

No. 18-9154

IN THE  
SUPREME COURT OF THE UNITED STATES

JEFFREY W. Smith — PETITIONER  
(Your Name)

vs.

Harold W. Clarke, Director — RESPONDENT(S)  
VIRGINIA DEPARTMENT OF CORRECTIONS  
ON PETITION FOR A WRIT OF CERTIORARI TO  
— REHEARING —

SUPREME COURT OF THE UNITED STATES  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

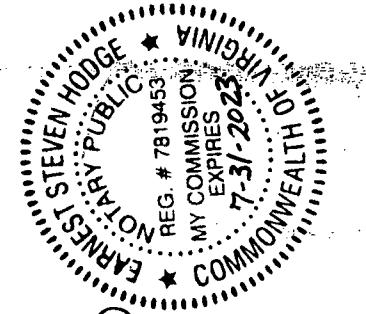
JEFFREY William Smith #1494875  
(Your Name)

RIVER NORTH CORRECTIONAL CENTER  
(Address)

329 DELLBOOK Ln. INDEPENDENCE, VA 24348  
(City, State, Zip Code)

(276) 773-2518  
(Phone Number)

State of Virginia  
County of Grayson  
On this 9<sup>th</sup> day of July, 2019  
before me personally appeared  
to be the person who executed the  
foregoing instrument, and acknowledged that the  
execution was of his/her free act and deed.  
\_\_\_\_\_  
SEAL (signed) Jeffrey W. Smith  
NOTARY PUBLIC



Jeffrey W. Smith

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT.....	5
CONCLUSION.....	7

## INDEX TO APPENDICES

APPENDIX A THE 22ND DAY OF DECEMBER, 2014

APPENDIX B THE 10TH DAY OF MAY, 2014

APPENDIX C THE 6TH DAY OF OCTOBER, 2015

APPENDIX D THE 2ND DAY OF FEBRUARY 2016

APPENDIX E THE 17TH DAY OF JUNE, 2019

APPENDIX F

**QUESTION(S) PRESENTED**

1. • IS A "LIFE MEANS" LIFE INSTRUCTION APPROPRIATE WHEN GIVEN TO THE JURORS?
2. • IS A "LIFE MEANS LIFE" INSTRUCTION SPECULATIVE?
3. • IS SPECULATION A VIOLATION UNDER THE EIGHTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?
4. • WAS THE COURTS ANSWER TO THE JUROR'S QUESTION WAS IN FACT DEFECTIVE AND SPECULATIVE?

## **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:

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
• "Wolfe v. Commonwealth", 265 VA 193 (2003)	5
• "Bell v. Commonwealth", 264 VA 172 (2002)	6
• Yarborough v. Commonwealth, 258 VA 374 (1999)	6

## STATUTES AND RULES

28 U.S.CA 2255

## OTHER

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 D 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 E 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 \_\_\_\_\_ appears at Appendix \_\_\_\_\_ to the petition and is court

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 JUNE 17th 2019

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 10th of May 2014.  
A copy of that decision appears at Appendix B.

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**

---

- *Yarbrough v. Commonwealth*, 265 Va 220
- *Bell v. Commonwealth*, 265 Va. 221
- *Wolfe v. Commonwealth*, 265 Va. 193

## STATEMENT OF THE CASE

---

- On January 9, 2014 THE COURT WAS PLAINLY WRONG AND ERRED AS A MATTER OF LAW WHEN IT INSTRUCTED THE JURY THAT "LIFE MEANS LIFE". THIS RESPONSE WAS NOT ONLY INAPPROPRIATE, BUT RULED BY THE "SUPREME COURT" IN NUMEROUS CASE LAW. TO BE FOUND INACCURATE. IT ALSO LED THE JURY TO BELIEVE AND SPECULATE THAT I WOULD SERVE THE FULL TERM OF A "LIFE" SENTENCE, NEGATING THE POSSIBILITY OF GERIATRIC PAROLE, AN ACT OF EXECUTIVE PARDON OR CLEMENCY. AS A GENERAL RULE IN DETERMINING A DEFENDANT'S SENTENCE A JURY IS NOT PERMITTED TO CONSIDER WHAT MAY HAPPEN TO A DEFENDANT AFTER A VERDICT.

## REASONS FOR GRANTING THE PETITION

- AFTER THE CASE WAS SUBMITTED TO THE JURY FOR SENTENCING DELIBERATIONS THE JURY ASKED THE FOLLOWING QUESTION: "WE WANT TO KNOW EXACTLY; WHAT'S THE TERM FOR A LIFE SENTENCE? I STATE THAT THE COURT'S RESPONSE INVITED THE JURY TO SPECULATE ABOUT THE TIME I WOULD SERVE ON A LIFE SENTENCE, IN VIOLATION UNDER THE FOURTEENTH AMENDMENT AND THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION.
- THE JURY ASKED SPECIFICALLY FOR THE DEFINITION OF "LIFE IMPRISONMENT" IN TERMS OF YEARS (SEE, TRIAL TR. 1/9/14 PAGES, 97-98) THE TRIAL JUDGE INSTRUCTED THE JURORS: "WEll I KNOW WHAT IT IS, BUT I CAN'T TELL YOU; BUT "LIFE IS LIFE", OKAY? YOU SENTENCE ACCORDING TO THE INSTRUCTIONS, BUT I CAN'T GET INTO HOW IT'S CALCULATED; OKAY?
- NOW I DON'T UNDERSTAND IF THE JUDGE STATES HE CAN'T GO INTO HOW IT'S CALCULATED THEN WHY INFORM THE JURY THAT "LIFE MEANS LIFE"? I STATE THAT WHERE A LIFE MEANS LIFE INSTRUCTION IS GIVEN THE JURY TENDS TO FAVOR "LIFE IMPRISONMENT" OVER ANYTHING BECAUSE IT GIVES THE ASSURANCE OF NO RELEASE. THIS TRUTHFUL ANSWER TO THE JURORS QUESTION OPENED THE DOOR TO MATTERS THAT WERE SPECULATIVE AND INAPPROPRIATE FOR THE JURY TO CONSIDER. IF IT IS THOUGHT NECESSARY TO TELL THE JURY NOT TO SPECULATE ABOUT THE INFORMATION GIVEN, THEN IT'S SAFER NOT TO GIVE THE INFORMATION AT ALL. THE FORMANS RESPONSE WAS: "THAT'S ALL WE NEED TO KNOW" (SEE, TRIAL TR. 1/9/14 PAGE, 98) WHICH GAVE AN ASSUMPTION TO SPECULATION.
- IN THE MOST RECENT CASE DECIDED "WOLFE V. COMMONWEALTH", 265 VA. 193 (2003), THE CAPITAL MURDER DEFENDANT WAS NOT ENTITLED TO INSTRUCTION IN RESPONSE TO JURY'S QUESTION TO THE COURT DURING DELIBERATIONS IN PENALTY PHASE OF TRIAL. THAT THE WORD "LIFE" MEANT THE DEFENDANT'S NATURAL LIFE; SUCH AN INSTRUCTION WOULD HAVE BEEN INACCURATE, BECAUSE IT WOULD HAVE NEGATED THE POSSIBILITY OF EARLY RELEASE THROUGH AN ACT OF EXECUTIVE PARDON OR CLEMENCY THESE POSSIBILITIES WERE INAPPROPRIATE FOR A JURY TO CONSIDER BECAUSE SUCH INFORMATION COULD CAUSE THE JURY TO SPECULATE AND SUCH SPECULATION IS INCONSISTENT WITH A FAIR TRIAL AND MIGHT RESULT IN A HARSHER SENTENCE THAN WOULD OTHERWISE BE WARRANTED.

• IN "BELL V. COMMONWEALTH", 264 VA. 172 (2002) DURING PENALTY PHASE DELIBERATIONS THE JURY INQUIRED, "UNDERSTANDING THAT IMPRISONMENT FOR LIFE MEANS NO POSSIBILITY OF PAROLE IS THERE ANY OTHER WAY TO BE RELEASED FROM PRISON? RECOGNIZING THAT GERIATRIC PAROLE WAS NOT AVAILABLE TO THE DEFENDANT CONVICTED OF CAPITAL MURDER, THE COURT'S PROPOSED ANSWER WAS NO NOT WHEN THE DEFENDANT HAS BEEN CONVICTED OF CAPITAL MURDER. THE DEFENDANT AGREED WITH THE RESPONSE BY THE COURTS, BUT THE COMMONWEALTH OBJECTED BECAUSE THERE COULD BE OTHER WAYS FOR THE DEFENDANT CONVICTED OF CAPITAL MURDER TO BE RELEASED EARLY, SUCH AS BY AN ACT OF EXECUTIVE PARON OR CLEMENCY. TO ANSWER THE QUESTION TRUTHFULLY WOULD THEREFORE REQUIRE THAT THE JURY BE INFORMED ABOUT SUCH THINGS ARGUED THE COMMONWEALTH. CONCLUDING THAT THE COMMONWEALTH WAS CORRECT, THE COURT THEN TOLD JURORS THAT THEY WOULD HAVE TO RELY ON THE EVIDENCE THAT THEY HEARD, AND THE INSTRUCTIONS ALREADY PRESENTED IN DECIDING THE PUNISHMENT. IN THE CIRCUIT COURT'S VIEW A TRUTHFULL ANSWER TO THE JUROR'S QUESTION WOULD HAVE OPENED THE DOOR TO MATTERS THAT WERE SPECULATIVE AND INAPPROPRIATE FOR THE JURY TO CONSIDER.

• IN "YARBROUGH V. COMMONWEALTH", 258 VA. 374 (1999), IT STATES WERE INFORMATION ABOUT POTENTIAL POST-SENTENCING PROCEDURES COULD LED A JURY TO IMPOSE A HARSH SENTENCE THAT IT OTHERWISE MIGHT, SUCH MATTERS MAY NOT BE PRESENTED TO THE JURY. THUS IT'S BEEN HELD IN THIS COMMONWEALTH THAT IT IS ERROR FOR THE TRIAL COURT TO INSTRUCT THE JURY THAT THE DEFENDANT WOULD BE ELIGIBLE FOR PAROLE OR COULD BENEFIT FROM AN EXECUTIVE ACT OF PARON OR CLEMENCY. UNQUESTIONABLY, IT WAS THIS LONG-STANDING RULE WHICH PROMPTED THE TRIALS COURTS REFUSAL OF "YARBROUGH'S PROFFERED "LIFE MEANS LIFE" INSTRUCTION AND ITS RESPONSE TO THE JURY'S QUESTIN CONCERNING THE MEANING OF A LIFE SENTENCE...

• UNFORTUNATELY, THIS IS THE EXACT SAME CONFUSION AND SPECULATION THE JUROR'S IN MY CASE WAS UP AGAINST. BY THE COURT TELLING THE JUROR'S THAT "LIFE MEANS LIFE" HE GAVE THAT ASSURANCE THAT I WOULD NOT BE RELEASED. THIS SPECULATION EFFECTS NOT JUST ME, BUT PASS AND FUTURE CASES TO COME. THIS SPECULATION IS A VIOLATION TO NOT JUST MY RIGHTS, BUT OTHER INDIVIDUALS FACING LIFE SENTENCES THAT HOLDS THIS COUNTRY TO THE SAFE GUARDS AND PROTECTION TO A FAIR AND RELIABLE SENTENCING DETERMINATION GUARANTEED BY THE EIGHTH AMENDMENT. IF THE JURY IS NOT TO BE CONCERNED WITH WHAT MAY LATER HAPPEN TO A DEFENDANT SENTENCED TO THE PENITENTIARY, THEN NO INFERANCE CAN BE DRAWN OR ARGUED ONE WAY OR THE OTHER TO WHETHER HE WILL SERVE HIS FULL TERM. THIS MIGHT SEEM SMALL, BUT TO PEOPLE FACING LIFE SENTENCES THIS IS A MAJOR PROBLEM FOR ALL. YOU HAVE TO STOP THE "UNEQUAL JUSTICE".

## Conclusion

- I ASK THE COURTS TO GRANT THIS PETITION IN SUPPORT OF THE FACTS AND ARGUMENT. IT'S CLEAR THAT THIS ISSUE WILL REMAIN UNLESS CHANGE OCCURS, AND YOU HAVE THE POWER TO DO SO FOR PAST AND FUTURE CASES LIKE MINE. I ASK THAT YOU SET THE STAGE FOR FAIR AND RELIABLE SENTENCING DETERMINATIONS WHICH IS GUARANTEED BY THE EIGHTH AMENDMENT.

RESPECTFULLY SUBMITTED,

x Jeffrey W. Smith

JEFFREY W. SMITH #1494875  
329 DELLBROOK LN. R.N.C.C  
INDEPENDENCE, VA 24349