

IN THE SUPREME COURT OF THE UNITED STATES

Todd Darrell Ballard

Petitioner,

Case No. 19- 7858

Vs.

(USCA3 No. 190 1143)

John E. Wetzel, et al.

Respondent(s).

Request for Rehearing of Claim

PETITION FOR REHEARING

TO THE HONORABLE SAID JUDGES OF THIS COURT:

NOW COMES, Todd D. Ballard, (Petitioner) pro se in the above captioned action, and respectfully moves this Honorable Court to GRANT the requested relief in this Petition [pursuant to Rule 44 of the Supreme Court], to issue an Order for rehearing on the merits of this case, and represents the following in support:

JURISDICTION

1. This Court has lawful jurisdiction to entertain and grant petitions (and appeals) that have been denied, upon an Order for rehearing the matter on the merits of the claim(s). This action is being advanced pursuant to Supreme Court Rule 44 in this matter.

STATEMENT OF THE CASE

2. On or about August 3, 2019, the Petitioner filed (mailed) his Petition for a writ of certiorari review of the merits of his claim(s) before this Honorable Court. Said Petition was filed regarding the denial of his Certificate of Appealability in the U.S. Court of Appeals for the Third Circuit [6/21/2019].

3. After being instructed (by the Clerk of Courts), the Petitioner's Petition for Writ of Certiorari was re-filed on or about February 25, 2020. The Petitioner never received the denial of his Certificate of Appealability (6/21/19), and recently received an civil docket with said information on it (February 13, 2020).

4. However, on or about February 19, 2019; the Petitioner's Appeal and Memorandum of Law (contesting the denial of his Petition for relief from Judgment **Rule 60(b)** action) was filed, but, has not been addressed by the U.S. Court of Appeals, to the present date.*

EXH. A
Civil Docket pg. 4

5. The aforesaid Appeal and Memorandum [which contests the denial of the Petitioner's Rule 60(b) action] presents constitutional violations of substantive and procedural rights in relation to the claim(s) presented within the Petition for writ of certiorari review.

6. On or about April 20, 2020 [after three re-filings of corrections], the petition for writ of certiorari review has been denied by this Honorable Court. As a result, the Petitioner now submits this petition requesting an rehearing [en banc] of the issue(s) of merit in this matter.

QUESTION(S) PRESENTED

Whether the denial of certiorari review of the violations of the Petitioner's [and additional parties named] substantive and procedural rights, concerning post-sentencing counsel(s) *intentional waiver* of claims, involves an issue of substantial public importance?

STATEMENT OF CLAIMS (LEGAL ARGUMENT)

7. The petitioner avers that his conviction and sentence [relating to Case No. CP-02-CR-1382-2006- Cmwlt. v. Ballard] is in violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, Law, and Treaties. The Petitioner further contends that said conviction and sentence is also in violation of the mandated provisions of Pennsylvania Consolidated statutes. Petitioner avers that appellate counsel(s) intentional waiver of his claims [during post-sentencing and direct appeal], prohibits due process; and further prejudices [not only his and additional parties] the public's fundamental rights to a fair and full opportunity to litigate meritorious claims during both State and federal appeals.

8. The right to effective assistance of counsel is one of the most important guarantees in the Sixth Amendment; because without it, the defendant is unable to assert any other rights that he or she has. It is imperative, and without it, is almost impossible for a lay-person to navigate an complicated legal system alone. Thus, counsel is appointed to help him navigate through the appeals process; and ensure that his petition for redress is effective.

9. The Petitioner's appointed [post-sentence] counsel did not effectuate any of the

claims Mr. Ballard requested. Moreover, counsel blatantly lied to Mr. Ballard, in wrongly advising him that if [the only argument she raised] was "...unsuccessful, [Petitioner] can raise any and all other issues in a PCRA petition."

10. To the contrary, the mandates of Act of 1988, April 13, P.L. 336, No. 47 [at 42 Pa.C.S. § 9544(b)] provides: "...an issue is waived if the petitioner could have raised it but failed to do so before trial, at trial, during unitary review on appeal, or in prior state post-conviction proceeding." Thus, not only did [Mrs. Swan- Petitioner's post-sentence counsel] provide ineffective assistance by refusing to present any of the Petitioner's claims; she lied by falsely assuring him that he could raise any and all other issues on a PCRA petition. Subsequently, this is what the Petitioner did in his PCRA [and federal habeas] filings; but were deemed waived by both Courts. * EXHS. B^(a) - AFFIDAVIT OF FACTS

11. In Pennsylvania [and nationwide], post-sentencing and pre-appeal motions are a critical stage. Not only has the Petitioner's counsel, but also 'Additional Parties' appellate counsel(s) have intentionally caused the 'waiver' of their claims in these cases and appeals. However, the Sixth Amendment applies equally to both the trial and direct appeal counsel, as held in Nguyen v. Curry, 736 F.3d 1287, 1293-96 (9th Cir. 2013). When counsel waives appellate review of claims, there are no safeguard(s) in place, to protect appellant(s) substantive and procedural rights. The additional parties [Thomas Scott, Shataan Adams, Timothy Anderson, Jamie Cruz, Jr. etc.] have submitted sworn declarations detailing how their appointed counsel(s) intentionally waived claims for review. * EXHS. B - Four Affidavits

12. The Petitioner avers that there is also an conflict of decisions between both the district courts of Pennsylvania and Court of Appeals for the Third Circuit. It is held in Richardson v. Superintendent Coal Twp., SCI, No. 15-4105 [Oct. 2, 2018]; the Third Circuit ruled "We now hold that in Pennsylvania State Court, post-sentencing motions are a critical stage under the sixth Amendment...So defendants have a right to counsel at the stage." [Id at pg. 23]. Furthermore, the Third Circuit Court of Appeals has also extended that Sixth Amendment right during the PCRA (state habeas) proceedings; when [PCRA] counsel fails to recognize ineffectiveness on behalf of post-sentencing counsel; during direct review. (See:

RELIEF SOUGHT

13. The Petitioner asserts that this instant case involves an question of law that concerns an issue of substantial public importance. In addition, publication of an determination [by this Honorable Court Panel] is necessary when dealing with cases of the first impression; clarity on a rule of law; attention to a rule of law generally overlooked; questions existing law or practices; resolution of an apparent conflict in decisions within the circuit court/district courts, et. al.

14. The Petitioner respectfully [again] asserts that matter involves issues of substantial public importance. Publication of a decision in uniformity [addressing these matter] is necessary to resolve the apparent conflict in decisions within the circuits and districts; and reversal of a published decision. The Petitioner expresses an immediate determination is required as his constitutional rights [and appellants nationwide] are being violated in the most serious manner.

CONCLUSION

WHEREFORE, for the reasons afore-mentioned; the Petitioner [additional named parties] respectfully requests that this Petition for Rehearing be GRANTED by this Honorable Supreme Court Panel in this matter.

Date: May 9, 2020

Respectfully Submitted;

Todd Balland

Certificate

I, Todd D. Ballard, hereby certifies on this date, that the enclosed Petition for Rehearing is presented in good faith [and not for delay]; as the grounds presented herein are limited to intervening circumstances of substantial public importance and/or controlling effect; and/or to other substantial grounds that have not been previously presented before this Honorable Court [in regards to the intentional waiver of meritorious claims by post-sentencing/direct review counsel(s)] , in the State of Pennsylvania (and nationwide).

Date: May 30, 2020
(re-submitted)



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* Re-filed with original Petition from May 9, 2020