

24-5190

No. _____

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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MATTHEW SAFRIT — PETITIONER
(Your Name)

VS.

TODD ISHEE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Matthew Safrut #1019077
(Your Name)

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QUESTION(S) PRESENTED

1. When a State cognizes Eighth Amendment conditions claims in their State habeas corpus proceedings, do AEDPA protections allow a Federal habeas corpus to ensue if 2254(d) standards were violated by the State courts?
2. Is the Eighth Amendment cognizable in a Federal habeas corpus for certain conditions claims?

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

- Safrit v. Ishee, No. 23-6503, Fourth Circuit Court of Appeals. Judgment entered 17 June 2024.
- Safrit v. Ishee, No. 3:23-cv-00166-MR, Western District of North Carolina District Court. Judgment entered 24 April 2023.
- Matter of Safrit, No. 381 P22-2, North Carolina Supreme Court. Judgment entered 24 January 2023.
- Matter of Safrit, No. P22-495, North Carolina Court of Appeals. Judgment entered 9 December 2022.
- Matter of Safrit, No. 0000000, Superior Court of Mecklenburg County, North Carolina. Judgment entered 2 September 2022.

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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 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☒ is unpublished.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 United States district 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☒ is unpublished.

☒ 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 822 SE2d 69; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the North Carolina Appellate court appears at Appendix D 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 Mecklenburg County Court appears
at Appendix E to the petition and is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 17 June 2024.

☒ 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 _____.
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

1. VIII Amend. US: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
2. NCGS 17-33(2): "... if it appears on the return of the writ that the party is in custody by virtue of civil processes from any court legally constituted, or issued by any officer in the course of judicial proceedings before him, authorized by law, such party can be discharged only in one of the following cases: ... (2) where, though the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the party has become entitled to be discharged."
3. 28 USC 2254 (d)(1) & (2): "An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim——
 - (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
 - (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

4. 28 USC 2072: " (a) The Supreme Court shall have the power to prescribe general rules of practice and procedure ... (b) Such rules shall not abridge, enlarge, or modify any substantive right. ..."
5. 28 USC 2254(a): " The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in State custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States. "

STATEMENT OF THE CASE

1. In December 2020, the COVID pandemic hit Nash Correctional Institution because staff transported a COVID-positive prisoner from a known COVID-positive prison to the then COVID-negative Nash C.I. without following proper protocols of quarantine restrictions.
2. As units were shut down (quarantined) by contamination, COVID hit Petitioner Safrit's housing unit because staff forced inmate workers to handle COVID-positive trash from the closed units without any PPE.
3. Staff continued to disregard proper quarantine procedures, and would allow units to intermix with each other fourteen days after the first positive found on a unit rather than fourteen days after the last positive was found, and would not do mass testing before opening up a quarantined unit.
4. Safrit's unit had its first known positive when an elderly man was rushed to the hospital, but Safrit's unit was only tested when the inmates stood together in solidarity and petitioned to be tested.
5. Safrit filed an emergency grievance before the protest, which was delayed past the normal time frame for such a procedure by staff.
6. Staff waited until after the protest to give a false response on the grievance, making it appear they were doing their job properly.
7. Staff went so far as to pressure people away from going to medical for help.

8. Safrit contracted COVID-19 because staff did not have concern for his health and safety, though COVID was well known to be potentially fatal.
9. COVID made Safrit very sick, and he still has a persistent cough and burning of the lungs three years later.
10. When Safrit brings up his long-COVID symptoms to medical staff, they invariably get quiet or change the subject.
11. Safrit contracted COVID before the State made vaccines available; he also remains unvaccinated for reasons of belief.
12. On 4 May 2021, the NC Court of Appeals affirmed the use of VIII Amend. conditions claims in State habeas proceedings in the context of the pandemic. State v. Daw, 277 NC App 240, 269 (2021) (relying on NCGS 17-33(2)).¹
13. Simultaneous with all of the above, one of Safrit's victims of crime began voicing her support for his release.

1. As the NC Constitution's VIII Amend. counterpart cannot provide lesser protection than the Federal provision, the NC State law is violated when the VIII Amend. is violated, and thus Safrit focuses, in this petition, only on the VIII Amend. see State v. Kellihen, 381 NC 558, 580 (2022) (citing State v. Carter, 322 NC 709, 713 (1988)).

14. Safrut used the above facts, along with mitigating factors overlooked by his trial court, to petition the Mecklenburg County Superior Court for habeas corpus on the basis of an VIII Amend. conditions claim, individualized to him.
15. Relief was summarily denied.
16. Safrut petitioned appeals to the NC Court of Appeals and NC Supreme Court; both were denied without comment.
17. Safrut then petitioned the Western District Federal Court of NC on the grounds of 2254(d)(1) & (2).²
18. Safrut also argued how VIII Amend. conditions claims were properly cognizable using US Supreme Court precedent and the Rules Enabling Act.
19. Safrut's petition was denied on the grounds of cognizability using one case from the Ninth Circuit.
20. Safrut petitioned for Certificate of Appealability with the Fourth Circuit on the grounds that:

(1) A circuit split shows the procedural ruling

² It was also shown how Federal mitigating factors parallel to those argued at the state level could apply to Safrut's sentence, warranting his release, and individualizing his claim.

is debatable by reasonable jurists;

- (2) Supreme Court precedent establishes grounds on which a reasonable jurist could find a categorical bar on conditions claims in habeas debatable;
- (3) The Rules Enabling Act would prohibit the Supreme Court from denying conditions claims in habeas, which is a ground a reasonable jurist could use to debate the lower court's stance on conditions claims in habeas;
- (4) The facts in this case show without a doubt Safrut's right to be free from cruel and unusual punishment was violated, giving grounds of debate for a reasonable jurist;
- (5) The NC laws of conditions cognizability place Safrut's conditions claims squarely within the core of Federal habeas, which a reasonable jurist could use to debate the lower court's ruling;
- (6) Since the Fourth Circuit has yet to make a published opinion on conditions cognition, the issue warrants proceeding further.

21. The Fourth Circuit denied to issue a Certificate of Appealability. But see Foote v. US, 2013 WL 5355543, at 8 (MDNC 2013) (circuit split shows debatable claim, warranting CoA); accord, US v. Halstead, 634 F3d 270, 274 (4th Cir. 2011).

REASONS FOR GRANTING THE PETITION

I. Circuit Split

1. While The Court gives leeway for cognition of conditions claims in Federal habeas, Preiser v. Rodriguez, 411 US 475, 499-500 (1973), no definitive ruling has been made on this issue, leaving appellate courts split. see Wilbourn v. Mansukhani, 795 F Appx 157, 579 (4th Cir. 2019) (collecting cases showing the split); but see Spencer v. Hayes, 774 F3d 467, 471 n.6 (8th Cir. 2014) (collecting cases in favor of cognizability at odds with some Wilbourn citations even within the same circuit).
2. The lower courts would thus benefit from This Court's guidance.

II. DEPARTURE

1. By virtue of the State habeas cognizing conditions claims with release from confinement as its relief, Safrut's Federal petition falls squarely within the core of habeas. Muhammad v. Close, 540 US 749, 750 (2004).
2. For the courts to deny Safrut's petition for reasons of cognizability thus departs from accepted courses of judicial proceedings via precedent, Hill v. McDonough, 547 US 573, 579-81 (2006) (VIII Amend. cruel/unusual challenge to duration of sentence proper for habeas proceedings), and established law. 28 USC 2254(a) ("in violation of the Constitution."); 2254(d)(1) & (2).

III. Public Interest

1. The COVID pandemic was a novel, catastrophic threat that American prisons were not prepared for. With such a serious threat, in many cases the only way to keep incarcerated citizens safe was release from confinement.
2. It is in the Public Interest to consider habeas cognition of conditions claims in case America again suffers a mass threat to incarcerated peoples' health and safety, which could be relieved by warranting release via habeas cognition of conditions claims.
3. Post-pandemic litigation floodgates will not be open if the Court allows cognition because, four years later, filing deadlines have all passed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3 July 2024

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