

THIS IS A CAPITAL CASE  
EXECUTION SET FOR FEBRUARY 20, 2020, at 7:00 PM CST

IN THE SUPREME COURT OF THE UNITED STATES

Nos. 19-7696, 19A912

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*In re: NICHOLAS TODD SUTTON, Petitioner*

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ON ORIGINAL PETITION FOR  
WRIT OF HABEAS CORPUS AND  
APPLICATION FOR STAY OF EXECUTION

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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## BRIEF IN REPLY

Unless this Court grants this Original Petition for Writ of Habeas Corpus, Petitioner Nicholas Sutton will be executed after having been tried by a jury who observed him forcibly shackled in heavy chains during his capital trial and sentencing proceedings, in violation of the Fifth, Eighth, and Fourteenth Amendments. As the State admits in its Brief in Opposition, Mr. Sutton has no other avenue to remedy this presumptively prejudicial constitutional violation. (BIO at 11). As the State notes, while the restrictions on second or successive habeas corpus applications contained in 28 U.S.C. § 2244(b)(1) and (2) “inform [this Court’s] consideration of original habeas petitions,” *Felker v. Turpin*, 518 U.S. 651, 662-63 (1996), they do not prevent this Court from considering the claims raised herein. Mr. Sutton has twice been told that his shackling claim is not cognizable and that he is afforded no procedural mechanism in the State of Tennessee to right this claim of constitutional error. Furthermore, the restrictions on second or successive habeas corpus applications prevent the lower federal courts from addressing this claim. It is precisely for these reasons that this Court should act. Mr. Sutton has been left with no other forum, but this one, to plead his cause. Thus, exceptional circumstances warrant the exercise of an extraordinary writ because adequate relief cannot be obtained in any other form or in any other court.

*Trevino v. Thaler*, 569 U.S. 413 (2013), and *Martinez v. Ryan*, 566 U.S. 1 (2012), were decided after the conclusion of Mr. Sutton’s federal habeas corpus proceedings. Mr. Sutton could not raise the claims in his petition and then assert ineffectiveness of post-conviction counsel to establish cause to excuse procedural

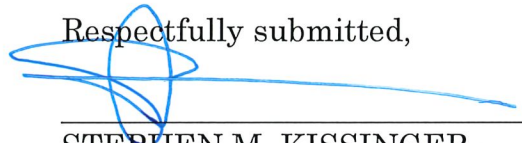
default of a claim of ineffectiveness of trial counsel for failing to raise and litigate this issue in post-conviction. That avenue was simply not available at the time he litigated his habeas claims.

Petitioner Nicholas Todd Sutton respectfully requests that this Court review this Original Petition for Writ of Habeas Corpus and grant relief from his unconstitutional conviction and sentence of death. Petitioner further requests that this Court stay his imminent execution and that it transfer for hearing and determination his application for habeas corpus to the district court in accordance with its authority under 28 U.S.C. § 2241(b).

**CONCLUSION AND PRAYER FOR RELIEF**

This Court should grant Mr. Sutton habeas corpus relief on his shackling claim, or remand that claim for an evidentiary hearing, and stay Mr. Sutton's imminent execution.

Respectfully submitted,



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Dated: February 20, 2020