No. 23-7629

FILED
MAY 15 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Randall Ziegler — PETITIONER
(Your Name)

vs.

State of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Robert Randall Ziegler #95842
(Your Name)

P.O. Box 548 JHCC B-2-210
(Address)

Lexington, Oklahoma 73051-0548
(City, State, Zip Code)

(Phone Number)

NAME/INMATE CONFINED: Joseph Harp Correctional Center
P.O. Box 548 JHCC B-2-210
Lexington, Oklahoma
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QUESTION(S) PRESENTED

Whether the Oklahoma Court of Criminal Appeals holding that the Oklahoma Current Post Conviction Procedure Act precluded Post Conviction relief is an adequate and Independent State-law ground for Judgment

(Petitioners' Post Conviction Application raised the Following Issues);

Colorful Claim of Innocence to the Convictions

Colorful Claim of Innocence to the Sentences

Due process violation by the Judges whom disposed of the issues using erroneous facts

Ineffectiveness of trial counsel, Appellate Counsel, of resentence trial counsel, and resentence appellate counsel

LIST OF PARTIES

[X] 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

Ziegler-v-Brown, NO 83-C-248-C (USDC NO OKL 1984)
Federal order for resentence

Ziegler-v- Champion, NO-83-C-248-C (USDC NO OKL 1990)
Federal order after resentence
Ziegler-v-state, 690 P2d 451 (OKL.CR. 1984)
Direct Appeal
Ziegler-v-State, F-1984-667 (OKL.CR. 1984)
Denial after resentence

Ziegler-v-state PC-1990-1363 (OKL.CR 1990)
Denial of 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[ ] is unpublished.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.

[X] 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,
[X] is unpublished.

The opinion of the Tulsa County, Oklahoma 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,
[X] is unpublished.

JURISDICTION

[ ] 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).

[X] For cases from **state courts:**

The date on which the highest state court decided my case was Feb. 28th, 2024
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 INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, § 1, provides:

> No State shall deprive any person of life, liberty, or property, without due process of law

Oklahoma's Post Conviction Procedure Act title 22 O.S. § 1080.1 Newly enacted Nov. 1st, 2022, Not in effect in 1977 at petitioners conviction

Oklahoma's Constitution Art. 1 § 1 states Oklahoma is inseparable part of the Federal Union, and the Constitution of the United States is the Supreme law of the law

(There can be no adequate and independent state law in Oklahoma)

STATEMENT

(47) years ago in September 1972, petitioner was convicted of six charges from a crimes at an Apartment where two victims were both raped, sodomized, their car stolen, and also First degree burglary; as stated in the order denying Post conviction Relief in the Oklahoma Court of Criminal Appeals. See App A A1 - A5

At sentencing petitioner protested to the Judge that petitioners court appointed Attorney refused to defend him at trial, refused to bring it to the Jurys attention of testimony by the states witnesses that proved he is innocent. App C C-50

App. C C-50 portions of victims testimony that her attacker had shoulder length hair, weighed up to 155 pounds, was up to 5' 9" in height.

App C C-49 reveals the states witness Marty Randolph testifies petitioner had collar length hair, and noted by arrest records petitioner is 6' 1", 205 pounds (The court appointed Attorney never presented this to the Jury, but merely rested the case after State presented it case)

App. C C-25 portions of testimony of victim Hampton at the line-up stated petitioner only looked Similar to her assailant (petitioners court appointed Attorney failed to advise the Jury of this important testimony)

App C C-34 victem Smith testified that she did not know if she was associating petitioner with the photo she seen two days previously, and App C-C35 victem Smith testified she did not identify petitioner at the line up.

App C C-22 mentioned a hall way incident where petitioner was left in a hall way with the two victems outside the line up room, with the victems, his lawyer, and an Asst. D.A., and Detective, yet testimony revealed (above) neither victem positively identified petitioner in the line up, the Court Appointed Attorney never advised the Jury of this evidence.

(The Court Appointed Attorney never requested Sperm tests, nor sought a print expert to analyze the print exhibits)

Many, many, years latter two print experts reviewed the print exhibits, stated, the print exhibits were fabricated, false exhibits revealing markings from an arrest record visible in the exhibits claimed to have been found at the crime scene (meaning the print exhibit was duplicated from an arrest ink card.)

(The Court appointed counsel refused to seek any expert to reveal this, yet petitioner advised the Counsel the print exhibit was falsified, as petitioner is innocent) C-C-14, 15 C-18, 19, 20 and 21.

App C C47 reveal testimony by states witness Randolph that petitioner was at home at 3:30 am the night of the sexual assaults. (Trial counsel failed to advise the Jury of this fact, as the sexual assaults were in progress a (30) minutes drive across town at 3:30 am)

App. C - C-43 reveal testimony from victem Smith that the assailant had no smell of alcohol, or cologne on his breath or person.

App C C-44, 45, 46 that petitioner, on the night in question drank pictures of beer, and was cleaned up (with cologne) (Court appointed counsel refused to advise the Jury of this important fact)

App C C38, 39, 40, 41 & 42 reveal testimony that shows another suspect was committing crimes on the Scarce Street the victems live, the suspect was unknown, at the 1977 trial, petitioner, and his family were advised of a Tulsa world front page article concerning this suspect, yet the petitioners Court appointed counsel refused to advise the Jury of this suspect, and that this suspect fit the description given by the victems, shoulder length hair, 5' 9', weighed 155 pds, yet petitioner was 6' 1", 205 pounds, collar length hair.

App C &38 - C42 occured at a resentence trial where the D.A. (District Attorney) stated petitioner was the suspect, and the suspect vanished when petitioner was arrested, petitioner advised the D.A. that petitioner was in the County Jail for (5) months before the News article came out, and the Suspect continued to commit like offenses.

The resentence Trial proceeding happened years latter, and is discussed further herein, yet it is important to mention the Innocent Project put a name to the now deceased suspect, App. C C54-55 as one Marty Eberhart, who Fit the exact description as the victims gave, and it appeared one of the two victims recognized him, or knew him personally App C C54-55

At every Stage, Trial, Appeal, resentence and resentence Appeal, and all Post Convictions the Judges refused to rule on the merits of these issues, and merely claimed, the issues were not properly raised (which in fact at every Stage were raised) (App A A-Z Stages, claims of innocence to the Charges and sentence are leaved, and were never raised; yet were.)

In Arizona (Cruz-v-Arizona 598 US 17 (US 2023) this court ruled that if State laws allow for successive Post Conviction Applications, such cannot be adequate and independent to thwart Federal review, due to erroneous factors

In Oklahoma title 22 O.S. 1086 allow for successive Post Conviction Applications that were inadequately raised, which is discussed further in the resentence issues, Petitioner has argued in certain circumstance all procedural bars should be ignored as reflected in Oklahoma law:

Valdez-vs-State, 46 Pad at 710 ... by our ruling today this Court exercises its power to grant relief when an error complained of has resulted in a miscarriage, or constitutes a substantial violation of constitutional or statutory right 20 O.S. § 3001.1

... where the interests of Justice and due process are genuinely implicated Murray-v-Carrier, 477 US. 478 at 495 (1989)

Petitioner was denied due process, and a fair trial by ineffectiveness of Counsel, had the Jury been advised petitioner was not identified in earlier proceedings, or that petitioner had Color length hair when these crimes occured, the offender had shoulder length hair, that there was another suspect, that petitioner was at home while the crimes were in progress, the Jury could have found petitioner innocent, but for Attorney Failures

Trial counsel should have sought sperm tests on the slides the court acknowledged existed, and Counsel should have sought expert testimony on the prior exhibits.

Had court Appointed Counsel provided effective assistance of Counsel, petitioner could have proved his innocence (47) years ago.

The Fourteenth Amendment prevents a State from creating laws that deprive Liberty, without due process... petitioner contends he was denied a fair trial, and that court Appointed counsels ineffectiveness was responsible, thus Oklahoma's Post Conviction Statute 22 O.S. 1086.1 should not seperate petitioner from liberty or due process due to Counsels errors

Oklahomas constitution Art. 1 Sec. 1 states Oklahoma is inseperable part of the Federal Union, and the Constitution of the United States is the supreme law of the land (App. C-16 and C-17) reveal the Tulsa police fabricate evidence, falsify testimony, and hide evidence of innocence, since 2002 over (65) convictions have been vacated, modified, and some released due too wrongful Tulsa convictions)

The Resentence Trial

The Oklahoma Trial, resentence Trial Judge used erroneous and false facts to create a resentence trial, rather than a complete new trial on "innocence".

Under Oklahoma law a sentence that as an previous felon is less than the minimum as a first offense, than the minimum as a first offense does become the minimum with one aforementioned Fulton-v-State, infra, Hines-v-State, infra and Stringfellow-v-State, 744 P2d 1277 at 1280 (Okl.Cr 1987)... the intent of the legislature.

A memo by renown deceased Attorney Fred P. Gilbert is attached as App D D-1 through D-34, to show how the ~~Oklahoma~~ Tulsa County Judge created a resentence contrary to ... the intent of the legislature, and state precedents, mentioned above, using erroneous facts.

A copy of Nigg-v-State, 626 P2d 1349 (Okl.Cr. 1981) describing a defendant has the right to be sentenced by the Jury that determines guilt, unless the sentence is modified to the minimum sentence, the least a Jury could provide, all if a sentence error occurs.

Petitioner believes that he is entitled to a new trial given the evidence of innocence mention in the trial statement herein, but will demonstrate by law and fact that the resentence trial by Jury was made by using erroneous facts to justify a resentence Jury, contrary to state law, and the intent of the legislature.

Petitioner is a true Hicks-v-Oklahoma, 447 US 343 (1980) and was ordered resentenced by the Northern District US. Court, Ziegler-v-Brown, 83-C-248 due to Hicks supra.

There after on remand the Oklahoma Courts modified Mr. Hicks sentences to the minimum of (10) years, Hicks-v-State, F-77-751 (January 15th, 1981) mentioned in Nipps-v-State, 626 P2d 1349, at 1350 Ft Note 4 (Okl. Cr. 1981)... modified to the minimum of (10) years the least time allowed under 21 O.S. § 51A.

However Mr. Nipps punishment statute had no minimum as a First Offense, or Second offense. Had Mr. Nipps sentence had a minimum as a First offense then the minimum would also control the minimum with one After Former, because the intent of the Oklahoma legislature is to increase punishment for having a previous felony and committing a new crime, see Fulton-v-State, 491 P2d at 792 (Okl. Cr. 1971); Hines-v-State, 557 P2d at 919 (Okl. 1976); and Stringfellow-v-State, 744 P2d at 1280 (Okla Crim. 1987) the current state of law in Oklahoma.

The Justifications for a Jury resentence was contrary to the above laws, that is the charge of Unauthorized use of a motor vehicle AFC as alleged by the resentence Judge had no minimum sentence as an AFC 21 O.S. § 51A 0 to 10 years, yet as a First Offense 47 O.S. (1976) Supp. § 7-102 (1) to (5) years (under Fulton, Hines, Stringfellow the minimum as a first Offense (1) year would control the Minimum as AFC.: the intent of the legislature.)

Certainly under Stringfellow, Fulton and Hines the minimum of (1) year as a First offense controls the Maximum with (1) After when the AFC has no Minimum, like petitioners case... the intent of the legislature.

Meaning both the Federal, and State Judge used erroneous facts to empanel a Jury for resentence, and even more erroneous the other Five convictions all had a Minimum punishment of (10) years as general felonies under 21 O.S. § 51A, yet the Tulsa Judge throwed all (5) of those cases in for a Jury Sentence.

At this point petitioner contends that "a new Trial" was the only relief available due to all the evidence mentioned, another suspect who fits the description, no identification in earlier proceeding, the need for sperm tests, the need for print expert, and the testimony that proves petitioner was at home across town at 3:30 am while these crimes were occurring, and if the Jury heard this evidence petitioner would have been found innocent.

A Colorful Claim of INNOCENCE to the Convictions, A Colorful Claim of innocence to the sentences; and each Post Conviction issue was disposed of, using erroneous facts, and not reaching the merits of each issue carved which had the Courts reached the merits, the intent of the legislature required all the sentences must be modified to the minimum, whereby petitioner would have discharged over (20) years ago, given the evidence the Jury never heard, petitioner would have been exonerated.

At resentence the trial Court advised petitioner's attorney that petitioner could not tell the resentence Jury "That he is innocent." App. C-11 Nor could he present evidence of his innocence. Certainly due process has no meaning in Oklahoma, and so is the reputation of the Judges of the Court of Criminal Appeals, commonly called the Court of affirms

(petitioner begs this court to forgive his handwriting, as petitioner is a (70) year old inmate currently with a shopping cart of medical problems, due (3) separate surgeries, wanted heart surgery, and may not survive this litigation, having asked the Court of Criminal Appeals for appointment of counsel and was refused)

Petitioner begs this court to appoint Competent Counsel to assist him. All the issues raised were raised inadequately previously, by Trial counsel, and all the counsels previously, and none of the Judges faced facts or discussed the merits of each issue raised with the applicable laws, there is obvious evidence of innocence, a new Trial is mandated, Unauthorized use of a motor vehicle AFC has a minimum sentence, all the other sentences had obvious minimums of (10) years 21 O.S.§ 51a ... issues that were inadequately Previously raised by previous attorney can be reviewed under 22 O.S.§ 1086 Mann-v-State, 856 P.2d 994 (Okl.Cr 1992); Fowler-v-State, 896 P.2d 566 (Okl.Cr. 1995). 22 O.S.§ 1086

Reasons for granting the petition

petitioner is innocent and has spent (27) plus years fighting to prove he is innocent, the Sixth amendment does provide for effective representation of counsel, as a matter of due process under Strickland v Washington, 466 U.S. 668 (1984) in petitioners case, at trial, appeal, and resentence appeal, and resentence, every stage petitioner was denied effectiveness of counsel, trial counsel refused to have spectests conducted (the state also never conducted tests, at least tests were available), trial counsel refused to seek expert testimony over the print exhibits (years latter petitioner found print experts who state the exhibits used by the State are phony, fabricated, false evidence, reveal parts of the arrest ink card brokin card on the exhibit the State claimed was found at the crime scene. App.C. C-20 C-21.

Trial counsel refused to bring it to the Jurys attention the assailant had shoulder length hair, 5-9" 155 pds yet the petitioner is 6'1" and weighed 205 pds, had collar length hair, App.C C-50, App C C-48 Trial counsel failed to bring it to the Jurys attention that the States witness in fact at earlier proceedings did not identify petitioner, and stated petitioner only looked 'similar' to the assailant App C C-25., and that they were unsure of any identification App C-C-36. App C C-22 petitioner was placed in a hallway with both victems befor a line up room, apparently an attempt to allow the victems to view petitioner by himself befor line up took place.

Petitioner contends that Oklahoma post conviction Statutes are not adequate and independent in that Effectiveness of Counsel Claims especially in this petitioner's case must be considered on the merits, not merely ignored by a procedure Oklahoma created to ignore the very issues Post Conviction Should review, Appellate Counsel errors for their refusal to raise trial, and resentence counsel issues, in petitioners case petitioner has the evidence to prove he is innocent a beg this court after (47) years to grant him competent Counsel, and a New Trial to have the chance for a fair trial to prove he is innocent.

Reasons for Granting the petition over the Resentence Trial errors

App C-IV reveals the same trial Judge, also resentence trial Judge, ruling petition could not tell the resentence Jury he is innocent, and could not tell the Jury of any evidence that proves he is innocent.

Petitioner contends the resentence trial was ordered due to the erroneous facts that the resentence Judge stated there was no minimum sentence, and could not be modified to the minimum sentence to fix the sentence error under Nipps-v-State supra, and Hicks-v-Oklahoma, supra, yet under Oklahoma law, the sentence had a minimum range and Fulton, Haines, and Stringfellow supra, the other (5) sentences had minimum punishment of (10) years under the general felony statute 21 O.S. § 51a

The resentence Judge could have ordered a new Trial, and given the evidence of petitioners innocence a new Trial would be the proper remedy as dictated in Nipps infra App E E-1 - E-3 as a defendant at that time had a right to be sentence by the Jury that found him guilty (in petitioners case a Jury should hear all the evidence that has never been heard)

Cox-v-Arizona 598 US 17 (2023) faced a similar case where "erroneous facts" caused a defendant to be subject to punishment he was ineligible to receive, and in Dretke-v-Haley, 541 US 386 (2004) "Erroneous Facts" was considered to be error in sentencing (a possible colorful claim of innocence to a sentence, due to ineffective assistance of Counsel)

In petitioners Case Nipps infra provided modification to the minimum sentences, of which petitioner would have discharged (20) years ago, but petitioner contends he is entitled to a New Trial with competent Counsel where with the evidence petitioner could prove he is innocent, something the Oklahoma Post Conviction Statute should not be allowed to Separate petitioner from a fair trial and effectiveness of Counsel.

Petitioner was deprived of effectiveness of Counsel at every stage; Evidence of INNOCENCE manifest after Conviction has never been heard or seen by a Jury; evidence of another suspect who Fit the witness descriptions, testimony petitioner was not positively identified in earlier proceedings, even though the line up was staged to bolster id, evidence the Exhibit print was Fabricated, that no sperm tests were conducted; rather than grant a new trial, a resentence (using erroneous justifications) where petitioner could not tell the Jury he is innocent, nor present evidence of INNOCENCE is Contrary to due process,

CONCLUSION

any statute that creates separation of Federal review claims, Especially Effective Counsel is should not be deemed, adequate and Independent.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert Zeagler

Date: 5-17-24