

JAN 21 2022

OFFICE OF THE CLERK

No. 21-7511

IN THE
SUPREME COURT OF THE UNITED STATES

Kevin Herriott — PETITIONER
(Your Name)

vs.

Charles Burton — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, 4th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kevin E. Herriott
(Your Name)

Post Office Box 8000
(Address)

Shirley, MA 01464
(City, State, Zip Code)

ORIGINAL
(Phone Number)

RECEIVED

JAN 31 2022

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) WHETHER THE SOUTH CAROLINA APPELLATE COURT RULES 208 (a) (4) IS FAIR AND REASONABLE IN CONTENT TO FURTHER A LEGITIMATE GOVERNMENTAL OBJECTIVE?

LIST OF PARTIES

- ☒ 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

The State v. Kevin Herrriott
Case No. (s): 31-MC-002131
18 - GS-31-0120

Appellate Case No.: 2019-000969
Kevin Herrriott v. Warden, McCormick Corr Inst.,
C/A No.: 6:20-CV-3336-DCN
Appellate Case No.: 21-6089

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South Carolina Appellate Court Rule 208(a)(4)

OTHER

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 A 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☒ is unpublished.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 A 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☒ is unpublished.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 _____ 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☐ is unpublished.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 _____ court appears at Appendix _____ 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☐ is unpublished.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 _____.

☐ 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: September 8, 2021, and a copy of the order denying rehearing appears at Appendix A.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including February 5, 2022 (date) on December 6, 2021 (date) in Application No. 21 A 203.

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 _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S.C.A. Const. Amend. XIV Section 1.
provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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 to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

See Attached.

Statement of The Case

On June 04, 2019, there was a jury trial that convicted the Petitioner of Attempted armed robbery, and one count of a(n) prisoner carrying or concealing a weapon. On June 7, 2019, the Petitioner filed a(n) direct appeal challenging the sentence as unconstitutional and inter alia.

On April 29, 2020, the Court ordered the Respondent to serve and file its initial brief and designation of matter. On June 22, 2020, the Respondent asked for a(n) thirty (30) day extension, noting more than two (2) weeks had lapsed after the dead-line had run its course. On August 14, 2020, the Court granted the extension.

The Petitioner moved before the South Carolina Court of Appeals motioned for default judgment. The Court, then denied judgment and the Petitioner then petitioned to the South Carolina Supreme Court challenging two (2) orders. The Order for denial of default judgment and the order granting the Respondent's extension order.

The Supreme Court refused to hear the matter ruling that the orders were not a(n) final decision. The Petitioner then moved before a(n) U.S. District Court asking to remove the case action from a(n) State sitting forum to a(n) Federal Sitting Forum.

The Petitioner, then pursued to file a(n) Federal Writ of Habeas Corpus under the condition to hear the merits of the existing issues that were before the State Court. The Writ was denied and the Petitioner appealed to the U.S. Court of Appeals. The Court of Appeals denied the appeal and the Petitioner is pursuing a(n) Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

See Attached. Also, the reason for granting the Petition are:

A state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

- WHETHER THE SOUTH CAROLINA APPELLATE COURT RULES 208(a)(4) IS FAIR AND REASONABLE IN CONTENT TO FURTHER A LEGITIMATE GOVERNMENTAL OBJECTIVE?

The Petitioner has challenged the legislation of the State procedural rule South Carolina Appellate Court Rule (SCACR) 208(a)(4), in light of, the rule is to be fair and reasonable in content to further a legitimate governmental objective.

The Petitioner contest the rule as unfair and prejudicial because it shields the Respondent from any wrong doing whereas if the Appellant had failed to timely respond without good cause shown, the Petitioner's petition would have been subject to dismissal.

The SCACR Rule 208(a)(4) states:

(4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except

as provided by Rule 260. Upon the Failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.

The Petitioner asserts that the doctrine that the Due Process Clauses of the 14 Amendment that applies to state prisoners in which require legislation to be fair and reasonable in content. To hold the Appellant to subjection of dismissal should also in respect rule forfeiture, waived, or abandon when the Respondent fails to answer. This language should be equal to protect the fairness, integrity, and proceedings of the Court. Because this rule of law in itself depends on the inquiry of whether the Respondent may legitimately be required to obey such a law. If so, then this rule of law violates the Petitioner's equal protections right. Accord Fourteenth (14) Amend, U.S. CONST.

WHEREFORE UPON, the above legal premises, the Petitioner ask the Court to alter or change the rule to reflect Fairness and a constitutional standard.

