

Supreme Court of Pennsylvania, No. 116 MAL 2021

Superior Court of Pennsylvania, No. 1491 MDA 2019

Trial Court No. CP-06-CR-0004433-2017

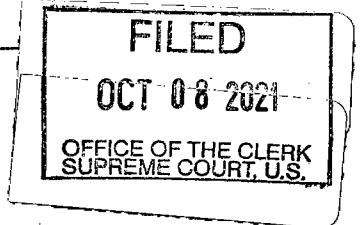
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ORIGINAL

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

Terry D. Malone, pro se petitioner



v.

COMMONWEALTH OF PENNSYLVANIA, respondent

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On Petition for Writ of Certiorari to the Supreme Court of the United States of America from the lower court Judgement entered December 14, 2020, under docket number 1491 MDA 2019

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PETITION FOR WRIT OF CERTIORARI

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Terry D. Malone, pro se

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I. QUESTION(S)

DID THE SUPERIOR COURT VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT (in its fullest context) AND THE DICTATES OF THIS COURT IN "PATTERSON V. NEW YORK", 432 U.S. 197 (1977), BY CONCLUDING THE COMMONWEALTH MAINTAINED A REBUTTABLE MANDATORY PRESUMPTION OF PETITIONER'S GUILT ON THE NONAUTHORIZATION ELEMENTS OF THE STATUTES, 35 P.S. §780-113(a)(16)(30) AND (32), UPON WHICH PETITIONER WAS FOUND GUILTY, THAT THE COMMONWEALTH DID NOT HAVE TO OFFICIALLY PROVE AT TRIAL BEYOND A REASONABLE DOUBT, UNTIL PETITIONER CAME FORTH WITH SUFFICIENT EVIDENCE TO PROVE HE WAS AUTHORIZED UNDER THE STATUTE TO MANUFACTURE, POSSESS WITH INTENT TO DELIVER, OR POSSESS A CONTROLLED SUBSTANCE?

II. FACTS

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## II. PROCEEDINGS

- Jury trial: June 10, 2019-June 12, 2019.
- Judgement of Sentence: August 14, 2019.
- Notice of Appeal: (filed) September 12, 2019.
- Superior Court Judgement: (entered) December 14, 2020.
- Motion for Reargument filed/denied: December 23, 2020/February 3, 2021.
- Petition for Allowance of Appeal from Superior Court Judgement filed/denied: February 26, 2021/August 3, 2021.

## III. CITATIONS

- Superior Court Judgement: 1491 MDA 2019
- Supreme Court of Pennsylvania: 116 MAL 2021

## IV. STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 USCS§ 2101, to exercise its discretion to review the lower court Judgement entered in this matter as established under docket number 1491 MDA 2019. Reargument was denied February 3, 2021.

## V. CONSTITUTIONAL AND STATUTORY PROVISIONS

- The 14th Amendment of the United States Constitution: (Section 1) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C.S. § 2101. Supreme Court; time for appeal or Certiorari; docketing; stay:

...

(d) The time for appeal or application for a writ of Certiorari to review the judgement of a State court in a criminal case shall be as prescribed by rules of the Supreme Court.

35 P.S. § 780-113:

**Prohibited Acts; Penalties.**

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

...

(16) knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board...

...

(30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board...

...

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

**Rules of the Supreme Court, rule 10:**

Review on a writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

...

(c) a state court or United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

## VI. STATEMENT OF THE CASE

At the trial in this matter, which took place from June 10th of 2019 until June 12th, the Commonwealth charged, and Petitioner was found guilty of two counts each, of manufacturing a controlled substance, possession with intent to deliver a controlled substance, possession of a controlled substance, and possession of drug paraphernalia. See "Appendix A". The trial court then sentenced Petitioner on August 14, 2019 to a total of 17 to 42 years in prison. See "Appendix B". The statutes, 35 P.S. § 780-113(a)(16), (30) and (32), read as follows:

### "Prohibited Acts; Penalties.

(a) The following acts and the causing thereof within the Commonwealth are hereby prohibited:

...

(16) knowingly or intentionally possessing a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board...

...

(30) Except as authorized by this act, the manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board...

...

(32) The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, re-packing, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

On appeal to the lower court, Petitioner specifically asked the court in his Statement of Errors, wall it a violation of Defendant's (Petitioner) 5th/6th/14th Amendment and Pennsylvania's equivalent constitutional rights for the Petitioner to be found guilty of counts 7-14 without the Commonwealth proving beyond a reasonable doubt that he wa§ not a person registered under the Controlled Substance Drug, Device, and Cosmetics Act, or a practitioner not registered or licensed by the appropriate State board to manufacture, possess with intent to deliver, or possess a controlled substance. See "Appendix C". The relief Petitioner requested wa§ for the Judgement of Sentence entered by the trial court to be vacated and all charges dismissed.

On December 23, 2019, Petitioner filed his Brief in accordance with Pennsylvania Rules of Appellate Procedure, rule 1925(b). Therein, pertinent to the question currently before this Court, Petitioner directed the lower court's attention to the decision it had already made on the topic in "Commonwealth v. Sojourner", 408 a.2d 1108 (Pa. Super. 1979), wherein, even though the lower court recognized that "nonauthorization ( a person not registered under the act, nor a practitioner not registered or licensed by the appropriate State board [to manufacture, possess with intent to deliver, or possess a controlled substance]) is an element of the offenses described in 35 P.S.§ 780-113(a)(16) and (30), which the Commonwealth had the burden of proving beyond a reasonable doubt", id. at 1113, the lower court still held that the Commonwealth maintained a mandatory presumption of the defendant's guilt on the nonauthorization elements of those statutes, that only disappeared once the defendant submitted some proof of his authorization to sh handle a controlled substance. See "Appendix G" (Commonwealth v. Sojourner, 408 a.2d at 1113-1114). This conclusion was drawn by the lower court in "Sojourner" based on its misinterpretation of this Courts h|lding in Patterson v. New York, 432 U.S. 197 (1977). See "Appendix H".

Petitioner went on to explain in his Brief to the lower court exactly how its decision in "Commonwealth v. Sojourner" was wrong in its interpretation and application of this Court's decision in "Patterson v. New York". In particular, Petitioner explained that in Patterson v. New York, the defendant there had challenged the constitutionality of New York's second-degree murder statute on the grounds of his belief that the statute, by making him prove his affirmative defense before the statute of New York had to disprove it, the statute violated the Due Process Clause of the Fourteenth Amendment. This Court there held that since the defendant's burden of proving his affirmative defense before the state of New York had to disprove it, was a separate issue that in no way negated the state of New York's burden of proving each and every element beyond a reasonable doubt of second-degree murder. The statute which had such a format was constitutional. See "Patterson v. New York", at 206-207.

The lower court, in "Sojourner", however, misinterpreted this Court's decision in "Patterson v. New York" to mean the Commonwealth no longer had the burden of proving beyond a reasonable doubt an essential element of the crime, as such element could be mandatorily presumed until the defendant came forth with sufficient evidence to rebut the presumption. See "Commonwealth v. Sojourner" at 1113-1114. Contrarily, and as previously noted, in "Patterson v. New York", this Court actually held that a State did not have to disprove an affirmative defense" until the defendant came forth with sufficient evidence to prove the defense. As to actual "elements" of the crime, however, this Court merely reiterated what it had already established in "In re Winship", 397 U.S. 358,-that the States must prove every element of a crime beyond a reasonable doubt. Irregards of this Court's holding in "Patterson v. New York", and the fact that the Commonwealth did not dispute Petitioner's assertion that the nonauthorization element was not proven beyond a reasonable doubt. The lower court concluded that based on its previous erroneous holding in "Commonwealth v. Sojourner" Petitioner's claim did not merit belief. See "Appendix D".

After the lower court entered its Judgement denying Petitioner relief on all claims raised in his Direct Appeal, including the claim raised herein. Petitioner then filed a timely Motion For Reargument. This motion was denied by the lower court on February 3, 2021. See "Appendix E". Petitioner then filed a timely Petition For Allowance Of Appeal in the Supreme Court of Pennsylvania which was denied on August 3, 2021. See "Appendix F".

The fact that Petitioner's guilt on the nonauthorization elements was a **mandatory presumption** (recognized by this Court as always being unconstitutional) and not merely permissive, is not only shown by the lower court's conclusion in this matter being based on its previous decision in "Commonwealth v. Sojourner", and nothing more. It is also proven by the fact that the trial court had erroneously instructed the jury in a fashion that omitted the nonauthorization elements of the statutes. In so doing, the trial court (1) totally lifted the Commonwealth's burden of proof on this element, (2) completely withdrew this element from the statute, and (3) fully removed the responsibility of the jury to find this element.

This Petition should be granted with due consideration being given to Rule 10(c) of this Court's rules, as established herein, and the potential harm that the Commonwealth's unconstitutional application of its laws will cause to the general public. The greater majority of We The People who are already imprisoned due to being criminally convicted are alleged violators of the very statutes addressed herein, that the Commonwealth and its courts claim every element of does not have to be proven beyond a reasonable doubt. At this very moment, hundreds of thousands of citizens, who are currently innocent, are accused of violating these very statutes, and are highly likely to be vilified, stigmatized, and most importantly, penalized in practically the harshest fashion known to our Country (imprisonment), by the Commonwealth's continued execution of its laws in defiance of the Constitution and

the authority of this Court. We The People have no immediate remedy to Redress the perils of this Jeopardy. Wherefore, the Supreme powers of this Court over inferior courts, as established under Article III, Section 1, of the United States Constitution is necessary to intercede expediently and expeditiously.

VII. UNSWORN DECLARATION

I, Terry Dion Malone, the pro se Petitioner in this matter, do hereby certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully Submitted,

Date: 10-8-21

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