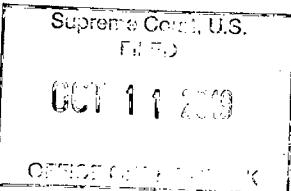


19-6374

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



KIM MOSS — PETITIONER
(Your Name)

vs.
Bryan Morrison (Warden) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

WAYNE COUNTY CIRCUIT COURT (Trial Court)

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

PETITION FOR WRIT OF CERTIORARI

KIM MOSS

(Your Name)

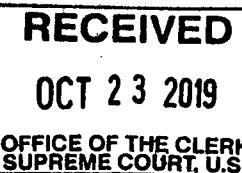
Lakeland Corr Facility, 141 State Street

(Address)

ColdWater, Michigan 49036

(City, State, Zip Code)

(Phone Number)



QUESTION PRESENTED

This case arise where Petitioner lost his Appeal of Right do to Ineffective Assistance of Appellate Counsel and once it was determine by the State Courts that Petitioner lost his Appeal of Right the Courts failed to reinstate that Right and prolonged that lost Right to Appeal through State procedures for More then 35 years

I

WAS PETITIONER MOSS CONSTITUTIONAL RIGHT TO APPEAL VIOLATED WHERE THE TRIAL COURT FAILED TO REINSTATE HIS APPEAL OF RIGHT

II

IS THERE TWO FORMS OF CONSOLIDATION ONE BASED ON THE CONSTITUTION, THE OTHER BASED ON NON-CONSTITUTIONAL GROUNDS AND IS ONE AFFORDED A GREATER DEGREE OF PROTECTION THEN THE OTHER

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

CASES	PAGES:
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RELATED CASES-CONTINUE:

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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 _____ 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[] is unpublished.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.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the Court Of Appeals and Supreme Court court appears at Appendix C/D to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] 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 (9/10/19). A copy of that decision appears at Appendix D.

A timely petition for rehearing was thereafter denied on the following date: Trial Court (7/11/18), and a copy of the order denying rehearing appears at Appendix B.

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:

1 Due Process; Equal Protection, Clause, U S Const, A, XIV § 1;
Right To Speed Trial; Compulsory Process; Right to Counsel;
U S Const VI

MICHIGAN CONSTITUTION:

1 Due Process Equal Protection, Const, 1963 Art I § 17;
Michigan Const: 1963 Art § 2
Michigan Const Right To Speed Trial; Copulsory Process; Right
to Counsel, Const 1963 Art I § 20

Michigan Court Rule, MCR, 6.428 (Reissuance Of Judgment)

NOTED (APPENDIX I) For Full Constitution

STATEMENT OF THE CASE

On February 21, 2017 Petitioner Kim Moss filed a pro se Motion for Reissuance of Judgment Pursuant to MCR, 6 428, In the Trial Court in the State of Michigan The trial Court denied this Motion on February 15, 2018, and On February 23, 2018 Petitioner filed Motion for Reconsideration of the Trial court order denying Reissuance of Judgment, the Trial Court Denied that Motion on July 11, 2018.

Petitioner filed Leave to Appeal to the Michigan Court of Appeals On August 1, 2018 the Court of Appeals denied Application for Leave to Appeal on December 7, 2018

On December 20, 2018 Petitioner appealed the decision of the Michigan Court of Appeals to the Michigan Supreme Court, and On September 10, 2019 the Michigan Supreme Court Denied Application for Leave to Appeal, The Above Court Orders appear as the following Appendix's (A,B,C,D.)

STATEMENT OF FACTS

In the Summer of (1984), Petitioner Kim Moss and Co-Defendant Keith Gould was convicted by jury trial of the Murder of Darrell Manley

Petitioner and Co-defendant was sentenced to life in prison without Parole, both Petitioner and Mr Gould Applied for the Appeal of Right within the 42-day time limitation according to Michigan Law

Petitioner was appointed Attorney John C Mouradian to prepare a timely appeal of right, Mr Mouradian came to see petitioner in the

fall of (1985) and set with petitioner and explained that he would be handling petitioner appeal of right and would be filing a brief with the Michigan Court of Appeals, See (Appendix-E)

After Petitioner met with counsel petitioner never heard or seen counsel Mouradian again, over two years had passed and petitioner thought his appeal of right was pending before the Michigan court of appeals

In early (1988), Petitioner was walking the prison yard with another prisoner and told that prisoner that his Appeal to the Michigan Court of Appeals has been pending for over 2-years, that prisoner thought this was kind of long for the Michigan Court of Appeals to have not made a ruling on petitioner Appeal of Right that prisoner wrote a letter to the Court of Appeals requesting to know the current status of petitioner Appeal

The Court of Appeals response to petitioner letter was that no appeal had ever been filed with the Court by Attorney John C Mouradian

That letter to the Court of Appeals triggered an Investigation into the actions of Attorney John C Mouradian upon the conclusion of the court of appeals investigation, the court found that Counsel had failed to file timely appeals of Right in 3-three other case, According to Michigan law the time to file a timely appeal of right had expired, See (Appendix-E)

The Court of Appeals Solution to this problem was not to reinstate petitioner right to appeal but to Grant Petitioner Leave to Appeal See (Appendix-F)

Thereafter the Court of Appeals issued a second order "Consolidating" Petitioner Granted Leave to Appeal with that of his Co-defendant Keith Goulds appeal of right and both Petitioner and Co-Defendant Appealed as a consolidated Appeal of Right

See (Appendix-G pg-2 of 5)

Petitioner and co-Defendant Keith Gould appealed for the next 2-years under the consolidated appeal being denied, the Court of Appeals issued its final ruling on the consolidated appeal of right in April of (1989) See (Appendix-G, pg-5 of 5)

Petitioner and co-defendant then appealed to the Michigan Supreme Court for Review, the Michigan Supreme Court realized there was 2-two problems 1) Reversal of the case was required, and 2) The case had been consolidated from the beginning of the Appeal of Right

The Michigan Supreme Court solution to the problem was to arbitrary discontinue the Granted Consolidated Appeal of Right put in place by the Michigan Court of Appeals, and on that same day proceeded to Grant Co-Defendant Keith Gould a reversal of his conviction, while denying petitioner that same right See (Appendix-G, pg-5 of 5)

Which Give rise to the present Questions before this Court

CONCISE ARGUMENT

Petitioner Say; for speedy expeditious to not take up the courts time, petitioner has combined both Questions 1) and 2) of this Petition into a single Argument to give a concise argument to this Court

Petitioner Urges this court to Grant review on the basis of divergent decisions emerging from the lower court's concerning Petitioner first time Right to Appeal

Petitioner believes the decision of the lower court is in conflict with the U S Constitution and it's own State Constitution, Const; 1963 Art I § 20 which states (quoting) ("To have an Appeal As a Matter of Right") and in conflict with long Standing decisions of this Court, Roe, 120 S ~~It~~ at 1035; Pequero V United States, 526 U S 23, 28; 119 S ~~It~~ 961; 143 L ed 2d 18 (1999), Evitts V Luehr, 105 S ~~It~~ 830 (1985), Baker V Wingo, 407 US 514; 92 S ~~It~~ 2182 (1972) and of the Six Circuit Court of Appeals Ludwing V United States, 162 F 3d 456, 459 (1998).

The importance of this case is not only to petitioner but to other similar situated petitioner in the State of Michigan who is faced with the lost of their Appeal of Right and must raise future challenges to have that right reinstated by the State Courts and not have the Courts place Impediments either Arbitrary or through State Laws and Procedures that would deny that Guarantee Right to Appeal

In Mempa V Rhay, 389 US 128, 134 (1967), this Court stated; ("When a State Grants a Right the State may not qualify that Right in a way that violates the Equal Protection or Due Process Clauses of the Fourteen Amendment").

Petitioner employ this Court to review this issue for failure to review this issue will only imbold the State Courts possession that it is entitled to not follow the Constitution ~~of~~ the United States. These State Laws and Procedures impact's a vast majority of its citizens within the State of Michigan. US Const Art VI, XIV Sec 1

Petitioner Further Urges this Court to grant review where the State Created a Liberty Interest in it's State Constitution and Court Rules and that liberty interest must be protected not only for Petitioner but for future Defendant See Michigan Const, 1963 Art I § 17; Const Art I § 2; and Const Art § 20, Michigan Court Rule, 6 428

In Wilkinson V. Austin, 545 U S 209, 221 (2005), the Court stated; "The Fourteenth Amendment's Due Process Clause protects persons against deprivation of life, liberty, or property " The Wilkinson court also stated; ("A liberty interest may arise from the Constitution itself, by reason of Guarantees implicit in the word "liberty" ..." Or it may arise from an expectation or interest ~~Created~~ by State Laws or polices." citing to Wolf V McDonnell, 418 U.S 539, 556-58 (1974).

Under Supreme Court Rule 10(c), this Court will consider granting certiorari, where a State Court has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In reaching the Merits of this claim the Trial Court found that Petitioner had lost his Appeal of Right due to action of Appellate Counsel. Once the Court made this finding the Court should have turned to the Guidance of it's own Court rule, MCR, 6 428, which gives the Court the Authority to Grant relief under Both State and Federal Constitution.

However, the Court diverted from the Guidance of it's own rules and decided that because the Court of Appeals had attached Petitioner Granted Leave To Appeal to his co-defendants appeal of right that no authority could be found supporting the contention that MCR, 6 428 Could apply to a case such as this one, therefore relief is not warranted. See (Appendix-A id at pg-4).

This is precisely the reason the Court should have relied on the State Constitution and Court Rule, MCR, 6 428, for guidance because these laws and rules are in line with decision of this Court.

But instead the trial Court's ruling put it in conflict with it's own Constitution being 1963 Art § 20 which gives it's Citizen (Quoting) ("To have an Appeal as a Matter of Right"). SEE (APPENDIX - I).

In Glover V Birkett, 679 F 3d 936 (6th Cir), this Circuit stated; ("Respondent argues that Glover was not completely Deprived of a Direct Appeal, because the Michigan Court of Appeals considered and denied his claims on the Merits in considering his "Application for Leave to Appeal", we have previously rejected this argument in Holloway V Robinson, 655 F 3d 445 (6th. Cir 2011).

The Decision in Petitioner case by the trial Court places it's ruling in direct Conflict with the Sixth Circuit rulings in both Glover and Hardaway, Further this Court In Vermont V Brillon, 129 S Ct 1283, 173 L ed 2d 231, (2009), held; ("We weigh an intentional delay by the Government heavily against it"). Dufield V Perrin, 470 F supp 487 ("Not losing sight of judicial system allowing defect to go unattened").

Under Rule 10 this Court said that the Lower Court of last resort decided an important question in a way that Conflicts with the decision of a United States Court of Appeals, or conflict with this Court's decision, Rule 10, (b), (c), it appears that the Decision of the Lower Court and it's judicial Court System place it's in conflict with the above court's in two ways, first the Sixth Circuit had ruled that an Application for leave to appeal is not a sufficient substitute for an Appeal Of Right The Trial Court and the Court of Appeals disregard with this Constitutional Right and allowed the Application for Leave to Appeal to stand See (Appendixs-A,F).

Petitioner Say; regardless of his appeal being attachment to his co defendant's Appeal of Right No were in the Constitution or rulings of this court or any Federal Court of Appeals ruling that it states or indicates that under these circumstances it is "Ok" to not reinstate the right to appeal.

Second, because of the State Court judicial system procedures, It placed petitioner in a situation of not having an Appeal of Right for over 35 years.

In United States V Erenas-Luna, 560 F 3d 772 this court consider the ruling in Baker v Wingo, 407 US 514 (1972), and found that ("Under the Second Baker Factor, we consider the reason for the Delay and evaluate whether the Government or the criminal defendant is more to blame"), siting Vermont V Brillion 129 S Ct 1283 ("We weigh an intentional delay by the Government heavily against it").

The delay put in place by the State judicial system to not follow the decision of this court or the Sixth Circuit Court of Appeals and both State and Federal Constitution to not reinstating petitioner appeal of right is contrary to prior decision of this Court, Rule-10,(b)(c) This Court should Grant review because this issue effect's not only petitioner but future defendants that will be face with the lost of there appeal of right and must appear before the State Court and it's judicial system.

II

CONSOLIDATION:

Next the Trial Court failed to take into consideration factors such as 1) The consolidated Appeal was in words "Only" Because in the end the Court Arbitrarily Broke the Consolidated Agreement once Reversal was required Effectively returning Petitioner Appeal back to the state of not having an Appeal Of Right.

A Case in point is Simmons V Reynolds, 898 F 2d 865, Here the court explains that Petitioner Appeal amounted to being a "Meaningless Ritual". Also In United States V Reese, 993 F 2d 254 the held; ("If a Court Of Appeals normally consolidate the appeals of co-defendant

and if one defendant flight preclude the consolidation of his appeal with that of his co-defendant a dismissal rule could properly be applied" D.

It should be noted at this point (There is no official Supreme Court Order/Ruling etc, concerning the State court's reasoning for denying and/or braking the Consolidation put in place by the Court of Appeal).

2) The Constitution; Decision of this Court; and ruling of Federal Court's of Appeals do not enact clauses that would allow Lower Court's to undermine the Constitution or decisions of this Court.

A ~~First~~ time Right to Appeal is Guaranteed by the Constitution and is protected under the equal protection and Due Process clause of the Constitution, and ~~for~~ a lower Court to take any other possession place it in conflict with decision of this court and of Federal Court of Appeals, Rule-10 (b)(c).

Finally, in relation to Petitioner Right of Apppeal claim this petition involves questions of exceptional importance as to: 1) What should be the standard ~~for~~ the lost of Appeal of Right under these circumstances, and 2) ~~If~~ a Petitioner reasonably relied on the Court's duty to Honor it's self impose consolidation agreement then there should and must be some Constitutional Guarantee protection to a Agreement that is placed upon a Petitioner by the State Court

With this in mind the primary question to this court is their two forms of consolidation? 1) A Consolidation Born out of the Constitution and 2) A Consolidation arising out of Non-Constitutional violations, and if so is one afforded a Greater Protection then the Other.

In addition, under Supreme Court rule 10(b), this Court Considers whether Certiorari should be granted where a "State Court of last resort has decided an important federal question in a way that Conflicts with the decision' . . "OR a United State Court of Appeals "

Petitioner contends, the State Court's decision conflicts with several United State Court of Appeals decision Morris V Curtin, 2010 U.S. Dist Lexis 66611, Reishauer V Laffler, 2008 U.S. Lexis 18460 (6th Cir), Hardaway V Robinson, 655 F 3d 445 (6th Cir 2011)

Petitioner contends, the Sixth Circuit faced a similar set of facts in Hardaway V Robinson, this case involved a Defendant that lost his appeal of right filed Application for Leave to Appeal in State Court, among several post Conviction appeals which was denied and the court ruled that the State must reinstate his Appeal of Right Petitioner case is procedural identical to Hardaway.

Petitioner has shown that the Sixth Judicial Circuit Court for the County of Wayne did decided Petitioner's Right to Appeal in a way that Conflicts with multiple Federal Court of Appeals and Supreme Court decisions.

Therefore Petitioner request this court Grant Certiorari

REASONS FOR GRANTING THE PETITION

Petitioner Urges this court to Grant review on the basis of divergent decisions emerging from the lower court's concerning Petitioner first time Right to Appeal.

I believe this court should grant the Petition for two fundamental reason, first ~~If~~ The State created ~~for~~ it's citizens a State Liberty Interest through it's State Constitution that ever citizen is entitled to an Appeal of Right, with no exception created in it's Constitution the State must conform to the letter of it's own Constitution, especially when that right is taken away by the State's Own Appointed Employee/Attorney for it's citizens, this put's the State in direct responsibility for actions of it's employees and the only remedy is full reinstatement of that Right.

The State should not be allowed to engage in a scheme through procedural rules and State laws, that would allow it to bypass either U S or State Constitution, this practice by the the State is Dangerous because it effectively Deny's it's Citizens Due Process and Equal Protection of the law, and erodes the very fabric of the Constitution, under the Color of State Law. It is for this Reason the Court should Grant Review See, Roe, 120 S ~~At~~ 1035, also Pequero v United States, 526 U S 23, 28; 143 L ed 2d 18; 119 S ~~At~~ 961 (1999)

2) The Second reason I believe this Court should Consider Granting this Petition is to determine whether their is two form's of Consolidation that a State court ~~can~~ impose on a defendant and is One form of consolidation afforded a Greater degree of Protection under the Constitution then the other and this Court should defined the differences in the two .

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jim Moss.

Date: 10-10-19