

No. 207, 2010

IN THE
SUPREME COURT OF THE UNITED STATES

James W. Riley — PETITIONER
(Your Name)

vs.

STATE of Delaware — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of The State of Delaware
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James W. Riley
(Your Name)

James T. Vaughn Correctional Center
(Address) 11841 Paddock Road

Smyrna, Delaware 19977
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Should this court extend Its Hurst v. Florida ruling to the pre-trial and trial stages of capital murder case where it is shown that the Judge's sentencing authority, a violation of Hurst, affected the trial stages and where the judge's sentencing authority prevented him from reviewing evidence of trial counsel's gross misconduct whereby creating a conflict between that authority and petitioner's rights to an impartial judge and fair trial?

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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 _____ 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☐ is unpublished.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 _____ 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☐ is unpublished.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☒ is unpublished.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 Superior Court 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☒ is unpublished.

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:

RELATED CASES

Riley v. Warden, No. 19F1041
United States Supreme Court. (Pending).

Riley v. STATE OF Delaware No. 13-9254
United STATES Supreme Ct. (denied)

In Re: Jame W. Riley (2244 Petition)
No. 14-3776 3rd Cir. Ct. (denied
Oct. 2014)

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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 Aug. 21, 2019.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (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 Amend. To U.S. Const. : No person shall be held to answer for a capital... crime [or] shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process law.

6th Amend To U.S. Const. : In all criminal prosecutions, the accused shall enjoy the right to trial by... An impartial jury... [and] to have the assistance counsel for his defence.

14th Amend. To U.S. Const. : No State shall... deprive any person of life, liberty, or property, without due process of law ; Nor deny to any person within its jurisdiction the equal protection of the law.

Statement Of Facts

In 1982 the petitioner was convicted and sentenced to death for capital murder under the 1977 death penalty sentencing statute which was consistent in every aspect of this Supreme Court's holding in *Hurst v. Florida*, 136 S.Ct. 616 (2016). See 11 Del. C. § 4209 (1977) Appendix E.

In 1991, following the jury's failure to impose the death penalty on four defendants in a high profile double murder case, the Delaware Legislature amended its capital murder sentencing statute that took away all sentencing authority from the jury and turned it over to the judge. See *Rauf v. State*, 2016 Del. LEXIS 419 at 53-59 in which the Delaware Supreme Court speak about this vindictive legislation.

In 2001, the Third Circuit Court Of Appeals reversed petitioner's convictions and death sentence on a Batson violation (discrimination against Blacks in jury selection). See *Riley v. Taylor*, 277 F.3d 261 (3d Cir. 2001).

Subsequently, petitioner was re-tried in 2003 on capital murder and robbery charges. Although petitioner was initially tried in 1982 under the 1977 version of 4209 where the jury was the final Sentencing Authority under the 6th Amendment dictates, however the 1991 version of 4209 was applied to petitioner's trial and sentencing, designating the trial judge as the final Arbitrator over both trial and sentencing from the outset of the selection of the jury.

Prior to the start of retrial petitioner's trial counsel pressured him to plea guilty to capital murder in exchange for a sentence of life in prison without parole. When petitioner refused to plea guilty his trial counsel alter and falsified documents in petitioner's clemency and mitigating files to suggest that he (Petitioner) confessed or made inculminating statements to his participation in capital murder and robbery.

Subsequently, petitioner made a request to the trial judge to hold a hearing out of the presence of the jury so he (the petitioner) could obtain the records in his case files to show that trial counsel's accusations were false. However, trial counsel argued against the trial judge holding any hearing or reviewing any evidence as requested by petitioner. Trial counsel argued to the judge that holding any type of hearing where he get involved with evidentiary issues will violate the judge's impartiality as being the final sentencer at the subsequent penalty phase under 4209. As support hereto both the Delaware Supreme Court and District Court cases cite these facts that the trial judge's 4209 sentencing authority affected petitioner's entire trial and sentencing phases. See *Riley v. State*, 867 A.2d 902 (Del. 2004); *Riley v. Carroll*, 2007 U.S. Dist. LEXIS 44770 *12 (stating... Judge Vaughn would not be the proper person to conduct such a hearing because of the impropriety of discussing evidentiary issues with a judge who, pursuant to Del. Code Ann. tit. 11 4209 would become the Finder of fact for sentencing purpose).

Both the Delaware Supreme and District Courts accepted trial counsel's false accusations as being true without reviewing

the evidence that trial counsel was using to support the alleged confession by petitioner - keeping in mind that counsel is not saying that petitioner confessed to him, but to other unidentified people. And the entire State and Federal Courts' records are devoid of any incriminating confessions made by petitioner.

In 2018 petitioner filed a Motion To Reopen his First Postconviction Proceedings in Superior Court based upon *McCoy v. Louisiana*, 2018 U.S. LEXIS 2802 where the facts identified above is evident of the same 6th Amendment autonomy rights committed by the petitioner's retrial counsel. (See STATE Court Motion To Reopen, App. D5).

In 2019 petitioner filed a Motion To Correct An Illegal Sentence in the Superior Court based upon *Hurst* involving the misconduct of both the trial judge and petitioner's counsel described above resulting in the *McCoy* violation and denial of right to impartial judge under *Turney v. Ohio*, 47 S.Ct. 437 (1927), where in petitioner's case the trial judge refused to review evidence because it may conflict with his 4209 penalty phase sentencing responsibilities.

(These issues are argued in Petitioner's Brief to the Delaware Supreme Court, see App. F-14). Also see the State Courts' Decisions whom failed to rule on these issues, App. B & A).

Facts Of De Facto Violation:

Also argued in petitioner's STATE Court Brief is the fact that the Delaware Legislature amended its 1977 death penalty statute that already was constitutional and fully complied with the dictates of *Hurst* and thereafter replacing it with the 1991

version found to be unconstitutional under Hurst. The Legislature reason for amending its death penalty Law was based "Solely" upon retaliation against the jury 6th Amendment choice not to impose the death penalty upon four defendants in a high profile capital murder case. Id. (see facts cited above).

Clearly, since the Delaware Legislature's amendment is "Administrative" in nature and the Hurst violation involves the "Sentencing Authority of the Judge" rather than an error in the sentencing procedure itself, constitute a Defacto Violation under Ngugen v. United States, 539 U.S. 69 (2003) (A defacto violation embodies a strong policy concerning the proper administration of judicial business that was breached).

The Reason For Granting The Writ

This Court Should Extend Its Hurst Decision To The Trial Stage Where It Is Shown That A Trial Judge's Final Sentencer Authority In A Capital Case, Violation Of Hurst, Affected The Trial Proceedings

In 2016, this Court ruled in *Hurst v. Florida*, 136 S.Ct. 616 (2016) that it violated the 6th Amendment for the judge rather than the jury to have the ultimate final sentencing authority in capital murder cases. Since Delaware was one of those States like Florida that have such unconstitutional death penalty sentencing statute, in 2016 the Delaware Supreme Court invalidated Delaware's death penalty statute. see *Rauf v. State* 2016 Del. LEXIS 419.

In March of 2019 the petitioner filed a Motion To Correct An Illegal Sentence arguing that the Hurst decision should apply also to the pre-trial and trial stages of a capital murder case where it is shown that the judge's final sentencer authority affected the trial proceedings.

In petitioner's pleadings to the Delaware State Courts he cited direct evidence of how the trial judge used his final sentencer authority under the death penalty statute 11 Del.C. § 4209 in the pre-trial stages for failure to review or address evidence of gross misconduct by petitioner's retrial counsel that is similar to the 6th Amendment autonomy violations found to be structural errors in *McCoy v. Louisiana*, 2018 U.S. LEXIS 2802. (see

Petitioner's Motion and Brief filed in State Supreme Court, appendix F-14). Also see the Delaware Supreme Court and Delaware District Court decisions (Id. must read!). In those decisions this Court will see how the lower courts affirmed the trial judge's failure to review material evidence of trial counsel's gross misconduct of altering documents in petitioner's case files to suggest that petitioner made incriminating confessions to capital murder in an attempt to force petitioner to plea guilty to capital murder and to obtain an illegal death sentence. Those decisions will also show how those courts failed to examine the evidence to determine whether or not counsel's accusations against petitioner were accurate before rejecting petitioner appeals and allowing their decisions to rest upon the basis of fraud and falsehood.

To this date no court has yet to review this evidence of trial counsel's gross misconduct of fraud that will merit a violation under Strickland v. Washington, 466 U.S. 668 (1984); United States v. Cronin, 104 S.Ct. 2039 (1984) and McCoy.

Because this violation is a direct result of the trial judge's use of his unconstitutional sentencing authority in the pretrial stage found to be a violation of Hurst, thus under those circumstances this Honorable Court must extend its Hurst decision to the trial stages. Also under the circumstances of this case the Hurst violation constitutes a Defacto violation as described in the Statement of Facts above on page 6-7.

Some Of The Many Harms Resulting From The Hurst And Defacto Violations

The Hurst And Defacto violations in petitioner's case is Apparent on the face of the Delaware Supreme Court and District Court decisions on direct review. see *Riley v. State*, 2004 Del. LEXIS 397 AND *Riley v. Carroll*, 2007 U.S. Dist. LEXIS 44770. Because trial counsel made false accusations that there was evidence of incriminating confessions to capital murder in petitioner's case files as explained above, as a defense to safeguard his constitutional rights, the petitioner invoked his 6th Amendment right to self-representation so he could request that the trial judge review any evidence of an allege incriminating confession.

Subsequently, at the Competency Hearing to determine reasons for self-representation petitioner requested that the hearing be conducted out of the presence of the "media" so not to prejudice his rights to a fair jury selection. However, trial counsel then interjected and argued against the judge holding any hearing or reviewing any evidence of a confession. Trial counsel impermissibly argued to the trial judge that it would violate his impartiality as the "Final Sentencer Authority" at the subsequent penalty phase under the death penalty sentencing statute 11 Del.C. § 4209 ("The 4209 Judge") were he to review the trial evidence in question.

The trial judge accepted trial counsel's arguments and denied petitioner's request to review trial counsel's evidence of an allege confession.

The counsel's arguments were improper for two reasons - (1) counsel had no right to speak at petitioner's competency hearing involving his 6th Amendment autonomy right to act in pro se status and (2) petitioner possessed a 6th Amendment autonomy right to waive any harm or conflict in the trial judge reviewing the evidence of an incriminating confession in which petitioner claim is false.

Other evidence cited in the caselaw further reflects that trial counsel admitted that he contacted the President Judge Ridgely regarding the circumstances surrounding the trial judge's disqualification to review this material evidence in question. see Riley v. State, 2004 Del. LEXIS 397, pg. 6 FN 9 and Riley v. Carroll, 2009 U.S. Dist. LEXIS 44770 at 32. President Judge Ridgely at the time was in charge of assigning superior court judges to specific cases. Although judge Ridgely was aware of the disqualifying nature of the trial judge in petitioner's case he failed to appoint a different judge for the limited purpose of reviewing the evidence of an allege incriminating confession at petitioner's Competency Hearing. Such failure violated petitioner's 6th Amendment right to a judge at every critical stage of the trial and right to impartial tribunal because the judge's final sentencing responsibilities conflicted with petitioner's rights to a fair trial.

This court must conclude that if the allege confession was not false then trial counsel would not have argue against the trial court reviewing it at petitioner's request.

The Hurst And Defacto violations in petitioner's case involving the trial judge's use of his improper sentencing authority under the death penalty sentencing statute AS A REASON FOR NOT reviewing this questionable incriminating evidence at trial AND the President Judge's "Administrative" * failure to appoint a different judge to fulfill this constitutional duty owed to petitioner are structural errors so gross that renders both the trial and sentence VOID! See Ngugen, 539 U.S. at 78.

* President Judge Ridgely's defacto misconduct is NOT AN isolated incident. see the case of Stevenson and Manley, 782 A.2d 249 (Del. Supr. 2001) (were the 4209 trial judge had judge Ridgely to secretly assign him to the case prior to indictment so he could deny defendants a fair trial and then impose a death sentence at the subsequent penalty hearing). Although this was a clear defacto violation, however, Stevenson and Manley were not grant a new trial. Also see the cases of Weeks v. State, 653 A.2d 266 (Del. 1995) and Sullivan v. State, 636 A.2d 931 (Del. 1994) (where the defendants' trial counsels improperly advised them to plea guilty to capital murder under the false impression that the 4209 trial judge would not impose a death sentence, but the 4209 trial judge having the final sentencing authority in violation of Hurst did sentence Weeks and Sullivan to death and they both were executed in 1998). The evidence is clear that the Superior court judges and petitioner's trial counsel attempted this same illegal death penalty/plea bargaining scheme in petitioner's case.

Furthermore, the other structural errors resulting from the 4209 judge's Hurst violation at petitioner's pre-trial competency hearing to determine reason for self-representation, where the gross misconduct of the superior court judges and petitioner's trial counsel was clearly meant to force petitioner to plea guilty to capital murder and to produce an illegal death sentence, are as following: (a) denial of right to counsel, (b) right to not plea guilty, (c) right to testify, (d) right to alibi defense, (e) right to impartial jury (because petitioner was forced to invoke right to self-representation to protect this right), (f) right to due process because the courts failed to review the actual existence of any incriminating confession and (g) right against self-incrimination because no allege confession exist or is either otherwise false and such falsehood appears throughout the state and federal courts' decisions in Riley v. State, 2004 Del. LEXIS 397 and Riley v. Carroll, 2007 U.S. Dist. LEXIS 44770.* This Court must issue Order to Strike those decisions from publication!

* Also these Delaware cases give a misleading impression that the fingerprint evidence was overwhelming which is also false! That description of the fingerprint evidence is related to trial counsel's fraudulent accusations of the existence of an incriminating confessions. see Statement of Facts of the trial evidence in Petitioner's Opening Brief, App. F

In McCoy this Court addressed this same exact misconduct by several State Courts in which Delaware was one of those States in error. The Delaware case this Court made reference to is *Cooke v. State*, 977 A.2d 803 (Del. 2009). Like the petitioner, Cooke also was subjected to the same illegal death penalty/plea bargaining scheme where the 4209 trial judge and trial counsel trick the defendant into pleading guilty to capital murder in order to make it easier for the trial judge to use his unconstitutional 4209 sentencing authority to impose a death sentence at the subsequent penalty phase, wherein by virtual of the guilty plea the defendant give up all rights to appeal. Like the petitioner, when Cooke refused to plea guilty his trial counsel retaliated by conceding Cooke's guilt to capital murder without his consent and as a result the trial judge sentenced Cooke to death. The only difference between Cooke's and petitioner's factual situations is that the petitioner's trial counsel did not get a chance to concede petitioner's guilt to capital murder because petitioner opted to represent himself. But however, in retaliation petitioner's trial counsel forged a false accusation that there were incriminating confessions to capital murder in petitioner's case files in which trial counsel used in an attempt to pressure petitioner into pleading guilty to capital murder.

Wherefore, like Cooke in McCoy this Court must also rule that petitioner's 6th Amendment autonomy rights not to plea guilty and right to counsel, etc., were violated.

The unique Hurst violations in petitioner's case resulted in at least nine (9) structural trial errors!

CONCLUSION

For the reasons stated above this Court must Extend its Hurst decision to the pre-trial and trial stages of capital trials.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James W. Riley

Date: Nov. 20, 2019