

No. **20-7441**

IN THE
SUPREME COURT OF THE UNITED STATES

KONSTANTIN RUDENKO

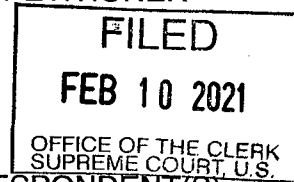
(Your Name)

PETITIONER

vs.

COXSACKIE WARDEN

RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO
The United States Second Circuit
Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

KONSTANTIN RUDENKO

(Your Name)

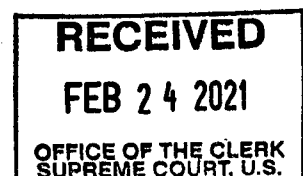
Bare Hill CORR. FAC.

(Address)

Celler Box 20, 181 Brand Road
Malone, N.Y. 12953

(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Did the New York State Courts
Deny Petitioner His Fundamental
Fourteen Amendment Right to
Due Process of Law in violation
of the United States Constitution.

Did the Federal District Court
And United States Court of
Appeals for the Second Circuit
Properly Address the violation.

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A - *Decision of District Court*

APPENDIX B - *Decision of United States Court
of Appeals*

APPENDIX C - *Supporting letter's*

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<i>Anders v. California</i> , 386 U.S. 378	9
<i>Hathorn v. Lovortn</i> , 102 S.Ct. 2421	10
<i>Wiggins v. Smith</i> , 539 U.S. 510	11

STATUTES AND RULES

<i>Fourteen Amendment</i>	10
28 U.S.C. § 1254(1)	11
28 U.S.C. § 2254(d)(1)(2)	11
28 U.S.C. § 2254(e)(1)	11

OTHER

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 at _____; 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 A to the petition and is

☐ reported at _____; 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 the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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: January 26, 2021, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) 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 _____.
A copy of that decision 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 and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

<i>United States Constitution</i>	<i>.... 10</i>
<i>Equal Protection Clause</i>	<i>.... 7</i>

STATEMENT OF THE CASE

Defendant was convicted in the Kings County Court of the crimes of Assault in the First Degree and criminal possession of a weapon in the third Degree, after a Sham trial where evidence of innocence deliberately suppress.

Appellate Counsel who was assigned to present appellate brief, shunned to present meritable issue of innocence which was properly preserved by Pro Se defendant, and deliberately sabotaged the appeal. - Coram Nobis was Filed do to deficiency

OF APPELLANT COUNSEL (See, on File).
UPON THE APPEAL OF THE MATTER
DEFENDANT RESPECTFULLY REQUESTED
TO FILE A PRO SE SUPPLEMENTAL
BRIEF, TO PRESENT MERITABLE ISSUES
ON THE RECORD. THE APPELLATE DIVISION
DENIED DEFENDANT THIS RIGHT AND
THE NEW YORK STATE COURT OF APPEALS
DENIED DEFENDANT LEAVE (See, Coram
Nobis). Thus, Failing TO ADDRESS
THE MATTER. ALTHOUGH THE APPELLATE
DIVISION WAS ALLOWING OTHER
DEFENDANTS THE RIGHT TO FILE A
PRO SE SUPPLEMENTAL BRIEF.

The Appellate Division Stated

that it was discretionary but never provided a criteria that was being used for the granting or denying of the right to file a Pro Se Supplemental brief.

Both the Federal District Court and the United States Second Circuit Court of Appeals also failed to address the matter.

REASONS FOR GRANTING THE PETITION

The Facts in the District Court's Decision clearly demonstrated that the District Court did NOT address the issue pursuant to the writ of Error Coram Nobis claims, and never addressed the fact that petitioner was denied his basic Fundamental Fourteen Amendment right to equal protection of the law.

The equal protection clause pursuant to the 14th Amendment which guarantees that the Government MUST TREAT a

PERSONS OR CLASS OF PERSONS THE
SAME AS IT TREATS OTHER PERSON
OR CLASSES IN LIKE SITUATIONS AND
CIRCUMSTANCES. Here, in the State
COURT PROCEEDINGS, DEFENDANT
RESPECTFULLY REQUESTED TO FILE A
PRO SE SUPPLEMENTAL BRIEF AND
WAS DENIED BY BOTH THE APPELLATE
DIVISION, SECOND JUDICIAL DEPARTMENT
AND THE NEW YORK STATE COURT
OF APPEALS. Although the same
Appellate Court granted this same
right to two other known
defendants. Although both defendants
had no real issue of substance
to place before the court. (see,

Appendix C), whereas in one case the defendant's attorney filed a brief pursuant to *Anders v. California*, 386 U.S. 738 stating that no issues exist to file on an appeal. But, the Appellate Court still allowed this defendant the right to file a Pro Se Supplemental brief.

Thus, this was a total denial of petitioner's rights pursuant to the equal protection clause, because the Appellate Court never stated a criteria for granting or denying of the right to file a Pro Se Supplemental brief.

Since the New York State Appellate
Division made the right to file a
pro se supplemental brief
discretionary and since an equal
protection claim would be a
Federal question pursuant to
the Fourteenth Amendment of the
United States Constitution. The
state courts may NOT avoid
deciding Federal issues by
invoking procedural rules that
they do not apply evenhandedly
to all similar claims (see,
Hathorn v. Lovorn, 102 S.Ct. 2421
[1982]). Here, since the New York
State Appellate Court had in

FACT Relied upon some procedural Rule that it had set, then the New York State Court of Appeals must address the claim.

Where a State court should have made a Finding of Fact, but neglected to do so (in this case the New York State Court of Appeals) the State court factual determination is perforce unreasonable and there is nothing to which the presumption of correctness can attach in a Federal habeas corpus case (See, 28 U.S.C. § 2254(d)(1)(2)(e)(1), Also see, *Wiggins v.*

Smith, 539 U.S. 510, 123 S. Ct. 2527
at 2539-40).

Similar, where the state courts
plainly misapprehend or misstate
the record in making their findings,
and the misapprehension goes
to a material factual issue that
is central to a petitioner's claim,
that misapprehension can fatally
undermine the fact finding process,
rendering the resulting factual
finding unreasonable, (see, Wiggins,
123 S. Ct. at 2538-39).

It merits noting here, that

the Third and Fourth Appellate Departments gives a defendant's the right to file a Supplemental brief without asking for such a right. Whereas the First and Second Appellate Departments makes it discretionary. Thus no uniformity in the Appellate Departments. The New York State Court of Appeals must address this matter.

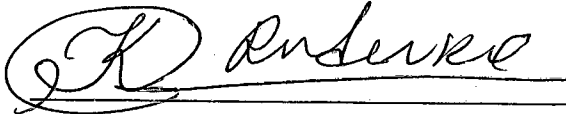
Petitioner now respectfully ask this Court to compel the United States Second Circuit Court of Appeals to address my

claim of a equal protection
violation that took place in the
State Courts and has never been
addressed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2/9/2021