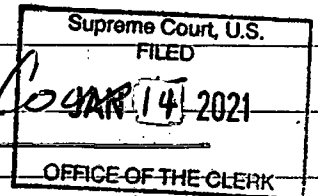


20-6958
NO.

IN THE UNITED STATES SUPREME COURT



LUIS PAULINO, PRO-SE, PETITIONER

VS.

THE UNITED STATES COURT OF APPEALS,
FOR THE SECOND CIRCUIT, (AND)

THE NEW YORK STATE COURT OF APPEALS,
RESPONDENTS

MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS

THIS HAND WRITTEN, AND BELIEVED LEGIBLE
SUBMISSION ASK THE U.S. SUPREME COURT'S
LEAVE TO FILE ATTACHED PETITION FOR A WRIT
OF CERTIORARI WITHOUT PREPAYMENT OF COST AND
TO PROCEED AS A POOR PERSON BY EXTENDING
IN FORMA PAUPERIS STATUS TO THE INSTANT COURT.
QUESTIONS OF LAW ARE NON-FRIVOLOUS AS THEY
CONCERN LOWER COURT'S APPLICATION OF U.S.
SUPREME COURT'S HOLDINGS CONCERNING LIBERAL
CONSTRUE OF PRO-SE PLEADINGS.

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Luis Paulino
LUIS PAULINO 12A 2151

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

LUIS PAULINO, PRO-SE, PETITIONER,

VS,

THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT, (AND)

THE NEW YORK STATE COURT OF APPEALS,
RESPONDENTS.

ON PETITION FOR A WRIT
OF CERTIORARI TO:
THE UNITED STATES SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

LUIS PAULINO #12A2151
GREEN HAVEN CORR. FAC.
594 ROUTE 216
STORMVILLE, NEW YORK

12582

QUESTION(S) OF CONSTITUTIONAL DIMENSION

1. WHETHER DEFENDANT IN CERTAIN SITUATIONS MAY RELY UPON PRESUMPTION OF VINDICTIVENESS OR "PENALIZED" FOR EXERCISING RIGHT TO TRIAL?
2. WHETHER PRO-SE PLEADINGS WERE DEPRIVED OF THE UNITED STATES SUPREME COURT'S DESCRIPTION AND APPLICATION FOR "LIBERAL CONSTRUCTION" OR SUBSTITUTED WITH CIRCUIT COURT'S PERCEPTION OF SUPREME COURT RULINGS, (COMPARE, LOPEZ V. SMITH, 574 U.S. ___, 135 S.Ct. 1 (2014), WITH QIEBEY V. FROST, 135 S.Ct. 429 (2014); HILL V. CURCIONE, 657 F.3d 116, 122 (2 Cir, 2011); TRACY V. ZUCK, 710 F.3d 90, 95 (2 Cir, 1983)?
3. WHETHER DISTRICT COURT DISPOSITION WOULD HAVE RESULTED IN A DIFFERENT OUTCOME, "IF" PRO-SE SUBMISSION HAD BEEN LIBERALLY CONSTRUED? (HUGHES V. ROWE, 449 U.S. 5, 8 (1980); HAINES V. KERNER, 404 U.S. 519 (1972))
4. WHETHER DEFENDANT WAS "IMPROPERLY" PENALIZED FOR EXERCISING RIGHT TO TRIAL? (GARCIA V. HERBERT, 2018 WL 6272778 (USDC/EDNY); U.S. V. GOODWIN, 457 U.S. 268 (1982); BORDENKIRCHER V. HAYES, 434 U.S. 357, 363 (1979))

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION
OF THIS CASE ON THE COVER PAGE

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STATUTES AND FEDERAL RULES

28 USC SEC. 2253, (c)(1)(2), (e)(2)

28 USC SEC. 2254, (a)(b)

FRCP SEC 60(b)(1)

NEW YORK STATE STATUTES

NEW YORK STATE PENAL LAW, SEC. 265.03

NEW YORK STATE CONSTITUTION, ART. 1, SEC. 6

IN THE SUPREME COURT OF THE UNITED STATES - PETITION FOR WRIT OF CERTIORARI

PETITIONER, MOVING IN PRO-SE, RESPECTFULLY PRAY THAT A WRIT OF CERTIORARI ISSUE TO REVIEW THE JUDGMENT BELOW.

OPINIONS BELOW

THE OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, APPEAR AT APPENDIX "A"

THE OPINION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, APPEAR AT APPENDIX "B"

Jurisdiction.

THE DATE IN WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS DECEMBER 23, 2020.

THE JURISDICTION OF THIS CASE IS INVOKED UNDER 28 USC SEC 1254(1); 2254(2)

THE UNITED STATES CONSTITUTION, AND STATUTORY PROVISIONS INVOLVED

THE MEANINGFUL APPLICATION OF THE
FIRST AMENDMENT, RIGHT TO REDRESS;
FIFTH AMENDMENT, RIGHT TO DUE PROCESS;
SIXTH AMENDMENT, RIGHT TO EFFECTIVE ATTORNEY;
FOURTEENTH AMENDMENT, RIGHT TO EQUAL APPLICATION
OF ESTABLISHED LAW, DEVOID OF DISCRIMINATION

STATEMENT OF THE CASE

District Court Failed To Interpret Pro-se pleadings in their strongest Constitutional claim, whereby petitioner's Announcement Contending Deprivation of Fair Trial, or Constitutionally Repugnant Sentencing, "If" Liberally Constructed would have resulted in the United States Magistrate Judge's Report and Recommendation Assertion of a Different Conclusion.

Liberal Construct of Pro-se submissions show petitioner had been acquitted of the "intent" element attached to the, "SECOND DEGREE POSSESSION OF WEAPON," charge. Thus, to sentence petitioner to, SECOND DEGREE POSSESSION would be an UNLAWFUL CHARGE WHERE ALL THE ELEMENTS ARE NOT AVAILABLE. Clearly, charge of Drug possession AND possession of gun in this case, allegedly, violates more than one statute during a single inseparable act; there can only be a single punishment. Concurrent sentence was warranted; rather than consecutive sentences. (Constitutionally Repugnant Sentence)

LIBERAL CONSTRUCTION WOULD ALSO HAVE DISCLOSED TRIAL COURT'S FAILURE TO AFFORD DEFENDANT HIS ENTITLEMENT TO, "JUSTIFICATION INSTRUCTION," ON THE BASIS OF THE ACQUITTAL OF THE ELEMENT OF "INTENT"...

DEFENSE ATTORNEY REPRESENTATION, TOGETHER WITH APPELLATE ATTORNEY REPRESENTATION, BOTH OVER-LOOKED THE "UNLAWFUL" CHARGE OF SECOND DEGREE POSSESSION OF A WEAPON, ONCE THAT ELEMENT OF "INTENT" WAS REMOVED FROM THE CONVICTION. (COMPARE, UNITED STATES v. WATTS, 519 U.S. 148 (1997) CITED IN PEOPLE v. BLACK, 33 A.D.3d 338 (1 Dept. 2006)); (COMPARE ALSO, HIRABAYASHI v. UNITED STATES, 320 U.S. 81, 85)

THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FAILED TO LIBERALLY CONSTRUCT PRO-SE PLEADING CONCERNING DEFICIENT ATTORNEY PERFORMANCE UNDER THE LANGUAGE IN LOPEZ v. SMITH, 135 S.Ct. 1 (2014).

MOREOVER, "VINDICTIVE" SENTENCING MAY BE LAWFULLY PRESUMED UNDER THE CIRCUMSTANCES.

REASONS FOR GRANTING THE FEDERAL HABEAS CORPUS PETITION FOR WRIT OF CERTIORARI

THAT DEFENSE ATTORNEY WAS INCOMPETENT OR TRIAL AND APPELLATE COURT REVIEWS OVER-LOOKED THE CONSTITUTIONALLY UNLAWFUL CHARGE AND CONVICTION FOR SECOND DEGREE POSSESSION OF WEAPON, (PENAL LAW, SEC. 265.03), CONSTITUTES THE BASIS OF PROSE WRIT, GOES WITHOUT SAYING. MOREOVER, PETITIONER'S INABILITY TO EXPRESS A WRONGFUL SENTENCE AND COURT ERR IS THE OMISSION OF THE, JUSTIFICATION INSTRUCTION, SHOULD NOT BE SEPARATED FROM THE SUPREME COURT'S PURPOSE FOR, "LIBERAL CONSTRUCTION."

WHERE THE RECORD REFLECTS AN ABSOLUTE REQUIREMENT FOR INTERPRETER, IT STANDS TO REASON THAT DEFENDANT WAS WITHOUT UNDERSTANDING HIS RIGHTS TO MEANINGFUL REPRESENTATION EVEN WITH THE ACQUITTAL OF THE UNDERLYING "ELEMENT" OF INTENT.

IN PEOPLE v. BLACK, 33 A.D.3d 338 (1 DEPT, 2006) CITING UNITED STATES v. WATTS, 579 U.S. 148 (1997) - SIMILAR CIRCUMSTANCES CONCERNED THE WATTS COURT'S RATIONALE IS NOT APPROPRIATE TO THIS CASE WHERE A JUSTIFICATION DEFENSE WAS OFFERED. AS THE JURY VERDICT MADE CLEAR DEFENDANT'S ACTS OF SHOOTING AT PEOPLE WHO WERE THREATENING HIM WITH DEADLY PHYSICAL FORCE WERE JUSTIFIED UNDER THE LAW. INDEED, THAT DEFENDANT WAS ACQUITTED OF ALL CHARGES FOR WHICH THE JUSTIFICATION DEFENSE WAS CONSIDERED BY THE JURY AND CONVICTED OF THE ONLY CHARGE FOR WHICH THE JURY WAS, (ERRONEOUSLY) TOLD THE JUSTIFICATION DID NOT APPLY IS CONVINCING PROOF THAT THE JURY CREDITED THE JUSTIFICATION DEFENSE AND DID NOT MERELY EXERCISE LENIENCY...

THAT THIS CASE REQUIRED CAPABLE REPRESENTATION IS OBVIOUS; OTHERWISE, THE CONTENTENDED UNLAWFUL CONSECUTIVE SENTENCING WOULD NOT CONTINUE TO SURVIVE. (SEE "IMPROPERLY PENALIZED FOR EXERCISING RIGHT TO TRIAL" (GARCIA v. HERBERT, 2018 WL 6272778 (USDC/EDNY))

WHEREBY, Trial Court's wrongful, alleged, CONSECUTIVE SENTENCING, IN THE FACE OF UNITED STATES COURT OF APPEALS' FAILURE TO LIBERALLY CONSTRUCT PRO-SE PETITIONER'S CLAIMS - HAVE APPARENTLY AFFECTED THE ORGANIZATION OF THE COURT, (E.G. DAVILA V. DAVIS, 137 8-CT, 2058 (2017))

STATE COURT'S SENTENCING FOR A CHARGE THAT DOES "NOT" MEET THE REQUIRED ELEMENTS, BY LAW, WOULD BE AN UNLAWFUL CONVICTION, ACCORDING TO STATUTE FOR (1) CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE AND (2) CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SECOND DEGREE. PETITIONER WAS ACQUITTED OF MURDER, MANSLAUGHTER, ATTEMPTED MURDER, ASSAULT IN THE FIRST DEGREE, AND POSSESSION OF WEAPON WITH "INTENT" TO INTENTIONALLY USE. (SEE "VINDICTIVE SENTENCING")

THE REQUIREMENT FOR CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE, INCLUDES THE ELEMENT OF INTENT.

"WE ALSO FIND THAT RESENTENCING IS REQUIRED ON THE WEAPONS POSSESSION COUNT BECAUSE THE TRIAL COURT ERRONEOUSLY RELIED ON THE COUNTS OF WHICH DEFENDANT WAS ACQUITTED IN MAKING ITS SENTENCING DETERMINATION..."
(SEE PEOPLE v. BLACK, 33 A.D.3d 338.
(1 DEPT, 2006))

SENTENCING IN THIS CASE WAS UNLAWFUL, IF NOT REPUGNANTLY UNCONSTITUTIONAL WHERE, TRIAL COURT HAVE ABUSED ITS DISCRETIONARY PREROGATIVES BY BASING ITS SENTENCE ON CRIMES OF WHICH THE DEFENDANT WAS ACQUITTED. (COMPARE UNITED STATES v. GOODWIN, 457 U.S. 268 (1982) RE: VINDICTIVE SENTENCE) PETITIONER'S ACQUITTALS WERE INTIMATELY RELATED AND INTERTWINED WITH THE CHARGES OF WHICH DEFENDANT WAS CONVICTED. UNDER THE CIRCUMSTANCES, THE COURT COULD NOT REASONABLY CHARGE CRIMINAL POSSESSION OF A WEAPON IN THE SECOND DEGREE BECAUSE THE ELEMENT OF "INTENT" WAS IMPROPERLY ASSUMED TO SURVIVE THE JURY'S ACQUITTAL OF, "POSSESSION OF WEAPON WITH INTENT TO INTENTIONALLY USE..."

PETITIONER ALLEGES THAT HIS PRO-SE
PLEADINGS RELATED TO CLAIM THAT STATE
COURT CORRECTLY IDENTIFIES THE
GOVERNING LEGAL PRINCIPLE, BUT
"UNREASONABLY" APPLIED IT TO THE FACTS
OF A PARTICULAR CASE. (COMPARE BELL V. CONE,
535 U.S. 685, 694 (2002))

IF NOT FOR DISTRICT COURT'S FAILURE TO
LIBERALLY CONSTRUCT PETITIONER'S CLAIMS, HE
WOULD HAVE BEEN ENTITLED TO RELIEF
UNDER 28 USC 2254(2)(1). (SEE "UNREASONABLE
APPLICATION" CLAUSE), (SEE ALSO, "PRESUMPTION OF
VINDICTIVENESS" E.G., U.S. V. GOODWIN, SUPRA.)
AN UNREASONABLE APPLICATION IS NOT MERELY
AN INCORRECT OR ERRONEOUS ONE;
(WILLIAM V. TAYLOR, 529 U.S. AT 411) AND, TO
ESTABLISH RIGHT TO FEDERAL HABEAS RELIEF UNDER
THIS CLAUSE, A HABEAS PETITIONER NEED "NOT"
SHOW THAT A STATE COURT HAS APPLIED
SUPREME COURT LAW IN A MANNER THAT
REASONABLE JURISTS WOULD ALL AGREE IS
UNREASONABLE. (WILLIAM V. TAYLOR, 529 U.S. AT
409)

MOREOVER, POOR PERSON, IMPRISONED PETITIONER CLAIMS HIS STATE CONVICTION IS PREJUDICED BY STATE AND FEDERAL JURISTS WHO HAVE CONSTRUCTED THE SUPREME COURT'S HOLDINGS REGARDING THE PURPOSE OR INTENT FOR LIBERAL CONSTRUE. (OTHERWISE, THE SITUATION OF PRESUMPTION OF VALIDITY IS OVERLOOKED) PETITIONER COMES SEEKING NOTHING LESS THAN THE BENEFITS OF HAINES v. KERNER, 404 U.S. 519 (1972) - BECAUSE HIS COMPETENCY OF THE ENGLISH LANGUAGE OR HIS ABILITY TO EXPRESS HIS ALLEGATIONS ARE SURELY VERY IMPEDED, IF NOT LIMITED TO THOSE BENEFITS AFFORDED BY U.S. SUPREME COURT IN LOPEZ v. SMITH, 135 S. Ct. 1 (2014). IT IS, HOWEVER, NOT AN UNREASONABLE CLAIM WHERE PETITIONER ALLEGES THAT HIS SUBMISSIONS TO LOWER COURTS ARE TRAMMELED BECAUSE HE IS NOT REPRESENTED BY COUNSEL; OR HIS PRO-SE PLEADINGS DO NOT RECEIVE LIBERAL CONSTRUE AS HELD BY THE U.S. SUPREME COURT. THE ALLEGATION THAT HE HAVE BEEN IMPROPERLY PENALIZED FOR GOING TO TRIAL IS NOT WITHOUT MERIT HERE.

THIS CASE, NEVERTHELESS, DOES NOT DISCARD THE AUTHORITY OF THE UNITED STATES SUPREME COURT, BECAUSE IT IS POSSIBLE FOR AN INVITE TO AMICUS CURIAE INTERVENTION. THE CONTENTIONS BROUGHT ARE TRULY NOT SUBORN TO ANY BELIEF THAT THE HIGHEST COURT WOULD NOT CONSIDER THE LOWLIEST OF ITS POOR PETITIONERS PLIGHT HAVING A PROBABLE AND MERITORIOUS CLAIM.

THIS PAPER CONSTITUTES DEFENDANT PETITIONER'S DUE DILIGENCE TO ADDRESS A CONSTITUTIONAL QUESTION OF LAW CONCERNING A CONVICTION UPHOLD BY STATE AND FEDERAL COURTS THAT IS RESTING UPON "LESS" THAN THE REQUIRED ELEMENTS FOR THE CHARGE.

THAT THE LOWER COURTS SERVED TO IGNORE AN UNLAWFUL SENTENCE IS NOT THE ISSUE HERE. WHAT IS OF IMPORT IS THE FACT THAT LOWER COURTS EXPECT PRO-SE PETITIONER TO ADEQUATELY DEMONSTRATE BY ARTICULATENESS IN NO UNCERTAIN, ENGLISH LANGUAGE TERMS THAT

HIS CONVICTION AND SENTENCE VIOLATED THE PROHIBITION OF DOUBLE PUNISHMENT CONTAINED IN SECTION 1938 OF THE FEDERAL LAWS, WHICH AMOUNTS TO A CONSTITUTIONAL VIOLATION OF DUE PROCESS UNDER THE FIFTH AND FOURTEENTH CONSTITUTIONAL AMENDMENTS (SEE PEOPLE EX REL MAURER V. JACKSON, 2 N.Y. 2d 259 (1957) RE: CONSECUTIVE SENTENCES AS OPPOSE TO CONCURRENT)

UNDERLYING THIS PETITION IS THE QUESTION OF LIBERAL CONSTRUER'S AVOIDANCE OF CLAIMS THAT "PENALIZE" DEFENDANT FOR EXERCISING RIGHT TO TRIAL, (E.G. GARCIA V. HERBERT, 2018 WL 6272778 (USDC/EDNY) CITING PEOPLE V. COSME, 203 A.D. 2d AT 376; BORDENKIRCHER V. HAYES, 434 U.S. 357, 363 (1979) RE: "VINDICTIVENESS") SIMILARLY, LOWER COURTS, ALLEGEDLY PERCEIVE THE VINDICTIVE NATURE OF TRIAL JUDGE IN RESPONSE TO A JURY VERDICT, AS IN THIS CASE, ACQUITTED THE ACCUSED OF CHARGES AND COUNTS THAT CONTAINED THE NECESSARY "ELEMENT" TO VALIDATE WHAT WOULD HAVE BEEN A LAWFUL SENTENCE.

Conclusion:

PRO-SE DEFENDANT RELIES UPON SUPREME COURT HOLDINGS CONCERNING, "LIBERAL CONSTRUCTION," HOWEVER, DISTRICT COURT MAY HAVE OVER-LOOKED THE MATTER OF STATE COURT'S, "VINDICTIVENESS" IN SENTENCING AS MAY BE COMPARED TO HOLDINGS AT, GARCIA V. HERBERT, SUPRA; UNITED STATES V. GOODWIN, 457 U.S. 268 (1982)...

UNDER PEOPLE V. FRANUS, 100 A.D.3d 1017 (2 DEPT. 2012); PEOPLE V. WILSON, 303 A.D.2d 773 (2 DEPT. 2003); PEOPLE V. PEDRAZA, 25 A.D.3d 394 (1 DEPT. 2006); AND BORDENKIRCHER V. HAYES, 434 U.S. 357, 363 (1979) LITED IN, GARCIA V. HERBERT, SUPRA; CERTIORARI MAY BE GRANTED ON THE BASIS OF, "EXCESSIVE" OR IMPROPERLY "PENALIZED" SENTENCING FOR EXERCISING RIGHT TO TRIAL.

SWORN TO BEFORE ME THIS

14 DAY OF JANUARY 2021
[Signature]

Respectfully Submitted,

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PATRICK LEON MCNEIL NOTARY PUBLIC, STATE OF NEW YORK Registration No. 01MC6324976 Qualified in Bronx County My Commission Expires: 05-18-2023
