

No. 19-8798

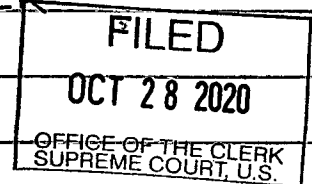
IN THE
SUPREME COURT OF THE UNITED STATES

RAFEEO Q. SALAHUDDIN — PETITIONER

vs.

DAVID SHINN, DIRECTOR

ARIZONA DEPARTMENT OF CORR. et. al. — RESPONDENT(S)



ON PETITION FOR REHEARING ON THE MERITS TO

SUPREME COURT OF ARIZONA

PETITION FOR REHEARING ON THE MERITS

Rafeeq Qadeer Salahuddin #056940

Arizona State Prison - Florence / East Unit

P.O. Box 5000

Florence, Arizona 85132

TABLE OF AUTHORITIES CITED

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JURISDICTION

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

CONSTITUTIONAL PROVISION INVOLVED

The United States Constitution - the Fourteenth Amendment to the United States Constitution:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On November 27, 1984, the Maricopa County Grand Jury returned an indictment charging petitioner with: first-degree burglary, two counts of kidnapping, two counts of armed robbery, and first-degree felony murder.

On November 5, 1985, trial counsel made informal motion for mistrial regarding jury selection. (See Evidentiary Hearing R.T. page 21 lines 14 through 19; at Appendix B)

On November 5, 1985, the State and trial counsel exercised their peremptory challenges. (See Appendix A - Counsel's Sworn Affidavit)

On November 6, 1985, prior to opening statements trial counsel made formal motion for mistrial regarding jury selection.

On November 27, 1985, the jury returned a verdict finding petitioner guilty on all charges.

On February 6, 1986, the trial court sentenced petitioner to 25 years to life for murder count and three consecutive 21 year sentences for all remaining counts.

On February 12, 1986, petitioner filed a timely notice of appeal.

On April 30, 1986, this Court decided Batson v. Kentucky, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986)

On January 13, 1987, in regards to the retroactive application of Batson, this Court decided Griffith v. Kentucky, 479 U.S. 314, 107 S.Ct. 708, 93 L.Ed.2d 649 (1987).

On February 4, 1987, on Direct Appeal as of Right, petitioner filed claim of Batson Violation.

REASONS FOR GRANTING THE PETITION

The ground before this Court presents a prima facie showing that substantial issues would be tendered concerning the administration of criminal justice by petition for rehearing.

ARGUMENT

Petitioner contends that the State deprives him of his liberty without due process of law by its failure to provide a full and fair corrective judicial process to remedy an alleged constitutional Batson violation when constitutional violation was discovered and made retroactively applicable by recent United States Supreme Court decision and where recent decision of state's highest court has shown that habeas corpus is unavailable under these circumstances.

The importance of fundamentally fair state proceedings is clear given that it is the "solemn duty of state courts, no less than federal ones, to safeguard personal liberties and consider federal claims in accord with federal law." Schnecko v. Bustamonte, 412 U.S. 218, 259 (1973) (Powell, J., concurring)

see Mooney v. Holohan, 294 U.S. 103, 113 (1935) ("Upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by this Constitution").

An inadequate state corrective process claim might arise inter alia by a procedural default doctrine; see Ford v. Georgia, 498 U.S. 411, 423 (1991) (refusing to recognize default of state procedural rule which petitioner could not reasonably have been expected to comply).

This Court has reversed state court decisions that denied an adequate hearing to state prisoners raising federal claims in state postconviction proceedings. Yates v. Aiken, 484 U.S. 211 (1988) (state postconviction courts implicitly faulted for failure to provide remedy for constitutional violations identified in recent, retroactive United States Supreme Court decisions); Tison v. Arizona, 481 U.S. 137 (1987); Truesdale v. Aiken, 480 U.S. 527 (1987); Rogers v. Richmond, 365 U.S. 534 (1961); Wilde v. Wyoming, 362 U.S. 607 (1960); Sublett v. Adams, 362 U.S. 143 (1960); Cash v. Culver, 358 U.S. 633 (1959); Pennsylvania ex rel. Herman v. Claudy, 350 U.S. 114 (1956); Palmer v. Ashe, 342 U.S. 134 (1951); Hawk v. Olsen, 326 U.S. 271 (1945); Pyle v. Kansas, 317 U.S. 213 (1942); Cochran v. Kansas, 316 U.S. 255 (1942); Smith v. O'Grady, 312 U.S. 329 (1941); see Johnson v. Mississippi, 486 U.S. 578 (1988).

Petitioner has for years and years unsuccessfully pursued every avenue open to him in an effort to obtain a decision on the merits of his appeal and to prove that the prosecution used race as a base for selecting the jury which is unlawful and render's the conviction unlawful.

The Arizona appellate courts' refusal to hear petitioner on the merits of his claim does not stem from any view of those merits, however, petitioner does argue in this Court that those courts were constitutionally required to render judgment on the appeal in his favor.

Therefore, the issue this Court must decide is whether the state courts' dismissal of the appeal, despite the retroactive mandates by this Court on appeals, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Quoting Lord Bacon, Blackstone says:

"The benignity of the law is such, as when, to preserve the principles and grounds of law, it depriveth a man of his remedy without his own fault, it will rather put him in a better degree and condition than in a worse."

CONCLUSION

When a state has provided an appeal as of right, that appeal is a state created liberty interest that the Due Process Clause of the Fourteenth Amendment protects against the arbitrary deprivation by the state. See Swarthout v. Cooke, 562 U.S. 216, 220 (2011) ("When... a state creates a liberty interest, the Due Process Clause requires fair procedures for its vindication - and federal courts will review the application of those constitutionally required procedures").

Because the State's appellate process is an inadequate corrective process that violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, by its failure to provide petitioner with requisite remedy for constitutional violation identified in retroactive United States Supreme Court decision; petitioner was denied full and fair corrective process on his Batson violation claim, and thus, the State deprives petitioner of his liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the United State Constitution.

Therefore, this petition for rehearing on the merits should be granted

Respectfully submitted on October 27 2020.



CERTIFICATION

I, the Petitioner, RAFEEQ QADEER
SALAHUDDIN, certify that pursuant to United
States Supreme Court Rules 44.1 and 44.2, this
Petition for Rehearing on the Merits is restricted to
the grounds specified in this paragraph and that
it is presented in good faith and not for delay

Respectfully Submitted on October 27 2020

By 
Rafeeq Qadeer Salahuddin
Pro se Petitioner