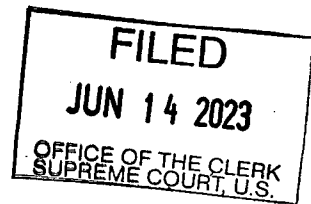


No. 23 - 6948



IN THE
SUPREME COURT OF THE UNITED STATES

Erick Wanjiku — PETITIONER
(Your Name)

vs.

State of Oklahoma — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Oklahoma Court of Criminal appeals - F-2022-96
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Erick Wanjiku
(Your Name)

215 N. 3rd Street
(Address)

Chickasha, OK 73018
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Comes now, petitioner, Prose under the Liberal interpretations of Haines V. Kerner, 404 U.S. 519 (1972) for prose litigates filing in this Court, and petitions this Court to grant a writ of Certiorari per 28 U.S.C. §1257.

Judicial bias.

Petitioner was denied due process of the law due to the trial judge being biased against him in violation of the U.S. Const. Amendments. VI, XIV; OK. Const. art. 11 §7.

Evidence was insufficient to convict the petitioner.

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

Tulsa County, OK Case No. CF-2019-4181
United States District Court - Case 5:23 ER-00227-R (W.D. OK.)
United States District Court - Case No. CIV-23-464-R
United States Court of appeals (Tenth Circuit) No. 23-6180
Oklahoma Court of Criminal appeals - Case No. F-2022-96

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OTHER

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☐ is unpublished.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☐ is unpublished.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 3/16/2023.
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).

Petitioner filed this petition in this Court on 6/12/2023.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Judicial Bias.

Petitioner was tried before a biased judge and was denied due process of law. *Rippo v. Baker*, 580 U.S. 285, 287 (2017)

US Const. Amends. V, VI, XIV; OKl. Const. art. 11 §7

Ineffective assistance of Counsel.

Counsel entered the case on the day of trial.

Strickland v. Washington, 466 U.S. 668, 694 (1984)

U.S. Const. Amend. VI.

Trial judge denied Counsel time to prepare for the defense.

U.S. v. Nicki, 427 F.3d 1286, 1293 (10th Cir. 2005) "The judge presiding at the trial may not testify in that trial as a witness. No objection need be made to preserve the point." Fed. R. Evid. 605.

While a judge may comment on proceedings, he may not assume the role of a witness. *Quercia v. U.S.*, 289 U.S. 466, 470 (1933).

A judge "may analyze and dissect the evidence, but he may not either distort or add to it." *Id.* Further it is improper for a judge to comment directly on the factual issue to be decided by the jury.

Sloan v. State Farm Mut. Ins. Co., 360 F.3d 1220, 1226 (10th Cir. 2004)

"If a judge exceeds the limitations of his power to comment and to question, such action may constitute prejudicial error and require reversal."

U.S. v. Paiva, 892 F.2d 148, 159 (1st Cir. 1989)

Adherence to rule 605 also prevents prejudice which may arise from a judge's testimony because of the judge's influential position with the jury. *U.S. v. Pritchett*, 699 F.2d 317, 320 (6th Cir. 1983)

STATEMENT OF THE CASE

Petitioner was falsely accused of rape, kidnapping, sodomy and domestic assault by strangulation. Case No. CF-2019-4181 Tulsa County State of Oklahoma. Trial Court was notified of a tampering allegation at the Jackson Denno hearing but still allowed the tampered evidence to be used by the government. At the pre-trial hearing, petitioner presented to the Court an expert report on the tampering allegation and requested the case to be dismissed. Trial Court denied that request. Trial Court allowed a falsified forensic report against petitioner's request not to allow the report because it contradicted a doctor's report filed on the day of the incident. The falsified report was filed by a Sane Nurse 8 days after the incident. Trial Court granted the motion in limine filed by the State preventing Petitioner's Counsel from impeaching the government's witness with her past convictions. Petitioner's new Counsel on the day of trial requested time to prepare for the case but was denied by the Court. At trial the Court made an objection for the State by stating "State if you are not going to object I am going to object on your behalf." Petitioner's Counsel made a record of the incident but failed to request a recusal. Again during petitioner's direct testimony the Court testified as a character witness for the alleged victim and informed the jury to disregard petitioner's statement that the alleged victim didn't want to go back to prison because it was a lie. Records provided show that the Court misled the jury. The jury sent a question indicating they wanted to hang on one charge. Trial judge went to the back and came back announcing "We have a verdict" then petitioner was convicted of domestic assault by strangulation but acquitted of the other charges. At sentencing petitioner was denied bail pending appeal. On 1/10/2022 petitioner filed a motion to vacate. The Court ignored the motion and appointed appeal Counsel from Oklahoma indigent defense system (OIDS) without the required pauper's affidavit form. Appointed Counsel filed a petition in error and failed to notify the appeal Court of a pending post trial motion. Petitioner then filed in the district Court an affidavit to proceed pro se on direct appeal (pending to this day)

Petitioner was granted a writ of Mandamus by the Oklahoma Court of Criminal Appeals (OCCA) on the motion to vacate. The district court denied the motion and defendant appealed. The OCCA Clerk refused to file citing rule 3.4 of that court. Petitioner then asked Counsel to file it per that court's rule 3.4 but he refused. Due to Counsel's ineffectiveness in the appeal brief, Petitioner wrote the OCCA judges and the Oklahoma attorney general a letter raising errors that were not raised. Petitioner was notified on appeal denial on 3/26/2023 and on 3/29/2023 petitioner filed a rehearing petition in the OCCA. The Clerk refused to file the petition per rule 3.4 then petitioner asked appointed Counsel to file it but he refused. Upon release from prison petitioner was arrested by immigration even after notifying them he would further challenge the conviction in a letter. After processing the petitioner, the officers decided to use force to obtain a signature where petitioner was subsequently charged with assault on a federal officer. The officers then took petitioner's legal paperwork to thwart his attempt in challenging the state's wrongful conviction.

REASONS FOR GRANTING THE PETITION

Federal and State Constitutions guarantee every defendant the right to be tried at a proceeding administered by a fair and impartial judge OKl. Const. art. 11 §6 Any defendant tried before a biased judge is denied due process of law. U.S. Const. Amends. V, VI, XIV; OKl. Const. art. 11 §7 Claims of bias that are substantiated by Citations to the record must be viewed with the effect the appearance of that bias may have to the public.

In evaluating the sufficiency of evidence supporting a criminal conviction, the Supreme Court holds that it is not for the court to inquire whether it believes the evidence established guilt beyond a reasonable doubt, but whether after considering the evidence in the light most favorable to the government a rational jury could conclude that each element of the charged crime was proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307 (1979)

Petitioner testified to protecting property against intrusion which is not unlawful. Therefore the unlawful element cannot be proved beyond a reasonable doubt.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: November 25, 2023