No. 19-7832

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SEAN PIERCE — PETITIONER PRO SE
(Your Name)

vs.

CANTIL-SAKAUYE et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Sean Pierce
(Your Name)

P.O.Box 8457
(Address)

Lancaster, CA 93539
(City, State, Zip Code)

(707) 448-6847
(Phone Number)

QUESTION(S) PRESENTED

1. Whether habeas corpus under Miller v. Alabama, 567 U.S. 460, 465 was necessary when a "significant mitigating factor" pop-up that calls into question the validity of the conviction or sentence?
2. What standard of review under Miller v. Alabama, 567 U.S. 460, 465 (2012) applies to eligible "Youth Offender's" claiming to be "Actually Innocent" of murder or homicide charges?
3. Whether under Miller v. Alabama, 567 U.S. 460, 465 (2012) Youth Offender was convicted or sentenced on the basis of a statute which punished status rather than criminal conduct?

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:

STATE OF CALIFORNIA

CONTRA COSTA COUNTY

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

RELATED CASES

* In re SEAN WAYNE PIERCE on Habeas Corpus, No. S256703, Supreme Court of California. Judgment entered October 9, 2019.

* California v. Pierce, No. 9409251, Contra Costa County Superior Court. Judgment entered December 22, 1994.

TABLE OF AUTHORITIES CITED

CASES — PAGE NUMBER

STATUTES AND RULES

OTHER

TABLE OF CONTENTS

INDEX TO APPENDICES

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 N/A. to the petition and is

[ ] reported at N/A.; 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[ ] is unpublished.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 N/A. to the petition and is

[ ] reported at N/A.; 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[ ] is unpublished.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 N/A.; or,
[ ] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the N/A. court appears at Appendix N/A. to the petition and is

[ ] reported at N/A.; 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 N/A.

[ ] 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: N/A., and a copy of the order denying rehearing appears at Appendix N/A..

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A. (date) on N/A. (date) in Application No. A N/A..

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

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

The date on which the highest state court decided my case was 10-9-2019.. A copy of that decision appears at Appendix A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A., and a copy of the order denying rehearing appears at Appendix N/A..

[x] An extension of time to file the petition for a writ of certiorari was granted to and including 1/16/2020 (date) on 3/16/2020 (date) in Application No. A. See APPENDIX "H"

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a). The Cert was originally postmarked on November 19,2019 and returned for correction within 60-days. It was again returned for corrections on January 31,2020 granting 60-days to return. The Petitioner now return in good faith having made all corrections and using the forms provided by the Clerk. The Cert is timely.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendments 2,6,8,9,14

All Statutory provisions for "Youth Offender's"

All Statutory Provisions for Sentencing Guidelines

All Statutory Provisions for Self-Defense

Bill of Rights

All U.S. Supreme Court Constitutional Cases that apply to circumstances

STATEMENT OF THE CASE

On June 30, 2019, Petitioner presented a question of first impression to the California Supreme Court on a Petition for Writ of Habeas Corpus. The primary concern of the Petitioner was not to correct errors in the lower court decision, but to have the State Supreme Court decide a Youth Offender case presenting a U.S. Supreme Court issue of importance beyond the particular facts and parties involved.

The question presented for review was: "What standard of review under Miller v. Alabama, 132 S. Ct. 2455 (2012) applies to eligible YOUTH OFFENDER'S claiming to be ACTUALLY INNOCENT of murder and homicide charges? He also requested an evidentiary hearing in that ground for relief to see if YOUTH OFFENDER meets that standard."

On October 9, 2019, the Petition for Writ of Habeas Corpus was denied without prejudice to filing a motion in the trial court pursuant to Penal Code section 1203.01, and citing In re Cook, (2019) 7 Cal. 5th 439.) See, Appendix A. The case stood for the proposition that Petitioner's conviction was not final and that I was granted a full blown evidentiary hearing.

On or about October 23, 2019, Petitioner filed the motion with the Superior Court according to the mailbox rules and U.S. Supreme Court Law. The caption of the motion was styled: "NOTICE OF PENAL CODE 1203.01 MOTION TO VACATE MURDER CHARGES UNDER MILLER V. ALABAMA, 567 U.S. 460, 465 (2012)." Approximately 45-days had passed without any response. So I requested Tamara T. Page to contact the Court and find out what the hold up was all about. After making many calls for days she talk to somebody that acknowledged they had received it, but said they were running behind schedule 30-days. The time period expired and Ms. Page made cantact with them again. This time they said that they don't have the pleading. With a professional restraint on my emotions cert was filed.

REASONS FOR GRANTING THE PETITION

We are wise to grant review where the Youth Offender possibly participated in the crime under circumstances of coercion or duress, or where he or she was possibly suffering from a mental condition that would significantly reduce the culpability for his or her crime. (RT-960)

Miller's journey of presenting general mitigating factor(s) begins at the bottom, where many Youth Offender's mitigating factor(s) reside but few rise above to presenting "significant mitigating factor(s)" that would call into question the validity of the murder or homicide charges. All levels are important: without a foundation to stop punishment for the Youth Offender's status of being mentally ill would constitute cruel and unusual punishment, the structure already appears to exist, as we climb the great Miller Pyramid, it becomes clear that it would be constitutionally impermissible if the result would be imposition of punishment on a mentally ill Youth Offender for acts done without criminal intent.

Today, we face that question in a self-defense shooting and need that "bright-light" of Miller for an ever-present guidance: a higher power that compels intellect and nature to fashion a remedy. All who seek Miller's glow act as mirrors, so after serving 25-years plus I am reflecting the Light into the world's still-darkened spaces of our "Youth" suffering at the time of the shooting from a mental condition.

I was raised up from the dead, so I speak for the "Youth Offender's" who are dead. My Eye resides at the center of Miller's Light, my focus so fixed upon truth that my circumstances becomes a beacon for the glow. Those who follow the Light are central to Miller's Design. Review should be granted because you are ever watchful and ever vigilant, the U.S. Supreme Court sees and knows all just as a shepherd sees and knows all of the flock.

I. HISTORICAL UNDISPUTED FACTS

Here, the undisputed facts show that Petitioner purchased and possessed the gun after the first drug transaction with Kelly. His intent, at the time, was to possess the gun for protection. He then arranged a second drug transaction which occurred at least one day later. As a matter of law the intent to possess the gun could not have included the particularized intent to kill Kelly a day later. See, Appendix C-Decision of State Court of Appeals, at page 19. See Also, In re Winship,397 U.S. 358 (1970);Jackson v. Virginia,443 U.S. 307 (1979).

II. ACTUALLY INNOCENT

Petitioner claims that he shot and killed Robert Kelly in a delusion of self-defense or imperfect self-defense. See,House v. Bell, 547 U.S. 518 (2006); See Also, Appendix B-Declaration of Youth Offender Pierce Mitigating Factor of Sanity.

III. Miller's "Significant Mitigating Factor(s)"

On November 30, 1994, the Probation Officer's Report raised a reasonable doubt on Petitioner's guilt or punishment:

1. The defendant possibly participated in the crime under circumstances of coercion or duress or his criminal conduct was possibly partially excusable for some other reason not amounting to a defense.

2. The defendant was possibly suffering from a mental condition that significantly reduced culpability for his crime.

It's very interesting to look at the fact that Petitioner was never talk to by the Probation Officer. So where did this information source come from? Maybe it came from the "mental health system" that Petitioner has been a part of all of his life.

On December 22, 1994, at the sentencing hearing defense counsel added great weight to Petitioner's "diminished culpability." He fleshed out Petitioner's youth age, minimum "serious" youth history, adoption problems, mental condition,

learning disability, that the "Richardson's" was a participant or initiator who took advantage of Petitioner, and said that all of these things have actually been verified.[1/] He also stated that when Petitioner was sent to CRC, there was what they described as bizarre behavior. That counselors as early as '85 diagnosed problems in that regard. This information was also corroborated and well documented by a counselor at San Quentin. (RT-952,53,54,55,56,57,58.) It is noteworthy to mention that Petitioner was going back and forth to court from San Quentin and the counselor there had the best observation of Petitioner's mental condition. The Prosecution made no objections to any of these mitigating factor(s).

However, the Honorable Mark B. Simmons found that factors in mitigation are the crime. The prosecutor made no objections to the factors in mitigation being the crime. (RT-959)

Further, he found that the probation department was correct, that Defense Counsel was correct that there is evidence suggesting that the defendant was suffering from a mental condition that might--and he suppose this is perhaps where he disagree with "probation" and perhaps from the guidelines, because it's not clear to him that the possibility is enough as opposed to the certainty or likelihood, but he suppose that it might "significantly"--it might reduce culpability for the crime. (RT-960.)

Petitioner claims that his "significant mitigating factor" was clear and convincing because Defense Counsel "verified" his mental condition. The key word here is "verified." He confirmed in law by bond. He "adequately"

Footnote 1) The Social Security Administration records confirm that Petitioner became unable to work because of his disabling mental condition on December 23, 1985. Government Record,SG-SSA-16, UNIT: DAN090, Page 1.

investigated to establish the truth, accuracy, or reality of Petitioner's mental condition playing a major role in the crime. He even said that these things are not fabricated, you know, or false. He think that they are real factors in mitigation. (RT-954.) Although the People had absolutely nothing to say about this "significant mitigating factor", the Honorable Mark B. Simmons gave this "Youth Offender" the maximum punishment for the status of being mentally ill which constitute cruel and unusual punishment under Miller.

IV. NEWLY DISCOVERED MENTAL ILLNESS EVIDENCE

Petitioner has a very long documented history of mental illness, suffering from disorders of bipolar, schizophrenia, schizoaffective disorder, depression, and other things going back as far as childhood. He has also experienced psychotic symptoms such as hallucinations, hearing voices and loud noises, and disorganized behavior, and also have a history of organic brain damage (seizures) with suicide attempts. See, Appendix B-Deolaration of Youth Offender Pierce Mitigating Factor of Sanity, Paragraph 2.

In 1992 before the Petitioner paroled, he was housed in the California Medical Facility (CMF) because he was a male prisoner suffering from serious mental health diagnoses and designated as a category "J." He was taking multiple strong medications like "Haldol" to prevent delusions, hearing voices and loud noises, and suicide ideations in his "Youth." He also had regular contact with trained employees to deal with patient/inmates receiving a high level of care. He was receiving "adequate" treatment and monitoring that was "necessary to protect life and/or treat a significant disability [or] dysfunctionality." As long as he took his medications, he was cool. He still had his problems, but he did not pose an unreasonable risk of danger to prison or public safety, if properly treated in the community. See,Appendix B-Deolaration of Youth Offender Pierce Mitigating Factor of Sanity, Paragraph 3.

However, the State of California "Fundamentally Dropped the Ball" and Petitioner fell through the cracks of a broken mental health system. In 1993, he was given a non-adverse transfer to "New Folsom State Prison." He was not getting any mental health treatment at this prison and his symptoms would wax and wane month to month, week to week, and even day to day. I don't think that this prison had a mental health system in play back then for category "J" patients/inmates. Remember that at this time frame CDC mental health system was broke and beyond repair. It didn't make improvements until the Coleman lawsuit won that injunction relief by stipulation and agreement.

Consequently, this systematic problem state wide caused a significant disability or disfunction of regular daily life activities such as eating and sleeping. Without much sleep my delusions and hearing things that was not true came on more frequently. I was extremely "paranoid" and one day after spacing out on the weight pile, the Correctional Counselor called me to his office but I did not respond. Staff had to go and locate me and escort me to his office. He said, "Sean your going home three weeks early." I said, "I need my mental health medication bad." He did not respond. Nor did he offer me any type of mental health care for parole. See, Appendix B-Declaration of Youth Offender Pierce Mitigating Factor of Sanity, Paragraph 4.

On April 23,1993, Petitioner paroled seeing things and hearing things. He was delusional and very "paranoid" thinking that he was under attack. When he checked in with the parole agent absolutely no mental health services was offered, but he noted in the Probation Report (PR) that he knew Petitioner was suffering from a mental condition. The same old song again and again..."the mental health system back then was broke and beyond repair." So we have a clear picture that a baby was thrown out with the bath water.

After Kelly had made substantial threats to kill Petitioner, he went right out and bought a .380-caliber handgun for protection from Keith

Richardson because he "didn't feel right." See, Appendix C-Decision of State Court of Appeals, At. page 4; Declaration of Pierce, Paragragh 6. Petitioner tried the best he could to explain his mental condition to Mr. Richardson who was a much older criminal, but he took advantage of Petitioner being a much slower criminal with a learning disability and "coerced" him into the belief that Kelly had planned on killing him like he killed Sylvester Warran on Deem Street. Since Petitioner was an eye witness to that killing and had seen Kelly shoot Mr. Warran in his back about 5-times as he pleaded don't kill me and tried to run away, Petitioner took the bait from Mr. Richardson hook, line and sinker. Id.

I have tried to present a "Significant Mitigating Factor" with ease and care, Upon the level, by the square. Petitioner erect "a showing by clear and convincing evidence presented to the highest state court that, but for a Miller error, no reasonable juror would have found the "Youth Offender" guilty under the applicable state law." Someone who is unable, because of mental illness, to comprehend his duty to govern his actions in accord with the duty imposed by law, cannot act with malice aforethought. See, People v. Saille,54 Cal.3d 1103,1110 (1991). Similarly, if under the influence of his delusions he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defense, he would be exempt from punishment. See, People v. Skinner, (1985) 39 Cal.39 765, 217 Cal.Rptr.68 704 P.2d 752.

SCOTUS should order an evidentiary hearing because this case has a sweeping affect in all states for "Youth Offender's" criminal intent to kill. There is a long established history of SCOTUS taking intent to kill very serious. In Graham SCOTUS said that "when compared to an adult murderer, a juvenile offender who did

who did not kill or intend to kill has a twice diminished moral culpability." Ibid. (emphasis added).

Given SCOTUS reasoning, the kinds of homicide that can subject a "Youth Offender" to life in prison must exclude instances where the "Youth Offender" himself neither kills nor intends to kill the victim. The Decision of State Court of Appeals found that Petitioner did not have the particularized intent to kill, so he lacks "twice diminished" responsibility. See, Appendix C-Decision of State Court of Appeals, at. Page 19. That finding along under Miller would adjust the sentence to mansloughter. We need a case that not only can show the standard of review but also show us the adjustment process at the hearing.

The state court opinion is contrary to Miller's finding of "Youth Offender" who did not intend to kill has a twice diminished moral culpability.

The state court decision is also contrary to Miller because habeas corpus was a necessary procedure to hear "any mitigating factor" regarding innocence or negating the issue of malice. See, Appendix F-Attorney Letter Denying Any Mitigating Factor regarding "innocence or negating the issue of malice."

The state court decision made an unreasonable determination of the facts when it fail to make any factual findings at all on Miller issues material to a habeas corpus claim. It was unreasonable for a state court not to file my Miller Motion. It is unreasonable for a state court to resolve credible, disputed issues of "intent to kill" without holding an evidentiary hearing or resolving the dispute on the basis sworn declarations. See, Taylor v. Maddox, 366 F.3d 992 (9th Cir. 2004). Similarly, state court factual findings are not entitled to a presumption of correctness when the state court fact-finding MOTION procedure was fundamentally flawed. Hurles v. Ryan, 752 F.3d 768 (9th Cir. 2014).

Petitioner has served over 25-years. He was supposed to receive his "Youth offender" parole hearing in 2017, but has never been given one to date. His so-called release date was 10/23/2018, but he was not given a hearing nor was he released from custody. See, Appendix G-Release date. Clearly, he has been denied any meaningful opportunity for release under Miller.

However, we should forgive them of that error because the hearing would have no jurisdiction over someone who should not be serving time for murder under the U.S. Constitution, Amendment's 6,8,9,14; and the Declaration of Independence. It would boil down to what could the Board do for a "Youth Offender" who is claiming to be innocent under Miller? They would lack any jurisdiction to deal with such a claim for release.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sean Pierce

Date: February 23, 2020