

No. _____

25-7460

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

APR 13 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Michael Lee Gordon — PETITIONER
(Your Name)

vs.

State of Ohio — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Michael Lee Gordon # 6789635
(Your Name)

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NA
(Phone Number)

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SUPREME COURT, U.S.

Questions Presented

* I) Whether or not the time limits and restrictions imposed (the formerly 180-days) "from the filing of the record" on direct appeal to file for a post-conviction relief motion pursuant to R.C. # 2953.21 was unconstitutional and unavoidably prevented appellant from discovering the facts necessary to file a claim of ineffective assistance of appellate counsel on direct appeal?

* II) Whether or not the time limits and restrictions imposed (the formerly 180-days) "from the filing of the record" on direct appeal to file for a post-conviction relief motion pursuant to R.C. # 2953.21 was unconstitutional and unavoidably prevented appellant from discovering the facts necessary to file a claim of ineffective assistance of appellate counsel on direct appeal?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

Michael Lee Gordon,
Petitioner,

- vs -

State of Ohio,
Respondent.

RELATED CASES

TABLE OF AUTHORITIES CITED

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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- is unpublished.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- is unpublished.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 C 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 Court of Common Pleas, Franklin County court appears at Appendix B to the petition and is

- reported at _____; or,
- has been designated for publication but is not yet reported; or,
- is unpublished.

The Decision of the ^{1.} Tenth Appellate District Court appears at Appendix A to the Petition

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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 1-20-2026
A copy of that decision appears at Appendix C.

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

Arguments

* 1) The time limits and restrictions imposed (ie formerly 180-days) to file for a Post-Conviction Relief motion pursuant to R.C. 2953.21 was unconstitutional and unavoidably prevented Defendant from discovering the facts necessary to file a claim of Ineffective Assistance of Appellate counsel on direct appeal for the denial, refusal, and failure to raise a meritorious claim of a Conflict of Interest between Defendant court appointed defense counsel (ie at trial) (ie Terry Sherman); and Newly enlisted defense counsel (ie Matt Gregger); because Appellate Counsel's denial, refusal, and failure to raise this meritorious claim of a Conflict of Interest did not become known to Defendant until well after the former 180-day time limit and restriction imposed pursuant to R.C. 2953.21 had passed; because Appellate brief was not filed until the time expired.

1) Ineffective Assistance of Counsel may result from an attorney's conflict of interest. Strickland v. Washington, 466 US 668 (1984); Cuyler v. Sullivan, 446 U.S. 335 (1980). In Cuyler v. Sullivan, the United States Supreme Court ruled that a defendant can demonstrate a Sixth Amendment violation by showing that (1) counsel was actively representing a conflicting interests, and (2) the conflict had an adverse effect on specific aspects of counsel's performance.

2) In the instant case, court appointed defense counsel (ie Terry Sherman) during trial had enlisted the help of another attorney (ie Matt Gregger) without express consent from Defendant. Defendant expressed his concerns with the trial court and told the court that Defendant could not effectively communicate with court appointed counsel (ie Terry Sherman) during trial because of the teaching and tutoring of the newly enlisted defense counsel (ie Matt Gregger) and Defendant requested that Matt Gregger be removed from the defense table - as Matt Gregger was not appointed to represent the Defendant nor did Defendant consent to Matt Gregger's assistance.

* 3) The trial court granted Defendant's request and directed Matt Gregger to be removed from the defense table and immediately court appointed defense counsel (ie Terry Sherman) interjected and objected and made arguments against Defendant's request. The trial court subsequently changed its previous ruling (denying Defendant's request) and allowed Matt Gregger to stay at defense table and resume representing Defendant and assisting court appointed defense counsel (ie Terry Sherman) against Defendant's wishes.

* 4) At that point, Defendant was denied his Sixth Amendment right to counsel due to this conflict of interest. At that point Defendant was deprived of defense counsel "altogether" and due to this conflict of interest Defendant could not and did not aid, assist, nor work with nor consult either counsel in presenting a defense, in presenting evidence and Defendant stopped communicating with either counsel because of this conflict of interest. Arizona v. Fulminanta, 499 U.S. 279, 309-10 (1991); see also U.S. vs.

Gonzalez, Lopez, 548 U.S. 140, 149-50 (2006) (deprivation of counsel of choice creates "consequences that are necessarily unquantifiable and indeterminate," constituting structural error not subject to harmless error review); Strickland v. Washington, 466 US 668, 692 (1984) (Actual or constructive denial of counsel presumed to result in prejudice); Benitez v. US, 521 F.3d 625, 630-636 (6th Cir. 2008) (court's failure to inquire into Defendant's dissatisfaction with counsel, constituting denial of counsel, was structural error).

In the instant case, Defendant was never appointed Matt Giegger by the trial court. Matt Giegger was "newly enlisted" to assist court appointed defense counsel (ie Terry Sherman) without express consent by Defendant. Defendant objected to this "Newly enlisted" defense attorney and requested his removal from the defense table and his assistance in Defendant's case at trial. The trial court granted Defendant's "oral motion" to remove Matt Giegger from the defense table and from assisting in Defendant's defense at trial. Court appointed defense attorney (ie Terry Sherman) then created a conflict of interest and objecting to the trial court granting Defendant's "oral motion" to remove Matt Giegger from defense table and from assisting in Defendant's defense at trial. This conflict of interest was properly raised to the trial court, fully adjudicated and was an appealable issue on direct appeal. Defendant's court appointed appellate counsel denied, refused and failed to raise this conflict of interest on direct appeal and this denial, refusal and failure to bring this meritorious issue on direct appeal did not become apparent until well after the former 180-day time limitation and restriction to bring a Post-conviction relief motion pursuant to R.C. #2953.21. Furthermore, this denial, refusal and failure to raise this meritorious issue on direct appeal (ie despite being an appealable issue) denied Defendant the proper adjudication of this meritorious issue on appeal or any other avenue of relief because the Defendant's appellate counsel's denial, refusal and failure would have further prevented Defendant claim because of Res Judicata; and Defendant maintains that based upon all the above reasons he has shown that he was unavoidably prevented from discovering the facts necessary to file this claim and has satisfied: (1) he was unavoidably prevented from discovering the facts necessary for the claim of relief (ie the ineffective assistance of appellate counsel on direct appeal for the denial, refusal and failure to raise a "conflict of interest" with trial counsel); and, because such claim of a "conflict of interest" is not subject to harmless error review, Defendant would not have been found guilty; so therefore, Defendant has presented and proved this issue satisfies the first exception to bring a Post-conviction relief motion pursuant to R.C. #2953.21.

- * II) The time limits and restrictions imposed (ie formerly 180-days) to file for a Post-conviction Relief motion pursuant to R.C. # 2953.21 was unconstitutional and unavoidably prevented Defendant from discovering the facts necessary to file a claim of Ineffective Assistance of Appellate counsel on direct appeal for the denial, refusal and failure to raise a meritorious claim of a denial of Defendant's constitutional right to be present at trial, both from the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the fifth Amendment, because Appellate counsel's denial, refusal and failure to raise this meritorious claim did not become known to the Defendant until well after the former 180-day time limit, and restriction imposed pursuant to R.C. #2953.21 had passed, because Appellate brief was not filed until the time expired.
- * 6) The right of a criminal Defendant to be present during criminal proceedings stems from both the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fifth Amendment.
- * 7) The Confrontation Clause guarantees a Defendant the right to be present at any stage that would contribute to the opportunity for effective cross-examination. See *KY v Stinger*, 482 U.S. 730 (1987).
- * 8) The Due Process Clause grants the Defendant the additional right to be present at any stage of the criminal proceeding that is critical to its outcome if [the defendant's] presence would contribute to the fairness of the procedure. The cumulative effect of these two guarantees entitles the defendant to be present at all critical stages of the proceedings.
- * 9) The confrontation clause of the Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witness against him." U.S. Const. amend. VI. This right is held applicable to the states through the fourteenth Amendment, *Pointer v. Texas*, 380 US 400, 403 (1965).
- * 10) The Due Process Clause of the fifth Amendment provides that "[n]o person shall be ... deprived of life, liberty, or property without due process of law." U.S. Const. amend. V. This right is held applicable to the states through the fourteenth Amendment, *Hurtado v. Cal.*, 110 U.S. 516, 537 (1884). See also, Fed. R. Crim. P. 43(a).
- * 11) In the instant case, Defendant was ordered to wear an electronic stun belt during trial, that was a wireless remote controlled by an onsite sheriff deputy.
- * 12) Defendant was also shackled during trial and had a chain going from Defendant's shackles to a bar under the table and was shackled to the Defense table.
- * 13) These extra security measures were brought on through "no

wrong doing by Defendant, Defendant did not cause these actions to be taken by the court and these actions "unprovoked" caused Defendants Constitutional rights to be violated, and Defendant was excluded from critical stages of the trial.

*14) Defendant was denied the Confrontation Clause of the Sixth Amendment and his Due Process Clause to be present at all stages of the criminal proceeding, due to these "unprovoked" extra security measures taken during trial, (ie Fifth Amendment).

*15) Specifically, Defendant was denied any and all access to every "side-bar" that was held during the entirety of the five (5) day trial, (ie "several" dozens of side-bars outside Defendants presence).

*16) This denial of access to the side-bars denied Defendant his Due Process rights to be present at every stage of the proceeding and also his Sixth Amendment right Confrontational Clause to confront all witnesses against him.

*17) In the instant case, Defendant filed a pre-trial pro se motion to be present at side-bar and was denied by the trial court. This request was properly raised to the trial court, fully adjudicated and was an appealable issue on direct appeal. Defendant's court appointed appellate counsel denied, refused and failed to raise this issue on direct appeal and this denial, refusal, and failure to bring this meritorious issue on direct appeal did not become apparent until well after the former 180-day time limitation and restriction to bring a Post-Conviction relief motion pursuant to R.C. *2953.21. Furthermore, this denial, refusal and failure to raise this meritorious issue on direct appeal (ie despite being an appealable issue) denied Defendant the proper adjudication of this meritorious issue on appeal or any other avenue of relief because the Defendant's appellate counsel's denial, refusal and failure would have further prevented Defendant's claim because of Res Judicata; and Defendant maintains that based upon all the above reasons he has shown that he was unavoidably prevented from discovering the facts necessary to file this claim and has satisfied: (1) he was unavoidably prevented from discovering the facts necessary for the claim of relief (ie the ineffective assistance of appellate counsel on direct appeal for the denial and violation of Defendant's right to be present during all stages critical to the outcome of the proceedings in the above captioned case); so therefore, Defendant's claim is a structural error and not subject to harmless error review; so Defendant has presented and proved this issue satisfies the first exception to bring a Post-Conviction relief motion pursuant to R.C. *2953.21.

Statement of the Case

* 18) In 2003, when Defendant proceeded to trial, convicted and sentenced statute R.C. *2953.21 provided for a one hundred and eighty (i.e. 180-day) time limit in which to file a post-conviction relief motion; after the date on which the trial transcripts is filed in the court of appeals in a direct appeal from the judgement of conviction.

* Note! In Defendant's case, the date was May 7, 2003; so Defendant had up until November 7, 2003; in which to file his post-conviction relief motion pursuant to R.C. *2953.21.

* 19) Defendant maintains that the former 180-day time limit in which to file a post-conviction relief motion pursuant to R.C. *2953.21 was unconstitutional, was a direct result in Defendant's failure to timely file his post-conviction relief motion and Defendant was unavoidably prevented from discovering the facts that Appellate Counsel was ineffective for not raising the claims of relief in issues 1 and 2 raised herein and that but for these constitutional errors at trial (i.e. and on direct appeal) no reasonable finder of fact would have found Defendant guilty in the above case.

* 20) Defendant maintains that issues 1 and 2 raised herein should have been raised on direct appeal by Defendant's Appellate counsel (i.e. Todd Barstow); and Defendant did not become aware that Appellate counsel failed to raise these meritorious issues on Defendant's direct appeal until well after the former 180-day time limit in which to file a post-conviction relief motion pursuant to R.C. *2953.21, (i.e. November 7, 2003).

* 21) All issues (i.e. 1 and 2) were properly raised in the trial court and fully adjudicated and Defendant's direct appeal was the only recourse to bring these issues and Defendant's Appellate counsel was ineffective for not raising these issues in Defendant's direct appeal; and Defendant did not become aware of Appellate counsel's ineffective assistance for the failure to raise these issues until well after the 180-day time limit upon which to bring a post-conviction relief motion pursuant to R.C. *2953.21

* 22) This unconstitutional statute and time limit of 180-days was the exact reason why the legislators extended the 180-days (to 365-days); because it prevented defendant's from raising ineffective assistance of appellate counsel claims the way these time limits were structured

Footnote 1) statute R.C. *2953.21 was later amended and the 180-day time period, in which to file a post-conviction relief motion was "extended" to three hundred and sixty-five days; and this extended time period is the current time period, in which Defendant's have to file for post-conviction relief (i.e. this change was 10 or more years later)

* Note! The former 180-day time limitation pursuant to R.C. *2953.21 began to run from the date on which the trial transcripts is filed in the court of appeals in a direct appeal from the judgement of conviction. In Defendant's case, the date Defendant had to file for post-conviction relief pursuant to R.C. *2953.21 was May 7, 2003; so Defendant had up until November 7, 2003 in which to file his post-conviction relief motion pursuant to R.C. *2953.21. Defendant's direct appeal was not decided until May 20, 2004, some 6 1/2 months after Defendant's post-conviction relief motion was due.

Explanation of why this case⁸ is a case of public or Great General Interest and involves a substantial constitutional question and of why this court should grant discretionary review

This case raises substantial constitutional questions that involve felonies, a lot of time imprisonment and is of public and great general interest for the following reasons:

This case involves and raises the question of whether or not the time-limitations and restrictions previously imposed (ie formerly 180-days) to file for post-conviction relief pursuant to R.C. #2953.21 was unconstitutional and unavoid prevented any defendants from raising a claim of ineffective assistance of appellate counsel on direct appeal?

The 180-day time-limitation previously imposed to file for post-conviction relief pursuant to R.C. #2953.21 had come and passed well before the defendants appellate counsel ever raised or filed appellate's direct appellate brief and appellate was unaware of appellate counsel's ineffectiveness in time to file his post-conviction relief motion "for ineffective assistance of appellate counsel" on direct appeal pursuant to R.C. #2953.21; therefore foreclosing defendant from raising any "ineffective assistance of appellate counsel on defendant's direct appeal" in a post-conviction relief motion.

Furthermore, the state of Ohio even argued that all these claims should have been raised and decided on appellate's direct appeal; however, these claims did not become apparent until well after the 180-day time-limitations and restrictions previously imposed to file a post-conviction relief motion pursuant to R.C. #2953.21 had passed; because appellate counsel's direct appellate brief was not filed until well after this 180-day time frame and appellate did not become aware of appellate counsel's failure to raise these claims until well after this 180-day time limitations period.

*Note: Because the state of Ohio argued that all these claims should have been raised and decided on appellate's direct appeal; all of appellate's post-conviction relief motions pursuant to R.C. #2953.21 were subsequently denied and barred by the doctrines of res judicata based upon the claim that these claims should have been raised on direct appeal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 4-8-2026

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