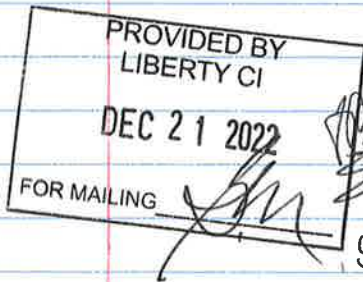


NO: 22-5046



IN THE
SUPREME COURT OF THE UNITED STATES

JAMES R. BUTLER - PETITIONER

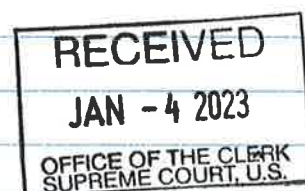
V.S.

STATE OF FLORIDA - RESPONDENT

PETITION FOR REHEARING

JAMES R. BUTLER, DOC # B15441
LIBERTY CORRECTIONAL INSTITUTION
11064 NW DEMPSEY BARRON Rd,
BRISTOL, FLORIDA, 32321

PHONE: NONE



REASONS FOR GRANTING THE PETITION

THE PETITIONER, James R. Butler, pro se, moves this Court for rehearing of Case No. 22-5046

On Oct. 3, 2022 this Court denied the Petition for a Writ of Certiorari. Petitioner respectfully asks the Court to review its decision based on the belief that the Court overlooked or misapprehended the facts presented and the extra-ordinary importance of the questions to future cases of similar nature.

In Support thereof Petitioner would show:

Question A:

- (1) Concerned what constituted a valid oath during a criminal proceeding.
- (2) The Oath is covered under 28 U.S.C.S. § 459:

Administrations of Oaths, Affirmations and Acknowledgements: Each judge or justice may administer Oaths and Affirmations. (June 25, 1998, Chapter 642, 62 Statute 908).

(3) The United States Constitution, Confrontation Clause:

ie Oath; ensures, that the witness will give testimony under Oath, impressing upon the witness the seriousness of the matter and protecting against a lie by the possibility of perjury.

(4) The witness Peggy Sue Batlen testified after being sworn in by an Australian notary, Marcus Jenkins, located in New Castle Australia, (see) (P*)

001467, 001468; (T*) pp 507:23-25 and 508:1-2.

(5) P.S. Batlen was also testifying from Australia because she simply refused to return to the United States for the trial. Not an acceptable reason,

(6) The main United States Supreme Court case addressing the Confrontation Clause in the context of video-satellite transmission testimony and the oath is Maryland v Craig, 497 us 836 (1990).

(7) Relying heavily on Craig, the Florida Supreme Court addressed the issue of video-satellite testimony in Harrell v State, 709 So.2d (Fla.1998).

(8) The court stated that there are certain exceptions where a defendant's right to face to face confrontation will give way to "consideration of public policy and the necessities of the case!"
Id at 1368 (quoting Craig, 497 us at 849-51).

"However such exceptions are only permitted when, the reliability of the testimony is otherwise assured."

(9) Id, The court stated that the reliability can

be found when the witness gives testimony under Oath.

(10) Clearly Petitioner has proven the Oath as sworn by the witness P.S. Butler was [not] a valid oath as required during a criminal proceeding. (see) Initial Petition paragraphs (1) thru (2).

(11) The Court in Martin v Hunter's Lessee, 14 us 304 (1816); affirmed the U.S. Supreme Court's right to appellate jurisdiction, that is, the right to review all state court judgments in cases arising under Federal Constitution or a Law of the United States.

(12) Allowing a witness to testify without swearing a valid oath is absolutely a violation of a defendants due process right to a fair trial. Making the conviction and sentence of Petitioner's case illegal and his incarceration a travesty of justice.

(13) In Powell v. Alabama, 287 us 49 (1933), extended the Fourteenth Amendment of the U.S. Constitution guarantee of due process law to State Courts.

(14) The Oath is an integral part of the Confrontation

Clause of the Sixth Amendment. The decision of this issue is of great national importance to

every defendant in the technological age we

live in. As a defendant's due process rights to

a fair trial are the foundation of our justice system,

(15) this error by the Court constituted a constitutional

error. "Constitutional errors with rare exceptions are subject to harmless error analysis," (see) State

v. Dequilio, 491 So.2d 1129, 1134 (Fla. 1986); The state as

the beneficiary of the error must prove beyond a

reasonable doubt that the error complained of did

not contribute to the verdict.

(16) For a Writ of Certiorari to issue the petitioner must establish:

(a) A departure from the essential requirements of Law; here, the States witness testified without being sworn in by an authorized official of a U.S. Court.

(b) Resulting in a material injury to the remainder of the case; the witness P.S. Butler was the only alleged witness to the alleged offense. There was no other witness to the alleged offense; there was not one iota of physical evidence to support the allegation and no other witness testified to any material disputed [Fact] of the alleged offense.

(c) that was not remedied on post-judgement appeal. It was not; (see) Appendix (B).

(17) Where P.S. Butler testimony was inadmissible

due to the invalid oath and there is no physical evidence, nor any witness to testify to the material facts of the case the State does not present adequate testimony or evidence to sustain a conviction. The conviction and sentence should be reversed.

(18) Thus the decision of the District Court conflicts with the decisions of Maryland v. Craig, Howell v. State, Crawford v. Washington, and the Confrontation Clause, is Oath of the Sixth Amendment of the U.S. Constitution, as well as violating Petitioner's due process rights under the Fifth Amendment.

(19) For the reasons stated above the Petitioner would invoke the Judicial Discretion of this Honorable Court, to review its decision and upon review that a writ of certiorari issue, or that the cause be remanded to a federal Court.

Question B:

(21) Concerned a Miranda violation which occurred during the interrogation of petitioner, J.R. Butler, on May 12, 1998, by an investigator for the 22nd District Attorney's office, Segouyah County, Oklahoma, Jennifer Hale.

(22) The State through state's witness J. Hale argued that it was not a custodial interrogation. However, J.R. Butler was in jail on May 12, 1998, (see Appendix F, Exhibit m-1 of the initial petition, the order of release dated May 13, 1998, signed by Judge S. Sprouse of the District Court of Segouyah County, Oklahoma. J.R. Butler was in jail on an unrelated case no. cm-98-286 on the 12th,

(23) Thus a Miranda warning was required before interrogation by an agent of the State. (see) Miranda v Arizona, 384 us 436, 86 S.Ct. 802, 16 2Ed 699 (1966).

(24) No actual documentation was ever submitted to the court at trial or in the State's response on appeal to prove that S. Hale had ever Mirandized J.R. Butler.

(25) Miranda warnings are "not themselves protected by the constitution, but are instead measures to ensure that a [suspect's] rights against compulsory self-incrimination are protected;" (see) Moran v Burbine, 475 US 412, 425, 106 S.Ct. 892, 410 (1986).

(26) Under the Fifth Amendment, "no person shall be compelled in any criminal case to be a witness against himself."

(27) Miranda creates a rule of evidence:

Statements made during custodial interrogation by a person who is not informed of, or waived his privilege against compulsory self-incrimination and the

right to counsel are inadmissible in a criminal proceeding, (see) U.S. v. Peterson, 414 F.3d 825, 828 (2nd cir. 2005). Miranda is required during any interrogation where it is "likely to elicit an incriminating response." (see) U.S. v. Torres-Luna, 491 F.3d 750, 757 (8th cir 2007).

(28) Malloy v Hogan, 378 us 1 (1964), extended the Fifth Amendment protection against self-incrimination to criminal defendants in state courts. The Court used the due process clause of the fourteenth Amendment to extend the provisions of the fifth Amendment to the states, thus expanding the rights of criminal defendants.

(29) Powell v. Alabama, 287 us 45 (1933), extended the fourteenth Amendment guarantee of due process to the state courts.

(30) where J. Hale's testimony consisted entirely of her interrogation of J.R. Butler on May 12, 1998, and due to the above stated reasons was inadmissible, and where J. Hale was easily the most prolific witness for the state, the jury's verdict would have been significantly different, resulting in a fundamental error during trial requiring reversal.

(31) The decision of the District Court of Appeal directly conflicts with the Florida Supreme Court on the issue of custodial interrogation as relates to a Miranda violation; (see) Ross v. State and the Self-Incrimination Clause of Article I, Section 9 of the Florida Constitution and enunciated in; Traylor v. State, 596 So.2d 989 (Fla. 1992). The decision also conflicts with Federal cases; Miranda v. Arizona, Monroe v. Barbee, U.S. vs Peterson, and U.S. v. Torres-Lopez.

CONCLUSION

THE PETITION for Rehearing of the Petition for a writ of Certiorari should be granted

Respectfully Submitted,
(s) James R. Butler #B15441
James R. Butler #B15441

December 121/2022

CERTIFICATION

THE, Petitioner, James R. Butler, pro se, certifies that the grounds presented are limited to intervening circumstances of substantial or controlling effect.

THE, Petitioner also certifies that the petition for rehearing is presented in good faith and not for delay.

December 121/2022

(s) James R. Butler #B15441
James R. Butler Doc #B15441
Liberty Correctional Institution
11064 N.W. Dempsey Barron Rd.
Bristol, Florida, 32321

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PROOF OF SERVICE

I, James R. Butler, do swear that on this date Dec/21/2022, as required by Supreme Court Rule 28, I have served the enclosed Petition for Rehearing on each party to the above proceeding on that party's counsel, and on every other person required to be served, by depositing an envelope containing the documents in the United States Mail, properly addressed to each of them and with First class postage prepaid.

Those served are as follows:

Office of the Clerk, Supreme Court of the United States,
Washington, D.C. 20543.

Solicitor General of the United States, Room 5614, Dept. of Justice,
950 Pennsylvania Ave. N.W. Washington, DC, 20530-001.

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

EXECUTED on Dec. 13/2022

(S) James R. Butler #B15441

James R. Butler - Doc #B15441

Liberty Correctional Institution
11064 N.W. Dempsey Barron RD,
Bristol, Fla. 32321

**Additional material
from this filing is
available in the
Clerk's Office.**