

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

JERRY WAYNE SHERRY,
vs.
LORIE DAVIS.

§ CAUSE No. 18-5094
§
§

**Rule 44.2. PETITION FOR REHEARING IN DENIAL OF:
PETITION FOR WRIT OF CERTIORARI**

COMES NOW, Jerry Wayne Sherry, "Petitioner" in the above-styled and numbered cause, and presents this his Petition for Rehearing of an order denying a petition for writ of certiorari, pursuant to Supreme Court Rule 44.2, and would show the Court the following:

I.

TIMELINESS

On October 1, 2018, this Honorable Court entered the following order in the above-entitled case: "The petition for a writ of certiorari is denied." signed by clerk of the Court Scott S. Harris. Therefore, to be deemed filed timely, the Petitioner must place this his Petition for Rehearing in the institutional mailing system on or before, Friday, October 26, 2018. See, Supreme Court Rules, 29.2, 44.2; See also, Houston v. Lack, 487 U.S. 266, 270-272 (1988)

II.

Pursuant to Rule 44.2, the Petitioner is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. In the instant case, the State of Texas has steadfast refused to apply the precepts of this Honorable Court set forth in Missouri v.

McNeely, 133 S.Ct. 1552 (2013). The State of Texas and the Federal Court have erroneously held that said precedent does not apply, however, as demonstrated, within the Petition for Writ of Certiorari, Teague v. Lane, 489 U.S. 288, 300-301 (1989), that when an appeal is pending in the State Court, the precedence of this Honorable Court are to be applied retroactively.

It was noted that in Aviles v. Texas, 134 S.Ct. 902 (2014)(mem.) This Honorable Court held that the decision in McNeely, *supra*, applied pursuant to Teague, *supra*, and the State of Texas reversed the conviction of the petitioner in Aviles. Therefore, an equal application of judicial prudence and precedence, demands that the Petitioner's case be reversed in like kind, and remanded for new trial which would exclude the illegally obtained evidence during a forced blood draw.

There is little to no differences between the case at bar and Aviles. In fact, the denial of due process and refusal to properly apply Supreme Court precedence, allows the State of Texas to continually ignore this Honorable Court's decisions under the presumption that so little of its precedence is actually upheld or re-reviewed at a later date. The less than one percent granting of certiorari in this Honorable Court has undermined the power of the Court. In fact, a simple memorandum opinion, as in Aviles, would prevent the travesty of justice in the instant case, and enforcement of this Honorable Court's precedence would send a clear message: When a State chooses to ignore the precedence of this Honorable Court, this Court will immediately enforce said precedence.

This Honorable Court stated it best over half a century ago: "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of administration of justice suffers when any accused is treated unfairly. An inscription on the walls of the Department of Justice states the proposition candidly for the federal domain; 'The United States wins its point whenever justice is done for its citizens in the courts.'" Brady v. Maryland, 373 U.S. 83, 86-88 (1963)(internal citations omitted)

III.

CONCLUSION

WHEREFORE PREMISES CONSIDERED, the Petitioner, Jerry Wayne Sherry, respectfully prays after a rehearing in the instant case, GRANT, the Petition for writ of certiorari, and at minimum issue a Memorandum Opinion instructing the Federal Court to properly apply McNeely, supra, pursuant to Teague, supra, and remand the case back to the jurisdiction of the Court of Criminal Appeals for the State of Texas, Austin.

Respectfully Submitted,



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cc/ file
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