

22-7775

No. _____

FILED

MAR 28 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DAVID ELIJAH SMITH — PETITIONER
(Your Name)

vs.

SOLICITOR GENERAL — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEAL
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID ELIJAH SMITH
(Your Name)

P.O. Box 6000
(Address)

Glenville, WV. 26351
(City, State, Zip Code)

F. C. I. Gilmer
(Phone Number)

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QUESTION(S) PRESENTED

DID THE FOURTH CIRCUIT COURT OF APPEALS VIOLATED THE FIFTH AMENDMENT OF DUE PROCESS IN VIOLATION OF THE SUPREME COURT BALL-V-UNITED STATES, 470 U.S. 864 (1985) (For single ACT)

DID THE FOURTH CIRCUIT COURT OF APPEALS VIOLATED THE SPECIAL ASSESSMENT FEE FOR THE SAME FIREARM IN COUNT 10 AND 11 IN VIOLATION OF RUTLEDGE-V-UNITED STATES, 571 U.S. 292 (1996) AND RAY-V-UNITED STATES, 481 U.S. 736 (1989) WITH TWO ASSESSMENT FEE.

DID THE FOURTH CIRCUIT COURT OF APPEALS VIOLATED THE SIXTH AMENDMENT GUARANTEE IN A JURY TRIAL, WHEN THE FOURTH CIRCUIT STATED IN IT OPINION SEPTEMBER 29, 2021, THAT A JURY WOULD HAVE CREDITED HIS CONCLUSORY CLAIM. (A DEFENSE)

HOW CAN THE FOURTH CIRCUIT COURT OF APPEALS SAY WHAT 12 JURYS WOULD FOUND, WITHOUT A TRIAL? (THAT SOME JIM CROW LAWS)

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TABLE OF AUTHORITIES CITED

CASES

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Ball-V- United States, 470 U.S. 864 (1985)
Ratlidge-V- United States, 517 U.S. 292 (1996)
Ray-V- United States, 481 U.S. 736 (1987)
Rehaif-V- United States, 139 S.Ct. 2191 (2019)

STATUTES AND RULES

18 U.S.C. 922(g)(1) AND 18 U.S.C. 922(d)

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 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☒ is unpublished.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 _____ 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☐ is unpublished.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 _____ 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 _____

September 29, 2021

☒ 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 _____.
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

Fifth Amendment of Due Process AND Sixth Amendment of
Fair Notice 18 U.S.C. 922(g)(1) and 18 U.S.C. 922(d) and
~~VIII~~ AMENDMENT

STATEMENT OF THE CASE

ON, August 1, 2016 David E. Smith made a phone call to his Grandson tell him a cracker (whiteman) is coming over to his Triguars house with some firearms and bulletproof Vest for sale are you interested in some and he, the Grandson sayed yes. And later Grandson came over and pick up the firearm and vest out of the trunk of cracker (whiteman) car. See Phone Ex D attached. David E. Smith never had possession of any firearm or vest. David E. Smith was charge with two Count, Count 10 and Count 11, for giving Grandson a 45 cal firearm count 10 and possession of same 45 cal firearm by a convicted felon Count 11, with was one act, on August 1, 2016 David E. Smith was given Two special assessment Fee, for one 45, cal firearm of 200.00 in violation of Ray-V. United States, 481 U.S. 736 (1989) on August 1, 2016. See Page 41 of sentence proceeding, that stated on line 21 to 23 In trunk of his car, never had possession of any firearms. Ex D.

REASONS FOR GRANTING THE PETITION

A.) THE FOURTH CIRCUIT COURT OF APPEALS IS AGAIN DISAGREEABLE WITH CASE LAW OF THE SUPREME COURT IN BALL V. UNITED STATES, 470 U.S. 964 (1985) (Double Jeopardy) Pursuant to Ball supra. The Supreme Court rest its opinion on the same conduct. The Ball supra. found that a single act may not establish unlawful receipt and unlawful possession of the same firearm. In case at bar, ON August 1, 2016 the District Court claim that I gave Kevin Smith (Grandson) a Firearm, a 45 cal and that David E. Smith the Defendant also had possession of same Firearm 45. cal on August 1, 2016 Court 10 and 11 of the indictment, the same act. David E. Smith was also given two special assessment fee for one 45 cal Firearm on Aug. 1, 2016 In violation of Rutledge v. United States, 571 U.S. 292 (1996) Surely that was Double Jeopardy and the writ should be granted.

B.) ON Remand from the Supreme Court of the United States, S.Ct. no. 19-6496. In the Fourth Circuit opinion September 29, 2021, stated that a jury would have credited his conclusory claim that alcohol, drugs and medication so clouded his memory that David E. Smith forgot he was a felon, and would have found him guilty. After David E. Smith show a defense? Surely that not the law. In Rehail supra. stated that 922(g)(1) applies both to the defendant conduct and the defendants status. The petitioners show his conduct that he was on Alcohol, Drugs and etc... The Fourth Circuit claim his conduct would have made no different, the jury would still found him guilty. David E. Smith ask this, what is the law? How can Fourth Circuit say what a jury would have found, look like some Jim Crow law again, see page 3 of September 29, 2021 C.F.A opinion. And what is the law? conduct and status...

CONCLUSION

The petition for a writ of certiorari should be granted.

With A New start (ANew)

Respectfully submitted,

W. E. Smith

Date: MAY 26, 2023