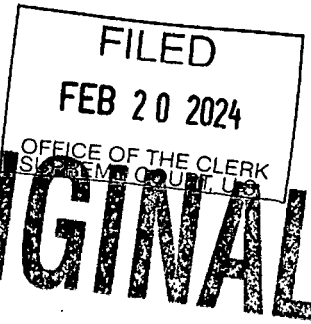


23-6961

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

Jacob Smith — PETITIONER
(Your Name)

vs.

Isidro Baca et. al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Nevada Supreme Court

U.S. Court of Appeals District of the Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jacob Smith
(Your Name)

Po box 7000
(Address)

Carson City Nevada 89702
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

① I Jacob Smith Alledge The Trial Prosecutor Did in fact commit Prosecutorial Misconduct by impermissibly shifting the burden of Proof. Arguing That Mr Smith Failed to present evidence to prove My innocence. After Asking Me (Smith) Twice to prove my innocence in front of A Jury, Then After Smith Orally spoke about evidence. The Prosecutor stated That doesn't prove your innocence. By The Prosecutor asking The defendant to prove your innocence in front of A Jury. Is this Burden shifting statements Highly improper? Is this prejudicial. And Confusing to A Jury? Was Counsel ineffective For not Objecting

② At Preliminary Hearing The Judge Denied me the right to Represent Myself. Later in My Post Conviction Habeas Corpus Proceedings. The U.S. Supreme Court Ruled the Ground Was unexhausted Because My Lawyer added The Phrase (Preliminary Hearing is a critical stage of my Defense. But the Entire Argument Mirrored The Original Of The court denied Me the right to represent Myself, *Faretta V. California*, Was This Not a Denial of the right to represent Myself.

③ At Smith's Trial For the charge of open murder. The Prosecutors Opening statements to the Jury That This case is Based on Circumstantial Evidence. After Never establishing a Motive For Murder. No Established Premeditation or Lying in wait was never proven. At the Phase of the Jury instruction. The Prosecutor instructed The Jury, That They can Find Smith guilty of First Degree Murder And Find Premeditation solely Based on successive Thoughts of the mind. By Smith Thinking about Pulling The Trigger is Pre Meditation. Per *Byford V. State, Nevada* Has been Warned To stop Using That tactic At Jury instructions. Does this Mistatement of ~~law~~ law cloud The Jury's minds as to other degrees of murder. Did This instruction Prejudice a Fair Trial. Was Counsel ineffective For not Objecting? Could a reasonable Jurist Find a lesser degree of Murder, with No Motive No Premeditation. And a Case based on Circumstantial evidence

These Questions are a Violation of my 5th 6th 8th and 14th Amendments, I ask The Courts to Grant me Writ of Certiorary

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:

Attorney General
For the state of Nevada

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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 NA to the petition and is

- ☐ reported at NA; 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 NA 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 A 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 US District Court court appears at Appendix B 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 1/1/23.

☐ 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: 1/1/23, and a copy of the order denying rehearing appears at Appendix 1/1/23.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including 1/1/23 (date) on 1/1/23 (date) in Application No. 1/1/23.

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 8-24-23.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: September 22 2023, and a copy of the order denying rehearing appears at Appendix F.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including 12-11-23 (date) on 2-19-24 (date) in Application No. 23A 526.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment

Sixth Amendment

Eighth Amendments

Fourth & Ninth Amendments

28 USC § 2254

STATEMENT OF THE CASE

In 2006 Jacob Smith Was Charged With First Degree Murder With the Use of A Deadly Weapon. The Washo County D.A.'s Office Alledged That on May 9, 2006 Jacob Smith shot Richard Duarte in the Head, The State Relied almost entirely on Alledged eyewitness testimony From Jessica Mansoor.

Ms Mansoor claimed that she was Driving Mr Duarte around because she Was try to pry a cellphone off of him. Ms Mansoor picked up Duarte in her car. She drove To several Fast Food restaurants to get some Food. During this time. Mr Duarte Was Directing Ms Mansoor to drive to Meet up With Mr. Smith. Duarte Was talking to someone on the Phone. Whom Ms Mansoor Assumed was Smith. Mansoor claimed that she observed Duarte get out of car and Walk around the corner of some Aparments. With Smith. Ms Mansoor claimed she heard an argument including a person With a High Pitch Voice whom she Did not recognize. Mansoor Heard gunfire and saw Smith jump backwards From the corner And run. Ms Mansoor Also admitted That she Uses Methamphetamine And Was Comming Down From the drug During this time and the Window were rolled up and she could Hardly Hear anything" 2-5ER-80. Mr Joshua Wolfe stated That he was positive That there Was a Third African American Man in the car With Duarte. He testified Police kept Trying to get him to say that it was a woman in the car with Duarte. But he Was Positive that it Was a Male and had gotten a good look at them. When the car Passed below a street light. Smith Testified at Trial and admitted to being on the scene of shooting. But that the other African American male Was the man who shot and Killed Mr Duarte. Smith Went to trial and was convicted of First Degree Murder

REASONS FOR GRANTING THE PETITION

This court should grant my request because of the Ninth Circuit Court of Appeals has entered a decision in conflict with decisions made in state courts and federal courts as a pro se litigant I made a mistake. I asked the 9th circuit to change the heading of my uncertified issues, but I did not include an argument. So all the court of appeals got for an amended petition, was the ground prosecutorial misconduct burden shifting - (no argument) to backup the ground. The same for uncertified issue No 2. - Improper jury instruction for the elements of first degree murder, no argument to backup ground. The court mistook my request to amend my petition, and granted my motion to amend. My intention was to change the heading for the grounds but I wanted to keep the arguments in my opening brief, that did not happen so my opening brief was incomplete. But a review of the record will show why the court should grant this petition. For the prosecutors misconduct by shifting the burden of proof. The prosecutor bears the burden of proof in criminal trials in re Winship, 397 US 358, 364, 90 S. Ct 1068 25 L Ed 2d 368 1970 ("The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute a crime with which he is charged United States v. Sanchez 176 F 3d 1214, 1224, 9th Cir 1991. The 9th circuit has also erred in its decision when it denied me due process because the prosecutor mistated the jury instructions. Relieving the state of its burden of proof, pursuant to Nevada case law. The elements of premeditation, willfulness, deliberation, all have distinct meanings and each of the three elements must be proven beyond a reasonable doubt. Byford v State 116 Nev 215, 994 p 2d 700, 713-715 In closing the trial prosecutor continually mistated the requirements for proving the 3 requisite mental states to support a first degree murder conviction. I also have a ground of the denial of the right to represent myself, they are all grounds that states and federal courts have ruled in favor of defendant. I have made a mistake in the 9th circuit. I request the Supreme Court of the U.S. will review the entire record and protect the rights of a pro se litigant. Because pro se litigants across the United States can be affected. The Ninth Circuit erred, but the Supreme Court can review the entire record.

I Jacob Smith respectfully request that this Court:

- (1) Issue a Writ of Certiorari to have Appealant Brought before The Court so that he may be discharged From his Unconstitutional Confinement,
- (2) Issue a Writ of Habeas Corpus to have Appeallant brought before Court So That I may be discharged From my Unconstitutional Confinement,
- 3 To Vacate The Judgment Filed against me in the Second Judicial District Court in And For the Washoe County State of Nevada Case NO. CR06-2721

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jacob Smith

Date: 2-19-24