

23-7833
No. _____

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Supreme Court, U.S.
FILED

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IN THE
SUPREME COURT OF THE UNITED STATES

Walter Peyton--PETITIONER

(Your Name)

vs

State of Kansas et.al.-RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS TENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Walter Peyton

(Your Name)

P.O. Box 1568

(Address)

Hutchinson Kansas 67504

(City State Zip Code)

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SUPREME COURT, U.S.

QUESTION (S) PRESENTED

1. Miscarriage of Justice occurred when Kansas Supreme Court refused to follow their on Statutory Law as well as The United States Constitutional?
2. Kansas Court are Enforcing Waiver and Stipulation on appilent will result [*3] in a miscarriage of justice?
3. Did Judge Richard Ballinger and ex ADA Kimberly T. Parker negotiation a Waiver and Stipulation make it invalid an annul?
4. The Waiver is dtherwise unlawful, seriously affecting the fairness, intetegrity, or public reputation of the proceeding ?
5. Does Record suggest enforcing that Mr. Payton Waived his Fifth Amendment Rights of the United States Constitutional ?
6. Did the Kansas Supreme Court incorrectly classify Petioner habeas corpus as time barred, by ignoing his Fifth Amendment Rights of the United States Constitutional ?
7. Nor follow their on statutory law to wit: KSA 22-3403 waiver required, KSA 22-3405, right to be presented, Fifth Amendment Rights from self incrimination, Kan Bill of Rights 5 and 10.If the constitutional rights and statutory rights does not apply to plaintiff then their are unconstitutional and need to be remove from the "BOOKS"?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

U.S.Tenth Circuit Court. Of Appeal.

[X] All parties **do not** appear in the caption of case on cover page. AS list of all parties to the proceeding in the court whose judgement is subject of this petition is as follow: In the Eighteenth Judicial District Court of Sedgwick County.

The Unify Government of Sedgwick county et. al.

Judge Richard ballinger

Judge Jeffrey Syrious

Ex Cheif Nola T. Foulston

Ex Kimberly T. Parker

Cheif DA Marc Bennett

Wichita Kansas Police Department

Detective Ronald S. Trollope

RELATED CASES

Benally 756, F.2d 778 10th Cir.

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Duncan v Louisiana 391 U.S. 145, 149 20 L.Ed 491, 88 S.Ct.

Frady Supra at 163 N.14

State v Higby 210 Kan. 554

Johnson, 304 U.S. 465

Mason, 85 F.3d 471-472-73 (10th Cir. 1996)

Montgomery v Hand 325 P.2d 69 Kan. (1958)

United State v Moore 340 U.S. 616

United State v Olano 507 U.S. 725

Osborne v Alaska 557 U.S. Supreme Ct.

Rodgers v State 419 P.2d 828 (Kan. 1966)

Sawyer v Whitley, 506 U.S. 333, 339, 340, 120 L.Ed 2d 269, 112 S.Ct. 2514 (1992)

Wiborg v United State 163 U.S. 632, 41 L. Ed. 289, 16 S.Ct. 1127 (1896)

Young 470 U.S. at 15

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APPENDIX (C) Payton v State 2024 U.S. App. LEXIS 1990

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JURISDICTION

Tenth Cir.Ct. Of App. Jan. 27, 2024

CONSTITUTIONAL STATUTORY PROVISION

4th Amendment U.S. Constitutional

5th Amendment U.S. Constitutional

6th Amendment U.S. Constitutional

7th Amendment U.S. Constitutional

8th Amendment U.S. Constitutional

13th Amendment U.S. Constitutional

14th Amendment U.S. Constitutional

REASON FOR GRANTING THE PETITION

National importants of having United States Supreme Court to decide this question is bacause plaintiff have not nor signed agreed to enter into stipulation with the government, fact in these cases, plaintiff cases can be example for futher who try to base conviction without stipulation that does not appear on the RECORD: Plaintiff can clearly show how in cases such as State v Higby 210 Kan. 554 that Kansas are court of RECORD and the RECORD controls, in stipulated facts, however in the plaintiff cases there is NO RECORD of stipulated facts, this is a clear conflict with the lower court decision is erroneous!, The tenth cir. ct. decision was erroneous because their decision to deny plaintiff is not support by the RECORD of plaintiff stipulating to any facts in these nonfeasance cases, nor enter into stipulation with the government a clear violation of 7th Amendment of U.S.Const., Mr. Peyton argues waiver and stipulation was and is invalid on the grounds nothing in the RECORD indicates waiver and stipulation was knowing , voluntary, and intelligent, and argues waiver and stipulation was and is invalid because plaintiff never signed written waiver required by Rule 23(a),(1) the waiver is in writing; (2) the government consents; (3) the trial court accepts the waiver; and waiver (4) waiver is knowing, intelligent, and voluntary. F.R.Crim. P. 23 (a), Nor is there any where in the RECORD plaintiff relinquished, and provide evidence of plaintiff consent to forego that right, and a violation KSA 22-3405 right to be presented, March 16, 1998 when discussion was made back in chambers per Vol. 12, pg 112 L. 13-25, show this discussion was with the ex-ADA Kimberly T. Parker, no one eles let the RECORD reflect, violation KSA 60-244. Plaintiff states this is violation of Fortiori; No agreement either verbal or in writing to waive the stipulation.

Plaintiff is requesting a jury trial per U.S.C.S. Rule 38, See : United States v Moore 340 U.S. 616, and asking for oral argument and place on zoom.

STATEMENT OF THE CASE

On the alleged date and time according to the transcript Vol.12, pg. 89-90, the state key witness the mother took her to Wesly Medical Center informed the mother that alleged victim does not look sexual abused, Jan. 1, 1997, however the alleged crime occurred Dec. 31, 1996, no RECORD of K.S.A. 65-448, nor any medical RECORD to support these alleged charges, Case # 97cr1534, however in 97cr2038 a K.S.A. 65-448 occurred in the alleged charges, however the DNA evidence excluded plaintiff before this malfeasance started, these cases were consolidated for trial, there is no RECORD that a crime occurred nor any evidence to link plaintiff to this miscarriage of justice, however the State chose to state that plaintiff enter into a stipulation with the government, violation K.S.A 60-244 no Proof of RECORDS, violation State v Higby 210 Kan. 554 Kansas are Court of RECORD and the RECORD controls.

On Jan. 27, 2023 tenth cir. ct. issue an opinion memorandum in case No.# 23-124,979 affirmed plaintiff convictions; however the opinion is contrary to all Fifty States as well as all other cir. cts. pertaining to waiver and stipulation, all cir. agreed that waiver must be in writing and conducted in opening court to wit; a colloquy to assure that all other courts can reflect from the RECORD, per K.S.A. 22-3403 (1), the judgement of the tenth cir. ct. refused to liberally construe the plaintiff request for COA merely because plaintiff is not a lawyer nor know the Rules to ask for permission to proceed, the argument is clear on the merits and ask the court to produce and address the waiver and stipulation, a criminal defendant's right to a trial by jury is a fundamental right. Duncan v Louisiana, 391 U.S. 145, 149, 20 L.Ed 2d491, 88 S.Ct. 1444(1968), This right may be waived, however, if: (1) the Waiver is in writing; (2) the government consents; (3) the trial court accepts the waiver, and [**9] (4) the waiver is knowing, intelligent, and voluntary. A clear violation F.R. Crim. P. 23 (a), a RECORD showing that plaintiff knowing and voluntary waived DNA evidence before trial started, however the State chose to state that plaintiff enter into a stipulation with the government, violation K.S.A 60-244 no Proof of RECORDS, violation State v Higby 210 Kan. 554 Kansas are Court of RECORD and the RECORD controls.

The entire 18th judicial district as well as U.S. District Ct. and the Tenth Cir Ct. refused to acknowledge the United States Const., violation, as well as a violation K.S.A statutory laws and the Kan. Bill of Rights 5 and 10, plaintiff argument is clear either there is a

RECORD or not, the lower court refused to follow their on legislation to wit: Probable Cause and Due Process, by committing perjury violation K.S.A. 21-5903, K.S.A. 21-105 fraud stating that plaintiff enter into a stipulation with the government, violation K.S.A 22-3403(1), and a clear violation of the *Fifth* Amendment of the United States Const. by stating plaintiff waived and stipulation, a clear violation of the *Fourth* Amendment of the United States Const. by illegally detaining plaintiff stating that plaintiff enter into a stipulation with the government, however Nor RECORD, *Sixth* Amendment of the United States Const. by taken away plaintiff right to confrontation and confront witness. *Seventh* Amendment of the United States Const. Violation Right to *Stipulated*, *Eight* Amendment of the United States Const. Violation cruel and unusual punishment, *Thirdteenth* Amendment of the United States Const. Violation place plaintiff back in slavery for a crime that was not committed by plaintiff, *Fourteenth* Amendment of the United States Const. deny plaintiff equal protection and Due Process court violated U.S. Const. States no state shall make or enforce any law which shall abridge any person of life or liberty or property, without Due Process of law; Nor deny person within its jurisdiction the same equal protection that every citizens, K.S.A 60-244 no Proof of RECORDS, violation *State v Higby 210 Kan. 554* Kansas are Court of RECORD and the RECORD controls.

Plaintiff is requesting the United States Supreme Court to allow movant the opportunity to be heard and address the merits in a jury trial per U.S.C.S. Rule 38, that plaintiff may be presented to establish that there is no RECORD to show that plaintiff signed nor that plaintiff enter into a stipulation with the government, a violation K.S.A. 22-3403(1), a waiver must be in writing and conducted in opening court and colloquy performed to assure that the other court may be able to address it on the RECORD.

A criminal defendants has a criminal rights and a statutory rights to jury trial, per *Sixth* Amendment of the United States Const. Kan. Bill of Rights § 5 and 10, and K.S.A 22-3403 (1). The right, however may be waived, pursuant to Kan. Stat. § 22-3403 (1) by agreement of the defendant, the prosecuting attorney, and the court; for the waiver of right to a jury to be valid, the waiver must be voluntarily made by a defendant who know and understand what he was doing. Plaintiff did not have any knowledge nor knowing and voluntarily waived his right to jury trial, because the district court may have made mention stipulation however no RECORD, plaintiff

See : United States v Olano, 507 U.S. 725, we previously have explained that the discretion conferred by Rule [*** 521] 52 (b) should be employed "in those circumstances in which miscarriage of justice would otherwise result. " Young, 470 U.S. at [****21] (quoting Frady, *supra*, at 163, n.14). In our collateral-review jurisprudence, the term "miscarriage of justice" means that the defendant is actually innocent, "See, e. g., Sawyer v. Whitley, 505 U.S. 333, 339-340, 120 L. Ed. 2D. 269, 112 S. Ct. 2514 (1992). The court of appeals should no doubt correct a plain forfeited error that causes the conviction or sentencing of an actually innocent defendant: see e. g., Wiborg v. United States, 163 U.S. 632, 41 L. Ed. 289, 16 S. Ct. 1127(1896), but we have never held that a Rule 52(b) remedy is only warranted in cases of actual innocence.

"Boykin requires an affirmative, on-the-record showing of this waiver. If the record fails to demonstrate an explicit waiver of these rights, then the accompanying guilty plea is invalid, and reversal is required."

The U.S. District Court wants to apply Policy Procedure Rules and Regulation, however their judgement was Rendered without Jurisdiction because they never follow their own Rules Statutory and Constitutional laws, the lower Courts does not want to address their deliberate malfeasance, and clearly know that when ever you are arguing Policy Procedure Rules and Regulation, Statutory and Constitutional laws, to wit KSA 22-3403(1) and U.S. Constitutional to wit Fifth Amend. Plaintiff is never time barred nor unauthorized barred for a mistake being that Plaintiff is not a Lawyer. Plaintiff was convicted of 3 X Rape, however the State never established Probable Cause and illegally detained Plaintiff without Due Process of Law, nor is there any RECORD to support this illegal conviction that was obtained KSA 21-5903, Perjury and Fraud KSA 21-105; See "Rodger v. State, 419, P. 2d 828 Kan. (1966)/Montgomery v. Hand, 325, P. 2d Kan (1958), and State v. Higby 210 Kan. 554." Nor any RECORD of testimony introduced by the Prosecutor to obtain a conviction was impugn the dignity and the integrity of the Courts and will destroy the very foundation of peace under the Law and any conviction testing there on cannot stand, to say Plaintiff entered into a stipulation with the Government to waive his rights. Judge Ballinger and ex-D.A. Kimberly T. Parker back in "CHAMBERS" without the Plaintiff present, a clear violation of KSA 22-3405, a right to be present at every stage of the proceedings. However, Plaintiff was not present in the above

names mentioned to wit Judicial Branch stated, that plaintiff signed a waiver and stipulated not to used DNA evidence that was favorable to plaintiff before trial started this nonfeasance? this is clearly the judge and prosecutor discovered that plaintiff DNA evidence that was excluded plaintiff before trial statred.

Plaintiff was not given a colloquy to show that was not knowing and voluntarily WAIVED nor STIPULATION not to use DNA evidence that was favorable to the Plaintiff, this is a violation of 22-3403. Malfeasance by Judge Ballinger and ex-D.A. Kimberly T. Parker, committed a "misfeasance" back in chambers without the Plaintiff present and the Courts clearly violated their own Laws and never followed their own ~~115~~ Procedure, Rules and Regulation, Statutory and Constitutional Laws, however wants to hold Plaintiff to procedures when there's No RECORD to support the WAIVER, the Plaintiff is accusin the District Court of not having any RECORD of any WAIVER Nor STIPULATION, Nor conducted a COLLOQUY on the RECORD, however ADA Robi Sommer on or about March 26, 2022 , clearly stated "In post-conviction discovery on pg. 4 line 11-14 in the States Response that there is NO RECORD Nor Transcript showing that this ever transpired, Nor any RECORD to support any of the States claims of a WAIVER regarding STIPULATION.

Nor follow KSA 22-3403(1)/ KSA 22-3405, Right to be present." Violation of the Fifth Amend. U.S. Const., by stating, Plaintiff entered into a STIPULATION with the Government, NO RECORD to support, violation of State v. Higby, 210 Kan. 554, Kansas are Courts of RECORDS and the RECORD controls." Violation of the Fourteenth Amend. of Equal Protection Clause. The lower Courts indicated that Plaintiff signed and agreed to WAIVE DNA evidence that was favorable before trial started, however there is NO RECORD in support of the facts that the Courts claim Plaintiff WAIVED his rights to DNA evidence that was favorable before trial started and if this Statutory Law KSA 22-3403(1) and Constitutional Fifth Amend. U.S. Const. does not apply to the Plaintiff arguing Unconstitutional and need to be removed from the BOOK. Nor RECORD of a Plea deal, the Courts have to make a RECORD as to why No COLLOQUY RECORD EXISTED.

Plaintiff was not given the opportunity, nor to have a colloquy, nor was it put on the RECORD plaintiff agreed to this fraudulent stipulation or waiver that was supposedly used at trial, however their no RECORD. The State back in chambers with the judge Ballinger March 16, 1998, made an statement that plaintiff signed and agreed to enter into stipulation with the government not to used DNA evidence that excluded and was favorable to the plaintiff in 97cr2038 , the prosecutor and the judge knew that plaintiff DNA excluded him from the crime, however in 97cr1534, they never done a KSA 65-448 and change legislation by saying these crime occured long after the fact however no RECORD in support this mere conjector, the nonfeasance begin, the plaintiff did not nor had any knowledge of the events, nor is their any RECORD in support of these allegations.

The judgement of the lower courts as well as the U.S. District Ct and the Tenth Cir. Ct., refuse to libertly construe the plaintiff request for COA merely because the plaintiff is not a lawyer, nor know the Rules, to ask for permission to proceed on successive petition, the argument is clear on the "MERITS", and ask the United States Supreme Courts to address Constitutional Deficiency of the waiver and stipulation, laws are clear to wit KSA 22-3403(1), that waiver must be in writing and conducted in opening court and KSA 60-244 proof of the RECORD and a colloquy performed to assure that all the other courts may ~~be~~ address it with the RECORD to show that plaintiff kn owingly and voluntarily waived DNA evidencc before trial started " corpus delicti, See: State v Higby 210 Kan. 554, The district court are courts of RECORD and the RECORD controls.

The state went through a great length to with held exculpatory evidence to wit: saying that plaintiff enter into stipulation with the government, this is fraud KSA 21-105 and KSA 21-5903 perjury upon the courts, plaintiff is simply ~~be~~ the "MERITS", and ask the United States Supreme Courts to address Constitutional Deficiency of the waiver and stipulation, laws are clear to wit KSA 22-3403(1), that waiver must be in writing and conducted in opening court and KSA 60-244 proof of the RECORD and a colloquy performed to assure that all the other courts may ~~be~~ address it with the RECORD to show that plaintiff knowingly and voluntarily waived DNA evidencc before trial started " corpus delicti, See: State v Higby 210 Kan. 554, The district court are courts of RECORD and the RECORD controls, the S.Ct. has jurisdiction to address this alleged Constitutional Deficiency of the waiver and stipulation, See: State v Higby 210 Kan. 554, The

district court are courts of RECORD and the RECORD controls.

If the Kansas Bill of rights 5 and 10, statutory laws and Constitutional laws does not apply to the plaintiff then they are unconstitutional and "SHALL" be remove from the books. Osborne v Alaska, 557 U.S. 52 United States Courts.

Plaintiff "knowingly" makes a stipulation so long as he understands that his stipulation means that the stipulated facts need not be proved at trial and that evidence on the issue will not be introduced.

Per ABA standard for criminal justice 2D § 15-1.2 (a) (1986) recommends that consent from DA and from the court should also appear on the RECORD to ensure an adequate waiver, all the court created a nonfeasance and erroneous for deny plaintiff for the last 26th years plus knowing that plaintiff never enter into stipulation with the government, however no court ever produce this waiver nor stipulation, however this is violation of the *Seventh Amend of U.S. Const.*

The U.S. District Ct. refused the plaintiff a COA, and plaintiff dose dispute that previously filing was wrong however the plaintiff refused to stop fighting for my liberty, and challenging the same illegal conviction, this U.S. District Ct. dismissal applicate as time barred, plaintiff was not aware he needed authorization to proceed on a successive, however U.S. District Ct. and the tenth cir. ct. refused to address the obvious to wit address Constitutional Deficiency of the waiver and stipulation, laws are clear to wit KSA 22-3403(1), that waiver must be in writing and conducted in opening court and KSA 60-244 proof of the RECORD and a colloquy performed to assure that all the other courts may be to address it with the RECORD to show that plaintiff knowingly and voluntarily waived DNA evidencc before trial started " corpus delicti, again ABA standard for criminal justice 2D § 15-1.2 (a) (1986) recommends that consent from DA and from the court should also appear on the RECORD to ensure an adequate waiver, made retroactive to cases on collateral review by the S.Ct. [of the United States], that was was previously unavailable, to wit : KSA 21-2512 (f) (2) and Rule 52 (b), the eighteenth judicial district court stated plaintiff waiver and stipulation, which that is "Insane", however the court never ever conducted a colloquy.

To determine if plaintiff knowingly voluntarily and intelligently waived and stipulated See: KSA 22-3403 (1). But for the constitutional error plaintiff could have discovered previously through the exercise of due diligence, their no RECORD a clear violation of State v Higby 210 Kan. 554, the underlying claim, is proven and viewed in light of the evidence that, but for constitutional error no reasonable fact finder would have found plaintiff guilty of the under lying offenes (Benally, 756 F.2d 778, 10th cir. 1985) holding that it was reversible error for the district court to instruct the jury that it must accepted stipulation testimony as true, See: Vol. 12 pg. 204 L.1 thur 6 in support of. (Mason, 85 F.3d 471-73 (10th cir.1996), holding that the right to a trial by jury on each elements is waived when a plaintiff voluntarily enter into stipulation with the government..., however no RECORD plaintiff voluntarily enter into stipulation with the government to waived any of his constitutional rights, let alone DNA evidence that was favorable before trial started, a violation of U.S.C.S. Fed. Rule Crim. P. 11 (b) (1) (e), and the Fourth, Fifth and Fourteenth Amend. to the United States Constitution, that gurantees that no one will be deprived of life or liberty without Probable Cause and Due Process of the law, United States v Moore 340 U.S. 616 .

GOD Willing, wherefore plaintiff asking the United States Supreme Court to liberally construe any error on plaintiff behalf and acknowledge the obvious to wit: Miscarriage Of Justice, Malfeasance at the hands of the tenth cir. ct. and the entired lower courts, violation Boykin v Alabama 1968 U.S. LEXIS 643 nor any RECORD plaintiff voluntarily enter into stipulation with the government, silences of the RECORD will not presume. Plaintiff is asking that United States Supreme Court to GRANT Certiorari VACATE VOID with prejudice and GRANT plaintiff an immediate release, the judgement was rendered without jurisdiction, kn owingly that deliberated Malfeasance Misfeasance and Nonfeasance, nor is their any RECORD that plaintiff committed any crime. Plaintiff make it perfectly clear if the Constitutional Laws and the Statutory Law and the Bill of Rights does not apply to plaintiff then there are unconstitutional and "SHALL" be remove from the books, See: DA'S Office v Osborne 557, U.S. 52, and ABA standard for criminal justice 2D § 15-1.2 (a) (1986), recommends that consent from the DA and from the court should also appear on the RECORD to ensure an adequate waiver

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 5/16/24



5-16-24
