

20-8139

UNITED STATES

SUPREME COURT

ORIGINAL

OCTOBER TERM

MARK W. BLOND,

PRO SE PETITIONER,

VS.

THE PEOPLE OF THE STATE OF NEW YORK,
RESPONDENT.

ON WRIT OF ERROR CORAM NOBIS
FROM THE NEW YORK COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

RESPECTFULLY SUBMITTED


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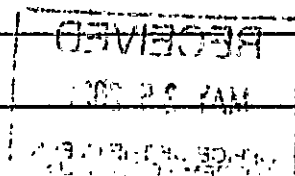
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QUESTIONS PRESENTED

1. WHETHER APPELLATE COUNSEL IS INEFFECTIVE FOR FAILING TO RAISE AN INEFFECTIVE TRIAL COUNSEL CLAIM; SINCE TRIAL COUNSEL PREPARED NO LAW OR ARGUED TO OFFER TWO OLIVETTIANS TESTIMONY FOR A DEFENSE?

2. WHETHER AN COURT RULED DECISION, NOT FOLLOWED BY THE STATE COURTS OR OTHER STATES, CAN BAR A DEFENDANT FROM OFFERING "VALIDATION" EVIDENCE VIA TWO WITNESS FAVORABLE TO THE DEFENSE?



LIST OF PARTIES

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CONSTITUTION:

SIXTH AMENDMENT

2

FOURTEENTH AMENMENT

3

ART. III § 2

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PETITION FOR WRIT OF HABEAS CORPUS

MARK W. BLOND, PETITIONER, RESPECTFULLY REQUESTS REVIEW OF THE JUDGMENT OF THE HIGHEST STATE COURT, WHICH DENIED REVIEW OF A WRIT OF HABEAS CORPUS, BASED ON INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, FOR NOT RAISING A CLAIM OF INEFFECTIVE ASSISTANCE OF TRIAL, WHO FAILED TO PRESENT A DEFENSE [DID NO RESEARCH], BY NOT PROCURING FAVORABLE DEFENSE TESTIMONY OF TWO CLINICIANS WHO EVALUATED THE ALLEGED VICTIM, AND FOUND HER STORY OF DAILY RAPE AND SEXUAL ABUSE INCREDIBLE.

OPINION BELOW

ON JULY 31, 2020, THE STATE OF NEW YORK, APPELLATE DIVISION, THIRD JUDICIAL DEPARTMENT, DENIED A PROSE WRIT OF ERROR CORAM NOBIS, WITHOUT OPPOSITION AND WITHOUT ANY OPINION. THE DECISION IS UNREPORTED, AND A COPY OF THE ORDER IS ATTACHED AS APPENDIX A.

THE STATE OF NEW YORK COURT OF APPEALS DENIED LEAVE ON SEPTEMBER 30, 2020. THE DECISION IS UNREPORTED, AND A COPY OF THE DENIAL IS ATTACHED AS APPENDIX B.

ON DECEMBER 28, 2020, THE STATE OF NEW YORK
COURT OF APPEALS DENIED A RECONSIDERATION FOR LEAVE
APPLICATION. THE DECISION IS UNREQUITED, AND A COPY
OF THE DENIAL IS ATTACHED AS APPENDIX C.

JURISDICTION

ON DECEMBER 28, 2020, THE HIGHEST COURT OF THE
STATE DENIED RECONSIDERATION TO REVIEW THE DENIAL OF
ERROR CORAM NOBIS, FILED AND DENIED BY THE APPELLATE
DIVISION, THIRD JUDICIAL DEPARTMENT, ON JULY 31, 2020.
THE JURISDICTION OF THIS COURT IS INVOKED BY 28 USC § 1257 AND
ARTICLE III § 2 OF THE U.S. CONSTITUTION, SINCE THE STATE
COURTS' DECISIONS CONFLICT WITH THE U.S. CONSTITUTION
AND FEDERAL LAW OF THIS COURT.

CONSTITUTION, STATUTES, AND RULE INVOLVED

THE SIXTH AMENDMENT PROVIDES, IN RELEVANT
PART; IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL
ENJOY THE RIGHT TO ASSISTANCE OF COUNSEL... TO HAVE
COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS
FAVOR.

THE FOURTEENTH AMENDMENT PROVIDES DUE PROCESS, WHICH MAKES THE SIXTH AMENDMENT APPLICABLE TO THE STATES.

FAMILY COURT ACT 10 ALLOWS CORROBORATION OF AN OUT OF COURT STATEMENT FOR THE FAMILY COURTS BUT, "VALIDATION EVIDENCE," AS IS PERMITTED IN OTHER STATES' PROSECUTIONS, IS NOT PERMITTED IN NEW YORK STATE TRIAL COURTS, EVEN AS HERE, IT WAS FAVORABLE TO THE ACCUSED.

STATEMENT OF THE ~~CASE~~ CASE

~~THIS~~ THIS CASE ORIGINATED IN THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF SCHENECTADY, WHICH ENTERED JUDGMENT ON JULY 31, 2009, CONVICTING PETITIONER OF RAPE IN THE FIRST AND THIRD DEGREES, CRIMINAL SEXUAL ACTS IN THE THIRD DEGREE, SEXUAL ABUSE IN THE THIRD DEGREE, ATTEMPTED ASSAULT IN THE SECOND DEGREE, ENDANGERING THE WELFARE OF A CHILD, AND CRIMINAL MISCHIEF IN THE THIRD AND FOURTH DEGREES, AND SENTENCING OF 22 $\frac{1}{3}$ TO 28 YEARS, ALONG WITH 20 YEARS POST RELEASE SUPERVISION.

PETITIONER APPEALED THE JUDGMENT ON JUNE 14, 2012, TO THE STATE SUPREME COURT APPELLATE DIVISION, THIRD DEPARTMENT, WHICH AFFIRMED HIS CONVICTION. [SEE, PEOPLE V. BLOND, 96 AD.3D [3d DEPT 2012]], PETITIONER APPEALED THIS DECISION TO THE STATE OF NEW YORK COURT OF APPEALS, WHICH DENIED LEAVE ON OCTOBER 1, 2012. THE PETITIONER REQUESTED RECONSIDERATION OF LEAVE TO THE STATE COURT OF APPEALS AND ON DECEMBER 19, 2012, THE COURT OF APPEALS DENIED LEAVE [SEE, PEOPLE V. BLOND, 19 NY.3D 1101; 20 NY.3D 985 [2012]].

AFTER FUTILE ATTEMPTS IN THE COURTS OF THE STATE OF NEW YORK, PETITIONER FILED FOR WRIT OF HABEAS CORPUS, IN THE U.S. DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK, IN JANUARY OF 2013, CHALLENGING THE LEGALITY OF THE STATE COURT CONVICTION.

ON MAY 26, 2013, RESPONDENT FILED AN ANSWER AND MEMORANDUM OF LAW TO HAVE THE PETITION DISMISSED. PETITIONER FILED A TRAVERSE AND A LIMITED, BY THE COURT, MEMORANDUM OF LAW.

ON JUNE 6, 2014, THE DISTRICT COURT ADOPTED THE RESPONDENT'S ANSWER AND DENIED RELIEF WITH PREJUDICE.

8. SUBSEQUENTLY, AFTER THE DISTRICT COURT DENIED RELIEF, PETITIONER FILED A TIMELY MOTION FOR A CERTIFICATE OF APPEALABILITY TO THE SECOND CIRCUIT COURT, WHICH WAS DENIED ON OCTOBER 15, 2014. PETITIONER FILED A TIMELY MOTION FOR RE-HEARING, EN BANC, TO HIS REQUEST FOR A CERTIFICATE OF APPEALABILITY, HOWEVER, ON DECEMBER 30, 2014, IT WAS DENIED.

ON APRIL 22, 2020, PETITIONER FILED A WRIT OF ERROR CORAM NOBIS, DATED DECEMBER 31, 2016, ALLEGING, INEFFECTIVE ASSISTANCE OF TRIAL AND APPELLATE COUNSELS, FOR FAILURE TO PRESENT FAVORABLE WITNESSES AT TRIAL, AND FOR FAILURE TO RAISE A COLORABLE INEFFECTIVE ASSISTANCE CLAIM ON APPEAL. BY DECISION AND ORDER OF STATE APPELLATE COURT, THE PETITION FOR WRIT OF ERROR CORAM NOBIS WAS DENIED [SEE, APPENDIX "A"]

IN AUGUST OF 2020, PETITIONER FILE FOR LEAVE TO APPEAL IN THE STATE COURT OF APPEALS, AND ON SEPTEMBER 30, 2020, THE COURT DENIED LEAVE. [SEE, APPENDIX "B"]

IN OCTOBER OF 2020, PETITIONER REQUESTED RECONSIDERATION OF HIS LEAVE APPLICATION TO THE STATE COURT OF APPEALS, AND ON DECEMBER 28, 2020, THE NEW YORK STATE COURT DENIED RECONSIDERATION OF LEAVE [SEE, APPENDIX "C"].

REASONS FOR GRANTING THIS WRIT

1. THIS COURT SHOULD RESOLVE THE COMPULSORY CLAIM, UNDER INEFFECTIVENESS OF TRIAL COUNSEL, BECAUSE THE COURTS OF NEW YORK STATE DO NOT UNDERSTAND A FUNDAMENTAL RIGHT IF IT BIT THEIR REAR-ENDS.

THIS COURT IN WASHINGTON V. TEXAS [388 U.S. 14 (1967)], DID AWAY WITH THE NARROW VIEW THAT THE COMPULSORY PROCESS CLAUSE ONLY GUARANTEES THE RIGHT TO SUMMON WITNESSES TO COURT, AND THE COURT INVALIDATED A STATE RULE OF EVIDENCE WHICH PRECLUDED THE DEFENDANT FROM PUTTING ON THE STAND MATERIAL EVIDENCE FAVORABLE TO HIMSELF.

A SIMILAR CONSTITUTIONAL VIOLATION OCCURRED IN CHAMBERS V. MISSISSIPPI [410 U.S. 284 (1973)], WHERE THIS COURT HELD THAT THE EXCLUSION OF THE EVIDENCE IF

MCDONALD'S OUT OF COURT STATEMENTS, COUPLED BY THE STATE'S REFUSAL TO PERMIT THE ACCUSED TO CROSS-EXAMINE MCDONALD, DENIED THE ACCUSED A TRIAL IN ACCORD WITH TRADITIONAL AND FUNDAMENTAL STANDARDS OF DUE PROCESS.

ANOTHER ARBITRARY RULE WAS HELD BY THIS COURT UNCONSTITUTIONAL IN CRANE V. KENTUCKY [476 U.S. 693 (1986)], WHERE, THE DEFENDANT WAS PERVENTED FROM ATTEMPTING TO SHOW, AT TRIAL, THAT HIS CONFESSION WAS UNRELIABLE, DUE TO THE CIRCUMSTANCES UNDER WHICH IT WAS OBTAINED, AND NEITHER THE STATE SUPREME COURT NOR THE PROSECUTION "ADVANCED ANY RATIONAL JUSTIFICATION FOR THE WHOLE-SALE EXCLUSION OF THIS BODY OF POTENTIALLY EXCULPATORY EVIDENCE." *Id.*, at 691.

IN ROCK V. ARKANSAS [483 U.S. 44 (1987)], THIS COURT HELD THAT A RULE PROHIBITING HYPNOTICALLY REFRESHED TESTIMONY WAS UNCONSTITUTIONAL BECAUSE "[W]HOLESALE INADMISSIBILITY OF DEFENDANT'S TESTIMONY IS AN ARBITRARY RESTRICTION ON THE RIGHT TO TESTIFY IN ABSENCE OF CLEAR EVIDENCE BY THE STATE REPUDIATING THE VALIDITY OF ALL POST-HYPNOSIS RECOLLECTIONS." *Id.*, at 61.

IN ANOTHER CASE, HOLMES V. S.C. [542 U.S. 319 (2006)], THIS COURT HELD THAT THE EXCLUSION OF THIRD PARTY GUILT DENIED DEFENDANT OF A FAIR TRIAL.

IN THIS CASE, TRIAL COUNSEL WAS UNPREPARED WITH LEGAL AUTHORITY TO PRESENT TWO FAVORABLE WITNESSES, WHO WORKED AS CLINICIANS, AND EVALUATED THE ALLEGED VICTIM PRE-TRIAL, USING A PROTOCOL DEVELOPED BY DOCTOR JOHN YULIE, A FORENSIC PSYCHOLOGIST OF CHILD SEX ABUSE. THE TRIAL COURT TOLD COUNSEL TO RESEARCH THE MATTER MORE OVER A RECESS. HOWEVER, AFTER THE RECESS, TRIAL COUNSEL CLAIMED HE COULD NOT FIND ANYTHING. THE TRIAL COURT OFFERED PEOPLE V. ZURECK, [168 AD.2d 196 (3d DEPT. 1991)], TO TRIAL COUNSEL AND THE PROSECUTION, WHICH PRECLUDED THE STATE FROM ELICITING "VALIDATION" EVIDENCE BUT DID NOT SAY ANYTHING OF DEFENSE USE OF EVIDENCE. THE TWO CLINICIANS TESTIMONY WOULD HAD SHOWN THE ALLEGED VICTIM WAS INCREDIBLE -- WOULD HAD IMPEACHED HER ABOUT THE EVENT BEING "TRAUMATIC" AND WOULD HAD SHOWN SHE WAS BIAS IN FAVOR OF HER AUNT. HAD IT BEEN ALLOWED SERIOUS DOUBT OF GUILT EVIDENCE WOULD HAVE BEEN OFFERED. TRIAL COUNSEL FAILED TO SHOW THE TRIAL COURT U.S. SUPREME COURT AUTHORITY AND STATE COURT AUTHORITY THAT WOULD HAVE ALLOWED THE REQUESTED TESTIMONY OF ANGELA BARTS AND NICOLE MUELLEN, AND IF THIS TESTIMONY WAS FAVORABLE TO

TO THE PROSECUTION, IT WOULD HAVE BEEN ~~AND~~
ADMITTED. [SEE, PEOPLE V. TAYLOR 75 NY 2d 277, 292;
PEOPLE V. STORY, 176 AD. 2d 1080 (3d DEPT 1991); PEOPLE V.
THOMPSON, 267 AD. 2d 602; PEOPLE V. BENNET, 306 AD. 2d
947, 948 (4th DEPT 2003)].

SINCE APPELLATE COUNSEL NEVER RAISED THIS
STRONGER ARGUMENT AND CONCEDED WITH THE STATE
ZURBACH DECISION, HE WAS NOT ACTING AS A REASONABLE
COMPETENT ATTORNEY IN THIS ONE AND ONLY APPEAL.
[SEE, JONES V. BARNES, 463 U.S. 745, 754 (1983)].

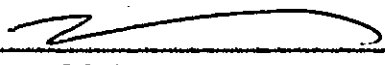
WHEREFORE, PETITIONER PRAYS FOR THE COURT
TO GRANT CERTIORARI AND ASSIGNMENT OF COUNSEL
TO PROPERLY BRIEF THESE ISSUES.

CONCLUSION

FOR THE REASONS STATED ABOVE, PETITIONER
PRAYS THAT ~~HER~~ CERTIORARI BE GRANTED, ALLOWING
THE ISSUES TO BE BRIEFED IN THIS MATTER

DATED: FEBRUARY 8, 2021
DANNEMORA, NEW YORK

RESPECTFULLY SUBMITTED,


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