

No. 22-5099

ORIGINAL

Supreme Court, U.S.
FILED

APR 28 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

ERWIN WITTNER — PETITIONER
(Your Name)

VS.

U.S. ATTORNEY GENERAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ERWIN WITTNER
(Your Name)

926 HICKORY ROAD
(Address)

OCEALA FL. 34472 - 2426
(City, State, Zip Code)

352 - 512 - 6749
(Phone Number)

QUESTION(S) PRESENTED

- (1) The right to be granted extended time to secure counsel.**
- (2) The Right to Obtain Burden of Proof.**

- (i) The Right to the Sixth Amendment (Advisal Statute) which was not advised by the Spartanburg appointed Public Defender.**

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

Erwin Whitter v. State of South Carolina, No. 2021-CP-43-015311, U.S. District Court of Spartanburg. Judgment entered Jan. 11, 2022

Erwin Whitter v. William P. Barr U.S. Attorney General, No. A077-361-246, U.S. Court of Appeals For the District of Columbia Circuit. Judgment Entered Unknown.

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STATUTES AND RULES

8 U. S. C. §1158, (D)Changed circumstances; An application for asylum of an alien may be considered, notwithstanding subparagraphs (B) and (C), if the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application within the period specified in subparagraph (B).

(B)Burden of proof (i)In general; The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

Rule 404(b), at its heart, prevents evidence of a person's character from being admitted at trial to prove that the person acted in accordance with that character or trait.¹ There are, of course, statutory exceptions to this rule. Rule 404(b) states that evidence of other acts are admissible to show opportunity, intent, knowledge, or absence of mistake.² This rule of evidence is often used in criminal trials, but is criminally underutilized in civil trials.

Evidence of "other acts" isn't likely to supplant evidence of business records in civil construction cases any time soon. However, this type of evidence, in certain situations, can be extremely valuable – even dispositive. Exceptions such as prior knowledge, lack of mistake, or motive can show a jury evidence that would not be admitted otherwise. This evidence can be admissible not only under the exceptions listed in the statute, but under other exceptions as well, such as the doctrine of chances. Also, even in cases where the evidence was excluded, the parties still went through discovery on these issues. As the above cases show, this

type of evidence could be admissible. Thus, it is discoverable. The result is access to more information – and more relevant information leads to more leverage in settlement and at trial. Therefore, construction lawyers should consider using this evidence more frequently.

II. Burden of Proof

The second issue raised by the State concerns whether the circuit court incorrectly placed the burden of proof on defendant during the hearing on defendant's motions to suppress his two pretrial statements. In his motions and during the suppression hearing, defendant contended he did not knowingly and intelligently waive his constitutional Miranda rights because he could not understand the standard Miranda warnings. The circuit court denied defendant's motions. The appellate court, however, found that the circuit court improperly placed the burden of proof on defendant rather than on the State. Therefore, the appellate court remanded the cause to the circuit court for reconsideration of defendant's suppression motions based on the correct burden of proof.

Justia US Law. *66 For the foregoing reasons, we reverse the judgment of the appellate court and affirm the judgment of the circuit court. Defense counsel indicated during oral argument before this court that the appellate court did not address all of the issues presented before it because it reversed defendant's convictions for other reasons. Consequently, defense counsel asks that if we reverse the appellate court, we remand the cause to the appellate court for consideration of those issues the appellate court failed to resolve. We grant defense counsel's request and remand this cause to the appellate court for consideration of those issues raised by defendant, but not previously resolved by us or the appellate court.

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 B 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 _____ 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 A to the petition and is

reported at 05/06/2020; 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: _____, 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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was JAN. 11 2022. A copy of that decision appears at Appendix B.

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

Burden of Proof: Article IV Primary tabs **Section 1.** Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

The Right to the Sixth Amendment (Advisal Statute): Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

The right to be granted extended time to secure counsel: Rule 32.1: (i) notice of the hearing and its purpose, the alleged violation, and the person's right to retain counsel or to request that counsel be appointed if the person cannot obtain counsel; **Find Law; The Sixth Amendment - Rights of the Accused:** Adopted in 1791 as part of the Constitution's Bill of Rights, the Sixth Amendment addresses important issues relating to criminal law. It grants several rights to those facing criminal charges, including the right to an attorney and the right to a trial by jury.

STATEMENT OF THE CASE

I, Erwin Whitter *Pro se*, shall present a **concise** statement of the following: The Spartanburg County Court presented a Public Defender, which He failed to provide the "Advisal Statute" which would have produced a different outcome, the defendant accepted a guilty plea without this provision. The defendant was unaware of his immigration rights, also the acceptance of a guilty plea at that time, for the applicant has a clean record, and was not educated on the laws. The applicant has been in the appropriate appeals courts trying to seek justification on this particular matter. The applicant as a *Pro se* has been trying to follow producal, at times with the discovery being denied, for lack of the legal system. The applicant now seeks to find Justice on this action by The Supreme Court of The United States. The BIA did not address the issue at hand with the denied request for an extension from the Immigration Judge (IJ) in this matter, therefore the applicant moved to The United States Court of Appeals For The Eleventh Circuit. The Eleventh Circuit has Denied most applications on this matter, also justifying the BIA decision. The applicant would like to be heard for the sake of Justice and the U.S. Constitution provisions.

Mr. Whitter has been denied time to seek legal aid, time to present the Burden of Proof, also His Advisal Statute.

REASONS FOR GRANTING THE PETITION

Firstly, Granting this petition has a high likelihood of success on merit. Granting stay would serve the public interest by allowing petitioner to remain safely in the United States while the Court considers the merit of the Petition, for the sake of justice and adjudicates this case for first impression. The issues to be raised in this Petition should be granted considering the circumstances in its totality with regards to exercise of discretion. Petitioner would face extreme hardship, irreparable damages. *The amicus brief filed by NIJC and other groups in 2008 had pointed out that it is very difficult for a noncitizen to return to the United States once removed. [I]n practice it is extremely difficult for an alien to return once he has been deported, even if his petition for review has been successful. There is no class of visa or other formal reentry mechanism available to aliens who have been previously removed but have successfully challenged their removal orders. As a result, trying to obtain travel documentation that will permit a returning alien to reenter the United States can be onerous, extraordinarily time-consuming, and often entirely improvisatory.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe". It is written in a cursive style with a horizontal line underneath.

Date: June 27 2022