

19-8074

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
1981 11 22
C. J. CLERK

David A. Gunter — PETITIONER
(Your Name)

vs.

Pulsipher et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States
Tenth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

David Gunter
(Your Name)
Iron County Jail
2136 N. Main
(Address)

Cedar City, UT, 84721
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1- Was Petitioner's Sixth and Fourteenth Amendments Rights violated? (The right to confrontation - to be present at the trial, and the right to effective assistance of counsel.)

1.a. - The fact that the trial court erred in proceeding without conducting an adequate inquiry into the ~~Voluntariness~~ voluntariness of Petitioner's absence from his trial.

1.b. - The fact that the court forced the newly appointed counsel to represent Petitioner at trial; when he had no defense prepared. And even if he did, he had less than twelve days to prepare.

1.c. The (forced) trial counsel prepared no defence because he was only hired for a suppression hearing. He should of requested to ~~withdrew~~ withdraw after said suppression hearing.

and question number two: Did the Petitioner break brake the law?

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:

attorney for the Respondent:
Mark C. Field, Assistant Solicitor General
160 E. 300 S. 6th floor
P.O. Box 140854
Salt Lake City, Utah, 84114-0854

RELATED CASES

- David Gunter V. State of Utah, No. 081502053, Fifth District Court for Washington County, St. George, Utah. Judgment entered August 18, 2011.
- David Gunter V. State of Utah, No. 140500378, Fifth District Court for Washington County, St. George, Utah. Judgment entered April 25, 2017.
- State of Utah, Plaintiff and Appellee, V. David A. Gunter Defendant and Appellant, No. 20110728-CA, Court of Appeals of Utah. Judgement entered - filed June 6, 2013.
- David Gunter V. State of Utah, not sure of case number. think the judgement was entered ~~February~~ February 23, 2018 Utah Supreme Court

Related cases Cont.

- David Gunter v. Cory Pulsipher, No. 2:14-cv-574-TC, United States District Court District of Utah. Judgement entered February 27, 2019.
- David Gunter v. Cory Pulsipher, No. 19-4060, United States Court of appeals for the Tenth Circuit, judgement entered January 15, 2020
- David Gunter v. Cory Pulsipher, No. 19-4060, United States Court of appeals for the Tenth Circuit, Granting appealability and giving me directions on how to present the appellant brief. November 4, 2019.
- also in the Tenth Circuit for the United States Court of appeals. Dismissed the appeal. January. ~~15~~ 15, 2020. (David Gunter v. Cory Pulsipher, No. 19-4060.)

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OTHER

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 not sure; 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 not sure; 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 _____ to the petition and is

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

The opinion of the _____ court appears at Appendix _____ to the petition and is

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

my page numbers start with the
Statement of the case (soor sorry)

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1-15-20.

☐ 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: 1-27-20, 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 2-23-18
2-2.
A copy of that decision appears at Appendix _____.

☐ 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 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

The Sixth and Fourteenth amendments.

The right to confrontation - to be present at the trial, and the right to effective assistance of counsel.

Utah Constitution:

"In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel...."

STATEMENT OF THE CASE

I will start with the material facts relevant to question one: The violation of the fourteenth amendment/ The right to confrontation - to be present at the trial. It is clear that the trial court nor the trial prosecution, of whom the burden of proof regarding a proper or adequate inquiry into whether Petitioner's absence was voluntary or involuntary falls. The records clearly shows not only did the trial court and the trial prosecution not take responsibility, but they the trial court put it on trial counsel. (and I will quote from the record - "That's [Chamberlain's] problem." And that was it, that was all the trial court and trial prosecution did to inquire. And then after the (Recess) as the record shows the trial court says "Thank you, ladies and gentlemen, we're back on the record in State v. [Gunter]. Mr. Gunter has voluntarily absented himself in these proceedings." (quoting State v. Wanosik, 2001 UT App 241, P.23)

The Utah court of appeals also agrees, as shown in their opinion. I'll quote from page nine of their opinion, under the Conclusion portion. "Although the trial court erred in proceeding with trial in absentia without conducting an adequate inquiry into whether Gunter's absence was voluntary. (Wanosik I 2001 UT App 241 ¶26, 31 P.3d 615 Tennessee v. Lane 541 U.S. 509) (1) See also State v. Anderson (Wanosik II, 2003 UT 46 ¶12, P.3d 937)

The Utah Court of appeals also tries to discredit me in its opinion. By saying I lacked credibility, because I was able to travel to Mexico right after the trial. The phone records verify, that trial counsel [Chamberlain] called me right after trial. That's when he told me the results of the trial. It took me two days after that to make the decision, to flee to Mexico. of which it took me about a week to hitchhike to Mexico. The lower courts try to use this fact to discredit me. when they don't even know the facts behind my whereabouts or departure to Mexico.

- The Utah Court of appeals in their opinion, and other lower courts contest that the error of proceeding with trial in absentia, was harmless due to the court's posttrial findings (of which they mostly revolve around me fleeing to Mexico). My point is this: Their posttrial findings ~~few~~ findings are completely based off of hear-say. and are therefore erroneous. (Chapman V. California 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed 2d 705 (1967))

United States v. Young, 482 F.2d 993, 995 (5th Cir. 1973)



Lastly, I would like to add to one more thing to material facts pertaining to question one: Trial counsel [Chamberlain], was not adequately prepared for trial and could not have been because he was merely hired to address a single suppression ~~issue~~ issue and not defend the entirety of Mr. Gunter's case. The court, therefore, improperly allowed the trial to proceed and failed to allow the withdrawal of Mr. Chamberlain once the suppression issue was ruled upon. (Manifest error) State v. Bair 2012 UT app 106 Utah 1989

Now to address the second part of question one: "Ineffective assistance of counsel." As trial counsel admits in his Affidavit [Chamberlain], quote "At the first day of trial (which consisted of jury selection) I did not alert the trial court to the circumstances surrounding the defendants' absence or seek a continuance based upon the same." (telling the trial court that I was stranded out of state) (neither a counsel's nor a judge's error) State v. Bullock 791 P.2d (Utah 1989)

also clear in his [Chamberlain] affidavit. He did not "request to withdraw as counsel for the defendant" after the suppression hearing, nor did he notify the trial court that he was not prepared for trial or was he hired or did any research for said trial. (Counsel failed both prongs of the two-part test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 C. Ed. 2d 674 (1984)).

And to address question number two:
"I did not brake the law."
In the Utah criminal code under 76-5-404 :1 of which I was charged. This code states under #2 intent to cause substantial or body pain or intent to arouse or gratify the sexual desire of any person. None of this occurred. (My daughter was concerned that she ^{might} ~~may~~ inherit the breast cancer that my mother died of. So she asked if I would check for lumps in one of her breasts.) That is what this case is all about. I did not brake the law.

Just a little follow up note to question number two.

My Ex-wife has been trying to get rid of me ever since our divorce, when our daughter was six months old. Her dad even offered me \$10,000.00, if I would sign the papers.

So when my daughter told her mother about how I checked for lumps in her breast, she jumped on this, as a opportunity to try once and for all, to get me to sign my rights away. I was told by my second attorney that the prosecutor called my Ex-wife and ~~asked what she would like~~ to asked her ~~and~~ what she would like done in this case. And the first thing she said was this: "If he will sign over our daughter, (his rights) you may let him go." This was about two months after I was arrested. The prosecutor then offered me 60 days time served and one first degree felony, if I would sign away my rights to our daughter. Needless to say, I would not abandon my daughter.

REASONS FOR GRANTING THE PETITION

I pray that this court look into the substance of my case. (The ~~70~~ violations of my Sixth and Fourteenth Amendments).

all of the lower courts refer to procedure.

Dismissing my case or denying relief.
Because I did not follow proper procedure
etc.. Ignoring my pro se status.

So I ask this court, in the intrust of justice and for others similary situated.
So please, make a ruling based on whether or not my Sixth and Fourteenth Amendments were indeed violated.

David Gentes 3/11/20

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David Gunter

Date: 3/11/20