

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

TERM, 20__

24-5526

Terry Dean Birts
PETITIONER

VS.

NO. _____

State of Arkansas
RESPONDENT

Supreme Court, U.S.
FILED
JUL - 2 2024
OFFICE OF THE CLERK

ON PETITION FOR A WRIT OF CERTIORARI TO

Arkansas Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terry Dean Birts - 130647
(YOUR NAME)

P.O. Box 970
(ADDRESS)

Marianna, Ar 72360
(CITY, STATE, ZIP CODE)

(PHONE NUMBER)

QUESTION(S) PRESENTED

- 1) Did the Arkansas Supreme Court err, in its decision May 30, 2024 denying petitioner's petition for Writ of Error Coram Nobis hearing in trial court?
- 2) Are petitioner's claims of Brady and its progeny, Giglio established under federal law (cases)?
- 3) Whether state's witnesses, Grimes and O'Donald perjured or false testimony, threats, favorable treatment (sentencing) material to jury's determination of their credibility?
- 4) Whether petitioner's substantial rights under 6, 14th amend. including, confrontation rights were infringe by perjury or nondisclosure of favorable sentencing deal?

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:

1) Arkansas Attorney General
323 Center St. Suite 200
Little Rock, Ar 72201

2) Terry Dean Birts
ADC # 130647
P.O. Box 970
Marianna, Ar 72360

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IN THE SUPREME COURT OF THE UNITED STATES

_____ TERM, 20__

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 designed 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- is unpublished.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 designed 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- is unpublished.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-CR12-74 to the petition and is

- reported at _____ ; or,
- has been designed 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- is unpublished.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 designed 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 May 30, 2024. A copy of that decision appears at Appendix A. CR 12-74

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

United States Constitution Amendment 6, 14

STATEMENT OF THE CASE

Petitioner, Terry Dean Birts was charged by felony information of having committed Capital murder, First degree murder, Second degree murder of three persons in Pulaski County, Arkansas CR-12-74. At jury trial, Sept 27-29, 2011 the State waived right to seek the death penalty. Also, Birts waived right to be sentenced by the jury. He was found guilty of one count Capital murder, one - Murder in the first-degree and, one - Second degree murder, where the trial court imposed an aggregate sentence of life without parole. Mr. Birts appealed, however, the Arkansas Supreme Court affirmed, see - Birts v. State, 2012 Ark 348. Later, Mr. Birts filed a petition for Writ of Error Coram Nobis, seeking permission from the Supreme Court for the trial court to entertain the petition. That petition was denied May 30, 2024. It is from that decision Birts seeks discretionary review before this ~~the~~ United States Supreme Court.

REASONS FOR GRANTING THE PETITION

Petitioner, Terry Dean Birts argues, two issues. That, the Arkansas Supreme Court erred, in its decision May 30, 2024 denying his petition for Writ Error Coram Nobis. Birts asserts, that the order is in contradiction to *Brady v. Maryland* 373 U.S. 83 (1963) where State may not use perjured testimony. In this case, further investigation has revealed that, State's witness Tiffany Grimes perjured herself, Mrs. Grimes had allege Mr. Birts had made an admission to her regarding his involvement in the deaths at issue. This testimony was very damaging and, the heart of the State's case in collaboration of other circumstantial evidence, including Mr. O'Donald's testimony.

Mr. Birts attained, a sworn affidavit, freely given to him by Mrs. Grimes detailing, she perjured her testimony against him because, she was coerced and physically threatened by State actors. See - *Aff'd; Pyle v. Kansas*, 317 U.S. 213 (1942), *Johnson v. State*, 983 A.2d 647, 142 Md. App. 126 (Md. App. 2008).
Second, Kevin O'Donald, another State witness gained favorable treatment (less or, an suspended sentence) for his testimony against Mr. Birts. The State did not reveal or disclose Mrs. Grimes inaccurate, false or coercion and threats used against her, neither Mr. O'Donald's favorable treatment to the defense. Mr. Birts surely, had a right to put forth this evidence before the jury where jury could consider it in its determination of the witnessess credibility or reasons for testifying. See - *Giglio v. U.S.*, 405 U.S. 150 (1972); *Donnelly v. DeChristoforo*, 416 U.S. 637 (1974); *Crawford v. Washington* Supra.

Mr. Birts alleges, the state manipulated it's witnesses testimony-
Miller, 386 U.S. 27 and used false evidence in part
to obtain his conviction. Mooney v. Holohan, 295 U.S. 103
(1935). That, the coercion and threats to Mrs. Grimes to lie,
Mr. O'Donald's suspended or less sentencing both were "material"
evidence. Mr. Birts asserts, that, he is actual innocent.
As a whole, the circumstantial evidence in the state's case
only shows, the parties knew each other or, entertained
together. That, Birts substantial rights were violated, he
had a right to complete confrontation of the state's witnesses
that, his due process and right to a fair trial both were
denied under the 6 and 14th amendment. Birts were
severely prejudiced- U.S. v. Agurs, 427 U.S. 95 (1975) by
the non-disclosures, perjury and coercion. Here, by
this petition before the United States Supreme Court
he seeks discretion review of the Arkansas Supreme
Court's order May 30, 2024 as to his Writ of
Error Coram Nobis. Because, the court erred, denying
that these two witnesses, Grimes and O'Donald's testimony
were advantageous toward the state's argument of Birts
involvement in the death of the victims at issue, There
is a reasonable probability of a different outcome in the proceeding had
the undisclosed or perjury evidence been put before the jury.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jerry D. Binta *

Date: July 2, 2024