

19-8781
No. _____

Supreme Court, U.S.
FILED

MAY 01 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Egbert Francis Jr — PETITIONER
(Your Name)

vs.
Municipal Court — RESPONDENT(S)
of Wake County et al.,
ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Egbert Francis Jr
(Your Name)

22385 McBride Bridge Road
(Address)

Laurelburg, N.C. 28353
(City, State, Zip Code)

ORIGINAL
(Phone Number)

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QUESTION(S) PRESENTED

I) Was petitioner Trial Counsel ineffective by waiving "Court Order for Complete trial transcript" without petitioner's consent?

II) Does petitioner have a right to have his Court Order enforced?

III) Does the Court have the authority to hold someone in Contempt for not following Court Order?

LIST OF PARTIES

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

[4] 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:

Janet M. Leggett - Court Reporter
Johnnie L. King III - Court Reporter
George E. Kelly III - Counsel
Howard Cummings - Assist district Attorney

RELATED CASES

Entsminger v. Iowa, 386 U.S. 748; 87 S.Ct. 1462;
18 L. Ed. 2d 501; (1967)

M^o Mann v. Richardson, 397 U.S. 759, 771 N.14,.

Short v. United States, 471 F.3d 686 (6th Cir. 2006)
Johnson v. Dugger, 911 F.2d 440 (11th Cir. 1990)
Hayes v. Ayers, 632 F.3d 500 (9th Cir. 2011)
Romeo v. Tansy, 46 F.3d 1024 (10th Cir. 1995)
Honal v. Kansas,
Evitts v. Lucy, 469 U.S. 387, 83 L. Ed. 2d 821, 105 S.Ct 830
Hardy v. United States,

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TABLE OF AUTHORITIES CITED

CASES

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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 below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; 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☒ is unpublished.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 B to the petition and is

☐ reported at _____; 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 C to the petition and is

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☐ is unpublished.

The opinion of the Court of Appeals N.C. court appears at Appendix D to the petition and is

☐ reported at _____; 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 MARCH 13, 2020.

☒ 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: _____, 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 _____.
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

Article 4 Sec. 1

Full faith and credit shall be given in each state to the public Acts, Records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such Acts, Records and proceedings shall be proved and the effect thereof.

5th Amendment

Not be deprived of life, liberty, or property, without due process of law;

6th Amendment

To have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

14th Amendment

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.

STATEMENT OF THE CASE

A) Petitioner was indicted on two-counts of first-degree Murder, which was joined for trial on the 9th of May 1994, Criminal Session of Wake County Superior Court. Petitioner was found guilty of both counts and judgment imposing consecutive sentences of Life imprisonment were entered by the Hon. Judge Dexter Brooks on the 13th of May 1994.

B) Petitioner counsel gave Notice of Appeal and that appeal was denied by the N.C. Court of Appeals on July 28, 1995. Petitioner filed several motions asking the Superior Court, the Court of Appeals and the Supreme Court of N.C. to provide petitioner with missing portions of trial transcript so that he may file a proper Appeal.

C) The Supreme Court of N.C. remanded the case back to the Superior Court of Wake County for evidentiary hearing, because record was incomplete. At evidentiary hearing Counsel Mr. George E. Kelly III failure to inform petitioner that he was going to waive petitioner rights to Court Order for Complete trial transcript.

- D) Mr. Kelly^{III} also fail to inform petitioner that his intention was to admit petitioner was guilty of second-degree murder without his consent.
- E) Mr. Kelly^{III} failure to object to possible improper remarks made by the prosecutor during closing arguments, which resulted in his inability to argue the impropriety of these remarks on direct appeal.
- F) Mr. Kelly^{III} failure to preserve objections for Appellate Review, his failure to assign any errors with respect to the Murder of Creede Sundwike, and his failure to properly object to an arguably improper jury instruction, and did not submit his requested instructions to the Trial Court in writing resulting in the waiver of his objection at the Appellate level, pursuant to N.C.R. app. P. 10(b)(2).
- G) Petitioner has filed several motions asking the Supreme Court, Appeals Court and Supreme Court and the Federal District Court of North Carolina to provide missing portions of trial transcript.

REASONS FOR GRANTING THE PETITION

1. The United States Supreme Court has held that the state must, as a matter of equal protection, provide an indigent defendant with a transcript of trial proceedings when the transcript is needed for an effective defense or appeal.
2. Petitioner Request once again, why has this Superior Court of North Carolina fail to comply with a Court Order for Complete Recodation of all proceedings, N.C. Gen. Stat. § 15A-1241 (A)(B) which is a legal requirement N.C. Gen. Stat. § 7A-450(B). Petitioner is in need of missing portions, so that petitioner may file a proper appeal.
3. By refusing to enforce the Court Order issued by the Honorable Judge Robert L. Farmer of Wake County Superior Court for Complete Recodation of all trial proceedings. The Court has prevented petitioner from being able to obtain evidence to properly address his Post-Conviction Claims and has denied me the right to fundamental Due Process of law provided by the 5th and 14th amendment of the U.S. Constitution.

* APPENDIX-E *

4. By barring access to these critical records, Petitioner warns, that by do so undermined appeal objective of protecting his Constitutional Rights to a fair trial and Appellate procedure.

5. The U.S. Supreme Court stated: all Orders and judgments of Courts must be complied with promptly; If a person to whom a Court directs an Order believes that such Order is incorrect the remedy is to appeal; persons who make private determinations of the law and refuse to obey an Order generally risk criminal contempt even if the Order is ultimately ruled incorrect. Marex v. Meyers, 419 U.S. 449; 95 S.Ct. 584; 42 L.Ed 574; (1975).

6. Now petitioner only request is that the Court follows its own Court Order for Complete Recordation of all trial proceedings granted by Judge Robert L. Faemee. Now in Shea v. Edwards, 221 Ill. App. 219, 163 Ill. Dec. 668, 581 N.E. 2d 822, 823 (Ill. App. 1991) the Mandamus was an appropriate remedy to compel Department of Corrections to follow its own Regulations.

SEE Halsey v. West, 966 F.2d 579, 582-83 (10th Cir. 1992)

Mandamus granted Ordering the district Court to ensure petitioner's right to jury trial; McNeil v. Guthrie, 945 F.2d 1163, 1165 (10th Cir. 1991) Granting Mandamus to compel district Court Clerk to file the plaintiff's papers.

7. The Supreme Court of U.S. Stated: Generally, the Collateral bar rule requires that the judge's Order be followed.

8. Petitioner is in need of these missing records to prove that he was denied effective assistance of Counsel at trial and appeal. In Opening Statement to the jury Mr. George E. Kelly III told the jury, "Ladies and Gentlemen of the jury, the evidence will show that the Co-defendant, Andrew Robinson, shot and killed the victim, Souraf Abraham; therefore, I want you to find my client guilty of one count of second-degree murder, and not first degree murder."

* Notice Records are missing for Opening Arguments *
BUT REMEMBER THERE'S A COURT ORDER FOR Opening Arguments.

9. In closing arguments, the prosecutor stated: "Ladies and Gentlemen, your decision to uphold the law is very important to this community. You're the people that must act as a bulwark against the continuation of murder and drug dealing that Mr. Francis is doing on the streets. The killings got to stop."

* Notice Records for Closing Arguments are missing *
But Mr. Howard Cummings the prosecutor stipulated to above statement at evidentiary hearing. Court Order was not followed.

10. On February 24, 1997 petitioner wrote his Trial Counsel about missing portions of Trial transcript. On February 25, 1997 Counsel wrote back explaining missing portions was not transcribed because Court Reporter frequently leave the Court room during those particular portions of the trial. * Appendix-F *

11. In the above letter of Trial Counsel, he said that he had Trial notes in regards to those missing portions. At the top right hand corner of notes counsel wrote Closing Arguments were recorded, he signed and dated it.

* Appendix-G *

12. On September 4, 1997 the Supreme Court of N.C. Remanded petitioner's Case back for and evidentiary hearing. Petitioner's trial counsel said at evidentiary hearing that he "Waived" the Court Order without petitioner's knowledge or consent, this violated due process guarantees of adequate and effective review. ^{See} Entominger v. Iowa, 386 U.S. 748, 750-51, 87 S.Ct. 1402, 1403, 18 L.Ed. 2d 501 (1967). Lane v. Brown, 372 U.S. 477, 485 (1963).

13. Petitioner was never informed about a waiver of his Rights to ministerial duty. There is no record of a waiver, no waiver hearing was done, nothing the Record is silent about a waiver.

14. We have several different stories about what really happened, petitioner trial Counsel made different stories (1) he said that missing portions was not transcribed (2) he wrote in his notes that transcript was recorded. (3) he said that he waived the Court Order to Record Trial transcript.

15. Now petitioner has filed several motions asking the Superior Court, Appeals Court, and the Supreme Court of N.C. to help provide missing portions. So petitioner may file a proper appeal with evidence.
16. The provisions of a Court Order provides petitioner tools to request the information and exhibits that is necessary for petitioner to prevail facts regarding evidence.
17. Now petitioner cannot move forward with gathering evidence of the mandated Court Order when this Court refuses to comply with such Order of process to discover evidence by attaching an active concealment of words or acts of something that one has a duty to reveal.
18. The U.S. Supreme Court has held that the state must, as a matter of equal protection, provide an indigent defendant with a transcript is needed for an effective defense or appeal. Britt v. North Carolina, 404 U.S. 226, 227 (1971).

19. Petitioner submits that the lower Superior Court, Wake County has had ample amount of time to correct this problem with missing portions of trial transcript, and has abused its discretion in failing to do so, to the prejudice of petitioner.

20. Further petitioner submits that Mandamus should issue in this case for there is no other means available to obtain desired relief and that his right to issuance of this writ is clear and undisputable. ^{SEE} In RE Class Workers local No. 173, 983 Fed 725 (6th Cir. 1993); Blaskand v. Rates, 979 Fed 324 (3rd Cir. 1992) and Mallard v. U.S. Dist. Court for S. Dist. of Iowa, 490 U.S. 296, 104 L. Ed 2d 318, 109 Sct. 1814 (1989).

21. Mandamus is appropriate if there are "no other adequate means to obtain the relief" and where the lower Court or agency has "violated a non-discretionary command or so abused [its] discretion" that its action constitutes a disregard of the Court's mandate. Dept. of Navy v. F.L.R.A., 835 Fed 921 (1st Cir. 1987).

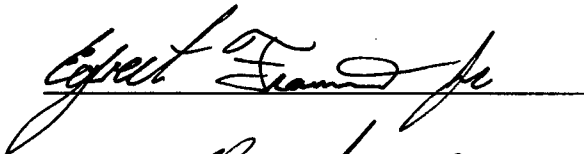
22. With respect to defendant's conviction judgment or sentence for the alleged murder of Corde Sordunke, defendant counsel did not assign "any error", although defendant gave notice of appeal to his conviction and sentence.

23. Petitioner request that you enforce his rights to his Court Order and hold someone in contempt, for non-compliance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: March 29, 2020