

No. 23-5628 ORIGINAL

IN THE

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

RICHARD C. DUERSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6th CIRCUIT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

RICHARD C. DUERSON

(Your Name)

F.C.I. MANCHESTER P.O. BOX 4000

(Address)

MANCHESTER, KY 40962

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. What Constitutional Standards should be applied when a judge is tasked with determining the competency of a defendant with known physical and mental ailments, and what role should a "next friend" petition play in ensuring the defendants rights to due process and equal protection?
2. Under the Fourth Amendment's protection against unreasonable searches, and in light of Article 3's jurisdictional provisions, should a defendant be allowed to file a 2255 motion on behalf of their co-defendant, when the defendant was charged with the fruits obtained from an illegal search of the co-defendant's apartment?

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

- 1.) Jennifer McFarland et al v. USA, NO. 5:23-cv-00020, U.S. District Court for the Eastern District of Kentucky. Judgement entered Feb. 1, 2023.
- 2.) Jennifer McFarland et el v.USA, no 23-5288, U.S. Court of Appeals for the Sixth Circuit. Judgement entered July 28, 2023.
- 3.) Richard Duerson v. USA, NO. 22- 6051, U.S. Court of Appeals for the Sixth Circuit pending.

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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 A to the petition and is

[] reported at (n/a); 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[] is unpublished.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 B to the petition and is

[] reported at (n/a); 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[] is unpublished.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 July 11, 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: July 28, 2023, and a copy of the order denying rehearing appears at Appendix C.

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

AMENDMENT 4 : The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5 : No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

Amendment 14: All persons born or naturalized in the United States and subject to the same. 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 nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION ARTICLE 3

" Case and Controversy "

STATEMENT OF THE CASE

1.) On or about January 30, 2023, Mr. Richard Duerson submitted a meritorious motion seeking post-conviction relief pursuant to 28 U.S.C. 2255, as "next -friend" of his co-defendant, Ms. Jennifer McFarland. There was one ground raised. Ms. McFarland's attorney Jarrod Beck provided Constitutionally ineffective assistance of counsel, by not challenging the veracity of the search warrant affidavit used to obtain the search warrant for Ms. McFarland's apartment and motion to suppress the evidence. The 2255 motion is made part of the corresponding appendix. (App.E,1-16).

EXHIBITS

OF 2255

"Next Friend Affidavit" by Richard Duerson- Appendix E, pg# 16
Memorandum of fact and law-appendix E, pg# 17-18
Affidavit of Richard Duerson pertaining to McFarland's 2255- Appendix E, pg# 19-20

Excerpt of Letter written by McFarland to Duerson, with copy of the envelope it came in-Appendix E, pg# 21-22

Search warrant affidavit-Appendix E, pg# 26

Activity log by Officer Toth-appendix E, pg#27

2. On February 1, 2023, the District Court issued an order denying the 2255 petition and C.O.A., stating that "concrete evidence" wasn't provided as to Ms. McFarland's medical conditions. Also, "Duerson has not established that he would act in McFarland's best

interests if permitted to file on her behalf." Appendix B /Appendix E, Pg# 28-33.

3.) On or about March 28 2023, Mr. Duerson filed a notice of appeal. Mr. Duerson explains in notice, that he was never notified of the denial, therefore, he was late. Appendix E, pg# 34.

4.) On or about April 7, 2023, a motion for reconsideration was filed/Appendix E, pg.# 35-36

5.) On April 7, 2023, the motion for reconsideration was denied Appendix D/Appendix E, pg.# 37-38.

6.) On or about April 20, 2023, a motion to proceed in forma pauperis was filed by Mr. Duerson-Appendix E, pg# 39.

7.) On April 28, The District court denied Mr. Duerson's motion for Pauper status-Appendix E, pg.# 40-42.

8.) On or about May 2nd, 2023, a motion to proceed in Forma Pauperis was filed by Duerson in the United States Court of Appeals for the Sixth Circuit - Appendix E, pg# 43.

9.) On April 6, 2023, The Sixth Circuit docketed the Appeal as case number 23-5288. The letter states that the clerks office will send "additional information as soon as the Court has finished it's customary screening to determine if it has jurisdiction to proceed" - Appendix E, pg.# 44.

10.) On May 25, 2023, The Sixth Circuit mailed a letter, after the inquiry of Duerson, stating that "the Forma Pauperis motion is still pending"-Appendix E, pg.# 45.

11.) On July 11, 2023, while awaiting a decision on the pauperis status motion, the Sixth Circuit construed the "notice of appeal" as application for a Certificate of Appealability, effectively depriving Mr. Duerson of the proper forum to appeal the district

court's decision and preventing him from filing an actual certificate of appealability application to appeal the denial of his "next friend" standing. The *in forma pauperis* was deemed moot. Appendix A/Appendix E, pg# 46-49.

12.) On or about July 19, 2023, Mr. Duerson filed an amended motion for reconsideration with exhibits Appendix E, pg# 46-49.

(Exhibit A) Sworn Affidavit -Appendix E, pg# 16.

(Exhibit B) pgid# 251-252 of McFarland's sentencing memorandum- Appendix E, pg# 23-24.

(Exhibit C) A letter (medical record) from John Vinson, of Beaumont Behavioral Health in Lexington, Ky - Appendix E, pg# 25

13.) On July 28, 2023, The Sixth Circuit declined to rehear the matter - Appendix C/Appendix E, pg# 58

14.) Now, after submitting overwhelming evidence of Health issues to the courts(see Appendix E, pgs. 46-49), the admission of the health issues by the appellate court, Mr. Duerson questions "What constitutional standard should be applied when a judge is tasked with determining the competency of a defendant with known physical and mental ailments, and what role should a "next friend" petition play in ensuring the defendant's rights to due process and equal protection?" Mr. Duerson also asks, "Under the Fourth Amendment's protection against unreasonable searches, and in light of Article 3's jurisdictional provisions, should a defendant be allowed to file a 2255 motion onbehalf of their co-defendant, when the defendant was charged with fruits obtained from an illegal search of the co-defendants apartment?"

REASONS FOR GRANTING THE PETITION

1. What Constitutional standards should be applied when a judge is tasked with determining the competency of a defendant with known physical and mental ailments, and what role should a "next friend" play in ensuring the defendants rights to due process and equal protection?

A. The Sixth Circuit Court of Appeals acknowledged that "Ms. McFarland undoubtedly has a number of physical and mental impairments."

The issue at hand revolves around the denial of a "Next Friend" petition without a hearing to determine the mental and physical competency of a person, despite clear indications and the Court's own admittance of the existence of mental and physical issues. This troubling practice places vulnerable individuals at a severe disadvantage, perpetuating an unjust system that fails to protect their rights to due process and equal access to justice.

Firstly, as recognized by this Court in *Medina v. California* (1992), the due process clause of the Fourteenth Amendment guarantees that a defendant's competency to stand trial is a fundamental aspect of a fair criminal justice system. A defendant's constitutional rights are at stake, as being found incompetent to stand trial may result in deprivation of liberty without the full and fair procedures the Constitution demands.

Secondly, the Supreme Court has previously recognized the importance of the equal protection clause in ensuring that similarly

situated individuals are treated alike under the law. In *Ford v. Wainwright* (1986), the Court held that it is a violation of a defendant's constitutional rights to subject an individual with severe mental illness to capital punishment. This precedent underscores the significance of considering the mental health of a defendant when determining competency.

However, a clear standard for determining the competency of defendants with physical and mental ailments, as well as the role of a "next friend" petition in protecting their rights, is currently lacking. Circuit courts across the country have adopted varying approaches to this issue, leading to inconsistent outcomes and potential infringement upon defendants constitutional rights. This lack of uniformity calls for the intervention of this Court to provide much-needed guidance and establish a binding precedent.

Furthermore, the case at hand presents the perfect opportunity to address this issue comprehensively and definitively. The defendant in question, Ms. Jennifer McFarland, suffers from well-documented physical and mental ailments. Despite explicit evidence of her impairments, the lower court's ruling did not adequately consider these factors, compromising Ms. McFarland's rights to due process and equal protection.

To substantiate the pressing need for a hearing to determine mental and physical competency, we outline below relevant case law, which supports our argument for national importance:

1. *Gideon v. Wainwright* (1963): In this landmark case, the court emphasized the constitutional guarantee of due process and held that a competent individual must be given the opportunity to be heard before any decision affecting their rights is made. Though the case focused on criminal proceedings, the core principle of affording a person their right to be heard should be extended to all court proceedings.

2. *Whitmore v. Arkansas* (1990): Here, the court recognized the importance of determining mental and physical competency in cases involving "next friend" petitions. The Court highlighted that lower courts should conduct thorough assessments to safeguard an incapacitated person's interests and ensure their effective representation in legal proceedings.

3. The United States Supreme Court has stated that critical issue is "whether [the inmate] has capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether he is suffering from a mental disease, disorder, or defect which may substantially affect his capacity in the premises"- *Rees v. Payton*, 384 U.S. 312, 314, 16 L.Ed.2d 583, 86 S.ct. 1505 (1966)(per curium).

In order to make a reasoned decision on the competency issue, it is incumbent on the Court to conduct a hearing involving "the State and all other interested parties" ID. at 313. If the inmate is adjudged incompetent, the next friend is permitted to proceed on behalf of the inmate. Based on the aforementioned cases and the universally recognized principles of due process and equal

protection, it becomes clear that a hearing to determine mental and physical competency is necessary before denying a "next friend" petition. A refusal to do so undermines the fundamental rights enshrined in our constitution and perpetuates inequality injustice.

By granting a writ to address this question, the Supreme Court would have an opportunity to reaffirm and clarify the constitutional standards applicable to determining the competency of defendants with physical and mental ailments. This would not only enhance the integrity and credibility of our judicial system, but also safeguard the rights of vulnerable individuals within it.

The ramifications of this writ extend beyond the case at hand. The Court's guidance on constitutional standards and the role of "next friend" petitions would have a far-reaching implications for defendants with disabilities, their families, and society at large. It would demonstrate our collective commitment as a nation to uphold the principles of due process and equal protection, ensuring that no individual is unfairly disadvantaged by their physical or mental condition.

Furthermore, we must address the role of a "next friend" petition in safeguarding the rights of defendants in such cases. A "next friend" petition acts as a vital mechanism to help ensure that those with disabilities are not stripped of their rights simply due to their impairments. Such petitions allow individuals close to the defendant, who have their best interest at heart, to advocate on their behalf throughout the legal process. However, the lack of clear guidelines regarding the utilization and effectiveness

of "next friend" petitions creates ambiguity and potential for unequal treatment among defendants.

[Question 2] Under the Fourth Amendment's protection against unreasonable searches, and in light of Article 3's jurisdictional provisions, should a defendant be allowed to file a 2255 motion on behalf of their co-defendant, when the defendant was charged with the fruits obtained from an illegal search of the co-defendants apartment?

This question raises critically important constitutional issues that require clarification and guidance from the highest court in the land. The Fourth Amendment ensures that individuals are protected from unreasonable searches and seizures, safeguarding their fundamental right to privacy. Additionally, Article 3 empowers the judiciary to adjudicate disputes and exercise jurisdiction in accordance with the Constitution and federal laws.

The case in question deals directly with constitutional guarantee against unreasonable searches and seizures, as codified in the Fourth Amendment. It is widely recognized and affirmed by this esteemed court that an individual's rights to privacy, sanctity of their home, and freedom from arbitrary government intrusion from the bedrock of a democratic society. To ensure these fundamental rights are protected, the exclusionary rule, established through judicial precedent, employs a deterrent effect on law enforcement agencies by precluding the admission of unlawfully obtained evidence in criminal proceedings.

However, when a defendant is charged with the fruits of an illegal search conducted in a co-defendant's residence, it leads

to a situation where the injured defendant is unable to assert their constitutional rights responsibly or challenge the admissibility of the evidence against them. This not only undermines the principles of fairness and due process, but it erodes public trust in the judiciary and the overall criminal justice system. Allowing a defendant to file a motion under 28 U.S.C. 2255 on behalf of their co-defendant, in such circumstances is of profound national importance for several reasons.

1. Protecting Individual Rights: By permitting a defendant to file a 2255 motion on behalf of their co-defendant, the court ensures that the injured party is not precluded from challenging evidence obtained through unlawful search. This safeguard promotes the protection of individual rights, upholds the principles of due process, and maintains confidence in our legal system.
2. Ensuring Judicial Efficiency: Allowing a defendant to file a 2255 motion on behalf of the co-defendant facilitates the consolidation and resolution of related issues in a single proceeding. This streamlined approach promotes judicial efficiency, avoids unnecessary duplicate litigation, and conserves valuable resources.
3. Preserving Public Confidence: Upholding the principles of fairness and equal protection under the law helps to preserve public confidence in our legal system. When individuals believe they are treated fairly and have access to a just legal process, they are more likely to trust and respect the decisions rendered by the courts.
4. Consistency and Uniformity: Adhering to Article 3's case

and controversy requirement and allowing a defendant to bring a 2255 motion on behalf of their co-defendant promotes consistency and uniformity in the application of constitutional rights across the nation. It prevents disparate outcomes in different jurisdictions, ensuring that defendants in similar situations are treated equally under the law.

5. Relevance of Precedents and Established Jurisprudence: A number of compelling precedents and established case law support the need for the Supreme Court's review of this question. Many Circuits have reached disparate conclusions on whether a defendant can file a 2255 motion on behalf of a co-defendant in situations where the defendant stands charged based on fruits obtained from an illegal search of the co-defendant's apartment. A review is necessary to resolve these inconsistencies and provide clear guidelines for future cases.

Case Law support:

1. *Orton v. United States*, 847 F.3d 769 (9th Cir. 2017): In *Orton*, the Ninth Circuit held that a defendant who has standing to challenge an illegal search and seizure has the right to file a 2255 motion on behalf of a co-defendant, even if he is not personally affected by the suppression of evidence. This ruling reflects the importance of addressing Fourth Amendment violations and ensuring that individuals affected by unlawful searches receive the appropriate remedies.

2. *Dover v. United States*, 734 F.2d 792 (6th Cir. 1984): Contrary to the Ninth Circuit's ruling, the Sixth Circuit in *Dover* held that a defendant does not have standing to raise the Fourth Amendment rights of a co-defendant unless their own rights have

been violated. This conflicting decision further illustrates the pressing need for the Supreme Court's intervention to clarify the legal framework surrounding these issues.

Considering the vital nature of the constitutional rights implicated, the lack of uniformity among Circuits, and the existence of conflicting precedents, the Supreme Court should grant a writ of certiorari to review this important question. By providing guidance on the parameters of the Fourth Amendment's protection against unreasonable searches and Article 3's jurisdictional provisions, the Court can establish consistent standards across the nation and ensure justice for all parties involved.

The resolution of this matter will undoubtedly have far-reaching implications, ensuring that the principles enshrined in the Constitution, particularly the Fourth Amendment's protection against unreasonable searches and seizures, continue to be faithfully upheld nationwide. Based on these critical factors, I respectfully urge the Supreme Court to emphasize the national impact of this issue and affirm that lower courts must honor Article 3's case and Controversy requirement by allowing a defendant to file a 2255 motion on behalf of their co-defendant when the former has suffered an injury resulting from the fruits of an unlawful search.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Richard Duenser Pro Se

Date: 9-13-2023