



Case No 17-8757

IN THE SUPREME COURT OF THE UNITED STATES

GLENN ELLIOTT LEONARD,
Petitioner,

PETITION FOR RECONCIDERATION

V.

STATE OF OREGON, et.al.,
Respondant(s)

Glenn Elliott Leonard
SID#6652617
82911 Beach Access Rd.
Umatilla, Or 97882

CERTIFICATION

(Rule 44)

This is to certify that this Petition for Reconsideration is being made on the grounds that there are other substantial grounds that were not previously presented, and the Petition is presented in good faith and not for delay.

Introduction

In my Petition for Writ of Certiorari, I raised the issue of the denial of my United States Constitutional right to effective assistance of appellate-counsel on my first appeal from conviction, and cited the appropriate precedent from this Court.

I am unlearned in the law, and was forced to rely on an attorney in which the State of Oregon appointed to me. cf, eg., id. at 620-621, 125 S.Ct. 2582, 162 L.Ed.2d. 552 (describing the educational background of prison population).

Justice should not be only available to those in society that can afford to retain counsel, to leave the poor either unrepresented or marginally represented by a public defender.

I have from the moment of my arrest, declared my innocence, I put my faith in a judicial system in Oregon, but have had a stark and rude awakening.

The State expert testimony that was later determined

(during my direct-appeal) to be inadmissible under Oregon Evidence Code 403. Under this rule, "if the probative value is substantially outweighed by [the] danger of"...."unfair prejudice", then the evidence cannot be admitted.

Under FRE 403, it states that "unfair prejudice" within it's context means an unfair tendency to suggest a decision on an improper basis, such as an emotional one.

A. As stated in my writ, the State of Oregon's Supreme Court ruled that:

"the expert diagnosis of sexual abuse was nonetheless inadmissible because, under OEC 403, the probative value was substantially outweighed by the danger of unfair prejudice."

State v Southard, at 141.

And that:

"The fact that a diagnosis came from a credentialed expert, surrounded with the hallmarks of the scientific method, created a substantial risk that a jury 'may be overly impressed or prejudiced by perhaps misplaced aura of reliability or validity of the evidence'" id at 140-41.

(quoting State v Brown, 297 Or 404, 687 P2d 751 (1984)).

My case was heard by a jury. The jury did not find me guilty by a unanimous polling, and thereby not beyond a reasonable doubt.

In Oregon,"[i]n all criminal prosecutions, the accused shall have the right to....and imarcial jury." Article 1 § 11.

That is the same right found in the Sixth Amendment.

B. The State's expert witness testified to a conclusive fact that went to the question of guilt. She did not simply provide helpful information to assist the jury, she answered the question that the jury was empaneled to determine, whether the the defendant was guilty or innocent. OEC 702.

HOWEVER- her testimony was not "based sufficient facts or data." FRE 702.

FRE 704(b) states "[i]n criminal cases, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or a defense. These matters are for the trier of facts alone." (underscore added).

There is no differance between the expert providing a conclusive diagnosis of sexual abuse, and giving an opinion on the defendant's mental state. Both are for the trier of fact to determine, and not for the expert, and the Oregon Supreme Court concurred in State v Southard. But my state=appointed attorney refused to brief this OEC 403 issue, so the court could not possibly review it. IEFFECTIVE ASSISTANCE.

The medical report submitted by the State expert even concluded that there was no physical findings to affirm her alleged "diagnosis of sexual abuse." This was brought out by defense counsel, but the prejudice was so great that the jury deferred to the experts conclusive opinion.

This is a text-book example of jury bias and prejudice. If I were the deviant in which the State of Oregon claims me to be, then after 11+ years of observation within the State's institution, would demonstrate that fact, but it does not.

C. Enclosed with this Petition, I provide for your consideration an excerpt from a DHS Investigative Report conducted 1 month before the children's mother and I separated after I found her being unfaithful with another man. All three of the children engaged with the investigator openly and answered all her questions, however embarrassing they may be. Not one of them gave any indication to this seasoned specialist of any kind of abuse, sexual or otherwise. Fn11

D. I understand the federalism vs state issue, but all I am asking is for one opportunity to present this OEC 403 issue to the State Appellate Court. The state would not be prejudiced and the State sovereignty would be maintained.

CONCLUSION

THEREFORE, in the interest of justice I throw myself on

fn.1 This document was under a protective order so I do not have the complete report, but was allowed to have this page as exculpatory evidence.

the mercy of this Court and pray that this Court will grant
a second opportunity to present this issue with competent
counsel, to prevent manifest injustice.

DATED:

Respectfully Submitted,


Glenn Elliott Leonard,
pro se petitioner

CERTIFICATE OF SERVICE

I certify that on July 2, 2018, I originally served the
foregoing PETITION FOR RECONSIDERATION upon the parties hereto
by depositing the same into the TRCI Institutional mailing
system in a First Class, postage paid envelope to the following
address:

DEPARTMENT OF JUSTICE
Att: Andrew Hallman
1162 Court St. NE
Salem, Or 97301-4096


Glenn Elliott Leonard,
pro se petitioner

**Additional material
from this filing is
available in the
Clerk's Office.**