

No. 21-7757

IN THE SUPREME COURT OF THE UNITED STATES

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MARK STINSON, REG #29908-076 – Petitioner,

VS.

UNITED STATES OF AMERICA, - Respondent.

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ON PETITIONER FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR REHEARING

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MARK STINSON, REG #29908-076

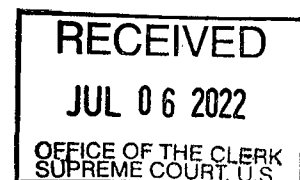
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June 28, 2022

HABEAS CORUPS CASE



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## **PETITION FOR REHEARING**

Pursuant to Supreme Court Rule 44.1, Mark Stinson respectfully petitions for rehearing of the Court's per curiam decision issued on June 6, 2022, Stinson v. USA, (June 6, 2022). Mr. Stinson moves this Court to grant this petition for rehearing and consider his case with merits briefing and oral argument. Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision in this case.

## **REASON FOR GRANTING THE PETITION**

Since the passage of the Antiterrorism and Effective Death Penalty Act ("AEDPA") and up until the issuance of its opinion in this case, this Court has never issued a per curiam opinion, without briefing or argument, granting a lower appellate court's denial of habeas corpus relief where the constitutional claim received no federal appellate court review. But that is precisely what happened here: The Sixth Circuit Appeals Court did not address the constitutional claims and issues that was presented in this case, nor did this Court.

This Court did not acknowledge The Sixth Circuit's lack of federal appellate review for Mr. Stinson's constitutional claims when he applied the "demanding standard" of the AEDPA, Dunn, 2017 WL 5076050, at \*1, and its summary disposition was not addressed by the Panel for the complicated question about the parameters of habeas corpus law in the content of the unique procedural posture of this case. Rehearing is appropriate for this Court to consider the following substantial questions:

- I. **Should this Court and or The Sixth Circuit Appeals dismiss this Case Without Addressing the Constitutional Claims of this Case?**

Rehearing is appropriate for this Court to review The Sixth Circuit per curiam decision to deny Stinson's petition, and the per curiam decision of this Court to deny Stinson's petition. Stinson should be excluded from any constitutional scrutiny, both because it results in the inconsistent application of the law, cf.

Ornelas v. United States, 517 U.S. 690 (1996) (in Fourth Amendment context, “[i]ndependent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles”), and because it increases arbitrariness and the likelihood of error. See Jones v. Barnes, 463 U.S. 745, 756 n.1 (1983) (Brennan, J., joined by Marshall, J., dissenting) (“There are few, if any situations in our system of justice in which a single judge is given unreviewable discretion over matters concerning a person’s liberty or property...”).

The Eighth Amendment prohibits the execution of a prisoner who is incompetent. Panetti v. Quarterman, 551 U.S. 930, 958 (2007); Ford v. Wainwright, 477 U.S. 399, 409-10 (1986). In the context of the Eighth Amendment, this Court has repeatedly recognized that a federal appellate review is necessary to protect against arbitrariness, capriciousness, and error. Pulley v. Harris, 465 U.S. 37, 59 (1984) (Stevens, J., concurring in part) (“[O]ur decision certainly recognized what was plain from Gregg, Proffitt, and Jurek: that some form of meaningful appellate review is an essential safeguard against the arbitrary and capricious imposition of this sentences by individual juries and judges.”); Parker v. Dugger, 498 U.S. 308, 321 (1991) (“We have emphasized repeatedly the crucial role of meaningful appellate review in ensuring that the penalty’s is not imposed arbitrarily or irrationally.”).

Despite this Court’s recognition of the need for appellate review in the context of the per curiam opinion in this case, it will permit Mark Stinson’s conviction to proceed based on a trial court determination unviewed by any federal appellate court. While Petitioner believes this is untenable under the Eighth Amendment, at a minimum it should be resolved by this Court after he has had an adequate opportunity to brief this issue. Bunkley v. Florida, 538 U.S. 835, 155 L.Ed.2d 1046, 123 S.Ct. 2020 (2003); Powell v. Alabama, 287 U.S. 45, 77 L.Ed 158, 53 S.Ct. 55 (1932). (Sutherland, J., The Right to be Heard).

## II. Did District Court Clerk make an Error when this case was Docketed?

When District Court Clerk submitted the Verdict document, there was an error on the document sheet. The Presiding Juror did not circle Guilty or Not Guilty, the juror circled Count #13: See Document 85 Filed 12/08/2017 Page 4 of 4 PageID 311. Counsel did not report this error and the petitioner was not permitted to file on this matter pro se, because he had representation (counsel) per the court. Corrective remedy, mitigating the harsh impact of calendar rules when a litigant's action is dismissed as a result of his counsel's neglect, Link v. Wasbush Railroad Co., 370 U.S. 626, 632, 82 S.Ct. 1389, 8 L.Ed.2d 734 (1962); Radack v. Norwegian America Line Agency, Inc., 318 F.2d 538, 7 Fed. R. Serv. 2d (Callaghan) 1139 (2<sup>nd</sup> Cir. 1963).

This error is new evidence and was not presented to the District Court, Appellate Court, nor this Court, and it should also be considered within this case as well. This case was not decided on the merits on any appellate level, See Sanders v. United States, 373 U.S. 1, 19, 10 L.Ed.2d 148, 83 S.Ct. 1068 (1963); Morgan v. United States, 696 F.2d 1239 (9<sup>th</sup> Cir. 1983).

The Court notes the well-recognized principle that complaints drawn by pro se litigants are held to a less stringent standard than those drawn by legal counsel. Haines v. Kerner, 404 U.S. 519 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); United States v. Rains, 615 F.3d 589 (5<sup>th</sup> Cir. 2010).

### **CONCLUSION**

Therefore, Mr. Stinson, respectfully requests that this Court grant the petition for Rehearing and order full briefing and argument on the Merits of this case.