

19-8650

Docket No. _____

ORIGINAL

SUPREME COURT OF THE UNITED STATES

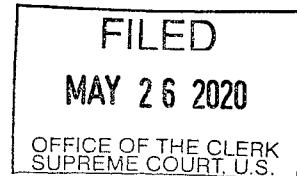
Sebastian Campbell

Petitioner,

v.

State of Maryland

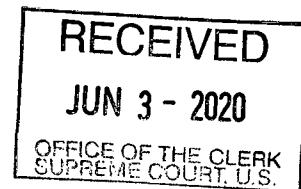
Respondent.



On Petition for a Writ of Certiorari to the
Maryland Court of Special Appeals

PETITION FOR WRIT OF CERTIORARI

Sebastian Campbell
Petitioner, pro se
Inst. ID #466146
Jessup Correctional Institution
P.O.Box 534
Jessup, MD 20794
E-Mail: Sebastian.a.campbell321@gmail.com



I. QUESTION PRESENTED

Did the state of Maryland err by utilizing an improper legal standard in its determination that compelling Petitioner to relinquish his right to self-representation in order to assert his right to be provided with the basic tools of an adequate defense did not deprive him of a fair trial?

II. LIST OF PARTIES AND RELATED CASES

List Of Parties

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

Related Cases

Petitioner was convicted of four counts of second-degree rape and two counts of sexual abuse of a minor in a four-day jury trial, August 14th through August 17th, 2017 in Montgomery County Maryland, Judge Cheryl A. McCally presiding. Previous proceedings include the four-day jury trial; the denial of three motions for new trial (Dkt #190, #240, and #315); the affirming of conviction on direct appeal on December 18th, 2019 (Court of Special Appeals, Sept. Term, 2018, No. 156); denial of petition for Writ of Certiorari in the Court of Appeals on March 27th, 2020 (Petition Docket No. 454, September Term, 2019); and, a pending appeal in the Court of Special Appeals for the denial of Petitioner's latest motion for new trial based on the full recantation of the complaining witness (Sept. Term, 2019, No. 1397).

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V. Petition For Writ Of Certiorari

Sebastian Campbell an inmate currently incarcerated at Jessup Correctional Institution in Jessup, Maryland, representing himself *in propria persona*, respectfully petitions this Court for a Writ Of Certiorari to review the Judgment of the Maryland Court of Special Appeals.

VI. Opinions Below

The decision by the Maryland Court of Special Appeals denying Petitioner's direct appeal is reported as *Campbell v. State*, No.156, Sept Term, 2018, rendered on December 18, 2019. The Maryland court of appeals denied Petitioner's petition for writ of certiorari on March 27, 2020. That order is attached at Appendix ("App") at 2.

VII. Jurisdiction

Petitioners petition for writ of certiorari to the Maryland Court of Appeals was denied on March 27, 2020. Petitioner invokes the Court's Jurisdiction under 28 USC § 1257, having timely filed this petition for a writ of certiorari within 90 days of the Maryland Court of Appeals judgment.

VIII. Constitutional Provisions Involved

United States Constitution – Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

United States Constitution – Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

IX. Statement Of The Case

The state filed its intent to introduce DNA experts and expert testimony with roughly six weeks left before trial (Docket #28, #59 and #66). Petitioner, who was proceeding as an Indigent pro-se defendant, responded by filing a Motion for Ex Parte Hearing to Establish Necessity for Appointment of Expert Witness (Docket #68). Trial court declined to conduct the requested hearing and summarily denied petitioner's request for appointment of expert witness on the grounds that Maryland statute (CP § 16-101 et. seq.) and precedent (*Moore v. State*, 390 Md 343

(2005)) required Indigent, pro-se defendant to relinquish their constitutional right to self-representation in order to assert their right to be provided with the basic tools for an adequate defense at State expense (T-8/7/17, pg. 12-59). In a reported opinion (Opinion-Sept. Term, 2018, No. 156) the court of special appeals upheld the trial Court's decision without contemplating the specific facts of the case. Instead, it determined without discussion that the right to self-representation and the right to counsel of choice were "virtually identical" (Opinion-12/18/19, pg.4), therefore the precedent governing the determination involving counselor Choice was controlling. Petitioner asserts that the trial court's and Court of Special Appeals' decisions were contrary to or involved and unreasonable application of clearly established federal law, as determined by the United States Supreme Court.

At the hearing where the trial court denied Petitioner's pre-trial motion requesting State funding for expert assistance (8/7/17, Dkt #117), the court took testimony from the District Public Defender of Montgomery County, Maryland, Allen Wolf. Mr. Wolf, having been advised by the head Public Defender, Paul DeWolf, confirmed the OPD policy prohibited the provision of ancillary services, even essential ones, to Indigent defendants who elected to represent themselves (T-8/7/17, pg. 12-59). In response, Petitioner clearly raised the Federal issue now before the Court:

"Understanding the statutory construction I would say there doesn't seem to be a provision which counteracts the fact that your policy violates the Constitution... there is an absolute right for me to represent myself, which is supported by the Sixth Amendment of the Constitution. And, the Fourteenth Amendment states that no state shall create or enforce a law or statute that violates my constitutional right, which is exactly, basically, what this circumstance creates." (T-8/7/17, pg. 27, L 17 - pg.28, L4).

Petitioner also presented this Federal issue to the Maryland Court of Special Appeals in the "Questions Presented" section of his appellate brief, which inquired:

"II. Is CP § 16-101 et. seq. unconstitutional with respect to indigent, pro se defendants, thereby rendering trial court's application of it in this case a violation of Appellants due process?" (Appellate Brief, Sept. Term, 2018, No. 156, pg.2)

In a reported Opinion rendered on December 18, 2019, the Court of Special Appeals denied Petitioner's direct appeal. *Campbell v. State*, Sept Term, 2018, No. 156.

Discussion

The trial court inappropriately applied *Moore v. State* and CP § 16-101 et. seq. In the determination of Petitioner's request for State funds to acquire expert testimony in his defense, making the request contingent upon the relinquishment of Petitioner's constitutional right to self-representation, contrary to governing, clearly established federal law. In *Faretta v. California*, 422 US 806 (1975) the US Supreme Court firmly established a defendant's right to make one's own defense personally, stating:

"The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused person only the right to make his defense... Although not stated in the Amendment in so many words, the right to self-representation - to make one's own defense personally - is thus necessarily implied by the structure of the Amendment... the council provision supplements this design. It speaks of the "assistance" of counsel, and an assistant, however expert, is still an assistant. The language and the spirit of the Sixth Amendment contemplate that council, like other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant - not an organ of the state interposed between an unwilling defendant and his right to defend himself personally... An unwanted Council "represents" the defendant only through a tenuous and unacceptable legal fiction. Unless the accused has acquiesced and such representation, the defense presented is not the defense guaranteed him by the Constitution, for, in a very real sense, it is not **his** defense."

Faretta @ 819-21 (citations omitted) (emphasis in original). The Office of the Public Defender's expressed position is diametrically opposed to the spirit of the 6th amendment as defined by the court. District Public Defender Allen Wolf and Deputy District Public Defender for Montgomery

County, Ms. Chernosky, after admittedly Consulting with the head public defender for Maryland, Paul DeWolf, articulately Define the policy of the OPD as to not only disallow any defendant from participating meaningfully in their own defense, but to deny access to the basic tools necessary for an adequate defense to any accused who has the audacity to exercise their constitutional right to represent themselves (T-6/30/17, pg. 12-14) (T-8/7/17, pg. 13-29). The Maryland Court of Special Appeals has echoed the US Supreme Court's holding with respect to the immutable right to self-representation, recognizing:

"The Sixth Amendment to the US Constitution and Article 21 of the Maryland Declaration of Rights guarantee... not only the right of a defendant to the effective assistance of counsel but also the right of a defendant to appear *in propria persona*. The right to self-representation is independent of the right to the assistance of counsel."

Parren v. State, 309 Md 260 (1987) (citations and quotations omitted).

In *Ake v. Oklahoma*, 470 US 68 (1985) the US Supreme Court definitively established:

"Justice cannot be equal where, simply as a result of his poverty, a defendant is denied the opportunity to participate meaningfully in a judicial proceeding in which his liberty is at stake... to implement this principle we have focused on identifying 'the basic tools for an adequate defense or appeal', and we have require that such tools be provided to those defendants who cannot afford to pay for them."

Ake @ 76-77 (citations omitted). Predicated on the 14th Amendment's due process guarantee of equal protection and fundamental fairness, the US Supreme Court requires that a state must take steps to ensure that an indigent defendant has a fair opportunity to present his defense. As discussed previously, the Court also mandates that the accused be allowed to present that defense personally. Both of these principles are clearly established in American jurisprudence.

In deciding Petitioner's issues the courts relied heavily on CP § 16-101 et. seq., and the conclusion in *Moore*. In formulating the decision in *Moore* the Court of Appeals relied just as heavily on *State v. Miller*, 337 Md 71 (1994), finding it " instructive" in reviewing Moore's appeal

where Moore, like Miller, had retained a private attorney and sought State funding for ancillary Services, namely, an expert DNA witness to testify in his defense, and transcripts respectively. The *Miller* Court incorporated into its conclusion consideration of the US Supreme Court holding that although an indigent criminal defendant enjoys the right to the assistance of counsel, this entitlement "does not translate into an absolute right to counsel of defendant's choosing," *Miller* @ 86-87. See *Wheat v. United States*, 486 US 153, 159 (1988) ("the essential aim of the amendment is to guarantee an effective advocate for each criminal defendant rather than ensure that a defendant will inexorably be represented by the lawyer whom he prefers."). The *Miller* Court then concluded:

"Failure to provide a free transcript to the indigent appellant cannot interfere with the right to choice of counsel where no such absolute right exists. In the absence of such a right to choice of counsel, there is no constitutional violation when the State requires that an indigent defendant avail himself of the services of the Office of the Public Defender in order to obtain a free transcript... Miller has not been denied his right to assistance of counsel, because he may apply to the Office of the Public Defender Allen and receive effective representation... public defender representation, like a transcript, it's part of the package provided by the state, and requiring Miller to comply with reasonable State procedures and no way infringes upon his right to assistance of counsel."

Miller @ 87-88. the United States Court of Appeals for the Fourth Circuit, sitting en banc, agreed with the holding on federal habeas corpus review, concluding:

"Because the State of Maryland's statutory scheme provides indigent criminal defendants with counsel on direct appeal and Miller, on account of his indigency, had no constitutional right to demand that Bray, in particular, represent him on appeal to the Court of Special Appeals of Maryland, Miller's Sixth Amendment rights were not violated in this case."

Miller v. Smith, 115 F3d 1136, 1144 (1997). Petitioner interjects that in stark contrast to both *Miller* rulings, Petitioner is unequivocally entitled (where he has not been deemed incompetent: see *Indiana v. Edwards*, 128 S.Ct. 2379, 2386-88 (2008)), to absolutely demand that

he be allowed to represent himself. The *Moore* Court was expressly guided by the determination in *Miller*, concluding:

"Our holding in *Miller* governs the outcome of the case sub judice. Although the Maryland Rules contain no analog to Md Rule 1-325 (b) with respect to the appointment of experts, the practical effect of non-severable OPD Services under Art. 27a [now CP § 16-101 et seq.] is the same. Indigent defendants may utilize the OPD's complete "package" of services or forgo them entirely. While such defendants may face difficult choices, the Constitution does not bar the State of Maryland from requiring them to choose between council of choice and ancillary services provided by the OPD."

Moore @ 345-46 (emphasis added). The decision is completely inapposite to Petitioner's issues since the record clearly reflects that at no time was Petitioner represented by a private attorney.

As the reviewing courts in Petitioner's case simply relied on the *Moore* decision, they failed to make a reasonable factual determination taking into account the specifics of Petitioner's presented issues. Instead, each Court completely ignored the legally relevant fact that Petitioner was asserting his right to self-representation, not council of choice; a fact the court needed to fully consider in order to reach the correct result. Had the reviewing courts actually contemplated the legality of compelling an Indigent defendant to relinquish his right to present his own defense, for any reason other than incompetence, but especially in order to avail himself of another constitutionally guaranteed right, it would have become immediately apparent that the US Supreme Court has long ago clearly indicated that "denial of self-representation at trial," is among the "structural errors" that "violate a defendant's right to a fair trial", and circumventing harmless error review, is "subject to automatic reversal." *Never v. United States*, 527 US 1, 8 (1999); see also *Johnstone v. Kelly*, 808 F.2d 214 (2nd Cir. 1986) ("violation of a defendant's right to proceed *pro se* requires automatic reversal of a criminal conviction."). Had Petitioner acquiesced to the trial court's ultimatum and relinquished his right to self-representation at the courts behest

in order to obtain funding for the basic tools to present his defense, pursuant to US Supreme Court precedent, it would have constituted a structural error that would ultimately nullify any conviction in the case. Moreover, the ultimatum itself, predicated on legislation contained in the Maryland law CP § 16-101 et. seq., violates the Fourteenth Amendment which states in pertinent part:

"No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States."

The Maryland statute, CP § 16-101 et. seq., which defines the functions of the OPD, when applied based on the interpretation utilized by the trial court, indisputably revokes an indigent US citizen's absolute constitutional privilege to represent himself in a meaningful way after being accused of a crime, while still retaining his privilege as afforded by the US Supreme Court to be provided by the state with the basic necessary tools for an adequate defense. The law is both unconstitutional and inherently unreasonable under those circumstances.

Requiring a US citizen to sacrifice one constitutional right "in order to assert another" is "intolerable." *Simmons v. United States*, 390 US 377, 394 (1968) (describing a situation whereby defendant was obliged to either forfeit what he believed to be a valid Fourth Amendment claim or waive his Fifth Amendment right against self-incrimination); see also, *Lefkowitz v. Cunningham*, 431 US 801, 807-08 (1977) (finding statute impermissibly coercive, in part because it forces forfeiture of one constitutional right as the price for exercising another). Some Circuit Court of Appeals have identical holdings; see *United States v. Ryan*, 810 F.2d 650, 656 (7th Cir. 1981) (recognizing that government is precluded from coercing the waiver of a constitutional right either by conditioning the exercise of one constitutional right on the waiver of another... or by attaching conditions that penalize the exercise of a constitutional right.); and, reversing a conviction, United States Court of Appeals for the Fourth Circuit concurred with the Third Circuit Court of Appeals, holding:

"The defendant [Petitioner] was told to waive either his right to counsel [right to self-representation] or his right to testify [right to be provided with the basic tools for an adequate defense]... in so doing, the court leveled and ultimatum upon Midgett [Petitioner] which, of necessity, deprived him of his constitutional right to testify on his own behalf [right to be provided with the basic tools for an adequate defense]. See *U.S. ex rel Wilcox v. Johnson*, 555 F.2d 115, 120-21 (1977) ("A defendant in a criminal proceeding is entitled to certain rights...he is entitled to all of them; he cannot be forced to barter one for another. When the exercise of one right is made contingent upon the forbearance of another, both rights are corrupted."). Forcing this 'Hobson's choice' upon the defendant constituted error that calls for a new trial."

"We conclude that in the circumstances of this case the court impermissibly forced the defendant to choose between two constitutionally protected rights: the right to testify on his own behalf [to be provided with the basic tools for an adequate defense] and the right to council [self-representation].

United States v. Midgett, 342. F.3d 321, 327 (2003).

Under the specific circumstances of the case at bar the OPD statute and the court rulings combined to deprive Petitioner of his right to equal protection under the law as afforded by the Fourteenth Amendment. The Maryland Court of Appeals reasoned:

"The State is free to place **reasonable** restrictions on the exercise of [Petitioner's] rights... There can be no equal protection violation when an individual is denied a right simply because of his own failure to comply with **reasonable** State procedures and regulations."

Moore @ 344-45 (quoting *Miller* @ 85-86) (emphasis added). This formulation found it reasonable to establish and enforce a State law requiring that when a defendant who intends to relinquish the autonomy over his defense to a private attorney seeks State funding for ancillary services, that defendant must utilize the procedures defined by CP § 16-101 et. seq., including accepting representation by the OPD, in conjunction with that request. Petitioner concedes he finds that statutory scheme "marginally" reasonable as it does not take into account the impracticality of requiring the State to provide funding for both representation **and** ancillary services when the

defendant only requires the latter. However, even this wounded rationale fails catastrophically when the indigent defendant has fully exercised his constitutional right under the Sixth Amendment to independently navigate the course of his own defense. This singular factor dramatically distinguishes the case at bar from those relied upon by the previous courts. Again, had the trial court, and the Court of Special Appeals applied the proper standard it would have easily concluded that depriving the indigent Petitioner of expert assistance would result in the Petitioner being denied a fair opportunity to meaningfully engage in a judicial proceeding in which his liberty was at stake for no reason other than financial insolvency. It has been confirmed by the US Supreme Court that under such circumstances "justice cannot be equal." *Ake* @ 76.

Ultimately, both *Miller* and *Moore* were decided with consideration of two specific facts; 1) the defendants in those cases had retained private counsel; and, 2) the Court's holding that, "Unlike the right to counsel, the right to counsel of choice is not absolute." *Miller v. Smith* @ 1143. Those cases were resolved on the conclusion that two constitutionally protected rights were, in fact, never at issue. In order to properly apply the decisions in *Miller* and *Moore* to the case at bar the court must necessarily determine that either the right to self-representation, or the right to be provided with the basic tools for an adequate defense are **not** guaranteed by the US Constitution or US Supreme Court decisions. In Petitioner's opinion, such a determination deviates so far from the clearly established legal standard as to reflect an arbitrary or capricious exercise of discretion.

X. Reasons For Granting The Writ

This case presents issues of importance beyond the particular facts and parties involved. Every State will turn to this decision for guidance in establishing a formula that provides indigent, *pro se* defendants with the means to obtain the basic tools for an adequate defense without relinquishing their Constitution right to self-representation.

While the Maryland statute governing the operations of the OPD does provide Indigent defendants with both representation and ancillary services, it fails to adhere to the "spirit" of the Sixth Amendment in that it prohibits the "Assistance of Counsel for his defense." The citizens of Maryland are entitled, under the US Constitution, to **ALL** of their rights; not a barter, not a contingency, and certainly not an ultimatum. This writ should be granted to ensure that, as guaranteed by the Fourteenth Amendment, all Americans receive equal justice under the law.

XI. Conclusion

For the foregoing reasons, Petitioner, Sebastian Campbell, requests that this Court issue a writ of certiorari to review the Judgment of the Maryland Court of Special Appeals.

DATED this 26th day of May, 2020.

Respectfully submitted,

Sebastian Campbell
Sebastian Campbell
Petitioner, pro se
Inst. ID #466146
Jessup Correctional Institution
P.O.Box 534
Jessup, MD 20794
E-Mail: Sebastian.a.campbell321@gmail.com