

22-6207

No. \_\_\_\_\_

Supreme Court, U.S.  
FILED

NOV 21 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Anika George — PETITIONER  
(Your Name)

vs.

Shelbie Smith, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Anika George  
(Your Name)

P.O. Box 17399  
(Address)

Dayton, Ohio 45418  
(City, State, Zip Code)

N/A  
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1) Whether the court abused its discretion by failing to grant a certificate of appealability when it based its own merits determination on district court's decision?
- 2) Whether the judicial panel abused its discretion to decline rehearing en banc petition when it relied on erroneous findings of fact and improperly applied the law?

IN THE UNITED STATES SUPREME COURT

Anika George  
Petitioner

CASE NO.

v.

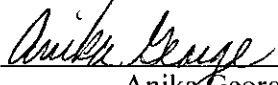
Shelbie Smith, Warden  
Respondent

CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE

Anika George, a pro se petitioner, presents and certifies for the record of this honorable court that the following listed persons and entities have an interest in the outcome of this appeal. This Certificate complies with the United States Supreme Court Rule 29.6.

- 1) Anika George, the petitioner
- 2) Honorable Guy Cole, United States Chief Circuit Judge
- 3) Honorable Ralph B. Guy Jr., United States Circuit Judge
- 4) Honorable Jeffrey S. Sutton, United States Circuit Judge
- 5) Honorable James G. Carr, United States District Judge
- 6) Honorable Thomas M. Parker, United States Magistrate Judge
- 7) Maura O' Neill Jaite, Senior Assistant Attorney General
- 8) Thomas Shaughnessy, Former Trial Defense Attorney
- 9) Reuben J. Sheperd, Former Trial Defense Attorney
- 10) James J. McDonnell, Former Trial Defense Attorney
- 11) Jaye M. Schlachet, Former Trial Defense Attorney
- 12) Daniel J. Misiewicz, Former State Appellate Attorney
- 13) Michael O'Malley, Cuyahoga County Prosecuting Attorney
- 14) Kristen Karkutt, Cuyahoga County Assistant Prosecuting Attorney
- 15) Holly Welsh, Cuyahoga County Assistant Prosecuting Attorney
- 16) Honorable Boggs, United States Circuit Judge

Respectfully Submitted on this day 17th of November, 2022

  
Anika George, pro se

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### OTHER

## 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 All parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## RELATED CASES

- *Miller-El v. Cockrell*, No.01-7662, Supreme Court of the United States. Judgment entered February 25, 2003.
- *Martin v. United States*, No. 16-3864, U.S. Court of Appeals for the Sixth Circuit. Judgment enter May 14, 2018.

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 A 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 C to the petition and is

- ☒ reported at George v. Smith, 2022 U.S. App. LEXIS 17432; 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 June 23, 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: September 15, 2022, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ 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**

Amendment VI, U.S. Constitution

Amendment XIV, U.S. Constitution

Judiciary Act I Statute 14

## STATEMENT OF THE CASE

On March 23, 2022, the U.S. Court of Appeals for the Sixth Circuit filed petitioner's Motion to Grant Certificate of Appealability authorized by 28 U.S.C. § 2253 challenging her conviction in violation of the constitution. June 23, 2022 the court denied to grant certificate of appealability based on district court's denial of habeas 2254 petition for procedural default. July 28, 2022 the court grants Motion for Extension of Time to file Panel Rehearing and rehearing en banc and files a Certificate of Service.

August 29, 2022 the court returns Motion for Panel Rehearing and/or Rehearing en banc unfiled and determines the motion to be successive. September 7, 2022 the petitioner notified the court of the error and to accept and file Rehearing en banc petition as the initial.

August 31, 2022 The judicial panel issued an order concluding that the original deciding judge did not misapprehend or overlook any point of law or fact issuing the order and declines to rehear the matter. September 12, 2022 the court returns petitioner's letter and motion for reconsideration unfiled.

September 15, 2022 the judicial panel issued an order concluding that the original application was properly denied and the rehearing en banc petition. November 17, 2022 the petitioner seeks review of petition for writ of certiorari in the United States Supreme Court.

## REASONS FOR GRANTING THE PETITION

The issues raised in this writ are those that affect society and require the court's decision. The petitioners request the United States Supreme Court to vacate and remand the U.S. Court of Appeals decision to deny a certificate of appealability contrary to U.S.C.S 2253(c)(2), "a circuit judge may issue a certificate of appealability only if the applicant has made a substantial showing of the denial of a constitutional right."

The circuit court contends George "filed a 2254 petition asserting that she is Unlawfully Imprisoned under Color of Authority of the United States. Although George did not specify on what basis her confinement is unlawful." See Appendix A The Court denied the C.O.A. petition based on its own merits determination from the district court's report and recommendation that the petitioner's habeas claim is procedurally defaulted. See Appendix C pgs. 2363-2373. Doc#15

George's claim is not procedurally defaulted because she raised the issue of unlawful detainment in her Memorandum In Support to the Supreme Court of Ohio, in which, George was held in jail to further police investigation. See Exhibit 2 Doc# 10-1 at 579-580 In *Wests v. Vaughn* 228 F.3d 178 (3rd Cir. 2000) the court held: In the context of exhaustion of remedies in a habeas corpus matter, a petitioner who has raised an issue on direct appeal is not required to raise it again in a state post-conviction proceeding. The federal habeas claim must have been "fairly presented" to the state courts. The court further asserts, if the petitioner fails to demonstrate cause and prejudice for the default, the federal habeas court may still review an otherwise procedurally

defaulted claim upon showing that failure to review the federal habeas claim will result in a "miscarriage of justice."

The circuit court failed to properly apply the COA standard by deciding the merits of the habeas petition. See *Buck v. Davis* 580 U.S. 100, 137 S. Ct. 759, 197 L. Ed. 2d (5th Cir. 2017)

As the Supreme Court stated in its decision on the case *Miller-El v. Cockrell*, "a C.O.A is a jurisdictional prerequisite," and until a C.O.A has been issued, the federal court of appeals lacks jurisdiction to rule on the merits of appeals from habeas petitioners. 537 U.S. 322, 123 S.Ct. 1029, 1039, 154 L. Ed. 2d 931 (2003).

George contends in her C.O.A petition that her due process rights under the Fourteenth Amendment were violated. February 3, 2016 George discovered the criminal case had been closed since September 2014, but she was never released. George contacted a representative at a government agency who informed George about the case's closure. George was at a state facility for a competency evaluation when she was reindicted. February 18, 2016. A government witness for the State informed the prosecution about George's discovery of the case being closed. February 3, 2016 defense counsel filed for Demand of Discovery and the State filed its Receipt for Demand of Discovery. See Exhibit 3 Doc# 10-1 at 496

George contends further in her rehearing en banc petition that the prosecution secured her conviction by prosecutorial misconduct.

The prosecution used known fake testimony when it allowed its expert witness to testify that he examined electronic devices involving George in 2014. See Exhibit 1 Doc# 10-4 at 1576 and 1581. The expert witness testified that he discovered child pornography and voyeurism. See Exhibit 1 Doc# 10-4 at 1587-1588

However, the State reindicted George two and a half years later based on new evidence from previously seized electronic devices the expert witness examined in 2014 alleging to contain images of child pornography. See Exhibit 3 Doc# 10-1 at 468-469.

George received Ineffective Assistance of Counsel in violation of the Sixth Amendment for failure to provide an adequate defense against prosecutorial misconduct and failure to object to State's witness testimony concerning child pornography and voyeurism and all false testimony.

The circuit court failed to consider these facts of the case and abused its discretion by denying the C.O.A. petition. The Supreme court held, "the certificate of appealability statute sets forth a two-step process, an initial determination whether a claim is reasonably debatable and if it is, an appeal in the normal course...

The only question is whether the applicant has shown that jurists of reason could agree with the District Court's resolution of his constitutional claim or that jurists could conclude issues presented are adequate... to proceed further. See *Buck v. Davis* 580 U.S. 100 (2017)

August 29, 2022 the court returns Rehearing en banc petition

unfiled and determines the Federal Rules of Appellate procedure nor the Rules of the Sixth Circuit make any provisions for filing petitions for rehearing or reconsideration. See Exhibits 4-6 Petitioner notified court to accept rehearing en banc petition as the initial. The docket indicate that a certificate of service 3pg document was entered as Petition for Rehearing en banc August 28, 2022. See Exhibit 7 General Docket pgs. 2-3

August 31, 2022 the judicial panel issued an order concluding that the original judge did not misapprehend or overlook any point of law or fact in issuing the order. September 15, 2022 the panel decline to rehear the petition. However, the court never filed or reviewed the rehearing en banc petition. Therefore, the panel made an erroneous decision to issue two orders without review of the en banc petition and misapplied the law. See Exhibit 9

In *Martin v. United States*, 889 F.3d 827 the circuit court states, "A court abuses its discretion when it relies on clearly erroneous findings of fact, improperly applies the law or employs an erroneous legal standard, or when a reviewing court is convinced that the trial court committed a clear error of judgment."

The original judge relied on the district court's report and recommendation without reviewing the facts of the C.O.A petition in which the petitioner has been prejudiced. See Exhibit 8

Statute 14 of the Judiciary Act I provides: Any incarcerated person who claims Unlawful Imprisonment Under Color of Authority of the United States has the fullest redress in the United States courts, that such a person has a constitutional right to apply for relief from illegal confinement and that it is the duty of the federal courts to exhaust all of their power to enforce that application. See *Hohn v. United States*, 524 U.S. 236

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*Amika George*

Date: *November 17, 2022*