

21-5373
No. _____

Supreme Court, U.S.
FILED

JUL 12 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Bernard Hollomond — PETITIONER
(Your Name)

vs.

Tracy, Ray, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Appeal Court Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bernard Donshay Hollomond
(Your Name)

901 Correction Way
(Address)

Jarrett, Virginia, 23870
(City, State, Zip Code)

(Phone Number)

ORIGINAL

- These questions will be pertaining to the Due Process Clause that's been preserved and amended by the 6th and 14th Constitutional Amendments.



Questions Presented

- 1) Pertaining to Claim I, "Denial of right to a jury trial." What is the constitutional method that the state are bound to use, that guarantees that a defendant had a chance to exercise their right to a jury trial?
- 2) On December 10, 2015 in the Chesapeake Circuit Court; did the courts use the method or any other constitutional standard to make sure that the defendant had a chance to exercise his right to a jury trial?
- 3) Based off transcript ~~12~~, Dec 10, 2015 the judge had a discussion with Hollomond about his waiver of a jury trial. Hollomond answered all of the question; concluding that he wanted and expected a jury trial. Does this statement (Tr. pg 8: 1-18) say that hollomond wants a jury trial?
- 4) Hollomond then had a moment with Ms. Hacked (Tr. pg 8: 20). Now the judge repeats all of the same questions and Hollomond is now saying he wants to be tried by a judge (Tr. pg 9: 1-22). Does this statement say that hollomond wants to waive his rights to a jury?

5). According to questions 3. and 4., there was ~~two~~ statements that was made by Hollomond. Based off the transcript, is it by any chance that Hollomond was confused?

6) Trial began and then continued to later date. Dec 16, 2015 Ms. Hadeed filed a motion for mistrial. Stating that, "The defendant advised counsel he has at all times desired a jury trial and did not understand the purpose of the proceeding of December 10th, and thought he would still have trial, but on a different date. The defendant demands trial by jury. Wherefore the reasons stated above the defendant through counsel respectfully requests a mistrial be declared and the case be set for trial by jury. During the motion argument, Hadeed argued to the court, "I think it's actually fairly clear from the transcript that my client was confused because he initially responded, yes, by jury. Yes I want a jury". Hadeed went on to state, regarding Petitioner's waiver "it has to be a voluntary and intelligently made waiver. (Tr. pg. 10 12/16/2015). Should have the Courts took this motion and Hadeeds argument in consideration?

7) According to the rule of law, what is a "Consent"?

8) Does the record show that there was an effective "Consent"?

9) Does the record show that there was a knowingly,

Voluntary, intelligently made waiver?

10). On December 10, 2015 ~~should~~ was a signature required for a effective waiver?

11). If yes, why didn't the courts make sure, to show that there was no confusion?

12). Does Fed. B. Crim. P. (23) a apply to state proceedings?

Claim II "Insufficiency of the evidence."

1). In a Circumstantial of evidence case, can a defendant challenge all evidence by the prosecutor presented against them?

2). On march 6, 2015 a special agent by the name of Edward Winkelspecht and other detectives set-up an entrapment operation, to place a recorded call for the amount of \$100 worth of crack cocaine. ~~Does the trial~~ (Tr. pgs. 12-13. 12-10-2015). Does the trial record show or proves that Hollomond agreed to sell the CI \$100 worth of crack cocaine?

3). Does the trial record show or prove that there was an detective incompany with the CI; when "Ms. Hadeed" objected to the foundation. He stated that the phone calls were made. He didn't state that he was in the presence of the CI

when the phone call was made nor was he present when they were recorded.

The "Court": I'll reserve ruling on it. (Tr. Pg 14: 9-17)

4) The recorded conversation between Hollomond and the CI were never played or heard in the courtroom after being challenged by the defense; was this evidence admissible or inadmissible?

5) During the audio recording for the alleged transaction; do the record show or prove that Hollomond sold the CI Crack cocaine on March 6, 2015?

6) On March 6, 2015, the special agent testified that he and other detectives had installed audio and video cameras into the CI's vehicle, and gave the CI U.S currency. (Tr. Pg 16: 8-14) Do the transcript show or prove that the CI gave Hollomond money and that Hollomond gave the CI Crack Cocaine?

7) Is it careful to say, that the witness was not for sure what had happened in the vehicle between Hollomond and the CI? (Tr. Pg. 17: 12-15)

8) Pertaining to the amount of drugs recovered by the special agent, is a "pat down" considered to be an effective search?

- 9) Commonwealth used evidence (Exhibits 1, 2, and 3) pertaining to a drug operation that was set-up by a special agent and other detectives that a CI allegedly purchased \$100 worth of crack cocaine from Hollomond, by using a recorded phone call and audio and video placed in the CI's vehicle. Based off the trial record; was this evidence shown to be factual or a theory?
- 10) The witness testified that a search was conducted before and after the alleged transaction for drugs and contraband. Is it possible that the CI could've concealed drugs or contraband in his vehicle or his body during the search, ~~and~~ ^{that} the agent didn't find?
(Tr. Pg. 64-65, 12-14-2015)
11. Should've there been a K-9 dog when searching the vehicle for a thorough or effective search?
- 12) On March 12, 2015 the special agent testified that he met up with detectives to arrange another recorded phone call between Hollomond and the CI. He testified that he was ~~in~~ present ~~with~~ with the CI but did not hear the conversation. Is it possible that the CI could have been sabotaging the whole operation?
(Tr. Pg. 24:7-8, 12-10-2015)
- 13) Can a defendant, according to the standards of Constitutional laws; be convicted of a theory or does the facts has to be shown on record?

14). On March 12, 2015 there was another operation set up by the same special agent and detectives; using and equipping the same CI with audio and video, in his vehicle. The detective testified that, "We lost communication with the audio. Is it possible that the CI could've sabotaged and lied ~~about~~^{about} what took place in the vehicle between Hollomond and the CI?"
(Tr. Pg. 24:18 12-16-2015)

15). Based off trial record, pertaining to March 12, 2015 meeting, does the recorded phone, audio and video show by facts that there was a drug transaction or is it a theory?

16). The CI testified that he was arrested on Feb 18, prior to March 6, 2015, "stating that he asked the detectives 'is there anything that I could do to help to benefit me'". Now knowing that the CI has pending charges, (Tr. ~~pg~~ pg. 63:7, 12-16-2015), also incarcerated at the time of his testimony (Tr. Pg. 63:20, 12-16-2015), also having a case pending at preliminary hearing stage for second offense of possession of a controlled substance and testified that he was addict for ten years. (Tr. Pg. 67:14-21, 12-16-2015). Should this type of credibility be excepted in the courts of law?

17). The CI testified that he had a conversation with Hollomond regarding to watches. (Tr. pg. 66:1-8, 12-16-2015). Hollomond also testified about having a conversation or discussion with the CI about watches and some money that he owed. (Tr. pg. 80:13 12-16-2015)
Is it possible that the CI sabotage the whole operation to pay off some personal debts?

18). The transcripts shows that the CI was alone while driving from location to location. (Tr. Pgs. 10-17, Pgs 55-63, 12-10-2015). Knowing that the CI was a crack addict and was motivated because of his pending charges! Does this calls for the CI's creditability, reliability, and intent to be challenged?

19). Can a person with this type of background, be Capable of fabricating ~~and~~ or lying?

20) Based off the trial record, should this circumstantial evidence case be ruled as an case of all facts or all theories?

Claim: III "Ineffective Assistance of Counsel failed to protect Petitioner's rights to a jury trial.

- 1) Isn't it the Due process law that should guarantees that the legal system is fair?
- 2) Did the U.S Supreme Court's implement into law that the Bill of Rights to the states, according to the 6th and 14th constitutional amendment as prohibiting states from depriving any person of liberty and due process?
- 3) Was it "Ms Hadeed" responsibility to protect Hollomond's right to a jury trial?
- 4) Is it possible according ~~to~~ to the trial record on December 10, 2015 that Hollomond was deprived from his Due process of law?
- 5) The Court had a discussion with Hollomond pertaining to his jury trial right's. Hollomond concluded that he wanted a jury trial. Based off transcript, according to Hollomond's answers giving ^{to} ~~by~~ the court's. Is it possible that Hollomond at an all time high desired a jury trial? (Tr. pg. 8:1-18, 12-10-2015)

6). Based on the facts from the transcripts, according to "Claim I" is it undeniable that Ms Hadeed did not adequately perform to prevailing professional norms? (Tr. pgs. 8-9, 12-10-2015)?

7). According to the US Supreme Court's, based off Constitutional standards. What are the professional norms that satisfies the Court's that protects a defendant right's to a jury trial?

8.) Ms. Hadeed filed a motion for a mistrial. (Tr. pgs. 3-4 12-16-2015). Is it possible that Ms. Hadeed wanted to start the trial over, because she realized that Hollomond was confused based of her performance and ~~and~~ lack of communication?

9). Ms. Hadeed informed the court's that their was a miscommunication that Hollomond spoke to her about. (Tr. pg. 4: 7-9, 12-16-2015). Is it by any chance, because of Ms. Hadeed's ineffective assistance ~~and~~ caused the miscommunication?

10). Pertaining to the motion that Ms. Hadeed filed. The motion stated that it has to be an knowingly, voluntary, and intelligently made waiver. Hadeed went on to state "I'm going to argue to the Court and then I'm going to ask if the Court would like to examine my client and ask him any questions because I am not at

liberty to reveal confidential conversations that I've had with my client without his permission. I have done that to the extent that was necessary to file the motion but nothing further. I think it's fairly clear from the transcript that my client was confused because he initially responds, Yes, by jury. Yes, I want a jury. Is it a surprise that you're in front of a judge today? Yes, it is. It has to be a voluntary and intelligently made waiver. The transcript itself indicates that it may not have been a voluntary and intelligently made waiver. (Tr. Pg. 10:1-14, 12-16-2015).

Ms. Hadleed stated in the motion and argued to the court that this was not a knowingly, voluntary, and intelligently made waiver, should have this been ~~taken~~ taking in consideration by the court's?

- 11). Should a effective waiver to a jury trial, be determined by facts or theory?
- 12). Because of Ms. Hadleed's harmful errors and performance, "failed to protect Hollomond's right's to a jury trial" and the "insufficiency of the evidence" also caused Hollomond to be prejudice against, because the facts proved that Hollomond ~~by facts~~ could've been acquitted ~~from~~ from this case, if he wasn't deprived from having a jury trial. Does these claims by facts proves that both prongs to strickland v. washington ~~was~~ ~~me~~ were met?

LIST OF PARTIES

Pg 11

☒ 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

→

Related Cases

Stanley v. Commonwealth, 12 Va App. 867 (1991)

Burton v. Commonwealth, 215 Va. 711 (1979)

Adkins v. Commonwealth, 217 Va. 437 (1976)

U.S. v. Childs, 409 U.S. 916 (1972)

Wilkins v. Commonwealth, 18 Va. App. 293 (1994)

Wood v. Commonwealth, 214 Va. 97 (1973)

Boykin v. Alabama, 395 U.S. 238 (1969)

United States v. Boynes, 515 F. 3d 284 (2007)

Hollomond v. Hadeed, case # 3:16-cv-00705-HEH-RCY

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Boykin v. Alabama, 395 U.S. 238 (1969):	
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United States v. Boynes, 515 F. 3d 284 (2007):	
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Winn v. Cook, (2019) U.S. Dist. Lexis 3284	
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Strickland v. Washington, 466 U.S. 668 (1984):	
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Lanham v. Murphy, 2018 U.S. Dist. Lexis 51754 (4th Cir. 2018):	
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Jackson v. Virginia, 443 U.S. 307 (1979):	
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U.S. v. Martin 704 F. 2d 267 (6th Cir. 1983)	
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Spytma v. Howes, 313 F.3d 363 (6th Cir. 2002)	
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Claim II

Stanley v. Commonwealth, 12 Va. App. 867 (1991)

Adkins v. Commonwealth, 217 Va. 437 (1976)

Burton v. Commonwealth, 215 Va 711 (1979)

U.S. v. Childs, 409 U.S. 966 (1972)

Wilkins v. Commonwealth, 18 Va. App. 293 (1994)

Wood v. Commonwealth, 214 Va. 97 (1973)

Booker v. Commonwealth, 2018 Va. App. Lexis 309

U.S. v. Sailor, 2007 U.S. Dist. Lexis 53264

"
Claim III

Romero v. Furlong, 25 F. Supp. 2d 1154 (4th Cir. 1998)

Parrish v. Fulcomer, 150 F. 3d 326 (3rd Cir. (1998).

Strickland v. Washington, 466 U.S. 668 (1984)

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Cuevas-Rosales v. Commonwealth 2010 Va. App. Lexis 266:
 "The right to a jury trial is one of the cornerstones of the legal system."

Boykin v. Alabama, 395 U.S. 238 (1969):
 "The question of an effective waiver of a federal Constitutional right in a state criminal proceeding is governed by federal standards"

United States v. ~~Boynes~~ Boynes, 515 F.3d 284 (2007):
 "Although it is much preferable for a district court to insure itself on the record before accepting a defendant's jury waiver, it is not constitutional imperative. The constitutional imperative is this, no less and no more; the waiver must be knowing, intelligent, and voluntary. Fed. R. Crim. P. (23)a provides that if a defendant is entitled to a jury trial, the trial must be by jury unless (1) a defendant waives a jury trial in writing; (2) the government consents; and (3) the court approves. The Sixth Amendment requires that the waiver be knowing, voluntary, and intelligent."

Winn v. Cook, 2019 U.S. Dist. Lexis 3284:

"The sixth Amendment as incorporated by the Fourteenth Amendment guarantees the right of a trial by jury in all state criminal cases."

Strickland v. Washington, 466 U.S. 668 (1984):

"The Sixth Amendment right to counsel exists in order to protect the fundamental right to a fair trial, since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled."

Lanham v. Murphy, 2018 U.S. Dist. Lexis 51754
(4th Cir. 2018)

"An essential element of the 'due process guaranteed by the Fourteenth Amendment is that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof."

U.S. v. Martin 704 F. 2d (6th Cir. 1983)

"The defendant waiver must be voluntary, knowing, and intelligent."

Spytma v. Howes, 313 F. 3d 363 (6th Cir. 2002)

Federal courts in habeas proceedings are required to give a high measure of deference to a state court's findings concerning a jury waiver, which are supported

by a contemporaneous record. A state court's finding of a valid jury waiver must be rebutted by clear and convincing evidence to obtain habeas relief.

Adkins v. Commonwealth, 217 Va 437 (1976)

In cases involving crimes which require an act coupled with a specific intent, such as this one, proof of intent is essential to conviction. While intent may be shown by circumstantial evidence, the existence of intent cannot be based upon speculation or surmise.

Wilkins v. Commonwealth, 18 Va. App. 293 (1994)

Because direct proof of intent is often impossible, it must be shown by circumstantial evidence which is consistent with guilt and inconsistent with and excludes every reasonable hypothesis of innocence.

Wood v. Commonwealth, 214 Va. 97 (1973)

"To distribute a controlled substance, one must not only illegally sell, barter, exchange or gift the controlled substance, but also deliver or transfer, actual or constructive, of possession of the controlled substance from one person to another.

Booker v. Commonwealth, 2018 Va. App. Lexis 309

Booker was stopped by detectives because he was suspected of possessing fifty capsules of heroin. The detectives performed a "pat down" search of Booker and no drugs were recovered. About five minutes later, the detectives performed a more thorough search of Booker and found the drugs located in Booker's buttocks area. In these case proves that a "pat down" search is not sufficient enough, because the CI could've hidden the drugs in another part of his body.

U.S. v. Sailor, 2007 U.S. Dist. Lexis 53264

A CI was used in a buy bust operation. The CI was searched prior to meeting the suspect. However, when the CI was on the way to meet the suspect the detectives lost sight of the CI for a few minutes. The Court stated its concern about the period of time during which the CI was not within eyesight of the officers. The Court's concern was that it is possible that the CI could have completed a drug transaction with someone else other than the suspect during that lost time. This case is the same!

Romero v. Furlong, 25 F. Supp. 2d 1154 (4th Cir. 1998)

"a complete breakdown in communication between an attorney and client may give rise to a presumption of ineffectiveness." In this case, the complete

breakdown in communication actually resulted in ineffective assistance of counsel and this is clear from the record. Hadeed testified that she wanted to withdraw as counsel midway through the trial because she could not effectively communicate with Hollomond. Clearly, when Hadeed ~~made~~ made such a statement on the record she believed she could not and did not effectively represent Hollomond, as it pertained to the jury trial issue. This constitutes ineffective assistance of counsel.

Strickland v. Washington, 466 U.S. 668 (1984)

Hollomond has demonstrated that his defense counsel's performance fell well below prevailing professional norms and due to that deficient performance, he was denied a fundamental constitutional right. Hollomond has provided a reasonable basis that the presumption of prejudice exception is applicable in this case, as well as, actual prejudice. Thereby, Hollomond has established both prongs of Strickland.

Prieto v. Zook, 791 F.3d 465 (4th Cir. 2015)

"a habeas petitioner can rescue his constitutional claim from procedural default if he establishes either 'cause and prejudice' for the default or that the default would yield a fundamental miscarriage of justice."

Statutes And Rules

1) "Denial of right to a jury trial"
4th and 14 Constitutional Amendment

2) "Sufficiency of the evidence."
4th and 14 Constitutional Amendment

3) "Ineffective Assistance of Counsel - failed to protect Petitioner's right to a jury trial."
4th and 14 Constitutional Amendment

Other

"Due Process Law"

"Bill of Rights"

Ve. Sup. Ct. Rule 3A:13

Fed. R. Crim. P. 23(a).

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 F 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 E 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 C 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 Circuit Appeal 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 27, 2021.

☐ 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 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 June 4, 2018.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: April 30, 2019, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

- 1) - Sixth Constitutional Amendment
- Fourteenth Constitutional Amendment
"Right to a jury trial!"
- 2) - Sixth Constitutional Amendment
- Fourteenth Constitutional Amendment
"Right to challenge all evidence and face opposing ~~and~~ witnesses"
- 3) - Sixth Constitutional Amendment
- Fourteenth Constitutional Amendment
"Protect the defendant's right to a jury!"
- 4) "Due Process Law"
- 5) Bill of Rights
- 6) Virginia Supreme Court Rule 3A:13
- 7) Federal Rule Criminal Procedure, 23(a)

Statement of the Case

On December 10, 2015 in the Chesapeake Circuit Court the trial record shows evidence that is undeniable and clearly establishes that petitioner's oral waiver was not knowingly, voluntarily, and intelligently made. In this case the defense attorney "Ms Hadeed" performance was well below Constitutional standards. On December 14, 2015 from continuance, Ms Hadeed filed a motion for a mistrial, because of her negligence to the prior date pertaining to Hollomond jury trial waiver. She believe herself base off trial record. That Hollomond did not understand what was going, know that he desired according to Constitutional; to have a jury trial. She also spoke on record stating that Hollomond was confused.

Upon review of the circumstantial evidence, the theory that Hollomond met the CI on both occasions for different reasons and not to make a drug transaction and the CI, motivated to gain a lenient sentence for pending drug offenses, contrived a plan to setup Hollomond by using hidden drugs to implicate Hollomond in two drug transaction is very reasonable and plausible.

Moreover, this theory is actually more credible and is corroborated more so with the circumstantial evidence than the Commonwealth's theory. The record shows: (1) the CI was motivated to gain a lenient sentence for pending drug charges; (2) the CI was a drug addict and crack cocaine was his drug of choice; (3) the drugs recovered from the CI were crack cocaine and were packaged in such a way that the drugs could be easily concealed from a "pat down" and/or cursory search of a vehicle; (4) there is case law that proves a "pat down" is not sufficient to recover drugs concealed on a person's body; (5) the CI was not in eyesight of the detectives for long periods of time, before and after meeting Hollomond; (6) the recorded phone calls did not provide any evidence of a meeting to purchase drugs; (7) the audio and video evidence did not provide any evidence that a drug transaction took place between the CI and Hollomond and (8) Hollomond gave a very reasonable and plausible explanation for meeting the CI, which the evidence supports.

Hollomond states that "Hadeed", defense Counsel, was ineffective and her performance fell well below a reasonable standard of professional competence.

Hacked's acts and/or omissions were outside the wide range of prevailing professional norms, and due to this deficient performance, Hollomond was prejudiced and was not afforded Counsel guaranteed by the Sixth Amendment. Hollomond states that Hacked's errors were so serious that he was deprived of his right to a jury trial.

Reasons For Granting The Petition

- 1). Granting this petition will not only perfect our democracy, but also show that our justice system is fair.
- 2). By granting this petition, it shows that our Constitution is effective and protects all US citizens.
- 3). If this petition is not granted, it will allow attorney's to dictate and deprive defendants of their Due Process.!
- 4). By granting this petition, it will establish rule and authority, pertaining to a jury trial waiver!
- 5). Granting this petition will establish rule and law pertaining to Insufficiency of the evidence based off a theory.
- 6). Although that the 6th constitutional amendment protects a defendant right to a jury trial waiver, granting this petition will show that there is a satisfying need that attorney's performance is shown by assisting the defendant. By making sure that the Court's of law know that the defendant had a fair chance to exercise their fundamental right to a jury trial!

Reason For Granting The Petition

We are a nation of law; our democracy is governed by constitutional standards. By granting this petition, it will prove that our justice system in the United States of America is fair. Also showing that no one shall be deprived or denied their "Due Process of Law". This case will provide insurance that all citizens can have confidence in the Supreme Court of the United States!

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bernad Holloman

Date: July 8, 2021