

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Benjamin Rettig — PETITIONER
(Your Name)

vs.

State of Utah — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

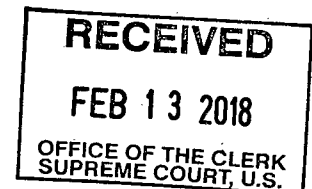
151 Benjamin Rettig
(Your Name)

#203136 C217B

P.O. Box 550
(Address)

Gunnison ut 84634
(City, State, Zip Code)

Prison
(Phone Number)



QUESTION(S) PRESENTED

1. Was the Utah Supreme Courts decision upholding the Constitutionality of §77-13-6 (2009 U.C.A) (1953 as Amended), Utahs Guilty Plea Withdrawal Statute, contrary to established U.S. Supreme Court Precedent, and, did the upholding of the statute violate the Petitioners Federal Constitutional Right protections as defined by this Court as well as his protections under the state constitution?

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:

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APPENDIX E: Brief of Steve S. Christensen - Attorney at Law

APPENDIX F: Supplemental Brief of Steve S. Christensen; Clinton R. Grimhall - Attorneys at Law

Appendix G: Statutes + Constitutional provisions

TABLE OF AUTHORITIES CITED

CASES

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Johnson v. US 520 US 461 (1997)
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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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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 A to the petition and is

- ☐ reported at 2017 Utah 83 (decided 11/22/17); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ 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 _____.

☐ 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 11/22/17.
A copy of that decision appears at Appendix A.

☐ 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

See provisions attached at Addendum G.

STATEMENT OF THE CASE

Peltoneva pled guilty to Aggravated Murder and Aggravated Kidnapping upon the Advice of Counsel who failed to inform me of the laws in relation with the facts I failed to advise me of the accomplice liability theory where had I known this I would never had entered a plea to Aggravated Murder. The prosecution and Court recognized that it was not my intent that Mr. Montemson be murdered. My intent was to burglarize the dwelling as I was under the belief he was not home and it was my co-defendant who committed the murder, not me. R-411:21, 22-30. I explained that I was present but when it happened I froze because I feared for my own life, and had been threatened by my co-defendant. R-417-46.

Counsel never gave me a copy of my discovery but once I found out some facts and later I filed, based on the Advice of an Attorney, a letter to withdraw my plea because I was persuaded into giving a false version of the events. See R-411 - R-415. When I submitted the letter my attorneys withdrew the plea and the case proceeded to sentencing. Further counsel would yell at my parents in the case to get them to assist counsel into manipulating and lying entering a plea, counsel never ask me of my version of the case, the private investigation never relayed all information to counsel given to him by me and this was not discovered until after the discovery was given to me, counsel made up the story and kept me apprised of the developments in the case, counsel made up the story in the plea when I tried to correct him he would tell me to shut up, they wrote the statement in the plea agreement not me. It was not my version of my facts, I was not apprised or shown the evidence against me until plea negotiations happened, counsel manipulated me into lying and I did not want to and a conflict developed that precluded the whole case.

Over all the plea is constitutionally invalid as was representation from each attorney I had. The case was a highly publicized murder of a Brigham Young University professor. It was originally believed to be his children who murdered him but after several months of investigation, we co-defendant and myself were arrested. After all was said and done I was sentenced to prison on a 25 to life term for aggravated murder and 15 to life term for aggravated kidnapping, to run concurrent. I appealed. The case was dismissed for lack of jurisdiction. I filed a pro se motion to reinstate my appeal rights which was granted. Counsel was appointed. The appeal ensued. One attorney backed off the case for poor representation and the other remained through initial briefing and he moved to withdraw. Another attorney and co-counsel were appointed. Counsel filed a replacement brief and since the first brief was responded to and not sticked, and the second one was responded to, both are on the record as both of the states and the reply briefs. Both responded to. The second set of Appellate attorneys, Mr. Christensen and me, finally, attorneys out of Salt Lake City instead of the Provo area, the vicinity where the crime occurred.

The Appeal

The first set of attorneys raised Federal 12th Amendment matters raising the issue of 97-13-6(2)(b)(c) being an unconstitutional provision restricting a parties ability to challenge a guilty plea on direct appeal and ineffective counsel during the plea process unless a party files a motion to withdraw the plea before sentencing.

The only recourse is to file a Petition for Post Conviction Relief after sentencing in which appointment of counsel is discretionary and most of the time not granted. See 378B-9-109(2008). Therefore it is up to a pro se litigant to discover defenses and counsel errors who usually is untrained in law, whose legal assistance during these proceedings was constitutionally guaranteed. To complicate matters these errors, in order to be found, requires the ability to be able to research and in a case such as this, Peltoneva had no access to a law library and the prison contact attorneys limited help is woefully inadequate. Sullivan State College, (1999).

Statement of the Case (cont)

The Utah appellate Courts have recognized in several Habeas and PCRA cases the difficulties pro se litigants have in Utah representing themselves but that's all it is is recognizing and not exercising supervisory authority to remediate the problem. Such is the case here.

The Court in this case went into extensive detail discussing the Post Conviction ^{Remedies} ~~Statute~~ (PCRA), instead of the Sixth and Fourteenth Amendment matters as did the first set of appellate attorneys presented and the state and Federal 14th amendment claims raised by the second set of attorneys presented.

The Utah Supreme Court Affirmed the district courts reinstatement of my appeal rights not addressing the Plain error and Ineffective Counsel issues, only addressing statutory constitutional arguments.

In addressing those arguments the Court failed to address 3rd 13-6(2)(b) claiming the issue was not raised but it was, in the first brief by Counsel Neil D. Skousen (U.S.B.#10064) in his 5/5/14 Brief from pg 17-45 and this brief was not stricken, no motion to strike this brief was filed nor did the court sua sponte strike it. Therefore its contents were still part of the appellate record, raising and presenting claims. Therefore the court erred in not addressing 3rd 13-6(2)(b). See Pettig 7759 and 77FN14.

In Fact the court, in the Petitioners opinion, sidestepped all issues raised on appeal and did not properly answer any Federal claim raised, ignored or improperly viewed Petitioners argument to their own law in order to not have to squarely address the claims because the court knew that if they were properly addressed it would result in relief for the Petitioner.

REASONS FOR GRANTING THE PETITION

1. The Petitioner as well as the people of the State of Utah are having their 6th and 14th amendment as well as their state constitutional Rights under Art 1 § 7 and § 12 violated when they, such as in this case, have to rely on challenging a guilty through the State Post conviction Remedies Act § 78B-9-101 et seq. and Rule 65C by statutory directive pursuant to § 77-13-6(2)(c). See also Art. 6 § 2 of the U.S. Constitution.

Petitioner asserts that § 77-13-6(2)(b)(c) are both suspect and relevant as in violation of the above constitutional provisions set forth above as § 3(2)(b) directs that the motion to withdraw a guilty plea be made before sentencing and § 3(2)(c) directs that any challenge to a guilty plea made post sentencing be made pursuant to Utah Post conviction provisions - where the party is not guaranteed Counsel. See § 78B-9-109.

This deprives the Petitioner of the ability to properly present Ineffective Assistance of Counsel in the plea proceedings, which if Counsel fails to file a motion to withdraw the plea before sentencing, The Petitioner is not only precluded from raising all issues in matters (except for issues relating to sentencing) pre sentence through post plea, but is also precluded from raising any issues on appeal except for matters relating to sentencing only. See Martinez v Ryan 132 S.Ct. 1309, 1317-18 (2012).

2. The Utah Supreme Court in Rhinehart (St. v Rhinehart 2007Ut61, 167 P3d 1046) determined that § 77-13-6(2) is a Jurisdictional bar and is constitutional, Id at 710-41 but this is not so under this Court's decisions in Padilla v Kentucky 130 S.Ct. 1473 (2010); Lafler v Cooper 132 S.Ct. 1376 (2012) and Missouri v Frye 132 S.Ct. 1399 (2012), Id at 1399.

The Above issues not only run afoul with clearly established U.S. Supreme Court precedent and Federal Law but also afoul with the state constitution Art 1 § 7, 12; Art 8 § 3, 4, 5, The Separation of Powers clause Art 5 § 1, State case Law Brown v Cox 2017Ut3 (which analyzes Supreme Court Rule making authority and its citations included), Julian v State 966 P2d 249, 259 (Ut. 1998) (which analyzes Pro Se Litigants Limitations while incarcerated) but Petitioner asserts very problematic is willful violations of the Supremacy clause, Art 6 § 2 U.S. Constitution.

This Court should grant the petition to resolve the constitutional, statutory and Case Law conflicts because the Utah Supreme Court used jurisdictional conflicts to skate out of Review of the conflicts with the conviction, ie matters with an constitutionally infirm plea based on Ineffective Counsel but ruled on their version and thoughts of the constitutionality of § 77-13-6(2) and while failing to consider

Reasons for Granting the Petition (Cont)

properly presented U.S. Supreme Court precedent which legally counters the States as well as the Courts standing on the issues presented on appeal.

Pursuant to Johnson v. U.S. 520 U.S. 461, 468 (1997) if the Law was adverse to the defendant through the trial process but changed by the time of Appeal and became the change was in his favor and also affected his substantial he will receive the benefit of the change, therefore Martinez, Frye, Lafler, Padilla and any other relevant Federal or State case applicable under these circumstances must apply, including the Reasoning and application of Brown v. Cox.

The Petitioner being charged in Dec. 2010 and still timely Litigating the conviction, he should receive the benefit of all beneficial and applicable Rulings. The Petitioner receiving Ineffective assistance of counsel through most of this Litigation has severely limited his ability to properly prepare and present an adequate defense, investigate and defend his cause.

This case is not a misdemeanor, Petitioner received an INITIAL Board hearing of 2046. I am not proclaiming I am completely innocent by no means. My intent was to commit a burglary only, I grieve every day because I was too afraid to stop what happened when the burglary went sour and my codefendant went crazy, and I do deserve a penalty but not what I was manipulated into pleading to.

I am not the only person in this position in Utah, there are many and it is due to the unconstitutionality of 377-13-6(2). It is fundamentally unfair and unconstitutional to place a person

Goodman and Goodman the Petitioner (and)

petitioners for writs of habeas corpus and certiorari to the Supreme Court of the State of New York, from the Appellate Division of the Court of Appeals for the Second Department, in the following case:

People v. Goodman and Goodman

People v. Goodman and Goodman, 125 N.Y.2d 1000, 601 N.E.2d 1000, 1992 WL 1000 (N.Y. App. Div. 2, 1992).

The petitioners, who are the sons of the respondent, were born in the State of New York and are now residing in the State of New York. They were arrested on December 1, 1991, and charged with the crime of second degree murder in the second degree. They were arraigned on December 1, 1991, and pleaded not guilty. They were held in the County Jail of New York City.

The petitioners were represented by counsel at the time of their arrest and arraignment. They were also represented by counsel at the time of their trial. The trial was held on December 1, 1991, and the jury returned a verdict of guilty of second degree murder in the second degree. The trial judge sentenced the petitioners to the State Prison for a term of 15 years.

The petitioners appeal from their conviction and sentence. They argue that the trial judge erred in admitting certain evidence and in sentencing them to the State Prison. They also argue that the jury was improperly instructed. The Appellate Division of the Court of Appeals for the Second Department affirmed the conviction and sentence. The petitioners seek review of the Appellate Division's decision. They argue that the Appellate Division's decision was based on an erroneous view of the law and that it was not supported by the facts of the case.

The petitioners also argue that the trial judge erred in admitting certain evidence and in sentencing them to the State Prison. They argue that the jury was improperly instructed. The Appellate Division of the Court of Appeals for the Second Department affirmed the conviction and sentence. The petitioners seek review of the Appellate Division's decision. They argue that the Appellate Division's decision was based on an erroneous view of the law and that it was not supported by the facts of the case.

The petitioners also argue that the trial judge erred in admitting certain evidence and in sentencing them to the State Prison. They argue that the jury was improperly instructed. The Appellate Division of the Court of Appeals for the Second Department affirmed the conviction and sentence. The petitioners seek review of the Appellate Division's decision. They argue that the Appellate Division's decision was based on an erroneous view of the law and that it was not supported by the facts of the case.

such as the defendant in a situation as serious as this one, with PROFESSIONALLY INCOMPETENT Attorneys, and this is supported in the Record, and have a court and prosecutor see the injustice just to capitalize on it.

In respecting the Rules of this Court the Petitioner has made this Petition as short as possible although the matters are issues of public importance and deserve this Court's Review, because citizens of the State of Utah's Rights are being compromised by legislative encroachment on constitutional principles cherished by the citizens and supposedly respected by the judiciary. It is the responsibility of this Court to, in cases of compelling reasons under Rule 10(b)(c) to grant a petition and resolve conflicts such as those presented herein and it is respectfully requested that this Court do so. It is further requested that the court understand that The Petitioner is pro se' with limited research ability.

CONCLUSION

Petitioner Requests to be Allowed to proceed In Forma Pauperis.

The petition for a writ of certiorari should be granted.

Petitioner Requests Briefing be allowed.

Respectfully submitted,

Benjamin Rettig

Benjamin Rettig - Pro se'

Date: 1/22/18