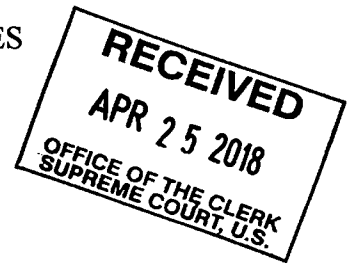


IN THE SUPREME COURT OF THE UNITED STATES

BENTON G. BASKIN,
Petitioner

vs.

STATE OF KANSAS,
Respondent



ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

PETITION FOR REHEARING
Sup. Ct. R. 44: 1

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

Grounds for Rehearing

A rehearing of the decision in the matter is in the interests of justice because, The Record is insufficient to make a determination. When the record on appeal does not contain sufficient factual findings to permit an appellate court to determine whether a violation of a defendant's right to be present at a continuance hearing was harmless, the appropriate response is to remand temporarily to the district court to make the necessary findings.

1. On March 19, 2018, this Court denied the petition for writ of certiorari.
2. The principal ground cited in the Court's per curiam opinion was that the crucial issue had been fully and completely determined by the ruling of the Court in *State v Wright*, 305 Kan. 1178, a case decided (21) days before the decision in this case.
3. The grounds for the ruling in *State v Wright* came as a surprise to petitioner. Petitioner had briefed the crucial issue in this case carefully, and was aware that a related issue was pending in 305 Kan. 1178, but the parties in that case did not extensively brief the issue that was crucial to the Court's decision in that case. A decision in the 305 Kan. 1178 case was expected only on related issues.
4. Petitioner was not granted any opportunity by the Court to distinguish this case from the 305 Kan. 1178 case or to suggest why they should not be determined by the same rule.

- 5.. This case contains several crucial factual and procedural distinction from the case of 305 Kan. 1178 that warrant its determination by a different or at least altered rule. the majority fails to explain why the absence of evidence in the record is being used against the party whose constitutional rights were violated. Where the State and the district court have violated a criminal defendant's rights by conducting a critical-stage hearing without the defendant's presence, our precedent suggests that the State should be charged with the burden to prove beyond a reasonable doubt that the constitutional violation was harmless. Cf. State v. Ward, 292 Kan. 541, 568-69, 256 P.3d 801 (2011) ("Chapman [v. California, 386 U.S. 18, [*902] 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967)]")
- Our earlier decision recited the procedural history necessary to an understanding of Wright's appellate claim that his right to be present at all critical stages of the prosecution against him had been violated. Of course, our remand continued the development of the procedural history on that claim, and the following further recitation provides necessary context for our ultimate disposition.

6. In an earlier decision, State v Hines, 269 Kan. 698, the Court had noted that cases with these factual and procedural distinctions should be treated by a markedly different rule of law from those properly applicable in the State v Brownlee, 302 Kan. 507 decision that the Court, in its order, stated was controlling in this case.

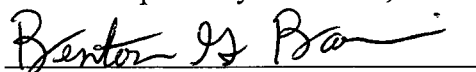
7. A rehearing tightly and squarely focused on the distinctions between this case and the 305 Kan. 1178 case, and whether these distinctions merit a different rule of law, is a matter of fundamental fairness to petitioner and would not unduly burden the Court.

Conclusion

For the reasons just stated, Benton G. Baskin urges that this petition for a rehearing be granted, and that, on further consideration, the Petition for Certiorari be granted or the judgment of the lower court be reversed or as appropriate.

April 10, 2018

Respectfully submitted,



BENTON G. BASKIN, #52888

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