

22-6465

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

FILED

DEC 12 2022

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JESS RICH SMITH — PETITIONER  
(Your Name)

vs.

State of Washington — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Washington Supreme Court  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jess Rich. Smith #739951  
(Your Name)

CRCC, PO BOX 769, H.B.23,  
(Address)

Connell, WA. 99326  
(City, State, Zip Code)

1-800-LEGAL Help Needed  
(Phone Number)

## QUESTION(S) PRESENTED

- 1) Whether the state court has decided an important question of Law under the due process clause of the United States Constitution; as to whether the Washington Court of Appeals, Div. One, and Washington Supreme Court, can "STAY" post conviction proceedings and later default-time bar, the "STAYED" post conviction proceeding?
- 2) Whether the Washington Supreme Court Commissioners, understanding and comprehension, of the BLACK'S LAW, legal definition, of the word "STAY," is misinterpreted; as "not tolling" or "halted"?

(i)

## 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:

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	12-1-22, Ruling Denying Review
APPENDIX B	7-3-12, Order Lifting Stay
APPENDIX C	5-3-13, order of Dismissal
APPENDIX D	
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Smith incorporates each and every case that this Supreme Court, has granted and honored, a STAY ORDER IN.

### STATUTES AND RULES

SUPREME COURT RULE 10(b) --- 8  
SUPREME COURT RULE 43(2) --- 9  
28 USC § 1251 (a)(2)(3) - - - - 2

### OTHER

BLACK'S LAW DICTIONARY - - - P. 8  
"STAY" - - - P. 9

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 \_\_\_\_\_ to the petition and is

- ☐ reported at \_\_\_\_\_; 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 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 \_\_\_\_\_ 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 \_\_\_\_\_.

☐ 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: \_\_\_\_\_, 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. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 12-1-22.  
A copy of that decision appears at Appendix A.

☐ 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);

28 U.S.C. § 1251(a)(2)(3);

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution,  
Amendments:

Amend. 1, (Right To Petition; Right  
To Access The Court);

Amend. 8, (Cruel and Unusual Punish-  
ment, TO STAY A POST  
conviction motion and  
later procedurally time  
bar it);

Amend. 14 (Due Process, Equal  
Protection of The  
Laws and Procedural  
Due Process);

U.S. Const. art. III, §2 (Judicial Power);

Petitioner, Smith reincorporates  
these Constitutional Provisions,  
for purposes and argument,  
throughout this Writ of Cert.



## STATEMENT OF THE CASE

For a full substantive and procedural history of the case, see Smith v. Washington, 575 U.S. 943 (March 30<sup>th</sup> 2015).

Smith states only relevant facts.

In October 2010, Smith was before the King County Superior Court, after his case of 1<sup>o</sup> murder and 1<sup>o</sup> main-slaughter, and was remanded on Double Jeopardy grounds, in State v. Smith, 148 Wn. App. 1021 (2009) rev. denied. 168 Wn. 2d 1011 (2010).

Smith's Remand Mandate, issued on April 14<sup>th</sup> 2010.

Smith filed a motion to vacate, at the King County Superior Court, remand hearing, some time in Sept.-October, 2010. No. 00-1-C-05900-7-Knt.

The Timely motion To Vacate, was transferred over Smith's objection, to the Court of Appeals, in Appeal No. 66364-0-1.

These post conviction proceedings, were put on "Stay," pending the resolution of Smith's appeal, of the transfer order. See State v. Smith-Wilson, 2012 Wn. App. LEXIS 1040 (4-30-12).

As the STAY was stayed, Smith filed a proper Personal Rest. Petition, to conform with the Rules of Appellate Procedure, governing PRP's, RAP 16.1 - RAP 16.18. Smith was issued PRP number, 68084-6.

After Smith's direct appeal was denied, Smith moved to lift the Stay and dismiss without prejudice,

the transferred 7.8, motion to Vacate, so "Smith may proceed under a subsequently-filed petition, in No. 68084-b." See Appendix B, 7-3-12, Order Lifting Stay. See also RCW 10.73.140 (Subsequent Pet.)

After the State's Response Brief, was filed, Smith's subsequently filed petition and supplemented petition, was dismissed, as time barred. See Appendix C (Time barred Order of Dismissal (5-3-13).

Smith exhausted all his claims and sought to relitigate his time barred PRP, arguing the interest of justice requires relitigation on the merits and attached the Stay Order,

as an exhibit to Smith's personal rest. petition.

Smith argued the stay order is newly presented and that the state appellate court, must of overlooked it's very own stay order, in the initial post conviction proceedings, where the Personal Rest. Petition, was time barred. Appendix C.

The Washington Supreme Court, denied discretionary review on the merits. Appendix A.

Smith contends that the Washington Supreme Court's Ruling Denying Review, conflicts with all state and federal appellate courts stay orders, entered. See Supreme Court Rule 10 (b).

## REASONS FOR GRANTING THE PETITION

This Court, should grant this Writ, and set a loud precedent and hold that an Appellate Court, shall not use its own court imposed stay, to procedurally default and time bar the petition, once the stay is lifted, See Rule 10(b).

The 10<sup>th</sup> Ed. of Black's LAW Dictionary, defines "stay," as: 1. The postponement or halting of a proceeding, judgement, or the like; 2. An order to suspend all or part of a judicial proceeding or a judgement resulting from that proceeding.

The Deputy Commissioner of the Washington Supreme Court, found that "The stay only put off consideration of the transferred petition pending resolution of Smith's appeal. It did not

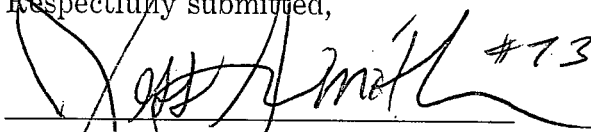
have the effect of suspending the time limits on other petitions." See Appendix A (Ruling Denying Review, P.2).

But Smith only had one post conviction proceeding. The mandate issued in April, 2010. 6 months after, Smith filed a motion to Vacate, that was transferred and stayed, pending result of appeal. Only 6 months went by from April, to October, 2010. Smith was later given permission to lift the stay and Supplement, with the PRP, in 68084-6. See Appendix B.

#### CONCLUSION

Smith prays, the Court enforces the STAY.  
AND AWARD Supreme Court Rule 43 (2.) COSTS.  
The petition for a writ of certiorari should be granted.

Respectfully submitted,

 #739951

Date:

12-9-22

CRCC, PO Box 769, H-Unit-B-23  
Cannell, WA. 99326