

NO.

23-7581

Supreme Court, U.S.
FILED
MAY 20 2024
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IN THE

SUPREME COURT OF THE UNITED STATES

GLENN D. ODOM,

Petitioner

V.

SCOTT JORDAN

Respondent

On Petition For Writ Of Certiorari
To The Sixth Circuit Court Of Appeals
23-5553

PETITION FOR WRIT OF CERTIORARI

Glenn Odom

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QUESTIONS PRESENTED

Please help us? The Commonwealth of Kentucky has adopted an unconstitutional pattern and practice allowing our court appointed lawyers to blurt out to the jury that we are guilty. Criminal defendants are also being refused any and all questions from our jury although our juries are permitted to question all state witnesses. This case presents several important nationwide issues. Also, this petition represents an opportunity for the Supreme Court to provide clarification amongst the divided circuits on what constitutes an intelligent and voluntary waiver of conflict counsel. Glenn Odom presents the questions that follow:

(1) Does a criminal defendant have a constitutional right to fully present himself/herself as a witness. If the jury is permitted to question all state's witnesses after their testimony should a jury be denied to question the defendant after his/her testimony without a justified reason?

(2) What exactly establishes that defense counsel is operating under a conflict? Also, when defense counsel asserts to a trial court that he has a conflict with his client/the defendant what is a clear line of questioning from the court to the layman defendant and/or what constitutes a knowing and intelligent waiver of conflict counsel?

(3) Is it unconstitutional for a defense lawyer to blurt out to a jury that the defendant only denies two(2) out of six(6) charges against the defendant's wishes?

(4) When a pro se defendant mounts an objection during trial does he have a constitutional right to attend the bench conference to articulate his objection?

(i)

(5) Does the right to question your "accuser" import to questioning the absent at trial victim that never accused a defendant - or just any substitute person that testified to be an eye witness?

LIST OF PARTIES

All parties appear on the caption to the case on the cover page. Mr. Odom is the Appellant below. The Commonwealth of Kentucky/Scott Jordan is the Appellee below.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, Glenn Odom makes the following disclosure:

1) Mr. Odom is not a subsidiary or affiliate of a publicly owned corporation.

2) There is no publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome of this case.

LIST OF PROCEEDINGS

Trial Court - Jefferson County Kentucky, Commonwealth v. Odom, 04-CR-2521 and 06-CR-2892; Finalized April 4, 2008.

Direct Appeal - Kentucky Supreme Court, Odom v. Commonwealth, 2008-SC-0272-MR; Finalized March 18, 2010.

Ineffective Assistance of Counsel - Trial Court, Odom v. Commonwealth, 04-CR-2521; Finalized April 6, 2016.

Appeal of Ineffective Assistance of Counsel, Kentucky Court of Appeals, Odom v. Commonwealth, 2017-CA-193-MR; Finalized January 3, 2020.

28 U.S.C. sec. 2254 (habeas corpus), United States District Court - Western District of Kentucky, Odom v. Anna Valentine, 3:20-cv-212-JHM-HBB; Finalized July 10, 2023.

Appeal of Habeas Corpus - U.S. Court of Appeals/Sixth Circuit Odom v. Scott Jordan, 23-5553; Finalized Feb. 22, 2024.

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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 G 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 F 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 _____ to the petition and is

- ☐ reported at _____; or
☐ has been designated for publication but is not yet reported; or
☐ is published.

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 published.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was Dec. 6, 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: Dec. 22, 2023, and a copy of the order denying rehearing appears at Appendix I.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ on _____ in Application No. _____ A _____.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to ... be confronted with the witnesses against him; to have compulsory process of obtaining witnesses in his favor; and to have the assistance of counsel for his defense."

Under 28 U.S.C. sec. 2254, a person in custody pursuant to a state court judgment may challenge the conviction and sentence in federal court by applying for a writ of habeas corpus.

STATEMENT OF THE CASE

The court of appeals in this case adopted the Kentucky court of appeals and regouted that petitioner's rights to effective assistance of counsel were not denied, even though (1) the jury was denied to question petitioner during his testimony but was allowed to question all other witnesses during their testimonies; (2) counsel noticed the court that a conflict existed with petitioner yet the court accepted a vague and clueless "waiver" after asking petitioner a single circuitous question about his counsel; (3) counsel blurted out to 43 jurors that petitioner only denies two (out of six) charges - forcing petitioner to yell "objection!"; (4) petitioner was denied to attend bench conferences despite being hybrid counsel and initiating the objection for the bench conference; (5) petitioner was denied to question the assault "victim" that never said petitioner assaulted her but was only allowed to question a "fill in" substitute "witness."

Petitioner seeks review of these issues.

The facts underlying the Sixth Amendment claims are set forth in the opinions below. Petitioner was indicted for murder, assault 2nd degree, two(2) counts of misdemeanor criminal mischief, and (years later) two(2) counts of intimidating a participant in the legal process.¹ Petitioner was sentenced to life in prison (App. A).

Counsel for petitioner failed to object to all above issues preserving the issues for appellate review. Petitioner then filed his ineffective assistance of counsel claim in the Jefferson county Kentucky circuit court, Division #1. The trial court held the following opinions for denials "... [petitioner] has failed to meet the heavy burden of establishing a valid claim... [T]he record clearly disproves the majority of [petitioner's] claims... Odom fails to show a single instance of his case being prejudiced... No evidentiary hearing is necessary..." (App. C at pg. #8). The petitioner then appealed said denial to the Kentucky Court of Appeals. That court of appeals denied petitioner's appeal holding (summarily) that: (1) Kentucky Rule of Evidence 614(c) provides that "[a] juror may be permitted to address questions to a witness." This rule is permissive rather than mandatory. The trial court acted within its discretion in denying such questioning... because

¹ Petitioner was nineteen (19) years old and decided to sell drugs. He was lured into a crackhouse, drugged for robbery, then robbed. Petitioner woke and discovered that his drugs and money were stolen. An argument ensued, petitioner shot victim in lower stomach area once. Victim attacked petitioner, grabbed petitioner to take his gun, petitioner ran backwards and shot again to victim's chest. Eye witness testified that people were placing pills in petitioner's mouth prior to falling asleep and also that victim attacked petitioner. Due to counsel's conflict, these mitigating facts were abandoned.

the questions may be irrelevant/foul² (App. D at pg. 22); (2) that no actual conflict existed despite counsel's motion to withdraw due to a conflict (motion to withdraw at App. J) and that petitioner knowingly and intelligently waived conflict counsel (App. D at pgs. 13-16); (3) (simply put) because counsel only said "Mr. Butler [prosecutor] mentioned intimidating witness in legal process. Mr. Odom denies that charge." And even though that petitioner stood up and yelled "objection" to the conceding of guilt to all other charges the petitioner was not prejudiced by counsel's statement (App. D at pg. 17); (4) basically, because counsel was present during bench conferences petitioner was represented at bench conferences (App. D at pg. 27); (5) (basically) petitioner had no right to question the assault "victim" despite her never telling anyone that petitioner assaulted her because petitioner was able to question a stand-in "witness" that said petitioner assaulted the "victim" (App. D at pg. 20).

The United States District Court, in the later-filed habeas proceeding brought under 28 U.S.C. sec. 2254 simply denied the habeas action by adopting the state Court of Appeals listed reasons for denial (Apps. E and F).

On appeal of the district court's denial of the sec. 2254 claims, the Court of Appeals for the Sixth Circuit denied petitioner's appeal (summarily) basically regouting and adopting the Kentucky court of appeals opinion (App. G).

Petitioner sought a rehearing, and rehearing en banc, explaining that important issues are present that the Sixth Circuit has never heard and also that one(c) issue is not clarified by the United States Supreme Court - with most

² In the commonwealth of Kentucky prior to any juror submitting a question to a witness it is first written on paper and is discussed at the bench to determine if it is allowed.

other circuits giving different standards on what constitutes a waiver of conflict counsel. The Sixth Circuit denied a rehearing (App.H) and later denied a rehearing en banc (App.I).

REASONS FOR GRANTING THE WRIT

(1) There is no guidance, or case law from any United States Court of Appeals, or this court regarding this issue that is being widely used in the Commonwealth of Kentucky.

Petitioner's attorney made petitioner testify in a narrative fashion and also refused to ask him any question during direct. Quite naturally, after petitioner testified in his own behalf the jury asked the trial could they ask petitioner questions just like they were allowed to ask all other prosecution witnesses questions during their testimony. The stated that he does not allow defendants to be questioned in his courtroom.

The Sixth Amendment allows criminal defendants to have compulsory process but that right is violated if a defendant can not present himself as a complete witness - especially if all prosecution witnesses were allowed to present themselves as a complete witness. This court has held that a criminal defendant has a right to testify in his own defense Harris v. New York, 401 U.S. 222, 225 (1971); Rock v. Arkansas, 483 U.S. 44, 51 (1987); Patterson v. New York, 432 U.S. 197, 201-02 (1977); Arizona v. Fulminate, 499 U.S. 279, 310 (1991) but this court has never addressed such a situation where criminal defendants are punished or harshly restricted/silence as retaliation for taking the stand.

The closest situation this court has addressed regarding

a witnesses' testimony being restricted is regarding testimony restriction as punishment/sanctions for misconduct. Taylor v. Illinois, 484 U.S. 400, 415-16 (1988); U.S. v. Nobles, 422 U.S. 225, 241 (1975).

In the Commonwealth of Kentucky only private lawyers are allowed to have the jury question their clients.

(2) Defense counsel asserted to the trial court that he had a conflict with petitioner and filed a motion to withdraw. When the trial court asked petitioner how he felt about defense counsel alleging a conflict petitioner simply replied "...I don't have a conflict with him..." and that comment was accepted as a knowing and intelligent waiver of conflict counsel.

This court has never clearly explained what constitutes a knowing and intelligent waiver of conflict counsel, nor has this court instructed trial courts to ask criminal defendants specific questions to ensure that conflict counsel is being waived and also that a defendant (young or old - brilliant or feeble minded) fully understands the pitfalls of waiving conflict counsel. Such is needed from this high court because all U.S. Courts of Appeals have given mixed standards that contradict each other and all state Supreme Courts have mixed standards, or no standards, on this issue. U.S. v. Williams, 372 F.3d 96, 109 (2nd Cir. 2004) (invalid waiver); U.S. v. Merlino, 349 F.3d 144, 152 n.3 (3rd Cir. 2003) (invalid waiver); U.S. v. Salado, 339 F.3d 285, 290 (5th Cir. 2003) (invalid waiver because court's advisement of right and inquiry into potential conflict... failed to elicit explicit waiver); U.S. v. Brock, 501 F.3d 762, 772-73 (6th Cir. 2007) (invalid waiver because

defendant's "explicit disregard for any conflict of interest" showed that he neither comprehended risks involved nor knew what he was waiving); Belmontes v. Brown, 414 F.3d 1094, 1118 (9th Cir. 2005) (invalid waiver because defendant never informed of potential conflict of interest...); rev'd on other grounds, Ayers v. Belmontes, 549 U.S. 7 (2006); U.S. v. Martin, 965 F.2d 839, 843 (10th Cir. 1992) (per curiam) (invalid waiver because defendant responded "no problem" to district court's "cursory" advice on pitfalls of waiving conflict); Hamilton v. Ford, 969 F.2d 1006, 1010 n.4 (11th Cir. 1992) (invalid waiver); U.S. v. Taylor, 139 F.3d 924, 930 (D.C. Cir. 1998) (invalid waiver). But see e.g. Yeboah-Sefah v. Ficco, 556 F.3d 53, 66-74 (1st Cir. 2009) (valid waiver); U.S. v. Buissere, 638 F.3d 114, 117 (2nd Cir. 2011) (valid waiver); U.S. v. Rico, 51 F.3d 495, 509-11 (5th Cir. 1995) (valid waiver); U.S. v. Adkins, 274 F.3d 444, 453 (7th Cir. 2001) (valid waiver), amended by 2002 U.S. App. LEXIS 1751 (7th Cir. 2002); Noe v. U.S., 601 F.3d, 784, 791-92 (8th Cir. 2010) (valid waiver); U.S. v. Garcia, 447 F.3d 1327, 1337 (11th Cir. 2006) (valid waiver).

There is no set national standard on such a very important issue. All U.S. Circuit Courts of Appeals, all state Supreme Courts have mixed standards or no set standard at all - allowing decisions to be free-styled.

(3) Defense attorneys should never be allowed to blurt out that a client does not denied murder charges against the client's consent and especially when the crime could be no greater than manslaughter (which was never offered to the jury).

(4) Defense Counsel was operating under a conflict.

Due to said conflict petitioner was allowed to proceed as hybrid counsel. During trial petitioner would mount merit objections. However, the trial court would deny him to approach the bench to argue his objection - allowing the non-objecting / conflict counsel to attend the bench conference to argue the petitioner's objection.

Petitioner had a right to argue his own objection. McKaskle v. Wiggins, 465 U.S. 168, 174 (1984). Does the right to self-representation cover bench conferences also?

(5) Criminal defendants have a right to face our "accuser." Clarification is urgently needed because if a victim never accuses a person of a crime (but police/prosecutor later obtain an indictment swearing to a grand jury that the victim positively identified the "accused") and does not attend trial, if the prosecutor substitutes the "victim" for another person that states they were an eye witness to the crime.

Does the Sixth Amendment guarantee a criminal defendant to question the "victim" that may exonerate you - or the substitute that will give a self-serving testimony stating that the defendant committed the crime.

The petitioner now petitions the Supreme Court of the United States to settle the matters, not only for resolution of his own constitutional claims, but also to set a standard for all courts to follow in subsequent cases.

CONCLUSION

This petition for a writ of certiorari should be granted.

Dated: May 15, 2024

Respectfully Submitted,
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