IN THE SUPREME COURT OF THE UNITED STATES

Ralph Reed – Petitioner,

vs. **No. 24-6787**

Brian Emig, Warden, JTVCC – Respondent

PETITION FOR A REHEARING

COMES NOW the Petitioner, Ralph Reed, who moves this Honorable Court pursuant to Rule 44 to grant this Petition for Rehearing. In support of this Petition, Reed presents the following:

This Petition is presented in good faith and not for delay.

On December 1, 2024, Petitioner's writ of certiorari was filed and placed on the docket March 18, 2025. Pursuant to Rule 15.3, the due date for a brief in opposition was Thursday, April 17, 2025.

a) Pursuant to Rule 15.3, cases in the United States Supreme Court require that the State of which the respondent is an office have to respond to Petitioner's petition. *See Clerk Order.*

b) Pursuant to Rule 15.5, the Clerk will distribute the petition to the court for its consideration upon receiving an express waiver of the right to file a brief in opposition, or, if no waiver or brief in opposition is filed, upon the expiration of time allowed for filing. If a brief in opposition is timely filed, the Clerk will distribute the petition, brief in opposition, and any reply brief to the court for its consideration no less than 14 days after the brief in opposition is filed, unless the petitioner expressly waives the 14-day waiting period.

In this matter here, the Court should reconsider the denial of his writ of certiorari and grant the Petitioner's relief for two equally compelling reasons: (1) the opposition failed to file a

brief or a waiver to dispute any of Petitioner's writ of certiorari claims that he submitted to this Court; and (2) Petitioner sustained substantial Due Process and other constitutional violations that warrant relief. In failing to file a brief or waiver pursuant to Rule 15.3, Respondent did not rebut or dispute any of Petitioner's claims. Therefore, Petitioner should be granted the relief that he requested.

Petitioner's request for rehearing should also be granted because Petitioner's 5th, 6th, 8th, and 14th Amendment constitutional rights were violated under an unconstitutional 11 Del. 636 and 11 Del. 4209 sentencing scheme and accompanying defective indictment. This is so given the examination of a "range of facts" and in light of Supreme Court authority holding that facts that increase a defendant's sentence must be found by a jury. See Apprendi v. New Jersey, 530 U.S. 466 (2000). Petitioner's sentence, just like the petitioner in Erlinger v. United States, 602 U.S. 821 (2004), is clearly unconstitutional.

Petitioner's sentence violated the 5th and 6th Amendments. The 6th Amendment guarantees that a criminal defendant has "the right to a speedy and public trial by an impartial jury." This guarantee includes the requirement that all jury verdicts be unanimous. Ramos v. Louisiana, 590 U.S. 83 (2020). Similarly, the 5th Amendment promises that no citizen may be deprived of their liberty without "due process of law." Due Process requires that the Government prove to a jury every element of a charged offense beyond a reasonable doubt. United States v. Haymond, 588 U.S. 634 (2019) (plurality opinion).

Moreover, from the beginning of our country, the Government has always been required to include in an indictment any fact which constitutes an element of crime charged, and failure to do so was fatal to the indictment. See Haymond, 588 U.S. 634. This requirement "historically included any particular fact which the laws ma[d]e essential to the punishment." Id. The point

of these constitutional protections, the Court emphasized, is to require that a unanimous jury ... find every fact essential to an offender's punishment, this ensuring that the sentence a court imposes is "premised on laws adopted by the people's elected representatives and facts found by members of the community." In other words, "[t]hese principles represent not 'procedural formalit[ies]' but 'fundamental reservation[s] of power' to the American people." Quoting Blakely v. Washington, 542 U.S. 296 (2004).

Over time, however, state legislatures, Congress, and the courts began experimenting with "new trial and sentencing practices" that authorized judges to impose punishment based on facts not found by the jury's guilty verdict or the defendant's guilty plea. Despite the proliferation of these laws, the Supreme Court has "cautioned that, while some experiments may be tolerable, all must remain within the 5th and 6th Amendments' guardrails." See Apprendi; See also Alleyne v. United States, 570 U.S. 99 (2013) principle that only a jury may determine facts that increase penalties applies when a court imposes a sentence that exceeds the maximum penalty authorized by a jury's findings and increases the minimum punishment. These "guardrails" guarantee "that a judge could not swell the penalty above what the law ... provided for the acts found by a jury of the defendant's peers." Haymond.

The Supreme Court struck down the sentence as violating the 5th and 6th Amendments because only a jury may find "facts that increase the prescribed range of penalties to which a criminal defendant is exposed." Apprendi; Erlinger.

Petitioner's sentence and indictment is clearly unconstitutional by the 5th and 6th Amendments of the constitution. Petitioner's petition should be granted for all these constitutional violations that is stated throughout this petition. Petitioner Reed's sentence should be vacated and his case remanded for new trial or resentence on lesser offenses.

"The remedy for a constitutional violation by a trial judge (making the determination of criminal guilt reserved to the jury) is a repetition of the same constitution violation by the appellate court (making the determination of criminal guilt reserved to the jury)." Neder v. United States, 527 U.S. 1, 32 (1999).

Petitioner Reed asserts this Court, the U.S. Supreme Court, recognized and reiterated in Chessman v. Teets, 354 U.S. 156 (1957), their overriding responsibility is to the U.S. Constitution as it held on many occasions this Court has found it necessary to say that the requirement of the Due Process Clause of the 14th Amendment must be respected, no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be after guilt has been established in accordance with the procedure demanded by the Constitution.

Evidently, it also needs to be repeated that the overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist. This Court may not disregard the Constitution because an appeal in these cases, as in others, has been made on the eve of execution. Petitioner's constitutional violations demand this Court to hear Petitioner's claims and grant relief for a new trial or resentence to a lesser offense. Donaldson v. California, 404 U.S. 968, Nunez v. United States, 554 U.S. 911, Wilson v. Corcoran, 562 U.S. 1, NHL v. Metro Hockey Club, 427 U.S. 639.

Petitioner's Due Process and Equal Protection of State and Federal law have also been violated where Petitioner's sentence for murder first degree has not been addressed under newly constructed terms now that Delaware's sentencing statute for murder first degree, 11 Del. 4209, was deemed unconstitutional entirely and cannot be severable from the rest. Petitioner was charged under an unconstitutional sentencing scheme statute, 11 Del. 636 and 11 Del. 4209, that violated Petitioner's indictment and sentence entirely. Consequently, Petitioner should be

resentenced under a lesser offense. Petitioner's sentence violated the 6th, 8th, and 14th Amendments to the U.S. Constitution whereas the Court held, in Hurst v. Florida, 577 U.S. 92 (2016), Rauf v. State, and Powell v. State, that is retroactive to capital and non-capital offenders. Delaware statute, 11 Del. 4209, was deemed unconstitutional entirely. Petitioner's sentence should be considered void *ab initio.*

Petitioner also contends that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for those adolescents who were above the age of 18-year-olds but not yet adults. Automatically mandatory life sentences without the possibility of parole run afoul of the requirement of individualized sentencing for defendant facing the most serious penalties. Graham v. Florida, 130 S. Ct. 2011 (2010) and Miller v. Alabama, 567 U.S. 407.

Therefore, Petitioner contends that to sentence him who was an adolescent at the time of the crime to an automatic mandatory life sentence without the possibility of parole, without a mitigating hearing, is unconstitutional and subjects him to cruel and unusual punishment, in violation of the 8th Amendment and Petitioner's life sentence should be considered void *ab initio.* State v. O'Dell, 183 Wn.2d 680, 695, 358 P.3d 359 (2015); State v. Houston-Sconiers, 188 Wn.2d 1, 21, 391 P.3d 409 (2017). As there is evidence that one's brain continues to mature past the age of 20, it is unconstitutional to apply the same mandatory sentence to all offenders, regardless of age. In the instant case, Petitioner was 18-years-old and therefore, his brain still continuing to mature. Bartholomew and Monschke require that Petitioner receive a new sentencing hearing.

Supreme Court Rule 10(a) provides that a writ of certiorari may be granted where "a United States Court of Appeals has entered a decision in conflict with the decision of another

United States Court of Appeals on the same important matter, has decided an important federal question in a way that conflicts with a decision by a state of last resort, or has so far departed from the accepted and usual court of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." In finding that Petitioner had not carried his burden of showing that Delaware Supreme Court's factual determinations were objectively unreasonable and the Court unreasonable applied the Strickland standard, the Delaware court has sanctioned Reed's conviction despite trial counsel overriding his own client's constitutional right to effective assistance of counsel. As such, this Court should exercise its supervisory power and GRANT this petition for a writ of certiorari.

Because the aggravated murder statute that the Petitioner was convicted of violating was unconstitutional as applied. In re Pers. Restraint of Monschke, 197 Wn.2d 305, 482 P.3d 276, 2021 Wash. LEXIS 152 (Wash. 2021); see also Montgomery v. Louisiana, 577 U.S. 190, 136 S. Ct. 718, 193 L. Ed. 2d 599 (2016); Graham v. Florida, 560 U.S. 48, 61, 130 S. Ct. 2011, 176 L. Ed. 2d 825 (2010). The opinion provides support for treating young adults with the leniency of the juvenile. The lead opinion today casts aside this long-standing deference to the legislature because it believes that the current line at 18 is arbitrary." Lead opinion at 23-24. The lead opinion contends the line at 18 is arbitrary because there is "no distinctive scientific difference, in general, between the brains of a 17-year-old and an 18-year-old" and notes that at 18, these youths' brains are not fully developed, which leads to decision-making based on immaturity and impulsivity. In re Pers. Restraint of Lilght-Roth, 191 Wn.2d 328, 338-39, 422 P.3d 444 (2018).

Today announces a broad new constitutional safeguard protecting "youthful defendants ages [18 to 20] without fully developed brains." Lead opinion at 29. In doing so, the lead opinion extends a protection to convicted murderers that may shield these individuals from the

full legal consequences of their actions. It was unconstitutional for the offender to receive mandatory life without parole sentences without an individualized inquiry to determination of mitigating qualities of youth. The Court grants the petition, vacates the mandatory life without parole sentence and remands the case for resentencing. Petitioner should be resentenced as well.

The trial court abused its discretion by denying Petitioner's constitutional right to a fair, impartial jury under the U.S. Constitution. Petitioner's juror's potential bias harmed Petitioner's trial rights. Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 171, 90 L. Ed. 2d 69 (1986). The prosecutor's violation of the striking of juror was discriminatory. The Constitution forbids even a single prospective juror for a discriminatory purpose. Petitioner showed purposeful and factual discrimination in the juror selection during trial for race violated federal laws. The prosecutor's reasons for striking a Black prospective juror apply equally to an otherwise similar non-Black prospective juror who is allowed to serve tends to suggest purposeful discrimination. Miller-El v. Dretke, 545 U.S. 231, 241, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005). Superior Court violated Petitioner's Due Process and federal rights under the 5th, 6th, and 14th Amendments.

The state court has proceeded on an incorrect perception of the federal law. It has been this Court's practice to vacate the judgment of the state court and remand the case so that the court reconsider the state law question free of misapprehension about the scope of federal law. Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C., 467 U.S. 138, 152 (1984); see also S. Shapiro, K. Geller, T. Bishop, E. Hartnett, and D. Himmelfarb, Supreme Court Practice 212 (10th ed. 2013). In a situation like the one presented here, the correct approach is for this Court to decide the question of federal law and then to remand the case to the lower court so that it can reassess its decision on the underlying federal issue. Batson v. Kentucky, 476 U.S. 69 (1986); Miller-El v. Cockrell, 123 S. Ct. 1029, 1043 (2003). It is

fundamental that this Court only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. Herb v. Pitcairn, 324 U.S. 117, 125-26 (1945).

Because of the State's willingness to accept White jurors with the characteristics, for example, the prosecution claims that it struck the Black juror, Ms. Turner, and the other four Black jurors who said they knew the Petitioner's relatives or friends, but the White juror, Mr. Haley, and other jurors knew the victim's family and friends yet were allowed to serve. The State used peremptory challenges in a racially constitutional claim, were violated the evidence advanced by petition in support of his argument that the prosecution's strikes of Black members of the venire were based on race. Petitioner is entitled to a new trial given the Batson violation. Flowers v. Mississippi, 204 L. Ed. 2d 638 (2019); Foster v. Chatman, 195 L. Ed. 2d 1 (2016).

The State use of unconstitutional *voir dire* questioning results in discriminatory selection of jurors that violate the 5th, 6th, and 14th Amendments to the Federal Constitution as well as their state counterparts. Jacobs v. State, 358 A.2d 725 (Del. 1996). Also, the discrimination in *voir dire* questioning, in violation of Batson, reviewed by the standard set forth in Miller-El v. Cockrell, 123 S. Ct. 1029 (2003), was a concerted effort to keep Black prospective jurors off the jury. Donaldson v. California, 404 U.S. 968.

Petitioner wrote to the trial court requesting the appointment of an attorney to represent him due to the complexity of the issues raised in the postconviction motion, especially the Batson claim, which involves the obvious discriminatory disparate *voir dire* questioning which were specifically targeted at excluding Black African-American jurors from Petitioner's trial.

Evidence that a prosecutor's reasons for striking a Black prospective juror apply equally to an otherwise similar non-Black prospective juror who is allowed to serve tends to suggest

purposeful discrimination. Miller-El v. Dretke, 545 U.S. 231, 241. Such evidence is compelling with respect to Turner and four other jurors and, along the prosecution's shifting explanations, misrepresentations of the record, and persistent focus on race, leads to the conclusion that the striking of those prospective jurors was "motivated in substantial part by discriminatory intent," Snyder, 552 U.S. at 485, "and reeks of afterthought." Miller-El, 545 U.S. at 246. The focus on race in the prosecution's record file plainly demonstrated a concerted effort to keep Black prospective jurors off the jury. Pp _-_, 195 L. Ed. 2d at 20-21; Flowers, 204 L. Ed. 2d 638 (2019); Foster, 195 L. Ed. 2d 1 (2016).

This violation is apparent given the State's willingness to accept White jurors with the same characteristics. For example, the prosecution claims that it struck Juror Turner and four other jurors because they revealed they knew Petitioner or his friends and relatives. However, four White jurors revealed they knew the victim or his friends and relatives yet were allowed to serve. Other justifications for striking Turner and four other jurors fail to withstand scrutiny because no concerns were expressed with regard to similar White prospective jurors. Pp _-_, 195 L. Ed. 2d at 20-21. When you look at the prosecution's records and files, they verify this information. They also reveal the unconstitutional use of peremptory challenges and the disparate *voir dire* questioning of similarly-situated White and Black jurors which resulted in the purposeful exclusion of all the Black jurors. Miller-El v. Cockrell, 123 S. Ct. 1029, 1043 (2003). The questioning posed by the prosecutors are clear evidence of discrimination. Batson, 476 U.S. at 97. For these reasons, this Court should grant the Petitioner a new trial or a resentence to a lesser charge.

Petitioner's trial counsel also deprived him of his 6th Amendment right to effective assistance of counsel for failing to properly investigate and subpoena two crucial defense

witnesses that support his innocence. Petitioner can meet the standard of deficient performance and prejudice in Strickland v. Washington, 466 U.S. 668 (1984) and Shockley v. State, 565 A.2d 1373, 1377 (Del. 1989).

The sown averments contained in J. Reed's affidavit demonstrate that trial counsel's decision not to subpoena J. Reed as a defense witness was not reasonable and prejudiced Petitioner's defense that someone else committed the crime.

First, Petitioner has a constitutional right under state and federal law to put on evidence of the State character tending some other person as perpetrator of the crime. See D.R.E. 404(b); Jones v. Wood, 207 F.3d 557, 562-63 (9th Cir. 2000). The Jones court held that before evidence implicating another suspect can be admitted, "there must be such proof of connection with the crime, such as a trial of facts or circumstances as tends clearly to point out someone beside the accused as the guilty party." Id. at 562. Furthermore, the Jones court concluded that "because the other suspect evidence was admissible under Washington law, Jones has established Strickland prejudice" from counsel's failure to present such evidence at trial. Id. at 563.

Such evidence must be "coupled with other evidence tending to connect such other person with the actual commission of the crime charged." Id. However, a lesser foundational restriction applies to cases involving circumstantial proof of crime. Applying this law to the facts of this case, which is consistent with D.R.E. 404(b), the averments contained in J. Reed's sworn affidavit, that he witnessed and observed another person as the perpetrator. See affidavit.

The train of evidence, according to Jones, revealed here shows beyond a reasonable doubt that someone else were actual accomplices to the murder which should have been explained to the jury and court by Petitioner's trial counsel with a request for a full charge

instruction on the lesser-included-offense to first degree murder under 11 Del. 271 and 274, e.g., second degree murder 11 Del. 635, manslaughter 11 Del. 631. See Chance v. State, 685 A.2d 351.

The circumstances of Petitioner's case are identical to what happened in Kyles v. Whitley, 514 U.S. 419 (1995), where the actual perpetrator of the crime provided the investigating police officer with all the evidence and information tht led to Kyles' arrest and conviction. Instead of advancing the available same character defense theory that someone else committed the crime. See J. Reed affidavit.

The Third Circuit Court, ruling in ineffective assistance of counsel in Berryman v. Morton, 100 F.3d 1089 (3rd Cir. 1996), support Petitioner's claims for postconviction relief based upon Jones v. Wood, 207 F.3d 557 (9th Cir. 2000). A contrary ruling would be totally unreasonable to the federal law governing this issue. Id. at 1097-1102. The Third Circuit reviewed each of Berryman's claims separately and found that counsel's performance strategy was unreasonable. For these reasons, Petitioner's constitutional violations demand that this Court hear Petitioner Reed's claims and grant relief for a new trial or sentence to a lesser offense.

Conclusion

Petitioner Ralph Reed's rehearing should be granted and Reed should be afforded a new trial, or resentence to a lesser charge. Petitioner's Due Process was violated under the 5th, 6th, 8th, and 14th Amendments and their state counterparts.

Respectfully,

Ralph Reed

IN THE SUPREME COURT OF THE UNITED STATES

Ralph Reed – Petitioner,

vs. **No. 24-6787**

Brian Emig, Warden, JTVCC – Respondent.

CERTIFICATION OF PETITIONER

I, Petitioner Ralph Reed, hereby certify that the attached Petition for Rehearing is restricted to grounds that are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented. Further, the petition is presented in good faith and not for delay.

Consequently, the attached Petition for Rehearing is submitted in accordance with this Court's Rule 44.

Ralph Reed

Ralph Reed *pro se*
#320813
JTVCC
1181 Paddock Road
Smyrna, DE 19977

Dated: July 10, 2025

Certificate of Service

I, Ralph Reed, hereby certify that I have served a true and correct copy(ies) of the attached Motion For Rehearing Petition upon the following parties/persons:

To: Office of the Clerk
Supreme court of The
united states
Washington, D.C. 20543-0001

To:

To:

To:

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the James T. Vaughn Correctional Center, Smyrna, DE 19977.

On this 10 day of July, 2025

Ralph Reed