

23-7025

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MAY 07 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

HENRY SOWERS

— PETITIONER

(Your Name)

vs.

SECRETARY DEPARTMENT OF
CORRECTIONS, et. al.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

HENRY SOWERS

(Your Name)

SANTA ROSA CORRECTIONAL INSTITUTION ANNEX
5850 EAST MILTON ROAD

(Address)

MILTON, FLORIDA

(City, State, Zip Code)

N/A

(Phone Number)

QUESTIONS PRESENTED

1. Does the State violate the American Disabilities Act by failing to provide “Program Accessibility” to a hearing impaired Defendant (pro-se) in a criminal judicial proceeding in State Court; and Does the State violate the equal protections clause of the Fourteenth Amendment, if the State Trial Court offers to make available a wheelchair for a physical impairment but fails to provide a qualified interpreter, note taker, computer aided transcription services, written materials, telephone handset amplifier, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunication devices for deaf persons, video text displays, and exchange of written notes for the hearing impaired Pro-Se defendant in a criminal judicial proceeding, and Would the failure of the Trial Judge to Sua Sponte strike two jurors who admitted to being unable to being impartial cause reversible structural error, when the defendant was unaware of the statements in Voir Dire until reading the statements in post conviction transcripts due to disability (hearing impaired)
2. Does the State violate Double Jeopardy Clause of the Fifth Amendment U.S. Constitution, by prosecuting and convicting a citizen of two separate statutory charges, wherein the elements for both charges are the same and

only separated by one word, and the separating word has the same context in both instances, and would conviction and sentence on both charges based on a single act incident violate the double jeopardy clause, when there is no evidence that the State Legislature intended to have both charges included on a single act incident.

3. Does the State initiate criminal process when it has procured a search warrant, and would serving of the search warrant constitute a criminal proceeding thus activating the alleged defendant's Constitutional Rights to include Right to Counsel 6th Amendment and 5th Amendment Right against being a witness against oneself, and 14th Amendment U.S. Constitution of Due Process of Law and the Equal Protection Clause of the 14th Amendment; and

Do the Courts of Equity and the Equity Doctrine admit for relief when no other relief is available, wherein the Petitioner files a timely, legally sufficient petition for Writ of Habeas Corpus pursuant to Article 1 Section 9 of the United States Constitution regardless of the limitations of the Federal Statute 28 USC 2254 to review the Constitutional claims of an unlawful detention of a citizen resulting from a conviction in State Court.

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:

SECRETARY DEPARTMENT OF CORRECTIONS

ATTORNEY GENERAL STATE OF FLORIDA

HENRY SOWERS

RELATED CASES

HENRY SOWERS V. SECRETARY DEPARTMENT OF CORRECTIONS
US DISTRICT COURT MIDDLE DISTRICT OF FLORIDA 6-23-cv-166
Judgment Entered on 11-22-2023

HENRY SOWERS V. SECRETARY DEPARTMENT OF CORRECTIONS
US COURT OF APPEALS ELEVENTH CIRCUIT 23-14149-D
Judgment entered on 2-8/2024

HENRY SOWERS V. STATE OF FLORIDA
SEVENTH CIRCUIT COURT VOLUSIA COUNTY 16-304945

HENRY SOWERS V. STATE OF FLORIDA
FIFTH DISTRICT COURT OF APPEAL 5D18-3346
Judgment entered on 11-19-2019

HENRY SOWERS V. STATE OF FLORIDA
FIFTH DISTRICT COURT OF APPEAL 5D21-0263
Judgment entered on 3-15-2021

HENRY SOWERS V. STATE OF FLORIDA
FIFTH DISTRICT COURT OF APPEAL 5D22-2233
Judgment entered on 1-10-2023

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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 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 B 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 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 FEBRUARY 8, 2024.

☐ 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).

28 USC 2403(a) may apply

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

UNITED STATES CONSTITUTION

Article I, Section 9

“The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

Article III, Section 2

“The judicial power shall extend to all cases, in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made under their authority, to all cases of admiralty and maritime jurisdiction.”

Amendment IV

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.

Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on presentment of indictment of a Grand Jury, except in cases arising in the land or Naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life liberty or property without due process of law; nor shall private property be taken for public use without just compensation.

Amendment VI

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 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.

Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where in they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; Nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the law.

28 USC 2253 Appeal

- (a) In a Habeas Corpus proceeding or a proceeding under Section 2255 before a district judge, the final order shall be subject to review, on appeal by the court of appeals for the circuit in which the proceeding is held.
- (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
- (c) (1) Unless a circuit justice or judge issues a certificate of Appealability, an appeal may not be taken to the court of appeals from

- (A) The final order in a Habeas Corpus proceeding in which the detention complained of arises out of process issued by a state court; or
 - (B) The final order in a proceeding under Section 2255
- (2) A Certificate of Appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of constitutional right.
- (3) The certificate of Appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF CASE AND FACTS

On October 14, 2016 State Agents executed a search warrant on the Petitioner's residence.

On October 14, 2016 the Petitioner was arrested and interrogated in his residence.

The Petitioner was not read his Miranda Rights at any point in the interrogation.

On 8/24/2018 the Petitioner filed a Motion to Suppress Evidence.

On Sept. 12, 2018 the trial court denied the motion to Suppress Evidence after a hearing was held.

The Petitioner was not provided a copy of the Motion to Suppress Evidence until the actual hearing, despite a prior request and under direction of the Court, for the Office of the Public Defender to provide the Petitioner with a copy.

On 10/9/2018 the Petitioner proceeded to trial pro-se, Case No.: 16-304945CFDB.

On 10-18-2018 the Petitioner was sentenced to 2 life sentences.

On 10-25-2018 the Petitioner filed a Notice of Appeal.

On 11-19-2019 the Petitioner's direct appeal was denied Case No. 5D18-3346 *per curiam* affirmed decision. The Petitioner filed a post conviction motion

pursuant to Fla. R. Crim. P. 3.850 which the post conviction court denied in a summary denial.

The Petitioner timely filed an appeal to the Fifth District Court of Appeal which was denied in a *per curiam* affirm decision Case No.: 5D22-2233.

The Petitioner also filed a Fla. R. App. P. 9.141(d) Ineffective Assistance of Appellate Counsel Case No: 5D21-0263 on Jan. 25, 2021. The IAAC Petition was denied on March 15, 2021 on the merits and a timely motion for written opinion as denied on March 30, 2021 Case No: 5D21-0263.

On 1-27-2023 the Petitioner filed an Amended 28 USC 2254 Habeas Corpus Petition Case No.: 6:23-cv-166-ACC-LHP.

On 11-21-2023 the 28 USC 2254 Petition was denied by the U.S. District Court and also denied a Certificate of Appealability.

On 12-20-23 the Petitioner timely filed a Notice of Appeal to the U.S. Court of Appeals for the Eleventh Circuit Case No.: 23-14149-D.

On Feb. 8, 2024 the Clerk dismissed the appeal stating the Petitioner failed to pay the filing feels. The Clerk sent the Petitioner's payment of \$505.00 back to the Petitioner stating the fee amount was changed and the Petitioner needed to file payment with the U.S. District Court.

REASONS FOR GRANTING THE PETITION

The questions presented are of great public importance and granting certiorari would allow the Supreme Court to establish relief pursuant to “Equity” to prevent a miscarriage of justice.

In regards to (Question #1)

The American Disabilities Act does not include Courtrooms or Courthouses on its list of Public Accommodations but does include jails and prisons;

and

The Petitioner (a Pro-Se defendant) was not given notes or written materials in the Criminal Trial, and was given a copy of Motion to Suppress Evidence at the suppression hearing, the recently removed Public Defender failed to provide a true and correct copy of the motion as requested by the Petitioner and the Court prior to the Hearing to Suppress Evidence.

Constitutional Law, 14th Amendment Equal Protection Clause and Statutory Law 42 USC 1201 specifically requires “Program Accessibility” to include public places.

(Question #2)

The Double Jeopardy Clause of the Fifth Amendment is specific to not being subject to same offense twice put in jeopardy.

The State has violated this Constitutional guarantee by charging the Petitioner with two charges that only differ by one word, and the one word has the same exact context in both charges “touching”.

Wherein, one charge requires “union” and the other requires “touching”.

Both charges carried the same Max penalty and the Petitioner was found guilty on both charges resulting in two life sentences for one alleged criminal act; and

The State Legislation does not establish that it intended to punish the Petitioner twice for the single incident alleged.

The U.S. Court of Appeals for the Eleventh Circuit has so far departed from the course of accepted and usual course of judicial proceedings, as to call for this Court’s supervisory power, and to call upon the Court of Equity for relief from the Constitutional Violations as stated in the 28 USC 2254 Petition, as no other remedy is available at law.

Habeas Corpus is an adaptable remedy, the precise application and scope of which change depending upon the circumstances. The equitable and flexible nature of Habeas Corpus relief also gives the reviewing court considerable latitude to correct errors that occurred during the prior proceeding.

Federal Courts, in the exercise of their jurisdiction in equity, and in determining questions which depend upon the general principles of equity

jurisprudence, are not bound to follow the decisions of the Courts of the State wherein they sit or where the controversy arose.¹

The U.S. Court of Appeals has caused irreparable harm to the Petitioner's Rights to Appeal his Habeas Corpus by dismissing the appeal and sending back the \$505.00 filing fee, and the Florida Department of Corrections also fails by not allowing the Petitioner to resend the correct amount of \$605.00 to the U.S. District Court of Appeals.

An injunction is warranted² wherein.

Injunctions are equitable remedies that are to be sought and granted only when there is no adequate remedy available at law. A statutory right to plenary appeal provides an adequate remedy at law.

Brevard County and Brevard County Fire Rescue v. Obloy and Obloy Family Ranch Corp., 301 So. 3d 1114 2020 Fla. App. LEXIS 11446 C5 Fla. L. Weekly D. 1943 (2020).

¹ Russell v. Southard, 12 HOW 139 13 L. Ed. 927.

Koten v. Fairmont coal Co., 215 US 349 54 L. Ed. 228 30 S. Ct. Rep 140

Black, Judicial Precedents, 1952 3 198 p. 655, 656

² An injunction directed to the Clerk of the U.S. District Court of Appeals to docket the case and order the Secretary Department of Corrections to make payment per Inmate Trust Account to U.S. Court of Appeals for \$605.00

(Question #3) “Equitable Relief”

The ability to sue to enjoin unconstitutional actions by State and Federal Officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action tracing back to England.

It is a Judge-made remedy, and judicial precedent has never held or even suggested that in its application to state officers it rests upon implied rights of action contained in the Supremacy Clause U.S. Constitution Art. VI Section 2.

“The well known Principles of Equity apply in capital cases just as in others” Ramirez v. Collier Executive Director Texas Department of Criminal Justice, 595 US 411.

The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others...

28 USC 2253 (a)(2)

Requires a substantial showing of a denial of constitutional right for a “Certificate of Appealability” to issue. Thus denying a Petitioner access to the US Court of Appeals jurisdiction as required in US Constitution Art. III Section 2 to review the denial of the claims in the US District Court.

The Petitioner is currently 71 years old, and his arrest was at 63.

The Petitioner is a 14 year veteran of the United States Marine Corps, who served during the Vietnam era.

In August 1972 (Appendix G) Mr. Sowers answered the Draft Call of his County. He passed the physical and medical test and signed a six-year contract. After renewing his commitment in a couple more contracts the Petitioner was released from active duty in March 1986 due to service connected injury. The Petitioner is currently 71 and rated by the VA (Veterans Administration) at 60% disability. The Petitioner received 3 Honorable Discharges.

Regardless of alleged charges (the Petitioner whose disability is linked to his service and documented thru the Veterans Administration) the Petitioner is entitled to Due Process and Equal Protection as stated in the Fourteenth Amendment U.S. Constitution.

A proper review of his Constitutional claims in his Habeas Corpus Petition thru Writ of Certiorari would establish that the Petitioner has been denied multiple constitutional rights in order for the State to secure a conviction.

Regardless of the statements in alleged custodial interrogation the Pro-Se Petitioner lacked the resources and experience to challenge the evidence in trial, to include authenticity chain of custody and outright legality regarding the failure to disclose to the Petitioner that a warrant had been issued by the Court for the Petitioner's residence and the Officers intent was to procure evidence in regards to the alleged charge.

While the subject matter of the charges is quite disturbing the Petitioner avers that, that was the point, the alleged victim's father owed the Petitioner thousands for a loan that went unpaid, the alleged victim's mother was a crisis counselor for the school district in Pennsylvania, and was thoroughly trained, and knew exactly what to say to perpetuate a false narrative.

The Trial Court had no business mentioning that the Petitioner had a prior charge regarding the same subject which was successfully defended.

The amount of Due Process Violations should be clear to the Supreme Court of the United States and a humble aging veteran is depending upon the Oath that separates a Judge from a citizen just as an Oath separated a service man from a citizen. Both Oaths include protecting and upholding the Constitution of the United States of America, so help me God.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Henry Gonsky

Date: 05/28/2024