No. 20-6279

IN THE

SUPREME COURT OF THE UNITED STATES

Bodhisattva Skandha — PETITIONER
(Your Name)

vs.

ORIGINAL

Massachusetts Appeals Court — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Bodhisattva Skandha
(Your Name)

Box 43, Norfolk MA 02056
(Address)

Norfolk, MA 02056
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

Issue #1:

WHETHER THE LOWER COURT ABUSED ITS DISCRETION BY DISMISSING THE COMPLAINT?

pp. 6-7

Issue #2:

WHETHER THE PLAINTIFF HAS STANDING ACCORDING TO THE UNITED STATES SUPREME COURT?

pp. 7-10

Issue #3:

WHETHER THE LOWER COURT FAILED TO APPLY FULL FAITH AND CREDIT?

pp. 10-12

Issue #4:

WHETHER THE RPOI WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL?

pp. 12-14

Issue #5:

WHETHER THE DEFENDANT WAS ENTITLED TO AN ADJUDICATION TO DETERMINE HIS MENTAL CONDITION AFTER JUDGE KANE'S COMMITMENT ORDER ON FEBRUARY 25, 1992?

pp. 14-17

LIST OF PARTIES

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

[x] 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:

Massachusetts Appeals Court

Middlesex Superior Court

Marian T. Ryan, District Attorney

RELATED CASES

Commonwealth v. Hung Tan Vo, 427 Mass. 464 (1998)

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES CONT'

Note: Prisoners are not allowed copies of regulations, Statutes, or Caselaw per Law Librarian MCI-Norfolk.

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[ ] is unpublished.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[ ] is unpublished.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 _____ 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 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 _____. 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

Statement Of The Case

The plaintiff ("Next Friend") was concerned when Dorothy Mele of the Committee For Public Counsel Services (CPCS) sent the real party of interest ("RPOI") a copy of the August 5, 2014 letter to the Clerk of the Middlesex Superior Court, declining to appoint counsel. [Appendix ("App") C, 55]

Director of Criminal Appeals, Donald Bronstein, notified the RPOI he would not be represented on February 29, 2016. [App. C. 27]

Represented by Attorney Lawrence Glynn in 1992, the RPOI lacked communication skills as he grew up in Viet Nam and came to the United States as a teen-ager around 1982.

Mr. Glynn testified under oath at a November 1995 motion hearing that his client was unable to assist in his own defense. [App. C, 53]

Because the RPOI is incompetent, the plaintiff assisted him with a Motion To Vacate, Set Aside, Or, Correct Sentence. None of the pre-trial issues were ruled upon. [App. C, 69-74]

After denial in the Superior Court, the plaintiff applied for review in the Massachusetts Appeals Court, citing both United States Supreme Court and Federal Circuit Court of Appeals cases. [App. C, 89-90]

On April 28, 2020, the Appeals Court, Vuono, Blakd & Singh, JJ., denied relief, not on the merits of the issues presented, but on a perceived procedural issue that the plaintiff was ...indication or even an allegation that Skandha has been appointed Wampler's guardian or 'next friend." [citing] Enos v. Secretary of Envtl. Affaires, 432 Mass. 132, 135 (2000)("standing is not measured by the intensity of the litigant's interest or the fervor of his advocacy" [citation omitted] [App. A, 3]

The plaintiff applied for leave to obtain further appellate review (ALOFAR) where the plaintiff queried "Is it proper to put a mental patient on trial? And, "Does an attorney have to tell his client that the Commonwealth has offered to plead the case out rather than go to trial? [App. C, 116]

ALOFAR was denied July 27, 2020. [App. B]

Reasons For Granting The Petition

Issue #1:

WHETHER THE LOWER COURT ABUSED ITS DISCRETION BY DISMISSING THE COMPLAINT ?

The lower Court, Wilkins, J., acting in the place of the defendantssua sponte, invoked the Mass.R.Civ.P. 12(b)(6) for the "failure to state a claim."

All the facts in the plaintiff's complaint must be accepted as true, as well as any favorable inferences therein. Galiastro v. Mortgage Electronic Registration Systems, 467 Mass. 160, 164 (2014)

The plaintiff can prove all the facts in the complaint. Nader v. Cintron, 372 Mass. 96, 98 (1977)

The State Court was required to review the lower Court's self-aggrandized dismissal de novo. Merriam v. Demoulas Super Mkts., 464 Mass. 721, 726 (2013)

> Rule 8(a)(1) requires only a short and plain statement of the claim showing the pleader is entitled to relief.
>
> Mass.R.Civ.P. 8(a)(1)

Specific facts are unnecessary: the statements need only give the defendant(s) fair notice of what the claim is and the ground upon which it rests. Neitzke v. Williams, 490 U.S.319, 327 (1989): Erickson v. Pardus, 551 U.S. 89 (2007)

The heart of this case is not for the RPOT to "win a new trial." It is for the defendants to write/tell the truth and the Court to rule on the Pre-Trial issues presented. [App. c. 65-66, 67-68] And the difference between App. C. 69-74 where the Middlesex Superior Court based on the rabid "trial proceedings" argued against RPOT, cheated. The Court, Billings, J., did not rule on the Pre-Trial issues.

Issue #2:

WHETHER THE PLAINTIFF HAS STANDING ACCORDING TO THE UNITED STATES SUPREME COURT?

"Standing" is esconced in the Declaratory Judgment stature, G.L. c. 231A §1. The purpose of the statute is to provide a remedy which will terminate the controversy. Was the RPOT entitled to a ruling on the

merits for the violation of Constitutional rights under the Due Process Clause of Article 12 and the 14th Amendment to the Constitution?

There are so many cases on Real Party Of Interest petitions, litigations, and judgments, it boggles the mond the lower Court does not know the law.

The United States Supreme Court cases of Hollingsworth v. Perry, 570 U.S. 693 (2013) gives standing. Whitmore v. Arkansas, 495 U.S. 149 (1990) gives the plaintiff standing.

The Rule of Law is that where the "real party of interest" is unable to litigate his own cause due to diminished mental capacity, lacke of access to the Courts, or (other) similar disability, the plaintiff can seek relief for the RPOI. Whitmore, 495 U.S. at 161, 165. See also, Gollust v. Mendell, 501 U.S. 115, 124-125 (1990)

Federal Circuit Courts, Sam M. v. Carcieri, 608 F.3d 77, 90 (1st Cir. 2010): Figueroa v. Rivera, 147 F.3d 77, 82 (1st Cir. 1998) are the same.

In Sam M., the following requirements were meted out:

1) the plaintiff must give an adequate explanation such as inaccessibility, mental incompetence, or other disability why the RPOI cannot appear in his own behalf;

2) the plaintiff is truly dedicated to the best interest of RPOI.

Sam M., 608 F.3d at 90.

There are Massachusetts cases: Ayawanna Davis and Next Friend of Elias Davis v. H.C. Land Trust-LLC & Greater Boston Mgmt. Inc., Mass. Super. LEXIS 1512 (Suffolk 2016); Gordon v. Entertainments, Mass. Super. LEXIS 1454 (Suffolk 2016)

The plaintiff is proper. He seeks relief from uncertainty with respect to rights, duties, status and other legal relations. Bonan v. Boston, 398 Mass. 315 (1986); Boston v. Keene Corp., 406 Mass. 301 (1989)

In United Oil Paintings, Inc. v. Commonwealth, 30 Mass. App. Ct. 958 (1991) the Court held that the

Declaratory Judgment statute requires both a controversy and standing. The plaintiff submitted both. The plaintiff is not an attorney, but he is the next friend of the real party of interest.

Issue #3:

WHETHER THE LOWER COURT FAILED TO APPLY FULL FAITH AND CREDIT?

The Full Faith and Credit Act, 28 U.S.C. §1738 mandates that the judicial proceedings of any state shall have the same full faith and credit in every Court within the United States as they have by law or usage in the Courts of such state from which they are taken. Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367 (1996)

Here, the rubric being, the Lower Court must give full faith and credit to the cases in Massachusetts on the State level, the cases from the First Circuit Court of appeals, from all Circuits, and, of course, the United States Supreme Court, the decisions of which are stronger than 28 U.S.C. §1738.

Stare Decisis is the preferred course of applying Next Friend law because it promotes the evenhanded,

predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process. Janus v. AFSCME, 201 L Ed 2d 924, 955 (2018) [citing] Payne v. Tennessee, 501 U.S. 808, 827 (1991); Accord, Commonwealth v. Vasquez, 456 Mass. 350, 356 (2010)

In the RPOI's motion, he cited Lafler v. Cooper, 132 S.Ct. 1376 (2012) and Missouri v. Frye, 132 S. Ct. 1399 (2012) that his attorney failed to inform him of plea offers prior to trail, which, if accepted, would nullify the need for trial. [App. C, 67] The State did not address the issue of Lafler & Frye, or any other Pre-Trial issue. [App. C, 69-74]

In addition the Lower Court gave no opportunity for the plaintiff to be heard. Matter of Angela, 445 Mass. 55, 62 (2005); Board of Regents v. Roth, 408 U.S. 564, 569-570 (1972)

If allowed to develop the record at an evidentiary hearing the RPOI's testimony would be he may be capable of copying words and phrases from a case, but he knows

nothing about making a logical argument to the Court. He speaks fluent Vietnamese and broken English. The plaintiff, as the Next Friend, speaks English, knows the law and is able to brief the facts to the law.

Issue #4:

WHETHER THE RPOI WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL?

"...[I]f a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If the right is denied, prejudice can be shown if the loss of the opportunity to plead led to putting the RPOI on trial resulting in a conviction of more serious charges, or the imposition of a greater punishment, in violation of the Constitution. Lafler v. Cooper, 132 S.Ct. 1376, 1387 (2012)

In the case at bar, prior to the commencement of the trial, defense counsel knew that the defendant faced a conviction of 1st Degree Murder with a sentence of Life without parole, but failed to inform the defendant the Commonwealth had offered 2nd Degree and three options of Manslaughter, which was amenable

to the Trial Court, Bohn, J.

> "[T]he constitutional guarantee applies to pretrial critical stages that are part of the whole course of a criminal proceeding in which defendants cannot be presumed to make critical decisions without counsel's advice."

Halbert v. Michigan, 545 U.S. 605 (2005): Evitts v. Lucey, 469 U.S. 387, (1985)(Should have been brought up on direct appeal, Commonwealth v. Hung Tan Vo, 427 Mass. 464 (1998)) Lafler at 1385.

To establish prejudice:

> "...The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Accordingly, any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."
>
> Strickland v. Washington, 104 S. Ct. 2052, 2067 (1984)

The defendant has made this showing on the facts that, without being told of the offers, he was taken to trial, convicted, and sentenced.

This Court, putting it all in perspective, will hold counsel's conduct so undermined the proper functioning of the adversarial process that the conviction cannot be sustained. Strickland, 2064.

As this Court explained in Frye, the right to adequate assistance of counsel cannot be defined or enforced without taking account the central role that plea bargaining plays in securing convictions and determining sentences. (It is insufficient simply to point to the "fair trial" as a backstop which inoculates any errors inthe pretrial process.) See, Lafler v. Cooper, at 1388.

Issue #5:

WHETHER THE DEFENDANT WAS ENTITLED TO AN ADJUDICATION TO DETERMINE HIS MENTAL CONDITION AFTER JUDGE KANE'S COMMITMENT ORDER ON FEBRUARY 25, 1992?

The questions asked to the Supreme Judicial Court in the ALOFAR brief are relevant here:

1. Is it proper to put a mental patient on trial?
2. [App. C, 1161

Prior to the commencement of the defendant's trial on March 2, 1992 the Trial Court failed to provide the procedures mandated in Ford v. Wainwright, 106 S.Ct. 2595 (1986)

On April 3, 1991, at the testimonial post-conviction hearing on a motion for a psychiatric examination/evaluation, the facts clearly indicate the defendant, who had a mental illness, [App. C, 911 did not receive an adequate opportunity to retain his own expert to inquire into his competency to stand trial on March 2, 1992.

The prohibition here, under Ford, applies based on the fact that an earlier competency evaluation on whether the defendant understood right from wrong, does not foreclose the defendant from proving he is incompetent to stand trial in his present condition.

Under the Due Process Clause of the 14th Amendment he was entitled to a competency hearing in the Superior Court. Panetti v. Quarterman, 127 S. Ct. 2482, 2847-2848 (2007)

Viewed as a whole, the pretrial record discloses too many signs of trouble to be ignored. It is

clear from the record that the TRial Court implied that the determination of defendant's competency was made solely on the basis of examinations performed in November 1991 by a psychologist, appointed by the Court, "...precisely the sort of adjudication Justice Powell warned 'would invite arbitrariness and error,'..." Id., citing Panetti at 2857.

The commitment Order by the Court, Kane, J., [App. C, 91] six (6) days prior to the commencement of the trial, without a competency hearing, without an expert for the defense.

THE COURT: The problem of course is if he was not competent, mentally competent at the time of the trial, I would be responsible for it.

ATTORNEY: The question, Your Honor, did he understand?

[App. C, 110]

The test for incompetence is well settled. A defendant may not be put to trial unless he "has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding... and a rational as well as factual understanding of

"the proceedings against him." Dusky v. United States, 362 U.S. 402 1960); Cooper v. Oklahoma, 116 S.Ct. 1373, 1377 (1966)

Conclusion

For the reasons stated above, in fact and law, the defendant's Petition For Certiorari should be allowed.

September 30,, 2020

Respectfully submitted,

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