

Supreme Court, U.S.
FILED

OCT 20 2021

OFFICE OF THE CLERK

NO-20-8031

IN THE

SUPREME COURT OF THE UNITED STATES

MAJOR HUDSON III—PETITIONER,

VS.

RICK WHITTEN, WARDEN—RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE

10TH CIRCUIT

PETITION FOR REHEARING

MAJOR HUDSON III, #264410

JCCC 216 N. MURRAY ST.

HELENA, OKLAHOMA 73741

PRO SE.

ORIGINAL

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SUPREME COURT, U.S.

PROPOSITION ONE:

HERRERA V. COLLINS, WAS NOT PRESENTED IN THE EARLIER PETITION BUT HOWEVER IT PROVIDES THAT IF THE PROCESS AT THE PUNISHMENT PHASE WAS NOT FAIR, THEN U.S. CONST. AMEND. 8 HAS BEEN VIOLATED, AS IS THE CASE HEREIN.

Comes, now Major Hudson, asking this honorable Court to exercise the Court's discretionary powers by granting a rehearing for one substantial reason not previously presented, because adequate relief cannot be obtained in any other form or from any other court. Mr. Hudson, prays that this honorable Court will consider the ruling in **Herrera v. Collins**, 506 U.S. 390 113 S.Ct.853 (1993) ("holding that the legitimacy of punishment is inextricably intertwined with guilt"). In other words, if the finding of punishment wasn't a legitimate process, (fair process), then that violates U.S. Const. Amend. 8, cruel and unusual punishment. (citing) **Beck v. Alabama**, 477 U.S. 625 100 S.Ct. 2382 65 L.Ed 392 (1980).

In the case at bar Mr. Hudson's rights to a fair trial were violated when the jury was allowed to decide punishment without having the proper instructions going against well established law. See, Kaulaity v. State, 859 P.2d 521 (1993) (illegal entry is a lesser included offense of first degree burglary)) and Roberts v. State, 29 P.3d 583 (2001) same.

The state's eyewitness "factually clears Mr. Hudson of first degree burglary". IN fact in the state of Oklahoma not even the attorney can waive a lesser-included offense instruction without permission from the defendant. See, Ballard v. State, 31 P. 3d Okla. Crim. App. 20 (2001) ("holding attorney cannot waive lesser-included offense instruction without consent of defendant")). T. 22 O.S. sec. 952. A legitimate trial was denied to Mr. Hudson, when the trial judge abused his discretion by not properly instructing the jury and trial counsel's failure to re-

quest it was ineffective assistance and appellate counsel was ineffective for not raising this issue on direct appeal, thus violating U.S. Const. Amend. 6, 8, and 14.

CONCLUSION

Wherefore premises considered, Mr. Hudson prays this honorable Court grant a rehearing and remand this case back to the lower court with instructions to decide the merit of the lesser-included offense instruction and the ineffectiveness of both trial and appellate counsel, and abuse of discretion by the trial judge.

IT IS SO PRAYED.

Respectfully Submitted,

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS TRUE
AND CORRECT. EXECUTED ON November 16, 2021.

A handwritten signature in cursive script, reading "Major Hudson III", is written over a horizontal line.

MAJOR HUDSON III, # 264410

JCCC 216 N. MURRAY

HELENA, OK 73741.

NO. 20-8031

IN THE
SUPREME COURT OF THE UNITED STATES

MAJOR HUDSON III, PETITIONER,

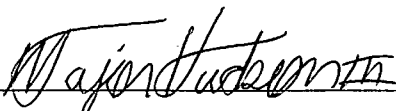
VS.

RICK WHITTEN, WARDEN, RESPONDENT.

CERTIFICATION OF COUNSEL

THESES GROUNDS HEREIN ARE LIMITED TO INTERVENING
CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER
SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED.

THIS PETITION IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY. RULE
44.



November 16, 2021.

MAJOR HUDSON III, 264410

JCCC 216 N. MURRAY

HELENA, OK 73741.