

20-715
No. 20-3793

Supreme Court, U.S.
FILED
NOV 16 2020
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JIBRIL A. Hersi - PETITIONER
(Your Name)

VS.

David Marquis, Warden. - RESPONDENT (S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, for the Sixth Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR A WRIT OF CERTIORARI

JIBRIL Abdikarim Hersi
(Your Name)

508 Van Buren Ave
(Address)

St Paul, MN 55103
(City, State, Zip Code)

425-215-2802
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1) Whether I am entitled to get the missing records from my trial In Medina County, Ohio for statements made by the judge outside the hearing of the jury? Transcript March 2, 2017: 742-743, Transcript March 3, 2017: 752-after.
- 2) Whether I am entitled to get the missing record on Dec 2, 2016 when the lawyer refused to comply with the judge's order for resulting a motion Sept 9, 2016?
- 3) Whether the police officer's testimony varied from their written reports significantly, causing confusion for the jury, and therefore my conviction?
- 4) Whether I was entitled to know, and agree to a jury trial? My attorney set my case for a jury trial without my authorization.
- 5) Whether the prosecutor was constitutionally obligated to dismiss the charge of felonious assault due to lack of evidence?
- 6) Whether the police officers were justified in following me and what the reason was for them to pull me over and put me under arrest?
- 7) Whether I can contest the initial coercion and false accusation of two counts that I am innocent of on March 6th, 2016?

LIST OF PARTIES

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

All parties **do not** appear in the caption of the case on the cover page.
A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Court of Appeals, Sixth Circuit

Case no: 20-3793

order filed. October-16-2020

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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 issue to review the judgment below.

-OPINIONS BELOW-

[] For cases from **federal courts**:

The opinion of the United states court of appeals appears at Appendix B to the petition and is

reported on 10-16-2020; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished

The opinion of the United States district court appears at Appendix C to the petition and is

reported on Dec-31-2019; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

[] For cases from **state courts**:

The opinion of the ~~Highest State Court to review merits~~ court appears at Appendix D to the petition and is ~~No Review?~~

reported on Sep-26-2018; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

The opinion of the ~~Court Appeals Ninth Judicial state~~ court appears at Appendix E to the petition and is

reported on May-24-2018; or,

[] has been designated for publication but is not yet reported; or,

[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date which the United States Court Appeals decided my case was
October - 16 - 2020

No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file a petition for a writ of certiorari was granted to an including _____ (date) on _____ in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. & 1254(1)

[] For cases from **state courts**:

The date on which the highest state court decided my case was
Sep - 26 - 2018. A copy of that decision appears at Appendix D.

[] A timely petition for rehearing denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to an including _____ (date) on _____ in Application No. ___ A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. & 1257(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

My 6th amendment constitutional right has been violated:

Article [VI] (Amendment 6 - Rights of Accused in Criminal Prosecutions) - #16CR0126 – VIOLATED

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

14th amendment U.S.A. 4th amendment U.S.A. Chapter 4513: TRAFFIC LAWS - EQUIPMENT; LOADS - #16CR0126 – VIOLATED

As provided in section 4511.01 of the Revised Code, the definitions set forth in that section apply to this chapter.

- No highway rule was broken to warrant a pursuit to pull me over
- Illegal arrest without ticket and without warning
- Illegal holding in jail
- 3 videos coming from the court show me pulling over safely to the right
- The officers ask me to provide a statement without reason:

“Did you swerve” I said “NO!” in my statement on March 6th 2016 but they complicate my response by asking me these questions illegally because this have no evidence to support their accusation of felony assault.

U.S. Supreme Court
11 Street NE
Washington, DC 20543

Statement of the Case

On March 6 2016 I was driving interstate I-76 in Ohio State. I passed by three (3) officers standing at cross over at 8.6 mile mark they were all facing one position (West Side) *they were just having a conversation*. I was driving normally like many other trucks were driving (speed limit *65 mph*, lane *right lane*) Me and my vehicle we weren't driving towards any violation in the State Of Ohio. I was stopped at I- 71 South Pond Shoulder-Safe. All three officers came to me all together and detained me. They didn't ask me anything they just locked me up. They took me to a empty small room at where they came from. I didn't know exactly what was happening in reality at the place they put me in. They brought me water, and I was sitting there for a while; and no one told me anything as they were detaining me and when I arrived to the place. They didn't bring me any interpreter that spoke my language or to call any community districts near me who spoke my language. When I was there for a while, the officer Sergeant Eleaser Rivera he brought other officers and he had a letter, and he directed me to write and answer questions. I didn't know what the letter meant but he didn't explain me anything and I barely speak english, it is illegal for you to bring someone into somewhere and integrate them. When I was in the room for a long time, they hid from me that they were watching their camera; and that's why they found I stopped safely and nothing else. The Sergeant repeated me the same questions 2 (two) times. When I answered the first question "no" from my knowledge, (which is very limited *my english*) You can see that on page #4 - 5 about those questions that he asked me.

#1 Did you try to forward towards the officers as they were trying to stop you? I answered "no".

#2 Did you every try to run those officers off the roadway?
They were basically the same, and they took my Semi-Truck and also watched their cameras and didn't find anything. That's the fact of the case. That's what happened and they also didn't give me no interpreter.

United States Supreme Court

1 1 Street NE

Washington, DC 20543

Case No. 16 C.R. 126

Statement of the Case

Reasons for granting the petition

Notice of Appeal Supreme Court of Ohio Filed June 13, 2018 United State District Court Filed October 22, 2018. And also 6th Circuit Court in Cincinnati, Ohio filed December 9, 2019 plus all pictures and road maps, where 3 officers are sitting on the highway I-76 Interstate. 3 officers they were sitting in mile marker 8.6 cross over. They follow me a jury trial all officers when they testified and they lied about everything. Again I am requesting the court to read carefully and investigate for that hearing September 9, 2016 that Assistant Prosecutor Mr. Scott Salisbury that hearing he agreed the officers they followed me more miles and they made illegal stop without reason. He agreed that hearing I am responsive person? He agreed and he made it clear I pulled over safely. When he asked the judge to file a brief he answered the judge if you would like it. That means I don't know why the judge asked that question because he is the judge? And then he answered Mr. Salisbury I wasn't planning on it, Judge. And he admitted that day he doesn't have anything else, nothing zero. And he requested the judge to set it for trial on Monday. That statement is very clear.

- According to my maps, I gave all courts. The report police, 3 officers especially Officer Richard Bell and Officer Phillip Melicant on March 6, 2016 what they wrote they cheat the Constitution and the rule for the United States and the people for the United States and also our country. Totally the report police are false.
- When I pulled over safely they don't ask me any questions. They made an illegal arrest.
- They made an illegal arrest without ticket and without warrant or warning.
- When they bring me to Post house, they tell me to write a statement without my knowledge. They don't tell me my rights and my English is very limited or to tell me if I need an interpreter to explain to me what they need from me. They took my truck.
- They absolutely abuse power without reason. They don't follow any rules.
- Absolutely on March 6, 2016, they violated my civil rights for human rights violation.
- According to the transcript Officer Richard Bell he testified they sat in the cross over half an hour, see page transcript Jury Trial number 394.
- Also he testified September 9, 2016, he was sitting downhill by himself only. Downhill means mile marker 7. See my maps that I gave all courts. He testified at ~~Sept~~ Trial transcript number 25-29. He chose my truck number 5.
- He testified at Jury Trial see page number transcript 391-413 he choose my truck was number 3. He admits he is lying. See page number transcript 455-460.
- Also, Officer Phillip Melicant he testified only video camera only transcript number 506-523. The camera going forward and back every time. And he is laughing crazily in front of the people. When he is laughing he is putting his hand over his mouth. Why he laugh? He doesn't have anything and he writes a false police report. This is clear he

cheats the Constitution. I am requesting to make an investigation for that video inside the trial please. Also, he testifies another transcript also.

- The third Officer Matt Masoor. He came to Jury Trial but he doesn't come on September 9, 2016. Also, he uses a system the word **snitch** I learn myself in prison. He using that system snitch. He told the people in the Jury the words that I'm not saying when I pull over safely on **March 6, 2016**. He came to tell the people a false statement. Because he working that system for a snitch. He came to help the Officers that write a false statement for the report police on **March 6, 2016** and testify a false statement. I want to request the court to investigate for that. See pages 472-486.
- When I pulled over safely on **March 6, 2016**, they put me inside the car immediately. Another car came a few minutes after. Officer Celemons inside his car and they locked it and the car has heat and there is no window at all. It's very hot. They make a conversation outside. I'm feeling very thirsty because I came a long way. I'm traveling. I was almost close to losing my life that time. He came to me later and I requested him to turn off the heat and bring me a water. My situation is very serious. And I ask him will you please let me go outside in the grass area to get air. I'm feeling very sick. He refused me to go outside to get air but he assisted me a little bit. He turned off the heat and he bring me a water 2 times from my truck. After that the video officers they delete that half of the video. You cannot see the 2 times he brings me a water from my truck. They delete that action totally. I tell the lawyer Paul Grant more times. He cheated me my Constitutional Rights and the Rule that I shared the people and also he ignored my story. I am requesting the United States Supreme Court to investigate this video that on March 6, 2016 and all my cases and statements that I wrote today.

notion Notice of Appeal
based on, Road MAPS
Interstate, pictures, Roads -
cross-over. To know Court
more thru - See trial Court
Sep-9-2016 = See Pages -
25-29. and Pages - 7.

Dec-2-2016 at.
1. pm. and
February - 27-2017
between. 87. days

Reasons for granting the Petition

- The state of Ohio made a violation, they didn't respond to my motion and never filed a feedback *Motion 26(B)
- In Effect assistant Counsel, only the judge gave an answer and that's a violation, the journal entry see May 24 2018
- Richard Bell and officer Phillip Melican; they wrote on March 6 2016 a false report police

Merits of Underlying Claim

1. Duplicitous Indictment
2. Appellate Counsel Was Ineffective
 - Performance prong
 - Prejudice prong
 - Ineffective assistance in Due process

You can review first hearing made on September 9 2016, also see transcript pages 53 - 57.

EXPLANATION WHY THIS CASE RAISES A SUBSTANTIAL
UNITED STATES CONSTITUTION ISSUES

"Manifest Injustice" means "a clear and openly unjust act." *State ex rel. Schneider v. Kreiner*, 83 Ohio St.3d 203, 208, 1998 Ohio 271, 699 N.E.2d 83 (1998) (citation omitted); *United States v. Luciano*, 329 F.3d 1, 5 (1st Cir. 2003) ("Manifest Injustice" means a "clear and gross injustice."). Manifest injustice relates to some fundamental flaw in the proceedings which results in a miscarriage of justice or is inconsistent with the demands of due process. *State v. Williams*, 10th Dist. Franklin No. 03AP-1214, 2004-Ohio-6123, ¶5.

"Manifest injustice" define what occurred in this case. Appellant, Jibriil A. Hersi ("Hersi") a Somali immigrant, citizen of the United States, and resident of Minnesota was returning to Minnesota after delivering a load in his semi-truck when Trooper Melicant and Officer Bell attempted to pull Hersi's vehicle over for a weight check.

Trooper Melicant and Officer Bell testified Hersi disobeyed their signals to pull over, and for no reason justiciable reason, attempted to "swerve" his semi-truck at Trooper Melicant and Officer Bell. Hersi testified that he did not intentionally flee from the officers and that he [Hersi] did not "swerve" at either officer.

The alleged incidents were captured on Officer Bell's dash-camera video. The dash-camera video—the only objective evidence—clearly contradicted Trooper Melicant and Officer Bell's testimony that Hersi "swerved" his vehicle towards either officer. The dash-camera video illustrate Hersi never swerved his vehicle towards either officer.

Contrary to *Scott v. Harris*, 550 U.S. 372, 378-80, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007), the jury convicted Hersi.¹ Hersi timely appealed, and compounding the error appellate counsel never alerted the appellate court to the fact the dash-camera video contradicted the officers testimony. Nor did appellate counsel raise any issue concerning Hersi's due process rights being violated because the indictment failed to specify which alleged "swerve" constituted the basis for the felonious assault.

Hersi timely raised his claim via an Application for Reopening pursuant to App. R. 26(B). Hersi's application was denied, and he timely appealed and raises the following proposition of laws.

Proposition of Law 1: Hersi was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution when appellate counsel failed to raise: "Hersi's Due Process rights under the Fourteenth Amendment to the United States Constitution were violated when the indictment failed to specify which of the two instances of Hersi's alleged swerving constituted the basis for the felonious assault charge."

I. Law-and-Argument

A. Ineffective Assistance-Of-Appellate-Counsel-Claim

i. Standard of Review under *Strickland*

Ineffective assistance of appellate counsel claims are reviewed under the two-part test under *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Appellate counsel need not raise every non-frivolous claim in order to provide

¹ No reasonable jury could conclude Hersi swerved his vehicle towards Trooper Melicant and Officer Bell, as both officers testified. While ordinarily a jury would determine whether to credit Trooper Melicant and Officer Bell's contrary testimony, "[w]hen opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts. *Scott v. Harris*, 550 U.S. 372, 380, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007).

effective assistance, *Jalowiec v. Bradshaw*, 657 F.3d 293, 321-22 (6th Cir. 2011). The failure to raise an issue on appeal constitutes ineffective only if there is a reasonable probability that inclusion of the issue would have changed the outcome of the appeal. *Howard v. Bouchard*, 405 F.3d 459, 485 (6th Cir. 2005).

To show ineffective assistance when counsel presents one argument instead of another, the petitioner must demonstrate that the issue not presented was clearly stronger than issues that counsel did present. *Caver v. Straub*, 349 F.3d 340, 348 (6th Cir. 2003) (quoting *Smith v. Robbins*, 528 U.S. 259, 120 S. Ct. 746, 145 L. Ed. 2d 756 (2001)).

In order to determine whether appellate counsel was ineffective, this Court must first determine whether the claim omitted had merit and a reasonable probability of success if raised on appeal. *Ivory v. Jackson*, 509 F.3d 284, 294 (6th Cir. 2007) (“whether raising the issue might have changed the results of the appeal, in turn, goes to the merits of the claim itself.”). If this Supreme Court concludes that the omitted claim would have had a reasonable probability of success, then appellate counsel’s performance was necessarily prejudicial because it affected the outcome of the appeal. *Eagle v. Linahan*, 279 F.3d 926, 943 (11th Cir. 2001).

B. Merits of Underlying Claim

1. Duplicitous Indictment

In this case, the State’s failure to specify in the indictment which incident of Hersi allegedly swerving his truck—*i.e.*, at Officer Bell or Trooper Melicant—constituted felonious assault thereby resulting in a duplicitous indictment and depriving Hersi of his right to a unanimous jury verdict and double jeopardy protections.

The trial court instructed the jury it could find Hersi guilty of felonious assault against Officer Bell or Trooper Melicant, however the jury's verdict form relative to felonious assault did not state who the victim of the felonious assault—due to the duplicitous indictment.

In light of the foregoing argument, the indictment was duplicitous and deprived Hersi of his right to a unanimous jury verdict and double jeopardy protections.

C. Appellate Counsel Was Ineffective

i. Performance prong

It's undeniable the indictment was duplicitous. Consequently, appellate counsel should have raised this claim on appeal. The omitted claim was obvious and much stronger than the claims appellate counsel presented on Hersi's direct appeal, thus appellate counsel omitting the "duplicitous indictment claim" cannot be deemed to be a strategic choice.

Furthermore, the omitted claim was so obviously valid that any competent lawyer would have raised it. *See State v. Jackson*, 8th Dist. Cuyahoga No. 95920, 2011-Ohio-5920. And, because the omitted issue was clearly valid and subject to reversal, no conceivable reasonable reasons can be proffered to make appellate counsel's failure to pursue the omitted claim reasonable, because the omitted claim, if raised, there is a reasonable probability the results of Petitioner's appeal would have been different.

In summary, the omitted claim was obvious from the record, a dead-bang winner, and clearly stronger than the issues raised by appellate counsel. Therefore, appellate

counsel's failure to raise the omitted claim was objectively unreasonable and deficient under the first prong of *Strickland*.

ii. Prejudice Prong

Had appellate counsel raised the omitted claim on Petitioner's direct appeal, there is a reasonable probability the state appellate court would have vacated Petitioner's felonious assault conviction. Consequently, appellate counsel's failure to raise the claim prejudiced Petitioner. Moreover, had appellate counsel raised the claim Petitioner could not be retried on the murder charge.

Based on the foregoing argument and authority, Hersi was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution and Mr. Hersi respectfully move this Supreme Court accept jurisdiction over this proposition of law, vacate Hersi's felonious assault conviction and order his immediate discharge.

Proposition of Law 2: Hersi was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution when appellate counsel failed to raise: "Hersi's felonious assault conviction was obtained in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution because the State of Ohio failed to produce sufficient evidence that Hersi 'caused or attempted to cause serious physical harm' to Trooper Melicant or Officer Bell."

II. Law-and-Argument

A. Ineffective Assistance-Of-Appellate-Counsel-Claim

1. Standard of Review under *Strickland*

Ineffective assistance of appellate counsel claims are reviewed under the two-part test under *Strickland v. Washington*. Appellate counsel need not raise every non-frivolous claim in order to provide effective assistance, *Jalowiec*, 657 F.3d 293, 321-22. The failure to raise an issue on appeal constitutes ineffective only if there is a reasonable probability that inclusion of the issue would have changed the outcome of the appeal. *Howard*, 405 F.3d 459, 485.

To show ineffective assistance when counsel presents one argument instead of another, the petitioner must demonstrate that the issue not presented was clearly stronger than issues that counsel did present. *Caver, supra*. In order to determine whether appellate counsel was ineffective, this Supreme Court must first determine whether the claim omitted had merit and a reasonable probability of success if raised on appeal. *Ivory* 509 F.3d 284, 294. If this Supreme Court concludes that the omitted claim would have had a reasonable probability of success, then appellate counsel's performance was necessarily prejudicial because it affected the outcome of the appeal. *Eagle v. Linahan*, 279 F.3d 926, 943.

B. Merits of Underlying Claim

1. Clearly Established Federal Law

The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970).

Viewing the evidence in the light most favorable to the prosecution, this Court must ask whether "any rational trier of fact could have found the essential elements of the

crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979). This standard "must be applied with explicit reference to the substantive elements of the criminal offense as defined by state law." *Jackson*, 443 U.S. at 324 n.16.

2. The State failed to not present sufficient evidence Hersi "caused or attempted to cause serious physical harm to Trooper Melicant or Officer Bell

To sustain a conviction for felonious assault under R.C. 2903.11(A)(2), the State must prove Hersi, (1) knowingly, (2) caused or attempted to cause physical harm to another *** by means of a deadly weapon or dangerous ordnance. The State failed to prove Hersi caused or attempted to cause physical harm to another *** by means of a deadly weapon or dangerous ordnance to Officer Bell.

As explained at the outset, Trooper Melicant and Officer Bell testified they were attempting to stop Hersi's semi-truck for a weight check, when Hersi "swerved" at them. Hersi testified that he did not "swerve" at either officer. Video footage supports Hersi's testimony and clearly contradicts Trooper Melicant and Officer Bell's account of what occurred.

The record contains video footage of Trooper Melicant and Officer Bell encounter with Hersi which shows Hersi did not swerve his vehicle towards either officer. In *Scott v. Harris*, 550 U.S. 372, 378, 380-81, 127 S. Ct. 1769, 167 L. Ed. 2d 686 (2007), the Supreme Court instructed courts to independently watch and take into account such footage in assessing the credibility of each party's version of the facts. The Supreme Court also instructed courts to not accept version of events if it is blatantly contradicted by the

evidence.'" *Ibid*, (refusing to adopt the plaintiff's version of facts when it was "clearly contradict[ed]" by the videotape of the events).

Scott require Trooper Melicant and Officer Bell's testimony and version of the events be rejected because their testimony is clearly contradicted by videotape. After disregarding Trooper Melicant and Officer Bell's its clear there was no evidence to proving Hersi "caused or attempt caused or attempted to cause physical harm to Officer Bell *** by means of a deadly weapon or dangerous ordnance.

Based on the foregoing, the State presented insufficient evidence that Hersi "caused or attempt caused or attempted to cause physical harm to Officer Bell *** by means of a deadly weapon or dangerous ordnance." Accordingly, Hersi's felonious assault conviction should be vacated and Hersi immediately discharged.

C. Appellate Counsel Was Ineffective

i. Performance prong

It is undeniable the jury's verdict finding Hersi, "caused or attempt caused or attempted to cause physical harm to Officer Bell *** by means of a deadly weapon or dangerous ordnance" was based on insufficient evidence. Consequently, appellate counsel's performance was objectively unreasonable because he should have raised this "insufficient evidence" claim on direct appeal.

The omitted "insufficient evidence" claim was obvious and much stronger than the claims appellate counsel presented on Hersi's direct appeal, thus appellate counsel omitting the "insufficient evidence" claim cannot be deemed to be a strategic choice.

Furthermore, the omitted claim was so obviously valid that any competent lawyer would have raised it.

Because the omitted issue was clearly valid and subject to reversal, no conceivable reasonable reasons can be proffered to make appellate counsel's failure to pursue the omitted claim reasonable, because the omitted claim, if raised, there is a reasonable probability the results of Hersi's appeal would have been different.

In summary, the omitted claim was obvious from the record, a dead-bang winner, and clearly stronger than the issues raised by appellate counsel. Therefore, appellate counsel's failure to raise the omitted claim was objectively unreasonable and deficient under the first prong of *Strickland*.

ii. Prejudice Prong

Had appellate counsel raised the omitted claim on Hersi's direct appeal, there is a reasonable probability the state appellate court would have vacated Petitioner's felonious assault conviction and discharged Hersi. *Burks v. United States*, 437 U.S. 1, 18, (holding, "the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient" and that "the only 'just' remedy available for that court is the direction of a judgment of acquittal."); *State v. Kareski*, 137 Ohio St.3d 92, 2013-Ohio-4008, ¶ 99, 998 N.E.2d 410 (holding that where "there was insufficient evidence for a conviction, * * * the Double Jeopardy Clauses of the Ohio Constitution and the United States Constitution bar a retrial," and the proper remedy is to vacate the conviction).

Consequently, appellate counsel's failure to raise the claim prejudiced Hersi because he would have been discharged. *Burks, supra.*, and *Kareski, supra.*

Based on the foregoing argument and authority, Hersi was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution and Mr. Hersi respectfully move this Supreme Court accept jurisdiction over this proposition of law, vacate Hersi's felonious assault conviction and order his immediate discharge.

CONCLUSION

Based on the foregoing argument and authority, Hersi was deprived effective assistance of appellate counsel in violation of the Sixth Amendment to the United States Constitution. Accordingly, Mr. Hersi request this Supreme Court accept jurisdiction over this appeal and vacate Hersi's felonious assault conviction and order his immediate discharge.

Respectfully submitted,
JIBRIIL A. HERSI
Defendant-Appellant.

JIBRIIL A. HERSI
Inmate No. A693-987
Richland Correctional Inst.
1001 Olivesburg Road
Mansfield, Ohio 44901

Conclusion

**In violation of Constitutional Rights protected by the 4th Amendment-
USA**

**Chapter 4513: TRAFFIC LAWS - EQUIPMENT; LOADS -
Case No. #16CR0126 - VIOLATED**

**As provided in section 4511.01 of the Revised code, the definitions set
forth in that section apply to this chapter.**

- **No highway rule was broken to warrant a pursuit to pull me over**
- **Illegal arrest without ticket and without warning, when I stopped safely**
- **Illegal holding in jail**
- **3 videos coming from the court show me pulling over safely to the right**
- **The officers asked me to provide a statement without reason**
- **State of Ohio; I don't have anything against their rules or their own property. I was just driving in a public highway (I'm not driving on any road of the state of Ohio) I was just driving in a right lane/Interstate.**
- **My speed limit was at 65 mph.**

10-20-2020

Tibril Hehs