

11/16/2023

23-6355
No. _____

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Mr. Allan Leslie Sinanan Jr. (Pro-Se) — PETITIONER
(Your Name)

VS.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPERIOR COURT OF PENNSYLVANIA

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

PETITION FOR WRIT OF CERTIORARI

MR. ALLAN LESLIE SINANAN JR. #QA - 9625

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(City, State, Zip Code)

N/A

(Phone Number)

QUESTION PRESENTED

WHETHER THE PENNSYLVANIA JUDICIARY'S APPLICATION OF THE Strickland/Pierce STANDARD WAS UNREASONABLE, WHERE TRIAL COUNSEL FAILED TO LITIGATE VIOLATIONS OF THE FOURTH AMENDMENT AND ARTICLE 1, SECTION 8 TO INculpatory EVIDENCE OBTAINED FROM AN UNLAWFUL "WARRANTLESS ARREST" SUBSTANTIATED ON ALLEGED DRUG BUYS MORE THAN TWO MONTHS OLD, WITH NO PROBABLE CAUSE AT THE TIME THAT A CRIME WAS BEING OR ABOUT TO BE COMMITTED OR REASONABLE SUSPICION THAT CRIMINAL ACTIVITY WAS AFOOT, IN CONFLICT WITH THE SUPREME COURT'S HOLDING IN Terry V. Ohio, 392 U.S. 1 (1968); Dunaway V. New York, 442 U.S. 200 (1978); AND Commonwealth V. Melendez, 676 A.2d 226 (Pa. 1996) REQUIRING SUPPRESSION OF ANY EVIDENCE SEIZED?

SUGGESTED ANSWER IS: YES.....6

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:

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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 _____ 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 is unpublished.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 is unpublished.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 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 Court of Common Pleas of Northampton court appears at Appendix B 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 09/12/2023.
A copy of that decision appears at Appendix D.

A timely petition for rehearing was thereafter denied on the following date: 11/08/2023, and a copy of the order denying rehearing appears at Appendix E.

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

The United States Constitution provides:

The **Fourth Amendment** states: "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."

The **Sixth Amendment** states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Pennsylvania Constitution provides:

Article 1, Section 8 states: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches and seizures, and no warrant to search any place or to seize any person or thing shall issue without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation subscribed by the affiant."

Article 1, Section 9 states: "In all criminal prosecutions the accused hath a right to be heard by himself and his counsel, to demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty or property,

(Cont.) CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

unless by the judgment of his peers or the law of the land. The use of a suppressed voluntary admission or voluntary confession to impeach the credibility of a person may be permitted and shall not be construed as compelling a person to give evidence against himself."

STATEMENT OF THE CASE

The instant case comes to the Supreme Court of the United States by way of Direct Collateral Review (DCR) on petition for a Writ of Certiorari from: (1) the Order of February 17, 2021, denying Post-Conviction Relief entered by the Court of Common Pleas of Northampton County, Pennsylvania (the Trial Court); (2) the Order of January 6, 2023, affirming the Order of the Trial Court for Post-Conviction Relief entered by the Superior Court of Pennsylvania; (3) Appellant's request to the Superior Court for reargument was denied on March 17, 2023; (4) Appellant's petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on September 12, 2023; and (5) Appellant's request for Application for Reconsideration was denied by the Supreme Court of Pennsylvania on November 8, 2023.

REASONS FOR GRANTING THE PETITION

WHETHER THE PENNSYLVANIA JUDICIARY'S APPLICATION OF THE Strickland/Pierce STANDARD WAS UNREASONABLE, WHERE TRIAL COUNSEL FAILED TO LITIGATE VIOLATIONS OF THE FOURTH AMENDMENT AND ARTICLE 1, SECTION 8 TO INculpatory EVIDENCE OBTAINED FROM AN UNLAWFUL "WARRANTLESS ARREST" SUBSTANTIATED ON ALLEGED DRUG BUYS MORE THAN TWO MONTHS OLD, WITH NO PROBABLE CAUSE AT THE TIME THAT A CRIME WAS BEING OR ABOUT TO BE COMMITTED OR REASONABLE SUSPICION THAT CRIMINAL ACTIVITY WAS AFOOT, IN CONFLICT WITH THE SUPREME COURT'S HOLDINGS IN Terry V. Ohio, 392 U.S. 1 (1968); Dunaway V. New York, 442 U.S. 200 (1978); AND Commonwealth V. Melendez, 676 A.2d 226 (Pa. 1996) REQUIRING SUPPRESSION OF ANY EVIDENCE SEIZED?

"An unreasonable application occurs when a state court identifies the correct governing legal principle from the Supreme Court's decisions but unreasonably applies that principle to the facts of petitioner's case." Rompilla V. Beard, 545 U.S. 374, 380 (2005)(quoting Wiggins V. Smith, 539 U.S. 510, 520 (2003)).

The ineffective assistance of counsel claim raised by the petitioner is governed by the standard set forth in Strickland V. Washington, 466 U.S. 668 (1984), which constitutes "clearly established Federal law." Williams V. Taylor, 529 U.S. 362, 391 (2000); Rainey V. Varner, 603 F.3d 189, 197 (3d Cir. 2010).

The test for ineffective assistance of counsel in Pennsylvania is commonly referred to as the Pierce test based on the Pennsylvania Supreme Court decision that purported to adopt the United States Supreme Court's holding in Strickland. See, Com. V. Pierce, 527 A.2d 973 (Pa. 1987).

To properly assert ineffective assistance of counsel, a petitioner must plead and prove that the underlying issue has: (1) arguable merit; (2)

counsel's action or inaction lacked an objective reasonable basis; and (3) actual prejudice resulted from counsel's act or failure to act. Pierce, 527 A.2d at 975.

Notably, the Strickland test has identical textual and policy considerations that constitute an identical rule of law in this Commonwealth. Meaning, Article 1, Section 9 of the Pennsylvania Constitution, does not create greater or lesser protection than the present federal standard. Pierce, 527 A.2d at 976.

The Sixth Amendment right to counsel is the right to the effective assistance of counsel, in order to protect the fundamental right to a fair trial. Because, counsel can deprive a defendant of the right to effective assistance of counsel simply by failing to render adequate legal assistance. Strickland, 466 U.S. at 687-94.

For example, "where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, [as is the case here], the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." Kimmelman V. Morrison, 477 U.S. 365 (1986).

In this case, officers arrested the appellant without any warrant. As a result, the appellant argues on appeal that the Pennsylvania Superior Court unreasonably denied relief, by adopting the Trial Court's opinion with the claim that the order correctly disposes of his properly preserved issues in conflict with Evitts V. Lucey, 469 U.S. 387, 393 (1985). See, (Appendix-A, Superior Court opinion page 16).

For instance, trial counsel was ineffective for failing to move to suppress evidence under the following facts: That the passage of time between

the appellant's alleged suspicious activity in the month of August 2016 and the officer's seizure of him in the month of November 2016. Made it entirely practicable for police to proceed with there investigation in a manner consistent with the default requirements of the **Fourth Amendment** to the United States Constitution and **Article 1, Section 8** to the Pennsylvania Constitution. Which only allow for a seizure upon a warrant or probable cause of current criminal activity or reasonable suspicion that criminal activity is afoot. See, Terry V. Ohio, 392 U.S. 1 (1968); Dunaway V. New York, 442 U.S. 200 (1978); see also, Com. V. Melendez, 676 A.2d 226 (Pa. 1996). As a result, trial counsel's representation amounted to incompetence under prevailing professional norms. (quoting Strickland, 466 U.S. at 690). And failure to do so prejudiced the appellant. Strickland, 466 U.S. at 688; Pierce, 527 A.2d at 975.

Moreover, the appellant was approached and arrested without warrant when he exited his residence. The government does not contend that it's officers had probable cause or reasonable suspicion that the appellant was involved in any criminal activity at the time they seized him. Hence, no exigency emerged from the simple observation that the appellant had exited his residence and entered his car. Consequently, the warrantless seizure of the appellant was unconstitutional under the totality of circumstances. Because, the opportunity to Terry stop a suspect, a law enforcement power justified by and limited to the exigent circumstances of the moment, cannot be put in the bank and saved for use on a rainy day, long after any claimed exigency has expired. See, Terry V. Ohio, supra; Dunaway V. New York, supra; Com. V. Melendez, supra.

In following the legal authority held in Terry; Dunaway; and Melendez, the appellant's case is fundamentally a simple case. However, the Trial

Court's opinion concedes that the three (3) alleged drug buys in the month of August 2016, obviated the warrant requirement for the appellant's warrantless arrest that occurred on November 4th, 2016, and cites Commonwealth V. Clark, 735 A.2d 1248, 1251 (1999), as the controlling authority for the appellant's arrest. See, (Appendix-B, Opinion of Court of Common Pleas, at pages 14-15).

Frankly, the appellant agrees that Clark is informative and helps the appellant's argument, and the Trial Court's application of Clark is misplaced and not on point with the language in Clark. The Supreme Court of Pennsylvania clearly states in Clark: "that law enforcement authorities must have a warrant to arrest an individual in a public place unless they have probable cause to believe that 1) a felony has been committed; and 2) the person to be arrested is the felon. Clark, 735 A.2d at 1251. Because, this statement is vague on timing for such a arrest, even though the Trial Court left out the part about "law enforcement authorities must have a warrant to arrest an individual in a public place", we have authority that provides the timing and under what circumstances a warrantless arrest can be made. Noteworthy, the panel that ruled in Clark is the same panel that ruled in Melendez three years earlier.

The Supreme Court of Pennsylvania held in Melendez, that there are two circumstances in which warrantless seizures of a person are constitutionally permissible. The first is where police have probable cause to believe that a crime is being or is about to be committed. The second is that a limited seizure may be effected where there is a reasonable police belief that criminal activity is afoot. Melendez, 676 A.2d at 228.

Clarifying, unless police have "specific and articulable facts" which lead them to suspect criminal activity, they may not stop and search any person without a warrant. Melendez, at 228. It was also held that, exigent circumstances excusing the warrant requirement arise where the need for prompt

police action is imperative. Melendez, at 229.

Moreover, in Clark, the court addressed a probable cause issue where police had not established that probable cause was present, at the time of the alleged criminal activity to make a warrantless arrest. Clark, 735 A.2d at 1251-52. Where as in Melendez, the court, addressed a warrantless arrest for alleged criminal activity, at a time and location wholly separate from the place where the person is seized. Melendez, 676 A.2d at 229.

To implement the Fourth Amendment's protection against unfounded invasions of liberty and privacy, the Court has required that the existence of probable cause be decided by a neutral and detached magistrate whenever possible. The classic statement of this principle appears in Johnson V. U.S., 333 U.S. 10, 13-14 (1948): "The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." See also, Terry, 392 U.S. at 20-22.

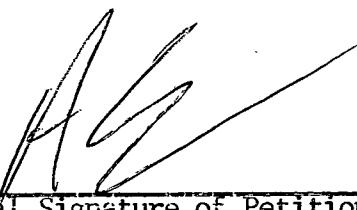
In the absence of any likelihood of the appellant escaping before a warrant is obtained, the arrest is unlawful; therefore, where police waited over two months to arrest the appellant after learning that he was a suspect, conclusion was compelled that at the time police learned that the appellant was a suspect they did not foresee any likelihood that the appellant would escape before a warrant could be obtained and since during ensuing two months before arrest there was ample opportunity to obtain a warrant, failure to obtain it rendered unduly delayed arrest unlawful. Terry, supra; Dunaway, supra; Melendez, supra.

The police in the present case "placed the cart before the horse" meaning, the stop and arrest of appellant without a warrant was illegal. With a warrant they could have arrested and avoided the problems of the present case. There were no exigent circumstances. The stop was grounded neither on probable cause nor the less stringent requirement of Terry, and the warrant requirement was not obviated by the existence of exigent circumstances. Because, of this arrest the appellant was transported to a police station where he was strip searched. It was alleged that contraband was found on his person. This alleged contraband was used to obtain a search warrant for the appellant's residence and off-site garage units. During the execution of the search warrant it was alleged that a jacket was recovered with contraband found outside the residence. Therefore, all evidence obtained and search warrant obtained as a result of the exploitation of this unlawful arrest must be suppressed as "fruit of the poisonous tree." U.S. V. Crews, 445 U.S. 463 (1980); Wong Sun V. U.S., 371 U.S. 471 (1963).

Consequently, appellant's trial counsel was ineffective for failing to make a suppression motion with this argument that would have been meritorious and the verdict would have been different absent this evidence. Where the search of appellant's person and the subsequent search warrant obtained should have been suppressed. Kimmelman V. Morrison, *supra*; Strickland V. Washington, *supra*; Com. V. Pierce, *supra*.

Respectfully,

Mr. Allan Leslie Sinanan Jr.



(Original Signature of Petitioner)

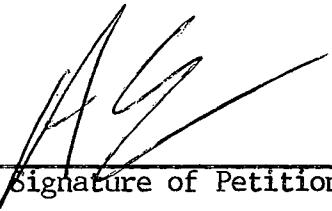
Date: 11/16/2023

CONCLUSION

The Superior Court Panel's and Common Pleas Trial Court's decision in this instance equates to stating the **Fourth and Sixth Amendments** of the United States Constitution and **Article 1, Section[s] 8 and 9** of the Pennsylvania Constitution, are merely propaganda for the public's consumption. That there is no force to the guaranties of Due Process of the law or to a fair process in the Commonwealth of Pennsylvania. That an indigent, imprisoned litigant must suffer injustice, because the Court refuses to recognize those constitutional rights afforded to every citizen. Merely, because he is already isolated from society and without a prominent voice to be heard. Unless this Court exercises it's supervisory powers to correct the error and injustice. The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Mr. Allan Leslie Sinanan Jr. (Pro-Se Petitioner)


(Original Signature of Petitioner)

Date: 11/16/2023