

23-5060

No. _____

FILED
JUN 27 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD EDWARD MCCORD- PETITIONER

VS.

CARRIE BRIDGES, JCCC Warden- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
the Tenth Circuit Court of Appeals

Donald Edward McCord #795868
James Crabtree Correctional Center, Unit 5S
216 North Murray Street
Helena, Oklahoma 73741-1017
(572) 568-6000



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:

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 A 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 is unpublished.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 A 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 is unpublished.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 _____ 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 is unpublished.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 _____ 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 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 3, 2023

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 _____. A copy of that decision appears at Appendix _____.

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).

STATEMENT OF THE CASE

Appellant sought post-conviction relief from judgment and sentence in the District Court of Oklahoma County, Oklahoma, claiming that the State had failed to follow through on its agreement that he had relied on in deciding to enter his plea of *nolo contendre*.

Appellant entered a plea agreement for Appellant to change his plea from not guilty to plea of *nolo contendre* for crime(s) of conviction, i.e. "31 counts of sexual offense primarily based upon sexual abuse of a child," provided (1) that Michelle McCord, my wife, could remain living at 2417 Spring Valley Lane, Yukon, Oklahoma 73099 with her son Namon McDowell and his family, (2) that Michelle would be able to have supervised visiting with all of the children and (3) that all of Appellant's family would have their confiscated property returned to them.

The state district court denied relief and the Oklahoma Court of Criminal Appeals affirmed. Appellant then filed a habeas corpus action in federal district court for Western District of Oklahoma. The District Judge adopted the Magistrate's Report and Recommendation and dismissed the case as untimely. Appellant appealed and the Tenth Circuit Court of Appeals affirmed the district court.

REASONS FOR GRANTING THE WRIT

Appellant should be granted a writ of certiorari for the following reasons:

Appellant is entitled to equitable tolling.

AEDPA is not jurisdictional. (*Day v. McDonough*, 547 US 198 (2006))

The statute has a rebuttable presumption in *favor* of equitable tolling and other equitable considerations. (*Holland v. Florida*, 560 US 631, 645-646)

Equitable considerations seek to achieve fairness. Black's Law Dictionary defines the "interests of justice" as "the proper view of what is fair and right in a matter in which the decision maker has been granted discretion." Equitable tolling requires that Appellant make a showing that he has pursued his claim with due diligence and that an extraordinary circumstance(s) stood in his way.

First, Appellant's trial counsel failed to timely file his Motion to Withdraw Plea despite Appellant's request that he do so within five days of the plea. Additionally, trial counsel failed to put details of the verbal agreement between the parties¹ on the record during the withdrawal proceeding. Trial counsel failed to seek enforcement of the agreement and the lack of record has prevented Appellant from substantiating his claims during subsequent proceedings. Both trial counsel and the assistant district attorney

¹ See Statement of Facts Relevant to Issues, *supra*

in the case would not provide information to Appellant or the state district court.

Second, Appellant has diligently pursued his rights. As the Prior Proceeding indicate,² Appellant has pursued his claims in state and federal courts and is pursuing them now on this appeal.

Third, on March 18, 2020, Appellant filed a document in federal district court entitled “Application to Order Oklahoma County District Court to Honor Plaintiff’s/Appellant’s Statuatory [sic] Ten (10) Day Right to Withdraw Plea”. *McCord v. State of Okla.*, No. 5:20-cv-00249-PRW (W.E. Okla. Mar. 18, 2020) The federal district court construed the filing as an appeal from the state trial court’s order denying Appellant’s motion to withdraw his plea and dismissed the action without prejudice as barred by the *Rooker-Feldman* Doctrine.

² (a) *Nolo Contendre Plea* entered: Case #CF-2016-6862 on May 17, 2018 in District Court of Oklahoma County, Oklahoma.

(b) *Motion to Withdraw Plea*: Case #CF-2016-6862 filed June 5, 2018 in District Court of Oklahoma County, motion withdrawn on August 20, 2018.

(c) *Application for Post-Conviction Relief*: Case #CF- 2016-6862 filed May 16, 2019 in District Court of Oklahoma County, relief denied on November 19, 2019.

(d) *Application to Nullify/Withdraw Plea of Nolo Contendre* (construed as a Second Application for Post-Conviction Relief): Case #CF- 2016-6862 filed December 9, 2019 in District Court of Oklahoma County, relief denied on January 14, 2020, motion for rehearing denied on January 28, 2020.

(e) *Post-Conviction Appeal*: OCCA Case #PC-2020-162, affirmed denial of relief March 6, 2020, motion for rehearing denied on April 7, 2020.

(f) *Application to Order Oklahoma County District Court to Honor Plaintiff’s/Appellant’s Statutory Ten (10) Day Right to Withdraw Plea*: Case # CIV-20-249-PRW, US District Court for Western Oklahoma, filed March 18, 2020, petition dismissed without prejudice pursuant to *Rooker-Feldman* doctrine on January 7, 2021.

(g) *Petition for Habeas Corpus*: Case # CIV-21-559-PRW, US District Court for Western Oklahoma, filed June 1, 2021, amended July 6, 2021, petition dismissed as untimely on September 30, 2022.

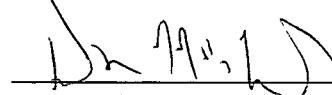
probation officer forced Namon and his family to move from 2417 Spring Valley Lane, Yukon, Oklahoma 73099, (2) Appellant's family did not have their confiscated property returned to them, and (3) Michelle, my wife, was denied supervised visiting with all of our children by prosecution.

These violations nullify Appellant's plea as unknowing and involuntary. Thus, Appellant is entitled to withdrawal of his nolo contendre plea.

CONCLUSION

The Petition for a Writ of Certiorari should be GRANTED.

Respectfully submitted,


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