

24-5260

No. 102740-1

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OFFICE OF THE CLERK
SUPREME COURT U.S.
ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JESS R. Smith — PETITIONER
(Your Name)

vs.

State of WASHINGTON RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF THE STATE OF WASHINGTON
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JESS R. Smith
(Your Name) DOC# 739951

CRCC, POB 769, B-A-54-UP
(Address)

CONNELL, WA. 99326
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether the State Court's denial of Petitioner Smith's Motion To Recall the Mandate for Clerical in miscalculating the time for filing Petitioner Smith's collateral review in 2010 under RCW 10.73.090 constitutes an unconstitutional suspension of Petitioner Smith's right to Habeas Corpus under the United States Constitution Suspension Clause in Art. I § 9, Cl. 2?
- 2) Whether Washington State Court of last resort has decided an important federal question, as to whether the denial of Smith's motion to Recall the Mandate, conflicts with this Supreme Court's holding in the case of Boumediene v. Bush, 553 U.S. 723 (2008), Supreme Court Rule 10 (C).
- 3) Whether the State of Washington's arbitrary abolishment of Petitioner Smith's Motion To Recall the mandate to correct Clerical mistakes Invalidating Time Bar Calculations Violate Due Process of Law?

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:

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TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

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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 _____ 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☐ is unpublished.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 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 WASHINGTON SUPREME 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 _____.

☐ 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 3/14/24.
A copy of that decision appears at Appendix A.

☒ A timely petition for rehearing was thereafter denied on the following date: 6/05/2024, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

United States Constitution, Art. I,
§ 9, Cl. 2 (Habeas Corpus);

United States Constitution, Amend.
14 (Due Process of Law);

RCW 10.73.090 (1)

STATEMENT OF THE CASE

Petitioner, Jess Richard Smith, is before this Nation's Highest Supreme Court for a third time. Smith v. Washington, 575 U.S. 943 (2015); Smith v. Washington, 143 S.Ct. 987 215 L.Ed.2d 109 (2023). (Hereafter Smith).

Smith prays to this Legal Universe, to grant his petition, as a 3rd time charm.

In November 2023, Smith filed a motion to recall, his 2014, April 14th, mandate - Certificate of Finality. The Division One, Court of Appeals, denied Smith's Motion To Recall the Mandate, in an unpublished 1 page Order. See COA No. 68084-6-1. Smith appealed to the Washington Supreme Court and was denied relief on motion for Discretionary Review. See APPENDIX C (Mot. For Discretionary Review).

Smith filed a timely motion

To modify. Appendix D.

The Washington Supreme Court Commissioner in his Ruling Denying Discretionary Review, stated:

After remand for re-sentencing in State v. Smith, 148 Wn. App. 1021 (2009),

"On October 18th, 2010, Smith timely filed his CrR 7.8 motion and that motion was transferred as a Personal Restraint Petition under cause number 66364-D-1."

But despite the fact, that the Commissioner, found Smith's collateral past conviction, CrR 7.8, as timely filed (6 months after the Court of Appeals' 4-14-10, Mandate, issued in 148 Wn. App. 1021) and properly tolling, Smith's motion for Discretionary Review was denied. Appendix C.

Smith argued in his motion for modification, that the Right to Habeas Corpus has been extended to alleged detained terrorists in Boumediene v. Bush, 553 U.S. 723 (2008) and must be extended to Smith's post conviction proceedings. Appendix D. The motion to modify, was denied without comment. See Appendix A.

This writ of cert. follows.

REASONS FOR GRANTING THE PETITION

1. The Court, is requested to use extraordinary Supervisory Powers, to correct the State Court's mistaken time bar miscalculation under Wa. State Statute RCW 10.73.090 (1) and find, Smith's time barred collateral review proceedings, in 68084-6, have been unconstitutional and violating the suspension clause and Right To Habeas Corpus, under the United States Constitution Suspension clause, in Art. I §9, Cl. 2.

The record shows Smith timely filed his CrR 7.8, on October 18th, 2010, and directly appealed the transfer of his CrR 7.8, as a PRP.

While a court imposed stay was tolling, on October 18, 2011, Smith filed a conformed PRP, and dismissed without prejudice, the CrR 7.8. See

Appendix E (10-18-2011, Filed PRP, in No. 68084-6-1); Appendix F (7-3-12 Order Lifting Stay, Dismissing PRP, and allowing superceding PRP in No. 68084-6-1).

2. WASHINGTON SUPREME COURT of Last Resort has decided an import federal question as to whether the denial of Smith's November 2024 Motion To Recall the Mandate Based upon Unconstitutional Clerks Mistaken Time bar calculation in Personal Restraint of Smith, in No. 68084-6 (2013) Violates Due Process of Law and Conflicts With this SUPREME Court of the United States Decision in Beaudene v. Bush, 553 U.S. 723 (2008); Supreme Court Rule 10(c).

Smith's "timely" filed October 18th 2010, was filed six months after the Certificate of Finality mandated. See Appendix A (3-14-24, Wa. Sup. Ct. Commissioner's Ruling at P. 2).

All times on the clock after October 18, 2010, were tolled.

The Division One Court of Appeals, dismissed Smith's PRP as untimely. See Appendix G (5-3-13 Order of Dismissal)

This is the unconstitutional time bar that suspends my right to habeas corpus under the 14th Amendment of the United States Constitution; Art. I, § 9, Cl. 2; RCW 10.73.090.

I am a born citizen of the United States of America to which these rights apply.

See Appendix H (my Certificate of Birth).

In Boumediene v. Bush, 553 U.S. 723 (2008) this Supreme

extended the right to habeas corpus to detainees who were entitled to seek a writ of habeas corpus to challenge their detention at Guantanamo Bay, Cuba. 28 U.S.C.S. § 2241 (e) violated U.S. Const. art. I, § 9, cl. 2, as the Procedures Act of the Detainee Treatment Act, 109 Pub. L. No. 148, 119 Stat. 2680, were not an adequate and effective substitute for habeas corpus. Headnote 19, in the Boumediene v. Bush, Opinion, states: "The privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to the erroneous application or interpretation of relevant law. And the habeas court must have the power to

order the conditional release of an unlawfully detained" "These are the easily identified attributes of any constitutionally adequate habeas corpus proceeding. But, depending on the circumstances, more may be required."

Does the Washington Court of Appeals' time bar miscalculation and uncorrected mistake, after denial of Smith's motion to Recall the mandate; constitute a suspension of Smith's right to habeas corpus under the Suspension Clause, U.S. Const. art. I, § 9, cl. 2?

Smith argues an invalid time bar (of an otherwise timely Personal Restraint Petition) is analogous to a suspension of the writ of

Habeas Corpus. See
Boumediene v. Bush, supra.

3. Washington State's Arbitrary
Abolishment of Smith's
Right to be heard in his
habeas corpus-codified
Personal Restraint Petition
violates due process of law.

Smith has a due process
right to be heard on the
merits of his timely
filed PRP, in No. 68084-6,
under the 14th Amendment
of the United States Consti-
tution and RCW 10.73.090
(1). See Appendix A-G.

This right to due process,
has been illusory.

Smith prays the Court
grants this Writ and orders
the Washington Court of
Appeals, Division to
hear the merits in No.

68084-6.

Smith requests the Court
to appoint counsel upon the
granting of this Writ of Cert.
and to award fees.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jess Smith #739951

Date:

June 11, 2024