

No. \_\_\_\_\_

**19-7447**

IN THE

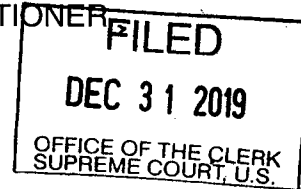
SUPREME COURT OF THE UNITED STATES

**ORIGINAL**

**KONSTANTIN RUDENKO**

(Your Name)

— PETITIONER



vs.

**COXSACKIE WARDEN**

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
**THE UNITED STATES SECOND CIRCUIT COURT OF APPEALS**

\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

**KONSTANTIN RUDENKO**

\_\_\_\_\_  
(Your Name)

**BARE HILL CORRECTIONAL FACILITY**

\_\_\_\_\_  
(Address)

**CALLER BOX 20, 181 BRAND ROAD  
MALONE, NEW YORK 12953**

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

**QUESTION(S) PRESENTED**

DID THE NEW YORK STATE COURTS DENY  
PETITIONER HIS **FUNDAMENTAL** FOURTEEN  
AMENDMENT RIGHT TO DUE PROCESS OF LAW IN  
VIOLATION OF THE UNITED STATES  
CONSTITUTION.

DID THE FEDERAL DISTRICT COURT AND UNITED  
STATES COURT OF APPEALS FOR THE SECOND  
CIRCUIT PROPERLY ADDRESS THE VIOLATION.

## 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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## 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   B   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- ☐ is unpublished.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   A   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- ☐ is unpublished.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- ☐ is unpublished.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 NOVEMBER 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: \_\_\_\_\_, 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 \_\_\_\_\_.  
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 \_\_\_\_\_.

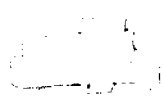
☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No.   A  .

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

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

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## STATEMENT OF THE CASE

Defendant was convicted in the Kings County Court of the crimes of Assault in the First Degree and criminal possession of a Weapon in the Third Degree. Upon the appeal of the matter defendant **Respectfully** requested to file a pro se supplemental brief. The Appellate Division denied defendant this right and the New York State Court of Appeals denied defendant leave. Thus, failing to address the matter. Although the Appellate Division was allowing other defendants the right to file a pro se supplemental brief.

The Appellate Division stated that it was **discretionary** but never provided a criteria that was being used for the granting or denying of the right to file a pro se supplemental brief. Both the Federal District Court and the United States Second Circuit Court of Appeals also failed to address the matter.

## REASONS FOR GRANTING THE PETITION

The facts in the District Court's Decision clearly demonstrated that the District court addressed the issue pursuant to the Writ of Error Coram Nobis claims, but never addressed the fact that petitioner was denied his basic Fundamental Fourteen Amendment right to equal Protection of the law.

The equal protection clause pursuant to the 14th Amendment which guarantees that the Government must treat a persons or class of persons the same as it treats other person or classes in like situations and circumstances. Here, in the state court proceedings, defendant Respectfully requested to file a Pro Se supplemental brief and was denied by both the Appellate Division, Second Judicial Department and the New York State Court of Appeals.

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Although the same Appellate Court granted this same right to two other known defendants. Although both defendants had no real issue of substance to place before the court. (See, Appendix C and D) whereas in one case the defendant's attorney filed a brief pursuant to Anders V. California, 386 U.S. 738 stating that no issues exist to file on an appeal. But, the Appellate Court still allowed this defendant the right to file a pro se supplemental brief. Thus, this was a total denial of petitioner's rights pursuant to the equal protection clause, because the Appellate Court never stated a criteria for granting or denying of the right to file a pro se supplemental brief.

Since the New York State Appellate Division made the right to file a pro se supplemental brief discretionary and since

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an equal protection claim would be a federal question pursuant to the Fourteen Amendment of the United States Constitution. The state courts may not avoid deciding federal issues by invoking procedural rules that they do not apply evenhandedly to all similar claims (See, HATHORN V. LOVORN, 102 S.Ct. 2421 [1982]).

Here, since the New York State Appellate Court had in fact relied upon some procedural rule that it had set, then the New York State Court of Appeals must address the claim.

Where a state court should have made a finding of fact, but neglected to do so (in this case the New York State Court of Appeals) the state court factual determination is perforce unreasonable and there is nothing to which the presumption

of correctness can attach in a federal habeas corpus case (See, 28 U.S.C.A. §2254 (d)(1)(2) (e)(1), Also See, Wiggins V. Smith, 539 U.S. 510, 123 S.Ct. 2527 at 2539-40).

Similar, where the state courts plainly misapprehend or misstate the record in making their findings, and the misapprehension goes to a material factual issue that is central to a petitioner's claim, that misapprehension can fatally undermine the fact finding process, rendering the resulting factual finding unreasonable, (See, Wiggins, 123 S.Ct. at 2538-39).

It merits noting here, that the Third and Fourth Appellate Departments gives a defendant the right to file a supplemental

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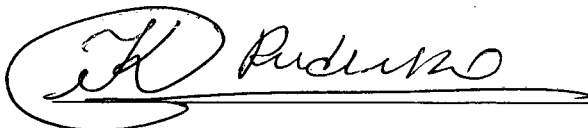
brief without asking for such a right.  
Whereas the First and Second Appellate  
Departments makes it discretionary . Thus,  
no uniformity in the Appellate Departments  
The New York\_ States Court of Appeals Must  
address this matter.

Petitioner now Respectfully ask this Court  
to Compel the United States Second Circuit  
Court of Appeals to address my claim of a  
equal protection violation that took place  
in the state courts and has never been  
addressed.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. K. Rudin", is written over a horizontal line. The initial "J" is large and stylized, with a loop that extends under the line.

Date: 12/25/2019