

No. _____

19-8897

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID LEE SMITH — PETITIONER
(Your Name) **OR**

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
NORTH CAROLINA SUPREME COURT

FILED
JUN 15 2020
OFFICE OF THE CLERK
SUPREME COURT, U.

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

PETITION FOR WRIT OF CERTIORARI

DAVID LEE SMITH

(Your Name)

P.D. BOX 1058

(Address)

BLURGAW N.C. 28425

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

IS PRO-SE APPELLANT IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY OR DEATH, HOUSED IN N.C. MEDIUM CUSTODY PRISON DORM, WITH (2) MAN BUNK BEDS (4) FEET APART, DURING DEADLY GLOBAL CORONA VIRUS PANDEMIC, ENTITLED TO A 28 U.S.C.S 1651(A) EXTRAORDINARY WRIT, COMMUTING HIS (2) CONSECUTIVE 168 MONTH TO 211 MONTH SENTENCES TO TIME SERVED, BECAUSE HIS CUSTODIAN BRYAN K. WELLS HAS REFUSED TO COMPLY WITH N.C. GOVERNOR ROY COOPER'S SOCIAL DISTANCING AND REDUCED CAPACITY ORDERS, BECAUSE NO CURE NOR VACCINE TO TREAT DEADLY CORONA VIRUS EXIST?

HAS PRO-SE APPELLANT ASSERTED RULE. 21(4) NEED FOR EMERGENCY ACTION, AFTER HE ALLEGED HIS CUSTODIAN REFUSED TO COMPLY WITH N.C. GOVERNOR'S SOCIAL DISTANCING AND REDUCED CAPACITY ORDERS AND HOUSES HIM IN DORM OF OVER 120-PRISONERS, WITH (2) MEN BUNK BEDS (4) FEET APART, DURING DEADLY GLOBAL CORONA VIRUS PANDEMIC, WHEN HE IS AGE 63 WITH HIGH BLOOD PRESSURE AND DIABETIC, BUT A NON-VIOLENT OFFENDER?

ARE N.C. DECLARED HABITUAL FELON PRISONERS, THAT HAVE COMPLETED THEIR LAWFUL MAXIMUM SENTENCES, DURING A GLOBAL CORONA VIRUS PANDEMIC, ENTITLED TO APPROPRIATE EMERGENCY RELIEF BY THIS COURT, CAUSING REPEAL AND THE DISSOLUTION OF N.C.G.S. 14-7.1 AND IMMEDIATE RELEASE, BECAUSE N.C. LEGISLATURE UNCONSTITUTIONALLY ASSEMBLED, (4) CRIMINAL STATUSES INTO A CRIMINAL STATUTE?

QUESTION(S) PRESENTED

ARE ALL PRO-SE PETITIONERS ENTITLED TO COURTS' LIBERAL CONSTRUCTION OF THEIR COURT PAPERS OR FAIR AMENDMENT?

IF PROSECUTOR PRESENTED NO EVIDENCE PETITIONER PLANNED TO KILL VICTIM, IS HE OR SHE ENTITLED TO REDUCTION OF LIFE AND NO PAROLE SENTENCE, TO TIME SERVED AND RELEASE, AFTER HE OR SHE SERVED OVER 20-YEARS IN PRISON?

IS AN 83-YEAR OLD PETITIONER, WITH 6TH GRADE EDUCATION, ENTITLED TO DISTRICT COURT LIBERAL CONSTRUCTION OF HIS PRO-SE 2254 PETITION, AS CLAIM OF INNOCENCE, WHEN PROSECUTOR PROVED 2ND DEGREE MURDER AND PETITIONER'S CUSTODIAN FAILED TO PROVIDE LAW LIBRARY OR PARA-LEGAL TO ASSIST HIM IN PREPARING THIS COMPLAINT?

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:

N.C. ATTORNEY GENERAL JOSHUA STEIN P.O. BOX 629 RALEIGH
N.C. 27602

BRYAN K. WELLS P.O. BOX 1058 BURGAW N.C. 28425

MAKE COUNTY ASSISTANT D.A. TOM FORD P.O. BOX 351
RALEIGH N.C. 27602.

RELATED CASES

1805-CV-02123-LHIA

7:17-CV-00349-EKD-RSB

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STATUTES AND RULES

U.S. SUPREME COURT RULE 30.4 AND 11

F. R. APP. P. RULE. 59(E)

28 U.S.C. § 2101(E)

N.C.G.S. 14-7.1

N.C. RULES OF ASSEMBLY OF STATUTES

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 D 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 N.C. APPEALS court appears at Appendix C 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 _____.

[] 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).

[X] For cases from state courts:

The date on which the highest state court decided my case was JUNE 3, 2010.
A copy of that decision appears at Appendix D.

[] 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

28 U.S.C. ^s 1257(A)

28 U.S.C. ^s 2101(E)

N.C. G.S. 14-7.1

STATEMENT OF CASE

PRO-SE APPELLANT SENTENCED TO (2) CONSECUTIVE 168 MONTHS TO 211 MONTH SENTENCES FOR (1) COUNT OF FELONY B AND B AND (1) COUNT OF FELONY LARCENY, HELD IN N.C. MEDIUM CUSTODY FACILITY WITH (2) MAN BUNK BEDS (4) FEET APART, AT AGE 63, WITH HIGH BLOOD PRESSURE, DIABETES, SERVING 17-YEARS IN PRISON, NOW IS IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY OR DEATH, DUE TO RAPID SPREAD OF DEADLY CORONAVIRUS.

N.C. GOVERNOR ALSO ISSUED SOCIAL DISTANCING AND REDUCED CAPACITY ORDERS, TO PREVENT FURTHER SPREADING OF DEADLY VIRUS, NO CURE NOR VACCINE TO TREAT DEADLY CORONAVIRUS EXIST.

SEE HUNT V. LIPHOFF, 199 F.3D 1200, 1222 (10TH CIR. 1999) (IMMINENT DANGER EXCEPTION SATISFIED BY ALLEGING FAILURE TO PROVIDE ADEQUATE MEDICAL CARE FOR SERIOUS CONDITION)

APPELLANT WAS DENIED RELIEF IN EMERGENCY BY WAKE SUPERIOR COURT MAY 14, 2020.

APPELLANT WAS DENIED EMERGENCY RELIEF IN N.C. COURT OF APPEALS ETLINE 9, 2020.

APPELLANT WAS DENIED EMERGENCY RELIEF IN N.C. SUPREME COURT ETLINE 3, 2020.

CUSTODIAN FAILED TO PROVIDE LAW LIBRARY OR PARA-LEGAL TO ASSIST IN PREPARING THIS DOCUMENT.

CUSTODIAN PROVIDES SUBSTANDARD FACE MASKS.

N.C. LEGISLATURE UNLAWFULLY ASSEMBLED CRIMINAL STATUTES INTO A CRIMINAL STATUTE.

N.C. DECLARED HABITUAL FELONS CONVICTED BETWEEN 1996 AND 2015 ARE BEING UNLAWFULLY HELD, DURING DEADLY GLOBAL CORONAVIRUS PANDEMIC, BECAUSE THEY HAVE COMPLETED THEIR LAWFUL MAXIMUM SENTENCES.

STATEMENT OF THE CASE

PRO-SE PETITIONER SUBMITTED COLORABLE CLAIM OF ACTUAL INNOCENCE OF FIRST DEGREE MURDER AND MOVED DISTRICT COURT ON MAY 8, 2019 TO LIBERALLY CONSTRUE HIS § 2254 PETITION AS SUCH.

DISTRICT COURT CITED CLIRABLE DEFECTS AND GAVE PETITIONER 21 DAYS TO CORRECT DEFECT, BUT HIS CLISTODIAN DOES NOT PROVIDE LAWS LIBRARY NOR PARALEGAL TO ASSIST INMATES IN HABEAS PETITIONS AND PETITIONER RECEIVED MARCH 12, 2019 ORDER-ON OR ABOUT MAY 7, 2019, HE SUBMITTED RULE. 59(E) MOTION. PETITIONER'S ATTORNEY JERRY D. REDFIRM INFORMED HIM PROSECUTOR WAS OFFERING HIM 20-YEAR PLEA FOR 2ND DEGREE MURDER.

ATTORNEY REDFIRM IMMEDIATELY STATED "WE AINT GOING TO TAKE NO PLEA, BECAUSE WE GOING TO BEAT THE MURDER CHARGE".

PROSECUTOR PRESENTED NO EVIDENCE PETITIONER DID PLAN TO KILL VICTIM.

PROSECUTOR SUCCESSFULLY PROVED 2ND DEGREE MURDER, BECAUSE DEFENDANT AIMED PISTOL AT VICTIM'S HEART AND FIRED, AS VICTIM ATTACKED HIM WITH A SHOVEL.

APPELLANT ADMITS HE COULD HAVE SHOT VICTIM IN HIS LEG TO STOP THE ATTACK WITH THE SHOVEL.

REASON FOR GRANTING PETITION

N.C. GOVERNOR ROY A. COOPER III ISSUED MARCH 27, 2020 STATE OF EMERGENCY DECLARATION, DURING RAPID SPREAD OF DEADLY CORONA VIRUS, FOLLOWED BY SOCIAL DISTANCING AND REDUCED CAPACITY ORDERS.

APPELLANT'S CUSTODIAN REFUSES TO COMPLY WITH N.C. GOVERNOR'S SOCIAL DISTANCING AND REDUCED CAPACITY ORDERS.

APPELLANT IS A NON-VIOLENT OFFENDER.

APPELLANT HAS SERVED 17-YEARS IN PRISON AND EARNED 407-DAYS MERIT TIME AND 648-DAYS GAINED TIME.

CUSTODIAN DOES NOT HAVE CURE, NOR VACCINE TO TREAT DEADLY CORONA VIRUS.

APPELLANT IS AT GREATER RISK DUE TO AGE 63, HIGH BLOOD PRESSURE AND DIABETES.

APPELLANT IS IN IMMINENT DANGER OF SERIOUS PHYSICAL INJURY OR DEATH AND CUSTODIAN DOES NOT HAVE CURE NOR VACCINE TO TREAT DEADLY CORONA VIRUS.

STATE COURT OF LAST RESORT HAS DECIDED IMPORTANT QUESTION OF FEDERAL LAW THAT CONFLICTS WITH IDTHCR. 1999.

1,089 NORTH CAROLINA COVID-19 DEATHS.

700 NORTH CAROLINA PRISONS TESTED POSITIVE FOR COVID-19.
24 NEW NORTH CAROLINA COVID RELATED DEATHS.

ALL PRO-SE APPELLANTS ARE ENTITLED TO LIBERAL CONSTRUCTION OF THEIR COURT PAPERS. [DE'LONTA V. ANGELONE 330 F.3D (A) COVID-19 DEATH AT PENDER CORRECTIONAL WITH 19-CASES.

DISTRICT COURT DENIED EMERGENCY RELIEF TO APPELLANT ON OR ABOUT APRIL 13, 2020 AND THREATENED TO SANCTION FOR FRIVOLOUS FILINGS.

REASONS FOR GRANTING THE PETITION

DISTRICT COURT FAILED TO LIBERALLY CONSTRUE PRO-SE 2254 HABEAS OR ALLOW FAIR AMENDMENT.

DEFENSE ATTORNEY INFORMED PETITIONER OF PLEA OFFER AND FAILED TO GIVE HIM OPPORTUNITY TO DECIDE TO ACCEPT OR REJECT PLEA.

PETITIONER WAS ADVISED NOT TO TESTIFY.

PROSECUTOR FAILED TO PRESENT EVIDENCE PETITIONER PLANNED TO KILL VICTIM.

PROSECUTOR PROVED 2ND DEGREE MURDER.

PETITIONER HAS SERVED OVER 20-YEARS IN PRISON.

DE'LONTA V. ANGELONA 330 F.3D 630, 633 (4TH CIR. 2003) (COURT LIBERALLY CONSTRUED PRO-SE COMPLAINT).

PETITIONER ADMITS HIS GUILT OF 2ND DEGREE MURDER, BECAUSE HE COULD HAVE STOPPED THE SHOVEL ATTACK BY SHOOTING VICTIM IN HIS LEG.

Attala County Bar Association Brief

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X David L. Smith

Date: JUNE 13, 2020