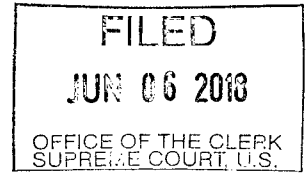


18-7734

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



JOE WILLIE CANNON – PETITIONER

Vs.

THE STATE OF IOWA – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE IOWA SUPREME COURT

JOE WILLIE CANNON Pro se #1049217

IOWA STATE PENITENTIARY

P.O. BOX 316

FORT MADISON, IA 52627

QUESTION PRESENTED FOR REVIEW

I. DID THE STATE OF IOWA VIOLATE THE PETITIONERS 5th, 6th, & 14th AMENDMENT'S CONFRONTATION AND DUE PROCESS RIGHTS TO BE PRESENT DURING A CRITICAL STAGE OF LITIGATION REGARDING HIS CRIMINAL PROSECUTION?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page.

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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

This petition for writ of certiorari is from a state court judgment.

The highest state court to have addressed the merits of the instant case is the Iowa District Court for Des Moines County, as the Iowa Supreme Court denied discretionary state certiorari review. The District Court's decision is not a published opinion.

JURISDICTION

This petition for writ of certiorari is from a state court judgment.

The date on which the Iowa District Court for Des Moines County decided the merits of the instant controversy was November 29th, 2017. A copy of that order appears at Appendix A.

The Defendant/petitioner thereafter moved the court for an enlargement of its final ruling regarding the underlying substantive issue, and again presented the district court with his contention regarding the denial of his right to be present. A copy of the court's final ruling appears at Appendix B, and a copy of the Defendant/petitioner's motion to enlarge, (captioned "Reply..."), appears at Appendix F.

A timely petition for discretionary state certiorari regarding the sole issue of Defendant/petitioner's right to be present was filed with the Iowa Supreme Court on December 18th, 2017. The petition was denied March 26th, 2018. A copy of the order denying the petition appears at Appendix K.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. V — “No person shall be... deprived of life, liberty, or property, without due process of law”.

U.S. Const. Amend. VI — “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.”

U.S. Const. Amend. XIV — “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

STATEMENT OF THE CASE

In 1993 Joe Willie Cannon was convicted in the Iowa District Court for Des Moines County of first degree murder. He was sentenced to life in prison without the possibility of parole. The fighting issue in the case was, and continues to be, identity.

The State had accused Mr. Cannon of breaking into the home of elderly Orley Culp, where, the State claims, Cannon then beat Mr. Culp with a baseball bat and ransacked the home in pursuit of money to finance his alleged crack-cocaine habit.

The State's case rested on painting Mr. Cannon as a desperate crack addict who would do whatever he needed to do to supply his high.

After his conviction and sentence, Joe Willie Cannon timely filed a notice of appeal, and appealed his conviction to the Iowa Supreme Court. Mr. Cannon's appeal was transferred to the Iowa Court of Appeals. The Iowa Court of Appeals summarily affirmed Cannon's conviction without opinion, and his direct appeal concluded when the Iowa Supreme Court denied further review.

Mr. Cannon has maintained his innocence, and there is a storied history regarding his attempts to litigate the legal issues involved in his case.

In 2011, while rejecting one of Mr. Cannon's post-conviction cases, the Iowa Court of Appeals summarized the State's case against Mr. Cannon in the following fashion: "[T]he State presented an extensive array of evidence against Cannon establishing motive, means, opportunity, and consciousness of guilt."

Notably lacking from the Iowa Court of Appeals' evidentiary summation is any mention of identity evidence. As noted above, identity continues to be the central fighting issue.

All in all, the Iowa courts have continued to reject Mr. Cannon's attempts to litigate his case, which brings us to the current controversy.

On September 15th, 2017, the defendant and petitioner herein, Joe Willie Cannon, (hereinafter "Cannon"), filed in the Iowa District Court for Des Moines County a motion for DNA testing pursuant to Iowa Code section 81.10. (App. C – Defendant's Motion for DNA testing).

On October 5th, 2017, the district court entered an order setting the motion for hearing. Cannon was appointed counsel, and the court also ordered counsel to be prepared to personally appear at the hearing. (App. D – 10/05/2017 District Court Order). Cannon thereafter filed a motion for transport. (App. E – Motion for transport, filed: 10/16/2017, renewed: 11/28/2017). Cannon sought to be personally present during the proceeding, as the need for DNA testing is a serious and central issue in this case. The district court did not issue an order for transport. Moreover, notwithstanding the fact that Cannon's counsel requested that Cannon be present, or at least appear telephonically, that court did not allow Cannon's presence in any form.

Ultimately the district court denied Cannon's motion for DNA testing. (App. B – 12/04/2017 - Order: District Court ruling).

Additionally, the district court denied Cannon's motion to enlarge, and never responded to Cannon's claim regarding his right to be present.

Cannon has appealed the district court's decision regarding his motion for DNA testing, and that appeal is currently pending.

In a separate action, Cannon filed a petition for writ of certiorari with the Iowa Supreme Court regarding the denial of his right to be present during the district court proceeding. As outlined above, the Iowa Supreme Court denied the petition, and its reason for so doing is not discernible from the order. In filing the petition Cannon's claim was properly presented to the State court of last resort, and his claim is now ripe for review here.

It is out of an abundance of caution that Cannon now prudently seeks a Writ of Certiorari in this Court in order to present the issue of a state criminal defendant's right to be present during critical proceedings regarding their criminal prosecution.

REASONS FOR GRANTING THE WRIT

I. THE STATE OF IOWA VIOLATED THE PETITIONERS 5th, 6th, & 14th AMENDMENT'S CONFRONTATION AND DUE PROCESS RIGHTS TO BE PRESENT DURING A CRITICAL STAGE OF LITIGATION REGARDING HIS CRIMINAL PROSECUTION.

"The due process clause and the confrontation clause of the Sixth Amendment, as applied to the states via the Fourteenth Amendment both guarantee to a criminal defendant the right to be present at all stages where his

absence might frustrate the fairness of the proceeding.” *Tennessee v. Lane*, 541 U.S. 509 at 523 (2004)

The Iowa Supreme Court has likewise made similar observations regarding a defendant’s constitutional right to be present: “Like the confrontation right, the related right to be present ensures the integrity of criminal proceedings because the defendant’s presence impresses the gravity of the proceeding upon the participants.” *State v. Rogerson*, 855 N.W.2d 495, 505 (Iowa 2014)

Furthermore, “a defendant’s presence exerts a psychological influence on a judge in the same manner as it would a juror”. *State v. Jones*, 817 N.W.2d 11, 18 (Iowa 2012).

There is an old adage that fits appropriately at times in life, that saying is this: “Out of sight; out of mind.” The concept may have a rightful place at certain points during a person’s life; however, it seems most inappropriate to have a place in our nation’s criminal justice system.

When a judge is weighing options, and making determinations that can affect the life and liberty of an incarcerated individual, especially when that individual might very well be innocent, should not the gravity of the proceeding be presented in its fullest sense? Does not the accused have a right to stand before the decision maker? Shouldn’t the accused be allowed to present his face to the court?

It seems quite likely that when an accused is not allowed to stand openly in court during a critical hearing, the gravity of the hearing is minimized to nothing more than a mere formality.

Judges are vested with great authority, that authority is power, and it should be wielded impartially. In this case it appears that the court was unconcerned with the individual dignity of the accused, which tends to generate a reasonable question of impartiality. One should be safe to believe that the Constitution guarantees more.

“Out of sight; out of mind” should not be a standard operating procedure in American courtrooms.

Cannon contends that when circumstance such as is presented in the instant case arise, a state-court criminal defendant has the right to stand before the court while his cause is presented thereto.

It strikes as fundamentally unfair for the State to physically appear in the only way possible; i.e. — by and through a State or assistant State attorney — while at the same time the defendant is left unmovingly out of sight.

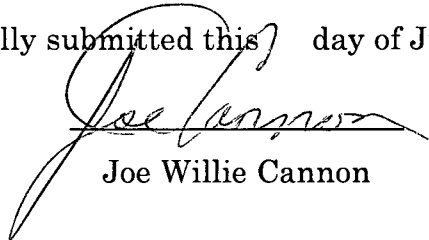
Cannon contends that the court should grant his writ in order to address the issue of a State-court criminal defendant’s right to be present as guaranteed by and pursuant to the United States Constitution’s Fifth, Sixth, and Fourteenth Amendments.

CONCLUSION

Cannon respectfully and humbly prays that his petition for writ of certiorari be granted.

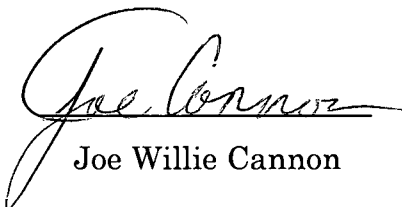
Upon setting my hand and affixing my signature below, I, Joe Willie Cannon, hereby swear and declare under penalty of perjury that the foregoing information contained in this petition is true and correct to the best of my knowledge.

Respectfully submitted this 7 day of June, 2018


Joe Willie Cannon

Upon setting my hand and affixing my signature below I do swear and certify that the foregoing document was served and filed with the Clerk of The United States Supreme Court on this 5 day of June, 2018, by placing one true copy thereof in the prison mailbag, with proper postage attached, addressed to:

Clerk of the United States Supreme Court
1 First Street, N.E.
Washington, DC 20543


Joe Willie Cannon

Date: 6-5-2018

