

IN THE SUPREME COURT of the UNITED STATES
NO: 22-5412

CLIFTON LEE TRIBBLE - Petitioner Pro Se

BOBBY LUMPKIN - ^{V.S.} Respondent Director TDI J-ID

Petition for Rehearing En Banc

To the Honorable Justices of the Supreme Court comes now the petitioner, in Pro Se, in necessity moves this honorable court pursuant the Court Rule 44 herein request a rehearing of the decision of this court's denial of his petition for writ of certiorari issued October 31, 2022.

Equal Protection Fourteenth Amendment, Infringement of Due Process Rights Violations.

This petition for Rehearing En Banc asserts that the proceeding presents a question of "Exceptional Importance" because it involves issues in which petitioner contends that Rule 10(c) of the Supreme Court Rules governs, as a State Court, as well as a 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 does, in fact, conflict with relevant decisions of this Court cited in this petition, as well as the writ of certiorari previously denied by the Court.

The State Court's findings of facts were erroneous in that the Texas Code of Criminal Procedures Art 1.15 clearly and convincingly states, "No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded, unless the defendant, upon entering a plea, has in open court in person waived his right of trial by jury in writing in accordance with Articles 1.13 and 1.14 provided however, that it shall be necessary for the State to introduce evidence into the record showing the guilt of the defendant and said evidence shall be accepted by the court as the basis for its judgment, and in no event shall a person charged be convicted upon his plea without sufficient evidence to support the same. The Evidence may be stipulated if the defendant in such case consent to an oral stipulation of the evidence and testimony... such consent must be approved by the court in writing, and be filed in the file of the papers of the cause." There was no "oral stipulation" in this case.

The plain language of Tex. Code Crim. P. Art 1.15 requires evidence in addition to the guilty plea independently supporting an essential element of the crime charged. The due process clause places on the prosecution the burden of persuasion for every element of the crime charged, only in rare circumstances does the burden shift to the defendant. Any shift of the burden of persuasion must withstand constitutional scrutiny. Cf. LEDHN[2B] LEDHN[4] of Sullivan v. Louisiana, 508 U.S. 275. This beyond a reasonable-doubt standard requirement, which was adhered to by virtually all common-law jurisdictions, applies in state as well as federal proceedings. In re Winship 397 U.S. 358. The guilty plea transcripts that were withheld by the opposing party throughout the state proceedings, as well as the U.S. District Courts, are a clear and convincing demonstration of an unreasonable application of clearly established federal law as well as Texas law. See headnote 3 @ page 362 of Winship and LEDHN[4].

Standard of Review

In relevant part, section 2254(d)(1) states, "An application for writ of habeas corpus on behalf of a person in custody pursuant to a judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of clearly established federal law as determined by the Supreme Court of the United States. This court has explained that "Section 2254(d)(1)'s 'clearly established' phrase refers to the holdings as opposed to the dicta of its decisions as of the time of relevant state court decisions. See: Lockyer v Andrade, 530 U.S. 63 and Williams v. Taylor, 529 U.S. @ 409.

The substance and scope of the Due Process Clause guarantee requires a standard of proof of the Fourteenth Amendment, which requires States to apply strict criminal standards of beyond doubt, opposed to the mere preponderance of evidence.

In the instant case, the sentencing should have been controlled by the due process protections of Constitutionally sufficient evidence and determination of the essential elements as determined by Jackson v. Virginia 443 U.S. 307 LEH HN[28], LEH HN[8A], Letter v. Lopez 516 U.S. 156 HN 4.

A Pro Se litigant's allegations of denial of due process, however in artfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. By the petitioner's being denied the trial court's plea hearing transcripts, an artificial barrier to the consideration of relevant testimony putatively credible by a preponderance of the evidence, the judge reduced the level of proof necessary for the State to carry its burden. Indeed, the petitioner's case rested almost entirely on heresay opinion of the DA, effectively required the petitioner to establish his innocence beyond a reasonable doubt. This requirement is plainly inconsistent with the constitutionally rooted presumption of innocence. The Due Process Clause and the Equal Protection Clause of the Federal Constitution each triggers a distinct inquiry, due process emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated; the equal protection clause, on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations arguably are indistinguishable. see LEH HN[5] of Evitts v. Lucey 469 U.S. 387.

The transcript of the guilty plea hearing was essential to a decision on the merits, petitioner filed a DKT 13 form with the Fifth Circuit Court of Appeals on 6/21/2021 which decided, "there will be no transcripts required for this appeal." Document Received - NO ACTION TAKEN. ?

The State court's interpretation of the proof required MUST BE applied on collateral review to prevent a violation of the Due Process Clause of the Fourteenth Amendment which guards against convicting a defendant without proof beyond a reasonable doubt on each element of his charged crime. In Fiore v. White 531 U.S. 225, the Supreme Court explained, "The State court's interpretation of the proof required must be applied to essential elements." This is controlling or persuasive authority as determined by the by the Supreme Court in 2001.

The Motion for Relief from Judgment 60 (b)(3) petitioner filed with the United State Southern District of Texas on Dec. 04. 2020 @ pg 16, petitioner cited clearly established federal law that the Supreme Court addresses, judge imposed sentencing's factual findings being unconstitutional and a denial of Sixth Amendment Rights to have a jury find the facts beyond a reasonable doubt in accordance with 28 USC 2253(c)(2), as well as Buck v. Davis 580 U.S. 100 LEH HN[8].

LEH HN[7] admonishes "... when the court of appeals properly applies the C.O.A. standard and determines that a prisoner's claim is not even debatable, that necessarily means the prisoner has failed to show that his claim is meritorious. But the converse is not true. That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he has failed to make a preliminary showing that his claim was debatable. Thus when a reviewing court inverts the statutory order of operations and first decides the merits of an appeal, then it justifies its denial of a C.O.A. based on its adjudication of the actual merits, it places too heavy a burden on the prisoner at the C.O.A. Stage. Miller-El v. Cockrell 537 U.S. 322, which flatly prohibits such a departure from the procedure proscribed by 2253. "Due Process of the law within the meanings of the Fourteenth Amendment and the Equal Protection of the laws are secured if the laws operate on all alike, and Not subject individuals to an arbitrary exercise of government." Duncan v. Missouri 152 U.S. 377 HN 1.

The denial of petitioner's trial transcripts by the Montgomery County Clerk's Office to support his claims, and to properly file his habeas corpus, is a misfit in a country dedicated to affording equal justice to all and special privileges to none in the administration of criminal law. see: HNS of Griffin v. Illinois, 351 U.S. 12. There can be no equal justice where the kind of trial a man gets depends on the amount of money he has. Destitute defendants MUST be afforded adequate appellate review, the same afforded to defendants who have enough money to buy the transcripts. The Southern District Court could not adequately assure itself that petitioner's pro se complaint could prove no set facts in support of his claims which could entitle him to relief without them, regardless of their repeated claim that, "This court broadly interprets Tribble's State and Federal habeas applications." and "we hold petitioner to less stringent standards as pleadings drafted by attorneys." The Federal Rules of Civil Procedure DO NOT require claimant's to set out in detail the facts to support its general allegations of facts upon which his claims are based. All the Rules require is a short plain statement of a claim that will give fair notice of the claim, and the grounds upon which it rests. Such simplified notice pleading is made possible by the liberal opportunity for discovery and other pretrial procedures established by the Rules to disclose more precisely the basis for both claim and defense, and to define more narrowly the disputed facts. see U.S. (S) Fed R. Civ. P. 8(b)(3), cf. LEdHN[10] of Conley v. Gibson, 355 U.S. 41, and Haines v. Kerner 404 U.S. 519 @ LEdHN[2] 1113 which held, "although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof." Even after the petitioner provided documentation of his diligent attempts to move Montgomery County to get the transcripts, and demonstrating allegations within the record that could not reasonably be disputed by reasonable jurist. Under Fed. R. Civ. P. Rule 56(c)(1) it was sufficient to warrant the U.S. Southern District to grant petitioner's Discovery, supporting his claims. See also Fed. R. Civ. P. Rule 56(a) and Jamison v. McLendon 476 F. Supp. 3d 386 HN 1.

First Amendment Infringement of A.T.C.

Petitioner herein certifies that intervening circumstances of controlling effect govern his claims above, as well as the denial and delays of his fundamental right to access to the courts. The right of access to the courts is an aspect of the First Amendment right to petition the Government for redress of grievances.

Accordingly, the Constitution guarantees that prisoners like all citizens have reasonable adequate opportunity to raise Constitutional claims before impartial judges. see: eg, Lewis v. Casey 518 U.S. 343, and Bounds v. Smith 430 U.S. 817. Moreover, because this right is fundamental, it requires a searching judicial examination under the Equal Protection Clause. Conventional notions of finality in criminal litigation cannot be permitted to defeat the manifest federal policy that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review. see Fay v. Noia 372 U.S. @ 424. In the instant case, petitioner was prevented from obtaining essential documentation to support his claims. see Bounds LEdHN[2] It is established beyond doubt that prisoners have a Constitutional right to access to the courts. The State and its officers may not abridge or impair petitioner's right to apply to a federal court for a writ of habeas corpus. Id. @ 549 Ex parte Hull 312 U.S. 546.

Petitioner has shown substantial and controlling Supreme Court decisions striking down restrictions impeding access to the courts by habeas applications. He cited the precedent case in Texas to the Fifth Circuit but they ignored governing caselaw? This is the first case that shows up when you Sheperdize Bounds on Nexis Lexis, and was controlling in 2016 at petitioner's conviction. As it was in 2019 584 Sw3d 434 Ex parte Jones, and was transcripts by the Clerk's Office. see: Concurring Opinion and Conclusion of Jones which also cite the controlling Texas Court of Criminal Appeals 2014 case of In re Bonilla 424 SW3d 528, which arguably is indisputably the same circumstance.

CONCLUSION

This petition for Rehearing En Banc asserts that the proceeding presents a question of "Exceptional Importance" because it involves issues in which the U.S. Supreme Court's recent denial conflicts with its well established precedent. See: United States v. Haymond, 139 S.Ct. 2369, 2019 U.S. Lexis 4398 which found that a mandatory minimum prison sentence that comes into play only as a result of additional judicial factual findings by the preponderance of evidence cannot stand. Justices Gorsuch, Ginsburg, Sotomayor and Kagan concluded Haymond's Fifth and Sixth Amendment right to a trial by jury was violated. Citing the exact same cases petitioner has relied on in this case. Secondly, this Court in Ramos v. Louisiana 140 S.Ct. 1390 2020 U.S. Lexis 2407 affirmed that the Sixth Amendment affords a right to a trial by jury as understood and applied at common law, including all essential elements as they are recognized in this country and England when the Constitution was adopted. This includes the requirement that a verdict should be unanimous. As well as the Sixth Amendment's right to a jury trial as incorporated against the States by way of the Fourteenth Amendment requirement of unanimous verdict to convict a defendant of a serious crime, and it was not the Court's role to assess whether the right was important enough to retain. see HNS, HNS4 and HNS.

This petitioner was sentenced to 30 years for DWI in which a mandatory one half of the sentence must be completed before he is eligible for any type of release. This mandatory minimum prison sentence ONLY came into play as a result of additional judicial factual findings by the preponderance of evidence. The petitioner here contends that this is intervening circumstances of substantial or controlling effect. It follows that, if a State provides that a specific component of a prohibited action shall give rise to a special stigma and to a special punishment, that component must be treated as a fact necessary to constitute the crime within this Court's holding in In re Winship, 397 U.S. 358. This unique standard of proof, not proscribed or defined in the Constitution is regarded as a critical part of the moral force of criminal law. Addington v. Texas 441 U.S. 418 LEAD HNS [10] citing Winship 397 U.S. @ 364.

Furthermore, this petitioner was denied his fundamental right to access to the Courts almost from day one, with his futile attempts to obtain the guilty plea hearing. His First and Fourteenth amendment rights were infringed by the State's failure to supply meaningful access, by allowing Montgomery County, Texas Clerk's Office to refuse to supply him with the necessary documents to properly file and prepare his Article 11.07 in State Court. The Due Process Clause of the Fourteenth amendment as well as the Equal Protection Clause require the State to provide a free transcript to an indigent defendant. See Habeas Rule 28 U.S.C. § 2254 and Sixta v. Thaler 615 F.3d 569 @ HNS. Without the transcripts the petitioner was essentially "up a creek without a paddle."

After the Court's denied his habeas 11.07 in State Court and his 2254 Federal habeas due to petitioner's being unable to support his claims, he filed the 60(b)(3) motion and alleged fraud and showed statements in the record which were untrue, it was also denied. After granting I.F.P. to proceed petitioner was able to obtain essential documentation to validate his constitutional claims. Contrary to Congressional intent petitioner was deprived of his valuable right to one full round of federal habeas review. Petitioner therefore prays this Honorable Court reconsider and rehear this case in the interest of fundamental fairness and the interest in the Constitutionally required mandates of Congress and common law. And accordingly make its decision known in findings of facts and conclusions of law.

Respectfully Submitted on this 30th
Day of December 2022.

Clifton Lee Tribble Petitioner Pro Se
1525 FM 766 Lubbock, TX. 79454

Certifications

I Clifton Lee Tribble hereby certify that, to the best of my ability as a laymen, I have presented grounds limited to intervening circumstances of controlling or substantial effect.

I also Certify that this Petition for Rehearing En Banc is presented in Good Faith, and surely not for delay, as it has been 6 long years of attempted understanding beyond my unschooled legal grasp.

Respectfully Submitted
December 30th 2022
Clifton Lee Tribble Pro Se
Clifton Tribble
1525 FM 766
Lubbock Texas 79454

PROOF OF SERVICE

I, Clifton Lee Tribble, do swear or declare that on this date December 30, 2022, as required by Supreme Court Rule 29 I have served the enclosed Petition for Rehearing on party's counsel via respondent by depositing an envelope containing the above document in the United States mail properly addressed with first class postage prepaid in accordance with 28 USC 1746 within the permitted time to file said documents served at P.O. Box 99 Huntsville, TX. 77342.

Respectfully Submitted,

Cliff Tribble

Clifton Tribble Pro Se
1525 FM 766
Lubbock TX 79454

**Additional material
from this filing is
available in the
Clerk's Office.**