

SUPREME COURT OF THE UNITED STATES

Cross Allen Hartwell - Petitioner
v.
Bobby Lumpkin, Dir. Texas Dept.
of Crim. Justice, Corr. Div.

NO. 21-5555

Supreme Court, U.S.
FILED

NOV 12 2021

OFFICE OF THE CLERK

ORIGINAL

Corrected PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

Pro Se Petitioner's petition for writ of Certiorari (informa pauperis) in the above cause was timely filed, August 24, 2021, and docketed Sept. 1, 2021. The Petition was DENIED on November 1, 2021; this petition for rehearing was filed within 25 days after the date of the Order as required by Sup. Ct. Rule 44 (2). Notice to correct petition was written, Dec. 7, 2021. Petitioner received notice, December 15, 2021. Petitioner places this correction in the prison mailbox on December 18, 2021. Petitioner has complied with all rules and time limits.

- The U.S. 5th Circuit Court of Appeals DENIED Hartwell's Certificate of Appealability (from the 2254 ruled upon in the Federal Western District of Texas).
- The Federal Courts wrongly applied the prejudice standard set in Strickland v. Washington, 466 U.S. 668 (1984).
- Hartwell's Habeas Corpus is grounded in a complaint that his defense attorney, without excuse, failed to strike/challenge a partial and unfair venireperson who sat on the convicting jury.
- The 5th Circuit, via the Federal Western District of Texas determined the Court is not required to decide whether or not Petitioner's jury was fair and impartial - and that its decision must purely be based upon whether or not Petitioner proved if the outcome of the trial would have been different w/out the juror.
- The decision is in direct conflict with the Supreme Court's decision in Strickland. In Strickland, the Supreme Court wrote - "The results of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have

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determined the outcome." (at 694).

- Also, a prejudice inquiry should, according to this Court, require "that the judge or jury acted according to law." The prejudice inquiry "should proceed on the assumption that the decisionmaker is reasonably, conscientiously, and impartially applying the standards that govern the decision." (at 695)

- Hartwell has clearly proven his jury to be constitutionally unfair and partial.
- The Federal District and Circuit Courts failed to apply this standard, and to the same extent (in refusing Hartwell's Petition for Writ of Certiorari) this United States Supreme Court fails to abide by its own CONTROLLING EFFECT.

Certification of Good Faith and Prayer

Petitioner Ross Allen Hartwell swears this petition is made in good faith, for the cause of justice, and not presented for delay. Furthermore, Hartwell prays this Court will re-consider the Petition for Writ of Certiorari.

Respectfully,

Ross Allen Hartwell

Ross Allen Hartwell #1893452

Memorial Unit

59 Darrington Road

Poshteron, TX

77583

SUPREME COURT OF THE UNITED STATES
WASHINGTON, DC.

Ross Allen Hartwell - Petitioner

V.

Bobby Lumpkin, Director, Texas Department
of Criminal Justice, Correctional Inst. Division

NO. 21-5555

PETITION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI

Pro se petitioner's petition for writ of certiorari (in forma pauperis) in the above cause was timely filed on August 24, 2021 and Docketed September 1, 2021. The petition was DENIED on November 1, 2021; this petition for rehearing is filed within 25 days after the date of the Order as required by Supreme Court Rule 44 (2).

By not granting the writ, the Supreme Court permits the lower Courts Denial of Hartwell's (and those that follow) Constitutional right to a fair and impartial jury. Petitioner's Certiorari questions are novel.

Hartwell was convicted of robbery and sentenced to Sixty years in prison by a juror who, before trial, on the record, adamantly voiced the fact he would not be fair and impartial in any phase of Hartwell's trial. The juror was neither challenged nor rehabilitated.

Hartwell Complained to the trial Court (Motion for New Trial), the direct appeal Court, and the State and Federal Habeas Courts that this structural error affected the framework with which the trial proceeded, and deserves a New Trial by a fair jury. All petitions were denied.

The U.S. Court of Appeals for the Fifth Circuit denies Hartwell's Complaint of fundamental unfairness because Hartwell has not attempted to prove

his innocence during the post conviction petition process.

Hartwell did, in his State habeas, show how he was only guilty of the lesser included offense; regardless, the Supreme Court nor the Federal District and Circuit Courts have never required the different outcome prejudice standard when it's obvious the jury was not fair or impartial.

From the end of trial, forward, and for eight years, Hartwell as a pro se filer, has ceaselessly petitioned State and Federal courts to re-instate his fundamental right to a fair trial by a fair jury. Hartwell continues to languish in prison, per a sentence of Sixty (60) years—though he may, but for an unfair and partial jury, be guilty of the lesser included offense: punishable by a maximum of two (2) years.

No practitioner of law would have failed to strike the juror Hartwell complains of, nor would any Judge have failed to remove him from service. Failure to grant Hartwell's writ strips all future defendants of the right to be protected from a court appointed attorney's rank ineffectiveness during jury selection. As it stands, the State and Federal Court's decision to require an appellant to prove—on paper—a different outcome than the one produced by a tainted jury is an injustice, and will have devastating effects on our civil and criminal justice system. Requiring an indigent pro se defendant to prove his innocence by way of paper and pen when he never had a constitutional jury flies in the face of reason.

For these reasons, petitioner requests this Supreme Court to rehear and grant his petition for writ of Certiorari.

Certification of Good Faith

Petitioner in the above cause, Ross Allen Hartwell, swears this petition is made in good faith and not presented for delay.

Respectfully,



Ross Allen Hartwell #1893452
Memorial Unit
59 Darrington Road
Posharon, TX 77583

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CERTIFICATE OF COMPLIANCE WITH RULE 44

The Grounds within this Petition for Rehearing of Petitioners Writ of Certiorari and in this Cause are within the bounds of intervening circumstances of controlling effect, as per Supreme Court Rule 44.

A Federal Circuit Court of which this Supreme Court has jurisdiction has failed to accurately apply (and comply with) the precedential standard set by the Supreme Court in Strickland v. Washington 466 U.S. 668 (1984).

And, as such has violated Petitioners Sixth and Fourteenth Amendment Right to an Attorney and a Fair Trial by a Fair Jury.

Petitioner, Ross Allen Hartwell, swears this Certificate is made in good faith and not presented for delay.

Respectfully,

Ross Allen Hartwell

Ross Allen Hartwell #1893452

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Prosharon, TX 77583