

22-5831
No. 21-60806

FILED

JUL 08 2022

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Matthew Smith, Jr. — PETITIONER
(Your Name)

vs.

Ronald King, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Matthew Smith, Jr.
(Your Name)

P. O. Box 88550
(Address)

Phoenix, AZ 85088
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1) Did the trial Court err, when the Judge failed to conduct and abandoned his discretion to conduct a hearing under Rule 8-05, when Petitioner stated during trial he didn't want his attorney, and the Court found Petitioner to proceed.

(2) Was Trial Attorney ineffective for not pursuing his filed Motion to Suppress Evidence of the Bloody Mother Knowing State witness Yanesha Brax did not operate a vehicle, not own the property the lead investigator to leading to clothes?

(3) Did investigator prejudice the Petitioner (defendant) when he failed to take photo's of defendant's right ring finger, that indicated a defense wound he received at crime scene, and admitted during trial it was his fault?

(4) Was the indictment considered fatally defective by not mentioning the type of weapon used to kill victim in nature in which the victim was killed?

(5) Did the jury err when it failed to consider that the Pathologist stated the weapon used was only a inch thick, contradicting a State witness illustrating and saying it was 3-inch thick, meaning what state arm wasn't weapon used if any weapon?

(6) Did the Court and jury err when there were no State witnesses who literally saw the Petitioner stab the victim, but yet found (defendant) guilty of murder, not proving beyond a reasonable doubt he killed the victim?

(7) Did the investigator abuse his authority by not having the hair inside the Bloody Clothes Bag he say he found tested; after the defendant informed him that he (defendant) did not handle Bag; not clothes?

(8) Did the investigator abuse his authority when he failed to get the Accelerant tested in the Bloody Clothes Bag after witness Yonessa Beals say she used Diesel or gasoline around area due to a fire ^{at} infestation from her dog, proving the attempted to burn clothes?

(9) Was there a tampering of Evidence presented after Club Manager (state witness) Ruby Ann Coggins Admitted she was cleaning blood up, until a Sheriff's deputy told her she couldn't, cause it was a crime scene.

(10) Does the investigation report prove, the (defendant) was never legally arrested by investigator, once investigator made contact with defendant, and during questioning? But placed defendant under investigation - Hold?

(11) Was trial Counsel ineffective for not calling hostile witness Minnie Pearl Bookry to testify since she gave a statement identifying the victim and his clothes, as being the provoker assaulting defendant?



(12.) Will the Court consider all important statements of witness Nadi during questioning and at trial?

(13.) Was trial attorney ineffective for not interviewing all potential witness, some who could have benefited defendants case and outcome?

(14.) Was trial attorney ineffective for not informing defendant he could call character witness?

(15.) Was trial attorney ineffective for not calling defendants Psychiatrist to testify concerning defendants mental capacity and illness, due to taking and not having his medication?

(16.) Did the jury sit and prejudge the defendant when one member stated to the others it wasnt the defendants first rode running time in trouble as if they knew?

(17.) Did trial Judge err when he didnt allow documents proving the (victim) was charged with carrying a conceal weapon (knife)?

(18.) Was trial attorney ineffective for not testifying for defendant, knowing state witness Vanessa Beale was retaliating against defendant, (as) Attorney held City Court over a case involving defendants live in girlfriend, and Vanessa Beale defendants out side girlfriend when (He) was City Judge?

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

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STATUTES AND RULES

Rule 8.05 Under Uniform Rule of Circuit and
County Court

14th Amendment Due Process

OTHER

EYEWITNESS OF THE COURT, INCONSISTENT STATEMENTS
OF WITNESSES

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 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 Exhibit A; 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 B to the petition and is

reported at Exhibit B; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States Court of Appeals court appears at Appendix C 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 May 31, 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: ✓/X, 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 ✓/X (date) on ✓/X (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 May 31st (mailed) 2022. A copy of that decision appears at Appendix 1.

[✓] A timely petition for rehearing was thereafter denied on the following date: ✓/X, 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

14th Amendment Violations under Due Process
Sixth Amendment

STATEMENT OF THE CASE

This case was appealed after a guilty verdict of guilty on a murder indictment, in which defendant didn't kill victim, between April 14th through April 17th, 2014. Petitioner (defendant) was sentenced to life in prison, under the Habitual Status in the Mississippi Department of Corrections without the possibility of parole.

The Court of Appeals and Fifth Circuit Court of Appeals
had rendered an unfair and unjust decision in
in not granting my appeal, and denying me a certificate
of appealability, Even the United States district court
for the Northern District.

The affirmability of their courts have their own preception
of the trial judge informing defendant Smith of the
Significant risk he faced in representing himself prior
violating the United States Constitution governing Due
Process which is guaranteed.

The trial judge knowingly and willingly failed to
entertain (Smith's) attempt of waiving his trial
Attorney, forcing Smith to continue on with such
unwanted attorney (T. 292-293) Smith simply
informed the court, that he didn't want an attorney
anymore first, due to it not helping him.

By the defendant:

I don't even want an attorney no more. I'm
going to go on ahead and leave it like that
I don't even want an attorney no more.

Court: Last time, (again last time) we talked i think
you wanted to represent yourself, is that
right?

Smith: Well, your honor, it was partially, what i
was saying is that i don't have a problem
with my lawyer (counsel) representing me.
But i would like to actually have the
moment to cross examine the witness
as well as him. i wanted it to be a
partial thing, we do this in part.

Court: I understand. you don't get to cross ex-
amine a witness and he gets to cross ex-
amine a witness. I mean it the other witness
you want to cross examine, you'll have to
do it, he won't be able to cross examine.
Smith: I understand that!

Court: Okay, so you want to be able to be an
active participant in certain parts
of this case?

Smith: That is correct!

Court: All right, ^{so if you understand it}
you cross examine or do direct ex-
amination of witness, i'll

hold you to the same rules of evidence, that i
do to the State and that ^(e.s.) i, would hold your
ATTORNEY to. Do you understand?

Smith: Yes Sir, i do understand!

The COURT OF APPEAL referred on SMITH's case being
similar to WASH v. STATE, 12950.3d 247, 251 quoting
that the APPELLANT WASH, did NOT proceed PRO SE
as contemplated by rule 8-05, thus there was NO
need to determine whether APPELLANT KNOWINGLY
and VOLUNTARILY waived his right to COUNSEL. The
APPELLANT WAS NEVER ^(e.s.) TOLD TOGETHER OR ON
his OWN TO DEFEND HIMSELF. AS HIS COUNSEL RE-
MAINED THROUGH OUT TRIAL IN FORM OF HYBRID PRO-
PRESENTATION.

Smith states, such case has no standing as his, Be-
cause it is clear in the record and in the trial
TRANSCRIPT (292-293), that SMITH STATED IN
(OPIN) COURT OF TRIAL, he did NOT want his
ATTORNEY ANYMORE, and instead of the Judge
Performing the 8-05 EXAMINATION ON RECORD
He STATED:

By the Court: why don't you (Smith) just take a break? Let's take about 10 minutes, get you some water. (T.292-293)

And after the 10 minutes, the 8.05 examination still wasn't held, or conducted. instead the trial judge brushed off under the rug, and intentionally ignored it. By stating:

By Court: Gentlemen, are you ready for me to show the jury back in?

By Mr. Hirst: Yes, your honor, I'm sorry I was just giving him some notes.

By Court: Mr. Guinn, if you will get the jury back in please.

Mr. Smith: you may continue your cross examination of the witness.

The Judge maliciously and deliberately disregarded Smith's plea to wait his unwanted attorney, forcing him Smith to carry on, despite Smith's best to have such attorney removed. This wasn't helping me due to 2 different theories being illustrated.

before the jury, that were considered damaging. 1. Smith acted in self defense and 2. Smith didn't kill anyone. It is a miscarriage of justice to intentionally ignore that the Judge failed to do his required duties and it prejudices me.

On the (7/10/07) the appeal court even agreed that the parts addressed dealing with rule 8-05 occurred (before) trial (per opinion) and the judge wasn't obligated to prevent such, because it wasn't necessary, due to Smith having his attorney at that time.

Smith agrees that the trial court judge wasn't obligated to do as was done. However what they done didn't apply to Smith (before trial). At the beginning Smith made it known he wanted to proceed in part with his attorney and the trial court didn't prove this was granted long before a trial started.

The Judge granting (Smith) his request to participate of his trial with his attorney and citing parts of 8-05 uniform rules of circuit and county court, had absolutely nothing to do

with, Smith saying he didn't want his attorney present, during a trial violating the 14th Amendment of the United States Constitution. This was not done under the appropriate circumstances. Under *Forretta v. California*, 432 U.S. 806 (1973):

"A defendant in a state court criminal trial has a constitutional right to proceed without counsel, when he voluntarily and intelligently elects to do so, and that the state may not force a lawyer upon him.

The record proves that his trial attorney was forced upon him.

The trial judge was obligated by Rule 805 to entertain Smith's plea to waive his attorney during trial, and by not doing it, there was no way to discern whether Smith's plea was being voluntarily made, not knowingly.

According to *Metcaif v. State*, 629 P.2d 538 (1993) Metcaif requested assistance ^(c.c.) and received such, but never desired to dismiss him. Smith attempted to exercise his right to self representation (T.292-293)

To no avail. According to *Tobacco v. Herbert*
304 U.S. 458 (1938) it states;

"A waiver is ordinarily an intentional
renunciation or abandonment of a known
right or privilege"

while an accused may waive the right to counsel,
whether there is a proper waiver should be clearly
determined by the trial court and it would be
fitting and appropriate for that determination
to appear on the record, under *Conn. v. State*, 251
A.F.2d 488 (1964) absent was a showing Conn.
waived his appointed counsel. It was stated
that Smith had an unfair an unjust trial from
the beginning. The record shows the psychiatrist
stated in open court Smith was competent to
stand trial, but had problems with commun-
cating with his attorney.

The court of appeal can take something
the circuit court done wrongfully at the
wrong time and apply it or they choose
to disregard justice. 8.05 under the
uniform rule of circuit and county
court didn't apply to Smith during
the time it was, before trial and
it wasn't applied when it should
have been during trial. (T. 291, 293)

It's plain to see on its Motion and Face of record (Transcript) that the judge故意ly denied Smith of his Constitutional right under Due Process of Law.

"No person shall be deprived of their Liberty, Life, nor Property without Due Process of Law."

According to Rule 8.05 Under Uniform Rule of Circuit and County Court it quotes:

"When the court learns that a defendant desires to act as his/her own attorney, the court shall on the record conduct an examination. (See Uniform Rule of Circuit and County Court 8.05)

The matter cont. but has been ignored intentionally. It is documented in the record, but the appeals court is siding with injustice and unprofessionalism by the trial judge, giving the pro se (defendant) its ignorant. The court(s) used the part of the record as indicating the trial judge followed rule 8.05, even when he didn't have to.

in Howard v. Stark, 701 So.2d 274 (1991) it quotes:

That the Fifth amendment grants each defendant a right to conduct his or her own defense, though the right is not as the judge toward Howard absolute. The right exists only when the waiver of counsel can be made in a knowing, intelligent and voluntary manner.

Smith contends Bennett had an opportunity to have an examination offered to him required by 8.05 rule. To continue by passing the important issue that's clearly visible is to partake in injustice violating the courts ethical duties it is shown to uphold.

(2.) Smith Notes his indictment is fatally defective under State v. Berryhill, 703 So.2d 250 (Miss. 1991) it quotes:

There are certain ways an indictment must be written, presented and amendment. The indictment must give notice of the nature and cause of the charge, although reasonably concise statement of crime with justice.

Under Thomas v. Mohr, 124 So.3d 877 an essential element of the crime voids the indictment.

Smith states, His indictment charges him with Murder, But does not give a description of how the victim was murdered. (See records). Smith states, this alone render his indictment totally defective absent (Kind of ^(or) weapon)

3.)

Smith Notes, The investigator assigned to his case violated his due process rights to. (1.) He didn't take photo's of Smith's right ring finger, showing a distinct wound, after Smith stated the victim tried stabbing him; and the investigator admitted during trial he failed to do so, saying his camera batteries were dead. This was a perfect defense and with the photo, the outcome could have been different. (See transcript of Brad Pettit (Testimony))

(2.) Failing to investigate states witness Yonisa Bicks statement, that she operated, the house, she gave the investigator some Bloody clothes, in which she didn't rent, lease, nor own.

(3.) Failing to test the hair found in. Side Bag containing Bloody clothes cause witness Yonisa Bicks handled such clothes and not Smith.

VANESSA BEALL GAVE INCONSISTENT STATEMENTS,
, SAYING SHE DIDN'T KNOW WITH SUCH CLOTHES WITH
, THAT (SMITH) DIDN'T HAVE SUCH CLOTHES IN ANY.
THING ONCE HE (SMITH) EXITED HER HOUSE, BUT
GAVE ANOTHER STATEMENT, SAYING THEY WERE IN
A BLACK BAG, LEAVING HER HANDED SUCH.

THE INVESTIGATOR FAILED TO HAVE THE ACCIDENTAL
TESTED INSIDE THE BAG, AFTER STATE WITNESS
VANESSA BEALL ADMITTED INDIRECTLY SHE SPILLED
DIESEL OR GAS ON GROUND THAT OCCURRED DUE TO HER
DOGS INFESTED WITH FLEAS, BUT ACCIDENTAL WAS
INSIDE BAG, PROVING CONSPIRACY & TAMPING
WITH EVIDENCE TO DESTROY (BURN) SUCH.

THE INVESTIGATOR NEVER LEGALLY ARRESTED
SMITH (SEE INVESTIGATION REPORT), ONLY BOOKED
SMITH AFTER QUESTIONING ON INVESTIGATION HOLD.
(SEE BOOKING SHEET)

(4.) THE INVESTIGATOR TAKING CLOTHES FROM HOUSE
NOT OWNED, LEASED, NOT OPERATED BY WITNESS
VANESSA BEALL PROVED TO BE AN ILLEGAL SEARCH
AND SEIZURE, A FRUIT OF A POISONOUS TREE.

(15)

(5.) Smith's lawyers were both ineffective

- the trial counsel would call Smith's treating psychiatrist to testify on Smith's medical condition, where as Smith was taking a chemical imbalanced drug & receiving a federal disability check, and Smith was out of his medication during the time of the incident collaborated by staff witness Danner Beale
- And the appeal attorney only argued one issue ignoring Smith's request for more issues to be argued.

(6.) There are Hundreds of inconsistent statements given by (all) witness from questioning and during trial

- The defendant relies on all information mentioned in Questions Presented and in the Trials reports.

(7.) The trial judge erred in not allowing documents of the victim charged with carrying a concealed weapon (Knife)

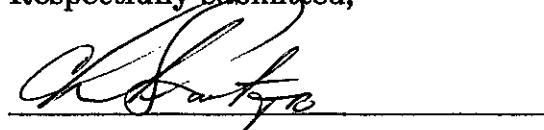
REASONS FOR GRANTING THE PETITION

Reasons mentioned in Statement of Facts
that the Court of Criminal Not Committing
Crime, and he received a unfair & unjust
Trial. And the defendant Prays for
Final Justice or Prob. J.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. Lanza". The signature is fluid and cursive, with "Robert" on top and "F. Lanza" below it.

Date: 9-22-2022