

No. **19-5746**

Supreme Court, U.S.
FILED

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Supreme Court of the United States

People of the State of New York,
Plaintiffs/Respondents
Represented by: William J. Fitzpatrick, Esq.
District Attorney of the State of New York/County of Onondaga

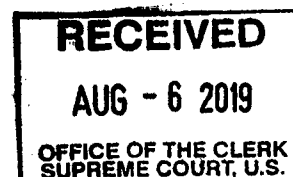
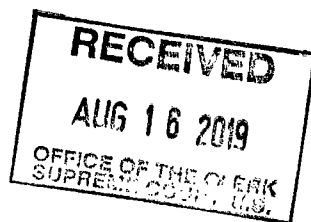
V

Howard Griffith,
Defendant/Petitioner,
Pro Se

Petition for Writ of Certiorari

ORIGINAL

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Questions Presented

1) Procedural Default is the failure to follow state appellate procedures which bars federal review of the case in the absence of showing cause for and prejudice from the failure or sometimes in the absence of showing proof that the bar would result in a miscarriage of justice. Defendant/Petitioner originally failed to follow state appellate procedures to attack his underlying conviction. Nevertheless, seven years after he completed his sentence, the Supreme Court of the State of New York, Appellate Division/Fourth Department, agreed he showed good cause to allow him to take a direct appeal from an improper procedure to attack his judgment of conviction. (Appendix [A]: 2; Defendant's Pro Se Brief [DPSB]: 4, 6-9, 10; People's Response to Pro Se Brief [PRPSB]: 3-5; Defendant's Pro Se Reply Brief [DPSRB]: 3-5, 5-6, 7) The Court interpreted ineffective assistance of counsel.

Does this cause support good reason this should still continue to be deemed for Defendant's procedurally defaulted claim of ineffective assistance of counsel to dismiss the underlying conviction by Coram Nobis?

2) Defendant/Petitioner alleged upon his arrest for rape in April, 2001, that his accuser had a history of accusing other men of sex offenses. He provided for the record that evidence existed his accuser had another man arrested in August, 2007,

for the same offense. He has obtained a statement from the other man she accused, claiming he was accused by the same woman and he was innocent. (DPSB: 10)

Could this support relief pursuant to the rule of procedural default because it proves Defendant/Petitioner is actually innocent?

List of Parties

Defendant/Petitioner, Howard Griffith

Plaintiffs/Respondents, People of the State of New York/County of Onondaga

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Opinions Below

The Order for the Court of Facts, in the State of New York/Onondaga County Court, is dated July 21, 2017, presented in the Appendix at: 1a, and is not reported. The Order of the Supreme Court of the State of New York/Appellate Division, Fourth Department, is dated November 09, 2018, presented in the Appendix at: 2a, and is Reported: "People v Griffith, 166 N.Y. A.D.3d 1518 (4th Dept 2018)". The Order for the New York State Court of Appeals Dismissing Defendant's Appeal is dated February 21, 2019, presented in the Appendix at: 5a, and is Reported: "People v Griffith, 32 N.Y.3d 1196 (2019)". The Order of the New York State Court of Appeals, denying Defendant's motion for reconsideration is dated June 11, 2019, presented in the Appendix at: 6a, and is not reported.

Jurisdiction

The Order of the New York State Court of Appeals dismissing Defendant's Right to Appeal pursuant to NY Civil Practice Laws and Rules (CPLR) 5601 in regards to constitutional provisions being directly involved was dismissed on the Court's own motion on February 21, 2019, and denied reconsideration on June 11, 2019. The jurisdiction of this court is invoked under 28 USC 1257(a).

Constitutional and Statutory Provisions Involved

The Sixth Amendment "Assistance of Counsel" Clause of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." The right to counsel is the right to the effective assistance of counsel, and the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.

In the Fifth Amendment, "Due Process Clause", Procedural Due Process can be applied to the void for vagueness doctrine which discourages judges from attempting to apply sloppily worded laws, yet in particular cases, courts may attempt to narrowly construe a vague statute so that it applies only to a finite set of circumstances.

NY Corrections Law Section 168-o, gives Defendant the Right to Petition for Relief or Modification of Sex Offender Registry once annually.

NY Corrections Law Section 168-n, refers to the authority courts have to determine how the facts in a prosecution of a sex offender registration proceeding

should affect the registration, while presenting the authority the parties have to prosecute it. Part of NY Corrections Law Section 168-n(3) states: "Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established by clear and convincing evidence and shall not be relitigated."

In regards to Defendant's statement: "Facts elicited at the time of entry of Defendant's plea of guilty, as the evidence is deemed clearly and convincingly established, proves he was deceived into admitting to the instant offense and this had not yet been previously litigated," narrowly construed the statute so that it applied to the rare circumstances of this case.

The Fourteenth Amendment "Due Process Clause" in regards to a doctrine called "substantive due process," extends beyond the methods government institutions use to make decisions, constraining to matters in State Governments.

NY Corrections Law Section 168-w, pursuant to separability, under the sex offender registration act, states: "If a court of competent jurisdiction adjudges any section of this article or part thereof to be invalid, such judgment shall not affect, impair, or invalidate the remainder or any other section or part thereof." Defendant argued his equivocal, valid interpretation of NY Corrections Law Section 168-n(3) should support substantive due process to overcome separability to support this

action as a Coram Nobis to dismiss his conviction of Rape 1st, NY Penal Law Section 130.35(1), by forcible compulsion.

NY Criminal Procedure Law Section 450.10(1) is the proper statute to take a direct appeal from the judgment of conviction. The statute of limitations to take notice for a direct appeal, pursuant to this statute, is 30 days after sentencing.

Nevertheless, the narrow construction of NY Corrections Law Section 168-n(3) that had been applied to "People v Griffith, 166 N.Y. A.D. 3d 1518 (4th Dept. 2018)" narrowly construed NY Criminal Procedure Law Section 450.10(1) to develop even more rare circumstances to apply a direct appeal to this case.

Concise Statement

The purpose of NY Corrections Law Article 168: Sex Offender Registration Act ([SORA] [Megan's Law]) was not meant to attack an underlying conviction. Yet Defendant was able to ambiguously take action, pursuant to this article, to have an interpretation of law reached, on the merits, he was provided ineffective assistance of counsel at his conviction for Rape 1st, NY Penal Law Section 130.35(1). This was interpreted because Defendant was deceived and coerced to take his guilty plea as he believed he had been convicted by Alford plea. (Appendix [A]: 52, 78, 87, 89) (See North Carolina v Alford, 400 U.S. 25 [1970]: "An Alford plea is not a

guilty plea as a defendant agrees to take a conviction without admitting to the instant offense to avoid the possibility of being proven guilty after trial.")

Defendant was convicted of Rape 1st, by guilty plea, on January 10, 2002, and was penalized on his SORA registry to determine the risk level to repeat a sex offense, in June, 2006, for not admitting to the instant offense. This was because he still believed he had been convicted by Alford. (A: 13, 94, 95) These were all violations of Defendant's 4th, 5th, 6th and 14th Amendment Rights of the Constitution of the United States. (A: 92, DPSB: 4) Defendant completed his sentence on August 11, 2011.

Defendant took action, pro se, in January, 2017, to petition to modify his SORA registry, equivocally, pursuant to NY Corrections Law Section 168-o, as he argued the court would have to determine that there was an admission to the instant offense. This would have substance for a SORA modification while having an interpretation of law reached supporting his conviction was illegal. The court of facts denied his argument in an Order on July 21, 2017, concluding, "Defendant has failed to establish pertinent facts supporting the requested modification by clear and convincing evidence."

Defendant attempted to appeal this Order with a direct appeal from the judgment of conviction while applying it to NY Corrections Law Section 168-n(3). The Supreme Court of the State of New York, Appellate Division/Fourth

Department, reached decision/order on November 09, 2018, on the merits, agreeing Defendant was denied effective assistance of counsel at the time of conviction. The court deemed the appeal to have been properly taken as a direct appeal, pursuant to NY Criminal Procedure Law Section 450.10(1). This supported cause for the petition to be remitted to the lower court for rehearing on the petition, yet contradiction was settled this could not be used to challenge his conviction in his SORA proceeding. "People v Griffith, 166 NY AD3d 1518 (4th Dept 2018)"

The Appellate Court chose to ignore the facts he presented that the indictment was fatally flawed on its face because it did not cite corroboration (Appendix [A]: 38, 39, 42, 43) and the facts he provided which proved he was actually innocent. (DPSB: 10)

Defendant appealed to the New York State Court of Appeals to interpret he should be entitled to Coram Nobis relief with his SORA modification as Coram Nobis relief would deem his SORA registry moot. Upon order of the New York State Court of Appeals' own motion, the court dismissed his appeal on February 21, 2019. Defendant motioned for reconsideration, and the court's June 11, 2019, Order denied it. Defendant's state remedies have now been exhausted to petition for writ of certiorari to the United States Supreme Court.

Reasons for Granting Petition

I) The Cause is Supported that Defendant Needed to Take his Action from an Equivocal Standpoint Because He was Initially Deceived in the Court to Take his Conviction. Defendant was convicted of Rape 1st, NY Penal Law Section 130.35(1), because he was deceived to plead guilty. He failed to follow the proper state procedures to attack the underlying conviction, yet because he was convicted of a sex offense, he was subject to additional prosecution to register as a sex offender, pursuant to NY Corrections Law Article 168, beyond his sentence. Being subject to these prosecutions, he was able to take equivocal action for the Supreme Court of the State of New York, Appellate Division/Fourth Department, to interpret merit that his conviction involved ineffective assistance of counsel. This was because the court deemed there was good cause to still allow Defendant to take a direct appeal from the underlying conviction. (A: 2; DPSB: 4, 6-9, 10; PRPSB: 3-5; DPSRB: 3-5, 5-6, 7) (United States v Morgan, 346 U.S. 502 [1954] id. 512-513: "Since results of the conviction may persist though the sentence has been served and the power to remedy an invalid sentence exists, respondent is entitled to an opportunity to attempt to show that his conviction was invalid.") (id. "invalid sentence" [invalid SORA certification]) (id. "respondent" [defendant])

Defendant's appeal was dismissed when he took it to the New York State Court of Appeals because it was deemed it did not finally determine his proceeding

within the meaning of the Constitution. (People v Griffith, 32 N.Y.3d 1196 [2019]) Yet due process supports these questions of law can still be raised because ineffective assistance of counsel supported cause to reverse the Order Defendant had taken his direct appeal from. Because of this, these proceedings are still pending, and Defendant will still have the authority to continue to raise questions of law. This supports good reason this cause should continue to be deemed for Defendant's procedurally defaulted claim of ineffective assistance of counsel to dismiss the underlying conviction. (Murray v Carrier, 477 U.S. 478, 485, 489 [1986]) This supports he should be entitled to Coram Nobis Relief.

II) Defendant Supports Evidence in a Separate Police Report Arresting a Different Individual Years After his Arrest Proves the Allegations He Made Against his Accuser in these Actions to Prove his Innocence. Because

Defendant alleged upon his arrest for rape in 2001 that his accuser had a history of accusing people of sex offenses, and in 2007, she had another man arrested for rape, this supports evidence which proves he is actually innocent. (DPSB: 10) (Pennsylvania v Ritchie, 480 U.S. 39, 107 S. Ct. 989, 94 L Ed. 2d 40 [1987]: "A defendant has the right to request that a court reviews confidential files to see if the evidence is material, but a defendant does not have the right to review those files

himself.") This proof of "actual innocence" should be considered for relief pursuant to the rule of procedural default. (Murray v Carrier, id. 496)

Conclusion

This court should grant this writ of certiorari because Defendant still has to suffer in regards to the injustice of still being prosecuted as a sex offender, based on an unlawful conviction, even after he has completed his sentence. Adjective law successfully obtained a meritorious interpretation of law in these proceedings, supporting his conviction was illegal, based on the constitutional violation of ineffective assistance of counsel, and with the evidence Defendant has provided for the record, it can easily be interpreted that the prejudice so violated the outcome of the judgment that if Defendant had been provided effective assistance of counsel, it can be deemed the results of the judgment would have been different. (see Strickland v Washington, 466 U.S. 668 [1984] id. 691-696) This should support a withdrawal of the plea (Brady v United States, 397 U.S. 742, 748: "Only a voluntary and intelligent guilty plea is constitutionally valid."), which would give Defendant his right to present newly discovered evidence to complete the dismissal of his indictment.

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Respectfully Submitted,
Howard Griffith: August 2, 2019
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