

19-7723

ORIGINAL

No.

IN THE

Supreme Court of the United States

JAMES WILLIAM BRAMMER,

Petitioner

Supreme Court, U.S.
FILED

FEB - 7 2020

OFFICE OF THE CLERK

vs.

RAYMOND MADDEN, WARDEN,

Respondent(s),

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT OF CALIFORNIA:

PETITION FOR WRIT CERTIORARI

James William Brammer
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91708

ORIGINAL

QUESTIONS(S) PRESENTED

¶1. DOES THE SIXTH AMENDMENT'S RIGHT TO COUNSEL, INCLUDE APPOINTMENT OF COUNSEL FOR PROSECUTION OF MOTION FOR A NEW TRIAL?

¶2. IS A MOTION FOR A NEW TRIAL CONSIDERED A "CRITICAL STAGE" OF THE CRIMINAL PROCEEDINGS?

¶3. IS PETITION FOR WRIT OF CERTIORARI WARRANTED BY THE DIVISION OF THE CIRCUITS ON THIS ISSUE?

¶4. UNITED STATES SUPREME COURT HAS NEVER SQUARELY ADDRESSED AND/OR CERTIFIED THIS PARTICULAR QUESTION REGARDING SIXTH AMENDMENT RIGHT TO COUNSEL, CAN A WRIT OF CERTIORARI ISSUE? 1/

FOOTNOTE #1

In *Marshall vs. Rodgers*, (2013) 569 U.S. 58, [133 S.Ct. 1446] 185 L.Ed.2d 540, 545, this Honorable Court stated: "[e]xpresses no view on the merits of the underlying Sixth Amendment principle nor does it suggest that the underlying issue if presented on direct review would be insubstantial." (Id., at pg. 545.)

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

California Attorney General
300 South Spring Street
Suite No. 1702
Los Angeles, California
90013

RELATED CASES

None to date.

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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 A, to the petition and is

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 is unpublished.

The opinion of United States district court 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 is unpublished.

For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix C, 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 California court of appeal appears at Appendix D, to the petition and is

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 is unpublished.

JURISDICTION

For cases from federal courts:

The date on which United States Court of Appeals decided my case was November 18, 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: _____, 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 March 11, 2015, page 1; October 12, 2016, page 2, and copies of those decision appear at Appendix C.

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 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

Sixth Amendment To United States Constitution

Fourteenth Amendment To United States Constitution

28 U.S.C. § 2254 (d)(1)

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STATEMENT OF THE CASE

District Attorney of Los Angeles County, State of California filed an information charging petitioner with thirteen (13) Counts of second degree robbery in violation of California Penal Code § 211 and two (2) Counts of attempted robbery in violation of §§ 211 and 664 of Penal Code.

It was further alleged as to all Counts that petitioner used a deadly and dangerous weapon during the commission of the offenses within the meaning of § 12022, Subdivision (b)(1) of Penal Code.

Additionally, it was alleged that petitioner had suffered three (3) prior "Strikes" convictions within the meaning of "Three Strikes Law" and that he suffered three (3) prior serious felony convictions within the meaning of § 667, Subdivision (a)(1); and that he served several prior prison terms within the meaning of § 667.5, Subdivision (b) of the Penal Code.

Petitioner was representing himself throughout all stages of the criminal prosecution, with the exception of the initial arraignment in the Superior Court, prior to preliminary examination.

On November 9, 2012, the jury found petitioner guilty of each of the thirteen Counts of robbery and found each of the deadly weapon enhancements allegations true. Petitioner was found not guilty of both attempted robberies charges.

In a jury-waived, bifurcated proceeding, the trial court found each of the charged prior convictions allegations true.

On February 27, 2013, the trial court sentenced petitioner to an indeterminate term of two-hundred-twenty-five (225) years to Life,

plus a determinate term of one-hundred-fourty-four years in state prison. Sentences on four (4) of the robbery Counts were ordered stayed pursuant to § 654 of Penal Code.

Petitioner filed a timely "Notice of Appeal" from the judgment rendered by the trial court, pursuant to § 1237, Subdivision (a).

As previously stated petitioner had filed all his own motions to dismiss, to vacate "Strikes" based upon the fact that State put him on jury trial in another matter without the benefit of counsel, nor having ever waived right to counsel. Motion to suppress the statement/confession, etc. All of which were unconstitutionally denied as presented to the trial court. 2/

The trial court judge, Honorable Harvey Giss, did not approve of pro per criminal defendant, and stated emphatically, "[d]id not like pro pers in [his] court. Its makes life very difficult...." (V.R.T. at pg. J86.) Trial court judge habitually harass, vex, and emasculated petitioner throughout his pretrial proceedings and at time of jury trial. 3/

No matter how personal antipathy a trial court judge has towards a particular defendant (or defense attorney), he may not abandon his constitutionally prescribed duty of impartially. Indeed, a criminal defendant has a due process of law right to an impartial judge. (Bracy vs. Gramley, (1997) 520 U.S. 899, 904-905.)

FOOTNOTE #2

Petitioner is only presenting the one (1) allegation herein, i.e., that the Sixth Amendment right to counsel extends to attorney for a motion for a new trial. Petitioner can not obtain Certificate of Appealability on that claim because of Marshall vs. Rodgers, 569 U.S. 58 [133 S.Ct. 1446] 185 L.Ed.2d 540, 545.

FOOTNOTE #3

Petitioner did not provide every reporter's transcript as cited, however, will do so upon request.

Petitioner briefly submits why for the most part of criminal proceedings he was deprived of Federal Due Process. First, Judge Harvey Giss, was publically admonished for his "sadistic remark" in regards to African-American criminal defendants, under his jurisdiction and/or courtroom in reference to the KKK. (Appendix D, at pgs. 1-2.) Judge, H. Giss, claimed it was in humor. Judge, H. Giss, was a defendant in a civil rights complaint for injunctive relief only. (Appendix E, at pg. 1.) [Petitioner's Complaint.]

While petitioner was in an evidentiary hearing regarding his motion(s) to suppress statement/confession, Judge H. Giss, claimed to have been a law clerk on Arizona Supreme Court, at time this Honorable Court rendered its opinion of Miranda vs. Arizona, (1966) 384 U.S. 436 [86 S.Ct.1602] 16 L.Ed.2d 694, and they (Giss) did everything right and that this Court erroneously reversed the case. Petitioner only mentioned the above-mentioned facts to set the stage of comprehension to understanding the arrogant and haughty attitude of the trial court judge. Petitioner additionally submits that he was deprived of fair process throughout pretrial and jury trial by this bias trial court judge, (See: Fourteenth Amendment)

Prior to jury trial, petitioner made several attempts to obtain a new private investigator to no avail. His private investigator did not accomplish the items to be completed prior to jury trial. Judge Harvey Giss absolutely refused to replace him, and conducted an incamera hearing with him outside the presence of petitioner.

After petitioner was convicted, he prosecuted a motion for appointment of a different private investigator. In this motion, petitioner articulated the malfeasance of (Mr. R. Stewart) private

investigator. (Appendix F, at pgs. 3-5) Now after jury trial, Judge H. Giss, finally replaces him, and after half ($\frac{1}{2}$) of his defense was never presented due to private investigator's malfeasance. Judge Harvey Giss, granted petitioner's motion. (See: Appendix F, at pg. 9, paragraphs 3-5.) However, new investigator had a hung jury in one case and could not take appointment, so the petitioner obtained another private investigator, i.e., Ms. Melanie Pack, Gordian Investigations. (Appendix F, at pg. 7.) On January 10, 2013, petitioner was instructed that new investigator could not take the appointment, so he obtained Ms. Melanie Pack to be appointed on the 17th day of January 2013.

When petitioner arrived back to court on January 17, 2013, the trial court judge (Harvey Giss) now forces petitioner to explain all his grounds for the appointment for a private investigator, at this time petitioner possessed none of his notes, motion for the appointment of private investigator had been granted twice before. Judge Harvey Giss, was constantly harassing petitioner like this, changing appointments and after petitioner left courtroom, he vacate previously granted motions and deny them to vex, frustrate and impede his defense. (Appendix F. at pg. 20, 6th paragraph.)

On January 18, 2013, via United States Mail, petitioner mails his motion for appointment of counsel for prosecution for a motion for a new trial. (Appendix F. at pgs. 10-19.) Judge Harvey Giss, was absence from the bench for over one (1) month.

In petitioner's motion for appointment of counsel for a new trial motion, petitioner set forth his grounds and allegations for appointment of counsel. (Appendix F. at pgs. 11, statement of relevant facts, to pg. 15.) The facts were overwhelming for the

appointment of counsel for a new trial motion, petitioner had no way of obtaining any evidence for his new trial motion. Even his pin number for pro per phones was malfunctioning or obstructed. (See: Appendix F, at pgs. 11, last paragraph to pg. 12, 2nd paragraph.)

Honorable Fredrick F. Mumm, magistrate judge for United States District Court, Central District, claimed petitioner provided no "proof" of the fact that he was precluded from utilizing his pro per pin phone number, yet petitioner had provided all complaints to Los Angeles Sheriff Department, and the phone records itself. However, Magistrate Judge refused to entertain the Eight (8) Volume of Habeas Corpus Appendices, that substantiated all of petitioner's allegations. Petitioner's in his objections to magistrate report and recommendation, presented, over fifteen (15) pages of factually incorrect statements of magistrate judge, supported by documented evidence, Honorable M. W. Fitzgerald, just ignored this denial of a fair process and never independently reviewed the record contrary to this Honorable Court's mandate/opinion of Williams vs. Taylor, (2000) 529 U.S. 362, 412 [120 S.Ct. 1495] 146 L.Ed.2d 389. At one point during jury selection, superior court clerk informed petitioner that Dr. M. Eisen, eye witness expert was unable to testify for the defense, as she was informed by private investigator, M. R. Stewart. Dr. Eisen, never made any such statement. (Appendix G, at pg. 1.) Judge Harvey Giss, was perfectly aware of the fact that petitioner had no way of contacting any of his witnesses. 4/

Petitioner's appellate counsel even stated in his opinion that Judge, should have appointed counsel for new trial motion, but yet
FOOTNOTE #4

At one point in the jury selection process, Judge Harvey Giss, yelled at petitioner for filing the civil rights complaint for the injunctive relief sought for the destruction of exculpatory evidence. (Appendix E, at pg. 1.) Again, Magistrate Judge, F. F. Mumm, ignored this fact to deny judicial bias.

never presented this argument. Mr. R. Kravis claimed that he could have made, a "straight-faced" argument why Judge Harvey Giss was incorrect. (See: Appendix H, at pgs. 1, 11, last paragraph to pg. 12, 5th paragraph.) Appellate counsel additionally claimed, he could develop no prejudice, however, refused to develop the trial record to establish prejudice. The State withheld and denied all motions for production of transcripts which substantiated petitioner's allegations. All of the above-mentioned facts are to establish the basis of why trial court unconstitutionally deprived counsel at a critical stage in the criminal proceedings and why this serious allegation was not raised by appellate counsel.

Sixth Amendment Right To Counsel For A New Trial

The Sixth Amendment's guarantee of the right to counsel at all critical stages has long been established. (*Mempa vs. Rhay*, (1967) 389 U.S. 128, 134 [88 S.Ct. 254] 19 L.Ed.2d 336.) On the other hand, the Constitution also guarantees a defendant the right to proceed without counsel. (*Faretta vs. California*, (1975) 422 U.S. 806, 807 [95 S.Ct. 2525] 45 L.Ed.2d 562.)

Once waived, the right to reappointment of counsel is not absolute, i.e., *John-Charles vs. California*, (9th Cir.) 646 F.3d 1243, 1250-1251, cert.den., 132 S.Ct. 855 [181 L.Ed.2d 557] (2011); *Menefield vs. Borg*, (9th Cir. 1989) 881 F.2d 696, 700.

Although, this Honorable Court has not explicitly addressed the parameters of a defendant's ability to re-assert his right to counsel after having waived that right, the Ninth Circuit has held that it violates "clearly established Federal Law to deny counsel in a post-trial pre-appeal proceeding simply because the defendant

has previously exercised that right to represent himself." (Rodgers vs. Marshall, (9th Cir. 2012) 678 F.3d 1149, 1161, i.e., accord, Robinson vs. Ignacio, (9th Cir. 2006) 360 F.3d 1044, 1059, petition for writ of certiorari filed, 81 USLW 3250 [September 25, 2012] cert.granted, 133 S.Ct. 1446 [185 L.Ed.2d 540] (2013).)

Petitioner never attempted to re-assert appointment of counsel at the time of pretrial or at time of jury trial. It was only after trial court judge violated petitioner's Due Process of Law, that he requested counsel because he was rendered helpless to present any meaningful and meritorious claims because he was restricted from using the phone to contact anyone nor was able to subpoena anyone nor obtain any sworn declarations/affidavits.

Under the facts and circumstances of petitioner, this pre-appeal request for appointment of counsel for prosecution of a new trial motion, was "in fact a critical stage" in the criminal proceedings under the Sixth Amendment. Clearly, petitioner was deprived of his right to the effective assistance of appellate counsel when he recognized the error and failed to brief it. (Richardson vs. Superintendent Coal Twp. SCI, (3rd Cir. 2018) 905 F.3d 750.) [cf: Doherty vs. United States, (1971) 404 U.S. 28, 29.]

There were many ways in which trial court could have solved petitioner's problems, however, the sole intention of the trial court was to stop petitioner from proving and substantiating his allegations. Did the trial court make the appropriate inquiry? (United States vs. Rivera-Corona, (9th Cir. 2010) 618 F.3d 976) The petitioner could have explained all his contentions to any counsel, delay was fabricated by trial court judge. Standby counsel could have sufficed, provided he was permitted to contact individuals

that were to be called at time of jury trial that private investigator refused to subpoena, including Dr. M. Eisen. [Cf: McKaskle vs. Wiggins, (1984) 465 U.S. 168 [104 S.Ct. 944] 79 L.Ed. 2d 122, reh.den. 465 U.S. 1112 [104 S.Ct. 1620] 80 L.Ed.2d 148.]

Herein, when the trial court judge rested his decision to deny appointment of counsel for a new trial motion, it was based upon an inaccurate view of the facts and the law, specifically on a clearly erroneous finding of fact. (United States vs. Ensminger, (9th Cir. 2009) 567 F.3d 587, 590; United States vs. Garcia-Lopez, (9th Cir. 2018) 903 F.3d 887, 890-891.) And appellate counsel waived this potentially meritorious allegation on direct review of the judgment of the trial court. (United States vs. Olano, (1993) 507 U.S. 725, 730-736 [113 S.Ct. 1770] 123 L.Ed.2d 508.)

This Honorable Court has never issued a mandate/opinion for a structural error unless the State was responsible for counsel's absence. To warrant automatic prejudice a state law or state actor must prevent counsel's presence or limit his representation. [Cf: Manhattan Cmty. Access Corp. vs. Halleck, (2019) 139 S.Ct. 1921, 1928-1929 [204 L.Ed.2d 405] Right to counsel at all critical stages of criminal proceedings. (Iowa vs. Tovar, (2004) 541 U.S. 77, 80-81 [124 S.Ct. 1379] 158 L.Ed.2d 209, i.e., accord, United States vs. Cronic, *supra*, 466 U.S. at pgs. 653-654.) [Cf: United States vs. Martinez, (9th Cir. 2016) 850 F.3d 1097, 1106, "structural error of Cronic."]

Right to counsel for the prosecution of a new trial motion under facts and circumstances of petitioner, was a substantial right to counsel under Sixth Amendment. (United States vs. Yamashiro, (9th Cir. 2015) 788 F.3d 1231, 1236.)

In petitioner's matter, the denial of counsel appointment for a new trial motion "[under-mines]" the fairness of the criminal proceeding as a whole. (United States vs. Davila, (2013) 569 U.S. 597 [133 S.Ct. 2139] 186 L.Ed.2d 139.) [Cf: United States vs. Collins, (9th Cir. 2012) 684 F.3d 873, 881 (Structural error/defect no harmless error analysis), United States vs. Rylander, (9th Cir. 1983) 714 F.2d 996, 1005.] (Fourteenth Amendment .)

Because the right to counsel at a critical stage of the criminal proceeding, is such a fundamental constitutional right under the Sixth Amendment, 28 U.S.C. § 2254 (d)(1), should not insist on such a close fit, where this type of violation of right to counsel is so clear and mandatory. (Panetti vs. Quarterman, (2007) 501 U.S. 930 [127 S.Ct. 2842] 168 L.Ed.2d 662.)

Because of this division among the reviewing courts, this Honorable Court should issue a clear mandate/opinion explaining how the Sixth Amendment applies in request for appointment of counsel for a new trial motion.

Petition for writ of certiorari should issue.

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REASONS FOR GRANTING THE PETITION

The subject matter of this petition for writ of certiorari can and will affect thousands of criminal defendant(s) throughout the United States criminal justice system.

Each case of a refusal by a state court or other tribunal, should be assessed on its own merits, i.e., refusal to appointment of counsel for the prosecution of a new trial. There is a division among the Circuit(s) as to whether this type of denial runs afoul of the constitutional rights secured by the Sixth Amendment to the United States Constitution.

Instruction and clarity should be provided by this Honorable Court in order to adequately instruct the lower reviewing courts, when they are confronted with this type of allegation. As it stands at this present time, no reviewing court can grant relief, no matter how wrong they interpret the denial of counsel to be. (Marshall vs. Rodgers, 569 U.S. 58 [133 S.Ct. 1446] 185 L.Ed.2d 540, 545.)

Based upon the Circuit(s) division on this subject, and a few examples should suffice at this point, i.e., Robinson vs. Ignacio, (9th Cir. 2004) 360 F.3d 1044; Bell vs. Hill, (9th Cir. 1999) 190 F.3d 1089, 1093; Robinson vs. Norris, (8th Cir. 1995) 60 F.3d 457; United States vs. Taylor, (5th Cir. 1991) 933 F.2d 307; Williams vs. Turpin, (11th Cir. 1996) 87 F.3d 1204; Schmidt vs. Pollard, (7th Cir. 2018) [January 19, 2018] 891 F.3d 302; [September 6, 2018] 911 F.3d 469, 472-473. [ADVERSE] United States vs. West, (4th Cir. 1988) 877 F.2d 281; United States vs. Kerr, (2nd Cir. 2014) 752 F.3d 206.

It is presumed that in all allegations as herein, the petitioner had sufficiently "rebutted" the trial court's denial of appointment of counsel. Petitioner's rebuttal of trial court's denial has been fully developed and articulated. Accordingly, it is submitted that the denial of appointment of counsel for prosecution of motion for a new trial, was a "critical stage of the proceedings." (Cf: *United States vs. Cronic*, (1984) 466 U.S. 648, 653-654, 658-659 [104 S.Ct. 2039] 80 L.Ed.2d 657, n. 25, i.e., accord, *Iowa vs. Tovar*, (2004) 541 U.S. 77, 80-81 [124 S.Ct. 1379] 158 L.Ed.2d 209.)

The Sixth Amendment protects a defendant's right to counsel at all critical aspects of criminal justice proceedings. Accordingly, as most Circuits have found and adopted a presumption that "a criminal defendant's "post-trial" request for assistance of counsel should not be refused or denied.

The above-mentioned presumption is predicated upon the fact that an unaided layman has little skill in arguing the law or in coping with an intricate procedural system.

The right to counsel extends beyond the trial itself. Criminal prosecutions involve critical confrontations before and after trial, where such results might very well settle the case.

This Honorable Court has never fully expressed a view on this subject matter or adequately addressed the underlying Sixth Amendment principle or stated emphatically that this type of denial is fully consistent within the meaning of the Sixth Amendment's guarantees.

Petition for writ of certiorari should issue to resolve this important question of constitutional law.

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CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Executed this 31st day of January 2020.

/s/ 

JAMES WILLIAM BRAMMER
PETITIONER
IN PRO SE

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