

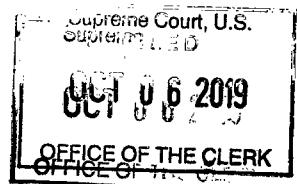
No. 19-6259

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Keino S. Chrichlow — PETITIONER
(Your Name)



vs.

Warden, James T. Vaughn — RESPONDENT(S)
Corr. Ctr., et al.

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

Keino S. Chrichlow
(Your Name) SBI #00579051

1181 Paddock Rd.
(Address)

Smyrna, Delaware 19977
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. whether or not an indigent defendant is entitled to equitable tolling, where he was in fact denied the right to challenge his sentence and convictions by way of direct appeal, based on the abandonment of his court appointed counsel?
2. Does an indigent defendant receive the United States Constitutional guarantee of due process, where he is denied counsel and evidentiary hearings during the appellate process, as a scheme, in state court, Federal District Court, and the Federal Court of Appeals?

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:

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Holland v. Florida</u> , 130 S. Ct. 2546, 177 L. Ed. 2d 130 (2010)	
<u>ROSS v. VARANO</u> , 712 F.3d 784, 2013 U.S. App. Lexis 6896 (3rd Cir. 2013) . . .	
<u>Allen v. State</u> , 970 A.2d 203 (Del. 2009) . . .	

STATUTES AND RULES

28 U.S.C. § 2244 (d)(1)(A)
28 U.S.C. § 2254
28 U.S.C. § 1291
11 Del.C. § 274

OTHER

<u>Haines v. Kerner</u> , 92 S.Ct. 594 (1972)

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 B 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[] is unpublished.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 A to the petition and is

reported at 2018 U.S. Dist. Lexis 157604 (09-17-18); 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 D to the petition and is

reported at 2014 Del. Lexis 385 (08-26-14); or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Superior court appears at Appendix L to the petition and is
 reported at 988 A.2d 939 (10-19-07); 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 6, 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 9, 2019, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including October 6, 2019 (date) on Aug. 7, 2019 (date) in Application No. 19 A 152.

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 08-26-14. A copy of that decision appears at Appendix D.

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

United States Constitution:

Sixth Amendment

Fourteenth Amendment

Antiterrorism and Effective Death
Penalty Act of 1996 ("AEDPA")

Statement of The Case

This is a case where an indigent (innocent) Petitioner has been denied the right to Appeal his Convictions and Sentences, because his Court appointed trial Counsel fail to file a notice of Appeal, and abandoned the Petitioner without filing to the Court for permission to withdraw.

On December 26, 2006, Petitioner was indicted on sixteen counts of first degree robbery, two counts of possession of a firearm during the commission of a felony, and one count of second degree conspiracy.

On June 1, 2007, a Delaware Superior Court Jury convicted Petitioner on all of the charges.

On October 19, 2007, the Superior Court granted, in part, Petitioner's motion for judgment of acquittal. As a result, the Superior Court entered judgments of not guilty on 11 counts of first degree robbery, and for the same counts, entered guilty verdicts on the lesser-included offense of aggravated menacing; Petitioner was not informed or involved in this decision.

The Superior Court sentenced Petitioner on November 30, 2007 to a total of 54 years of incarceration at Level V, and then resentenced Petitioner on January 17, 2008 to a reduced total of 21 years of incarceration, without the aide or input of pre-sentence Report.

On November 21, 2007 the State Filed a notice of appeal (prior to Petitioner being sentenced) of the Superior Court's order dated October 19, 2007, challenging the Court's intentions on sentencing. The surreptitious sentencing procedures resulted in Petitioner Filing a pro se notice of appeal which the Delaware Supreme Court dismissed as untimely.

Petitioner continued to seek review of sentencing and conviction, to no avail. see Appx. A thru P.

REASONS FOR GRANTING THE PETITION

Petitioner comes to this Honorable Court of last resort in hopes that he will be heard “crying for justice.”

The Petition should be granted because:

A) Petitioner has been denied the right to a Direct Appeal of his convictions and sentences.

The record in this case, as evident in the many **Supportive Documents** in the Appendix (Appx.) P-(1-22), which clearly reveals that Petitioner has demonstrated perseverance and diligence, and has that an extraordinary circumstance stood in the way of him filing his direct appeal; the abandonment of his court appointed counsel. See *Affidavit of Petitioner*, at Appx.-O.

B) The Trial Judge’s Order dated December 28, 2011, addressed the facts highlighting the Petitioner’s denial of *Equal Protection* and *Due Process*, but he fail to intervene and protect, see Appx. P-14:

- i. “...the state had to file its appeal before defendants were sentenced.” at 3.
- ii. “[Petitioner], through counsel, opposed the state’s appeal, but no appeal of [Petitioner’s] conviction was filed.” at 4.
- iii. “[Petitioner] filed an appeal *pro se*, but by then it was too late and he was rebuffed by the Supreme Court in July 2009.” at 4.
- iv. “Because [Petitioner] was convicted as an accomplice and he did not file a cross-appeal, his claims are more complicated and challenging.” at 8.
- v. “Trial Counsel did not request and the Court did not give the detailed jury instruction on accomplice liability under 11 Del. C. §274 and *Allen v. State*.

Therefore, [Petitioner] had at least one issue potentially meriting direct appeal.”

at 8.

vi. “[Petitioner] missed the deadline because he was trying to get the Supreme Court to hear him, pro se, on direct appeal. [Petitioner] has shown cause and prejudice for his default.” at 11.

vii. “At least, his appellate counsel should have filed a notice of appeal and a Supreme Court Rule 26 (c) brief. Then [Petitioner] could and would have made his claims, and the Supreme Court would have considered them. The Court emphasizes that this approach is called for because [Petitioner] always insisted on being heard and he did not rest.” at 11.

viii. “It is not clear what issues [Petitioner] wanted to raise on appeal. Nevertheless, it appears that [Petitioner] wanted an appeal and even if Counsel rightly discounted its prospects, counsel should have perfected one. Thus, it can be said that Appellate Counsel was ineffective.” at 23.

C) This Court has addressed the lack of inquiry into *pro se* litigation in reference to extraordinary circumstances. In the case of **Holland v. Florida**, 177 L. Ed. 2d 130, 130 S. Ct. 2549 (2010), the Court *Reversed and Remanded*, stating:

“Because the District Court erroneously concluded that Holland was not diligent, and because the Court of Appeals erroneously relied on an overly rigid *per se* approach, no lower court has yet considered whether the facts of this case indeed constitute extraordinary circumstances sufficient to warrant equitable tolling.”

at 147-149.

D) In the instant case, there was never any hearing or the the appointment of counsel to consider the fact that Petitioner wanted to Appeal (Direct review) his sentence and convictions.

The Courts, District Court and Court of Appeals failed to conduct any evidentiary hearings, where circumstances obviously warranted same. See Appx.-M, N, and O.

E) The District Court's interpretation *contra legem* of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") is narrowly tailored as to 28 U. S. C. §2244 (d)(1)(A). Surely the "AEDPA" did not vest to the State, the decision of when Petitioner's right to appeal by 'direct appeal' of his sentence and convictions is triggered. In this case the State actually filed an interlocutory appeal of the Trial Court's Order granting (in part) the defendants' Motion for Judgment of Acquittal. See Appx. L.

F) The State filed its' Appeal of the Superior Court's Order dated October 19, 2007, prior to Petitioner being sentenced, which occurred November 30, 2007. See Appx.-A.

G) The surreptitious abandonment of Trial Counsel, especially during the sentencing phase, was the direct cause of the Ineffective Assistance of Counsel. There wasn't even a presentence report put before the Sentencing Judge.

H) The United States District Court for the District of Delaware took approximately three (3) years to deny Petitioner's Petition for a Writ of Habeas Corpus and simultaneously declining to issue a Certificate of Appealability. Appx.-A:

- i. The Court cites to a point of fact case that is parallel to this case, **Ross v. Varano**, 712 F. 3d 784, 803 (3rd Cir. 2013).
- ii. The Court fail to appoint counsel or conduct an evidentiary hearing on the issue of *equitable tolling*.

iii. The Court denied the Writ on procedural grounds.

I) The United States Court of Appeals for the Third Circuit denied Petitioner's well documented request for a Certificate of Appealability based on reasons given by the District Court. Appx.-B.

J) Petitioner begs the High Court to examine his submissions and grant him the *equal protection* that he is entitled to. He put forth his efforts in the following:

- i. Petition for Certificate of Appealability (Appx.-M)
- ii. Supplement to Petition for Certificate of Appealability (Appx. N)
- iii. Affidavit of Petitioner (Appx. -O)

CONCLUSION

This Court should grant Certiorari to correct the Lower Courts misapplication, as to "...if a state has created appellate courts..., the procedures used in deciding appeals must comport with the demands of the *Due Process* and *Equal Protection* Clauses of the Constitution." **Evitts v. Lucey**, 469 U.S. 387, 393, 105 S. Ct. 830, 834, 83 L. Ed. 2d 821 (1985).

Consequently, "A first appeal as of right...is not adjudicated in accord with *due process* of law if the appellant does not have the effective assistance of an attorney." *Id.* at 398.

In the interest of justice, Petitioner request Certiorari and the Appointment of Counsel.

Respectfully submitted,

K. Cullar

October 5, 2019