NO. 20-6202

IN THE

SUPREME COURT OF THE UNITED STATES

JIMMY D. WOOTEN – PETITIONER

Vs.

STATE OF ARKANSAS – RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

ARKANSAS SUPREME COURT

Jimmy D. Wooten, Pro Se

P.O. Box 600

Grady, AR, 71644-0600

Varner Unit – A.D.C.

QUESTION(S) PRESENTED

I. Did United States Code Annotated 18 U.S.C.A. 3005 apply to Petitioner in 1994 when he was charged with Capital Murder and the Death Penalty was sought?

II. Did the Trial Court violate Due Process by Denying the Petitioner his rights under 18 U.S.C.A. 3005 when the Death Penalty was sought.

III. Does the Arkansas Supreme Court violate Due Process by limiting what can be brought up on Error Coram Nobis to such a small category when they have no other way for an inmate to bring up a mistake or, error found in his or her case at a later date?

IV. Did and Still Does 18 U.S.C.A. § 3599 and Criminal Justice Act of 1964, and amended, (C.J.A. Guidelines) 18 U.S.C.A. § 3006A not apply to this Petitioner?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court, (The Arkansas Supreme Court), to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the highest state court, (The Arkansas Supreme Court), decided my case was October 8, 2020.

A copy of the decision appears at Appendix A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amdmt. V: No person shall be held to answer for a capital, or otherwise infamous crime, ... nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law.

U.S. Const., Amdmt. VI: In all criminal prosecutions, the accused shall enjoy the right to ... have compulsory process for obtaining witnesses in his favor.

U.S. Const., Amdmt. XIV: NO state shall ... 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.

Statutory Laws:

18 U.S.C.A. § 3005: Whoever is indicted for treason or other capital crime shall be allowed to make his full defense by counsel; and the court before which the defendant is to be tried, or a judge thereof, shall promptly, upon the defendant's request, assign 2 such counsel, of whom at least 1 shall be learned in the law applicable to capital cases.

18 U.S.C.A. § 3599: Counsel for financially unable defendants.

18 U.S.C.A. § 3006A: Criminal Justice Act of 1964, as amended, ... the Judges of the United States District Court for the Eastern District of Arkansas do hereby adopt this plant for furnishing representation for any person financially unable to obtain adequate representation in accordance with the CJA. (AR R USDCT E.D. – CJA Plan)

STATEMENT OF THE CASE

This is a "Capital Case," in 1994 Petitioner was charged with capital murder, criminal attempt to commit capital murder and aggravated assault. In Feb. 1995 after a day and a half trial he was sentenced to death; thirty years; and six years, respectively.

In 2011, Petitioner's death sentence was vacated and he was resentenced by a Judge to Life without parole. Which is still a Capital Crime. Petitioner was assigned only one attorney, the public defender, to represent him during the trial and to do all the investigation work. Petitioner made requests to his attorney to ask for help in his case when it appeared the solo attorney was not giving his case the attention it needed. When Petitioner questioned him on this the attorney got mad and told Petitioner he did not have time for this crap that he had nearly the whole Pope County Detention Center to represent. He told Petitioner he had made a request to the judge for someone to help him in his case since it was a Capital Case but was denied. He stated to Petitioner that there was no funds for anyone to help him. Petitioner was not informed by the court nor his attorney that he had a right to two attorney under 18 U.S.C.A. 3005. Petitioner just learned about this right several months ago by another inmate. Since learning about this Petitioner has researched it and put forth his best attempt without having an attorney to get all the information he can and present it to the courts. His attempt in the Arkansas Supreme Court was denied by Chief Justice, John Kemp. Justice, Josephine Linker Hart, dissenting. She stated that Petitioner's allegation is deserving of a hearing. Arkansas has no other avenue for Petitioners that has been locked up for years who finds a error in their case to obtain relief.

STATEMENT OF THE CASE

Petitioner wrote the circuit court where he was tried, to get records showing his attorney had requested another attorney. But he never got a reply back. So Petitioner cannot confirm whether his attorney made the request or lied to him about it. If he did not, then this was Negligence Per Se and unprofessional conduct. Wooten v. Norris, 578 F. 3d 767. Circuit Judge, Bright of the United States Court of Appeals, Eight Circuit, held in his opinion. "This relation of the court procedures represents a breakdown in the criminal-justice system of a great magnitude. It seems to be obvious, even to any observer, that the criminal-justice system failed in this case, both during the penalty phase and post-conviction proceedings. I express no opinion on the constitutional sufficiency of Wooten's representation, but as a matter of common sense and judicial experience, the quality of Wooten's representation is as shocking as it is poor." "Nonetheless, this court may be limited in its ability to correct an injustice." Petitioner uses Circuit Judge, Bright's opinion to show what happened when 18 U.S.C.A. § 3005 is violated on a Capital Case.

Petitioner's traumatic childhood and mental-health issues was never presented to the jury. Nor did the jury hear of his (P.T.S.D) Post-traumatic stress disorder. See Wooten v. State, 2010 Ark. 467, 370 S.W. 3d 475; Robert L. Brown, Justice concurring; "Counsel did absolutely nothing a reasonably competent attorney would have done to provide effective representation in the penalty phase."

Because of trial counsel's negligence and unprofessional conduct the Petitioner was convicted and has spend over 26 years in prison. Petitioner respectfully asks for this injustice to be corrected.

REASONS FOR GRANTING THE PETITION

This is a "Capital Case," where the Petitioner was sentenced to death, but in 2011 his sentence was changed to Life without parole. But it still remains a Capital Case with a Capital Punishment. As Petitioner explained to the Arkansas Supreme Court. He was not given two attorneys when the Death Penalty was sought. Under 18 U.S.C.A. § 3005 two attorneys was suppose to be provided upon the defendant's request. He did make that request to his solo attorney, which was a public defender with limited experience in Capital Cases. Upon research the Petitioner learned Arkansas has a Code Annotated 16-87-306 Duties, that states in (2)(A) In all capital cases where the death penalty is sought, two (2) attorneys shall be appointed. Arkansas' claim is, that statute did not start until 1997. But the Federal statute has been around since 1948 and was revised in 1994, see 1994 U.S. Code Cong. and Adm. News, p. 1801. And Arkansas was suppose to be following all Federal Laws and Statutes in accordance to the Criminal Justice Act of 1964. The actions of the lower courts are erroneous and in conflict with the decisions of U.S. Courts of Appeal, and violates the Petitioner's rights to Due Process.

In U.S. v. Williams, C.A. 4 (Va.) 1976, 544 F. 2d 1215; Failure to appoint up to two counsel upon request in capital cases gives rise to irrebutable presumption of prejudice.

In U.S. v. Watson, 496 F. 2d 1125 and U.S. v. Boone, 245 F. 3d 352, March 30, 2001; The United Courts of Appeals ruled that a defendant has a absolute right to two attorneys in capital cases. In both cases their sentences were vacated and remanded for retrial, for trial court's failure to appoint two attorneys.

The judges in both cases believe that a desire to guard against human error, the first Congress felt it desirable to have two lawyers keeping watch on each other when the life of the client was at stake.

Congress has purportedly continued the death penalty will be a complex and difficult case to prepare and try. The kinds of crimes made punishable by death are usually such as to generate revulsion in the trier of fact and, as a result a high degree of prejudice if the trial is not conducted strictly in accord with recognized procedures, including the rule of evidence and burden of proof. It is not unlikely that Congress may have also sought to buttress the defense with two attorneys to provide greater assurance that a defendant's rights would be fully observed. As a consequence, we are unable to say, absent a clear legislative expression, that the possibility of imposition of the death penalty was the sole reason why Congress gave an accused the absolute right to two attorneys.

Congress at the time it enacted this section requiring courts to assign two attorneys for defendant in capital cases; was a provision meant to ensure that a sufficient number of attorneys would be appointed so the defense would not suffer from insufficient manpower; this section provides an absolute right to additional counsel in capital cases. Smith v. U.S., 122 U.S. App. D.C. 300, 353 F. 2d 838, 845-46 (1965) and 384 U.S. 910, 974, 86 S. Ct. 1350, 1867, 16 L. Ed. 2d 362, 684 (1966)

U.S. v. Boone, 245 F. 3d 352, March 30, 2001; The court ruled, "we also affirm Watson's other conclusion that harmless error review is not applicable to a violation of this statute, because this statute,

that Congress mandated, provides an absolute statutory right to two attorneys in capital cases. U.S. v. Watson, (supra)" (Since in our view, that statute would be eviscerated by application of the harmless error doctrine, we perceive no alternative but to enforce it.") Congress' mandate is unequivocal, and application of harmless error analysis would undermine Congress' clear intent in capital cases. Congress mandated 18 U.S.C.A. § 3005 and Federal Courts has enforced it. This alone should be reason for granting the Petitioner a new trial. Because the trial court violated Petitioner's right to Due Process when it violated Congress' mandate of 18 U.S.C.A. § 3005. Petitioner was never advised of this right and it was ruled in Smith v. U.S. (supra) and U.S. v. Watson (supra); that the failure to advise a defendant of his right to two attorneys, by the courts in a capital case, created a presumption of prejudice so that the burden of disproving it was shifted to the government.

It was also ruled in Smith v. U.S. (supra); an accused right to additional counsel in a capital case should not be lost solely because of lack of awareness of its existence.

This Petitioner should not lose this right because he was not advised of it.

John Dan Kemp, Chief Justice; (Appendix A page 4), states, section 3005 of the federal statute is purely a statutory requirement and does not embody a fundamental constitutional right.

This Petitioner believes he is wrong and in conflict with the Federal Courts and Congress.

REASONS FOR GRANTING THE PETITION

Because it has been ruled on several times by the U.S. Court of Appeals that Congress mandated this section, 18 U.S.C.A. 3005, and this section provides a absolute right to additional counsel in capital cases, and it is not a, "Harmless Error," and the Federal Courts stated they perceive no alternative but to enforce it. So the Petitioner's fundamental constitutional right of Due Process was violated, and he should be granted a new trial with the proper representation that Congress mandated, so that everything that was left out of his first trial can be presented. Otherwise a injustice will continue.

The other issue was due diligence in Petition for Writ of Error Coram Nobis. In Wooten v. State, 2018 Ark. 198, 547 S.W. 3d 683, Josephine Linker Hart, Justice, said there is no due diligence in a Writ of Error Coram Nobis, and they erred by denying it for this reason. And the last reason Chief Justice, Kemp denied Petitioner's Petition was it did not fit neatly in the very small box he allowed for Error Coram Nobis. Yet again Josephine Linker Hart, Justice, dissenting. Stated Petitioner alleged a perfectly viable basis for reinvesting jurisdiction in the trial court to consider the writ of error coram nobis. Wooten v. State, 2020 Ark. 305 No. CR-95-975.

For the reasons stated above this should be granted so Petitioner's issues will be heard, and this injustice be corrected.

CONCLUSION

The petition for a writ of certiorari should be granted for reasons stated. Least a injustice in a Capital Case will continue.

Respectfully Submitted,

Jimmy D. Wooten pro se

Jimmy D. Wooten

Date: 10/20/20