

24-5960

Supreme Court of the United States

1 First Street NE, Washington, DC 20543

CHRISTOPHER MCGOWAN,
Petitioner

v.

Commonwealth of Pennsylvania

PETITION FOR WRIT OF CERTIORARI 28 USC § 1257(a)

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

Lower Court's Case Numbers:

1. Pennsylvania Supreme Court Docket Number: 69 MAL 2024
2. Superior Courts Docket Number: 784 MDA 2022
3. Franklin County Court of Common Pleas Trial Court Docket Number:
 - Trial Court Case# CP-28-CR-0001505-2016
 - Petition for Post Conviction Relief under 42 Pa.C.S. § 9542

Christopher McGowan 11-8-2024

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November 8th, 2024

QUESTIONS PRESENTED

1. DID THE FRANKLIN COUNTY COURT OF COMMON PLEAS VIOLATE THE PETITIONER'S FOURTH AMENDMENT RIGHTS BY FAILING TO ESTABLISH PROBABLE CAUSE BY REFUSING TO HOLD A REQUIRED PRELIMINARY HEARING?
2. DID THE FRANKLIN COUNTY COURT OF COMMON PLEAS VIOLATE THE PETITIONER'S FIFTH AMENDMENT RIGHTS BY CHARGING HIM WITH AN INFAMOUS CRIME WITHOUT A PRESENTMENT OR INDICTMENT OF A GRAND JURY?
3. DID THE FRANKLIN COUNTY COURT OF COMMON PLEAS VIOLATE THE PETITIONER'S FOURTEENTH AMENDMENT RIGHTS TO MAKE PRIVATE CONTRACTS BY INTERFERING WITH THIS CIVIL BUSINESS MATTER?

LIST OF PARTIES

McGowan v. Commonwealth of Pennsylvania, No. 784 MDA 202, The Superior Court of Pennsylvania. Judgment entered Jan. 21, 2020.

McGowan v. Franklin County, No. CP-28-CR 0001505-2016, Court of Common Pleas of Franklin County. Judgment entered Apr. 28, 2022.

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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 the **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is reported at unknown.

The opinion of the Court of Common Pleas of the 39th Judicial District of Pennsylvania- Franklin County Branch appears at Appendix B to the petition and is recorded at unknown.

The opinion of the Superior Court of Pennsylvania to review the merits appears at Appendix C to the petition and is recorded at unknown.

JURISDICTION

For cases from the state courts:

The date on which the highest state court decided my case was 14th of August, 2024. A copy of that decision appears at Appendix A. A timely petition for rehearing was thereafter denied on the following date: April 28th, 2022, and a copy of the order denying rehearing appears at Appendix B. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV.....	6
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STATEMENT OF THE CASE

It was alleged by the Commonwealth of Pennsylvania that Appellant, Christopher McGowan, and co-defendant, Patricia Chase, conspired to steal money from the complaining witness by deception. The specific allegation was that Patricia Chase sold their own automobile to the complaining witness for \$2,500.00 and that automobile had a loan taken out on it by the co-defendant, Patricia Chase. N.T. September 28th, 2018, pages 13-15. Because of this loan, it was alleged that the complaining witness was unable to title the car in her name and she was thus unlawfully deprived of \$2,500.00. *Id.* at 15. During the trial, Appellant was represented by Anthony E. Miley, Esq. Attorney Miley argued that Appellant had no knowledge that the co-defendant had taken a loan out on the vehicle they were selling to the complaining witness and thus, there was no conspiracy to deceive on Appellant's part. *Id.* At 17-20. Appellant was ultimately convicted.

On November 7th, 2018, Appellant was sentenced to thirty (30) to sixty (60) months of confinement. Appellant was sentenced in absentia due to a missed flight and as such was unable to be advised at this hearing of his post-sentence rights nor was he able to participate in a way that may have mitigated his sentence. Attorney Miley did not file any post-sentence motions on Appellant's behalf. On November 19th, 2018, Appellant filed a Motion to Appeal Judgement and Conviction with the Pennsylvania Supreme Court, which was eventually forwarded to the counsel of record. On November 30th, 2018, Attorney Miley filed a Motion to Withdraw as Counsel. On December 3rd, 2018, the Court entered an order granting Attorney Miley's Motion to Withdraw as Counsel and appointed the Public Defender's Office, who in turn requested that conflict counsel be appointed. In the following months, Appellant made multiple requests to proceed pro se and filed numerous post-sentence motions for relief. On March 14th, 2019, the Court ordered that Appellant's November 19th, 2018 filing to be construed as a

post-sentence motion and his subsequent filings as supplements to that motion. On March 19th, 2019, Appellant's post-sentence motion was denied.

On May 24th, 2019, Appellant filed a Notice of Appeal. This Honorable Court affirmed Appellant's judgment of sentence on January 31st, 2020. Appellant subsequently filed a pro se Petition for Allowance of Appeal with the Pennsylvania Supreme Court on March 17th, 2020. The Pennsylvania Supreme Court denied Appellant's Petition for Allowance of Appeal on September 15th, 2020. The following month, on October 21st, 2020, the Lower Court's administration erroneously listed an entry to Appellant's docket labeled, "Memorandum and Order" There is no indication that this entry was erroneous and was actually related to a different matter. On December 22nd, 2021, undersigned counsel filed a PCRA Petition on behalf of Appellant and brought three (3) claims of ineffective assistance of counsel. On April 1st, 2022, the PCRA Court issued a 907 notice stating they intended to dismiss the PCRA on the basis of timeliness. On April 28th, 2022, the PCRA Court formally denied Appellant's PCRA. A timely notice of appeal was filed on May 23rd, 2022.

REASONS FOR GRANTING THE WRIT

1. The Franklin County Court of Common Pleas violated the Petitioner's 4th Amendment Rights by failing to establish probable cause and by refusing to hold a required preliminary hearing.

The petitioner was first arrested in 2016 without probable cause and did not have legal counsel at that time. To this date, October 20th. 2024, the Petitioner still has not had a preliminary hearing. The Fourth Amendment of the United States Constitution protects citizens from unreasonable searches and seizures by the government.

2. The Franklin County Court of Common Pleas violated the Petitioner's 5th Amendment Rights of the USC by Charging Petitioner without presentment or indictment of a grand jury.

The 5th Amendment right of the United States Constitution Guarantees: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury... nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Commonwealth of Pennsylvania, Franklin County District Court of Common Pleas failed to give notice of new charges brought against the Petitioner on the date of the trial and again did not provide a probable cause hearing. The Commonwealth failed to follow Due Process of law. The Fifth Amendment guarantees that people receive adequate notice of legal actions against them and a fair and impartial hearing.

3. The Franklin County Court of Common Pleas violated the Petitioners Fourteenth Amendment right to enforce contracts by interference with this civil business deal matter.

Petitioner and complaining party had a signed contract agreement that the commonwealth interfered with, Law states: New York, 198 U.S. 45 (1905), the Supreme Court held that the Fourteenth Amendment protects the right to make private contracts, and that a state may not interfere with this liberty in the name of protecting the health of the worker.

The "liberty" guaranteed by the due process clause has been variously defined by the Court, as will be seen herein-after. In general, in the early years, it meant almost exclusively "liberty of contract," but with the demise of liberty of contract came a general broadening of "liberty" to include personal, political and social rights and privileges. Nonetheless, the Court is generally chary of expanding the concept absent statutorily recognized rights.

Liberty of contract, a concept originally advanced by Justices Bradley and Field in the Slaughter-House Cases, was elevated to the status of accepted doctrine in *Allgeyer v. Louisiana*. Applied repeatedly in subsequent cases as a restraint on federal and state power, freedom of contract was also alluded to as a property right, as is evident in the language of the Court in *Coppage v. Kansas*.

"Included in the right of personal liberty and the right of private property-partak-ing of the nature of each-is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long-established constitutional sense."

Conclusion

WHEREFORE, Petitioner, CHRISTOPHER MCGOWAN SR., prays that the Honorable United States Supreme Court will reverse the conviction and grant relief to the Petitioner according to Title 42 U.S.C § 1983 of the United States Constitution. Furthermore, The Petitioner prays for the United States Supreme Court to open an FBI investigation into Franklin County Courts for violating Federal Penal Code 18 U.S.C 241, Conspiracy Against Rights, Public Corruption, Malicious Prosecution, Oppression, and Abuse of legal process.

Respectfully Submitted,

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