

No. 18-7812

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
**JAN 16 2019**  
OFFICE OF THE CLERK

Raheem Wilcox — PETITIONER  
(Your Name)

vs.

State of New Jersey RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

New Jersey Supreme Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Raheem Wilcox  
(Your Name)

East Jersey State Prison  
(Address)

Rahway, New Jersey 07065  
(City, State, Zip Code)

(732) 499-5010  
(Phone Number)

### QUESTION(S) PRESENTED

The question in the case is whether, the New Jersey Supreme Court's decision in State v. W.B that clarified discovery rule 3:13-3, holding that the pre-indictment destruction of police interview notes may entitle a defendant to an adverse inference charge, should be retroactively applied to the petitioner's case in his third petition for post-conviction relief, and or entitled to a new trial on the basis of a new factual predicate pursuant to rule 3:22-4(b) (2) (a) (b) since defendant's trial attorney raised and preserved for review the similar issue regarding a police officer destroying his pre-interview notes of defendant prior to his indictment that , and whether applying W.B prospectively to only pre-indictment cases is contrary to this court's decision in Teague v. Lane that held in part, that "an old rule applies on direct and collateral review. This petition presents issues of public importance that should be settled by this court, and to resolve an important constitutional question of first impression.

## LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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 is unpublished.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 State Appeals 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.

## 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 October 24, 2018. 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

Under U.S. Const. Amend XIV No state shall 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.

28 U.S.C 2254 (1)

### STATEMENT OF THE CASE

The petitioner Mr. Wilcox, is confined at East Jersey State prison. He is serving 40 years with a 30 year period.

On March 22, 2017, Mr. Wilcox filed a third petition for post-conviction relief. Mr. Wilcox asserted that the New Jersey Supreme Court's decision in State v. W.B., 205 N.J. 588, 607-609 (2011) that clarified discovery rule 3:13-3, should be retroactively applied to his case, and or entitled to a new trial on the basis of a new factual predicate pursuant to R. 3:22-4(b). Since Mr. Wilcox raised the issue regarding the State's detective destroying his pre-interview notes of defendant prior to court's decision in W.B. In W.B., the court held that " if the notes of a law enforcement officer are lost or destroyed before trial, a defendant may be entitled to an adverse inference charge. The Court stated that it's holding regarding " the discovery obligation is merely a reiteration of existing law," W.B supra, 205 N.J at 609, but deferred application of this old rule, and ruled that it would only have prospective effect beginning thirty days from the Court's opinion.

During a suppression hearing held in April 2002, prior to Mr. Wilcox being convicted in May 2002, his trial attorney objected to his right to explore the copious notes taken by the State's detective of defendant's oral statements he destroyed after preparing his final reports. The trial judge noted in part, that " New Jersey Constitutional law didn't require the saving of notes or some kind of remedy if notes aren't saved."

The State court dismissed Mr. Wilcox third petition for PCR concluding that he failed to meet the

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<sup>1</sup> The procedural history and facts underlying defendant's convictions and his two prior unsuccessful petitions for PCR are set forth in detail in the Appellate Court's opinion in State v. Wilcox, no. A-2930-13 (App. Div. April 1, 2016) slip op. at 1-6, certif. denied 227 N.J. 255 (2016)

and 3:22-12(a)(2)

requirements of Rule 3:22-4 (b) (2) (a). The State appellate court affirmed the denial of Mr. Wilcox petition and the State Supreme Court denied certification.

The New Jersey Supreme Court stated that it's "retroactivity analysis is generally consistent with that of the United States Supreme Court." State v. Afanador, supra, 157 N.J. 41, 57. Although, this court noted, "federal precedent is some what more restrictive". Ibid; see also State v. Knight, 145 N.J. 233 (1996) Whorton v. Bockting, 549 U.S. 406, 416, 127 S.Ct. 1173, 1180 167 L.Ed.2d (2007) (stating under Teague v. Lane, 489 U.S. 288, <sup>311</sup> 109 S.Ct. 1060, 103 L.Ed.2d 34 (1989), "an old rule applies both on direct and collateral review, but a new rule is generally applicable to cases that are still on direct review").

Therefore, defendant relies on the ruling announced in W.B that satisfies the federal test for retroactivity set forth in Teague and New Jersey's separate test for retroactivity set forth in Afanador and Knight.

In State v. W.B., the New Jersey Supreme Court declined to find that W.B was entitled to an adverse inference charge because he neither requested such charge before final jury instructions were given nor raised the issue before filing a motion for a new trial. Id at 608-609. In Mr. Wilcox case unlike W.B, the similar issue regarding the investigating officer destroying his notes was raised and preserved for review prior to that decision during the suppression hearing in 2002, that should entitle him to such charge.

To allow W.B to be prospectively applied to only pre-indictment cases thirty days from the court's opinion and not allow defendant to benefit from the court's ruling in W.B, would be unjust and violate his fourteenth amendment right to due process and equal protection, U.S. C Const. amend XIV.

#### REASONS FOR GRANTING CERTIFICATION

The court should grant the petition to determine if the New Jersey Supreme Court's decision in State v. W.B that clarified discovery rule 3:13-3 holding that the pre indictment destruction a police interview notes may entitle a defendant to an adverse inference charge should be retroactively applied to defendant's case that preceded that decision and or entitled to a new trial based on a new factual predicate under rule 3:22-4 (b) (2) since the destruction of a police officer's notes constitute discovery material within the meaning of rule 3:13-3. Furthermore, the New Jersey Supreme Court's decision in W.B is contrary to this Court's retroactivity analysis the New Jersey Supreme Court stated is generally consistent with this court. The petitioner also respectfully requests that the Court grant his petition for a writ of certiorari <sup>that</sup> presents issues of public importance and to resolve an important constitutional question of first impression that should be settled by this court.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

R. Wilcox

Date: January 14, 2019