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No. 22-5766

In The Supreme Court of The United States

Clifford Benjamin Kinade

Petitioner

vs.

The United States

Respondent

On Petition for Writ of Certiorari
to The United States Court of Appeals
for the 8th Circuit

Petition for Rehearing

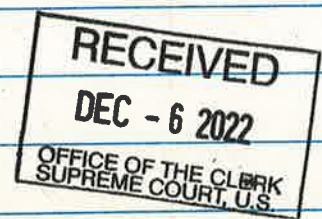
Clifford Benjamin Kinade prose # 32481-045

Federal Medical Center

Po Box 15330

Ft. Worth, Tx

76119



Petition for Rehearing (Sup. Ct. R. 44.2)

Appellant presents its petition for a rehearing of the
above-entitled cause, and, in support of it, respectfully
shows:

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Grounds for Rehearing

A rehearing of the decision to deny Petitioner's Petition for writ of certiorari in the matter is in the interests of justice because, by denying a certificate of appealability (CoA) the Court is sanctioning an ex post facto application of procedure denying Petitioner access to address the claim of ineffective assistance of counsel.

1. On Oct. 31, 2022, this Court denied the petition for writ of certiorari.

2. The Court's denial of the petition for certiorari by this Court falls literally within the categorical descriptions of an "ex post facto" application. See F.R.A.P. 47, and local court Internal operating procedure (IOP) rules of the 8th Cir Court of appeals). Justice Chase set forth such more than 200 years ago in Calder v. Bull, (Us) 3 Dall 386, 1 Led. 648 (1798), which this Court has recognized as an authoritative account of the Ex Post Facto clause scope. See also, Collins v. Youngblood 497 U.S. 37, 46, 110 S. Ct. 2715, 111 L. Ed. 2d 30 (1990). See also, Galveston Dry Dock & Construction Co. v. Standard Dredging Co., 40 F.2d 442 (2nd Cir. 1930).

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3. To leave in place orders of the District Court penalizing the Petitioner with a denial of access to the courts by retroactively impressing knowledge of a date of finality prior to the date on which his counsel was relieved of representing the petitioner without prior disclosure that all extensions given by the Court of Appeals of the 8th Circuit encompasses the ultimate in "manifest" miscarriage of justice and violation of due process not only in theory but in practical ex post facto application of the date of finality utilized by the District Court's opinion which the 8th Circuit effectively approved of by denying a certificate of appealability of Petitioner

~~Granted~~ vacated + Remanded

4. This case at least falls within the Court's ("GVR") practice as codified in statute and applied in precedent. See, 28 U.S.C. § 2106, i.e. "require such further proceedings to be just under the circumstances" whether a GVR order is ultimately appropriate depends on the equities of the case but to deny a COA based on technical reading of finality in contravention and in conflict with a valid "IOP" rule of the 8th Circuit Court of Appeals is not only inequitable by any logic that sounds in reason or justice. See cf. Lawrence v. Chaster, 516 U.S. 1163. At a minimum a "GVR" is entirely appropriate to allow the 8th Circuit to reevaluate the potential hundreds of cases that can and will likely be caught in what can only be described as a "Catch 22" court procedure to deny defendant's

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fair access to actual claims of ineffectiveness of counsel as is being done in this particular case to this petitioner.

Conclusion

For the reasons just stated, Clifford Benjamin Kinkadee urges that this petition for a rehearing be granted, and that, on further consideration, the Petition for Certiorari be granted vacated and remanded ~~and~~ or the judgment of the lower court be reversed and a COA granted re Petitioner

Dated 11-23-22

Respectfully submitted,

Clifford Benjamin Kinkadee Pro, se

Clifford Benjamin Kinkadee

#32481-045

Federal Medical Center

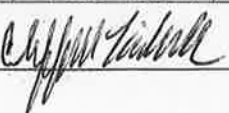
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Fort Worth, Tx

76119

Certificate of Good Faith by Counsel

I, counsel for Clifford Benjamin Kinkadee, certify that the this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court

 #32481-045

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Certification of Compliance with Word Limits

As required by Supreme Court Rule 33.1(h), I certify that the document contains 6 handwritten pages, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d)

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

Executed on Nov. 23, 2022

 #32481-045

Clifford Benjamin Kinkade

Certificate of Filing & Service

On the 23rd day of Nov. 2022, I Clifford Benjamin Kinkade, do hereby certify that I have placed the above Petition for Rehearing in the special/legal Mail System for prisoner's (inmates) located in the Ft. Worth FMC Institutions custody in a pre-paid postage envelope addressed to the clerk of the Court for the United States Supreme Court, 1 First Street N.E. Washington, DC # 20543, pursuant to the prison mail box rule for filing, See Houston v. Lack, 487 U.S. 266, 270 (1988) + Fed. R. App. P. 25(a)(2)(A)(iii); Rule 3(d) Additional copies are being sent to the U.S. Atty for the Gov & Solicitor General of the United States in his mail postage prepaid at the following addresses:

Hon. Tereasa Moore, U.S. Atty
Attn: Ami Harshad Miller, AUSA
901 St. Louis Street, Suite 500
Springfield, MO # 65806

Solicitor General of the United States
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Clifford Benjamin Kinkade #32481-045