

No. 21-5308

ORIGINAL

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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

CALVIN B. LYNCH, prose — PETITIONER
(Your Name)

SUPERINTENDENT ^{vs.}
OF ROCKVIEW, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Calvin B. Lynch # JY-8205
(Your Name)

Box A; 1 Rockview Place
(Address)

Bellefonte, Pa. 16823
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. IS PETITIONER ENTITLED TO THE BENEFIT OF THE PENNSYLVANIA SUPREME COURT'S CLARIFYING INTERPRETATION OF THE WITNESS INTIMIDATION STATUTE, Pa. C.S.A. §4952, WHICH PETITIONER WAS CONVICTED?
2. CAN PETITIONER, CONSISTENT WITH FEDERAL DUE PROCESS, CONTINUOUSLY BE CONVICTED AND INCARCERATED ACCORDING TO THE CLARIFYING INTERPRETATION OF THE WITNESS INTIMIDATION STATUTE, WHERE PETITIONER IS ALLEGED TO HAVE ONLY MADE A PECUNIARY OFFER OR POSSIBLY OTHER BENEFITS TO THE WITNESS TO NOT COME TO COURT?
3. BECAUSE PETITIONER'S FIRST OPPORTUNITY TO RAISE THIS PARTICULAR CLAIM WAS IN THE U.S. DISTRICT COURT (3RD CIR.), SHOULD THE DISTRICT COURT HAVE REMANDED BACK TO THE STATE COURT FOR A DETERMINATION ON WHETHER OR NOT PETITIONER'S CONDUCT SATISFIES THE ELEMENTS OF WITNESS INTIMIDATION, 18 Pa. C.S.A. §4952, AS PROPERLY INTERPRETED BY THIS STATE'S HIGHEST COURT?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. SUPERINTENDENT OF ROCKVIEW
2. COMMONWEALTH OF LANCASTER COUNTY
PENNSYLVANIA
3. ATTORNEY GENERAL OF PENNSYLVANIA

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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.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished. **NOTE: to date the LEXIS NEXIS SYSTEM has yet to be updated.**

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,

has been designated for publication but is not yet reported; or,

is unpublished.

1.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT; DUE PROCESS:

"Due process requires that a state prove all elements of a crime...."

18 Pa.C.S.A. §4952, WITNESS INTIMIDATION:

Clarified by the State's Highest Court to mean a pecuniary offer alone is not enough to sustain a conviction for witness intimidation. Common. v. DOUGHTY, 633 Pa. 539, 126 A.3d 951 (2015).

UNITED STATES SUPREME COURT'S PRECEDENT:

"Because due process requires that a state prove all elements of a crime beyond a reasonable doubt; when a state's highest court, later interpretation of a statute merely clarifies what the law provided at the time of the conviction, due process requires that a petitioner be given the benefit of that subsequent interpretation. FIDRE v. WHITE, 531 U.S. 255, 278-79, 121 S.Ct. 712, 148 L.Ed.2d 629 (2001).

STATEMENT OF THE CASE

On October 10, 2009, the victim in this case was assaulted with a baseball bat by Petitioner. Days later, Petitioner made two collect calls to the victim from Prison Pleading with the victim, (ROMERO), to drop the charges or to not show up to Court. On October 17, 2009, Romero received a handwritten letter from Petitioner Pleading with Romero to drop the charges or not show up to Court. TRANSCRIBE OF THE TWO CALLS AND COPY OF THE HANDWRITTEN LETTER APPEARS @ APPENDIX D.

The content of Petitioners communications with Romero is consistent. Petitioner clearly pleads with Romero to drop the charges, or just not show up to the Preliminary Hearing. A review of the two calls and letter shows that Petitioner engaged in an apologizing, begging manner, emphasizing his need for drug addiction counseling, and opportunity to continue being a father to his children.

Based on Petitioners communications with Romero, he was charged with FELONY INTIMIDATION OF A WITNESS, 18 Pa.C.S.A. §4952.

On reargument to the Superior Court, the Commonwealth did not point to any facts of record that there was a history of violence between Petitioner and Romero, nor do they point to any facts of record that Petitioner applied force, violence, threats or deception upon Romero in the two calls or letter. The Commonwealth's argument was that the evidence established that Petitioner made a pecuniary offer, or possibly other benefits to the victim to not show up to court. APPENDIX E - Commonwealths APPLICATION FOR REARGUMENT.

Sitting en banc the Superior Court found that they need not determine whether Petitioners conduct qualified as intimidation in affirming Petitioners conviction based on a clear offer of pecuniary and other benefits. Specifically:

" IN THIS REGARD, THE FACTS OF EACH CASE AND HISTORY BETWEEN THE ACTOR AND THE WITNESS WILL DETERMINE WHETHER SUCH COMMUNICATIONS, WITHOUT MORE, QUALIFY AS INTIMIDATION. "

" ... HERE, HOWEVER, WE NEED NOT MAKE SUCH A DETERMINATION, AS THE RECORD INCLUDES ADDITIONAL INSTANCES WHICH APPELLANT COMMUNICATES A CLEAR OFFER OF PECUNIARY AND OTHER BENEFITS... "

APPENDIX F - SUPERIOR COURT En Banc Opinion (@6-7)

UP until 2015 State Courts relied upon the holding in COMMONWEALTH V. BRACHBILL, 520 Pa. 533, 555 A.2d 82 (1989) to discern a violation of the witness Intimidation Statute, 18 Pa. C.S.A. § 4952. BRACHBILL instructed that a violation of the witness intimidation statute is made upon "... ANY offers of benefits with such intent violates the statute EVEN if unaccompanied by threats or overt intimidation."

In 2015 the PENNSYLVANIA SUPREME COURT granted ALLOCATOR to determine whether BRACHBILL should be partially overturned or CLARIFIED so that it isn't in conflict with the plain language reading of 18 Pa. C.S.A. § 4952.

See COMMONWEALTH V. DOUGHTY, 633 Pa. 539, 126 A.3d 951 (2015);¹

"INSOFAR AS BRACHBILL IS READ TO MEAN PECUNIARY INDUCEMENT ALONE WILL SUFFICE WITHOUT PROOF OF INTIMIDATION, IT IS DISAPPROVED."

In DOUGHTY, the Pennsylvania Supreme Court addressed the elements the Commonwealth must establish to prove witness intimidation when the defendant makes a pecuniary offer to a witness not to testify.

The DOUGHTY Court, thus, concluded that "INTIMIDATION" cannot be inferred from the mere offer of a pecuniary benefit not to testify. *id*@957. Rather, there must be other evidence from which intimidation can be inferred, such as the prior relationship between the defendant and witness or the manner in which the defendant made the pecuniary offer not to testify.

1. At the time of The DOUGHTY COURT'S CLARIFICATION OF THE WITNESS INTIMIDATION STATUTE, 18 Pa. C.S.A. § 4952, Petitioners PCRA was pending before the trial court.

20 Years ago THE UNITED STATES SUPREME COURT found that, because **Due Process** requires that a state prove all elements of a crime beyond a reasonable doubt; when a states later interpretation of a Statute merely clarifies what the law provided at the time of the conviction, **Due Process** requires that a Petitioner be given the benefit of that subsequent interpretation. **FIORÉ v. WHITE**, 531 U.S. 255, 228-29, 121 S.Ct. 712, 148 L.Ed. 2d 629 (2001).

This Court recognized that it violates **Due Process** to refuse a defendant the benefit of **CLARIFYING INTERPRETATIONS OF LAW** in effect at the time of his conviction, even if the **JUDICIAL CLARIFICATION** did not occur until well after the defendant's conviction was final. (*id.*) Citing to **BUNKLEY v. FLORIDA**, 538 U.S. 835, 123 S.Ct. 2020, 155 L.Ed. 2d 1046 (2003), that Court reconfirmed that, when a later judicial decision interpreting a statute's elements does not amount to an outright change in law, but stands instead as a correct statement of sustaining law as of the time a defendant's conviction became final, post conviction relief is required without regard to retroactivity. (*id.*) (citing **BUNKLEY**, 123 S.Ct. @ 2023).

Because **UNITED STATE SUPREME COURT PRECEDENT** dictates that defendants are entitled the benefit of **CLARIFYING INTERPRETATIONS OF LAW**, Petitioner's **DOUGHTY CLAIM** was ripe for discussion in the U.S. District Court.² Yet, the Magistrate made no reference too nor reached the merits of Petitioner's claim. Although, the Magistrate did make reference to the fact that it was not in that Courts province to interpret a state law.

Thus, Petitioner relinquished all other claims and raised only one claim in objecting to the Magistrates Report & Recommendation. The claim was simply this, Petitioner's alleged pecuniary offer ~~alone~~ alone is not enough to sustain a conviction for witness intimidation as properly interpreted by The Pennsylvania Supreme Court. **SEE APPENDIX G - Petitioner's Objection to the R & R**. Yet, The District Court adopted the Magistrates Report and Recommendation.

2. Petitioner's **DOUGHTY CLAIM** was of first instance before the U.S. District Court, where, Petitioner's P.C.R.A. was pending before the PCRA Court at the time the relevant Statute was **CLARIFIED**.

Petitioner timely filed a PETITION FOR CERTIFICATE OF APPEALABILITY in THE United States Court of APPEALS For the Third Circuit. Again, petitioner raised a DOUGHTY/FIDRE CLAIM. Without reaching the merits of Petitioners Claim, the U.S. Court of Appeals Cited to the District Courts Ruling in denying Petitioners Petition For C.D.A.. APPENDIX H - PETITION FOR CERTIFICATE OF APPEALABILITY.

REASONS FOR GRANTING THE PETITION

A Petitioner's claim, like here, that his conduct does not satisfy the elements of a crime according to a state's Highest Court's **CLARIFYING INTERPRETATION OF A CRIMINAL STATUTE** is a legitimate claim under this Court's precedent set out in **FIORE V. WHITE**. This Court has determined that people convicted of a criminal statute that is later clarified are entitled to the benefit of that **CLARIFICATION**.

A review of the record here reveals that the Commonwealth's only argument was that petitioner violated the witness intimidation based on a pecuniary offer or other benefit to the witness to not come to court. Based on that argument, the Superior Court sitting En Banc affirmed petitioner's conviction without the need to determine if petitioner's conduct constituted intimidation. According to the **CLARIFYING INTERPRETATION OF THE WITNESS INTIMIDATION STATUTE**, set out in **DOUGHTY**, by this State's Highest Court, that alone is not enough to sustain a conviction for witness intimidation, (**Pa.C.S.A. §4952**), as properly interpreted.

One of the purposes of Appellate Courts is to determine the merits of legitimate claims presented on Appeal. Yet, there is no mention of petitioner's claim in any of the lower Court(s) Decisions. Is this not a departure from the accepted and usual course of judicial proceedings? Those actions, or lack thereof, in most cases, are actually considered to be a denial of the very claim itself.

The Magistrate Judge did make one particular statement in the R/R which was, it is not in the province of a Federal Court to interpret a state law. Whether or not this analysis was directed towards petitioner's claim is hard to tell because a claim dealing with the clarification of a statute does not suggest a Federal Court interpret that statute. According to SCOTUS precedent, with regard to this particular claim, a Federal Court need only determine whether the record supports a conviction under the clarified reading of the statute and/or at a minimum, determine whether or not petitioner's claim is actually a change in law or indeed a clarifying interpretation of it. Thus, if the Magistrate's above statement was directed towards petitioner's claim, is it not a decision that conflicts with the SCOTUS decision in **FIORE**?

The lower Court(s) lack of entertaining Petitioners claim here is inconsistent with this COURT'S decision in **FIORE** and the **DUE PROCESS CLAUSE** of the **FEDERAL CONSTITUTION**.

This Court stated in **FIORE** that;

"BECAUSE DUE PROCESS REQUIRES THAT A STATE PROVE ALL ELEMENTS OF A CRIME BEYOND A REASONABLE DOUBT; WHEN A STATES LATER INTERPRETATION OF A STATUTE MERELY CLARIFIES WHAT THE LAW PROVIDED AT THE TIME OF THE CONVICTION, DUE PROCESS REQUIRES THAT A PETITIONER BE GIVEN THE BENEFIT OF THAT SUBSEQUENT INTERPRETATION." *id.*

Thus, lower Court(s) has denied Petitioner of his right to **DUE PROCESS** BY refusing Petitioner the benefit of the **CLARIFYING INTERPRETATION OF THE WITNESS INTIMIDATION STATUTE, Pa.C.S.A. §4952.**

EVERY SO OFTEN we see legitimate claims make their way to this Honorable Courts door step, when, United States Supreme Court precedent should have paved the way for lower courts to proceed accordingly. Yet, time and time again it is left up to SCOTUS to step in and adjudicate what should have already been adjudicated. Here, my claim made it past five (5) Federal Judges without as much as a mention to the Clarifying Interpretation of the statute for which I was convicted.

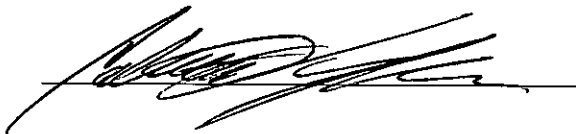
Wherefore, I humbly beg and pray that this Honorable Court step in and use this opportunity to reconfirm its precedent on clarifying interpretations of law set forth in **FIORE v. WHITE**, or possibly clarify that a **FIORE** claim is not a request on a Petitioners behalf to interpret a law, as the Magistrate may have suggested, but instead is a request for a Court to determine if a Petitioners actions satisfy the elements of a statute that has already been interpreted.

THUS I PRAY YOU GRANT THIS PETITION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "M. J. [unclear]", written over a horizontal line.

Date: 7/26/21