No. 23-6534

IN THE
SUPREME COURT UNITED STATES

LUCIOUS M. JACKSON - PETITIONER

v.

FLORIDA - RESPONDENT

On Petition for a Writ of Certiorari to the Fifth District Court of Appeal of the State Of Florida

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PETITION FOR REHEARING

Lucious M. Jackson
DC# 134860
Wakulla Correctional Institution
110 Melaleuca Drive
Crawfordville, FL 32327-4963

PETITION FOR REHEARING

Comes now, Lucious M. Jackson, *pro se,* pursuant to the Supreme Court of The United States Rule 44, for the petition of Rehearing that is presented in good faith and not for delay on the ground that the court overlooked controlling points of law or fact, In support of the Petition, the Petitioner state:

1) A state court or a United States Court Of Appeals has decided an important question of federal law that has not been, but should be settled by this court, or has decided an important federal question in a way that conflicts with relevant decisions of this court.

2) That the asserted error and Intervening circumstance of the substantial and controlling effect of this instant case lies in Batson v. Kentucky, 476 U.S. 79, 90 L.Ed. 2d 69, 106 S.Ct. 1712 (1986). Equal Justice under law requires a criminal trial free of racial discrimination in the jury selection process. Enforcing that constitutional principle, Batson ended the widespread practice in which prosecutors could (and often would) routinely strike black prospective jurors in cases involving black defendants. By taking steps to eradicate racial discrimination from the jury selection process, Batson sought to protect the rights of

defendants and jurors, and to enhance public confidence in the fairness of the criminal justice system. Batson immediately revolutionized the jury selection process that takes place (139 S.Ct 2243) everyday in federal and state criminal courtrooms throughout the United States.

3) This case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this court. See 28 U.S.C. § 2101(e) and Rule 11 of Supreme Court of the United States.

In Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L.Ed. (1986), this court ruled that a state may not discriminate on the basis of race when exercising peremptory challenges against prospective juror in a criminal trial. In Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664 (1880) the court explained that the central concern of the recently ratified Fourteenth Amendment was to put an end to governmental discrimination on account of race (at 306-307) Exclusion of black citizens from service as jurors constitutes a primary example of the evil the Fourteenth Amendment was designed to cure.

The core guarantee of Equal Protection , ensuring citizens that their state will not discriminate on account of race, would be

meaningless were we to approve the exclusion of jurors on the basis of such assumptions, which arise solely from the juror's race. Batson, 97-98, 106 S. Ct. 1712, 90 L.Ed. 2d 69.

The Constitution forbids striking even a single prospective juror for a discriminatory purpose, Batson v. Kentucky, Provides a three-step process for determining when a strike is discriminatory: First, a defendant must make a *prima facie* showing that a peremptory challenge has been exercised on the basis of race; Second, if that showing has been made, the prosecution must offer a race-neutral basis for the striking the juror in question; and Third, in light if the parties submissions, the trial court must determine whether the defendant has shown purposeful discrimination. A recurring question in this case, as in any case alleging a violation of the Equal Protection Clause, was whether the defendant had met his burden of proving purposeful discrimination on the part of the State. Whitus v. Georgia, 385 U.S. 545, 550, 17 L.Ed. 2d 599, 87 S.Ct. 643 (1967); Hernandez v. Texas, supra at 478-481, 98 L.Ed. 866, 74 S.Ct. 667.

In a Batson challenge, credibility can be measured by among other factors how reasonable, or how improbable, the State's explanations

are. In considering a Batson objection, or in reviewing a role claimed to be Batson error, all the circumstances that bear upon the issue of racial animosity must be consulted. Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial evidence of intent as may be available, Snyder, 552 U.S., at 478, 128 S.Ct. 1203, 170 L.Ed. 175. Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 266, 97 S.Ct. 555, 50 L.Ed. 2d 450 (1977).

No state is at liberty to impose upon one charged with a crime a discrimination in its trial procedure which the constitution, and an act of Congress pulled pursuant to the constitution, alike forbid. Nor is this Court at liberty to grant or withhold the benefits of equal protection, which the constitution commands for all, merely as we may deem the defendant innocent or guilty. Tumey v. Ohio, 273 U.S. 510, 535, 71 L.Ed. 749, 759, 47 S.Ct. 437, 50 ALR 1243. It is the State's function, not ours, to access the evidence against a defendant. But it is our duty as well as the State's to see to it that throughout the procedure for bringing him to justice he shall enjoy the protection which the constitution guarantees. Whereas in this instant case, the prosecutor

race neutral reason was never actually said by juror in question, as violation of Equal Protection Rights can be assumed. Equal Protection of the laws is something more than an abstract right. It is a command which the State must respect the benefits of which every person may demand. Not the least merit of our constitutional system is that its safeguards extend to all the least deserving as well as the most virtuous.

It has been federal statutory law, 18 Stat. 336 (1875), 18 USC § 243, and the law of this court as applied to the states through the Equal Protection Clause of the Fourteenth Amendment, that a conviction cannot stand if it is based on an indictment of a grand jury or the verdict of a petit jury from which Negros were excluded by reason [385 U.S. 550] of their race. Strauder v. West Virginia, 100 U.S. 303, 25 L.Ed. 664 (1880); see also Pierre v. Louisiana, 306 U.S. 354, 83 L.Ed. 757, 59 S.Ct. 536 (1939). There is no controversy as to the constitution principle the question involved is its application to the facts disclosed in this record. It is our province to "analyze the facts in order that the appropriate enforcement of the federal right may be assured," Norris v. Alabama, 294 U.S. 587, 590, 79 L.Ed. 1074, 1077, 55 S.Ct. 579 (1935),

and while the conclusions reached by the highest court of the State "are entitled to great respect...it becomes our solemn duty to make independent inquiry and determination of the disputed facts..."

Pierre v. Louisiana, supra, 306 U.S. at 358, 83 L.Ed. at 760. The burden is, of course, on the petitioner to prove the existence of purposeful discrimination, Tarrance v. Florida, 188 U.S. 519, 47 L.Ed. 572, 23 S.Ct. 402 (1903). However, once a prima facie case is made out the burden shifts to the prosecution.

In Batson, we recognize, of course, that the peremptory challenge occupies an important position in our trial procedures, we do not agree that our decision today will undermine the [476 U.S. 99] contribution the challenge generally makes to the administration of justice. The reality of practice, amply reflected in many state and federal court opinions, shows that the challenge may be, and unfortunately at times has been, used to discriminate against black jurors. By requiring trial courts to be sensitive to the racially discriminatory use of peremptory challenges, our decision enforces the mandate of equal protection and furthers the ends of justice. In view of the heterogeneous population of our nation, public respect for our criminal justice system and the rule of

law will be strengthened if we ensure that no citizen is disqualified from jury service because of his race.

Just as in Batson, where this Honorable Court established the critical points of law, as in this case "if the trial court decides that the facts establish prima facie, purposeful discrimination and the prosecutor does not come forward with a neutral explanation for his action, our precedents require that Petitioner's conviction be reversed. E.g., Whitus v. Georgia, 385 U.S., at 549-550, 17 L.Ed. 2d 599, 87 S.Ct. 643; Hernandez v. Texas, 347 U.S. at 482, 98 L.Ed. 866, 74 S.Ct. 667; Patton v. Mississippi, 332 U.S. at 469, 98 L.Ed. 866, 74 S.Ct. 667.

WHEREFORE, the Petitioner respectfully moves the court for an order granting rehearing pursuant to The Supreme Court of the United States Rule 44.

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PROOF OF SERVICE

In accordance with United States Supreme Court Rule 29, I, Lucious Jackson, do swear or declare that on this 20th day of March, 2024, I have served the enclosed PETITION FOR REHEARING FOR A WRIT OF CERTIORARI on each party to the above proceeding or the party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail[1] properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Office of the Attorney General for the State of Florida, The Capitol, PL-01, Tallahassee FL 32399-1050

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 20th, 2024.

[1] This was accomplished by placing both documents into the hands of institutional officials at Wakulla C.I. Main Unit.