

IN THE  
SUPREME COURT OF UNITED STATES  
October Term 2020

No. ~~20-7094~~

Kenneth Ray Sheffey

Petitioner

-Against-

State of Iowa, Randy Gibbs, et al

Respondents

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PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE 8<sup>TH</sup> CIRCUIT

&

A MOTION REQUESTING APPOINTMENT OF COUNSEL,  
REQUEST THIS CLOCK BE TOLLED, REQUEST TIME EXTENSION  
AND SEEK PERMISSION TO AMEND THIS PETITION  
THIS INSTRUMENT IS NOT COMPLETE AND  
PETITIONER IS ILLITERATE WITH LIMITED ASSISTANCE

Petitioner Kenneth Ray Sheffey  
P.O. Box 316  
Fort Madison, Iowa 52627

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## **QUESTIONS PRESENTED**

- I. Did the lower court violate the protections under the Iowa and United States Constitutions by denying Petitioner, an illiterate prisoner, both legal assistance and assistance from another prisoner?**
  
- II. Should the US District Court of Iowa have investigated Petitioners claims of a fraudulent filing of his 2254 by another prisoner without the actual filers knowledge rather than the court making Petitioner who is pro se, illiterate and Indigent investigate this matter when the court lost his case file?**

## **PARTIES**

**The Petitioner is Kenneth Ray Sheffey, a prisoner at Iowa State Penitentiary in  
fort Madison Iowa. The respondents are Randy Gibbs, the Warden of Iowa  
State Penitentiary and Governor of the state of Iowa Kimberly Reynolds.**

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**Bounds v. Smith, 430 U.S. 87, 828, 97 S. Ct. 1491, 52 L.Ed.2d..... 6**

**DECISIONS BELOW:**

## **JURISDICTION**

The judgment of the United States Court of Appeals for the Eighth Circuit was entered through the mandate issued September 9<sup>th</sup> 2020. An order denying a petition for three panel rehearing was entered on August 31<sup>st</sup> 2020 and a copy of that order is attached as Appendix: A to this Petition. Jurisdiction is conferred by 28 U.S.C. § 1254 (1)

## **CONSTITUTIONAL AND STATUARORY PROVISIONS INVOLVED**

## STATEMENT OF THE CASE

**The Applicant Was Denied The Right To Assist His Counsel In His Defense;  
The Applicant Was Denied Effective Assistance Of Counsel;**

**Nature of the case:**

This is an appeal by Defendant-Appellant, Kenneth Ray Sheffey from the original order post-conviction relief filed February 12<sup>th</sup>, 2018, in the District Court for Scott County, Iowa, from the order dismissing said action by the Honorable

Chief District Judge, Marilita A Greve.

**Course of proceedings:** On February 12<sup>th</sup>, 2018, Appellant Sheffey filed a post-conviction (2254) application, in that he is and was incompetent and illiterate. All of this is new to Sheffey. Sheffey is in need of an appellant defense and an interpreter. This is obvious in the case of Sheffey, Scott County Cause No. (s) L06169001; L06169002; and L06169003. This is why Sheffey should not be time barred, because of his incompetency and illiteracy. Sheffey was in confinement and separated from his lawyer and the Courts outside of Iowa from September of 1981 until 2013, when he was returned to Iowa. At no time did any of the other states provide legal assistance for Sheffey's Iowa criminal charges. This remained as new to the applicant. The applicant could not have assisted in any way with his defense, or his appeals.

There are lawyers and interpreters that deal with illiteracy and incompetency. Applicant Sheffey knows the rules of procedure are not waived because Sheffey is unrepresented. By reading old letters to the applicant Sheffey, , there are three issues. The Trial should never have started. There were pretrial orders in discovery. These were Orders that should have been followed. The State

was ordered three times to disclose. A competent Judge would not have let the argument occur in front of a jury.

- (1)** A competent lawyer for the applicant would not have started the trial without a defense. There is not much to say about the respondent, except he was incompetent and that a hearing will show that all the Applicant says is in the transcripts.
- (2)** Up until this court and the filing of the motion to strike by the respondents, and the court's ruling on that order. The applicant feels that he has been treated by incompetence, and that the lower court never even read the argument. It is known by the respondent that Sheffey is illiterate and incompetent, and he has been an out of state prisoner, and has not had access to the courts for 40 years or more. Applicant has been in the custody of the respondents since 7/24/1974. *See Bounds v. Smith*, 52 L.Ed.2d 72, 430 U.S. 817.

**Facts:** The applicant is illiterate and incompetent *see Appendix: B* attached to this petition. Persist as best as he can. The fact is the respondent has blocked the applicant from the courts, has had the knowledge of the applicant's illiteracy and incompetency. A hearing in Scott County would show all of the issues to be true.

1. On 08-04-2020 Petitioner Sheffey filed with this court a motion to stay the proceedings to toll the clock on the Appeal until the Eighth Circuit Court of Appeals could hear the Rule 60 B Motion
2. On August 31, 2020 the Eighth circuit denied Petitioners Rule 60 motion finalizing this court's decision as the Rule 60 b motion being Successive,

without ruling on the key issue of Sheffey's illiteracy and/or ability to proceed without assistance.

3. Petitioner then appealed the 2254 to the Eighth Circuit Court of Appeals and request this court proceed with this request.
4. Petitioner reminds this court that he has never filed a 2254 Petition in 1987.
5. Petitioner claims fraud if any such petition exists.
6. The eighth Circuit exposed the US District Court of Iowa's misleading order denying Sheffey of the most basic assistance through a prisoner acting as scrivener to assist him. This issue is best read through separate orders the US District Court Of Iowa's opinion on their 11-14-2018 order which states:

*"Upon consideration, the State's motion to strike is granted, and the appellant's September 4, 2018, amended proof brief is stricken because it appears to have been written by another inmate. An inmate's preparation of legal documents on another's behalf may constitute the unauthorized practice of law. See, e.g., Iowa Supreme Ct. Comm'n on Unauthorized practice of Law V. Sukllins, 893 N.W. 2d 864, 873 (Iowa 2017). Within 21 days of the filing date of this order. The appellant shall prepare and file his proof brief and designation of parts on his own behalf"*

The lower court makes it clear they are aware Appellant is illiterate through state document and other evidence provided to the lower court from this Institution. For these reasons the court knew Sheffey had assistance because Petitioner couldn't have prepared the brief because of his illiteracy. The US District Court of Iowa ruled against him in this matter. Additionally, the lower Court took the only assistance Sheffey had through their 11-14-2018 order which made no inmates want to assist him in fear of retaliation.

The above or from the US District Court of Iowa is clearly in conflict with the 8<sup>th</sup> Circuits 07-22, 2020 order which States:

*"... ("[A] party does not practice law when he or she merely assumes the role of a 'scrivener.'")."*

**Preservation of Error:** Error was preserved by the District Court's ruling dismissing the applicant's post conviction relief on March 15<sup>th</sup>, 2018, when it did so without appointing counsel to investigate all claims by the undersigned, and amending the application pursuant to Iowa Code §822.8 respectively.

**Standard of review:** "Because there is no constitutional right to counsel in post conviction cases, we review the appointment of counsel for an abuse of discretion." Wise v. State, 708 N.W.2d 66, 69 (Iowa 2006).

**Argument:** The undersigned filed a second application for post-conviction relief on February 12<sup>th</sup>, 2018. (See Scott County Docket No. PCCE129936 on said date).

In said application, the undersigned made it clear to the Courts that he had a "5<sup>th</sup> grade education" and was "illiterate," in addition to stating clearly, "will go into further details in my pro se brief and after I get a lawyer to help with the required motions." (See Scott County Docket No. PCCE129936 filed "Application for Postconviction" relief filed on 2/12/18 at Pg. 2-3).

It was made clear to the court, that the applicant was unable to properly present his claims to the Court for postconviction relief, and required the assistance of counsel due to the inability of his indigency, coupled with his lower level education, and illiteracy to properly present his claims for relief. All combining to present an insurmountable obstacle to overcome in seeking relief *inter alia* post conviction without the assistance of court appointed counsel.

The appellant asserts that the District greatly erred when it dismissed his application without first appointing counsel to assist him in preparing and presenting viable claims.

To begin with, the appointment of counsel, aside from including all viable issues in an amended application pursuant to Iowa Code §822.8, it would of assisted the district court and aided the district court, and benefited the applicant.

The Iowa Supreme Court stated, "In general, counsel should be appointed because "it benefits the applicant, aids the trial court, is conducive to a fair hearing, and certainly helpful in the event of an appeal." *Furgison v. State*, 217 N.W.2d 613, 615 (Iowa 1974)." *Armstrong v. State*, 868 N.W.2d 881.

Additionally, The District Court itself acknowledged Appellant's indigency status. In *Wright v. Cedar Falls*, 424 N.W.2d 456 at 459, the Court held, "Under section 663A.5 an indigent petitioner is entitled to counsel to challenge a conviction at the county's expense."

"The Iowa Supreme Court has recognized a statutory right to counsel in chapter 822 proceedings and a corresponding statutory right to the effective assistance of postconviction counsel. See Dunbar v. State, 515 N.W.2d 12, 15." Moore v. State, 902 N.W.2d 590.

The complexity of the issues that the applicant wished to presented, taking into consideration his "5<sup>th</sup> grade education" and "illiteracy," was more than sufficient to warrant the appointment of counsel. See generally Phillips v. Jasper County Jail, 437 F.3d 791, 794 (8<sup>th</sup> Cir. 2006) ("The relevant criteria for determining whether counsel should be appointed include the factual complexity of the issues, the ability of the indigent person to investigate the facts, the existence of conflicting testimony, the ability of the indigent person to present the claims, and the complexity of the legal arguments."); Edgington v. Missouri Dep't of Corr., 52 F.3d 777, 780 (8<sup>th</sup> Cir. 1995), abrogated on other grounds, Doe v. Cassel, 403 F.3d 986, 989 (8<sup>th</sup> Cir. 2005), (reviewing factors to consider when appointing counsel in pro se civil case). See also Ward v. Smith, 721 F.3d 940 (8<sup>th</sup> Cir. 2013).

The Iowa statute that appoints counsel to indigent applicants expressly includes criminal proceedings and postconviction proceedings... The right to counsel is only as to the criminal proceeding [and postconviction] that is contemplated with the filing of the sentence. State v. Dudley, 766 N.W.2d 606, 618 (Iowa 2009); see also State v. Loyer, 670 N.W.2d 141, 147 (Iowa 2003). It is

relevant to point out that the appellant's postconviction was contemplated and filed to seek relief on the criminal sentence.

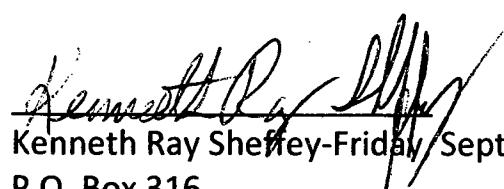
Additionally, even with the District Court summarily dismissing the appellant's application without first giving the assistance of counsel, which appellant requested in order to amend his application properly due to his limited education and illiteracy, the District court erred a second time when it denied the appellant appointment of counsel to prosecute this appeal.

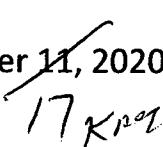
Even in *Furgison*, which the District Court in this case relied upon to dismiss the claim and not appoint appellant counsel, when the District Court dismissed Furgison's application for post conviction relief, upon request, *Furgison WAS* given appointed counsel to represent him in the appellate proceedings. *Furgison, 213 N.W.2d 613 at 615.*

As such, the appellant respectfully asserts that the district court erred and abused its discretion when it first refuse to appoint the appellant counsel to investigate his claims, when it warranted doing so. Secondly, when refused appellate counsel, to assist with this appeal it forced the appellant to seek the assist of "jail house lawyers" within the prison system.

7. Petitioner reminds this court that petitioner is illiterate & pro se and again request this honorable court appoint counsel to assist in preparing the documents this court requires. Currently Petitioner has assistance from a scrivener but without legal assistance.

**Request Appeals Permission to Have the Writ Heard Under  
The Anti-Terrorism and Effective Death Penalty Act (AEDPA) 28  
U.S.C. § 2244(b) (3) (A) & FRCP Rule 22B or have the case sent  
back to Scott County.**

  
Kenneth Ray Sherry-Friday, September 11, 2020  
P.O. Box 316  
Fort Madison Iowa 52627

  
17 K12

- Clerk of court please serve all parties this document

11-6-2021

  
Notary Public Lee Co. IA  
9-17-2020

Notary