

No. 19-7094 ORIGINAL

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SUPREME COURT, U.S.

In the

Supreme Court of the United States

ERNEST LAWRENCE,

Petitioner,

v.

ADMINISTRATOR NEW JERSEY STATE PRISON;
ATTORNEY GENERAL OF NEW JERSEY,

Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals,
For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

Mr. Ernest Lawrence, Pro-Se
#673245 / 502721-D
New Jersey State Prison
P.O. Box 861
Trenton, New Jersey 08625

QUESTIONS PRESENTED

Mr. Lawrence seek leave to appeal the following issues:

1. Whether The Lower Court's Decisions Were Contrary To Miranda v. Arizona, 384 U.S. 436 (1966) and Whether the Lower Courts Unreasonably Applied Miranda? (Dist. Court Op. At *11-26)
2. Whether the Lower Courts unreasonably applied Strickland v. Washington, 466 U.S. 668 (1984) to Petitioner's Ineffective Assistance of Counsel Claims? (Dist. Court Op. at *57-64)
3. Whether the Lower Courts unreasonably applied clearly established federal law to deny the Prosecutorial Misconduct claim? (Dist. Court Op. at *35-41)
4. Whether the "Prior Bad Acts" violate Defendant's Due Process Rights to a Fair Trial? (Dist. Court Op. at *26-32)
5. Whether the Lower Courts erred in concurring that "Failure to include a limited instruction about prior bad acts was harmless error and not 'capable of producing an unjust result'" was unreasonable? (Dist. Court Op. at *26-32)
6. Whether the Circuit Court erred in failing to consider the issues of Constitutional importance?

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:

Ms. Sarah D. Brigham, Esq.
Division of Criminal Justice
25 Market Street, 5th Floor West Wing
P.O. Box 086
Trenton, N.J. 08625

(Attorney for Respondents, Administrator of New Jersey State Prison and the Attorney General of the State of New Jersey)

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Appendix C: The Order and Opinion of the United States District Court for the District of New Jersey filed April 30, 2019, Lawrence v. The Attorney General for the State of New Jersey, et al, Civ. No. 17-2458 (D.N.J.)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ernest Lawrence respectfully petitions this Court for a Writ of Certiorari to review the judgment of the United States Court of Appeal for the Third Circuit denying his (1) Petition for Rehearing and Rehearing En Banc dated November 26, 2019; and (2) Application for a Certificate of Appealability dated October 9, 2019. The Petitioner also Petitions this Court to Review the Judgment of the United States District Court for the District of New Jersey denying his Petition for a Writ of Habeas Corpus dated April 30, 2019.

OPINIONS BELOW

The Order of the United States Court of Appeals for the Third Circuit Denying Request for a Rehearing and Rehearing En Banc filed November 26, 2019, Lawrence v. The Attorney General of the State of New Jersey, et al., (C.A.) (3d Cir.) is attached herein (Appendix A)

The Order of the United States Court of Appeals for the Third Circuit Denying Request for a Certificate of Appealability filed October 9, 2019, Lawrence v. The Attorney General of the State of New Jersey, et al., (C.A.) (3d Cir.) is attached herein (Appendix B)

The Order and Opinion of the United States District Court for the District of New Jersey filed April 30, 2019, Lawrence v. The Attorney General of the State of New Jersey, et al., is attached herein (Appendix C).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS

The relevant parts of the Fifth Amendment provides, in pertinent part, that: "No person shall be . . . compelled in any criminal case to be a witness against himself, nor deprived of life, liberty, or property, without due process of law."

The relevant parts of the Sixth Amendment is: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . and to have the Assistance of Counsel for his defense."

The relevant part of the Eighth Amendment is: "Excessive bail shall not be required . . . nor cruel and unusual punishments inflicted."

The relevant part of the Fourteenth Amendment (Section 1) is: "No State shall . . . deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

A. Introductory Statement

It cannot be overemphasized that the United States Court of Appeals for the Third Circuit found that "jurists of reason could not debate the District Court's determination, that Appellant's habeas corpus petition was untimely filed under 28 U.S.C. §2244(d), and that Appellant failed to show reasonable diligence."

The Court of Appeals decision was erroneous.

The United States District Court for the District of New Jersey denial of Petitioner's habeas corpus petition on its merits.

B. Procedural History and Statement of Facts

This Appeal comes from the Order of the United States Court of Appeals for the Third Circuit denying a Petition for (1) Rehearing and Rehearing En Banc and (2) the application for a Certificate of Appealability; all of which affirmed the denial of a Petition for a Writ of Habeas Corpus entered on April 30, 2019 by the United States District court for the District of New Jersey.

Petitioner argues that the Court of Appeals was in error when it denied the appeal for "substantially the reasons set forth in the District Court's thorough and cogent 64-page opinion."

The Petitioner was charged with numerous offenses relating to and including murder.

As a result, the Grand Jury in Camden County, New Jersey Indicted the Petitioner in a 4-Count Indictment, Number 08-10-03241-I, with violating the following New Jersey offenses: First-degree murder (N.J.S.A. 2C:11-3(a)(1) and (2) (Count I); Third-degree Possession of a knife for an unlawful purpose (N.J.S.A. 2C:39-4d) (Count II); Fourth-degree Unlawful Possession of a Weapon (N.J.S.A. 2C:39-5d) (Count III); and Fourth-degree Hindering his own Prosecution (N.J.S.A. 2C:29-3(b)(4) (Count IV).

After he was indicted, Defense counsel filed a Motion to Suppress the Statements he had made in a Camden County hospital while being treated for injuries and while in custody in Florida.

A Trial by Jury was held on five (5) consecutive days in September 2010. The Petit Jury ultimately convicted Petitioner on all 4-counts of the Indictment.

As a result of the guilty findings, the Trial Judge, during sentencing, merged Counts Two and Three into Count One and Sentenced Petitioner to a Forty-Five year term subjected to New Jersey's No Early Release Act (85%). The Court also sentenced him to a concurrent term of 18-months on Count Four and imposed the required fees and assessments.

A timely appeal was filed and on August 12, 2013, the Appellate Division affirmed the Conviction and Sentence but remanded the matter for correction of the Judgment of Conviction to reflect the appropriate amount of jail credits. State v. Lawrence, No: A-4252-10T2, 2013 WL 4045596, at *1-3 (App. Div. Aug. 12, 2013).

On March 20, 2014, the New Jersey Supreme Court denied Certification. (217 N.J. 293, 88 A.3d 190)

On or about July 7, 2014, Petitioner filed a pro-se Petition for Post-Conviction Relief ("PCR") with the trial court.

On March 31, 2015, the PCR Judge denied the Petition. Petitioner's Notice of Appeal was filed by the Public Defender's Office.

On September 22, 2016, the Appellate Division affirmed the denial of Petitioner's Petition for Post-Conviction Relief. (State v. Lawrence, A-3917-14T1, 2016 WL 5210616 (App. Div. 2016)). Certification was then sought with the New Jersey Supreme Court and on June 13, 2017, same was denied. (2017 N.J. LEXIS 670, 169 A.3d 982, Dkt. #078379).

In January 2017, the Petitioner filed a Petition for a Writ of Habeas Corpus with the United States District Court.

On, April 30 2019, the Honorable Noel L. Hillman, U.S.D.J., denied the Petition on its merits and declined to

issue a Certificate of Appealability. (Lawrence v. The Attorney General for the State of New Jersey, et al, Civ. No. 17-2458).

The Petitioner then filed a Timely Notice of Appeal to the Third Circuit Court of Appeals with the District Court.

On October 9, 2019, the United States Court of Appeals for the Third Circuit denied to issue a Certificate of Appealability. (Lawrence v. The Attorney General for the State of New Jersey, et al C.A. 19-2216).

The Petitioner then sought a timely filing of a Petition for Rehearing and Rehearing En Banc with the Third Circuit Court of Appeals. On November 26, 2019, the same was denied by the Circuit Court. (Lawrence v. The Attorney General for the State of New Jersey, et al C.A. 19-2216).

This Application now follows and presents Constitutional issues that should be resolved by this Honorable High Court.

REASONS FOR GRANTING THE WRIT

I

WHETHER THE LOWER COURT'S DECISIONS WERE CONTRARY TO
MIRANDA V. ARIZONA, 384 U.S. 436 (1966) AND WHETHER
THEY UNREASONABLY APPLIED MIRANDA TO PETITIONER'S
CASE? (Dist. Court Op. at *11-26; 46-57)

The District Court held that Petitioner's Miranda Rights were not violated by the Lower Courts.

The privilege against self-incrimination, as set forth in the Fifth Amendment to the U.S. Constitution, is one of the most important protections of the criminal law. U.S. Const. Amend. V; State v. Hartley, 103 N.J. 272, 262 (1986).

The United States Supreme Court has addressed this issue on many occasions, but none more important to our jurisprudence than in the case of Miranda v. Arizona, 384 U.S. 436, 439-45 (1966), wherein the rights were explicitly explained:

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards

to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required **prior to any questioning**, the person **must** be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights provided the waiver is made voluntarily, knowingly, and intelligently.

Miranda, supra. (Emphasis added).

Both of the defendant's statements were taken in violation of his constitutional rights against self-incrimination; the first statement, because the defendant did not receive timely advice of his right to silence and the second statement because he was not told, prior to the start of questioning, that he was facing a charge of murder.

**(A) The First Statement
(While in the Hospital)**

The transcript of the statement makes clear that prior to being advised of his rights, defendant admitted to stabbing the victim. The questioning during which the admission occurred was clearly custodial.

The trial court erred in ruling that the interrogation which resulted in the defendant's first statement was not custodial.

The defendant urges that the trial court erred in accepting the State's facile contention that the initial questioning of the defendant was non-custodial.

While the defendant was in a hospital room, he was clearly alone with the police. The questioning was entirely focused upon an incident in which the defendant's companion was stabbed to death, a fact which would leave no doubt in the mind of any rational person "that he was or was becoming a focus on the police investigation." Despite the assertion of both Prosecutor's Investigator John Greer and Detective Isidoro Reyes that the defendant believed that the police officers stationed outside of his hospital room were there for his protection. Reyes admitted that the defendant asked him why the officers were there. The presence of officers, whatever their purported purpose, could not convey a restraint on freedom to leave. Furthermore, the defendant's physical circumstances would have been made leaving the room a practical impossibility; despite the claim of both Greer and Reyes that the defendant would have been physically able to do so. Greer testified that the defendant had a "suction tube in his chest," which would appear to make leaving difficult, if not inconceivable.

The claim by the officers that they were there merely to "find out what happened" simply cannot be credited; the defendant

was known to have been involved in an incident in which his companion was stabbed to death, and investigators were aware of prior instances of domestic violence involving the defendant and his companion. Detective Reyes testified that he believed the investigation to concern a "homicide" after the defendant was questioned, but acknowledged, "in [his] mind ... [he] figured it was ..." at the outset. Additionally, a responding officer (to the scene of the crime) testified that when the defendant was found a block away from the scene of the stabbing, he told, "assisting units" to "hold onto that person [because] he's a suspect in" the stabbing. Clearly, given the circumstances of the questioning, the claim of the police that it was merely investigatory and not custodial cannot withstand scrutiny.

The trial court based its denial of suppression (of statement) in the main upon State v. Choinacki, 324 N.J. Super. 19, 44 (App. Div.), certif. den., 162 N.J. 197 (1999), and the statement in that case that "[A] hospital room generally lacks the 'compelling atmosphere inherent in the process of in-custody interrogation.'" However, the circumstances of the defendant's hospitalization, as well as the posting of police officers outside his room, strongly indicate that the compulsory atmosphere of an interrogation was present.

The transcript of the questioning casts significant doubt upon the claim of the officers that they were merely gathering information until the point at which defendant began to incriminate himself, at which point Miranda warnings were administered. The transcript relates:

GREER: We came in here this morning. I told you that we were, instigating to find out exactly what happened to you, correct?

DEFENDANT: Yes.

GREER: And I advised you that you weren't under arrest. At any time and ..., you acknowledged that you understand that you're not under arrest is that correct?

DEFENDANT: Yes.

GREER: Okay. When we were asking you what happened you currently during the course of what started as an argument. You stabbed, what's your baby's mom name?

DEFENDANT: Jennifer Lane.

GREER: Jennifer, you stabbed Jennifer, Jennifer stabbed you and you're not sure who stabbed first?

DEFENDANT: Yes.

GREER: Okay, um, before I go any further, I'm going to advise you of your rights.

The underlined passages confirms that the defendant had been questioned and had incriminated himself, before Miranda warnings were administered. While Inv. Greer maintained that the initial discussion concerned only how the defendant had been injured, it strongly appears that the defendant in response to questioning, incriminated himself before Miranda Warnings were given, therefore, this Court must vacate Defendant's conviction.

The District Court's denial of ARGUMENT I(A) conflicts with the United States Decision in Miranda v. Arizona and should be looked at by the Supreme Court.

The District Court denied this Argument for substantially the same reason that the State Appellate Court did.

In order for the Investigators to determine what transpired during the incident in which a young woman was stabbed to death, the Petitioner had to self-incriminate himself by telling them that he was the one who stabbed her, regardless if it was in self-defense or in the heat of the moment, therefore, the Investigators knew that they had to inform him of his Miranda rights prior to questioning him at the hospital but they failed to do so.

**(B) The Second Statement
(While in the Custody in Florida)**

The trial court also erred in declining to suppress the second statement because the State failed to carry its burden of proving, beyond a reasonable doubt, that the defendant was advised or aware of the charges against him before that statement was taken.

The transcript of the statement does not reflect the defendant being advised by the interrogators that a murder charge was pending.

Moreover, Inv. Greer's assertion that he did so at the outset of the encounter, and in fact that the defendant expressed knowledge of the murder charge before the questioning began, is not borne out by a close examination of the evidence.

The defendant argues that the sketchy and contradictory testimony presented by the State concerning whether the defendant had been advised of the charge before making his statement is insufficient to sustain the state's burden.

Overall, the defendant submits that the State failed to prove the voluntariness of the defendant's waiver of his rights to silence and both statements must be suppressed and the conviction overturned.

Inv. Greer statements is brought before the jury. His testimony is important concerning the Miranda issues. On January 9, 2008, at 10: 45 a.m., Greer stated that defendant was calm, alert, comfortable, cooperative; the defendant did not seem to appear impaired or intoxicated, statement voluntary.

Dr. Burns, who treated defendant, testified that he could only state that he "initially" treated the wounds, however, instructions were left to the nurses after the operations were completed.

Dr. Burns stated that defendant had multiple stab wounds to his chest and a consequence, had a pneumothorax or collapsed lung.

Defendant received antibiotics, phenobarbital, norcuronaparalytic, Morphine as a relaxing agent and also morphine and Percocet especially during post-operation the day he was admitted into the hospital for surgery. This testimony by Dr. Burns was for showing the type of pain defendant was going through during taking of the statement by the investigators, and the effects of the medicine although most of the notes were in the nurse's reports, that the defense did not have access to at that time and could not fully establish the defendant's ability to answer questions.

It was actual error to allow Dr. Burns to testify without the nurse who actually did the report because Dr. Burns could not fully answer the questions concerning defendant's state of mind.

The defendant's reading level was at a 2.5 grade level and he was under the influence of heavy medication where he almost died from the wounds he sustain.

The defendant submits that his first statement to the investigators (while at the hospital) should have been suppressed because they were made in violation of Miranda and because he was under the influence of heavy medication making his statement involuntary, unknowingly, and unintelligently made.

**WHETHER THE LOWER COURTS UNREASONABLY APPLIED
STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) TO
PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS?
(Dist. Court Op. at *57-62, 62-64)**

The District Court held that Petitioner's Right to Effective Assistance of Counsel under the Sixth Amendment was not violated was erroneous.

Under Strickland v. Washington, 466 U.S. 668 (1984), a lawyer's "ignorance of a point of law that is fundamental to his case combined with failure to perform basic research on that point is a quintessential example of unreasonable performance ..." Hinton v. Alabama, 134 S.Ct. 1081 (2014). Petitioner's trial counsel's failure to investigate the ---- amounted to deficient performance.

(A) Mental Health

In defendant's certification in support of his PCR Petition, the first place where he can raise such a claim, he attested, in pertinent part:

My attorney was ineffective in not having me evaluated for mental health issues. My attorney was aware that I had a mental health problem at the time of the crime. I was taking daily medications (sinequan and visteril) for anxiety and depression and I was under the influence of drugs and alcohol.

The PCR Court, in denying relief, reasoned, in pertinent part:

First, the defendant argues that this -- that his trial counsel was ineffective for failing to hire an expert to

determine if the defendant was mentally competent, and or suffered from diminished capacity.

In support of this argument, the defendant cites that while informed strategic choices made by counsel after thorough investigation of the relevant law and facts and considering all possible options are virtually unchallengeable, strategic decisions made after less than complete investigation are subject to closer scrutiny, and may be found to sustain a claim of ineffective assistance of counsel.

Defendant asserts that he has a history of mental problems. He states that he disclosed to the pre-sentence investigator that he had poor physical and mental health. He also reported that he used alcohol and marijuana daily, and had never received substance abuse treatment.

The defendant argues that the trial counsel was aware of this and failed to order a medical evaluation to which a possible diminished capacity defense could have been raised based on the results of the evaluation.

The State asserts the defendant has presented no evidence whatsoever supporting his claim.

And this -- to this point the Court agrees. Nothing in the record creates a factual predicate that would cause this Court to conclude that the defendant was prejudiced by the failure to have a medical evaluation, or that the defendant does indeed suffer from mental illness.

Defendant fails to support his claim with any relevant evidence supporting his assertion that he suffered from a mental illness such that his capacity to purposefully or knowing cause the death of the victim was diminished.

Defendant supports this claim with nothing more than his own assertions. Defendant argues that this alleged substance abuse and use of depression medication supports his claims that an expert evaluation would have led to relevant evidence to support his alleged diminished capacity.

However, the defendant has failed to support his asserted with any objective evidence. Defendant cannot show that counsel was ineffective for failure to investigate and produce evidence that remains non-existent.

Specifically, the manifestation of any mental illness. Therefore, this Court finds that the defendant cannot show that counsel was ineffective for failing to hire an expert.

The PCR Court misconstrued the thrust of defendant's claim. The PCR Court erroneously focused upon the absence of an expert's evaluation, contrary to the crux of defendant's claim, was the trial counsel failed to investigate defendant's "mental health problem at the time of the crime."

The Appellate Division affirmed the PCR Court's decision was in error. Furthermore, the affirmance by the District Court and the Third Circuit Court were also erroneous.

Furthermore, the District Court reasoning was in error and conflicts with Strickland's two-prong test and this Court should grant the COA to conduct a thorough review of the issue

(B) Discovery

In support of his PCR Petition, defendant also attested, in pertinent part, "my attorney also failed to review my entire discovery."

PCR Counsel reiterated at the hearing that trial counsel "failed to review certain discovery." However, the PCR Court, in denying relief, did not address this claim in violation of N.J.Ct.R. 3:22-11.

Counsels are obligated to conduct a full investigation of the case to determine the strengths and weaknesses of the State's case and to determine whether or not to proceed to trial or to engage in plea negotiations with the Prosecutor, but it is only after a thorough review of the discovery can this be done. If counsel does not review the Discovery, how can one be prepared for anything?

III

WHETHER THE LOWER COURTS UNREASONABLY APPLIED CLEARLY ESTABLISHED FEDERAL LAW TO DENY THE PROSECUTORIAL MISCONDUCT CLAIM? (DIST. COURT OP. AT *35-41)

Prosecutors are ethically bound to do justice:

The ... [prosecuting] Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

State v. Rose, 112 N.J. 454, 509 (1988) (quoting Berger v. U.S., 295 U.S. 78, 88, 55 S.Ct. 629, 633 (1935)); State v. Loftin, 146 N.J. 295 (1996). Furthermore, a prosecutor is not allowed to intertwine irrelevant emotional considerations with relevant facts so as to confuse or impassion the jurors. State v. Pennington, 119 N.J. 547, 570-76 (1990), overruled on o.g., 132 N.J. 392 (1993).

The defendant argues that the prosecutor committed misconduct for submitting overly prejudicial evidence during opening summation and though the use of State witnesses concerning the defendant and victim's children walking in a pool of blood and lying downstairs near a pool of blood.

The Court had ruled that the baby lying next to the mother covered in blood was overly prejudicial and should not go into evidence, however, during the prosecutor's opening statement, it was stated:

"And the evidence will show that, when she stumbled up those basement stairs, her young son was right on her heels. And, ladies and gentlemen, while Jennifer lay there dying in a pool of her own blood, the evidence will show that his man came rushing up out of that basement soon after."

Officer Roberts stated that he got a call for domestic disturbance at (redacted) Street where he was met by Harry Winsch. Officer Roberts then stated that, he later identified Ms. Lane lying in a pool of blood.

Additionally, Officer Galiazzi testified while describing the scene as follows:

Q: And could you describe the scene in the basement when you went down there?
A: Yes. There was the -- the little baby was laying on the mattress. Next to the mattress, there was a pool of blood, and there was little bloody footprints all around the basement and up the basement steps.

This was prejudicial and coincides with the ruling concerning the baby being found covered in blood and further violates the Court's ruling that the baby lying next to the mother covered in blood should not go into evidence.

Defense counsel also objected to further testimony by Officer Galiazzi as being repetitious considering the Officer described the gruesome scene in its entirety.

This prejudicial evidence should not have been allowed to come in.

CONCLUSION

For the foregoing reasons, the Petitioner Ernest Lawrence respectfully requests this Court grant the Petition for a Writ of Certiorari.

Respectfully submitted,

Dated: X Dec. 12, 2019

Ernest Lawrence
Ernest Lawrence, Pro-Se

CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5; 28 U.S.C. §1746, I, Ernest Lawrence declare that I am over the age of 18 and a party to this action. I am a resident of New Jersey, and I currently reside at New Jersey State Prison, P.O. Box 861, Trenton, New Jersey 08625. My inmate numbers are #673245 / 502721-D.

I, Ernest Lawrence, hereby certify that on X 12/12/19, as required by Supreme Court Rule 29, I have served the attached Motion for Leave to Proceed in Forma Pauperis and Petition for a Writ of Certiorari on each party to the above proceeding by handing the envelopes to the Corrections Officer for processing

and forwarding to the prison's mailroom for proper postage and mailing. The name and address of those served is:

Ms. Sarah D. Brigham, Esq.
Division of Criminal Justice
25 Market Street, 5th Floor West Wing
P.O. Box 086
Trenton, N.J. 08625

(Attorney for Respondents, Administrator of New Jersey State Prison and the Attorney General of the State of New Jersey)

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.2(b), I certify that the petition for certiorari is 28-pages total; and this entire Petition consists of 5,548 words.

Ernest Lawrence

Ernest Lawrence, Pro-Se

Dated: December 12 2019