ORIGINAL

Supreme Court, U.S.
FILED
NOV 0 9 2021
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No. 21-6288

IN THE

SUPREME COURT OF THE UNITED STATES

TINA LYNNE WAGONER - PETITIONER

- VS -

STATE OF NEW YORK - RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TINA LYNNE WAGONER
247 HARRIS ROAD
BEDFORD HILLS, N.Y. 10507

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Questions Presented

This case serves to demonstrate the tactical evolution of trial court's unconstitutional application of law to fact, whether the law governs jurisdiction, application of legal terms to describe a party, an event, or a proceeding, or governs ~~[illegible]~~ the administration of traditional orderly procedure or court room practice. The appellate court maintenance of trial court's extreme deviation from the normal and accepted application of law appear liken to a run-away train, or as the only viable sustenance from which to sustain the illusion of a legitimate case or conviction. Rather than holding the "drivers of damage" accountable, the delay triggers a chain reaction from such acceptance of nefarious and abusive tactics, so as to result in undermining public trust in the otherwise legitimate and necessary work of law enforcement agencies. The local district attorney is, after all, top judge and legal policy maker, no less protector of conduct, which is often otherwise penal. This reveals the necessity for the Supreme Court to take up its responsibility to intervene on behalf of its citizen's nation-wide, as the guard against state court's unconstitutional application of law to fact and appellate court treatment or lack thereof on appellate court review.

I. How is the appellate court able to determine whether self-representation was imposed or not?

II. How is the appellate court able to determine whether acting-trial-court-counsel-Pro Se's rights were respected?

III. How is the appellate court able to determine whether pre-trial and trial preceedings were governed by the proper application of law to fact in regard to jurisdiction, application of legal terms used to describe a party, an event, or a proceeding and traditional orderly procedure and court room practices - or not?

IV. How should the Supreme Court of the United States firmly frame the guide to appellate court treatment of trial court cases as to the law that governs the proper application of legal terms to describe a party, an event, or a proceeding, defines jurisdiction, or underpins administration of traditional orderly procedure and court room practice?

V. Should the appellate court exclude evidence discrediting prosecutions case and before facts in its decision?

List of Parties: State Court case

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Supreme Court of the State of New York
Appellate Division Fourth Judicial Department

Cattaraugus County Office of the District Attorney-
Lori Rieman, Esq.

Legal aid bureau of Buffalo, Inc. -
Michael S. Deal, Esq.

Copy of the Opinions Below - 1-4

The date on which the highest state court decided my case was June 17, 2021, appended

A timely petition for rehearing was thereafter denied on September 8, 2021, and a copy of the order denying discretionary review follows the highest state court decision.

Constitutional and Statutory Provisions Involved

Article VII, Constitutional Amendment I

"Congress shall make no law respecting an establisment of religion, or prohibiting the free exercise thereof - as to private, religous, or homeschooling ~~education~~ as choice of education; or abridging the freedom of speech - as to defense counsel-Pro Se persuing a valid line of reasoning and questioning of prosecution's witnesses while presenting evidence in persuit of defense's trial theory and theme, different from prosecutions; or the right to redress of grievance respecting the right to such expressions; and

Amendment IV - the right of the people to be secure in their person... against unreasonable-pretextual-searches and seizures, as to vehicle traffic stop to seize a "letter", which by nature has no probable cause in a traffic stop, or in its form granting permission to search for such article.

Amendment V - No person shall be held ~~~~ to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury - without prerequisite of Legally sufficient evidence production; and proper "notice" in cases involving a 30-month pre-accusatory delay, so as to prohibit secret/sealed grand jury hearing which deprives the person of the opportunity to prove their case befor case proven ~~~~ against a trial jury; nor should the same offense be charged in the same indictment multiple times.

Amendment VI - the right to a speedy trial, to confront witnesses against him/her; and the right to have compulsor process for obtaining witnesses in his/her favor — without interference from prosecution and negligent conduct from the court as to requiring compliance from those compelled to appear - to meet the fundamental measure of due process in regard to acting trial court counsel-Pro Se and defendants right to same.

Statutory provisions involved in this case, as to the unconstitutional application of Penal laws 20.00, 130.35, and 230.30.

Statement of the Case

In order to properly demonstrate the tactical evolution of trial courts unconstitutional application of law to fact, the case is layed out against the appellate court synopsis and Holdings as presented in the appended decision, as they relate to the questions presented in this petition.

[1] Balancing test - undue delay. The court contends that it considered the extent of the delay; 2) the reason for the delay; 3) the nature of the underlying charges; 4) whether there was an extended period of pretrial incarceration; 5) whether there was any indication that defense was impaired by reason of the delay; [2] Constitutional law; [3] Neglect or delay; Investigation: obtaining witnesses or evidence; Confinement.

In this case, the appellate court did not have a solid foundation from which to base their decisions on. There is no records submitted to the appellate court to justify neither the extent nor reason for the 30-month pre-accusatory delay.

True, the underlying charges are serious, but that does not excuse the absence of competent records. In fact, it is all the more reason for the courts need to verify the actual vulnerability of a child, or in this case a 12 year old-minor's potential culpability in regard to the charge laid against the adult,

Was the minor a victim or did she willingly play a part from which culpability was excused?

The charge is promoting prostitution in the second degree, to which the prosecutor claimed that "there's no allegations of force or forcible compulsion and these charges are based upon the child's age" (6/15/16, p 29).

This means that the prosecutor is claiming that defendant's daughter is a prostitute and intentionally agreed

Reasons For Granting the Petition

will establish a firmly framed standard to appellate court treatment of trial court cases as to the law that governs the proper application of legal terms to describe the parties in a case, such as evidence required to prove the existence of a complaint by the person named as the complainant; such as evidence required to demonstrate the practice of prostitution to underpin the charge of promoting prostitution; and mandatory review of pretrial proceedings when they pretain to the admission or exclusion of evidence, no less requirment for credibility determination on or befor the use of a confession, for example.

If this court were to stipulate that a pre-accusatory delay involving a minor requires trial courts to hold a singer hearing, should the delay exceed 12-18 months (or in this case 30 months), then the rights of the accused are protected. If this Court were to stipulate that any psychological condition that is attributed to the minor is required to be on record prior to trial and must accompany records on appellate court review, then the rights of the accused are protected; and if this court were to stipulate that the absence of these hearings in the trial court, no less their absence in appellate court review is actionable ground for immediate review in the federal courts, then possibly the state courts will strive to make a more constitutionally compatible application of law to fact, so as to prevent the wrongful conviction of a factually innocent person on false evidence.

This petition involves the rights of a child, the rights of the accused — and the rights of acting trial court counsel-Pro Se. There are no laws to regulate the protection of a child-used by the prosecutor, without benefit of a lawyer-in a criminal trial; and there are no laws to protect the rights of acting trial court counsel-Pro Se; Or to prevent the trial court from assigning an attorney that was terminated as standby-conflict.

Reason For Granting the Writ - Cont.

In answer to question three, The Court could establish case origin requirements in regard to determining jurisdiction when a minor is involved in a criminal case, as to a guide to prerequisite records for appellate court determinations on physical, psychological, or educational conditions attributed to the minor; no less to the attachment of penal law labels to the child in a criminal case, and the description of the child's position in the case, as used by the press, such as defendant's daughter.

Generally, there has been no arbitrary application of legal terms used to describe a party, an event, or a a proceeding, but it appears that it may be becoming a practice ~~in cases~~ which involve minors in criminal cases. To prevent the stigma from the arbitrary attachment of penal law labels to children, the appellate court should be guided by evidence which would exist normally, for example, in the practice of prostitution, such as evidence of multiple acts of sexual abuse or multiple acts of sexual intercourse, in order to qualify as a prostitue in a charge of promotion of prostitution.

Further, unconstitutional use of penal labels by the appellate court in this case appears to arise from furthering the trial court prosecutors' misrepresentation of facts. For example the label "Human Trafficing and Slavery" and "Infants", §2421A gives a definition as to be applied in cases where 5 or more people have suffered the reckless disregard from sex trafficing. These labels are not justified under the laws. They merely serve to facilitate the illusion of legitimate determinations on trial court misconduct; and the arbitrary label of "Infant" to a case that involved a 12-year-old minor - who is of the age of criminal responsibility, in no way reflects the nature or purpose for appellate court review of trial court cases.

In answer to question four, I pray that this Court

Reason For Granting the Writ

This Court has worked long and hard to establish numerous precedents to protect the fundamental rights U.S. citizens. However, the Court has yet to establish any sort of prerequisite guide from which trial courts should follow, no less for appellate Courts to utilize when determining whether or not a violation has been committed against a persons' fundamental rights. These rights stand in ambiguity as stated in state and federal Constitutions.

The absence of treatment plans has allowed the employment of runaway applications that undermine the rule of law and detract from its power, purpose, and authority, by those who would abuse the power of discretion.

In answer to the questions presented, the Court could establish the rule that a hearing record is required on appeal from the trial court, as a means to determine whether good cause exists to terminate counsel, whether reassignment of counsel was offered, or whether self-representation was imposed upon the defendant; and to determine whether or not the termination of counsel was a tactic employed by the defendant to delay trial.

In answer to question two, the court could establish the rules of trial court treatment for acting trial court counsel-Pro Se, as a means to guide the appellate court when reviewing infringments upon defense counsel's right do present a trial theory that is different from prosecutions, to present evidence in support of that theory or theme, while persuing a valid line of reasoning as to the questions posed to prosecutions' witness from a different perspective than that which is persued by the prosecutor. A defendant acting Pro Se is held to the same legal standards that lawyers are held to and should be treated with the same respect when evaluating civil/criminal rights violations. Pro Se counsel's rights are not part of appellate court review, but should be.

or understood that she would participate in the proceeds. This in itself reveals the weakness in the people's case, as to the extensive delay in disclosing defendant's involvement; no less to the failure to disclose that such an agreement or understanding existed between the minor and her mother at trial.

There is absolutely no evidence on record that would even remotely suggest, no less fairly infer that the minor engaged in the "practice" of prostitution, no less that the defendant promoted it.

The practice of prostitution would be demonstrated by a medical finding that included evidence that suggested the presence of signs that reveal multiple acts of sexual intercourse or sexual abuse.

In this case, a colposcopic gynocological exam was conducted. The forensic child abuse medical specialist determined that there was nothing present to suggest that multiple acts of sexual intercourse occurred. In fact the child's hymen was normal, consisting of a thick ring of redundant tissue.

This forensic medical specialist works under the Child Advocacy Center, and participates in the conduct of police interviews that are duly recorded for law enforcement purposes. On October 30, 2012 such an interview was recorded; moreover, the interview in which the prosecutor claims that the child incriminated the defendant was recorded on April 2, 2014. However, these two tapes are missing from evidence.

And since it can fairly be infered from these records mentioned above that the child is not a prostitue and that there is no agreement on record to indicate that the defendant promoted the prostitution of this child — it can fairly be infered that not only did the child not incriminate the defendant, but the reason for the delay is arbitrary — unless it is to prove a case against the state for false imprisonment, because it can fairly be infered that if the defendant did not promote prostitution, then by extention she cannot be held liable for the conduct of another person or his crime committed against the child.

The appellate court took "good faith" as a reason to excuse the omission of a competent record from a professional psychiatrist or psychologist to verify the existence of a psychological condition that the prosecutor attributed to the child, as reason for the 30-month pre-accusatory delay. Moreover, the absence of the April 2, 2014 CAC tape strongly indicates that there is no sufficient incrimination on record against the defendant. No complaint means no complainant, yet this label too is arbitrarily applied in this case.

What is worse? The fact that the prosecutor went so far as to impeach her own witness - the child, in order to get what is not fairly infered as an incrimination against the defendant, and is the basis of sustaining counts five and six, despite no evidence to prove that an agreement existed between the prostitute and promoter to share or participate in the proceeds therefrom.

Further, the appellate court flat-out misrepresented the fact that (in addition to the 30-month pre-accusatory pre-indictment delay) the defendant spent an extended 18-months in pretrial incarceration - a 4-year delay to trial. The pre-trial incarceration is 3x's the the accepted 6 month pretrial delay - speedy trial.

[4] Waiver of counsel; self representation

The appellate court had no pretrial record from which to fairly determine whether or not the defendant chooses to represent herself or if the position was imposed on her. The March 7, 2016 record fairly shows that the defendant did previously contact the court to request reassignment of counsel. In fact the record shows that the defendant provided the court with a copy of the original notice (and the reply letter from J. Widger stating that she copied the letter to both the DA and MLS to resolve the exparte issue.

However, the court ignored this request for 7-months, until it chose to address the issue formally a mere 3 weeks prior to trial, at which point the defendant was denied reassignment and stated that "at this point I feel that even in ignorance... I would probably do better for myself" (5/23/16), when given the choice between a lawyer who refuses to demand verification of sufficiency in regard to the prosecutor's bald-self serving statement that an incrimination exists in the form of the April 2, 2014 CAC tape, that the condition attributed to the victim exists in the form of a competent report from the victim's treatment provider; and that a singer hearing be held to establish that the prosecutor's possession of the CAC tapes that were turned over meant that she prevented them from entering family court proceedings and thereby prejudiced the outcome of those proceedings against the defendant, while committing a felony and breaking criminal court rules which require that new/different evidence be ~~used~~ produced and used to convict in the criminal courts; no less causing the defendant to be deprived of her right to confront her accusers in (family court) criminal court because they died prior to indictment.

The prejudice far outweighs the bald-self serving statements that the appellate court calls good faith.

[4] continues

The tactical imposition of self representation culminated on appellate court review where there is no treatment as to ~~[illegible]~~ reviewing for violations of acting trial court counsel-Pro Se's rights. It is here in the trial court ~~[illegible]~~ arena. It was here that defendant was held to the same standard as lawyers, but denied her rights when it came to the most fundamental expressions of law.

The prosecutor and trial court judge by extention prevented Pro Se-defense Counsel from having a trial. She was prevented from persuing a defense strategy that exposed the weaknesses in prosecution's case. She was prevented from building foundation to present evidence in support of her theory. She was prevented from persuing a valid line of reasoning as to questioning prosecution's witnesses, that would have exposed that the police had not developed probable cause, apart from the prima facie eye-witness complaints that they possessed 4-years ago; and that judge interrupted defense counsel who was specifying a weakness in prosecutions case once her recognized the potential argument, by so ~~[illegible]~~ sustaining prosecutions objections (6/15/16, pp. 47, 58, 76, 78, 79, 97, 109-111, 129, 131, 132, 133, 134) and (6/21/16, p 43) - and prosecution's tactic to list Terhune as her witness until the last minute (pp 33-43), then yell out, "you cant impeach your own witness", despite the fact that she impeached her key witness - the victim (6/15/16, p111) after the kid just said that she didn't know why Terhune did what he did.

The appellate court failed to protect acting trial court counsel - Pro Se's right to put on a defense at trial.

[5] Human trafficing and Slavery; Infants

[5] continued, and [6]

The legal terms applied to this headding are egregiously misleading. Sex trafficing crimes by definition require 5 or more people-victims, to be designated under this heading or reference to the crime of promoting prostitution.

The fact that counts One and Two were reversed as against the weight of the evidence - which had the jury or court been listening and impartial, that verdict would have been reversed in the trial court when the victim said her mother did not know that Dorer raped her; and Dorer plainly said "you did not sell me your child (6/15/16, pp. 103, 105-124).

[7] Traffiding; "Infants" Carnal Knowledge; aiding and abetting.

A different conclusion was reached with respect to counts five and six, as to codefendant terhune.

Count Six, Promoting Prostitution in the Second degree required the element of proof that an agreement or understanding between defendant and the victim. No such proof exists on record, no less that the victim was a prostitute. However, the unconstitutional application of PL 20.00 to this charge and the charge of rape and attempted rape in the first, where guilt of the promotion charge is meant to infer guilt to the unconstitutional application of PL 20.00 to rape and attempted rape in the first in this case is the deleterious result from permitting the arbitrary attachment of legal terms to parties in a criminal proceeding, where the terms are not justified by competent or sufficient facts in a case, no less when they are applied contrary to the evidence or lack thereof.

In truth, the appellate courts require a formal standard by which they must follow when performing a review of law and facts or compairing the law to facts, no less for record requirements in order

[7] continued

to have physical evidence or hearing records of some sort from which to justify their determinations.

Good faith does not excuse either the prosecutor from fulfilling her discovery obligation, nor the appellate court from making presumptious mistakes because they lack the records required to make a full and fair review of trial court cases.

It is better to error on the side of caution than to make a decision on the face of absent records and risk the imprisonment of an actually innocent person.

The apparent publicity on court reversals on the ground of factual innocence recently leads the public to believe that our courts are not requiring local district attorney's to act in accordance with the rule of law. In fact, "state attorney generals, police chiefs, and former federal justice officers" are "pushing Biden to prioritize criminal justice reform", citing the lack of focus on "local prosecutors who are in many ways the drivers of damage" (8/17 Ap news).

It would appear that "good faith" requires a new definition, such as good faith is the demonstration of bald statements plus competent records to back the statements up, so as not to commit the obvious ROSARIO AND BRADY VIOLATIONS that occur as a result of the absence of records, on review and in the trial court.

I am not a lawyer, but I do know that I am innocent. I also know that my daughter is not a prostitute. She is an innocent child that was torn from her mother and her home on the face of a false, forged, unprocessed Salamanca City Court instrument, captioned People v. Tina Wagoner, dated October 29, 2012, and signed by Thomas Ginnery, Sr. DSS used this instrument to take custody of my daughter in family court on October 30, 2012. From there, Emily spent 7 years in a state institution which she did not belong in.

The enclosed records - Exhibits - will give the Court an overview of where and how this case originated and how the parties were abused under the illusion of court process.

If you will not hear this case for me, then please hear it for the sake of protecting our children when they become the objects of abuse in the state court system - because the parent was not afforded her rights in either court; and then ignored in the appellate court when she made the abuse of discretion and egregious violation of their rights known.

Hear this case in honor of our children. The future leaders. Hear this case because Emily deserves to know that the it was the government who suppress evidence and deprived her mother of a right to a hearing during family court proceedings. It was the government who called her a prostitute so that they could frame and convict her mothe - put her away for 35 years, as a way to shut her up and prevent her from writing letter and voicing the abuse of her and her daughter's rights; and it was the government who excluded the medical professionals evidence from appellate court review because it discredited prosecution's case and its evidence, and then belied the facts so as to make the 4-year delay to trial appear acceptable - despite the 18-months pretrial incarceration.

Hear this case because the state courts need laws that will reign in prosecution's conduct by defining the records that will be mandatory on appeal when delays are attributed to the psychological condition of the child (without proof the condition exists), when pre-accusatory delays last longer than a year, mandate a singer hearing; protect our children by mandating that the evidence - marked evidence - exhibits be included on appeable court review.