

No. 18-9730

ORIGINAL

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MAY 25 2019

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Gerald S. Lepre, Jr. — PETITIONER
(Your Name)

vs.

Commonwealth of PA, Et al RESPONDENT(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

Gerald S. Lepre, Jr.,
(Your Name)

4015 Fairfield Avenue
(Address)

Pittsburgh, PA 15120
(City, State, Zip Code)

1 (412) 526-7321
(Phone Number)

WRIT OF CERTIORARI

TO THE HONORABLE CHIEF JUSTICE John Roberts & SUPREME COURT JUSTICES Ruth Bader Ginsburg, Clarence Thomas, Stephen Breyer, Elena Kagan, Samuel Alito, Sonya Sotomayor, Neil Gorsuch and Brett Kavanaugh:

I. QUESTIONS PRESENTED TO THIS HONORABLE COURT IN SUPPORT OF CERTIORARI:

PURSUANT TO FEDERAL HABEAS CORPUS JURISDICTION UNDER 28 U.S.C. 2254 (A) FOR STATE PRISONER'S:

1. DOES A SUSPENDED SENTENCE COUPLED WITH AN ACTIVE DOMESTIC ORDER CONSTITUTE CUSTODY FOR PURPOSES OF RELIEF BECAUSE OF THE RESTRAINTS ON PERSONAL INTERESTS, LIBERTIES OR THREAT OF FUTURE INCARCERATION? AND
2. SHOULD THE CIRCUIT SPLIT IN WRIGHT v. BAILEY, 544 F.2d 737, 739 (4TH CIR. 1976) AND UNITED STATES EX REL. DESSUS V. PENNSYLVANIA, 452 F.2d 557, 560 (3RD CIR. 1971) BE RESOLVED ON THIS ISSUE?

SUGGESTED ANSWERS: Yes.

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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 1 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☒ is unpublished.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 2 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☒ is unpublished.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 _____ 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☐ is unpublished.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 _____ 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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 28, 2019.

☐ 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: May 20, 2019, and a copy of the order denying rehearing appears at Appendix 3.

☐ 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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 _____ (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

28 U.S.C. 2254 (a)

STATEMENT OF THE CASE

Petitioner was convicted on 2 counts of a contempt of court and sentenced to ninety (90) days of incarceration for an alleged violation of an ongoing domestic order. Petitioner was represented at trial by the Public Defender. The Public Defender did nothing at trial. Additionally, Petitioner sought a direct appeal from the judgment of conviction and sentence. Petitioner was represented at the time by the Public Defender who did not properly file an appeal. As a result, Petitioner's direct appeal was dismissed for the Public Defender's failure to properly file the same. Petitioner as a result was denied counsel and direct appeal.

During this time, Petitioner, filed a Petition for Writ of Habeas Corpus under 28 U.S.C. 2254. Several Report's and Recommendation's were filed and entered. The Report and Recommendation, which is germane in this appeal is the Report and Recommendation entered August 10, 2018 that dismissed the case on the merits and denied a certificate of appealability. The district court accepted this Report and Recommendation. At this time, Petitioner sought a certificate of appealability from the United States Court of Appeals for the Third Circuit. On March 28, 2019, the Third Circuit dismissed the request on the basis that a Suspended Sentence did not constitute custody for purposes of Federal Habeas Relief for State Prisoner's under 28 U.S.C. 2254 citing United States Ex Rel. Dessus v. Pennsylvania, 452 F.2d 557, 560 (3d Cir. 1971). Petitioner sought rehearing en banc under Wright v. Bailey, 544 F.2d 737, 739 (4th Cir. 1976) claiming Suspended Sentences do constitute custody for purposes of Federal Habeas Corpus Relief to State Prisoner's under 28 U.S.C. 2254 (a). The petition for rehearing was denied on May 20, 2019. This timely Petition for Writ of Certiorari followed.

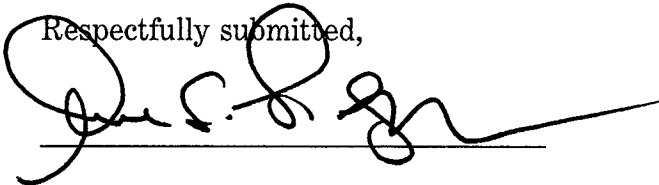
REASONS FOR GRANTING THE PETITION

Suspended Sentences Constitute Custody for Purposes of Federal Habeas Corpus Relief for State Prisoner's Under 28 U.S.C. 2254 (a). Wright v. Bailey, 544 F.2d 737, 739 (4th Cir. 1976).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: June 4, 2019