

18-9660

No. 18A944

ORIGINAL

Supreme Court, U.S.
FILED

JUN 06 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM WINDSOR — PETITIONER
(Your Name)

vs.

DANA METZGER — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

William Windsor

(Your Name)

Delaware Correctional Center

1181 Paddock Road

(Address)

Smyrna, De. 19977

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Did The Delaware State Courts, Violate Windsor's 5th and 14th amendments and Due Process Rights, When it failed to consider newly discovered evidence and a new Rule of Constitutional Law. Which rendered his conviction /Plea invalid?

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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OTHER

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 is unpublished.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 is unpublished.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 is unpublished.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 De. Superior court appears at Appendix B 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 is unpublished.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. 18 A 944.

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 January 23, 2019. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied 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 April 23, 2019 (date) on June 7, 2019 (date) in Application No. 18 A 944.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment 5 provides, in pertinent part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, without due process of law. (U.S. Const. amend. V)

United States Constitution, Amendment 6 provides, in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to have the assistance of counsel for his defense. (U.S. Const. Amend. VI)

United States Constitution, Amendment 14 provides, in pertinent part:

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 (U.S. Const. Amend. XIV)

STATEMENT OF THE CASE

Petitioner William Windsor, (hereinafter referred to as "Windsor" or Petitioner) was charged on 151 counts on 12/14/12 (Docket no.1). Windsor was arraigned on 03/07/13 (Docket no.5). Windsor plead not guilty. Windsor plead guilty on 09/09/13 (Docket no.32). Windsor's indictment was amended in open court, Windsor was not present (Docket no.42). Windsor was sentenced to 22 years on 12/13/13 (Docket no.40). Windsor filed notice of appeal on 01/14/14 (Docket no.41). Windsor's appeal was affirmed 09/18/14 (Docket no.69). Windsor file an motion for correction of sentence on 11/10/14 (Docket no.71). motion was order without merit and denied on 11/24/14 (Docket no.72). Windsor filed for Post Conviction on 03/23/15 (Docket no.73). motion for postconviction relief dismissed on 03/30/15 (Docket no.74). Windsor filed an notice of appeal on 04/20/15 (Docket no.75). Motion of appeal was affirmed on 10/15/15 (Docket no.81). Windsor filed motion for postconviction relief on 06/19/18 (Docket no.82). Motion for postconviction denied on 07/19/18 (Docket no.83). Windsor filed an appeal with Del. Supreme Court (Docket no.84). appeal was denied on 01/23/19 (Appendix A).

REASONS FOR GRANTING THE PETITION

Mr. Windsor presented to the Delaware Courts newly discovered evidence and a claim that a new rule of Constitutional Law made retroactive in his case and it rendered his conviction/plea invalid.

The De. Cts. denied his application because it ruled that according to it rule 61(d) (ii), the consideration of newly discovered evidence or new rule of withdrawal law only applied to a movant that was convicted at trial not a movant that took a plea.

This restriction cannot stand as it violates the 5th amendment's Due Process Clause made applicable to the states through the 14th amendment and equal Protection Clause of the 14th amendment.

Through the State Court's ruling, it prevented Windsor from bringing forth a cognizable 6th amendment claim, preventing this argument violated Windsor's rights.

For background purposes, the newly discovered evidence was a affidavit testimony proving his innocence and rendered Windsor's plea involuntary. The Court denied the evidence when it ruled Windsor's affidavits were ambiguous hearsay. With the Superior Court ruling this way, it makes the Court the sole fact finder. In Poor v. State, 880 A.2d 236 Del. (2005) it states "we also recognize that it is the sole province of the fact finder to determine witness credibility, resolve conflicts, in testimony, and draw any inferences from the proven facts. The fact Finder is free to reject all or part of any witness testimony. The fact Finder need not believe even uncontested testimony, we will not substitute our judgement for the fact Finder's assessment in this area".

The Court ruled on it without an evidentiary hearing. If the Court was to be the fact finder, it did so without all the facts.

The U.S. Supreme Court ruled in Bee v. U.S., 137 S.Ct. 1958, 198 L. Ed. 2d 476 (2017) and Class v. U.S., 138 S.Ct. 798, 200 L. Ed. 2d 37 (2018), making the prose withdrawal of plea retroactive. In Windsor's petition he argued that the Lower Court would not allow him to withdraw of plea. Windsor also argued ineffective assistance of counsel, that counsel coerced him into taking the plea. The Lower Court has denied Windsor the right to argue this new Constitutional Law, in doing so violated Windsor's Constitutional rights.

In Griffith v. Kentucky, 479 U.S. 314, 93 L. Ed. 2d 688, 107 S.Ct. (1987) "Failure to apply a newly declared Constitutional rule to Criminal Case pending in direct review violates basic norms of constitutional adjudication". Two principle guided this decision. First, the problem not applying new rules to cases pending on direct review is "the actual inequity that results when the Court chooses which of many similarly situated defendants should be the chance beneficiary of a new rule". Second "that a new rule for the conduct of Criminal prosecution is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a "clear break" with the past". Thus, the Courts "new rule" is applied to the present cases, future cases, and any cases pending at trial, on direct review or appeal or yet not final. The new rule even applies to cases where claims was already rejected by a Lower Court based on prior precedent, but still subject to direct review in the Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Windsor

Date: June 3, 2019