

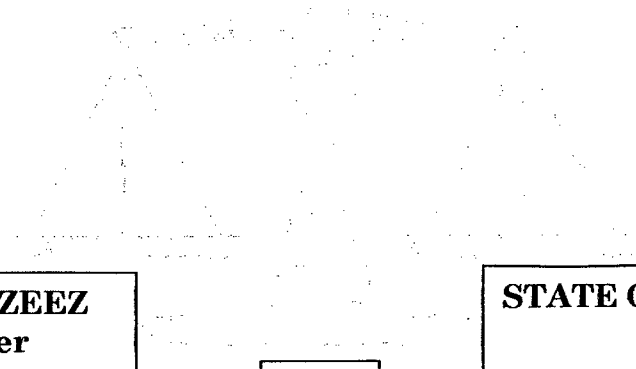
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Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES



JAMAL A. AZEEZ
Petitioner

STATE OF WEST VIRGINIA
Respondent

VS

**ON APETITION FOR A WRIT OF CERTIORARI
TO THE WEST VIRGINIA SUPREME COURT OF APPEALS**

PETITION FOR A WRIT OF CERTIORARI

Jamal A. Azeez, Petitioner
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Questions Presented for Review and Constitutional Provisions

1. Did the lower court condone **systemic injustice** against Petitioner (“Azeez”), a **colored** citizen, knowing that he was falsely arrested and indicted twice¹ by the same officer that used blatant and willful perjuries because he believed Azeez was “illegal in the country”?
2. Whether Azeez claim of **actual innocence, as proven**, was ignored by the lower court, as espoused in the precedence set in McQuiggins v. Perkins, 569 U.S. 383 (2013), in which this Court held with abundance of clarity that “*actual innocence, if proven, is sufficient to circumvent the one-year² statute of limitations for petitioners to appeal their conviction enacted within the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)*”. The late Justice Ruth Bader Ginsberg (RIP) held: “*Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar, such res judicata, collateral estoppel, as it was in Schlup v. Delo, 513 U. S. 298, and House v. Bell, 547 U. S. 518, or expiration of the AEDPA statute of limitations, as in this case. Pp. 7–14*”. The Court has applied this “*fundamental miscarriage of justice exception*” to overcome various procedural defaults, including, *res judicata*, collateral estoppel, and as most relevant here, failure to observe state procedural rules, such as filing deadlines.

¹ One conviction (for Failure to Appear) was reversed by a federal district court recently, but the Respondent refused to compensate Azeez for Unjust Incarceration in a pro se Civil Rights suit.

² Majority of the evidences (concealed through gross Prosecutorial and Police Misconduct) were discovered in between 5 to 13 years after conviction and expiration of the one-year statute of limitation under AEDPA.

3. Did this case provide a classical example of ‘**exceptional circumstances**’ to invoke a review knowing that the petitioner, must **register for life** as a **violent** sexual offender under the 1996 Megan laws, as a Level 2 offender that can never be downgraded, when such consequence did not exist in his 1987 conviction in violation on the U.S. Constitution *Ex Post Facto* laws?
4. Since this Court recently made changes in (Batson v. Kentucky, 476 U.S. 79) regarding race-biased jury³ and peremptory challenges, did the lower court ignore 2 newly-discovered evidences (Background Arrest record and Affidavit); which prove that the **only black juror** was kicked out based upon a fraudulent statement (“*Juror Johnson may have been arrested, we don’t know*”) by the prosecutor that was conspiratorially not verified by the trial judge?

Many more questions could be presented as a result of gross prosecutorial and police misconduct as seen in the 22 reversible errors listed below. See footnote below for one such questions.

Opinions Below

- (a) “Memorandum Decision” denying an appeal on a Petition for Removal of Sexually Violent Offender designation under WV Code § 15-12-3a, issued on 6/25/2020. (Appendix A)
- (b) “Order” denying a Petition for Rehearing of Appeal (Appendix A (i)).
- (c) “Mandate” issued during the preparation of this Petition for a Writ of Certiorari. (Appendix B)

Parties (As seen on cover page)

Jurisdiction

Rule 10(b)(c) of the Rules of Appellate Procedures, USCA 28 §

³ Can a fair-minded, race-neutral jury, if presented with not one, but eight newly discovered Brady evidences (4 expert witnesses and 4 exculpatory scientific reports as seen below) now find Azeez factually innocent?

Statement of The Case

Azeez is a 67-year old citizen⁴, a high school valedictorian, a US Army veteran (2nd Lt. Nuclear, Biological and Chemical Warfare specialist), a Medical Graduate (MD), a former NYPD (Auxiliary Officer); none of which matters to the lower court, was unprecedentedly arrested, indicted and convicted in 1987 for **Second** degree sexual assault and sentenced 10-20 years. The alleged incident occurred while Azeez was studying for his Medical Boards exam and working in a laboratory; a job he obtained during a major labor strike at a Beckley Hospital. Two weeks before the strike ended, an anonymous note was left of the Human Resource Manager's desk saying, "*Jamal was fooling around with a patient*". After an investigation, the patient bluntly denied the allegation and Azeez continued to help saving lives in the ER as usual. His employer, Dr. Zarina Rasheed (Chief Pathologist), a foreign and colored doctor who conducted the investigation, warned Azeez "to be careful".

On the very day the strike ended, and after 3 former employees returned to the lab looking to be rehired on that same day, Azeez was approached by a nurse (Susan Philips, LPN, a pot head) who was accompanied by her supervisor (Geneva Fox, RN) and was told, "*A patient in Room 201 said you molested her*". Instead of calling the police and have Azeez arrested immediately, Ms. Fox demanded Azeez to turn over the hospital beeper and lab keys, and she escorted him to the front door. Five days later, hospital authorities **finally decided** to call the police. Azeez was

⁴ Born in South America, Azeez became a US citizen in 1979; which is 8 years prior to the alleged incident, and had a clean and unblemished history protecting the lives of all Americans.

unprecedentedly arrested by Detective Cedric Robertson. Apparently after running a background check, Mr. Robertson told Azeez, "*You have problems with the immigration*" and assumed that Azeez was illegal in the country; which is the rail-roading factor⁵ in this case. Similar perjuries and misconduct by Mr. Robertson were recognized by district federal court in a Failure to Appear conviction; reversed in 2003.

Facts Supporting Factual Innocence and Reversible Errors the Lower Courts Repeatedly Ignored. Most Evidences Discovered Post-Appeal Era

1. Azeez was falsely arrested. (Appendix C: The Arrest Warrant contains many significant perjuries----falsely claiming that both the CIB Rape Kit and Dr. Slack's ER examinations reports '*were positive for sexual intercourse*' (But See #7 and #10 below) Hospital authorities purposely waited 5 days before calling the police.
2. Azeez was wrongfully indicted. (False statements sworn in the Arrest Warrant and Complaint for Arrest were similarly made before the grand jury). Judge Hutchison denied request for Grand Jury Minutes and accused Azeez of "*going on a fishing expedition*" despite such particularized need for exposure of the minutes.
3. Judge Canterbury denied Azeez a critical witness who, prior to this case, denied a similar accusation seen on an anonymous note, "*Jamal was fooling around with a patient*", left on the Human Resource Manager's desk, that represents a plot to remove Azeez who took a job from disgruntled employees during a major labor strike. Azeez car was vandalized twice.

⁵ To begin, it was rather audacious, flagrant, disrespectful of the law, and racial injustice when the Arresting Officer solemnly swore in his Arrest and Complaint for Warrant that "the rape kit analysis conducted by Serologist Police Sergeant Fred Zain at the Police Crime lab, and the Emergency Room rape examination conducted by Dr. Slack were both "*tested positive for sexual intercourse*"....while the rape kit was still in the Beckley Police Evidence Locker unanalyzed. Bear in mind, Azeez was arrested and charged with Third Degree sex assault. Review #5 on the list below to determine how rogue Bruce Lazenby raised it to Second Degree and got away with murder, literally. Yet the Court is blind to all of these claims while many States are establishing "Innocence Commission", "Integrity Unit", etc., to review wrongful convictions dated decades ago. This is the fate of a poor person like Azeez, unable to hire an attorney; which makes it so easy to trample upon his rights. How could anyone ignore 22 Facts supporting Innocence? Azeez refused a Third Degree plea by Lazenby.

4. Azeez was accused on the day the strike ended by a nurse (Phillips) who used a mentally retarded patient after the first attempt to frame him failed.
5. Azeez Motion for Psychiatric Evaluation To Determine Competency on the alleged victim is today **still pending a resolution**. Judge Canterbury knew she was mentally incompetent. She was allowed to testify to invoke jury sympathy and with coached testimony. (During direct examination, the woman was coached to say, "*A man in white coat threatened to stick me with needles if I scream*"...specifically to support "forcible compulsion" and "use of violence" as required under Second Degree sexual assault statute.
6. But during cross examination, the woman told the all-white jury, "*I never saw him before—don't know his name— could not remember anything that happened to me*". Yet they returned a guilty verdict---racially motivated. (Appendix D).
7. Dr. Slack stated in a post-conviction hearing that he "*found no objective evidence the woman engaged in recent sexual intercourse*"; let alone violent rape. But the Judge refused to reverse the conviction even though he knew the rape kit tested by the Police Crime Lab yielded a "negative result". Dr. Slack ER **negative** rape examination **report** was concealed. **It was discovered 5 years after conviction** (See Appendix E)
8. Prosecutor Lazenby deceitfully stated in open court that he never knew Dr. Slack was involved in the case. Yet in the Complaint for Warrant and his Response to Defendant's Motion for Discovery, prosecutor Lazenby listed Dr. Slack in his "Witness List". Dr. Slack was tactically withheld from trial. (See Appendix F)
9. Police Sergeant Fred Zain (Serologist) was withheld. Fred zain conducted the rape kit analysis. Lazenby deceitfully stated at bench conference, "*...I don't know anything about Dr. Slack...the CIB Serologist who did the (rape kit) analysis is gone...I never received the report*". (The Serologist did not quit. See Appendix G)
10. The CIB Lab (**negative**) rape kit **report** was concealed. Arrest Warrant stated it was "*positive for sexual intercourse*" while the rape kit was still in BCPD evidence locker **unanalyzed**. **This evidence was discovered 8 years after conviction**. (See Appendix H).

11. Evidence Officer Don Lilly, who received the rape kit report three months before trial, was not called. He later confirmed that he *“forward the report to the prosecutor”*. **This evidence was discovered 10 years after conviction.** (See Appendix I).
12. Dr. Hassan (Psychiatrist) was withheld. He could have rendered the victim incompetent.
13. Dr. Rasheed (Pathologist) was intentionally and conspiratorially withheld.
14. Dr. Rasheed's acid phosphatase exculpatory report was **suppressed** by the Judge in his chamber. (See Appendix J) It proves the woman had sexual intercourse at a time Azeez was not present. This is a rock-solid *alibi* defense blatantly suppressed.
15. The woman testified that she *‘ran away from Ted at Spencer Boarding Home.....Ted made me pregnant....Ted did it to me....I was in lots of pains....I want to commit suicide....I screamed for help....’*. Yet the jury returned a guilty verdict (Appendix K (a) (b) solely based upon “Sperm Cells” found on the **same** acid phosphatase swab.
16. The **only black juror** (Mr. Joseph Johnson) was kicked out because of false narratives; *“We speculate Cedric may have arrested him, I don't know”*, as stated by rogue prosecutor K. Bruce Lazenby. (See Appendix L)
17. Recently acquired Background Check on Mr. Johnson proves he has no arrest record. Another recent Affidavit shows the Clerk of the Court verified Mr. Johnson was never arrested anywhere in the country, let alone by the arresting officer in Beckley, WV. **This report was discovered 25 years after conviction.** (See Appendix: M (a) and (b).
18. Judge Canterbury did not verify Lazenby's statement (as seen in #17 above) and was fully cognizant that Mr. Johnson would have NEVER been called for jury duty, and/or selected by the Clerk of the Court, if Mr. Johnson had prior arrest record.
19. Azeez attempted two DNA analysis to prove his innocence, but were rejected because Azeez is *‘no longer incarcerated’* as ruled by WV Innocence Project, and by District Judge (Faber) due to the *“one-year “statute of limitation under AEDPA... even though “...circumstances that the court feels make this case unique...this petition presents a compelling case for review...it could result in evidence strongly*

suggesting his actual innocence” (See Appendix N) Sadly, Judge Faber’s Court (SDWV) was next-door neighbor to the court of conviction. If this case was reviewed by Judge Maxwell (NDWV)---away from Raleigh County Court), Azeez is confident he would be here today writing this appeal. Politics should never interfere with the law.

20. Lazenby deliberately concealed all of the exculpatory evidences (“EXHIBITS”) as seen in the “Police Report on Investigation” This report was discovered in 2013---
26 years after conviction. (See Appendix O (a) and (b))
21. Azeez contacted The Center For Public Integrity. A newspaper article by Associated Press published a report illustrating “**Dozens Falsely Imprisoned Due to Prosecutor Misconduct**”...an issue the WV Supreme Court failed to consider whether the “*misconduct ruled harmless error or prejudicial misconduct*”. Azeez cases were mentioned in the report published nationally. (See Appendix P (a) and (b). Yet the lower courts ignored these warning signs of systemic injustice.
22. Azeez had only **one** witness at trial---his fiancée who told the jury nurse Phillips hated him for calling her a “pot head”. None of the above potential witnesses was interviewed or subpoenaed by the Public Defender. Lack of money (state funds) played a role of the wrongful conviction; in addition to a false suspicion that Azeez was illegal in the country. The Appendices submitted are purely factual evidences of a wrongful conviction; not the hogwash rulings of the lower courts that would be a waste of time to review their inconclusive, unsupportive, and side-stepping views.

Additional Information for review under “Exceptional Circumstances”

Brady and Strickland violations inundated the root cause of this case. Azeez should have never gone through 23 years of failed pro se appeals⁶ when the law under Batson clearly proscribed racial discrimination during jury selection. He should not

⁶ A lie doesn’t become truth, a wrong doesn’t become right, and evil doesn’t become good, just because it’s accepted by a majority.

be judged, as before, by the color⁷ of his skin but by the content of the 23 reversible claims illustrated above. If this type of injustice occurs frequently in big metropolis like NYC, as in the case of the Central Park Five, one can imagine the frequency and severity in small rural towns like Beckley, WV. Like the mayor said, "*George Floyd would still be alive today if he were white*". Azeez was tried by 5 white witnesses, none of whom provided any eye-witness testimony of the alleged crime, and with many contrasting testimonies. For example, Ms. Philips stated, "The woman was yelling "*Don't let him hurt me....*" The room was dark...Jamal stuttered a lot".... while her supervisor Ms. Fox who was present at all times stated, "*No, I don't recall the woman making any statement...there was some light in the room.....No, I didn't hear him stutter....*". Today **Black and Brown Lives Matter**. Many old and unsettled cases of racial and systemic injustice are being given full review. Numerous states have started reviewing wrongful convictions especially where racial injustice is a factor. San Francisco just established the "Innocence Commission", the Integrity Unit in Ohio, New York, Texas, etc.

Conclusion and Relief

In summary, the WV Supreme Court adopted the lower court ruling and concluded that Azeez:

"had filed thirty-eight petitions in the twenty-seven years since petitioner's underlying criminal conviction. The circuit court noted that petitioner had argued the same issues time and time again and that petitioner had filed these petitions at the taxpayers' expense with no regard for good faith pleadings...The motion was denied by the circuit court on February 22, 2019, because petitioner failed to comply with the filing requirements set forth in the August 25, 2014, circuit court order. That is, he failed to provide a full and complete financial statement and failed to have an attorney verify that there was a good faith basis for his pleading".

In contrast, Azeez requests that this Court grant review to address the question of whether or not the WV Supreme Court failed to address the following falsities:

⁷ Justice Alito, in his recent dissent in *Ramos* was the latest in a string of opinions bristling at the idea that racism still shapes many policymakers' decisions today, and that the legacy of past racism still affect people of color (like Azeez). Alito's *Ramos* dissent also, fits into a broader pattern in multiple cases, including cases where there is a clear evidence that modern-day lawmakers acted with invidious racial intention, Alito treats the mere suggestion that anti-black or anti-brown racism may still play a role in policymaking with contempt.

- (i) It is quite erroneous and disingenuous to state that Azeez “had filed 38 petitions over 27 years” since majority of those pleadings relate to the defunct Failure to Appear conviction the Respondent refused any relief until the Northern District Court rightfully entertained a pro se petition, appointed a lawyer, and **reversed the conviction** 17 years ago----the dislike of which still lingers today.
- (ii) Azeez filed a Motion for Appointment of counsel and verified that his only income is his Social Security monthly benefit of \$1,015.00 and he is unemployed; which is complying with the Hutchison’s demands to ***“provide a full and complete financial statement”***. Yet, like the email letter to the Clerk, the Motion was completely ignored. Azeez believes if he were a white poor person, Judge Hutchison would have appointed a lawyer knowing that Azeez was incarcerated for nearly 13 straight years. **Justice Ran Amok!!!!**
- (iii) Never in any response to Azeez’s pro se appeals the Respondent provide a counterclaim on any of the 22 issues listed above, especially the suppression of the acid phosphatase (alibi) result, and systemic **exclusion of 8 Brady** evidences that support factual innocence.
- (iv) Azeez filed a Petition (not a civil complaint) regarding his **criminal** conviction, and ergo, under no circumstance under the Fifth and Fourteenth Amendments of the US Constitution due process of law the lower court has any authority to ***“impose restrictions upon Petitioner’s future filing”*** where there are laws to permit return.
- (v) For example, under WV Code §15-12-3a: **Petition for removal of sexually violent designation:** *“A proceeding seeking to remove a person’s designation as a sexually violent predator may be initiated by the filing of a petition by the person so designated in the original sentencing court.* Accordingly, Azeez has a due process right to file his Petition since he is a Level 2 registrant, and is currently **registered for life** as a ‘sexually violent’ person in the State of New York. These statues, **without restrictions**, allow a Registrant to return to the court of

conviction once per year with any factor that supports reduction or relief from registration, or anytime evidence is acquired supporting a wrongful conviction, as in this case. Hutchinson ignored due process of laws.

- (vi) Azeez made a good-faith attempt (Appendix Q) to cure any filing defect or satisfy any filing requirement (unlawfully) imposed by an extremely prejudicial Judge (John Hutchison). But the Clerk Flanagan failed to do his ministerial duties and ignored Azeez's request for assistance and right to access court, obviously unaware of Judge Hutchinson.
- (vii) It is clearly unlawful and abuse of authority to compel Azeez to hire "*an attorney to verify that there was a good faith basis for his pleading*" a restriction that was never placed before, even during the Failure to Appear case when Azeez discovered year and year many evidences, filing appeals after appeals, claiming gross prosecutorial and police misconduct; some criminal in nature.
- (viii) Azeez filed a Motion to Recuse Judge Hutchison citing 12 reasons that support a 27-year history of abuse of authority, provided solid facts illustrating prejudicial and erroneous decisions, judicial misconduct (complaint filed), conflict of interest, unethical and improper conduct, partiality, all supporting grounds for disqualification, **but he blatantly ignored said Motion also.** Reversal of the Failure To Appear conviction by the federal court was a slap in his face, and such should not recur in this case at all costs. He rudely told Azeez, "*The conviction is not reversed. You just got out of jail*".

WHEREFORE, since "*the facts have been fairly presented*" in this case (as in Haines v. Kener, 404 US 520, (1971), this Court should apply its "*least stringent standard of review*" and REOPEN the case, GRANT this Petition⁸ or REMAND, based on the countless facts illustrating actual innocence, additional facts supporting exceptional circumstances, and the systemic injustice⁹ the Respondent **repeatedly** ignored and circumvented for more than 30 years. Respectfully submitted,

⁸ Azeez had intention to submit this case to individual Justice Ginsberg. (RIP. May God rest her soul). Her legacy to free and seek justice for the "actual innocent" should live on in her McQuiggin v. Perkins rulings.

⁹ Even though this petition contains only 10 pages, its content speaks a volume of the travesty of justice inflicted on Azeez on all of his *pro se* attempts to clear his name. Archie Williams and dozens other wrongfully convicted people recently proved their innocence 15 to 35 years after exhausting all appeal remedies. Archie Williams had only fingerprint analysis, while Azeez submitted *pro se*, many Brady evidences. **Is Azeez different?**