

No. 18-8002

IN THE SUPREME COURT OF THE UNITED STATES

---

BRAD HUNTER SMITH,

*Petitioner,*

v.

STATE OF ARKANSAS,

*Respondent.*

---

*ON PETITION FOR WRIT OF CERTIORARI  
TO THE  
SUPREME COURT OF ARKANSAS*

---

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

---

GREGORY NEAL ROBINSON  
*Counsel of Record for Petitioner*  
LUCAS WAYNE ZAKRZEWSKI  
Attorneys at Law  
720 West Sixth Street  
Pine Bluff, Arkansas 71601  
870-850-6000  
[rzlawfirm@yahoo.com](mailto:rzlawfirm@yahoo.com)

**CAPITAL CASE****QUESTION PRESENTED**

Whether the Arkansas Supreme Court's holding that a capital-sentencing jury permissibly declined to weigh an existent statutory mitigating circumstance against the existent aggravating circumstances after deeming the former subjectively unworthy of consideration facilitates the arbitrary imposition of the death penalty in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

# TABLE OF CONTENTS

	Page(s)
QUESTION PRESENTED . . . . .	i
TABLE OF CONTENTS . . . . .	ii
TABLE OF CITED AUTHORITIES . . . . .	iii
PETITIONER’S REPLY TO RESPONDENT’S REASONS FOR DENYING THE WRIT , , , , , . . . . .	1
I.    THIS COURT DOES NOT LACK JURISDICTION TO REVIEW THE ARKANSAS SUPREME COURT’S DECISION. . . . .	1
II.   THIS CASE PRESENTS PETITIONER’S QUESTION PRESENTED. . . . .	2
CONCLUSION . . . . .	2

## TABLE OF CITED AUTHORITIES

Page(s)

## CASES

*Adams v. Robertson*, 520 U.S. 83, 117 S. Ct. 1028 (1997) (per curiam) . . . 1

*Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 50 S. Ct. 451 (1972)  
(per curiam) . . . . . 1

*Stop the Beach Renourishment, Inc., v. Fla. Dep't of Env'tl. Prot.*, 560 U.S.  
702, 130 S. Ct. 2592 (2010) . . . . . 1

## CONSTITUTIONAL PROVISIONS

U.S. Const. amend. 8 . . . . . 1

U.S. Const. amend. 14 . . . . . 1

**PETITIONER'S REPLY TO RESPONDENT'S REASON FOR DENYING THE  
WRIT**

**I. THIS COURT DOES NOT LACK JURISDICTION TO REVIEW THE  
ARKANSAS SUPREME COURT'S DECISION.**

Respondent argues that this Court lacks jurisdiction to review the Arkansas Supreme Court's decision because Petitioner failed to timely raise a federal question. Br. 4-5. In support of its position, Respondent cites *Adams v. Robertson*, 520 U.S. 83, 89 n.3, 117 S. Ct. 1028, 1031 n.3 (1997) (per curiam) and *Brinkerhoff-Faris Tr. & Sav. Co. v. Hill*, 281 U.S. 673, 677-78, 50 S. Ct. 451, 453 (1930), which collectively state that this Court generally declines to consider issues raised for the first time in a petition for rehearing unless rehearing presented the first opportunity to raise it. Br. 4. It then cites *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702, 712 n.4, 130 S. Ct. 2592, 2600 n.4 (2010), which states that this Court may consider federal questions raised for the first time in a state-court petition for rehearing when the state-court decision itself is claimed to constitute a violation of federal law. Br. 4-5. Maintaining that the decision below "was rendered without the benefit of any briefing on the federal question [Petitioner] now seeks to raise[.]" Respondent asserts that he could have raised his federal arguments sooner Br. 5.

The foregoing cases do not support Respondent's position. Petitioner claims that the Arkansas Supreme Court's decision itself constitutes a violation of federal law, namely the Eighth and Fourteenth Amendments to the United States

Constitution. Pet. 9-10. Accordingly, Petitioner could not have raised his federal question and arguments sooner, and rehearing presented the first opportunity for him to do so. Finally, Respondent's contention that the Arkansas Supreme Court rendered its decision without the benefit of any briefing on the federal question Petitioner raises overlooks the facts that his petition for rehearing fully outlined his federal constitutional argument and that Respondent responded to that argument. *See App. 38-42, 44-46.*

## II. THIS CASE PRESENTS PETITIONER'S QUESTION PRESENTED.

Respondent also argues that this case does not present Petitioner's question presented. Br. 5-8. Petitioner's petition fully explains why this case presents his question presented, and he has no further reply as to that point.

---

## CONCLUSION

For the reasons stated in his petition and this reply, certiorari should be granted, and the decision of the Arkansas Supreme Court should be reversed.

Respectfully submitted,

---

/s/ Gregory Neal Robinson  
GREGORY NEAL ROBINSON  
*Counsel of Record for Petitioner*  
LUCAS WAYNE ZAKRZEWSKI  
Attorneys at Law  
720 West Sixth Street  
Pine Bluff, Arkansas 71601  
870-850-6000  
[rzlawfirm@yahoo.com](mailto:rzlawfirm@yahoo.com)