

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

Charles 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

Charles Smith, Jr.

(Your Name)

P. O. Box 99550

(Address)

Pearls MI-39288

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- (1.) Did the trial court err when the judge failed to conduct and or abused his discretion to conduct a hearing under rule 8.05; after Petitioner stated during trial he didn't want his attorney, and yet forced Petitioner to proceed.
- (2.) Was Trial Attorney inept for not pursuing his filed Motion to Suppress Evidence of the Bloody Clothes knowing State witness Vanessa Beale didn't operate a house, not own the property the lead investigators told leading to clothes?
- (3.) Did investigator prejudice the petitioner (defendant) when he failed to take photos of defendant's right ring finger, that indicated a defense would be 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 and 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-inches thick. meaning what State seen wasn't weapon used if any weapon?
- (6.) Did the court and jury err when there were no State witnesses who testified 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) didn't handle Bag, nor clothes?
- (8) Did the investigator abuse his authority when he failed to get the Accelerant tested in the Bloody Clothes Bag after witness Vanessa Beale stated she used Diesel or gasoline around area due to a flea infection ^{at} from her dog, proving she attempted to burn clothes?
- (9) Was there a tampering of evidence presented after Club Manager (State witness) Ruby Ann Loggins 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 Booker 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 inconsistent Statements of witnesses made during questioning and at trial?

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

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

(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 Err and Prejudice the defendant when one member stated to the others it wasn't the defendants first 7000 meaning time in trouble as if they knew?

(17.) Did trial Judge err when he didn't 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 Beal was retaliating against defendant, cause Attorney held City Court over a case involving defendants live in girlfriend, and Vanessa Beal 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

Errors 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: N/A, 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 N/A (date) on N/A (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 C.

☒ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 jury 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 imprisonment, 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
Have 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 first matter is these courts have their own Perception
of the trial Judge informing defendant Smith of the
Significant risk he faced in representing himself prone
Violating the United States Constitution governing Due-
Process which is guaranteed.

The trial Judge knowingly and willingly Failed to
entertain (Smith's) attempt at waiving his trial
Attorney, Forcing Smith to continue on with such
Un-wanted Attorney (t. 292-293) Smith simply
informed the Court, that he didn't want an Attorney
anymore twice, 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: Just 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 witnesses 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 examine a witness and he get to cross examine a witness. I mean if there's a 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's correct!

Court: All right, ^(so) just (you) understand it to yourself (not) that you cross examine or do direct examination of witnesses, I'll

hold you to the same rules of Evidence, that i do to the State and that (E.S.) would hold your Attorney to. Do you understand?

Smith: yes sir, i do understand!

The Court of appeal relied on Smiths case being similar to Wash v. State, 129 S.O. 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 ~~left~~^{left} alone or on his own to defend himself. As trial counsel remained through out trial in form of hybrid representation.

Smith states, such case has no standing as his, Because it is clear in the record and in the trial transcript (292-293), that Smith stated in (open) court at trial, he did not want his Attorney any more; 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? Tests 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 it under the rug, and intentionally ig-
nored it By stating:

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

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

By Court: Mr. Brun, 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 waive his unwanted attorney, forcing
him Smith to carry on, despite Smith's cry 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's a
miscarriage of justice to intentionally
ignore that the Judge failed to do his
required duties and it prejudice me.

In the (record) the appeal court even agreed
that the Parts addressed dealing with rule 8-05
occurred (Before) trial (See opinions) and
the judge wasn't obligated to present 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 transcript
proves this was granted long before a trial
started.

The Judge granting (Smith)'s request to Participate
at 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 Period, during actual trial violating
the 14th amendment of the United States Con-
stitution. This was never done under the
appropriate circumstances. Under *Forrest v.
California*, 422 U.S. 806 (1975):

"A defendant in a state case or criminal
trial has a Constitutional right to pro-
ceed 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 secure whether Smith's
Plea was being voluntarily made, nor knowingly.

According to *Metcalf v. State*, 629 So.2d 558
(1993) Metcalf requested assistance ^(C.S.) assistance
and received such, but never desired to
dismiss him. Smith attempted to exercise
his right to self representation. (T. 290-293)

To no avail. According to Johnson v. Zerbst
304 U.S. 458 (1938), it states:

"A waiver is ordinarily an intentional
relinquishment 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.2d 488 (1969) about was a showing Conn.
waived his appointed counsel. It was settled
that Smith had an unfair and unjust trial from
the beginning. The record shows the psychiatrist
stated in open court Smith was competent to
stand trial, but had problems with communica-
ting with his attorney.
The Court of Appeals can't take something
the Circuit Court done wrongfully at the
wrong time and apply it as 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. 293, 293)

It's plain to see on its surface and face of record (Transcript) that the judge literally 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 can't, but has been ignored intentionally. It's documented in the record, but the appeals courts are siding with injustice and unprofessionalism by the trial judge; as is the pro se (defendant) is ignorant. The courts 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. State*, 701 So.2d 274 (1997) it quotes:

That the Sixth 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 where the waiver of counsel can be made in a knowing, intelligent and voluntary manner.

Smith contends he never 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's shown to uphold.

(2.) Smith states his indictment is fatally defective under *State v. Berryhill*, 703 So.2d 250 (Miss. 1997) it quotes:

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

Under *Thomas v. State*, 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 renders his indictment totally defective absent (Kind of ~~the~~^{Weapon})

3.) Smith states, The investigator assigned to his case violated his due process rights to. (1.) He did not take photos of Smith's right ring finger, showing a defense 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 Vanessa Beale's 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 Vanessa Beale handled such clothes and not Smith.

Vanessa Beale gave inconsistent statements,
saying she didn't know where such clothes were,
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, cause she handled such.

The investigator failed to have the accelerant
tested inside the Bag, After State witness
Vanessa Beale admitted indirectly she sprayed
Diesel or gas around that area due to her
dogs interested with fire, but accelerant was
inside Bag, Proving Conspiracy & tampering
with Evidence to destroy (Burn) such.

The Investigator never legally arrested
Smith (see investigation report), only Booked
Smith after questioning on investigation held.
(see Booking sheet)

(4.) The investigator taking clothes from house
not owned, leased, nor operated by witness
Vanessa Beale proved to be an illegal search
and seizure, & Fruit of a poisonous tree.

(5.) Smith's Counsel where 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 dis-
ability check, and Smith was out of his
Medication during the time of the incident
Collaborated by State witness Vance Beale
And the appeal attorney only argued one
issue ignoring Smith's request for more issues
to be ~~argued~~ argued.

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

The defendant relies on all information mentioned
in Questions Presented and in the Trial records.

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

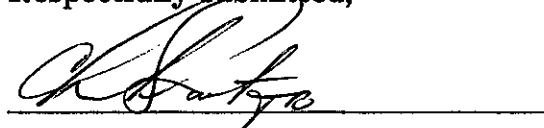
REASONS FOR GRANTING THE PETITION

Reasons or grounds in Statement of Facts
Reasons consist of defendant not committing
Crime; and he received a unfair & unjust
Trial. And the defendant prays for
Final Justice or Pardon.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



A handwritten signature in cursive script, appearing to read "R. L. Hutto", is written over a horizontal line.

Date: 9-27-2012