

19-6173 ORIGINAL

IN THE UNITED STATES SUPREME COURT
BEFORE THE HONORABLE ASSOCIATE JUSTICE
NEIL McGILL GORSUCH

FILED
AUG 30 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

KARL DAVID KRETSE JR

13308-035

Confined at F.C.C. Petersburg Low

KARL DAVID KRETSE JR
Petitioner

v.

re: 2:06-cr-20062

Mark J. Bolster
Acting Warden

TRADITIONAL HABEAS CORPUS UNDER 28 U.S.C. §2241

FOR A COMPLETE MISCARRAGE OF JUSTICE

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RE
H.C.
OFFICE OF
SUPREME COURT, U.S.

Rule 14 requirement;

QUESTION PRESENTED

Can a conviction stand when at the time of trial and sentencing the trial judge was civilly committed and later determined to be suffering from Wernicke-Korsakoff Syndrome? Was the petitioners right to a "competent tribunal" violated due to the judges inability to rationally make decisions in the case?

Rule 20.1 requirement;
Rule 20.4

RELIEF CANNOT BE OBTAINED IN ANY LOWER COURT

The petitioner previously filed a 2241 to the Eastern District of Virginia. This was done in October 2017, immediately after the facts were discovered that Judge Minaldi was civilly committed mere days after presiding over the case in question. The facts include Associated Press news reports that Magistrate Judge Kay had civilly committed Judge Minaldi due to her inability to handle her basic affairs.

In January 2018, the Eastern District of Virginia transferred the 2241 petition to the Western District of Louisiana. The Western District of Louisiana dismissed the filing without prejudice and construed it as a unauthorized second 2255. Kretser cannot meet the requirements for a second 2255 which is why he properly filed it as a 2241 in the district of confinement.

At the courts direction, Kretser attempted to meet the requirement of a second 2255 in March 2019. The court once again denied the motion.

Kretser meets the requirements for a 2241 but feels that the lower courts are unable to properly hear this case due to the fact that the courts have never had a judge be incompetent to hear a case due to documented mental illness during the trial and sentencing. Because this set of facts have never been addressed, the Supreme Court should hear this case and explain to the lower courts how to handle simular cases.

For these reasons, the Supreme Court is best situated to hear this matter and provide guidance to the lower courts.

Rule 20 requirement:

REASON FOR FILING TO THE SUPREME COURT

The issues raised in this motion have never been ruled upon by any court in the history of the United States. The Constitution requires that a defendant be tried by a "competent tribunal" and the fact that the district court judge was suffering from a debilitating mental disorder that was not publicaly disclosed until years after the trial and conviction violates Due Process.

The Supreme Court should address this issue and provide guidance to the lower courts in how to appropriately handle cases where the trial judge was mentally incapable to adjudicate a case that is before it for adjudication.

PETITION

1. Name and location of court which entered the judgment of conviction under which you are presently confined:

U.S. District Court, Western District of Louisiana

2. Date of judgment of conviction: 02/13/2007

3. Length of sentence: 30 years Sentencing Judge: Minaldi

4. Nature of offense or offenses for which you were convicted: COERCION OR

ENTICEMENT OF FEMALE

5. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes [] No []

6. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes [] No []

A. If so, give name and location of court which imposed sentence to be served in the future:

N/A

B. Give date and length of sentence to be served in future:

N/A

C. Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the future sentence? Yes [] No [] N/A

GROUND ONE: DUE PROCESS VIOLATION

Supporting Facts: During the first week of March, 2007, the Honorable Kathleen Kay (Magistrate Judge for the Western District of Louisiana) attempted to civilly commit her longtime friend who had been diagnosed with a disease called WERNICKE ENCEPHALOPATHY & KORSAKOFF SYNDROME. Judge Kay had determined that her friend was not capable to take care of herself and this civil commitment occurred just one month after she (the friend with WKS) sat in judgement of Karl David Kretser. The civilly committed person was the Honorable Judge Patricia Minaldi.

Due Process requires "that a defendant has a right to a tribunal both impartial and mentally competent to afford a hearing." Tanner v. United States, 483 U.S. 107, 126, 107 S.Ct. 2739 (1987) The evidence presented herein will show that Kretser was denied of his Constitutional Right to Due Process because the Honorable Judge Minaldi was suffering from a disease which is documented to rob the victim of the ability to make even minor decisions which resulted in her need to be cared for as a small child.

BRIEF IN SUPPORT OF PETITION

Wernicke Encephalopathy & Korsakoff Syndrome (WKS) is a type of brain disorder caused by a lack of Vitamin B-1, or Thiamine often caused by alcoholism or chronic alcohol misuse.

People who have WKS demonstrate a variety of issues relating to memory, including;

- * a confused mental state which frequently leads to combativeness or violent behavior.
- * Amnesia for events that happen after the onset of the disorder.
- * Difficulty understanding the meaning of information.
- * Difficulty putting words into context.
- * Hallucinations, and
- * Exaggerated storytelling or spontaneous confabulation (spontaneous confabulation refers to incorrect memories that the patient believes to be true due to the inability to remember the spatial and contextual information or event.)

The aforementioned changes in mental state occur in approximately 82% of patients diagnosed with WKS.

Judge Minaldi was diagnosed with WKS in 2007 within weeks of presiding over Kretser's trial and before his sentencing. Judge

Minaldi was ultimately relieved of her duties as a federal judge and unfortunately after being committed to an assisted living home, she succumbed to her illness in 2018.

In addition to the unfortunate events of Judge Minaldi's life, her disease also negatively affected defendants whose cases she oversaw while suffering the effects of her disease. Karl Kretser was one of those defendants.

DUE PROCESS VIOLATION

The case law on Due Process violations resulting from mental incompetence of the decisionmaker is sparse but clear. The Supreme Court has stated unequivocally, "This court has recognized that a defendant has a right to a tribunal both impartial and mentally competent to afford a hearing." Tanner v. United States, 483 U.S. 107, 126, 107 S.Ct. 2739, 97 L.Ed. 2d 90 (1987) (quoting Jordan v. Massachusetts, 225 U.S. 167, 176, 32 S.Ct. 651, 56 L.Ed 1035 (1912))

The following events are offered to aid this court in conclusively determining that judge Minaldi was suffering from mental disability as a result of WKS during both the trial and sentencing in 2007 and when deciding Kretser's #2255 in 2013-2014.

§ 2255 is inadequate and ineffective
to test Kretser's detention

A motion under §2255 is inadequate and ineffective to test Kretser detention. At the time that Kretser filed his first §2255, the facts presented in this petition were not known to Kretser. It was not until 2014 that Judge Minaldi's erratic behaviour became public knowledge, and it was not until after she was arrested for DUI that a reporter began to investigate Judge Minaldi. Since the initial reporting of Judge Minaldi several other media outlets have discovered that she was diagnosed in 2007 with SEVERE WKS. (see Evidence #2) At the time that Kretser's §2255 the fact that Minaldi was suffering from a debilitating mental illness was not public knowledge thus Kretser could not raise this issue any sooner than he did in 2016.

TRIAL EVENTS AND STATEMENTS MADE
BY JUDGE MINALDI

The statements and decisions made by Judge Minaldi are documented and will show that the decision of Judge Kay to civilly commit her in 2007 were well founded. Reasonable jurists would find that the decisions made by Judge Minaldi were not based on reality or facts that were actually presented and that her conclusions were questionable and should be vacated.

On February 13, 2007, in the opening moments of impaneling the jury, the jury expressed concern over the amount of prison time that a defendant could receive based on possible entrapment. The jury foreperson asked Judge Minaldi "how much time can he get?" Judge Minaldi stated "entrapment is legal in the feds, dont worry about that-thats my job. Its equivalent to a misdemeanor." The answer was witnessed by multiple people in the courtroom as well as the entire jury. (See witness statement by Brenda Lee-Kretser) Mr. Kretser was in fact indicted for Attempted Internet Solicitation of a Minor. This offense is a felony punishable by up to ten years in federal prison.

Wikipedia (evidence #1 pg 3 of 12) explains "that patients found estimations involving time to be the most difficult" and "additionally, the study included a category for classifying 'bizarre' answers, which included any answer that was outside of the

normal range of expected responses. WKS patients did give answers that could fall into such a category and these included answers such as 15 seconds or 1 hour for the estimated length of a shower, or 4kg or 15 tons as the weight of a car." (Cognitive Estimation and Affective Judgements in Korsakoff Patients- Journal of Clinical and Neuropsychology (2003))

Judge Minaldi was trained in law and had served as a federal judge for many years. The fact that she gave such bizarre answers demonstrates her impaired judgement due to the effects of WKS.

The jury convicted Mr. Kretser in less than four hours after Judge Minaldi gave her incorrect answer (that his crime was the equivalent to a misdemeanor) and sentencing was scheduled for the end of June.

On June 21, 2007, the parties returned to court for sentencing. Judge Minaldi entered the courtroom and said that she wanted a conference in chambers with the parties attorneys. When Judge Minaldi open the door to her chambers and held it open for counsel, Mr. Kretser observed on her desk a book that he had authored during his time as a decorated police detective. The book "The Night Runner" is a true crime novel detailing the real life events of a teenage serial rapist whom Mr. Kretser captured and brought to

justice. Mr. Kretser thought that it was strange that Judge Minaldi had his book on her desk, but it was after his counsel (Ginger Virdrine) returned from the meeting in chambers that he realized how bizarre Judge Minaldi truly was. Defense counsel sat next to Mr. Kretser and ~~whispered~~ to him that Judge Minaldi had just said in chambers that she believed that "THE NIGHT RUNNER" was not a true crime novel but a fictitious writing of Kretser's sexual fantasies.

This statement by Judge Minaldi is a classic example of confabulation. Confabulation is defined as "incorrect memories that a patient holds to be true, and may act on, arising spontaneously without provocation." (see evidence 1 pg 4 of 12) quoting Confabulation Behavior and False Memories In Korsakoffs Syndrome: Role of Source Memory And Executive Functioning (Psychiatry and Clinical Neurosciences (2008)).

Mr. Kretser knew when his counsel told him what she believed about his book that he was not going to be sentenced in proportion to the crime he was convicted of. Judge Minaldi's previous statement that his crime was a misdemeanor along with her belief that his book was a fictitious writing of his sexual fantasies conclusively show that Judge Minaldi was suffering from confabulation.

Mr. Kretser's fears were founded when the sentencing hearing began. Judge Minaldi began the sentencing hearing by stating that she was not satisfied with the PSR as calculated by the probation

officer. The PSR recommended a sentence of 58-60 months in prison. Judge Minaldi stated that she believed that Mr. Kretser had committed crimes which the government was unaware of, and ordered the probation officer to prepare a second PSR. Judge Minaldi violated court rules by rescheduling the sentencing hearing stating that she was "confused and could not make a decision."

Once again the evidence shows that Judge Minaldi's "confabulation" of the facts of the case mixed with her perceived reality of a case Mr. Kretser solved relating to a serial rapist led Judge Minaldi to falsely tie his alleged offense with that of a convicted rapists acts which are not related to Mr. Kretser.

On June 28, 2007, sentencing was held for a second time in violation of Federal Rules of Criminal Procedures. Probation had re-wrote the PSR to include a cross-reference to 2G1.3, which raised Mr. Kretser's sentence to the maximum 120 months allowed by law.

Once again Judge Minaldi stated "I believe that he has committed other crimes and was never caught." She then upward departed to a sentence calculated using 2G2 instead of the probation officers recommended 2G1.3. This raised Mr. Kretser's maximum sentence to 360 months in prison which is the sentence that Judge Minaldi imposed.

Mr. Kretser was sentenced to 360 months in prison when the PSR originally prepared had his sentence at 58-60 months.

At this point in the proceedings Mr. Kretser's wife and thirteen year old daughter were openly crying in the courtroom. Additionally Mr. Kretser's daughter (Arika) had written a letter to the court asking the court to be lenient on her father. Judge Minaldi yelled at Kretser's wife and daughter and told them that she "is doing them a favor by putting him away for life, and they just don't know it yet." Judge Minaldi then had Kretser's wife and daughter removed from the courtroom. (see witness statement by Arika Shaffett)

Judge Minaldi has spent her entire adult life functioning as a closet alcoholic. The onset of WKS can occur within a few years of severe alcohol abuse but the effects are generally under reported thus delaying treatment.

In January 2014, Judge Minaldi led police on a pursuit which ended with her arrest for DUI and other offenses including Assault on Police. In March 2014, she pled guilty to DUI and the rest of the charges were dismissed. While these actions do not directly relate to the trial and sentencing of Mr. Kretser, they do show that she was not capable to make proper decisions. In 2007 (just several weeks after Kretser's trial) Judge Kathleen Kay filed a lawsuit against Judge Minaldi in an attempt to civilly commit her, stating that Minaldi "was unable to take care of her daily activities" and "unable to safely take care of her personal needs, financial matters, or her property matters." The fact that another Federal Court Judge

recognized that Judge Minaldi was incapable of taking care of herself is evidence enough to know that she was also incapable of presiding over Mr. Kretser's trial and sentencing. Due Process requires "that a defendant has a right to a tribunal both impartial and COMPETENT to afford a hearing."

CONCLUSION

The Honorable Judge Minaldi was suffering from a disease when she oversaw the trial and conviction of Karl Kretser. The disease that Judge Minaldi was suffering from is called Wernicke Encephalopathy & Korsakoff Syndrome (WKS), and the disease is well researched and documented and the Honorable Judge Minaldi was diagnosed within days of Kretser's trial.

The transcripts, docket sheets and witness statements prove that Judge Minaldi failed to follow the basic rules of the court. Minaldi made statements and postponed sentencing in violation of Fed. R. Crim. P. These facts make clear that Judge Minaldi was suffering from mental deficiencies which makes Kretser's trial, conviction and sentence in violation of his Due Process Rights.

Mr. Kretser was charged with a single count of an offense that the state dismissed due to the finding of entrapment. He had no criminal history or relevant conduct and yet due to Minaldi making

the probation officer rewrite the PSR and postponing the sentencing Judge Minaldi raised his statutory maximum to 30 years. Judge Minaldi in fact sentenced Mr. Kretser to 30 years in prison. No-one has ever been sentenced to 30 years for incitement alone. Minaldi reasoned his 30 year sentence because she believed that he had committed other crimes that he had never been caught. The belief that a defendant has committed other crimes is not a legitimate sentencing factor and goes against the rules of the court.

Judge Minaldi suffered the effects of WKS and Mr. Kretser is suffering a 30 year prison sentence in violation of his right to a competent tribunal. No-one has ever been sentenced to 30 years for this offense.

In the history of this great country, the Supreme Court has never had to decide a case where the trial judge was suffering from a mental disease that denied the defendant of a fair and competent tribunal. The few cases that the Supreme Court has ruled on the importance of a competent tribunal make a strong case that the conviction and trial should be vacated.

REMEDY SOUGHT

The facts presented herein are well documented and warrant a vacator of the conviction and sentence. In the alternative, Mr. Kretser asks this court to grant a COA so that the district court will have jurisdiction to decide the merits of the case.

Wherefore, petitioner prays that the Court grant petitioner relief to which petitioner may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 30th, 2019



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