

UNITED STATES SUPREME COURT

December 13, 2022

Demetrius Wade, Petitioner.

**Motion for Re-hearing  
(out of time )**

V.

Harold Clarke, Director for  
Va. Dept. of Corrections,  
Respondent.

No: 22-5330

Comes Now, Pro-se Petitioner, Demetrius Wade, and motions this Honorable Court to ask leave to file a petition for re-hearing out of time, pursuant to Rule 44.2 of this court.

On October 3, 2022, The United States Supreme Court denied petitioner's writ of certiorari that's related to the case number provided above. However, because of a recent change in Virginia Department of Corrections' operating procedure 803.1, which is in regards to legal mail, petitioner didn't receive the notification letter that arrived at GreenRock Correctional Center on October 5, 2022. Instead, petitioner received a Notice of Unauthorized Correspondence from the institution's mail room that indicated that that particular legal document was returned back to your court and that all legal documents must first be forwarded to the Central Mail Distribution Center at 3521 Woods Way, State Farm, Va 23160.

On October 12, 2022, petitioner again received another Notice of Unauthorized Correspondence from the institution's mail room making him aware that a document from your court was forwarded directly to the institution but that it

had been returned back to your court with another unauthorized correspondence letter which advised you that all legal mail had to first be sent to the Central Mail Distribution Center in State Farm, Virginia for screening purposes. I've included a copy of those documents along with this motion.

Because there was the passing of petitioner's dad at the same time as these events were occurring, Petitioner wasn't able to have a family member to phone your court to see what those returned documents contained. However, petitioner was able to access the institution's law library and view the Nexis system which showed that petitioner's writ was denied on October 3, 2022. Upon learning this information, petitioner forwarded a motion to this court making it aware of his current circumstance and also asking leave to file an out of time re-hearing petition. A document approving the video viewing of petitioner's Dad's funeral is also included with this motion.

Shortly after petitioner submitted his first motion to your court asking for an extension of time to file his petition for a rehearing on November 10, 2022, petitioner then forwarded a memorandum from that rehearing. However, a copy of that initial motion hasn't been returned to the petitioner.

Petitioner has included with this motion all relevant documents which he hopes will verify that his filing was timely.

Unfortunately, during the preparations of this document, the Christmas holiday impeded petitioner's ability to complete, copy, and mail this document to your court. Also, we're experiencing another Covid outbreak here at this institution that temporarily delayed normal operations which started on December 31, 2022..

UNITED STATES SUPREME COURT

Memorandum for Rehearing

Case No. 22-5330

**Claim # 1 on writ of certiorari**

Petitioner ask that the Honorable Justices of this court review claim # 1 of his writ of certiorari in light of the case law that petitioner used to support this claim. The cases presented undoubtedly show that petitioner's 5th, 16th, and 14th Amendment rights were violated, and that the decisions made were in conflict with courts of other circuits, and that of the 4th circuit.

A clear case of violation of the fundamental rights took place when Officer Levering of the Roanoke City Police Department deliberately removed bullet fragments from an evidence bag that was sealed, and should have only been unsealed by the forensic scientist who was to compare those particular fragments to potential murder weapons which were also in her possession.

What makes this violation significant is that other weapons of different caliber, and some being of the same caliber were collected from the crime scene. There was also shell casings collected that were fired from different weapons but were of the same caliber.

This violation underminds the work that honest cops perform on a daily basis and likewise sends the message that it's okay to 'violate' a defendant's constitutional rights when he's suspected of committing a crime, has limited resources to prove his innocence(indigent), and is a black male from the inner cities of America.

The police in this issue has tampered with evidence in order to make a case without pursuing other leads in which the evidence directed.

## Claim # 2 on writ of certiorari

Petitioner ask that the Honorable Justices of this court review claim # 2 of his writ of certiorari in light of the case law that petitioner used to support this claim. The cases presented undoubtedly show that petitioner's 5th, 6th, and 14th Amendment rights were violated, and that the decisions made were in conflict with courts of other circuits, and that of the 4th circuit.

Petitioner's trial counsel was constitutionally ineffective in this claim because he failed to exercise diligence when investigating the issues that were presented in the previous claim.

Because counsel failed to correct or to even attempt to bring to light the unlawful conduct on behalf of the Roanoke City Police Department, his actions are just aggrievous as theirs and are in conflict with the 6th amendment of the constitution and all the underlying, supporting case law.

Trial counsel failed to investigate, or ignored evidence that could've exonerated petitioner or have reasonably weakened the Commonwealth's case against him. Instead, trial counsel made many recommendations that petitioner enter into plea negotiations whereas, there was a reasonable defense that existed for petitioner.

~~The state habeas court even ruled that trial counsel was deficient in this claim but that petitioner is unable to show prejudice. Likewise, the state court even acknowledged that Officer Levering of The Roanoke City Police Department didn't submit all the evidence that he received from the victim's autopsy to the forensics unit so that they could be tested against weapons. The fact that it was accepted that that's what had occurred is enough to show that trial counsel's deficiency in this claim also was a prejudice to the petitioner and is not harmless error.~~

### **Claim # 3 on writ of certiorari**

Petitioner ask that the Honorable Justices of this court review claim # 3 of his writ of certiorari in light of the case law that petitioner used to support this claim. The cases that were presented undoubtedly show that petitioner's 5th, 6th, and 14th Amendment rights were violated, and the decisions made were in conflict with other circuits, and that of the 4th circuit.

Trial counsel for the petitioner was constitutionally ineffective in this claim when he provided incorrect information to petitioner when he first negotiated and then presented him with a potential plea offer, which had limited time to accept restrictions, which was 2 months before trial.

The state habeas court ruled that trial counsel was deficient but that petitioner wasn't prejudiced.

The lower courts are overlooking the petitioner's constitutional protections in regards to this issue and are instead, looking at the fact that petitioner refused the initial offer of 35 years because he didn't have all or the correct information needed to weigh the benefits or the consequences of taking the offer. However, they agree that trial counsel caused the error, but they don't believe petitioner when he stated, from the beginning, even during pre-trial, that this was an issue. The lower courts have erred because they've made a ruling based off of their own personal assessment instead of ruling based on constitutional law, case law, established law, etc.

### **Claim # 4 on writ of certiorari**

Petitioner ask that the Honorable Justices of this court review claim # 4 of his writ of certiorari in light of the case law that petitioner used to support this claim. The cases presented undoubtedly show that petitioner's 5th, 6th, and 14th Amendment rights were violated, and that the decision made were in conflict with other circuits, and that of the 4th circuit.

The cases presented undoubtedly show that petitioner's 6th and 14th Amendment rights were violated, and that the decisions made were in conflict with courts of other circuits, and that of the 4th circuit.

Similar to the previous claim, trial counsel on the day of trial, after voir dire, in a court holding cell, persistently told petitioner that had he been convicted, that he would certainly be punished for four murders, although there was only two victims. As was in the previous claim, trial counsel even went so far as to write those statements on paper which petitioner submitted as exhibits.

It wasn't until petitioner transferred to prison that he was able to confirm that the information used by his trial counsel to persuade him to enter a plea was indeed incorrect. Even on the days leading up to trial, petitioner consistently asked his counsel if that was possible and he assured him that it was most certainly going to happen.

The state habeas court like in the previous claims, ruled that trial counsel was deficient but that petitioner wasn't prejudiced as a result.

It's obvious that because of the type of error on behalf of petitioner's trial counsel in this claim, that petitioner was without dispute prejudiced.

There's also mountains of case law supporting petitioner's request for relief in this claim. Some in which he presented, and most being from decisions made in your court.

This error also underminds judicial and constitutional protections put in place to avoid and to correct the very issues such as these.

When tallied together; trial counsel's actions had a negative cumulative affect on petitioner and as a result he has suffered a grave harm.

## CONCLUSION

In some instances, petitioners/defendants are unable to prove their innocence because the trial court and the officers thereof, have negotiated deals that allows leniency for parties that are represented by hired counsel. For the most part, our judicial system works in bringing about justice for victims and their families. However, in much of those cases, defendants who are indigent are left to bear the punishment for crimes that they didn't commit. In cases such as those, it's almost impossible to show their innocence through post conviction as well. Those individuals are left with showing that because there were mistakes made in their cases, that they made not have been exonerated but, they have discovered through due diligence and by participating in their own defense that, they wasn't afforded all the rights that should be afforded to defendants situated in the same judicial posture as them.

Petitioner in this petition discovered long before post conviction was appropriate, that his trial counsel wasn't performing at the level that he should have been functioning in regards to his representation of the petitioner.

Petitioner ask the courts to re-visit the issues that he has presented. As stated earlier, petitioner acknowledges that because of the type of crime he's been convicted of, and all the similar crimes that America has been plagued with as of lately, his innocence will almost with certainty be overlooked. However, petitioner is asking that the courts who can clearly see the mistake of his trial counsel during plea negotiations, take action and re-instate those negotiations which would be a close simulation of other cases similarly situated that have received that further action on behalf of the court.

Petitioner prays that the Honorable Justices of this court grants the request of this petition, after careful consideration and review.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the attached documents were forwarded to The United States Supreme Court at Washington, DC 20543-0001 and to Virginia's Attorney General at 202 North 9th Street in Richmond, Virginia 23219, on the 25<sup>th</sup> day of April, 2023

Demetrius Wade # 1240734  
GreenRock Correctional Center  
Post Office Box 1000  
Chatham, Virginia 24531

Demetrius Wade /Pro-se  
Demetrius Wade

Bereavement Visit Request - Institutions

Part I: Complete for all Bereavement Visits (Part II is not required for Video Visits, Facility Unit Head has Final Authority for Approval or Disapproval of Video Visits)

Facility:	Greco Rock		Date: 10/4/22	Private Visitation <input type="checkbox"/>	Deathbed Visit <input type="checkbox"/>	Video Visit <input type="checkbox"/>
Inmate Name:	Demetrius Jermaine Wade		Number: 1240734			
Offense(s):	2 counts of felony Murder / 2 counts of Use of firearm					
Total Sentence:	48 years		PED: —	MPRD: —	GTRD: 11-2-56	
DRC: 7-8-2016	DCRI: —	Security Level: 3	Date Assigned Security Level: 3-7-2022			
Date of Birth/2-18-75	Class Level: 1	Medical Class: B	Mental Health Class: 0			
Detainers:	None					
Victim Registered (VACORIS Alert):	<input type="checkbox"/> Yes <input type="checkbox"/> No					
Dates of Prior Private Visitation/Deathbed Visits:						
Name of Deceased/III Relative:	Wendell Haley		Relationship to Inmate: Father			
Date of Proposed Visit:			Time of Visit:			
Are there any unusual circumstances concerning this private visitation/deathbed visit? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						
Explain:						
Will any other inmates request to attend?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Are they approved? <input type="checkbox"/> Yes <input type="checkbox"/> No		Are they disapproved? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Names of other inmates and facility assignment:						

Family Member Contacted:	Monica Johnson		Relationship to Inmate: Sister	
Phone: 540-916-6636	Will Any Family Members Object? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Explain: _____	
Are Funds Available to Cover Expenses? (If applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Who Will Pay Expenses: Monica Johnson			
How Will Payment be Made?				
Name/Title of Staff Member Verifying All Information:	St. Williams			
Recommendation:	Approve		Date: 10-4-2022	

Facility Unit Head or Administrative Duty Officer Decision:
Preliminary Approval for Death Bed/ Private Visitation: Approved <input checked="" type="checkbox"/> Disapproved <input type="checkbox"/>
Final Approval for Video Visits: Approved <input checked="" type="checkbox"/> Disapproved <input type="checkbox"/>
Comments:
Signature: BL
Date 10/4/2022



COMMONWEALTH of VIRGINIA

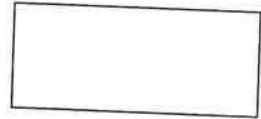
Barry L. Kanode  
Warden

Department of Corrections  
Division of Institutional Services  
GREEN ROCK CORRECTIONAL CENTER

P.O. BOX 1000  
CHATHAM, VA 24531-1000  
(434) 797-2000  
Fax: (434) 797-8161

Date: October 5, 2022

TO: Office of the Clerk  
Supreme Court of the US  
Washington, DC 20543



FROM: Mailroom Supervisor

SUBJECT: UNAUTHORIZED CORRESPONDENCE

Please be advised that the enclosed correspondence and/or item you sent to Wade, Demetrius Jermaine, #1240734 is unauthorized in accordance with Operating Procedure 803.1, *Inmate and Probationer/Parolee Correspondence* for the following reason(s):

Recipient cannot be identified, please address with the full legal name and DOC number

Correspondence with inmates at the Virginia Center for Behavioral Rehabilitation or in local, state, or federal, adult, or juvenile correctional facilities and jails must be pre-approved by both unit heads

Third party correspondence is prohibited

Correspondence containing DOC staff, contractor, or volunteer personal information (social security number, address, phone number, etc.) is prohibited

Correspondence, documents, drawings, or symbols of any type that contain or indicate gang/STG identifiers, language, or information is prohibited.

Coded or encrypted correspondence is prohibited.

No unauthorized property permitted through the mail.

No cash, money orders, certified/ cashier's checks, or personal checks permitted ; Only government and business checks are authorized. Amount received was \$ \_\_\_\_\_, Serial Number(s): (1) \_\_\_\_\_ (2) \_\_\_\_\_

No lottery tickets, blank post cards, stationary, greeting cards, stamps, and unauthorized prepaid postage envelopes permitted.

No powders, body fluids, or other foreign substances permitted

Personal photobooks must be received directly from the vendor.

Correspondence exceeds the maximum of three 8 1/2" X 11" photocopied pages, front and back

Correspondence or enclosed contents exceed the size limit and require manipulation to photocopy

No nude/semi-nude personal photographs/pictures are permitted.

Thumbnail print must be at least 1 1/2" by 1 1/2"

Exceeds the maximum number of five photographs

Commercially Distributed Photograph(s) violates *Specific Criteria for Publication Disapproval* \_\_\_\_\_  
(If more than one criteria is violated, list all violations)

Legal Mail must be sent directly to the Central Mail Distribution Center (3521 Woods Way, State Farm, VA 23160)

Other: \_\_\_\_\_

**DISPOSITION**

Item(s) are being returned to sender (enclosed).

Item(s) were illegal or hazardous and cannot be placed in the mail and are hereby confiscated and will not be returned to you.

Item(s) purchased by the inmate but review determines they are unauthorized for inmate possession and must be disposed of at the inmate's expense; see Operating Procedure 802.1, *Inmate and CCAP Probationer/Parolee Property*.

By copy of this letter, the inmate or probationer/parolee is being advised of this action. If you wish to appeal this decision, you may do so in writing to the Facility Unit Head at the above address. Thank you for your cooperation in this matter

Copy: Inmate or Probationer/Parolee: Wade, Demetrius Jermaine #: 1240734 Housing: B-3-315-T





VIRGINIA  
DEPARTMENT OF CORRECTIONS

Notice of Unauthorized Correspondence 803\_F2\_6-21



COMMONWEALTH of VIRGINIA

Barry L. Kanode  
Warden

Department of Corrections  
Division of Institutional Services  
GREEN ROCK CORRECTIONAL CENTER

P.O. BOX 1000  
CHATHAM, VA 24531-1000  
(434) 797-2000  
Fax: (434) 797-8161

Date: October 12, 2022

TO: Office of the Clerk  
Supreme Court of the US  
Washington, DC 20543



FROM: Mailroom Supervisor

SUBJECT: UNAUTHORIZED CORRESPONDENCE

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Copy: Inmate or Probationer/Parolee: Wade, Demetrius Jermaine #: 1240734 Housing: B-3-315-T





## COMMONWEALTH of VIRGINIA

Commonwealth of Virginia  
Division of Institutional Services  
GREEN ROCK CORRECTIONAL CENTER

Barry L. Kanode  
Warden

Date: November 29, 2022

P.O. BOX 1000  
CHATHAM, VA 24531-1000  
(434) 797-2000  
Fax: (434) 797-8161

TO: Office of the Clerk Supreme Court of the US  
Washington, DC 20543

FROM: Mailroom Supervisor

**SUBJECT: UNAUTHORIZED CORRESPONDENCE**

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Copy: Inmate or Probationer/Parolee: Wade, Demetrius Jermaine #: 1240734 Housing: B-3-315-T

SUPREME COURT OF THE UNITED STATES

January 5, 2023

"CERTIFICATE OF DECLARATION"

RE: Demetrius Wade, Petitioner V. Harold Clarke, Director  
Respondent. No:22-5330

I Demetrius Wade hereby certify that this petition for a rehearing out of time is presented in good faith and is not an attempt to delay this court in any manner.

Through out his post conviction process, petitioner has maintained diligence with a timely filing of every document related to his case at every stage. The current delays are through no fault of his own.

Petitioner has included several documents that will support this declaration.

Petitioner prays that after the court reviews his motion and attached certificate, that his motion will be submitted to the court.

All your assistance in this matter is very much appreciated.

Respectfull Submitted



SUPREME COURT OF THE UNITED STATES  
April 25, 2023

Supreme Court of The United States  
Office of The Clerk  
Washington, DC 20543-0001

RE: Wadev. Clarke, Dir., Va DOC  
No:22-5330

Dear Supreme Court Clerk:

This letter is in response to your recent letter to me, which is in relation to the case number provided above.

I've enclosed all the relavant documents which we've discussed in our latest correspondence to each other. I pray that this will resolve all the issues that have occured over the past six months or so in regards to my case. Maybe this will bring the outcome that I've worked so hard to obtain.

However, all your assistance is very greatly appreciated, and may God continue to bless you.

Sincerely



DEMETRIUS WADE #1240734

RECEIVED  
MAY - 9 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**SUPREME COURT OF THE UNITED STATES  
OFFICE OF THE CLERK  
WASHINGTON, DC 20543-0001**

November 22, 2022

Demetrius Wade  
#1240734  
P.O. Box 1000  
Chatham, VA 24531

RE: Wade v. Clarke, Dir., VA DOC  
No: 22-5330

Dear Mr. Wade:

The petition for rehearing in the above-entitled case was postmarked November 14, 2022 and received November 22, 2022 and is herewith returned as out-of-time.

Pursuant to Rule 44 of the Rules of this Court, a petition for rehearing must be submitted within 25 days after the decision of the Court. As the petition for writ of certiorari was denied on October 3, 2022, the petition for rehearing was due on or before October 28, 2022.

Please be advised that if you intend to file a motion for leave to file a petition for rehearing out-of-time, the petition must be accompanied by a certificate stating that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. You must also certify that the petition for rehearing is presented in good faith and not for delay. Rule 44.2.

Sincerely,  
Scott S. Harris, Clerk  
By:

Jacob Levitan  
(202) 479-3392

Enclosures