

19-8624

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

MIGUEL DeFREITAS,
Petitioner,

vs.

STATE OF NEW YORK,
Respondent.

On Petition for a Writ of Certiorari
To the New York Court of Appeals

FILED
MAY 12 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I Did the New York State Appellate and Supreme courts' dismissal of Petitioner's habeas corpus petition, which left Petitioner with no corrective remedy to redress the merits of his jurisdiction claim, conflict with fundamental fairness, and full and fair right principles of the Fourteenth Amendment of the United States Constitution as announced and recognized by this Court.

LIST OF PARTIES

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: Jaifa Callado, as Superintendent of Shawangunk Correctional Facility, New York State Department of Corrections and Community Supervision.

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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 and opinion of the state Appellate and Supreme courts with respect to a habeas corpus proceedings.

OPINIONS BELOW

The Court of Appeals' Order denying Petitioner leave to appeal appears at Appendix ("App.") A2 to the petition and is reported at 34 N.Y.3d 909, 119 N.Y.S.3d 64, 141 N.E.3d 949 (Ct. App. 2020). The Appellate Division, Third Department's, Decision and Order denying reargument and leave to appeal appears at Appendix A3 to the petition and is unpublished. The Appellate Division, Third Department's, Memorandum and Order affirming the dismissal of Petitioner's petition for a writ of habeas corpus appears at Appendix A4 to the petition and is reported at 172 A.D.3d 1811, 100 N.Y.S.3d 779, 2019 N.Y. Slip Op. 04073 (3rd Dept. 2019). The Ulster County Supreme Court's Decision and Order dismissing the Petitioner's habeas corpus petition appears at Appendix A7 to the petition and is unpublished.

JURISDICTION

The New York Court of Appeals' Order denying leave to appeal was entered February 18, 2010. **App. A2.** This petition for certiorari is being filed within the prescribed period of 90 days after Notice of Entry dated February 27, 2020. **App. A1.** This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part that: "... No state shall ... deprive any person of life, liberty or property without due process of law"

STATEMENT OF THE CASE

A. Background

This case originated from Petitioner's arrest on March 6, 1991 in Nassau County, New York. The Petitioner was charged and convicted of attempted murder, two counts of robbery, two counts of weapon

possession, reckless endangerment, and sentenced to 52 1/3 years to life.

B. Direct Appeal From Judgment of Conviction

The Legal Aid Society of Nassau County represented Petitioner on direct appeal. Attorney David MacDonald was assigned to Petitioner. MacDonald filed a brief, sent petitioner a copy and quit. Thereafter, Petitioner moved to discharge Legal Aid, strike MacDonald's brief and requested permission to file a *pro se* supplemental brief. Legal Aid filed a response thereto (App. A11) and so did the District Attorney. App. A12. Petitioner did not receive a decision on his request to discharge or substitute counsel, nor to withdraw MacDonald's brief. The Appellate Court did issue a decision denying Petitioner permission to file a *pro se* supplemental brief. App. A13. Attorney Brian Schecter was assigned to replace MacDonald. Schecter sent Petitioner a copy of the District Attorney's brief and quit. Attorney Judah Serfaty was assigned to replace Schecter. Serfaty sent Petitioner a copy of the Appellate Division's affirmance of judgment of conviction. Serfaty also filed a leave to appeal to the Court of Appeals which was denied.

C. New York State Postconviction Proceedings

1. Criminal Procedure Law § 440.10

In 2010, Petitioner filed a C.P.L. § 440.10 motion to vacate judgment of conviction and dismissal of indictment. Petitioner contended, *inter alia*, that during the grand jury proceedings, two repealed statutory basis for joinder of charges were used by the District Attorney's Office to join the charges contained in his indictment. Which rendered the indictment invalid causing lack of jurisdiction to proceed to trial. Without reaching its merits, the motion court dismissed on procedural grounds holding that Petitioner's claims are a matter of record which should and must be raise on direct appeal. App. A9.

2. Writ of Habeas Corpus

In 2018, Petitioner filed a State habeas corpus petition in Ulster County Supreme Court alleging he is illegally detained and must be release because trial court had no jurisdiction to proceed to trial. This was the same jurisdiction argument raised in the C.P.L. § 440.10 motion. The Supreme Court dismissed the petition without prejudice as a renewal to a C.P.L. § 440.00 motion. App. A8. In addition, without making

an inquiry and determination on the jurisdiction issue, the Supreme Court held that *even if* the Petitioner is successful on the renewal motion, he would only be entitled to a new trial, not immediate release. For this further reason, habeas corpus relief is unavailable. App. A8.

On appeal, Petitioner argued that the C.P.L. § 440 motion cannot be renewed because he does not meet the criteria for renewal and the remedy for an indictment if found to be invalid is not a new trial, but dismissal of the indictment. The Appellate court held: that Petitioner was barred from habeas corpus relief because he *could* have raised the jurisdiction claim on direct appeal from judgment of conviction (App. A5); (without making a merit review and determination on the jurisdiction issue), that habeas corpus relief is unavailable because the Petitioner would not be entitled to immediate release (App. A5-A6); that a writ of error coram nobis is the appropriate vehicle for raising an ineffective appellate counsel claim (App. A5); and agreed with the Petitioner that he would be procedurally restricted if he attempted to renew the C.P.L. § 440 motion as directed by the Supreme Court. App. A6, n. 2. Petitioner filed a motion for reargument and leave to appeal which was denied without opinion. App. A3. Thereafter, Petitioner filed a motion for leave to appeal to the Court of Appeals which was denied. App. A2.

REASONS FOR GRANTING THE PETITION

The question presented herein is whether the state courts have failed to provide Petitioner an adequate opportunity to challenge the legality of his imprisonment on a jurisdiction issue according to applicable decisions of this Court. Petitioner's odyssey through the state courts unfolds below.

On direct appeal from conviction, the appeals court denied Petitioner's request to discharge counsel, gave Petitioner no option of proceeding *pro se* and denied him permission to file a *pro se* supplemental brief in order to raise, *inter alia*, his jurisdiction claim. Petitioner made a second attempt for remedial action by filing a C.P.L. § 440 motion. Only to be told by the convicting court that his jurisdiction issue is procedurally barred because it is record-based which must be raised on *direct appeal*. However, the record shows that the Petitioner was prevented from raising any issue on direct appeal by the appeals court.

Petitioner made a third attempt for remedial action by filing a writ of habeas corpus in state court.

Only to be told by the Supreme court (without an explanation) that he must renew his C.P.L. § 440 motion. Also, the Supreme court held, without making a determination on the jurisdiction claim, that *even if* Petitioner is successful on the C.P.L. 440 renewal motion, he would not be entitled to immediate release, therefore, habeas corpus relief is unavailable. On appeal, Petitioner argued he could not renew the C.P.L. § 440 motion as directed by the Supreme court. The Appellate court agreed in a footnote. Yet, without citation to any record in support thereof, it affirmed the Supreme court's dismissal on different grounds.

First, despite record proof to the contrary, it held that the Petitioner *could* have raised the jurisdiction claim on *direct appeal*, and because he didn't, habeas corpus relief is unavailable. However, the highest state court and others have held the failure to raise a jurisdiction claim on direct appeal does not bar prisoners from obtaining habeas corpus relief. *See E.g.*, *People ex rel. Ray v. Martin*, 294 N.Y. 61, 65, 60 N.E.2d 541 (Ct. App. 1945) ("No such challenge to the jurisdiction was made ... on his appeal ... we hold, nonetheless, that the alleged jurisdictional question may properly be raised by these habeas corpus proceedings"); *People v. Schildhaus*, 8 N.Y.2d 33, 36, 201 N.Y.S.2d 97, 167 N.E.2d 640 (Ct. App. 1960) ("Although the challenge to the jurisdiction of the [[trial] Court could have been raised by the defendant on appeal from judgment of conviction ... the right to invoke habeas corpus, ... is so primary and fundamental that it must take precedence over considerations of procedural orderliness and conformity. *See U.S. Const.*, art 1, s 9; *N.Y. Const.*, art. 1, s 4"); *People ex rel. Foote v. Lorey*, 28 A.D.3d 917, 813 N.Y.S.2d 798 (3rd Dept. 2008) (we "find that petitioner was not required to first pursue an appeal, and she could utilize the writ to seek immediate release because she alleged the deprivation of an absolute and fundamental right"). Despite controlling authorities in the Petitioner's favor entitling him to a merit review and determination on the question of jurisdiction, the Appellate court either refuse to acknowledge or ignored these precedents.

Second, without making a merit review on the jurisdiction claim, the Appellate court held that because the Petitioner would not be entitled to immediate release, habeas corpus relief is unavailable. However, other New York courts have held that habeas corpus "is not limited to simple discharge". *People ex rel. Berry v. McGrath*, 61 Misc2d 113, 116, 305 N.Y.S.2d 305 (Sup. Ct. New York Cty. 1969). *See E.g.*,

People ex rel Brown v. Johnson, 9 N.Y.2d 482, 215 N.Y.S.2d 44, 174 N.E.2d 725 (Ct. App. 1961); People ex rel. LaBelle v. Harriman, 35 A.D.2d 13, 15, 312 N.Y.S.2d 623 (3rd Dept. 1970) (“habeas corpus may be used to obtain relief other than immediate release”).

Third, despite record proof to the contrary, and without citing any portion of the Petitioner’s submissions in support thereof, the Appellate court construed his habeas corpus petition as raising an ineffective appellate counsel claim. However, Petitioner’s petition contained no allegation that appellate counsel was ineffective for failing to raise the jurisdiction claim. As shown, time and again, rebuffed at every turn, fostered by conflicting rulings, *inter alia*, Petitioner was shut off from obtaining a full and fair merit review on grounds not applicable to him. Resulting in deprivation of a state remedy where constitutional rights have been denied.

In Petitioner’s view, the state courts have denied him a right to which the Fourteenth Amendment and decisions by this Court, indicates he is entitled. The germinal bases for finding a constitutional right to full and fair state postconviction procedures can be found in Case v. Nebraska, 381 U.S. 336. In Case, the court granted certiorari to decide whether the constitution requires states to provide a postconviction remedy that offers an adequate corrective process for the hearing of federal constitutional guarantees and, if so, what constitutes an adequate process. Because Nebraska legislature passed a postconviction statute after certiorari was granted, the writ was dismissed as improvidently granted. In a concurring opinion, however, Justice Brennan concluded the “Fourteenth Amendment and the Supremacy Clause makes requirements of fair and just procedures an integral part of those laws, and state procedures should ideally include adequate administration of these guarantees as well.” *Id.* at 344. See Todd v. Dowd, 100 F.Supp. 485, 488 (M.D. Ind. 1949) (“the procedure required of a state to comply with the standards Fourteenth Amendment is that procedure which conforms with fundamental principles of justice and fairness.”).

Moreover, Justice O’Connor’s concurring opinion in Wright v. West, 505 U.S. 277, 299 (1992) recognized a “full and fair” review as “defin[ing] [a] constitutional claim itself”. See Daniels v. United States, 532 U.S. 374, 386-87 (2001) (Scalia, J., concurring in part) (reflecting on the role due process might

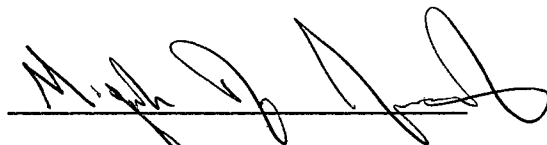
play in ensuring a claim is adjudicated fully and fairly “somewhere”). Further support can be found in *Logan v. Zimmerman Brush Co.*, wherein the Court opined that “the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged.” 455 U.S. 422, 433 (1982). In *Logan*, while recognizing the state’s entitlement to enact reasonable procedural regulations for enforcing claims, the Court held the particular state procedure completely foreclosed the litigants from presenting their claims. In light of these rulings, by preventing Petitioner herein from obtaining a merit review on an issue which called into question the legality of his confinement, the state courts have deprived him liberty without due process by failing to provide an adequate remedy.

Under circumstances similar to those at bar, certiorari was granted *Woods v. Nierstheimer*, 328 U.S. 211 (1946) to decide whether the state court’s dismissal of a habeas corpus petition deprived *Woods* an adequate remedy. The Court opined that “if the State ... should ... deny all remedies to individuals imprisoned within the state in violation of the Constitution of the United States, the federal courts would be available to provide a remedy to correct such wrongs.” *Id.* at 217. See *Douglas v. Alabama*, 380 U.S. 415, 422 (1965) (adequacy “is itself a federal question.”). This Court ultimately dismissed *Woods*’ petition after determining that another state remedy remained. Here, however, no remedy remains under state law. Therefore, certiorari should be granted to determine whether dismissal of Petitioner’s habeas corpus petition violates the Fourteenth Amendment’s Due Process Clause as interpreted by this Court, by failing to provide him an adequate opportunity to redress the constitutional claim.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael D. Smith", is written over a horizontal line.

Dated: May 12, 2020