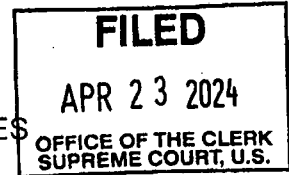


No. 23-7375

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



SAMUEL GAYDEN — PETITIONER
(Your Name)

VS.

PEOPLE OF THE STATE OF ILLINOIS — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Samuel Gayden
(Your Name)

P.O. Box 1000, Reg. No. R-26456
(Address)

Menard, Illinois 62259-0100
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether CERTIORARI should be granted to Determine if the liberal ILLINOIS Post-CONVICTION Pleading STANDARDS ALLOW COURTS to ARBITRARILY deny PRISONERS post conviction relief.

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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☐ is unpublished.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☐ is unpublished.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☒ is unpublished.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 ILLINOIS Supreme 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☒ is unpublished.

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☐ 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 JAN. 24, 2024.
A copy of that decision appears at Appendix B .

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

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution provides in pertinent part:

[T]hat no person shall be deprived of life, liberty, or property without due process of law

The Fourteenth Amendment to the Constitution provides in pertinent part:

No state shall . . . deprive any person of life, liberty, or property without due process of law

STATEMENT OF THE CASE

SAMUEL GAYDEN WAS CONVICTED OF TWO COUNTS OF FIRST DEGREE MURDER AND ONE COUNT OF ATTEMPT FIRST DEGREE MURDER. HE WAS SENTENCED TO NATURAL LIFE IN PRISON FOR THE TWO MURDERS AND 20-YEARS FOR THE ATTEMPT MURDER. MR. GAYDEN'S CONVICTION WAS AFFIRMED ON DIRECT APPEAL ON JUNE 26, 2020. SUBSEQUENTLY MR. GAYDEN FILED A POST-CONVICTION PETITION. SAID PETITION WAS DENIED ON JUNE 08, 2022, AND AFFIRMED ON APPEAL IN AN ORDER DATED SEPTEMBER 29, 2023, WHICH IS ATTACHED AS APPENDIX A.

AMONG THE TEN ARGUMENTS ADVANCED IN THE POST-CONVICTION PETITION, ALL TEN ADDRESSING CLAIMS OF INEFFECTIVE ASSISTANCE OF COUNSEL. OF RELEVANCE HERE, MR. GAYDEN ALLEGED THAT HIS TRIAL COUNSEL FAILED TO INTERVIEW ANDREW WILLIAMS AND CALL HIM TO TESTIFY. BASED UPON THE ILLINOIS POST-CONVICTION-HEARING-ACT'S FIRST STAGE PROCEEDINGS WHICH REQUIRES LIBERAL CONSTRUCTION OF THE PLEADINGS AND A LIMITED AMOUNT OF DETAIL THAT ARE TO BE VIEWED WITH A LENIENT EYE ALLOWING BORDER LINE CASES TO PASS AND PRECEDENT CASE LAW FROM THE ILLINOIS SUPREME COURT MR. GAYDEN ARGUED ON APPEAL THAT THE PETITION'S ALLEGATIONS SUPPORTED BY ANDREW WILLIAMS' AFFIDAVIT "IMPLICITLY" SET OUT A CLAIM OF ACTUAL INNOCENCE. IN REJECTING THIS CLAIM, THE ILLINOIS APPELLATE COURT HELD THAT:

'No evidence existed that Mr. Gayden's trial counsel

knew of Andrew Williams, thus counsel cannot be ineffective for failing to call a witness of whom they have no knowledge. The appellate court stated, "Any claims assessed by a reviewing court must be presented in the petition filed in the circuit court." Therefore, Mr. Gayden did not ["explicitly"] set forth a claim of actual innocence, even considering the limited amount of detail required at the first stage. Thus, he has forfeited review of it on appeal. ³ People v Gayden, 2023 IL App (1st) 221066-U, pp 24-28.

The Illinois Supreme Court denied leave to appeal.

REASONS FOR GRANTING CERTIORARI

CERTIORARI SHOULD BE GRANTED TO DETERMINE IF THE LIBERAL ILLINOIS POST-CONVICTION PLEADING STANDARDS ALLOW COURTS TO ARBITRARILY DENY PRISONERS POST CONVICTION RELIEF.

Petitioner has a substantive due process interest in post-conviction relief from a wrongful conviction. A state created fundamental liberty interest in collateral relief and judicial decision making free from arbitrariness.

This Court has stated that the principal goal of the Due Process Clause is "protection of the individual against arbitrary action of government," Wolff v McDonnell, 418 U.S. 539, 558, 94 S.Ct. 2963, 2976, 41 L.Ed.2d 935 (1974), whether the fault lies in a denial of fundamental procedural fairness, see, e.g., Fuentes v Shevin, 407 U.S. 67, 81, 92 S.Ct. 1983, 1995, 32 L.Ed.2d 556 (1972). By forcing the government to use a "fair process of decision-making" when it implements a law, procedural due process seeks "to ensure abstract fair play to the individual" and to minimize "unfair or mistaken deprivations" that may result from the government's having acted on the basis of erroneous information, or in the exercise of power without any reasonable justification in the service of a legitimate governmental objective, see, e.g., Daniels v Williams, 474 U.S. 327, 331, 106 S.Ct. 662, 664.

88 L.Ed.2d 662 (1986) (the substantive due process guarantee protects against government power arbitrarily and oppressively exercised). This Court, when dealing with abusive executive action has emphasized that only the most egregious official conduct can be said to be 'arbitrary in the constitutional sense...'. Collins v. Harker Heights, 503 U.S. 115, 129 S.Ct. 1061, 1071, 117 L.Ed.2d 261 (1992). This Court thus held that "in a due process challenge to executive action, the threshold question is whether the behavior of the governmental officer is so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience"; i.e., "that it did not comport with traditional ideas of fair play and decency" would violate substantive due process. Whitley v. Albers, 475 U.S. 312, 327, 106 S.Ct. 1078, 1088, 89 L.Ed.2d 251 (1986); United States v. Salerno, 481 U.S. 739, 746, 107 S.Ct. 2095, 2101, 95 L.Ed.2d 697 (1987). "So called 'substantive due process' prevents the government from engaging in conduct that shocks the conscience, ... or interferes with rights 'implicit in the concept of ordered liberty.'" (quoting Rochin v. California, 342 U.S. 125, 172, 72 S.Ct. 205, 207-10, 96 L.Ed. 183 (1952) and Palko v. Connecticut, 302 U.S. 319, 325-26, 58 S.Ct. 149, 151-152, 82 L.Ed. 288 (1937) (underline added).

Whether or not executive action is sufficiently arbitrary, egregious, or conscience shocking to state a due process claim turns on the circumstances under which the government official was acting. Ides, Allen and Christopher N. May, Constitutional Law,

Individual Rights, Aspen Law + Business, § 2.1, pp. 56 (2nd ed. 2001). Between the extremes this Court has acknowledged there may be occasions when "something more than negligence but 'less than intentional conduct, such as recklessness or "gross negligence"'" will suffice, depending on how much opportunity there was for deliberation, reflection, and forethought. *Id.* (underline added)

In the cause sub judice the circuit court had 90-days in which to enter its order, a significant and substantial amount of time for deliberation, reflection, and forethought. However Illinois courts (circuit and appellate) have incorporated a deeply seeded judicial philosophy of a "sense of guilt" or "close-enough-is-good-enough" now supercedes meaningful and equal application of the law. The courts are apparently too busy to correct outcome determinative errors essential to a constitutionally adequate post-conviction review. This has become an overt denial of a fundamental liberty interest by misprioritizing an administrative convenience (finality-loosely termed) thereby allowing a non-constitutional doctrine to trump fundamental fairness and equal protection.

In Illinois there exists a conflict between appellate court case-law and the Illinois Supreme Court's precedent on post-conviction petitions. While the Illinois Supreme Court has addressed claims raised "implicitly" in pro se petitions at the first stage, the appellate court cases limit review to claims made "explicitly."

The appellate court cases, which treat pro-se petitioners like experienced litigants, are contrary to the legislative purposes of the Post-Conviction-Hearing Act ("Act") and the Illinois Supreme Court's precedents. To be clear, in many cases the pro-se defendant will be unaware that certain facts, which in his mind are tangential or secondary, are in fact, critical parts of a complete and valid constitutional claim. Under the "sufficient facts" test, however, the pro-se defendant must recognize the facts that need to be pled to support a "valid claim." This is an unrealistic requirement. Therefore, the Illinois Supreme Court has rejected the "sufficient facts" standard as an unfairly high burden to place on a pro-se petitioner. People v Edwards, 197 Ill.2d 239, 258 Ill. Dec. 753, 757, 757 N.E.2d 446 (Ill. 2001)

The Act allows those convicted of crimes to seek relief for denials of their constitutional rights. 725 ILCS 5/122-1(a)(1) (2022). A post-conviction petition can only be summarily if the circuit court determines the claims are frivolous or patently without merit. 725 ILCS 5/122-2.1(a)(2). Otherwise, the case proceeds to the second stage, where counsel can be appointed for indigent petitioners and the state can file a motion to dismiss. See 725 ILCS 5/122-4; 725 ILCS 5/122-5.

To survive summary dismissal, a post-conviction petition must pass the "low threshold" of having one non-frivolous argument. People v Hodges, 234 Ill.2d 1, 9-10 (Ill. 2009). This is a forgiving

standard. People v Allen, 2015 IL 113135, p 43. To trigger docketing of the petition, a claim must only have an arguable basis in fact and law. Hodges, 234 Ill.2d at 16. This standard reflects the reality that most post-conviction litigants are uneducated and not represented by counsel. Hodges, 234 Ill.2d at 16, n.7. Given these limitations, petitioners "will, in all likelihood, be unaware of the precise legal basis for his claim or all the legal elements of that claim." Edwards, 197 Ill.2d 239, 245 (Ill. 2001).

As a result, first-stage petitions must be given "a liberal construction" and reviewed "with a lenient eye, allowing borderline cases to proceed." Hodges, 234 Ill.2d at 21. In Hodges, the Illinois Supreme Court applied the liberal construction standard to find a claim implicit in the pro-se petition. The defendant's pro-se petition alleged ineffective assistance of counsel for failing to interview witnesses whose testimony would show he acted in self-defense. Hodges, 234 Ill.2d at 6-8. The Illinois Supreme Court found this claim was rebutted by the record. Id. at 80. But it advanced the petition based on the effect of the proposed testimony on the defense's second degree murder defense. In doing so, the Court rejected the state's argument that courts can only review claims "explicitly" made in pro-se petitions. Though defendant "did not expressly allege that [the] testimony would have supported 'unreasonable belief' second degree murder," the Court liberally construed the petition to consider that claim. Hodges, 234 Ill.2d at 21. It found, "[t]he state's

strict construction of defendant's petition is inconsistent with the requirement that a pro-se petition be given a liberal construction." *Id.*

In *People v Allen*, the Illinois Supreme Court similarly inferred a missing allegation in a witness's statement, citing "the directive to construe the petition's allegations liberally." 2015 IL 113135, p 41.

These principles have been eroded and undermined by a line of appellate court cases. In *People v Cole*, the Appellate Court refused to address an "implicit" claim of ineffective assistance of appellate counsel. 2012 IL App (1st) 102499, pp 11-14. In support the First District cited the Illinois Supreme Court's precedent in *People v Jones*, 213 Ill.2d 498, 506 (2004), barring new claims from being raised on appeal. *Cole*, 2012 IL App (1st) 102499, pp 12-13. The Appellate court, moreover, found considering "implicit" claims was not a component of liberal construction but instead contrary to the "strictures" of the Post-Conviction-Hearing-Act. *Id.*, p 14.

Cole's ban on considering "implicit" claims has been widely adopted in cases affirming the summary dismissal of first-stage petitions. See *People v Shief*, 2016 IL App (1st) 141022, p 53; see also *People v Truick*, 2020 IL App (1st) 181228-11, p 20; *People v Williams*, 2020 IL App (4th) 190089-11, p 28; *People v Nelson*, 2019 IL App (1st) 161078-11, p 30; *People v Lawitzke-Cardenas*, 2015 IL App (4th) 130680-11, p 27; *People v Dziadzio*, 2014 IL App (1st) 120377-11, p 22; *People v Reed*, 2014 IL App (1st) 122610, pp 55-61; *People v Martin*, 2013 IL App (1st) 121460-11, p 16; *People v Bennett*, 2013 IL App (1st)

120047-U, p 18; People v Youngblood, 2013 IL App (2d) 120289, p 16; People v Fuller, 2013 IL App (1st) 111339-U, p 18; People v MARS, 2013 IL App (2d) 110695, p 33; People v Brewer, 2012 IL App (3d) 110137-U, p 15-16.

The Cole rule is plainly contrary to Illinois Supreme Court decisions reviewing a claim that "defendant did not expressly allege" and taking inferences in petitioner's favor. See Allen, 2015 IL 113135, p 41; Hodges, 234 Ill.2d at 21. Courts in the Cole line, while purporting to apply a liberal construction to petitions, instead apply a strict reading. Cole and its progeny also conflict with court cases that remain faithful to the Illinois Supreme Court's precedent. As one decision found, "[t]he Cole court interpreted [Jones] too broadly to hold that post-conviction appellate counsel may not raise "implicit" claims derived from a pro se petition's factual allegations." People v Thomas, 2014 IL App (2d) 121001, p 76. But these appellate court cases are in the minority.

Petitioner's appeal was the perfect vehicle for addressing this precedent/a rift. Samuel Gayden's pro se petition set out allegations and evidence that, read together, create a viable claim of actual innocence. Gayden asserted that his trial counsel was ineffective for failing to present Andrew Williams' testimony at trial. Gayden asserted that Williams' affidavit supports his argument that he was not the shooter. Williams' affidavit avers that he has known Gayden for years, that Williams was at the liquor store dur-

ing the shooting, and that Williams recognized the shooter, who was not Gayden, from the neighborhood. On appeal from the summary dismissal of the petition, Gayden argued that Andrew Williams' affidavit supported a claim of actual innocence because it is arguable that this newly discovered, material, and noncumulative evidence would likely change the result upon retrial. A liberal reading of Gayden's petition would find this allegation set out an arguable constitutional violation.

Yet the appellate court affirmed the summary dismissal of Gayden's pro-se petition, refusing to consider an actual innocence claim. The court held that Gayden only alleged a claim of ineffective assistance of counsel and reasoned that "Gayden did not set forth a claim of actual innocence, even considering the limited amount of detail required at the first stage.... Instead, his entire lengthy petition is based solely on claims of ineffective assistance of trial and appellate counsel." People v Gayden, 2023 IL App (1st) 221066-U, p 25.

However, Gayden's pro-se allegation had substantial merits. Williams' affidavit arguably qualifies as newly discovered evidence. The facts in the affidavit, stating that Williams was present during the incident and that Gayden was not the shooter, were unknown at the time of trial. Also, Williams' affidavit is both material to Gayden's claim of actual innocence and is not cumulative. The averments in Williams' affidavit, taken as true, are material

where they support Gayden's claim that he was not the shooter. And the allegations are not cumulative to any evidence from trial. Lastly, the newly discovered evidence contained in Williams' affidavit is of such a conclusive character that it would probably change the result on retrial. People v Robinson, 2020 IL 123849, p 47 (citing People v Coleman, 2013 IL 113307, p 96; People v Ortiz, 235 Ill.2d 319, 336-337 (2009)). Gayden asserted at trial that he was not the person portrayed in the surveillance video. Williams' testimony would undermine the credibility of the three witnesses, Jaber, Chauncey Williams, and Sergeant Lopez, who identified Gayden as the shooter in the video. For these reasons, Gayden's claim of actual innocence should have advanced to the second stage.

The appellate court's holding in this case subjected Gayden's petition to a stricter standard than the one described in the Post-Conviction-Hearing-Act or in the Illinois Supreme Court's opinion in Hodges. See also, 725 ILCS 5/122-2 (2022). There exists confusion in the appellate court regarding whether a pro-se petitioner must "explicitly" allege a correct legal theory for his claims, or whether factual allegations are sufficient. Gayden's case exemplifies this confusion and offers the Illinois Supreme Court an appropriate vehicle to address this issue and to unify the currently fractured body of precedent surrounding it.

Subsequently, on January 24, 2024, the Illinois Supreme Court denied leave to appeal.

Mr. Gayden has a fundamental/state created liberty interest in a constitutionally adequate post-conviction process. In this case the appellate court has ignored the Post-Conviction-Hearing-Act's ("Act") mandate of liberally construing pleadings, the requirement that only a limited amount of detail be presented and are to be viewed with a lenient eye allowing border line cases to pass and ignored precedent case law from the Illinois Supreme Court allowing "implicitly" stated claims to proceed. Lower courts of the state are required to not only know the law, but also are required to follow the law established by the state's highest court. The appellate court here, has failed to do so. It has violated the requirements of the Act and the law as set forth by the Illinois Supreme Court. Since this is not a situation involving split second decisions; rather the court has all the time it requires for forethought, to deliberate and to reflect, the foregoing facts results in sufficiently egregious conduct and arbitrary acts that rise to the conscience shocking level thereby establishing a substantive due process violation. Mr. Gayden's right to due process is conferred by constitutional guarantee. While the legislature may not elect to confer a property or [liberty] interest... it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 541 (1985). In this case the appellate

COURT'S ACTIONS ARE CONSCIENCE SHOCKING RESULTING IN THE ARBITRARY DENIAL OF SUBSTANTIVE DUE PROCESS.

CONCLUSION

FOR THE FOREGOING REASONS, SAMUEL GAYDEN, PETITIONER PRO-SE, RESPECTFULLY REQUESTS THAT A WRIT OF CERTIORARI BE ISSUED TO THE APPELLATE COURT OF ILLINOIS, FIRST JUDICIAL DISTRICT.

Respectfully submitted,

Samuel Gayden PRO-SE,

SAMUEL GAYDEN, PRO-SE,

P.O. Box 1000, Reg. # R-26456

MENARD, IL. 62259-0100