

SUPREME COURT OF THE UNITED STATES

HENRY ALEXANDER TOWNSEND,
PETITIONER,

CASE No. 20-6839

V.

JERI TAYLOR, ET AL.,
RESPONDENT.

PETITION FOR REHEARING

PETITIONER, HENRY ALEXANDER TOWNSEND, IS A PRO SE LITIGANT, WHO IS INDIGENT, UNREPRESENTED BY COUNSEL WHO HAS PREVIOUSLY PETITIONED THIS COURT FOR A WRIT OF CERTIORARI, AND APPOINTMENT OF COUNSEL DUE TO THE UNUSUAL NATURE SURROUNDING THIS CASE. PETITIONER'S WRIT OF CERTIORARI WAS DENIED FEBRUARY 22ND, 2021, WITHOUT REVIEW. PETITIONER, HENRY ALEXANDER TOWNSEND, NOW PETITIONS THIS COURT FOR REHEARING. THERE ARE SEVERAL REASONS THAT THIS COURT SHOULD EXERCISE ITS DISCRETIONARY POWERS. THE GROUNDS SUPPORTING THIS APPLICATION ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL AND/OR CONTROLLING EFFECT PRESENTED IN GOOD FAITH AND NOT FOR DELAY. FOR PURPOSES OF THE 4TH, 5TH, 6TH, AND 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, IF THE STATE CHARGES AN INDIVIDUAL WITH FELONY MURDER BASED ON AN UNDERLYING FELONY BURGLARY, THE STATE MUST ALLEGE THE SPECIFIC CRIME THAT THE ASSAULTANT INTENDED TO COMMIT WHEN HE/SHE ENTERED THE PREMISES. IN THIS CASE THE STATE OF OREGON FAILED TO DO SO, AND PROSECUTING ATTORNEYS HAVE AN AFFIRMATIVE DUTY TO AVOID MISLEADING THE COURTS. MOREOVER, TO SATISFY BOTH THE UNITED STATES AND OREGON CONSTITUTION, THE ACCUSATORY INSTRUMENT MUST STATE THE CRIME THE ASSAULTANT INTENDED TO COMMIT WHEN HE/SHE ENTERED THE PREMISES. THE LOWER COURTS ABANDONED THE DEMURRER TO SEVERAL COUNTS OF THE INDICTMENT EXPRESSING WAIVER OR CONSIDERATION. THE PRINCIPAL QUESTION LEFT FOR CONSIDERATION IS WHETHER THE ACT UNDER WHICH

THE INDICTMENT WAS FOUND CAN BE MADE EFFECTIVE FOR THE PUNISHMENT IMPOSED. IN ADDITION TO THE INDICTMENT ISSUES THE TRIAL COURT ERRED IN ADMITTING EVIDENCE TAKEN FROM THE SEARCH OF A PAIR OF BLACK NIKE SHOES ALLEGEDLY "ABANDONED" BY PETITIONER AT THE SCENE OF THE CRIME. THE STATE PRESENTED EVIDENCE INDICATING THAT PETITIONER FLED FROM A HOME-INVASION ROBBERY, LEAVING TWO SHOES AT THE CRIME SCENE. IN CONCLUDING THAT THE PAIR OF BLACK NIKE SHOES WERE ABANDONED, THE COURT DID NOT CONSIDER WHETHER PETITIONER INTENDED TO RELINQUISH HIS INTEREST IN THE SHOES. RATHER, THE COURT CONCLUDED THAT GENERALLY, WHENEVER A DEFENDANT FLIES A CRIME SCENE AND LEAVES PROPERTY THE PROPERTY IS ABANDONED. THAT CATEGORICAL CONCLUSION IS INCORRECT, AND THUS, THE COURT IMPROPERLY APPLIED THE TEST. THE POLICE COULD NOT LAWFULLY SEIZ THE SHOES UNDER THE PLAIN VIEW DOCTRINE BECAUSE THERE WAS NO BASIS TO CONCLUDE THAT THE SHOES THEMSELVES WERE TIED TO ONE OF THE ASSAILANTS. FURTHERMORE, EVEN IF THE POLICE LAWFULLY SEIZED THE SHOES, THEY COULD NOT TEST THE SHOES FOR DNA EVIDENCE WITHOUT OBTAINING A WARRANT, AND ANY EXIGENCE THAT MIGHT HAVE ALLOWED SEIZURE OF THE EVIDENCE WOULD HAVE DISSIPATED BY THE TIME OF THE TESTING. PRIOR TO TRIAL, PETITIONER FILED A MOTION TO SUPPRESS "ALL EVIDENCE" SEIZED AT THE CRIME SCENE, SPECIFICALLY INCLUDING A PAIR OF NIKE ATHLETIC SHOES; PLEASE SEE MOTION TO SUPPRESS, MULTNOMAH COUNTY CIRCUIT COURT CASE # 100331057. THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSON, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND PERSON OR THING TO BE SEIZED. THE TRIAL COURT ALSO ERRED IN ADMITTING EVIDENCE THAT PETITIONER HAD BEEN ARRESTED. THE

POLICE ARRESTED PETITIONER A FEW MILES FROM THE CRIME SCENE AND APPROXIMATELY FOUR HOURS AFTER THE INCIDENT. THE STATE DID NOT PRESENT TESTIMONY FROM THE TWO OFFICERS WHO ACTUALLY ARRESTED PETITIONER. WITHOUT THAT TESTIMONY, THE STATE WAS NOT ABLE TO SHOW THAT THE OFFICERS HAD SUBJECTIVE OR OBJECTIVE PROBABLE CAUSE TO ARREST. THE LATER IDENTIFICATION OF PETITIONER BY ANOTHER COP DID NOT RETROACTIVELY VALIDATE THE ARREST. IN ADDITION TO THE SEARCHES AND SEIZURES THE INDICTMENT ALLEGES FELONY MURDER BASED ON THE COMMISSION OF BURGLARY, BUT IT DOES NOT SPECIFY WHAT CRIME PETITIONER INTENDED TO COMMIT WHEN HE ENTERED THE PREMISES. AS A RESULT, THE INDICTMENT IS NOT SUFFICIENTLY DEFINITE AND CERTAIN. THE STATES SUBSEQUENT ELECTIONS DO NOT CURE THE DEFICIENCY. FINALLY, THE TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION FOR JUDGMENT OF ACQUITTAL ON THE ASSAULT CHARGES BECAUSE THERE WAS NO EVIDENCE THAT PETITIONER PERSONALLY CAUSED ANY PHYSICAL INJURY AND THERE WAS NO EVIDENCE THAT PETITIONER KNEW OR PLANNED ON AIDING THE ASSAULT OF THE OCCUPANTS OF THE RESIDENCE. ONE OF THE THREE VICTIMS OF THE HOME INVASION ROBBERY WAS JULIE MCGARY, A WOMAN WHO HAPPENED TO BE STAYING OVERNIGHT. A CODEFENDANT ASSAULTED MCGARY WHILE DEMANDING DRUGS AND MONEY. PETITIONER DID NOT PARTICIPATE IN THAT ASSAULT AND DID NOT AID THE CODEFENDANT. THERE WAS INSUFFICIENT EVIDENCE THAT PETITIONER AIDED AND ABETTED HIS CODEFENDANT IN THE ASSAULT, AND THE COURT SHOULD HAVE GRANTED A JUDGMENT OF ACQUITTAL ON THAT COUNT. PETITIONER, HENRY ALEXANDER TOWNSEND, HAS SHOWN THAT HIS CASE IS OF SUCH IMPERATIVE PUBLIC IMPORTANCE THAT IT REQUIRES IMMEDIATE

PAGE 3 OF 4 - PETITION FOR REHEARING

DETERMINATION IN THIS COURT. PETITIONER HAS SHOWN THAT THIS COURT HAS JURISDICTION, THAT EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THIS COURTS DISCRETIONARY POWERS, AND THAT ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT. THE LOWER COURTS HAVE ENTERED CONTROVERSIAL DECISIONS OF IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT. THE ABUSE OF DISCRETION, AND CLEAR ERROR AS TO WHETHER PETITIONER RECEIVED EFFECTIVE ASSISTANCE OF TRIAL COURT COUNSEL VIOLATES FEDERAL LAW. PETITIONER HAS A SIXTH AMENDMENT RIGHT TO A FAIR TRIAL AND AN IMPARTIAL JURY, AND "EFFECTIVE" ASSISTANCE OF TRIAL COURT COUNSEL; STRECKLAND V. WASHINGTON, 466 U.S. 668 (1984). TRIAL COURT COUNSEL, GEOFFREY S. GOVEY, ALLOWED AND IN FACT COMPELLED PETITIONER TO RELINQUISH HIS RIGHT TO A FAIR AND IMPARTIAL JURY TRIAL WHILE INCOMPETENT, AND FAILED TO ATTACK THE DEFENDER TO THE INDICTMENT AND THE INADEQUATE NOTICE IT PROVIDED; RAMOS V. LOUISIANA, (2020), AND IN MAPP V. OHIO, ILLEGALLY OBTAINED EVIDENCE MUST BE EXCLUDE FROM USE AT FEDERAL AND STATE CRIMINAL TRIALS. THE TACTICS TRIAL COURT COUNSEL USED TO EXTRACT CONSENT TO WAIVE A JURY TRIAL VIOLATED PETITIONER'S 6TH AMENDMENT RIGHT TO A FAIR TRIAL AND AN IMPARTIAL JURY, AND A PERSON INCOMPETENT LACKS CAPACITY AND/OR LEGAL QUALIFICATION TO CONTRACT AND HIS CONTRACTS ARE VOID. I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. PETITIONER ASKS FOR RECONSIDERATION.
DATED THIS 8TH DAY OF APRIL 2021.


PETITIONER
HENRY ALEXANDER TOWNSEND
SEVER 14258900
777 STANTON BLVD
DULUTH, OR. 97014

CERTIFICATE
OF COUNSEL

I, HENRY ALEXANDER TOWNSEND, EM. A PRO SE LITIGANT,
WHO IS INDEED UNREPRESENTED BY COUNSEL.
I CERTIFY THAT THE APPLICATION

FOR REHEARING IS PRESENTED IN GOOD
FAITH AND NOT FOR DELAY. THE GROUNDS
ARE LIMITED TO INTERVENING CIRCUMSTANCES
OF SUBSTANTIAL OR CONTROLLING EFFECT
OR TO OTHER SUBSTANTIAL GROUNDS NOT
PREVIOUSLY PRESENTED.

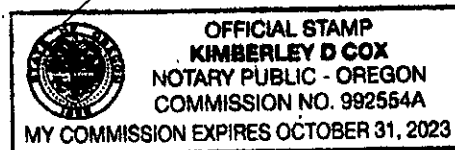
I DECLARE UNDER PENALTY OF PERJURY THAT
THE FOREGOING IS TRUE AND CORRECT

DATED THIS 8TH DAY OF APRIL 2021.

~~Henry Townsend~~
PETITIONER
HENRY ALEXANDER TOWNSEND
SEO #14258900
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DUNDAS, OR, 97914

April 8 2021 Multnomah County, State of Oregon

Notary:  commission expires 10/31/23



CERTIFICATE OF SERVICE

I CERTIFY THAT ON APRIL 8TH, 2021, I SERVED THE FOREGOING PETITION FOR REHEARING, AND CERTIFICATE OF COUNSEL, UPON THE PARTIES HERETO BY THE METHOD INDICATED BELOW:

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