

No. 18-5360

IN THE SUPREME COURT OF THE UNITED STATES

CURTIS CLINTON,

Petitioner,

v.

STATE OF OHIO,

Respondent.

*On Petition for a Writ of Certiorari to
the Supreme Court of Ohio*

**REPLY TO STATE'S BRIEF IN OPPOSITION TO THE PETITION FOR
WRIT OF CERTIORARI**

Kimberly S. Rigby (0078245)
Supervising Attorney, Death Penalty Department
Counsel of Record
Kimberly.Rigby@opd.ohio.gov

Kathryn Polonsky (0096468)
Assistant Public Defender
Death Penalty Department
Kathryn.Polonsky@opd.ohio.gov

Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394 (Telephone)
(614) 644-0708 (Fax)

Counsel for Petitioner, Curtis Clinton

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REPLY

In its Brief in Opposition, the State claims that Clinton “did not assert any race-based challenges either to the trial court or to the Ohio Supreme Court on appeal.” State’s Brief in Opposition (“BIO”), p. 2. This is simply not true.

The overarching theme of Clinton’s direct appeal brief highlighted the errors of trial counsel, the State, and the trial court judge that led to his conviction and sentence. These errors frequently involved the handling of race. In his Petition, Clinton cited to several places in his direct appeal brief where he raised the issue of racism as poisonous to his conviction and sentence.

In his direct appeal brief, Clinton pointed out these errors repeatedly:

- Clinton argued that “[t]he trial court erred, and defense counsel was ineffective, by failing to adequately address the issue of race at any point during Clinton’s capital trial...” Clinton Direct Appeal Merit Brief (“Brief”), p. 12.
- He argued that the trial court erred when it failed to voir dire on race given the nature of the case. *Clinton*, 2017 – Ohio – 9423, ¶162.
- He argued that the State impermissibly challenged a prospective juror because of her race. *Id.* at ¶ 40.
- He argued that Clinton’s lawyers were ineffective for simply accepting the State’s reasoning for its challenge. Brief at pp. 111–12.
- He argued that race was only mentioned once during voir dire when Clinton’s trial counsel simply stated in passing that race should play no role in this case. Brief, p. 12. The Ohio Supreme Court rejected all of these arguments, claiming that these issues did not impact Clinton’s right to a fair trial given what it considered the overwhelming evidence of guilt, *Clinton*, 2017 – Ohio – 9423 at ¶ 40, and that the trial court had no independent duty to inquire on issues of race in voir dire. ¶ 163.

The State responded to the race-based claims Clinton raised in his direct appeal brief. *See* State's Merit Brief, p. 115–20, 121, 144–45, 154–55. For example, in response to Clinton's assertion that the Keckler evidence was improperly admitted under 404(b), the State argued that the Kecker case was “strikingly similar” to the Jackson murders and went to prove identity of the Jacksons' killer. One criterion that the State highlighted as evidence of this purported striking similarity is that “Heather and Ms. Kecker were also both blonde.” *Id.* at 65. In rejecting Clinton's arguments regarding joinder and 404(b), the Ohio Supreme Court found that “[a]ll three [adult] victims were **young Caucasian women.**” *Clinton*, Slip Opinion No. 2017-Ohio-9423 at ¶108.

The Ohio Supreme Court rejected all of Clinton's arguments. This rejection, as Clinton noted in his Petition, prompted Clinton to file a Motion for Reconsideration, where he once again raised the issue of race as it related to errors that form the basis of his Petition for Certiorari before this Court. *See* Clinton Motion for Reconsideration (“Motion”), pp. 12–15. He told the Ohio Supreme Court that its decision on the joinder and 404(b) issues allowed racism – presented through language used by the prosecutor in closing argument – to be a critical factor in his conviction and sentence in violation of the VI, VIII, and XIV amendments to the U.S. Constitution. *See* *Id.* at 2, 12–15. In this Motion, Clinton cited to numerous decisions issued by this Court that appear in his Petition: *Strauder v. West Virginia*, 100 U.S. 303 (1880); *Furman v. Georgia*, 408 U.S. 238 (1972); *Batson v. Kentucky*, 476 U.S. 79 (1986); *Turner v. Murray*, 476 U.S. 28 (1986); *McKlesky v. Kemp*, 481 U.S. 279 (1987); *Buck v. Davis*,

580 U.S. __, 137 S.Ct. 759 (2017); *Peña-Rodriguez v. Colorado*, 580 U.S. __, 137 S.Ct. 855 (2017); *Tharpe v. Sellers*, 583 U.S. __, 138 S.Ct. 545 (2018); *Rose v. Mitchell*, 443 U.S. 545, 558–59 (1979).

The State once again responded to Clinton’s race-based claims in its Opposition to Reconsideration (“Opposition”). It cited to *Buck v. Davis*, 137 S.Ct. 759 (2017) in furtherance of its argument, Opposition, p. 5, asserting that “Clinton’s reference to prosecution argument about sexual assaults does not contain any mention of race.” But “Clinton’s reference to prosecution argument” did mention race, expressly. Motion, p. 14 (“When the trial court refused to sever the charges and allowed the State to present evidence of the Keckler murder, it fed this racial stereotype of the oversexualized violent black man who had preyed and continued to prey on vulnerable white women and children.”); p. 15 (“This was a subtle call that reinforced racial stereotypes and unduly prejudiced Clinton at both the guilt and sentencing phases.”). And though the State’s Opposition entirely misses Clinton’s point – that racism in his case was subtle, not express, but still unduly prejudicial – the Opposition exposes that the State acknowledged and responded to Clinton’s assertions regarding racism’s impact on his case below.

Clinton raised the issues presented in his Petition during the direct appeal process below, the State responded to these claims, and the Ohio Supreme Court ruled on them. Despite this, the State fails to respond substantively to any of the arguments Clinton raised in his Petition.

CONCLUSION

Racism infected Curtis Clinton's trial and sentencing. Prosecutorial misconduct, trial court error, and ineffective assistance by defense counsel combined to ensure that Clinton's race played an unconstitutional role in his conviction and sentence. This Court should grant a writ of certiorari to review the decision below.

Respectfully submitted,

Office of the Ohio Public Defender

/s/ Kimberly S. Rigby

Kimberly S. Rigby (0078245)

Supervising Attorney, Death Penalty Department
Counsel of Record

Kimberly.Rigby@opd.ohio.gov

/s/ Kathryn Polonsky

Kathryn Polonsky (0096468)

Assistant Public Defender
Death Penalty Department

Kathryn.Polonsky@opd.ohio.gov

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