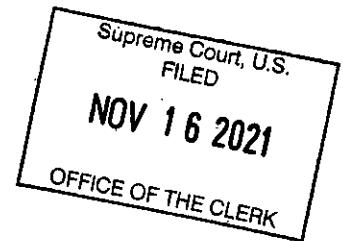


21-6353  
No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



Stephen Allwine — PETITIONER  
(Your Name)

vs.

State of Minnesota — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Stephen Allwine #256147  
(Your Name)

970 Pickett St. N  
(Address)

Stillwater, MN, 55003-1490  
(City, State, Zip Code)

N/A  
(Phone Number)

**QUESTION(S) PRESENTED**

- 1) Did the Trial Court err in denying In Forma Pauperis funding for post-conviction services based upon Petitioner's financial status at the beginning of the prosecution (Jan, 2017) rather than the beginning of the post-conviction action (2020)?

## **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:

## **RELATED CASES**

State v. Allwine, No. 82-CR-17-242, Washington County District Court. Sentenced Feb. 2, 2018

State v. Allwine, No. 82-CR-17-242, Washington County District Court, Post-Conviction Judgement entered Sept. 21, 2020.

State v. Allwine, No. A18-0846, A20-1588, Supreme Court of State of Minnesota. Judgement entered Aug. 18, 2021.

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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 \_\_\_\_\_; 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 is unpublished.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 \_\_\_\_\_; 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 is unpublished.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 A to the petition and is

reported at State v. Allwine (2021) \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Minnesota District Court (Washington Co) 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.

## JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was \_\_\_\_\_.

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: \_\_\_\_\_, 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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 8/18/21. A copy of that decision appears at Appendix A.

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**

United States Constitution

Article 6

Amendment VI

Amendment XIV

United States Code

U.S.C., Title 18, Section 3006(a)

U.S.C., Title 42, Section 9902(2)

Minnesota State Constitution

Article 1, Section 6

Article 1, Section 7

Article 3, Section 1

Minnesota Statutes

Minn. Stat. §563.01

Minn. Stat. §563.02

Minn. Stat. §590.01

Minn. Stat. §590.05

Minn. Stat. §611.21

Minn. Stat. §632.14

Minnesota Rules

Minn. R. Crim. P. 28.02

## **STATEMENT OF THE CASE**

The District Court violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution when it denied the Petitioner's In Forma Pauperis funding. It refused to accept IFP Affidavits with current financial information, and instead required financial data prior to trial (over 4 years ago).

### Reason For Granting The Petition

The United States Constitution has placed limits on this Court as it pertains to intervening in State Law except where that State Law violates the United States Constitution. The Fourteenth Amendment to the Constitution states, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States ...". While the United States Constitution doesn't address appellate or post-conviction processes (Ross v. Moffitt, 417 U.S. 600, 609), the Minnesota Legislature has enacted laws regarding these processes, and therefore the laws must conform to established Constitutional rights. Referring to the Due Process and the Equal Protection clauses of the Fourteenth Amendment this Court has said, "... our case law reveals that, as a practical matter, the two Clauses largely converge to require that a State's procedure 'affor[d] adequate and effective appellate review to indigent defendants, Griffin v. Illinois, 351 U.S. 12, 20 ... The equal protection guarantee ... assure[s] the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process.' (quoting Ross v. Moffitt, 417 U.S. 600, 616)" (Smith v. Robbins, 528 U.S. 259, 276-77).

Minn. stat. §632.14 deals with the appeal, and Minn. Stat. §590 deals with the post-conviction process. "... once the State chooses to establish review in criminal cases, it may not foreclose indigents from access to any phase of that procedure because of their poverty." (Burns v. State of Ohio, 360 U.S. 252, 257; see also Smith v. Bennett, 365 U.S. 708, 713 "When an equivalent right is granted by the State, financial hurdles must not be permitted to condition its exercise."); Griffin, 351 U.S. at 18 "at all stages of the proceeding the Due Process and Equal Protection clauses protect persons like petitioners from individus discrimination.") The Minnesota Legislature

accomplishes this requirement with Minn. Stat. §590.05. Minn. Stat. §590.05 deals specifically with indigent petitioners and states, "A person financially unable to obtain counsel who desires to pursue the remedy in section 590.01 may apply for representation by the state public defender. The state public defender shall represent such person under the applicable provisions of sections 611.14 to 611.27, if the person has not already had a direct appeal of the conviction. The state public defender may represent, without charge, all other persons pursuing a postconviction remedy under section 590.01, who are financially unable to afford counsel."

In Minn. Stat. §590.05, the Legislature references Minn. Stats. §§611.14-611.27 rather than recodifying the language of those statutes within Minn. Stat. §590.05; however, Minn. Stats. §§611.14-611.27 deal specifically with the indigent status before and during trial, and the wording of those statutes specifically reflects that association with trials rather than the post-conviction process. This is where the crux of our argument lies. For example, Minn. Stat. §611.21 (Services other than Counsel) subd. (a) states, "Counsel appointed by the court for an indigent defendant, or representing a defendant who, at the outset of prosecution, has an annual income not greater than 125 percent of the poverty line established under United States Code, title 42, section 9902(2), may file an ex parte application requesting investigative, expert, interpreter, or other services necessary to an adequate defense in the case." This statute is designed to accommodate the pre-trial needs required in order to provide the defendant with a fair trial; however, in this case the trial court is using the specific wording in Minn. Stat. §611.21(a) to deny resources, in the post-conviction and appellate phases, that are required for an adequate defense; thereby violating the equal protection clause of the Fourteenth Amendment. This Court has said, "we will not assume that a state-

court decision rests on adequate and independent state grounds when the 'state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any state law ground is not clear on the face of the opinion.' (Michigan v. Long, 463 U.S. 1032, 1041-42)'' (Caldwell v. Mississippi, 472 U.S. 320, 327) Therefore, the U.S. Supreme Court has jurisdiction to address this case. "The imposition by the State of financial barriers restricting the availability of appellate review for indigent criminal defendants has no place in our heritage of Equal Justice Under Law." (Burns, 360 U.S. at 258; Entsminger v. State of Iowa, 386 U.S. 748, 751)

Griffin, 351 U.S. at 23 holds that once the State determines that the appellate process is "wise and just" ... "it cannot by force of its exactions draw a line which procludes convicted indigent persons, forsooth erroneously convicted, from securing such a review merely by disabling them from bringing to notice of an appellate tribunal errors of the trial court which would upset the conviction were practical opportunity for review not foreclosed." The Minnesota Supreme Court, in my case, ruled, "Allwine also argues the district court erred when it denied his motion for funding, as authorized under Minn. Stat. §611.21(a), for him to hire an expert. This assertion is incorrect, however. Section 611.21(a) distinguishes between two categories of defendants: (1) those with 'counsel appointed by the court for an indigent defendant' and (2) those with private counsel who have an annual income not greater than 125 percent of the poverty line 'at the outset of prosecution'. Because Allwine has a private attorney, he is not entitled to funds for experts unless he established that his annual income was not greater than 125 percent of the poverty line at the outset of prosecution. Allwine did not do that before the district court. Accordingly, the district court did not err in

denying him additional funding. The fact that Allwine has private counsel also dooms his claim that, under Minn. Stat. §590.05, he is entitled to funding to hire an expert without a showing that his income was not greater than 125 percent of the poverty line at the outset of the prosecution."

While the Minnesota Court of Appeals, the Minnesota Supreme Court, and the 8th Circuit Court of Appeals have ruled on whether funds for an expert can be denied because the testimony would not aid in the defense (State v. Volker, 477 N.W.2d 904; State v. Griffie, 281 Minn. 569; and Davis v. Norris, 493 F.3d 868 respectively), in general the Minnesota state courts and the 8th circuit courts have been strangely silent on this issue of when indigent status is determined and whether that status can change over time. Therefore, this is a precedent setting case and would infringe upon the rights of many appellants moving forward.

The Minnesota Supreme Court acknowledged the "class distinction" in their opinion making this an Equal Protection issue, as noted in Bearden v. Georgia, 461 U.S. 660, 665. If indigent status is improperly determined by the trial courts then it may not only disallow expert services, as in this case, but also court-appointed representation, court fees, and documentation. In all of these situations the indigent appellant is being placed at a disadvantage compared to both the non-indigent appellant and the appellant that was indigent at the outset of prosecution, during the appeal process. This violates the Equal Protection clause of the Fourteenth Amendment.

There is no argument that the determination of indigency is in the sound discretion of the trial courts and is reviewable only for an abuse of discretion, but courts have held that it is subject to careful scrutiny because it involves a constitutional right. (Nikander v. District of First Judicial District, 711 P2d 1260) It is our argument that it was an abuse of

discretion for the trial court to base its 2020 decision of the indigent status of the appellant upon the financial resources that he had in 2017 prior to expending those resources on the trial and appellate processes.

To determine indigent status courts have analyzed multiple sources of funds that can be used to obtain required legal services including: income, assets, real or personal property, cash and money on deposit at banks, the interest on those deposits, gifts, government benefits, and even the spouse's income (in some cases). This type of information is collected on the forms associated with Minn. Stat. §563.01 and Minn. Stat. §563.02. These forms were properly completed by the appellant in this case. In fact, the appellant presented multiple IFP declarations and affidavits (at the request of the trial court). All of these, except the first one (the request for a medical expert), were dismissed by the trial court. (Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 "where the affidavits are written in the language of the statute it would seem that they should ordinarily be accepted.") When additional questions were asked by the trial court regarding possible additional sources of income that were not specifically mentioned on the forms (i.e. possible book deals), the appellant provided answers associated with his present financial situation via an affidavit. The courts do not have unquestionable discretion to simply disbelieve the appellant's evidence of indigency (Harris v. State, 468 S.W.3d 248) In Harris it was held that once a prima facia showing of indigency was made then the burden shifts to the State to show that the defendant is not indigent. Unless there is some basis in the record to find the appellant's prima facia showing to be inaccurate or untrue, the trial court should accept it. People v. Gillespie, 201 N.W.2d 104 and others hold that if there are questions or ambiguities then they should be resolved in favor of the appellant. The law has procedures for recovering

funds that were improperly assigned to a non-indigent appellant.

The appellant has made a good faith effort to avoid using public resources through the trial and the appellate process until his resources were exhausted, at which point he met the qualifications for indigent status and requested public assistance. The trial court initially granted indigent services to the appellant. On June 6, 2018 appellant's counsel submitted a "request for transcripts by an indigent defendant represented by private counsel" subject to Minn. R. Crim. P. 28.02 subd. 5 (Appeals by Defendant - Proceeding In Forma Pauperis). So from the very beginning of the appeal process it was clear that the appellant was proceeding In Forma Pauperis. Additionally, the trial court accepted the initial request for expert funds for a Medical Expert thereby acknowledging the indigent status of the appellant. However, all further requests were denied culminating in the trial court determining that the determination of indigent status should be based on the availability of pre-trial funds.

Many cases have already shown that indigency or non-indigency status at trial is not a determining factor of indigency status at the time of appeal, and because indigent status can change over time the determination of indigency should be initially determined at the time of the request (or action). Medberry v. Patterson, 188 F.Supp. 557, 561 held, "The Colorado Courts, on application for a free transcript would be obliged only to decide if petitioner is presently entitled to a free transcript." (see also Taylor v. State, 799 S.W.2d 445; Morey v. State, 744 S.W.2d 668; and McCraw v. State, 476 P.2d 370) In State v. Frank, 803 S.0.2d 1 the defendant was declared non-indigent for trial, but then 8 months later was declared indigent for his appeal. In the present case, it is not 8 months, but rather years that passed between the trial and the appellate's request for indigent status. Stream v.

Beisheim, 311 N.Y.S.2d 542 is another example of a successful businessman who was clearly non-indigent at trial, but by the time he came to his retrial he had exhausted his resources, was declared indigent, and was provided counsel.

Additionally, indigent status can, and should be, reexamined throughout the course of the action to ensure that the appellant still meets the qualifications for indigency status. Based on the interpretation of the law by the Minnesota Supreme Court, if an individual was indigent at trial but then received an inheritance of \$1 million then he would still be allowed to receive state funded assistance because he was indigent "at the outset of the prosecution." Common sense tells us that this would not be allowed, and most current laws allow for the removal of indigent status if it is determined that the individual is no longer in need of those services (United States v. Sampson, 161 F.Supp. 216; United States v. Harris 707 F.2d 653 where services were removed when it was found that defendant was non-indigent), and likewise the law should allow for the continuation of services (though possibly not in the exact manner) if an individual has exhausted his financial resources yet still requires the requested services to obtain fair treatment in the judicial system, as required by the Fourteenth Amendment. In United States v. Cohen, 419 F.2d 1124 the defendant's trial was May 1, 1969 where he was represented by private counsel. Then on July 29, 1969 he was determined to be indigent and was assigned representation to support his appeal. The court said that the representation was essential to an adequate defense and would have been beyond the means of the appellant.

"Griffin v. Illinois and its progeny establish the principle that the State must, as a matter of equal protection, provide indigent prisoners with the basic tools of an adequate defense or appeal, when those tools are

available to prisoners." (Britt v. North Carolina, 404 U.S. 226,27) As mentioned in many post-Griffin cases, court-appointed counsel is not the only "basic tool" required to successfully present appellate issues. In the appellate process, the burden of proof has shifted to the appellant to prove his issue(s) on appeal. It is acknowledged throughout case law that the proof needed to support the appellant's position must be more than "argumentative assertions"; however, it may not be possible for the appellant to meet that burden without the facts and evidence being properly examined and/or presented by experts. In Ake v. Oklahoma, 470 U.S. 68, 80 funding for a psychiatrist was allowed because "the State has made the defendant's mental condition relevant to his criminal culpability." In this particular case all of the experts requested by the appellant were addressing keystones of the State's case. These experts were required to provide the scientific expertise that the appellant lacked in order to make a justifiable motion to the trial court:

- 1) Medical Examiner -- The time of death was key in this case. The State suggested a time of death of 3:15PM (or earlier) when the appellant was alone with his wife. The appellant suggests a time of death after 5:30PM. This time of death would be within the time window of his alibi.
- 2) Computer Forensics -- The State used detailed computer forensic evidence that was never examined by the defense counsel. Any reliable computer forensics must be accomplished by an expert.
- 3) DNA -- There were a number of items that were tested for DNA, but were not reviewed by a defense counsel expert. There were also additional DNA tests that should have been done and were not. A DNA expert is required to appropriately respond to the tests that were done and to opine on the usefulness of additional tests.

"There is no meaningful distinction between a rule which would deny the poor the right to defend themselves in a trial court and one which effectively denies the poor an adequate appellate review accorded to all who have money enough to pay the costs in advance." (Griffin 351 U.S. at 18) The courts have, in this case, effectively denied review because all of these are highly specialized scientific knowledge areas for which any statement by the appellant would be useless "argumentative assertion" without the support of an expert in the designated area. In 18 U.S.C. §3006A(c) "Congress has provided that indigent defendants shall receive the assistance of all experts necessary for an adequate defense." (Ake 470 U.S. at 79-80)

Bearden, 461 U.S. at 665 differentiated between the two "fairness" issues spoken of by the Fourteenth Amendment: Due Process is related to the legal need for the service and whether the service is required to support their case and to present an adequate defense; Equal Protection relates to whether one class of defendant is treated differently. In this case it deals with the financial need for the service and whether the defendant is prejudiced by the inability to afford a particular service. Minn. Stat. §590:05 is intended to meet the Equal Protection (financial) requirement of the Fourteenth Amendment, but it is currently being disregarded by the trial court, effectively denying the appellant access to the court.

McFatridge v. State, 309 S.W.3d 1 holds that determination of indigency for the purposes of appointing counsel and receiving free records are independant and discrete inquires. They must be since there is a recognition that needs and resources vary with time. As such the determination of indigency for the purpose of procuring expert services should also be a discrete, independant inquiry, while using the same indigency requirements and documentary evidence.

In this case the appellant is required to proffer arguments that are based in fact and not mere argumentative assertions. However, in order to obtain those facts, additional services (beyond the assistance of counsel) are required. All of these services cost money and currently the appellant is indigent. The trial court has refused to fund these services no because they were deemed frivolous or otherwise unnecessary, and not because the appellant is not currently indigent, but rather because the appellant was not indigent years ago. To deny the indigent appellant the services that are needed to demonstrate his innocence, when those services would be available to a wealthier appellant or even an appellant that was indigent at the outset of the prosecution, is clearly a violation of the Equal Protection Clause of the Fourteenth Amendment. As such, appellant requests that this Court clarify that indigent status is to be analyzed based on the financial status of the individual at the time the action is taken, and to remand to the District Court for post-conviction proceedings.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Nov 10, 2021