

APR 24 2023

OFFICE OF THE CLERK

No. 23-5281IN THE
SUPREME COURT OF THE UNITED STATESMORRIS SCOTT HOLMES — PETITIONER
(Your Name)

vs.

TOMMY BOWEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

No court has ruled on the merits of claims raised
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MORRIS SCOTT HOLMES
(Your Name)P.O. Box 426-2728 South Hwy 49
(Address)OGLETHORPE, GEORGIA 31068
(City, State, Zip Code)

(Phone Number)

ORIGINAL

RECEIVED

MAY 2 - 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. DOUBLE JEOPARDY: Petitioner was found "not guilty" of malice murder (count one) charge of indictment Y-16428, "guilty" of felony murder (count two) charge of indictment Y-16428. Only one individual involved, the same evidence was used to prove each charge of indictment.
2. AMENDING (ALTERING) OF INDICTMENT: Petitioner objected to the indictment, petitioner objected that the felony murder did not go with indictment. The court stated: "I'm going to change it to read, did cause the death of Jerome Morrison by stabbing him with a knife".
3. DEFECTED (VOID) INDICTMENT: The indictment (true bill) fails to include state's criminal code statutory, fails to include each essential element of offenses charged. Special presentment entered after indictment was amended by trial court, etc.
4. CASE ASSIGNMENT VIOLATION: Judge John Goger was assigned to try petitioner's case. John Goger conducted voir dire to select trial jury. Eleven hours afterwards, trial began in the courtroom of judge William Daniel. All judgments rendered by William Daniel is voided.
5. INSUFFICIENT EVIDENCE: witnesses testified petitioner "did not" have possession of knife during struggle, petitioner received several knife wounds during struggle. Knife involved was not introduced nor admitted into evidence, etc.
6. PROSECUTORIAL MISCONDUCT: Trial prosecutor repeatedly misstated the laws of the state of Georgia, prosecutor withheld witnesses statements, prosecutor assigned William Daniel to try petitioner's case, etc.
7. UNLAWFUL CONFINEMENT: Due to all of the violations committed by petitioner's trial court to obtain petitioner's conviction, petitioner's confinement is unlawful. Petitioner have not committed any crime.
8. RIGHT TO APPEAL DENIED: Petitioner's right to appeal has been denied as no superior, state supreme court, state habeas corpus court, federal district court, Eleventh circuit court of appeals, has ruled on the "merits" of claims raise by petitioner.

Cont.

QUESTION(S) PRESENTED

9. SUCCESSIVE PROSECUTION: Petitioner was tried twice for the death of a single individual immediately following the "not guilty" verdict was announced for the malice murder (count one) charge of the indictment (Y-16428). The prosecutor announced a "guilty" verdict for felony murder (count two) charge.

10. IMPROPER JURY INSTRUCTIONS: The court instructed the trial jury on a amended indictment, the court failed to instruct the trial jury of the lesser included offense (voluntary manslaughter) etc., charge was requested by petitioner's trial attorney.

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:

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 Decision of state court of Appeals.

APPENDIX B Decision of state Trial court.

APPENDIX C Decision of state's Supreme court Denying Review.

APPENDIX D Decision of state's Supreme court Denying Rehearing.

APPENDIX E Decision of Superior Court dismissing petition, no. 19HC-0479.

APPENDIX F Rule 11 Statement.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
GREEN V. THE STATE, 728 S.E. 2d 668, 291 Ga. 287 (Ga. 2012)	3, 4
JACKSON V. STATE, 577 S.E. 2d 570, 276 Ga. 408 (2003)	2
TOUCHSTONE V. THE STATE, 2012 WL 6621684 (Ga. App. 2012)	3
THE STATE V. JACKSON, 697 S.E. 2d 757, 287 Ga. 646 (Ga. 2010)	4
CUZZORT V. STATE, 519 S.E. 2d 688, 271 Ga. 4641.	5
LEWIS V. McDUGAL, 276 Ga. 861, 583 S.E. 2d 859 (2003)	5
BROWN V. RICKETTS, 233 Ga. 809, 213 S.E. 2d 672 (1975)	4, 5
U.S. V. HOY, 309 F3d 602 (9th Cir. 2002)	5, 6
U.S. V. MORROW, 177 F3d 272 (5th Cir. 1999)	5, 6

STATUTES AND RULES

D.C.G.A. 16-5-1 (c)
D.C.G.A. 16-1-8 (a)
D.C.G.A. 16-1-8 (a)(b)
D.C.G.A. 16-5-20
D.C.G.A. 16-5-20 (a)(1)
D.C.G.A. 16-5-21 (a)(1)
D.C.G.A. 16-5-21 (a)(2)
D.C.G.A. 16-5-21 (a)(3)
D.C.G.A. 16-5-21 (a)(4)
Rule 3.2
D.C.G.A. 15-1-9 (c)
Rule 25, Federal Rules of Criminal Procedure
Rule 18.1
47-8-1 et seq., 15-1-9.1 (f)
D.C.G.A. 59-14-4 2(a)

OTHER

GREEN V. U.S., 355 U.S. 184, 2 L.Ed. 2d 199, 87 S.Ct. 221 (1961)
WADE V. HUNTER, 336 U.S. 684, 93 L.Ed. 2d 974, 69 S.Ct. 934 (1949)
NORTH CAROLINA V. PEARCE, 395 U.S. 711, 23 L.Ed. 2d 656, 89 S.Ct. 2072 (1969)
GREYSON V. KELLAM, 937 F2d 1409 (9th Cir. 1991)
U.S. V. STODDARD, 111 F3d 1450 (9th Cir. 1997)
U.S. V. AUGILERA, 179 F3d 604 (8th Cir. 1999)
PALAZZOLO V. GOREYCA, 244 F3d 519 (6th Cir. 2001)
U.S. V. LOAYZA, 107 F3d 257 (4th Cir. 1997)
U.S. V. CLEMENTE, 22 F3d 783 (8th Cir. 1994)

CONT.

TABLE OF AUTHORITIES CITED

U.S. V. MOLINARO, 11 F.3d 853 (9th Cir. 1993)
U.S. V. DHINSA, 243 F.3d 635 (2nd Cir. 2001)
46 Am. Jur. 2d Judges' 249 when substitutions may be made (2004)
Federal Rules of Criminal Procedures, 73 A.L.R. Fed. 833 (1985);
"Substitution of Judge in state criminal trial" 45 A.L.R. 5th 591 (1997)
WHITEHEAD V. COWAN, 163 F.3d 708 (7th Cir. 2001)
CABBERIZA V. MOORE, 217 F.3d 1329 (11th Cir. 2000)
O'NEAL V. McANINCH, 513 U.S. 432, 130 L.Ed.2d 947, 115 S.Ct. 992 (1995)
CEJA V. STEWART, 97 F.3d 1246 (9th Cir. 1996)
mcWILLIAMS V. STATE OF COLO., 121 F.3d 573 (10th Cir. 1997)
DARADUS V. ARAUZ, 130 F.3d 385 (9th Cir. 1997)
ROSS V. WARD, 165 F.3d 793 (10th Cir. 1999)
SIMPSON V. MATESANZ, 175 F.3d 200 (1st Cir. 1999)
CALDWELL V. RUSSELL, 181 F.3d 731 (6th Cir. 1999)
MICKENS V. TAYLOR, 227 F.3d 263 (4th Cir. 2000)
SKAGGS V. PARKER, 235 F.3d 161 (6th Cir. 2000)
mcCLESKY V. ZANT, 499 U.S. 467, 497, 113 L.Ed.2d 517, 111 S.Ct. 1454, 1471-72 (1991)
STOIBER V. S.E.C., 161 F.3d 745 (D.C. Cir. 1998)
U.S. V. DABETT, 231 F.3d 979 (5th Cir. 2000)
MONGE V. CALIFORNIA, 524 U.S. 721, 118 S.Ct. 2246, 141 L.Ed.2d 615, 623 (1998)
U.S. V. EVANS, 318 F.3d 1011 (10th Cir. 2003)
BENTON V. MARLAND, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969)
U.S. V. BERRIOS-CENTENO, 250 F.3d 294 (5th Cir. 2001)
Shoemaker V. Whitlock, 226 Ga. 771, 177 S.2d 677, 1970 Ga. LEXIS 680.
Schofield V. Meder, 632 S.E.2d 369, 280 Ga. 865 (2006)
JAMES V. KENTUCKY, 466 U.S. 341, 80 L.Ed.2d 346, 104 S.Ct. 1830 (1984)
U.S. V. GAUDINI, 515 U.S. 504, 132 L.Ed.2d 444, 115 S.Ct. 2310 (1995)
U.S. V. WOLNY, 133 F.3d 758 (10th Cir. 1998)
U.S. V. YAZZIE, 188 F.3d 1178 (10th Cir. 1999)
U.S. V. SMITH, 223 F.3d 554 (7th Cir. 2000)
U.S. V. GALLAWAY, 316 F.3d 624 (6th Cir. 2001)
HO V. CAREY, 332 F.3d 587 (9th Cir. 2003)
BRADY V. MARYLAND, 373 U.S. 83, 10 L.Ed.2d 215, 83 S.Ct. 1194 (1963)
COLLIER V. DAVIS, 130 F.3d 843 (7th Cir. 2002)
U.S. V. TURNER, 104 F.3d 217 (8th Cir. 1997)
ZONE V. BELL, 243 F.3d 961 (6th Cir. 2001)

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.

[] 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

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the Trial court 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.

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 1-3-2003. A copy of that decision appears at Appendix A.

[] A timely petition for rehearing was thereafter denied on the following date: March 17, 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 _____ (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 5: no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor be deprived of life, liberty, or property, without due process of law.

AMENDMENT 5: AMENDING OF INDICTMENT.

AMENDMENT 14, which applies to the states through the fifth Amendment.

AMENDMENT 5, 6: DEFECTIVE (VOID) INDICTMENT.

AMENDMENT 5: DUE PROCESS VIOLATION, CASE ASSIGNMENT,

AMENDMENT 5: DUE PROCESS VIOLATION, INSUFFICIENT EVIDENCE.

AMENDMENT 6: DUE PROCESS VIOLATION, PROSECUTORIAL MISCONDUCT.

AMENDMENT 5: UNLAWFUL CONFINEMENT.

AMENDMENT 14: RIGHT TO APPEAL; DUE PROCESS VIOLATION,

AMENDMENTS 5, 14: DUE PROCESS VIOLATION, SUCCESSIVE PROSECUTION,

AMENDMENT 5, 14: DUE PROCESS VIOLATION, IMPROPER JURY INSTRUCTIONS.

STATEMENT OF THE CASE

After petitioner's conviction, petitioner filed a "Motion" for a new trial in the superior court of Fulton County, petitioner's motion was denied. Petitioner filed a "motion" for reconsideration in the supreme court of Georgia, petitioner's motion was denied.

Petitioner submitted petitioner's State habeas Corpus petition to the superior court of Calhoun County on 11-10-2003, petitioner presented twenty one claims to the habeas court during hearing. The superior court of Calhoun County denied petitioner's petition without ruling on the "merits" of claims raised in petition. The court ruled that Eighteen (18) of claims raised were procedurally defaulted and did not rule on the "merits" of claims raised.

Petitioner submitted a certificate of probable cause to the Supreme Court of Georgia on March 28, 2006, the Georgia Supreme Court denied petitioner's certificate of probable cause without ruling on the "merits" of claims raised. No. S05H1328.

Petitioner submitted a Federal habeas Corpus petition to the U.S. District Court for the Middle District of Georgia, the court adopted the decision of the Supreme Court of Georgia and denied petitioner's petition without ruling on the "merits" of claims raised.

Petitioner appealed the district court's decision to the Eleventh Circuit Court of Appeals, the court adopted the decision of the U.S. District Court and denied petitioner's appeal, without ruling on "merits" of claims raised.

Petitioner submitted a state habeas corpus petition to the Superior Court of Wilcox County, a hearing was held, the court denied petitioner's petition without ruling on claims raised.

Petitioner submitted a certificate of probable cause to the Supreme Court of Georgia, No. 2017-CV-113, the court denied certificate without ruling on "merits" of claims raised.

Petitioner submitted a petition for leave to file a successive petition in the U.S. Court of Appeals Eleventh Circuit, the court denied petition.

The lower courts decisions dismissing petitioner's petitions for failing to raise claims on appeal conflicts with the United States Supreme Court's decisions in KAUFMAN v. U.S., 394 U.S. 219, 22 L.Ed.2d 127, 89 S.Ct. 1068 (1969), D'NEAL v. McANINCH, 513 U.S. 432, 130 L.Ed.2d 947, 115 S.Ct. 992 (1995).

REASONS FOR GRANTING THE PETITION

Petitioner's writ of certiorari should be granted because of the erroneous decisions made by the superior court of Fulton County, the court's decisions violated several Amendments of the United States Constitution. The superior court's decisions are in conflict with the state of Georgia Supreme Court decisions, the U.S. district court decisions, the U.S. Court of Appeals decisions, and the U.S. Supreme Court decisions.

The Supreme Court of Georgia decisions are in conflict with the U.S. district court decisions, and the U.S. Supreme Court decisions regarding claims raised in petitioner's petitions.

The Supreme Court of Georgia decisions are in conflict with the court's own decisions regarding claims raised in petitioner's petitions. The Supreme Court of Georgia in "Brown v. Ricketts", decided, "one review on the "merits" whether on habeas corpus "or" on appeal of conviction is sufficient when neither facts nor law has changed".

The Superior Court of Calhoun County violated Brown v. Ricketts, when the court failed to issue any decisions on the "merits" of claims raised in petitioner's petitions. Petitioner's initial (first) state habeas corpus petition.

Brown v. Ricketts, states; "Whether on habeas corpus "or", "not an" on appeal, the court's decision in Brown v. Ricketts, means petitioner "did not" have to raise claims in the Superior Court (motion for new trial), nor Supreme Court of Georgia before petitioner's claims can (could) be raised in state habeas corpus petition(s). Claims raised by petitioner "were not" is not procedurally defaulted. KAUFMAN v. U.S., 394 U.S. 217, 221 Ed 2d 227, 89 SCt 1068 (1969). ONEAL v. Mc ANINCH, 513 U.S. 432, 130 Ed 2d 947, 115 SCt 998 (1992) (1995).

The erroneous decisions of the Superior Court, Georgia Supreme Court, the U.S. district court, and the Eleventh Circuit Court of Appeals, are in conflict with the decisions of the United States Supreme Court.

It is of national importance that the United States Supreme Court correct the erroneous decisions of the lower courts, and for this court to issue court's decisions on the "merits" of claims raised in petitioner's petitions.

Petitioner is innocent, and the "not guilty" verdict for the Malice murder (Count One) charge of indictment Y-16418, reveals petitioner's innocence.

The special presentment that was entered into petitioner's trial after the "true bill" of indictment was amended by petitioner's trial court renders trial court's judgment "VOID".

Claims raised in petitioner's petitions "are not" procedurally defaulted, nor is previous petitions successive /untimely.

Contra

REASONS FOR GRANTING THE PETITION

It is of national importance that the United States Supreme Court review the merits of claims raised by petitioner so that the American public can and will be reassured that the judicial system in America will protect innocent citizens. The citizens of this country continues to have great respect for this court as this court has showed the court's ability to protect the constitution of America. This court has showed repeatedly the court's ability to correct the erroneous decisions of the lower courts, and to protect innocent Americans.

Petitioner have not violated any laws of the state of Georgia, and this court's examining (ation) of the documents and records of petitioner's case will reveal petitioner's innocence.

As one of the great Justices of this court stated: "it is far worse to convict an innocent man, than it is to let a guilty man go free".

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Morris Scott Holmes

Date: 4-17-2023