

No. 17-6994

IN THE
UNITED STATES SUPREME COURT OF THE UNITED STATES

C O V E R S H E E T

WINFRED A. MILNER, In Propria Personam.

Petitioner.

v.

COMMONWEALTH OF PENNSYLVANIA

Respondent.

PETITION FOR EN BANC/REHEARING - NUNC PRO TUNC FROM THE COURT'S

FEBRUARY 20, 2018 DECISION

Filed on behalf of the Petitioner



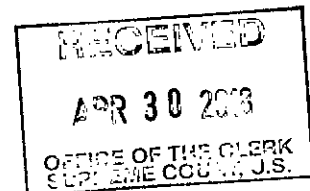
Mr. Winfred A. Milner, AP-6690

DOC/SCI-Mercer. E/B-4-2.

801 Butler Pike Road

Mercer, PA 16137

Dated: March 8, 2018 // Perfected: 4-15-2018.



IN THE
UNITED STATES SUPREME COURT OF THE UNITED STATES

WINFRED A. MILNER , In Propria Personam/Pro se.,
Petitioner.

v.

COMMONWEALTH OF PENNSYLVANIA, Et al.,
Respondent(s).

PETITION FOR A EN BANC/REHEARING - NUNC PRO TUNC./ IN LIEU OF THE DENIAL OF HIS
PETITION FOR A WRIT OF CERTIORARI, IN THE U.S. SUPREME COURT-

To: The Honorable John G. Roberts, Chief Judge and Justices of the above Court.

PETITION FOR EN BANC/REHEARING - NUNC PRO TUNC FROM THE COURT'S
FEBRUARY 20, 2018 DECISION

COMES NOW, Winfred A. Milner, Petitioner/In Propria Personam, who hereby moves the Court in the above captioned case and matters to grant unto him Leave to File, A "Petition for En Banc/Rehearing" Nunc Pro Tunc ... In Lieu of the denial of His "Petition for a Writ of Certiorari," filed to correct the Current Miscarriage of Justice and to ask the High Court to Rule, Adjudge and Clarify; whether the inferior lower Courts are denying Petitioner and Prisoners similarly situated the Constitutional Protection and Application of retroactive Court decisions during their Collateral Appeals; Pursuant to the U.S. Const. Art. 6 Cl. 2. "The Supremacy Clause" ... The February 20, 2018, Ruling handed down in the present case directly conflicts with the well established decisions of the United States Supreme Court. Apprendi/Alleyne, Harper/Booker, per. Hurst v. Florida, 136 S. Ct. 616, 624 Note 4. (2106). Judicial Notice is given, that this Request for Redress is presented in good faith and not for delay. Herein, The Petitioner proffers the following in support of the "Petition for an En Banc/Rehearing," that the full-Court Review/Reconsider the cause/effects of his Illegal Detention; sua sponte, Shall Reconsider the unjust/unconstitutional denial of his good faith "Petition for a Writ of Certiorari". Furthermore, He/Winfred A. Milner, Petitioner represents that his Original "Petition for a Writ of Certiorari" and the "Brief for Merit" filed in support thereof, Is incorporated herein, as if same was set forth, both whole and in part.

He avers the following; The Petition is filed in good faith and not for delay:

Dated: March 1, 2018 /Perfected: 4-15-2018.

Filed on Behalf of the Petitioner

Winfred A. Milner
Mr. Winfred A. Milner, AP-6690
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II. REHEARING IS REQUIRED BECAUSE BOTH THE PANEL DECISION AND PA STATE SUPREME COURT'S DECISIONS FAILED TO EVALUATE WHETHER THE INFERIOR COURT'S JUDGMENT VIOLATED THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION. 9.

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JURISDICTIONAL STATEMENT

Petitioner respectfully Prays that a En Banc/and Rehearing Review Sua Sponte be granted in lieu of the current Miscarriage of Justice involving the unjust denial of a Good Faith Petition for Writ of Certiorari by a Panel of this Supreme Court of the United States on 2-20-2018 . That En Banc Review is needed to correct on Appeal, a decision found to be in conflict with the Laws of the Land. The Jurisdiction of this Supreme court of the United States is invoked to hold a En Banc/and Rehearing in this Matter pursuant to the following: 28 U.S.C. §1254. Et. seq., and §1257. Et seq.; Supreme court Rules; Rule 13.; 44 Et. Seq., 22.1.; and also Rules of U.S. S.Ct., Rule 10(c).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Winfred A. Milner, and All others similarly situated (In 49 other States), that are affected by the Unconstitutional/Acts of the Pennsylvania State Court's Interference with their Access to Court, who are being Denied their Rights, Benefits, and Entitlements to the Decisions of the United States Supreme Court: violation of the following:

Petitioner, In Good Faith, Request the Justices of this Court would Enforce the Demands of the Constitution of the United States, Compel Respondent(s) to adhere to the Supreme Court's intent of 28 U.S.C. §1251 (a), (b)(2) Original Jurisdiction; §1257(a) and give Petitioner's their Right to Supreme Court Decisions, Equally Both on Direct and during Collateral Appeals, their meaningful Access to Court, Enforcement of Supreme Ct. Decisions, and Equal Protection of the law.

This Case involves Violations of the following: Article 6 Sec. 2. "Supremacy Clause", The Constitution, and the Laws of the United States shall be made in pursuance thereof...sic...Shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

I. First Amendment: Government shall not Prohibit/Abridge the Freedom of the People or Right to Petition the Government for Redress of Grievances.

V. Fifth Amendment: No person shall be deprived of Life or Liberty, without Due Process of Law.

VI. Sixth Amendment: All persons shall 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.

XIV. Fourteenth Amendment Sec. 1: 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 or Liberty, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Also invoked under the Pennsylvania Constitution Article/Sections: 5§9, "The Right to Appeal"; 1§11, "The Right to An Open Court/Without Denial or Delay (or Limitations)"; 1§20, "The Right to Petition the Court for Redress to those in Authority."

STATEMENT OF THE CASE

We only recite a brief summary of the facts necessary to explain what has occurred over the past four(4) years history of this litigation; which forms the basis for the requested Enforcement of Petitioner's Constitutional Rights and the U.S. Supreme Court's Orders/Decisions, (Protections), and/or Hereafter find stated all substantive facts that are necessary for a fair determination of the original request to "Vacate Judgment of Sentence/Petition to Set Aside his Illegal Mandatory Minimum-Maximum Sentence(s)...Nunc Pro Tunc.

On April 12, 2015, Appellant Filed a timely Pro-Se P.C.R.A. Petition. No Direct Appeal was filed even though requested by Appellant. On June 24, 2016 - the lower Court dismissed the P.C.R.A. Petition. Then, Appellant Filed A Timely "Notice of Appeal" to the Superior Court on July 12, 2016. While Appellant's timely Filed P.C.R.A. Petition was pending at the Briefing Stages of his Appeal, at Case No. 1062 WDA 2016; Appellant gave "Judicial Notice" in a Motion Requesting the Superior Court to Consider the United States Supreme Court's Decision of Alleyne v. United States, 133 S.Ct. 2151 186 L. Ed 2d 314 (2013); and its progenies pursuant to Pa. R.A.P. Rule 2501(b) when deciding Appellant's Appeal. Appellant's Motion was granted for Consideration of Alleyne, But yet, no relief was granted as to Appellant's Unconstitutional Mandatory Minimum Sentences. On April 5, 2017, The Superior Court affirmed the Petitioner's Unlawful Conviction-Sentence and present incarceration for Title: 18 Pa. C.S.A. §903(a)(1) "With Elements Unproven." On June 24, 2016, Judge Jill E. Rangos, Affirmed the Sentenced imposed. On March 6, 2016, Appellant Filed his "Motion to Vacate Illegal Sentence" in which the Court then Illegally Recharacterized and Construed it as A Second P.C.R.A. Petition and Ultimately denied same on June 24, 2016. That on July 4, 2016, A Notice of Appeal was filed to the Superior Court at Case No. 1062 WDA 2016. On April 5, 2017, The Superior Court affirmed the Lower Court's order while erroneously stating that "Appellant did not file his Petition seeking relief under Alleyne and its provisions until March 5, 2016...; nearly two years after that case was decided". On April 10, 2017; Appellant filed an "Application for Reargument" while giving the Superior Court Judicial Notice of Facts material to the outcome of his case that have been overlooked by the Court,

and as a result; Appellant's Petition was affirmed and ruled to be untimely. Finally, On April 5, 2017, The Superior Court denied Appellant's Application for Reargument. Next, A Petition for Allowance of Appeal was filed to the Pennsylvania Supreme Court and was denied on 11-14-2017. Petitioner filed A "Application for Reconsideration" (en banc) to the above said Order asking the Full Court to hear his Appeal which was ultimately denied on November 2, 2017, which brings this Appeal to this Honorable Court and Justices. Thus, to date, State Court Justices "Refuse" In Bad Faith to Hear Appeals pursuant to Mandatory Minimums Challenge... Therefore, This Court is ask to decide once and for all Whether Petitioner Was Unconstitutionally Denied by A State Court, The Retroactive Relief And Application Of U.S. Supreme Court Decisions, "United States v. Alleyne, Greer, Johnson, Shavers, Booker; Denied The Application of Marbury v. Madison, Testa v. Katt; The Harper Rule Pursuant to Article VI. Clause 2. "The Supremacy Clause", Nunc Pro Tunc? II. Whether The State Court By Its Refusal To Apply The Decisions Alleyne-Apprendi, VIA The Supremacy Clause To The Appellant's Case Nunc Pro Tunc, Was Tantamount To A State Court Committing A Unconstitutional Structural Defect? III. Whether Appellant's Sentence Is Illegal? IV. Whether The PCRA Statute Warrants Relief In The Context Of A Timely Filed Petition When Appellant's Timely Filed PCRA At Case No. 1062 WDA 2012 Warrants Relief Pursuant To Alleyne?

I. EN BANC/REHEARING IS NECESSARY BECAUSE THE FEBRUARY 20, 2018 COURT PANEL'S ORDER NEEDS CLARIFICATION BECAUSE OF ITS FAILURE TO ENFORCE THE DEMANDS OF THE SUPREMACY CLAUSE UPON THE STATE COURTS DURING COLLATERAL PROCEEDINGS NUNC PRO TUNC.

This Appeal for Rehearing/En Banc is from the decision entered by both the State Supreme Court of Pennsylvania on 11-1-2017, The Reargument dated 4-25-2017, and the (Letter sent in lieu of a Signed Order by a Justice) from the February 20, 2018 Panel Decision entered by the Supreme Court of the United States, because both are found to be ruled contrary and/or in direct conflict with current/historical Retroactive Sentencing Applications, Moreover, with the Cited Precedential decisions rendered by the United States Supreme Court, as well as, those that were recently issued by the Third Circuit Court ... Whose Judgments are based upon the same subjects originally claimed.

Instantly, Winfred Milner, The Petitioner requests a "En Banc/Rehearing" on behalf of his case, as well as on behalf of all those whom are ^{now} similarly situated; Logically, That He/They be granted Reconsideration of the Unconstitutional and Bias Denial of his/their good faith "Motion to Vacate the Judgment of Sentence-Petition to Set Aside their Mandatory Maximum Sentence." Especially since said Sentence Per. Apprendi-Alleyne/Booker, Harper-Montgomery v. Louisiana-Cage v. Louisiana-Sullivan v. Louisiana. Although they might have been lawful when imposed ... at the time of sentencing, it is nonetheless found Now to be illegal, (or Unconstitutional Retroactively per. the Harper Rule's Application of the Supremacy Clause-United States Supreme Court Decisions) and be vacated as a result thereof. Thus, He/Milner and those whom are similarly situated demand both Clarification/Application, continuous Constitution Enforcement and Protection of Retro-active Supreme Court Decisions. Herein, In Lieu of the aforesaid, Judicial Notice is given, That Petitioner's State Court Motion-Petition and the Current Petition for a "U.S. Writ of Certiorari," Are Incorporated herein, as if same was set forth, both whole and in part.

Therefore, I, Winfred Milner, Express a belief, based upon a reasonable self-study of historical court judgments, (as well as the following citations) that the panel's decision of February 20, 2018, as was entered by the U.S. Supreme Court ... Is tantamount to the Court committing a "Structural Defect". Especially, as was done in this instant, We find that the Panel turned a blind-eye to what is seen clearly as proof as an act of injustice, Which is now compounded by the complained of panel's denying (Mr. Milner) the Petitioner, a good faith "Motion to Vacate the Judgment of Sentence-The Petition to Set Aside the Mandatory Minimum/Maximum Sentence imposed in this matter on May 20, 1983? ...

As well as, To Addressed the Denial of Review of the bad faith/bias February 20, 2018, Letter'
 Sent in lieu of a "Authentic Supreme Court Order" filed without an opinion at issue... Instantly
 is found contrary to well and clearly established laws and known U.S. Supreme Court Decisions.
 Moreover, It is believed that a good faith, Rehearing en banc is necessary because the Order of
 the Panel failed to Rule on the Writ before it. In this Case the Panel has failed to respond
 to the fundamental arguments of the Petitioner, Namely, (1) That the Movant has an absolute
 right to be before this Court, and (2) That there is a constitutional basis in law for prohib-
 iting the State Court from violating the "Supremacy Clause" in violation of Harperrv. Virginia
Dept. of Taxation, 509 U.S. 86, 100 (1993). Which therein holds that, "The Supremacy Clause" does
 not allow Federal Retroactivity Doctrine to be supplanted by the invocation of contrary approaches
 to retroactivity under State Law. That whatever freedom State Courts may enjoy to limit the retro-
 active operation of their own interpretations of State Law, "It cannot extend to their interpret-
 ation of federal law." as cited in United States v. Booker, 543 U.S. 220, 268 (2005); In that
 case the Court held, "[A] New Rule for the conduct of criminal prosecutions are to be applied
 retroactively to All cases." Especially, Since as here the Petitioner's current Sentence is one
 that has not as of yet been finally served, (his present sentence cannot stand because there is no
 exception for Cases in which the new rule constitutes a 'clear break' with the past.") Also Accord
Montgomery v. Louisiana, 136 S.Ct. 718, 729-731 (2015). This Court stated that, "that Constitution
 requires substantive ruled to have retroactive effect regardless of when a conviction becomes
 final." Furthermore, This Reviewing Court shall logically agree that, an Unconstitutional Statute
 is ineffective for any purpose as its unconstitutionality dates from the time of its enactment and
 not merely from the date of the decision holding it so. Herein, If no Statutory Authorization
 exists for a particular sentence, that sentence is illegal and subject to correction. Thus, this
 Court shall also agree that, an illegal sentence must be vacated, and that an Appellate Court can
 raise and Review an illegal Sentence Sua sponte. Herein, The function of the Writ of Certiorari,
 is to test the legality of the prisoner's detention ... The Requested Relief from the State's
 current illegal restraint is not limited to cases falling within the jurisdictional scope of the
 State Court's Erroneously Delayed Judgment and thus, instantly the Court can reach Mr. Milner's
 Petition for Writ of Cert., Nunc Pro Tunc, Despite the State's Failure to follow the mandate of the
 Supremacy Clause. Logically, This Court can reach Mr. Milner's Writ at this late date on En Banc/
 Rehearing ... Because, "No matter where or how the chains ^{of} captivity were forged - the ultimate

power of the federal judiciary is adequate to crumble the unjust-chains that bound an wrongfully fully convicted man to dust. Especially, As is needed in this case because a wrongfully conviction or illegally Mandatory Minimum/Maximum Sentenced individual is deprived of his liberty contrary to the law of the land," This Reviewing Court shall agree with the petitioner's Position that because he did not receive the benefits of Supreme Court's Retroactive Decision.

"Equitable Tolling shall now be granted by this Court, Because He was prevented from asserting his right to file an appeal, and Receive the Benefits of the "Supremacy Clause" and the Mandatory Enforcement of Retroactive U.S. Supreme Court Decisions during Collateral Appeal. Sua sponte the Court should ask itself, Whether "Extraordinary Circumstances Existed" to warrant a equitable tolling of the statute of limitations period set forth in 28 U.S.C. §2244(b)(1)... Pursuant to: Miles v. Prunty, 187 F.3d 1104, 1107 (1999) Since the Doctrine of Equitable Tolling precludes a finding that his (Milner's) or prisoner's Writ of Cert. would be time-barred! Thus, Any Order dismissing a Writ of Certiorari Petition as being untimely (under the circumstances advanced in this and related matters) should be reversed, and the case should be remanded because the petition/petitioner was entitled to equitable tolling...As well as have the claims heard on their merit.

1. This Court shall agree that, "The Overriding Responsibility of this (reviewing) Court is to the Constitution of the United States, No matter how late it may be that a violation of the United States Constitution (as are now complained of occurred) are found to exist," the court shall be deaf to all such suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, even on the eve of execution, because this High Court was not earlier able to self enforce (Mr. Milner's) petitioner's personal rights under the Constitution. Accord Chessman v. Teets, 77 S.Ct. 1127, 1132 (1957) emphasis added...He should be allowed to to proceed, pursuant to: 28 U.S.C. §2263 (b)(2) and (b)(3)(B). Filing of Writ of Cert; tolling rules: The time requirements established by subsection (a) shall be tolled - (2) from the date on which the first petition for post-conviction review or other collateral relief is filed until the State Court's disposition of such petition; ... (B). a showing of good cause is made for the failure to file the Writ/Habeas Corpus/Application within the time period established by this Court.

2. Finally, The Petitioner ask the Full Court, to offer a "Judicial Clarification" concerning Answers to the following Questions:

1. WAS PETITIONER UNCONSTITUTIONALLY DENIED BY A STATE COURT, THE RETROACTIVE RELIEF AND APPLICATION OF U.S. SUPREME COURT DECISIONS, "UNITED STATES V. ALLEYNE, GREER, JOHNSON, SHAVERS, BOOKER: DENIED THE APPLICATION OF MARBURY V. MADISON, TESTA V. KATT: THE HARPER RULE PURSUANT TO ARTICLE VI. CLAUSE 2. "SUPREMACY CLAUSE" NUNC PRO TUNC?

2. WHETHER THE STATE COURT BY ITS REFUSAL TO APPLY THE DECISIONS OF ALLEYNE-APPRENDI, VIA THE SUPREMACY CLAUSE TO THE APPELLANT'S CASE NUNC PRO TUNC, WAS TANTAMOUNT TO A STATE COURT COMMITTING A UNCONSTITUTIONAL STRUCTURAL DEFECT?
3. WHETHER APPELLANT'S SENTENCE IS ILLEGAL?
4. WHETHER THE PCRA STATUTE WARRANTS RELIEF IN THE CONTEXT OF A TIMELY FILED PETITION WHEN APPELLANT'S TIMELY FILED PCRA AT CASE #1062 WDA 2016 WARRANTS RELIEF PURSUANT TO ALLEYNE?

WHEREFORE, A Rehearing/by the En banc Court is required because an Panel of this Court failed to satisfactorily Answer the Above Questions; thus, A Clarification is Necessary by this Court to Enforce the Demands of the Supremacy Clause on the Inferior Courts during Collateral Proceedings. Moreover, There is a reasonable probability the Full Court will vindicate its powers to allow the Original Writ to be heard; Grant Certiorari, and Reversal of the Denial.

II. REHEARING IS REQUIRED BECAUSE BOTH THE PANEL DECISION AND PA STATE SUPREME COURT'S DECISIONS FAILED TO EVALUATE WHETHER THE INFERIOR COURT'S JUDGMENT VIOLATED THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION.

We further express a belief, based upon a reasonable study and Judgment that this appeal for En Banc/Rehearing In Lieu of the Original Petition-Brief for Writ of Certiorari involves one or more questions of exceptional importance.

1. WAS PETITIONER UNCONSTITUTIONALLY DENIED BY A STATE COURT, THE RETROACTIVE RELIEF AND APPLICATION OF U.S. SUPREME COURT DECISIONS, "UNITED STATES v. ALLEYNE, GREER, JOHNSON, SHIVERS, BOOKER; DENIED THE APPLICATION OF MARBURY v. MADISON, TESTA v. KATT; THE HARPER RULE PURSUANT TO ARTICLE VI. CLAUSE 2. "THE SUPREMACY CLAUSE", NUNC PRO TUNC?
2. WHETHER THE STATE COURT BY ITS REFUSAL TO APPLY THE DECISIONS OF ALLEYNE-APPENDI, VIA THE SUPREMACY CLAUSE TO THE APPELLANT'S CASE NUNC PRO TUNC, WAS TANTAMOUNT TO A STATE COURT COMMITTING A UNCONSTITUTIONAL STRUCTURAL DEFECT?
3. WHETHER APPELLANT'S SENTENCE IS ILLEGAL?
4. WHETHER THE PCRA STATUTE WARRANTS RELIEF IN THE CONTEXT OF A TIMELY FILED PETITION , WHEN APPELLANT'S TIMELY FILED PCRA AT CASE #1062 WDA 2016 WARRANTS RELIEF PURSUANT TO ALLEYNE?

This is true especially because these basic tenets of our Supreme Court Jurisprudence and Appellate Jurisdiction require immediate vindication and reaffirmation, and because the effect of Retroactive Supreme Court Decisions as the "Law of the Land" shall be applied to both Collateral and Direct Appellate Review Equally to a petitioner's benefit. Therefore, Reversal of the Panels decision of Feb.20, 2018 , shall be granted. Herein, the Order/presents a series of counterrelated questions of "exceptional importance" we urgently and respectfully request immediate reconsideration by this Court en banc.

CONCLUSION

Based upon the foregoing arguments and authorities, upon the briefs previously filed in this Court, and upon the record in the case at bar, the Petitioner respectfully urges this Honorable Court to grant a rehearing en banc.

Respectfully submitted,



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Dated: March 1, 2018/Perfectd: 4-15-2018.