

No..

19-6805

IN THE  
SUPREME COURT OF THE UNITED STATES

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HAJES K. RABAIA - PETITIONER

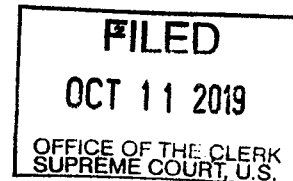
v.

JOHN POWELL, ADMINISTRATOR,  
SOUTH WOODS STATE PRISON, ET AL.

Respondents

ORIGINAL

On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Third Circuit.



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PETITION FOR WRIT OF CERTIORARI

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Hajes K. Rabaia, #610849  
South Woods State Prison  
215 Burlington Rd. South  
Bridgeton, NJ 08302

Petitioner, pro se

QUESTIONS PRESENTED

1. Under the fifth, sixth, and fourteenth amendment, Does the holding of Brady v. Maryland apply to the petitioner?

2. Were the decisions rendered by the Trial Court, District Court, and the Third Circuit Court of Appeals in complete conflict with clearly established federal law, as determined by the Supreme Court of the United States in Brady v. Maryland? 373 U.S 82 (1963)

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Brady v. Maryland, 373 U.S. 83 (1963)

Williams v. Taylor, 529 U.S. 323 (2000)

Duncan v. Louisiana, 391 U.S. 145 (1968)

In Re Winship, 397 U.S. 358 (1970)

Mooney v. Holohan, 294 U.S. 103 (1935)

Strickland v. Washington, 466 U.S. 668 (1984)

28 U.S.C 2254(d)

Constitutional Amendment 5<sup>th</sup>

Constitutional Amendment 6<sup>th</sup>

Constitutional Amendment 14<sup>th</sup>

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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 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☒ is unpublished.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 \_\_\_\_\_; 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☒ is unpublished.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 \_\_\_\_\_ 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 \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ 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 July 19, 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: July 19, 2019, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ 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).

## STATEMENT OF CASE

On June 3, 2008, The Superior Court of Atlantic County sentenced defendant to fifteen years in state prison upon a single count of the indictment charging the second-degree offense of Robbery.

On October 20, 2008, an untimely notice of appeal nunc pro tunc was filed in the office of the clerk of the appellate division under Docket No.-1013-08T4.

On March 8, 2011, a petition for certification to the New Jersey Supreme Court was filed with the Supreme Court Clerk and was subsequently denied summarily on September 7, 2011.

On or prior to November 18, 2011 Petitioner filed his Pro se petition for post-conviction relief.

On June 30, 2015, Petitioner filed his petition for Writ of Habeas Corpus in the District Court of New Jersey.

On April 17, 2019, Petitioner filed an appeal to the third circuit of Appeals from a denial of a final order denying a petition for Writ of Habeas Corpus in the District Court.

The petitioner for Writ of Certiorari is now being presented to The United States Supreme Court by the petitioner.

## REASONS FOR GRANTING THE PETITION

Petitioner presents compelling and significant questions of national importance and of particular public importance and substance to the district Court and the third Circuit Court of appeals, and is now presenting those questions to the Supreme Court of the United States.

The pertinent background for Petitioner's case begins with the Supreme Court's decision in Brady v. Maryland, 373 U.S. 83 (1963).

The decision rendered by the United States Supreme Court in Brady v. Maryland, 373 U.S. 83 (1963)

Petitioner contends that the sixth amendment right to trial by jury and the fourteenth amendment due process clause taken together, entitled petitioner to a jury determination that he was guilty of every element of the crime for which he was charged. Duncan v. Louisiana, 391 U.S. 145 (1968), In Re Winship, 397 U.S. 358 (1970).

At stake in Petitioner's case and others similarly situated are constitutional protections of surpassing importance. Petitioner had a substantial and legitimate expectation that he would be deprived of his liberty only to the extent determined by the jury in the exercise of its statutory discretion, and that liberty interest is one that the fourteenth amendment preserves against arbitrary deprivation by the State.

The illegal and unconstitutional procedure employed by the prosecution was an arbitrary disregard of the petitioner's right to trial by jury and a clear denial of petitioner's due process.



The trial Court, The District Court and the Third Circuit Court of Appeals reasoning and their non-application of Brady v. Maryland was "contrary to, and involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States". Williams v. Taylor, 529 U.S. 362 (2000), 28 U.S.C. 2254(d).

The petitioner's papers are ineptly drawn, but they do set forth allegations that his imprisonment resulted from the deliberate suppression by the prosecution of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the federal constitution, and if proven, would entitle petitioner to release from his present custody. Mooney v. Holohan, 294 U.S. at 103.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment irrespectively of the good faith of the prosecution.

A prosecution that withholds evidence on demand of an accused which if made available would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with the standard of justice.

The principle of "Due process" is not punishment of society for misdeeds of a prosecutor, but avoidance of an unfair trial to the accused. Society wins not only when the guilty are convicted, but when criminal trials are fair.

In petitioner's case here, mere appearances aside under the surface of the trial record lurked "the sinister spectacle" of a most blatant miscarriage of justice and the resulting

deprivation of the defendant's fundamental constitutional rights to a fair trial and the effective assistance of counsel.

Nowhere is to be found any correspondence to or from the defendant soliciting his input or a list of fact or character witness crucial to the conduct of a meaningful and effective defense to the underlying charge contested by the defendant.

Nor is there to be found correspondence or other evidence of any communication between or among trial counsel, members of his experienced office staff and the State's Attorney General's office seeking to uncover or receive supplemental discovery materials consisting of the twelve separate video surveillance tapes collected by security officials at the Trump Plaza Hotel and Casino and utilized to form the composite tape admitted into evidence and exhibited to the Petit Juror panel at trial.

Even more disturbing and troubling is the absence therein of any evidence of an effort to subpoena or otherwise obtain the voluminous records of the defendant's extensive and long-term table play as a rated player at the same and other Atlantic City Casinos over the past two decades totaling nearly a few million dollars as well as a copy of the complaint for dispossession filed against him by his landlord in the law division (Special part) of the Superior Court for Atlantic County which was previously served with a summons upon the defendant and made returnable on the morning of the aforesaid incident date, as averted to during the defendant's testimony.

The sparse contents therefore readily suggest the shameful acceptance of resignation and grim defeat and the inability or unwillingness to amount or provide a meaningful defense for the defendant.

Because of the Court's apparent and unabashed genuine dislike of and outward hostility toward the defendant was easily cowed and

distracted from presenting evidence of good character, family responsibility and his post-secondary education and extensive work history on both sides of the continent over a period of thirty years since his emigration to his adopted country and eventual naturalization.

CONCLUSION

For the reasons stated above, it is respectfully submitted that this petition for Writ of Certiorari be granted.

Respectfully,

*Hajes K. Rabaia*

Hajes K. Rabaia

No. \_\_\_\_\_  
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JOHN POWELL, ADMINISTRATOR,  
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Respondents

STATEMENT OF REASON FOR CERTIFICATION

1. THE INTEREST OF JUSTICE REQUIRES AN EXERCISE OF THIS COURT'S  
SUPERVISORY POWER.

CERTIFICATION

The undersigned Petitioner hereby certifies that this petition is  
being filed in good faith and not for the purpose of delay.

  
Hajes K. Rabaia