

21-5279

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

ERNEST FRANCIS

V.
STATE OF CONNECTICUT

Appeal From State of Connecticut
Supreme Court (S.C. 20353)

Petition for Certiorari

Pro-Se Petitioner

Ernest Francis

Carl Robinson Correctional Institution

285 Shaker Road

Enfield, CT 06082

ORIGINAL

Questions Presented

Did the Constitution State Dilute The Due Process Clause Of the United States Constitution, When It Utilized ITS Own Standard Of Review for Determining Whether A Defendant Was Sentenced On the Basis of Inaccurate Information

List of Parties

Petitioner Pro-Se

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Supreme Court Justice

Robinson, C.J., McDonald, D'Auria, Mullins, Kahn & Ecker
Supreme Court Building, 231 Capitol Ave, Hartford, Connecticut 06106.

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Supreme Court Justices of the State of Connecticut

Robinson Chief Justice, McDonald, DiLucia, Mullins, Kahn, & Ecker
Supreme Court Building, 231 Capitol Avenue Hartford, Connecticut 06106

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

Prior Opinions & Orders

March 5, 1992 Defendant found guilty of murder State v. Francis,

CR 90-391532 Geographical Area 14 Hartford Superior Court

(1993) Conviction affirmed on direct appeal State v. Francis 228 Conn. 118

(1995).

The opinion of the Highest State Court to review the merits appears at Appendix A to the petition and is a slip opinion

Jurisdiction

Seeking U.S. Supreme Court review of a Motion to Correct a Sentence imposed in an Illegal manner, Relief denied by Connecticut Supreme Court of Appeals Docket No. (S.C. 20353) 231 Capitol Avenue Hartford, Ct. 06106 decided April 16, 2021.

Jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

Constitutional Provisions & Statutory
Provisions Involved

United States Constitution Amendment XIV

Connecticut Practice Book Section 43-22

Statement of the Case

Five days after Mr. Francis' eighteenth birthday, he committed the crime of murder. He was arrested on September 30, 1990. The Honorable Judge Thomas Milano signed his arrest warrant, presided over the probable cause of the warrant, conducted the pre-trial, trial and sentencing.

The court relied on inaccurate information concerning Francis' criminal history, the number of wounds that the victim received. Additionally, the court relied on inaccurate information concerning his economical and sociological status. The court on April 15, 1992 sentenced Mr. Francis to 50-years imprisonment. Mr. Francis filed several post conviction remedies including a Motion to Correct an Illegal Sentence, all of which were denied by the Hartford Superior Court.

Reasons for Granting the Petition

I. Did the Constitution state Dilute The Due Process Clause of The United States Constitution, When It Utilized Its Own Standard of Review For Determining Whether A Defendant Was Sentenced On the Basis of Inaccurate Information.

From 1978-1997 the State of Connecticut allowed convicted persons to seek the correction of their sentence pursuant to Connecticut Practice Book Section 935. In 1997 C.P.B. 935 was amended to C.C.P.B. 43-22. C.P.B. 43-22 States:

"The judicial authority may at any time correct an illegal sentence or other illegal disposition, or it may correct a sentence imposed in an illegal manner or any other disposition made in an illegal manner".

Since the Codification of C.P.B. Section 43-22 the State of Connecticut has failed to order the re-sentencing of Criminal defendant's who were sentenced on the basis of inaccurate information.

On April 15, 1992 Mr. Francis was sentenced to 50-years imprisonment by the Honorable Thomas Miano. The Sentencing Court relied on inaccurate information concerning the defendant's Criminal History. The trial Court found that the petitioner had a prior conviction for Conspiracy to Sell Narcotics, as opposed to his true charge of Conspiracy to possess narcotics.

The Court also sentenced the petitioner on the false assumption that his probation was for assault third on a victim over 60. The Court instead of correcting the inaccurate information stated, it was relying on the fact that petitioner was on probation for the charge.

The Court then went on to state that "Young men like Mr. Francis that appear macho, that are involved in drugs that have cars, that have jewelry, that have money, that have attractive ladies. And that's impressionable on young people" Tr. 4/15/92 at 51-52

The Sentencing Court went on to state:

"When the victim eventually acknowledged that he recalled the defendant, the defendant raised his right hand with the knife and with a downward thrust apparently grazed the victim.

The victim, by one account: I think it was Mr. Lowe retreated a short distance only to be struck by a second downward thrust of the knife, into the upper chest area. Id at 48-49

The Sentencing Court's reliance on two stab wounds to the victim were inaccurate and contradicted by the testimony of the medical examiner Dr. Carver, who testified that there was a single stab wound to Smith's upper left chest. T. 2128/92 at 11.

"The only other remarkable finding was an abrasion or scrap of the skin on the back of one of Smith's left finger T. 2128/92. The scrape was already healing and did not occur at the time that the stab wound occurred.

Due Process Violation

This Court found in Townsend v. Burke, 334 U.S. 736, 740-41 (1948) that "misinformation or misunderstanding that is materially untrue regarding a prior criminal record... renders the entire Sentencing procedure invalid as a violation of due process." Townsend Supra.

With respect to the claims here. This Court found "A Sentencing Court demonstrates actual reliance on misinformation when the Court gives explicit attention to it, [bases] its sentence at least in part on it, or gives specific consideration to the information before imposing sentence". See United States v. Tucker 404 U.S. at 447 (1972), see also Burke at 741 (1948).

over the years the State of Connecticut modified the standard of review in Burke, and Tucker, from this Court's position that a Court must explicitly rely on inaccurate information, to - a Court must substantially rely on inaccurate information. See State v. Collette, 199 Conn. 308, 321, 507 A.2d 99 (1986).

Finding that:

"A Sentence Should be Set aside if a defendant can show that (1) the information relied on was materially false or unreliable and (2) the trial Court substantially relied on the information in determining the Sentence

The Connecticut Supreme Court relied on this interpretation while interpreting whether the petitioner received due process in his State Court Sentencing. The term explicit as utilized in Burke means fully and clearly expressed. However, the term substantially relied means a "Considerably large attention to". There is a stark difference between the State of Connecticut's interpretation in Collette v. This Court's interpretation in Burke.

Conclusion

Because this Court never utilized the word substantially as a deciding factor for defining due process in Burke or Tucker, this Court should grant Certiorari to clarify the criteria for due process under the United States Constitution, as the State of Connecticut has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Respectfully Submitted

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By Ernest