

No. \_\_\_\_\_

\_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_

GERALD ADGER #05-B-2254 PETITIONER  
(Your Name)

vs.

THE PEOPLE OF THE STATE OF NEW YORK — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

STATE OF NEW YORK COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GERALD ADGER #05-B-2254  
(Your Name)

ELMIRA CORRECTIONAL FACILITY  
(Address)

ELMIRA, NY 14902-0500  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION PRESENTED

WHEN THE PETITIONER GERALD ADGER #05-B-2254  
WAIVED HIS RIGHT FOR A JURY TRIAL, WAS THE  
JUDGE SUPPOSE TO DENY GERALD ADGER WAIVER  
OF THE JURY TRIAL BECAUSE AN HUNTLEY HEARING  
WAS HELD AND FOUND THAT THE PETITIONER  
GERALD ADGER #05-B-2254 PRE-TRIAL STATEME-  
NTS WERE VOLUNTARY "AND AN TRIAL ON THE  
MERITS BY A JUDGE ALONE WOULD DEPRIVE  
THE PETITIONER GERALD ADGER #05-B-2254 OF AN  
SECOND DETERMINATION, BY A JURY, OF THE  
VOLUNTARINESS OF INCULPATORY STATEMENTS  
MADE BY THE PETITIONER GERALD ADGER #05-B-2254"  
(PEOPLE V. DICOSTANZO, 31 AD 2d 250, 252 [4TH  
DEPT 1969], AFFD 26 NY 2d 1014 [1970]) ?

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PETITIONER,

GERALD ADGER #05-B-2254

V.

RESPONDENT.

THE PEOPLE OF THE STATE OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
SUPREME JUDICIAL COURT

GERALD ADGER (AD-JUR) #05-B-2254 RESPECTFULLY  
PETITIONS FOR A WRIT OF CERTIORARI TO REVIEW THE  
JUDGMENT ORDER DENYING LEAVE FROM THE STATE OF  
NEW YORK, COURT OF APPEALS BEFORE: HON. MICHAEL J.  
GARCIA, ASSOCIATE JUDGE, DATED: MARCH 22, 2018 AT ALBANY,  
NEW YORK WHEREIN IT WAS ORDERED THAT THE APPLICATION  
IS DENIED.

### OPINIONS BELOW

THE OPINION OF THE STATE OF NEW YORK COURT OF APPEALS  
BEFORE: HON. MICHAEL J. GARCIA, ASSOCIATE JUDGE, ORDERED  
THAT THE APPLICATION IS DENIED AS AN ORDER DENYING  
LEAVE AFTER APPELLANT HAVING LEAVE TO APPEAL TO THAT  
COURT PURSUANT TO CRIMINAL PROCEDURE LAW § 460.20  
FROM AN ORDER IN THE CASE OF: GERALD ADGER V. THE PEOPLE  
OF THE STATE OF NEW YORK.

### JURISDICTION

THE STATE OF NEW YORK COURT OF APPEALS ORDERED

THAT THE APPLICATION IS DENIED MARCH 22, 2018 AT ALBANY, NEW YORK. THE PETITIONER WAS TOLD BY HIS ATTORNEY FOR THE MEMORANDUM AND ORDER THAT WAS ORDERED UNANIMOUSLY AFFIRMED AND THE STATE OF NEW YORK COURT OF APPEALS ORDER DENYING LEAVE, " THAT WITHIN 90 DAYS FROM THE RECEIVED DATE OF THE NEW YORK COURT OF APPEALS ORDER DENYING LEAVE, YOU MAY PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES, LOCATED ON ONE FIRST STREET, IN WASHINGTON, DISTRICT OF COLUMBIA. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1257.

### CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE III, SECTION 2 (I) OF THE CONSTITUTIONS OF THE UNITED STATES PROVIDES THAT (WE THE PEOPLE OF THE UNITED STATES, IN ORDER TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILITY, PROVIDE FOR THE COMMON DEFENSE, PROMOTE THE GENERAL WELFARE, AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY, DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE UNITED STATES OF AMERICA)" THE JUDICIAL POWER SHALL EXTEND TO ALL CASES, IN LAW AND EQUITY, ARISING UNDER THIS CONSTITUTION, THE LAWS OF THE UNITED STATES, AND TREATIES MADE, OR WHICH

SHALL BE MADE, UNDER THEIR AUTHORITY; - TO ALL CASES AFFECTING AMBASSADORS, OTHER PUBLIC MINISTERS AND CONSULS; - TO ALL CASES OF ADMIRALTY AND MARITIME JURISDICTION; TO CONTROVERSIES TO WHICH THE UNITED STATES SHALL BE A PARTY; TO CONTROVERSIES BETWEEN TWO OR MORE STATES; - BETWEEN A STATE AND CITIZENS OF ANOTHER STATE; BETWEEN CITIZENS OF DIFFERENT STATES; - BETWEEN CITIZENS OF THE SAME STATE CLAIMING LANDS UNDER GRANTS OF DIFFERENT STATES, AND BETWEEN A STATE, OR THE CITIZENS THEREOF, AND FOREIGN STATES, CITIZENS OR SUBJECTS."

## STATEMENT

PETITIONER WAS INDICTED JUNE 10, 2004 FOR CRIMINAL CHARGES, OF, INTER ALIA, RAPE IN THE FIRST DEGREE. AT THE BENCH TRIAL, THE PETITIONER WAS DISMISSED FOR AN COUNT OF PETIT LARCENY JUNE 21, 2005.

ON JULY 27, 2005, THE JUDGMENT DATE, THE PETITIONER WAS SENTENCED TO 14 YEARS IMPRISONMENT, 5 YEARS PAROLE AND POST RELEASE SUPERVISION RAN CONCURRENT.

THE PETITIONER TRIAL ATTORNEY FILED ~~AN~~ AN NOTICE OF APPEAL AND AN AFFIDAVIT WITH THAT NOTICE OF APPEAL ON THE JUDGMENT DATE OF JULY 27, 2005 WITH THE SENTENCING

CLERK OF THE COUNTY OF MONROE, STATE OF NEW YORK, CITY OF ROCHESTER BUT THE SENTENCING CLERK RENDERED THE WRONG JUDGMENT DATE AND AS JUNE 21, 2005.

EVEN THOUGH THE PETITIONER ATTORNEY AT TRIAL DID NOT SERVE THE MONROE COUNTY PROSECUTOR, THE PETITIONER DID NOT FIND THIS OUT UNTIL AFTER HE COMPELLED THE APPELLATE DIVISION 4TH DEPARTMENT, STATE OF NEW YORK ON AUGUST 03, 2010 AND TO GET THE JUDGMENT DATE DEEMED AGAIN FROM THE SENTENCING CLERK ERROR.

THE PETITIONER DID NOT LEARN HOW TO REMEDY THE JUDGMENT DATE ERROR UNTIL JULY 23, 2015 AS AN GRANT TO PURSUE CPL § 460.10(b) AND GRANTING HIM AN ATTORNEY NOVEMBER 8, 2015 BY THE STATE OF NEW YORK APPELLATE DIVISION 4TH DEPARTMENT.

BY DECEMBER 22, 2017 AN MEMORANDUM AND ORDER WAS ORDERED UNANIMOUSLY AFFIRMED AND THE COURT OF APPEALS FOR THE STATE OF NEW YORK DENIED THE PETITIONER APPLICATION AS AN ORDER DENYING LEAVE MARCH 22, 2018 WHEN THE PETITIONER APPELLATE ATTORNEY ARGUED WHETHER THE RIGHT TO A JURY TRIAL WAS INVALID INASMUCH AS SUPREME COURT FAILED TO CONDUCT AN ADEQUATE ALLOCUTION TO DETERMINE WHETHER THE WAIVER WAS VOLUNTARY, KNOWING,



AND INTELLIGENT.

BEING THE FACT THAT AN HUNTLEY HEARING WAS HELD IN THIS INDICTMENT AND IT WAS FOUND THAT THE PETITIONER PRE-TRIAL STATEMENTS WERE VOLUNTARY PRIOR TO THE BENCH TRIAL, MERITS BY A JUDGE ALONE WILL DEPRIVE THE PETITIONER OF AN SECOND DETERMINATION, BY A JURY, OF THE VOLUNTARINESS OF INCULPATORY STATEMENTS AS IT IS SAID IN PEOPLE V. DICOSTANZO 31 AD 2d 250, 252 [4th DEPT 1969] affd 26 NY 2d 1014 [1970]. THEREFORE AN JURY TRIAL MUST BE HELD TO GURANTEE THE PETITIONER AN FAIR TRIAL AS THE PETITIONER REQUESTS THAT AN FAIR TRIAL BE GIVEN BY AN JURY TRIAL, SO THAT THIS VERDICT HAS NO DEPRIVATIONS IN CONSTITUTING THE UNITED STATES CONSTITUTIONS.

### I. THE DECISION BELOW SQUARELY CONFLICTS WITH THE COURT DECISION

IF IT WAS STATED IN PEOPLE V. DICOSTANZO, 31 AD 2d 250, 252 [4th DEPT 1969] affd 26 NY 2d 1014 [1970] "A COMPELLING GROUND FOR THE DENIAL OF A BENCH TRIAL WHERE THE TRIAL JUDGE, AFTER A HUNTLEY HEARING, FOUND THAT THE DEFENDANT'S PRE-TRIAL STATEMENTS WERE VOLUNTARY AND WHERE" A TRIAL ON THE MERITS BY THE

JUDGE ALONE WOULD DEPRIVE DEFENDANT OF A SECOND DETERMINATION, BY A JURY, OF THE VOLUNTARINESS OF INCULPATORY STATEMENTS MADE BY DEFENDANT, THEN TO GO AGAINST THAT DECISION WILL CONFLICT WITH ITS COURT.

HOWEVER, IN PEOPLE V DUCHIN (12 NY 2d 351 [1963]), THE COURT OF APPEALS CONCLUDED THAT A DEFENDANT IS ENTITLED TO A BENCH TRIAL "AS A MATTER OF RIGHT" UNLESS (1) THE WAIVER IS TENDERED IN BAD FAITH OR (2) THE DEFENDANT IS NOT "FULLY AWARE OF THE CONSEQUENCES OF THE CHOICE HE IS MAKING".

## REASON FOR GRANTING THE WRIT

THIS WRIT SHOULD BE GRANTED TO SUPPORT THE CONSTITUTIONS OF THE UNITED STATES AND NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES WHEREIN THE PETITIONER IS AN BORN UNITED STATES CITIZEN.

## CONCLUSION

REVIEW FROM THIS COURT SHOULD GRANT THE PETITIONER AN JURY TRIAL AS AN FAIR TRIAL BECAUSE IN PEOPLE V. DICOSTANZO, 31 AD 2d 250, 252 [4TH DEPT 1969], AFFD 26 NY 2d 1014 [1970], THE COURT DENIED HIS WAIVER OF A BENCH TRIAL BECAUSE AN HUNTLEY HEARING WAS HELD AND FOUND THAT THE DEFENDANT PRE-TRIAL STATEMENTS

WERE VOLUNTARY " AND AN TRIAL ON THE MERITS BY A JUDGE ALONE WOULD DEPRIVE THE DEFENDANT OF AN SECOND DETERMINATION, BY A JURY, OF THE VOLUNTARINESS OF INCULPATORY STATEMENTS MADE BY THE DEFENDANT. "

ONLY IF ITS WITHIN THE DISCRETION OF INCULPATORY STATEMENTS THAT WAS MADE BY THE PETITIONER GERALD ADGER, THE HUNTLEY HEARING THAT MADE THE PETITIONER GERALD ADGER STATEMENTS INCULPATORY SHOULD BE HELD AGAIN FOR AN HUNTLEY HEARING BECAUSE THE ATTORNEY WHOM REPRESENTED THE PETITIONER GERALD ADGER (DAVID DUGAY) WAS LATER FOUND TO BE AN CONFLICT OF INTEREST AN WEEK BEFORE TRIAL WAS GOING TO TAKE PLACE, SO THE JUDGE (HON: CONNEL) GAVE THE PETITIONER ANOTHER ATTORNEY OUT THAT SAME FIRM OF THE MONROE COUNTY, STATE OF NEW YORK PUBLIC DEFENDER OFFICE, THEN ASSIGNED A DIFFERENT JUDGE OTHER THEN HIMSELF FOR THE TRIAL.

IF THE CONFLICT OF INTEREST COULD NOT REPRESENT HIM AT TRIAL, THEN ALL HEARINGS, MOTIONS, AND PROCEEDINGS SHOULD HAVE BEEN HELD OVER FOR THE EQUITY OF LAW AND JUSTICE AND TO SUPPORT THE CONSTITUTIONS OF THE UNITED STATES.

SWORN TO BEFORE ME  
THIS 15 DAY OF JUNE  
2018

STEVEN D. LEE  
Notary Public, State of New York  
Chemung County, 01LE6231048, 8  
Commission Expires Nov. 15, 2021

RESPECTFULLY SUBMITTED,



GERALD ADGER #05-8-2254  
ELMIRA CORRECTIONAL FACILITY