

No. **20-8226**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
FEB 26 2021
OFFICE OF THE CLERK

FRANCIS BOYD — PETITIONER
(Your Name)

vs.

SUPERINTENDENT OF ROCKVIEW — RESPONDENT(S)
CV-97-7160

PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS

EASTERN DISTRICT OF PENNSYLVANIA **UNITED STATES DISTRICT COURT**
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FRANCIS BOYD
(Your Name)

500 E. 4TH STREET
(Address)

CHESTER, PA. 19013
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTIONS PRESENTED FOR REVIEW

1). CAN A TRIAL JUDGE INSTRUCT A JURY DURING A JURY CHARGE , THAT THEY CANNOT FIND PETITIONER GUILTY OF A CERTAIN DEGREE OF MURDER AFTER ENTERTAINING A QUESTION FROM THE JURY ON THE DEGREES OF MURDER? A DEGREE OF MURDER LISTED ON THE BILL OF INDICTMENT?

2). CAN A TRIAL JUDGE GIVE AN ERRONEOUS CHARGE ON THIRD DEGREE MURDER THE SECOND TIME AROUND AFTER GIVING THE CORRECT ONE THE FIRST TIME WHEN THE JURY ASKED FOR A RE-CHARGE ON FIRST, SECOND AND THIRD DEGREE MURDER?

PARTIES

THE COMMONWEALTH OF PENNSYLVANIA

Editorial Information: Subsequent History

Post-conviction relief dismissed at, Writ of habeas corpus denied Com. v. **Boyd**, 401 Pa. Super. 638, 577 A.2d 647, 1990 Pa. Super. LEXIS 1053 (Apr. 20, 1990) Habeas corpus proceeding at **Boyd** v. Myers, 1998 U.S. Dist. LEXIS 20253 (E.D. Pa., Dec. 21, 1998) Post-conviction proceeding at, Decision reached on appeal by **Commonwealth** v. **Boyd**, 823 A.2d 1022, 2003 Pa. Super. LEXIS 1384 (Pa. Super. Ct., Mar. 27, 2003) Post-conviction proceeding at, Decision reached on appeal by **Commonwealth** v. **Boyd**, 897 A.2d 514, 2006 Pa. Super. LEXIS 701 (Pa. Super. Ct., Feb. 24, 2006) Writ of habeas corpus dismissed, Certificate of appealability denied **Boyd** v. Klem, 2007 U.S. Dist. LEXIS 67649 (E.D. Pa., Sept. 13, 2007) Post-conviction proceeding at, Decision reached on appeal by **Commonwealth** v. **Boyd**, 15 A.3d 543, 2010 Pa. Super. LEXIS 5664 (Pa. Super. Ct., Oct. 27, 2010) Post-conviction proceeding at, Writ granted by, in part, Request granted **Boyd** v. Court of Common Pleas, 164 A.3d 461, 2016 Pa. LEXIS 2812 (Pa., Dec. 16, 2016) Post-conviction relief dismissed at **Commonwealth** v. **Boyd**, 2018 Pa. Super. Unpub. LEXIS 1804 (May 31, 2018) Post-conviction relief denied at, Writ of habeas corpus dismissed **Commonwealth** v. **Boyd**, 2018 Pa. Super. Unpub. LEXIS 2736 (July 30, 2018)
FRANCIS BOYD V. SUPERINTENDENT ROCKVIEW SCI, et al 2-97-cv-07160 2018
FRANCIS BOYD V. SUPT. ROCKVIEW SCI, et al CASE NUMBER: 19-2061 U.S. COURT OF APPEALS 2019

IN THE SUPREME COURT OF THE UNITED STATES

EX PARTE FRANCIS BOYD

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS

Petitioner in the above captioned action respectfully request this Honorable Court hear his claims concerning a miscarriage of justice that occurred during the Judge's charge to the jury. The District Court in 2018 Judge Schiller of the United States District Court Third Circuit did not consider this specific claim while hearing petitioner's 60(b)(6) petition. Petitioner claimed that a miscarriage of justice occurred as a result of the trial judge's erroneous jury charge and the error caused petitioner to serve a life without parole sentence.

RELIEF SOUGHT

Petitioner seeks for this Honorable Court to rule that the trial judge was in error when he gave a different and erroneous charge of **third degree murder** to the jury the second time following a question by the jury to define **First, Second and Third** degree murder. Or remand back to the district court for them to hear petitioner's claim. Or for this Honorable Court to hear and decide petitioner's claim on its own.

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APPELLATE JURISDICTION

The writ will be in aid of the courts appellate jurisdiction because the lower federal courts would not hear petitioner's claims of miscarriage of justice pertaining to the questions presented.

ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT AND EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THE COURT'S DISCRETIONARY POWERS.

Because all state courts and federal courts said that my claim(s) are defaulted because my trial attorney did not file a direct appeal. I informed my initial collateral review attorney about both matters, the faulty jury charge, and the fact that my attorney did not file my direct appeal. He said that I don't have any merits to my arguments. This violated my rights to due process of the law.

EXCEPTIONAL CIRCUMSTANCES

Exceptional circumstances warrants the exercise of this Court's discretionary powers. Petitioner's trial attorney did not seek a direct appeal to the state's highest court. As a result, no court would hear petitioner's claim, both state and federal. They said that the claim was procedurally defaulted even after petitioner claimed that a miscarriage of justice occurred. And Judge Schiller of the District Court never considered petitioner's claim in his order denying petitioner's 60(b)(6) petition. And the Third Circuit Court of Appeals sustained the Judge's order, even after petitioner claimed a miscarriage of justice occurred. Petitioner never received an adjudication on the merits of his Erroneous Jury Charge Claim and the judge just got away with this miscarriage of justice. This court in *Montgomery v. Louisiana*, 577 U.S. ____, 136 S.Ct. ____, 193 L.ed.2d 599 (2016) held: {A} CONVICTION OR SENTENCE IMPOSED IN VIOLATION OF A SUBSTANTIVE RULE IS NOT JUST ERRONEOUS BUT CONTRARY TO LAW, AS A RESULT, VOID [I]T FOLLOWS, AS A GENERAL PRISCIPLE, THAT A COURT HAS NO AUTHORITY TO LEAVE IN PLACE A CONVICTION OR SENTENCE THAT VIOLATES A SUBSTANTIVE RULE". ID. AT 731. "THE CONSTITUTION REQUIRES SUBSTANTIVE RULES TO HAVE RETROACTIVE EFFECT REGARDLESS OF WHEN A CONVICTION BECAME FINAL". MONTGOMERY, SUPRA. Petitioner was sentence to Life Without Parole as a result of the trial judge violating a "Substantive Rule". Petitioner had a constitutional right to a fair trial

. This Court in *Chapman v. California*, 386 US 18, 24, 17 L.ed 2d 705, 87 S.Ct. 824 (1967) held: "we held that the standard for determining whether a conviction must be set aside because of a

federal constitutional error is whether the error "was harmless beyond a reasonable doubt." Petitioner was sentence to life without parole because of the error. This Court in Harmelin v. Michigan 501 US 957 (1991) said: Life without parole" is the second most severe penalty permitted by law". Id. And in Glen Campbell v. Ohio 200 L.ed 2d 502, 2018 US Lwxis 1638, Justice Sotomayer said "Life without parole sentences share some charateristics with death sentences" (quoting Graham v. Florida, 560 US 48, 69, 130 S.Ct. 2011 (2010)). If this Court won,t at least take a look at petitioner's claims, he will die in prison because a judge dictated to a jury that they cannot find him guilty of a charge that petitioner was charged with. This violated In re Winship, 397 US 358, 25 L.ed 2d 368, 90 S.Ct. 1068 (1970).

ADEQUATE RELIEF

Adequate relief cannot be obtained in any other form or from any other court. (See Exceptional Circumstances Above).

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION

Petitioner filed a 60(b)(6) in 2018 and the Third Circuit dismissed it in 2019. (The order from the third circuit was destroyed in a flood in petitioner's cell.) Petitioner then went through medical treatment for Hep C treatment and was unable to marshal a legal challenge to the Third Circuit's

Order. When treatment was over, petitioner filed the instant petition in March of 2020. That same month, the Department of Corrections locked down all of its 26 prisons due to Covid 19. Petitioner was unable again to enter the prison's law library to prepare his legal work pertaining to the instant petition. Petitioner never heard back from this court concerning his petition filed in March of 2020, so petitioner filed the petition again. He received a letter from the clerk on 12-15-2020, that was dated on 11-6-2020, stating that his petition was being sent back because 'Failure to reflect the changes requested in prior correspondence". However, petitioner never received what ever letter the court sent to him. During the Covid 19 lockdown, some legal mail failed to reach inmates here at the prison.

Judge Schiller denied petitioner's 60(b)(6) petition in November of 2018 and did not consider petitioner's two questions concerning the erroneous jury charge in his order, which was also destroyed in the flood.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1651(a) to consider this writ.

Concise Statement Of The Case

Petitioner was arrested on June 4, 1976 and charged with murder, robbery, conspiracy & weapons. He was held over for trial on the following charges:

Robbery, First Degree Murder, Second Degree murder, Third Degree Murder, Voluntary Manslaughter, Conspiracy & Weapons. CP-597-600 1976. (271 Pa. Super. 88 412 A.ed 588 Lexis 3165). Boyd v. Klem 2007 U.S. Dist. Lexis 67649 (E.D. Pa. Sept. 13, 2007).

Petitioner's case went to the jury on December 1, 1976. The jury came back on December 2, 1976 with a question as follows:

"Please recharge us on the definition of first degree murder, second degree murder, and third degree murder".

The judge, Albert F. Sabo gave a totally different charge for third degree murder than the initial charge. In fact, he inferred to the jury that they cannot find petitioner guilty of third degree murder although third degree murder was one of the charges that the jury was considering during their deliberations.

Petitioner's trial attorney did not object to this erroneous recharge nor did he file petitioner's direct appeal to the states Supreme Court. As a result, no state or federal court would entertain petitioner's claim(s). The jury had a right to find petitioner guilty of third degree murder, which is a lesser degree of murder than first or second degree. The only evidence presented at trial to connect petitioner to the murder was a statement given to police to detectives admitting to the murder saying that his weapon accidentally discharged and hit the decedent while under the influence of drugs. The jury believed petitioner and wanted to either find him guilty of third degree murder, or consider finding him guilty of third degree murder. In Pennsylvania, the jury can find a defendant guilty of third degree murder and the robbery. No where in Pennsylvania or Federal law does it stipulates that a trial judge can tell a jury not to consider a specific charge during their deliberations, that the defendant was charged with. The jury did just what the judge ordered them to do.

"Jurors are presumed to follow the Court's instructions". "(Weeks v. Angelone 528 U.S. 225, 234 145 L.ed. 2d 727, 120 S.Ct> 727 (2000). Further more, the jury cannot be expected to know when an incorrect instruction is given. (Whitney v. Horn, 280 F.3d 240, 258 (3rd Cir. 2002).

This erroneous charge by the judge violated petitioner's Due Process rights to the U.S. Constitution and it was a miscarriage of justice. Petitioner was sentenced to Life without parole, which in Pennsylvania is a death sentence. As Pennsylvania is the only state in the country to sentence defendants to life without parole for a non-premeditated, accidental murder.(Second-Degree Murder). Which means that petitioner will die in prison for a murder that the jury did not want to find him guilty of, because of the unlawful exercise of government power. This Court in Oberkfell v. Hodges, 135 S.CT. 2584 Quoted Schuett v. Bamn, 572 U.U. 134 S.CT. 1623, 188 L.ed.2d at 268 saying: "{t]he freedom secured by the constitution consists, in one of its essential dimensions, of the right of the individual not to be injured by the unlawful exercise of government power". Thus, when the rights of persons are violated "the constitution requires redress by the courts". 134 S.CT> 1623, 188 L.ed 2d at 268".

The judges erroneous charge undoubtedly caused the jury to find petitioner guilty of second-degree murder, because his instruction ordered them not to consider third degree murder, a degree of murder in which petitioner was charged with. This Court in Fahy v. Connecticut 375 U.S. 85, 11 L.ed 2d 171, 84 S.CT> 229 held: "The question is whether there is a reasonable possibility

that the evidence complained of might have contributed to the conviction".

Id. at 86-87, 11 L.ed. 2d at 173.

In the judges charge to the jury on third degree murder he said: "If no intention can be inferred, either expressed or implied, from the facts, then the verdict should be third degree murder". N.O.T. at Pg. 946.

The jury found petitioner NOT GUILTY of INTENTIONAL MURDER. (First Degree Murder). However, the judge in that same charge inferred to the jury that they couldn't find petitioner guilty of (Third Degree Murder). See N.O.T. at 970 Enclosed). The charge was both erroneous and prejudicial, which amounted to a miscarriage of justice. Petitioner's trial attorney did not object to the erroneous charge, nor did his Initial collateral review attorney challenge the trial attorney's error when petitioner brought it to his attention. As petitioner said above, every State court and every Federal court either said petitioner was time barred or his claim was procedurally defaulted. The judge's faulty erroneous instruction(s) virtually eliminated any considerations that they (Jury) may have had to consider a conviction on third degree murder during their deliberations.

WHEREFORE, petitioner prays that this Honorable Court Grant the writ.

