

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA
October Term, 2017

JACQUELINE TEDDER,
Petitioner

No. 17-7038
6:16:-cv-02554-HMH

Against

WARDEN LEATH CORRECTIONAL INSTITUTION
LEATH CORRECTIONAL INSTITUTION
Respondent - Appellee

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals
Fourth United States Circuit

From the final dismissal of her Petition for a Writ of Habeas Corpus
And denial of Certificate of Appealability by the Fourth Circuit
Court of Appeals
January 22, 2018

Petitioner requests that this Court exercise its supervisory capacity over the courts below.

Petitioner
Jaqueline Tedder - Admill
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Respondent
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Due circa April 29, 2018

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QUESTIONS PRESENTED

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II, WHETHER A POLICE SNIFFER DOG SEARCH FOLLOWING A ROUTINE TRAFFIC STOP IS AN UNCONSTITUTIONAL SEARCH AND SEIZURE?

III, WHETHER COUNSEL WAS LAYERED INEFFECTIVE?

AUTHORITIES

United States Constitution, Amendments: Fourth, Fifth, Sixth, and Fourteenth amendments.

CASES:

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WHY THE COURT SHOULD HEAR THIS CASE

Petitioner requests that this Court exercise its supervisory capacity over the courts below because the courts below have totally ignored the law of the land that was decided by this Court. This presents the very real question of who is the high court. Petitioner requests that this Court exercise its supervisory authority over the courts below.

OPINIONS BELOW

The opinions courts below are annexed to this petition.

JURISDICTION

This Court has Constitutional authority to supervise the courts below.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner invokes the protections of the: Fourth Amendment to the United States Constitution which prohibits unreasonable searches and seizures, and the right to effective

assistance of counsel under the Sixth Amendment, and the Fourteenth Amendment which makes the Fourth and Sixth Amendments applicable to the states.

HISTORY OF THIS CASE:

On October 11, 2005, your petitioner was stopped by a deputy on patrol because a trailer hitch was mounted behind the vehicle tag (license plate) like a million others and was described as blocking the view of the tag. The officer also claimed that the vehicle crossed the right line which is not illegal. The tag did not match the vehicle and the officer wrote a warning ticket. The deputy ran his dog around the vehicle. The dog was never certified as capable of narcotics detection, and supposedly “alerted “ to a can of paint unknown to your petitioner, where the fruit of the illegal search revealed a quantity of cocaine. Counsel ineffectively persuaded defendant to plead guilty. Her post-conviction relief petition alleged an unconstitutional stop, and seizure. The state courts denied her petitions multiple times claiming she failed to meet her burden that a vehicle stop followed by an illegal dog sniff search resulted in an unconstitutional search and seizure and an involuntary plea. The United States Court likewise held that a stop for a minor traffic violation followed by a dog search is not illegal but based its decision on time bar for plain error, or Constitutional claims, (which this is). Application to the Fourth Circuit Court of Appeals was denied January 22, 2018 as: “Tedder has waived appellate review by failing to file specific objections....” (CA4 p. 3 of 3) Her habeas petition specified an illegal search.

FACTS OF THE CASE:

Respondent further states the facts of the case: “(A) deputy was on patrol... when he noticed a large trailer hitch on Petitioner’s vehicle which partially obscured the license plate number. (fn. 2, “two inch” obscuration is legal) The deputy ran his narcotics trained canine around the vehicle as a second deputy wrote Petitioner a warning ticket for improper tag display. The dog alerted....” The search following the “dog alert” was unconstitutional and counsel was Constitutionally ineffective for not challenging the search which was overtly unconstitutional (Rodriguez v. United States, 575 U.S. ____ (2015) before advised defendant to plead guilty.

ARGUMENT

I, THE DISTRICT COURT HELD THAT PETITIONER DID NOT FILE AN OBJECTION. PETITIONER DID FILE AN OBJECTION WHICH STATED "... UNCONSTITUTIONAL SEARCH...." (Paragraph 1, annexed) EVEN THEN, FAILURE TO FILE OBJECTIONS IS NOT FATAL. (ASSUMING ARGUENDO)

In her OBJECTIONS TO MAGISTRATE'S REPORT, Petitioner stated: "As previously noted this is an unconstitutional search, and counsel's conduct in failing to litigate the legality of the search was also in violation of petitioner's right to effective assistance of counsel following an unconstitutional search." (Petitioner's paragraph 1, annexed)

The court makes reference to a lack of objections filed by your petitioner. The petitioner makes reference to *Thomas v. Arn*, 474 U.S. 140, 1985) which states "rules of procedure should promote, not defeat the ends of justice" (Id. p. 145) and further: "Even a sensible and efficient use of the supervisory power, however, is invalid if it conflicts with constitutional or statutory provisions. A contrary result would confer on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing." (Id. p. 148) "Congress provided for a clearly erroneous or contrary to law standard of review...." (Id. p. 149) "(I)f no objections are filed, it does not preclude further review by the district judge, *sua sponte* or at the request of the party, under a *de novo* or any other standard." (Id. p. 154) The court may decide ... on the applicable law." (Id. f.n. 9) Under Fed. Rule Crim Proc. 52 (b) the court may correct plain error despite failure of any party to object. (Id. f.n. 15)

Curiously this Court did not cite its own decisions, which this instant decision is in conflict with:

See: *U.S. v. Schronce*, 4th Cir. 727 F.2d 91 1984, findings of fact were insulated from failure to file objections, not conclusions of law (f.n. 2) Clear error reviewable. (*Diamond v. Colonial Life*, 4th Cir. 2005, 416 F.3d 310, 315)

In *Snyder v. Ridenour*, (889 F.2d 1363 CA4, 1989[2] p. 1366) the Fourth Circuit held that "Under 'fundamental error doctrine' court will consider issues raised for the first time on appeal if error is 'plain' and if refusal to consider error would result in denial of fundamental justice, such error must be so serious and flagrant that it goes to very integrity of trial."

With proper notification, plain error/Constitutional questions of law, survives failure to object to magistrate's report. (*Henderson v. Carlson*, 3d Cir, 1987, 812 F.2d 874, [2,3], *Boggs Diguglieimo*, 2008, 3d. Cir, 264 Fed. Appx. 165; *Brightwell v. Lehman*, 3d. Cir. 2011, 637 F.3d 187, 193-94; *Donaldson v. U.S.* 3d. Cir, 2006, 281 Fed. Appx. 75, 76 [1]; *Nara v. Frank*, 2007, 3d. Cir. 2007, 488 F.3d 187, 195; *Ferrone v. Onorato*, 2008, 3d. Cir. 298 Fed. Appx. 138, 140-41; *Blasi v. Att. General Pa. USDC*, 2000, 120 F. Supp. 2d 451)

PLAIN ERROR (essentially under Due Process)

The United States Supreme Court has held, and has therefore imposed on the state courts, that the United States Courts of Appeal may recognize a plain error that affects substantial rights, even if that error was not brought to the district court's attention. "Rule 52(b) [Fed. Rule Crim. Proc.] permits an appellate court to recognize a 'plain error that affects substantial rights, even if the claim was not brought to the district court's attention. Lower courts, of course must apply the Rule as this Court has interpreted it . And the cases that set forth our interpretation hold that an appellate court may, in its discretion, correct an error not raised at trial only where the appellant demonstrates that (1) there is an error, (2) the error is clear and obvious, rather than subject to reasonable dispute, (3) the error affected the appellant's substantial rights, which in the ordinary case means it affected the outcome of the district court proceedings, and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings" (internal quotes omitted, *United States v. Marcus*, 130 S.Ct. 2159, 2163,)

With proper notification, plain error/Constitutional questions of law, survives failure to object to magistrate's report. (*Henderson v. Carlson*, 3d Cir, 1987, 812 F.2d 874, [2,3], *Boggs Diguglieimo*, 2008, 3d. Cir, 264 Fed. Appx. 165; *Brightwell v. Lehman*, 3d. Cir. 2011, 637 F.3d 187, 193-94; *Donaldson v. U.S.* 3d. Cir, 2006, 281 Fed. Appx. 75, 76 [1]; *Nara v. Frank*, 2007, 3d. Cir. 2007, 488 F.3d 187, 195; *Ferrone v. Onorato*, 2008, 3d. Cir. 298 Fed. Appx. 138, 140-41; *Blasi v. Att. General Pa. USDC*, 2000, 120 F. Supp. 2d 451)

"Omission of culpable participation requirement from jury instructions was plain error (which) affected defendant's substantial rights." (*U.S. v. Dobson*, 419 F.3d 231, 2005, CA3) Bucks County continually relies on an inappropriate "time bar" which is non-cognizable in cases of plain error. "Court of Appeals would review ... for plain error" despite that timely appeal was not taken. (*Selkridge v. United of Omaha Life Ins. Co.* 360 F.3d 155, 2004, CA3;

and would review for plain error where appeal was taken absent timely objection to duplicitous indictment (U.S. v. Sturdivant, (Sotomayor, Calabresi) 2001, 244 F.3d 71, 77, CA3)

“(W)e have had little difficulty noticing an error and remanding cases ... where substantial rights were affected and the integrity of our system had been undermined by illegal sentences.” (U.S. v. Vasquez, 271 F.3d 93, 2001, CA3) “Plain error doctrine requires that plain error effecting substantial right of defendant not be overlooked.” (Govt. of Virgin Islands v. Smith, 1991, 949 F.2d 677, CA3) This plain error is particularly egregious as it upsets hundreds of years of law to result in a fundamentally unfair conviction. (U.S. Corso, 2008, 549 F.3d 921, CA3)

“Under plain error review, we may grant relief if, 1, the District Court committed an error 2, the error is plain, and 3, the error affects substantial rights (United States v. Olano, 507 U.S. 725, 732, 113 S.Ct. 1770) . An error is a deviation from a legal rule. (U.S. v. Russell, 134 F.3d 171, 180 CA3, 1988) It is plain when it is clear under current law, And it affects substantial rights when it is prejudicial, it affects the outcome of the district court proceeding.” (U.S. v. Harris, CA3, 2006, 471 F.3d 507) In *Harris*, the plain error referenced was bolstering.

II, A POLICE SNIFFER DOG SEARCH FOLLOWING A ROUTINE TRAFFIC STOP IS AN UNCONSTITUTIONAL SEARCH AND SEIZURE.

The South Carolina Courts held that the search of the defendant’s vehicle which was stopped for minor vehicle violations (trailer hitch in front of license plate justified stopping the vehicle, and that once stopped for minor infractions, the officer who conducted an extended stop to allow his dog (dog was never certified as reliable) operated legally, however the State court misapprehends Constitutional precedent. “1. Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution’s shield against unreasonable seizures. A routine traffic stop is more like a brief stop under *Terry v. Ohio*, 391 U.S. than an arrest, see e.g. *Arizona v. Johnson* 555 U.S. 323. Its tolerable duration is determined by the seizure’s ‘mission’, which is to address the traffic violation that warranted the stop, *Illinois v. Caballes*, 543 U.S. 405 and attend to related safety concerns. Authority for the seizure ends

when tasks tied to the traffic infraction are -- or reasonably should have been -- completed. The Fourth Amendment may tolerate certain unrelated investigations that do not lengthen the roadside detention, *Johnson*, 555 U.S. , at 327-328 (questioning) *Caballes*, 543 U.S. , at 406, 408 (dog sniff), but a traffic stop 'become[s] unlawful if it is prolonged beyond the time reasonably required to complete the mission of issuing a warning ticket, id. , at 407.... a traffic stop prolonged beyond the time in fact needed for the officer to complete his traffic-based inquires is unlawful, *Caballes*, 543 U.S. , at 407.” (*Rodriguez v. United States*, 575 U.S. ____ (2015))

The State Court cites: “holding an examination by a trained narcotics dog is not a search and seizure but is considered a minor intrusion’ *Illinois v. Caballes*, 543 U.S. 405, 409, (2005)” (Opinion, Section 2) does not square with the Supreme Court’s application of its own decision, nor with the holding in the instant *Rodriguez* decision. This Court failed to consider that the officer stopped the vehicle for minor violations, then extended the stop to allow a search by the sniff dog. This is impermissible. Whether the dog “alerts” is irrelevant, since the extended stop which permitted the dog to operate is impermissible as noted in *Caballes*, which this court misapprehended, with or without the benefit of *Rodriguez*. “(A) dog sniff is not fairly characterized as part of the officer’s traffic mission.” (*Rodriguez*)

III, COUNSEL WAS LAYERED INEFFECTIVE

Prior to her involuntary plea, through post conviction applications and appeals, counsel began to be and continued to be constitutionally ineffective, negating the legality of her conviction which was based on “fruit of the poison tree“ evidence, and a coerced unintelligent plea. (*Kimmelman v. Morrison*, 1986, 477 U.S. 365, 374-75; *Maples v. Thomas*, 2012, 132 S.Ct. 912) The failure to perfect a requested appeal is the functional equivalent of having no representation at all. (*Evits v. Lucey*, 469 U.S. 387, 396-97)

CONCLUSION

The courts below ignored precedential law found in the decisions of this Supreme Court. Defendant’s judgment of conviction and sentence should be arrested