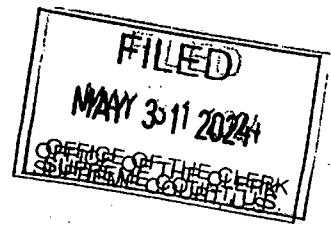


No. 23 - 7722



IN THE
SUPREME COURT OF THE UNITED STATES

Christopher Harry West — PETITIONER
(Your Name)

vs.

BRIAN EMIG, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF DELAWARE
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Christopher Harry West, Citizen of Delaware
(Your Name)

1181 Paddock Road
(Address)

Smyrna, Delaware
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Where a State Court post-conviction review was denied without a key state-law procedural requirement and the statute was immediately changed with no notice barring second challenges for all defendants forgoing trial, is due process violated along with the holding of Carter v. Illinois, 329 U.S. 173 (1946) and Harrington v. Richter, 562 U.S. 86 (2011)?

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:

Warden Brian Emig; Kathleen Jennings, Attorney General for Delaware; Joseph R. Biden III, original respondent.

RELATED CASES

West v. State, 2016 WL1517912

State v. West, 2015 WL3429919

West v. State, 2014 WL4264922

West v. State, 148 A.3d 687, 2016 WL5349354

West v. Warden, C.A. No 22-1731 (3d.cir 2022) Cert. denied

West v. May, N23M-07-045 Judgement entered July 18, 2023

West v. May, No. 284 Judgement entered February 20, 2024

West v. May, No. 284 Rehearing denied March 11, 2024

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
STATE V. HAWKINS, 183 A.626 (1936 Del. LEXIS 29)	
CURRAN v. WOOLLEY, 104 A.2d 771 (1951 Del. LEXIS 58)	
PURNELL v. STATE, 254 A.3d 1053 (2021 Del. LEXIS 193)	
CARTER V. ILLINOIS, 329 U.S. 173 (1946)	
DECK v. MISSOURI, 544 U.S. 622 (2005)	
HARRINGTON v. RICHTER, 562 U.S. 86 (2011)	

STATUTES AND RULES

- DELAWARE SUPERIOR COURT CRIMINAL RULE 61 (2013)
- DELAWARE SUPERIOR COURT CRIMINAL RULE 61 (2014 - current)
- DELAWARE SUPREME COURT RULE 26(c)
- DELAWARE SUPERIOR COURT RULE 10

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: May 23, 2021

OTHER West's name, and other names of actual people, places and things appear with the first letter capitalized, followed by lower case letters, as opposed to names in all CAPITAL letters denoting corporate entity. West is a citizen of Delaware first, then as a consequence a citizen of the United States, - Christopher
a Private Citizen, Christopher
signature

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APPENDIX E	DELAWARE SUPREME COURT RULE 26(c)
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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 _____ 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 B 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 LOWER court 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.

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 2/20/2024. A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: 3/11/2024, 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 _____ (date) on _____ (date) in Application No. ___A_____.

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

UNITED STATES OF AMERICA
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE I, § 9: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it." Also ARTICLE I, § 13 of DELAWARE's Constitution.

AMENDMENT V.: No person shall be held to Answer for a capital, or otherwise infamous crime, unless on a presentment, or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

AMENDMENT VI.: "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 previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

AMENDMENT XIV.: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

Petitioner West, pro se., was incarcerated on July 5, 2011 after a brief struggle with the New Castle County police K-9 unit. He was indicted for several banks robbed with notes. No weapons were displayed nor disguises worn. In prison, West's untreated serious mental illness of major depression and PTSD along with a drug withdraw manifested and as a result of psychological watch West never received a preliminary hearing, arraignment, nor meaningful review of the indictment or any discovery evidence. The record is devoid of signed waivers pursuant to Delaware Superior Court Rule 10. In January of 2012 after being held in solitary with no mattress since October 2011, West was forced to plead guilty to 25-life while in 3 restraints never addressed in the record under the threat of 150 plus years in prison. On March 30, 2012 West was sentenced as a habitual offender to 25 years minimum mandatory with counsel offering no mitigation or references to the ordered and completed pre-sentence investigation report. In June of 2016 these errors required resentencing which occurred without counsel over the objection of West. West had filed a timely post-conviction motion in February 2013 pursuant to then Superior Court Rule 61. The court appointed counsel and ordered an affidavit of trial counsel pursuant to Del. Supreme Court Rule 26(c), a state-law procedural principle for appeals. See appendix E. Two separate attorneys ordered the same in jacket entry No.s 11,17,19 (appendix D). The affidavit was never provided nor reviewed. Albert Roop took over the case, never provided nor inquired into the missing evidentiary requirement, then withdrew from private practice, immediately becoming a Delaware prosecutor. West filed an appeal which was denied on August 28, 2014. On July 9, 2014 West filed a Federal Habeas pursuant to 28 U.S.C. 2254 which was taken

out of the U.S. mail and obstructed by prison officials. It took West 5 years to win remand. His ultimate denial thereof was prejudiced in the delay. Crucial to West's current claims, while his first Rule 61 was pending, the State changed their statute for post-conviction relief pursuant to Superior Court Rule 61 to bar second or successive motions unless the movant went to trial and is actually innocent. The change was made to, in reality, bar successful challenges due to serious State misconduct. Appendix H contains the affidavits of two Delaware attorneys who confirm 3 important facts; that the change was made to restrict the availability of post conviction relief, that it was done without notice and shocked most members of the legal community in Delaware, and it was done in response to the bad-faith illegal action of large scale theft of drug evidence from the State office of the medical examiner's office. West attempted to file a second and third Rule 61 in 2015, 2016 only to be procedurally barred then summarily dismissed, under the new version of Rule 61. In those motions, he attempted to present the missing statement of trial counsel Manning, obtained in 2015. See appendix G. In June 2023 West filed a State Habeas petition, which was denied without explanation on July 18, 2023. See appendix A. West appealed to the Delaware Supreme Court and the State filed a motion to affirm the judgement of the Superior Court on December 11, 2023. The Supreme Court granted the motion to affirm on February 20, 2024. See appendix B. West filed a timely motion for reargument which was denied on March 11, 2024. See appendix C. Important to note, West filed his petition clearly pursuant to Article I, § 9 and Article I, § 13 of the United States and Delaware Constitutions, respectively.

REASONS FOR GRANTING THE PETITION

In Delaware, unlike Federal law, the Constitutional privilege of Habeas Corpus is not superceded by statute. *State v. Hawkins*, 37 Del. 396, 183 A. 626 (1936 Del. LEXIS). West's petition clearly invoked Constitutional, not statutory habeas relief. This important distinction was lost or overlooked by state courts. In splitting post-conviction relief from state habeas petitions to be adjudicated under then Delaware Superior Court Rule 35, the court held in *Curran v. Woolley*, 104 A.2d 771 at 774 (1954 Del. LEXIS 58), the procedure must always be both "available" and "adequate" to protect the rights of defendants. Citing *Carter v. Illinois*, 329 U.S. 173 at 176-177 (1916). The current absence of an avenue for redress to present new evidence previously unobtainable through due diligence proving Constitutional rights violations have infected the manner in which the post-conviction review is adjudicated and has prevented a "full and fair" first review is lacking. In *Purnell v. State*, 251 A.3d 1053 at 186-188 (2021 Del. LEXIS 193), the court held that question, and the failure to give notice as required by Federal due process to be questions for the Superior Court rules committee. However, as the affidavits of the co-chair~~s~~ with another member of the Delaware bar shows, they were never consulted in the change to begin with and were not given notice to a change "made to restrict" post-conviction access.

While denying West's petition on February 20, 2021, on page 2, paragraph 3 of appendix B, the court in error claimed the Superior Court reviewed the affidavit of trial counsel as required by Del. Supreme Court Rule 26(c) during West's first Rule 61 post-conviction motion. In the state's answer, appendix F, to West's 2251 habeas petition, they admit the affidavit was not provided nor reviewed at all.

The exclusion of this key state-law procedural evidentiary requirement has not been considered by any court in the context of its absences and the effect that would have upon any other factual determinations by the Superior Court. The facts that West was later able, in 2015, to obtain in a statement from trial counsel that has been entered into the docket at entry No. 72 confirms most of West's claims that his plea was not voluntary due to the fact the 3 restraints he was "often" in and that when he and counsel met, "certainly would have impeded document review." This interference confirmed by West's counsel is exactly the type held by this court in Deck v. Missouri, 544 U.S. 622 at 631-632 (2005) to violate both the VIth Amendment right to counsel and also due process in the Vth and XIVth Amendments.

While these errors in West's case do violate his Constitutional rights, they are not, in and of themselves, the basis for this petition for Writ of Certiorari nor West's 2023 State Habeas petition. The basis of this petition, and the reason for granting this Writ, is that the 2014 change to Delaware's post-conviction Statute occurred without notice to be heard and is repugnant to the Constitutional privilege of Habeas Corpus due to the fact a trial requirement to seek post-conviction relief has no historical precedence, nor controls the disposition of challenges to an illegal confinement. As this Statute effects all defendants in Delaware convicted after a plea of guilty, and the majority of defendant convictions are obtained in that manner, West hereby states this Court's jurisdiction under 28 U.S.C. § 1257 is invoked for these reasons. It does not help the State that the change

Was made in bad faith to restrict access to post-conviction relief after other illegal State actions by State employees theft of drug evidence from their crime lab. In Harrington v. Richter, 562 U.S. 86 (2011) this court held habeas relief to be available in only the most extreme malfunctions in the State criminal justice system. While that case involved individual application of relief, when the violation effects not one prisoner, but a majority of State defendants, the intervention of this court is necessary to review the question petitioner West presents herein, as it challenges the validity of a State statute in relation to a Constitutional privilege.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 23, 2024