

19-8073

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

MAR - 9 2020

OFFICE OF THE CLERK

KENNETH BAKER

— PETITIONER

(Your Name)

VS.

COMMONWEALTH OF PENNSYLVANIA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COMMONWEALTH OF PENNSYLVANIA FOR WESTERN DISTRICT

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

PETITION FOR WRIT OF CERTIORARI

KENNETH N. BAKER

(Your Name)

SCI Albion, 10745 Route 18

(Address)

Albion, PA 16475-0002

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

MAR 17 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the Court of Appeals for the Third Circuit rendered a decision in conflict with the law of the United States Supreme Court announced in Barefoot v. Estelle, 463 U.S. 892-893 (1983); Coppedge v. United States, 369 U.S. 428, 435 (1962), and contrary to 28 U.S.C. 2253 (C) when it denied Petitioner's request for a Certificate of Appealability from the District Court's denial of the Petitioner's Motion to Vacate Conviction and Sentence?

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

Barefoot v. Estelle, 463 U.S. 892-893 (1983)

Coppedge v. United States, 369 U.S. 438, 445 (1962)

Sixth Amendment of the United States Constitution

Douglas v. California, 372 U.S. 353 (1963)

Halbert's v. Michigan, 595 U.S. 605 (2005)

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STATUTES AND RULES

Sixth Amendment of the United States Constitution

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

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[X] reported at Western District of Pennsylvania; 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[] is unpublished.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

[X] reported at Superior Court; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[xx] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[X] reported at Beaver County; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Beaver County court appears at Appendix _____ to the petition and is

[X] reported at Beaver County Court; 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 January 2020.

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 January 2020. A copy of that decision appears at Appendix N/A.

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

The judgement of the United States Court of Appeals for the Third Circuit was entered in December, 2019. Jurisdiction is conferred by 28 U.S.C. §2253 and this case involves constitutional and statutory provisions for habeas corpus appeals; See Barefoot v. Estelle, 463 U.S. 892-893 (1983), Coppedge v. United States, 362 U.S. 438, 455 (1962). See also 28 U.S.C. §2253 et. seq.

It is clear that a Certificate of Appealability should issue under 28 U.S.C. §2253(C)(2) where the applicant has made a substantial showing of the denial of a constitutional right Id. A court must either issue a Certificate of Appealability indicating which issues satisfy the required showing, or must state the reason why such a certificate should not issue. Fed. R. app. P. 22(b).

STATEMENT OF THE CASE

In the case sub judice, the United States Court of Appeal for the Third Circuit failed to "state the reasons why such a certificate should not issue" and this did not comply with Fed. R. app. P. 22(b).

The State presented evidence that a nightgown that Karen Dreher was wearing when the police arrived at the Dreher residence on the morning of June 2010 contained semen stains that matched Petitioner's DNA.

However, the evidence also indicated that it was not possible to determine when the semen had been deposited on the nightgown, that semen could be found on a garment even after it had been washed, that extremely low sperm count in the semen samples on the nightgown could have resulted from washing, and that Karen might have taken the nightgown from a pile of dirty laundry.

Moreover, vaginal swabs collected during a sexual assault examination on the day of the alleged assault did not contain semen; and the same examination did not disclose any evidence of injury or trauma on Karen Dreher's body, including her vaginal area. There were also bite marks on Ms. Dreher's breast that will prove Petitioner's innocence, since Petitioner is missing his left front tooth and that fact does not match the bite marks found on Ms. Dreher's body.

All of this occurred after Petitioner expressed his desire to terminate his relationship with Ms. Dreher, which had lasted about ~~ten~~ years.

REASONS FOR GRANTING THE PETITION

This is important for the issues as to the continued validity of the so-called 'great writ': the writ of Habeas Corpus, created by the Founding Fathers and embodied in the U.S. Constitution.

The law is well settled that in order for a federal prisoner to avail himself to an appeal to the applicable federal circuit court of appeals from a district court's denial of an application for collateral relief from the federal equivalent to the constitutionally created writ of Habeas Corpus, a motion to vacate under 28 U.S.C. 2255 is called for.

CONCLUSION

In this instant case, the Court of Appeals' decision failed to comply with the requirements of Fed. R. app. P. 22(b) and thus violated the foregoing constitutional standards. Therefore, Certiorari should be granted herein.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth Baker

Kenneth N. Baker

Date: 2 / 23 / 2020