

IN THE SUPREME COURT OF THE UNITED STATES

AVERN LEE BURNSIDE,

Petitioner,

v.

RANDEE REWERTS, WARDEN

Respondent.

MOTION FOR SUSPENSION OF ORDER DENYING CERTIORARI/
PETITION FOR REHEARING

RELIEF SOUGHT

Pursuant to Supreme Court Rule 16.3, Petitioner requests that this Court suspend the application of its order on October 5, 2020 denying certiorari in this matter pending resolution and final disposition of this petition for rehearing under Supreme Court Rule 44.2.

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

GROUND FOR REHEARING

1. A rehearing of the decision in this matter is in the interest of justice because Mr. Burnside's perjury testimony claim is substantial. And

jurists of reason could conclude that the state denied Mr. Burnside due process when it knowingly used perjured testimony from Leah Watson, whose testimony was based on threats and intimidation; and that Judge Farah's factual findings are not entitled to a presumption of correctness. Giglio v. United States, 405 U.S. 150, 405 U.S. 150, 153-54 (1972); Napue v. Illinois, 360 U.S. 264, 269-70 (1959); Pyle v. Kansas, 317 U.S. 213, 214-16 (1942); Cabana v. Bullock, 474 U.S. 376, 388 n.5 (1986); Miller-El v. Cockrell, 537 U.S. 322, 340 (2003).

2. Under the controlling standard, a petitioner must 'sho[w] that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner' or that the issues presented were adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003). This Court further stressed in Miller-El that the standard for a certificate of appealability is "much less stringent" than the standard for success on the merits, and that petitioners need not show that they are likely to succeed on appeal or that any reasonable jurist would, after hearing the appeal, rule in their favor. *Id.* Rather, the petitioner need only show that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Id.*

3. This Court also held that the Eleventh Circuit erred in denying a certificate of appealability to a habeas petitioner based on the district court's acceptance of a state court's factual finding, because that factual finding was called into question by "remarkable" contrary evidence. Tharpe v. Sellers, 138 S. Ct. 545, 546 (2018).

4. Mr. Burnside has shown in his writ of certiorari that 'jurists of reason could disagree with the district court's resolution of his constitutional claim or that jurists could conclude the issue presented is adequate to deserve encouragement to proceed further. Buck v. Davis, 137 S.Ct. 758, 773

(2017)(quoting Miller-El v. Cockrell, 537 U.S. 322, 327 (2017)). Therefore, the Court must suspend the application of its order denying certiorari and grant Mr. Burnside's petition for rehearing.

CONCLUSION

For the reasons just stated, Mr. Burnside urges that this Court suspend the application of its order denying certiorari and grant this petition for a rehearing, and that, on further consideration, the petition for certiorari be granted.

11-17-20
Date: 10-19-20

Avern Lee Burnside
Avern Lee Burnside # 394665

I, Avern Lee Burnside, certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

11-17-20
Date: 10-19-20

Avern Lee Burnside
Avern Lee Burnside # 394665

I declare under penalty of perjury that the foregoing is true and correct.

11-17-20
Date: 10-19-20

Avern Lee Burnside
Avern Lee Burnside # 394665

I, Avern Lee Burnside, also certify that the grounds presented in the Petition for Rehearing are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. See Rule 44

Date: 11-17-20

Avern Lee Burnside
Avern Lee Burnside # 394665