

25-7017

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE BOBBY RAY PARKER — PETITIONER

VS.

THE STATE OF OKLAHOMA — RESPONDENT(S)

FILED

AUG 01 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

ON PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO SUPREME COURT RULE 20 (1)(2)&(4)

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Question(s) Presented

1. Petitioner was Denied Counsel "AT TRIAL" in violation of 6th and 14th Amendments.
2. AEDPA is Unconstitutional as applied to *facts* of Petitioner's case.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] 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:

State of Oklahoma, Represented by Attorney General of Oklahoma

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PETITION FOR WRIT OF HABEAS CORPUS
OPINIONS BELOW

All relevant or related opinions are presented or listed in the attachment titled "EXHIBITS." Petitioner does not know if any of said opinions have been published in Federal Reporter or elsewhere.

STATEMENT OF JURISDICTION

The Jurisdiction of this Court is invoked under Supreme Court Rule 20 (1)(2)&(4) and under 28 U.S.C. §§ 1651 (a), 2241, 2242, and 2254 (a). Art. III, § 2.

Since a State (Oklahoma) is a party and Petitioner has made a prima-facie showing that he is imprisoned in violation of the U.S. Constitution, this Court has original and appellate jurisdiction. See U.S. Const. Art. III, § 2, cl. 1, 2. Compliance with Supreme Court Rule 20 (4)(a) and 28 U.S.C. §§ 2241, 2242 and 2254 (a)(b).

Petitioner was denied the right to counsel AT TRIAL, which is a violation of the 6th and 14th amendments. Hence this habeas writ is in compliance with the requirements of 28 U.S.C. §§2241 (C)(3) AND 2254 (A).

Petitioner has presented Question ONE to state trial and appellate courts. Both state courts denied relief on Question ONE (denial of counsel at trial claim), based on Petitioner's failure to comply with AEDPA's limitations period. See Exhibits A, B.

The fact that both state courts failed or refused to adjudicate merits of Question One does not change the fact both courts were given a full opportunity to resolve the constitutional violation[s] raised. Accordingly, Petitioner has satisfied requirements of 2254 (b).

Question Two did not exist or become ripe for adjudication until after state court proceedings (state court procedural rulings could not be addressed until after final judgement in the state appellate court). Federal courts have final say on federal constitutional questions.

As it regards making application to the district court and reasons for not making such application thereto, Petitioner certifies that he did make application in the district court where he is held. See exhibit (C). the district court for N.D. OK dismissed Petitioner's 2254 petition as time-barred under AEDPA. See exhibit C. Pursuant to the last paragraph of 28 U.S.C. § 2242 and S. Ct. Rule 20 (4)(a), Petitioner has provided the court with reasons for not presenting this habeas writ to the District Court AGAIN.

Finally, Petitioner declares that adequate relief cannot be obtained in any other form or from any other court. His substantiated denial of trial counsel claim has been presented to state trial and appellate courts (see exhibits A, B), U.S. Dist. Ct. N.D. OK (see exhibit C), and to U.S. Court of Appeals for the Tenth Circuit (see exhibit E). Neither court has addressed the merits of Petitioner's substantiated denial of trial counsel claim, despite the fact that denial of counsel is structural error AND void judgment--both of which require automatic reversal. Accordingly, adequate relief cannot be obtained in any other form or from any other court.

As demonstrated by the procedural history cited herein, this habeas writ is in compliance with S. Ct. 20(4)(a) as well as in compliance with 28 U.S.C. §§ 2241, 2242, and 2254 (a)(b).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S Constitution, 6th Amendment
- U.S. Constitution, 14th Amendment
- 28 U.S.C. §§ 2241, 2242, 2254(a)(b)
- Supreme Court Rule 20
- AEDPA
- Okla. Stat. tit. 22 O.S. § 1080

STATEMENT OF THE CASE

On January 11, 2023, Petitioner filed a third application for post-conviction relief in Tulsa County District Court, Case No. CF-1993-912. THEREIN, he presented for the first time he colorable, substantiated denial of counsel claim. He was denied relief on February 23, 2023. See Exhibit A.

Petitioner appealed to OCCA, Case No. PC-2023-319. Relief was denied on May 31, 2023. See Exhibit B.

Petitioner then filed his federal habeas petition § 2254 in the U.S. Northern District Court of Oklahoma, Case No. 23-CV-355-CVE-JFJ. Relief was denied on June 14, 2024. See Exhibit C.

Finally, Petitioner appealed the denial of his § 2254 petition to U.S. Court of Appeals for the Tenth Circuit, No. 24-5077. COA was denied on September 4, 2024. See Exhibit E.

QUESTION ONE. Petitioner was denied counsel “AT TRIAL” in violation of 6th and 14th Amendments.

STANDARD OF REVIEW

An accused’s right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases “are necessities, not luxuries.” Their presence is essential, because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be “of little avail,” as THIS COURT has recognized repeatedly. “Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.” *U.S. v. Cronin*, 46 U.S. 648, 653-654, 104 S. Ct. 20239 (1984);

Faretta v. California, 422 U.S. 806, 807, 95 S. Ct. 2525 (1975) (the 6th and 14th Amendments of our Constitution guarantees that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel BEFORE he can be validly convicted and punished by imprisonment). Also see U.S. Const. 6th Amendment.

ARGUMENT AND AUTHORITY

In 1993, in the Tulsa County District Court, Petitioner was charged with two counts of robbery with a firearm, Case No. CF-1993-912.

Petitioner requested counsel and a jury trial.

But on the Friday before trial on the upcoming Monday, Petitioner explained in open court that his court appointed counsel (Les Earl) refused to call alibi witnesses requested by Petitioner, which constituted an actual conflict of interest. Court appointed counsel even confessed to the Court that "he would not represent Petitioner if Petitioner kept insisting on presenting alibi witnesses."

In response, the trial judge ordered Petitioner to represent himself and set trial for the upcoming Monday--a mere two day period (he didn't have enough time to subpoena alibi witnesses; didn't have enough time to conduct discovery, and didn't have enough time to prepare and present a viable or complete defense).

As prerequisites to self-representation, *Faretta* requires the defendant to (1) make a clear and unequivocal request to proceed pro se and (2) make a knowing and intelligent waiver of the right to counsel, both of which must be done in open court on the record. See *Faretta*, supra., 22 U.S. at 835. (in order to represent himself, the accused must knowingly and intelligently forgo right to counsel, and the court should make him aware of the dangers and disadvantages of self-representation, so that the record will establish that "he knows what he is doing and his choice is made with eyes open").

But the judgment rolls for both State courts, U.S. Dist. Ct. N.D. OK, and the Tenth Circuit ALL show that Petitioner “never asked to proceed pro se” and “never told the trial judge--he did not want a lawyer, i.e., never waived his right to counsel.”

As a matter of law, Petitioner waived the right to self-representation by his mere failure to request it. See *Brown v. Wainwright*, 665 F.2d 607, 610-611 (5th Cir. 1982).

Since Petitioner did not ask to represent himself and did not waive the right to counsel and gave the trial judge a good reason for wanting another attorney (there was an actual conflict of interest in that Petitioner wanted to exercise his 6th Amendment right to present exculpatory witnesses, but trial counsel arbitrarily refused to do so), the trial judge was required--by the 6th and 14th Amendments--to appoint him lead instead of standby counsel to defend him at trial. See *Brown*, supra, 665 F.2d at 610-611 (If an indigent defendant stands mute upon arraignment, neither requesting counsel nor asserting the right of self-representation, an attorney must be appointed); *U.S. v. Padilla*, 819 F.2d 952, 955 (10th Cir. 1987)(“To warrant substitution of counsel, the defendant must show good cause, such as a conflict to interest, a complete breakdown of communication or an irreconcilable conflict which leads to an apparently unjust verdict”). Trial counsel’s prejudicial refusal to present alibi witnesses--made evident the existence of a conflict of interest, a complete breakdown of communication, and an irreconcilable conflict.

Under these particular circumstances, the trial judge’s failure to appoint new counsel to avoid or resolve an obvious conflict of interest constituted denial of right to counsel AT AND FOR TRIAL.

Reversal has been the result in ALL cases where the accused was denied counsel at and for trial. Hence, the 14th Amendment’s equal protection of law clause requires reversal in this case.

QUESTION TWO: AEDPA is Unconstitutional as Applied to Facts of Petitioner's Case

The Judgment rolls in State and Federal Courts, all show that Petitioner never waived his right to counsel and never asked to represent himself. Which means he was denied the right to counsel at and for trial.

Reversal has been the result in every case where an accused was denied counsel at a "critical stage" of criminal prosecution (trial is most critical stage of prosecution). That is to say, actual or constructive denial of counsel requires automatic reversal. See *Arizona v. Fulminante*, 499 U.S. 279, 306, 111 S.Ct. 1246 (1991).

Denial of counsel at trial requires automatic reversal because the 6th Amendment guarantees a criminal defendant the right to the assistance of counsel FOR HIS DEFENSE. The 6th Amendment's mandate of right to counsel is made obligatory on the states through the 14th Amendment. Accordingly, denial of counsel constitutes denial of due process, which renders void judgment of conviction. Due to its status as a legal nullity, a void judgment cannot be enforced or affirmed and hence may be challenged at any time -- even after final judgment.

But up to this point, ALL courts -- state and federal -- have denied Petitioner reversal on his "substantiated" denial of trial counsel claim based on his failure to meet AEDPA's one year limitations period.

Denial of counsel is denial of due process. And since reversal has been the result in ALL cases where the accused was denied counsel at trial, state and federal courts denied Petitioner equal protection of law by denying reversal on his substantiated denial of trial counsel claim.

Denial of due process and equal protection of law violates the 14th Amendment. Hence, AEDPA's one year limitations period is unconstitutional as applied to facts of Petitioner's substantiated denial of trial counsel claim.

A constitutional provision is superior to and supersedes any contrary rules or statutes. See, e.g., 16 AM.JUR.2d CONSTLAW § 2 (the people's constitutional standards must always prevail over the legislature's statutory standards. And where a statute or other rule and a constitutional provision are in conflict, the constitutional provision must prevail); *Marbury v. Madison*, 5 U.S. 137, 178 (1803) (If then the courts are to regard the constitution; and the constitution is superior to any ordinary act of the legislature; the constitution, and not such ordinary act, must govern the case to which they both apply); U.S. CONST. Art. VI, cl.2 (Theis constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the SUPPREME law of the land.); 16 AM. JUR.2d CONSTLAW § 1 (Whatever the constitution prescribes, the general assembly, and every officer or citizen to whom the mandate is addressed, must do, and whatever it prohibits, the general assembly, and every officer and citizen, must refrain from doing.)...

Since a constitutional provision is superior to and supersedes any contrary statutes or rules, AEDPA's limitations period must yield to the 14th Amendment's mandate of due process and equal protection of law; and must yield to the 6th Amendment's prohibition against denying criminal defendant counsel at trial.

Due to being repugnant to the 6th and 14th Amendments, trial court's denial of trial counsel to Petitioner should be reversed and remanded for a new trial, with instructions for trial court to appoint a competent lawyer who does not oppose Petitioner's right to present alibi witnesses.

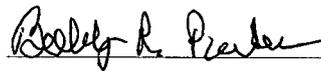
REASONS FOR GRANTING HABEAS WRIT

The writ should be granted because failure to do will result in or constitute an ad hoc de facto repeal of the 6th Amendment, which would be contrary to equal protection of law and separation of powers.

CONCLUSION

The Petitioner for a writ of habeas corpus should be granted.

RESPECTFULLY SUBMITTED,



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