

19-6223

No. _____

Supreme Court, U.S.
FILED

JUL 02 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Kermit B. Harris — PETITIONER
(Your Name)

vs.

EIGHTH DISTRICT COURT OF — RESPONDENT(S)
APPEALS OF OHIO

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kermit B. Harris Pro-Se
(Your Name)

P.O. BOX 640 T.C.C.
(Address)

Leavittsburg, Ohio 44430
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. CAN A STATE TRIAL COURT DISREGARD A DEFENDANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW UNDER THE 14th AMENDMENT OF THE UNITED STATES CONSTITUTION, AND EQUAL PROTECTIONS OF THE LAW, BECAUSE HE WAS CONVICTED OF SHOOTING A POLICE OFFICER?
2. CAN A STATE TRIAL COURT HOLD A DEFENDANT IN CUSTODY WITHOUT A CHARGING OFFENSE, AND IF SO WHEN WILL THE DEFENDANT EVER HAVE FINALITY ON HIS SENTENCE WITHOUT A CHARGING OFFENSE?.

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:

1.THE STATE TRIAL COURT OCTOBER 29, 2015 JOURNAL ENTRY & OPINION.

2.THE STATE COURT OF APPEALS EIGHTH DISTRICT APPELLATE COURT

STATE V. HARRIS, No. 103807, 2016 WL 204908, at *1 (Ohio) Ct.
App. May 19, 2016).

3.THE JUDGMENT OF THE OHIO SUPREME COURT CHIEF JUSTICE MAUREEN

O'CONNOR DENYING TO ACCEPT JURISDICTION OF THE PETITIONER'S

APPEAL OCT.5,2016. RELATED CASES CASE No.2016-0948.

4.THE OHIO SUPREME COURTS JUDGMENT FROM CHIEF JUSTICE MAUREEN

O'CONNOR SUA SPONTE DISMISSING THE PITITIONER'S STATE WRIT OF

HABEAS CORPUS FILED WITH THE OHIO SUPREME COURT ON MAY 8th,
2017. CASE No. 17-0615. DISMISSED ON JULY 26, 2017. Case No.
2017-0615.

5.THE JUDGMENT OF THE UNITED STATES DISTRICT COURT NORTHERN

DISTRICT OF OHIO EASTERN DIVISION JUDGMENT BY JUDGE JOHN R. ADAMS

DISMISSING THE PETITIONER'S WRIT OF HABEAS CORPUS IN ITS

ENTIRETY, WITH PREJUDICE. PURSUANT TO 28 U.S.C. 1915(a)(3). CASE

No. 1:17-cv-02094-JRA Doc: 18 Filed: 07/25/18. 1 of 1 PAGE ID: 222.

4.a. THE JUDGMENT OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT

OF OHIO MAGISTRATE JUDGE GEORGE J.LIMBERTS REPORT AND RECOMMENDATION

RECOMMENDING PETITIONER'S PETITION FOR WRIT BE DISMISSED. ON MAY 11,18.

**LIST OF PARTIES
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- 6. THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO
EASTERN DIVISION ORDER AND DECISION BY JUDGE JOHN R. ADAMS
DISMISSING THE PETITIONER'S Kermit B. Harriss 28 U.S.C.
2254 PETITION FOR HABEAS CORPUS. CASE:1:17-cv-02094-JRA Doc.
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- 7. UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO
EASTERN DIVISION ORDER BY JUDGE JOHN R. ADAMS DENYING THE
PETITIONERS 28 U.S.C. 455(a) MOTION FOR JUDGE JOHN R. ADAMS
TO RECUSE HIMSELF DUE TO HIS IMPARTIALITY AND PERSONAL BIAS
AS WELL AS PERSONAL KNOWLEDGE OF DISPUTED EVIDENTIARY FACTS
CONCERNING THE PROCEEDING. CASE:1:17-cv-02094-JRA Doc:114
Filed: 05/17/18 1 of 2. PageID: 207.**
- 8. THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO
EASTERN DIVISION ORDER FROM MAGISTRATE JUDGE GEORGE J.
LIMBERT DENYING PETITIONERS Kermit B. Harriss MOTION FOR
REVIEW OF MANDATORY EVIDENTIARY HEARING PURSUANT TO 28 U.S.C.
2254 RULE.8 CASE NO. 1:17CV2094 Dated: May 11, 2018.**
- 9. UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO
EASTERN DIVISION REPORT AND RECOMMENDATION OF MAGISTRATE
JUDGE GEORGE J. LIMBERT RECOMMENDING JUDGE JOHN R. ADAMS
DENY AND DISMISS PETITIONER'S PETITION IN ITS ENTIRETY.
CASE NO. 1:17CV2094 Dated: May 11, 2018.**

**LIST OF PARTIES
CONTINUAL**

- 10. UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ORDER
DENYING THE PETITIONER'S WRIT OF MANDAMUS ASKING THEM TO
DIRECT THE DISTRICT JUDGE JOHN R. ADAMS TO RULE ON THE
MOTION TO RECUSE HIMSELF THE PETITIONER FILED. CASE No.
18-3462. Filed July 16, 2018.**
- 11. UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ORDER
DENYING THE PETITIONER'S MOTION FOR CERTIFICATE OF
APPEALABILITY(COA) AND TO PROCEED IN FORMA PAUPERIS. CASE
No. 18-3757 JAN 31, 2019.**
- 12. UNITED STATES COURT OF APPEAL FOR THE SIXTH CIRCUIT ORDER
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CASE No. ~~18-3757 APRIL 25, 2019~~
18-3757 April 25, 2019...**

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- APPENDIX.(D)(2). UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO EASTERN DIVISION ORDER FROM JUDGE JOHN R. ADAMS DENYING THE PETITIONERS MOTION FOR DISTRICT JUDGE JOHN R. ADAMS TO RECUSE HIMSELF FROM THE PETITIONERS CASE. 2 of 2 PAGES. FILED 05/17/2018.
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- APPENDIX.(H)(1). THE OHIO COMMON PLEAS COURT CUYAHOGA COUNTY 1997 4 COUNT INDICTMENT WITH THE WRONG CHARGING OFFENSE FOR COUNT (3) ATTEMPTED/MURDER WITH THE REVISED CODESTATUTE FORRECEIVING STOLEN PROPERTY FOR THE ~~MURDER~~ STATUTE. THE CORRECT STATUTE SHOULD HAVE BEEN R.C.2903 FOR MURDER NOT R.C. 2913.51 WHICH IS THE REVISED CODE STATUTE FOR RECEIVING STOLEN PROPERTY NOT MURDER. 4 of 4 PAGE'S.
- APPENDIX.(H)(1). THE OHIO COMMON PLEAS COURT CUYAHOGA COUNTY 1997 INDICTMENT COUNT (4).FELONIOUS ASSAULT COUNT PLACED THE PETITIONER IN JEOPARDY FOR THE SAME CHARGE FOR COUNT (3) AND (4) FOR THE SAME OFFICER.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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O'SULLIVAN V. BOERCKEL, 526 U.S. 838, 845, 119 S.Ct. 1728, 144 L.Ed. 2d 1 (1999).....	8.
WHITE V. WOODALL, 572 U.S. , , 134 S.Ct. 1697, 1702, 188 L.Ed. 2d 698, 704(2014)(INTERNAL QUOTATION MARKS OMITTED).....	8.

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28 U.S.C. 455(a) MOTION FOR JUDGE JOHN R. ADAMS TO RECUSE HIMSELF DUE TO HIS IMPARTIALITY AND PERSONAL BIAS AS WELL AS PERSONAL KNOWLEDGE OF DISPUTED EVIDENTIARY FACTS CONCERNING THE PROCEEDING. CASE:17-cv-02094-JRA Doc: 14 Filed: 05/17/18 1 of 2 PAGE'S ID: 207.....	4.



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 (A)(A)(1), (A)(2) 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 (B) to the petition and is

☒ reported at 2019 U.S. App. LEXIS 3269, 4 of 4 pages; 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 (E) to the petition and is

☒ reported at COURT OF APPEALS EIGHTH APPELLATE DISTRICT; or, NO. 103807
☐ has been designated for publication but is not yet reported; or, MAY 19, 2016
☐ is unpublished.

The opinion of the STATE TRIAL COURT CR-97-346368 OCT. 29, 2015 court appears at Appendix (F) 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 ~~March 2019~~, 2019.

JAN 31

☐ 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: April 25, 2019, 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 JULY 16, 2019 (date) on JULY 2, 19 received (date) JULY 10, 19 in Application No. A.

USCA 6 No 18-3257 To correct petition by clerks office.

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 OCT 5, 2016.
A copy of that decision appears at Appendix (G). 1 of 1 page.

(G)(1) 1 of 1 page JULY 26, 2019.

☒ A timely petition for rehearing was thereafter denied on the following date: JULY 26, 2019, and a copy of the order denying rehearing appears at Appendix (G)(1).

☐ 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

**PETITIONER'S CONSTITUTIONAL DUE PROCESS RIGHTS AND EQUAL
PROTECTION OF THE LAW UNDER THE 5,6,14, AMENDMENT OF THE
UNITED STATES CONSTITUTION.**

STATEMENT OF THE CASE

The Petitioner attempted to have the State Court correct a void judgement that do not charge an Offense in the State Trial Court, After not being able to succeed the Petitioner attempted to have The State Appellate Court of the Eighth District correct the issue's without any success. Then The Petitioner tried to have the highest State Court The Ohio Supreme Court correct the issue's at hand without any success. Once the Petitioner was denied a hearing by the highest State Court he filed in Federal Court by way of a 28 U.S.C. 2254 Writ of Habeas Corpus. The Petitioner has shown by the Record that he is being held for a crime that the Ohio State Court's do not have a CHARGING OFFENSE FOR COUNT THREE SUPPOSE TO BE A ATTEMPTED/MURDER CHARGE BUT THIS COURT CAN PLAINLY SEE THE STATE OF OHIO HAVE THE MURDER REVISED CODE ON THE SENTENCING JOURNAL ENTRY AND AS WELL THE INDICTMENT HAVE COUNT THREE ATTEMPTED/RECEIVING STOLEN PROPERTY FOR THE MURDER OFFENSE. IN OHIO ATTEMPTED/MURDER IS R.C.2923.02/2903.02. AS THIS COURT CAN SEE IN THE PETITIONERS INDICTMENT THE CHARGE IS AS THE PETITIONER JUST STATED. AS WELL AS YOU CAN SEE IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ORDER DATED JAN 31, 2019. APPENDIX.(A)(1) THE SIXTH CIRCUIT HAS THE CHARGE FOR COUNT THREE ATTEMPTED MURDER JUST LIKE THE INDICTMENT WITH THE WRONG CHARGING OFFENSE R.C.2923.02/R.C.2913.51. THIS IS THE ISSUE THE PETITIONER HAS BEEN ARGUING FOR 23 YEARS NOW OF HIS 24 YEARS SENTENCE.



REASONS FOR GRANTING THE PETITION

1. Under 28 U.S.C. 2254(B)(c) To satisfy the Exhaustion Requirement State Prisoners must give the State Courts One full opportunity to resolve any Constitutional issues by involving one complete round of the State's established Appellate review Process. SEE: O'Sullivan v. Boerckel, 526 U.S. 838, 845, 119 S.Ct. 1728, 144 L.Ed. 2d 1 (1999)." The burden is on the Habeas Petitioner to prove Exhaustion." Like O'Sullivan the Petitioner Kermit B. Harris has shown the District Court and The United States Court Of Appeals For The Sixth Circuit The Actual Journal Entries and Opinion's from all Three State Court's were he has Attempted to Exhaust all his State Court Appeals. SEE APPENDIX.(C),(C)(1), (D), and (E). In Petition For Writ of Certiorari.
2. THIS COURT HAS SAID THAT A STATE COURT DECISION MUST BE "SO LACKING IN JUSTIFICATION THAT THERE WAS AN ERROR WELL UNDERSTOOD AND COMPREHENDED IN EXISTING LAW BEYOND ANY POSSIBILITY FOR FAIRMINDED DISAGREEMENT." White v. Woodall, 572 U.S. ___, ___, 134 S.Ct. 1697, 1702, 188 L.Ed. 2d 698, 704(2014)(INTERNAL QUOTATION MARKS OMITTED). The Petitioner's State Court Decision continue to ignore the fact that the Charging Offense the Attempt R.C. 2923.02 is missing from the Petitioners 1997, 2009, and 2015 Sentencing Journal Entries. This clearly violates the Petitioners Federal Constitutional Due Process Rights, and Equal Protection of the Law. This Error was well understood and comprehended in existing law beyond any possibility for fairminded disagreement.

2.cont...The United States Court of Appeals for the Sixth Circuit Keep ignoring the fact that this Supreme Court of the United States and the Sixth Circuit and the Northern District Court all said that a CHARGING OFFENSE MUST BE PRESENT TO CONVICT A CRIMINAL DEFENDANT. IF A CRIME IS NOT CHARGED HOW CAN THE STATE GAIN A CONVICTION? The FAILURE TO CHARGE AN OFFENSE IS A DUE PROCESS VIOLATION OF THE PETITIONERS FEDERAL CONSTITUTIONAL RIGHT'S AND A VIOLATION OF EQUAL PROTECTION OF THE LAW THAT THE 14TH AMENDMENT REQUIRES BY HOLDING THE PETITIONER IN STATE CUSTODY WITHOUT A CHARGING OFFENSE WHEN THE RECORD CLEARLY SHOWS THIS. AS IN JACKSON V. VIRGINIA 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed 2d 560(1979). This Very Court THE UNITED STATES SUPREME COURT HELD THAT AS A MATTER OF FUNDAMENTAL DUE PROCESS, A CRIMINAL CONVICTION CANNOT STAND UNLESS EACH ESSENTIAL ELEMENT IS PRESENT IN THE CHARGING DOCUMENT.

3.The Petitioner has actual proof that this is not a second or Successive Petition due to the fact it's Attacking a New Judgment. THIS SUPREME COURT SAID IN Magwood v. Patterson, 651 U.S. 320, 332-39, 130 S.Ct. 2788, 177 L.Ed 2d 592 (2010) were there is a new judgment intervening between the two Habeas Petitions, an application challenging the resulting new judgment is not second or successive at all. Also in Marrnolejos v. United States, 789 F. 3d 66 (2d Cir. 2015). The Second Circuit held that "Magwood and Johnson...Stand for the principle that when a judgment is entered on account of new Substantive Proceedings involving Reconsideration of either the Defendant's guilt or his appropriate punishment, It is a new judgment for purposes

of (The Anti-Terrorism and Effective Death Penalty Act(AEDPA)).
*9 Id. at 70(emphasis added). The Northern District Court
ruling is in direct conflict with the Second Circuit ruling
and The United States Supreme Court ruling.

This Court can see in the States Journal Entry & Opinion dated
October 29, 2015. The Petitioner was Appealing that Opinion
Which is Marked Appendix.(E) in this Petition Which is 5 of 5
Page's from Common Pleas Court, Judge Dick Ambrose. The Sixth
Circuit Court of Appeals ruled in Garfield Heights Municipal
Court, 802 F. 2d. 168, United States Court of Appeals For The
Sixth Circuit August 7, 1986 Argued; September 25, 1986 Decided.
No. 86-3046. The Substantive Due Process Clause of the
Fourteenth Amendment requires the State to prove beyond a
reasonable doubt every fact necessary to constitute the crime
with which the defendant is charged. In determining which facts
must be proven to establish a given offense. The Appellate
Court generally looks to the State Legislature's Statutory
Definition of the Offense. The Applicability of the reasonable-
doubt standard has always been dependant on how a State defines
the offense that is charged in any given case. In determing what
facts must be proven beyond a reasonable-doubt the State
Legislature's definition of the elements of the offense is
usually dispositive. There are, of course, certain Constitutional
limits beyond which a State legislature may not go. in defining
the elements of a crime. In certain limited circumstances Winship's
Reasonable Doubt Requirement applies to facts not formally
identified as elements of the offense charged.



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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth B. Harris Pro-se

Date: 9-9-2019