

No. 24-7356

ORIGINAL

Supreme Court, U.S.
FILED

MAY 19 2025

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Kurtavious Jermon Smith — PETITIONER
(Your Name)

vs.

Superintendent, SCI-Greene, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kurtavious Jermon Smith
(Your Name)

SP1-6 Greene, 169 Progress Drive
(Address)

Waynesburg, Pennsylvania 15370
(City, State, Zip Code)

724-852-5902, Prison Phone Number
(Phone Number)

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MAY 29 2025

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- (1) "Did The U.S. District Court Err in Dismissing Petitioner's Writ of Habeas Corpus without A hearing?"
- (2) "Did The U.S. Court of Appeals for The Third Circuit, Err in Denying Petitioner's Request for A Certificate of Appealability Pursuant To U.S.C. § 2253?"
- (3) "Were Petitioner's Rights to Due Process and a Fair Trial Violated by Allowing (Hearsay Testimony) Prosecutorial Police Agents to Testify About Statements made By Private Citizens During Petitioner's Jury Trial, Serving as The "Truth of The Matter" Absent Exception To The Hearsay Rule?"
- (4) "Was Trial Counsel Ineffective for Failing To Have The Gunshot Residue Kit Obtain from Crawford Analyzed Prior to Trial?"

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) Superintendent SCI Greene
- (2) The District Attorney of the County of
Fayette.
- (3) The Attorney General of the State of Pennsylvania.

RELATED CASES

Mr. Kurtavious Jermon Smith, (Petitioner) has no other cases pending before this or any other court.

Mr. Smith is not aware of any related cases pending before this
or any other court

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APPENDIX A "ORDER"- UNITED STATES COURT OF APPEALS- THIRD CIRCUIT, dated: 3/4/25.
Request for a Certificate of Appealability - Denied - C. A. 24-3133. (4 pages).

APPENDIX B "ORDER" in the Affirmative, By Judge Arthur J. Schwab, U.S. District Court, dated: 7/7/24.
Civil Action No. 21-1637. (Court Electronic Review, Filing System).

APPENDIX C REPORT AND RECOMMENDATION, by Magistrate Judge Kezia O. L. Taylor, dated: 5/23/24.
(33 pages). Civil Action No. 21-1637.

APPENDIX D APPLICATION FOR CERTIFICATE OF APPEALABILITY, filed: 4/8/25. By Petitioner,
please, At: No. 24-3133.

APPENDIX E PETITIONERS OBJECTIONS TO THE MAGISTRATE JUDGE REPORT AND RECOMMENDATION
filed: 7/5/24. by Petitioner, No. At: Case No. 21-1637. (7 pages).

"PLEASE TAKE NOTICE:

APPENDIX F I, Kurtavious Jerome Smith ("Petitioner Herein"), seek LEAVE REQUESTING
UTILIZATION OF THE COURT ELECTRONIC-REVIEW/FILING SYSTEM IN ATTENTION

TO APPENDIX "B". The "Affirmative" order-issued by Arthur J. Schwab Judge,
(dated July 7, 2024) from the U.S. District Court, Western District, Pa.,
in adopting the Magistrate's Report And Recommendation, At:
21-1637, Pa. Civil Action No. 21-1637, is unavailable, for purpose
of Appendix. Although Respectfully the "ORDER" can be put in
effect (if the Court deems necessary), via The Courts Electronic
Review/Filing System. Whereas the entire Appendix is fully a
part of the Courts record and is available to the Justices.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>AKER V. OKLAHOMA</u> , 470 U.S. 68 (1985);	10
<u>Brecht V. Abrahamson</u> , 507 U.S. 619, 637 (1992);	9
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<u>Kotekos V. United States</u> , 328 U.S. 750, 776 (1946);	9
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<u>Robinson V. Beard</u> , 763 F.3d 316, 324 (3d Cir. 2014);	7-9
<u>Strickland V. Washington</u> , 466 U.S. 668 (1984).	7

STATUTES AND RULES FEDERAL - STATE

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<u>28 U.S.C. § 2254 (d) (1)</u>	7
<u>28 U.S.C. § 2254 (1)</u>	6
<u>U.S.C. § 2253</u>	1

OTHER

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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 A to the petition and is

reported at C. A. No. 24-3133; 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 Civil Action No. 21-1267; 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 _____ 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 _____ 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 March 4, 2005.

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) Violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2254 (a);
- 2) The Adjudication of the claim 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;
- 3) The conviction resulted in a decision based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding - Analyzed under § 2254 (d) (1), which applies primarily to mixed questions of law and fact.

LEGAL PRINCIPLES

Recognizing: Harrington v. Richter, 562 U.S. 86, 98-100 (2011);
Robinson v. Beard, 762 F.3d 316, 324 (3d Cir. 2014);
Strickland v. Washington, 466 U.S. 668 (1984).

HERE, The States court's decision was objectively unreasonable, lacking in existing law beyond any possibility for fair minded disagreement.

- (1) The Fifth Amendment of the United States Constitution provides: "No person shall be...deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."
- (2) The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the Accused shall enjoy the right to...be informed of the nature and cause of the accusation; and to have the Assistance of Counsel for his defense."

STATEMENT OF THE CASE

For a detailed narration (account), As per the Statement of the Case, Please refer to the 32 page Report and Recommendation issued by U.S. Magistrate Judge Kezia O.L. Taylor, Document 23, Filed 5/23/24.
Affixed hereto At Appendix "C". And Affirm by David J. Portch
Circuit Judge, United States Court of Appeals for the Third Circuit
C.A. No. 24-3133, Document 14-1, Filed 3/4/25. Affixed hereto
At Appendix "A"

ALSO STATEMENT OF THE CASE - IN APPENDIX

Please refer to, Petitioner's Objections To The
Magistrate Judge "Report and Recommendation."
Filed pro se, Submitted 7/5/24, consist of 7 pages (Pages).
Respectfully invoked and Affixed hereto At Appendix "E".

REASONS FOR GRANTING THE PETITION

A Violation of the Constitution or Laws or Treaties of the United States.
28 U.S.C. §2254 (a). — Where the Adjudication of the claim 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;

Also The Conviction 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 — Analyzed under §2254 (d) (1), which applies primarily to mixed
questions of law and fact. (Legal Principles). Recognizing: Harrington v. Richter,
562 U.S. 86, 98-132 (2011); Robinson v. Beard, 762 F.3d 316, 324 (3d Cir. 2014).

"In The Case In Chief, The Magistrate's Report and its recommendation As well as
the District Court Judge's Application to the same, was objectively unreasonable, lacking
in existing law beyond any possibility for fair minded disagreement. —

In Assessing whether the exclusion ("Abandonment") of trial Counsel's failure to obtain
the gunshot residue kit from "Crawford" had a substantial and injurious effect on the jury's verdicts.
The first inquiry for the reviewing court is to determine the full "damaging potential" of the
of the excluded evidence and any doubt concerning the harmlessness of any such error must be
resolved in favor of the petitioner. Recognizing: Brecht v. Abrahamson, 507 U.S. 619, 637 (1992);
And still with legal force, Kettakos v. United States, 328 U.S. 750, 776 (1946).

"In Brief Digest, Petitioner's trial Counsel was constitutionally ineffective for failing to have the
Gunshot residue kit obtained from Crawford Analyzed prior to trial. Petitioner's jury received forensic evidence
that the victim's right hand contained two (2) component particles of gunshot residue. The importance being, the
the jury was presented with solely expert witness testimony from the prosecution's perspective, regarding All manner of
Conducted Forensic Science. — In consequence, Petitioner suffered prejudice in light of trial counsel's gross ineffectiveness
for not securing the gunshot residue kit pertaining to the victim to be Analyzed prior to trial by a defense expert witness to
establish A valid Self defense ("In Scientific Proof") Acceptable in representation that the fatal incident Actually occurred
from by an initial gunshot fired At Petitioner by the declared victim which in consequence resulted in his demise.

Overwhelming prejudice towards Petitioner was established when prosecution witness Ms. Susan Atwood, Forensic Scientist Super-
visor, for the Pennsylvania State Police Crime Laboratory testified "inter alia" if the person is the victim of A gunshot
wound then she will not perform a residue test per laboratory policy. . . . The witness testimony went Unchallenged
by defense Counsel. this type of (ineffective assistance), break down within the judicial system again Shaking to
the Universal sense of Justice. Considering that police statements were obtain from Petitioner Consistent with A self-
defense theory, yet no gunshot residue test was conducted on the victim to determine ("Reasonable Doubt") if indeed
he Actually fired A gun (shot) At Petitioner. — Based on the above, Mt. Katahdin Sherman Smith (Petitioner) Respectfully move
the Supreme Court of the United States to GRANT qualified Petition for Writ of Certiorari. Alternatively, Appeal Counsel
and demand to the U.S. District Court to conduct Evidentiary development to resolve the factual disputes.

RECOGNIZING:

AKER V. OKLAHOMA, 470 U.S. 68 (1985);

MARTINEZ V. RYAN, 182 L. ED. 2d 272 (2016).

Note: for the court's interpretation; point of contention being that

the gunshot residue kit was subsequently analyzed "After Trial" by Al Lee Group, which found that the victim's right hand contained two component particles of gunshot residue. The analysis should have been proffered before the jury to reach a determination whether the victim may have discharged a firearm before his death, which fact could have been used to persuade the fact finder's (jury), that defendant acted in self-defense.

CONCLUSION

Petitioner contends that the District Courts and the Third Circuit Court of Appeals stand in conflict with the decisions of other circuit courts, including the Supreme Court of the United States decisional law.

WHEREFORE;

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: MAY 12th, 2025