

20-5311

No. _____

Supreme Court, U.S.
FILED

JUL 20 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

RICHARD HOLLIHAN JR., PRO SE

— PETITIONER

(Your Name)

vs.

COMMONWEALTH OF PENNSYLVANIA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF PENNSYLVANIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard Hollihan Jr., AJ-0676 Pro Se

(Your Name)

1600 Walters Mill Road

(Address)

Somerset, Pennsylvania, 15510

(City, State, Zip Code)

(814)443-8100 Prison's Number

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Did the Pennsylvania Supreme Court violate the 14th Amendment to the United States Constitution when it Denied Petitioner's Application For Extraordinary Relief that conflicts with its own Precedential Decision?

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:

RELATED CASES

COMMONWEALTH V. HOLLIHAN, 566 A.2d 254 (Pa. Super. 1989), appeal denied, 593 A.2d 838 (Pa. 1991).

COMMONWEALTH V. HOLLIHAN, 963 A.2d 567 Pa. Super. 2008) (unpublished memorandum), appeal denied, 967 A.2d 958 (Pa. 2009), CERT. Denied, 557 U.S. 926 (2009).

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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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 A to the petition and is

- ☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the N/A court appears at Appendix _____ 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 _____.

☐ 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 May 22, 2020. A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: June 22, 2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

U.S. Constitution Amendment XIV

42 PA.C.S. 726

PA. R.A.P. RULE 3309

STATEMENT OF THE CASE

On March 8, 1985, Appellant was falsely accused, framed and arrested and placed in the Old County Jail in the mental health section.

On March 15, 1985, Appellant had a Coroner's Inquest with paid counsel, held for trial.

On March 21, 1985, Appellant was placed on a bail bond at 10% of \$25,000.00 dollars, taken out of the mental health section and released to go home to my 4 daughters.

On Monday, October 28, 1985, Appellant's trial was to start.

On October 31, 1985, in the Courtroom of my trial Judge a Suppression hearing was held with Counsel present No one was there to give an account of what evidence or confession was involved. Brief of Attorney Omnibus Pre-trial Motion Rule 306.

On January 28th, 1986, the Attorney's Omnibus Pre-Trial Motion was denied by the Court. Trial Started that morning.

On February 4, 1986, The jury Trial ended and was found guilty of Murder in the First Degree.

On February 7, 1986, Trial Counsel filed a Motion For a New Trial and or Arrest of Judgment.

In March, 1986, Appellant fired my trial Counsel due to his ineffectiveness and hired another Attorney.

On July 23, 1986, Appellant Richard Hollihan Jr., due to his exparte communications with Judge James R. McGregor, on Orders, Judge McGregor had me taken to Farview State Mental Hospital in Waymart, Pennsylvania, and on September 17, 1986, I returned back to Pittsburgh, Pennsylvania.

On September 12, 1986, Paid Counsel Paul R. Gettleman, Esq. filed additional Post Verdict Motions.

On October 14, 1986, a hearing was conducted by Judge McGregor to hear my testimonies about my wife's suicide and to determine if trial counsel Hickton was ineffective.

On April 3, 1987, a hearing was conducted by Judge McGregor to hear a psychologist named Arthur Vancarra's testimonies to ask him if he was paid and does he represent Mr. Hollihan as a Vietnam Veteran, did he evaluate me, Was he bribed by Mr. Hickton for his services?

On May 15, 1987, the Motion hearing was denied and on that same day, Appellant was sentenced to Life in Prison, No Parole.

On June 4, 1987, the Office of the Public Defender Howard B. Elbling and Lester B. Nauhaus and John H. Corbett Jr. did my direct appeal and on June 12, 1987, atimely Notice of Appeal was filed. Docket at Superior Court as 800 Pittsburgh, 1987.

On December 2, 1987, Appellant filed a Motion for ALL Transcripts.

On September 28, 1989, the Superior Court affirmed the Judgment of Sentence. Case No. 566 A.2d, 254 (Pa. Super Ct.).

On October 12, 1989, an Application by the Public Defender's for reargument was timely filed, BUT denied on November 6, 1989.

On December 7th, 1989, or so or about, the Allegheny County District Attorney Appeals/Post Convictions Unit received the Public Defender's Petition of Allowance of Appeal. They are Lester G. Nauhaus, Shelley Stark and James R. Wilson who drafted up Appellant's Petition to the PA. Supreme Court, the Court gave a docket number 677 W.D. Allocatur, 1989.

NO ANSWER

On July 8, 1991, Appellant Richard Hollihan Jr., received a letter that was sent to the Public Defender's on their 677 Allocatur, stating: Dear Ms. Stark and Mr. Wilson:

The Court has entered the following Order on your Petition for Allowance of Appeal in the above-captioned matter:

"Petition Denied

Per Curiam

7/3/91"

On June 11, 1993, Judge James R. McGregor, trial Judge who presided over Appellant's Post Conviction dated June 10, 1993, which was Appellant's First P.C.R.A. Petition, made note that Appellant's First P.C.R.A. Petition is sent to his Court.

On December 3, 1993, The Commonwealth filed a Motion for an extension of time to answer the P.C.R.A. Petition. Although counsel had been appointed by McGregor, NO Amended Petition was filed on Appellant's behalf, and the record does not reflect that the Commonwealth ever filed an answer to the Petition.

On February 25, 1994, Appellant receives a letter from Attorney Robert A. Crisanti, stating he was appointed for Appellants P.C.R.A., that he only came aware of my case on in November of 1993.

On March/April 1994, Appellant at SCI-Somerst, PA, Petitioned THE Court for Trial Records, All Records, because his P.C.R.A. Attorney wasn't acting on Appellant's best interest.

On June 17, 1994, Appellant FILED for A Immediate Evidentiary

Hearing about Attorney Robert A. Crisanti.

On July 21, 1996, two (2) years later Court Appointed Robert A. Crisanti filed a NO-Merit Letter..

On July 23, 1996 by Order of the PCRA Court (McGregor) and filed July 26, 1996, counsel's Motion to withdraw was granted and my 1st PCRA Petition was dismissed.

On July 31, 1996, Appellant Hollihan filed an Appeal on His 1st PCRA, AND WAS ASKING THAT Judge McGregor recuse himself off of my PCRA Petition.

On March 5, 1998, Appellant sent a copy to the PCRA Court of His 1st PCRA Petition to see if the Court had a correct copy of his 1st PCRA Petition, that was mistaken as a 2nd PCRA.

On August 8, 2001, Appellant filed a Motion for Immediate Release due to all the confusion with the PCRA Court and Judge McGregor's actions on the PCRA Petition.

On September 4, 2001, McGregor's Order denying the Motion For Immediate Release and Discharge.

On January 15, 2002, Appellant filed a Motion For Trial Transcripts, all Court Records, and to proceed In Forma Pauperis.

On February 19, 2002, Judge McGregor denied the Motion made an Opinion denying transcripts.

On February 21, 2002, Motion for Transcripts.

On October 31, 2007, Appellant files his 2nd PCRA Petition

On November 11, 2007, the PCRA Court under Judge Kathleen A. Durkin issued a notice of intent to dismiss pursuant to Pa. Rule Criminal Procedure 907.

On December 3, 2007, Appellant Pro Se filed a response to the intent to dismiss the PCRA Petition.

On December 13, 2007, Judge Kathleen A. Durkin denied the PCRA Petition.

On December 21, 2007, Appellant Richard Hollihan Jr., Filed a Notice of Appeal to Superior Court, copy went to Judge.

On January 3, 2008, Judge Durkin made her Opinion ON MY PCRA

On January 8, 2008, Appeal Docket Sheet from Superior Court was sent.

On March 12, 2008, Appeal sheet prepared by the Commonwealth copy was given to Appellant Superior Court

On March 12, 2008, Certificate and transmittal of Record to Appellate Court by Kate Barkman

On March 25, 2008, Pro Se correspondence mailed docket report to Defendant, Appellant

On March 26, 2008, Pro Se Petition filed by Richard Hollihan Motion for an Attorney.

On December 15, 2008, Appellant filed a Petition for allowance of Appeal to the PA Supreme Court.

On April 20, 2009, Petition for Allowance of Appeal denied in the PA. Supreme Court.

On May 11, 2009, The way it looks, The PA. Superior Court Affirmed the PA. State Supreme Courts Denial.

On September 8, 2011, Appellant sent a letter to the Court, a copy of it went to the Federal Bureau of Investigation but Appellant received No reply.

On March 13, 2014, Petitioner filed a State Habeas Corpus Petition which the Judge Durkin made into a PCRA Petition.

On July 22, 2014, Appellant filed a Motion for Court appointed Attorney.

On August 14, 2014, Appellant filed for Transcripts and ALL Court Records to be sent to him.

On November 13, 2014, Appellant filed for a Immediate Release and Discharge of all wrong doings. Citing case law without trial Court Records.

On November 25, 2014, Appellant received a Notice of Intent To Dismiss from Judge Durkin.

On January 8, 2015, Appellant receives an Order denying Post Conviction Relief Act, IN fact the Petition was a State Habeas Corpus Petition.

On January 11, 2016, Appellant filed a Petition for EXTRAORDINARY JURISDICTION (nunc pro tunc) in the Pennsylvania Supreme Court, Richard Hollihan Jr. v. Commonwealth of PENNA. Allegheny County District Attorney and the Pennsylvania Attorney General.

On January 29, 2016, Appellant Richard Hollihan Jr., received a letter addressed to Attorney Beemer and Streily.

From the Pennsylvania Supreme Court in Pittsburgh, Pa. at 414 Grant Street, the Court gave a docket number 16 WM 2016.

On February 5, 2016, The Supreme Court SENT Appellant a PRAECIPE FOR APPEARANCE AND PROOF OF SERVICE.

AND on this same day, the Office of the District Attorney sent me a copy of an ANSWER. State: Dear Mr. Vaskov:

This is to advise you that the Commonwealth will not file an Answer to the Application for Extraordinary Relief filed in the above-captioned case. Signed Sandra Preuhs.

On March 30, 2016, Appellant received an ORDER from the PA. Supreme Court: PER CURIAM

AND NOW, this 30th day of March, 2016, the Application for Extraordinary Jurisdiction is DENIED. Signed Chief Clerk of Court Patricia Nicola

On April 5, 2016, Appellant Richard Hollihan JR., files a Application For Reargument Or Reconsideration.

On May 5, 2016, from the PA. Supreme Court comes an ORDER entered on May 5, 2016 PER CURIAM

AND NOW, this 5th day of May, 2016, the Application for Reconsideration is DENIED. Same Clerk denied it in the PA. Supreme Court.

In May, 2016, Appellant sent a letter to the Pennsylvania Supreme Court asking an Opinion.

On May 12, 2016, Came a letter from the Pennsylvania Supreme Court Office of the Prothonotary, NOT SIGNED, denying any Arguments in my Petition, even Rearguments.

On June 27, 2017, Appellant taliking to an attorney, who represented Appellant in a Civil case, Appellant wrote a LETTER TO THE Court's explaining his case.

On July 7, 2017, Appellant filed a Motion in the Common Pleas Court asking for his wife's Autopsy Report.

On July 13, 2017, The Motion was received by the Court Titled "MOTION FOR AUTOPSY REPORT directed at the Allegheny County Medical Examiner's Office.

On August 25, 2017, AN ORDER denying the Motion for the Autopsy Report.

On September 5, 2017, Appellant filed a NOTICE OF APPEAL TO the Superior Court of the Commonwealth of Pennsylvania Pittsburgh.

On September 12, 2017, Appellant had to amend a Proof of Service, the Court advised it..

On September 15, 2017, Superior Court a Docketing statement from Superior Court in Pittsburgh, PA.

On September 26, 2017, An Order Directing a Concise Statement of Matters be filed by Appellant.

On October 11, 2017, an Opinion was made by Judge Kathleen A. Durkin.

On October 17, 2017, a Concise Statement of Matters Compained On Appeal was forwarded to the Dept. of Records by Appellant via Judge's Chambers.

On October 23, 2017, Appeal Docket Sheet was prepared via Dept. of Records for the Court by Appellant AND the Certificate of Record was sent to the Appellate Court.

On October 27, 2017, A Subpoena to produce documents or things for discovery by Appellant was sent to the Court.

On October 27, 2017, Motion for wife's Autopsy Report was sent to the Court by Appellant.

On November 1, 2017, An Application For Relief pursuant to PA. R.A.P. 123 was sent by Appellant to the Court.

On November 9, 2017, Appellant sent all Motions, The Court, stalled held the paper work up.

On June 18, 2018, Superior Court Affirmed the Case

On August 2, 2018, Appellant received a Court Docket Sheet which was wrong. No answer from the Court to correct it.

On October 1, 2018, Appellant/Petitioner sent a Petition For A Writ Of Mandamus Motion To Proceed, to the Judge who has taken a personal knowledge of Petitioner's Case.

On October 18, 2018, Appellant/Petitioner made a Pro Se Correspondance and told the Court his docket is wrong.

On October 31, 2018, Petitioner sent a Pro Se letter to the Judge Durkin asking her about why my case is being denied?

On December 7, 2018, The Judge Kathleen A. Durkin sent a Notice of Intent to Dismiss the case.

On January 2, 2019 Petitioner Pro Se sent a Notice of Appeal to Superior Court.

On January 2, 2019, the case Corrrepondence Advised that a final Order disposing a PCRA Petition/MOTION has not been issued.

On January 29, 2019, Petitioner filed a Motion to Recuse Judge Kathleen A. Durkin off my case. Reason for doing this she changed my MOTION into a PCRA AND TIME barred me. Case given to Judge Lawrence J. O'Toole.

On March 14, 2019, Judge O'Toole sent an Order that I did not know about to deny Petitioner Case.

On the months that pass from March 2019 and seeking attorney(s) for advice on how to litigate my case because it has been going on 34 years now and NO relief, The question came up about the weapon fired during my trial no one had any case law or could find any. So I did it

On January 28, 2020, Petitioner sent a King's Bench Petition to the Pennsylvania Supreme Court, One issue, the PA. Supreme Court' Appeal as follows :

On May 22,2020, The King's Bench Matters Application
For Extraordinary Relief was Denied.

On June 22,2020, The Motion For Reconsideration was
Denied .

This Petition For A Writ Of Certiorari Follows;

REASONS FOR GRANTING THE PETITION

The Pennsylvania Supreme Court has decided an important Federal Question in a way that conflicts with its own precedential decision in a prior case and conflicts with other State Courts of last Resort.

"The procedures used in deciding appeals must comport with the demands of the Due Process and Equal Protection Clauses of the Constitution". Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, at 834, 83 L.Ed. 2d 821, 1985- applying Fourteenth Amendment of the United States Constitution.

The Equal Protection Clause of the Fourteenth Amendment prohibits State Officials from exercising their discretionary authority for an intentionally discriminatory purpose. SEE: Johnson v. Anhorn, 416 F. Supp. 2d 338, 375 (E.D. Pa. 2006). Thus, selective prosecution may constitute illegal discrimination even if the prosecution is otherwise warranted. " Desi's Pizza Inc. v. City of Wilkes-Barre, 321 F.3d 411, 425 (3rd. Cir. 2003).

There are two theories by which a [Petitioner] may establish an equal protection Claim: the traditional theory and the Class-of-One Theory. Borough of Old Forge

66 F. Supp. 3d 592, 614 (M.D. Pa. 2014), Under the Traditional theory, A [Petitioner] must allege: (1) that he or she is a member of a protective Class; and (2) that the government treated similarly situated individuals outside of the protected Class differently." Reed v. Chambersburg Area School District, 951 F. Supp. 2d 706, 716 (M.D. Pa. 2013). Alternately, to state a claim under the Class-of-one theory, " A [Petitioner] must allege that; (1) [Respondent] treated him differently from other similarly situated, (2) the [Respondent] did so intentionally, and (3) there was no rational basis for the difference in treatment. Reed, 951 F. Supp. 2d at 716 (Quoting Hill v. Borough of Kutztown, 455 F.3d 225, 239 (3rd Cir. Ct. 2006)).

In the case sub judice, Petitioner alleges that he is in the "Class-of-one category established under the equal protection theory. Petitioner asserts that under the precedent established by the Pennsylvania Supreme Court in Commonwealth v. Stallone, 281 Pa. 41; 126 A.56 1924 Pa. LEXIS 565 No 347 May 12, 1924, Argued July 8, 1924, he was denied the equal protection afforded the Appellant in the case, supra Black's Law Dictionary (6th ed) defines Precedent as: "An adjudged case or decision of a Court, considered as furnishing an example or authority for identical similar Case afterwards arising or a similar Question of Law....A Rule of Law established for

the first time by a Court for a particular type of case and thereafter referred to in deciding similar cases"

Petitioner avers here that His Case is Identical or similar to Stallone Supra, in that weapon was fired in the Courtroom during his trial, however, the Pennsylvania Supreme Court failed to reach the same conclusion, Stallone received a New Trial whereas Petitioner received a conviction and subsequent life sentence.

BLACK'S Law Dictionary(6th ed) defines Stare Decisis as:

" To abide by, or adhere to, decided cases.

Commonwealth v. Stallone, supra, has not been overruled IN 96 YEARS, THEREFORE, UNDER BOTH PRECEDENT AND STARE DECISIS, Petitioner should have gotten relief.

Under the Rules of the Supreme Court of the United States, Rule 10(b) it states:

(b) A State Court of last resort has decided on important Federal Question in a way that conflicts with the decision of another State Court of last resort or of a United States Court of Appeal;...

Petitioner avers that this Honorable Court should Grant Certiorari for this compelling reason to establish uniformity among the State Courts of last resort so that the procedures that they use to decide appeals comport

with the Due Process and Equal Protection Clause of the
Fourteenth Amendment of the United States Constitution.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard Hollihan Jr. Pro Se

Date: July 18th, 2020