

23 NO. 7745

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

GUSTAVO GALINDEZ #807436,

Petitioner,

v.

PEOPLE OF THE STATE OF MICHIGAN,

Respondent.

FILED
JUN 03 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition for Writ of Certiorari to the
Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

Gustavo Galindez #807436
In Propria Persona
Chippewa Correctional Facility
4269 West M-80
Kincheloe, Michigan 49784

QUESTION[S] PRESENTED

I. DOES MCL 769.34(10) VIOLATE THE DEFENDANTS CONSTITUTIONAL RIGHT TO DUE PROCESS AS GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND THE DEFENDANTS CONSTITUTIONAL RIGHT TO APPEAL UNDER THE MICHIGAN CONSTITUTION?

Petitioner answers "yes"
The State answered "no"

II. DID THE TRIAL COURT ABUSE ITS DISCRETION AT THE SENTENCING PHASE WHEN IT CONSIDERED ALLEGATIONS OR UNADJUDICATED CRIMINAL BEHAVIOR INTO A DETERMINATION THAT AN ENHANCED SENTENCE NEARLY TRIPLED A PREVIOUS PLEA AGREEMENT WAS REASONABLE AND PROPORTIONATE?

Petitioner answers "yes"
The State answered "no"

III. Did the admissions of the unadjudicated criminal behavior violate Petitioners constitution right to be confronted with all the witnesses as well as his right to due process that starts with a presumption of innocence?

Petitioner answers "yes"
The State answered "no"

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:

GUSTAVO GALINDEZ, Petitioner

THE STATE OF MICHIGAN, Defendant

RELATED CASES

2022-491-FH

2022-765-FH

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- A) Michigan Court of Appeals Opinion and Order denying application for leave to appeal dated; August 16, 2023 Docket No. 366456.
- B) Decision of the State Trial Court, Eaton County 2021-020024-FH
- C) Michigan Supreme Court, Order denying application for leave to appeal dated; January 4, 2024, case No. 166168
- D) 54A District Court Motion #22-000765-FH
- E) 55th District Court Motion #22-000491-FH
- F) Partial Trial Transcript December 8, 2022
- G) Partial Transcript June 6, 2022
- H) Presentence Case Report

TABLE OF AUTHORITIES

Cases

<i>Crawford v. Washington</i> , 541 U.S. 36, 158 L. Ed. 2d 177, 124 S. Ct. 1354 (2004)
<i>Herrera v. Collins</i> , 506 US 390; 122 L. Ed. 2d 203, 113 S Ct 853 (1993)
<i>People v. Francisco</i> , 474 Mich. 82, 771 NW2d 44 (2006)
<i>People v., Hoyt</i> 185 Mich. App. 531, 462 NW2d 793 (1990),
<i>People v. Knol</i> , 2024 Mich App. Lexis 644 (2024).
<i>People v. Milbourn</i> , 453 Mich. 630; 461 NW2d 1 (1990)
<i>United States v. Gonzalez</i> , 2004 U.S. Dist. Lexis 16907 (2004)
<i>Williams v. Lynbauah</i> , 484 U.S. 935 (1987)
<i>People v. Steanhause</i> , 500 Mich. 453; 902 NW2d 327 (2017)

Statutes

<i>M.C.L.A. 333.740 (2)(b)(i)</i>
<i>M.C.L.A. 750.224(f)</i>
<i>M.C.L.A. 750.227</i>
<i>M.C.L.A. 750.227(b)</i>
<i>M.C.L.A. 769.34</i>
<i>MCR 6.425(a)(1)</i>
<i>MCR 6.425 (d)(1)(a)</i>

OPINIONS BELOW

The opinions of the highest state court to review the merits appears at Appendix A to the Petition and is and is unpublished at 2023 Mich. App. Lexis 5804

The opinions of the Michigan Supreme Court appears at Appendix C to the Petition and is unpublished at 2023 Mich. App. Lexis 4999

STATEMENT OF JURISDICTION

The Michigan Supreme Court entered its order on January 4, 2024 case No.166168. A copy of that decision appears at Appendix C. No petition for rehearing was timely filed. An extension of time to file the Petition for a Writ of Certiorari was granted until June 2, 2024 on April 12, 2024 in Application No. 23A902. This court has jurisdiction pursuant *to 28 U.S.C. §1257(a) and 28 USC §2241 (1)* to grant a writ of habeas corpus to a prisoner held in violation of the Constitution of the United States.

CONSTITUTIONS AND STATUTORY PROVISIONS INVOLVED

U.S.C.S. Const. Amend. 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 has been committed. Which district shall have been 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.

U.S.C.S. Const. Amend. XIV

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein 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 laws.

Michigan Constitution Article 1 §20

Rights of accused in criminal prosecution:

Sec. 20. In every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury, which may consist of less than 12 jurors in prosecutions for misdemeanors punishable by imprisonment for not more than 1 year; to be informed of the nature of the accusation; to be confronted with the witnesses against him or her; to have compulsory process for obtaining witness in his or her favor; to have the assistance of counsel for his or her defense, to have an appeal as a matter of right, except as provided by law and appeal by an accused

who pleads guilty or nolo contendre shall be by leave of the court; and as provided by law...

Article 37.07 Sec 3(a) V.A.C.C.P

Regardless of the plea and whether the punishment be assessed by judge or jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant, his general reputation, and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

made aware of the Ingham County cases and these cases were in fact included in the original plea agreement, and stipulated as to have both county cases to be served concurrently. (pg. 4 of same transcript).

Presentence case report #807436 in docket # 21-020054-FH that was prepared on November 28, 2022 reports no criminal activity from the time of arrest and a LIEN check on the same date indicates no new criminal behavior or warrants.

In the present case report prepared by Michigan Department of Corrections Agent Todd W. Brunner #3341 there was a lot of inaccurate information used to persuade or convince the court that Mr. Galindez had continued on with criminal behavior. Brunner reported allegations of new extensive criminal activity stemming from the arrest on 9/19/2022. It was reported that Mr. Galindez was being watched by the fugitive task force, when contact was attempted I threw a case over a fence with a short barrel shotgun and suspected heroin inside it. It was reported that a handgun was located on a motorcycle and that the vehicles at the scene were reported stolen.

The admission of this inaccurate information that amounts to hearsay, by the prosecutor is an unfair attempt to entice the judge into exceeding the plea agreement by placing before her allegations of unadjudicated acts with similar patterns to that of the underlying crimes. This although not contested by my state appointed counsel is a clear violation of my rights under the confrontation clause of the sixth amendment. The reporter then contradicts himself by reporting that a search of the 54-A District Court Records indicate no new criminal cases stemmed from the arrest on 9/19/22.

Allegations of criminal activity was also reported to have taken place on 8/3/22 but again a search of court records in that county revealed no criminal cases linked to myself.

The admission of this inaccurate information should of clearly been objected to and

precautions should have been taken to ensure that the judges duties to impose a sentence that is proportionate and reasonable were not impaired by the admission of the unadjudicated acts. Pursuant to MCL 771.14(2)(a) “an evaluation of and a prognosis for the person’s adjustment in the community based on factual information contained in the report” allows an agent to report on activity post-conviction so long as the information gathered is based on facts.

The unfair tactic of the prosecutor and the unprofessional error by my counsel allowed the judge to hear the allegations of new criminal activity and he went on the record acknowledging his concern as to them and his discretionary option to exceed the plea agreement’s minimum sentence because I violated the conditions of the bond. (December 8, 2022 transcript pg.8 (1-8))

It is without debate that the Judge took those allegations into account while determining a sentence that would be reasonable and proportionate. Pg. 13 ((1-8) and pg. 14 (12-22). The Court states in short that in light of the updated report on the “things that you done while you were out” “the prosecutor’s request for twenty (20) years minimum is ‘sadly’ reasonable”. The Judge sentenced the petitioner to the maximum of the guidelines range, which was a twenty (20) to forty (40) year sentence being imposed.

I filed an application for leave to appeal and the Court of Appeals denied on August 16, 2023. Mr. Galindez was not aware of an option to file a motion for reconsideration, therefor I did not timely pursue that course. I did file an application for leave to appeal that decision yet was denied on January 4, 2024 by the Michigan Supreme Court, cause for this Petition.

REASONS FOR GRANTING THE PETITION

It has been clearly established that the proper inquiry when reviewing a sentence for

reasonableness is whether the trial court abused its discretion by violating the principle of proportionality set forth in *People v. Milbourn*, 435 Mich. 630, 636; 461 NW2d 1 (1990) which requires sentences imposed by trial courts to be proportionate to the seriousness of the circumstances surrounding the offense and the offender. *People v. Steanhause*, 500 Mich. 453, 459-460; 902 NW2d 327 (2017). A trial court judge is tasked with the duty of weighing all of the evidence presented at trial, (if the offender in fact had a trial) and combining that evidence with many other factors when determining a sentence that is reasonable. In cases where a plea agreement was reached the task of imposing a reasonable, proportionate sentence is completed by weighing evidence gathered through a pre-sentence investigation, along with criminal history, the offender's remorse or lack of in regard to the offense, victim impact statements, community involvement and more.

It is critical that the agents assigned to complete the pre-sentence investigation do so diligently and with integrity, that they ensure that the information they are reporting is accurate, up-to-date and based on facts *MCL 771.14(2)(a)* states that a presentence investigation report shall include the following (in part), (a) An evaluation of and a prognosis for the persons adjustment in the community based on factual information contained in the report, and *MCR 6.425(A)(1)* states that "prior to sentencing, the probation officer must investigate the defendant's background and character, verify material information, and report I writing the results of the investigation to the court.

The unadjudicated criminal activity that was alleged by Mr. Brunner I my presentence report could in no way be verified and considered material information. In fact the investigation turned up "no new criminal activity that stemmed from the 9-19-2022 arrest in Ingham County. Its without debate that defense counsel was deficient for failing to challenge the admission of the

unadjudicated criminal acts in accordance with *MCR 6.425(D)(1)(a)*. A challenge of the inaccurate information would of required the court to make a finding with respect to the challenge. The allegations would have been omitted from the report and the court would not of been able to consider the allegations while determining a reasonable sentence. This error was not harmless, as I mentioned in my statement of the case, the judge clearly put the majority of the weight on these allegations when determining “reasonableness and proportionality and defense counsel was ineffective for failing to challenge the admissions.” A defendant is entitled to be sentenced by a trial court on the basis of accurate information” *People v. Francisco*, 474 Mich. 82, 88; 771 NW2d 44 (2006)... “It is well settled that the use of inaccurate information at sentencing may violate a defendant’s constitutional right to due process. U.S. Const. Amend. XIV, *People v. Hoyt*, 185 Mich. App. 234, 236; 544 NW2d 480 (1996). The citing’s on this page were all recorded from *People v. Knol*, 2024 Mich. App. Lexis 644 at *11.

It has also become apparent that my constitutional rights were also violated under the confrontation clause of the U.S. Const. Amend VI. Although I have been convicted of the offenses Mr. Galindez was sentence on, the allegations of criminal behavior while on bond amounted to “hearsay testimony as the allegations were made out of court, the witness was not made available to testify on the record and the defendant had no opportunity to cross-examine the witness.” (citing) *Crawford v. Washington*, 541 U.S. 36, 158 L.Ed.2d 177, 124 S.Ct. 1354 (2004). It is as if I had lost my presumption of innocence as to the alleged criminal behavior and was sentence on collateral matters. In *United States v. Gonzalez*, 2004 U.S. Dist. Lexis 16907 at *9 A Presumption of innocence, of course, no longer applies” once the defendant has been afforded a fair trial and convicted of the offense for which he was charged.” *Herrera v. Collins*, 506 U.S. 390, 399, 122 L. Ed.2d 203, 113 S.Ct. 853 (1993). (“The purpose of the trial stage...is to convert a criminal

defendant from a person presumed innocent to one found guilty beyond a reasonable doubt.”) However, having never been tried or convicted for the unrelated and heretofore unadjudicated crimes sought to be put before the jury at the penalty phase, a defendant has not lost the presumption of innocence as to the “unadjudicated crimes.” *10 The presumption of innocence, although not articulated in the constitution, is a basic component of a fair trial under our system of criminal justice... The presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law. *United States v. Gonzalez*. I also found that a Texas prohibition against the use of unadjudicated offenses in non-capital cases suggest the use of such evidence at sentencing is at tension with the fundamental principle that a person not be punished for a crime that a state has not shown he committed. *Williams v. Lynbaugh*, 484 U.S. 935 at *938

Finally, *Art. 37.07, Sec.3(a) V.A.C.C.P.* provides: Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may be offered by the state and the defendant as to the prior criminal record of the defendant and his general reputation and his character. The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.

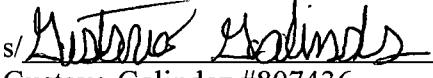
Negotiations in my case went on for a lengthy period of time, the original offer from prosecution starting at a minimum of twelve (12) years. When a nine (9) year minimum was offered, after a brief consultation with my attorney I accepted the plea agreement and had agreed to stipulations that would allow me to remain on bond until sentencing. I concede to the facts surrounding the violations of the special bond conditions that gave the judge a discretionary option to exceed my plea agreement.

CONCLUSION

WHEREFORE, for all the foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this petition for writ of certiorari, order responsive pleading, and or briefing. Or issue the Writ of Habeas Corpus, or any other relief that this Court deems equitable.

Date: June 2, 2024

Respectfully Submitted,

s/ 
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