

NO. \_\_\_\_\_

**19-7303**

IN THE

SUPREME COURT OF THE UNITED STATES

MICHAEL WARREN SMITH - PETITIONER  
vs.  
PEOPLE STATE OF ILLINOIS - RESPONDENT

PETITION FOR WRIT OF CERTIORARI:

28 U.S.C. Section 1257(3) TO THE

SUPREME COURT OF THE UNITED STATES

LAST RULING FROM SUPREME COURT OF ILLINOIS

**ORIGINAL**

September 25, 2019

ILLINOIS SUPREME COURT NO. 124865

FILED  
DEC 23 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**PETITION FOR WRIT OF CERTIORARI**

Michael Warren Smith - Pro-Se  
(Your Name)

Illinois Dept. of Human Services and

Treatment & Detention Facility

17019 County Farm Road  
(Address)

Rushville, Illinois 62681  
(City, State, Zip Code)

(217) 322-3204  
(Phone Number)

QUESTION(S) PRESENTED

- 1) Does the Petitioner have a legal right by the U.S. Constitution and the Illinois Constitution, State law to be admonished about indefinite involuntary civil commitment Sexually Violent Person Commitment Act 725 ILCS 207/1 et seq., before accepting a promised plea agreement in a criminal proceeding?
- 2) Is Petitioner entitle to a Sixth Amendment U.S. Constitutional Right to effective assistance of counsel when tried in a Court of law admonishing Petitioner of any other possible outcomes when accepting such promised plea agreement?
- 3) Does the Petitioner have a legal right by the U.S. Constitution and the Illinois Constitution, State law to be admonished about indefinite involuntary civil commitment sexually violent person 725 ILCS 207/1 et seq., before accepting a promised plea agreement in a criminal court proceeding by the sitting Honorable Judge James T. Teros.
- 4) Does the Petitioner have a legal right by the U.S. Constitution and the Illinois Constitution, State law to be admonished about indefinite involuntary civil commitment sexually violent person commitment act 725 ILCS 207/1 et seq., before accepting a promised plea agreement in a criminal court proceeding by the prosecuting States Attorney, Heidi J. Weller.
- 5) Does the Petitioner challenges his guilty plea to a promised plea agreement, arguing that the constitutional violation was the denial of effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). Counsel for the Petitioner was ineffective that his performance was deficient to the Petitioner when counsel failed to ensure the Petitioner of the SVP consequences and the Petitioner guilty plea was not voluntarily and intelligently entered.
- 6) Criminal Responsibilities-quasi-civil. Can a mentally incompetent person consent to a certain crime and be held liable? If not, than can a mentally incompetent person accept a promised plea agreement without admonishment of all other possibilities/collateral consequences?

## 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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## TABLE OF AUTHORITIES CITED

### CASES

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### STATUTES AND RULES

### OTHER

IN

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 as

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 appeal

reported at Supreme Court denied Petitioner leave to: or,

has been designated for publication but is not yet reported; or,

is unpublished.

The opinion of the \_\_\_\_\_ court appears as 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 \_\_\_\_\_.

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. \_\_\_\_\_.

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

For cases from **state courts:**

The date on which the highest state court decided my case was IL.Su.Pt. 9/25/2019.

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 the rehearing appears at Appendix \_\_\_\_\_.

An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is involved under 28 U.S.C. §1257(a).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

**(1)** Sixth Amendment ineffective assistance of counsel, admonishment, judicial misconduct by the prosecutor and sitting Honorable Judge, admonishment.

**(2)** Fourteenth Amendment-Due Process, Equal Protection of the law.

**(3)**

## STATEMENT OF THE CASE

### **A: Events Leading To This Litigation:**

On July 13, 2004, Petitioner was charged with one count of Predatory Criminal Sexual Assault. Petitioner was represented by counsel Vincent Lopez Jr., and Herbert Schultz Jr., Petitioner stayed in the Rock Island County jail awaiting trial.

Petitioner was evaluated for a fitness exam to see if Petitioner could stand trial, report came back that Petitioner was fit to stand trial. Counsel for Petitioner was ineffective in that he failed to file motions to suppress and failed to interview or subpoena witnesses present that were never interviewed by law enforcement or prosecutors. Counsel failed to admonish the Petitioner of the possibility of being subjected to be a sexually violent person pursuant to 725 ILCS 207/1 et seq., When accepting such a promised plea agreement on its face, nor did the State or the Honorable Judge admonish the Petitioner of any collateral attacks could come upon the Petitioner if accept any promised plea agreement by the State and the Court.

The Court should have admonish the Petitioner of any other collateral attacks from the State when accepting such a promised plea agreement an/or the Honorable Court should have written in the promise plea agreement that the Petitioner is not to be subjected as a sexually violent person pursuant to § 725 ILCS 207/1 et seq., ("The SVP Act or "The Act"). Furthermore, the State and/or the Court could have petition the Petitioner as being a sexually dangerous person pursuant to § 205 SDP Act, since the Petitioner was previously evaluated to see if Petitioner could stand trial for a fitness exam.

Petitioner accepted a Promised Plea Agreement on January 10, 2005 for the charge of Predatory Criminal Sexual Assault, Petitioner was sentenced to ten (10) years, in the Illinois Department of Corrections, ("I.D.O.C.") plus three (3) years Mandatory Supervise Release, ("MSR"), and court fines, plus, register as a sex offender for ten (10) years.

**B: The Initial District Court Proceedings:**

Petitioner was petitioned as a sexually violent person once completing his prison sentence on January 13, 2013. On January 7, 2013, the State filed their sexually violent person petition to have Petitioner subjected as a sexually violent person. On January 13, 2013 the Court held a probable cause hearing and the court found probable cause that Petitioner is a svp pursuant to § 725 ILCS 207/1 et seq.

The Petitioner has continued to be held involuntary, indefinite civil commitment pursuant to the SVP Act as being a svp.

Petitioner filed a Successive Post Conviction Petition on August 31, 2015 alleging ineffective assistance of counsel for failing to admonish the Petitioner of all collateral attacks such as SVP involuntary civil commitment.

Paul L. Glover v. U.S., No. 99-8576; Strickland v. Washington, 466 U.S. 668 (1984); Missouri v. Frye, 566 U.S. --- 132 S.Ct. 1399, 1405, 1402-08 (2012).

The State nor The Honorable Court never admonish the Petitioner of all collateral attacks such as svp involuntary civil commitment. People v. Hughes, 2012 IL. 112817 60, 983 N.E.2d 439, 456-57; Missouri v. Frye, 566 U.S. - --- 132 S.Ct. 1399, 1405, 1402-08 (2012); Strickland v. Washington, 466 U.S. 668 (1984); Lee v. U.S., 137 S.Ct. 1958 (2017); People v. Pendleton, 233 ILL.2d 458; People v. Domagala, 2013 IL. 113688; Padilla v. Kentucky, 559 U.S. 356 (2010); Teague v. Lane, 489 U.S. 288 (1989); Chaidez v. United States, 568 U.S. 342, 344 (2013); Lafler v. Cooper, 132 S.Ct. 1376 (2012).

The Petitioner successive post conviction petition was denied in the State Court, Appellate Court, Illinois Supreme Court which now brings this urgent matter in the needs of the United States Supreme Court for review the Petitioner Writ of Certiorari as Petitioner could be held as a involuntary civil sexually violent person indefinite.

**C:Rock Island Appellate Court Review and Decision:**

Please go to page 7

#### REASONS FOR GRANTING THE PETITION

This petition presents an issue ripe for Supreme Court review. As pointed out before the Illinois Supreme Court is not finding denial of a Constitutional Right, admonishment, promised plea agreement, ineffective assistance of counsel, mentally incompetent person cannot consent to a certain crime then a mentally incompetent person cannot accept a promised plea agreement without admonishment of all other possibilities/collateral attacks consequences. § 725 ILCS 207/1 et seq.

#### THE ILLINOIS SUPREME COURT DENIED REVIEWING PETITIONERS CLAIMS/ARGUMENTS/LAWS, AND THE U.S. CONSTITUTION, NOW TO CALL FOR AN EXERCISE OF THIS COURTS SUPERVISORY POWER

It is established beyond doubt that prisoners have a constitutional right to effective counsel under the sixth amendment, criminal and civil proceedings. 725 ILCS 207/25. Pursuant to People v. Hughes, 2012 IL 112817 60, 983 N.E.2d 439, 456-57, Petitioner should have been admonished of such possibility of any other outcome from accepting promised plea agreement. The 6th Amendment guarantees Petitioner the right to effective assistance of counsel at all critical stages of the criminal proceedings, which include the entry of a guilty plea; Strickland v. Washington, 466 U.S. 668 (1984).

#### CONCLUSION

Wherefore, for the foregoing reasons, the Court should grant certiorari, or in the alternatively, summarily reverse the Illinois Supreme Court, Illinois Appellate Court, Illinois State Court affirmed ruling, and remand the case for further proceedings. The petition for a writ of certiorari should be granted.

Signature and dated on Proof of service.