

No. 22-7492

IN THE
SUPREME COURT OF THE UNITED STATES

CEDRIC O'NEAL

Petitioner

v.

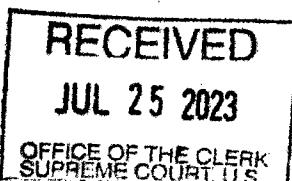
CRAIG HUGHES

Respondent

ON PETITION FOR REHEARING
FOR WRIT OF CERTIORARI
IN THE UNITED STATES SUPREME COURT

SUPREME COURT RULE 44

Cedric W. O'Neal pro se
Southeast State Corr. Comp.
P.O. Box 1600
Wheelwright, Ky. 41669



STATEMENT OF THE CASE FOR REHEARING

O'Neal has been incarcerated since he was 15 years old. He is serving a life sentence as the result of a mandatory penalty scheme established by the transfer-stage. These substantive grounds for review where not presented on *Writ*, however they demonstrate the effects of this penalty scheme's aim for retribution, has fatally burdened our system of Law. The penalty scheme against O'Neal obstructs Due Process of the Fourteenth Amendment, the United States Constitution's Fourth, Fifth and Sixth Amendments. And violates the Equal Protection Clause and violates U.S. Const. Art. I, § Sect. 9, Cl 3 & U.S. Const. Art. I, §Sect. 10, Cl 1: to ultimately secure a goal of incapacitating him.

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APPENDIX

- A. O'Neal v. Com. 1998-SC-0642-MR-UNPUBLISHED (2000)**
- B. MOTION TO SUPPRESS STATEMENTS -Filed November 10 1997**
- C. COMMONWEALTH'S RESPONSE TO RCr 11.42 MOTION**
- D. CALENDAR "TRANSFER CIRCUIT COURT"**
- E. JEFFERSON COUNTY CIRCUIT COURT BLANKET INDICTMENT #97CR2403-5**
- F. JURY INSTRUCTION with ABOLISHED FELONY MURDER RULE**
- G. PROSECUTION'S INSTRUCTION TO THE CIRCUIT COURT JUDGE THAT DELEGATED THE JURY'S DUTY TO FIND O'NEAL GUILTY AS CHARGED TO THE PAROLE BOARD**

ATTACHMENTS

1(a). KRS 635.020(4) Criteria for Determining How *Child* is to be Tried [Effective until July 15 1997]
Second of two versions of this Section [Effective July 15 1997]

1(b). KRS 635.020(4) Criteria for Determining How *Child* is to be Tried [Effective 2023]

2. KRS § 640.010 [Effective July 1997]

TABLE OF AUTHORITIES

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<u>Whitney v. Heckler, 780 F.2d 963, 1986 U.S. App. LEXIS 21846 (11th Cir.) cert denied, 479 U.S. 813, 107 S. Ct. 65, 93 L. Ed. 2D 23, 1986 U.S. LEXIS 3338 (1986)</u>	pg.6
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<u>Due Process Clause to the 14th Amendment</u>	pg.7
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PETITION FOR REHEARING ON THE MERITS FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT.

Cedric O'Neal respectfully petitions pursuant to **Supreme Court Rule 44** for a Rehearing on the Merits.



JURISDICTION

This Honorable Court denied review of his Writ of Certiorari in O'Neal v. Hughes, 2023 LEXIS 2629 S. Ct., 2023 WL 4065697(June 20, 2023).



RELEVANT COSTITUTIONAL PROVISIONS

U.S. Constitutional Article. I, § Section. 9, Cl 3

U.S. Constitutional Article. I, Section. 10, Cl 1

U.S Constitutional Amendment IV

U.S. Constitutional Amendment V

U.S. Constitutional Amendment VI

U.S. Constitutional Amendment VIII

Due Process Clause U.S. Constitutional Amendment XIV

Equal Protection Clause U.S. Constitutional Amendment XIV



RELEVANT STATE PROVISIONS

KRS § 507.020 *et al*

KRS § 635.020(4) See Attachments 1(a) & (b)

KRS § 640.010 See Attachments 2

SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED

The grounds herein are not previously presented but are nonetheless consequences of *inherent flaws* of a punitive transfer scheme, to assure the State imposes punishments upon O'Neal that Law will not allow. The transfer was used to convey that O'Neal had automatically forfeited all rights protected by the Due Process Clause of the Fourteenth Amendment, particularly at retributive stages. Which subsequently should impair his 4th & 5th Amendment rights, Sixth Amendment rights, so to not interfere with the state's punitive aim. And violates the Equal Protection Clause and violates U.S. Const. Art. I, § Sect. 9, Cl 3 & Sect. 10, Cl 1.

1. The penalty scheme against O'Neal, begins with the state readily taking advantage of his youthful inability to deal with police, prosecutors and to assist his own attorneys, to put him at a significant disadvantage during subsequent proceedings. This issue requires discussing the theory that O'Neal shot and killed the victim. The theory that O'Neal killed the victim, shows in the record as supported in evidence that the Police obtained a taped statement from O'Neal *confessing to the murder*. See: O'Neal v. Com. 1998-SC-0642-MR-UNPUBLISHED (2000). See: **Appendix A**.

However, all statements the police obtained from O'Neal were ruled as inadmissible and were **suppressed** by the trial court, because they were the fruit of the poisonous tree. See: **Appendix B**. The fact of the matter is the record's own contradiction reveals disputes as to whether or not the "evidence" was actually presented at O'Neal's trial. The fact is observable in the actual record of the circuit court proceedings, which demonstrates that no tape-recording was ever produced to the jury. However strange, the Court's decision injects into the record use of a taped-recorded statement where O'Neal "*confessed to the murder*," without providing any discussion to the fact that it was verified as a coerced statement and suppressed as evidence, thus inadmissible under any circumstances. Nor does the Court discuss the fact that O'Neal himself, has **never** been afforded the opportunity to physically examine the said "*tape*," to explain, deny or have its contents proven as truth admitted against him, at trial. All of which violates the essence of the Fourth and Fifth Amendments which mean *evidence so acquired shall not be used at all*. This demonstrates the before this Honorable Court the admission in the record as evidence, over

objection, of the coerced confession vitiates the state courts judgment in O'Neal's case showing a clear violation of the Due Process Clause of the Fourteenth Amendment.

The Attorney General in response to Petitioner's RCr. 11.42(10)(b), verifies O'Neal's allegations that the injection of a *tape* as evidence in the record is a false account of trial events. The Attorney General asserted in a footnote that O'Neal is merely speculating that it was used as evidence against him *at trial* and that the tape-recording was suppressed and never heard by a jury in his case. Which disputes, the record. **See: Appendix C.**

The admission on part of the Attorney General sufficiently attest to the dishonesty of the record. Therefore, this Honorable Court can attest to the record's own lack of integrity, for *rewriting* the actual events of a trial that resulted in the judgment against O'Neal. And the resulting miscarriage of justice, will allow the state to sustain his conviction, but clearly aware of the fact that it is falsely founded, and violates the 14th Amendment.

2. In 1997 O'Neal was transferred from juvenile court to circuit court. The Courts construed the rules of *transfer* to mandate side-stepping O'Neal's Due Process at this critical stage, so to defeat establishing his constitutional rights and safeguards, that would otherwise be secured by the Fourteenth Amendment. See: Kent v. United States, 383 U.S. 541, 560, 86 S. Ct. 1045, 16 L. Ed 2d 84 (1966) & In re Gault, 387 U.S. 1, 13 87 S. Ct. 1428, 18 L. Ed. 2D 527 (1967). (*The transfer stage, is a critical stage to which the constitutional rights of a child are established*) Accordingly, the juvenile court failed to make specific findings as to his age, and that he fit within a *specific*¹ provision of a transfer statute, which is required of state and federal law to authorize circuit court to proceed against him. Consequently, absent a valid transfer from the juvenile court, circuit court jurisdiction over O'Neal was void *ab initio*, showing a clear violation of the Due Process Clause of the Fourteenth Amendment. Kent, supra. **See: Appendix D.**

O'Neal's transfer also violates the Equal Protection Clause, because, in 2023 Kentucky's Legislature amended KRS 635.020(4) so that it now provides that juveniles classified within the provision be proceeded in accordance with KRS 640.010. **See: Attachment 1(a)**

¹ no specific version of KRS 635.020 stated on record in O'Neal's case.

compare to Attachment 1(b). KRS 640.010, administers **Due Process** requirements for juveniles the state wishes to prosecute as *adults*. KRS 635.020(4) now provides that juveniles charged in firearm offenses be afforded the critical-stage procedures of KRS 640.010 that are essential to establishing their constitutional rights. In 1997 O'Neal was *not* exempt from either version of KRS 640.010's purview. **See: Attachment 2.** However these are the exact same protections that Kentucky used KRS 635.020(4) to deny O'Neal, and impose burdens based on KRS 635.020(4)'s arbitrary classification. Which clearly demonstrates the state's discrimination against O'Neal violates the Clause.

3. In the circuit court, O'Neal was served a *blanket* indictment under KRS § 507.020. **See: Appendix E.** However, the deficiencies of the juvenile process that rendered O'Neal's competency to stand trial as no inquiry of interest to the courts, manifested the Commonwealth's failure to prove every essential element needed to find that a child's conduct, as it appears in evidence, met the statutory definitions that would qualify O'Neal guilty of *wanton* murder as defined by the statute, and by *adult standards*. That is because, Kentucky's wanton standard ignores reality, when applied to a child. **See: Appendix F (at page 9).** The basis of O'Neal's conviction is rather a desperate import of the abandoned *felony murder doctrine*, that was placed beyond the state's power to impose, via Kentucky's own enacted statutes. **See: Appendix F (at pages 3 and 12).** This maneuver allowed the jury to convict O'Neal for "wanton" murder, instead **based on a finding that he did NOT shoot the victim**. The instructions denied O'Neal his Sixth Amendment right to a unanimous verdict from the jury to convict him on the charges.

The felony murder rule was abolished when Kentucky adopted the penal code, well before O'Neal's 1998 conviction!² And Kentucky's legislature had not enacted the felony murder rule at the time of O'Neal's adjudication in 1998, which means O'Neal's conviction is by definition unlawful to reinforce, as it cannot be said to conform to even then existing constitutional standards, which is a concern of this Court in the category of prisoners, whose judgments are finalized, yet the conviction is under NO LAW. **See: Montgomery**

². KRS § 507.020 (enacts. Acts 1974, ch 406, § 61, effective January 1, 1975; 1976, ch 183 § 1; 1976 (Ex. Sess.), ch. 15, § 1, effective December 22, 1976), *Bennet v. Commonwealth*, 978 S.W. 322, 327.

v. Louisiana. 193 L. Ed. 2d. 599 at 615. (Ex parte Siebold, U.S. 371 at 376-377, 25 L. Ed. 717 (1879), states *if the commitment be against law, as being made by one who had no jurisdiction of the cause, or for a matter for which by law no man ought to be punished, the court is to discharge. Bac. Abr., Hab. Corp., B. 10.* The latter part of this rule, when applied under conviction and sentence, is confined to cases of *clear and manifest want of criminality in the matter charged*, such as in effect to render the proceedings void. *Id.*.) and See: Montgomery, 136 S. Ct. 718 at 731.

4. O’Neal’s conviction was obtained without necessity of the jury of the Court to find the essential elements, required to establish a defendant guilty of wanton murder -i.e. *as to whether or not he killed the victim*. See: **Appendix G.** The 8th Amdt demands of O’Neal’s situation, there be a *jury determination* that the juvenile actually killed or intended to kill. See: Miller, 567 U.S. 460 at 478 (*compare companion case of Kuntrell Jackson at 490*). However, the absence of a jury’s inquiry to establish the essential elements to properly support a conviction for wanton murder, produced a factually unconstitutional conviction in the circuit court. *The Sixth Amendment right to a jury trial, as incorporated against the States by way of the Fourteenth Amendment, requires a unanimous verdict to convict a defendant of a serious offense.* Accordingly, O’Neal has the constitutional right to demand that his liberty should not be taken from him except by the joint action of the court, and the unanimous verdict of a jury of 12 persons.

In O’Neal’s situation, a parole board inquiry for fact-finding to legitimate a “*verdict*” where the conduct being penalized is **not established by the Judiciary**, is an illegal state remedy. A Parole board proceeding in Kentucky is one of which the state lacks power to proscribe O’Neal’s conduct, therefore by it the State *could not constitutionally insist that he remain in jail.* “*For, no resources marshaled by the state could preserve O’Neal’s conviction that the Constitution deprives the states power to impose. As there is little societal interest in permitting the criminal process to rest where it ought properly never to repose.*” Montgomery, *supra* at 615, 617, e.g. Mackey, 401 U.S., at 693, 91 S. Ct. 1160, 28 L. Ed. 2D 404.

5. Consequently for O’Neal, the *primary conduct* for which he is being penalized is his *failure to grasp his options, and succeed in his repeated attempt to remove himself remove him*

*from the situation, due to inherent incapacity of his condition as a child, combined with duress from unrelenting pressure from an adult, which resulted in O'Neal being struck by a bullet as well -clearly verifiable in the state court record, i.e. trial. In fact, Kentucky's Supreme Court assessment of O'Neal's culpability, shows it is entirely based on the fact that this offense involved a firearm... regardless that it appeared in evidence that O'Neal had no intent to use it nor used it against the victim: as shown, **conduct that is not defined as murder, nor criminal.** Especially, that the "offense" makes him **eligible** to spend his life in prison, renders suspect the judgment against him.*

6. O'Neal's particular circumstance embodies *Miller's* recognition of the 'inherent danger in special legislative acts' of KRS 635.020(4)'s nature. *Id.* 567 U.S. 460 at 471. *As the legislature itself has decided that certain juveniles possess certain characteristics, and are thus deserving of the most severe possible punishments* -i.e. mandatory transfers- *not that it has failed to sanction others similarly situated.*

Although O'Neal demonstrated KRS 635.020(4) in *Miller's* concern, as not suited to the task of ruling upon the blameworthiness of himself, and levying appropriate punishment upon *specific persons* -i.e. children. *Id.* However, the "inherent flaws" of KRS 635.020(4), causes O'Neal to suffer from the unconstitutional effects of a *Bill of Pain and Penalties* pursuant to Kentucky's official position³. Which affirmatively demonstrates that as a matter that failed to satisfy the Due Process Clause of the 14th Amdt., that KRS 635.020(4) was applied to defeat the substantive requirements that safeguard *him*.

Consequently, the statute functions against O'Neal within this Court's definition of a "Bill of Pain and Penalties," prohibited by the United States Constitution Article I, § Sect. 9, Cl 3 and Article I § Sect. 10, Cl 1.

KRS 635.020(4) impaired and obstructed the government function contemplated under Kentucky's Unified Juvenile Code KRS 600 to 645, which is characteristic of the *bill*. As it implied

³. The Attorney General's response to his Rcr. 11.42, alleged Kentucky *only* used KRS 635.020(4) to 'determine' O'Neals culpability for the offense; not to 'transfer' him to adult court.

dismissing the *procedural hurdles* provided by the Fourteenth Amendment & Bill of Rights, to deprive O’Neal who is affected by it DUE PROCESS of law.

Kentucky *exposed* a wrong so fundamental, that the whole circuit court proceeding was a *mere pretense of a trial* endorsed neither by authoritative statute, nor constitutional state or federal law. Hence, the “trial” was NOT valid in any legal manner, and as a void trial is equivalent to ***no trial***.

This makes *KRS 635.020(4)* in O’Neal’s case function within this Court’s definition under United States v. Lovett, 328 U.S. 303, 66 S. Ct. 1073, 90 L. Ed. 1252, 106 Ct. Cl. 856, (1946) and Putty v. United States, 220 F.2d. 473 at 478, as a ‘*Bill of Pains and Penalties*’ prohibited by U.S. Const. Art. I, § Sect. 9, Cl 3 & Sect. 10, Cl 1. As applied to O’Neal, the statute qualifies under the test set out in: Foretich v. United States, 351 F.3d 1198, 359 U.S. App. D.C. 54, 2003 U.S. App. LEXIS 25375 (D.C. Cir 2003) to ascertain whether the statute imposes punishment, which are:

- 1. whether challenged statute falls within historical meaning of legislative punishment,**
- 2. whether statute, viewed in terms of type and severity of burdens imposed, reasonably can be said to further non-punitive legislative purposes, and**
- 3. whether legislative record evinces congressional intent to punish;**

Federal Courts further established the standard in Whitney v. Heckler, 780 F.2d 963, 1986 U.S. App. LEXIS 21846 (11th Cir.) cert denied, 479 U.S. 813, 107 S. Ct. 65, 93 L. Ed. 2D 23, 1986 U.S. LEXIS 3338 (1986) Petitioner specifically directs this Court to Whitney v. Heckler’s finding that... “the statute fails to further any non-punitive legislative purpose...” also qualifies KRS 635.020(4) as applied to him, as one that inflicts constitutionally prohibited punishment.

The position from which O’Neal Petitions is anticipated by this Court in Montgomery v. Louisiana U.S. 136 S. Ct. 718, 193 L. Ed. 2D 599 (2016), as one that provides substantive grounds that would reasonably require federal intervention for proper remediation, without delay. This Courts rehearing on the merits of O’Neal’s *Writ* is warranted.

THIS COURT'S DECISION TO DENY O'NEAL REVIEW ON WRIT OF CERTIORARI ERRS TO O'NEAL'S SUBSTANTIAL PREJUDICE FOR DENYING HIM A MEANINGFUL REVIEW THAT IS REQUIRED OF A REVIEWING COURT IN WHICH A PETITIONER CHALLENGES THE CONSTITUTIONAL VALIDITY OF THE CRITICAL-STAGE JUVENILE TRANSFER THAT WAS CONDUCTED IN HIS CASE.

O'Neal has a constitutional claim to have this Superior Court review his *Writ* for Certiorari, because it questions the constitutional validity of his critical-stage juvenile transfer procedure. Kent v. United States, 383 U.S. 541, 560, 86 S. Ct. 1045, 16 L. Ed 2d 84 (1966) affords a Meaningful Review Standard, meaning Courts shall review to transfer dispute raised in that Court. The Standard is an established requirement of the Due Process Clause to the 14th Amendment, because "**the claimed benefits for this process should be candidly appraised by a reviewing court.**" See: In re Gault, 387 U.S. 1, 13 87 S. Ct. 1428, 18 L. Ed. 2D 527 (1967). Contrary to Kent's concern, the transfer scheme against O'Neal is conferred from a license for arbitrariness, that defaulted into unenlightened lawless procedures aimed at permanently incapacitating him. And this, Courts decision to not review O'Neal's transfer inquiry consequently countenances a license for the State to perform arbitrary actions against O'Neal and qualifies as concluding a jurisdictional crisis upon *presumption* which is prohibited of the Clause. Especially for the facts that in O'Neal's case, that it does not affirmatively appear in the record that the Constitution has been satisfied. Therefore, O'Neal has a constitutional claim to Kent's "statement of reasons" from this Honorable Court's *meaningful* review. A rehearing is warranted in this case as a requirement of the Due Process Clause to the fourteenth Amendment.



CONCLUSION

O'Neal imprisonment is upon transfer rules that allow the State to violate of ALL of his substantial rights. A rehearing is warranted in O'Neal's case and his request should be granted.

Submitted

CEDRIC W. O'NEAL
Southeast State Corr. Comp. P.O. Box 1600 Wheelwright, Ky. 41669

ⁱ Miller, 567 U.S. 460, at 472, 492 “Neuroscience continues to confirm, the ability to consider the full consequences of a course of action and to adjust one’s conduct accordingly is precisely what we know juveniles lack capacity to do effectively.

ⁱⁱ. **Indeed, even where a “reasonable person” standard otherwise applies, the common law has reflected the reality that children are not adults.** This rule is commonly applied to children of *tender years*. In practice, it has seldom been applied to anyone over the age of sixteen. *A child of tender years is not required to conform to the standard of behavior which it is reasonable to expect of an adult.* Reference- Restatement (third) of Torts § 10, comment b, p.117 (2005); see also id., Reporters’ Note, pp 121-122 (collecting cases); Restatement (second) of Torts § 283A Comment b, p. 15 (1963-1964). Miller, 576 U.S. 460 at 481. O’Neal appears in fact the type of juvenile contemplated by this Court, as his age (15 years old) at the time of the incident places him within the realm of **children of tender years**. The applied science of this Court in relation to the brain, fall squarely with the province of the offense committed in this case.

NOTICE

Notice is hereby given that the foregoing PETITION FOR REHEARING FOR WRIT OF CERTIORARI was mailed to the CLERK of the SUPREME COURT OF THE UNITED STATES, 1 First Street N.E. Washington D.C. 20543, and to the Attorney General of the Kentucky Commonwealth, State Capitol, 700 Capital Ave., Pm. 118, Frankfort Ky. 40601, this 14th Day of July, and to be considered at the Court's convenience.

DECLARATION IN COMPLIANCE WITH
28 U.S.C § 1746

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PETITION FOR REHEARING FOR WRIT OF CERTIORARI motion has been served by mailing postage prepaid to the CLERK of the SUPREME COURT OF THE UNITED STATES, 1 First Street N.E. Washington D.C. 20543, and to the Attorney General of the Kentucky Commonwealth, State Capitol, 700 Capital Ave., Pm. 118, Frankfort Ky. 40601, this 14th Day of July.



Cedric O'Neal
Southeast State Corr. Comp.
P.O. box 1600
Wheelwright Ky. 41669