

19-7299
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 2019

JOHN JOSEPH BARRERA,

Petitioner,

vs.

BRYAN MORRISON,

Respondent.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Attorney of Record

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On Behalf of Respondent
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John Joseph Barrera,
MDOC ID No. 160094
In Propria Persona
Lakeland Correctional Facility
141 First Street
Coldwater, Michigan 49036

Dated: January 7, 2020

STATEMENT OF QUESTION PRESENTED

WHERE A STATE CRIMINAL DEFENDANT HAS BEEN SENTENCED ON THE BASIS OF INACCURATE/FALSE INFORMATION USED BY THE SENTENCER TO INCREASE HIS PUNISHMENT, FOLLOWING A REMAND FROM THE STATE HIGHEST COURT FOR CORRECTION AND RESENTENCING, AND THE SAME PUNISHMENT WAS AGAIN IMPOSED, IS HABEAS RELIEF WARRANTED UNDER THIS COURT'S RULING IN TOWNSEND V BURKE ON DUE PROCESS PROTECTIONS UNDER US CONST. AMEND. XIV?

Petitioner answers YES

The Courts Below answered NO

LIST OF PARTIES

The Parties listed in, or associated with, the instant Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit, are listed in the cover page heading and can be addressed as:

Petitioner Party:

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JOHN JOSEPH BARRERA,

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-vs-.

BRYAN MORRISON,

Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, John Joseph Barrera, petitions this Court to issue an order granting his Writ of Certiorari, to review the Opinion and Orders rendered in this case on October 10, 2019, by the US Court of Appeals for the Sixth Circuit, denying his appeal, from the US District Court - Eastern District of Michigan, in Detroit, Michigan denying his Title 28 USC § 2254 habeas corpus petition, where he punished in the State Courts of Michigan on "inaccurate information" which was materially false under *Townsend v Burke*, 334 US 736 (1948). The decisions below were contrary to this Court's rulings on an issue of the same magnitude regarding the inaccurate/false information used to increase punishment. Accord, U.S. v Tucker, 404 US 443 (1972).

The decisions below conflicts with the decisions of this Court where a Petitioner had done all he could do to remedy the error by submitting his pro. per. pleadings, after the state trial court judge imposed the same sentence following a remand order from the state's highest court for

resentencing after the inaccurate/false information was removed, but the same sentence was imposed and further relief was denied on the same false/inaccurate information amounting to a denial of due process. *Townsend*, 334 US, at 740.

Further, Petitioner is mindful that this Court rarely, if at all, grants a pro. per. indigent prisoner certiorari relief. However, because his case is one of exceptional circumstances, that is, he was deprived of his due process right when the US District Court disregarded this Court's ruling in *Townsend v Burke*, *supra*, claiming the issue to be one of state law and procedures. Petitioner urges this Court to *abandon* its posture of denying a pro. per. litigants an opportunity to be heard in his cause, and refrain from "The Order of the Coif." Petitioner states in support of his petition for writ of certiorari as follows:

The Opinions Below

The October 10, 2019, order from the U.S. Court of Appeals for the Sixth Circuit, denying the Motion for a Certificate of Appealability, to appeal the US District Court's decision, is unpublished and can be found in the Appendix, § -A. (Appx. pp 1a- to 3a). The opinion and order from the United States District Court denying the 28 USC § 2254 habeas petition, on May 23, 2019, is unpublished in the Federal Supplements, and can be found in the Appendix § B, at (Appx. B, p 4a to 10a).

The Opinion of the Michigan Supreme Court, denying reconsideration relief is unpublished and can be found in the Appendix §C, at (Appx-C p 11a). The opinion of the Michigan Supreme Court denying the application for leave to appeal is unpublished and can be found in the Appendix-D, at (Appx-D, p 12a). The Opinion of the Michigan Court of Appeals denying the application for leave to appeal is unpublished and can be found in the AppendixE, at (Appx-E, p 13a). The Original Michigan Supreme Court's Order, and the Original Michigan Court of Appeals order denying relief on direct appeal, is unpublished and can be found in the Appendix, at (Appx-F and G, at (Appx-F and G, pp 14a, 15a). The due process issue involved in this petition began at the resentencing stage of the proceeding in the Circuit Court for the County of Saginaw, in Saginaw, Michigan before Judge James T. Borchard.

Basis for Jurisdiction

Petitioner Barrera seeks review in this Honorable Court from the Opinion and Order entered on October 10, 2019, by the Sixth Circuit under citation, *Barrera v. Nagy, [former Warden of LCF]*, (6th. Cir), case number 19-1730, denying his appeal from the US District Court's denial of his 28 USC § 2254 habeas petition, where the judgment was contrary to clearly established US Supreme Court precedent under *Townsend v Burke*, and *U.S. v Tucker*, *supra*. This would conflict with this Court's rulings on the subject matter of "inaccurate/false information used to increase punishment in violation of the Due Process rights of the accused. Accord, US Const. Amend. XIV.

Accordingly, this Court is urged to address the claim in such a fashion that will preclude future, and needless litigation on this subject matter of what, constitutes a deprivation of the right to due process at sentencing in the state courts, where the US District Court ruled it to be only state law. This is a novel circumstance which needs to be addressed by this Court's supervisory authority, clarifying the due process protection of state prisoners at sentencing.

This Petition is timely, from the Sixth Circuit denying relief, pursuant to Rule 13.1 of the Rules of this US Supreme Court. Jurisdiction is invoked pursuant to 28 USC § 1251.

Jurisdiction of this Court is also invoked under the supervisory authority vested in Title 28 USC § 1251; U.S. Const. Art III, and US Const. Amend. XIV. Furthermore, Petitioner seeks supervisory jurisdiction of this Court to determine whether the courts below arrived at, but completely disregarded the ruling in *Townsend v Burke*, *supra*, where this Court found:

"a due process violation where the sentencing court relied on materially false information about a defendant's criminal history in making its sentencing decision."

*-

Thus, this Court should invoke its supervisory jurisdiction and hear the claim asserted. US Const. Art III. Accord, US Supreme Court Rule 10(a); *Miller El v Cockrell*, 123 S Ct 1029 (2003). This Court should, as a matter of constitutional law, hear this certiorari petition because the claim has never been addressed where the US District Court ruled the issue under *Townsend v Burke*, *supra*, was only a state law claim, not cognizable on habeas corpus. This case presents a novel

question.

Constitutional and Statutory Provisions Involved

The issue presented for certiorari in this Court is in direct violations of the constitutional amendments, and the statutory provisions listed infra:

- 1). US Const Amend. XIV, § 1 (1868)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

- 2). Michigan Const. 1963 Art 1, §§ 17. (Due Process of Law - Fair Investigation Clause]
- 3). Title 28 USC § 2253(c)(1)
- 5). Title 28 USC § 2254(d)(1); (d)(2).
- 6). State Statutes: MCL § 750.520b (Criminal Sexual Conduct-First Degree).

Certiorari Statement

Petitioner seeks a writ of certiorari in this Court to decide a claim of first impression. That is, there is no rulings from this Court on a claim of inaccurate/false information used in a state court sentencing proceeding to increase the punishment, is only a state law claim and not cognizable on habeas corpus review. So stated, Petitioner Barrera asks this Court to make a judicial ruling on his claim and grant certiorari relief, using both *Townsend v Burke*, and *U.S. v Tucker*, as a guide.

This Court has previously determined that a claim can be properly addressed before the Court on proper citations to governing law. *Albrecht v United States*, 273 US 1, 11 (1926). Thus, Petitioner urges this Court to address the due process right right under the umbrella of the right to be sentenced on accurate information. US Constitution Amendment XIV, which was not applied to him during his appeal to the US Court of Appeals for the Sixth Circuit.

Reasons for Allowance of Writ of Certiorari

Petitioner urges this Court to grant his petition for writ of certiorari and clarify that a claim of inaccurate/false information, used to enhance his punishment will not be allowed to stand in light of the due process clause and the ruling in *Townsend v Burke* 334 US, at 740.

The focus of the certiorari inquiry is, does the Fourteenth Amendment protect the defendant during a state court proceeding where the state trial judge used inaccurate/false information to enhance his punishment after the state highest Court remanded for resentencing after removal of the inaccurate information and a new sentence be imposed without the inaccurate information. This is perhaps an issue of first impression under the Fourteenth Amendment.

Petitioner asserts a significant inquiry as to whether or not his claim give rise to the grant of relief under either the constitutional safeguards of the Fourteenth Amendment, or the relief afforded by this Court ruling in *U.S. v Tucker*, supra.

Petitioner asks this Court to grant certiorari to clarify, once and for all, that where, as here, when a criminal defendant has been sentenced on the basis of inaccurate information, which was only used to enhance the punishment, the decision denying relief results in a denial of due process and a fundamental right to sentencing on accurate information. US Const. Amends. XIV.

A Fortiori to grant certiorari in this case, this Court should grant certiorari and correct the error of the courts below, or pronounce a decision where criminal defendants have been denied their right to full due process protection by a state trial court judge at sentencing, and the lower federal courts have this to be only a state law claim, would be a constitutional violation curable by remanding the case for further review on the constitutional right as opposed to the procedural failure of the courts. Under the ruling in *Townsend v Burke*, supra, where it was determined that inaccurate/false information used at sentencing, violated due process and required resentencing, relief would be available, because of the failure of the courts to adhere to clearly established law as determined by this Court.

Certiorari should be granted in this case, to assure that Petitioner has not been the victim of the denial of the Fourteenth Amendment protection of the right to be sentenced on accurate

information. This Court is called upon to correct the constitutional violations as has occurred in this case sub judice. US Const. Amend. XIV.

Petitioner asserts that Certiorari should be granted to announce a new rule of constitutional law which addresses his claim as a matter of constitutional protection under the sentencing procedures of all state and federal courts insofar as due process protection is concerned as to inaccurate/materially false information used to enhance punishment.

Consideration Governing Review on Certiorari:

"(a). a United States Court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and unusual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for exercise of this Court's supervisory power." *Id.*

Because the Sixth Circuit relied on the erroneous notion that because Petitioner failed to present the false/inaccurate information on his appeal, the District Court's decision was upheld. This is clearly a violation of clearly established law as determined by this Court mandating certiorari review under *Townsend v Burke*, *supra*.

Petitioner is entitled to habeas corpus relief in this case, and certiorari should be granted on the inquiry on his claim of denial of a right to fundamental due process protection at his sentencing where he informed the sentencing judge that his information was incorrect. [Appendix-H, the PSIR page showing the convictions were dismissed). The District Court rendered its decision denying the habeas petition on an illusion as to constitutional law, as opposed to state law, creating a novel inquiry, as announced in *Engle v Isaac*, 71 L Ed 2d 783, 799, and opined:

"The writ of habeas corpus indisputably holds an honored position in our jurisprudence. Tracing its roots deep into English common law, it claims a place in Art I of our Constitution. Today, as in prior centuries, the writ is a bulwark against convictions that violate fundamental fairness." *Wainwright v Sykes*, 433 US, at 97; 53 L Ed 2d 594; 97 S Ct 2497. (Stevens, J., concurring).

On this well written principle of law, Petitioner Barrera is entitled to have his writ of certiorari heard on the merits notwithstanding the erroneous rulings from the courts below. Cf. US Const. Amend. XIV..

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner, John Joseph Barrear, was charged in the State Circuit Court for the County of Saginaw, in Saginaw, Michigan, with the statutory crime of Criminal Sexual Conduct in the First Degree, on two counts, MCL § 750.520b. He was also charged with two counts of Criminal Sexual Conduct in the Second Degree, MCL § 750.520c. These charges arose on the complaint by his wife's grand daughter.

Petitioner entered a plea of 'nolo contendere' as to a fourth offense habitual offender for reduced charges of Criminal Sexual Conduct, Second Degree and added counts of CSC third degree. MCL § 70.20d. He was sentenced to prison for a term of (280 to 600) months. He appealed his sentence and the Michigan Court of Appeals affirmed on January 21, 2015. The Michigan Supreme Court remanded the case for resentencing because the parties agreed that OV-11 was scored in error. Petitioner's plea called for a term of (84 to 280) months.

At the resentencing proceeding, the court imposed (280 to 600) months it had previously sentenced him. During the resentencing, Petitioner informed the Court that it has scored his guidelines for convictions which were dismissed. The Court used the convictions from the 1970s and 1980s to keep the scoring OVs the same. This is the inaccurate information because those convictions were dismissed. (Re. St pp 11-12). Cf [Appendix-H].

Petitioner appealed the new sentence to the Court of Appeals and that Court denied relief. He sought relief from the Michigan Supreme Court and that Court denied discretionary relief after it had remanded for resentencing. See *People v Barrera*, 500 Mich 14, 22 (2017).

On habeas corpus review, Petitioner sought relief under Title 28 USC § 2254, and the US District Court denied relief and dismissed the petition claiming the issue of inaccurate information was a state law claim and habeas relief could not be granted. (Appendix-B, pp 4a to 10a).

On appeal to the US Court of Appeals for the Sixth Circuit, the Court denied relief basing its denial on the decision reached by the US District Court, claiming Petitioner had not shown the inaccurate information. (Appendix-A, pp 1a to 3a). He now seeks certiorari relief in this Court.

ARGUMENT

CERTIORARI SHOULD ISSUE WHERE A STATE CRIMINAL DEFENDANT HAS BEEN SENTENCED ON THE BASIS ON INACCURATE INFORMATION USED BY THE SENTENCER TO INCREASE HIS PUNISHMENT FOLLOWING REMAND FROM THE STATE HIGHEST COURT FOR CORRECTION AND RESENTENCING, WHERE THE SAME PUNISHMENT WAS AGAIN IMPOSED AND HABEAS RELIEF WAS WARRANTED UNDER THIS COURT'S RULING IN TOWNSEND V BURKE ON DUE PROCESS PROTECTION UNDER CONST. AMENDMENT. XIV.

Certiorari Review on Claim:

This Court has explained on numerous occasions that a sentence imposed on the basis of inaccurate and materially false information offends the due process clause of the Fourteenth Amendment. *Cf. United States v Tucker*, 404 US 443, 447 (1972). So stated, this Court should apply the de novo inquiry to determine whether Petitioner Barrera was the victim of a due process denial when he was resentenced on the same false information used to increase his punishment from (84 to 280) months, to an increased sentence of (280 to 600) months.

During his initial appeal, the Michigan Supreme Court remanded the case back for the circuit court judge to correct the improperly scoring of OV-11 on the inaccurate information. See *People v Barrera*, 500 Mich, at 22. The circuit court judge imposed the same invalid sentence he had imposed during the first sentencing process. (Re St Tr pp 11-12). The Judge indicated and acknowledged the improper scoring of OV-11, but decided he would keep the sentence in the same grid as the previous sentence because the judge believed Petitioner was never going to be released from prison. (Re St Tr p 11). The court used two former convictions which had been dismissed to arrive at the conclusion that Petitioner was a 'shameful man.' You have ruined the lives of many young girls, including your own daughters. They have to go through life not trusting people, being afraid. And you took all that away from innocent children. ... For that, your sentence will be a minimum of 280 months, a maximum of 600 months. (Re St p 11).

Clearly established law from this Court has made it clear that the due process clause forbids the judge to rely on materially false or unreliable information. *Cf US v Tucker*, 404 US,

at 447. [Due process prohibits a court from imposing a sentence based on prior convictions if those convictions were unconstitutional].

In *Townsend v Burke*, *supra*, this Court found a due process violation where the sentencing court relied on materially false information about a defendant's criminal history in making its sentencing decision. The US District denied relief based on the erroneous assumption that the claim was one of state law and not cognizable of habeas corpus. (Opinion of the District Court p 4, ¶ 2). The US District Court, in essence, recharacterized the issue before it as a claim challenging the OV-11 scoring as opposed to the false/inaccurate information derived from that OV-11 scoring and denied habeas relief as on state law grounds.

The Sixth Circuit also denied relief claiming, *inter alia*, that Petitioner failed to show the false/inaccurate information the state sentencing court relied on for its resentencing. (Opinion p 3, ¶ 1). The Sixth Circuit, although addressing the remand order from the Michigan Supreme Court, failed to review the reason the State Highest Court remanded for correction of the OV-11 scoring where the parties agreed it was scored improperly on inaccurate information. Therefore, the US Court of Appeals, like the US District Court committed a clear legal error of sentencing law on inaccurate information as determined by this Court requiring certiorari relief. US Const. Amend. XIV. *Townsend v Burke*, 334 US, at 741.

In *US v Tucker*, *supra*, this Court found error and overturned a sentence where the sentencing court had considered two prior convictions that later were invalidated. In the instant case, two of Petitioner prior convictions were dismissed. (Appendix H). The two were from the time periods referenced by the state trial judge during the resentencing proceeding. (St Tr p 11). These two prior convictions gave the sentencing court an illegal reason to keep the already ruled invalid sentence the same. This violated both *Townsend v Burke* and the case of *United States v Tucker*, *supra*. In either event, the Courts below erred reversibly when determining that the issue was one of state law, and no evidence of materially false/inaccurate information was shown. Accordingly, certiorari is warranted to correct the fundamental due process violation in the instant case. US Const. Amend. XIV. *Townsend v Burke*, *supra*.

Again, at resentencing, the state sentencing court imposed (280 to 600) months, the exact same sentence it had imposed prior to the remand order for resentencing from the Michigan Supreme Court. Petitioner informed the Court that the two 70s sentence had been dismissed, but the court ignored his statement. Thus, the trial court demonstrated a form of "vindictiveness" for Petitioner having utilized his right to appeal the invalid sentence from the first instance.

Petitioner urges this Court to grant his petition for writ of certiorari and clarify that a claim of inaccurate/false information, used to enhance his punishment will not be allowed to stand in light of the due process clause and the ruling in *Townsend v Burke* 334 US, at 740.

The focus of the certiorari inquiry is, does the Fourteenth Amendment protect the defendant during a state court proceeding where the state trial judge used inaccurate/false information to enhance his punishment after the state highest Court remanded for resentencing after removal of the inaccurate information and a new sentence be imposed without the inaccurate information. This is perhaps an issue of first impression under the Fourteenth Amendment.

Petitioner urges this Court to assert a significant inquiry as to whether or not his inaccurate/false information sentencing claim is grounds for, or gives rise to, the granting of relief under the constitutional safeguards of the Fourteenth Amendment's Due Process Clause, or the relief ruled upon by this Court on like subject matter in *U.S. v Tucker*, *supra*, and order resentencing without the false information or dismissed convictions.

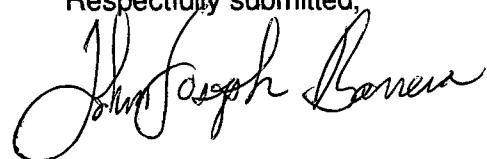
Petitioner asks this Court to grant certiorari to clarify, once and for all, that where, as here, when a state criminal defendant has been sentenced on the basis of inaccurate information, which was only used to enhance the punishment, the decision denying relief results in a denial of due process and a fundamental right to sentencing on accurate information. US Const. Amends. XIV.

SUMMARY AND CONCLUSION

WHEREFORE, Petitioner John Joseph Barrera, has stated a constitutional violation during his resentencing proceedings in the state circuit court. This violation is contrary to this Court's ruling in both *Townsend v Burke*, and *United States v Tucker*, supra. Therefore, since both the US District Court and the Sixth Circuit Court of Appeals, failed to adhere to clearly established law as determined by this Court, certiorari should be granted and this Court should, as a matter of US Constitutional law, reverse the courts below and remand for resentencing.

Or, in the alternative, remand for the state court to correct the materially false/ inaccurate information regarding the two prior convictions which were dismissed and resentence on accurate information as the Court has proclaimed in both *US v Tucker*, and *Townsend v Burke*.

Respectfully submitted,



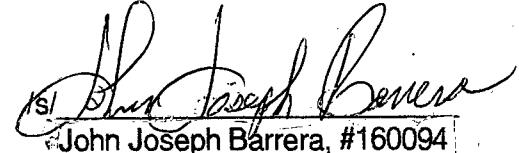
Dated: January 7, 2020

John Joseph Barrera, #160094

VERIFICATION

I, John Joseph Barrera, hereby verify under the penalty of perjury and pursuant to Title 18 USC § 1746, that I have read the foregoing Petition for Writ of Certiorari. That the same is true in all respects insofar as the facts are concerned. That as to case law authority, statutes, and constitutional provisions embedded therein, I believe to be truthful and applicable and I place my reliance thereupon. FURTHER, I say not.

Dated: Jan 7, 2020



John Joseph Barrera, #160094
In Pro persona
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Coldwater, Michigan 49036