23-7467

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Joseph Thomas Saari — PETITIONER
(Your Name)

vs.

Jesse Pugh, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Joseph Thomas Saari
(Your Name)

1000 Lakeshore Drive
(Address)

Moose Lake, MN 55767
(City, State, Zip Code)

_____
(Phone Number)

QUESTION(S) PRESENTED

This case presents important nationwide issue[s] concerning two separate First Amendment claims, and if there is a bright line limitaion between Sixth Amendment--right to Jury Trial--claims that are either harmless or structual, and whether a State Court ruling of mootness qualifies as an adjudication on the Merits of a prisoner's claim under AEDPA. This petition represents an opportunity for the Supreme Court to clarify the differnce of Sixth Amendment claims that are harmless and can be held moot and a State court would have no obligation to apply federal law to a valid claim that a constitutional error had occured. Finally, a question on the retroactivity of a recent Supreme Court ruling. Mr. Saari presents the quetions that follow:

1) Did the panel of the Eighth Circuit err by deciding the merit of an appeal not properly before the court to justify the denial of a certificate of appealability?

2) Is the relationship clear between the Overbreadth doctrine and the scrutiny analysis in First Amendment challenges?

3) Does a State court's determination that a preserved claim of constitutional error is MOOT qualify as an adjudication on the merits under the AEDPA?

4) Has the Supreme Court overturned Callan v. Wilson, 127 U.S.-540, 547, 8 S.Ct 1301, 32 L.Ed 223(1888). Which held that a denial of the jury trial right rendered a conviction "void" and "without jurisdiction"?

5) Did Counterman v. Colorado, 600 U.S. 66(2023) announce a new substantive rule that has retroactive effect in cases on collateral review?

LIST OF PARTIES

[X] 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:

DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, Joseph Thomas Saari, makes the following disclosure:

1) Mr. Saari is not a subsidiary or affiliate of a publicly owned corporation.
2) There is no publicly owned corporation, not a party to the appeal, that has financial interest in the outcome of this case.

By: _____
Joseph Thomas Saari, PRO SE

RELATED CASES

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STATUTES AND RULES

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 A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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 Feb. 8, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Mar. 14, 2024, 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

Article III. § 2- Trial by jury,...Jury Trials which states:

> "The Trial of all crimes, except in Cases of Impeachment , shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place as the Congress may by Law have directed."

Amendment 1-Freedom of Religion, Press, Expression., which states in part:

> "Congress shall make no law...abridging the freedom of Speech"

Amendment 6-Right to Speedy Trial, Confrontation of Witnesses which states in part:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..."

Amendment 14-Citizenship Rights which states in part:

> "No State shall...deprive any person of life, liberty, or property, without due process of Law"

Antiterrorism and Effective Death Penalty Act of 1996:

28 U.S.C. § 2254

28 U.S.C. § 2253 ;

> "(c)Unless a circuit judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from(A) the final order in a habeas corpus proceeding in which the detension complained of arises out of process issued by a State court...(2) A certificate of appealability may issue under paragraph(1) only if the applicant has made a substantial showing of the denial of a constitutional right."

STATEMENT OF THE CASE

On or about September 30, 2022, Mr. Saari submitted a Petition seeking the Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. His primary claims where based on four grounds: 1) Prejudicial defective severance; 2) The omission of an element(witness-tampering); 3) The Minnesota 'Revenge Porn' Statute was unconstitutional; 4) The instruction of the Pattern-of-Stalking count led to a fundamentally unfair trial. APP-C

Mr. Saari also requested an evidentiary hearing regarding this court's recent ruling in Counterman v. Colorado, 600 U.S. 66-2023). APP-C

In addition to the courts ORDER adopting the Magistrate's R & R, it issued an order that denied Mr. Saari a certificate of appeal-ability on the same day. APP-C

On or about December 21, 2023, Mr. Saari filed a notice of appeal from the district court's denial of a certificate of appealabilit -y. On or about January 17, 2024 Mr. Saari filed his "Application for issuance of a Certificate of Appealability" in the Eighth Cir -cuit of the United States Court of Appeals. Within his Applicati -on to the Court of Appeals Mr. Saari notified the Court that the Circuit's long standing mandate, in Carter v. Bowersox, 265 F. 3d 705(CA8. 2001), requires reversal when a trial court omits a required instruction to the jury in 28 U.S.C. § 2254 proceedings. APP-A

Now Mr. Saari seeks the Writ of Certiorari to resolve questions of Federal Law(whether a ruling that an issue is MOOT, qualifies as adjudication under AEDPA), a bright line in between which test to apply in First Amendment challenges, a right to jury trial claim and whether it is, and under what circumstances, it is just mere error or jurisdictional defect, and finally is the Counterman v. Colorado announced a new subsatntive rule that is retroactively available on collateral review.

REASONS FOR GRANTING THE PETITION

I. [Question One] Did the panel of the Eighth Circuit err by deciding the merits of an appeal not properly before the court to justify the denial of a certificate of appealability?

A. The panel improperly sidestepped the C.O.A. process by denying relief based on its view of the merits.

In reviewing the facts and circumstances of Mr. Saari's case, the Eighth Circuit panel "paid lip service to the principles guiding issuance of a C.O.A." **Tennard v. Dretke**, 542 U.S. 274, 283(2004), but in actuality the panel held Mr. Saari to a far more Stringent standard. Specifically, the Eighth Circuit panel "sidestepped the threshold C.O.A. process by deciding the merits of [Mr. Saaris']appeal, and then justifying its denial of a C.O.A . based on its adjudication of the actual merits, thereby "in essence deciding an appeal without jurisdiction." **Miller-El v. Cockrell**, 537 U.S. 322 at 336-37(2003).

As the Supreme Court held on **Miller-El**, the threshold nature of the C.O.A. inquiry "would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail." **Miller-El**, 537 U.S. 322 at 337,

Mr. Saari filed an Application in the Eighth Circuit seeking a certificate of appealabilty, so that he may appeal the district court's denial of his §2254 Petition. The panel however, determined that Mr. Saari's claims had no merit and concluded that Mr. Saari should be denied a certificate of appealability because the appeal was obviously meritless.

The panel impermissibly sidestepped the C.O.A. inquiry, when it adopted the Magistrate's R & R, in this manner by denying relief because the subsequent appeal would be meritless. The panels assessment of the merits is patently wrong. The panel could not possibly resolve the merits of the appeal based solely on an application seeking a certificate of appealability. Moreover, without the issuance of a C.O.A. and the district court's record before the panel, the panel had lack of jurisdiction to determine the merits of the appeal.

Recently this court in it's dissent, **Johnson v. Vandergriff**, 143 S. Ct. 2551(2023), agreed with Mr. Saari's claim that the Eighth Circuit has went astray from the established standard of the C.O.A. Process(1)the Eighth Circuit was to demanding in assessing whether reasonable jurists could debate the merits of the petitioner's habeas petition(2) The Eighth Circuit failed to limit its examination to a threshold inquiry. This is the same error that Mr. Saari complains of now and asks this court to resolve this conflict in the Eighth Circuit Court of Appeals.

REASONS FOR GRANTING THE PETITION(CONTINUED)

I. [question One] continued

B. Jurist of Reason Could Debate the District Court's Judgment.

Mr. Saari's actual innocence would cause jurists of reason to find the district court's decisision debatable. The first and most important Judge in Mr. Saari's case is the district judge who adopted the Magistrate's R & R in which Mr. Saari now seeks a certificate of appealability.

The district court judge in Mr. Saari's case issued an order granting Mr. Saari's motion seeking to leave to proceed on appeal In Forma Pauperis. The Controlling law, concerning proceeding in forma pauperis, is 28 U.S.C. § 1915. Subsection 1915 (e)(2)(B)(1) states that, "...the court shall dismiss the case at any time if the court determines that-the action or appeal-is frivolous or malicious."

It is unreasonable to conclude that a wise district judge would waste judicial resources by granting in forma pauperis status to a prisoner advancing a frivolous claim. It is likewise unreasonable to conclude that a district judge would fail to consider the reasonableness of the appeal prior to granting or denying a motion as important as a motion for leave to proceed In forma pauperis. Mr Saari believes that the district judge reconsidered his own judgment after reading Mr. Saari's notice of appeal. Thus , District court judge Patrick J. Schlitz appears to be a jurist of reason who found his own judgment debatable in light of all available information.

REASONS FOR GRANTING THE PETITION(CONTINUED)

II. [Question Two] Is the relationship clear between the Overbreadth doctrine and the scrutiny analysis in First Amendment challenges?

A. The Minnesota Supreme Court held that the Scrutiny Analysis was superior to the Overbreadth doctrine.*

In the case of first impression, the Minnesota Supreme court determined that to apply the Law from **Reed v. Town of Gilbert**, 576 U.S. 155(2015) that there was no need to first assess if the Statute in question of whether it(Statute) was a content-based restriction on speech.APP-D(Magistrate's R & R). Mr. Saari in his pleadings asked that the court for relief, because the State court's applied **Virginia v. Hicks**, 539 U.S. 113, 124(2003) in contrary or an unreasonable way to decide the Overbreadth violation in his case. The Court of Appeals of Minnesota ruled that Minn. Stat. § 617.261 was an overly broad Statute in violation of the U.S. Constitution, First Amendment. This final decision is in conflict with other State court of last resorts holdings of this very issue[Revenge Porn]**State v. VanBuren**, 214 A.3d 791(Vt.Sup.Ct. 2018)Holding thatthe statute did not fall into Obscenity exception but concluded it passed strict scrutiny; **People v. Iniguez**, 247 Cal. App. 4th Supp. 1(CA Superior Ct. App. March 25, 2016) Held that because of the heightened intent requirement sufficient-ly narrowed the Law and prevented it from being used in cases where a person acted under mistake of fact or negligent accident it passed muster; **Ex Parte: Jordan Bartlett Jones**, 2018 WL 222-8888(12th Circuit Court of Appeals, April 18, 2018) Held that the Statute was invalid because it was a content-based restriction on speech and was not the least restrictive means of achieving the purported compelling interest. In Minnesota's determination it never reached the question of whether this statue even is related to conduct or speech necessarily related to conduct, thereby appling federal law in contrary or unreasonably in a First Amend. Challange. Minn. Stat. § 617.261, does not have a strong Intent requirement, it has two clearly different intents built in to the Statute. First, it involves a specific intent to post the image and then moves onto only require negligence to whether the image obtained and if the alleged victim had a reasonable expectation of privacy. It should be noted that in Mr. Saari's case, he had a signed waiver from the Alleged victim to disseminate the image. APP-D

*State v. Casillas, 952 N.W. 2d 629(Minn. 2020)(Controlling case in Mr. Saari's case)

REASONS FOR GRANTING THE PETITION(CONTINUED)

III.[Question Three] Does a State Court's determination that a preserved claim of constitutional error is MOOT qualify as an adjudication on the merits under the AEDPA? APP-F

A. The Court of Appeals of Minnesota was the last State-court to rule on Mr. Saari's claim. It held that the issue was MOOt, because the charge[pattern-of-Stalking] had been dismissed before sentencing, but after the Jury Trial.

Mr. Saari sought relief under Minn. Stat. § 590.01, subd. 4(b)-(3). "the petitioner asserts a new interpretation of federal or State constitutional or statutory law by either the United States Supreme Court or a Minnesota appellate court and the petitioner establishes that this interpretation is retroactively applicable to the petitioner's case" Id. The Trial court or postconviction court, Hon. Judge Dale O. Harris, granted an Evidentiary Hearing where Mr. Saari demonstrated the infirmity of the instruction to the Jury in his case. The basis of Mr. Saari's claim was that the instruction failed to hold the State to it's obligation to prove all the elements or facts of the the offense of Pattern of Stalking. The State court's improperly ignored the possiblity that the instruction might have influenced the jurors' concept of both the seriousness of the case and the standard of proof that the State had, which is proof beyond a reasonable doubt. In Re Winship, 397 U.S. 358, 364(1970). Minn. Stat. § 609.749 subd. 5(a) states:

> "A person who engages in stalking with respect to a single victim or one or more members of a single household which the actor knows or has reason to know would cause the victim under the circumstances to feel terrorized or to fear bodily harm and which does cause this reaction on the part of the victim is guilty of a felony...";

(b)

> "For purposes of this subdivision, 'stalking' means two or more acts within a five-year period that violate or attempts to violate the provisions of any of the follow-ing or a similar law of another state, the united states, the district of columbia, tribe, or united states territories:...

The Court of Appeals of Minnesota applied the right rule of this court's holding of **Richardson v. United States**, 526 U.S. 813-(1999), when it decided, **State v. Windell**, 2019 WL 2079811(citing **State v. Johnson**, 773 N.W. 2d 81(Minn. 2009), but it failed to apply the correct test when a claim of a denial of the jury trial right has been violated, by either ommitting an element of a offfense or that an instruction was in effect a directed verdict for the State in a criminal trial. **Neder v. United States**, 527 U.S. 1(1999); **Carella v. California**, 491 U.S. 263(1989). this violates the precedent of **Fry v. Pliler**, 551 U.S. 112, 119-120 (2007) which imposes an important question of federal law that has not been, but should be, settled by this court.

IV.[Question Four] Has the Supreme Court overturned CALLAN V.--WILSON, 127 U.S. 540, 547,, 8 S.Ct. 1301, 32 L.Ed 223(1888). Which held that a denial of the jury trial right rendered a conviction "void" and "without jurisdiction"? APP-F

A. The Eighth Circuit of the Court of Appeals held that, Mr. Saarihas not made a substantial showing of the denial of a constitutional right, under 28 U.S.C. § 2253(c)(2), when and by it's adoption of the Magistrate's R & R.

While Mr. Saari's direct appeal was proceeding the Court of Appeals of Minnesota decided **State v. Windell**, 2019 WL 2079811 citing **State v. Johnson**, 773 N.W. 2d 81(Minn. 2009)., And this court decided **Ramos v. Louisana**, 140 S. Ct 1390(2020); **Edwards-v. Vannoy**, 593 U.S.__,__-__(2021), ultimately holding that an error on jury agreement as to the verdict did not apply retro-actively on collateral review. However, both the State court's and this court's rules are consonant with one another and should be applied to Mr. Saari's case evenly, as there would be no need to analyze under **Teague v. Lane** for retroactive effect.

In **Brown v. Davenport**, 596 U.S. 118(2022), this court provided some background to the history of Habeas Corpus, citing **Edwards v. Vannoy**, 593 U.S.__,__-__(2021) "To be sure, the line between [***19] mere errors and jurisdictional defects was not always a 'luminous beacon' and it evolved over time." Mr. Saari now asks this court to resolve a conflict with the Ninth Circuit's case of **Powell v. Galaza**, 328 F. 3d 558(CA9. 2003) and the Eighth Circuit's decision in Mr. Saari's case, because the instruction in **Powell v. Galaza** had the same effect in Mr. Saari's case as it did in **Powell**. Mr. Saari shows the court the trial instruction, TO WIT:

B. Pattern of Stalking Instruction.

As in **Powell v. Galaza**, supra this court's holding in **Carella v. California**, 491 U.S. 263(1989), and **Sandstrom v. Montana**, 442 U.S . 510(1979), provide the controlling authority here. Because the Minnesota State Court's failed to apply the correct analysis as determined by **Carella** and **Sandstrom** and reached a result that con-tradicts the reasoning and result of these cases, it's decision was contrary to federal law. **Fry v. Pliler**, 551 U.S. 112, 119-20 (2007). The trial court improperly removed two elements from the jury's consideration--the Main contested issue--and in effect commanded a directed verdict for the State. Under **Carella** and **Sandstrom** this was error. Here the trial court told the jury that it could find guilt if:

> "As indicated in these instructions, the State must prove a pattern of stalking conduct by proving two or more criminal acts within a five-year period. The State seeks to meet this element by proving the criminal acts which occurred on September 2, 2018 and which occurred on December 4, 2018." JURY TRIAL_MARCH 13, 2019-VOLUME II. PAGE 254 lines 4-8

IV.[Question Four] continued.

B. The instruction went on and supplied the jury with all the neccesary elements of COUNT ONE-Domestic Assault from September 2 , 2018. and COUNT SIX-Threats of Violence from December 4, 2018., but excluded the staement "If you find any element has not been proven beyond a reason able doubt, the defendant is not guilty. If you find that each of these elements has been proven beyond a reasonable doubt, the defendant is guilty." as to each of the criminal acts, and concluded with:

> "All of that is for the harassment and stalking because we have charges within the charge, all right, and I think that will be more clear when you look at it in writing."
> JURY TRIAL_MARCH 13, 2019-VOLUME II PAGE 247 Line 16-18

In **State v. Johnson, 773 N.W. 2d 81(Minn. 2009)** the Minnesota Supreme court held that "In order to prove[statutes] a pattern beyond a reasonable doubt, it is necessary to prove at least a minimum number of underlying acts beyond a reasonable doubt in order to prove a pattern beyond a reasonable doubt." So the Trial court's instruction went beyond the mandatory instructions found in **Carella** and **Sandstrom.**

C. The Instruction given was not harmless error.

The court in **Carella** explained that"a mandatory-presumption instruction maybe reviewed for harmless error because it is not equivalent to a directed verdict for the State--the jury is still required to find the predicate facts underlying each element beyond a reasonable doubt." **Carella, 491 U.S. at 260** The instruct -ion given in Mr. Saari's trial on the pattern of stalking charge encompassed alleged conduct from both behavorial incidents of Sep -tember 2, 2018 and December 4, 2018 and did not provide that the jury make separate findings of fact for each criminal act. The instructional errors at issue in **Carella** were subject to harmless error review precisely because the jury in that case made other factual findings that were untouched by the court's errors.

Mr. Saari's remaining conviction must be vacated because the court's trial instruction effectively directed the jury to find for the State on the pattern of stalking charge and the conduct was a species of lesser included offense of felony pattern of stalking. Thus,the pattern-of-stalking statute requires juror unanimity as to each of the underlying offenses on which a pattern-of-stalking convcition can be based. This error "vitiate all the jury's findings." **Sullivan v. Louisana, 508 U.S. 275, 281** (1993)."A courtcannot, no matter how clear the defendant's culpab -ility, direct a guilty verdict." **Rose v. Clark, 478 U.S. 570, 57** -8(1986).

REASON TO GRANT THE PETITION(CONTINUED)

V.[Question Five] Did Counterman v. Colorado, 600 U.S. 66(2023) announce a new substantive rule that has retroactive effect in cases on collateral review?

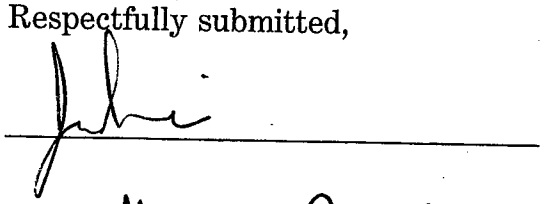
A. The Eighth Circuit court of Appeals denied a certificate of Appealability on the claim that this court's holding is a new substantive rule that has retroactive effect on collater -al review.

New constitutional rules of criminal procedure generally do not apply retroactively. **Teague v. Lane, 489 U.S. 288, 310(1989).** Substantive rules alter "the range of conduct or class of persons that the law punishes,"**Id., at 353.** Procedural rules, by contrast "regulate only the manner of determining the defendant's culpabil -ity." **Ibid.** Under this framework, **Counterman** is substantive, bec -ause the **Teague** framework turns on whether the function of the rule is substantive or procedural, not on the rule's underlying constitutional source. In **Welch v. United States, 136 S.Ct 1257 (2016)**, a certificate of appealabilty was denied, but this court found that **Welch** met the standard that he must make "a substantia -l showing of the denial of a constitutional right" § 2253(c)(2). Because the question implicated a broader issue: "whether Johnson is a substantive decision with retroactive effect in cases on collateral review. If so, then on the present record reasonable jurists could at least debate whether **Welch** should obtain relief in his collateral challenge to his sentence." Mr. Saari raised th -is same claim, with the difference that the jury in his case was given liscence to consider an insufficient Mens rea in determinin -g guilt and the **Counterman** holding supports his claim. The Motio -n for an Evidentiary Hearing being denied was error, because Mr. Saari satisfied § 2254(e)(2). The jury in Mr. Saari's case had the option to use any of three mental states to convict, a specif -ic intent, recklessness and negligence on the second criminal act underlying the pattern-of-stalking charge, the jury in all likelyhood selected the option of least resistence, which is the negligence and under **Counterman** that is Unconstitutional. The decision of **Counterman** has the effect on the Pattern-of-Stalking Statute that it would be unconstitutional as applied in prosecut- ions for "True Threats" because the State would only have to show that a reasonable person would understand the statements as threa -ts. This question presents an important federal law and the Eighth Circuit Court of Appeals has decided in contrary to this court's holding under **Teague v. Lane, 489 U.S. 288(1989).** So Mr. Saari asks this court to use it's Supervisory powers to intervene and restore uniformity to the lower courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 2 2024