

Supreme Court, U.S.  
FILED

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No. 22-981

In The  
**Supreme Court of the United States**

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EMEM UFOT UDOH,

*Petitioner,*

vs.

STATE OF MINNESOTA,

*Respondent.*

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**On Petition For A Writ Of Certiorari  
To The Minnesota Court Of Appeals**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

The Minnesota Court of Appeals concluded that the scope of Chapter §590 does not permit or allow a Defendant to raise – right of access to court – assignment of constitutional error in challenge to the Defendant’s conviction or sentence. Under these circumstances and in light of recent Supreme Court ruling in *Byington v. State*, 981 N.W.2d 193 (Minn. October 26, 2022), Minnesota Chapter §590 does guarantee a Defendant such right of action as an assignment of error under the “Other Disposition” Prong of Chapter §590 to challenge Petitioner’s conviction or sentence in a criminal case. The question presented for review is:

**QUESTION ONE: WHETHER THE COURT OF APPEALS ERRED AND VIOLATED PETITIONER’S DUE PROCESS RIGHT IN AFFIRMING THE DISTRICT COURT POST-CONVICTION ORDER DENYING RELIEF ON DEFENDANT’S – RIGHT OF ACCESS TO COURT TO TIMELY FILE AN APPELLATE BRIEF IN A19-1129 APPEAL CHALLENGING HIS CONVICTION ON THE FOLLOWING GROUNDS**

- (1) NEWLY DISCOVERED EVIDENCE, (2) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, (3) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL, (4) A *BRADY* VIOLATION, (5) THE STATE’S KNOWINGLY USE OF FALSE TESTIMONY, AND (6) PROSECUTORIAL MISCONDUCT BASED UPON THE STATE’S VOUCHING FOR THE CREDIBILITY OF THE COMPLAINANTS.

**QUESTIONS PRESENTED – Continued**

IN LIGHT OF *BYINGTON V. STATE*, 981 N.W.2D 193  
(MINN. OCTOBER 26, 2022)?

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

## **RELATED CASES**

*State v. Udoh*, A19-1129 (Minn. Ct. App. March 23, 2020)

*Byington v. State*, 981 N.W.2d 193 (Minn. October 26, 2022)

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**Supreme Court of the United States**

EMEM UFOT UDOH,

*Petitioner,*

vs.

STATE OF MINNESOTA,

*Respondent.*

**On Petition For A Writ Of Certiorari  
To The Minnesota Court Of Appeals**

**INTRODUCTION**

Petitioner hereby seeks review of the decision of the Minnesota Court of Appeals pursuant to 28 U.S.C. §1257. Petitioner urges this Court to review the Minnesota Court of Appeals decision in light of *Byington v. State*, 981 N.W.2d 193 (Minn. October 26, 2022) where the lower court has previously recognized a Petitioner's right of access to court in the State of Minnesota. Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**JUDGMENT AND OPINIONS BELOW**

Hennepin County District Court issued its order on March 16, 2022. (Appendix (“App.”) B). The Minnesota Court of Appeals issued its opinion on September 12, 2022. (Appendix (“App.”) A). The Supreme Court of the State of Minnesota denied further review on November 23, 2022 (App. C). On January 25, 2023, Honorable Brett Kavanaugh extended the time within which Petitioner is allowed to file the current petition to April 22, 2023. The judgment and opinion in Hennepin County District Court File No. 27-CR-13-8979 for which review is sought is in *State v. Udoh*, Appellate Case No. A22-0481 (Minn. November 23, 2022).

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**JURISDICTION**

The date on which the Minnesota Supreme Court decided this case was November 23, 2022. A copy of that decision appears at Appendix C. An extension of time to file the petition for a writ of certiorari was granted to and including April 22, 2023 on January 30, 2023 in Application No. 22A666/691. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) over the lower court decision.

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**CONSTITUTIONAL AND  
STATUTORY PROVISIONS INVOLVED**

United States Constitution, Amendment V provides in relevant part:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; 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; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV provides in relevant part:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

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### STATEMENT OF THE CASE

Petitioner appeals the September 21, 2022 decision of the Minnesota Court of Appeals in A22-0481. In August 2014, appellant was found guilty of one count

of first degree criminal sexual conduct and two counts of second degree criminal sexual conduct. On direct appeal, the court of appeals affirmed regarding the issues raised but reversed appellant's conviction on one of the two second-degree criminal sexual conduct charges, finding it to be a lesser included offense of the first-degree conviction based on a violation of Minn. Stat. §609.04, Subd. 1 (2012). *State v. Udoh*, A14-2181, 2016 WL 687328 (Minn. App. February 22, 2016), *review denied* (Minn. App. April 27, 2016).

Appellant subsequently filed a first petition for post-conviction relief, seeking relief on ten legal grounds. The district court issued an order and an evidentiary hearing was set on the new claim regarding a request for a new trial based on alleged victim recantation, which was denied on February 5, 2019. The Court of Appeal dismissed appellant's appeals of this February 5, 2019 denial of a new trial based on victim recantation due to appellant's inability to file a timely brief. *State v. Udoh*, No. A19-1129 (Minn. App. Mar. 23, 2020). The Minnesota Supreme Court in an order opinion denied appellant's motion to accept a late petition for review of the March 23, 2020 dismissal order. *State v. Udoh*, No. A19-1129 (Minn. Dec. 9, 2020) (Order opinion).

On December 14, 2020, Petitioner filed a petition for writ of habeas corpus in Chisago County district court, asserting that the restrictions imposed by the Minnesota Department of Corrections (DOC) on inmates' access to the prison law library facilities violates his constitutional right to meaningful access to

courts to timely file his brief in A19-1129 appeal. The major substantive claim that Petitioner appears to have made to the petition and memorandum was to include language regarding his right of access to the courts in his assertions of error. The Chisago district court denied the Chapter §589 petitions on August 9, 2021, concluding that an alternative means to obtain relief on the violation of Udoh's constitutional right of access to court claim exists, specifically citing to *Udoh v. Janssen, et al.*, 21-CV-99 (D. Minn. 2021) civil action.

Thereafter, Petitioner filed a petition for post-conviction relief in the district court in January 2022, arguing that the Minnesota Department of Corrections violated his constitutional right of access to the court by limiting his ability to adequately access the correctional facility's law library resources due to the COVID-19 pandemic to file a timely brief in A19-1129 appeal. These restrictions, he argued, were responsible for his inability to file a timely brief in appeal A19-1129 challenging his conviction. He therefore requested that the district court vacate the two orders resolving the claims raised in his first post-conviction petition and reissue those orders to provide him with a renewed opportunity to appeal and obtain the court of appeal's review of his claims.

The district court issued an order granting in part and denying in part Petitioner's post-conviction petition but declined to vacate the two orders resolving his first post-conviction claims. The Minnesota Court of Appeals affirmed and the Minnesota Supreme Court denied further review. Petitioner appealed issues

related to his conviction on the following grounds in his appellate brief to the Minnesota Court of Appeals filed on May 2022. Petitioner raises claims related to the validity of his convictions, and the claims presented in his appellate brief relate to (1) newly discovered evidence, (2) ineffective assistance of trial counsel, (3) ineffective assistance of appellate counsel, (4) a *Brady* violation, (5) the state's knowingly use of false testimony, and (6) prosecutorial misconduct based upon the state's vouching for the credibility of the complainants. These claims and arguments in support of relief were also appended to the addendum of Petitioner's appellate brief filed on May 3, 2022 in the lower court record, but the Minnesota Court of Appeals declined to reach the merit of those claims, which is squarely a challenge his conviction under Chapter §590.

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## REASONS FOR GRANTING THE WRIT

***First***, statutory construction of a statute, such as Chapter §590 presents a question of law that this court reviews *de novo*. *State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000); *State v. Stevenson*, 656 N.W.2d 235, 238 (Minn. 2003). The goal of all statutory constructions is to "ascertain and effectuate the intention of the legislature." Minn. Stat. 5645.16. When interpreting a statute, we must first determine whether the statute's language is clear and unambiguous. See *State v. Bluhm*, 676 N.W.2d 649, 651 (Minn. 2004). If it is not ambiguous, we must apply its plain meaning. *Id. State v. Maurstad*, 733 N.W.2d 141, 148 (Minn. 2007). A

statute is ambiguous if the language is susceptible to more than one reasonable interpretation. *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2002). When a criminal statute is ambiguous, we construe the statute narrowly in favor of lenity. *Maurstad*, 733 N.W.2d at 148. Furthermore, “if the legislature intent is discernable from the statute’s plain and unambiguous language, the letter of the law shall not be disregarded under the pretext of pursuing its spirit. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015).

Substantial and compelling reasons for granting review in this case is merited in light of the *Byington v. State*, 981 N.W.2d 193 (Minn. October 26, 2022) decision because this case presents an issue of importance to a Petitioner’s constitutional right of access to courts under the Fourteenth Amendment during the COVID-19 pandemic in light of the restrictions imposed to mitigate the spread of the COVID-19 virus. Although, vacating an order is a matter vested in a trial court’s discretion and will not be overturned absent a clear abuse of that discretion. *Johnson v. Hunter*, 447 N.W.2d 871, 873 (Minn. 1989). This court may grant a party relief from an order or judgment by vacating the lower court judgment. See Minn. R. Civ. P. 60.02(d); *Bode v. Minnesota Dep’t of Natural Resources*, 612 N.W.2d 862, 869 (Minn. 2000); *Boom v. Boom*, 361 N.W.2d 34 (Minn. 1985) (reversed and remanded to the court of appeals); *State v. Whitson*, 876 N.W.2d 297, 303 (Minn. 2016) (the court granted Whitson’s motion to reinstate the consolidated appeals); *Skelton v. State*, A10-2028 (Minn. App. September 6, 2011) ([t]he supreme court granted

review ‘in the interest of justice,’ vacated the dismissal order, and remanded to [the court of appeals] for further proceedings”); *McCoggle v. State*, 810 So.2d 1016 (Fla. Dist. Ct. App. 2002) (affirming the circuit court’s order denying motion to vacate post-conviction orders); *Weckerling v. McNiven Land Co.*, 42 N.W.2d 701 (Minn. 1950) (district court entered an order which vacated an order denying motion to vacate judgement).

**Second**, this court has previously granted review of a decision of the lower court that considered issues regarding the scope of a state statute, such as Minn. Stat. Chapter §590 in relation to the assignment of error. *Byington v. State*, 981 N.W.2d 193 (Minn. October 26, 2022); *McKenzie v. State*, 713 N.W.2d 840, 843 (Minn. 2006); *Sutherlin v. State*, 574 N.W.2d 428, 435-36 (Minn. 1998); *Rainer v. State*, 566 N.W.2d 692, 696 (Minn. 1997); *Johnson v. State*, 955 N.W.2d 908, 910-12 (Minn. 2021). These are substantial and compelling reasons for granting review in this case to revisit the Court of Appeals’ determination on the scope of the cognizable assignment of error that can be brought by a petitioner under Minn. Stat. Chapter §590 as it relates to Petitioner’s right of access to court. Minnesota Rules of Civil Procedure are applicable to a post-conviction action. A petition for post-conviction relief is civil in nature. *Bolstad v. State*, 435 N.W.2d 547 (Minn. App. 1989) (held appeals from orders in post-conviction proceedings are civil in nature and the Rules of Civil Appellate Procedure applies). See also *Caswell v. State*, 121 Idaho 801, 828 P.2d 830 (1992); *Freeman v. State*, 122 Idaho 621, 628, 836 P.2d 1088,

1089 (Ct. App. 1992) (citing *Hanks v. State*, 121 Idaho 153, 823 P.2d 187, 188 (Ct. App. 1992)); *State v. Cheney*, 116 Idaho 917, 919, 782 P.2d 40, 41 (Ct. App. 1989). For instance, Appellant points this Court to *Harbison v. State*, A22-0056 (Minn. App. Sept. 6, 2022) at Page 3, where the post-conviction court issued an order granting Harbison's petition and vacating for a second time, *Harbison's conviction. Id.* Then the post-conviction court later vacated its previous order upon the State's motion asking the post-conviction court for reconsideration of its order.

The Court of Appeals affirmed concluding that the issue raised was not cognizable under Chapter §590, and as such, the district did not abuse its discretion in denying in part appellant's petition for post-conviction. Petitioner now moves this Court to reinstate appeal A19-1129 and permit him to file a brief on the merit or remand for an evidentiary hearing on the question of the violation of his right of access to the court under the reasoning's applied in *State v. David Russell*, 1996 CV01901, 97-LW-2315 (Ohio App. June 2, 1997) (held the trial court abused its discretion and denied appellant's constitutional right to a full and meaningful access to court when it denied appellant's post-conviction petition without filing a ***findings of facts and conclusion of law***). See Appendix B. The Appellate Court in *State v. David Russell* reasoned that the trial court's findings of facts and conclusion of law is mandatory when the court dismisses the petition for post-conviction relief without conducting an evidentiary hearing. *State v. Jacobs*, 94 Ohio App. 3d 256, 260

(1994), citing *State v. Lester*, 41 Ohio St. 2d 55 (1975). The failure to make findings of facts and conclusion of law is a prejudicial error. *Jacobs*, at 260, citing *State v. Brown*, 41 Ohio App. 2d 181 (1974). The trial court failed to set forth findings of facts and conclusion of law in Appendix B, and the appellate court therefore sustained the appellant's first assignment of error, reversed and remanded the case for further proceedings consistent with this reasoning.

For the foregoing reasons, Petitioner prays the court reverse the Court of Appeals decision and remand to the Court of Appeals to reinstate A19-1129 appeal for merit review. In the alternative, this court should remand the case to the district court for further proceedings to vacate the two (June 15, 2018 and February 5, 2019) post-conviction court orders, including the examination of Petitioner's constitutional right of access to court claim. *Rickett v. State*, 795 N.W.2d 236, 242 (Minn. 2011) (therefore, the post-conviction court was able to hear and consider the petition on the merits).

**Third**, the Court of Appeals correctly noted that, in his brief to the Court, Petitioner renews his claim that his constitutional right of access to the courts was infringed upon by the Department of Corrections, which unjustly prevented him from filing a timely brief in A19-1129. Petitioner requests, as alternative forms of relief, that the court reinstate appeal A19-1129 and permit him to file a brief on the merit. This request for relief is clearly an assignment of relief or could be liberally construed as an assignment of error entirely

related to either his conviction or his sentence under Minn. Stat. §590.01 Subd. 1 (2020) because A19-1129 was an appeal of Petitioner's conviction. This is contrary to *Byington v. State*, 981 N.W.2d 193, 199-200 (Minn. October 26, 2022).

The Court of Appeals also correctly noted that Petitioner requested that the court conclude that the Department of Corrections violated his constitutional right of access to the Courts because Petitioner access to courts is a fundamental right. See *Bound v. Smith*, 430 U.S. 817, 827 (1997). The right of access to courts has been grounded in the due process clause of the United States Constitution. *Murray v. Giarratano*, 492 U.S. 1, 11 n.6 (1986). Due process affords petitioners "a limited right of access to the courts, to challenge their convictions . . . and to pursue actions for violation of their constitutional rights. *Bound*, 430 U.S. at 821. The right of access ensures that a post-conviction petition of a person in state custody will reach a court for its consideration. *Cornett v. Donovan*, 51 F.3d 894, 899 (9th Cir. 1995).

To facilitate an inmate's right of access to the courts, prison authorities must assist inmates in preparing and filing "meaningful legal papers by providing prisoners with adequate prison law library or 'adequate assistance from person trained in the law' 'during the pleading stage of an action'". *Bound*, 430 U.S. at 828. But the lower court declined to reach the merits of that argument which was clearly erroneous under *Kristian v. Minnesota Department of Corrections, et al.*, 541 N.W.2d 623, 628 (Minn. App. 1996) (held an

inmate alleging a denial of the constitutional right of access to the court must make a showing of actual injury). Thus, the dismissal of Petitioner's A19-1129 appeal satisfies that showing of actual injury or prejudice. See *Boom v. Boom*, 361 N.W.2d 34, 36 (Minn. 1985); *State v. Herem*, 365 N.W.2d 771, 772 (Minn. 1985) (applying *Boom* factors in criminal appeal); *Knutson v. Zent*, 413 N.W.2d 593, 597 (Minn. App. 1987) (concluded that an appeal should not be dismissed for appellant's failure to file a timely brief); *Theisen v. Theisen*, 405 N.W.2d 470 (Minn. App. 1987) (same); *State v. Bjornson*, 378 N.W.2d 4 (Minn. App. 1985) (same); *Progressive Cas. Ins. Co. v. Kraayenbrink*, 370 N.W.2d 455 (Minn. App. 1985) (same); *Progressive Cas. Ins. Co. v. Kraayenbrink*, 365 N.W.2d 229 (Minn. 1985) (same).

This Court should grant review in light of the reasoning applied in *Williams v. State*, 2011 Ark. 534 (Ark. Dec. 15, 2011) (granting a petition to recall a judgment in order to reopen the case); *State v. Griddine*, 75 S.W.3d 741, 745 (Mo. App. 2002) (Motion to recall the judgement is granted, the previous opinion is vacated and the cause is remanded to the district court); *Smartmays v. State*, 937 So.2d 712, 713 (Fla. Dist. Ct. App. 2006) (motion to recall judgement granted). See also *Dorn v. Laflar*, 610 F.3d 439, 445 (6th Cir. 2010); *Hebbe v. Plier*, 627 F.3d 338, 341 (9th Cir. 2010).

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## **CONCLUSION**

WHEREFORE, Petitioner prays the petition for a writ of certiorari be granted.

Respectfully submitted,  
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Dated: April 6, 2023