

No. 21-5867

IN THE SUPREME COURT OF THE UNITED STATES

JAMES DEAN KENDRICK, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

James Dean Kendrick, Pro Se
Inmate #19301055
USP Allenwood
P.O. Box 3000
White Deer, PA 17887

PETITION FOR REHEARING

(Sup. Ct. R. 44.2)

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

GROUND FOR REHEARING

A rehearing of the decision in the matter is in the interest of justice because: the Second Circuit's decision to affirm Petitioner's conviction has created a split in the Circuits, as to Criminal Jurisdiction in Indian Country. If this Petitioner was allowed to file his appeal in any other Circuit Court, in the United States, Petitioner's conviction would have been vacated.

1. On November 15, 2021, this Court denied the petition for a writ of certiorari.
2. This Court's decision, not to hear the Petition for a Writ of Certiorari, came as a surprise to Petitioner. The relevant issue, as to criminal jurisdiction in Indian Court, was raised and established in 1882 in the case of *United States v. McBratney*, 104 U.S. 621, 26 L.Ed. 869 (1882). Its precedent has not been interrupted, by any Act of Congress, and it has been followed by every Federal Circuit Court, in the United States, that has considered the issue FN1, until this Petitioner's case went before the United States Court of Appeals, Second Circuit.
3. The split in the Circuits, created by the Second Circuit's holding, is a substantial ground that has not previously been presented, by Petitioner.
4. The relevant facts of the present case are as follows: Petitioner was charged with murder (Count-14 Francisco Santos Homicide); the evidence at trial established that the location of the murder was the Cattaraugus Indian Reservation, in Erie County, New York State; Petitioner is non-Indian; and the victim was non-Indian.
5. A rehearing tightly and squarely focused on the distinctions between this case and the holdings in this Court's precedent cases FN2, and whether these distinctions merit a different rule of law, is a matter of fundamental fairness to Petitioner and would not unduly burden the court.

CONCLUSION

For the reasons just stated, James Dean Kendrick, urges that this petition for a rehearing be granted, and

that, on further consideration, the Petition for Certiorari be granted and/or the judgment of the lower court be reversed or as this Court deems appropriate.

Dated: December 2, 2021

Respectfully submitted,

Sign: James Dean Kendrick, Pro Se

Print: James Dean Kendrick

Inmate #19301055

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FN1. 5th Cir.

United States v. John, 587 F.2d 683, at 686-687 (January 10, 1979)(Federal jurisdiction upheld because the defendant was Indian and his victim was non-Indian.

7th Cir.

United State v. Hall, 171 F. 214, at 217 (July 1, 1909)(Intoxicating liquors case).

8th Cir.

Gearlds v. Johnson, 183 F. 611, at 617-618 (January 9, 1911)(Intoxicating liquors case).

United States v. Norquay, 905 F.2d 1157, at 1162 (December 14, 1989)(Burglary case).

United States v. Dodge, 538 F.2d 770, at 775 (April 26, 1976)(Burglary case).

9th Cir.

United States v. Cleveland, 503 F.2d 1067, at 1070-1071 (September 25, 1974)(Assault case).

Hilderbrand v. United States, 261 F.2d 354, at 355-356 (November 5, 1958)(Murder case).

United States v. Antelope, 523 F.2d 400, at 402-403 (September 4, 1975)(murder case).

United States v. Broncheau, 597 F.2d 1260, at 1265 FN4.(May 30, 1979)(Assault case-Indian on non-Indian).

10th Cir.

Kaul v. Stephen, 83 F.3d 1208, at 1218 (April 30, 1996)(Search and Seizure case).

United States v. Burch, 169 F.3d 666, at 671 (March 4, 1999)(Manslaughter case).

United States v. Prentiss, 256 F.3d 971, at 974 (July 12, 2001)(Arson case).

United States v. Langford, 641 F.3d 1195, at 1198-1199 (April 11, 2011)(Spectator at Cockfight-victimless).

FN2.

United States v. McBratney, 104 U.S. 621 (1882).

Draper v. United States, 164 U.S. 240 (1896).

Donnelly v. United States, supra, 228 U.S. at p. 270 (1913).

United States v. Ramsey, 271 U.S. 467 (1926).

New York ex rel Ray v. Martin, 326 U.S. 496 (1946).

CERTIFICATE OF GOOD FAITH BY COUNSEL

I, James Dean Kendrick, proceeding Pro Se, certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

Dated: December 2, 2021

Print: James Dean Kendrick

Sign: James Dean Kendrick

CERTIFICATION OF COMPLIANCE WITH WORD LIMITS

As required by Supreme Court Rule 33.1(h), I certify that the document contains 443 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 2, 2021.

Print: James Dean Kendrick

Sign: James Dean Kendrick