

No. 21-7776

ORIGINAL

Supreme Court, U.S.
FILED

APR 28 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Kelvin WRENN — PETITIONER
(Your Name)

vs.

WARDEN D. TONEY, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kelvin WRENN
(Your Name)

565 Bibb LANE
(Address)

BRENT, Alabama 35034
(City, State, Zip Code)

(205) 926-5252
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE CIRCUIT COURT ENTERED A DECISION IN CONFLICT WITH THE DECISIONS OF THE U.S. SUPREME COURT IN BOUNDS V. SMITH, AND HOUSE V. BELL?
2. WHETHER THE CIRCUIT COURT ERRED IN OVERLOOKING AND MISAPPREHENDING THE PRO. SE. PLEADINGS AND THEN DEPARTING FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS?
3. WHETHER THE CIRCUIT COURT ENTERED A DECISION IN CONFLICT WITH THE DECISION THE U.S. SUPREME COURT MADE IN CLAIMS CONCERNING A FUNDAMENTAL MISCARRIAGE OF JUSTICE?

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

1. STATE OF ALABAMA V. WRENN, CC-2012-110 - Circuit Court of Sumter County: Judgment Entered May 21, 2015
2. WRENN V. STATE OF ALABAMA, CR-14-1535 - Alabama Court of Criminal Appeals and Alabama Supreme Court: Judgment Entered November 10, 2016
3. KELVIN WRENN V. WARDEN D. TONEY, ET AL., 7:18-CV-01563-RDP- SG - U.S. District Court For The Northern District of Alabama: Judgment Entered September 16, 2021
4. KELVIN WRENN V. WARDEN D. TONEY, ET AL., 21-13337-E / US Court of Appeals For The Eleventh Circuit: Judgment Entered Feb. 10, 2022

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-11
REASONS FOR GRANTING THE WRIT	12-16
CONCLUSION.....	17

INDEX TO APPENDICES

APPENDIX A decision of U.S. Court of Appeals, decision of The U.S.

District Court And The Findings And Recommendation Of The Magistrate Judge

APPENDIX B REHEARING // RECONSIDERATION

APPENDIX C STATE Court decision(s) ON DIRECT APPEAL

BECAUSE The U.S.C.A. MAKES REFERENCE TO A STATE Court decision

APPENDIX D MOTION TO RECONSIDER, VACATE, OR MODIFY ORDER

DENYING The Right To APPEAL HABEAS CORPUS PETITION

APPENDIX E

Procedural History

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Bounds V. Smith, 430 U.S. 817, 821, 97 S.Ct. 1491 (1977) — 4-7
12-13

House V. Bell, 547 U.S. 518, 536 (2006) — 8-

STATUTES AND RULES

Title 28 USC § 2254 — 3

U.S. Const. AMEND. VI — 10, 11, 15, 16

OTHER

11TH Circuit Rules — 3

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 February 10, 2022.

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: February 10, 2022, and a copy of the order denying rehearing appears at Appendix B.

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. § 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

The Constitutional and Statutory Provision under Title 28 USC § 2254 is VERY Lengthy and Located in Appendix A of This Petition.

The Constitutional and Statutory Provision under 11TH Circuit Rules is VERY Lengthy and CAN BE Located in Part in The FEBRUARY 10, 2022 ORDER in Appendix A AND in Appendix D of This Petition.

STATEMENT OF THE CASE

THE PROCEDURAL HISTORY IS LOCATED IN APPENDIX E.

THE PETITIONER WRENN WAS REPRESENTED BY COUNSEL AT TRIAL
AND ON DIRECT APPEAL IN THE STATE COURT OF ALABAMA AND A
CERTIFICATE OF JUDGMENT WAS ISSUED ON NOVEMBER 10, 2016.

AFTERWARDS - ON OR ABOUT JANUARY 23, 2017
WRENN FILED A TIMELY POST-CONVICTION PETITION PURSUANT TO
RULE 32 OF THE ALABAMA RULES OF CRIMINAL PROCEDURE FROM
THE ONE AND ONLY ALABAMA RULES OF COURT PRISON OFFICIAL
PROVIDED TO HIM.

THIS LAW BOOK WAS THE 2004 EDITION AND WAS OLD, WORN AND
MARKED UP WITH WRITING ALL OVER MANY PAGES.

A COPY OF THE RELEVANT PAGES ARE ATTACHED WITH THIS
PETITION LOCATED IN APPENDIX D.

IN THIS 2004 EDITION OF THIS ALABAMA RULES OF COURT,
RULE 32.1(F) WAS/IS THE COURT'S MAIN FOCUS FOR DISMISSING
THE FEDERAL HABEAS CORPUS PETITION AS PROCEDURALLY
DEFAULTED. THE RULE PROVIDES FOR AN OUT-OF-TIME
APPEAL IF WRENN FAILED TO PURSUE HIS "DIRECT APPEAL"
WITHIN THE PRESCRIBED TIME AND THAT FAILURE WAS WITH-
OUT FAULT ON THE PETITIONER'S PART.

IN WRENN'S CASE, ON "DIRECT APPEAL" THE CERTIFICATE
OF JUDGMENT WAS ISSUED ON NOVEMBER 10, 2016 IN THE
ALABAMA SUPREME COURT — A COPY IS ATTACHED LOCATED
HERE IN APPENDIX C.

ON OR ABOUT JANUARY 23, 2017 WRENN FILED A PRO SE
POST CONVICTION RULE 32 PETITION IN STATE COURT.

The Rule 32 Petition was timely file pursuant to the limitation period under Rule 32.2(c) which allowed one(1) year after the issuance of the certificate of judgment by the Alabama Court of Criminal Appeals.

The 2004 Edition did not require any other appeal process and prison officials did not provide anything in the law library.

In 2005, a year later the Alabama Rules of Court was amended and expanding Rule 32.1(f) to then include the requirement to appeal the denial of a post conviction petition.

Prison officials never provided WRENN and others the amendment of the Alabama Rules of Court.

WHEN WRENN FILED his Rule 32 Post-Conviction Petition
ON OR ABOUT JANUARY 23, 2017, PRISON OFFICIALS PROVIDED
THE ONLY LAW BOOK THEY HAD AVAILABLE, WHICH WAS THE
2004 EDITION OF THE ALABAMA RULES OF COURT.

THE FEDERAL COURT OF APPEALS IN THIS HABEAS PROCEEDING
LOCAL RULE 11TH CIR. R. 27-2 PROVIDED 21 DAYS FOR WRENN
TO FILE "A MOTION TO RECONSIDER, VACATE, OR MODIFY
ATTACHED IN APPENDIX A
WRENN FILED IT AND SHOWING THAT REASONABLE JURIST
WOULD DEBATE IT. - ATTACHED HERE IN APPENDIX D.

THE FEDERAL APPEALS COURT DENIED THE MOTION
ATTACHED HERE IN APPENDIX B

THE FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS
PRESENTED ARE, THE U.S. SUPREME COURT HAS STATED THAT IT
IS ESTABLISHED BEYOND DOUBT THAT PRISONERS HAVE A RIGHT
CONSTITUTIONAL OF ACCESS TO THE COURTS. AND THAT A LAW-
LIBRARY MUST BE EQUIPPED. AND THEY MADE THIS CLEAR IN
BOUNDS V. SMITH.

THE U.S. SUPREME COURT ALSO MADE CLEAR IN HOUSE V. BELL
THAT THE MISCARRIAGE OF JUSTICE "EXCEPTION APPLIES" WHEN
A CONSTITUTIONAL VIOLATION HAS RESULTED IN THE CONVICTION OF
SOMEONE WHO IS ACTUALLY INNOCENT AND THAT ACTUAL INNOCENCE
MEANS FACTUAL INNOCENCE, NOT MERE LEGAL INSUFFICIENCY.

IN THIS HABEAS CORPUS PROCEEDING, WREN RAISED NINE

(9) CLAIMS OF CONSTITUTIONAL VIOLATIONS AND ONLY ONE (1) WAS ADDRESSED; THE REST WAS BARRED AS A PROCEDURAL DEFECT. THE LOWER FEDERAL COURT TREATED IT AND REASONING THAT PERHAPS ACCOUNTING FOR THE JURISDICTIONAL PREDICAMENT FACED BY PRO-SE PRISONERS IN WRENN'S POSITION, EFFECTIVE JUNE 1, 2005, RULE 32.1(F) OF THE ALABAMA RULES OF CRIMINAL PROCEDURE ALLOWS A PETITIONER TO OBTAIN AN OUT-OF-TIME APPEAL OF THE DENIAL OF A PRIOR RULE 32 PETITION.

THE FEDERAL LOWER COURT DID NOT TAKE INTO ACCOUNT THAT WRENN HAS TO USE THE 2004 EDITION THAT PRISON OFFICIALS PROVIDED, WHICH DID NOT REQUIRE IT.

THE OTHER FACTS MATERIAL TO BE CONSIDERED PERTAINS TO

THE CONFRONTATION CLAUSE CLAIM; THE SIXTH AMENDMENT
GUARANTEES CRIMINAL DEFENDANTS THE RIGHT TO CONFRONT
ADVERSE WITNESSES.

THE CONFRONTATION CLAUSE PREVENTS THE ADMISSION OF A CO-
DEFENDANT'S PRETRIAL CONFESSION THAT IMPLICATES ANOTHER
DEFENDANT UNLESS THE CONFESSOR TESTIFIES, ALLOWING CROSS-
EXAMINATION AND INTRODUCING A CONFESSION AT TRIAL.
CANNOT BE CURED BY A LIMITING INSTRUCTION.

DURING TRIAL, THE STATE INTRODUCED A TESTIMONIAL STATEMENT OF
SOMEONE THE STATE "CLAIMED" TO BE THE CO-DEFENDANT AND
WRENN WAS DENIED THE RIGHT TO CONFRONT THIS WITNESS. WAS
BELIEVED TO BE ACTUALLY A FALSE WITNESS FOR THE STATE.

THE U.S. DISTRICT COURT SAID IT WAS WITHOUT MERIT,

And The U.S. Appeals Court AGREED And DENIED A CERTIFICATE OF APPEALABILITY on it Also.

CLEARLY REASONABLE JURIST WOULD AND COULD DEBATE THIS.

WHEN TESTIMONIAL EVIDENCE IS AT ISSUE, THE SIXTH AMENDMENT
REQUIRES WITNESS AVAILABILITY FOR CROSS-EXAMINATION.

REASONS FOR GRANTING THE PETITION

THERE ARE MANY REASONS Why CERTIORARI Should BE GRANTED in

This CASE; First The U.S. District Court and U.S. Circuit Court

of Appeals FAILED To Adher To The LIBERAL Construction

AFFORDED PRO.SE PLEADINGS OF PRISON INMATE WRENN, AND THAT

PRO.SE PLEADINGS AND COMPLAINTS ARE GOVERNED By LESS

STRINGENT STANDARDS Than PLEADINGS dRAFTED By

LAWYERS. SECOND, Prison Officials only Provided WRENN

THE ONLY ALABAMA RULES OF COURT AVAILABLE in ~~THE~~

THE PRISON, WHICH WAS AN OLD, WORN, OUTDATED LAW BOOK (2004 EDITION).

PRISON OFFICIALS DID NOT INFORM, NOR PROVIDE ANY AMENDMENT IN WHICH THE RELEVANT RULE (RULE 32.1(F)) WAS AMENDED IN 2005.

THE PETITIONER HAD NO WAY OF KNOWING AN ADDITIONAL REQUIREMENT HAD BEEN ADDED.

WRENN PRESENTED THIS FACT TO THE FEDERAL APPEALS COURT IN HIS MOTION TO RECONSIDER, VACATE, OR MODIFY ORDER.

IN ADDITION, WRENN DID NOT FAIL TO APPEAL HIS CONVICTION ON DIRECT APPEAL.

THE COPELLING REASONS ALSO INVOLVS A FUNDAMENTAL MISCARRIAGE OF JUSTICE BECAUSE THE PETITIONER ~~IS~~ IS ACTUALLY INNOCENT.

The decision of the lower federal courts and the national importance of having the Supreme Court review would be to insure not only conflict with the decision of another federal court, it would also guarantee equal protection for the accused.

The decision of the lower federal courts is in conflict with the court in Bounds v. Smith as well as the petitioner's right of meaningful access proper law books.

The petitioner was provided by prison officials a 2004 edition of an Alabama Rules of Court, but never provided the amended 2005 edition and the lower federal courts never considered the error.

THE PETITIONER SHOWED CAUSE FOR THE DEFAULT AND
PREJUDICE, EVEN ATTACHED AN ADDENDUM INCLUDING AN
EXHIBIT; ALSO MOVING TO COMPARE RULE 32.1(F) OF
THE 2004 EDITION WITH THE 2005.

THE PETITIONER WAS NOT REQUIRED BY LAW TO CITE ANY
POINTS OF LAW, IT WAS NOT NECESSARY BECAUSE
REASONABLE JURIST COULD DEBATE THE ISSUE.

THE COURT OVERLOOKED AND MISAPPREHEND NOT ONLY
THE MOTION BUT THE PRO. SE WAY THE PETITIONER
PRESENTED HIS PETITION ALL TOGETHER.

• • • • •
ANOTHER REASON WHY CERTIORARI SHOULD BE GRANTED IN
THIS CASE IS THE TESTIMONIAL EVIDENCE OF A CO-DEFENDANT

INTRODUCED AT TRIAL.

THE TESTIMONIAL STATEMENT OBVIOUSLY WAS VERY IMPORTANT TO THE STATE PROSECUTION THAT IT WAS INTRODUCED AND IT SHOULD NOT MATTER WHAT VERSION WAS INTRODUCED INTO EVIDENCE.

IN THIS HABEAS CORPUS, THE LOWER FEDERAL COURT DID NOT ALLOW PETITIONER WRENN TO SHOW THE HARMLESS ERROR HOLDING RESULTED IN ACTUAL PREJUDICE; BECAUSE UNDER THIS TEST, RELIEF IS PROPER.

IN ADDITION, THE INTRODUCTION OF THE STATEMENT COULD HAVE BEEN A FABRICATION BY LAW ENFORCEMENT, THE NATIONAL IMPORTANCE OF HAVING THE SUPREME COURT TO DECIDE WOULD SET BETTER STANDARDS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kurt L

Date: 4-28-22