

No.

22-7697

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAR 16 2023

OFFICE OF THE CLERK

Kenneth Brown, Jr. — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania, Et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF PENNSYLVANIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kenneth Brown, Jr., #JL-0563
(Your Name)

SCI Coal Township, 1 Kelley Drive
(Address)

Coal Township, PA 17866
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether Act 84, 42 Pa.C.S. § 9728(b)(5) is Unconstitutional on its Face as Violative of the Commonwealth of Pennsylvania Constitution and/or the Separation of Powers Doctrine?

- II. Whether the Amendment to Act 84 is Unconstitutional as Applied to Petitioner as Violative of Both Pennsylvania and United States Constitution?

- III. Whether Petitioner's Guilty Plea and Sentence is Void because Act 84 is Void ab Initio on its face, or as applied to Petitioner?

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:

Commonwealth of Pennsylvania,

Department of Corrections of Commonwealth of Pennsylvania,
Respondents.

RELATED CASES

-- Harding v. Stickman, 823 A.2d 1110, 1112 (Pa.Cmwlth 2003).

-- Elkington v. Department of Corrections, 2019 Pa. Commw.Unpub. LEXIS 313, 215 A.3d 100. Decided June 3, 2019; Elkington v. Dep't of Corr. 2021 Pa. Commw.Unpub. LEXIS 282 (Pa.Commu.Ct., May 27, 2021).

-- Abdul-Salaam v. Pa.Dep't of Corr. (Pa.Cmwlth., No. 346 M.D. 2010, filed Dec. 23, 2010), slip op. at 9-10 (citations omitted).

-- Richardson v. Dep't of Corr., 991 A.2d 394 (Pa.Cmwlth.2010).

-- County of Allegheny v. Commonwealth, 93 Pa. Commw.112, 500 A.2d 1267, 1985 Pa. Commw. LEXIS 1394; County of Allegheny v. Commonwealth, 517 Pa.65, 534 A.2d 760, 1987 Pa. LEXIS 843).

-- Boyd v. Dep't of Corr., 831 A.2d 779, 782-84 (Pa.Cmwlth), aff'd, 886 A.2d 222 (Pa.2003).

-- Commonwealth v. Lyons, 830 A.2d 663, 665 (Pa.Cmwlth.2003).

-- Sweatt v. Dep't of Corrections, 769 A.2d 574 (Pa.Cmwlth.2001),

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STATUTES AND RULES

OTHER

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 C to the petition and is

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 is unpublished.

The opinion of the Pennsylvania Commonwealth court appears at Appendix A 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 12/21/22. A copy of that decision appears at Appendix C.

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).

2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. VIII. ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.").

Pa. Const. Art. I, § 13. Article 1, Section 13 ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.").

U.S. Const. Amend. XIV. Section 1 (In relevant part: "No State shall make or enforce any law which shall 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.").

U.S. Const. Art. I, § 9, cl.3 ("No Bill of Attainder or Ex Post Facto Law shall be passed.").

Pa. Const. Art. I, § 17 ("No ex post facto law...shall be passed.").

U.S. Const. Art. I, § 10, cl.1 ("No State shall...pass any...ex post facto Law.").

U.S. Const. Art. III, § 1 (In relevant part: "The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.") and § 2 (In relevant part: "The judicial Power shall extend to all Cases, in law and Equity, arising under this Constitution, the Laws of the United States.").

U.S. Const. Art. IV, § 1 ("Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State...").

Pa. Const. Art. I, § 1 ("All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.").

Pa. Const. Art. I, § 26 ("Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right nor discriminate against any

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

person in the exercise of any civil right.").

Pa. Const. Art. III. § 24 ("No money shall be paid out of the treasury, except on appropriations made by law and on warrant issued by the proper officers, but cash refunds of taxes, licenses, fees and other charges paid or collected, but not legally due, may be paid, as provided by law, without appropriation from the fund into which they were paid on warrant of the proper officer.").

Pa. Const. Art. III. § 32.1, 5, and 8 ("The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General Assembly shall not pass any local or special law. 1. Regulating the affairs of counties, cities, townships, wards, boroughs, or school districts. 5. Remitting fines, penalties and forfeitures, or refunding moneys legally paid into the treasury. 8.Nor shall the General Assembly indirectly enact any special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.").

Pa. Const. Art. V. § 10(c) ("The Supreme Court shall have the power to prescribe general rules governing practice, procedure and the conduct of all courts, justices of the peace and all officers serving process or enforcing orders, judgments or decrees of any court or justice of the peaces, including the power to provide for assignments and reassignment of classes of actions or classes of appeals among the several courts as the needs of justice shall require, and for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant, nor affect the right

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

OF THE General Assembly to determine the jurisdiction of any court or justice of the peace, nor suspend nor alter any statute of limitation or repose. All laws shall be suspended to the extent that they are inconsistent with the rules prescribed under these provisions.").

Pa. Const. Art.IX, § 4 ("County officers shall consist of commissioners, controllers, or auditors, district attorneys, public defenders, treasurers, sheriffs, registers of wills, recorders of deeds, prothonotaries, clerks of the courts, and such others as may from time to time be provided by law for services performed for the county or any other government unit. Fees incidental to the conduct of any county office shall be payable directly to the county or the Commonwealth, or as otherwise provided by law....Provisions for county government in this section shall apply to every county except a county which has adopted a home rule charter or an optional form of government. One of the optional forms of county government provided by law shall include the provisions of this section.").

U.S. Const. Art.I, § 8 ("The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general welfare of the United States;...").

Section 9726(c) of the Sentencing Code, 42 Pa.C.S. § 9726(c) states: (c) Exception.- The court shall not sentence a defendant to pay a fine unless it appears of record that:

- (1) the defendant is or will be able to pay the fine; and
- (2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.

Section 9728 of the Sentencing Code added by the Act of June 18, 1998, P.L.640, No. 84. 42 Pa.C.S. § 9728(b)(3) and (5)(i). See Opinion at Page 1-2, Appendix A.

STATEMENT OF THE CASE

Petitioner is an inmate currently confined at the State Correctional Institution at Coal Township (SCI-Coal Township). On January 29, 2010, Petitioner was sentenced to serve an aggregate 30-to 60-year term of imprisonment, and pay restitution, based upon a negotiated guilty plea in the Lancaster County Court of Common Pleas of Pennsylvania, without a hearing regarding the payment of restitution, notice of the reason(s) why he must pay restitution, who he must pay it to, how he must pay it, and whether he could pay it.

At the time of the Petitioner's arrest and sentence, Act 84 in question, required that the Pennsylvania Department of Corrections make monetary deductions of at least 20% of deposits made to inmate wages and personal accounts for the purpose of collecting restitution. Upon amendment of Act 84, 25% instead of 20% started being deducted from Petitioner's prison account, without advance notice and opportunity to be heard. As a result of Act 84, money has been and is continuing to be deducted from his account every time money is deposited into his account, contrary to the sentencing court in Lancaster County Court of Common Pleas of Pennsylvania Sentencing Order. See Sentencing Order, Appendix D.

Therefore, and upon discovering that the Act in question is unconstitutional, Petitioner filed a pro se Complaint in the nature of Mandamus in the Commonwealth Court of Pennsylvania, seeking to enjoin Respondents from withdrawing funds from his prison account pursuant to Section 9728(b)(5) of the Sentencing Code, 42 Pa.C.S. § 9728(b)(5), commonly referred to as Act 84, and to have the funds deducted from his account returned to him.

However, Respondent, Department of Corrections of Commonwealth of Pennsylvania (DOC) filed a Preliminary Objection (PO) in the nature of a demurrer, which was treated as also a preliminary objection on behalf of the Commonwealth

of Pennsylvania, to Petitioner's pro se Complaint which was treated as a Petition for Review (PFR).

As a result of Petitioner not receiving a response from the Commonwealth of Pennsylvania (i.e. the Attorney General of Pennsylvania or the Secretary of the Commonwealth of Pennsylvania), he filed a Motion for Summary Relief and Respondent DOC filed a response thereto, asserting that the PO was filed also on behalf of the Commonwealth of Pennsylvania, and the Court agreed.

Upon both Petitioner and Respondent filing the briefs they were ordered to file, the Commonwealth Court of Pennsylvania sustained the PO in the nature of a demurrer and dismissed Petitioner's PFR. See Opinion and Order, Appendix A.

As a result of the dismissal, Petitioner requested reargument, which was denied, and then he filed a timely appeal to the Supreme Court of Pennsylvania and the Supreme Court affirmed the Order dismissing Petitioner's Complaint. See Order of Supreme Court, Appendix C.

REASONS FOR GRANTING THE PETITION

Petitioner, pro se, respectfully request this Honorable Court to honor his right to a redress of his grievance (i.e. Complaint) that was before the Commonwealth Court of Pennsylvania and the Supreme Court of Pennsylvania pursuant to his right to petition the government under the First Amendment to the United States Constitution and pursuant to Haines v. Kerner, 404 U.S. 519, 30 L.Ed.2d 652, 92 S.Ct 594, reh. den. 405 U.S. 948, 30 L.Ed.2d 819, 92 S.Ct. 963, because:

- a. The Commonwealth Court and Supreme Court of Pennsylvania both erred and/or abused its discretion in not addressing whether Act 84 of the Pennsylvania legislature is/was unconstitutional on its face as violative of the Separation of Powers doctrine and of the restrictions and provisions set forth in Article I, §§ 1, Article III., §§ 24 and 32, Article V, § 10(c), and Article IX., § 4 of the Commonwealth of Pennsylvania Constitution, and Article I., § 8, Article III., § 1, and Article IV., § 1 of the United States Constitution and Amendment XIV to the United States Constitution.
- b. Both Courts has decided an important federal question (i.e. whether the Act and statute in question violates the ex post facto clause as applied to Petitioner) in a way that conflicts with the decision of another state court of last resort and that conflicts with relevant decisions of this Court, and Appeals Court, by erroneously concluding that the amendment to Act 84 is not in the nature of penal even though it increased the restitution penalty payments from 20% of Petitioner's income, which was being deducted from his inmate account since his court ordered sentence, to 25%. See Opinion at Page 1-4, Appendix A; Collins v. Youngblood, 497 US 37, 110 S.Ct. 2715 (1990); Koch v. Village of
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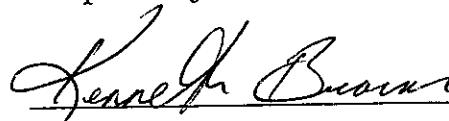
Hartland, 437 F. 4th 747, 2022 U.S. App. LEXIS 21857 (7th Cir. 2022); Calder v. Bull, 3 U.S. 386, 1 L.Ed 648 (1798); Stagner v. California, 539 U.S. 607, 156 L.Ed.2d 544, 123 S.Ct. 2446 (2003); Peugh v. United States, 569 U.S. 530, 133 S.Ct. 2072, 186 L.Ed.2d 84, 2013 U.S. LEXIS 4359 (2013); Commonwealth of Pennsylvania v. McIntyre, 659 Pa. 428, 232 A.3d 609, 2020 Pa. LEXIS 3292 (2020).

c. Despite both Commonwealth Court and Supreme Court of Pennsylvania failing or refusing to address Petitioner's challenge to the Constitutionality of Act 84 and the Statute in question, 42 Pa.C.S. § 9728 created by the Act, Petitioner's challenge to the Constitutionality of the Act/Statute is of great public importance and Those prisoners who are Similarly Situated, and his challenge has not been, but should be, settled by this Court, especially in light of his assertion that the Act/Statute interferes with judicial proceeding, and thus, violates the Separation of Powers doctrine and both United States and Pennsylvania Constitution. See Robinson Twp. v. Commonwealth, 623 Pa. 564, 83 A.3d 901 (2013); County of Allegheny v. Commonwealth, 517 Pa. 65, 534 A.2d 760, 1987 Pa. LEXIS 843. See also County of Allegheny v. Commonwealth, 93 Pa. Commw. 112, 500 A.2d 1267, 1985 Pa. Commw. LEXIS 1394; Petitioner's Reply Brief in Opposition to Brief of Respondents, filed in the Commonwealth Court of Pennsylvania; Application for reargument En Banc, filed in the Commonwealth Court of Pennsylvania.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Kenneth Brown Jr.

Date: May 19, 2023