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ORIGINAL

No. 2-20-CV-01936

FILED

JUL 11 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ALAN TROY HOUSER, Petitioner

vs.

MICHAEL ZAKEN, et al

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD

CIRCUIT

PETITION FOR WRIT OF CERTIORARI

RECEIVED

JUL 18 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ALAN TROY HOUSER, pro se

Case No. ME-2349

801 Butler Pike

Melcer, PA 16137

QUESTION(S) PRESENTED

1. Whether 18 Pa. C.S.A. § 5105 violates the substantive due process guarantees of the United States and Pennsylvania Constitutions
2. Whether 18 Pa. C.S.A. § 5105 is unconstitutional facially and as-applied to the petitioner.
3. Whether 18 Pa. C.S.A. § 5105 is void for vagueness to the petitioner.
4. Whether the unconstitutional violation is plain error

LIST OF PARTIES

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 judgement is the subject of this petition is as follows:

Chagares, chief judge, Jordan, Hudman, Greenaway, Jr.,
~~Sh~~Wartz, Krause, Restrepo, Bibas, Porter, Matey, Phipps,
Ficeman, Montgomery-Reeves, Circuit Judges

TABLE OF CONTENTS

	<u>Pages</u>
OPINION (Below)	1, 2
JURISDICTION	3
CONSTITUTION AND STATUTORY PROVISIONS INVOLVED	4, 5
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	7, 8, 9, 10
CONCLUSION	10

INDEX TO APPENDICES

APPENDIX - A

APPENDIX - B

APPENDIX - C

APPENDIX - D

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Com. v. Fisher

7

Com. v. Brown

8, 9

U.S. v. Santos-Santana

9

Class v. U.S.

9

STATUTES AND RULES

18 Pa. C.S.A. § 5105

7, 8, 9

18 Pa. C.S.A. § 306

7, 9

18 Pa. C.S.A. § 904

8

Vagueness Doctrine

10

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 judgement below.

OPINIONS BELOW

Federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

The opinion of the United States district court appears at Appendix B to the petition and is

State courts:

The opinion of the highest state court to review the merits appear at Appendix C to the petition and is reported at 180 WAL. 2020 (Pa. 2020).

The opinion of the Superior Court of Pennsylvania appears at

Appendix ① to the petition and is reported at 1122 WDA
2019 (Pa. Super. 2020).

JURISDICTION

Federal court(s):

The date on which the United States Court of Appeals decided my case was February 2, 2023.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: May 8, 2023, and a copy of the order denying rehearing appears at Appendix.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution in pertinent part: "No person shall... be deprived of life, liberty, or property without due process of law?" U.S. Const. amend. V.

Fourteenth Amendment to the United States in part: "No State shall... 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." U.S. Const. amend. XIV, § 1.

Article I, § 9, of the Pennsylvania Constitution provides in pertinent relevant part: "Nor can an accused be deprived of this life, liberty, or property unless by the judgement of his peers or the law of the land. Pa. Const. art. I, § 9.

STATUTES

18 Pa. C.S.A. § 5105: "A person commits an offense if, with intent to hinder the apprehension, prosecution, conviction or punishment of another for crime or violation of the terms of probation, parole, intermediate punishment or Accelerated Rehabilitative Disposition..."

18 Pa. C.S.A. § 904. Incapacity, irresponsibility or immunity of party to solicitation or conspiracy in relevant part: "It is a defense to a charge of solicitation or conspiracy to commit a crime that

if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under section 306(e) of this title (relating to status of actor) or section 306(f)(1) or (2) of this title (relating to exceptions). Section 904(b).

18 Pa. C.S.A. § 306. Liability for conduct of another; complicity in relevant part: "Unless otherwise provided by this title or by the law defining the offense, a person is not an accomplice in an offense committed by another person if: (2) the offense is so defined that his conduct is inevitably incident to its commission;" Section 306(f)(2).

STATEMENT OF THE CASE

The Petitioner was arrested September 3, 2014, and charged with 1 count 18 Pa. C.S.A. § 5105 Hindering Apprehension or Prosecution; 1 count 18 Pa. C.S.A. § 903 Conspiracy. On June 2, 2015, the day of trial a general plea was accepted. August 18, 2015, petitioner was sentenced to 21 to 42 months at both counts to run consecutive. Petitioner filed timely prose petition for Post Conviction Relief Act (P.C.R.A.), in which, an evidentiary hearing was granted. September 20, 2018, the hearing was held, to which, court-appointed counsel Emily Smarto, Attorney Patricia Elliott-Pentler (co-defendant's counsel), and Donald Pyros, Jr. (correctional counselor employed at the Westmoreland County Prison) all were called to testify. The P.C.R.A. judge ordered briefs to be submitted. On July 3, 2019, the P.C.R.A. court denied the P.C.R.A. petition. Petitioner filed timely appeal to the Superior Court of Pennsylvania and was affirmed on April 28, 2020. An allowance of appeal was denied by the Supreme Court of Pennsylvania on November 19, 2020. The Petitioner filed habeas corpus to the United States District Court (Western) and on June 30, 2022, Chief United States Magistrate Judge Cynthia Reed Eddy recommended denial of all seven (?) claims. On July 26, 2022, Honorable William S. Steikman IV denied the petitioner's Objection to Judge Cynthia Reed Eddy's recommendation. Petitioner filed timely appeal to the United States Court of Appeals (3rd Cir.), which, was denied on February 2, 2023. Petition for rehearing filed and denied May 8, 2023. Now this Petition for a Writ of Certiorari, timely filed.

REASONS FOR GRANTING THE PETITION:

The issue raised is whether 18 Pa. C.S.A. § 5105 Hindering Apprehension or Prosecution violates the substantive due process guarantees of the United States and Pennsylvania Constitutions.

Section 5105, is unconstitutional facially and as-applied to the petitioner, because the Section makes no provisions in that the petitioner "requested another person to engage in conduct which would constitute a crime." Under Section 5105, there is an offense, in which, the petitioner can be absolutely liable for the conduct of another, whether with the intent of promoting or facilitating the commission of the offense, he solicits such other person to commit it. The accused would not be guilty of a crime, even "if the criminal object were achieved," under the law defining the offense. *Commonwealth v. Fisher*, 622 A.2d 732 (Pa. Super. 1993).

Section 5105, makes no provision for finding those inevitably involved in the accused's conduct culpable as accomplices, they fall within the exception stated in 18 Pa C.S.A. § 306(f)(2).

§ 306. Liability for conduct of another; complicity.

(f) Exceptions. — Unless otherwise provided by this title or by the law defining the offense, a person is not an accomplice in an offense committed by another person if:

(2) the offense is so defined that his conduct is inevitably incident to its commission;

The Petitioner was charged with hindering his "own" prosecution under Section 5105(A)(3), subject to the term "another" within the the sections definition. The statute completely fails to make liable a person who interferes in his "own" apprehension or prosecution, or culpable as an accomplice to one who commits the offense under the statute as defined. *Commonwealth v. Brown*, 369 A.2d 329 (Pa. Super. 1976).

Furthermore, because "a person cannot be convicted as an accomplice to a crime if the offense is so defined that his conduct is 'inevitably incident' to its commission," he cannot be considered a conspirator to the commission of the crime if the criminal object were achieved. 16 Pa. C.S.A. § 904.

§ 904. Incapacity, impossibility or immunity of party to solicitation or conspiracy.

(b) Exception. — It is a defense to a charge of solicitation or conspiracy to commit a crime that if the criminal object were achieved, the actor would not be guilty of a crime under the law defining the offense or as an accomplice under section 306(e) of this title (relating to status of actor) or section 306(f)(1) or (2) of this title (relating to exceptions).

Although a guilty plea generally waives a defendant's right to appeal his conviction, it does not waive the right to challenge the constitutionality of the statute underlying the conviction. *United States v. Santos-Santana*, 2022 U.S. App. Lexis 35782; *Class v. United States*, 138 S.Ct. 798, 803 (2018).

18 Pa. C.S.A. § 5105 (A)(3), clearly, palpably and plainly violates both the Constitutions of the United States (5th and 14th Amendments) and Pennsylvania (Article I Section 9).

The Petitioner's alleged conduct of promoting and facilitating the alleged three-way phone call between his sister, Rachel Catalano and himself, which constituted the hindering charge, is not a crime the petitioner would be guilty under the law defining Section 5105. Not as an accomplice, nor as a conspirator.

Section 5105 should be ruled unconstitutional at both the United States and the Pennsylvania Constitutions, as Section 5105, violates the petitioner's substantive due process facially and as-applied, as shown above.

18 Pa. C.S.A. § 5105 makes no provision for finding those inevitably involved in the accused's conduct culpable as accomplices, they fall within the exception stated in Section 306(f)(2) and cannot be considered accomplices. *Brown*, 245 Pa. Super. 137, at 349 A.2d 331. Section 5105, does not establish all elements of the crime accused to the petitioner, therefore, the unconstitutionality of the section is not moot, as to the petitioner. There is no textual basis for the Commonwealth's liberal interpretation of § 5105.

Section 5105, is void for vagueness because the statute does not define "promoting and facilitating" another person to engage in specific conduct that would constitute hindering apprehension or prosecution a criminal offense.

"The void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."

This is a matter of plain error, as well.

CONCLUSION

The petitioner prays that the Supreme Court of the United States grant the writ of certiorari.

Respectfully Submitted,

Alan Tray Havel

Alan Tray Havel, prose.

Date: