

23-6342

No. _____

FILED
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OFFICE OF THE CLERK
SUPREME COURT U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

YA-SIN EL-AMIN SHAKIR — PETITIONER
(Your Name)

vs.

SUPERINTENDENT FAYETTE — RESPONDENT(S)
SCI; DISTRICT ATTORNEY BEAVER COUNTY
ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF PA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

YA-SIN EL-AMIN SHAKIR #KT9682
(Your Name)

SCI FAYETTE 48 OVERLOOK DRIVE
(Address)

LABELLE, PA 15450
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. IS FUNDAMENTAL DUE PROCESS VIOLATED WHEN A JURY'S FINDING OF GUILT IS UPHELD WHERE THE RECORD DEMONSTRATES INSUFFICIENT EVIDENCE?

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

YA-SIN EL-AMIN SHAKIR V. CAPOZZA, C.A. NO. 2:19-CV-1652,
MAGISTRATE JUDGE PATRICIA L. DODGE (7-7-22)

YA-SIN EL-AMIN SHAKIR V. CAPOZZA, C.A. NO. 19-1652,
DISTRICT JUDGE MARILYN J. HORAN (11-21-22)

YA-SIN EL-AMIN SHAKIR V. SUPERINTENDENT FAYETTE SCI,
ET AL., C.A. NO. 22-3359, (GREENAWAY, JR., MATEY, AND
FREEMAN, CIRCUIT JUDGES) (5-30-23)

YA-SIN EL-AMIN SHAKIR V. SUPERINTENDENT FAYETTE SCI;
DISTRICT ATTORNEY BEAVER COUNTY, NO. 22-3359, (BEFORE:
CHAGRES, CHIEF JUDGE, AND JORDAN, HARDIMAN, SHWARTZ,
KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,
MONTGOMERY-REEVES, CHUNG, CIRCUIT JUDGES)

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT.....	9
CONCLUSION.....	12

INDEX TO APPENDICES

APPENDIX A YA-SIN EL-AMIN SHAKIR V. CAPIZZA, C.A. NO. 2:19-cv-1652,
MAGISTRATE JUDGE PATRICIA L. DODGE (7-7-22)

APPENDIX B YA-SIN EL-AMIN SHAKIR V. CAPIZZA, C.A. NO. 19-1652,
DISTRICT JUDGE MARILYN J. HORAN (11-21-22)

APPENDIX C YA-SIN EL-AMIN SHAKIR V. SUPERINTENDENT FAYETTE
SCI, ET AL., C.A. NO. 22-3359, (GREENAWAY, JR., MATEY, AND
FREEMAN, CIRCUIT JUDGES) (5-30-23)

APPENDIX D YA-SIN EL-AMIN SHAKIR V. SUPERINTENDENT FAYETTE SCI;
DISTRICT ATTORNEY BEAVER COUNTY, NO. 22-3359,
APPENDIX E (BEFORE: CHAGARES, CHIEF JUDGE, AND JORDAN, HARDIMAN,
SKWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY,
APPENDIX F PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG,
CIRCUIT JUDGES)

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 D to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished. - *TO PETITIONER'S KNOWLEDGE*

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,
[X] is unpublished. - *TO PETITIONER'S KNOWLEDGE*

[] 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 5-30-23.

[] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 9-8-23, and a copy of the order denying rehearing appears at Appendix 4.

[] 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 _____. 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 14 OF THE UNITED STATES CONSTITUTION

28 U.S.C. 2254

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
JACKSON V. VIRGINIA, 443 U.S. 387 (1979)	9, 10
STATUTES AND RULES	
OTHER	

STATEMENT OF THE CASE

STATEMENT OF THE CASE WRITTEN ON LOOSELEAF PAPER
AND ATTACHED TO THIS PAGE, PAGES 5-8.

STATEMENT OF THE CASE

A. FACTUAL HISTORY

ON JULY 14, 2011, VICTIMS LUCIEN ROBERTS AND BRIAN ELMORE WERE APPROACHED BY THREE MALES. ONE OF THESE THREE MALES, IDENTIFIED AS THE PETITIONER, RETRIEVED A FIREARM FROM HIS WAIST AND POINTED IT AT BRIAN ELMORE WITHOUT EVER FIRING AT HIM. WORDS WERE EXCHANGED BETWEEN THE TWO WHICH CAUSED LUCIEN ROBERTS TO RETRIEVE HIS FIREARM. THIS IN TURN CAUSED PETITIONER TO TURN AND POINT HIS FIREARM AT LUCIEN ROBERTS - COMPLETELY ABANDONING ALL ENGAGEMENT WITH BRIAN ELMORE WITHOUT EVER HAVING FIRED THE WEAPON AT HIM. LUCIEN ROBERTS AND PETITIONER THEN EXCHANGED FIRE.

DURING THIS EXCHANGE OF FIRE BRIAN ELMORE RAN INTO THE LINE OF CROSSFIRE IN HIS ATTEMPT TO FLEE THE SHOOTOUT AND WAS STRUCK BY UNINTENTIONAL GUNFIRE. LUCIEN ROBERTS WAS NOT STRUCK AT ALL. PETITIONER WAS ARRAIGNED AND SUBSEQUENTLY CONVICTED OF AGGRAVATED ASSAULT AGAINST LUCIEN ROBERTS, AND ATTEMPTED MURDER AGAINST BRIAN ELMORE.

B. PROCEDURAL HISTORY

A JURY TRIAL COMMENCED ON SEPTEMBER 6, 2012. ON SEPTEMBER 11, 2012, THE JURY FOUND PETITIONER GUILTY ON ALL CHARGES. ON OCTOBER 15, 2012, PETITIONER WAS SENTENCED TO 8½ TO 17 YEARS OF IMPRISONMENT FOR ATTEMPTED MURDER, A CONSECUTIVE 5 TO 10 YEARS FOR AGGRAVATED ASSAULT, AND A CONSECUTIVE 1½ TO 3 YEARS FOR CARRYING A FIREARM WITHOUT A LICENCE, FOR AN AGGREGATE TERM OF IMPRISONMENT OF 15 TO 30 YEARS.

PETITIONER FILED A DIRECT APPEAL TO THE PENNSYLVANIA SUPERIOR COURT, AND ON DECEMBER 17, 2013 JUDGEMENT OF SENTENCE WAS AFFIRMED. COMMONWEALTH V. SHAKIR, NO. 517 WDA 2013 (PA. SUPER. 2013). PETITIONER THEN FILED A PETITION FOR ALLOWANCE OF APPEAL WITH THE PENNSYLVANIA SUPREME COURT WHICH WAS DENIED ON MAY 15, 2014. COMMONWEALTH V. SHAKIR, NO. 39 WAL 2014 (PA. 2014).

PETITIONER FILED A TIMELY PRO SE PETITION

FOR POST CONVICTION RELIEF ON MARCH 18, 2015. RELIEF WAS GRANTED ON AN ALLEYNE ISSUE BUT ALL REMAINING ISSUES WERE DENIED. ON MAY 10, 2018, PETITIONER APPEALED TO THE PENNSYLVANIA SUPERIOR COURT WHICH AFFIRMED THE PCRA COURT'S DECISION IN FEBRUARY OF 2019. COMMONWEALTH V. SHAKIR, NO. 198 WDA 2018 (PA. SUPER. 2018). A PETITION FOR ALLOWANCE OF APPEAL WAS FILED IN THE PENNSYLVANIA SUPREME COURT AND WAS DENIED ON AUGUST 6, 2019. COMMONWEALTH V. SHAKIR, NO. 61 WAL 2019 (PA. 2019).

PETITIONER FILED A TIMELY PETITION FOR WRIT OF HABEAS CORPUS WITH THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA. ON JULY 7, 2022, RECOMMENDATION TO DENY RELIEF WAS FILED.

PETITIONER FILED TIMELY OBJECTIONS, AND ON NOVEMBER 21, 2022, DISTRICT JUDGE MARILYN HORAN DENIED THE HABEAS PETITION.

PETITIONER THEN FILED A TIMELY NOTICE OF APPEAL WITH THE THIRD CIRCUIT COURT OF APPEALS ON DECEMBER 6, 2022, AND A TIMELY

CERTIFICATE OF APPEALABILITY ON JANUARY 19, 2023
WHICH WAS DENIED ON MAY 30, 2023,

PETITIONER FILED A TIMELY PRO SE PETITION
FOR REHEARING ON AUGUST 8, 2023 WHICH WAS
DENIED ON SEPTEMBER 8, 2023, AND NOW
PETITIONER FILES THE INSTANT PETITION
FOR A WRIT OF CERTIORARI. ON 11-30-23

REASONS FOR GRANTING THE PETITION

1. THE JACKSON COURT HIGHLIGHTED THAT A "PROPERLY INSTRUCTED JURY MAY OCCASIONALLY CONVICT EVEN WHEN IT CAN BE SAID THAT NO RATIONAL TRIER OF FACT COULD FIND GUILT BEYOND A REASONABLE DOUBT". JACKSON, SUPRA AT 317.

THE PRESENT CASE AT HAND IS ONE IN WHICH, AS REFERENCED ABOVE IN JACKSON V. VIRGINIA, THE JURY AS TRIER OF FACT MADE A FINDING OF GUILT WHEN IT CAN BE SAID THAT NO RATIONAL TRIER OF FACT COULD FIND GUILT BEYOND A REASONABLE DOUBT. DUE PROCESS GUARANTEES THAT A CITIZEN CANNOT BE FOUND GUILTY OF A CRIME UNLESS THE FINDING OF GUILT IS BEYOND A REASONABLE DOUBT. THE QUESTION INVOLVED IS OF NATIONAL IMPORTANCE BECAUSE IT DEALS WITH ONE OF THE MOST FUNDAMENTAL MATTERS OF CONSTITUTIONAL INTEGRITY.

GRANTING THIS WRIT AND DECIDING IN FAVOR WILL HIGHLIGHT THAT IN THIS JUDICIAL SYSTEM IN CASES EVEN AND ESPECIALLY WHERE EVIDENCE OF ONLY A SINGLE ELEMENT OF A CRIMINAL DEFENSE IS MISSING THEN THE EVIDENCE IS SIMPLY INSUFFICIENT TO SUSTAIN A GUILTY CONVICTION.

2. GRANTING THIS WRIT AND DECIDING FAVORABLY IS OF NATIONAL IMPORTANCE FOR AN ADDITIONAL REASON. THE QUESTION INVOLVED HIGHLIGHTS AND SUPPLEMENTS YET ANOTHER CITING FROM JACKSON V. VIRGINIA. THE SUPREME COURT STATED THEREIN, "UNDER OUR SYSTEM OF CRIMINAL JUSTICE EVEN A THIEF IS ENTITLED TO COMPLAIN THAT HE HAS BEEN UNCONSTITUTIONALLY CONVICTED AND IMPRISONED AS A BURGLAR." ID AT 323-324, JACKSON V. VIRGINIA, 443 U.S. 307 (1979).

PETITIONER'S ARGUMENT IS IDENTICAL IN PRINCIPLE TO THAT OF THE ABOVE-REFERENCED THIEF'S COMPLAINING THAT HE HAS BEEN UNCONSTITUTIONALLY CONVICTED AND IMPRISONED AS A BURGLAR. PETITIONER HAS CONCEDED IN PREVIOUS PETITIONS TO THE CONVICTION OF AGGRAVATED ASSAULT AGAINST BRIAN ELMORE, BUT INSISTENTLY CONTESTS THE CONVICTION OF ATTEMPTED MURDER AGAINST BRIAN ELMORE. PETITIONER CONCEDES THE SAME IN THIS COURT. THERE'S NO EVIDENCE IN THE RECORD, DIRECT OR CIRCUMSTANTIAL, THAT SUPPORTS PETITIONER'S CONVICTION FOR ATTEMPTED MURDER AGAINST BRIAN ELMORE. THERE'S ONLY EVIDENCE FOR AGGRAVATED ASSAULT.

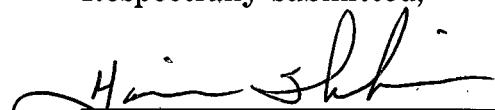
GRANTING THIS WRIT AND DECIDING FAVORABLY WILL REFLECT THE INTENDED DESIGN OF THE CRIMINAL JUSTICE SYSTEM EXACTLY AS OUTLINED ABOVE IN JACKSON V. VIRGINIA.

3. THE DECISION OF THE LOWER COURT IS ERRONEOUS IN THIS CASE BECAUSE IT CONFLICTS WITH ONE OF THE MOST BASIC FUNDAMENTALS OF THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION. A JURY IS NOT ALWAYS CORRECT IN ITS FINDINGS AND IT SHOULD BE KEPT AT THE FOREFRONT THAT A HIGHER COURT CAN AND WILL

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



James Shul

Date: 11-30-23