

RONALD LEE DOLAN,
Petitioner / Defendant

v.

STATE OF MARYLAND

* * * * *

IN THE DISTRICT COURT
OF MARYLAND

FOR GARRETT COUNTY

Civil No. _____

PETITION FOR WRIT OF ERROR CORAM NOBIS

Petitioner Ronald Lee Dolan, by his undersigned attorneys, respectfully petitions this Court for the issuance of a writ of error coram nobis vacating the judgment and conviction entered against him by this Court on January 19, 1999. For his reason Petitioner states generally that he did not knowingly and intelligently waive his rights to the assistance of counsel or to trial by jury and that certain facts and circumstances material to the validity and regularity of the proceedings were not brought into issue at the trial of the case, rendering his conviction invalid and unconstitutional. As Petitioner is no longer in custody on the judgment herein, no judicial remedy is available to him other than the writ of error coram nobis. More particularly, Petitioner states:

1. Petitioner was charged on October 28, 1998, by District Court Charging Document No. 3X00004973 with second degree assault, in violation of Maryland Code (1957, 1996 Repl. Vol.) Art. 27, sec. 12A.

2. The Petitioner appeared in the District Court of Maryland on January 19, 1999, the first scheduled trial date. The case was called for trial as follows:

“Assistant State’s Attorney: Thank you, Your Honor. I call State of Maryland v. Ronald Dolan, Case number 3X00004973.

The Court: Mr. Dolan, you do not have an attorney, sir?

The Defendant: No, sir.

The Court: Why not?

The Defendant: Didn't think I needed one.

The Court: Alright, sir, you're charged with a single count of second-degree assault. That carries a penalty of 10 years in prison and/or a \$2500 fine. It also carries with it the right to a jury trial. Do you wish to have this matter tried before me today or before a jury sitting in the Circuit Court?

The Defendant: Before you, sir.

The Court: How do you plead, guilty or not guilty?

Defendant: Guilty.”

3. The Court proceeded to inquire as to the voluntariness of the plea of guilty, but made no further inquiry or finding respecting Mr. Dolan's ability or willingness to proceed without counsel. The Court did not comply with Maryland Rule 4-215(a)(2) to the extent of informing Petitioner “of the right to counsel and the importance of assistance of counsel.” The Court conducted no inquiry pursuant to Rule 4-215(b) as to whether waiver of counsel was knowing and voluntary. While the Court did extend the right, as required by Rule 4-215(c), to Petitioner to explain the appearance without counsel, there was neither a finding on whether there was a meritorious reason for appearing without counsel or a determination that counsel was waived by inaction, all of which is required by the mandatory terms of Rule 4-215. The docket, which is required by Rule 4-215(a) to reflect any compliance with the waiver requirements, reflects no such compliance.

4. The Court ultimately accepted the plea of guilty and imposed a sentence of imprisonment for 30 days, 20 days of which it suspended in favor of a one-year period of probation. Petitioner completed his sentence and conformed with the conditions of probation

throughout the probationary period, which expired on or about January 29, 2000.

5. Petitioner did not knowingly and voluntarily waive his right to counsel. Petitioner did not understand the seriousness of the charge or its potential consequences and did not understand how valuable an attorney's assistance might be in connection with them. The averments contained in Petitioner's affidavit, attached hereto, are specifically incorporated by reference.

6. By requiring Mr. Dolan to proceed without counsel and without a knowing and voluntary waiver of the right to counsel, the Court's action denied Mr. Dolan important and fundamental rights secured by the Sixth and Fourteenth Amendments to the Constitution of the United States and by the corresponding provisions of the Maryland Declaration of Rights, and by Maryland Rule 4-215.

7. Petitioner is now facing significant collateral consequences from the conviction and judgment entered in this case. On November 9, 2000, an indictment was returned in the United States District Court for the District of Maryland charging Petitioner with possession of firearms by a convicted felon, in violation of 18 U.S.C. § 922(g) and related counts. A copy of the indictment is attached hereto as an exhibit to this Petition. The conviction entered in the District Court of Maryland, Case No. 3X00004973, is case is Petitioner's only prior conviction, and its existence is an essential element of the §922(g) count. Moreover, the implications of the conviction entered in this case under the U.S. Sentencing Guidelines are profound. Undersigned counsel calculates that if Petitioner were to enter a plea of guilty to any of the counts in the federal proceedings, the existence of the second-degree assault conviction would expose Petitioner to a sentencing range of between 41 and 51 months incarceration, which under the federal system is not parolable. By contrast, if the instant conviction is stricken from the

Guidelines calculation, Petitioner, on a guilty plea to the other viable counts, would be exposed to a sentencing range of not more than 15-21 months and might be eligible for a probationary disposition.

CONCLUSION

For the foregoing reasons, Petitioner prays that this Court issue a writ of error coram nobis and vacate the judgment of conviction entered in State of Maryland v. Ronald Lee Dolan, District Court of Maryland for Garrett County, No. 3X00004973.

Respectfully submitted,

GARY W. CHRISTOPHER
Chief Assistant Federal Defender
Suite 1101 Tower II
100 S. Charles Street
Baltimore, Maryland 21201
(410) 962-3962

MEMORANDUM OF POINTS AND AUTHORITIES

Skok v. State, 2000 WL 1498042 (writ of error coram nobis is available and appropriate to challenge the validity of a conviction on the ground that the waiver of a constitutionally secured right was involuntary, where petitioner is no longer under sentence or on probation and where he is now facing significant collateral consequences from the conviction).

Maryland Rule 4-215

Johnson v. State, 355 Md. 420, 735 A.2d 1003 (1999) and cases cited (generally requiring strict compliance with Maryland Rule 4-215 governing waiver of counsel)

United States v. King, 582 F.2d 888, 890 (4th Cir. 1978) (Before accepting a waiver counsel, “the court must make the defendant aware of the ‘dangers and disadvantages of self-representation,’ so that the defendant ‘knows what he is doing and his choice is made with his eyes open.’ *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525, 2541, 45 L. Ed.2d 561 (1975). Thus, the court must assure itself that the defendant knows the charges

against him, the possible punishment and the manner in which an attorney can be of assistance. [*United States v. Townes*, [371 F.2d 930 (4th Cir. 1966)] at 933; *Aiken v. United States*, 296 F.2d 604 (4th Cir. 1961). The defendant must be made aware that he will be on his own in a complex area where experience and professional training are greatly to be desired. *United States v. Gillings*, 568 F.2d 1307 (9th Cir. 1978); *Stepp v. Estelle*, 524 F.2d 447 (4th Cir. 1975)”).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of January, 2001, a copy of the foregoing Petition for Writ of Error Coram Nobis was mailed, first-class postage prepaid, to Lisa Thayer Welch, Esquire, State's Attorney for Garrett County, 203 South 4th Street, Room 210, Courthouse, Oakland, Maryland 21550.

GARY W. CHRISTOPHER
Chief Assistant Federal Defender

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AFFIDAVIT OF RONALD LEE DOLAN

I, Ronald Lee Dolan, affirm under the penalties of perjury that the contents of the following statement are true to the best of my knowledge, information, and belief.

In 1999, I was the defendant in a criminal case filed in the District Court of Maryland for Garrett County, numbered 3X00004973. The charge was second-degree assault. The complaining witness was my estranged wife, Brenda Dolan.

I did not retain or otherwise seek an attorney in connection with the criminal charges. I realized afterward -- and certainly I realize now -- I should have had an attorney. I did not realize how serious the charges were, nor did I realize what collateral consequences they might have. I had never been charged with anything before (other than minor traffic citations) and so had never had occasion to retain a lawyer for a criminal matter and had never thought seriously about how a lawyer could help me on a criminal charge. I didn't understand what was required to prove the charge, or how a charge of that nature might be defended. I understand now that there might have been defenses to the charge, or motions that might be filed or other actions taken that could have resulted in my acquittal or some other favorable outcome. I should have retained a lawyer in advance, and I believe that if the judge had impressed on me how serious the charges were and

how helpful an attorney might be, I would have asked for a postponement to obtain counsel.

Date

Ronald Lee Dolan