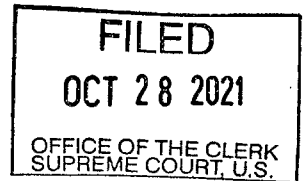


ORIGINAL

No. 21-6209



IN THE
SUPREME COURT OF THE UNITED STATES

ANGELO COBBINS — PETITIONER
(Your Name)

vs.

PEOPLE OF THE STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Supreme Court of Illinois
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Angelo Cobbins
(Your Name)

PINKNEYVILLE Correctional Center 5835 State route 154
(Address)

PINKNEYVILLE, IL 62274-3410
(City, State, Zip Code)

618-357-9122
(Phone Number)

QUESTION(S) PRESENTED

Whether the ruling on the Motion to Suppress was error as it was demonstrated the Petitioner did not possess the intellectual capacity to waive his custodial rights?

Whether Petitioner was denied effective assistance of counsel when his trial lawyer failed to call the co-defendant to the witness stand in defense knowing the co-defendant would offer favorable evidence to the defense position of mere presence.

The sentence imposed by the trial court was excessive and imposed as it failed to follow the dictates of Miller, Coty and Illinois statutes as they apply in the juvenile sentencing milieu.

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:

People of the State of Illinois, Honorable Vincent Walowski,
Judge Presiding First District.

Thomas C. Brandstrader was the Attorney for Angelo Cobbins on
Appeal from the Circuit Court of Cook County. Dr. Erick New, Sharon Stanley
Dr. Whitmore, Bryron West, Joseph Bresnahan, Moreno (paramedic) Dr. Kloertz,
Dan Prowaczek, Brian Schoon, Mr. West, Dr. Fr I King, Mr. Bond (witness) Jasmine Web-
ster, Tinitia Taylor (next page)

RELATED CASES

People v. Murdock, 2102 IL 112362 § 32

In re Gault, 387 U.S.

People v. Reyes, 2016 IL 119271, 11

LIST OF PARTIES (continue) from page

Shanee Musgray, Mr. Musgray and Terrence Love

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Section 5-4.5-105 of the Unified Code of Corrections (Code) (730
ILCS 5/5-4.5-105 (West 2016)

OTHER

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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 _____ to the petition and is

- ☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

- ☐ reported at N/A; 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 B 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 Appeal from the Circuit court appears at Appendix A/B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was N/A.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from state courts:

The date on which the highest state court decided my case was 09/29/2021.
A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ 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

U.S. Const., amends. VI, XIV

Ill. Const. art. I, § 8

Ill. Const. 1970, art I, § 11

STATEMENT OF THE CASE

The Petitioner was charged with first degree murder in the above-entitled cause. The Petitioner pled not guilty and the matter proceeded to a jury trial on August 21, 2017. (C 357) The jury returned a Verdict of guilty on August 23, 2017. (C 362) A motion for new trial was denied on April 5, 2018. (C 397) The sentence of thirty five years in prison was entered on May 17, 2018. (C 399) After a motion to reconsider sentence was denied, a notice of appeal was filed on July 10, 2018. (C 411)

Prior to trial certain motions were heard including a request for a fitness hearing, a motion to quash arrest, and a motion to suppress statements based on Mr. Cobbins inability to appreciate his Miranda warnings.

On August 22, 2012, the trial court conducted a fitness hearing on motion of the Petitioner. Doctor Erick Neu (a psychologist) testified as an expert in forensic clinical psychology. (R 6) He examined the Petitioner on June 8, 2012. (R 7) The doctor opined that Cobbins was fit for trial and aside from drug abuse he suffered no other mental illness. (R 9) The doctor admitted on cross that he was aware of the Petitioner's prior psychiatric hospitalizations but he did not review any records pertaining to those. (R 12-13) The doctor did not conduct any IQ tests but observed signs of below average intelligence. (R 14) The defense presented no other evidence, (R 18) The court found no evidence of active mental illness and agreed with the doctor that Mr. Cobbins was fit for trial. (R 19)

REASONS FOR GRANTING THE PETITION

ARGUMENT

Whether the ruling on the Motion to Suppress was error as it was demonstrated the Petitioner did not possess the intellectual capacity to waive his custodial rights?

The denial of Petitioner's motion to suppress statement as involuntary which was entered on May 10, 2016, was error as the 17 year old Petitioner was incapable of intelligently waiving his rights that accrue to the Petitioner in the custodial setting as he did not possess the intellectual capacity to do so.

This issue is complicated by the fact that trial counsel failed to present available evidence at the hearing of the Petitioner's psychiatric treatment that had been on going from the age of 12 which would have demonstrated the Petitioner's intellectual deficits for the court's consideration of the issue of voluntariness of the statement.

(R-12) The trial court should have had its attention directed to the facts brought out at the fitness hearing which had been conducted on August 22, 2012. (R 12-14) At the hearing it was heard that Mr. Cobbins had participated in psychiatric treatment which commenced at the age of 12. It was further heard that Cobbins had been prescribed psychotropic medication as part of that treatment. It was also of record that Cobbins had ingested alcohol and narcotics on nearly a daily basis from the age of 13.

At the hearing a video was played of Mr. Cobbins in custody.

(Defense Exhibit No. 3; R 82) It revealed some difficulty in understanding the Miranda warnings. (R 57) The defense called Doctor Whitmore, who was the principal of Smyth grade school attended by Mr. Cobbins. Dr. Whitmore testified that the Petitioner was in learning disabilities classes. (R-69) While the doctor had not seen the defendant for some years, he was principal of the school when Cobbins was in seventh and eighth grades. (R 71). The defense also called the Petitioner's mother, Mrs. Stanley, who testified her son was slow in learning and quit high school in his first year. (F 78) The parties stipulated to the Petitioner's report card from Crane High School. (R 82) It was demonstrated and argued by the defense that Cobbins was 17 at the time of the interrogation, isolated, chained to a wall, with a grade school education spent in special education classes due to a life long learning disability. (R 59-61; 68-83) These circumstances indicated that he was lacking in sufficient intellectual capacity to understand and/or waive his custodial rights in the situation. (R 88)

The State argued that the video demonstrated that Mr. Cobbins understood and knowingly waived his rights while in custody. (R 90) The state based their position on the fact that the Petitioner answered "Yes sir" to each right and did not ask for further clarification from the interrogators. (91)

After interpreting what the Petitioner's grades on his report card meant, the trial court found no constitutional violation of Cobbins custodial rights and denied the motion. (R 96)

The Supreme court, in *People v. Bernasco*, 138 Ill. 2d. 349 (1990), discussed extensively the constitutional requirements that a defendant must knowingly and intelligently waive his rights in Miranda-type situations, and, in addition, that the waiver or confession must also be voluntary. *Bernasco* also involved a 17 year old defendant with subnormal intelligence and a

fourth grade reading and comprehension level. The supreme court in Bernasco stated that for a defendant to make an intelligent and knowing waiver, there must be an intentional abandonment of the privilege, a defendant must know what he is doing, and he must understand both the nature of the right and the consequence of the decision to abandon it. (Bernasco 138 Ill. 2d. At 360) The supreme court also stated that, at a minimum, "to waive rights intelligently and knowingly, one must at least understand basically what those rights encompass and minimally what their waiver will entail." (Id at 363)

The evidence does not show that Petitioner was advised of his rights repeatedly or that the admonishments were given in a form sufficient to provide him with an understanding of what his rights were that he was to waive. The officer read the rights from the waiver form and did not simplify or explain further these rights to the Petitioner; however, he did ask the Petitioner after each admonishment if he understood. (R56-57) The facts that the advice is imparted and that a defendant states he understands his rights do not assure an intelligent understanding unless he possesses the intelligence to understand the warning. People v. Long 217 Ill.3d 940 (1991) Common sense tells us that there cannot be an intelligent understanding of Miranda warning if the defendant cannot hear or if the warning are read in English to a person who does not understand English. A subnormally intelligent person may be no different from a deaf person or a person who understands little English in intelligently understanding the Miranda warnings. People v. Higgins, 239 Ill. App. 3d. 260 (1993)

Our Supreme court has long recognized that receiving a confession from "a juvenile is a sensitive concern." People v. Pruett 66 Ill. 2d. 470 (1977); People v. Murock, 2102 IL 112362 § 32 Further, it has been held in a case

often cited by Illinois courts of review, the United States Supreme Court has stated: "If counsel was not present for some permissible reason when an admission from a juvenile was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights of adolescent fantasy, fright or despair." *In re Gault*, 387 U.S. 1 (1967) It is uncontested that Mr. Cobbins sat alone in this setting. (R60) He had not talked to a parent nor counsel nor anyone not connected to the government. He had no buffer versus the prosecutorial forces. *People v. Murdock*, 2012 IL 112362, § 30, 32, 45

While no single factor is dispositive of whether a juvenile confession should be found to be voluntary, it is clear the combination of factors found in this record indicate that trial court's ruling on the issue should be reversed as it reveals no sensitivity to the circumstances presented, i.e., the statement of an isolated, learning disabled 17 year old, who barely had a special education grade school education at the time he rendered the statement employed in his murder trial.

Whether Petitioner was denied effective assistance of counsel when his trial lawyer failed to call the co-defendant to the witness stand in defense knowing the co-defendant would offer favorable evidence to the defense position of mere presence.

The Petitioner's defensive position was mere presence at a crime scene and that he was not accountable for the criminal behavior of another. Cobbins testified that on the morning of the incident, he and Musgray were returning to Cobbin's girl friend home when they saw a "guy" waiting near the back of Jasmine's home. (R527) They approached the

man and ask who was he waiting for and received no response. (R528) Musgray asked the man for a light and when the man gave him a lighter, Musgray started to swing on him. (R528) Musgray and the man were swinging on each other and when the man fell down, Musgray started to kick him. (R529) Cobbins tried to stop the fight. (R529) Sharee took the man's clothes off and went through his pockets. (R532)

Trial counsel for the Petitioner was ineffective for failure to call Sharee Musgray as a witness in defense knowing Mr. Musgray had made an exonerating statement which would have corroborated the Mr. Cobbins' defense at trial in the form of an affidavit which Cobbins had at trial and improperly attempted to refer to during his testimony. (R528-531)

A defendant is guaranteed the right to the effective assistance of counsel under the United States and Illinois Constitutions. U.S. Const., amend. VI, XIV; Ill. Const. art. I, § 8 Failure to subpoena witnesses known to defense counsel who contradict the State's case or provide exonerating testimony demonstrates ineffective assistance of counsel. *People v. Butcher*, 240 Ill. App. 3d 507, (1992) Musgray's affidavit indicates that he would have directly corroborated the Petitioner's testimony.

There is no strategy involved in not calling Musgray as a witness in defense. Mr. Musgray had accepted the consequences of his behavior in the assault on Mr. West and was already serving his sentence at the time of the Cobbins trial. (IDOC record Y14266) Nothing he would have said as contained in the affidavit would have been detrimental to the Cobbins' defense. According to the affidavit of Musgray which is of record as part of his motion for new trial, he averred that Mr. Cobbins had nothing to do with his (Musgray) beating of the man. (C396)

An attorney who fails to conduct a reasonable investigation, fails

to interview witnesses and fails to subpoena witnesses cannot be found to have made decisions based on valid trial strategy. *People v. Coleman*, 267 Ill. App.3d. 895 (1994) Attorneys have an obligation to explore all readily available sources of evidence that might benefit their clients, *Brown v. Sternes*, 304, 677 (7th Cir. 2002) Defense counsel has a professional obligation, both legal and ethical, to explore and investigate a client's case. *People Morris*, 335 Ill. App. 3d. 70 (2002) Failure to present available witnesses to corroborate a defense has been found to be ineffective assistance. *People v. Solomon*, 158 Ill. App. 3d. 432 (1987)

In the instant cause, there is no answer to the question why under the circumstances that Musgray was not called as a witness for the defense and whether that failure to call Musgray as a witness render the trial fundamentally unfair. There is a reasonable probability that the failure to call this defense witness to corroborate the Petitioner's "mere presence" position rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Enis*, 194 Ill. 2d. (2000)

The sentence imposed by the trial court was excessive and improperly imposed as it failed to follow the dictates of Miller, Coty and Illinois statutes as they apply in the juvenile sentencing milieu.

The State improperly argued to the sentencing court facts inherent in the offense (R 680-685) for which the Petitioner was found guilty which is improper aggravation and would indicate that the Petitioner was being punished for facts inherent in the offense. *People v. Sanders*, 2016 IL App. (3d) 130511 The trial court rested on this improper argument as the majority of the sentencing monologue addressed the facts inherent in the offense. (R 690-693) In rendering the sentence of 35 years, the trial court touch-

ed on some of the concept words prevalent in the current juvenile sentencing scheme, but made no attempt to connect them to the sentence rendered. (R 689-690) The court commented on Cobbins' alcohol and drug abuse and the fact that he was 17 at the time of the offense. The court discounted the possibility of rehabilitation based on his jail behavior (misdemeanor public indecency) and accountability for the crime for which he stood convicted. (R 691) The trial court improperly relied on the demeanor of the Petitioner and the facts of the offense to impose the sentence. (R 693)

At the time of the offense (1/4/11) Mr. Cobbins was 17 years old (5/1/93). In 2016, the Illinois legislature enacted section 5-4.5-10.5 of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5 (West 2016)), which provides a new sentencing scheme for criminal defendants under 18 years of age. *People v. Reyes*, 2016 IL 119271, 11. The new statute requires the sentencing judge to consider various factors before sentencing, including the defendant's impetuosity, level of maturity, and ability to consider risks and consequences; whether the defendant was subjected to outside pressures; the defendant's home environment; and history of parental neglect, physical abuse, or other childhood trauma. 730 ILCS 5/5-4.5-11 This was not done in the case before this Court.

Supreme Court decisions have "established that children are constitutionally different from adults for purposes of sentencing." *Miller v. Alabama*, 570 U.S. 460 (2012) Quoting *Graham*, the Miller Court found that "because juveniles have diminished culpability and greater prospects for reform... they are less deserving of the most severe punishments." In finding the de facto natural life sentences at issue in *Miller* to be cruel and unusual punishment the court reasoned that juveniles are fundamentally different than adults in terms of their maturity, impetuosity, and ability to appreciate risks,

and that these characteristics must be accounted for to reach a proportionate sentence. Miller, 567 U.S. at 471

As the United States Supreme Court has stated while some of the sentences before it were not technically a life-without-parole sentence, such a lengthy sentence imposed on a juvenile is sufficient to trigger Miller-type protections.

"Even if lesser sentences than life without parole might be less problematic, we do not regard the juvenile's potential future release in his or her late sixties after a half century of incarceration sufficient to escape the rationales of Graham or Miller. The prospect of geriatric release, if one is to be afforded the opportunity for release at all, does not provide a 'meaningful opportunity' to demonstrate the 'maturity and rehabilitation' required to obtain release and re-enter society as required by Graham, see Bear Claw, (supra)

The trial court failed to realistically consider that there was substantial evidence of the Petitioner's intellectual and mental deficiencies readily available throughout the fitness hearing on August 22, 2012, which included the Petitioner's psychiatric treatment which commenced years earlier (at the age of 12), included the ingestion of psychotropic medication and his voluntary ingestion on nearly a daily basis of narcotic substances (PCP) and alcohol (pint of vodka) from the age of thirteen.

It cannot be forgotten that the current juvenile sentencing schemes actually began with Atkins and the Court's concern with the intellectually disabled. Miller v. Alabama, 567 U.S. 460 (2012) (citing Atkins v. Virginia, 536 U.S. 304 (2002)).

Further, this Court should consider the decision in Coty which went on to discuss the issue at length citing the analogies of the juvenile considerations at sentencing with that of the intellectually disabled and found them

compatible. *People v. Coty*, 2018 IL App (1st) 16238. The Court found that consideration attached to the juvenile sentencing protocol were found in the intellectually challenged as well as both groups exhibited limited adaptive skills; an inability to assist counsel in a meaningful manner; the fact they are followers not leaders; and their general inability to comprehend the permanence of life in prison, let alone weigh the consequences of such a life against the perceived benefit of criminal conduct. The Coty court found that the procedural safeguards originating with *Atkins*, and created by *Miller* and its progeny are applicable to the intellectually disabled defendant under the Illinois constitution. Accordingly, the Coty court held that minors and adults with intellectual disabilities should be treated similarly in a proportionality analysis and the prohibition against the imposition of discretionary life sentences without the procedural safeguards of *Miller* and its progeny should be extended to the intellectually disabled person. The failure to consider the unique factors that can impact the culpability of the intellectually disabled results in constitutional error. Ill. Const. 1970, art I, § 11; *People v. Coty*, 2018 IL App (1st) 16238. The sentencing court in the instant cause failed in these considerations of youth and mental deficiency in rendering sentence.

Illinois law also specifically ask judges to consider the unique characteristics of juveniles when determining an appropriate sentence. 730 ILCS 5/5-4.4-105. Pursuant to Section 105 (a), the sentencing Court should consider: (1) Cobbin's "age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior," and (2) Cobbin's potential for rehabilitation or evidence of rehabilitation. The real consideration of juvenile sentencing issues as set out by case law and statute is absent from this record. It is difficult to find in the instant

Sentencing record that the above factors now mandated by Statute and case law were applied or even seriously considered. It should not be enough to echo the buzz words and not demonstrate how they are applied or dismissed. The matter should be sent back to the lower trial court for a re-sentencing which would meet the constitutional criteria in the juvenile / mental health sentencing arena.

CONCLUSION

The Petitioner, ANGELO COBBINS, Prays that this Honorable Court consider the issues raised above and accord the appropriate relief for each.

Respectfully submitted,
Angelo Cobbins
Y-29571

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Angelo Cobbins #29571

Date: 10-21-2021