

19-5055
No. _____

Supreme Court, U.S.
FILED

MAY 20 2019

OFFICE OF THE CLERK

CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Washington, D.C. 20543

Isaac DeCurtis Harris — PETITIONER
(Your Name)

vs.

People of the State of Mich. RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Michigan Supreme Court

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

PETITION FOR WRIT OF CERTIORARI

Isaac DeCurtis Harris

(Your Name)

Alger Corr. Fac. N6141 Industrial Park Dr.

(Address)

Munising, Michigan 49862

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1.) Whether the State Court had caused a conflict within the State Court ignoring its controlling governed caselaw *People v. Thomason* 173 Mich. App, 812(quoted *Grigg v. People* 31 Mich. 470.471) states that: "Where the record does not reveal that the defendant was arraigned, the conviction must be set aside"...And the Petitioner was not arraigned upon his warrantless arrest and there's no record/transcript within the court file?
- 2.) Where there is a mandatory Michigan Court Rule MCR 6.104(F) that provided: "A verbatim record must be made of the arraignment." And a controlling State Court caselaw that states: Where the record does not reveal that the defendant was arraigned, the conviction must be set aside. "*Thomas* 173 Mich. App, 812 (quoting *Grigg* 31 Mich. at 471). Is the lower State Court bound to act upon its mandatory court rule that's connected to a controlling State caselaw remedy, where there is no verbatim record within the court file to show that an arraignment was truly held?
- 3.) Whether a person is under a continuation of restraint of his liberty by the State's failure to arraign him on his warrantless arrest upon the complaint and warrant and allowed the case to proceed forward without conducting such arraignment, that resulted in a conviction?
- 4.) What is the proper remedy for a violation of a person's Due Process Rights through the 14th Amendment, when the State Court cannot produce a record/transcript of an Arraignment being held on a person that was arrested without a warrant for two different felony offenses and was never brought before a Magistrate Judge to be arraigned on the Complaint and warrant, and the State still proceeded forward with the felony prosecution?

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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APPENDIX B Decision of State Court of Appeals denying ~~Reconsideration~~ Preconsideration.

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→ APPENDIX ~~D~~ D Decision of State Trial Court denying Reconsideration.

APPENDIX E Decision of State Supreme Court denying Application For Leave To Appeal.

Appendix D, Decision of State Trial Court denying Motion to Dismiss the final order & return his 6.500 motion, dated 1/31/18

Appendix F, State Trial Court Transcript of Swearing of Felony

Appendix G, State Trial Court letter

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

People v. Thomason 173 Mich. App. 812
(Quoting Grigg v. People 31 Mich. 41)

STATUTES AND RULES

MCL 764.13
MCL 764.26
MCL 6.104(F)

OTHER

Fourteenth Amendment
Due Process right throughout the Fourteenth Amendment

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 E 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 Supreme Court of Michigan court appears at Appendix E 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 4/30/19.
A copy of that decision appears at Appendix E.

☐ 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

Fourteenth Amendment provided: (In Part)

"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."

MCL 764.13 provided:

"A peace officer who has arrested a person for an offense without a warrant shall without unnecessary delay take the person arrested before a Magistrate of the judicial district in which the offense is charge to have been committed, and shall present to the Magistrate a Complaint stating the charge against the person arrested."

MCL 764.26

"Every person charged with a felony shall, without unnecessary delay after his arrest, be taken before a Magistrate or other judicial officer and, after being informed as to his rights, shall be given an opportunity publicly to make any statement and answer any questions regarding the charge that he may desire to answer."

The Due Process Clause of the Fourteenth Amendment mandates that whatever charging method the State employes must give the criminal defendant fair notice of the charges against him to permit adequate preparation of his defense. (Citing *Buffalo v. U.S.* 544, 88 S. Ct. 1222 (1968); *Blake v. Murford* 563 F. 2d. 248 (6th Cir. 1977)).

Concise Statement

On October 27, 2004 Petitioner was arrested without a warrant and taken to the Adrian Police Station for questioning in regards to two different armed robberies that occurred within the Adrian area...After 2 to 3 hours of questioning him, Petitioner was taken to the Lenawee County Jail and the booking procedure was done as fingerprints, pictures, etc. on the same above arrest dated 10/27/04.

On October 28, 2004 While the Petitioner was in custody and housed in the County Jail. The arresting officer had presented a Complaint Felony and Felony Warrant before a Magistrate Judge, charging Petitioner with the Clark Gas Station robbery. The Magistrate had issued the warrant and signed the Complaint based upon the arresting officer's oath testimony to both of the different robberies. Petitioner was not present within the court for such hearing. See Appendix F Swearing of Felony.

A District Arraignment were scheduled for October 29, 2004 but the Petitioner was never brought before a magistrate judge to be arraigned. Still, the prosecutor's case proceeded forward without conducting such arraignment to the January 10, 2005 Preliminary Examination.

Due to Petitioner being a lay person and did not know anything about the "Arrest Procedures" and Arraignment procedure, it was never brought to the defense counsel attention...12 years later after the conviction and serving his time. Petitioner discovered the arraignment procedure and recalled that he was never brought by body before a Magistrate Judge to be arraigned and that his first appearance before magistrate was at the 1/10/05 Preliminary Examination.

[Continue] >>>

In 2016, several request for a copy of the transcript of the arraignment was sent to the trial court by Petitioner . After the trial court ignored such and produced other transcripts such as the 10/28/04 Swearing Felony and 1/10/05 Preliminary Examine...Petitioner had informed the "State Court Administrative Office Region II" of such refusing.

On June 9, 2017, the trial court had sent Petitioner the same two transcript and stated at the end of the court's letter that. "Any other proceedings older than ten years, specifically the arraignment held on 10-29-04, have been purged and destroyed pursuant to statute." See Appendix G [Please look at the two dated of the transcript that trial had sent, notice that the 10/28/04 Swearing of Felony procedure was held a day before the so-called held 10-29-04 Arraignment. If any and all transcripts older than 10 years was purged and destroyed, how is the trial court able to produce the 10-28-04 Swearing of Felony transcripts.]

The Trial Court and the appellate courts had ignored the State controlling caselaw (People v Thomason 173 Mich. App. 812) (quoting Grigg v. People 31 Mich. 41), and the mandatory MCR 6.104(F).

Appendix C: There are three trial court orders, the trial court had erred and put the incorrect file number on such order, Trial Court corrected it.

Appendix D: Petitioner filed a Motion To Dismiss the Final Order and Return his filings 6.500 motion in regards to appendix c, and not being assigned to his trial judge, Denied 1/31/18.

Appendix D: Motion For Reconsideration of the 1/31/18 order, Denied 7/24/18.

Appendix A: Court Of Appeals, Denied 8/28/18.

Appendix E: Court of Appeals Reconsideration, Denied 10/12/18.

Appendix E: Michigan Supreme Court, Denied 4/30/19.

REASONS FOR GRANTING THE PETITION

Petitioner is being held under a continued restraint of his liberty without being arraigned upon his warrantless arrest and the lower State Court is ignoring their own governed controlling caselaw and mandatory Michigan Court Rule that's causing a conflict as follows:

In *People v. Thomason* 173 Mich. App. 812 (Quoting *Grigg v. People* 31 Mich. 41) the Court of Appeals stated: "Where the record does not reveal that the defendant was arraigned, the conviction must be set aside."

MCR 6.104(F) provided: "A verbatim record must be made of the Arraignment."

The above State caselaw is a controlling caselaw, that had not been overturned and the rule of the Michigan Court Rules is also a mandatory rule that the lower State Court was required to apply to the Petitioner's claim.

Petitioner's claim is so clear and obvious, Petitioner was arrested on a warrantless arrest on 10/27/04 and placed in the County jail on the same date. On 10/28/04 a warrant was issued as of if the Petitioner wasn't already in custody and Petitioner was not present for such hearing. An arraignment date was set for 10/29/04 but Petitioner was never brought before a Magistrate to be arraigned upon the complaint as the two mandates statutes required MCL 764.13 and MCL 764.26. There is no verbatim record (transcript) of an Arraignment being held on the Petitioner within the lower State Court file as the mandatory MCR 6.104(F) requires.

This is a important issue for not only to the Petitioner but to the interest of the public citizen(s) that's being restrained of their liberty without being personally brought before a Magistrate to be arraigned on a warrantless arrest and apprised of the nature of the offense charges and their Constitutional Rights. And to create a binding highly court caselaw decision that's supports the controlling State Court governed caselaw.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Charles H. H.

Date: 5/30/19