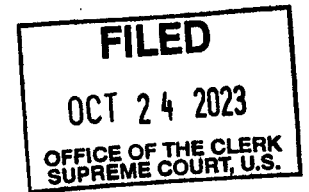


ORIGINAL

No. 23-6598



IN THE
SUPREME COURT OF THE UNITED STATES

SHUAIB A. HAJI-MOHAMED PETITIONER
(Your Name)

VS.

JAY FORSHEY, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shuaib A. Haji-Mohamed
(Your Name)

(#A662-683) 15708 McConnelsville Road
(Address)

Caldwell, Ohio 43724-8902
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

HAS A STATE PRISONER SEEKING FEDERAL HABEAS CORPUS MADE A
SUBSTANTIAL SHOWING THAT HIS PETITION SHOULD HAVE PROCEEDED FURTHER
WHERE THE PROCEDURAL DEFAULT IS DUE TO INEFFECTIVE ASSISTANCE
OF COUNSEL ON THE STATE'S DISCRETIONARY REVIEW?

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:

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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 B to the petition and is

[] reported at 2023 U.S. App. LEXIS 12733; 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[] is unpublished.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 C to the petition and is

☒ reported at 2022 U.S. Dist. LEXIS 216353; 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[] is unpublished.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[] is unpublished.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[] is unpublished.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 May 23, 2023.

☐ 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: July 28, 2023, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

28 U.S.C. § 2254

14TH U.S.C.A.

6TH U.S.C.A.

STATEMENT OF THE CASE

After a jury trial, Petitioner was found guilty of attempted gross sexual imposition, attempted rape and two (2) counts of kidnapping. Petitioner further received an aggregated 15-year prison term as a result of his convictions.

On direct appeal, Petitioner raised eight (8) claims. The court of appeals sustained one of Petitioner's claims, but the State of Ohio appealed to the Ohio Supreme Court. **State v. Mohamed** 8th Dist. No. 103602, 2016-Ohio-1116, rev'd 151 Ohio St.3d 620, 2017-Ohio-7468. Since the Rules of Practice of the Supreme Court of Ohio prohibited pro se representation on discretionary review, Petitioner was appointed the Ohio Public Defender for representation. Counsel did not cross-claim the seven (7) issues rejected by the court of appeals.

Thereafter, the Ohio Supreme Court reversed and claim was affirmed on remand. Petitioner then sought a delayed appeal to the Ohio Supreme Court on the seven (7) issues not raised by his counsel during briefing.

Petitioner then filed a timely writ of habeas corpus seeking federal review of the seven (7) claims not raised by supreme court counsel.

The district court ultimately imposed a procedural bar, and did not accept the claim of ineffective assistance of supreme court counsel as a gateway to the merits. The Sixth Circuit denied a certificate of appealability on the same.

REASONS FOR GRANTING THE PETITION

This Court has not visited the issue of counsel's performance on discretionary review since **Pa. v. Finley**, 481 U.S. 551 (1987). The issue was discerned from a standpoint of the criminal defendant initiating the discretionary review, whereas here the State of Ohio successfully sought review.

The appointment of counsel neither comported with the Due Process Clause's fundamental requirement of notice, nor the Sixth Amendment's call for effective assistance. Ohio S.Ct.Prac.R. 7.09 provides for appointment of counsel **after** it accepts jurisdiction. Therefore, Petitioner was without counsel when the State of Ohio originally sought review. Ohio S.Ct.Prac.R. 3.11(B)(3) provides that the county prosecutor, when filing notice of appeal in felony case pursuant to S.Ct.Prac.R. 7.01, "shall also serve" the Ohio Public Defender. The State of Ohio knew perfectly well that Petitioner wasn't represented after conclusion of direct appeal, and has used this "oversight" to fundamental deny due process and equal protection of the law. The nature of the proceedings requires the Petitioner/appellee (at the time) have competent assistance for meaningful review.

The district court's and Sixth Circuit's resolution of this matter runs afoul of the established federal law set forth in **Evitts v. Lucey**, 469 U.S. 387, 401 (1985), wherein the Court found it appalling that a state could rollback the obligation to provide effective assistance simply by taking solace in the fact that one

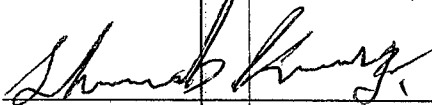
wasn't entitled to an appeal in the first place.

This Court ought to accept jurisdiction to lend its voice in this "gray area" of law. This Court has always protected against a state's manipulation of the appellate process and should not assign any reason to turn its back now.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,





Date: October 19, 2023