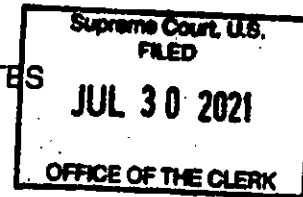


21-5337

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



GARRETT M'ELVEEN — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE
OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF ILLINOIS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

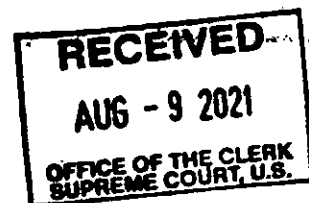
PETITION FOR WRIT OF CERTIORARI

Garrett M'Elveen Imate No. Y27410
(Your Name)

PO Box 1000
(Address)

Menard, IL 62254
(City, State, Zip Code)

(Phone Number)



QUESTION

Wherein Mr. McElveen's original public defender became the lead state's Attorney, does not an appearance of impropriety exist? By extension, does not the resultant per se conflict of interest not warrant reversal?

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Cases Cited

People v. Miller, 199 Ill. 2d 541, 546 (2002) pages: 9, 10, 11, 12

People v. Courtney, 288 Ill. App. 3d 1025, 1035 (3rd Dist 1997) pages: 9,

People v. Shick, 318 Ill. App. 3d 899, 907 (3rd Dist 2001) pages: 9,

People v. Price, 196 Ill. App. 3d 321, 324-25 (3rd Dist 1990) pages: 10,

People v. Spreitzer, 123 Ill. 2d 1, 17 (1998) pages: 11

People v. Coslet, 67 Ill. 2d 127, 135 (1977) pages: 12

People v. Kester, 66 Ill. 2d 162, 169 (1977) pages: 12

People v. Gurdal, 265 Ill 448 (1914) pages: 13

People v. Halstead, 73 Iowa 376, 35 N.W. 457, 459 (1887) pages: 13

Cases (Continued)

People v. Lang, 346 Ill. App. 3d 677, 685 (2nd Dist. 2004) pages: 13,

People v. Blue, 189 Ill. 2d 99, 139 (2000) pages: 13,

People v. Gr. Pl. H., 404 Ill. App. 3d 1072, 1087 (1st Dist. 2010)

OPINIONS BELOW

The opinion of the Fifth District Appellate Court of Illinois appears at Appendix A, and is unreported. 2020 IL App (5th) 180280-U.

The petition for leave to appeal to the Supreme Court of Illinois appears at Appendix B.

The final affirmation by the Supreme Court of Illinois appears at Appendix C.

JURISDICTION

The final judgement of the Supreme Court of Illinois was entered on the 29th of April, 2021. The petition for leave to appeal to same was filed on the 26th of January, 2021. The Fifth District Appellate Court of Illinois denial of appeal was filed on the 23rd of November, 2020. This Court's jurisdiction rests on 28 U.S.C. §1257 (a) (a denial of review by a state's highest court justifies proceeding to the certiorari stage).

CONSTITUTIONAL PROVISIONS

U.S. Constitution

Fifth Amendment: "No person shall be held to answer for a capital, or otherwise infamous, crime . . . , nor be deprived of life, liberty, or property, without due process of law; . . . "

Fourteenth Amendment: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, ~~shall~~ nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois State Constitution

Section 2. Due Process and Equal Protection. "No person shall be deprived of life, liberty or property without due process of the law nor be denied the equal protection of the laws."

STATEMENT OF FACTS

Garrett McElveen was charged with multiple counts of predatory criminal sexual assault of a child, and a single count of sexual exploitation of a child. At his first appearance Mr. McElveen was appointed Mr. Sean Featherstun, a public defender, as legal counsel. Within a week of the appointment, Featherstun transferred representation of Mr. McElveen to his subordinate, Mr. Scott Quinn, an assistant public defender. Also during that week, Featherstun introduced Quinn to Mr. McElveen. At a status hearing, the trial court allowed Featherstun to withdraw and appoint Quinn to represent Mr. McElveen.

While still in charge of the public defenders' office, Featherstun was elected to the position of State's Attorney for Jefferson County, Illinois. During the first pretrial hearing following Featherstun's election, his new subordinate in the State's Attorney's office, raised Featherstun's prior representation of Mr. McElveen during this case. The assistant advised the court of the fact Featherstun had represented Mr. McElveen as the previous defense attorney for this case, but had no involvement in this case as defense counsel, and as such, "there's no conflict arisen." Public Defender Quinn said he recalled Featherstun having been appointed to this case, and that it was his "understanding that he (Featherstun) never went over and spoke with Mr. McElveen." The trial

court scheduled a hearing on the state's conflict of interest.

At the conflict-of-interest hearing, the trial court heard only the arguments of counsel, and Featherstun did not appear. The state, through the same assistant state's attorney, that had previously raised the issue, advised the court that Featherstun's appointment as Mr. McElveen's public defender was "completely superficial" and existed only as a "docket entry." The assistant alleged that Featherstun had not met with Mr. McElveen except during a court appearance "wherein he introduced the defendant to his attorney, Scott Quinn."

The state claimed that Featherstun had no substantive interaction with Mr. McElveen, and cited *People v. Price* to support its position that, as a result, no conflict of interest existed. *People v. Price*, 196 144 App. 3d 321 (3rd Dist. 1990).

Finally, the assistant advised the court that, "[t]his case has been assigned to Miss Ligon and myself, so we argue no conflict of interest exists..." The trial court then asked the assistant state's attorney, "...did you say that Public Defender Sean Featherstun had no contact with this client?" The assistant responded, "...other than what I mentioned. There was a brief exchange, I believe, whenever he was brought to court. That's what has been relayed to me, which I'm proffering for the Court's consideration."

Public Defender Quinn argued that Featherstun's involvement on both sides of the case created an appearance of impropriety that would cloud this case's finality. Quinn also advised the court that ~~that~~ he recalled having an introduction or something in the back hallway, but could recall no mutual contact between himself, Mr. McElveen, and Featherstun. The trial court found no conflict of interest, giving no rationale or specific findings of fact, and the case proceeded.

At a later ~~hearing~~ hearing, where Mr. McElveen waived his right to a jury trial, Featherstun appeared for the state. During the hearing, Quinn told the trial court, "I think, realistically I talked to Mr. Featherstun about what he thinks that the presentation of their case is going to look like. I think that this is a two-day trial probably." While the trial court was setting a bench trial date, the following exchange occurred:

The Court: All right. Is there any prejudice that would show to the state if the continuance was granted or delay occurred other than the fact that you have subpoenas issued?

Mr. Featherstun: We certainly hope not. All of the witnesses are alive, and doing well and under subpoenas now.

The Court: Are there any coming from long distance?

Mr. Featherstun: No, Sir.

The Court: All are local witnesses?

Mr. Featherstun: Yes, your Honor.

After two further pages of transcript containing a discussion between Featherstun and the trial court about scheduling the bench trial, Featherstun ~~commented~~ commented that "Ms.

Ligon can handle this without me. Maybe I should take myself out of this conversation." The court then provided a pretrial date and Featherstun responded "Those dates would be good."

Mr. McElveen entered an open guilty plea to three counts of the indictment, and the remaining counts were dismissed by agreement. The trial court accepted the plea and ordered a presentence report.

The court sentenced Mr. McElveen to 40 years in the Illinois Department of Corrections on each of the three counts, to be served consecutively, for a total of 120 years. Assistant State's Attorney Ligon appeared for the state at the sentencing hearing. Featherstun's signature appears on the Statement of Facts filed after the sentencing.

Mr. McElveen filed a timely motion to reconsider sentence, and once again, Featherstun appeared to

represent the State, this time as the only prosecutor present. Featherston's first comment at the hearing was, "Thank you, Judge. I won't belabor the issue. I mean, essentially, the State's here to say we believe your Honor did get it right..." Specifically, Featherston argued that the trial court's sentence of 120 years in the Illinois Department of Corrections ("DOC") was "reasonable." The court denied the motion to reconsider sentence.

On direct appeal, Mr. McElveen argued that a per se conflict of interest exists when his appointed public defender subsequently became the State's Attorney and represented the State at both the jury waiver and the motion to reconsider sentence. The Fifth District Appellate Court rejected Mr. McElveen's argument and affirmed the conviction and sentence, relying on its interpretation of *People v. Kester*, 66 Ill. 2d 162 (1977), to hold that Mr. McElveen's guilty plea waived his claim regarding the State's Attorney's conflict of interest.

People v. McElveen

On the 29th of April, 2021, the Supreme Court of Illinois issued a mandate affirming the Fifth District Court's decision, having ~~denied~~ denied Mr. McElveen's petition for leave to appeal.

REASON FOR GRANTING THIS PETITION

I. In finding that Mr. McElveen waived, upon accepting a plea agreement, his right to raise a per se conflict of interest arising from Mr. McElveen's defense counsel later representing the State, the Fifth District's decision directly conflicts with the Illinois Supreme Court's finding in *People v. Miller*, wherein the Court required remand when a per se conflict of interest was created when the defense counsel later acted as a prosecutor in the same criminal case. *People v. Miller*, 199 IL. 2d 541, 546 (2002).

This Court should grant this petition because the appellate court's decision contradicts the Illinois Supreme Court's ruling in *Miller*. Also, see *People v. Courtney*, 288 IL App. 3d 1025, 1035 (3rd Dist. 1997), *People v. Shick*, 318 IL App. 3d 899, 907 (3rd Dist. 2001). Furthermore, this Court should grant this petition because the Fifth District's decision to allow a defense attorney to take an adversarial position as the State's Attorney later on, is injurious to the integrity of the criminal justice system. The parallels between Mr. McElveen's case and *Miller* allow for *Miller* to provide the guiding precedent. In both instances, a court appointed defense attorney left the case after little interaction, then returned as a prosecutor for the State. In *Miller*, the conflicted attorney was an assistant public defender, and filed three motions, as well as appearing at

a hearing to waive the preliminary hearing. *People v. Miller*, 199 Ill.2d 541 (2002). The same attorney later returned as an assistant State's Attorney at a motion to reconsider sentencing hearing. In Mr. McElveen's case, Featherstun was the head of the public defender's office at the time he was appointed to represent Mr. McElveen on the 16th of December, 2016. The Court then allowed Featherstun to withdraw and appoint assistant public defender Quinn, whose representation of Mr. McElveen continued through the remainder of the case.

Even though Featherstun was not elected State's Attorney until November 2016, his name begins appearing on the record as the State's Attorney in proceedings against Mr. McElveen as early as March 30, 2016, at which time he was still head of the public defender's office. Not until January 7th, 2016 was the issue of a potential per se conflict of interest raised by an assistant state's attorney. At the conflict of interest hearing, the assistant cited *People v. Price*, arguing Featherstun's involvement as defense counsel was "of record" only, and that he and another assistant had been assigned to prosecute Mr. McElveen, and so no conflict of interest existed. *People v. Price*, 196 Ill. App. 3d 321, 324-25 (3rd Dist. 1990). Based on the State's representations and over Mr. McElveen's objection about the appearance of impropriety, the trial court found no conflict.

subsequent jury waiver, advising the trial court that, "All of the witnesses are alive, and doing well, and under subpoena now." Featherston also advised that all of the state's witnesses live locally. Quinn also advised the trial court,

"I think realistically I talked to Mr. Featherston about what he thinks that the presentation of their case is going to look like. I think that this is a two-day trial probably." These statements by both Featherston and Quinn indisputably demonstrate that Featherston had a thorough familiarity with the case, and was involved in the prosecution of Mr. McElveen as more than just an administrator of the State's Attorney's office.

Featherston was not present for the guilty plea or sentencing hearing, but was the only prosecutor present for the motion to reconsider sentence hearing. Featherston argued the 120 year sentence for his former client in DOC was "reasonable" and that the trial court "did get it right." Mr. McElveen's motion was denied. Featherston's involvement with Mr. McElveen spanned the entire case.

Where a per se conflict of interest exists, reversal is automatic without a defendant being required to demonstrate prejudicial treatment due to the conflict of interest, unless the accused knowingly waives the conflict. See *People v. Spreitzer*, 123 Ill. 2d, 1, 17 (1998); *Miller*, 194 Ill. 2d, at 547. No valid waiver occurred in Mr. McElveen's case. Courts indulge every reasonable

presumption against per se conflicts of interest being waived, and the record must demonstrate the accused both understood and intentionally waived the conflict in light of the facts and circumstances of the case, "including the background, experience [], and conduct of the accused." *People v. Costet*, 67 ILL. 2d 127, 135 (1977).

In *Kester*, the Supreme Court of Illinois did not rule a valid waiver of a per se conflict occurred when the defendant failed to object to defense counsel's previous role as prosecutor and the defendant gave an affirmative response to a general inquiry about his satisfaction with defense counsel's representation. *People v. Kester*, 66 ILL. 2d 162, 169 (1977). In Mr. McElveen's case, an objection to Featherstun's involvement as a prosecutor due to his prior representation of Mr. McElveen had been raised. At no time did Mr. McElveen waive explicitly Featherstun's conflict of interest. The Fifth District, however, relied on *Kester* to find Mr. McElveen did waive his right to object to the prosecutor's per se conflict of interest by pleading guilty. This decision conflicts with the Illinois Supreme Court's decision in *Miller*. *Miller*, 199 ILL. 2d at 541.

As with *Miller*, Featherstun's involvement spanned the entirety of the case. *Id.* at 546. Though the appellate court chose not to address the merits of Mr. McElveen's argument, this Court should consider the damage done to the integrity of the criminal justice system via the appellate court's acceptance of Featherstun's

per se conflict. It is a long-standing principle that if a client lacks full confidence in their attorney, "the profession will suffer by the loss of the confidence of the people. The good of the profession, as well as the safety of clients, demands the recognition and enforcement of these rules." Gerold, 265 Ill. at 478-79 (citing *State v. Halstead*, 73 Iowa 376, 35 N.W. 457, 459 (1887)).

The concern of the integrity of the criminal justice system by the court is something that extends to the prosecutor's office. A special prosecutor was required to maintain the public's faith for the state's attorney's office, as well as the integrity of and faith in the criminal justice system when an assistant state's attorney became a key witness against the defendant at trial. *People v. Lang*, 346 Ill. App. 3d 677, 685 (2nd Dist. 2004). Another example, where even though the evidence of a defendant's guilt was overwhelming, to protect the integrity of the criminal justice system, convictions obtained in violation of the law and constitution have been overturned. See *People v. Blue*, 189 Ill. 2d 99, 139 (2000); *People v. Griffith*, 404 Ill. App. 3d 1072, 1087 (1st Dist. 2010).

By allowing Featherston to take an adversarial role against Mr. McElveen, his onetime client, even over Mr. McElveen's objection, the court placed the defendant in an untenable situation with no recourse. The appearance of impropriety is of itself sufficiently egregious, but coupled with the damage to the integrity of the

criminal justice sentence warrant action by this Court. The petition for a Writ of Certiorari should be granted for these reasons, thus maintaining the fairness and equality our system of justice guarantees.

CONCLUSION

Garrett McElveen, petitioner, respectfully requests this Court grant his petition for Writ of Certiorari.

Respectfully Submitted,

Garrett McElveen

Inmate No 427410

PO Box 1000

Menard, IL 62259

Dated the 28th of July, 2021