

IN THE SUPREME COURT OF THE
UNITED STATES
No. 19-8251

IN RE KEVIN TALKINGTON	§	PETITIONER
V.	§	
LORIE DAVIS, Director,	§	
Texas Dept. of Criminal Justice		
C.I.D.		RESPONENT

MOTION FOR REHEARING

Comes now, Kevin Duane Talkington, Petitioner in cause No. 19-8251 and moves this court for a rehearing in said cause. In support of this motion, Petitioner will show that: ¹ The Supreme Court's denial of his Petition is in conflict with Long Standing Supreme Court Law /Rulings; ² the ruling is in conflict with Federal courts; ³ and also in conflict with Texas Government Code; ⁴ and the United States Constitution.

A.

BRIEF IN SUPPORT

1. The supreme court's denial of a writ of certiorari is in conflict with the supreme court's ruling in Smith v. Phillips, 102 S. Ct. 940 (1982), regarding issue One of Petitioners application, Ineffective Assistance of Counsel: Failing to strike or challenge a biased Juror. "This court has long held that the remedy for ~~Juror~~ allegations of juror partiality is a hearing in which the

defendant has the opportunity to prove actual bias". Smith supra at 945. The Supreme Court instructs that where a juror's impartiality "is placed in issue" and the juror swore that she could set aside her opinions and decide the case impartially, the question remains nonetheless whether "the jurors protestations of impartiality [should] have been believed. Citing Patton, 104 S. Ct. 2885 at 2891.

2. Counsel failed to remove Nygaard after he stated that he could "not be fair" due to his and his family's history of being sexually abused (2RR 43, 45, 46). The fifth Circuit ruled that not removing a juror after making such a statement was ineffective assistance of counsel, citing Virgil v. Dretke, 446 F.3d 598 (5th Cir. 2006) ; see also Hughes v. U.S., 258 F.3d 453 (6th Cir. 2001).

3. Tx. Gov. Code 62.105 (4) states: (... the venire member cannot revive his eligibility by recanting an earlier expression of bias or prejudice.), as happened with Nygaard when he stated "... now, I think I can be impartial..", (2RR 103).

4. The sixth amendment of the United States Constitution guarantees an accused the right to trial by an "impartial jury". Due to Nygaard's detailed reasons about why he could NOT be fair to Petitioner (2RR 43, 45, 46) it cannot be said without question that his simple statement that he "Thinks" he could be impartial, is enough to afford Petitioner his constitutional right to a "Fair and impartial jury", even had there been no rule of law to prevent such a recantation by Nygaard. Petitioner has requested an evidentiary hearing throughout every collateral proceeding, which have been ignored, to develop the record, and prove that Nygaard

was actually biased against either the subject matter or petitioner, which further denied him the opportunity to prove that counsel was ineffective for not striking or challenging Nygaard for cause, even after Petitioner instructed him to do so. A denial of an evidentiary hearing in this matter, *supra*, is in direct conflict with the Supreme Court dictum in Smith v. Phillips 102. S.Ct. 940 (1982); and the case law cited herein; the Tx. Gov. Code; but most importantly, it conflicts with Petitioner's 6th amendment Constitutional right to a trial by an impartial jury and effective assistance of counsel. see also Wellons v. Hall, 130 S.Ct. 727, 731 2010.

B.

Petitioner stands by his position and statements as outlined in grounds TWO; THREE; and FOUR, of his Petition for Writ of Certiorar to the Supreme Court, and the supporting case law cited in each of those grounds.

However, due to Petitioner's ~~£~~ lack of further access to additional research material in support of his grounds therein due to the Unit COVID-19 quarantine, He will address briefly only Grounds Three and Four.

As to ground Three, there is record evidence through counsel's own billing statement and the witness affidavits that he failed to investigate the facts before trial. Further, counsel states in his affidavit ~~and~~ page 4, in cause No. C-213-010817-1269829-A, that he "doesn't like to keep track of the details". The proof of any case is in the details, as the court well knows.

Counsel failed to subject the prosecutions case to meaningful
advisarial testing ~~§~~ as required under U.S. v. Cronin 104 S.Ct
2039 (1984), when he failed to present any ~~evidence~~
exculpatory evidence supporting that Petitioner was NOT
Guilty of the crime alledged, such as challenging the
lack of any physical evidence; Questioning N.S. about
her recantation to Casey Talkington; and failing to present
the alibi testimony of Cristal Sparks as outlined in
Ground Four in cause No. 19-8251, Citing Raygoza v.
Hulick 474 F.3d 958, 965 (7th Cir. 2007) thus prejudicing
Petitioner's defense and right to present evidence in support
there of. Citing Strickland v. Washington, 104. S.Ct. 2032 (1984)
~~Ther. denied~~ Each of Petitioner's claims are supported
by the record and could easily be proven through an
evidentiary hearing in which he could call forth the
witnesses involved /and or in question to prove his case.

Thus, the denial of such a hearing is in conflict with
supreme court dictum and rulings of the sister courts
cited herein and presented in Petitioners writ of Certiorari.

Petitioner fears that his Pro Se status and the nature
of the subject matter, is preventing his pleas for relief
and protection of his constitutional rights to a fair trial
and effective assistance of counsel, from being heard.

Therefore, in the interest of Justice and to keep the
uniformity of the Supreme Courts decision in Smith supra,
he Petitions this honorable Court for a rehearing in these
matters and relief ~~of an~~ in the form of an evidentiary
hearing.

PRAYER

Wherefore premises considered, Petitioner Prays this honorable court and or honorable Justice Samuel A. Alito Jr., grant relief of a rehearing in Petitioners application for writ of Certiorari and remand for an evidentiary hearing on the matters therein, or in the alternative, grant an evidentiary hearing on the ineffective assistance of counsel claim regarding the biased juror as deemed to be the proper remedy by the long standing dictum of the Supreme Court.

Respectfully Submitted,
Kevin Talkington 01911091
2661 FM 2054 CO Unit
Tenn. Colony, Tx., 75884

CERTIFICATE OF SERVICE

This is to certify that the above and forgoing Motion for rehearing in cause No. 19-8251 was mailed to the office of the Clerk, Supreme Court of the United States, Washington, DC 20543-001, by placing same in the Coffield Unit mailbox on the 5th day of July 2020 to be forwarded by the U.S.P.S. to the above address.

July 31st 2020

date of certificate correction

Respectfully,

Kevin Talkington 01911091

Petitioner Pro Se

Table of Contents

	<u>Page</u>
Cover letter	1
Motion for Rehearing, with Brief in Support	2-5
PRAYER	6
CERTIFICATE OF SERVICE	6

Index of Authorities

Hughes v. U.S., 258 F.3d 453 (6th Cir. 2001)	3
Patton v. Yount, 104 S.Ct. 2885, 2891	3
Raygoza v. Hulick, 474 F.3d 958, 965 (7th Cir. 2007)	5
Smith v. Phillips, 102 S.Ct. 940, 945 (1982)	4, 5
Strickland v. Washington, 104 S.Ct. 2052 (1984)	5
U.S. v. Cronk, 104 S.Ct. 2039 (1984)	5
Virgil v. Dretke, 446 F.3d 598 (5th Cir. 2006)	3
Wellons v. Hall, 130 S.Ct. 727, 731 (2010)	4

OTHER AUTHORITIES

Texas Government Code, § 62.105 (4)	3, 4
The Sixth Amendment of the United States Const. of America	3, 4

CERTIFICATE OF SERVICE

This is to certify that the above and foregoing Motion for rehearing in cause No. 19-8251 was ~~mailed~~ remailed to the office of the Clerk, Supreme Court of the United States, Washington DC 20543-001, by placing same in the Coffield Unit mailbox on the 31st day of July 2020 to be forwarded by the U.S. Postal Service to the above address.

Respectfully,

Kevin Talkington 01911091

CERTIFICATE OF COMPLIANCE

In accordance with rule 44 of the Supreme Court rules, I Kevin Talkington petitioner pro se in cause No. 19-8251 certify that the grounds in this Motion for rehearing are limited to intervening circumstances of substantial or controlling effect, are briefly and distinctly stated herein, and I also certify that the petition for rehearing is presented in good faith and not for delay.

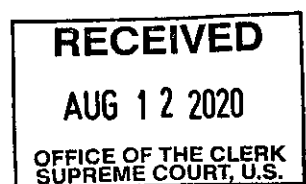
Respectfully Submitted

Kevin Talkington 01911091

2661 FM 2054 CO UNIT

Tenn. Colony, Tx., 75884

July 31st 2020
date



IN THE SUPREME COURT OF THE UNITED STATES

Cause No. 19-8251

Inre Kevin Talkington

٧٠

Lorie Davis, Director,

T.D.C.J., C.I.D.

COVER LETTER

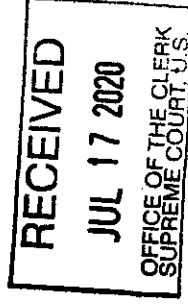
Dear honorable Clerk, Petitioner Pro Se, Kevin Talkington, in the above cause presents this, his original Motion for rehearing of said cause, and respectfully requests that you file with this honorable court and/or Justice Samuel A. Alito Jr., the enclosed Motion for rehearing of cause No 19-8251, at your earliest convenience. Petitioner ask for forgiveness for any errors of form or spelling as he has only a ninth grade education.

Respectfully,

Kevin Talkington 01911091

July 5th 2020
date

July 31st 2020	date of correction
----------------	--------------------



SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

July 31st 2020

RE: Certificate regarding rule 44

Dear Clerk :

Per your instruction I have corrected the error and I now enclose a certificate in compliance with rule 44 stating that the grounds in the petition for rehearing are limited to intervening circumstances of substantial or controlling effect, are brief and distinct, and said motion is presented in good faith and not for delay.

Please file said motion with the court at your earliest ~~earliest~~ convenience.

Cause No: 19-8251

Respectfully

Kevin Talkington 01911091
2661 FM 2054 CO UNIT
Tenn. Colony, Tx., 75884

