No. 23-7543

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAY 13 2024
OFFICE OF THE CLERK

JERYME MORGAN — PETITIONER
(Your Name)

vs.

DEANNA BROOKHART — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATE DISTRICT COURT NORTHER DISTRICT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JERYME MORGAN
(Your Name)

3820 EAST MAIN ST.
(Address)

DANVILLE, IL 61834
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- The questions in this case is whether The Martinez-Trevino exceptions should bee extended to Illinois prisoners.

- Whether Indeed, effective trial counsel and Appellate counsel are inextricably connected elements of a fair trial.

- Whether the Martinez-Trevino exception Applies in this procedural Regime.

- Whether procedures used in deciding Appeals comport with the demands of Due process and Equal protection Clause of the Constitution.

- Whether A state law violates the Due process Clause if it premitted the use of 'prior crimes' evidence to show propensity to commit a charged crime?

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

People v. Morgan, No. 09 CR 1144301, Ill. Cir. Ct. Oct. 6, 2009

People v. Morgan, No. 1-09-3388, May 7, 2012, Filed, Judgment Entered May 29, 2013

People v. Morgan, No. 115812, Judgment Entered May 29, 2013

People v. Morgan, No. 1-17-1331

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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 B to the petition and is

[✓] reported at United States District for Northern District of ILLinois; 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[ ] is unpublished.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 A to the petition and is

[✓] reported at United States Court of Appeals for the Seventh Circuit; 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[ ] is unpublished.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 C to the petition and is

[✓] reported at Appellate Court of ILLinois first district; 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 August 15, 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: December 13, 2023, and a copy of the order denying rehearing appears at Appendix A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including May 11, 2024 (date) on February 27, 2024 (date) in Application No. 23 A 785.

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 May 7, 2012. A copy of that decision appears at Appendix D.

[ ] A timely petition for rehearing was thereafter denied on the following date: May 25, 2012, 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

STATEMENT OF THE CASE

Petitioner claims that much like the Indiana Court of Appeals, The Illinois Appellate court has followed suit, Routinely issuing non-precendent decisions that echo the lesson of woods, see: (woods v. state, 701 N.E.2d 1208, Especially when denying relief on direct appeal. Eg, Crockett v. State, 13 N.E 3d 566, 2014 WL 2202763, at*4 (Ind. App2014) ([I]t is well well settled that a post-conviction petition proceedings is generally the perferred," Even if "A criminal defendant... is at liberty to elect whether to present this claim on direct appeal or post-conviction proceedings."). During Petitioner's direct Appeal process he was poor and had to depend on the state's Appellate Defender's office for representation. Petitioner, although ignorant & mentally ill, did all that he knew how with in his ability to assist in his constitutional right to a fair trial. Petitioner begged his Appellate Defender to include meritorious ineffect Assistance of trial claims, BRADY discovery violation, and Abuse of descretion. Petitioner even mailed Appellate counsel notes that he took from his trial transcripts to convince her his requested claims had merit. See Appendix E. The Appellate Defender for Petitioner did not raise any of his requested claims... one being ineffective-assistance of trial counsel. The Appellate Counsel and the Illinois Appellate Court's directives believe preferably for the defendant to adjudicate his claim...is in a post-conviction Relief proceedings. See People v. Kunze, 550 N.E.2d 284, 140 Ill. Dec. 648 See Also 2016 IL App (4th) 130888, ¶¶89, 92. The Illinois Appellate Court also engaged in lenghty discussion of the practice of deffering judgment in such cases, citing People v. Kunze, the Appellate Court in Kunze did not cite any Authority to support it's holding that ineffective assistance of counsel claims are better made in post-conviction proceedings.

Nevertheless, The Illinois Appellate Court has widely followed People v. Kunze, in refusing to consider ineffective assistance of counsel claims on direct review. See In re Alonzo O., 2015 IL App (4th) 150308, 397 Ill. Dec 44, 40 N.E.3d 1228; People v. Taylor, 2015 IL App (4th) 140060, 398 Ill. Dec. 822, 44 N.E 3d 1234; People v. Evans, 2015 IL App (1st) 130991, 393 Ill. Dec. 578, 34 N.E.3d 1106; People v. Brothers, 2015 IL App (4th) 130644, 396 Ill. Dec. 275, 39 NE. 3d 1101; People v. Sharp, 2015 IL App (1st) 130438, 389 Ill. Dec. 370, 26 N.E. 3d 460; People v. Pelo, 404 Ill. App. 3d 839, 942 N.E 2d 463, 349 Ill. Dec. 260 (2010); People v. Millsap, 374 Ill. App 3d 857, 873 N.E 2d 396, 313 Ill Dec. 772 (2007); People v. Evans, 369 Ill. App. 3d 366, 859 N.E. 2d 642, 307 Ill. Dec. 353 (2006); People v. Durgan, 346 Ill. App. 3d 1121, 806 N.E. 2d 1233, 282 Ill. Dec. 645, (2004).

Judgment entered on Petitoner's convictions of Aggravated Criminal sexual assault, Robbery, and Kidnapping affirmed over claim that trial court abused its discretion in admitting evidence of other crimes; Petitioner forfeited claim that jury instruction was overly broad; fines and fees order Modified. Appendix C-1. The Court of trial sentenced him to an aggregate term of 52 years' imprisonment: three consecutive 15-year terms on the aggravated criminal sexual assault counts, a consecutive seven-year term on the Robbery conviction, and a concurrent seven-year term for Kiddnapping.

On December 6, 2013, Petitioner filed a pro-se post-conviction petition for relief under the Post Conviction Hearing Act (Act) (725 ILCS 5/122-1 et seq. (West)). The circuit court advanced the petition to the second stage of the postconviction proceedings and appointed counsel. The trial court granted the State's subsequent motion to dimiss the petition. Petitioner appealled, arguing that he was denied reasonable assistance of postconviction counsel. Appendix G.

REASONS FOR GRANTING THE PETITION

Petitioner believes that His complaint will address compelling Reasons for the exercise of the court's discretionary jurisdiction, beginning with the United States District's court's Decision to deny Petitioner's claim of His counsel's constitutional defective performance at each stage of proceedings. Petitioner argues that his trial counsel was deficient in fail to adequately Hire in Assistant Public defender Deanna Binstock in time to adequate investigate the DNA evidence, which was used in ~~the~~ State's case-in-chief to find Petitioner guilty in trial, his Appellate counsel was deficeient in failing to raise the issue on direct appeal, His Post-conviction Attorney for not raising ineffective on his postconviction, and His postconviction appellate counsel was deficient forfeiting the claim on postconviction Appeal. Appendix J&K Petitioner Relied on Massaro v. United States, 538 U.S. 500 (2003), after Reading this court's "United States" use of it in The Court's Opinion in Trevino v. Thaler, 569 U.S. 413, at [*428], the Illinois Appellate court's Reliance in both People v. Veach, 2016 IL App(4th) 130888, ¶¶69-70, 89, 92, And People v. Bew, 228 ILL.2d 122, 886 N.E.2d 1002, 319 ILL. Dec. 878, Petitioner next, relied on Martinez v. Ryan, 566 U.S., At 13, 132 S.Ct. 1309, 182 L.Ed.2d 272, and Trevino v. Thaler, 569 U.S. 413, To excuse the procedural default of his Claims Petition believes that the U.S. District Court's decision Not to Apply Massaro v. United States, 538 U.S. 500 (2003) was erroneous ~~because~~ Not only did federal courts, Illinois Appellate Court use it to Rely on ineffective assistance, but this Honorable cited it. Petitioner believe that the US District Court error by not applying Martinez v. Ryan, 566 U.S., 13 (2012) and Trevino v. Thaler, 569 U.S. 413 (2013) to Petioner claims erroneously. See Appendix B p 18 & p 11.

The Martinez v. Ryan - Trevino v. Thaler Exception should be Applied here where the trial court made an important error of law by improperly instructing the jury, the state called Monika Solek to testify during it's case-in-chief, and without objection from counsel, the court instructed the jury that Her testimony was to be admitted only with regard to the issue of the defendant's identification, intent, And modus operandi and could be ~~or~~ considered for only those limited purposes The state then called Maricel to testify, And again, without objection from counsel, the court instructed the jury that her testimony related to conduct other than charged in the indictment and was to be

Considered only for the limited purposes of resolving the issues of defendant's identification, intent and Modus Operandi. Prior to deliberations, the trial court instructed the jury that "Any Evidence that was Received for limited purpose should not be considered by you for any other purpose." The court also instructed the jury as follows

> "Evidence has been received that the defendant had been involved in the offense other than that charged in the Indictment. This Evidence has been received on the issues of the defendant's identification, intent and modus operandi and may be considered by you for only those limited purposes."

Petitioner believes his lawyer on direct should have raised the error of trial counsel's deficiency for failing to object to thoses instructions by the trial court, because they led to his conviction. Petitioner believes that Martinez and Trevino should govern the outcome of this case. The appellate counsel failure to raise ineffective assistance of trial counsel amounts to ineffective assistance of appellate counsel.

Petitioner can not make this argumenton direct appeal, for the direct appeal is the very proceeding in which he is represented by the lawyer he says was ineffective. To prevail on a claim of ineffective assistance, the petition must show that counsel's performance was deficient and that the deficency perjudiced him. Strickland v. Washington, 466 U.S. 668, 687 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984).

On the prejudice prong, the petitioner has shown there is a reasonable probability that but for counsel's unprofessional errors, the results of the proceeding would have been different". Strictland, 466 U.S. at 694. This requires showing that counsel's error were so serious as to deprive the defendant of a fair trial, a trial whose results is reliable." Gilbreath v. Winkleski, 21 F.4th at 981.

Petitioner believes that there is National importance of having the Supreme Court decide the questions involved."No Supreme Court has held that the admission of Evidence of other crimes violates defendant's due process Rights even if it is admitted to show propensity of the defendant to commit crimes." Payton v. Pfister, No. 11C 6610, 2015 U.S. Dist. LEXIS 135785, 2015 WL 5829749, at *13 (N.D. Ill. Oct 1, 2015). The Court expressly avoided this issue years ago: "Because we need not reach the issue, we expess no opinion on whether a state law would violate Due Process Clause if it permitted the use of prior crimes evidence to show propensity to commit a charged crime." Estelle, 502 U.S. at 75, n.5. The Supreme Court still has not resolved the issue. See Kipp v. Davis, 971 F.3d 939, 952, n.8 (9th Cir. 2020) ("there is no clearly establish law that addresses whether the admission of a defendant's criminal history or prior bad acts would violate due process"); Gomez v. Silva, 958 F.3d 12, 25, n.9 (1st Cir. 2020) (same); Bennette v. Bartley, No. 07 C 1975, 2008 U.S. Dist. LEXIS 48717, 2008 WL 4866169, at *4 (N.D. Ill. June 23, 2008) (same). In Petitioner's trial, other-crimes evidence was present to the jury of crimes he was only charged with. See Appendix E4-6 Appendix E

Petitioner next, believes the decisions decided in his conflict with the decisions in Appellate Courts, U.S. Court of Appeals and The Court's own cases. See Crockett v. State, 13 N.E.3d 566, 2014 WL 2202763, at *4 (In. App 2014), Woods v. State, 701 N.E.2d 1208, People v. Kunze, 550 N.E.2d 284, Martinez-Trevino, or with cases, Petitioner post-conviction should've proceeded to evidentary hear to establish the record as ineffect assistance of trial counsel due to Appellate's ineffective assistance in failing to do so. But the next course of action to pursue Petioner claim after his Direct Appeal was His PLA, which was denied without publish opinion, Then his post-conviction Petition, Petitioner counsel didn't believe he had a Right to raise Ineffective Assistance of Appellate Counsel during Post-Conviction Proceeding, thus his post conviction Petion was not

Amended to include ineffective Assistance of Appellate counsel. Post-conviction Counsel's Assistance of counsel Fell below the level of Assistance provided for by the Post-Conviction Hearing (Act) (725 ILCS 5/122-1 et seq. (West 2008)). People v. Tuner, 187 ILL. 2d 406, 410, 719 N.E. 2d 725, 241 ILL Dec 596 (1999). The Act Allows for an impresoned person to file a petition if the proceeding that resulted in conviction substantially denied "his or her rights under the Constitution of the United States or of the State of Illinois or both". 725 ILCS 5/122-1(a)(1) (West 2008). To be entitled to postconviction relief, a defendant must show that he or she suffered a substantial deprivation of his federal or state constitutional Rights in the proceeding that produced the conviction or sentence being challenged. People v. Lacy, 407 ILL. App. 3d 442, 455, 943 N.E. 2d 303, 347 ILL Dec 1013 (2011). The Act provides for a reasonable level of assistance to defendant in postconviction proceedings. People v. Flores, 153 Ill. 2d 264, 276, 606 N.E. 2d 1078, 180 Ill. Dec. 1 (1992). The legislatoe anticipated that most of the petition falling under the Act would be filed prose by prisoners who did not have the aid of counsel in their preparation. People v. Johnson, 154 Ill. 2d 227, 237, 609 N.E. 2d 304, 182 Ill. Dec. 1 (1993). The Act imposed duties on postconviction counsel to ensure that a prisoner's complaints would be adequately presented, and the statue envisioned that the attorney appointed to represent an indigent person would ascertain the basis of his complaints, shape those complaints into appropriate legal form and present the prisoner's constitutional contentions to the court. Johnson, 154 Ill. 2d at 237-38 (citing People v. Owens, 139 Ill. 2d 351, 359 N.E. 2d 1184, 151 Ill. Dec. 522 (1990), and People v. Slaughter, 39 ILL 2d 278, 285, 235 N.E. 2d 566 (1968). To ensure that defendants receive this level of assistance, Supreme Court Rule 651(c) imposes specific duties on postconviction counsel and requires that the record disclose that counsel has fulfilled his mandatory duties. Supreme Cour Rule 651(c) requires postconviction counsel to file an Affidavit certifying that he has complied with these requires postconviction counsel to file an Affidavit certifying that he has complied with these requirements ILL. S. Ct. R. 651 (eff. Dec. 1, 1984)

Petitioner argued in his Appeal only that post conviction counsel's failure to amend his pro-se post-conviction petition to avoid the Application of "waiver" rendered his assistance unreasonable under Supreme Court Rule 651(c). Petitioner's Post-Conviction counsel claimed that the pro-se post-conviction petition adequate represented Petitioner's claims of constitution violations. The records shows that counsel attempt to argue Petitioner claim of DNA sufficiency of evidence pertaining to the effect of the "2015 FBI flawed DNA Evidence." see Appendix H Had on the jury. But ultimately did not amend the Post-petition. The trial court found that the claim was forfeited because counsel had failed to include it by amending the postconviction petition. The Appellate court dismissed Petitioner's Postconviction petition Appeal for Appellate counsel failure to raise the DNA issue on Appeal. Therefore the DNA issues in Petitioner case stemming from trial counsel's ineffective Assistance - to - Post conviction Appellate counsel's deficient representation. At no stage of Petitioner's criminal proceedings did he receive effective Assistance of counsel... from the Public or Appellate defender's office in Illinois. This violates Petitioner's due process and Equal Protection clauses, which protects indigents from "invidious discriminations" on Appeal and that such persons "must be afforded as adequate appellate review as defendants who have money enough money to buy transcripts. see Griffin v. Illinois, 351 U.S. 12, 18-19 (1956). The Constitution Applies similarly to both prisoners; It guarantees them effective Assistance of counsel at both trial and during an initial Appeal, see Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 80 L. Ed 674 (1984) (trial); Evitts, supra at 396 (Appeal). Gideon v. Wainwright, supra, held that the 6th Amendment Right to counsel was "so fundamental and essential to a fair trial, and so, to due process of the law, that is made obligatory upon the states by the fourthteenth Amendment." Id., at 340, quoting Betts v. Brady, 316 U.S. 455, 465 (1942); see Also Powell v. Alabama, 287 U.S. 45 (1932); Johnson v. Zerbst, 304 U.S. 458 (1938).

Gideon rested on the "obvious truth" that lawyers are "necessities, not luxuries" in our adversarial system of criminal justice. 372 U.S., at 344. "The very premise of our adversarial system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objectives that the guilty be convicted and the innocent go free." Herring v. New York, 422 U.S. 853, 862 (1975). In short, the promise of Douglas that a criminal defendant has a right to counsel on appeal -- like the promise of Gideon that a criminal defendant has a right to counsel at trial -- would be a futile gesture unless it comprehended the right to the effective assistance of counsel. This Honorable Court cases make clear that the Constitutional Right Assistance of Appellate Counsel is also critically important. The Court wrote in Douglas v. California, 372 U.S. 353, 357, 83 S.Ct. 814 9 L.Ed. 2d 811 (1963), that "Where the merits of one and only appeal... as of right are decided w/o benefit of counsel, we think an unconstitutional line has been drawn between rich and poor". The court held in Evitts that "[a] first appeal as of right... is not adjudicate in accord w/ due process of law if the appellant does not have the effective assistance of an attorney." 469 U.S., at 396, 105 S.Ct. 830, 83 L.Ed. 2d 821. The court stated in Martinez itself that "if the attorney appointed by the state to pursue the direct appeal is ineffective, the prisoner has been denied fair process." 566 U.S., at 11, 132 S.Ct 1309, 182 L.Ed 2d 272 (citing Coleman v. Thompson, 501 U.S. 722, 754, 111 S.Ct 2546, 115 L.Ed 2d 640 (1991); Evitts Supra at 396; Douglas, Supra at. 357-358). Petitioner's trial attorney brought up to the Judge during the eve of trial (3 days prior) that she was still miss CD-Roms from the State on DNA. Trial counsel made motions for continuances to get the outstanding CD-Roms & Discovery violation on the DNA evidence was raised, but since trial (See Appendix I-6.) the missing DNA evidence CD-Roms, was never raised by direct Appellate Counsel, by Post-Counsel, nor Appellate Postconviction Counsel. Yet still DNA Evidence, in-cluding the outstanding evidence was used, see Appendix I-2, pg 9, Appendix K.

Against the Petitioner in the State's case-in-cheif. Petitioner Argues that his situation is Analogous to Martinez, Where the Court Expressed concern that trial-ineffectiveness claims might completely evade Review. If an unpreserved trial error was so obvious that appellate counsel was constitutionally Required to Raise it on Appeal, then likely trial counsel provided ineffective assistance by failing to raise it at trial. In that circumstance, the prisoner likely could invoke Martinez to obtain Review of trial counsel's failure to object. In the Absence of a Martinez-Trevino Rule in Illinios, the Petitioner would Receive No Review of his ineffective claims, Moreover, there will be cases in which no court will consider the underlying trial error. During the Pendency of Petitioner's appeal, he informed counsel of a Brady violation and discovery violation, see Appendix E. Petitioner's Appellate Counsel failed to Review and pursue the claim. Without the Martinez-Trevino exception petitioner seeks here, No court will hear either the Appellate-ineffective-Assistance claim or the underlying Brady, Abuse of decretion, DNA Suffienciency, Discovery, and other-crimes evidence, claims. To put matter more familiarly, what is sauce for the goose is sauce for the gander. How could Federal law deny defendants the benefit of Martinez solely because of the existence of a theoritically Available procedural alternative, namely, direct Appeal Review, there's No significant difference between Petitioner's case, Martinez, And Trevino. The very factors that led this Court to create a narrow exception to coleman in Martinez similarly argue for Application of that exception here, causes come in many forms, but the one relevant here is Attorney error. The Court Recognized in coleman that "[W]here a [habeas] petitioner defaults a claims as a result of denial of the Right to effective Assistance of counsel, the state, Which is Responsible for the denial as a constitutional matter, must bear the cost of any resulting default." Id at 754 111 S.Ct. 2546, 115 L.Ed 2d 640. The Question Raised by this Equitable equation are as endless as well be the state-by-state litigation it takes to work them out.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeuyme Morgan

Date: May 10, 2024