

No. 23-5109 (CAPITAL CASE)

IN THE SUPREME COURT OF THE UNITED STATES

CARL LINDSEY,
Petitioner,

v.

WARDEN CHARLOTTE JENKINS,
Respondent.

On Petition for Writ of Certiorari to
The United States Court of Appeals for the Sixth Circuit

PETITION FOR REHEARING

No execution date is presently scheduled.

Joseph Medici
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Petitioner Carl Lindsey respectfully petitions this Court to grant rehearing of this Court's October 16, 2023 order denying his petition for writ of certiorari,¹ which raises the question whether Lindsey is entitled to a certificate of appealability (COA) on his claim for relief under *Brady v. Maryland*, 373 U.S. 83 (1963). *See* Pet. at i, 11-19.

Since denying Lindsey's petition for writ of certiorari, this Court has redistributed for conference (on October 23, 2023, October 30, 2023, November 6, 2023, and today, November 13, 2023) two certiorari petitions in *Glossip v. Oklahoma*, U.S. Nos. 22-7466 and 22-6500. Both *Glossip* petitions raise the question whether the petitioner's death sentence violates *Brady* where, as here, the State withheld evidence impeaching a key witness.

The serial redistributions of the *Glossip* petitions appear to indicate that two likely outcomes in *Glossip* are: (a) this Court will grant certiorari in *Glossip*, and ultimately discuss *Brady* and its application to capital sentencing; or (b) this Court will deny certiorari in *Glossip*, with one or more Justices discussing *Brady*'s standards. *Compare Chinn v. Shoop*, 598 U.S. ____ (2022) (Jackson, J., dissenting from denial of certiorari) (stating that Sixth Circuit failed to properly apply *Brady* materiality standard in capital case).

¹ Rule 44.2 of the Rules of this Court permits the filing of a petition for rehearing within 25 days after the date of an order denying a petition for writ of certiorari. Here, the twenty-fifth day falls on Friday, November 10, 2023, which is a federal holiday (Veterans Day) and a day on which this Court is closed. As provided by Rule 30.1 of the Rules of this Court, Lindsey may timely petition for rehearing by Monday, November 13, 2023.

In either situation, however, whatever this Court or individual Justices would say about *Brady* would be relevant to the question raised by Lindsey's petition: Whether reasonable jurists could debate the Sixth Circuit's denial of Lindsey's application for a certificate of appealability on his *Brady* claim. See *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (petitioner entitled to a COA if denial of relief is debatable among reasonable jurists or issues deserve encouragement to proceed further). Indeed, even a dissent would likely demonstrate the debatability of Lindsey's *Brady* claim, while providing encouragement to proceed further. Compare *United States v. Miller*, 789 Fed. Appx. 678, 680 (10th Cir. 2019) (Bacharach, J., dissenting) (citing Justice Sotomayor's dissent from denial of certiorari in *Jordan v. Fisher*, 576 U.S. 1071 (2015) as supporting grant of COA).

Accordingly, given these intervening developments in *Glossip*, this Court should hold Lindsey's petition for rehearing pending any ruling on the *Glossip* petitions. Then, after this Court issues any rulings in *Glossip*, this Court should grant Lindsey's petition for rehearing, vacate the order denying certiorari, grant Lindsey's petition for writ of certiorari, and vacate and remand to the Sixth Circuit for reconsideration in light of *Glossip*. See e.g., *Gonzalez-Longoria v. United States*, 585 U.S. ___, 138 S.Ct. 2668 (2018) (granting rehearing, vacating order denying certiorari, granting certiorari, and vacating and remanding for further consideration in light of intervening Supreme Court decision); *Kent Recycling Servs. LLC v. U.S. Army Corps. Of Eng'rs*, 578 U.S. 1019 (2016) (same); *Johnson v. Alabama*, 578 U.S. 958 (2016) (same).

CONCLUSION

Given the redistributions and impending rulings in *Glossip v. Oklahoma*, U.S. Nos. 22-7466 and 22-6500, Lindsey respectfully requests this Court: grant rehearing; vacate the order denying Lindsey's petition for writ of certiorari; and enter an order granting the petition for writ of certiorari, vacating the judgment below, and remanding for further proceedings.

Respectfully submitted,

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By:



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November 13, 2023

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CERTIFICATE OF COUNSEL

I certify that the foregoing petition for rehearing is restricted to the grounds specified in Supreme Court Rule 44.2 and is presented in good faith and not for delay.

Respectfully submitted,



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