

20-7262  
No. 21-

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**SUPREME COURT OF THE UNITED STATES**

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**MELVIN STILLS,**

*Petitioner,*

**vs.**

**COMMONWEALTH OF PENNSYLVANIA**

*Respondent.*

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**On Petition for a Writ of Certiorari to  
the Superior Court of Pennsylvania**

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**PETITION FOR A WRIT OF CERTIORARI**

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**FILED**

**FEB 10 2021**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**MELVIN STILLS, NG-3738**

SCI Fayette

48 Overlook Drive

La Belle, PA 15450

### **Question Presented**

Did the Pennsylvania Superior Court violate the due process rights of the Petitioner when it issued two opinions that conflicted on whether the record was complete enough to review the merits of the case and engineered a waiver issue while the trial court, Commonwealth, and Petitioner agreed on the facts of the case?

## TABLE OF CONTENTS

Question Presented.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Petition for Writ of Certiorari.....	1
Opinions Below.....	1
Jurisdiction.....	1
Constitutional Provisions Involved.....	2
Statement of The Case.....	2
Reasons for Granting the Writ.....	4
Conclusion.....	7
Appendix.....	9
A. Superior Court Opinion, March 31, 2020.....	A1
B. Superior Court Reconsideration Granted, December 30, 2019.....	A13
C. Superior Court Opinion, December 17, 2019.....	A14
D. Trial Court Opinion, March 13, 2019.....	A26
E. Supreme Court Order Denying Allocatur, November 12, 2020.....	A38
F. Superior Court Opinion, January 6, 2016.....	A39
G. Trial Court Opinion, May 1, 2015.....	A43

## **TABLE OF AUTHORITIES**

### **CASES**

<u>Carter v. People of State of Illinois</u> , 329 U.S. 173 (1946).....	4
<u>Blackledge v. Perry</u> , 417 U.S. 21 (1974).....	4
<u>Eaton v. City of Tulsa</u> , 415 U.S. 697 (1974).....	5
<u>Cole v. State of Ark.</u> , 333 U.S. 196 (1948).....	5

### **STATUTES**

18 Pa.C.S. 3701(a)(1)(i).....	5
18 Pa.C.S. 3701(a)(1)(ii).....	5

### **Constitutional Provisions**

United States Constitution, Amendment XIV.....	2
Pennsylvania Constitution, Article V, Section IX.....	4

## **PETITION FOR WRIT OF CERTIORARI**

Melvin Stills, an inmate currently incarcerated at State Correctional Institution Fayette at La Belle, Pennsylvania, respectfully petitions this court for a writ of certiorari to review the judgment of the Pennsylvania Superior Court.

### **OPINIONS BELOW**

The decision by the Pennsylvania Superior Court denying the Petitioner's appeal dated March 31, 2020 is attached at Appendix ("App.") at 1-12. The order withdrawing the first opinion is attached at App. 13. The withdrawn decision date December 17, 2019 is attached at App. at 14-25. The trial court opinion dated March 13, 2019 is attached at App. at 26-37. The Pennsylvania Supreme Court denied the Petitioner's petition for allowance of appeal on November 12, 2020. That order is attached at App. at 38. The direct appeal opinion by the Superior Court is attached at 39-42. The trial court direct appeal opinion is attached at 43-52.

### **JURISDICTION**

Petitioner's petition for allowance of appeal to the Pennsylvania Supreme Court was denied on November 12, 2020. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Pennsylvania Supreme Court's judgment.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

Amendment XIV, section 1, of the United States Constitution provides in part:

No State shall ... deprive any person of life, liberty, or property, without due process of law[.]

## **STATEMENT OF THE CASE**

The Petitioner was arrested on January 29, 2013. Petitioner was charged with robbery with the infliction of serious bodily injury among other charges. Petitioner was represented by the same attorney from the preliminary hearing through his direct appeal. On May 30, 2014, at a bench trial, the Petitioner was found guilty of three counts of robbery among other charges. The testimony at trial was that the Petitioner and another man robbed three individuals at gunpoint. No one was seriously injured. On August 7, 2014, the Petitioner was sentenced to an aggregate sentence of fifteen-to-thirty years incarceration with a twelve year probationary tail.

On August 8, 2014, the Petitioner filed a notice of appeal. The trial court issued its opinion on May 1, 2015, reviewing the matter under the standard for an uncharged crime which was robbery with the threat of serious bodily injury. That crime and the crime actually charged are not cognate offenses. Petitioner filed his direct appeal brief on July 16, 2015. On appeal, counsel labored under the erroneous idea that his client had been charged and convicted of robbery with the threat of serious bodily injury instead of the correct charge which was robbery with infliction of serious bodily injury. On January 6, 2016, the Pennsylvania Superior Court affirmed the judgment of sentence on the basis of the flawed trial court opinion. On September 9, 2016, the Petitioner filed his Post-Conviction Relief Act petition. An amended petition was later filed alleging that trial counsel was ineffective for

2  
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failing to identify with what his client was charged. This failure caused counsel to neglect to move for an acquittal at the proper time or argue the proper standard on appeal.

On April 2, 2018, the trial court issued an order dismissing the Post-Conviction Relief Act petition. On April 26, 2018, the Petitioner filed a timely notice of appeal and on March 12, 2019, the trial court filed an opinion. In the opinion, the trial court noted that there was no question that trial/direct appeal counsel had misidentified what charge was brought against his client as the Commonwealth conceded the point. It was purely a question of law as to what the outcome should be. Petitioner filed his brief on June 24, 2019. During the course of writing the brief, post-conviction counsel realized the record was missing the original direct appeal brief, contacted the Commonwealth, and filed a motion to correct the record on July 17, 2019 with no objection from the Commonwealth. On July 22, 2020, the Commonwealth filed their brief. On August 5, 2019, the motion to correct the record was denied. On December 17, 2019, the Superior Court issued an opinion affirming the lower court. The Superior Court analyzed the charges under the wrong standard like it did in the direct appeal. Notably, it found that there was enough of a record to address the merits of the claim. On December 30, 2019, Petitioner filed an application for re-argument pointing out the errors in the opinion and it was granted and the original opinion was withdrawn. A second opinion was issued on March 31, 2020 which again affirmed the lower court, but found the claim it earlier reviewed was entirely waived. A second application for re-argument was filed on April 30, 2020. It was denied on June 22, 2020. A Petition for Allowance of Appeal to The Pennsylvania Supreme Court was filed on July 23, 2020. The Petitioner argued the Superior Court violated his due process rights by engineering the waiver issue when all sides of the lower court proceedings were in agreement an error had

occurred. The Pennsylvania Supreme Court denied the petition on November 12, 2020.

### **REASONS FOR GRANTING THE WRIT**

This case is many layered, but the crux of the case is the Pennsylvania Superior Court created a waiver issue that did not need to exist and initially held it had enough of a record to review the merits of the case, albeit under the wrong standard, but withdrew its opinion and authored one that found complete waiver of the central issue. Compare Superior Court Opinion, March 31, 2020 at App. 10-11 with Superior Court Opinion, December 17, 2019 at App. 22-24. Here, the trial court, which heard the case at a bench trial, also heard the post-conviction proceedings. Factually, the Commonwealth, Petitioner, and trial court were all in agreement. See Trial Court Opinion March 13, 2019 at App. 29-30. The Commonwealth, Petitioner, and trial court differed on what the outcome should be, given those facts, but everyone identified there was a problem in the case. Rather than review the issue, the Superior Court ducked the problem by claiming waiver.

This Court previously noted, "A State must give one whom it deprives of his freedom the opportunity to open an inquiry into the intrinsic fairness of a criminal process even though it appears proper on the surface." Carter v. People of State of Illinois, 329 U.S. 173, 175 (1946) (citation omitted). The Petitioner was guaranteed a right to an appeal by Article 5, Section 9 of the Pennsylvania Constitution. This Court further stated, as to the appellate processes, "once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts." Blackledge v. Perry, 417 U.S. 21, F.N. 4 (1974) (citations omitted). Here, the Superior Court blatantly gamed waiver to deny the Petitioner his right to appellate review of a valid claim.

The underlying issue the Petitioner wanted reviewed was that the Petitioner was



charged with Robbery with infliction of serious bodily injury under 18 Pa.C.S. 3701(a)(1)(i), but everyone, including the courts, labored under the idea that the Petitioner was charged with robbery under 18 Pa.C.S. 3701(a)(1)(ii) which only requires the threat of serious bodily injury. See Trial Court Opinion, 3/13/19 at App. 29-30; Superior Court Opinion 12/17/19 at App. 24 (reviewing the case under standard for the uncharged crime); Superior Court Opinion January 6, 2016 at App. 40-42; Trial Court Opinion, May 1, 2015 at App. 46-48. The evidence at trial showed that what injuries there were did not rise to the level of serious bodily injury. See Trial Court Opinion, 3/13/19 at App. 28-29. The evidence did not support the charge, but Petitioner's trial/direct appeal counsel argued the wrong charge which essentially denied him a direct appeal. Id. at 29-30. This situation—a court reviewing a case under the standard of an uncharged offense—is apparently rather rare, but Petitioner believes it is slightly analogous to what occurred in Eaton v. City of Tulsa, 415 U.S. 697 (1974) (appellate court affirmed lower court on basis of uncharged offense in a contempt case and this Court reversed as violation of due process). It is also analogous to what happened in Cole v. State of Ark., 333 U.S. 196 (1948) (reversing the lower court when it reviewed a conviction under the wrong standard for an uncharged crime). In Cole, a similar situation that was on a direct appeal instead of collateral appeal, this Court held that, “the petitioners have been denied safeguards guaranteed by due process of law—safeguards essential to liberty in a government dedicated to justice under law.” Id. at 202. Petitioner would just like to have the matter reviewed on the merits, but the Superior Court hid behind a waiver issue it manufactured after reviewing the matter under the standard of the uncharged offense. The Superior Court is using waiver to sweep this whole problem under the rug.

Additionally, the waiver problem at issue here was essentially created by the Superior Court. The trial court stated in its opinion that the Commonwealth admitted that trial/appellate counsel had misidentified the correct charge and there was no issue of fact. See Trial Court Opinion, March 13, 2019 at App. 29-30. Technically, the missing appellate brief was not even needed, as the trial court held that there was an error by trial/appellate counsel. It was essentially a factual finding by the trial court and the issue was conceded by the Commonwealth. Id. The trial court noted it was purely a question of law as to what remedy, if any, was needed to cure that error. Id. The trial court addressed the claim in its opinion without issue and did not find that there was waiver. See generally Trial Court Opinion, March 13, 2019 at App. 26-36. The basic question presented is—can trial counsel be effective when they have no idea what their client is charged with and base all of their arguments around an uncharged crime with a different standard of review? Rather than answer that question, the Superior Court ducked it and arbitrarily denied the Petitioner his right to appellate review after already reviewing the issue under the wrong standard.

The Petitioner filed a motion to correct the record when he found that the document was missing from the record because the Superior Court may have wanted to see it. This motion was discussed with the Commonwealth and filed prior to the Commonwealth filing its brief. The Commonwealth had no objection to this motion. The missing document had been filed with the Superior Court during the direct appeal and the certification on it read that it had been transmitted to both the Commonwealth and trial judge when it was filed. Everyone had access to the document and everyone was able to assess the case, except the Superior Court depending on what opinion one reads. The Superior Court created this problem by overlooking that all actors in the proceedings below agreed on the factual

scenario and additionally they denied themselves access to the unneeded missing document by denying the motion to correct the record. They turned what was essentially a formality into a case-ending issue for no reason.

Here, this case presents this Court with the chance to disarm the minefield of waiver traps setup by the Pennsylvania Superior Court to deny post-conviction petitioners their right to appellate review of their claims. This case is an egregious example of the practice, as the Superior Court ignored that the Commonwealth, lower court, and Petitioner all agreed on the facts. It held that it had enough of a record to review the matter and then went back on itself when it was pointed out that it reviewed the issue under the wrong standard. The Petitioner stands convicted of a crime clearly unsupported by the evidence to this day and no court has been brave enough to review the issue under the correct standard.

Petitioner has always just wanted his case reviewed on the merits. Everyone in the lower proceedings merely wanted the Superior Court to weigh in on how the matter should be decided. Instead of reviewing the matter as everyone wanted, the Superior Court hid behind waiver when the calculus would come out in the Petitioner's favor. This is unjust and a mutilation of due process. It is clearly not something readily cured by the lower courts as the Pennsylvania Supreme Court denied allocatur and the Superior Court was the cause. By arbitrarily denying people their right to appellate review of clearly legitimate claims, it undermines the credibility of all Courts.

### **CONCLUSION**

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the Pennsylvania Superior Court. This injustice

and violation of the Petitioner's due process rights should not stand.

Respectfully Submitted,

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Date: 2/8/21