

IN THE UNITED STATES SUPREME COURT

NO. 23-6848

STEWART SMITH,
Petitioner

v.

LAVREL HARRY, ET AL.,
Respondent

PETITION FOR REHEARING

DATE: 6/11/24

STEWART SMITH, QP1872
512 Camp Hill
P.O. Box 8837
Camp Hill, PA 17005-8837

I. BRIEF STATEMENT OF THE CASE

False accusations made by disgruntled ex-girlfriend, inept Police investigation coaching star witness, withheld exculpatory impeachment evidence, introduced highly prejudicial prior crimes evidence, permitted perjury before the jury, PCRA jurist blocked pro se litigant from raising constitutional claims and then faulting him for allegedly not following State's established procedural rules cannot be considered fair process or justice.

II. BRIEF STATEMENT OF THE ISSUES

During initial collateral review Mr. Smith was re-sentenced.¹ Additionally, Mr. Smith was blocked by an external factor which impeded and prevented him from raising any additional claims when he was denied twice, his requests to amend his initial PCRA and 1925(b) statement of errors complained of on appeal. Thus, Mr. Smith did not "fail to comply" with the State's procedural rules as determined by the District Court and affirmed by the Third Circuit Court of Appeals.

Moreover, the Third Circuit Court of Appeals completely disregarded (ignored) the question presented to it of whether Mr. Smith provided the Court with "cause to excuse" the claims determined defaulted. As such, Mr. Smith did not receive fair process. This Court's decision to deny certiorari only manifests injustice, fails to consider and apply it's holdings to the facts of this case and undermines the public interest that it's judiciary is neutral in protecting, safeguarding, and upholding constitutional rights to it's citizens.

¹ Mr. Smith filed his initial PCRA petition 12/15/14, but was re-sentenced 5/10/16. However, AEDPA's deadline was statutorily tolled until 4/30/18, the date the PA Supreme Court denied allowance of appeal. 330 days elapsed between the denial of PCRA appeal becoming final and his 3/1/19 federal habeas petition being filed.

Because Mr. Smith was prevented from raising any additional claims by partial jurist, he never had a chance to raise ANY claim concerning the re-sentencing procedure, however, those claims should be considered timely in habeas action regardless of additional PCRA petitions are filed as the ACT only requires ONE complete round.

III. Point(s) of Fact Or Law this Court Overlooked Or Misapprehended

FACTS OVERLOOKED

- Mr Smith was *blocked* by external factor from complying with State's established procedural rules when he was *denied twice* his requests to amend his initial PCRA and 1925(b) statement of errors complained of on appeal on *both* his pcra appeal and re-sentencing appeal— jurist partiality— providing cause to excuse the procedurally defaulted claims;
- Re-sentencing appeal Attorney Wilson only raised issues amounting to a serial pcra not properly before the court— per se ineffectiveness— providing cause to excuse the procedurally defaulted claims;
- Mr. Smith hired private counsel Sembrot to litigate a second pcra petition, however, he failed to take a timely procedural step that deprived Mr. Smith the review he was entitled to seek— per se ineffectiveness— providing cause to excuse the procedurally defaulted claims.

REASONABLE JURISTS COULD DEBATE WHETHER MR. SMITH ALLEGED CAUSE TO EXCUSE HIS PROCEDURALLY DEFAULTED CLAIMS

- In Claim Seven(n) Mr. Smith alleged trial court's patterned bias, partiality, abuse of discretion and unreasonable decision making *interfered with* and *prevented* petitioner from raising constitutional claims, causing manifest injustice on two appeals;
- In Claim Seven(l) Mr. Smith alleged trial court oppressed petitioner denying *twice* his requests to amend initial pcra petition and 1925(b) statement of errors to intentionally *ensnare* him in **procedural traps**;
- In Claim Ten Mr. Smith again alleged trial courts patterned bias, partiality and *prevented* petitioner from raising constitutional issues derived from video recorded interview of complainant during initial collateral review;

See, Amended Habeas Petition, Claims Seven(l) & (n), Claim Ten & Eleven; See also, Pet.'s Memorandum in Support for Habeas, 5/6/22 at pp.6-8.

Finally, Claim Seven— trial court alleged conduct of bias, partiality was determined by the state court to be previously litigated but Superior Court refused to pass judgment. These important issues evaded review. The District Court simply mirrored the state court and refused to

pass judgment as well.

Mr. Smith cannot be faulted for failing to comply with the states established procedural rules when he in fact he did comply but was sucessfully thwarted by bias, partial jurist.

The Third Circuit Court of Appeals also evaded the issue presented to it which was whether or not Mr. Smith provided cause to excuse the procedurally defaulted claims. It did not answer that question. Moreover, it failed to consider all the times prior crimes, parole, and state prison references were mentioned, thus failed to conduct a proper *Strickland* analysis.

Petitioner herein incorporates by reference his petition for certiorari as if fully set forth herein. No court has fully analyzed the procedural posturing of this case and all the pro se filings, theres just no way that happened or else some relief would have been granted.

I've bent over backwards fighting this case and quite frankly I'm tired of the games the court plays, I'm almost finished with this corrupt case and I'll be better suited to seek justice when I'm released. That being said, I'm finished arguing here, I'm not arguing law cause this court is well equipped with the knowledge of it. Just know this, I am innocent of any wrongdoing in this case, my ex-girlfriend got one over on the State by falsely accusing her boyfriend of raping her and the State got one over on me cause it's corrupt and did whatever it could to win regardless of the truth. The truth does not always set one free. God bless us all.

Sincerely submitted,



Stewart Smith, QP-1672
SCI Camp Hell
P.O. Box 8837
Camp Hill, PA 17001

CERTIFICATE

I, do hereby Certify that the petition for rehearing is
based on intervening circumstances of a substantial or controlling
effect or on other substantial grounds not previously presented, presented
in good faith and not for delay, to the best of my ability
Respectfully

Stewart Smith
SS Smith

Certificate of Service

I do hereby certify that I served a true and correct copy
of the foregoing petition for rehearing on all persons
Attached.

Respectfully,

6/11/24

Stewart Smith
SS Smith