

SUPREME COURT OF THE UNITED STATES

KEVIN OGDEN, PETITIONER,

VS.

CHELSEA SMITH, WARDEN,

PENITENTIARY OF NEW

MEXICO SOUTH, STATE OF

NEW MEXICO, et. al.

..... RESPONDENTS.

PETITION FOR REHEARING

Case Number: 24-7175

By: Kevin Ogden 44384

Kevin Ogden, Pro Se

Penitentiary of New Mexico South

Unit: 2A-L-104

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Issue 1: The Supreme Court of New Mexico Lacked Jurisdiction To Rule Prior To Trial.

The S.C. of N.M. has granted the State permission to pretrial appeals for half of a century. The law quoted by them says the pretrial appeal is for the defendant. This is a public interest case, and is not for delay or in bad faith because the State of N.M. practices law contrary to State and Federal cases which state the opposite.

It is intervening case law stated below due to the S.C. of N.M. made their pretrial opinion in 1994 and there has been many new cases since then which were not previously presented, See Rule 44(2). See Griffen ET AL. V. Illinois, 351 U.S. 12 (1956), Issue 2 this Petition.

The courts have ruled consistently in later cases that the case must be a final decision for the defendant to appeal prior to trial, and in rare cases the prosecutor, See Johnson V. Frankell, 520 U.S. 911 (1997). In this case the defendant claimed qualified immunity, and there was an interlocutory appeal prior to trial. The court ruled that it must be a final decision to appeal.

In Behrens v. Pelletier, 516 U.S. 299, paragraph 1, the court ruled in another interlocutory appeal that it must be a final decision to appeal prior to trial.

In Cornbase, Inc. v. Blelski, 143 S.Ct. 1915, 216 L.Ed 2d 67 (2023) the court ruled a pretrial appeal is only allowed for a final judgement, "11, para 1."

In Richardson Merrell, Inc v. Koller, 472 U.S. 424, 2nd para., the court ruled that it must be a final judgement to qualify as an immediate appeal, interlocutory.

A lack of a speedy trial was ruled to be a valid reason for a pretrial appeal by the defendant due to it being a final order, See United States v. Donald, 435 U.S. 850, page 853, 852: The Court of Appeals panel majority recognized that a denial of a pretrial motion in a criminal case generally is not appealable. The prosecutor in Mr. Ogden's case should not have been granted special privileges and allowed to appeal prior to trial.

"Finality of judgement has been required as a predicate for federal appellate jurisdiction, See

Abney v. United States, 431 U.S. 651, at 656.

In another criminal case the court ruled that "1... only final judgements are appealable," See Sell v. United States, 539 U.S. 1 (2003).

In a land dispute case, finality is required for an interlocutory appeal, See Lucero v. Tachias, No. 33,558, para. 4 (N.M. App. July 9, 2014).

In a criminal case in N.M., finality is required for an appeal, See State v. Pacheco, 850 P.2d 1028 (N.M. App. 1993), para. 3.

Finality is required in a criminal case for a pretrial appeal, State v. Webb, No. 35,411, page 10 (N.M. App. June 30, 2017).

In criminal cases the ruling must be final for an appeal, See State v. Catt, 435 P.3d 1255, para. 35.

The interlocutory appeal has its origin and use in federal civil rights cases. The State wanted the same right, a right it does not have. Mr. Ogden's prosecutor should not have been allowed an appeal prior to trial. The State lacked jurisdiction.

Issue 2: The Supreme Court of New Mexico Applied The Wrong Standard When It Denied Mr. Ogden The Right To Represent Himself on Appeal.

The Supreme Court of N.M. used and applied the well known legal precedent Faretta v. California thinking that it applied to appeals. It does not apply to appeals, See United States v. Rodriguez, No. 15-50239, 821 F.3d 632 (2016) (5th Cir.), footnote 3. Faretta v. California only applies when a defendant requests to represent himself at trial. Mr. Ogden did not.

Also, another well known standard was omitted that applies to appeals, See Anders v. California, 431 U.S. 671 (1977) where the defendant requests to represent himself on appeal, or at the very least, have the court review the merits of his case to determine if an appeal is warranted.

Mr. Ogden did not have a valid appeal. The assigned lawyer submitted a frivolous appeal.

The Supreme Court of The U.S. has ruled that defendants have the right to represent themselves on appeal, and to transcripts, See Griffin v. Illinois, 351 U.S. 12 (1956). Both apply to petitioner Ogden.

Issue 3: The Petitioner, Mr. Ogden, has not had an appeal or a habeas petition adjudicated in a court of law.

Under N.M. Habeas Corpus law the Petitioner's issues must be adjudicated in a court of law, See N.M.R.A. 5-802 Habeas Corpus Rules (G) 6.

The problem was identified in Anders v. California, 38 U.S. 738 (1968) in a short, but decisive opinion that Petitioner's (defendant's) issues must be presented to the higher court if valid, and court's must state specific reasons why each issue is not valid when ruling on State Habeas Petitions. The court states that it is necessary so the Petitioner may know how to file in the next stage of the criminal justice system. The Supreme Court of The U.S. states that it is impossible to proceed unless the issues are adjudicated and reasons given on each issue.

Question 4: The State May Not Appeal

The Supreme Court of The U.S. ruled in 1958 that the State can not appeal, See Green v. United States, 355 U.S. 184, at 188, 193-94.

"The Criminal Appeals Act should be strictly construed against the Government's right to appeal," See Carroll v. United States, 354 U.S. 394, at 399, 400 (1957), See also Will v. United States, 389 U.S. 90, at 96-97 (1967).

The Supreme Court of N.M. lacked jurisdiction to reverse the trial court's ruling that a Community Service Officer was not a peace officer, and for several reasons. The State can appeal if the trial court lacked jurisdiction to rule, which was not the case.