Appeal Board.

It should also be noted that throughout the course of the Commonwealth's Decision, filed on June 21, 2011, the Order states repeatedly that the Norristown State Hospital is the Employer and that Gregory S. Roberts is the Employee. This is incorrect as it appears that the Commonwealth of Pennsylvania assumed that Gregory S. Roberts did work for the Norristown State Hospital at some time. Gregory S. Roberts **never** worked at Norristown State Hospital in any capacity, he was employed by the Department of Public Welfare

at the Bensalem Youth Development Center. There is a discrepancy in that certainly there would be, again, many job opportunities available as stated in Judge Burman's original Decision for light duty status which Claimant was never afforded.

Finally, Defendant did not follow procedure in this case as well. Should the court follow the case of *Shuster v. W.C.A.B.* (Pa Human Relations Commission) 745 A.2d 1982 (Pa. Commwlth. 2000), there's a holding in that Decision where the Board renders an opinion adverse to a party but that party cannot appeal to the Commonwealth Court at the time the opinion is issued because the Board also remands matter, the party cannot appeal the Judge's Decision following remand directly to the Court but must first file an appeal to the Board. This order and case law was rendered on 7/28/2010, the Defendant appealed to the Commonwealth Court on 8/17/2010. In the *Roberts* case, that is also what occurred and there should have not been a direct appeal to the Commonwealth until the remand to the Appeal Board had been taken care of. Therefore, there was a premature appeal to the Commonwealth Court previously and therefore since they did not follow procedure, in conclusion, once again, Claimant's benefits should be reinstated retroactive from the date of suspension of his benefits from the Commonwealth Court.

REASONS FOR GRANTING THE PETITION

The Commonwealth Court Erred in Holding That Plaintiff Voluntarily Retired from the Workforce.

United States Supreme Court should grant my petition for certiorari for many reasons. From the day of my injuries 1997 and until 2010 the lower court decision was in my favor. For the defendant to request an appeal to the Commonwealth Court shows that their issues were found unreasonable as stated many times. What is erroneous about this case, after 2010, I lost my Sixth Amendment Right. The Supreme Court has held that part of the right to counsel is the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 688 (1984)

Viewing my attorney's (Kenneth Saffren) 2010's brief, it shows that he lacked fidelity and it showed that he concealed consequential evidence from the Commonwealth Court. The evidence that he neglected to submit, see Appendix I of the original filing. My attorney failed to argue the fact that the Commonwealth Court did not have Jurisdiction to hear the case as stated by W.C.A.B. *Shuster v. W.C.A.B.* See Appendix F of the original filing. Case #A08-2308 page 8 dated 7/28/2010. W.C.A.B. 7/28/2010 decision was in conflict with the Commonwealth Court 2011 decision.

In this same brief my attorney failed to state that I never was employed at Norristown State Hospital, as stated in the defendant's 2010 brief to the Commonwealth Court. My attorney concealed the fact that my

case was being litigated in the Commonwealth Court. His client was informed one year later, when he received a notice from the Commonwealth Court that his benefits were suspended. Finally, my attorney failed to submit an appeal on my behalf. Appendix K of the original filing dated 10/23/2013.

This unethical practice is of national importance. To allow an attorney to violate his client's Sixth Amendment Right and to allow an attorney to violate his oath of office is unthinkable. Canon #5 an attorney is bound by all fair and honorable means to present every defense that the law of the land permits. Canon #6, an attorney's obligated to represent his client with undivided loyalty. Not having consequential evidence, the Commonwealth Court decision was correct and the Pennsylvania Supreme Court decision was also correct. The Commonwealth Court did not make a mistake; they only went by what they had, and my attorney gave them nothing. This Court has all of fact and with this, the court should grant my petition of Certiorari. Appendix I of the original filing, will expand my reasons.

Note: February 21, 2002 I was forced to litigate a matter in the Federal Court of United States. My First Amendment Rights were violated and my Fourteenth Amendment Rights were violated. This matter was in response to the facts of my case. My attorney was not representing me, but he was aware of this matter.

Again, it appears when lower tribunal and Federal Court System are aware of the facts of the case the rulings are in agreement.

CONCLUSION

This matter should not be decided due to my Attorney's (Kenneth S. Saffren's) atrocious misconduct. Hopefully there are rare occasions when an attorney will prey on a client's inabilities and lack of knowledge. Fortunately, I have the desire not to relent to his unethical practices. Kenneth S. Saffren, with intent, violated his oath of fidelity and concealed consequential evidence from the Commonwealth Court and his client. His actions are of public issues and the lower courts and Workers Compensation Appeal Board decision conflicts with the higher court. Prior to my attorney submitting his ineffective brief in 2010, the lower courts and W.C.A.B. all agreed that the defendant are without cause and their issues were unreasonable. Based on established case law following a Remand, lower courts are required to follow the direction of the higher authorities. The Commonwealth Court had no alternative but to render a decision to suspend my benefits due to my attorney's concealment. His action made it possible for the State Supreme Court to affirm the Commonwealth Court decision. In both situations, neither Tribunal's had the opportunity to view the evidence of my case. His unethical practice is definitely beyond the fact of the case. Not to address this matter leaves the door open for future misconducts. The United States Supreme Court with this knowledge

NOTE: Respondent and my Attorney neglected to submit the Statement of the Case. Again, violation of my Six Amendment Rights and Due Process of the Law.

should grant this Petition for Writ of Certiorari, now
that it has all of the evidence.

Respectfully submitted,

GREGORY STANLEY ROBERTS
1617 Edge Hill Road
Abington, PA 19001
215-572-0134

Gregory Stanley Roberts

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory Stanley Roberts

Date: 5/29/2019

APPENDIX