

22 - 7888

No.

FILED

JUN 16 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

"Pharaoh El-Forever Left-I, Amen El",

Petitioner,

V.

State of Minnesota,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

Minnesota's Court of Appeals

PETITION FOR WRIT OF CERTIORARI

PARTIES

Amen El, Pharaoh El-Forever Left-i

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PETITIONER

Minnesota Attorney General

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RESPONDENTS

QUESTION(S) PRESENTED

1.Q) *If a state conditions satisfying Strickland's first prong, on the testimony of two privately funded expert witnesses against a indigent pro se prisoner, whom cant afford the experts opinion; has the state created a custom, statute, practice or other form of economic discrimination...???*

3.Q) *Does Minnesota common law which holds pro se litigants to the same standard as lawyers, when accessing their courts (whether prosecuting a cause or defending against another's cause) conflict with the due process principle of liberally construing pro se maneuvers, specifically in matters associated w/ complaints regarding previous agents...???*

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Minnesota Court of Appeals Case Number(s);

- **A15-1542**

United States District Court, District of Minnesota Case No. 17-cv-2790 (DWF)

1 IN THE
2 SUPREME COURT OF THE UNITED STATES
3 PETITION FOR WRIT OF CERTIORARI

4 Petitioner respectfully prays that a writ of certiorari issue to review the
5 judgment below.

6
7 OPINIONS BELOW

8 For cases from **state courts**:

9 The opinion of the highest state court to review the merits appears at
10 Appendix A to the petition and is unpublished.

11
12 JURISDICTION

13 For cases from **state courts**:

14 The date on which the highest state court decided my case was ;

15 A copy of decision appears at Appendix G.

16 A timely petition for Review was thereafter denied on the following date:

17 January 17, 2023, and a copy of the order denying review appears at Appendix
18 see Thomas v. State, 2023 Minn. LEXIS 8 Jan. 17, 2023

19 An extension of time to file the petition for a writ of certiorari was granted to and
20 including unknown on unknown in Application No.

21
22 The **JURISDICTION** of this Court is invoked under;

- 23 • **HAGUE v. COMMITTEE FOR INDUS. ORG.**, 307 U.S. 496 (decided; June 5th,
24 1939) ("Every question arising under the federal constitution may, if
25 properly raised in a state court, come ultimately to the United States
26 Supreme Court for decision.")

- 1
- 2 • 28 U.S.C. §1254(1)

3 **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

- 4 • 14TH Art. Of Amendment to the United States Constitution;
- 5 - Due Process (Substantial & Procedural) (Life, Liberty, Property Interests)
- 6 (Fundamental Fairness) (Sixth & First Art. Of Amendment to the United
- 7 States Constitution, applicable to the states byway of the 14th Amendments
- 8 Due Process Clause and Equal Protection Clauses prohibition against
- 9 Discrimination...

10 **STATEMENT OF THE CASE**

11 Following a jury trial, before a State District Court Judge, petitioner was convicted

12 under state law of second-degree intentional murder for the benefit of a gang, and

13 sentenced to approximately 451 months in prison. Petitioner filed a direct appeal

14 partially pro se and partially through counsel. Prior to the direct appeal being fully

15 briefed and taking under advisement petitioner through his counsel moved for

16 postconviction relief on account of the states star witness recanting his statement.

17 Ultimately the direct appeal and the first postconviction petition was denied, and

18 the conviction was affirmed. See State v. Thomas, A15-1542, 2017 WL 1375278

19 (Minn.App.Apr.17,2017). Petitioner proceeded pro se to the Minnesota Supreme

20 Court for Review of the affirmation of the conviction which was denied. After the

21 state round of appeals petitioners attempts to retrieve relief from the United States

22 District Court of Minnesota and the 8th Circuit were denied.¹

23 On the 13th of Jan. 2020, the state denied postconviction relief, but granted

24 petitioner the exclusive right to file a postconviction petition on facts arising

25 that supported a Ineffective Assistance of Trial & Appellate Counsel Claim

26 (IATC)(IAAC). The respondent (state) conceded to the hearing and a

27 postconviction evidentiary hearing was held the ~~24th of April, 2020~~ **Sept. 30, 2020.**

28 Petitioner proceeded pro se at the hearing and called the lawyers that

29 represented him at trial and on appeal to testify. The court accepted most of

30 **Footnote**

31 1.) Petitioner did not present the same claim here to the lower federal courts.

32 2.) See Postconviction Transcript @ Appendix D

(Next Pages fn.)

petitioners exhibits at the hearing. The court sustained the state's objections against petitioner's questions to the lawyers, regarding lawyers' customary practices, as to presenting certain evidence to support certain defenses.²

Amen El requested Expert Witnesses & Stand-by Counsel funds, but the state denied the request. In the State of Minnesota to establish the first Strickland prong, a petitioner must prove by-way of (2) independent expert

affidavits that the complained of attorney conduct does not fall within accepted norms. The state court at the same time found petitioner to be indigent, but refused to provide the necessary funds. The states position was that indigent litigants bringing forth IATC & or IAAC³ did not qualify for expert funds; this was their position even though they also argued that to satisfy Strickland's first prong expert witness affidavits are required.

The state court copy and pasted the respondents argument verbatim when it filed its order denying the petition for relief & the court did not come up with a independent finding of law or fact⁺. The state consistently, implicitly construed *Stricklands* 2nd prongs concept of more "more favorable result" to mean a complete innocence, had the ineffective lawyer done his or her job competently.

Amen El appealed the lower courts decision pro se arguing partially that the state violated his federal due process & equal protection rights; state ignored evidence presented by him; amongst other things. The court of appeals denied petitioners appeal affirming the district courts decision. The Minnesota Courts of Appeal and District Court held petitioner to the same standard as a lawyer, when taking the petition and appeal under advisement.

Petitioner appealed the court of appeals affirmation of the district courts order to the Minnesota Supreme Court & was denied review.

Petitioner through his person submitted a Brief and Addendum to the appellate court, see Appendix B, but the appellate court did not record the addendum for consideration, nor did they copy the document fully; for instance

FOOTNOTE

(3) IATC & IAAC means ineffective assistance of trial and appeal counsel.

* see Appendix App. C
+ see Appendix App. E

1
2
3 the footnotes and the bottoms of the pages were not copied & recorded for
4 review.

5 REASONS FOR GRANTING THE PETITION

6 PROPERTY PROTECTION

7
8 *amen el's collateral attack on the state conviction is protected by the 14th Article of*
9 *Amendment to the United States Constitution, protection of property interests*
10 *amongst other 14th Amendment guarantees implicated in this cause. see Fuentes v.*
11 *Shevin, 407 U.S. 67 (1972) (Fourteenth Amendment's protection of property does not*
12 *safeguard only rights of undisputed ownership but extends to any significant*
13 *property interest including statutory entitlements.") see also Zinermon v. Burch, 494*
14 *U.S. 113, 110 S.Ct. 975 (1990) "The dichotomy between personal liberties & property*
15 *rights is a false one." "a person's liberty is equally protected. "The collateral*
16 *attack executed by the petitioner was a statutory entitlement created by the state*
17 *government.*

18 *In the state of Minnesota "causes of action", such as the postconviction statutory*
19 *entitlement executed by the petitioner to challenge the conviction in this matter,*
20 *under Minnesota law is personal property. see "Under Minnesota law, a cause of*
21 *action is personal property." see Martin ex rel. Hoff. v. City of Rochester (March*
22 *24, 2002) see also Carlton v. State, 816 N.W.2d 590 (July 18, 2012) "Postconviction*
23 *remedy in Minnesota is personal property, as it is a cause of action."*

24 *Petitioners federal and Equal Protection Rights, amongst other federal rights that*
25 *were implicated throughout this cause was enforceable in the state courts through a*
26 *statutory entitlement; Minn.Stat.590...*

27
28 **1.A) RESPONDENTS "PRACTICE" OF CONDITIONING THE SATISFYING**
29 **STRICKLANDS FIRST PRONG, ON THE TESTIMONY OF TWO**
30 **PRIVATELY FUNDED EXPERT WITNESSES, AGAINST, A PRO SE**
31 **INDIGENT PRISONER, WHO CAN'T AFFORD EXPERT AFFIDAVITS**

1 **OPERATES TO EFFECT AN ARBITRARY ECONOMIC DISCRIMINATION**
2 **AGAINST PETITIONERS PERSON...**

3 **ARGUMENT**

4 Stricklands first prong reads "the defendants must prove that counsel's
5 representation fell below an objective Standard of Reasonableness." This courts historic
6 purpose or rather historic expectation, has not mandated complainants brings forth a
7 IATC & or IAAC (Ineffective Assistance of Trial Counsel & Appellate Counsel) claim to
8 satisfy this prog w/ expert testimony or affidavits, For a state to mandate this is
9 motivated by an undue preference.

10
11 Its an indisputable fact that this court has not mandated expert affidavits to satisfy
12 Stricklands first prong; on the flip side this court has required state action to operate
13 w/o unfair discrimination in criminal cases, see *Caldwell v. Texas*, 137 U.S. 692, 11
14 (1891) " 14th Amendment forbids discrimination against persons or classes in criminal
15 cases" Economic Discrimination is outlawed by the 14th Art. Of Amendment to the U.S.
16 Consti..

17 The Minnesota practice, common law, custom, or other action resulting in a
18 economic discrimination against petitioners person is; *Bruestle v. State* , 719 N.W.2d
19 698, 704 (Minn.2006) (Noting that a petitioner bears the burden of establishing that
20 counsels performance was deficient, that there is a strong presumption that counsels
21 performance fell within a wide range of reasonable assistance, and that the petitioner
22 provided no affidavits from unaffiliated defense experts suggesting that counsels
23 representation fell below an objective standard of reasonableness.), and the way the
24 common law was instrumentalized in this case, objectively and subjectively.

25 The common law operated to infringe upon petitioners protection against
26 economic discrimination because it made the pursuit of justice contingent on
27 what petitioner could afford. The practice, law, custom, or action was
28 discriminatory in its operation, because petitioners access to equal protection &
29 due process was contingent upon the affordability of the expert affidavits. Even if
30 the common law was/is "non-discriminatory" on its face, it was "grossly
31 discriminatory" in its operation" see *Griffin*, 351 U.S. at 17, n.11.

32 Petitioner complains about postconviction-appellate review being unfair. A
33 collateral attack upon a conviction is not guaranteed by the federal constitution
34 but this court has stated " Although the federal constitution guarantees no right to

1 appellate review, id., at 18, once a state affords that right, Griffin hold, the state
2 may not "bolt the door to equal justice," id. At 24 see Griffin v. Illinois, 351 U.S.
3 12, 16 (1956) see also Rinaldi v. Yeager, 384 U.S. 305, 310 (1966) "This court has
4 never held that the states are required to establish avenues of appellate review,
5 but it is now fundamental that, once established, these avenues must be kept free
6 of unreasoned distinctions that can only impede open and equal access to the
7 courts."

8 To make justice contingent on economic status has been outlawed since days
9 of the Magna Carta "To no one will we sell, to no one will we refuse, or delay right
10 or justice..." Petitioner is similarly situated to the rich. An invidious discrimination
11 and or invidious classification between the rich and poor is not reasonable in the
12 instant case although it may or may not be in other situations.

13 There are Due Process & Equal Protection obligations on the states mandated
14 by the federal government when indigent criminal litigants seek postconviction
15 accommodations. See Smith v. Robbins, 528 U.S. 529 (Jan. 19, 2000) see also Ake
16 v. Oklahoma, 470 U.S. 68, Griffin v. Illinois, amongst other cases that specifically
17 recognizes a indigents constitutional rights to be accommodated w/ transcripts &
18 counsel to pursue relief as a matter of equal protection & or fundamental fairness.
19 See "Due Process" emphasizes fairness between the state & individual dealing w/
20 the state, regardless of how other individuals in the same situation may be treated.
21 "Equal Protection" on the other hand, emphasizes disparity in treatment by a state
22 between, classes of individuals whose situations are arguably indistinguishable."
23 Quoting Ross v. Moffitt, 417 U.S. 600 (1974).

24 The principle @ work in those cases are applicable here... see also M.L.B v.
25 S.L.J, 519 U.S. 102 (Dec. 16, 1996) (The principle of fair access by indigents to the
26 judicial process reflects both equal protection & due process concerns. Due
27 Process and Equal Protection principles converge. The Equal Protection concern
28 relates to the legitimacy of fencing out would-be appellants base solely on their
29 inability to pay core costs. The due process concern hones in on the essential
30 fairness of the state-ordered proceedings another to adverse action."

31 The petitioners principle cause is to protect his right to a fair trial, through
32 his persons right to effective assistance of counsel... The collateral attack on the
33 conviction was a procedure willingly provided by the state actor, as a statutory
34 entitlement, to assist petitioner in prosecuting his cause of action; to avail his
35 persons fundamental federal rights. Petitioner moved respondents to provide
36 resources so that petitioner could provide the affidavits and respondents denied

petitioner those resources on grounds that state law doesn't provide provisions to accommodate petitioners request funds.

Even though the Respondent contended that petitioner does not deserve relief under either prong of Strickland, it interprets the second prong of Strickland, it interprets the second prong definition of "more favorable result" to mean, the/a difference between innocent or guilty, which is clearly not the case.

2.A) MINNESOTAS "COMMON LAW" OF HOLDING PRO SE PRISONERS TO THE SAME STANDARD AS LAWYERS WHEN ACCESSING THEIR COURT IN A MATTER WHICH CALLS INTO QUESTION HIS AGENTS REPRESENTATION CONFLICTS W/ DUE PROCESS PRINCIPLE OF LIBERALLY CONSTRUING PRO SE ACTIONS...

The United States Supreme Court in Haines v. Kerner, 40 U.S. 519 (1972) and succeeding cases involving pro se litigants like Estelle v. Gamble, and many others held that pro se litigants are not to be held to the same standards as lawyers and that pro se litigants' pleadings are to be construed liberally. Construed Liberally does not translate to excuse litigants from following Court Rule and legislative enactments, however it does excuse pro se litigants from performing artfully, citing legal authorities, poor syntax & sentence construction, confusion of form and the likes thereof.

Contradistinguished from federal authority respondent expressly hold pro se litigants to the same standard as lawyers; this has translated to mean that pro se litigants must cite caselaw to support their claims, amongst other things. See Fitzgerald v. Fitzgerald, 629 N.W.2d 115, 119 (Minn.App.Ct.2001). The practice has operated to fail accommodating one that cant afford a lawyer, or one who decides not to hire a lawyer, because like in the instant case there is a accommodation & value impediment.

The "common law" (practice) fails to provide due accommodation because fairness would require the state too, at minimum provide the pro se litigant w/ advisory counsel and expert funds to navigate through the state complex court system. *Advisory counsel would be necessary to advise*

1 petitioner on or rather, through the complexities of a
2 substantial ineffective assistance of counsel claim. i.e.
3 "To present a claim of ineffective assistance of counsel
4 at trial in accordance with the state's procedures, then, a
5 prisoner likely needs an effective attorney." quoting
6 *Martinez v. Ryan*, 566 U.S. 1 (2012) "A pro se indigent
7 prisoner is even at a greater disadvantage than any
8 other individual proceeding pro se presenting a claim
9 of ineffective assistance. e.g. "A prisoner's inability to
10 present a claim of trial error is of particular concern
11 when the claim is one of ineffective assistance of counsel."
12 quoting *Martinez v. Ryan*... see also "While confined to prison,
13 the prisoner is in no position to develop the evidentiary basis
14 for a claim of ineffective assistance, which often turns on
15 evidence outside the trial record." "The prisoner, unlearned
16 in the law, may not comply with the state's procedural rules
17 or may misapprehend the substantive details of federal
18 constitutional law." *Martinez v. Ryan*...

19 The expert funds would be necessary to satisfy Strickland's
20 first prong under Minnesota law...

21 The common law or practice is also unconstitutional because
22 it holds petitioner to the same standards as a lawyer yet the
23 state did not give due consideration to petitioner's arguments
24 like it had or would **have** a lawyer; i.e. the court held petitioner
25 to a lawyer's standards but did not value petitioner's submissions
26 like they had or would have valued a lawyer's. The valuing through

1 due consideration was lacking in the instant case because
2 the state did not file petitioners brief for full consideration, (a)
3 court did not come w/ its own findings of fact & law, (b)
4 court did not weigh all evidence in determining if petitioner
5 satisfied the burden of persuasion, amongst others.

6 The point is that the state holds, and held petitioner
7 a prisoner, indigent pro se litigant to the same standard
8 as a lawyer, but the state failed and refused to weigh
9 the value of petitioner's submissions to support his cause
10 w/ due consideration of what was presented.

11 "The fundamental requirement of due process is the opportunity
12 to be heard at a meaningful time in a meaningful manner."
13 see *Matthews v. Eldridge*, 424 U.S. 319 (1976)...

14 Without the benefit of having his pleadings liberally construed
15 and being held to the same standard as an attorney petitioner's
16 property interest in statutory entitlement Minn. Stat. § 590 will
17 be infringed. There is a real substantial risk that petitioners
18 right to having his IATC & IAAC claims reviewed properly
19 through Minn. Stat. § 590 will be erroneously denied because

20 FOOTNOTE

21 (a) The appellate court did not file the Addendum to petitioners
22 appellate brief & the court left out all footnotes & the bottom of
23 pages in the appellate brief affecting the judges ability to
24 review the entire appellate argument. see Appendix B

25 (b) The Dist. Ct. copy and pasted the states argument as
26 its order for denial. see Appendix E

1 of Respondents practice of holding pro se litigants to the
2 same standard as lawyers in IATC & IAAC claims, and
3 there is no probable value of substitute safeguard. The
4 government has no legitimate interest in holding pro se
5 prisoner litigants to same standard as lawyers.

6 Liberally construing and not holding pro se litigants
7 to same standards as lawyers is a principle or right
8 "implicit in the concept of ordered liberty," for purposes
9 of substantive due process. see *Palko v. Connecticut*, 302
10 U.S. 319, 325-326 (1937).

11 CONCLUSION

12 Undue Preference, Economic Discrimination, Due Process
13 infringement are so fundamentally inconsistent w/
14 the public's interest the court must accept the
15 case and grant the Writ in the interest of
16 substantial justice.

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Signed under the Penalty of Perjury
pursuant to the laws of the
United States of America. 28 U.S.C.
§ 1746

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