20-5616 ORIGINAL

No.

IN THE SUPREME COURT OF THE UNITED STATES

ZACHARY KNOTTS— PETITIONER

vs.

STATE OF WEST VIRGINIA— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF APPEALS OF WEST VIRGINIA

PETITION FOR WRIT OF CERTIORARI

ZACHARY KNOTTS
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FAIRMONT, WV. 26554
304-670-7397

QUESTION(S) PRESENTED

1. If a defendant is indicted and found not competent to stand trial, is the court obligated to write a final order disposing of the case when the court no longer has jurisdiction over the individual?
2. If a court fails to write a final order disposing of the indictment, does this raise issues of double jeopardy, and are the individual's constitutional rights violated?
3. When a defendant is deemed not competent to stand trial, but requests a bench trial to determine if there is sufficient evidence for a conviction, what is the level of proof that is required? Do the requirements stated in US v. Haymond, 139 S. Ct. 2369 (June 2019) apply here?

LIST OF PARTIES

[x] 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

Criminal Case: Marion County Circuit Court 11-F-33
Writ of Error Coram Nobis 19-C-1
Supreme Court of Appeals of West Virginia 19-0304

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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 state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is Supreme Court of Appeals of West Virginia
[ ] reported at_____SE 2d_____ ; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the court appears at Appendix B to the petition and is From the Marion County Circuit Court
[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1)

JURISDICTION

[ ] For cases from state courts:

The date on which the highest state court decided my case was June 3, 2020 . A copy of that decision appears at Appendix .A

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The administration of the West Virginia statute for competence to stand trial raises constitutional questions relevant to the rights of the individual.

The level of proof required in a criminal trial is a question in a bench trial where the defendant has been found to be not competent to stand trial. The following was

taken from the Order of Judge David R. Janes following a bench trial in the trial court case in which Knotts had been found not competent to stand trial. On page 4 of the Order the court writes:

> 6. At the outset, the Court notes that there is disagreement between counsel for the State of West Virginia and counsel for Mr. Knotts regarding the level of proof required to sustain a conviction pursuant to W.Va. Code section 27-6A-6.
> 7. Dana R. Shay, Assistant Prosecuting Attorney for Marion County, argued that "sufficient evidence," as used in W.Va. Code section 272-6A-6, is not proof beyond a reasonable doubt. Rather, Mr. Shay asserts that the burden of proof for satisfying the sufficient evidence standard is comparable to that required for a Rule 29 motion for judgment of acquittal. See W.Va.R.Cr.P. Rule 29(a) (stating that a court shall grant a defendant's request for an acquittal of one or more offenses charged in the indictment or information <u>if the evidence is sufficient to sustain a conviction</u>.) If a court refuses to grant a defendant's request for acquittal under Rule 29, the case shall be submitted to the jury. Id.
> 8. On the other hand, Mr. Murphy, on behalf of Mr. Knotts, argues that the level of proof to sustain a conviction under W.Va. Copd section 27-6A-6 is more than that represented by the State of West Virginia. Further, according to Mr. Murphy, the State has not shown that the defendant committed all elements of the offense as charged. According to Mr. Murphy, the alleged threat by Mr. Knotts, even if established as true, does not show that Mr. Knotts committed a terrorist act, as a threat to one employee of the Credit Union, or even multiple employees, does not constitute a threat to the "civilian population."
> 9. The Court is of the opinion that the sufficient evidence standard, as used in W.Va. Code section 27-6A-6, is comparable to the level of proof required for finding sufficient evidence as set forth in Rule 29 of the West Virginia Rules of Criminal Procedure. With respect to what constitutes sufficient evidence in a Rule 29 motion, the West Virginia Supreme Court has found that a defendant's motion for a judgment of acquittal may be denied where there is sufficient circumstantial evidence to allow a jury inference that the defendant committed the offense. See State v. White, 228 W.Va. 530, 722 S.K. 2d 566 (W.Va. 2011)
> 10. Similarly, this Court concludes that there is sufficient circumstantial evidence in this case from which a jury could infer that mr. knotts made a terroristic threat to employees at the Credit Union.

STATEMENT OF THE CASE

Knotts was indicted with a charge of making terroristic threats. The accusations were based on conversation with bank personnel following their closing of the bank account that knotts had at the bank. Knotts had a pre-existing head injury and his lawyer requested a mental evaluation. Pursuant to being charged and indicted, Mr. Knotts resided at a mental facility, under the jurisdiction of the Court [not under a guardianship or conservatorship as a ward of the Court, but as an individual unable to post bail to get out] for three months, three years and ten days. This was because the same Court found in a bench trial that there was sufficient evidence to convict the defendant for the alleged crime. The hallmarks of the mechanism of the bench trial violates the defendant's constitutional rights guaranteed in a trial but was sufficient for the Court to exert complete control over the individual and detain him in their facility.

In the case State v. Bias 352 SE 2d 52 (1986), the Court described the changes to the statutes governing the procedures for determining competency to stand trial. Knotts challenged the procedures used in his case regarding competency to stand trial. Knotts filed a Writ of Errors Coram Nobis to challenge many elements of his case. This was necessary because the final order in his case did not properly dispose of the indictment. It stated that the hospitalization was completed. Knotts needed clearance from the transportation authority to return to his work as a Merchant Marine. They needed to know how the case was concluded, but they never received an answer from the court.

Coram Nobis offers an opportunity to look at the process of the case and note the errors that occurred.

In State ex rel. McMannis v. Mohn, 163 W.Va. 129, 254 S.E.2d 805 (1979),the Court holds, "[a] habeas corpus proceeding is not a substitute for a writ of error in that ordinary trial error not involving constitutional violations will not be reviewed."

In *Frank* v. *Mangum*, 237 U.S. 309 (1915) " the question of whether relief should be granted was not to be resolved solely by examination of the trial court record, as had

historically been the case, but upon federal court consideration of the entire judicial process which pre-dated the petition."

In State of WV v. Dwight Keefer, No.15-0845, (2016) ineffective counsel claims were considered. The Court included the footnote: See United States v. Esogbue, 357 F.3d 532, 534 (5th Cir. 2004) ("Our court has held that ineffective assistance of counsel, if proven, can be grounds for coram nobis relief.");

In Kovacs v. United States, 744 F.3d 44, 54 (2d Cir. 2014), claims of ineffective assistance of counsel satisfies the requirements for coram nobis relief."

In the cases Keefer and Kovacs, ineffective counsel was recognized as an element for consideration in a Coram Nobis. Ineffective counsel was argued in the petition and it was addressed by Judge Janes in his decision dismissing the case. [In this case effectiveness of the Judge,Prosecutor, and Defense Counsel should be an issue because case law adjudicated later shows they were all wrong (see US v. Haymond, 588 U.S. 2019)] Judge Janes missed the point about the level of proof required in the hearing. The colloquy between the Court, the prosecution and the defense about the level of proof required in the bench trial to determine if sufficient evidence existed for a conviction, presented a multi-faceted opinion-laden view that did not accurately describe the level of proof required in a criminal case. This was demonstrated by the US Supreme Court decision of United States v. Haymond, 588 U.S. 2019. It was filed on June 26, 2019 which was a few days before the Knotts brief was due. From the beginning of his writings, Knotts advocated for his missed out opportunity to exercise his right to a jury trial. The US Supreme Court decision reinforced his expressed position. This was one of the issues raised by Knotts that the Supreme Court of Appeals of West Virginia didn't review. They simply affirmed the lower court's dismissal of the Writ because there wasn't a conviction. However, something so basic as the levels of proof required in a criminal case should be scrutinized in a Writ of Error Coram Nobis case which is intended to examine procedure.

In the appeal, the Petitioner put forward the question of how the Court can articulate in the final Order that the defendant has "completed hospitalization" and that this order closes the case that began with a criminal indictment. One question by the appellant became two questions after reading the court's decision:

a) How can the Court procedurally dispose of an appeal where a denovo review shows that the argument of no "conviction" cannot overcome the appellant's argument that "completion of hospitalization" cannot reasonably dispose of an indictment?

b)How can the Court ignore the appellant's U.S. Constitutional questions of level of proof required in a criminal case (even if it is a bench trial), and the proper legal closure for an indictment?

An ordinary person of ordinary intelligence would question how hospitalization relates to a criminal indictment. An employment application may pose the questions about past criminal records. The outcome of this case is unknown using the court records. There is even a question of invasion of privacy and HIPAA violations (Health Insurance Portability and Accountability Act) because medical issues are referenced in a court order that is public. In the case State of WV ex rel. State Farm Mutual Automobile Ins. Co. Petitioner v. Hon. Thomas Bedell; Lana Luby and Carla Blank Respondents, No. 35738, (2011) the Court reviewed the uses and protections for medical records in a legal case. The parties expressed differing concerns for how medical records would be used, stored and destroyed during and after the case. In the present case the issue of exposure of medical records wasn't even considered by the trial Court or the review Court.

The Petitioner had included in the case 11-F-33, the letter and paperwork from the TSA which is required for employment in any of the transportation fields. The TSA questioned what was the disposition of the indictment but the court never provided an answer. The Petitioner has a work record with the Merchant Marine, and oversight is by the US Coast Guard. Following the trial court case in 11-F-33 which was the subject of the Writ, the Petitioner has not been able to work in his field of employment because there was no closure for the indictment. The Court never responded to the inquiries by

the TSA about the disposition of the case. This has caused Knotts great harm and prevented him from moving forward with his life. It is an error that this matter is not addressed here, and that it was not addressed by the trial court. If the final order had been written properly the error would have been corrected. If the parties had reached the correct conclusion about the level of proofs required in this criminal case, and if they had submitted the matter to a jury this case would have been resolved.

The Petitioner is entitled to resolution of the matter. Judicial notice should be taken that Coram Nobis has been a legal process that has provided justice after many years and many appeals in many courts provided none. In Yasui v. United States 320 US 115 US Supreme Court 1943 the conviction of Minoru Yasui was upheld. However in January 1984 the conviction was overturned in Yasui v. United States, No. 83-151 D.Or. Jan 26, 1984. The District of Oregon case was a Coram Nobis case.

REASONS FOR GRANTING THE PETITION

This case has had many issues that were only supposition, beliefs, and opinions fashioned to look like law. This case has elements that challenge the Court system. The Petitioner is entitled to the same rights as other indicted individuals, however the system has allowed his case to travel along an alternate path that has left him without a remedy. As a legal case he should be allowed to have a trial by jury, with the standard of proofs beyond a reasonable doubt. He should be allowed to have a final order that disposes of his case. He should be allowed to have closure for a criminal complaint and indictment so that he can pursue employment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____/s/Zachary Knotts

Date: 9-1-20