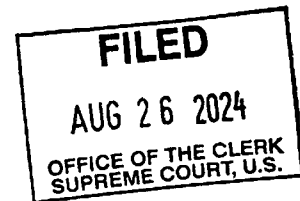


24-5471

IN THE SUPREME COURT
OF THE UNITED STATES

ORIGINAL



In Re Keith Girvan,
Petitioner

AN EXTRAORDINARY WRIT
OF HABEAS CORPUS

Keith Girvan
QC6563
SCI - Mercer
801 Butler Pike
Mercer, PA 16137

QUESTIONS

- 1) Do 3rd Circuit Local Appellate Rules 24(c) and Miscellaneous 107, and newly promulgated Federal Rule of Appellate Procedure 3(e) apply to Habeas Corpus Proceedings?
- 2) Can new reliable eyewitness evidence in the form of 2 affidavits submitted to U.S. District Court overcome erroneous state court finding of fact pursuant to 28 U.S.C. 2254 and 28 U.S.C. 2246?
- 3) Does the evidence referred to in question 2 provide a prima facie case for evidentiary hearing?
- 4) Does closure of the law library for the entire period for appeal causing untimely appeal violate petitioner's right of access to courts or qualify as the absence of a state corrective process pursuant to 28 U.S.C. 2254 (b)(B)(i)?
- 5) Pursuant to 28 U.S.C. 2254 (d), is 1 short paragraph with 1 inapplicable citation in a Superior Court memorandum of decision adjudication on the merits?
- 6) How can an incarcerated, unrepresented in forma pauperis petitioner supplement his observance of an empty courtroom as lack of a public trial with federal discovery procedures?
- 7) Is a new District Court rule requiring assignment of non death penalty cases only to a magistrate judge appropriate judicial rulemaking?
- 8) Does petitioner's rejection of County Public Defender as State Appellate Counsel and repeated coercive questioning disqualify waiver of right to counsel?
- 9) Does a County Court President Judge violate Articles II, III, and VI of the U.S. Constitution?
- 10) Does petitioner have the right to be notified of the censorship or withholding of delivery of mail written by or addressed to him?

RELATED CASES

Commonwealth of Pennsylvania v. Keith Girvan
Clarion County Court of Common Pleas
CP - 16 - CR - 159 - 2019
Judgement filed November 25, 2019

Commonwealth of Pennsylvania v. Keith Girvan
Superior Court of Pennsylvania
107 WDA 2020
Judgement filed July 14, 2021

Keith Girvan v. Melinda Adams et. al
U.S. District Court for the Western District of Pennsylvania
2:21 - cv - 01176 - PLD
Judgement filed April 5, 2024

Keith Girvan v. Superintendent of Mercer SCI et. al
U.S. Court of Appeals, 3rd Circuit
24 - 1273
Judgement filed April 18, 2024

PARTIES

Erich Spessard, Assistant District Attorney, Clarion County, Pennsylvania; counsel for
Melinda Adams, et. al

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CITATIONS

Board of Regents v. Roth 408 U.S. 564, 33 L Ed 2d 548, 92 S Ct 2701 (1972)

Brady v. Maryland 373 U.S. 83, 10 L Ed 2d 218, 83 S Ct 1194 (1963)

Childress v. Johnson 103 F 3d 1221 (5th Cir. 1997)

Coleman v. Thompson 501 U.S. 722, 750 111 S Ct 2546, 115 L Ed 640 (1969)

Harris v. Nelson 394 U.S. 286, 22 L Ed 2d 281, 895 S Ct 1082 (1969)

Herrera v. Collins 506 U.S. 390 404-405, 113 S Ct 853, 122 L Ed 2d 303 (1993)

Gideon v. Wainwright 372 U.S. 335 S Ct (1963)

In re Oliver 92 L Ed 682, 333 U.S. 257 (1948)

Jordan v. Estelle 577 F 2d 144 (5th Cir. 1979)

Lewis v. Casey 518 U.S. 343, 135 L Ed 2d 606, 116 S Ct 2174 (1996)

Martin v. U.S. 96 F 3d 853, 855-856 (7th Cir. 1996)

Price v. Johnston 374 U.S. 266 269, 92 L Ed 1356, 1361 685 S Ct 1049 (1948)

Procunier v. Martinez 416 U.S. 396, 419 (1974)

Schlup v. Delo 513 U.S. 324, 115 S Ct 851, 513 U.S. 324, 130 L Ed 2d 808 (1995)

Townsend v. Sain 372 U.S. 293, 312 (1963)

Williams v. Taylor 529 U.S. 420, 146 L Ed 2d 435, 120 S Ct 1474 (2000)

JURISDICTION

Pursuant to U.S. Supreme Court Rule 13, this Extraordinary Writ is to be filed within 90 days of an Order of the U.S. Court of Appeals, 3rd Circuit filed on April 18, 2024.

This Extraordinary Writ is filed pursuant to 28 U.S.C. 1651.

The U.S. Supreme Court has jurisdiction of this legal proceeding under Articles III and VI, and Amendments 5,6,8, and 14 of the United States Constitution.

STATEMENT OF CASE

Petitioner, Keith Girvan, was convicted of 10 of 10 charges in Clarion County Court of Common Pleas on November 25, 2019.

Petitioner appealed to Pennsylvania Superior Court. Petitioner's writ of habeas corpus was denied. Superior Court filed an unpublished memorandum of decision affirming all convictions on July 14, 2021. A petition for allowance of appeal to Pennsylvania Supreme Court was denied as untimely. A petition for appeal nunc pro tunc was denied without cause.

Petitioner filed a writ of habeas corpus in U.S. District Court for the Western District of Pennsylvania on October 5, 2021. Petitioner voluntarily consented to jurisdiction of a magistrate judge. Requests for evidentiary hearing and appointed counsel were denied. On April 5, 2024 the writ of habeas corpus was dismissed and certificate of appealability was denied.

Petitioner submitted a writ of certiorari to U.S. Court of Appeals, 3rd Circuit that was docketed as a notice of appeal. On April 18, 2024 the appeal was dismissed for "failure to timely prosecute insofar as appellant failed to pay the requisite fee as directed."

REASONS TO GRANT THE EXTRAORDINARY WRIT

REASONS TO GRANT THE EXTRAORDINARY WRIT OF HABEAS CORPUS

This Extraordinary Writ of Habeas Corpus will be in aid to the U.S. Supreme Court's Appellate Jurisdiction in adherence to Article VI and Article III, Section 2 of the U.S. Constitution. "This Constitution...shall be the supreme law of the land; and judges in every state shall be bound thereby." "The Supreme Court shall have appellate jurisdiction, both to law and fact with such exceptions, and under such regulations as the congress shall make." The Supreme Court can utilize petitioner's case to establish precedent regarding appropriate roles and original/appellate procedure in response to the usurpation of judicial power by U.S. District Court Clerks and Magistrate. *Platt v. 3M* 376 US 245, 11 L.Ed. 2d 6714, 84 S. Ct. 769 (1964)

The text of the all writs statute, 28 U.S.C. §1651(a) is as follows "The Supreme Court and all courts established by an act of Congress may issue all writs necessary in aid of their respective jurisdictions and agreeable to the usages and principles of law. §1651 extends to habeas corpus proceedings and authorizes appropriate modes of procedure in conformity with judicial usage.

Adams v. U.S. ex. rel McCann 317 US 269, 273 (1942)

Adequate relief cannot be obtained in any other form from any other court because appeal from Pennsylvania Superior Court to Pennsylvania Supreme Court was denied. The respondent to petitioner's Writ of Habeas Corpus has admitted exhaustion of state remedies. Petitioner's Writ in U.S. District Court pursuant to 28 U.S.C. §2254 was dismissed and Certificate of Appealability was

denied. Petitioner's Appeal to 3rd Circuit Court of Appeals was denied for "Failure to timely prosecute, insofar as appellant failed to pay the requisite fee as directed."

The egregious and exceptional circumstances of this Extraordinary Writ warrant the utilization of U.S. Supreme Court discretionary power and jurisdiction for the following reasons. Clarion County Court of Common Pleas committed multiple constitutional violations in the performance of original jurisdiction causing the incarceration of an innocent person, petitioner. As an unrepresented, in forma pauperis inmate, petitioner has encountered almost insurmountable procedural and, most recently, financial burdens preventing meritorious judicial review. State and Federal Courts utilized flawed fact finding procedures and have denied the introduction of new, relevant, verifiable evidence.

Petitioner contends that technological and socioeconomic factors have trumped the objective determination of guilt or innocence leading to the continued incarceration of petitioner and others similarly situated. Utilization of technology in judicial settings, instant case and appeal, PCRA and/or Circuit Court in a creative commons context has perpetuated information asymmetry. Prior state sentence requirement of anonymity and issues of encryption have further complicated issues of identity, gender, and culpability. Petitioner has been denied access to counsel, been further isolated due to the COVID pandemic, and has been incarcerated for over 5 years due to the unreliable and inconsistent testimony of one person.

Petitioner's Writ of Habeas Corpus has been subjected to the usurpation of judicial power and abuse of discretion. Federal Habeas Corpus Rule 10 authorizes performance by Magistrate of virtually all duties of a District Judge **except the exercise of ultimate decisionmaking authority.** Magistrate Judge Patricia Dodge denied evidentiary hearing and appointed counsel, then dismissed the writ and denied certificate of appealability in violation of this rule. Magistrate Dodge also failed to serve proposed findings and recommendations to petitioner as required, denying petitioner the opportunity to object to errors pursuant to 28 U.S.C. §636 (b)(1)(C).

Federal Rules of Civil Procedure for reference of a case to a magistrate includes procedures to protect voluntary consent. The assignment of noncapital habeas corpus cases in U.S. District Court for the Western District of Pennsylvania only to Magistrate Judges violates this protection. (Appendix D) Magistrate Dodge circumvented normal court operating procedures, repeating dismissal of the writ and denial of certificate of appealability, adverse substantive consequences violating the right to withhold consent and vacate magisterial jurisdiction. §636 (c)(2-4) (Appendix C)

Patricia Dodszeit, a 3rd Circuit clerk, dismissed the appeal for as noted supra. She cited newly promulgated Federal Rule of Appellate Procedure 3(e) and 3rd Circuit Local Rules 24(c) and Miscellaneous 107 in erroneous adherence to the Prison Litigation Reform Act, 28 U.S.C. §1915. Petitioner contends this ex post facto determination does not apply to habeas corpus proceedings pursuant to Federal Rule of Civil Procedure 81 (a)(2). *Martin v. U.S.* 96 F 3d 853, 855-856 (7th Cir. 1996) While aware of societal interest in res judicata and conserving scarce judicial resources, petitioner's Writ of Habeas Corpus is neither frivolous nor malicious.

The All Writs Statute §1651 has been utilized to conduct factual inquiries. Petitioner claims innocence and seeks proof of witness unreliability sufficient for impeachment. Robert Girvan committed unsworn falsification at the incident in question and perjury at trial. Prosecutor Drew Welsh most likely knew this. Pennsylvania State Police Report 351077 contains at least 3 separate incidences asserting petitioner called and said "You're a dead man." Petitioner does not contest this fact. At Trial, Robert changed his story and Drew Welsh echoed Robert's perjured claim that petitioner said "I hate you. I am going to kill you." This specific false and inconsistent statement was objected to by petitioner, yet overruled by President Judge James Arner.

Witness unreliability was raised extensively in petitioner's appellate brief, providing numerous additional false, exaggerated, and inconsistent statements. The claim was not

adjudicated on the merits pursuant to 28 U.S.C. 2254 (d). (Appendix E) The unpublished Superior Court Memorandum of Decision's entire judicial review of the issue is one short paragraph based upon the inconsistent, perjured testimony of one unreliable witness. Judge Mary Jane Bowes' citation regarding a sexually violent predator is inappropriate, factually dissimilar, providing only unpersuasive authority. Petitioner's Writ of Habeas Corpus in State Court regarding this issue was denied, as was a petition for evidentiary hearing. Petitioner did not fail to develop the factual basis of his claim in state court, he was denied the opportunity to do so. *Williams v. Taylor* 529 U.S. 4201 146 L Ed 2d 435, 170 S Ct 1474 (2000)

Petitioner and his mother, 2 of 3 participants in the incident in question, have presented to U.S. District Court affidavits that establish by clear and convincing evidence that no reasonable factfinder would have found the applicant guilty of the underlying offense. 2254 (e)(2)(B) *Schlup v. Delo* 513 U.S. 329, 115 S Ct 851, 130 L Ed 808 (1996). The Superior Court Memorandum begins with the following erroneous determination of fact.

On March 13, 2019, appellant phoned his parents Robert and Carroll Girvan and told them "I hate you. I want to kill you". Less than one half hour later, he entered their home carrying a knife, repeated his threats, and proceeded to punch his 79 year old father multiple times. When appellant's mother tried to prevent him from hitting his father, appellant punched and shoved her.

The incident occurred March 19, not March 13. In her affidavit, Carroll states she has never been hit by petitioner and she did not see petitioner punching with a knife in his hand. She also states petitioner never said "I hate you. I want to kill you." Magistrate Dodge clearly erred in finding her statements are of little probative value. They are 3 specific instances of factual contradiction that pertain to the most serious

charges in the case, attempted aggravated assault and assault with a deadly weapon.

Magistrate Dodge did not even consider petitioner's affidavit that provides additional contradictions and support for an unreasonable finding of fact. 2254(d)(2) (Appendix D) The affidavit is clearly new evidence as petitioner did not testify at trial. *Griffin v. Johnson* 350 F 3d 956, 966 (4th Cir. 2003)

Despite this prima facie case for relief, petitioner was denied a federal evidentiary hearing by Magistrate Dodge. Her decision is contrary to the standard established in *Townsend v. Sain* 372 U.S. 293, 312 S Ct (1963). In a factual dispute, federal courts must hold an evidentiary hearing if petitioner did not receive a full and fair hearing in state court. Petitioner has been denied evidentiary hearing in both state and federal court.

As Abe Fortas aptly wrote in *Harris v. Nelson* 394 U.S. 256, 22 L Ed 281, 895 S Ct 1082 (1969)

It is now established beyond reasonable dispute that a petitioner, being in custody, is usually handicapped in developing evidence in necessary detail the facts alleged in his petition, that a habeas petition not be allowed to founder in "procedural morass." *Price v. Johnston* 374 U.S. 266, 269, 92 L Ed 1356, 1361 685 S Ct 1049 (1969)

Although a habeas corpus petition may be decided on the basis of affidavits, contested facts ordinarily may not be decided on affidavits alone, unless there is other evidence in the record supporting them. *Jordan v. Estelle* 577 F 2d 144 (5th Cir. 1979) The two affidavits, when considered with the prior inconsistent statements in the record establish multiple clear and convincing instances of witness unreliability and inconsistency sufficient for impeachment. No reasonable juror would convict based on that information. 2254 (e)(2)(B) "The reliability of a given witness may well be determinative of guilt or innocence." *Brady v. Maryland* 873 U.S. 83, 10 L Ed 218, 83 S Ct 1194 (1963)

This factual basis of innocence satisfies the cause and prejudice standard of the miscarriage of justice exception to procedural default. *Herrera v. Collins* 506 U.S. 390, 404-405, 113 S Ct 853, 122 L Ed 2d 303 (1993) The prejudice, or actual injury, was the untimely filing and dismissal of appeal to the Pennsylvania Supreme Court. The cause was the closure of the law library at SCI - Mercer coinciding with the delivery of the Superior Court Memorandum of Decision. Petitioner was denied access to essential information for the entire 30 day appellate period. Petitioner requested information from the Superior Court clerk during that time period without response. The law library reopened over a month later without paper resources and petitioner was further delayed learning to access legal information via computer. This justification for untimely appeal was presented to PA Supreme Court in a petition for appeal nunc pro tunc that was denied without cause. Thus, petitioner is entitled to pursue constitutional violations supporting the grant of this writ. *Coleman v. Thompson* 501 U.S. 722, 750, 111 S Ct 2546, 115 L Ed, 640 (1991)

The closure of the law library can be considered the absence of available corrective process pursuant to 2254 (b)(B)(i), and an access to courts constitutional violation, particularly when considered in conjunction with denial of counsel. *Lewis v. Casey* 518 U.S. 343, 135 L Ed 2d 606, 116 S Ct 2174 (1996) *Gideon v. Wainwright* 372 U.S. 335 S Ct (1963) The conspicuous nonresponse to petitioner's repeated correspondence in effort to secure counsel is a first amendment liberty interest access to courts constitutional violation. Letters to the ACLU, Pittsburgh Bar Association, several prominent law firms and approximately 15 personal acquaintances, attorneys and fellow Duke University alumni have gone unanswered. "Any regulation or practice which unjustifiably obstructs the availability of professional representation or other

aspects of access to courts is invalid. *Procunier v. Martinez* 416 U.S. 376, 419 (1974)

Board of Regents v. Roth 408 U.S. 564, 33 L Ed 2d 548, 92 S Ct 2701 (1972)

Petitioner did not voluntarily or knowingly waive right to counsel, he was repeatedly coerced to do so. In her memorandum, Judge Mary Jane Bowes claims that "Our review of the certified record, as supplemented, confirms that a proper waiver colloquy was conducted." her specific reference to a County Plea Court Session "See N.T. Plea Hearing 7/10/219 at 7-12" does not exist in the record as presented to petitioner. Her claim that petitioner "reiterated his refusal to be represented by ppointed counsel or any member of public defender's office" is false and unsupported in the record. In the only colloquy specifically held, a "grazier hearing" in response to a 2/24/2020 Order of Superior Court, petitioner declined the offer of Clarion County Public Defender as state appellate counsel. Judge Arner coerced petitioner to waive counsel while unrepresented at sentencing.

Petitioner was assigned standby counsel for trial by Judge Arner. Standby counsel is in constitutionsl terms, no counsel at all. *Childress v. Johnson* 103 F 3d 1221 (5th Cir. 1997) Erich Spessard resigned as public defender and joined the district attorney's office while the case was before county court, a clear conflict of interest. Mr. Spessard is the counsel for respondents in petitioner's Federal Writ of Habeas Corpus. These multiple errors of fact and law clearly establish that while petitioner rejected inappropriate counsel imposed upon him, he has been denied even adequate assistance of counsel for his defense.

In another 6th Amendment violation, petitioner was ordered to provide opposing counsel witnesses in his favor, and denied the opportunity to communicate with any. Judge Arner stated in an order of the Court " If the defense does not identify any such

witnesses by the time of the hearing on the Rule 600 Motion this thursday, he will be precluded from calling any character witnesses at trial."

In addition to ensuring that judge and prosecutor perform their duties in adherence to law, a public trial encourages witnesses to participate and provide information, and discourages perjury. Petitioner's observance of an empty courtroom for the duration of the trial is an unlikely occurrence considering the prominence of petitioner's family in the Clarion community. Petitioner seeks evidence of the lack of a public trial and requests the honorable court authorize suitable discovery procedures for that purpose, if necessary. *Harris v. Nelson* 394 U.S. 290, *In re Oliver* 92 L Ed 692, 333 U.S. 257 (1948)

Regarding cruel and unusual punishment, as noted supra, petitioner was unrepresented at sentencing. Superior Court failed to adjudicate the issue on the merits pursuant to 2254(d) (Appendix E) Petitioner contends that the original definition of aggravated assault utilized by the Commonwealth that includes attempted aggravated assault, equating attempt to commit, is fundamentally logically flawed. The Commonwealth admitted it did not prove aggravated assault. Thus the utilization of Pa Sentencing Guidelines 204 PA Code 303.1 for sentencing of petitioner for aggravated assault is cruel and unusual punishment made applicable via the 14th Amendment.

For the preceding reasons, this extraordinary writ should be granted. Petitioner has provided evidence of cumulative errors of fact and law sufficient to justify reversal of conviction and release from custody, or any other relief this honorable court deems appropriate