

19-6713

No. _____

Supreme Court, U.S.
FILED

NOV 18 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Derek Tyler Horton — PETITIONER
(Your Name)

vs.

State of Alabama — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Alabama Supreme Court (Writ denied)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Derek Tyler Horton
(Your Name)

3700 Holman Unit
(Address)

Atmore, AL 36503
(City, State, Zip Code)

251-202-3684 (K. Horton, wife)
(Phone Number)

derekstrial@gmail.com
(email)

ORIGINAL

QUESTION(S) PRESENTED

- 1.) Whether the Eleventh Circuit erred by denying petitioner's Application For Certificate of Appealability when the record makes clear that in a separate, but related, Habeas proceeding — District Judge Terry Moorer found that petitioner was, in fact, procedurally correct in his claim that state appeals had been exhausted in the instant Habeas proceeding and that he was therefore entitled to a reversal by the Eleventh Circuit?
- 2.) Is there a remedy when the Habeas Corpus proceeding fails to protect a citizen from a Double Jeopardy violation because of an incorrect procedural ruling by both the District and appellate Court?

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:

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INDEX TO APPENDICES

APPENDIX A *Decision of the Alabama Supreme Court*

APPENDIX B *Decision of the Court of Criminal Appeals*

~~APPENDIX C *Decision of the Mobile County Circuit Court*~~
[Judge Youngpeter, Mobile Circuit, orally denied "Motion to Dismiss" so NO OPINION.]

APPENDIX D *Decision of the United States District Court*
Judge Beaverstock

APPENDIX E *Report and Recommendation of USDC Magistrate*
Bivins

APPENDIX F *Decision of the Eleventh Circuit*

Appendix G *Denial of Motion For Reconsideration in*
the Eleventh Circuit

Appendix H *Opinion of Judge Moorer in a*
separate, but related, petition
for Habeas Corpus proceeding.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Hohn v. United States, 524 U.S. 236 (1998) 6

STATUTES AND RULES

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 F 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 D 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 A 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 Alabama Court of Criminal Appeals court appears at Appendix B 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 October 3rd 2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely ~~petition for rehearing~~ ^{motion for Reconsideration} was denied by the United States Court of Appeals on the following date: 11-4-2019, and a copy of the order denying rehearing appears at Appendix 6.

☐ 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).

and/or 28 U.S.C. § 2241
~~and/or 28 U.S.C. § 2254~~

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 4-4-2018.
A copy of that decision appears at Appendix A.

☐ 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

5th Amendment to the U.S.C (Fair trial,
14th Amendment to the U.S.C. (due process)
1st Amendment to the U.S.C. (Access to Court)

STATEMENT OF THE CASE

- 1.) I, the petitioner, was convicted with an insufficient amount of evidence in August of 2012.
- 2.) The Alabama Court of Criminal Appeals reversed my case for a new trial on March 18th 2016, opining, in dicta, that the evidence was "minimally sufficient to warrant sending the case to the jury" but, ultimately, reversing for other reasons. [Prior Bad Acts]
- 3.) As a pro se criminal defendant I motioned the Judge prior to retrial asking him to dismiss the case on double jeopardy grounds because the evidence at my previous trial had, in fact, been legally insufficient and I was entitled to a judicial acquittal. He denied my motion.
- 4.) I appealed via a Petition For A Writ of Mandamus to the Alabama Court of Criminal Appeals and the Alabama Supreme Court prior to trial. Both denied my petition.
- 5.) I filed a petition For A Writ of Habeas Corpus in Federal District Court to get a fair review of the sufficiency of the evidence by a Federal Judge. Magistrate Sonja Bivins, incorrectly, found I had not exhausted my claim in State Court. Judge Beaverstock affirmed her R+R denying my C.O.A.
- 6.) I filed a separate petition under §2254 and Judge T. Moorer agreed I was procedurally correct. (4.)
- 7.) The Eleventh Circuit denied C.O.A. placing them in conflict with District Judge Terry Moorer on this issue.

REASONS FOR GRANTING THE PETITION

1.) Civil Action No. 1:14-cv-229-TFM-B

Page 7 last line says

"Rather, the Court acknowledges that, procedurally, he is correct." (underlining mine)

2.) As Judge Moorer stated in his opinion, I was correct in my contention that I had exhausted my claim in state court.

3.) Judge Beaverstock and Magistrate Bivins were plainly wrong.

4.) The appeals court refused to grant a C.O.A. even though according to Judge Moorer, the case should be sent back to the district court that he is a member of.

5.) The appeals court refuses to do as Judge Moorer did and acknowledge that I am correct or even take judicial notice of his opinion.

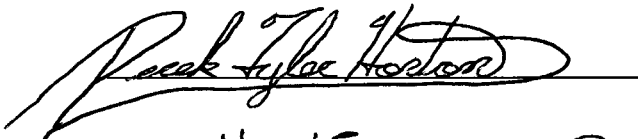
6.) This is completely unjust and a denial of my Constitutional right to due process and access to courts,

7.) *Hokx v. United States*, 524 U.S. 236 (1998)
gives this court jurisdiction to hear this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Isaac Tyler Horton", written over a horizontal line.

Date: 11-15 2019
November 15th