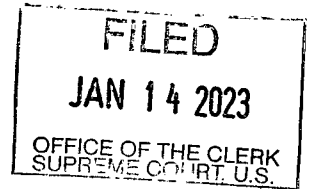


No. 22-7084

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



CHRISTOPHER D. LUTKER — PETITIONER
(Your Name)

vs.

STATE OF MICHIGAN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Mich. court of Appeals, Docket No. 361479; 2022 Mich App Lexis 5611
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher D. Luther #686194
(Your Name)
Macomb Corr/Fac
34625 26 Mile Rd
(Address)

Lenox Twp. Mich. 48048
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. DID CHRISTOPHER DANIEL LUTHER KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY MADE WHEN HE WAS SICK AND SOILING HIMSELF AND DENIED A RESTROOM UNTIL HE WOULD PLEA GUILTY?
- II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING HIS MOTION TO WITHDRAW HIS PLEA?

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

PEOPLE VS. LUTKER, 2022 Mich App Lexis 5611 (Mich. Ct. of App. Sept. 21, 2022).

PEOPLE VS. LUTKER, 2023 Mich Lexis 169 (Mich. Supreme Court. Jan. 31, 2023).

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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☐ is unpublished.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☐ is unpublished.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 B 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☒ is unpublished.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 Michigan court of Appeals court appears at Appendix DA to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

Michigan constitution of 1963.

Mich. Const. of 1963, art 1, § 17 6

Other Authorities.

Magna Carta of 1215 clause 39 7

Magna Carta of 1215 clause 40 7

47 St. Mary's L.J. 1, 16-17 (2015) 7

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 ~~supreme~~ ^{Court of Appeal} _____.
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 Const. Am XIV. Due process of laws.

Michigan constitution of 1963, art 1, § 17. Due process of laws.

STATEMENT OF THE CASE

Petitioner Christopher Daniel Lutker, was charged with two counts of criminal sexual conduct (CSC) First Degree contrary to Mich. Comp. Law 750.520 b (Multiple variables); two counts of CSC Second Degree, contrary to Mich. comp. Law 750.520 c (Multiple variable); and one count of Accosting children for Immoral Purposes, contrary to Mich. Comp. Law 750.145a. Petitioner was sentenced on Sept. 21, 2021.

On March 25, 2022. The Petitioner filed a motion to withdraw his plea; Arguing that his plea was involuntary because at the time he entered it, he was feeling apprehensive and soiled himself and wanted to end the proceeding to clean himself up.

The hearing on the motion to withdraw the Judge stated:

"I'm not seeing anything to suggest that this was, Yea, he was in a bad spot because of his accident, but again, the fact that he was nervous and hesitant and didn't like his attorney. That is not a defect in the Plea-taking process". Tr. pp. 15-16 (5-13-2022).

Petitioner's attorney reminded the court that "the added part of it is he wanted to get out of the courtroom as soon as he could, you know because of his condition." Tr. pp. 17. In reply, the court said:

"well I understand that. But I don't think that... I can't address, you now, his unspoken concerns, you know?" I mean well recognize that it was an uncomfortable situation for him. And again, we never got to the discussion as to how to deal with it for a bench trial because he indicated that he wanted to plea, so we never had to address the question of whether he was going to be taken back to the jail, given a shower, brought back that afternoon, which is likely what we would have done, but I don't know. We never got to that point. So I'm going to deny your motion to withdraw the plea. Tr. p. 17(5-13-22).

Petitioner then filed an application for leave to appeal with the Court of appeals, arguing that the trial court erred in denying his motion as his plea was involuntary because "he pled no contest with reluctance" and at the time of the plea had soiled himself. (COA App, pp. 7-8, on Sept. 21, 2022).

The Court of Appeals in a Two out of Three decision to deny leave to appeal. See *People vs. Luther*, 2022 Mich App Lexis 5611 (APPENDIX-A). 2023 Mich Lexis 169.

Now Judge Amy Ronayne Krause in a dissenting would "Grant" leave to appeal stating:

"There is sufficient evidence in post-plea proceedings that defendant defected on himself during the plea. It is difficult for me to understand how this plea was knowing and voluntary under the circumstances and it certainly deserves plenary review."

REASONS FOR GRANTING THE PETITION

Due process "demands" that the Petitioner's plea must be voluntary, knowingly, and Intelligently made. U.S Const. Am. XIV; Mich. Const. of 1963, art 1, § 17; McCarthy vs. United States, 394 U.S 459, 466 (1969); Boykin vs. Alabama, 395 U.S 238, 242-244 (1969); Brady vs. United States, 368 U.S 487 (1962); In re Valle, 364 Mich 471 (1961); People vs. Johnson, 386 Mich 305 (1971); Marchibroda vs. United States, 368 U.S 487 (1962).

In Brady, supra at 748, This Honorable Court explained:

"The plea is more than an admission of past conduct, It is the defendant's consent that judgment of conviction may be entered without a trial - a waiver of his rights to a trial before a jury or a judge. Waivers of a Constitutional right not only must be voluntary but must be knowing, intelligent act done with sufficient awareness of the relevant circumstance and likely consequences."

In In re Valle, supra at 477, The Michigan Supreme Court explained:

"A plea 'must be entirely voluntary by one competent to know the consequences', and 'should not be induced by fear, misapprehension, persuasion, promises, inadvertence, or ignorance'."

under the situation with the Petitioner, the Trial Court abused its discretion when denying the motion to withdraw his plea. See e.g., People vs. Rajput, 505 Mich 7, 11 (2020); People vs. Anderson, 501 Mich 175, 189 (2018).

The Due process rights originated in 1215. That was called the Magna Carta.

Clause 39 states:

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by law of the land."

Clause 40 states:

"To no free man will we sell, to no man will we deny or delay right or justice."

In determining whether a legal system comports with the Rule of Law, Perhaps nothing is more important than due process. In the most basic terms, due process entails both notice and hearing. Persons must have notice of what the law requires and, in defending against accusations, notice of the claims against them. Persons must also have a "fair" opportunity to state a legal claim, or assert a defence, and this opportunity must occur before a decision is made by the adjudicatory authority. If a decision is reached before the arguments are heard and the evidence is considered, the purported observance of procedure is not compliant with the Rule of Law but its simply a mockery of justice." 47 St. Mary's L.J. 1, 16-17 (2015).

"The purpose of a criminal court is not to provide a forum for the ascertainment of a private right. Rather it is to vindicate the public interest in the enforcement of criminal law while at the

same time safeguarding the rights of the individual defendants." Standefer vs. United States, 447 U.S. 10, 25 (1980).

The true question here is "did the State Trial court protect the rights of the Petitioner" when it held a plea hearing with the Petitioner who was sick and defecating on himself without immediately removing him from the holding cell in the courthouse to a place where he could clean himself up and then brought back to the courthouse. Now they took him from the holding cell into the courtroom before the Judge and proceeded to discuss whether he would have a bench trial or Plea guilty! without him being able to fully clean himself.

The Trial court denied his motion to withdraw his Plea and determined that under the circumstances that he voluntarially pled guilty. The FACTS that he was forced to sit in his defecation and decide if he was going to plea or go to trial without allowing him to clean himself is "UNCONSTITUTIONAL" not to for that there are facts of which or not of the record and facts that are.

See APPENDIX-C.

"I was in my chambers with the Prosecutor and I believe his defense counsel when a Sheriff's deputy came in and indicated that he had an accident, that he had soiled himself, and that they were, you know, helping him clean up." But of course its not like we

have showers back in the courtroom detention."

"NOW THERE WAS NO SHOWER FOR HIM, NO NEW CLOTHES FOR HIM BUT THEY STILL BROUGHT HIM INTO THE COURTROOM TO DISCUSS A PLEA!" There is more to this but its clear that at this point in time "NO MAN" shall be forced to sit in his own "Soil" and it be said then that the decision to Plea guilty is voluntarily made under those circumstances. He was doing anything possible to get out of the courtroom and be able to get cleaned up and clean clothes on himself.

One Judge has recognized the situation and attempted to save face on this fact. But she was not the voice that all wanted to hear. Ibid 2. The Rule of Law is clear: "Voluntariness must be determined by considering all relevant circumstances surrounding the guilty Plea." Brady vs. United States, 397 U.S. 742, 749 (1970). The voluntariness of a guilty plea presents a question of "Law." Marshall vs. Lonberger, 459 U.S. 422, 431-432 (1983).

This is a situation to which has never been a question asked before! Is it constitutionally sound to begin a court proceeding when a Petitioner is in a holding cell in the courthouse defecating on himself and is not allowed to clean up himself and the only ~~way~~ way to get out of the courtroom to clean himself up is to "Plea Guilty" to the Judge, Prosecutor and his own attorney.

Is it human to make a person sit in his own defecation without being able to clean up. Is it human to bring a person into the courtroom knowing he defecated on himself to see if they can make him plea guilty. Outside of one Judge it is said that these proceedings are constitutionally sound. This writer says no these facts, this situation can never be ~~deemed~~ deemed as constitutional and thus is the reason to present this question of law with the facts for this Honorable Court to hear.

Both the Petitioners and this writer pray for
Relief and Justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chris Gutter

Date: 3/10/23

Respectfully Prepared By

Donald L. Kissner #383562

A non-Attorney assistant

In the ~~aid~~ aid of criminal Justice.

Macomb Corrl Fac

34625 26 mile Rd

Lenox Twp. MI 48048.