

Case no # 17-7818

In The
Supreme Court of the United States

In re: Carlton West II

on Petition For Rehearing of Denial of
Petition For Extraordinary Writ - Writ of Habeas Corpus
To The United States Court of Appeals For The 6th Circuit

Petition For Rehearing

Carlton West II; Inmate no. # A-237293
Baraga Correctional Facility
13924 Wadaga Road A.M.F.
Baraga, Michigan 49908-9204
February 19th, 2019: Tuesday

Questions Presented

The Question Is Very Simple. It's A Question Of
"Waiver". Whether Petitioner Waived His Rights;
Constitutional Rights To Assistance Of Counsel
And His Rights Against Self Incrimination Or
Not ?

"List of Parties"

☒ All parties appear in the caption of the case on the cover page.

Table of Contents

Opinions Below.	1.
Jurisdiction.	2.
Constitutional and Statutory Provisions Involved.	3.
Statement of the Case.	4.
Reasons for Granting Rehearing.	7.
Conclusion.	10.
Proof of Service.	11.

Index to Appendices"

<u>Appendix</u>	<u>Description of Document</u>	<u>Date</u>	<u>Pages</u>
A.	Denial of Petitioner's Petition for Writ of Habeas	03/19/2018	1
B.	Order to lock-up the State of Michigan's Witness	11/04/1993	1
C.	Constitutional Provisions Involved	09/17/1787	2

Table of Authorities Cited

Cases:

<i>Ashcroft v. Tennessee</i> , 322 U.S. 143 (1944)	B.
<i>Brown v. Allen</i> , 344 U.S. 143 (1953)	9.
<i>Clewis v. Texas</i> , 386 U.S. 707 (1967)	B.
<i>Colorado v. Connelly</i> , 479 U.S. 157 (1986)	B.
<i>Connecticut v. Barsett</i> , 107 S.Ct. 828 (1987)	7.
<i>Counsellman v. Hitchcock</i> , 142 U.S. 547 (1892)	10.
<i>Edwards v. Arizona</i> , 401 S.Ct. 1880 (1981)	7.
<i>Fikes v. Alabama</i> , 352 U.S. 191 (1957)	B.
<i>Flynn v. U.S.</i> , 75 S.Ct. 285; 99 L.Ed. 1298 (U.S. 1955)	9.
<i>Forsythe v. California</i> , 422 U.S. 806 (1973)	10.
<i>Greenwald v. Wisconsin</i> , 390 U.S. 519 (1968)	B.
<i>Halcy v. Ohio</i> , 332 U.S. 596 (1948)	B.
<i>Kastigar v. U.S.</i> , 406 U.S. 441 (1972)	B.
<i>Layna v. Demme</i> , 347 U.S. 556, 561 (1954)	B.
<i>Mincey v. Arizona</i> , 437 U.S. 398 (1978)	9.
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	7., B.
<i>Reek v. Pate</i> , 367 U.S. 433 (1961)	B.
<i>Schemenker v. California</i> , 384 U.S. 757 (1966)	B.
<i>Smith v. Illinois</i> , 469 U.S. 91 (1984)	7.
<i>Withrow v. Williams</i> , 113 S.Ct. 1745 (1993)	B.

Statutes And Rules

28 U.S.C. 1254 (1., Court of Appeals; Certiorari; Certified questions	2.
28 U.S.C. 1651 (a., writs.	2.
28 U.S.C. 1746., Und sworn declarations under penalty of perjury.	10.
28 U.S.C. 2241., Power to grant writ.	2.
28 U.S.C. 2242., Application.	2.
Supreme Court Rule 14 (2., Rehearing.	2., 9.

Other

U.S. Constitution Article I. Section 9. Habeas Corpus Clause	3.
U.S. Constitution Amendment 5. Privilege Against Self Incrimination	3.
U.S. Constitution Amendment 1. Access to Courts clause	3.

In The
Supreme Court of the United States
Petition For Rehearing

Petitioner respectfully prays that rehearing issue to review
the judgement below.

Opinions Below

The opinion of the Supreme Court of the United States
appears at appx. A. to this petition and is unpublished i.e.,
In Re Carlton West II case no# 17-7018 : March 19, 2018.

"Jurisdiction"

The date on which the Supreme Court of the United States decided Petitioner's case was March 19, 2018 appx. A.

This Petitioner's timely petition for rehearing, which was initially filed April 12, 2018 (see "Declaration of Timely Filing" attached), now being re-filed February 19th 2019. Tuesday.

The jurisdiction of this court is invoked under Rule 44. (a. of the rules of the Supreme Court and 28 U.S.C. 1254 (1 ; 1651 (a ; 2211 and 2242 .

Constitutional And Statutory Provisions Involved

Article 1. Section 9

Habeas Corpus clause

Amendment 5.

Privilege Against Self Incrimination

Amendment 1.

Access To Courts clause

"Statement of the Case"

- ① October 12, 1993: Petitioner was read his Miranda rights twice by Miami police in Miami, Fla., neither time did Petitioner waive his rights.
- ② October 22, 1993: Petitioner was read his Miranda rights two more times by Flint police, once in Miami Fla., and once in Flint Mich., neither time did Petitioner waive his rights.
- ③ October 23, 1993: Petitioner requested counsel via signing a Petition and Order for Court Appointed Attorney.
- ④ October 24, 1993: Petitioner was visited by court appointed attorney.
- ⑤ November 04, 1993: Petitioner, without the assistance of counsel, yet at the request of counsel, took a polygraph test.
- ⑥ The State of Michigan's witness refused to testify to the point where he was locked up by the District judge i.e.;
- ⑦ "Darryl Lofton, a witness in the above entitled matter, and a juvenile, having been found in contempt of court for refusal to testify in the above proceedings and having been ordered held at the Regional Detention Center until he shall agree to testify on until 11/12/93 at 3:00 appx. B.
- ⑧ November 12, 1993: The State of Michigan's witness continues in his refusal to testify appx. B.
- ⑨ Now, being on the verge of having to dismiss the case against Petitioner because their witness refuse to testify, the State added the Polygraph Examiner to their witness list, with the caveat "The defense may have a problem with this witness." Prelim. Exam. Trans. pp. 109

⑪ November 19, 1993: The Polygraph Examiner testified, without any mention of the polygraph test, that Petitioner voluntarily, knowingly, and intelligently waived his rights and gave incriminating statements Prelim. Exam. Trans. pg. 112..

⑫ The State of Michigan's witness continues in his refusal to testify. dppx. B.. just as he had the previous two weeks.

⑬ which is when the attorney for the States witness, now armed with Petitioner's polygraph statement, requested a recess because;

⑭ "I have a little new information here that I would like to share with my client. I wonder if I might have a few moments in private." Prelim. Exam. Trans. pg. 126.

"off record recess at 9:47... proceedings resume at 9:55... well, for the record, it is my understanding, my client has changed his mind and is now prepared to testify in relation to this cause your honor". Prelim. Exam. Trans. pg. 127.

⑮ The State of Michigan's witness then testified that Petitioner was the person who shot and killed Steven Becker. Prelim. Exam. Trans. pg. 127.

⑯ April 12, 1994: The State of Michigan, in their opening statement, confirms that Petitioner's polygraph statement was the root and their witness testimony was the fruit, therefore, which lead to Petitioner's conviction.

⑰ "and then it comes time to testify at the preliminary examination, and Darryl Lofton, when he gets up in the District court. He says. "I'm not testifying... and this is how you view the whole thing, how it all developed to come into here..." "I'm not testifying against my boy"... he's saying this in terms of Carlton West... and when it's finally pointed out to him, that this guy right over here, Carlton West, had said "well, yeah, it had been talked about a couple of weeks before, at my house, that

getting this glock.. that it would be a nice gig... I don't know if he used that term. but nice gig to get this glock and I said yeah... Carlton West here is talking... but the only person I remember ever there at my house, and there was a lot of them. but I only remember Darryl Lofton being there... it's Carlton West here that said that, see, Carlton West is talking, & when that was pointed out to Darryl Lofton, Darryl Lofton changed his mind and said "I'll testify!" Prelim. Exam. Trans. pg. 59-65.

⑮ April 14, 1994: The judge refused to instruct the jury on the instruction of "Petitioner's Statement as Evidence Against Petitioner".

⑯ April 18, 1994: Petitioner was found guilty of the murder of Steven Becker as a result of supposedly waiving his rights.

⑰ Petitioner appealed his case all the way to the U. S. Supreme Court, who denied Petitioner's petition for an extraordinary writ-writ of habeas corpus on March 19, 2018 appx. A.

⑱ Petitioner, now timely petitions this court for Rehearing based on issues of "waiver"; whether Petitioner waived his constitutional rights or not, a substantial ground not previously presented.

"Reason's For Granting Rehearing"

The Other Substantial Ground Not Previously Presented Is The Question Of Waiver; Did Petitioner Waive His Constitutional Rights To Assistance Of Counsel And His Constitutional Right Against Self Incrimination

The substantial and controlling effects of "Miranda v. Arizona", 384 U.S. 436 (1966) via the 5 Amend. and its progeny, on which Petitioner relies, says the privilege against self incrimination is a fundamental constitutional right"

Petitioner's signing of the Miranda rights card at the polygraph test on November 04, 1993 was not an effective waiver because Petitioner was coerced by his counsel with the promise of being released from custody in the aftermath of passing the test.

The essence of "Edward's v. Arizona", 101 S.Ct 1880 (1981) says when an accused has invoked his right to have counsel present during custodial interrogations as Petitioner did on October 26, 1993.

A valid waiver of that right cannot be established by showing only that Petitioner responded to further police initiated custodial interrogation, even if he has been advised of his rights, as Petitioner was so advised on November 04, 1993 at the polygraph test.

The rigid rules of Miranda is that an accused request for an attorney is per se an invocation of his 5 Amend. rights requiring that all interrogation cease... the right identified in Miranda is the right to have counsel present at any custodial interrogation, polygraph test included.

The essence of "Connecticut v. Bennett", 407 S.Ct. 828 (1987) is, there is a brightline rule for establishing a waiver of the invocation of fundamental constitutional rights.

This rule requires a finding that the suspect (a, initiated further discussions with the police. and (b, knowing and intelligently waived the right he had invoked "Smith v. Illinois" 469 U.S. 91 (1984)

A statement obtained from a defendant during custodial interrogation, as Petitioner's statement was on November 09, 1993, at the polygraph test, is admissible only if the State carries its heavy burden of establishing that defendant had executed a valid waiver of the privilege against self incrimination and the right to counsel Miranda Supra.

The State of Michigan has not carried this heavy burden. The essence of "Withrow v. Williams," 113 S.Ct. 1745 (1993) is, under the due process approach, Courts look to the totality of the circumstances to determine whether a statement was voluntary.

Those potential circumstances include not only the crucial element of police coercion "Colorado v. Connelly," 479 U.S. 157, 167 (1986), also the length of the interrogation "Ashcroft v. Ikenes," 322 U.S. 143, 153-154 (1944) its location "Reek v. Pate," 367 U.S. 133, 141 (1961).

The continuity "Leyro v. Denno," 347 U.S. 556, 561 (1954) the defendant's maturity "Haley v. Ohio," 332 U.S. 596, 599-601 (1948), his education "Clewis v. Texas," 386 U.S. 707, 712 (1967), physical condition "Greenwald v. Wisconsin," 390 U.S. 519, 520-521 (1968), and his mental health "Fikes v. Alabama," 352 U.S. 191, 196 (1957).

Although the Self incrimination clause protects an accused only from being compelled to testify against himself or otherwise provide the State with evidence of a testimonial or communicative nature "Behrman v. California," 384 U.S. 757, 761 (1966), it prohibits the use of such communications against the accused in any way.

The 5 Amend., therefore contains a self executing rule, commanding exclusion of evidence derived from such communications, be it directly or indirectly therefrom, such as the State of Michigan's witness Darrell Lofton's testimony. Prosecutorial authorities are prohibited from using such compelled testimony in any respect "Kostigan v. U.S.," 406 U.S. 441, 453 (1972).

These principles has been consistently upheld and continually reaffirmed. The rule is that a federal habeas petition-

er, who claims he is detained pursuant to a final judgement of a State court in violation of the U.S. Constitution is entitled to have the Federal habeas court make its own independent determination of his federal claim without being bound by the determination of that claim reached in the state courts "Brown v. Allen", 344 U.S. 443 (1953)

As recently as 1978, the U.S. Supreme Court reaffirmed that it was not bound by a state court voluntariness finding and reiterated its historic duty to make an independent evaluation of the record "Mincey v. Arizona", 437 U.S. 398 (1978). which is all Petitioner respectfully ask of the Court.

The essence of "Flynn v. U.S.", 75 S.Ct. 285:99 S.Ed. 1298 (1955) on which Petitioner relies says: "Petitioner's right to consideration of rehearing pursuant to Supreme Court rule 44(2) is not to be deemed an empty formality to simply be denied as a matter of course."

" Conclusion "

Petitioner's eyes were not wide open during the November 04, 1993 polygraph test "Forsetta v. California," 422 U.S. 806. 835 (1973). his statements to police were coerced and involuntary, his actions cannot be seen as either an expressed or implied relinquishment or abandonment of his legal rights.

It's clear Petitioner was compelled via the atmosphere and nature of the polygraph test, that is, to make statements, to answer police questions. The statement from Petitioner, which the prosecutor used in his opening statement to bolster his case, is, in fact, a misconstrued version of answers Petitioner gave, in response to questions asked of him during the polygraph test.

A coerced statement which leads to sources of information which may supply other means of convicting the accused. those sources must also be suppressed. "Counselman v. Hitchcock." 142 U.S. 547. 586 (1892)
Thus, this petition for rehearing should be granted.

Thank you for your time, Respectfully Submitted,
Carlton West II,

pursuant to 28 U.S.C. 1746.1, Carlton West II, declare under penalty of perjury that the foregoing is true and correct. Executed on this 19th day of February 2019: Tuesday

Case no # 17 - 7818

In The
Supreme Court Of The United States

In Re Carlton West II,

"Certification of a Party Unrepresented by Counsel".

Pursuant to 28 U.S.C. 1746.1, Carlton West II, Petitioner in the above entitled case, certify under penalty of perjury, under the laws of the United States, that the following is true and correct.

The "Petition for Rehearing" in the above entitled case is restricted to the grounds specified in Rule 44 (2., of the Rules of the Supreme Court, i.e., Other Substantial Grounds Not Previously Presented. [Waiver; Did Petitioner Waive His Constitutional Rights or Not?] and the "Petition for Rehearing" is presented in good faith and not for delay.

Thank you for your time, Respectfully Submitted,
Carlton West II #A-237293,
Baraga Correctional Facility.
13924 Wadaga Road
Baraga, Michigan 49908-9204
February 19th, 2019; Tuesday

**Additional material
from this filing is
available in the
Clerk's Office.**