

IN THE SUPREME COURT OF THE UNITED STATES

CAUSE NO. 18-9134 DATE: 10/18/2019

DOCKET #

JOE CLOPTON
(PETITIONER)

VS.

NO. 3:16-CV-1407

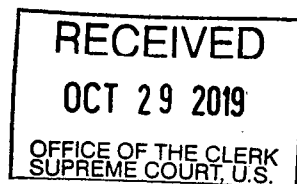
LORIE DAVIS " DIRECTOR "
(RESPONDENT)

TEXAS DEPARTMENT OF CRIMINAL JUSTICE CORRECTIONAL DIVISION

MOTION FOR REHEARING

IN RE: PETITION FOR A WRIT OF CERTIORARI
(RECONSIDERATION)

Now Comes Petitioner Joe Clopton in above cause no.
asking the court to reconsider petitioners petition
for writ of cert. This case deserves the attention
of the Supreme Court. I would like to bring the
courts attention to an error of exceptional public
importance or an opinion that directly conflicts
with Supreme Court. The petitioner ask for the court
to intervene as the Constitutional rights of petitioner
has been engrossly been violated .



BRIEF IN SUPPORT OF MOTION FOR REHEARING

PG. 1 OF 6 "ARGUMENT AND
POINTS OF ERROR"

GROUND (1) "IMPROPER AMENDING OF INDICTMENT"

Argument 1 • THE SUPREME COURT HAS HELD THAT "WHERE CONSTITUTIONAL RIGHTS DIRECTLY AFFECTING THE ACERTAINMENT OF GUILT ARE IMPLICATED, THE HEARSAY RULE MAY NOT BE APPLIED MECHANISTICALLY TO DEFEAT THE ENDS OF JUSTICE. CHAMBERS vs. MISSISSIPPI 410 U.S. 284, 302 (1973) (DISCUSSING THE DUE PROCESS RIGHT TO A FAIR TRIAL) PETITIONERS PLEADS HIS INNOCENTS, AND THAT HIS 1st, 5th, 6th, and 14th AMENDMENTS, TO THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 10, 15 and 19 TEXAS CONSTITUTION HAS BEEN VIOLATED. DUE TO THE LACK OF SPECIFICITY OF THE ALLEGATIONS IN THE INDICTMENT, THE FAILURE OF THE INDICTMENT TO STATE A PARTICULAR DATE WOULD DENY PETITIONER OPPORTUNITY TO INVESTIGATE THE FACTUAL ALLEGATIONS AGAINST HIM.

DUE PROCESS CLAUSE FORBIDS THE STATE FROM CONVICITNG A PERSON OF A CRIME WITHOUT PROVING THE ELEMENTS OF THAT CRIME BEYOND A REASONABLE DOUBT, BUNKLEY v. FLORIDA 538 U.S. 835, 155 L2d 1046 123 Ct (2003)

PETITIONER STATES HE WAS INDICTED FOR A CHARGE OF CONTINUOUS SEXUAL ASSAULT OF A CHILD UNDER 14 TEXAS PENAL CODE 21.02 AND ACQUITTED OF HIGHER OFFENSE TO AGGRAVATED SEXUAL ASSAULT PENAL CODE 22.021 AMENDING THE INDICTMENT TO LESSER WITH SAME ELEMENTS. TEXAS CODE OF CRIMINAL PROCEDURES READS ART. 37.09 LESSOR INCLUDED OFFENSE (1) IT IS ESTABLISHED BY PROOF OF THE SAME OR LESS THAN ALL THE FACTS REQUIRED TO ESTABLISH THE COMMISSION OF THE OFFENSE CHARGED. ART. 37.14 ACQUITTAL OF HIGHER OFFENSE AS JEOPARDY IF A DEFENDENT, PROSECUTED FOR AN OFFENSE WHICH INCLUDES WITHIN IT LESSER OFFENSE, BE CONVICTED OF A OFFENSE LOWER THAN THAT FOR WHICH HE IS INDICTED. AND A NEW TRIAL BE GRANTED HIM. SEE: STIRONE V. U.S. 361 U.S. 212, 217-19 (1960)

GROUND (2) INEFFECT ASSISTANCE OF COUNSEL

ARGUMENT: PETITIONER AFFIRMATIVE MISADVICE BY AN ATTORNEY AND FAILURE TO ADVISE ABOUT ADVANTAGES AND DISADVANTAGES OF A PLEA ARE TREATED THE SAME WHEN ASSESSING WHETHER COUNSEL PERFORMANCE WAS DEFICIENT) PADILLA V. KENTUCKY 559 U.S. 356, 373, 130 S.Ct. 1473, 176 L.Ed 2d 284 (2010)

PG 3 of 6 BRIEF CONTINUED

GROUND 2 CONT. / ARGUMENT; ATTORNEYS PERFORMANCE
FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS
WHEN HE LED THE CLIENT TO BELIEVE HE WOULD GET
PROBATION IF HE PLED NO LO CONTINRY. WITHIN
THE CHARGE DOES NOT EVEN PERMIT PROBATION.
THIS IS A DUE PROCESS VIOLATION. / I.A.C. X
TOTAL VIOLATION OF PETITIONER CONSTITUTIONAL
RIGHTS. 5th, 6th, and 14th AMENDMENTS OF THE
U.S. CONSTITUTION. FEDERAL PROTECTED RIGHTS.

THUS CONSTITUTES A "FUNDAMENTAL DEFECT"
AND MISARRIAGE OF JUSTICE. THIS IS A
COGNIZABLE CLAIM AND SUCH VIOLATIONS ARE OF
CONSTITUTION MAGNITUDE AND CREATED "FUNDAMENTAL
UNFAIRNESS" THAT VIOLATES THE PETITIONERS
14th AMENDMENT RIGHT TO DUE PROCESS.

IT HAS RISEN TO THAT LEVEL AND IS "INCONSISTANT
WITH THE RUDIMENTRY DEMANDS OF FAIR PROCEDURE.

STANDARDS

SUPREME COURT; STRICKLAND V. WASHINGTON, 466 U.S.
668, 691, 80 L.Ed 2d 674 (1984)

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BRIEF CONTINUED

GROUND 2 CONT / ARGUMENT: / STANDARDS CONT.

WIGGINS V. SMITH, 539 U.S. 510, 522, 156 L.Ed 2d 471 (2003)

BOBBY V. VAN HOOK, 558 U.S. 4, 175 L.Ed. 2d 255 259 (2009)

FIFTH CIRCUIT CASES

WOODARD V. COLLINS 898 F.2d 1027, 1029 (5th Cir 1990)

NELSON V. HARGETT, 989 F. 2d 847, 850 (5th Cir. 1993)

BOWER V. QUARTERMAN, 497 F. 3d 459, 467 (5th Cir 2007)

TROTTIE V. STEPHENS, 720 F. 3d 231, 243 (5th Cir 2013)

DUE TO THE FOREGOING REASONS TENETS OF TEXAS LAW THE ALLEGATIONS IN THE INDICTMENT PLACED PETITIONER TWICE IN JEOPARDY FOR THE SAME OFFENCE. STATE VS. MOFF 154 S.W. 3d 599 (TEX. CRIM. APP. 2004); SWABADO VS. STATE 597 S.W. 2d 361 (TEX. APP. 1980); AMAYA VS. STATE, 551 S.W. 2d 365 (TEX. CRIM. APP. 1977) FIFTH, SIXTH AND FOURTEENTH AMENDMENTS UNITED STATES CONSTITUTION; ARTICLE 1, SECTIONS 10, 15, 19. TEXAS CONSTITUTION.

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BRIEF CONTINUED

GROUND 2 CONT / ARGUMENT / Conclusion

CONCLUSION

THE PETITIONER WOULD LIKE SUPREME COURT TO KNOW AND CONSIDER THE FACT THAT PETITIONER JOE CLOPTON WAS MISINFORMED OF THE CHARGE, AND WAS LED AND MISADVISED ABOUT PROBATION TO A CHARGE THAT DID NOT PERMIT PROBATION OF CONTINUOUS SEXUAL ASSAULT TO A CHILD UNDER 14. AT SENTENCING JUDGE FOUND PETITIONER GUILTY OF LESSOR OFFENCE AGG. ASSLT. OF A CHILD 1st DEGREE FELONY 5-99 OR LIFE. U.S. v. CARREON-IBARRA 673 F3d 358, 365-66 (5th Cir. 2012) (PLEA INVALID BECAUSE COURTS ERROR IN EXPLAINING MINIMUM SENTENCE PREVENTED DEFENDANT "FROM UNDERSTANDING THE NATURE OF THE CHARGES.") THUS PREJUDICE PETITIONER. MR NANCARROW WAS THE DEFENSE ATTORNEY FOR PETITIONER AND STATED ON AN AFFIDAVIT "HE ADVISED PETITIONER TO SIGN FOR PROBATION ON CHARGES." THIS CASE SHOULD BE REMANDED BACK TO LOWER COURTS FOR PETITIONER TO BE RE-INDICTED AND SENTENCE TO A LESSOR OF THE LESSOR OF SEXUAL ASSAULT OF A CHILD. TO MAKE THIS SENTENCE LEGAL UNDER THE LAWS AND TO PROTECT THE RIGHTS OF THE PUBLIC.

PRAYER TO THE COURT

PETITIONER JOE CLOPTON PRAYS THAT HIS CONSTITUTIONAL RIGHT ARE UPHELD AND PROTECTED. THAT THE SUPREME COURTS INTERVENE AND USE THE COURTS SUPERVISORY POWERS TO REMAND THIS CASE DOWN TO THE LOWER COURTS FOR AN "EVIDENTIARY HEARING" SO ALL THE EVIDENCE FROM BOTH SIDE MAY BE PRESENTED AND JUSTICE BE SERVED.

PETITIONER ASK THE S. CT TO GRANT RECONSIDERATION OF WRIT OF CERTIORARI IN THIS MOTION FOR REHEARING.

FOR JUSTICE AND THE GREATER GOOD OF THE PEOPLE.

"THANK-YOU, FOR YOUR PRECIOUS TIME IN THIS IMPORTANT MATTER."

GOD BLESS ALL INVOLVED

RESPECTFULLY SUBMITTED BY



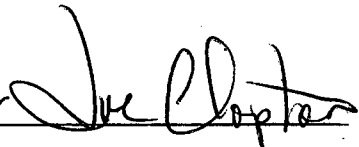
DATE: 10.18.2019

DECLARATION IN SUPPORT OF MOTION FOR REHEARING

"DECLARATION INCORPORATED IN BRIEF"

I PETITIONER JOE CLOPTON IN ABOVE CASE MAKE
DECLARATION IN SUPPORT OF MOTION FOR REHEARING
PURSUANT TO 28 U.S.C. § 1746 I DECLARE
UNDER PENALTY OF PERJURY THAT THE FORGOING IS
TRUE AND CORRECT.

PETITIONER JOE CLOPTON (NODGE UNIT)
379 FM 2972 W. RUSK, TEXAS 75785

RESPECTFULLY SUBMITTED X 
DATE: 10.18.2019 PROSE: JOE CLOPTON

SUPREME COURT OF THE UNITED STATES

DATE 10/18/2019

A CERTIFICATE OF STATEMENT IN PETITION

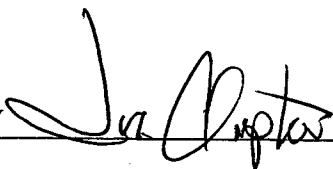
JOE CLOPTON V. DAVIS NO: 18-9134

THE PETITION FOR REHEARING IN THE ABOVE-ENTITLED CASE BRIEFLY AND DISTINCTLY STATES ITS GROUNDS AND THE GROUNDS ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT AND TO OTHER GROUNDS NOT PREVIOUSLY PRESENTED THAT ARE SUBSTANTIAL AND OF GREAT PUBLIC IMPORTANCE

IN ADDITION PETITIONER STATES HIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY

PURSUANT TO 28 § USC 1746 I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND CORRECT.

RESPECTFULLY SUBMITTED x


PRO SE: JOE CLOPTON

JERRY NODGE UNIT 379 FM 2972 W. RUSK, TEXAS

- 75785 -

IN THE SUPREME COURT OF THE UNITED STATES

JOE CLOPTON (PETITIONER)

VS.

NO: 18-9134

LORIE DAVIS (RESPONDENT)

(DIRECTOR) T. D. C. J

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

IN FORMA PAUPERIS IN FEDERAL U.S SUPREME COURT
(GRANTED) 28 USC § 1915 AND FEDERAL DISTRICT COURT

DECLARATION IN SUPPORT OF REQUEST FOR LEAVE TO PROCEED
IN FORMA PAUPERIS (DECLARATION INCORPORATED IN THE ABOVE MOTION)

I AM THE PETITIONER IN THE ABOVE CASE /PETITION FOR RE-HEARING

I MAKE DECLARATION IN SUPPORT OF MY MOTION FOR LEAVE TO
PROCEED IN FORMA PAUPERIS PURSUANT TO 28 U.S.C. § 1915

I AM INCARCERATED AT THE JERRY HODGE UNIT. I HAVE NO
INCOME AND I HAVE NO CASH, BANK ACCOUNTS, REAL ESTATE, OR ANY OTHER
VALUABLE PROPERTY. PURSUANT TO 28 U.S.C § 1746, I DECLARE
UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE AND
CORRECT. X Joe Clifton /DATE: 10-18-19

PRO SE JOE CLOPTON

THE JERRY HODGE UNIT 379 FM 2972 W. RUSK, TEXAS 75785