

No.
21-7694
Term _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jason Paul Maple
Petitioner, Pro se

v.

Superintendent Albion SCI
Respondent

On Petition for Reargument
from the denial of Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit.
No. 20-2514.

PETITION FOR REARGUMENT

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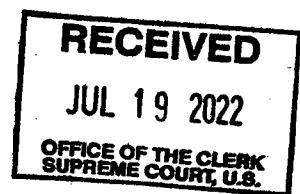


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Introduction

AND NOW, comes Petitioner, Jason P. Maple, *Pro se*; pursuant to United States Supreme Court Rule 44; and hereby moves this Honorable Court for reargument in the above captioned matter, regarding denial of Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit. There, the question presented for review was:

Whether the Third Circuit Appellate Court adhered to the terms of harmless-error review, judged by the standard set-forth by the United States Supreme Court, as it relates to a constitutional trial error in this case.

Relative to the question presented were discussed matters of exceptional importance regarding direct conflicts with clearly established federal law, as determined by the Supreme Court of the United States ("SCOTUS"); and conflicts with the 'beyond a reasonable doubt' standard, conflicts with the jury-trial guarantee, and conflicts with the Confrontation Clause, of the Fifth, Sixth, and Fourteenth Amendment's to the United States Constitution.

In proceeding on this Petition for Reargument, Petitioner adopts and incorporates by reference the matters set-forth in his Petition for Writ of Certiorari, with the intent that the former shall be taken and considered as part of the latter, the same as if it were fully set out therein.

Further presented herein are intervening circumstances that are of a substantial or controlling effect, or other substantial grounds not previously presented. These are to include conflicts with the substantive and procedural Due Processes, and the Equal Protection doctrine, of the Fifth and Fourteenth Amendment's to the United States Constitution.

In support thereof, aver as follows:

Discussion

Previously on direct appeal, a three judge panel of the Pennsylvania Superior Court unanimously concluded that Petitioner's confession in this case was indeed procured in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966) and his Fifth Amendment rights, and was erroneously admitted into evidence at trial. However, it was found that the violation amounted to harmless error, and the court affirmed Petitioner's sentence of life in prison without a chance of parole. (In a concurring statement, Judge Musmanno emphasized his reluctance to find harmless error where the Majority had acknowledged that a constitutionally-infirm confession was improperly admitted into evidence). *See Appx. E, of Petition for Writ of Certiorari.*

On Writ of Habeas Corpus, the United States District Court for the Western District of Pennsylvania found that the state Superior Court's harmless determination was contrary to, or involved an unreasonable application of, clearly established federal law - namely, *Brecht v. Abrahamson*, 507 U.S. 619 (1993), and *Harrison v. United States*, 392 U.S. 219 (1968). 28 U.S.C. § 2254 (d)(1). The District Court concluded that the admission of the unlawfully obtained confession was not harmless error and that there was 'grave doubt' surrounding the impact it had on the jury. Petitioner's Writ was granted and his conviction vacated. *See Appx. B, of Petition for Writ of Certiorari.*

In the habeas context, when there is to be a federal court review of a state court judgment, it has to be undertaken in the Federal District Court. In his *Desist* dissent, Justice Harlan recognized that ordinarily the purpose of habeas review is to ensure faithful state court adherence to the requirements of the Supreme Court imposed upon them. *See, e.g., Desist v. United States*, 394 U.S. 244, 262-63 (1962) (Harlan, J., dissenting) ("[T]he threat of habeas serves as a necessary incentive for trial and appellate courts throughout the land to conduct their proceedings

in a manner consistent with established constitutional standards").

Accordingly, the Western District Court in this case exercised habeas court jurisdiction, assuming responsibility for guaranteeing that faithful adherence to federal law. Where the District Court concluded that the state court's ruling was dictated by a 'contrary or unreasonable application of federal law', that independent judgment should have prevailed. However, pursuant to Respondent's appeal to the United States Court of Appeals for the Third Circuit, the Circuit Court reversed the District Court's judgment and remanded the matter back for denial of habeas relief. *See Appx. A, of Petition for Writ of Certiorari.*

Firstly, the Third Circuit opinion demonstrates a biased approach of review in its opening statement: "Not every murder is a mystery. Here, we know who did it: Jason Maple". *See Appx. A-2, of Petition for Writ of Certiorari.* Because of the fact that Petitioner did confess to the crime, it appears the court was of a preconceived opinion - that is, a predisposition to decide the case against Petitioner without proper consideration of the facts and law pertaining to the matter submitted.

The Substantive Due Process Clause of the Fifth and Fourteenth Amendment's to the United States Constitution requires fairness, impartiality and reasonableness in the manner by which a court exercises its authority. But because the Third Circuit was unable to exercise its functions impartially and without prejudice to the subject matter involved, the court's judgment in this case should be disqualified.

Secondly, the Third Circuit diverted its attention from the heart of the matter with an erroneous assessment of the Commonwealth's opportunity to secure a different resolution of the underlying *Miranda* violation, which had been previously passed by in the state courts. The Third Circuit opined that the District Court erred in relying on the exhaustion doctrine pursuant to

28 U.S.C. § 2254 (B)(1) as it only applies to prisoners seeking habeas relief, not states defending convictions. *See Appx A-4, 5, of Petition for Writ of Certiorari.* This, however, is a misrepresentation of the record. Nowhere in the District Court's memorandum do the terms of an exhaustion doctrine come into play regarding the *Miranda* violation. Rather, the District Court simply alluded to the Commonwealth's qualification to perform according to professional norms and procedural rule. *See Appx B-19, of Petition for Writ of Certiorari (Footnote 13).*

The Procedural Due Process Clause of the Fifth and Fourteenth Amendment's to the United States Constitution requires fairness, impartiality and reasonableness in the manner in which rules and modes of procedure are exercised and enforced. Here, however, the Third Circuit has deliberately ignored the Commonwealth's procedural requirements and circumvented enforcing such in order to intervene and save the illegality of Petitioner's confession. Nonetheless, just as the District Court has correctly acknowledged, the issue in dispute and presented for review in Petitioner's habeas proceedings is the harmlessness determination itself...not the underlying *Miranda* violation. *See Appx B-19, of Petition for Writ of Certiorari (Footnote 13).*

Finally, although the Third Circuit addressed the harmlessness of Petitioner's confession, its assessment of the error was an unreasonable departure from binding precedent and settled judicial custom, constituting an error of law. The Circuit Court ultimately reviewed the state Superior Court's harmlessness analysis and ruled that it was reasonable.

As an initial point, where the Third Circuit explicitly conducted *de novo* review of the matter, it was to conduct its own harmless-error analysis under the *Brecht* standard of review rather than test its confidence in the state court's harmless-error analysis under AEDPA's unreasonableness standard.

[I]n 2254 proceedings, a federal court must assess the prejudicial impact of constitutional

error in a state-court criminal trial under the 'substantial and injurious effect' standard set-forth in *Brech*, **whether or not** the state appellate court recognized the error and reviewed it for harmlessness under the 'harmless beyond a reasonable doubt' standard set-forth in *Chapman*.

Fry v. Pliler, 551 U.S. 112, 121-22 (2007) (citations omitted). See also, e.g., *Bond v. Beard*, 539 F.3d 256, 275-76 (3d Cir. 2008) (A court considering a habeas petition must perform its "own harmless error analysis under *Brech v. Abrahamson*, rather than review the state court's harmless-error analysis under the AEDPA standard".)

Thus, if a trial error is prejudicial under *Brech*'s standard, a state-court's determination that the error was harmless beyond a reasonable doubt is a result of an unreasonable application of *Chapman*.

The basis for the Third Circuit's judgment was that, after weighing the evidence against Petitioner as being "very strong", he "doubtless would have been convicted of first-degree murder" absent the erroneous admission of his illegally obtained confession. *See Appx. A-6, of Petition for Writ of Certiorari*. Maybe he would... or maybe he wouldn't. But even so, a strong case against Petitioner does not make the state court's harmlessness determination reasonable.

The judgment of the Third Circuit proceeded as if harmless-error analysis is synonymous with weight and sufficiency-of-the-evidence review, and focused on whether the state could theoretically sustain a conviction without the erroneously admitted confession. However, this is not and cannot be the test.

If this court's attention may respectfully be directed to Petition for Writ of Certiorari in this case, Petitioner's discussion clearly lays out the proper application of harmless-error review as it relates to the error in his case. There, it bears repeating that the determinative consideration is **not** the strength of the evidence or the probability of reconviction. It is **not** whether there is other legally sufficient evidence of guilt on which the accused could have been convicted. The court is **not** to weigh evidence or search for evidence to support a harmlessness determination.

Nor is it to assume the role of hypothetical jurors at a hypothetical retrial.

Rather, the correct inquiry is under *Brecht v. Abrahamson*, 507 U.S. 619 (1993), where the focus is on the jury and whether the erroneous admission of Petitioner's infirm confession "had a substantial and injurious effect or influence in determining [their] verdict". *Id. at 623*. The court was to inquire into the actual effect the error had on the jury's verdict, and whether the error substantially affected the actual thinking of the jurors or the deliberative processes by which they reached their verdict.

The Third Circuit's adjudication of the matter has "resulted in a decision that is contrary to, or involved an unreasonable application of, clearly established federal law, as determined by [SCOTUS]". 28 U.S.C. § 2252 (d)(1). *See, Williams v. Taylor*, 529 U.S. 362, 380-84 (2000) (*O'Connor, J., reasoning*) (The term "contrary to" is commonly understood to mean "diametrically different", "opposite in character or nature", or "mutually opposed").

If the adjudication was fairly consistent with the requirements of federal law, then yes, it could be considered reasonable. In this case, however, the Third Circuit *unreasonably* refused to extend a legal standard from SCOTUS precedent to a context where it should apply. This was not an incorrect interpretation of federal law, but rather an unreasonable application thereof.

By allowing the Third Circuit to flagrantly disregard the mandates of federal law and the United States Constitution, Petitioner is further being denied fair and equal protection of the law. The concept of the Equal Protection Clause of the Fifth and Fourteenth Amendment's to the United States Constitution has traditionally been viewed as requiring the uniform treatment of person's standing in the same relation to the governmental action questioned or challenged. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). Equal protection requires that all person's under like circumstances or conditions be subject to the same standards and modes of procedure.

[W]hen another similarly situated defendant comes before us, we must grant the same relief or give a principled reason for acting differently. We depart from this basic judicial tradition when we simply pick and choose from among similarly situated defendants those who alone will receive the benefit of ... constitutional law.

Desist v. United States, 394 U.S. 244, 258-59 (1969) (Harlan, j., dissenting).

It is the court's duty to act impartially and on the basis of reason which requires that

Petitioner be treated alike similarly situated litigants. Petitioner is entitled to the same

~~evenhanded~~ and consistent application of well-established federal and constitutional law that has governed previously considered cases relative to that of his, i.e., regarding an erroneous admission of an infirm confession. *See, e.g.*,

Arizona v. Fulminate, 499 U.S. 279 (1991); *Harrison v. United States*, 392 U.S. 219 (1968); *Abela v. Martin*, 380 F.3d 915 (6th Cir. 2004); *Alvarado v. Hickman*, 316 F.3d 841 (9th Cir. 2002); *Collins v. Brierly*, 492 F.2d 735 (3d Cir. 1974); *Harison v. Chandler*, 1998 U.S. App. LEXIS 27744 (6th Cir. 1998); *Hart v. Attorney General*, 323 F.3d 884 (11th Cir. 2003); *Moore v. Berghuis*, 700 F.3d 882 (6th Cir. 2012); *Sessoms v. Grounds*, 776 F.3d 615 (9th Cir. 2014); *Smith v. Estelle*, 527 F.2d 430 (5th Cir. 1976); *Taylor v. Maddox*, 366 F.3d 992 (9th Cir. 2003); *United States v. Barns*, 713 F.3d 1200 (9th Cir. 2013); *United States v. Brownlee*, 454 F.3d 131 (3d Cir. 2006); *United States v. Williams*, 435 F.3d 1148 (9th Cir. 2006); *Wood v. Ercole*, 644 F.3d 83 (2d Cir. 2011); *Collins v. Brierly*, 336 F.Supp. 1024 (W.D. Pa. 1971); *United States v. Tyler*, 2000 U.S. Dist. LEXIS 21891 (M.D. Pa. 2000).

Perhaps no question presented by habeas review is more vexing than that of a harmless-error review of a constitutional trial error. However, after its application of *Brech's* harmless-error standard, the Western District Court in this case was convinced that it was perfectly clear that Petitioner's erroneously introduced infirm confession had a 'substantial and injurious effect' on the jury's deliberations. This determination should not have been second-guessed by the Circuit Court. A deferential standard of review demands that it be given the benefit of the doubt.

The Third Circuit has directly impinged upon the independence of federal district habeas court review of state court convictions. It has directly implicated the existence of the District Court's effective venue for correction of a serious constitutional error and vindication of those

rights impinged upon by the state criminal procedures and proceedings. Review is therefore necessary by this court so as to assure every state and federal prisoner a forum in which he can continually litigate the constitutional invalidity of his case, preventing fundamental unfairness while assuring a uniformity of ultimate treatment among prisoners, and providing a method of correcting abuses perceived as severely detrimental to societal interests.

Review is necessary so as to avoid offending constitutional principle and prevent a serious disruption of our laws. Without it, there is no more undermined the incentives of lower federal and state courts to honor the commands of federal law than there is undermined the incentives of law enforcement to adhere to the requirements of *Miranda* and the Fifth Amendment. It is necessary here to advance the deterrence function of habeas corpus jurisprudence and assure that the lower courts toe the constitutional line.

Conclusion

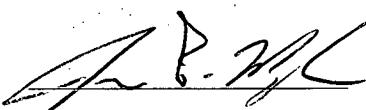
Petitioner believes the matters presented herein are colorable, arguably meritorious, and supported by federal law and the United States Constitution. He believes he has demonstrated, at the very least, that jurists of reason would find the Third Circuit's assessment of the District Court's judgment in this case debatable or wrong ... and that reasonable jurists could debate whether the matter should have been resolved in a different manner.

Review is not available from any other court or judge. If anyone is responsible for ensuring the commands of federal law are adhered to, it is this Honorable Court. It is this court's power, but also its duty to provide the proper resolution to this case or controversy. Without it, federal law, 'as determined by [SCOTUS]', might be applied one way by the federal and state courts in Pennsylvania, another way in Virginia, and yet another way in California.

WHEREFORE, intervention is necessary in this case to prevent a substantial miscarriage of justice, and to effect control and maintain compliance with the essential requirements of federal law and the United States Constitution. Thus, Petitioner prays this Honorable Court exercise its supervisory power and grant review of Petition for Writ of Certiorari.

Respectfully Submitted:

Date:



7-11-22

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