

Case No 23-6293

In The

Supreme Court of The United States

Shallon Hawkins

Petitioner

U.S.

David Vandergriff

Respondants

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Eighth Circuit
Petition For Rehearing

Shallon Hawkins 1278691

Eastern Reception Diagnostics
And Correctional Center

2727 HWY K

Bonne Terre MO 63628

Attorney Of Record For Petitioner

To Chief Justice and/or Deciding Justices, Grounds for Rehearing

A rehearing of the decision in the matter is based on a substantial matter and is in the interests of justice because the issues presented in my petition for writ of Certiorari is in regards to Circuit Conflict, the state of last resort, U.S. District Court, and/or U.S. Court of Appeals made decisions of federal issues and state issues that conflicts with other decisions of state and/or federal courts as well as Supreme Court decisions or of such importance, they should be reviewed by this Supreme Court. Also the federal Circuit and U.S. Federal Court of Appeals decisions are so out of line with normal judicial standards this Supreme Court should exercise its supervisory powers to instruct the lower state and federal courts.

In regards to Reason for Writ 2, it is fact and law (*Miller-Eli V. Cokerell* 573 U.S. 327, 336, 154 L.Ed.2d 931 (2003)) that a petition for Certificate of Appealability need not be winning but only show reasonable jurists could debate or agree whether the petition should be handled differently or the issues were adequate for encouragement to proceed further (*Tennard V. Dretke* 542 U.S. 274, 276 (2004)/*Barefoot V. Estelle* 463 U.S. 880 (1983)). The U.S. District Court denied the 2254 and the Certificate of Appealability with the 2254 petition and then again with a motion for continuance of time and based on the denial of 2254. If the court believed the 2254 issues were adequate to proceed further or was debatable, the court would have granted the Certificate of Appealability. With this being said the requirements of *Tennard V. Dretke* and *Barefoot V. Estelle* could only be in regards to a separate petition, one requesting a certificate of appealability with an argument reasonable jurists could debate or agree the petition should have been handled differently or the issues were adequate to proceed further. The U.S. District Court denying the certificate of appealability with the 2254 motion was a procedural error by that court which caused the procedural default of the request of the certificate of appealability, it procedurally defaulted, because if the Certificate of Appealability was not denied with the 2254 I would have sent the request for Certificate of Appealability back to the U.S. District Court and not mistakenly to Missouri Court of Appeals. As argued Appellate Rule 22B says a request can be made to a circuit judge as well as a District judge and Missouri Court of Appeals are circuit judges and reviewable by Fed. App. Proc. R 3 and 4. The request for Certificate of Appealability should have been granted because I showed how reasonable jurists could debate or agree the petition should have been handled differently and/or the issues were adequate for encouragement to proceed further.

In regards to Reason for Writ 3, the U.S. Court of Appeals, also, erred and/or by abuse of discretion denying the appeal due to lack of jurisdiction because the second continuance of time was denied when the first one was granted and between the U.S. District Court's error or abuse of discretion denying the Certificate of Appealability with the 2254 and I sent a request for Certificate of Appealability timely to the wrong Court of Appeals and Appellate Rule 22B gives me a chance to request one from the U.S. Court of Appeals also. If this Court considers these errors an abuse of discretion, according to *Friendly, Indecision About Discretion* 31

Engr. L. Rev. 747, 773-78 (1982)). In *Larson v. Verizon New York Inc.*, 252 F.3d 163, 169 (2d Cir. 2001), it states, "A 'district court abuses' or 'exceeds' the discretion accorded to him when (1) its discretion rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding (*Milanese v. Rust-Oleum Corp.*, 244 F.3d 1041 (2d Cir. 2001)), or (2) its discretion - though not necessarily the product of legal error or a clearly erroneous factual finding - cannot be located within the range of permissible decisions (*Stormy Climate Ltd. v. Pro-bramp Inc.*, 809 F.2d 971, 974 (2d Cir. 1987); *Eastway Constr. Corp. v. City of N.Y.*, 821 F.2d 121, 123 (2d Cir. 1987)). This determination that the range of acceptable decision making has been exceeded in a particular case is assuredly one of law but it is analytically distinct from a determination that a legal standard applicable to a generality of fact situations has been ignored, incorrectly applied or inadequately applied in a particular case. That sort of error of law, if of significance to an outcome, can always be the basis for the appellate revision of "trial" court decisions. In such cases it would be clearer to say directly that the decision is reversed because of an error of law, rather than call such an error an abuse of discretion. In regards to (2) a district court has the ultimate responsibility to ensure, amongst the U.S. sentencing guidelines manual range it considers it correct, and the failure to calculate the correct guidelines range constitutes procedural error. (This is true and relevant to the state court in state claim Reason for Writ 1 issue 1-12) There is no difference in abuse of discretion in trial court and appeals courts in state or federal levels and this could also be true to legal decisions as well as sentencing guidelines where it would be considered procedural error. In effect an abuse of a court's discretion is a court error as suggested in the questions presented to the Writ of Certiorari.

In regards to Reason for Writ 1, the Missouri Public Defender system violated both Mo. Sup. Ct. R. 24.035(c) and 29.15(c) by failing to raise all (meritorious) claims known to me and all facts to support those claims in both the Direct and 2915 appeals and to the standard of Strickland rendering both counsels constitutionally inadequate. These inadequate and ineffective assistance of counsel claims for both Direct and 2915 counsel claims was attempted in the cover page in regards to every claim raised or not raised in the 2915. Any claim not raised or that did not come to full fruit, respectfully, the procedural default is supposed to be imputed to the state. This should account for all procedural defaults. However some of the claims that was attempted but did not come to full fruit, was not raised in a higher state court by the next appellate attorney. Although I am supposed to be afforded effective assistance of counsel at all stages, I am not afforded relief due to ineffective or inadequate counsel after the Direct or 2915 appeals. Knowing this I was trying to raise my own petition instead of my attorneys at that stage. I am entitled to my own defense (*United States v. Smith* 830 F.3d 803, 2016 U.S. App'x 13766, 118 AFTR 2d (CA-10) 2016, 5293) And that attorneys arguments were wrong and missing issues, as the court agrees in its decisions I asked for the phone call by Department of Corrections staff and was denied and not given the address to the courts by the third party interference and after organized criminal acts of department of Corrections. Also a reasonable confusion of the timeliness of a claim (in all Reasons for Writ 1, 2, 3) is generally good or just cause for procedural default and Article IX section 1 of Constitution states "the Congress may by general law prescribe

the manner in which such acts, records, and proceedings shall be proved, and the effect thereof "so this is within this court's jurisdiction."

In regards to the state claims 1-11, the state courts held these claims were not outcome determinative or not prejudicial which is contradictory to *Coleman v. Wainwright* 372 U.S. 338, 9 LEd 2d 799, 83 S.Ct 792 (1963) that the Supreme Court states court error or ineffective or inadequate assistance of counsel is prejudicial unless proven unprejudicial beyond reasonable doubt. As this court has read, I acted lawfully in "excusable assault" or justified by self defense, defense of persons in a dwelling building or vehicle, accident and crime of possession and denied instructions with sufficient evidence to support the instructions, restrained unconstitutionally by visible, "non-visible" leg restraints, denied evidence of a breathalyzer test, denied a maternal witness that proved my culpable mental state, provided corrupt and altered state exhibit 5/80. The State, Courts, and counsel erred or allowed or opened the door to several inadmissible and damaging evidence and testimonies of entrapment, hearsay, and prior bad acts, and was provided involuntary intoxication instructions that forced a conviction based on intoxication instead of the required specific intent, sentencing me in a manner far exceeding constitutional sentencing guidelines and the law while using god to sentence me and although my claims are of innocence, justifiability, and not of intoxication, I could not deny my behaviors due to a head injury (Mayo Clinic Family Health Book 5th Edition 2018 Mayo Foundation for Medical Education And Research (MFMER) P41-42, P712-813 Scott C. Liting, MD Medical Editor, Sanjeev Nanda, MD Associated Medical Editor) could not lead the jury to believe me intoxicated in which I would have plead guilty if I was informed the court would have or would have had to give me the voluntary intoxication instruction, or given all the lesser included charges to the plea bargain, this is also all up to the jury to decide where the judge interfered with the jury's decision making process as argued in the issues. All the testimonies are provided from trial as are all the facts but if any of the judges do not find it credible, that is up to the jury to decide and I am to be given the benefit of the doubt in regards to self defense and the state has to prove it was not a self defense.

Conclusion

The procedural default issues by counsel and Department of Corrections are adequate to show the 2254 petition or rather the Certificate of Appealability was debatable by reasonable jurors the outcome should have been handled differently and/or the issues were adequate for encouragement to proceed further. They could also debate the claims could be reviewed by (*Martinez v. Ryan* 566 U.S. 1, 10-11 (2012) 132 S.Ct 1309, 182 LEd 2d 272 (2012) and *Coleman v. Thompson* 501 U.S. 722, 750, 111 S.Ct 2546, 115 LEd 2d 640 (1991)) fundamental fairness clause, actual innocence. The procedural defaults in state and federal courts also change the ways these courts review the claims in regards to preserved to plain error review to procedurally defaulted to *Martinez v. Ryan* to *Coleman v. Thompson*, to the fundamental fairness, and actual innocence. These procedural defaults are all external to me and not fairly attributable to my fault. All of these court errors and ineffective assistance of counsel claims were highly prejudicial and outcome

determined. Denying my case undermines my, and the peoples, ability to defend oneself or says one cannot defend oneself if intoxicated and makes a statement one cannot try to escape from a situation to get away but must try to cause serious physical injury or death just in self defense or defense of persons in dwelling building or vehicle (instructions). This also, although driving intoxicated is illegal but no an assault in my case, states an individual only needs to know serious physical injury or death can occur is sufficient to charge an individual for 1st degree assault regardless if it was intentional or if serious physical injury occurs, that it conflicts with the required elements of 1st degree assault but that one must be convicted of assault based on intoxication regardless of serious physical injury or not. This means every individual involved in a car collision would have to be charged for 1st degree assault regardless of intoxication injury, or intent because everybody who drives a motor vehicle knows just by driving a motor vehicle can cause a collision which could cause serious physical injury. Respectfully, by upholding this conviction, denying this petition for rehearing and writ of Certiorari, this court is leaving an innocent person in prison for 35 years who acted lawfully and within his rights when I thought I saw a gun and is denying me and the people justice and severely undermines the integrity of the judicial process and the fundamental fairness. Besides the reasons above, you are forcing me, an accused, to an attorney who creates my defense of their own over the defendants and denying me the constitutional rights listed in my petitions for Certiorari and supporting motions and documents, deciding contrary to clearly established state, federal, and Supreme Court decisions and laws provided in the petitions. I respectfully request your highnesses, the justices of the highest court of the land, to grant this petition for rehearing and Certiorari presented in this petition for rehearing, writ of Certiorari, Petitioners Reply Brief. We are well aware I am uneducated in the law and must rely on the integrity of this court to conclude a fair conclusion of law in these matters. What may come to your surprise is everything in my petitioners is true, fact, to the best of my knowledge. I provided only testimony and facts provided in state courts and even if a court does not find my testimony credible, that is up to a jury to decide and invokes their responsibility of fact findings, and denies me benefit of doubt I was denied and supposed to get in trial.

1 On this date February 29, 2024 this court denied petition for Writ of Certiorari

2 The principle issues addressed in this case was not addressed in the denial of Certiorari, petitioner has not been given an opportunity to argue reasons for rehearing or suggesting why petition should be heard.

3 In other decisions by State, District, and U.S. Court of Appeals, and by this court listed in Petition for Certiorari and all other supporting motions, the other petitions have been granted.

For the reasons stated and in petition for Writ of Certiorari Shallon Hawkins, petitioner, urges this petition for rehearing be granted, and that on further consideration the state conviction, and or petition for Certificate of Appealability to be overturned, conviction set aside and judgment corrected, or the judgment of lower court reversed or as appropriate.

Certificate Of Good Faith

I, Shallon Hawkins, Counsel for Shallon Hawkins, certify this petition for rehearing is presented in good faith and not for delay and that it is reflected to the grounds specified in Supreme Court Rule 44 of the rules of this Court

Date 3-10-24

Signature Shallon Hawkins

Signature

Block

Shallon Hawkins 1278691
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Eastern Reception Diagnostics
And Correctional Center

2727 Hwy K

Bonne Terre, Mo 63628

Counsel of Record for Shallon Hawkins, petitioner

Certificate Of Good Faith

I, Shallon Hawkins, Counsel for Shallon Hawkins, certify this petition for rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in Supreme Court Rule 44 of the rules of this Court.

Date: 3-11-24

Signature Shallon Hawkins

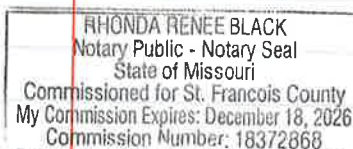
Proof of Service

I certify, swear, state or declare this was placed in the prison mail system on March 11, 2024 and a copy sent to opposing counsel.

Date: 3-11-24

Signature Shallon Hawkins

Rhonda Renee Black
3-11-24



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Motion For Suspension Of Order Denying Certiorari

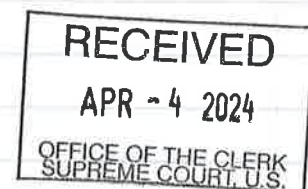
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Bonne Terre MO 63628

Attorney Of Record for Petitioner



Motion For Suspension Of Order Denying Certiorari

Persuant to Supreme Court Rule 16.3, petitioner requests this Court suspend the application of its order of February 20, 2024 denying Certiorari in this matter pending the filing and final disposition of petitioner's petition for rehearing under Supreme Court Rule 44.2

Grounds For Relief

In support of this motion, the petitioner states this petition and petition for rehearing is in good faith and not for delay and is restricted to the grounds specified in Supreme Court Rule 44 of the rules of this court. The claims in the petition re a rehearing of the decision in the matter is based on a substantial matter and is in the interests of justice because the issues presented in my petition for writ of Certiorari is in regards to Circuit conflict, the state court of last resort, U.S. District court, and on U.S. Court of Appeals made decisions of federal issues that conflicts with other decisions of state and or federal courts as well as Supreme Court decisions or of such importance they should be reviewed by this supreme court. Also the federal circuit and U.S. Federal Court of Appeals decisions are so out of line with normal judicial standards this supreme court should exercise its supervisory powers to instruct lower state and federal courts.

Amongst the claims raised are the U.S. District Court erred and or by abuse of discretion of denying the claims due to procedural default and by denying the petition for Certificate of Appealability first with the 2254 without receiving an argument for petition for Certificate of Appealability and then a second time based on a motion for continuance of time for petition for Certificate of Appealability and again on the 2254 because I could not argue the petition could be argued or was debatable by reasonable jurists the petition should or should be handled differently or was adequate to encouragement to proceed further when I did not know why the petition was denied. I also claimed the U.S. Court of Appeals erred and or by abuse of discretion by denying the appeal due to lack of jurisdiction when it was in their jurisdiction, the U.S. District Courts error and or by abuse of discretion was good or just cause for any procedural default even though there was good or just cause for any procedural default and could be renewed by appellate rule 22b. Finally the error or abuse of discretion of the U.S. District court denying claims I acted lawfully is self defense, defense of persons in a dwelling building or vehicle, accident and crime of passion and denied these instructions with sufficient evidence to support the instructions. Unconstitutionally restrained by visible, non-visible restraints, denied evidence of a breathalyzer test, denied material witnesses that prove my culpable mental state, provided corrupt and altered state exhibit 5/5A in trial, the state, courts, and counsel allowing or opening the door to several inadmissible and damaging evidence and testimonies of entrapment and of prior bad acts and of hearsay. Provided involuntary intoxicated instructions forcing a conviction instead of required specific intent, and all of this was a court errors but also ineffective assistance of trial counsel and direct and 29.15 counsel for failing to raise ineffective assistance of trial counsel, did all of this was procedurally defaulted by inadequate assistance of 29.15 counsel and denied phone call by D.O.C.

1. The same issue(s) presented by petitioner in this matter has been presented to this court in the case of Shallon Hawkins V. David Vandergriff 23-6293, Shallon Hawkins V. David Vandergriff 22-3145, Shallon Hawkins V. David Vandergriff 4:22-cv-00867-GKF

2. In this case presenting the same issue, the appellant Shallon Hawkins has filed petition for Certiorari with this court

3. Petitioner in this case states that-

A. Its case is still pending before this court and denial of Certiorari should be stayed to permit the court to consider the petition for rehearing that will emphasize that the existence of a second petition for Certiorari on the same issue in so short a time illustrates the importance of the issue and the interest of the legal community in it.

B. If the court grants Certiorari in the case of Shallon Hawkins V. David Vandergriff 23-6293, the resolution of the issues in both cases may be determined simultaneously

Conclusion

For all the reasons set forth above, Petitioner requests that the stay be granted

Date ~~3/10/24~~ 3/11/24 Shallon Hawkins

Signature of Counsel Shallon Hawkins 1278691

Shallon Hawkins 1278691

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2727 Hwy 16

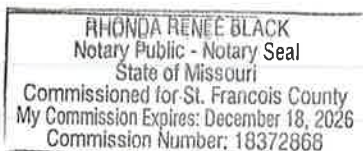
Bonne Terre, Mo. 63628

Attorney of Record for Shallon Hawkins

I certify, swear, or declare, this was placed in the prison mail system on _____ and a copy was sent to opposing party

Date 3/11/24

Signature Shallon Hawkins



Rhonda Renee Black
3-11-2024



STATE OF MISSOURI
DEPARTMENT OF CORRECTIONS
UNAUTHORIZED PROPERTY NOTICE

INSTITUTION
ERDCC

OFFENDER NAME Shallon Hawkins	DOC NUMBER 1278691	HOUSING UNIT 3B 205
REPORTING STAFF MEMBER Rhonda Black	STAFF MEMBER ID NUMBER 41883	DATE 3-11-24

You have the following items at this institution which you are not authorized to keep. If these items are not removed from the institution by the following date 3-11-24, the items will be disposed of per standard operating procedures.

1. Petition for rehearing	9. Petition for Rehearing	17.
2. Motion for suspension of order denying certiorari	10. Motion for suspension of order denying certiorari	18. Postage
3. Sent to State	11. Sent to Supreme Court	19. Paid in full
4. Michael Joseph Spillane, Attorney General	12. Mr. Scott Harris Clerk of Court	20.
5. Attorney General's office	13. Supreme Court of United States	21.
6. 207 W. High Street	14. 1 First Street N.E.	22.
7. P.O. Box 899	15. Washington DC 20543	23.
8. Jefferson City MO 65102	16.	24.

SELECT ONE OPTION BELOW AND COMPLETE THE REQUIRED INFORMATION.

☒ 1. MAIL TO:

NAME Michael Joseph Spillane Assistant Attorney General	Mr Scott Harris Clerk of Court Supreme Court of the United States
ADDRESS Attorney General's office 207 W. High Street P.O. Box 899	1 First Street N.E. Washington DC 20543
CITY Jefferson City MO 65102	STATE ZIP

Optional postage insurance desired? ☐ YES ☒ NO Approximate value of items: \$ _____

Cost of postage insurance: \$ _____ Postage Due: \$ _____ Total Due: \$ _____
(Insurance + Postage)

☐ 2. Visitor to pick up the items. If not picked up in 30 days, items may be returned to offender upon request or disposed of per SOP.

☐ 3. I am giving up all possession. The item(s) disposition will be determined by the institution.

NAME OF VISITOR	SIGNATURE OF VISITOR
NAME OF STAFF MEMBER	STAFF MEMBER SIGNATURE
STAFF MEMBER ID	DATE PICKED UP

I HEREBY RELEASE THE ITEMS AS INDICATED ABOVE.

OFFENDER SIGNATURE Shallon Hawkins	DOC NUMBER 1278691	DATE 3-11-24
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THE ITEM IS CONTRABAND AND WAS DISPOSED OF PER STANDARD OPERATING PROCEDURES.

STAFF MEMBER SIGNATURE	STAFF MEMBER ID	DATE
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MO 351-0228 (2-22)

DISTRIBUTION: COPY - PROPERTY/MAILROOM FILE COPY - OFFENDER

RHONDA RENEE BLACK
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Francois County
My Commission Expires: December 18, 2026
Commission Number: 18372868

Rhonda Renee Black
3-11-24