

SEP 06 2023

OFFICE OF THE CLERK

No.

23-6308

IN THE
SUPREME COURT OF THE UNITED STATES

ARIEL GARCIA-PELICO — PETITIONER
(Your Name)

vs.

STATE OF NEBRASKA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

NEBRASKA COURT OF APPEALS/SUPREME COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ARIEL GARCIA-PELICO
(Your Name)

TECUMSEH STATE CORRECTIONAL INSTITUTION
(Address) 2725 North Highway 50

TECUMSEH, NE 68450
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. I WOULD LIKE TO KNOW WHETHER OR NOT TRIAL/APPELLATE COUNSEL'S ACTIONS FELL BELOW THE U.S. V. CRONIC STANDARDS?
2. I WOULD LIKE TO KNOW WHETHER OR NOT TRIAL/APPELLATE COUNSEL'S ACTIONS FELL BELOW THE STRICKLAND V. WASHINGTON STANDARDS?
3. WAS THE JUDGE'S ACTIONS DURING MY TRIAL IMPROPERLY FAVOR THE PROSECUTION IN ALLOWING TO RE-OPEN ARGUMENTS?
4. WAS MY 14TH AMENDMENT RIGHTS VIOLATED WHEN THE TRIAL COURT ASKED PROBING/INVESTIGATIVE QUESTION TO THE PROSECUTION?
5. DID MY TRIAL/APPELLATE COUNSEL'S ACTIONS FALL BELOW THE FISHER V. GIBSON STANDARDS?

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

STRICKLAND v. WASHINGTON, 466 U.S. 668, 80 L.Ed 2d 674, 104 S.Ct. 2052 (1998)
FISHER v. GIBSON, 282 F.3d 1283 (CA 10 2002)
FRANKLIN v. McCAGHTRY, 398 F.3d 955 (CA 7 2005); BRACY, 286 F.3d at 411-412
WESTBROOK v. THALER, 585 F.3d 245 (CA 5 2009)
WALLACE v. BEIL, 387 F. Supp. 3d 728 (E.D. MICH. 2005)
U.S. v. GRAY, 878 F. 2d 702 (CA 3 1989)
U.S. v. HAMMONDS, 425 F. 2d 597 (D.C. 1970)
U.S. v. TUCKER, 716 F. 2d 576 (CA 9 1998)
WOODARD v. GOWNS, 898 F. 2d 1027 (CA 5 1990)
MARSHALL v. JERRICO, Inc., 446 U.S. 238, 64 L.Ed 2d 182, 100 S.Ct. 1610 (1980)
CRONIC, 466 U.S. 659, 104 S.Ct. 2039
U.S. v. CRONIC, 466 U.S. 648, 80 L.Ed 2d 657, 104 S.Ct. 2039 (1984)
HUNT v. HOUSTON, 563 F. 3d 695 (CA 2009)

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A *DECISION OF THE NEBRASKA COURT OF APPEALS*

APPENDIX B *DECISION OF THE NEBRASKA SUPREME COURT*

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
STRICKLAND V. WASHINGTON	3,10
FISHER V. GIBSON	3,10
FRANKLIN V. MCCAUGHTRY	3,10
WESTBROOK V. THALER	3,10
WALLACE V. BELL	3,10
U.S. V. GRAY	3,10
U.S. V. HAMMONDS	3,10
U.S. V. TUCKER	3,10
WOODARD V. COLLINS	3,10
MARSHALL V. JERRICO, INC.	3,10
CRONIC V. U.S.	3,10
HUNT V. HOUSTON	3,10

STATUTES AND RULES

OTHER 5TH, 6TH AND 14TH AMENDMENT RIGHTS

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 _____ 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 _____.

☐ 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 July 15, 2023.
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

1. 5TH AMENDMENT - "NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT THE DUE PROCESS OF LAW."
2. 6TH AMENDMENT - "AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE."
3. 14TH AMENDMENT - ENTITLES A PERSON TO AN IMPARTIAL AND DISINTERESTED TRIBUNAL — REQUIRES NEUTRALITY IN ADJUDICATION PROCEEDINGS.

STATEMENT OF THE CASE

ON MAY 6, 2021 I WAS CONTACTED ABOUT MOTHER'S DAY GIFT PURCHASES. MY MISTRESS'S DAUGHTER SAID I PICKED HER UP IN HASTINGS AND DROVE TO GRAND ISLAND, WHERE SHE ALLEGES WE WENT TO THE MALL, AND THEN TO THE WAL-MART, BECAUSE IT WAS TOO LATE FOR THE MALL. SHE FURTHER ALLEGES I BOUGHT FLOWERS AND CHOCOLATES; LEFT, AND WENT TO A BASKIN ROBBINS FOR A SLUSHIE. SHE GOES ON TO ALLEGE WE DROVE TO MY HOME AND I WAS GIVING HER A MASSAGE, WHICH TURNED INTO A SEXUAL ASSAULT. NOT A SINGLE ALLEGATION FROM HER IS TRUE; AS OFFICER SUCHANECK TESTIFIED, MY VEHICLE WAS NEVER FOUND IN THE WAL-MART PARKING LOT DURING THE ALLEGED TIME FRAME IN SURVEILLANCE VIDEO.

IN THE CHILD ADVOCACY INTERVIEW, THE INTERVIEWER TESTIFIES THERE WAS NO EMOTION IN HER INTERVIEW, AND THAT SHE HARDLY HAD TO ASK QUESTIONS, BECAUSE SHE WAS VERY OPEN AND WILLING TO TELL HER STORY. IN A TRAUMATIC EVENT AS SUCH AS THIS ONE WOULD BE THOSE ACTIONS DON'T MAKE ANY SENSE.

I WAS THREATENED BY MY MISTRESS MAY 28, 2021 BECAUSE I BROKE UP WITH HER AFTER SHE SENT FLOWERS TO MY WIFE'S HOME IN ANGER TOWARDS ME, TRYING TO START TROUBLE BETWEEN MY WIFE AND I.

DURING TRIAL, I ASKED MY LAWYER IF HE HAD CHECKED THE WAL-MART AND THE BASKIN ROBBINS, AND HE TOLD ME I NEEDED TO HIRE A PRIVATE INVESTIGATOR... HOWEVER, MY LAWYER DID NOT ALLOW ME ~~to~~ TO HIRE AN INVESTIGATOR, I WAS TOLD THAT THE JUDGE DENIED MY ACCESS TO A PRIVATE INVESTIGATION WHEN I HAD OWN MONEY TO PAY FOR THIS INVESTIGATION, THE LAWYER ALSO ADVISED AGAINST THIS. THERE WAS NO INVESTIGATION INTO NO VIDEO SURVEILLANCE DURING MY TRIAL HOWEVER, OFFICER SUCHANECK TESTIFIED THAT MY VEHICLE WAS NEVER FOUND AT THE GRAND ISLAND NEBRASKA PARKING LOT (WAL-MART). MY LAWYER WAS TOLD THAT IT WAS NOT APPROVED TO LOOK AT SURVEILLANCE NEITHER HAS THE PROSECUTION LOOKED AT VIDEO SURVEILLANCE. ALSO THERE WAS SUPPOSABLY SOME TEXT MESSAGES THAT WAS ALLEGEDLY CONFISCATED AS EVIDENCE BUT NEVER PROVED DURING TRIAL. MY LAWYER NEVER DID WHAT I ASKED TO DO ~~to~~ TO ~~keep~~ PREVENT ME FROM GOING TO PRISON, THERE IS SO MUCH OUT THERE THAT SHOULD BE GRANTED ME A LOT MORE ACCESS TO DISCOVERY BUT THE LAWYER WAS NOT DOING HIS JOB. ON MAY 9TH 2021, THE ONLY PLACE I WENT TO WAS TO THE WAL-MART IN HASTINGS NE, AROUND 6:00 TO 7:00 P.M. THE ONLY PLACE I WENT TO BUT I TOLD MY LAWYER IF HE CAN CHECK VIDEO SURVEILLANCE ON THIS DAY, BUT THE ~~Judge~~ ^{LAWYER} TOLD ME THE JUDGE ~~Represent~~ ADVISED AGAINST IT.

THE JUDGE DENIED ME ACCESS TO A PRIVATE INVESTIGATOR TO FIND THE VIDEO.

REASONS FOR GRANTING THE PETITION

I FEEL THE LOWER COURTS DECISION SHOULD BE REVERSED FOR THE FOLLOWING REASONS: IN FISHER V. GIBSON, COUNSEL POINTED OUT MISSING PROCEDURAL AND EVIDENTIARY EVIDENCE LEFT OUT BY THE PROSECUTION DURING TRIAL, MUCH LIKE IN MY CASE.. HAD MY ATTORNEY SIMPLY SAID NOTHING AT ALL, I WOULD HAVE BEEN IN A BETTER POSITION TO SECURE RELIEF. ALONG WITH THAT, IN WESTBROOK V. THALER, THE JUDGE ACTED IN A DUAL ROLE AS BOTH INVESTIGATOR AND ADJUDICATOR. IT SEEMED AS THOUGH HE FAVORED THE PROSECUTION MUCH LIKE IN WALLACE V. BELL. IF MY LAWYER WOULD HAVE DONE HIS DUE DILIGENCE AND FULLY INVESTIGATED THIS CASE, ANYONE WOULD HAVE SEEN I WAS NEVER AT THE WAL-MART IN GRAND ISLAND SIMPLY BY THE VIDEO-CAMERA EVIDENCE, AND KNOWN LIES WHERE THE ROOT OF THE PROSECUTIONS CASE; SAME AS IN U.S.V. GRAY; U.S.V. HAMMONDS, AND U.S.V. TUCKER. WOODARD V. COLLINS SHOWED IN 1990 THAT A FAILURE TO INVESTIGATE CONSTITUTED A CONSTRUCTIVE DENIAL OF COUNSEL, AS IN MY CASE. AFTER THE STATE RESTED, AND MY COUNSEL'S COMMENTS ABOUT THE PROSECUTION'S NOT PROVING MY AGE ESSENTIALLY GAVE THEM THE KEYS TO WIN; SO THEREFORE COMPLETELY AFFECTED THE OUTCOME OF TRIAL JUST AS IN STRICKLAND V. WASHINGTON. AT THAT POINT IN THE CASE, A CLEAR PRESUMPTION OF PREJUDICE IS SHOWN DURING THIS VERY CRITICAL STAGE OF TRIAL AS IN U.S. V. CRONIC, AS WELL AS HUNT V. HOUSTON. THE 14TH AMENDMENT ENTITLES A PERSON TO AN IMPARTIAL AND DISINTERESTED TRIBUNAL AND REQUIRES NEUTRALITY FROM THE ADJUDICATOR. HAD THE TRIAL COURT NOT PROMPTED THE STATE WITH QUESTIONING THEIR CONCLUSION, THEY WOULD HAVE NOT DONE IT THEMSELVES.

BECAUSE COUNSEL WAS REPRESENTING ME, MY DUE PROCESS WITH THE 5TH AMENDMENT, AND ASSISTANCE OF COUNSEL WAS DENIED AS GUARANTEED IN THE 6TH AMENDMENT. HE WAS BASICALLY A WITNESS AGAINST HIMSELF, AND THE 5TH AMENDMENT SHOULD SAFEGUARD US ALL FROM MOMENTS LIKE THIS.