

24-5223

No. M2017-01116-CGA-R3-CD

FILED

AUG 23 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL D. SALES — PETITIONER
(Your Name)

vs.

State of TENNESSEE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

TENN. CRIM. APP. Ct.

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL D. SALES
(Your Name)

DSNE, 7575 CACKRILL BEND BLVD.
(Address)

NASHVILLE, TN 37209
(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

Question(s) Presented

1. Whether the petitioner is entitled to the Writ of Certiorari.
2. Whether Tennessee Ct's. abused their discretion.
3. Whether the petitioner has established his claim or right to relief by evidence satisfactory to the Ct.
4. Whether the petitioner gave a correct interpretation of the existing laws of the State of Tennessee

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Appendix A: Court of Criminal Appeals Record

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Cases:

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Been v. Bailey, 280 S.W.3d 798, 803 (Tenn. 2009)
State v. Austin, 87 S.W.3d 447, 470 (Tenn. 2002)
State v. Ferguson, 2 S.W.3d 912, 915 (Tenn. 1999)
Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)
State v. Walker, 910 S.W.2d 381, 389 (Tenn. 1995)
State v. Copeland, 983 S.W.2d 703, 706 (Tenn. Crim. App. 1998)
U.S. v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)
State v. Sales, No. M2017-01116-CCA-R3-CD (Tenn. Crim. App. 2020)
State v. Kelso, 2020 WL 2109530 (Tenn. Crim. App. 2020)
State v. Fletcher, ■ 2020 WL 495795 (Tenn. Crim. App. 2020)
Nunley v. State, 552 S.W.3d 800 (Tenn. 2018)
Baxter v. Rose, 523 S.W.2d 930, 936 (Tenn. 1975)
Strickland v. Washington, 466 U.S. 668, 693, 104 S.Ct. 2052, 2067-68, 80 L.Ed.2d 674 (1984)
Grevelly v. Mills, 87 F.3d 779, 785 (6th Cir. 1996)
Litek v. U.S., 510 U.S. 540, 550, 114 S.Ct. 1147, 1154, 127 L.Ed.2d 474 (1994)
Adams v. U.S. ex rel. McCann, 317 U.S. 269, 280, 63 S.Ct. 236, 87 L.Ed. 268 (1942)
Spottford v. Rose, 145 Tenn. 583, 609, 237 S.W. 68, 76 (1922)
State v. Rodriguez, 254 S.W.3d 361, 371 (Tenn. 2008)
State v. Hester, 324 S.W.3d at 30 (Tenn. 2010)
State v. Small, 988 S.W.2d 671, 673 (Tenn. 1999)
Smith v. State, 357 S.W.3d at 358.

Holland v. Florida, 560 U.S. 631—130 S.Ct. 2549, 2562, 177 L. Ed. 2d 130 (2010)

Sales v. State, 2023 WL 2962280 (Tenn. Crim. App. 2023)

State v. Lewis, 235 S.W.3d at 141 (Tenn. 2007)

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Statutes:

28 U.S.C. § 1257(a)

T.C.A. 39-13-201

T.C.A. 39-13-204(a)

T.C.A. 39-13-205(b)

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Tenn. R. App. P. 11(a)

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U.S.C.A. Const. Art. III, Sec. 2, Clause 2

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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 state courts:

² The opinion of the highest state court to review the merits appears at Appendix B to the petition and is unpublished.

The opinion of the Tenn. Crim. App. Court appears at Appendix B to the petition and is unpublished at 2023 WL 2962280

Jurisdiction

for cases from State Courts:

The date on which the highest state court decided my case was April 17, 2023.

A copy of that decision appears at Appendix B.

As no petition for rehear was filed.

The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257(a) and U.S.C.A. Const. Art. III, Sec. 2, Clause 2.

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

Related Cases

State v. Sales, No. M2017-01116-CCA-R3-CD, 2020 WL 5568621 (Tenn. Crim. App. Sept. 17, 2020). perm. app. denied (Tenn. Aug. 9, 2021)

State v. Kelso, 2020 WL 2109530, at *5 (Tenn. Crim. App. 2020)

State v. Fletcher, 2020 WL 995795, at *3 (Tenn. Crim. App. 2020)

Sales v. State, No. M2022-01280-CCA-R3-PC, 2023 WL 2962280 (Tenn. Crim. App. Apr. 17, 2023)

Statement of Case

On Feb. 17, 2017. The petitioner was found guilty of first degree murder (39-13-201) by way of a jury verdict. Tenn. R. Crim. P. 31(a). On Apr. 4, 2017. The petitioner was sentenced to a term of life imprisonment by the trial Ct. judge (Hon. Forest A. Durrard, JR.) contrary to T.C.A. 39-13-204(a) and 39-13-205(b). On April 24, 2017. The petitioner by and through trial counsel of record (Russell L. Leonard) filed a motion for a new trial. Tenn. R. Crim. P. 33. On May 16, 2017. The trial Ct. denied the motion for a new trial. On June 5, 2017. The petitioner by and through trial counsel of record filed a direct appeal. Tenn. R. App. P. 36. On April 21, 2018. The petitioner by and through trial counsel filed a Writ of error coram nobis. On July 2, 2019. The trial Ct. denied the Writ of error coram nobis contrary to the abuse of discretion standard. ■ see State v. Lewis, 235 S.W.3d at 141 (Tenn. 2007). On Sept. 17, 2020. The Tenn. Crim. App. Ct. affirmed the trial Ct's decision. (See Sales, No. M2017-01116-CCA-R3-CD, 2020 WL 5568621 (Tenn. Crim. App. Sept. 17, 2020), perm. app. denied (Tenn. Aug. 9, 2021). On Mar. 7, 2022. The petitioner filed a petition for Post-Conviction Relief. Tenn. Sup. Ct. Rule 28 (PCPR). On Aug. 16, 2022. The post-conviction Ct. denied the petition in an unreasonable, preconceived way. Tenn. Sup. Ct. Rule 10, RJC 2.11(A). On Feb. 6, 2023. The petitioner filed a Tenn. R. Crim. P. 36.1 Motion for Correction of illegal sentence 36.1(a)(1). On Feb. 7, 2023. The trial Ct. denied the Rule 36.1 motion contrary to State law and the applicable Rules of the Ct. Tenn. R. Crim. P. 36.1

(a)(2). On Feb. 18, 2023. The petitioner's post-conviction Counsel of record (Dustin Feeder) filed a Tenn. Ct. of Crim. App. Rule 22 motion to withdraw as counsel. On Mar. 13, 2023. The petitioner filed his pro se appellant brief to satisfy the Tenn. R. App. P. 4(a) requirement. On Apr. 17, 2023. The Tenn. Ct. of Crim. App. issued an opinion in an illogical and unreasonable way. Tenn. Sup. Ct. Rule 10, RJC 2.11(A). On May 11, 2023. The petitioner filed a Tenn. R. App. P. 11 application for permission to appeal to the Tenn. Sup. Ct. On JUNE 30, 23. The Tenn. Sup. Ct. declined review. The State filed no opposition. Tenn. R. App. P. 11(d).

Reasons For Granting The Petition

The petitioner represents that this Ct. is the appropriate Ct. to guide the discretion of the lower Ct's. in Tennessee. Therefore, the petitioner will demonstrate as follows:

I.

review on a writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of Certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Ct's. discretion, indicate the character of the reasons the Ct. considers: (a) a United States Ct. of appeals has entered a decision in conflict with the decision of another United States Ct. of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state Ct. of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower Ct. as to call for an exercise of this Ct's. supervisory power; (b) a state Ct. of last resort has decided an important federal question in a way that conflicts with the decision of another state Ct. of last resort or of a United States Ct. of appeals; (c) a state Ct. or a United States Ct. of appeals has decided an important question of federal law that has not been, but should be, settled by this Ct., or has decided an important federal question in a way that conflicts with relevant decisions of this Ct.. United States Sup. Ct. Rule 10. Therefore, the petitioner

avows that, he is entitled to review by this Ct. because the Ct. of last resort of this State (Tenn.) refused to supervise and secure settlement of important questions of law. Tenn. R. App. P. 11(a). The petitioner contends that, every criminal defendant is guaranteed the right to a fair trial under the Due Process Clause of the 14th Amendment of the U.S. Const., and the Law of The Land Clause of Art. I, Sec. 8, of the Tenn. Const. see *Coin-Swope v. Swope*, 523 S.W. 3d at 87 (Tenn. Ct. App. 2016) (quoting *Bean v. Bailey*, 280 S.W. 3d 798, 803 (Tenn. 2009)); see also *State v. Austin*, 87 S.W. 3d 447, 470 (Tenn. 2002). To facilitate this right, a defendant has a Constitutionally protected privilege to request and obtain from the prosecution, evidence that is either material to guilt or relevant to punishment. see *State v. Ferguson*, 2 S.W. 3d 912, 915 (Tenn. 1999). This fundamental principle of law is derived from the "Landmark Case", *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), in which this Ct. held that, "Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution," *id.*, at 87, 83 S.Ct. 1194. evidence* 56 favorable to an accused includes evidence deemed to be exculpatory in nature and evidence that could be used to impeach the State's witnesses. see *State v. Walker*, 910 S.W. 2d 381, 389 (Tenn. 1995); *State v. Copeland*, 983 S.W. 2d 703, 706 (Tenn. Crim. App. 1998); Tenn. Sup. Ct. Rule 8, RPC 3.8(d); and *U.S. v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed. 2d 481 (1985). And the record will reflect, the defense filed a Tenn. R. Crim. P. 16 motion

for discovery and inspection in the trial Ct. but however, the subsequent trials of Kelso, Bedford Co. case no. 18385, and Fletcher, Bedford Co. case no. 18404, clearly shows that the prosecutor concealed information and evidence favorable to the petitioner, and the rule in Tennessee is that, "A lawyer shall not unlawfully obstruct another party's access to evidence or ... Conceal a document (information) or other material having potential evidentiary value or assist another person to do any such act... OR counsel or assist a witness to offer false or misleading testimony. Tenn. Sup. Ct. Rule 8, RPC 3.4 (a)(b). (See Sales, No. M2017-01116-CCA-R3-CD, at *10 (Tenn. Crim. App. 2020). The record will reflect that, the State's material witness (Corey Eddings) refused to be truthful at the petitioner's trial concerning his and the other associates gang affiliation to the Gangster Disciples that ordered the killing of petitioner's mother as a result of this case, because it would have proved the petitioner's version of the facts. (see Sales, 2020 WL 5568621, at *5) But would in turn, after the jury returned a guilty verdict of first degree murder on the petitioner, said witness would tell the truth later in the subsequent trials of Mr. Kelso and Mr. Fletcher. (see Kelso, 2020 WL 2104530, at *5; and Fletcher, 2020 WL 945795, at *3). Under the same District Atty's. Office and same Circuit Ct. Judge who sit on the petitioner's trial, Thus, was error by failing to take judicial notice of Post-judgment facts when asked and supplied with the necessary information. Tenn. R. App. P. 14(a); see also Tenn. R. Evid. 201(d) and 202(a). (See Writ of error Coram Nobis filed

by petitioner in the trial Ct.) Our State Sup. Ct. has already stated that, "Cts. must take judicial notice of Cts. records and actions in earlier proceedings of the same case; and further held that, "evidence is deemed to be material, for purposes of BRADY analysis when there is a reasonable probability that, had the evidence been disclosed (Concerning the adverse party's gang affiliation) to the defense, the results of the proceedings would have been different. Tenn. R. App. P. 36(b); Tenn. Sup. Ct. Rule 8, RPC 3.8(d). Nunley v. State, 552 S.W.3d 800 (Tenn. 2018) (Citations Omitted). Therefore, the petitioner avers if the jury would have known of this fact, it would have corroborated and supported the petitioner's version of the facts and events. (See Sales, No. M2017-01116-CCF-R3-CD, at *8 (Tenn. Crim. App. 2020), and the results would have been different. And it is well settled law in Tennessee that, "when necessary to do substantial justice on appellate Ct. may consider an error that has affected the substantial rights of a party at anytime, even though the error was not raised in the motion for a new trial or assigned as error on appeal. Tenn. R. App. P. 36(b); Tenn. R. Evid. 103(d).

II.

The petitioner contends that, "he is entitled to review by this Ct. because his trial Counsel of record Russell L. Leonard was ineffective because he failed to preserve

review of a clearly prosecutorial misconduct issue by the prosecutor "wrongfully misleading the jury in portraying [Petitioner] as a member of the Crips gang, when the prosecution knew petitioner had no gang affiliation, with no other purpose than to place [Petitioner] in a bad light." But in turn would conceal the adverse parties gang affiliation solely to convict. Tenn. Sup. Ct. Rule 10, RJC 3.8 (a). The Tenn. Crim. App. Ct. declined review because his trial Counsel of record failed to cite relevant authority and present an adequate argument in his Appellant brief, so it was waived pursuant to Tenn. Crim. App. Ct. Rule 10(b). (see Sales, No. M2017-01116-CCA-23-CD, at *14 (Tenn. Crim. App. 2020)). Which was a fundamental error that no competent attorney could believe within itself to be a tactical decision made during the course of the proceedings. Thus, was way below "the range of competence demanded of attorneys in a criminal case." see *Baxter v. Rose*, 523 S.W. 2d 930, 936 (Tenn. 1975). And, I'm sure this Ct. will agree such error adversely affected the appellant, under this Ct's ruling in *Strickland*. see *Strickland v. Washington*, 466 U.S. 668, 693, 104 S.Ct. 2052, 2067-68, 80 L.Ed. 2d 674 (1984), which ultimately led to petitioner's trial counsel of record writing him a letter informing him to file for ineffective assistance of Counsel on him. (see letter attached). It is well established, "Attorney error that amounts to ineffective assistance of Counsel can constitute 'CAUSE' under the cause and prejudice test." see *Gravelly v. Mills*, 87 F.3d 779, 785 (6th Cir. 1996) (holding

That defense counsel's failure to object to very serious prosecutorial misconduct amounted to ineffective assistance of counsel and that such ineffective assistance was "CAUSE" for the defendant's failure to comply with Tennessee's Rules for preserving a claim of prosecutorial misconduct).

III.

Lastly, the Tenn. Crim. App. Ct. erred in abused its discretion by holding: "Upon review of the entire record on appeal, including post-conviction counsel of Record, Dustin Feeder's motion to withdraw (Claiming frivolousness of appeal) as counsel, the Ct. found that, the 'Appeal is not 'frivolous', but went on to affirm the post-conviction Ct. decision. (see Sales, No. M2022-01280-CCA-R3-PC, at *1 (Tenn. Crim. App. 2023) (stating Accordingly, Counsel's motion to withdraw is denied. That being said, the Ct. has decided to suspend the briefing schedule and address the merits of this appeal on the record alone. Tenn. R. App. P. 2 (that Ct. 'may suspend the requirements or provisions of any of [the rules of appellate procedure] in a particular case on motion of a party or on its motion and may order proceedings in accordance with its discretion').

Thereby creating a prejudice to the judicial process. Tenn. R. App. P. 36(b), because they (Crim. App. Ct.) didn't want the contents of the appellant brief apart of the record in an attempt to aid the State and trial Ct. due to interest, partiality and favor, in direct violation of Tenn. Sup. Ct. Rule 10, RJC 2.11(A) and T.C.A. Const. Art. VI, Sec. 11. *Cain-Swope v. Swope*, 523 S.W. 3d at 87 (Tenn. Ct. App. 2016); see also *Liteky v. U.S.*, 510 U.S. 540, 550, 114 S.Ct. 1147, 1154, 127 L. Ed. 2d 474 (1994). Because it is well settled law that, "Since the earliest days, our system of justice has been reluctant to force a lawyer on an unwilling client. *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 280, 63 S.Ct. 236, 87 L. Ed. 268 (1942). As a general matter, clients should not be forced to entrust their legal matters to an unwanted lawyer. see *Spottford v. Rose*, 145 Tenn. 583, 609, 237 S.W. 68, 76 (1922). And the record will reflect, said counsel did not want to represent the petitioner. (See motion to withdraw as counsel). An error in denying the exercise of the right to self-representation is a structural Constitutional error not amenable to harmless error review and requires automatic reversal when it occurs. *State v. Rodriguez*, 254 S.W. 3d 361, 371 (Tenn. 2008). Art. I, Sec. 9 of the Tennessee Const. and the Sixth Amendment to the United States Const. guarantee not only a right of the accused to be represented by counsel but also a right to self-representation. *State v. Hester*, 324 S.W. 3d at 30 (Tenn. 2010) (quoting *State v. Small*, 988 S.W. 2d 671, 673 (Tenn. 1999)).

(See *Sales v. State*, 2023 WL 2962280, at *2.).

Conclusion

Base on the law, facts, and record in this case. The petitioner is entitled to relief because it is well established that, "Equitable tolling is likewise triggered when circumstances beyond a prisoner's control prevent the prisoner from filing his or her petition on time. Compare *Smith v. State*, 357 S.W. 3d at 358, with *Holland v. Florida*, 560 U.S. 631, —, 130 S.Ct. 2549, 2562, 177 L.Ed. 2d 130 (2010). And the record will reflect that, "the petitioner offered the following explanation for his tardiness: "yes sir, because we get locked down a lot due to overdoses and Covid have [sic] us locked down a lot Id. at 2023 WL 2962280, at *2. In Tennessee an abuse of discretion has been defined as follows:

an abuse of discretion occurs when a trial Ct. applies an incorrect legal standard or reaches a conclusion that is illogical and unreasonable and causes an injustice to the party complaining; or when a trial Ct. has gone outside the framework of legal standards or statutory limitations or when it fails to properly consider that issue given by the higher Ct's. to guide the discretionary determination. *State v. Lewis*, 235 S.W. 3d at 141 (Tenn. 2007) (quoting *State v. Ruiz*, 204 S.W. 3d 772, 778 (Tenn. 2006)).

Therefore, Petitioner, Michael Domic Sales respectfully request the following relief:

1. That the petitioner may proceed in forma pauperis. (See attached motion);
2. That this Ct. Set aside and/or VACATE the judgment and Conviction, of the Tennessee Ct and guide the discretion on the appropriate Order pursuant to the applicable rules of this Ct.; or
3. REMAND back to the Ct. below with instructions to enter an ORDER granting a full and fair hearing in the interest of law and justice.

Respectfully Submitted,

X MICHAEL D. SALES

Date: 8.22.23

Constitutional And Statutory Provisions Involved

U.S. Const. Art. III, Sec. 2, Clause 2: "In all cases affecting Ambassadors, other public ministers and Consuls, and those in which a State shall be Party, the Supreme Ct. shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Ct. shall have appellate jurisdiction, both as to law and fact, with such Exceptions, and under such Regulations as the Congress shall make."

U.S. Const. Amend. 6: "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 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. Const. Amend. 14: "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 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 to any person within its jurisdiction the equal protection of the law."

Tenn. Const. Art. 1, Sec 8: "That no man shall be taken or impr-

isoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or the law of the land."

Tenn. Const. Art. I, Sec. 9: "That in all criminal prosecutions, the accused hath the right to be heard by himself and his counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof, to meet the witnesses face to face, to have compulsory process for obtaining witnesses in his favor, and in prosecutions by indictment or presentment, a speedy public trial, by an impartial jury of the County in which the crime shall have been committed, and shall not be compelled to give evidence against himself."

Tenn. Const. Art. VI, Sec. 11: "No judge of the Supreme or Interior Ct's. shall preside on the trial of any cause in the event of which he may be interested....."

28 U.S.C. § 1257(a).

T.C.A. 39-13-201.

T.C.A. 39-13-204(a).

T.C.A. 39-13-205(b).