

24-5490

No. \_\_\_\_\_

**ORIGINAL**

IN THE

SUPREME COURT OF THE UNITED STATES

**FILED**  
**SEP 05 2024**

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

Eric Michael Corder — PETITIONER  
(Your Name)

vs.

State of West Virginia RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

State of West Virginia Supreme Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eric Corder  
(Your Name)

112 Northern Reg. Cor. Drive  
(Address)

Moundsville, WV 26041  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## **QUESTIONS PRESENTED**

Is it Constitutional for a state to deny a defendant a hearing without the defendant formally waiving the hearing?

Is it Constitutional for a defendant to agree to terms within a plea, that the defendant does not understand?

## 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 judgement is the subject of this petition is as follows:

State of West Virginia by the Circuit Court of Randolph County Prosecuting Attorney, Michael Parker

State of West Virginia by Shawn Straughn, Superintendent, Northern Correctional Center, Moundsville, WV

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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☐ is unpublished.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☐ is unpublished.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 A to the petition and is

☒ reported at West Virginia Judicial Decisions; 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☐ is unpublished.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 \_\_\_\_\_.

☐ 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 6/10/24.  
A copy of that decision appears at Appendix A.

☐ 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).

**Constitution and Statutory Provisions Involved**  
(Provisions appear in Appendix G)

U.S. Constitution Article III  
U.S. Constitution Amendment XIV  
W.Va. Code §15-12-1  
W.Va. Code §15-12-2  
W.Va. Code §15-12-2a  
W.Va. Code §15-12-2b  
W.Va. Code §17-2-3



### **Statement of the case**

On the 3<sup>rd</sup> of June 2015, in the Circuit Court of Randolph County, WV; petitioner pled guilty to one (1) count of Sexual Assault in the First Degree, one (1) count of Soliciting a Minor Via a Computer, and one (1) count of Sexual Assault in the Third Degree, case number 14-F-46. On the 4<sup>th</sup> of January 2016, petitioner was sentenced (Appendix F) on all counts to 18 to 50 years of incarceration. As a contingency of petitioner's plea agreement (Appendix E), he would register as a sexually violent predator.

On the 15<sup>th</sup> of December, 2021 petitioner filed a Writ of Habeas Corpus in the Circuit Court of Randolph County (Appendix D). On the 3<sup>rd</sup> of March, 2022 petitioner's counsel filed an Amended Petition for Writ of Habeas Corpus Ad Subjiciendum. On the 10<sup>th</sup> of June 2022 the State's Response to Amended Petition for Writ of Habeas Corpus was filed. On the 3<sup>rd</sup> of August, 2022 an Omnibus hearing was held, Honorable David Wilmoth presiding. On August 22, 2022 the Circuit Court of Randolph County denied petitioner's argument (Appendix B). On the 19<sup>th</sup> of September, 2022 petitioner's counsel filed a notice of appeal. A Petitioner's Brief was filed on the 22<sup>nd</sup> of December, 2022 (Appendix C). The State of West Virginia Supreme Court of Appeals affirmed the final order of the Circuit Court of Randolph County on the 10<sup>th</sup> of June, 2024 (Appendix A); by stating that "a guilty plea waives all antecedent constitutional and statutory violations" and "we are unpersuaded by the petitioner's argument that his designation as a sexually violent predator could not be waived by the plea agreement." The State of West Virginia Supreme Court of Appeals reached its conclusion without oral argument through a Memorandum Decision, with two of the five Justices dissenting, Justice John A. Hutchinson writing:

I dissent to the majority's resolution of this case. I would have set this case for oral argument to thoroughly address the error alleged in this appeal. Having reviewed the parties' briefs and the issues raised therein, I believe a formal opinion of this Court was warranted, not a memorandum decision. Accordingly, I respectfully dissent.

By the Justice's own admission this case should, at the very least, be sent back down to the State Supreme Court for oral argument. This petition seeks to have the lower Court's order denying the Writ of Habeas Corpus reversed.

## Reasons for Granting Petition

The State of West Virginia Supreme Court of Appeals and the Circuit Court of Randolph County, erred in denying petitioner's Writ of Habeas Corpus in three fundamental ways, (1) petitioner never waived his right to a sexually violent predator hearing, (2) failure to conduct said hearing is not a previously existing Constitutional violation, and (3) according to the Statute this determination must be made by "experts in the field of the behavior and treatment of sexual offenders" after a conviction.

Firstly, if we look at the plea agreement (Appendix E, pg. 108), on page 2 paragraph 2(c) we can see that the words "waive" or "hearing" do not appear with regards to a sexually violent predator hearing.

c. That the Defendant would stipulate and agree to designation as a sexually violent predator pursuant to **W.Va. Code § 15-12-2** and asserts that he has been advised of additional requirements and that will result therefrom with registration as a sexual offender pursuant to **W.Va. Code § 15-12-1 et seq.**

Therefore the State's entire argument that anything can be waived because certain constitutional right can be waived is a moot point, due to the fact that the petitioner never waived this hearing afforded him under W.Va. Code §15-12-2A, which is also not referenced in the plea agreement. This is a direct violation of the petitioner's Fourteenth Amendment right to due process. Furthermore the plea agreement does not reference W.Va. code 17B-2-3(b), which stipulates "The division may not issue a license or nondriver identification card to any person required to register as a sexually violent predator" unless "coded by the commissioner to denote that he or she is a sexually violent predator".

The Defendant was not notified of his right to a hearing to determine whether or not he is a sexually violent predator and the driver's license stipulation in his plea agreement or by his counsel. As set forth in *Boykin v Alabama*, 395 US 238, 242, 23 L Ed 2d 274, 89 S Ct 1709 (1969); a plea must be "voluntary" and "understandingly". Since the plea does not make clear that a hearing is being waived and that a mark shall be placed upon the driver's license, it could not have been made intelligently.

Secondly, the State errs in determining this hearing is antecedent to the plea when it is in fact post-factum. It's my opinion that no violations of Constitutional or Statutory Provisions are waivable because these are fundamental principles of law. If you review *State of W.Va vs Green*; 196 W. Va. 500, 505, 473 S.E.2d 921, 926 (1996), as referenced in the State Supreme Court of West Virginia's opinion (Appendix A, pg. 3), you will find a determination that "in the absence of special circumstances, a guilty plea

waives all antecedent constitutional and statutory violations save those with jurisdictional consequences." This argument is previously was calimed to be in State of W.Va. vs. Simms; 162 W. Va. 212, 248 S.E.2d 834 (1978).

However, if you review the Simms case you will only find an argument of double jeopardy and no reference of Constitutional violations being waived via plea agreement. Which raises the question, where is the State of West Virginia receiving its authority to claim a waiver of constitutional violations?

The State's argument that most Constitutional rights are waivable, may be valid. But if you review the petitioner's plea agreement, the vast majority, numerous pages, is dedicated to waiving constitutional rights, but none of it is dedicated to waiving the hearing afforded the petitioner under West Virginia law.

Lastly, the fact that neither the State nor the County makes an argument to the fact that W.Va. Code 15-12-2b(a) states "experts in the field of the behavior and treatment of sexual offenders" are to determine whether someone is or is not a sexually violent predator is a strong indicator that the petitioner is correct and, in fact, the state never meets the argument head-on and only references them as "laughable" and "novel" (Appendix C, pg. 54). There is no provision under W.Va. law that grants a Circuit Court the power to make a determination whether or not someone is a sexually violent predator without first requesting, then conducting a hearing.

The County Prosecutor did not file a written pleading in the Circuit Court claiming that the petitioner "suffers from a mental abnormality or personality disorder" that makes petitioner likely to engage in predatory sexually violent offenses, as required by W.Va. Code § 15-12-2a(c).

The Trial Court did not request and receive a report by the Sex Offender Registry Board setting forth their findings and recommendations on the issue of whether petitioner is a sexually violent predator, as is required by W.Va. Code §15-12-2a(e), which could only be made by a careful review of petitioner's past history.

The petitioner was not allowed access to a summary of the medical evidence in possession of State nor allowed to an examination by an independent expert of his choice for testimony on his behalf and to instruct his attorney on the subject, as is required by W.Va. Code §15-12-2a(f). Without such review and instruction petitioner could not make an intelligent and voluntary contract to be classified as a "sexually violent predator."

Given the facts that the State makes no valid argument to the petitioner's objections, the summary proceeding required by W.Va. code §15-12-2a was never held as an adjunct to petitioner's sentencing in 2015, the hearing in question was never waived, and by the statute cannot be waived,

it is evident the State Supreme Court of West Virginia erred in affirming the lower Courts decision and this Court, under the authority of Article III or the U.S. Constitution, should grant this petition.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric Cordak

Date: September 4th, 2024