

No \_\_\_\_\_

Cert. No 19-6598

IN THE SUPREME COURT OF THE UNITED STATES

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ROBERT HERCENBERGER  
Applicant-Plaintiff,

vs.

GARY A. MARTIN  
Respondent-Defendant.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
Appellate Court of the State of Oregon

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**PETITION FOR REHEARING**

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Pro Se- Applicant

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**PETITION FOR REHEARING**

Pursuant to Supreme Court Rule 44.1, Robert Hercenberger respectfully

petitions for rehearing of the Court's denial decision issued on

January 21, 2020. Hercenberger v. Martin 19-6598,

Mr. Hercenberger moves this Court to grant this petition for rehearing and

consider his case with merits briefing argument.

Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed

within 25 days of this Court's decision in this case.

And re filed the petition on Mar, 2. 2020.

**REASONS FOR GRANTING THE PETITION**

Petitioner hereby certify that the petition based on substantial grounds not

previously presented pursuant to U.S. Supreme Court pursuant to Rule 10 (b).

U.S. Supreme Court has decided an important federal question

See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983)

Griffin v. Illinois, 351 U.S. 12 (1956) and Draper v. Washington, 372 U.S. 487,496

(1963). and in a way that conflicts with a decision by a (Oregon) state court of last

resort, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

Jemeson v. Desta, D066793

California Supreme Court told that must provide court reporter free of charge for indigent civil litigants. Decision based on equal access of justice.

There is a fundamental error in the opinion of the Court of Appeal which skews the analysis and result, or an erroneous finding of procedural default by the Court, and there is a reasonable possibility of a cure by means of a rehearing petition.

Independent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles”), and because it increases arbitrariness and the likelihood of error.

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See *Jones v. Barnes*, 463 U.S. 745, 756 n.1 (1983) (Brennan, J., joined by Marshall, J., dissenting) (“There are few, if any situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person’s liberty or property....)

#### Oregon Judicial Department : Oregon Court of Appeals ...

[www.courts.oregon.gov](http://www.courts.oregon.gov) › courts › appellate › coa

Individuals and businesses in **Oregon** have a general **right to appeal** decisions from those bodies to our court, and our doors are open to them.

Why is the right of appeal important?

The court determining an **appeal** will correct errors by the trial judge and the **right of appeal** ensures that, as far as possible, courts arrive at correct decisions. ... It is vital the **right** exists as it ensures that if a judge does make an error of law or fact the means exist to correct it.

## ARGUMENT

**The best-known power of the Supreme Court is judicial review.**

Appellate jurisdiction refers to the power of a court to hear appeals from lower courts.

An appeal as a matter of right refers to a party's right to appeal a lower court's decision, without needing approval from any court.

Appeal of right as a mechanism for correcting errors as it is a mean of ensuring that ensuring that such error are not made in the first place.

Every loosing litigant in a one judge court ought to have a right to appeal to a multi-judge court.

Petitioner highlight the fact that the law is in disarray, and can be corrected only by a higher court. There is no question that U.S. Supreme court exercise of their discretion to rehear this case that are undeniable certworthy.

When that is the case then in three –tier system the immediate dispute should be review by at least one court.

Weather based on considerations jurisprudential or political, should not leave the litigant (especially indigent) at the mercy of a single decision-maker.

Judgment based on a trial court determination is not reviewed by any state appellate court.

While Petitioner believes this is untenable under the 14<sup>th</sup> Amendments, at a minimum it should be resolved by this Court after he has had an adequate opportunity to brief the issue.

Supreme Court of California

*Jameson v. Desta*, that litigants who are entitled to fee waivers must be able to obtain a court reporter free of charge. To do otherwise is incompatible with both California statutes and case law on access to justice, the court found.

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The Court knowing the circumstances, should been easy apply the ORAP1.2(3)(5) Instead the Court of Appeal clearly denying an **homeless man** access to justice because he could not afford to pay for transcript fees.

**U.S. Supreme Court**  
**Griffin v. Illinois, 351 U.S. 12 (1956)**

*Held:* Petitioners' constitutional rights were violated, the judgment of the Illinois Supreme Court is vacated, and the cause is remanded to that Court for further action affording petitioners adequate and effective appellate review.

Pp. 351 U. S. 13-26. Judgment vacated, and cause remanded. Page 351 U. S. 13

(Griffin) wanted to appeal his conviction and petitioned the trial court on grounds of indigence for a free copy of the trial court record.

Griffin filed a second petition alleging that the denial of transcripts violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

**Decision**

The U.S. Supreme Court had to decide if denying the defendants a free transcript violated the due process rights guaranteed to them by the 14th Amendment. The Supreme Court determined that the defendants' rights were violated.

Justice Hugo Black wrote the majority opinion in which he started his analysis with the assumption that the alleged errors made in the trial court were valid and could well amount to a reversal.

He then reasoned that if a reversal was a possibility, then the defendants may have been denied a chance of relief based on their status of being poor.

If a state generally offers appellate review, it cannot deny appellate review on the basis of financial capacity.

**CONCLUSION**

In all cases the duty of the State is to provide the indigent as adequate and effective an appellate review as that given appellants with funds. . . ." 2142

**Draper v. Washington, 372 U.S. 487, 496 (1963).**

No state may condition the right to appeal 2143

**360 U.S. 252 (1959)**

or some other type of fee when the petitioner has no means to pay. Similarly, although the states are not required to furnish full and complete transcripts of their trials to indigents when excerpted versions or some other adequate substitute is available.

See in this case: ORAP 1.2(3)(5) could have been easily applicable.

Where Court of Appeal may direct that the appeal proceed without the transcript.

This Court and other courts have recognized the importance of an independent review of the record by a state appellate court and discouraged "one tier" review.

“Unfairness results only if indigents are singled out by the State and denied meaningful access to that system because of their poverty.”

**in the area of access to justice, the Court also has concluded that states must provide free trial transcripts to indigents (*Griffin v Illinois* (1956)**

**Where Equal Protection of the laws definition apply for all:**

A phrase in the Fourteenth Amendment to the United States Constitution requiring that states guarantee the same right, privileges, and protection to all citizens.

The Equal Protection Clause is part of the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction “ the equal protection of the laws”.

It is the duty of the courts to be watchful for the CONSTITUTIONAL RIGHTS of the Citizen, against any stealthy encroachments thereon.

Boyd v. U.S. 116 US 616, 635, (1885).

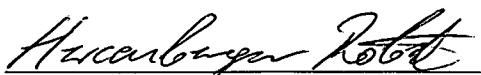
The petition for rehearing should be granted, pursuant to equal protection clause and the 14<sup>th</sup> Amendment of Constitution.

If denied Appellant may loose one half year of earnings.

Petitioner respectfully requests that this Court grant the petition for rehearing and order full briefing and argument on the merits of this case.

Dated: Mar, 2. 2020.

Respectfully submitted,



Robert Hercenberger-Appellant.

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## CERTIFICATE OF APPELLANT

I hereby certify that this petition for rehearing is presented substantial grounds not previously presented.

Petition is limited to grounds the right to appeal and meaningful appellate review.

Every loosing litigant in a one judge court ought to have a right to appeal to a multi-judge court. Trial dispute should be review by at least one court.

Also certify that the petition is in good faith and not for delay.

Dated: Mar.2.2020.

  
Robert Hercenberger

Robert Hercenberger- Appellant.

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

February 20, 2020

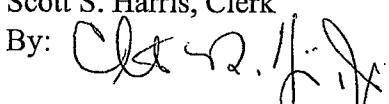
Robert Hercenberger  
c/o River Street Church of God  
715 S. River Street  
Newberg, OR 97132

RE: Hercenberger v. Martin  
No: 19-6598

Dear Mr. Hercenberger:

The petition for rehearing in the above-entitled case was postmarked February 11, 2020 and received February 18, 2020 and is herewith returned for failure to comply with Rule 44 of the Rules of this Court. The petition must briefly and distinctly state its grounds and must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Please correct and resubmit as soon as possible. Unless the petition is submitted to this Office in corrected form within 15 days of the date of this letter, the petition will not be filed. Rule 44.6.

Sincerely,  
Scott S. Harris, Clerk  
By:   
Clayton R. Higgins, Jr.  
(202) 479-3019

Enclosures