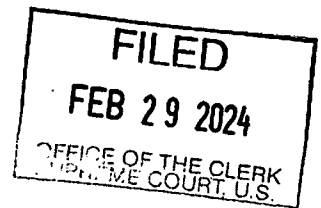


NO. 23-7057



IN THE
SUPREME COURT OF THE UNITED STATES

Sammy Tinnin - Petitioner;

v.

Theodore E. Aokita - Respondent;

PETITION FOR WRIT OF CERTIORARI

Attorney for Petitioner:

Sammy Tinnin

DOC# 242171

Miami Correctional Facility
3038 West 850 South
Bunker Hill, IN 46914-9810

Petitioner / *pro se*

QUESTIONS PRESENTED

1. Does a verdict supported by evidence not admitted at trial
deprive a defendant of his Sixth and Fourteenth amendment of
the U.S. Constitutional right to a fair trial?

2. _____

3. _____

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:

_____ Jod. K. Stein
_____ Deputy Attorney General
_____ Attorney No. 16849-47

TABLE OF AUTHORITIES CITED

<u>CASES:</u>	<u>PAGE NUMBER:</u>
Brewington v. State, 7 N.E.3d 946, 974 (Ind. 2014)	5
Freeze v. State, 327 N.E.2d 600, 604 n.4 (Ind. Ct. App. 2005)	5
U.S. v. Olano, 507 U.S. 725, 735 (1993)	5
Henderson v. State, 568 U.S. 266, 272 (2013)	5
Mendelsohn v. State, 785 N.E.2d 1112, 1123 (Ind. 2003)	5
Sanchez v. State, 749 N.E.2d 509, 515 (Ind. 2001)	5
Tinnin v. State, 234-CR-00628, 2023 WL 6784953, *5 (Ind. Ct. App. Oct. 13, 2023)	6

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**IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI**

The Petitioner respectfully prays that this Honorable Court issue a writ of certiorari 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 reporter; 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☐ is unpublished.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 reporter; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is-

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reporter; or,
☒ is unpublished.

The opinion of the Indiana appeal court appears at Appendix A to the petition and is-

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reporter; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States court of appeals decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ 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: _____, 20__, 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 _____, 20__, on _____, 20__, in Application No. __, and a copy of the order granting said extension appears at Appendix _____.

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 January 18, 2024.
A copy of that decision appears at Appendix C.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied on the following date: January 18, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____, 20__, on _____, 20__, in Application No. __, and a copy of the order granting said extension appears at Appendix _____.

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

CONSTITUTIONAL PROVISIONS AND STATUTES

Ind. Const. Art. 1, § 13

U.S. Const. Amend. V

U.S. Const. Amend. XIV

Statutes

Ind. Code § 35-42-1-1

STATEMENT OF THE CASE

On August 23, 2021, the state re-charged Sammy Tinnin ("Tinnin") with murder.¹ Appellant's App. Vol. 11-Confidential. ("Conf. App. Vol. 11") 27, 31. This matter proceeded to jury trial on January 23, 2023. Appellant's App. Vol. 11 Public ("App. Vol. 11") 10. The jury found Tinnin guilty of murder. App. Vol. 11 9. On February 24, 2023, the trial court sentenced Tinnin to sixty (60) years in the Indiana Department of Correction ("IDOC"). App. Vol. 11 17-18. Tinnin received credit for 599 actual days served and 199.66 days of Class B good time credit. App. Vol. 11. 17. A notice of appeal was timely filed on March 21, 2023. App. Vol. 11 2-5. The clerk filed the notice of completion of transcript on May 11, 2023. [Online Docket]. On June 5, 2023, Tinnin filed a motion to hold in abeyance and this court granted it on June 13, 2023. [Online Docket]. An amended Notice of completion of transcript was filed on July 5, 2023. The brief of Appellant is due on or before August 4, 2023.

Tinnin filed brief August 2, 2023
 State reply Brief August 30, 2023
 Tinnin reply Brief to state September 12, 2023
 Direct Appeal, Affirmed, October 13, 2023
 Tinnin file petition to transfer to Indiana supreme court November 21, 2023
 State reply brief to transfer December 4, 2023
 Tinnin reply Petition to state December 18, 2023
 Indiana Supreme court Denied Tinnin's transfer January 18, 2024

REASONS FOR GRANTING THE WRIT

While our justice system implicitly demands perfection from attorneys, attorneys are human, and humans are subject to making mistakes. Although the doctrine of fundamental error is noted in waiver, it gives appellate courts leeway to mitigate the damaging consequences of counsel's oversight or mistake. Brewington v. State, 7 N.E. 3d 946, 974 (Ind. 2014). The failsafe prevents a defendant from being punished for an attorney's mistakes that ultimately affects the defendant's constitutional right to a fair trial or due process. Id. The federal plain error test is roughly equivalent to Indiana's test for fundamental error. Freeze v. State, 827 N.E. 2d 600, 604 n. 4 (Ind. Ct. App. 2005).

An error is plain when it is clear and affects the substantial rights of the party. U.S. v. Olano, 507 U.S. 725, 735 (1993). Normally a party must show a specific prejudice to satisfy the "affecting substantial rights" prong, but in U.S. v. Olano, Scotus suggested that may not be necessary in every case. Id. at 735. In Olano, Scotus noted that it did not need to decide whether "the phrase 'affecting substantial rights' is always synonymous with 'prejudicial.'" Id. Instead, it noted that "constitutional error may not be found harmless if error deprives defendant of the 'basic protections [without which] a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence, and no criminal punishment may be regarded as fundamentally fair.'" Id. Ultimately, the court suggested appellate courts should correct plain error affecting substantial rights if the error "seriously affects the fairness, integrity or public reputation of judicial proceedings." Id. at 736; Henderson v. State, 568 U.S. 266, 272 (2013). The sixth and fourteenth Amendments of the U.S. Constitution require a defendant's guilt or innocence be determined based on evidence introduced at trial. Meadows v. State, 785 N.E. 2d 1112, 1123 (Ind. 2003); U.S. Const. Amend VI; U.S. Const. Amend XIV. The Constitution does not provide an exception to that fundamental requirement. U.S. Const. Amend VI; U.S. Const. Amend XIV. Thus, a trier-of-facts exposure to evidence not admitted at trial but considered when rendering a verdict is a constitutional violation that prejudices the defendant because, under the Constitution, the defendant did not receive a fair trial. Meadows, 785 N.E. 2d at 1123; Cochran, 736 N.E. 2d at 1283; Harris, 450 N.E. 2d at 83.

Similar to the point made in Olano, normally a party must show specific prejudice to show fundamental error, however, that may not be necessary in every case depending on the error. 507 U.S. at 735. For example in a situation like Tinnin's where the error is an explicit constitutional violation of the right to a fair trial, procedural trial rules, and common law, the substantive violation - the error seriously affects the fairness of the proceedings and constitutes a blatant violation of basic and elementary principles of due process. See Meadows, 785 N.E. 2d at 1123; Harris, 450 N.E. 2d at 83; Sanchez v. State, 749 N.E. 2d 509, 515 (Ind. 2001).

Such error affects the integrity and public reputation of the judicial proceedings. Olano, 507 U.S. at 73. Allowing an exception to a constitutional requirement - including procedural trial rules and common law that have existed for decades - because of an inadvertent mistake creates a slippery slope that can easily be abused.

Thus, a violation of a defendant's right to a fair trial under the federal constitution is naturally prejudicial because the defendant did not receive a fair trial as required by the constitution. See Olano, 507 U.S. at 736; Henderson, 568 U.S. at 272. No mistake, no matter how small, can excuse this sacred constitutional requirement without negatively affecting the integrity of our justice system. Olano, 507 U.S. at 736 (urging appellate courts to correct errors that "seriously affects the fairness, integrity or public reputation of judicial proceedings"). This Court should ~~not~~ know that to happen. Here, the court of appeals agreed the evidence at issue was not admitted yet it was considered by the trier-of-fact when determining Tinnin's guilt or innocence.

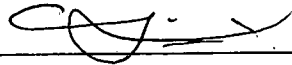
Tinnin v. State, 23A-CR-06628, 2023 WL 6784953, *5 (Ind. Ct. App. Oct 13, 2023) The court, however, held the error did not rise to the level of fundamental error. The error, however, rise to the level of fundamental error because Tinnin was deprived of a fair trial as required by the constitution - his guilt or innocence was determined based on evidence not admitted at trial. Meadows, 785 N.E.2d at 1123. No party, including this court, can know exactly how much weight the jury gave to the evidence not admitted - this court cannot have confidence in the jury's verdict. As Tinnin has consistently argued, the evidence not admitted (Exh 66 and 67) but considered by the trier-of-fact was used to draw the inference that Tinnin was the shooter. Pet. to transfer at 9; Br of Appellant at 19-20. That is the prejudice that Tinnin has consistently maintained he suffered. Id. Without Exhibits 66 and 67 the inference that Tinnin was the shooter is weakened. Further, Tinnin was naturally prejudiced by this error because he did not receive a fair trial under the constitution - a violation of this basic, sacred right justifies a new trial. Thus, Tinnin has shown both the specifics and natural prejudice he suffered from this error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Executed on: February 8, 2024,

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'G. J.', written over a horizontal line.

Petitioner / *pro se*