

No. ~~22-7422~~

~~22-7422~~

FILED  
APR 17 2023  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.  
ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

DARRELL GUNN — PETITIONER  
(Your Name)

vs.

People of the State of New York — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

New York State Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darrell Gunn 03B2443

(Your Name)

Sullivan Correctional Facility  
P.O. Box 116

(Address)

Fallsburg, New York 12733-0116

(City, State, Zip Code)

(Phone Number)

**QUESTION(S) PRESENTED**

WHETHER THE COURT OR LEGISLATURE DID NOT EXPRESSLY SWEEP WITHIN NEW YORK PENAL LAW § 125.27 ALL KILLINGS IN WHICH THE MURDERER UNLAWFULLY ENTERED THE VICTIM'S HOME CAUSES CONFLICTING DECISIONS WHEN THE LAW APPLIES EQUALLY TO EVERYONE.

## **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**

People v. Gaines, 74 N.Y.2d 358, 547 N.Y.S.2d 620, 546 N.E.2d 913[1989]

People v. Cahill, 2 N.Y.3d 14

State v. Moore, 222 Ariz. 1, 213 P.3d 150, July 24, 2009

People v. Lewis 791 P.2d 1152, October 12, 1989

## 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 People v. Gunn, 2023 WL 2903677 (Table)

APPENDIX B People v. Gunn, 211 A.D.3d 1635 [4th Dept 2022]

APPENDIX C People v. Gunn, 36 N.Y.3d 972, 138 N.Y.S.3d 478

APPENDIX D People v. Gunn, 185 A.D.3d 1479, 125 N.Y.S.3d 618

APPENDIX E People v. Gunn, 147 A.D.3d 1449, 47 N.Y.S.3d 555

APPENDIX F SENTENCING October 18, 2011

APPENDIX G People v. Gunn, 8 N.Y.3d 985, 838 N.Y.S.2d 488 (Table)

APPENDIX H People v. Gunn, 8 N.Y.3d 923, 834 N.Y.S.2d 513 (Table)

APPENDIX I People v. Gunn, 35 A.D.3d 1243, 825 N.Y.S.2d 870

APPENDIX J SENTENCING October 2, 2003

## TABLE OF AUTHORITIES CITED

### CASES

People v. Cahill, 2 N.Y.3d 14

PAGE NUMBER  
64-65

### STATUTES AND RULES

NEW YORK PENAL LAW § 125.27 (1)(a)(vii)(burglary)

### OTHER

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.

**[X] 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

[X] reported at 2023 WL 2903677 (Table); or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the Fourth Department, Appellate Division court appears at Appendix B to the petition and is

[X] reported at 211 A.D.3d 1635 [4th Dept 2022]; 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 March 15, 2023. 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).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

New York Penal Law § 125.27 (1)(a)(vii)(burglary)

### **STATEMENT OF THE CASE**

IF THE BURGLAR INTENDS ONLY MURDER, THAT INTENT CANNOT BE USED BOTH TO DEFINE THE BURGLARY AND AT THE SAME TIME BOOTSTRAP THE SECOND DEGREE INTENTIONAL MURDER TO A CAPITAL CRIME TO DO SO WOULD NOT NARROW THE CLASS OF THOSE ELIGIBLE FOR THE DEATH PENALTY, BUT WOULD WIDEN IT.

**REASONS FOR GRANTING THE PETITION**

THE PROSECUTION MUST DEMONSTRATE THAT DEFENDANT INTENDED TO COMMIT ANOTHER CRIME IN THE DWELLING IN ADDITION TO THE MURDER HE DID COMMIT.

**CONCLUSION**

HERE THERE WAS NO BURGLARY WHATSOEVER.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darrell Gunn

Date: April 14, 2023