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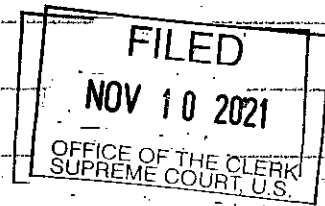
IN THE SUPREME COURT OF THE
UNITED STATES

ORIGINAL

Johnathan Robins,
Petitioner,

- against -

Superintendent of Rockview, et al.,
Respondents



PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Johnathan Robins
JP9849
P.O. Box A
Bellefonte, Pa 16823

QUESTIONS PRESENTED

1. Whether it violates the Constitution for a trial Court to refuse a defendant to present a marriage defense to a jury for sex charges involving his wife.

2. Whether it violates the Constitution to sentence a defendant to an indicted offense he was not found guilty of explained by trial Court as a "Clerical Error" due to jury instruction of a different uncharged offense.

3. Whether it violates the Constitution when trial Court files defense motions without pro se defendant's knowledge and allows after Graziop hearing for counsel to have control over case to have appeal dismissed.

PARTIES

The petitioner is Johnathan Robins, a prisoner at SCI-Rockview.

The respondents are Superintendent of Rockview at Box A, Bellefonte, Pa 16823, and Philadelphia District Attorney's Office at Three South Penn Square, Philadelphia, Pa 19107.

COURT PROCEEDINGS

Petitioner was convicted in Phila County Court on 3-12-10; #CP-51-CR-0003430-2009. Direct appeal affirmed in Pa. Superior Court on 8-5-11; 2000 EDA 2010. PCRA was dismissed in Phila. County Court on 4-27-16. PCRA dismissal affirmed in Pa. Superior Court on 9-27-17; # 2047 EDA 2016. Habeas Corpus denied in Eastern District of Pa. District Court on 2-22-21; # 18-1385. Request for Certificate of Appealability denied in Third Circuit of Appeals on 7-22-21, # 21-1556; Rehearing denied on 8-31-21.

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2020 U.S. Dist. Lexis 6511, 1-14-20, (Appx. Vol. I, Ex. A).
Order of Eastern District of Pa. Denying
Writ of Habeas Corpus # 18-1385, 2021 U.S.
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Decision of Pa. Superior Court affirming dismissal
of PCRA # 2047 EDA 2016, 2017 Pa. Super. Unpubl.
Lexis 3601, 178 A.3d 197, 9-27-17, (Appx. Vol. I, Ex. B).

JURISDICTION

The judgment of the United States Court of
Appeals for the 3rd. Circuit was entered on
July 22, 2021. An order denying a petition for
rehearing was entered on August 31, 2021,
copy attached Appendix, Volume I, Exhibit E.
Jurisdiction is conferred on the Supreme
Court by 28 U.S.C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves:

The V Amendment to U.S. Constitution (Appx. Vol. II, Ex. P)

The VI Amendment to U.S. Constitution (Appx. Vol. II, Ex. P)

The XIV Amendment to U.S. Constitution (Appx. Vol. II, Ex. P)

23 Pa. C.S.A. § 3305. Grounds for annulment of voidable marriages (Appx. Vol. II, Ex. M)

18 Pa. C.S.A. § 3123 (a)(1) [D.S.I. "by forcible compulsion" (Appx. Vol. II, Ex. K)

18 Pa. C.S.A. § 6318 (A)(1) Unlawful Contact with Minor (Appx. Vol. II, Ex. K)

18 Pa. C.S.A. § 3122.1 Statutory Sexual Assault (Appx. Vol. II, Ex. K)

18 Pa. C.S.A. § 2904 (A) Interference with Custody of Child (Appx. Vol. II, Ex. K)

18 Pa. C.S.A. § 6301 (A)(1) Corruption of a Minor (Appx. Vol. II, Ex. K)

Pa. Rules of Criminal Procedure Rule 563. Joinder of offenses in Information (Appx. Vol. II, Ex. L)

Pa. Rules of Criminal Procedure Rule 564. Amendment of Information (Appx. Vol. II, Ex. L)

STATEMENT OF THE CASE

Petitioner married his wife, who was fifteen at the time, by a Judge in St. Louis, Missouri on January 16, 2008. (Appendix, Volume II, Exhibit N.). Petitioner was arrested in Philadelphia, Pennsylvania on February 11, 2009 and charged with: Count 1., Involuntary Deviate Sexual Intercourse "by forcible compulsion" 18 Pa.C.S.A. §3123 (a)(1); Count 2., Unlawful Contact with Minor 18 Pa.C.S.A. §6318 (A)(1); Count 3., Statutory Sexual Assault 18 Pa.C.S.A. §3122.01; Count 4., Interference with Custody of a Child 18 Pa.C.S.A. §2904 (A); Count 5., Corruption of a minor 18 Pa.C.S.A. §6301 (A)(1). (Appx., Vol. II, Ex. I. Docket, Ex. K. Statutes). Petitioner was never charged with Involuntary Deviate Sexual Intercourse 18 Pa.C.S.A. §3123 (a)(7).

Petitioner was Pro Se at trial. Petitioner admitted to having sex with his wife. (Appx. Vol. II, Ex. J. Transcripts pg 56, 57). Petitioner tried to present a marriage defense by introducing Marriage License and Missouri and Pennsylvania marriage laws. Trial Court viewed marriage evidence and refused to let jury see it or instruct them on a marriage defense and told Petitioner if he tried to present a

marriage defense the Court would stop him.

Petitioner objected. (Appx., Vol. II, Ex. J. Tran. pg. 84-88). Trial Court told jury no one introduced any marriage evidence. (Appx., Vol. II, Ex. J. Tran. p 137)

Petitioner objected to refusal to admit evidence, and instruct jury for him to present a marriage defense at trial. After direct appeal where ineffective counsel, Thomas McGill, did not raise issue, Petitioner filed a Pro Se PCRA on Jan. 30, 2012, Amended Sep. 13, 2014 raising the issues of refusing to admit evidence, instruct jury, not allowing a defense; Petitioner also claimed ineffective appellant counsel. Trial Court dismissed PCRA on April 27, 2016 saying issues had no standing. (Appx., Vol. I, Ex. H.).

And in Nov. 10, 2016 Opinion trial Court said issues had no merit. (Appx., Vol. I, Ex. C. p 12, 13). Pa. Superior Court Opinion Sep. 27, 2017 states issues were either previously litigated or waived. (Appx. Vol. I, Ex. B. p 8, 9). Magistrate Judge Recommendation Jan. 13, 2020 stated issues were meritless. (Appx. Vol. I, Ex. A. p 13-15). Eastern District of Pa adopted recommendation. (Appx. Vol. I, Ex. G.). 3rd Circuit stated issues lack merit. (Appx. Vol. I, Ex. F.).

The Court instructed jury not to consider IDSI "by forcible compulsion" 18 Pa.C.S.A. § 3123 (a)(1), Count 1, as it had nothing to do with the

case, but instead instructed the jury on IDSI §3123(a)(7). (Appx., Vol. II, Ex. J. Tran. p 134-136).

Petitioner was found guilty of Counts 2-5 by jury on March 12, 2010. But Petitioner was also listed as guilty of Count 1. IDSI "by forcible compulsion" §3123(a)(1) and sentenced a consecutive 10 to 20 years for it on June 29, 2010. (Appx. Vol. II, Ex. I).

Petitioner raised this issue on July 19, 2015 in Addendum to Amended PCRA. Trial Court dismissed on April 27, 2016 saying it had no standing. In trial Courts Opinion Oct. 20, 2010 he states Petitioner was found guilty of IDSI §3123(a)(7), (Appx. Vol. I, Ex. D. p 10); nowhere on the docket is Petitioner charged with §3123(a)(7), or listed as guilty of it, nor sentenced to it. In trial Courts Opinion Nov. 10, 2016 the Court states Petitioner being listed as guilty of IDSI §3123(a)(1) "by forcible compulsion" was a "Clerical Error", (Appx. Vol. I, Ex. C. p 8); the error has never been corrected. Pa Superior Court states the issue is waived. (Appx. Vol. I, Ex. B. p 5). Magistrate's Recommendation states issue lack merit. (Appx. Vol. I, Ex. A. p 9-11). District Court Adopted recommendation and 3rd Circuit stated issue lacked merit.

After trial and before sentencing, without Petitioner's knowledge, trial Judge, Charles Cunningham

filed a defense motion on April 1, 2016 to remove Petitioner's Pro Se status. (Appx. Vol. II, Ex. I.). After direct appeal, Petitioner filed a PCRA saying he did not want any counsel on Jan. 30, 2012, court appointed counsel. At Grazier hearing on June 19, 2014 the Court stated Petitioner could proceed Pro Se (Appx. Vol. II, Ex. I.). Petitioner wrote court clerk on Jan. 6, 2016 who responded with a note stating the Judge never issued the order for him to be Pro Se. (Appx. Vol. II, Ex. O). Trial Court again filed a defense motion on Jan. 21, 2016, allowed counsel, Raymond M. Bily Jr, to remain in control of appeal, and refused to allow Petitioner to attend any other hearing. Counsel Bily filed a Finley letter on April 27, 2016 to have PCRA dismissed the same day. (Appx. Vol. II, Ex. I). Issue presented to Superior Court on March 22, 2017.

BASIS FOR FEDERAL JURISDICTION

This case raises questions of interpretation of the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. The district court had jurisdiction under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a person in state custody.

ARGUMENT IN SUPPORT OF GRANTING CERTIORARI

I.A. Conflicts with Decision of Other Courts, Question 1:

i The holding of the courts below that refusal to admit marriage evidence issue lacked merit is in conflict with other courts. "Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or support a reasonable inference or presumption regarding the existence of a material fact." Com v. Hawk, 709 A2d 373, 376, 551 Pa. 71 (1998). Fed. R. Evid. 401 defines relevant evidence merely as evidence "having any tendency to make the existence of any fact, that is of consequence to determination of the action more probable or less probable." US v Clifford, 704 F2d 86, 90 (3rd 1982).

ii The holding of the courts below that marriage evidence was irrelevant because Complainant was a minor, misrepresented her age, and did not have parental consent so Petitioner was not married. This is in conflict with many other courts as the law states a minor may be legally married without parental consent while misrepresenting their age. See: in the interest of Miller, 448 A2d 25, 301 Pa Super 511 (1982), Forry v Forry, 42 Pa. D & C. 2d 769, 1967 Pa. Dist. & Cnty. Dec. Lexis 132 (1967), Le J. v. V. J., 6 Pa. D & C. 4th 363, 1990 Pa. D & C.

Lexis 313 (1990), Teamsters Local 639 Employer's Pension Trust v. Johnson, 1992 U.S. Dist. Lexis H248*2 (D.C. 1992), Holbert v. West, 730 F. Supp. 50, 53, 1990 U.S. Dist. Lexis 1362 (E.D. Kentucky 1990, 6th Cir.), U.S. v. Miles, 2006 U.S. District Lexis 27226 *8. Under Missouri law, voidable marriage results from fraud, error, duress or other imperfect consent, per Mo. Anno. Stat. §451.020. Everetts v. Apfel, 214 F3d 990, 992, 2000 U.S. App. Lexis 12162 (8th Cir 2000). A voidable marriage is valid until set aside by a decree of annulment, Id.. The marriage of a person shall be deemed voidable and subject to annulment where either party to the marriage was under 16 years of age. 23 Pa. C.S.A. §3305 (a)(1). (Appx. Vol. II, Ex. M.) In all cases of marriage which are voidable either party to the marriage may seek and obtain an annulment of the marriage but, until a decree of annulment is obtained from a court of competent jurisdiction, the marriage shall be valid. The validity of a voidable marriage shall not be subject to attack or question by any person if it is subsequently confirmed by the parties to the marriage or if either party has died. 23 Pa. C.S.A. §3305 (b). (Appx. Vol. II, Ex. M.) A marriage which satisfies the requirements of the state where the marriage was contracted

will everywhere be recognized as valid. In re: Estate of Len Herr, 314 A2d 255, 258, 455 Pa. 225 (Pa 1974), also see Sutton v. Leib, 96 L ED 448, 452, 342 U.S. 402, 72 S Ct 398 (1952).

iii

The holding is in conflict with other decisions on an affirmative defense. With respect to the statutory rape statute . . . explicitly exempts from its scope acts of sexual intercourse with spouse of the alleged perpetrator, even in cases involving a person under sixteen . . . the government must plead and prove, as an element of the offense, that the defendant and his alleged victim were not married at the time the acts of sexual intercourse occurred. U.S. v. Miles, 27226*5, an exception to a criminal statute was an essential element of the offense which had to be alleged by the government in the indictment. Id*7, the marital status of the defendant and his alleged victim is a legal barrier to a prosecution Id*8. When a statute defines the factual basis of an offense or entitlement, and then states a further factual element as a basis for an exception, the Pennsylvania Supreme Court has treated the exceptional element as a matter for affirmative defense . . . Com. Pennsylvania Liquor Control Bd. v. T. J. R. Inc., 548 A2d 390, 120 Pa Commw. 313, 318-319 (1988) citing Keyes v. N.Y., Ontario &

W. Ry. CO., 108 A. 406, 265 Pa 105 (1919)." A criminal defendant may assert an [affirmative defense] when the government affirmatively assures him that certain conduct is lawful, the defendant thereafter engages in the conduct in reasonable reliance on those assurances, and a criminal prosecution based upon the conduct ensues" U.S. v. Aquino-Chacon, 109 F3d 936, 938 (4th 1997).

iv The Court's holding on instructing the jury without an affirmative defense instruction conflicts with Pa. Supreme Court. A charge will be found adequate unless the issues are not made clear, the jury was misled by the instructions, or there was an omission from the charge amounting to a fundamental error. Com. v. Chambers, 980 A.2d 35, 50, 602 Pa. 224 (2009),

1.B. Importance of Affirmative Defense Question:

i The question of being allowed a defense, specifically an affirmative defense, is important in many civil and criminal cases. It goes to the heart of Constitutional Due Process in a case. Refusal to allow an affirmative defense permits the prosecution of persons exempt from a statute to be convicted of it. Without an affirmative defense it causes the jury to believe a crime

has been committed when it actually has not. The lay person is not expected to know when an affirmative defense exists for a unique or specific statute unless properly presented to a jury. There should be oversight by this Court to give more weight of authority to alert lower courts that when requested an affirmative defense is more mandatory than discretionary. Even when trending public opinion does not favor a defense for a particular offense, the Supreme Court should make it clear that the law guaranteeing a defendant a due process right to a defense is not swayed by public opinion.

ii Petitioner's conviction and sentence should be vacated as he was exempt from statutes charged.

2.A. Conflicts with Decisions of Other Courts, Question 2:

i The courts holding conflicts with U.S. Supreme Court, Pa. Supreme Court, and Pa. Rules of Criminal Procedure. Phila. County charged Petitioner with Count 1, IDSI "by forcible compulsion", did not find him guilty of it, but falsely listed him as guilty of it and sentenced him to it; § 3123(a)(1). Phila. never charged IDSI § 3123(a)(7), a different offense, but

instructed jury on it, never listed him a guilty to it or sentenced Petitioner to it; the Phila court had no jurisdiction to try 3123(a)(7). Trial Judge admits to this and calls it a "Clerical Error."

ii When examining the "statutory elements" of a crime, the court cannot ignore that individual criminal statutes often overlap, and proscribe in the alternative several different categories of conduct under a single banner

... Involuntary Deviate Sexual Intercourse, 18 Pa. CSA. §3123 (setting forth eight separate violations). Consequently, in such cases, [the Pa. Supreme Court] cautions that trial courts must take care to determine which particular "offenses", i.e. violation of law, are at issue in a particular case. Commonwealth v. Baldwin, 985 A.2d 830, 837 note 6, 604 Pa. 34 (2009). Recognizing that a particular subsection of a criminal statute may merge with another crime as a lesser-included offense even though a different subsection of that same statute may not Id. A court may allow amendment of indictment provided it does not charge an additional or different offense. Pa. Rule Crim. Pro. Rule 564. (Appx. Vol. II, Ex. L). If several offenses are joined in a single information there shall be a separate count for each offense charged.

Pa. R. Crim. P. Rule 563(B). (Appx. Vol. II, Ex. 1).

A defective indictment is a structural flaw not subject to harmless error review. U.S. v. Inzunza, 638 F.3d 1006, 1016-1017 (9th 2011). Subject-matter jurisdiction involves a court's power to hear a case, it can never be forfeited or waived... a defective indictment deprives a court of jurisdiction. U.S. v. Cotton, 535 U.S. 625, 152 L.Ed 2d 860, 864, 122 S.Ct. 1781 (2002).

2.B. Importance of Defective Indictment Question:

i The question is important as the standards of the Fifth, Sixth, and Fourteenth Amendments to the lower courts needs affirmation. The lower courts needs guidance on what constitutes a proper indictment to give a court the jurisdiction to try someone and what constitutes a conviction to give a court the legal right to sentence a person. To correct a departure from Constitutional standards which has allowed a court to try an uncharged crime and to sentence someone to a crime that the lower court admits the person was not convicted of.

ii

Petitioner's sentence for Count 1, 18 Pa. C.S.A. §3123(a)(1) IDSI "by forcible compulsion"

should be vacated as he was not convicted of it and any claim that Petitioner was found guilty of §3123(CA)(7) IDSI be determined void as he was never charged with it.

3.A. Conflicts with Decisions of Other Courts, Question 3:

i The holding of the courts below on Pro Se violation are in conflict with other circuits and Supreme Court. Trial Court denied Petitioner to have control over his appeal by filing motions and keeping counsel on case even after trial Court claimed Petitioner could proceed Pro Se.

ii The right to self-representation on appeal is guaranteed in the Sixth and Fourteenth Amendment, see Myers v. Johnson, 76 F.3d 1330, 1333 (5th Cir 1996). A pro se appellant has a right to preserve actual control over the case he chooses to present and if standby counsel substantially interferes with a pro se appellants' presentation on his appeal the right to proceed pro se is effectively denied. Id at 1334. Denial of pro se rights is not subject to a harmless error analysis. McKaskle v. Wiggins, 465 U.S. 168, 177 n.8 (1984) ("the right to self-representation is either respected or denied; its deprivation cannot be harmless").

3.B Importance of Pro Se Violation Question:

i This question is important to protect an appellant's 6th Amendment right to self-representation. When a state allows for self-representation on appeal and a court abuses its' discretion to substantially interfere with pro se appellant's control of appeal, the appellant has no representation at all on appeal. The appellant has no proper representation by counsel or proper self-representation. This lack of representation denies an appellant the opportunity to challenge his conviction by having his issues fairly heard, it makes the appeal process a void exercise. The Supreme Court should specify to the lower courts what they should not do in pro se appeals, to deter a court's interference with an appellant who has been told he could proceed pro se on appeal.

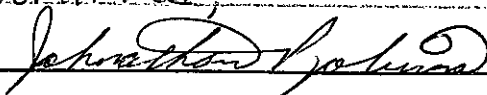
ii The District Court should be directed to have a hearing where pro se petitioner is allowed to fairly present his issues.

CONCLUSION

For the foregoing reason, certiorari should be granted

Respectfully submitted,

9-10-21



Johnathan Robins