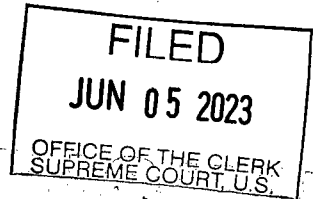


22-7799
No. 22A991



IN THE
SUPREME COURT OF THE UNITED STATES

GREGORY SMITH — PETITIONER
(Your Name)

vs.

L. OLIVER SUPT. S.C.I. - ALBION — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregory Smith
(Your Name)

10746, Route 18
(Address)

Albion, Pa. 16475-0001
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. SHOULD A CERTIFICATE OF APPEALABILITY ISSUE TO DEBATE THE MATTER OF COUNSEL BEING APPOINTED TO AID A PRO SE DEFENDANT SUFFERING FROM RETARDATION AND MENTAL ILLNESS?
2. SHOULD A CERTIFICATE OF APPEALABILITY ISSUE WHEN A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT WAS DEMONSTRATED THAT AT LEAST ONE OF THE CLAIM IF NOT ALL WAS DEBATABLE?

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

Commonwealth v. Smith, 451 WDA 2014, 131 A.3d 101 (Pa. Super. Ct. 8/21/15).
allocature denied 128 A.3d 220 (Pa. 12/16/15).

Commonwealth v. Smith, 383 WAL 2015 (Pa. 2015).

Commonwealth v. Smith, 1767 WDA 2016, 181 A.3d 416 (Pa. Super. Ct. 11/15/17)
allocature denied 188 A.3d 393 (Pa. 6/27/18).

Commonwealth v. Smith — WDA —, — A.3d — (Pa. Super. Ct. 6/6/20)

G. Smith v. Supt. Clark, et al., No 2:18-cv-1661 (W.D. of Pa. 7/21/22) order
affirming R. & R. (W.D. of Pa. 2:18-cv-01661-RJC 8/22/22).

G. Smith v. Supt. Albion, et al. (C.A. 22-2673 third circuit 1/9/23)

Rehearing denied February 14, 2023.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Barefoot v. Estelle, 463 U.S. 880 (1983)	5, 6, 8,
Martinez v. Ryan, 132 U.S. 1309 (2012)	7, 8,
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Escamilla v. Stephens, 749 F.3d 380 (5th Cir. 2014)	7,
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Title 18 subsection 3006(a)(2)(B).	5,

OTHER

CONT'D TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Fleming v. Evans, 481 F.3d 1249 (10th Cir. 2007)	7,
Parsad v. Greiner, 337 F.3d 175, (2d Cir. 2003)	9,
Resendez v. Knight, 653 F.3d 445 (7th Cir. 2011)	7,
United States v. Hanson, 237 F.3d 961 (8th Cir. 2002)	9,
United States v. Straight, 620 F.3d 816, (7th Cir. 2010)	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 C 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 B 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 January 9, 2023.

☐ 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: February 14, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including June 14, 2023 (date) on May 15, 2023 (date) in Application No. 22 A 991.

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 IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause...

Amendment V

...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

Amendment VI

...to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV

Section 1...; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 28 U.S.C. § 2253(c)(2)

STATEMENT OF THE CASE

Gregory Smith was indicted in January 2013, for the homicide for the shooting of Jacques Pascal in Pittsburgh Hill District, Pennsylvania.

On September 30, 2013, he appeared with counsel Carne L. Allman before Judge Anthony M. Mariani with a jury. The jury deadlocked. A new trial was commenced on January 13, 2014. He was ultimately found guilty of First-Degree Murder and sentence to life without parole.

The Superior Court affirmed in August 21, 2015, and the Supreme Court denied an allowance of appeal. Pa. 2015

A Post conviction was filed in June 2016. The Superior Court affirmed in Nov. 15, 2017, and the Supreme Court denied allowance of appeal, on June 27, 2018.

On December 10, 2018, a second P.C.R.A. filed and denied on March 5, 2019. The Superior Court affirmed on January 6, 2020, as time barred. Petitioner filed a writ of habeas corpus while his second PCRA was pending. The writ was stayed and on February 13, 2020 the stay was lifted. On July 21, 2022 the Chief U.S. Mag. Judge dismissed the petition. On August 22, 2022, the dist. ct. affirmed. In January 2023, the third circuit denied a C.O.A. and rehearing was sought and denied on February 14, 2023.

REASONS FOR GRANTING THE PETITION

Appointment of Counsel Claim(1).

The lower court along with the third circuit court of appeals should have given your petitioner a certificate of appealability because a substantial showing of the denial of a federal right, at least to one claim were debatable amongst jurists of reason. *Barefoot v. Estelle*, 463 U.S. 880, 893, (U.S. Sup. Ct. 1983); *Slacks v. McDaniel*, 529 U.S. 473, (U.S. Sup. Ct. 2000).

Petitioner sought appointment of counsel due to his everlasting mental illness. He is diagnosed with depressive disorder and aggressive ideation behavior. He have to take daily doses of Prozac & Ritalin.

Somewhere between February or March 2022, your petitioner made the timely request. Albert: he is not entitled to counsel for a writ of habeas corpus under Title 18 § 3006A (a) (2) (B) he met the criteria. Which counsel should have been given.

The district court denied the motion without prejudice stating your petitioner could resubmit the motion, if counsel was necessary at a later stage. No colloquy hearing was held to find out was your petitioner able to understand complex writ of habeas law with his mental condition. The court had his records of retardation and mental illness before it

during the habeas proceedings and consideration for appointment of counsel.

At the time of the request, your petitioner had filed a reply/traverse with a merit based claim, with tremendous value. That being: actual innocence of the charges of first degree murder in the form of diminished capacity supported by documented proof.

Your Petitioner misunderstanding of the rules distorted his interpretation of what stage to present this claim. His misinterpretation led him to believe he could file his diminished capacity in a reply.

With no notification or counsel appointed to rectify this matter by way of amended, he believed, he was within the rules. The district court knew something was amiss and would not appoint counsel. Instead, the claim was ruled waived.

This issue was and still is debatable amongst jurists of reason. Barefoot v. Estelle, supra and Slack v. McDaniel supra, were met. The district court and third circuit court of appeal were in error. Appointment of counsel for a defendant suffering with a mental illness disability evokes broad concerns, for all suffering from mental defects, and are left to defend themselves during complex litigation.

The reasons stated in this matter calls for a writ of certiorari to be granted.

Diminished Capacity Claim(2).

The issue of trial counsel ineffective assistance for failing to investigate and prepare a diminished capacity defense is a substantial showing of a denial of a federal right ~~and~~ debatable amongst jurists of reason. *Escamilla v. Stephens*, 749 F.3d 380, 391 (5th Cir. 2014). (COA granted because reasonable jurists could debate application of Strickland). *Resendez v. Knight*, 653 F.3d 445, 446-47 (7th Cir. 2011). (COA granted where petitioner made substantial showing he was denied right to counsel). *Fleming v. Evans*, 481 F.3d 1249, 1259 (10th Cir. 2007). (COA granted because substantial showing of ineffective assistance of counsel and due process claim).

The district court did not consider *Martinez v. Ryan*, 132 US 1309, (U.S. Sup. Ct. 2012) in your petitioner claim. Instead, the court stated there is no right to counsel during p c r a.

In absence of this valuable case of *Martinez v. Ryan*, supra., the court evoked the waiver rule. Also ruling your petitioner failure to raise the diminished capacity defense in his initial writ of habeas corpus, makes it waived.

The court also ruled that your petitioner could not use a diminished capacity defense, because his trial defense was, he did not commit the act.

The district court did not take into consideration this alternative defense not chosen was the only viable defense, because the defense, that your petitioner was not the shooter, had no likelihood of success when the witnesses knew the defendant from living in the neighborhood. *Deluca v Lord*, 77 F.3d 578 (2nd Cir. 1996). *Commonwealth v. Gainor*, 289 Pa. Super. 190, 432 A.2d 1116, (Pa. 1981)

This diminished capacity defense would have lessened the degree of guilt from 1st. to 3rd thereby rendering your petitioner actual innocent of the charges of first degree murder.

The record evidence of retardation, depressive disorder and aggressive ideation behavior supports a diminished capacity defense.

This issue demonstrated a substantial showing of a federal right to have effective assistance at trial and the issue was not waived because post conviction relief act, (p.c.r.a.), counsel failed to raise trial counsel ineptitude under *Martinez v. Ryan*, *supra*, and is debatable among jurist of reason. The third circuit should've given a C.O.A.

Therefore, under the *Barefoot v. Estelle*, *supra*, and *Stacks v. McDaniel*, *supra* this High Court is being evoked to consider a writ of certiorari and remand for a C.O.A.

Custodial Interrogation Claim (3).

This claim is debatable under *Miranda v. Arizona*, 384 U.S. 436 (1966). The district court did not apply the correct standard.

The district court believed that your petitioner was not considered "in custody" because he capitulated to be interviewed by the detective. They cuffed him, placed him in a locked vehicle, and kept him handcuffed during the interview.

During the interview the district court found your petitioner informed Det. Leheny that he had anger issues, and at times, his mind is not in the right place, and he is prone to outbursts of anger. Your petitioner t-shirt was confiscated, for testing and likewise his hands.

The petitioner conduct puts him in the category of "in custody." *Parsad v. Greiner*, 337 F.3d 175, (2d Cir. 2003). (In custody despite defendant voluntary going to police station, because officers confiscated his pants during questioning.) *U.S. v. Straight*, 620 F.3d 816, 819-20, (7th Cir. 2010). (In custody, despite defendant voluntary going to the station, because officers questioned him in tiny room for 1 hour.) *U.S. v. Hanson*, 237 F.3d 961, 964-65 (8th Cir. 2002). (In custody, despite defendant voluntary going to police station and being transported in a locked government car.)

The district court did not consider *Stansbury v. Cal*, 511 U.S. 318, (1994), or *Yarborough, v. Alvarado*, 541 U.S. 652, (2004).

The district court should have considered your petitioner retardation, depressive disorder and aggressive ideation which makes the mentally ill most susceptible to influence.

The state called detective Leheny to the stand solely for the purpose of commenting on your petitioner silence at trial.

Which violated his fifth and sixth amendment rights to silence at trial. He informed the jury that your petitioner told him he wasn't right in the head, that he was prone to sudden outbursts of anger since he was young.

The district court believed it was admissible to let the jury hear this oral statement because it only disclosed how the interview ended.

When in fact, the jury could have heard how the interview ended absent any comment that violates a petitioner right to silence at trial.

The third circuit court of appeals should have granted a C.O.A. because this issue demonstrated a substantial showing of a federal right and is debatable amongst jurists of reason.

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CONCLUSION

Wherefore, your petitioner request a remand

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Greg Smith

Date: 5-28-2023