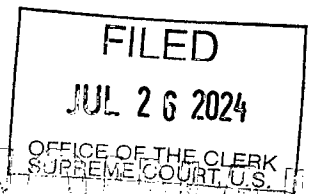


24-5843

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Jerome Sueing

PETITIONER

(Your Name)

VS.

Noah Nagy

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Jerome Sueing

(Your Name)

644 Billantau Street S.E.

(Address)

Grand Rapids, Michigan 49507

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. The trial court violated [Petitioner's] right to due process—denied him his right to a fair trial by joining the unrelated cases of aggravated indecent exposure which each carried a second count of indecent exposure by a sexually delinquent person, and the join[d]er resulted in unfair prejudice.
- II. The trial court abused it[s] discretion and denied [Petitioner] his due process right to a fair trial by admitting evidence of past acts that should not have been admissible pursuant to MCR 404(b).
- III. [Petitioner] did not receive the adequate assistance of counsel in fulfillment of his constitutional rights.
- IV. [Petitioner] claims that, during opening statements, the prosecutor improperly referenced the testimony of a professor and a police officer regarding the 2003 incident at Kendall College. Specifically, [Petitioner] asserts that the prosecutor's comments violated his Sixth Amendment right to confrontation because neither the professor nor the police officer testified at trial. [Petitioner] also claims that defense counsel was ineffective for failing to move for a mistrial based on the prosecutor's opening statement. These comments were prejudicial to [Petitioner] and impaired his ability to have a fair trial. [Petitioner] further claims that defense counsel was ineffective for failing to request a "cautionary instruction" or a "missing witness instruction."

LIST OF PARTIES

- ☒ 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

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DEODLE V SUEING
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CASE NO. 329961

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F R A P 22(b)(2)
28 U.S.C. 2254

OTHER

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 A 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 B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at 923 U. W. 2d 265; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the APPELLATE COURT (mich) court appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 1, 2024.

☒ 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).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
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

1. Article 1. Section 9, of the U.S. Constitution provides, "The privilege of the Writ of Habeas Corpus shall not be suspended, except when in cases of rebellion or invasion the public safety may require it."
2. The Sixth Amendment to the United States Constitution provides in relevant part that in all criminal prosecutions the accused shall enjoy the right . . . to be confronted with the witnesses against him and to have the Assistance of counsel for his defense."

STATEMENT OF THE CASE

B. Procedural History

Sueing was convicted of two counts of aggravated indecent exposure and two counts of indecent exposure by a sexually delinquent person. The trial court originally sentenced him as a fourth-offense habitual offender to concurrent sentences of 2-15 years' imprisonment for the aggravated indecent exposure convictions and 20-40 years' imprisonment for the indecent exposure by a sexually delinquent person convictions.

Following his conviction and sentence, Sueing filed a claim of appeal in the Michigan Court of Appeals, which raised the following claims:

- I. The trial court violated Defendant-Appellant's right to Due Process and denied him his Right to a Fair Trial by joining two unrelated cases of aggravated indecent exposure which each carried a second count of indecent exposure by a sexually delinquent person, and the joinder resulted in unfair prejudice.
- II. The trial court abuse its discretion and deny Mr. Sueing his Due Process right to a Fair Trial by admitting evidence of past acts that should not have been admissible pursuant to 404b.

Sueing also submitted a brief in the Michigan Court of Appeals pursuant to Michigan Supreme Court Administrative Order No. 2004-6, Standard 4, which raised the following claims:

- I. Defendant did not receive the adequate assistance of counsel in fulfillment of his constitutional rights.
- II. Defendant's Sixth Amendment right to confrontation was violated at his trial when the prosecutor made improper remarks during opening statement(s).
- III. Defendant was deprived of his Sixth Amendment right to counsel of choice at trial and did not knowingly and intelligently waive his right to be represented by retained counsel.
- IV. The trial court erred in denying defendant's request to "discharge" his trial counsel.
- V. Defendant was denied the effective assistance of counsel guaranteed by the Sixth Amendment because "animosity: existed between him, his attorney, and the public defender's office.
- VI. The stop, detention, and arrest of defendant was a violation of his Fourth Amendment right against illegal

searches and seizures and defendant's appointed counsel was ineffective for failing to identify and argue this claim.

- VII. The defendant was stopped, detained, photographed, and arrested in violation of his First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights.
- VIII. Defendant was coerced by the trial court and defense counsel into giving up his stated desire to testify.
- IX. Trial counsel's "refusal" to subpoena the defendant's medical records, doctors or physicians, family members, etc. constituted ineffective assistance of counsel under *Strickland v. Washington*, 466 US 668 (1984).
- X. Defendant was denied his constitutional right to an impartial jury drawn from a fair cross-section of the community.
- XI. Defendant as denied his Sixth Amendment right to counsel because his trial counsel failed to investigate or interview members of his family who were with him on the date of these offenses.
- XII. Multiple convictions and sentences for the same crime violated the double jeopardy clause.
- XIII. The trial court abused its discretion by scoring 25-points for OV 13, thereby increasing defendant's sentencing guidelines to 126-420 months for conduct that did not involve an indecent exposure and did not constitute the commission of a criminal offense.

The Michigan Court of Appeals found Sueing's double jeopardy claim persuasive and vacated Sueing's convictions and sentences for aggravated indecent exposure in an unpublished order. The Michigan

Court of Appeals also found that the trial court had erred when it sentenced Sueing for his indecent exposure by a sexually delinquent person convictions and remanded for the trial court to resentence Sueing in accordance with Mich. Comp. Laws § 750.335a(2)(c). *Sueing*, 2017 WL 1034423, at *10.

Sueing subsequently filed an application for leave to appeal in the Michigan Supreme Court which raised the same claims as in the Michigan Court of Appeals, in addition to claims of ineffective assistance of trial and appellate counsel related to Sueing's medical condition. However, before the Michigan Supreme Court decided Sueing's appeal, the trial court resentenced Sueing on his indecent exposure by a sexually delinquent person convictions on May 22, 2017 to concurrent terms of one day to life in prison. Sueing again filed a claim of appeal in the Michigan Court of Appeals, but stipulated to dismiss the appeal, which was dismissed on September 22, 2017. (9/22/2017 Mich. Ct. App. Order at 1.)

The Michigan Supreme Court then vacated the Michigan Court of Appeals' original order as it related to Sueing's sentences for indecent exposure by a sexually delinquent person and remanded to the

Michigan Court of Appeals to redetermine Sueing's sentences based on another pending case in the Michigan Court of Appeals as well as make a determination on Sueing's offense variable (OV) 13 claim that had not been previously determined. The Michigan Supreme Court denied the remainder of Sueing's application because it was not persuaded that the questions presented should be reviewed by the Court. *People v. Sueing*, 923 N.W.2d 265 (Mich. 2019) (unpublished table decision).

On remand from the Michigan Supreme Court, the Michigan Court of Appeals found that the trial court was allowed to fashion a sentence based on the Michigan sentencing guidelines, but the trial court erred when it scored OV 13, and therefore, the Michigan Court of Appeals remanded to the trial court for resentencing. *Sueing (On Remand)*, 2019 WL 6045563, at *2-3.

Sueing was resentenced by the trial court on August 30, 2021 to concurrent terms of one day to life in prison for the indecent exposure by a sexually delinquent person. (8/30/2021 Hr'g Tr. at 10.) Although Sueing again filed a claim of appeal in the Michigan Court of Appeals, he stipulated to dismiss that appeal which was granted on January 24, 2022. (1/24/2022 Mich. Ct. App. Order at 1.)

Sueing did not seek leave to appeal in the Michigan Supreme Court or the United States Supreme Court, nor did he seek collateral review before the trial court. Rather, he filed the instant petition for habeas relief.

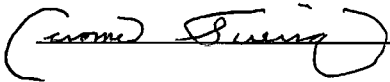
REASONS FOR GRANTING THE PETITION

- I. The trial court violated [Petitioner's] right to due process—denied him his right to a fair trial by joining the unrelated cases of aggravated indecent exposure which each carried a second count of indecent exposure by a sexually delinquent person; and the join[d]er resulted in unfair prejudice.
- II. The trial court abused it[]s discretion and denied [Petitioner] his due process right to a fair trial by admitting evidence of past acts that should not have been admissible pursuant to MCR 404(b).
- III. [Petitioner] did not rec[ei]ve the adequate assistance of counsel in fulfillment of his constitutional rights.
- IV. [Petitioner] claims that, during opening statements, the prosecutor improperly referenced the testimony of a professor and a police officer regarding the 2003 incident at Kendall College. Specifically, [Petitioner] asserts that the prosecutor's comments violated his Sixth Amendment right to confrontation because neither the professor nor the police officer testified at trial. [Petitioner] also claims that defense counsel was ineffective for failing to move for a mistrial based on the prosecutor's opening statement. These comments were prejudicial to [Petitioner] and impaired his ability to have a fair trial. [Petitioner] further claims that defense counsel was ineffective for failing to request a "cautionary instruction" or a "missing witness instruction."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

_____

Date: 7/26/2024