

No. 17-9210

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH J. BUTTERCASE,
Petitioner,

v.

STATE OF NEBRASKA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE NEBRASKA COURT OF APPEALS

PETITION FOR REHEARING

JOSEPH J. BUTTERCASE - 76999
pro se Petitioner
NEBRASKA STATE PENITENTIARY
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JOSEPH J. BUTTERCASE, PETITIONER

V.

STATE OF NEBRASKA, RESPONDENT

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Pursuant to Rule 44 of this Court, Petitioner Joseph J. Buttercase hereby respectfully petitions for rehearing of this Court's October 1, 2018 order, *Buttercase v. Nebraska*, No. 17-9210, 2018 WL 2726093 (U.S. Oct. 1, 2018) (mem.), before a full nine-member Court. This petition for rehearing calls the Court's attention to a recent development, since the denial of certiorari, that may affect the Court's consideration of this case.

On or about October 6, 2018, the Honorable Brett M. Kavanaugh was officially sworn in as the 114th Justice of this Court. Petitioner Joseph J. Buttercase requests that Honorable Justice Kavanaugh take part in the consideration for rehearing in this case due to this Court's prior vacancy when certiorari was denied on October 1, 2018.

1. This case involves the challenge by the Petitioner for postconviction relief of his State conviction and sentence. Our country has seen first hand that false accusations of sexual assault, as in Petitioner's case, can destroy a person's good name, reputation, and life in the blink of an eye. The

news media will typically prosecute allegations of sexual assault and the accused's presumption of innocence, as in Petitioner's case, will disappear.

2. Ordinarily, it is exceedingly rare for this Court to grant rehearing. But when this Court is equally divided because of a vacancy, the Court has not infrequently granted rehearing before a full Bench. For example, the government petitioned for rehearing in *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 305 U.S. 666 (1938), after this Court equally divided in a case when there was a vacancy due to Justice Cardozo's death, but before the vacancy was filled. This Court granted the petition, *ibid.*, then heard the case after Justice Frankfurter was confirmed. 307 U.S. 219 (1939).

This Court similarly granted petitions for rehearing before a full Bench in a series of cases decided 4-4 after Justice McReynolds' retirement caused a vacancy in 1941. *Baltimore & Ohio R.R. v. Kepner*, 313 U.S. 597 (1941); *Toucey v. New York Life Ins. Co.*, 313 U.S. 596 (1941); *New York, Chi. & St. Louis R.R. v. Frank*, 313 U.S. 596 (1941); *Commercial Molasses Corp. v. New York Tank Barge Corp.*, 313 U.S. 596 (1941); after a leave of absence by Justice Jackson caused a temporary vacancy in 1945. See *Macgregor v. Westinghouse Elec. & Mfg. Co.*, 327 U.S. 812 (1946); *Bruce's Juices, Inc. v. American Can Co.*, 327 U.S. 812 (1946); and after Justice Jackson's death caused a vacancy in 1954. *Indian Towing Co. v. United States*, 349 U.S. 926 (1955); *Ryan Stevedoring Co. v. Pan-Alt. Corp.*, 349 U.S. 926 (1955). See also, e.g., *Pollock v. Farmers' Loans & Trust Co.*, 158 U.S. 617 (1895) (similar for absence due to illness); *id.* at 601-606 (reproducing petition for rehearing discussing earlier cases); *id.* at 606-607 (granting rehearing).

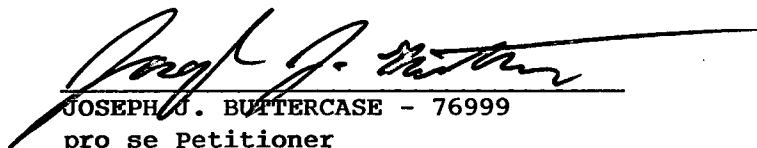
3. Petitioner Joseph J. Buttercase was tried and sentenced by a partial

judge and two members of the Petitioner's jury had already formed opinions at the jury voir dire prior to the commencement of trial. Due process requires that a prisoner's claim of innocence receive much more thorough and careful scrutiny and a hearing; where the prosecution suppressed material exculpatory evidence from the defense, complex scientific issues surrounding the DNA results that are difficult for laymen and judges to grasp, and the defendant is not afforded a fair trial before an impartial judge and jury are involved. The lower State courts' denial of the Petitioner's motion for postconviction relief undermines the integrity of the criminal justice system and, if left undisturbed, will result in a fundamental miscarriage of justice. This Court should reconsider its denial of certiorari in this case.

CONCLUSION

For the foregoing reasons, Joseph J. Buttercase respectfully requests that the Court grant rehearing and set aside the order denying the petition for a writ of certiorari to the Nebraska Court of Appeals.

Respectfully submitted.


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Date: October 13, 2018

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