

No. _____

79-8613

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Abdul-Aziz M. Shabazz-Wiggins — PETITIONER
(Your Name)

vs.

Commonwealth of Virginia — RESPONDENT(S)

FILED
DEC 07 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

The Supreme Court of Virginia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Abdul-AzizM. Shabazz-Wiggins
(Your Name)

2440 Webb Ct.
(Address)

Norfolk, VA. 23518
(City, State, Zip Code)

2522590057
(Phone Number)

RECEIVED
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QUESTION(S) PRESENTED

- 1.Whether the General District and Circuit Courts of Suffolk ignored the defendant's right to Qualified Immunity as set forth in *Hudson v. McMillian* 503 U.S. 1, 6-7 & 9-10 (1992) and *Hope v. Pelzer* 536 U.S. 730, 739 (2002) citing *Anderson v. Creighton* 483 U.S. 635, 640 (1987).
2. Whether the Norfolk Court of Appeals and the Supreme Court of Virginia erred in affirming the erroneous decisions of the lower courts which violated the legal standard for Use of Force set by The Supreme Court of the United States as in *Graham v. Connor* #87-6571, 490 U.S. 386 (1989) and *Whitley v. Albers* #84-1077, 475 U.S. 312 (1986).
3. Whether by applying the Assistance of Counsel Clause of the Sixth Amendment and two prong Strickland Test set by The Supreme Court of the United States in *Strickland v. Washington*, 466 U.S. 668, Attorney for the Defense is guilty of ineffective assistance of counsel.

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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~~The Office of the Clerk for the Supreme Court of the United States -extension~~

APPENDIX E

Western Tidewater Regional Jail- Use of Force Rules

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

Western Tidewater Regional Jail Use of Force Policy

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 _____ 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 _____ 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

reported at Virginia Reports (Va.); or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Norfolk Court of Appeals court appears at Appendix B to the petition and is

reported at Virginia Court of Appeal Reports (Va. Ct. App.); 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. 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 10/09/2019.
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including May 29, 2020 (date) on March 30, 2020 (date) in Application No. A 0516-18-1

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Standards for Use of Force

Sixth Amendment two prong Strickland Test

STATEMENT OF THE CASE

The appeal upon which this Petition for Writ of Certiorari is based came about because of the failure of the lower courts to hold a hearing on my motion to Appeal. This motion contains information about the U.S. Supreme Court cases that are meant to set the standards of Use of Force to be followed by Law Enforcement and standard test for Ineffective assistance of counsel. (See APPENDIX B)

On November 5, 2016 I was employed as a Jail Officer by Western Tidewater Regional Jail. While doing my security rounds of the cellblock I passed the cell of Inmate Gregory Lassiter. Lassiter began yelling at me stating he had been calling me on the call button and wanted to know why I didn't answer him. I explained that if more than one person press the button it negate them all and therefore I had no idea he was calling. I asked what he needed and he stated to see Medical for a bloody nose. Inmate stated his nose was not bleeding at this time and was informed that I would let Medical know as the Nurse was outside the pod getting ready for medication pass. Inmate Lassiter was not satisfied with that answer and began yelling for an emergency grievance, began threatening to assault me and banging on the cell door. I told the inmate that he did not need an emergency grievance and again that he would see medical when she came in the pod for med pass. I warned the inmate that when he did come out of his cell that he was not to continue yelling and threatening. I ordered all the inmates in the cellblock to lock down for med pass. When the Nurse was finished preparing for med pass I gave Officer Drake the order for the pod security door to be opened and took my place in the doorway to control the flow of inmates to and from the secured outer hallway where the Nurse was waiting with her med cart. I then gave the order for the inmates to be called out to line up for med pass. Inmate Lassiter's cell was on the bottom tier and was the last door to be released. Inmate Lassiter quickly walked toward the door passing all the other inmates and as I was standing in the doorway he did a swim move with his arm to push by me to get out of the pod into the hallway. The inmate was not advised that he was clear to exit the pod. According to Law Enforcement/ Corrections Officer training Use of the Force Continuum the first level of Enforcement is mere presence and by the inmate trying to push past me he raised the level of response to Level 3 & 4. Level 3 is Resistant (passive) and Level 4 is Resistant (active physical) of Officer's Perception. At that point the Force Continuum for Officer's Response of Level 3 & 4 is Pain Compliance, Take Downs, Chemical Agent to Impact Weapons, CEW or Canine. I responded with a Palm Heel Strike to the chest and did a take down onto the floor, I kicked the door to the pod shut behind us to secure the pod and attempted to control the inmate who was actively resisting. Officer Drake called for Officer Assistance over the radio and soon Officer McCray and 2 others arrived to assist with taking inmate into custody and handcuffing. The inmate was taken to Medical and evaluated by the Nurse. All parties involved wrote statements and I wrote an incident report. The Nurse cleared the inmate medically stating she did not note any blood or deformity of any kind. I returned to my workstation and completed the day as normal, as well as the following day. All these events occurred on the weekend.

On the following Monday I was informed that I was on administrative leave pending investigation. Tuesday the clerk from the HR Dept of the Jail called and informed me I was fired and to turn in my uniforms when I come to pick up my last paycheck. On Wednesday my shift Lieutenant called to inform me I was not fired but on Admin Leave pending Investigation. Also on Wednesday I was made aware by a co-worker that there was an article/ interview with the Superintendent of Western Tidewater Regional Jail in the Suffolk Herald stating that an inmate had been assaulted by a jail officer and that the officer had been terminated. I was called in to the Commonwealth's Office to talk to an investigator and was

told they would let me know if they were going to do anything with the case. The following week I received notice from Western Tidewater Regional Jail stating I was terminated. Several months went by and I heard nothing else about the matter until my teenage son called me to say he was alone in the house and the police had surrounded the house with 6 cars and Officers were outside with guns drawn. He spoke to the Police and they informed him there was a warrant for my arrest and asked him to contact me and have me come to the house to turn myself in. Of course, I complied immediately and without incident. I was taken to Portsmouth City Jail, where I had worked as a Deputy years prior to my employment at WTRJ, and was booked for charges of Felony Malicious Wounding brought by the Commonwealth Attorney's Office. I bonded out on the charges and retained Ali Sprinkle as my Attorney.

During the time that Mrs. Sprinkle was collecting information to build a case for my defense I asked for a Change of Venue which she did not apply for. I informed her of a conflict of interest with the Nurse the Commonwealth was calling as a witness due to the fact that her boyfriend, had been an Officer also working at WTRJ and was fired because he had assaulted me and broken my nose in the parking lot of the jail prior to our shift the week before the incident with the inmate. I also made her aware of the conflict of interest with the other Nurse testifying for the Commonwealth because she had been fired in correlation with a complaint of sexual harassment of me. Mrs. Sprinkle at no time during the trial made this information known to the court. During the trial Mrs. Sprinkle allowed the Nurse to leave the courtroom after giving testimony and did not question her as to why she testified that the inmate had deformity of his nose when she examined him but her statement at the time of the incident clearly noted no deformity. The inmate complained 2 days later of pain and was given an x-ray and told he would need surgery. Mrs. Sprinkle did not make the case during the trial the inmate had originally asked to see medical for a bloody nose and it was possible his nose was either broken before any contact with me and/or his the opportunity to damage his nose further himself during the 2 days post incident. Mrs. Sprinkle allowed the Commonwealth Atty and the Judge to continuously refer to the inmate as if he were free to come and go throughout the jail as if he were in the public streets and able to walk thru a secured door to see medical without specified permission and to overlook the original complaint of why he was going to the Nurse. The Judge and the Commonwealth Atty continuously referred to the inmate as if he were "just trying to get his medication". My trial was put on hold for months in order for Mrs. Sprinkle to seek medical treatment for Cancer. Her father is also an attorney and took over my case while she was receiving Chemotherapy but refused to go ahead with the case and take it to trial because he wanted his daughter to finish the case herself.

The sitting Judge stated he would hear my Expert Witness testimony in regard to Officer Defensive Tactics Training and Use of Force but would not take it into consideration for my defense. The Judge determined there was no Malicious Intent and therefore reduced the charge to a Misdemeanor Assault & Battery. The video evidence was grainy and the judge refused to leave the bench to look closely at it, exclaiming he felt I sucker punched the inmate and didn't need to look further. He sentenced me to 12 months jail with 11 months suspended to serve one month in jail stating he wanted me to see how it feels to only be able to eat, sleep and receive medical when the Officer advises and 2 years probation plus restitution for the inmate.

REASONS FOR GRANTING THE PETITION

1. Federal Laws Must Not Be Violated.

Congress passes laws that are meant to be beneficial to all people of the United States. These laws take into account the rights and benefits that are guaranteed under the Constitution of the United

States. As the ultimate laws of the land, federal laws must not be violated. The Western Tidewater

Regional Jail receives federal funding and have a sworn duty to obey the Constitution, State laws and it's own rules and regulations.

2. I Need To Be Able To Provide For My Family.

Because of my wrongful termination and the charges that have been brought against me I have been unable to secure gainful employment. At the time of the incident I was employed part time with

the Portsmouth Public Schools as a High School Football Coach and a Substitute Teacher, both of which I have been unable to renew my contract with the School System due to the nature of the charges. I paid out of pocket to attend and pass an Emergency Medical Technician Course with Isle

of Wight Rescue. I was working for a private Ambulance company as an EVOC driver but also due to

the nature of my charges and while on Appeal and/or probation the VA Office of EMS has denied me

my certification as an EMT and deemed me unable to work in EMS until the case is closed and appeal their decision. This has not only had an economic affect on my family's well being, we had to

file Chapter 7 bankruptcy and our house was foreclosed on, it has affected me psychologically as I suffer with Depression and has affected my marriage to the point of a temporary separation with my wife.

3. And Justice For All to Include Law Enforcement.

A positive ruling by this court will go a long way toward helping all who have been victimized as I have in the course and the scope of their duties as Law Enforcement. The laws are there to protect us

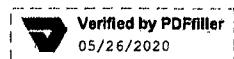
all not just those working on the streets as Police Officers but also Corrections Officers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Abdul-Aziz Shabazz-Wiggins



Date: 03/10/2020