No. 21-6845

In The

SUPREME COURT OF THE UNITED STATES

In re Willie S. Smith, Petitioner

PETITION FOR REHEARING

Willie S. Smith # 312-990
Richland Correctional Institution
P.O. Box 8107
Mansfield, Ohio 44901

Pro se Litigant

Mr. Dave Yost
State Office Tower,
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

QUESTION(S) PRESENTED

Smith's case presents exceptional circumstances that warrant exercise of this Court's discretionary power. Because of the willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this court, has allowed respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty and Cuyahoga County Common Pleas Court Judge Steven E. Gall to become the judge, jury and executioner of Smith's protected constitutional rights to get proper redress in federal court pursuant to ***§§2254(B)(i)(ii)(D)(1) and 2241(c)(3).*** Which has had a detrimental effect on Smith's meritorious constitutional Evans-Ball due process claims, leaving no other remedy but mandamus, for the right to issuance of the writ is clear and indisputable.

(1) Is it clear and indisputable that, respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty and Cuyahoga County Common Pleas Court Judge Steven E. Gall, went beyond professional norms and violated Smith's ***1st and 14th U.S. Const. Amend.*** freedom of speech to file grievance against the government to get redress and equal protection of law, and have a legal duty to enter the judgment of acquittal?

(2) Is it clear and indisputable that, the issuance of the writ is appropriate in this case because exceptional circumstances from the respondents have amounted to a judicial ***"usurpation of power," or a "clear abuse of discretion,"*** justifying the invocation of this extraordinary remedy?

(3) Is it clear and indisputable that, it is agreeable to principles and usages of law, that Mr. Smith has a legal right to compel the performance of a ministerial act, in light of the facts and law presented in this action?

LIST OF PARTIES

[X] All parties appear in the caption of the cover page.

Just to be clear, the respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty and Cuyahoga County Common Pleas Court Judge Steven E. Gall, will be represented by The Ohio Attorney General Mr. Dave Yost. The Warden of Richland Correctional Institution is Kenneth Black, and Petitioner Prison Inmate is Willie S. Smith.

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TABLE OF AUTHORITIES CITED

Statutes and Rules

Other

PETITION FOR PETITION FOR REHEARING

Petitioner Willie S. Smith invokes this Court's broad and discretionary power pursuant to 28 U.S.C. §§ 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution, to remand this case to the Cuyahoga County Common Pleas Court of Ohio to vacate Smith's sentence(s) and enter a judgment of acquittal pursuant to federal policy pursuant to Evans v. Michigan, 568 U.S. 313, at 318, 319 (U.S. 2013) and United States v. Ball, 163 U.S. 662, 671, at HN4 (U.S. 1896).

OPINION BELOW

The Journal Entry from Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty was entered on October 6, 1995 and attached at Appendix A, and the denial of Smith's Common Law Motion to Correct Void Judgment was entered on October 16, 2017 by Cuyahoga County Common Pleas Court Judge Steven E. Gall and attached at Appendix B.

STATEMENT OF JURISDICTION

The Journal Entry from Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty was entered on October 6, 1995, and the denial of Smith's Common Law Motion to Correct Void Judgment was entered on October 16, 2017 by Cuyahoga County Common Pleas Court Judge Steven E. Gall. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

THE FIRST AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Congress shall make no law... abridging the freedom of speech... or the right to petition the Government for redress of grievances.

THE FIFTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law;

THE SIXTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Shall enjoy the right to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

THE EIGHTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Nor cruel and unusual punishment inflicted.

THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

CONSTITUTINAL AND STATUTORY PROVISIONS INVOLVED

1966 AMC 12 (U.S. 1965)

Abdirahman v. United States, 2018 U.S. Lexis 4114 (U.S. 2018)

ABF Freight System v. NLRB, 510 U.S. 317, (U.S. 1994)

Castro v. United States, 540 U.S. 375, (U.S. 2003)

Cheney v. United States Dist. Court, 542 U.S. 367, (U.S. 2004)

Chevalier v. Estate of Barnhart, 803 F.3d 789, (6th Cir. 2015)

Criston v. United States, 125 S. Ct. 1112, (U.S. 2005)

Dretke v. Haley, 541 U.S. 393, (U.S. 2004)

Evans v. Michigan, 568 U.S. 313, (U.S. 2013)

Foster v. Texas, 179 L. Ed. 2d. 797, (U.S. 2011)

Gonzalez-Longoria v. United States, 2018 U.S. Lexis 3693 (U.S. 2018)

Kendall v. United States, 37 U.S. 524, (U.S. 1838)

Marbury v. Madison, 5 U.S. 137, (U.S. 1803)

Norton v. Shelby County, 118 U.S. 425, (U.S. 1886)

United States v. Ball, 163 U.S. 662, 671, (U.S. 1896)

United States v. Ohio Power Co., 353 U.S. 98, (U.S. 1957)

Wearry v. Cain, 577 U.S. 383, (U.S. 2016)

Weed v. Bilbrey, 400 U.S. 982, (U.S. 1970)

Will v. United States, 389 U.S. 90, (U.S. 1967)

GROUNDS FOR INTERVENING CIRCUMSTANCES OF A SUBSTANIAL OR CONTROLLING EFFECT
(Statement of the Case)

Smith's case has an extremely extraordinary criminal rule and appellate rule posture, and it is nothing more than a direct reflection of the respondent(s) Cuyahoga County Common Pleas Court Judge Timothy J. Mc Ginty's actions in the ***October 6, 1995 order,*** sentencing Mr. Smith for kidnapping and aggravated murder pursuant to ***ORC. 2929.04(A)(7) & ORC. §2903.01 See appendix A, E, & F.*** Before the Court today is another example of an unauthorized abuse of authority, ***amounting to a judicial "usurpation of power," or a "clear abuse of discretion".***

Moreover, this has continued, and further perpetuated by respondent(s) Cuyahoga County Common Pleas Court Judge Steven E. Gall's denial of Smith's Common Law Motion to Correct a Void Judgement, which was entered on October 16, 2017, ***amounting to an adoption of a deliberate policy in open defiance of the federal rules handed down by this court. See appendix C & D (Ohio's & Federal Crim. Proc. Rule 29 Acquittal) Also, see Evans v. Michigan, 568 U.S. 313, at 318, 319 (U.S. 2013) and United States v. Ball, 163 U.S. 662, 671, at HN4 (U.S. 1896).***

On December 21, 2021 Smith filed a writ of mandamus with this court against both respondent(s) in ***Case No. 21-6845. On February 14, 2022*** the Ohio's Attorney General Mr. Dave Yost failed to respond to Smith's mandamus, in which he defaulted pursuant to ***USCS Fed Rules Civ Proc. R. 55 Default; Default Judgment see appendix X.***

It is clear and indisputable that the Cuyahoga County Common Pleas Judges have a legal duty to enter a judgment of acquittal pursuant to all applicable rules and case precedent. Also, it is clear and indisputable that Smith has a legal right to compel the performance of that duty.

Petition for rehearing of denial of a petition was part of appellate procedure authorized by rules of the Supreme Court, subject to requirements of predecessor to Rule 44 on rehearings; right to such consideration was not to be deemed an empty formality as though such petitions would as matter of course be denied; denial of petitions should not be treated as definitive determination in Supreme Court, subject to all consequences of such an interpretation.

> Occasionally, the principle in favor of the finality of judgments is outweighed by the interest of justice. In one case a taxpayer prevailed against the government in the Court of Claims and the Supreme Court denied the government's petition for certiorari and two subsequent petitions for rehearing. Nearly ***nine months after*** its initial order denying the petition for certiorari, the court vacated that order ***sua sponte*** and granted certiorari so that the case could be disposed of in accordance with the holdings of two cases that were decided by the court after its initial order denying certiorari. The Court Stated "[W]e have consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our rules. ***See United States v. Ohio Power Co., 353 U.S. 98 (U.S. 1957) (per curaim) (untimely petition for rehearing granted).***
>
> The "interest of justice," however, are often vague, and the case law has not yet yielded a reliable standard to divine them. In a case involving a claim for death benefits under the Longshoremen's and Harborworker's Act arising from the death of an employee in an automobile accident, the Fifth Circuit affirmed the district court's denial of benefits and the Supreme Court denied certiorari and subsequent petition for rehearing. Thereafter, the Fourth Circuit upheld an award of benefits to the survivors of another employee killed in the same accident. The Fifth Circuit then questioned the validity of its earlier holding, noting that its decision was inconsistent with Supreme Court case law. Based on these facts, the Supreme Court granted certiorari in the interests of justice and reversed the judgement. ***See 1966 AMC 12 (U.S. 1965) (untimely petition for rehearing granted).***
>
> However, the court reached the opposite result in a case arising from the death of boaters in separate accidents in Florida waters. The survivors of each boater sought to apply federal maritime doctrines to their claims, instead of state law, which barred their recovery. Initially, the Supreme Court denied certiorari to one claimant, who had been denied recovery below. Three weeks later, the claimant in the other action petitioned for certiorari. The first claimant then petitioned for a rehearing in an effort to combine the two cases before the court. This petition was denied. When certiorari was granted in the second case, the first claimant again petitioned for a rehearing, and was again

> denied. Finally, when a judgment was reached in favor of the survivor in the other case, the first claimant again petitioned for a rehearing, and was again denied. ***See Weed v. Bilbrey 400 U.S. 982 (U.S. 1970) (per curium) (untimely petition for rehearing denied).***

These cases illustrate the difficulty in applying the "interests-of-justice" standard. It would be of great assistance to practitioners if the Court, either by opinion rule, or a combination of the two were to elaborate upon the factors that are involved in the determination. ***See 23 Moore's Federal Practice- Civil §544.06***

> "The interest in finality of litigation ***must yield*** where the interest of justice would make unfair the strict application of our rules. This policy finds expression in the manner in which ***we have exercised our power over our own judgments***, both in civil and criminal cases." ***See United States v. Ohio Power Co., 353 U.S. 98,99 or HN1 (U.S. 1957)***

Smith has an unexhausted list of the latest examples where this court has exercised its power over its own judgments in the interest of justice, or intervening circumstance of a substantial or controlling effect:

- ***Abdirahman v. United States, 2018 U.S. Lexis 4114 (U.S. 2018) rehearing granted.***
- ***Gonzalez-Longoria v. United States, 2018 U.S. Lexis 3693 (U.S. 2018) rehearing granted.***
- ***Foster v. Texas, 179 L. Ed. 2d. 797, (U.S. 2011) rehearing granted.***
- ***Criston v. United States, 125 S. Ct. 1112, (U.S. 2005) rehearing granted.***

Smith affirms that ***Rule 20.4(b) see appendix N*** of this court states in relevant part: "neither the denial of the petition, without more..., is an adjudication on the merits, and therefore ***does not preclude*** further application to another court for the relief sought."

Also, Smith declares that ***Rule 44.2 see appendix Y*** of this Court States in relevant part: "but its grounds shall be limited to intervening circumstances of a ***substantial or controlling effect...***"

This court held in ***Wearry v. Cain, 577 U.S. 383, at 395, 396 (U.S. 2016)-*** The prosecution's failure to disclose material evidence violated the death row inmate's due process rights because the newly revealed evidence sufficed to undermine confidence in the inmate's conviction because the only evidence tying the inmate to capital murder was a first witness's dubious testimony, corroborated by the similarly suspect testimony of a second witness, and the first witness's credibility, already impugned by his many inconsistent stories, would have been further diminished had the jury learned about the newly revealed evidence; The State postconviction court improperly evaluated the materiality of each piece of evidence in isolation rather than cumulatively, and failed even to mention the statements of the two inmate's impeaching the first witness; The denial of the inmate's Brady Claim ran up against settled constitutional principles. Petition for writ of certiorari granted judgment reversed. Case remanded. Per curium decision.

395 Id. - The dissent criticizes the court for deciding this "intensely factual question... without full briefing and argument." But the court ***has not shied away*** from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law.

396 Id. – Reviewing the Louisiana court's denial of postconviction relief is thus hardly the bold departure the dissent paints it to be. ***The alternative to granting review,*** after all, is forcing Wearry to endure yet more time on Louisiana's death row in service of a conviction that is constitutionally flawed.

Smith asked this court to consider the fact that, all along Smith knew in his heart and soul he was an innocent man. That fact gave him the ***resolve to risk it all by*** going to trial in a capital case with a State appointed public defender. So when an independent jury affirmed what Smith knew all along, by factually determining that Smith was ***not guilty of all*** the essential elements to be found guilty of that capital offense. Today, to not issue the writ of mandamus presented to the court, ***would force Smith to endure yet more time in Ohio's prison system with a life sentence in service of a conviction that the jury affirmed he did not commit.***

Over the past 27 years, Smith has appealed this counterfeit conviction in every applicable jurisdiction, with all sorts of different counsel. Every Court has overlook this atrocity forever journalized in stone within both respondent's orders and Journal Entry.

This is especially troubling in the context of due process and the fact that every court has a duty to police themselves of their own jurisdiction. ***See Chevalier v. Estate of Barnhart, 803 F.3d 789, at HN4 (6th Cir. 2015)***

Since acquittals are unreviewable ***See Evans v. Michigan, at 318*** and every appeals court's review, was in fact made without jurisdiction that amounting to a violation of Smith's constitutionally protected rights of due process and against being put in double jeopardy. Smith ask this court; will this court end his dizzying ride upon "the carrousel of hopelessness."

To deny Smith's mandamus without more would place him in a bad faith attempt to encourage the Supreme Court of Ohio and Attorney General Mr. Dave Yost to police themselves and tell the truth that Mr. Smith was in fact acquitted.

Smith wants to remind this court of a seemingly forgotten era with the truthful words of Justice Kennedy:

> "Our law must not become so caught up in procedural niceties that it fails to sort out simple instances of right from wrong and give some redress for the latter." ***See ABF Freight System v. NLRB, 510 U.S. 317, 325 (U.S. 1994)***
>
> See also ***Dretke v. Haley, 541 U.S. 393, at 399-400 (U.S. 2004)*** "The law must serve the cause of justice... perhaps some would say that Haley's innocence is a mere technicality, but that would miss the point. In a society devoted to the rule of law, the difference between violating or not violating a criminal statute cannot be shrugged aside as a minor detail."
>
> *"The legal proposition that mandamus will lie in appropriate cases to correct willful disobedience of the rules laid down by this Court in not controverted."* ***See Will v. United States, 389 U.S. 90, at 100 (U.S. 1967) (added emphasis)***
>
> *"The peremptory writ of mandamus has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so..."* ***See Will v. United States, 389 U.S. 90, at HN1 (U.S. 1967).***
>
> *"For the overriding rule of judicial intervention must be "first, do no harm."* ***See Castro v. United States, 540 U.S. 375, at 386 (U.S. 2003) (added emphasis)***

Smith points out these last facts for the court to consider, ***(1)*** it may take another 250-years before another case with similar facts as presented here today, where a criminal defendant was actually and factually acquitted in of a capital crime. ***(2)*** It's hard to imagine any case with a more deserving intervening circumstance in the interest of justice than this case properly before this court now. ***(3)*** Especially in light of the facts of mass incarceration, the erosion of the rule of law, and Ohio's Attorney General defaulted on ***February 14, 2022. (4)*** The fact that it is clear and indisputable that respondents in this case have a clear legal duty to enter a corrected judgment of acquittal. ***(5)*** Mr. Smith has a clear legal duty to compel the performance of that duty.

- *"Any unconstitutional act is null and void of law, it confers no rights, it imposes no duties, it affords no protections, it creates no office."* ***See Norton v. Shelby County, 118 U.S. 425, at HN1, (U.S. 1886)***

- ***See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, (U.S. 2004).*** *"the common-law writ of mandamus against a lower Court is codified at 28 U.S.C. §1651(a): The United States Supreme and all courts established by Act of Congress may issue all writs necessary or appropriate of their respective jurisdictions, and agreeable to the usages and principles of law."*

- ***HN6*** *" The authority to issue the writ of mandamus to an officer of the united States, commanding him to perform a specific act required by law of the United States, is within the scope of the judicial powers of the United States, under the constitution."*[1]

- ***HN8*** *"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection."*

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[1] ***HN5*** Under the constitution, the power to issue a mandamus to an executive officer of the United States, may be vested in the inferior court of the United States; and it is the appropriate writ, and proper to be employed, agreeably to principles and usages of law, to compel the performance of a ministerial act, necessary to the completion of an individual right arising under the laws of the United States. ***See Kendall v. United States, 37 U.S. 524, at HN5, HN6. (U.S. 1838)***

- ***HN9*** *"Where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."*

- ***HN14*** *"The Court ought to assist by mandamus, upon reasons of justice, as the writ expresses, and upon reasons of public policy, to preserve, order and good government. This writ ought to be used* ***upon all occasions*** *where the law has established no specific remedy, and where in justice and good government there ought to be one."*

- ***HN15*** *"To render the mandamus a proper remedy, the officer to whom it is directed, must be to whom, on legal principles, such writ may be directed; and the person applying for it must be without any other specific remedy."*[2]

Smith wants to remind this court that the very phrase that is the center piece that controls the rehearing process is not clearly defined in case law policy or otherwise. Throughout the history of America, together as a people and as a government, we have been tasked with the duty to hope and to believe in this system of government although not perfect, will endure because of the fundamental principle of Justice for All.

This belief in this principle gave Smith the heart to risk it all and go to trial in a capital case, because of his belief in his innocence and that he would receive a fair trial. For 27-years now, Smith has been robbed of his reward of the truth of what the jury said on that fateful day on ***October 6, 1995.*** Smith implores this court to intervene because the Rule of Law will suffer irreparable harm if this court is willing to sit down and look at his journal entry and not be motivated to intervene.

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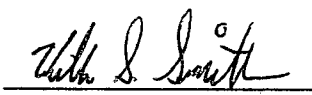
[2] ***See Marbury v. Madison, 5 U.S. 137, at HN8, HN9, HN14, and HN15. (U.S. 1803).***

CONCLUSION

Smith prays that this Court issues the Petition For Rehearing because he has shown that it is appropriate, agreeable to principles and usages of law, and he has no other legal recourse. ***Smith affirms although this standard is demanding it is not insuperable.*** The right to issuance of the writ is clear and indisputable.

Respectfully submitted,



Willie S. Smith #312-990
P.O. Box 8107
Mansfield, Ohio 44901

Pro Se Litigant

Index to Appendixes

Smith relies and hereby fully incorporates all exhibits as indicated in the index to appendixes, to support and get redress in this Court of his protected constitutional claims. I declare under penalty of perjury that the forgoing is true and correct pursuant to ***28 U.S.C.S. §1746.***

Executed on March 23, 2022

Respectfully Submitted,

Willie S. Smith #312-990
P.O. Box 8107
Mansfield, Ohio 44901

STATE OF OHIO,
CUYAHOGA COUNTY ss.

IN THE COURT OF COMMON PLEAS

SEPTEMBER Term, 19 95

To-wit: OCTOBER 6, 1995 , 19

No. CR-323987 & CR-325283

INDICTMENT KIDNAPPING AGGR. MURDER W/FEL MURD. W/FIREARM HAVING WEAPON UNDER DISB. W/VIOL & FIREARM SPEC.

STATE OF OHIO

vs.

WILLIE S. SMITH

JOURNAL ENTRY

CASES CR-323987 AND CR-325283 ARE CONSOLIDATED FOR TRIAL. CHARGES RENUMBERED, CASE CR-323987 KIDNAPPING COUNT ONE, CASE CR-325283; AGGR. MURDER W/FEL MURD W/FIRM SPEC & AGGR. CIR. SPEC CTS TWO AND THREE, HAVING WEAPON UNDER DISABILITY W/VIOL & FIRM. SPEC COUNT FOUR.

This day again comes the prosecuting attorney on behalf of the State and defendant, Willie S. Smith in open court, represented by Attorneys Tom Lobe and Gary Puzin, with Prosecutors John Kosko and Darcy Moulin present.

Now comes the Jury conducted into Court by the Bailiff and returned the following verdicts in writing, to-wit: " We, the Jury being duly impaneled and sworn, do find the defendant, Willie S. Smith Guilty of Kidnapping per ORC 2905.01, as charged in the First Count of the indictment." and " WE, the Jury further find and specify that the defendant Did Not release the victim in a safe place unharmed while committing the offense charged in this count of the indictment." and " W2, the Jury do find the defendant, Willie S. Smith Not Guilty of Aggravated Murder per ORC 2903.01, as charged in the Second Count of the indictment." and "We, the Jury do find the defendant, Willie S. Smith Guilty of Aggravated Murder per ORC 2903.01 as charged in the Third Count of the indictment." and " WE, find and specify that the defendant Did Not have a firearm on or about his person or under his control while committing the offense charged in the indictment." in regards to Specification One; Specification Two; " We, the Jury find defendant, Not Guilty of committing this offense while he was committing, attempting to commit or fleeing immediately after committing or attempting to commit Kidnapping and defendant was the principal offender in the aggravated murder or if not the principal offender, committed the aggravated murder with prior calculation or design." and " We, the Jury do find the defendant, Willie S. Smith Not Guilty of Having Weapon While Under Disability, per ORC 2923.13, as charged in the Fourth Count of the indictment."

Defendant was informed of the verdict of the Jury and inquired of if he had anything to say and he having nothing but what he had already said.

It is ordered by the Court that defendant, Willie S. Smith is sentenced to the Lorain Correctional Institution under both counts; Count One for term of ten (10) years to twenty-five (25) years, and pay a fine of $10,000.00 Count Three for term of LIFE, and pay a fine of $25,000.00, Count One to run Consecutive to Count Three. Pay court costs. Defendant read his rights to Appeal. Defendant found to be indigent, Public Defender appointed to for his Appeal. All documents and Transcripts are ordered at the State's expense. Defendant given No Credit for time served, due to the fact that defendant was on probation in another Court on two (2) separate felonies at time he commited this Kidnapping and Aggravated Murder.

Opinion 11/16/95

FILED
NOV 03 1995
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY, OHIO

Timothy J. McGinty, Judge
va 10/12/95 n

VOL 1441 PG0167

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO
Plaintiff

WILLIE S SMITH
Defendant

Case No: CR-95-325283-ZA

Judge: STEVEN E GALL

INDICT: 2903.01 AGGRAVATED MURDER W/FELONY MURDER & FIREARM SPECS
2903.01 AGGRAVATED MURDER W/FELONY MURDER & FIREARM SPECS
2923.13 HAVING WEAPON WHILE UNDER DISABIL. W/VIOL.W/FRM

JOURNAL ENTRY

DEFENDANT'S MOTION TO CORRECT VOID JUDGEMENT IS DENIED.

10/13/2017
CPROB 10/13/2017 14:06:18

Judge Signature 10/16/2017

HEAR
10/13/2017

RECEIVED FOR FILING
10/16/2017 08:49:15
NAILAH K. BYRD, CLERK

Ohio Crim. R. 29

Rules current through rule amendments received through October 13, 2021

OH - Ohio Local, State & Federal Court Rules Ohio Rules of Criminal Procedure

Rule 29. Motion for acquittal

(A) Motion for judgment of acquittal.

The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case.

(B)Reservation of decision on motion.

If a motion for a judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury and decide the motion either before the jury returns a verdict, or after it returns a verdict of guilty, or after it is discharged without having returned a verdict.

(C)Motion after verdict or discharge of jury.

If a jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within fourteen days after the jury is discharged or within such further time as the court may fix during the fourteen day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be a prerequisite to the making of such motion that a similar motion has been made prior to the submission of the case to the jury.

USCS Fed Rules Crim. Proc. R 29, Part 1 of 2

Current through changes received November 11, 2021.

USCS Federal Rules Annotated Federal Rules of Criminal Procedure Title VI. Trial

Rule 29. Motion for a Judgment of Acquittal

(a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.

(b) Reserving Decision. The court may reserve decision on the motion, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.

(c) After Jury Verdict or Discharge.

(1) Time for a Motion. A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

(2) Ruling on the Motion. If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter a judgment of acquittal.

(3) No Prior Motion Required. A defendant is not required to move for a judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) Conditional Ruling on a Motion for a New Trial.

(1) Motion for a New Trial. If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.

(2) Finality. The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.

(3) Appeal.

(A) Grant of a Motion for a New Trial. If the court conditionally grants a motion for a new trial and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.

(B) Denial of a Motion for a New Trial. If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

Appendix –E

ORC. ANN.§2929.04

(2 PAGES)

ORC Ann. 2903.01

Current through File 53 (HB 228) of the 134th (2021-2022) General Assembly; acts signed as of November 5, 2021.

Page's Ohio Revised Code Annotated Title 29: Crimes — Procedure (Chs. 2901 — 2981) Chapter 2903: Homicide and Assault (§§ 2903.01 — 2903.44) Homicide (§§ 2903.01 — 2903.10)

§ 2903.01 Aggravated murder.

(A) No person shall purposely, and with **prior calculation and design**, cause the death of another or the unlawful termination of another's pregnancy.

(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, **or while fleeing immediately after committing or attempting to commit, kidnapping,** rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, or escape.

Appendix –F

ORC.ANN. § 2903.01

1 PAGE

ORC Ann. 2929.04

Current through File 53 (HB 228) of the 134th (2021-2022) General Assembly; acts signed as of November 5, 2021.

Page's Ohio Revised Code Annotated Title 29: Crimes — Procedure (Chs. 2901 — 2981) Chapter 2929: Penalties and Sentencing (§§ 2929.01 — 2929.72) Penalties for Murder (§§ 2929.02 — 2929.07)

§ 2929.04 Criteria for imposing death or imprisonment for a capital offense.

(A) Imposition of the death penalty for aggravated murder is precluded unless one or more of the following is specified in the indictment or count in the indictment pursuant to section **2941.14** of the Revised Code and proved beyond a reasonable doubt:

(1) The offense was the assassination of the president of the United States or a person in line of succession to the presidency, the governor or lieutenant governor of this state, the president-elect or vice president-elect of the United States, the governor-elect or lieutenant governor-elect of this state, or a candidate for any of the offices described in this division. For purposes of this division, a person is a candidate if the person has been nominated for election according to law, if the person has filed a petition or petitions according to law to have the person's name placed on the ballot in a primary or general election, or if the person campaigns as a write-in candidate in a primary or general election.

(2) The offense was committed for hire.

(3) The offense was committed for the purpose of escaping detection, apprehension, trial, or punishment for another offense committed by the offender.

(4) The offense was committed while the offender was under detention or while the offender was at large after having broken detention. As used in division (A)(4) of this section, "detention" has the same meaning as in section 2921.01 of the Revised Code, except that detention does not include hospitalization, institutionalization, or confinement in a mental health facility or intellectual disabilities facility unless at the time of the commission of the offense either of the following circumstances apply:

(a) The offender was in the facility as a result of being charged with a violation of a section of the Revised Code.

(b) The offender was under detention as a result of being convicted of or pleading guilty to a violation of a section of the Revised Code.

(5) Prior to the offense at bar, the offender was convicted of an offense an essential element of which was the purposeful killing of or attempt to kill another, or the offense at bar was part of a course of conduct involving the purposeful killing of or attempt to kill two or more persons by the offender.

(6) The victim of the offense was a law enforcement officer, as defined in section 2911.01 of the Revised Code, whom the offender had reasonable cause to know or knew to be a law enforcement officer as so defined, and either the victim, at the time of the commission of the offense, was engaged in the victim's duties, or it was the offender's specific purpose to kill a law enforcement officer as so defined.

(7) The offense was committed while the offender was committing, attempting to commit, **or fleeing immediately after committing or attempting to commit kidnapping,** rape, aggravated arson, aggravated robbery, or aggravated burglary, and either the offender was the principal offender in the commission of the aggravated murder or, if not the **principal offender,** committed the aggravated murder with **prior calculation and design.**

ORC Ann. 2941.14

Current through File 53 (HB 228) of the 134th (2021-2022) General Assembly; acts signed as of November 5, 2021.

Page's Ohio Revised Code Annotated Title 29: Crimes — Procedure (Chs. 2901 — 2981) Chapter 2941: Indictment (§§ 2941.01 — 2941.63) Form and Sufficiency (§§ 2941.01 — 2941.35)

§ 2941.14 Allegations in homicide indictment.

(A) In an indictment for aggravated murder, murder, or voluntary or involuntary manslaughter, the
(B) manner in which, or the means by which the death was caused need not be set forth.

(B) Imposition of the death penalty for aggravated murder is precluded unless the indictment or count in the indictment charging the offense specifies one or more of the aggravating circumstances listed in **division (A) of section 2929.04 of the Revised Code.** If more than one aggravating circumstance is specified to an indictment or count, each shall be in a separately numbered specification, and if an aggravating circumstance is specified to a count in an indictment containing more than one count, such specification shall be identified as to the count to which it applies.

(C) A specification to an indictment or count in an indictment charging aggravated murder shall be stated at the end of the body of the indictment or count, and may be in substantially the following form:

"SPECIFICATION (or, SPECIFICATION 1, SPECIFICATION TO THE FIRST COUNT, or SPECIFICATION 1 TO THE FIRST COUNT). The Grand Jurors further find and specify that (set forth the applicable aggravating circumstance listed in divisions (A)(1) to (10) of section 2929.04 of the Revised Code. **The aggravating circumstance** may be stated in the words of the subdivision in which it appears, or in words sufficient to give the accused notice of the same)."

State v. Smith, 2018 Ohio LEXIS 2668

Supreme Court of Ohio

November 7, 2018, Decided
2018-1340.

Reporter
2018 Ohio LEXIS 2668 * | 154 Ohio St. 3d 1425 | 2018-Ohio-4496 | 111 N.E.3d 21 | 2018 WL 5840150

State v. Smith.

Notice:

DECISION WITHOUT PUBLISHED OPINION

Subsequent History: Habeas corpus proceeding at, Motion denied by In re Smith, 2019 U.S. App. LEXIS 31062 (6th Cir., Oct. 17, 2019)

Prior History:

Cuyahoga App. No. 106486, 2018-Ohio-2938 [*1].

State v. Smith, 2018-Ohio-2938, 2018 Ohio App. LEXIS 3165 (Ohio Ct. App., Cuyahoga County, July 26, 2018)

Opinion

APPEAL NOT ACCEPTED FOR REVIEW

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106486

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

WILLIE SMITH

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-95-325283-ZA

BEFORE: McCormack, P.J., Celebrezze, J., and Jones, J.

RELEASED AND JOURNALIZED: July 26, 2018

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