

23-5761

No.

IN THE SUPREME COURT
OF THE UNITED STATES

October Term 2023

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

TIMOTHY MORSE,
Petitioner

v.

CLERK CLINTON DISTRICT COURT,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Timothy Morse
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Date: October 4, 2023

Question presented

Whether the Supreme Court should decide that registration by a sex offender satisfies the requirement of custody for habeas corpus purposes to settle a split between the circuits on the issue?

List of Parties and Related Cases

All of the parties to this action are listed in the caption of this case.

Related Federal cases include:

Timothy Morse v. Clerk of the Clinton District Court, United States Court of Appeals for the First Circuit, no. 23-1248, judgment dated July 11, 2023.

Timothy Morse v. Clerk of the Clinton District Court, United States District Court for the District of Massachusetts, number 22-40030-TSH, judgment February 27, 2023.

The underlying state court actions are:

Commonwealth v. Timothy Morse, Supreme Judicial Court of Massachusetts, number FAR-28684, application for further appellate review denied March 17, 2022.

Commonwealth v. Timothy Morse, Massachusetts Appeals Court, number 20-P-336 decision dated January 20, 2022.

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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.

The decisions of the United State District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit Court are unpublished.

Jurisdiction

The judgment of the United States Court of Appeals for the First Circuit was entered on July 11, 2023. The ninetieth (90th) day falls on October 10, 2023, allowing for the Federal holiday on October 9. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

**Constitutional and Statutory
Provisions Involved**

28 U.S.C. § 2253 provides that:

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
- (c) (1) Unless a circuit justice of judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ---

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out process issues by a State court; or
- (B) the final order in a proceeding under section 2255.
- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required under paragraph (2).

Statement of the Case

This petition arises out of the United States District Court of Appeals for the First Circuit denying a certificate of appealability in this habeas corpus case. The petition for a writ of habeas corpus arises out of the petitioner's conviction in the Clinton District Court, Worcester County of the Commonwealth of Massachusetts.

On February 20, 1998, the defendant pled guilty to indecent assault and battery on a child under 14 and was sentenced to 2 1/2 years in the house of correction, six months to serve balance suspended with probation. The remaining three counts of that complaint were dismissed at the request of the Commonwealth. The defendant also pled guilty to two charges domestic assault and battery against his girlfriend and a violation of the protective order and on both charges was sentenced to a year of probation to be served concurrently. The remaining three charges of the protective order pending at that time were dismissed at the request

of the Commonwealth. Within a year, the defendant moved that his plea be set aside. The court took no action on the motion. Years later, the defendant obtained counsel and moved to file an amendment to the motion and pressed the motion.

The case came on before Judge Robert Gardner, who was a friend of a defense witness who had advanced bail funds that plea counsel stole, and Judge David Locke, who supervised Mr. Uhl when he was a prosecutor with the Worcester District Attorney's office. Both recused themselves. The defendant requested an out-of-county transfer.

The case came before Judge Pellegrini in Worcester District Court and the defense objected to the judge hearing the matter. The court allowed the filing of the amendment to the motion for a new trial and heard the motion. The court ordered testimony on a limited issues of the retainer and conversation between the defendant and his plea counsel prior to the plea and the discovery of material filed by the defendant with the Board of Bar Overseers, that state attorney licensing agency. The court denied the motion.

A timely notice of appeal of the denial was filed with the court. Review was sought in the Massachusetts Appeals Court. Relief was denied. The petitioner sought further appellate review in the highest court in Massachusetts. This was denied.

The petitioner then filed an application for a writ of habeas corpus in the United States District Court for the District of Massachusetts. On July 11, 2023, the Court allowed the Commonwealth's motion to dismiss on custody grounds. At that time the Federal trial court denied a certificate of appealability.

The petitioner filed his timely notice of appeal and, a motion for a certificate of appealability with the United States Court of Appeals for the First Circuit.

On or about July 11, 2023, that request was denied.

Trial Court and Habeas Corpus Facts.

The petitioner has demonstrated more than a substantial showing of the denial of a Federal Constitutional right in his petition for the writ. The claims are:

Ground one: plea counsel had an actual conflict with the petitioner requiring the plea be vacated under the Federal standard. The petitioner in the trial court demonstrated that the disbarred attorney stole \$10,000 from the petitioner and was attempting to retain it under the guise that it was a fee (the fee issue). It was only returned when directly confronted by Mr. James Hickey, a respected member of the community and then bank official.

This behavior of plea counsel is similar to the conduct of the same later disbarred attorney detailed in his subsequent Federal prosecution in the U.S. District Court. It was detailed

during his Federal prosecution that he did not escrow funds for his employees' taxes as required by Federal law, when confronted told a Federal agent untruthfully stated that his son was responsible for escrowing funds, lied during the Federal prosecution and indicated the Federal agent falsely imprisoned him (locked him in a room), and he thereafter received a substantial jail sentence.

It is significant that the prosecution of the disbarred attorney began when he filed false tax returns with a bank to secure a loan for a yacht or large boat. The bank as it was required to sought copies of his tax returns from the U.S. government and when it compared these returns obtained from the IRS to returns that he had given the bank determined tax returns he had provided the bank grotesquely exaggerated his income. His actions amounted to attempting to secure a loan illegally.

The fee issue created a conflict which infected the plea discussions and lack of investigation performed. Under the Federal standard of review a new trial must be ordered.

It is undisputable that the fee attorney Uhl charged Mr. Morse was excessive and the way in which he obtained it criminal. In this time frame charging \$12,500 for the legal work he did in the state district court was grossly excessive. According to the records, the attorney appeared a few times on the various

allegations and once on the sex charges were lodged, forced petitioner to plead to the charge and receive a split jail sentence. At the time he did so, he obtained \$10,000 from a bail assignment which belonged to another person.

One would not secure the additional \$10,000 fee in these circumstances in the state district court unless one's intent was to keep it. Otherwise, the \$2,500 fee already obtained would have been enough. The case was then in the state district court, an inferior court to the superior court, in Massachusetts. There was no need for Mr. Uhl to secure the additional funds since he was under no obligation to follow the matter to the superior court if the case was indicted. If one were to wish to achieve what the state motion court judge detailed, that is justification of earning the fee, Mr. Uhl should have done what the defense bar calls "putting on a dog and pony show" before pleading him out. Mr. Uhl did not have time or energy for this. He did not wish to justify his expenditure of time --- he wanted to keep the money. He was confronted by Mr. Hickey.

This of course makes the presentation of the negotiated deal in the state court --- as a take it or leave matter --- as inherently coercive and therefore, unethical. It proves that the defense counsel was interested in quickly concluding the

representation of the petitioner and getting his "fee." There was no need for the additional money to be paid.

The truth of these allegations is supported by the affidavit of James Hickey, an individual who has served as a bank official, Commonwealth official, and was colleague of the late Massachusetts Governor and later Ambassador Paul Cellucci. The affidavits demonstrates that immediately following the plea, when Mr. Hickey confronted Mr. Uhl about his criminal behavior in coercing the bail assignment and collecting on those illegal actions and Mr. Uhl obviously fearing being caught returned the \$10,000 obtained by a coerced bail assignment.

Mr. Morse sought relief from these actions with the BBO, that state attorney licensing authority, and filed a motion to withdraw his plea. Mr. Morse alleged coercion of his plea and detailed the theft of the money.

Not surprisingly, Mr. Uhl, then a member of the bar, continually engaged in felonious activity which breached fiduciary obligations which would later result in his prosecution, conviction, and sentencing for tax issues. A judge of the United States District Court awarded a substantial jail sentence on the tax issue. These activities resulted in the attorney's indefinite suspension from the practice of law in Massachusetts and disbarment in other jurisdictions.

These actions demonstrate that Mr. Uhl was disreputable, a discredit to the bar, and nothing more than a thief. Moreover, the testimony of James Hickey and Ms. Gloria Urbie Patulak and the conviction of Mr. Uhl corroborate and, therefore, prove Mr. Morse's allegations against Mr. Uhl.

Ground two: plea counsel offered ineffective assistance of counsel. (The failure to pursue and detail a defense in preparation for trial and disposition was ineffective assistance of counsel.) Here, the failure to adequately develop a defense was ineffective. This resulted in a defective plea to the charges.

Investigation is critical here because there is no basis for plea bargaining until counsel has evaluated the risk of conviction in light of all available and admissible evidence in the case. Plea counsel if he had undertaken an investigation and properly advised Mr. Morse would have developed and detailed the following to Mr. Morse:

A. That the alleged victim abuse on a prior occasion would explain the victim's sexual knowledge and actions attributing wrongful behavior to Mr. Morse;

B. That the victim's mother had her daughter claim abuse was in direct retaliation for Mr. Morse desiring to leave the relationship. The desire for Mr. Moore to leave was supported by the victim's mother's actions when he was traveling on business

and theft of his belongings. She had engaged in inappropriate relations with another man and had stolen and sold Mr. Morse's coin collection. Moreover, Mr. Morse impending departure from the relationship was supported by his surrendering his car to creditors to allow purchase of a less expensive model to decrease his living expenses and his recent looking for apartments to rent on his own;

C. That the mother refused to take the child victim to therapy and even frustrated that effort obviously because the story was concocted and/or not believed by the mother;

D. That the mother and daughter had and continue to have lifestyles that support them being sociopaths; and

E. That the alleged victim's mother had a well-known and poor reputation for truth and veracity and had even lied to the police to prevent Mr. Morse from retrieving his belongings and had told falsehoods and misused the courts before.

Had Mr. Morse been aware of the above he never would have plead guilty, especially given the effect of having to register as a sex offender.

Ground three: the plea was not knowingly, voluntarily and intelligently made. A guilty plea must be knowingly, voluntarily and intelligently made. If not so made, the plea is invalid. Id.

In the case at bar, the actions plea by Mr. Morse was plainly involuntary given the representation provided by Mr. Uhl. |As

detailed above, Mr. Uhl failed to perform an investigation which would have demonstrated a defense to the matter. Without an understanding of the available defense the plea is by its nature not knowingly, voluntarily, and intelligently made.

In ruling on the evidence, the state district court was aware that during the hearing the Commonwealth stated that the raw sentencing guidelines on the case were 40 to 60 months (approximately 3 to 5 years). Plea counsel exaggerated the exposure. Here, Mr. Morse ended up serving in essence a 3 to 5 which was his total exposure under the guidelines at the time of the plea. He received no benefit from the plea.

Ground four: the defendant is innocent. Conviction of the innocent is repugnant to the United States Constitution.

Reasons for Granting the Petition

This petition should be granted to allow the court to consider a split between the circuits on the issue of whether or not sex offender registration constitutes custody for the purpose of federal habeas review. This case presents the court with an opportunity to assess what factors constitute sufficient grounds to constitute custody for Federal habeas purposes.

This Court should adopt the Third Circuit view that that sex offender registration satisfies the requirements of custody for habeas corpus review. Piasecki v. Court of Common Pleas, Bucks

Cty., 917 F.3d 161 (3rd Cir. 2019). The Federal District Court relied on other cases. See Clements v. Florida, -- F.4th --. No. 21-12540, 2023 WL 1860620 (11th Cir. 2023); Hautzenroeder v. Dewine, 887 F.3d 737, 744 (6th Cir. 2018); Calhoun v. Att'y Gen. of Colo., 745 F.3d 1070, 1074 (10th Cir. 2014); Sullivan v. Stephens, 582 F. App'x 375, 375 (5th Cir. 2014); Wilson v. Flaherty, 689 F.3d 332, 338 (4th Cir. 2012); Virsnieks v. Smith, 521 F.3d 707, 719-720 (7th Cir. 2008); Williamson v. Gregoire, 151 F.3d 1180, 1184-1185 (9th Cir. 1999); Munoz v. Smith, 17 F.4th 1237 (9th Cir. 2021).

This petition arises from the Court of Appeals for the First Circuit refusing to issue a certificate of appealability on the issues of whether or not sex offender registration in Massachusetts constitutes custody for habeas corpus purposes and/or whether or not Massachusetts is estopped from asserting the custody issue where the state court failed to act for years on his motion while he was in prison. The petition was dismissed on the erroneous grounds that the petitioner was not in custody. It is the petitioner's position, here, that he has had to register as a sex offender continually since the time of his conviction and that registration and the conditions of that registration constitutes custody for the purpose of this proceeding.

The petitioner pled guilty in the Massachusetts Clinton District Court to a sex offence charge. That plea was constitutionally defective in that his (later disbarred and imprisoned) counsel was attempting to steal funds from him so it caused a conflict, his counsel offered ineffective counsel, his counsel caused a constitutionally defective plea, and the court allowed the plea of an innocent individual. The day the plaintiff was released from custody he was informed by probation to register with the police. Approximately a month later he was charged with the failure to register as a sex offender in Massachusetts and that violation was part of a probation violation hearing.

Moreover, he has continually been required to comply with the registry law including notifying authorities 10 days in advance of any change in residential address or secondary address. Similarly, he has been required to notify the authorities of any change of employment. He is additionally required to register in person each year. He must supply numerous details of his personal life including cars driven, emergency contacts, and personal information. He must notify the Commonwealth if he intends to reside outside the Commonwealth two days prior to any such move. He has to be photographed (mug shots) and fingerprinted routinely as part of this process. He has had to register if he has attended an educational institution. Finally, he has to pay a yearly

registration fee or be determined by authorities of the Commonwealth to be indigent.

This has been all done in person under the supervision of Massachusetts law enforcement. Any violations of these mandates are punished in a draconian criminal statute where the second offense carries a five-year mandatory state prison sentence.

Since the time of his plea the petitioner's liberty has been restricted to the point where he remains in custody. This was not merely a collateral occurrence. See. M.G.L. c 6, section 178C to 178Q; papers created under it authority; and the regulations of the sex offender registry board, 803 C.M.R. 1.00 et seq. Over the course of the next 25 years, 10 days prior to moving from any location or changing jobs, he was to notify the local authorities in person. This included telling the police department where he was located and informing the police department in person where he was going. He of course would then have to register at the new location. He was to notify the police department of the cars he drove, his emergency contacts, his residential address. He was routinely photographed and fingerprinted during this process. These papers were sent to the sex offender board. Moreover, when he attended college, as he did, he was to notify the authorities and the sex offender registry. Finally, the petitioner must pay a fee or be found indigent for this continual custody.

The penalties for violation of any of these violations no matter how minor carry on the first offense a jail term and a second offense carried a mandatory minimum five-year state prison sentence. M.G.L. c. 6 section 178H. As a consequence, absolute and total compliance is necessary. Compliance requires affirmative acts and is not merely a disqualification from a privilege.

The lower courts' finding that the petitioner has not been in some form of custody since his plea is without merit. In essence what the Commonwealth has designed a form of lifetime custody for sex offenders enforced with excessive penalties for minor offenses many would call trivial.

Conclusion

For all of the above reasons, the petitioner prays that this Court grant him the writ of certiorari to review a judgment of the United States District Court of Appeals for the First Circuit denying a certificate of appealability in this habeas corpus case.

Respectfully submitted,



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Date: October 4, 2023