

20-5503

No. USCA7-no 20-1527

ORIGINAL

FILED

AUG 17 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

KEVIN L martin

— PETITIONER

(Your Name)

VS.

C. nicholson et al.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

united state's court of appeal for the seventh circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KEVIN L martin #169289

(Your Name)

westville correctional Facility

5501 S 1100 WEST

(Address)

westville IN 46391

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

AUG 17 2020

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SUPREME COURT, U.S.

(1-)

QUESTION(S) PRESENTED

- (1-) whether the court of appeal afforded equal protection because the plaintiff who was deny of s-14 amendment by court of appeal justice demand that motion process it was in good faith.
- (2) whether the court of appeal took advantage of plaintiff incompetency and denying him of due process right to a fair proceeding to appeal.
- (3) whether the trial counsel open the door to prejudice that harm the plaintiff at his trial.

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:

C. nicholson et al / prison at webash valley
correctional Facility

TABLE OF CONTENTS

OPINIONS BELOW	6	1
JURISDICTION.....	6	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	7	
STATEMENT OF THE CASE	20	
REASONS FOR GRANTING THE WRIT	20	
CONCLUSION.....	21	

INDEX TO APPENDICES

APPENDIX A	public docket 1 thru 20
APPENDIX B	Banta threatening page 21
APPENDIX C	Lovelside Battery page 22
APPENDIX D	Defendants Exhibits 23 thru 27
APPENDIX E	Verdict Form 28 thru 32
APPENDIX F	Court of Appeal page 33 Jury Form 4 papers
APPENDIX - G	Motion For Extension page 34 Court of Appeal
APPENDIX H	Letter to counsel reuff. page 35 -) incompetency?

Table of Authorities cited

CASES

Haines v Kerner 404 US 519 (1972)	7
Pate v Robinson 383 US 375 (1966)	7
Pruitt v Mote 503 F.3d 647 (2007)	7
Marbury v Madison 5 US 137 (1803)	8
Late v Short 28 L. ed. 2d 130 401 US 395	8
US v Mazzare 782 F.2d 757 764 7th Cir (1986)	10
Levitts v Lucy 469 US 387 105 Sct 830 83, 1985	13
Strickland v Washington 466 US 668 104 1984	13
US v Cronin 466 US 648 1984	15
Pruitt v Mote 503 F.3d 647 (2007)	15
Pate v Robinson 383 US 375 (1966)	15
Holbrook v Flynn 475 US 560-568-69 (1986)	16
Estelle v Williams 425 US 504-505 96 Sct 1976	16
Lemos v Skidmore 985 F.2d 354-356-57 7th Cir 1993	16
Strickland v Washington 466 US 668 US 668 104 1984	18
Mathews v Elridge 424 US 319 96 Sct 893, 1976	21
Other Authorities	
28 USC 1259	6
28 USC 1257 a)	7
1915-g	8
1915-b	8
42 U.S.C. 1983	12
Rule 404-b-7	19

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 court's

The opinion of the United States court of appeal appears at appendix ~~page 32~~ page 32
and page 33 to the petition and is
reported at index to appendices re-view
It has been designated for publication but is not yet reported or
it is unpublished

For CASES From state court

The opinion of the highest state court to review the merit appears at appendix
B to the petition and is deny of a Fair trial
it reported at
It has been designated for publication but is not yet reported or
it is unpublished

The opinion of the United state court of appeal court appears at appendix
page 32- and page 33) to the petition and is
reported page-32 and page 33
It has been designated for publication but is not yet reported or
it is unpublished

JURISDICTION

For CASES From Federal courts

The date on which the United States court of appeal decided my case was
a no petition for rehearing was timely filed in my case was
it a timely petition for rehearing was denied by the United state court of appeal on
the following date and a copy of the order denying rehearing appears at appendix
it an extension of time to file the petition for a writ of certiorari was
granted to and including date on date in application, no it
The jurisdiction of this court is invoked under 28-U.S.C (254-) 1-3
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

2. 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.
1357 & constitutional and statutory provisions involved.

Martin notes the court of appeal deprive him of a Fundamental right
ARE EXAMINED in the substantive due process and Equal protection
section of this outline and whether the court of appeal must waive
such Fee's For indigents depends on the nature of the right
involved," of the plaintiff right is based on the First, Fifth and
Fourteenth amendments to the constitution and due process guarantees
A plaintiff Fundamentally right to Fair trial there is no way
possible if Martin was in hand cuffs and leg shackles and
was clothing in front of the jury deprive him of a right
to address his grievances on a appeal and put together the
cause was in good faith to put together these provisions
mean that Martin must have the opportunity to go to court
to challenge the district court abuse of discretion by denying Martin
to testify without hand cuff on his arm was in good faith
to appeal in a special circumstances that often arise
in precise situation SEE *Haines v Kerner* 404 US 519 (1972)
Martin only request is that he be afforded Equal protection
of the law as would be afforded his more affluent
counterpart, "It is the duty of this United State Supreme to
Follow the letter of the law and its members have taken
An oath to uphold the constitution of the United States of
America; It is incumbent upon this court to meaningfully
Address the fact that court of appeal took Advantage of
Martin incompetency and judge has a duty to court to conduct
Further inquiry and determine whether in fact was the
plaintiff incompetent, to stand trial because he did understand
the process and this cant constitute a waiver SEE
Pate v Robinson 383 US 375 1966 AND ALSO SEE
Pruitt v one 503 F 3d 647-2007) SEE Appendix
1-1) Letter sent to me perff about the incompetency-relevant

page. 34.) Martin must point out relevant fact by the constitution and the constitution authorizes a Federal court system in article III, which provides that Federal court shall have judicial power over, "case and controversies" and also however judicial review of other branches of the Federal government was established in *See Marbury v. Madison* 5 US 137 (1803) per Marshall (C.J.) The constitution is law and it is the province and duty of the judiciary to declare what the law is. Martin crucial piece of the plea as provided for in the plea, if he can't pay it in full the judge shall issue an order to the department of corrections directing the withdrawal of percentage usually 20% from all monies coming into the prison account and the provision 28 U.S.C. 1915-g.) And 28 U.S.C. 1915-b)(1.) Also income under 28 U.S.C. 1915-b) 2) if Martin don't have the money you don't have the money but you're still entitled to justice. *See Appendix F* page-32.) Also under the appropriate decision in accordance to the constitution and its provision *See Tate v. Short* 28 LEd 2d 1304 / US 395) The different Martin was deprived of his right at trial. The trial judge off record before the trial start said he was going to inform the jury about the prison clothing and shackles and hand-cuff to ignore it but he never explain mean he abuse of discretion in them instruction and a curative instruction can even have negative efficacy, to tell jurors to ignore shackles may divert the jurors attention on them *See Eg. Dan Simon* more problem with civil trial the limit effectiveness of legal mechanisms law and contemporary problem and especially if the judge explain to the jury why the plaintiff is shackled

and shackled will be highly prejudicial - but without an explanation the jurors are left to wild conjecture, and the proper course is thus to conceal from the jury that plaintiff is shackled, and the shackles on the sides of the box will conceal them; there is no indication that these methods of concealment would have been infeasible in this case and it is not even clear that the plaintiff's is so violent that he had to be manacled at all his hand cuffs was never removed and on the stand the plaintiff had to adjust the mic, and the jury saw the hand cuffs when (martin) testified and one prison guard behind martin testified and one in front of (martin) was prejudiced.) because the jury think they are dealing with a mad-dog run wild in single release out the cuffs in the court room will be the jungle, in this court room

And the curative instruction that the Judge failed to give would not have eliminated the prejudice to the plaintiff arising from the

visible manacles the prison uniforms and the guards uniforms curative instructions have as Judge too rarely acknowledge only limited efficacy as we said in SEE United States V mazzone 782 F 2d 757 764 7th Cir 1986)

we are not quite, so (n-ove.) as to believe that telling jurors not to think about something will (cause) them to forget it (Justice Jackson)

once market that the (n-ove.) assumption that prejudicial effects can be overcome by instructions to the jury all practicing lawyers knew as for the Judge requiring the plaintiff to wear his prison clothing in court while allowing the defendant to

wear their guard uniforms and all guard testify were they prison uniforms and it was ^{also} ~~prison~~ prison guard ~~set~~ set

in the court room from wabash valley correction
with they uniforms on right behind the defendants
no consideration of security justified that requirement
and that permission see *Estelle v Williams* supra
425 US 413-414, the plaintiff was not less
dangerous by virtue of being in a prison uniforms
or the guards safer by virtue of wearing their
guard uniforms 15-ten prison support the
defendants with gun cause-) prejudice and the
judge thought the clothing worn by the prisoners
and the guards in the courtroom inconsequential
because the jury knew that the plaintiff was
a prisoners and the, and defendants wore
prison uniforms was all them guards was
match and actually there would have been
no reason for the jurors to think the
plaintiff a prisoners had it not been
for his prison clothing and for remember
that his suit concerns events that had
occurred when he had been in prison

At Wash he filed a Law suit against the
Defendant in Sullivan circuit court in Indiana under
cause, 77 Del-1807- ct 362-) base off that
the Defendant retaliate against (Martin) by have
him ~~stake~~ down 3 or 4 times a week behind this
Law suit mean this was a protect right mean
First Amendment right so (Martin) filed suit
under 42. U.S.C 1983 Against the Defendant
and Martin survived summary judgments and
was tried to a jury which found and ruled
in the favor of the Defendants. The plaintiff
was a prisoner (inmate.) at that time of
his trial and his issue was he claim on
Appeal is that he was denied a Fair trial
because he was compelled to wear shackles
and his prison uniform in the courtroom
and could consult with his attorney or
take notes, if so the jury see hand
cuff every time Martin reach to Grab

the pen and paper is the prejudice and martin
could consult with his attorney deny martin of sixth
amendment and Fifth amendment and 14th Amendment
right to consult with his attorney and assist
in his defense SEE EVITTs v LUCY 469 US 387
105 S Ct 830 83, LE d 2d 821 1985.) Also
SEE STRICKLAND v WASHINGTON 466 US 668, 104
S Ct 2052 80 LE d 674 1984.) trial counsel
was ineffective for permitting the court to
arbitrarily not explain the instruction to
the jury about the handcuff and shackled
and the prison clothing in violation of martin
constitutional right mean Fifth, was deny by
counsel failed to object and protect
elementary constitutional right essential to
the defense such as the right to cross
examine witnesses the right to present
a defense by call witness, (1) prison guard
woodburn who play a part in the shakedown
that could cause a reasonable doubt and

show Lt nicholson was retaliate against martin
and also christopher L scruggs and willard
and brown and sgt cobb because martin been complaint
about this problem at the Facility and the right
to present a defense, or the right to put before
the jury exculpatory testimony counsel be said to
have been acting as counsel guaranteed by the
sixth Amendment or that his performance was
in accordance with professional norms martin
counsel had a duty to protect martin right from
being trampled upon by arbitrarily actions
of the court, counsel's ineffectiveness deprive
martin of due process and a fair trial.

which cronic more apply applies because
(1-) counsel entirely fails to subject the
prosecution's case to meaningful adversarial
testing and (2) The surrounding circumstances
are such "that although counsel is
available to assist the ~~defendant~~^{plaintiff} during

the likelihood that any lawyer even a fully competent one could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial SEE

united states v. CRONIC 466 US 648 (1984)

also he should request off the letter should have automatically triggered an inquiry into martin competency at any time before the final submission of any civil case to the court or the jury trying the case, the court has reasonable grounds for believing that the Plaintiff lack the ability to understand the proceedings and assist in the preparation of a defense the court and counsel shall immediately fix a time for a hearing see pruit v. mott 503 F.3d 647 (2007) and also pate v. robinson 383 US 375 (1966) relevant

The sight of a shackled litigant is apt to make jurors think they're dealing with a mad-dog and just the contrast between a litigant wearing prison garb and his opponents wearing the prison guard uniforms is likely to influence the jury against the prisoner and has long been recognized as being highly prejudicial see *Holbrook v Flynn* 475 U.S. 560 568-69 106 S.Ct. 1340 89 L.Ed. 2d 525 (1986) and also *Estelle v Williams* 425 U.S. 501-504-05 96 S.Ct. 1691 48 L.Ed. 2d 126 (1976)

Although the issue has arisen mainly in criminal including post-conviction cases, as in the case just cited it arises from time to time in civil cases as well such as this case and the prejudicial effect of visible shackling and prison clothing has been recognized in these cases see *Leaves v Skidmore* 985 F.2d 354 356-57 7th Cir 1993)

(16)

martin had to adjust the mic to talking into
at trial on the stand and the jury saw the hand
cuff and on martin was prejudicial and prison
guard behind martin with a gun and prison
guard in front of martin on the stand testify
cause prejudicial because the jury was looking
like they deal with a mad-dog and the
counsel open the door and the defendant
present martin conduct history to the jury
also paint a picture of a mad-dog no object
by counsel prejudicial martin and he was the
cause of why the defendant was able to
use martin conduct history and counsel had
an obligation to object to the defendant's
introduce martin conduct report that assist
the jury with looking at martin like
a mad-dog, and this trial counsel

left the jury with the belief that martin was a mad-dog and Failure to dive into the reasons why martin filed the complaint in sullivan circuit court against the defendant because he was arbitrary discriminate against martin not afforded martin Equal-protection that which guarantees by Fourteenth Amendment which guarantees Equal-protection of the law to all citizens had the jury heard this thing could cause reasonable doubt and the outcome would been different if he will dive into the complaint was the defendant was retaliate to give the jury a better understand of the case claim of ineffective assistance of counsel are reviewed under the two part test announced in strickland v washington 466 us 668 us 668 104 Sct 2052 (1984)

A plaintiff must demonstrate both that counsel's performance fell below

Appellant must demonstrate that a proper objection would have been sustained. Relevant

Statement of case

on 9-04-18 plaintiff Filed 1983 against C. nicholson entered date 9-05-18, because the prison guard was retaliate against martin for Filed a lawsuit in sullivan circuit court in Indiana about him discriminate against because of the color of his skin still pending under 77Dcl-1807-ct. 362.)

Reason For granting the petition

Based upon the constitutional violations the plaintiff right to fair trial under Fifth amendment was violation by district court failure to give instruction about the plaintiff prison clothing and hand cuff and shackled and all the prison guard come dress the same with gun and (martin) testify on the stand had to adjust mic in hand cuff and reveal the hand cuff and both prison one front and one behind (martin) cause prejudicial

(20)

And for counsel not object or bring to the court attention about the instruction to explain why martin in prison clothing and hand cuff and shackled not request a competent hearing etc (martin) cant assist in his defense deny martin of Fair trial under fifth and sixth amendment is relevant here," or whether existing procedures are inadequate to prevent erroneous of deprivations, SEE mathew's v Eldridge 424 us 319 96scf, 893 47 Lcd 2d 18 (1976)

conclusion

The petition for a writ of certiorari should be granted respectfully submitted

1-30-20



KEVIN L MARTIN