

IN THE SUPREME COURT
OF THE UNITED STATES

Kenneth Brown

Petitioner,

Pro Persona

v.

no: 24-6248

Robert Adams,Jr., Warden

PETITION FOR REHEARING OF WRIT OF CERTIORARI

Parties:

a)Kenneth Brown 512777, Petitioner.

Hardeman County Correction Facility

b)Robert Adams, Jr., Warden, Respondent.

Hardeman County Correction Facility

GROUND FOR RELIEF

- I. PENDING TCCA APPEAL OF POST-CONVICTION PROCEEDING, RELATIVE TO STAY AND ABEYANCE CLAIM, HAS SUBSTANTIAL EFFECT ON REVIEW.**
- II. INCORRECT DISTRICT COURT FINAL OPINION HAD SUBSTANTIAL CONTROLLING EFFECT ON CERTIORARI REVIEW.**
- III. FAILURE TO SUBMIT TRIAL COURT RECORD OF JURY INSTRUCTIONS AND OMITTED INSTRUCTION HAD SUBSTANTIAL CONTROLLING EFFECT ON REVIEW.**
- IV. RECENT INTERVENING PROCEEDINGS IN U.S. V. KYLE MEANY HAS SUBSTANTIAL OR CONTROLLING EFFECT ON REVIEW.**
- V. CLERICAL OVERSIGHT OF RULE 14.5 HAD A CONTROLLING EFFECT ON REVIEW.**

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Rhines v. Weber, 544 US 269

U.S. v. Davis, 2019 U.S. Dist. LEXIS 5609

U.S. v. Heath, 525 F. 3d 451 (6th Cir. 2008)

U.S. v. Jefferies, 2018 U.S. Dist. LEXIS 219134

U.S. v. Martinez, 588 F. 3d 301 (6th Cir. 2009)

U.S. v. Meany, et al, 2024 U.S. Dist. LEXIS 150867

Waddington v. Sarausad, 555 U.S. 179

PETITION FOR REHEARING

Pursuant to Rule 44.2, Kenneth Brown motions this honorable court for a Rehearing of its March 10, 2025 decision denying Brown's petition for writ of certiorari.

GROUNDS ON REHEARING

I.

Currently pending before the Tennessee Court of Criminal Appeals is Petitioner's post-conviction proceedings that were timely and properly initiated in state court on the unexhausted claims that were raised in his Motion For Stay and Abeyance before the district court. This has a controlling effect on Certiorari review regarding Petitioner's claim of district court's erroneous denial of Stay of §2254 proceedings, pursuant to **Rhines v. Weber**, 544 US 269, while Petitioner exhausts unexhausted post conviction remedies. Granting of Rehearing, followed by a Hold on §2254 proceeding pending the finality of the proceeding is necessary.¹

¹ TCCA docket no. W2024-01291-CCA-R3-ECN

II.

Incorrect district court opinion of final Order denying habeas relief was mistakenly appended to Petitioner's initial writ, making it virtually impossible for this court to render adequate review pursuant to Rule 14.1(i)(i). This inadequacy in the record had a controlling effect Certiorari review—presumably resulting in denial. The correct opinion is herein appended. Rehearing should be granted with a de novo review which includes the correct district court Order of Denial being challenged. *See* Joint Appendix (E): CORRECT ORDER.

III.

The Joint Appendix on initial Certiorari mistakenly lacked the appropriate trial record of the final jury charge given to the jury at the final-instruction phase of proceedings; the joint appendix also lacked the actual omitted jury instruction being challenged on review. These two components play a substantial role in any proper review of the lower court record in support of erroneous jury instruction claims. The lack of the appropriate trial-phase record had a controlling effect on appropriate review. *See Parker v. Sims*, 2016 U.S. Dist. LEXIS 184889 (Holding: A jury instruction may only serve as the basis for a successful habeas corpus challenge if the instruction is so erroneous as to render the entire proceedings manifestly unfair. *citing Waddington v. Sarausad*, 555 U.S. 179, 191, 129 S. Ct. 823, 172 L. Ed. 2d 532 (2009) ("Even if there is some 'ambiguity, inconsistency, or deficiency' in an instruction, such an error does not necessarily constitute a due process violation....Rather, the defendant must show both that the instruction was ambiguous and that there was ``a reasonable likelihood'' that the jury applied the instruction in a way that relieved the State of its burden of proving every element of the crime beyond a reasonable doubt.")); *see also U.S. v. Jefferies*, 2018 U.S. Dist. LEXIS 219134, at 6 (Refusal to give a requested jury instruction is reversible error only if the instruction is 1)correct, 2)not substantially covered by the actual jury charge, and 3)so important that failure to give it substantially impairs the defendant's defense.); *see also U.S. v. Martinez*, 588 F. 3d 301 (6th Cir. 2009) (Because the perimeters of legal cause are more closely drawn when the intervening cause was a matter of coincidence rather than response, an unforeseeable coincidence will break the chain of legal cause, but a response will only do so if it is abnormal.)

Lack of the final jury instructions from Brown's trial prejudicially effected

this court's ability to fully and fairly review his due process challenge to the omitted jury instruction on proximate causation. It was impossible, therefore, for this court to provide a meaningful review and consideration of Brown's certiorari Question(s) pertaining to IATC for failing to object to the omission of the jury instruction. The inclusion of these two essential documents from the trial record has a substantial and *controlling* effect on this Court's review on certiorari. *see Estelle v. McGuire*, 502 US 62, at 71 (With respect to a claim that a jury instruction in a state criminal trial violated the due process clause of the Federal Constitution's Fourteenth Amendment, the only question is whether the ailing instruction by itself so infected the entire trial that the resulting conviction violated due process; the instruction may not be judged in artificial isolation, but must be considered in the context of the instruction as a whole and the trial record.(emphasis added)); *see also U.S. v. Heath*, 525 F. 3d 451 (6th Cir. 2008)(“The United States Court of Appeals for the Sixth Circuit reviews a jury charge as a whole to determine whether the charge fairly and adequately submitted the issues and law to the jury.”)

It can only be interpreted through well established Supreme Court authority that—although through a claim of ineffective assistance of counsel—Brown challenges an ailing [in this case, omitted] trial jury instuction. It follows that this court could not give appropriate review without the components required to render a just consideration, e.g: 1)the trial record of the final jury charge from trial; and 2) the omitted jury instruction which violated due process and infected the fairness of the trial.

Rehearing should thus be granted for appropriate review.

IV.

Rehearing should be granted in light of current active proceedings in the case of U.S. v. Kyle Meany, 2024 U.S. Dist. LEXIS 150867. While Petitioner's petition for certiorari was pending in this court, U.S. v. Meany has been undergoing its judicial process at the same time. The Kentucky, 6th circuit, district court's holding in *Meany* is substantially on alignment with the kind of methodology that the Petitioner was deprived of at review in the district court of western Tennessee—also 6th circuit—resulting in the denial of his §2254 habeas petition claim of ineffective-assistance-of-trial counsel for failing to request appropriate jury instruction on proximate cause of death pursuant to Tennessee Pattern Jury Instructions §42.14.

Meany's holding—that Burrage v. U.S., 571 U.S. 204; 134 S. Ct. 881; 187 L. Ed. 2d 715; 2014 U.S. LEXIS 797 “refused to address proximate causation”—is, indisputably, in harmonious alignment with Brown's assertion that the authority set out in *Burrage* does not sufficiently address the unique causal perplexity adduced by the facts in Brown's case because it [this court in *Burrage*] failed to address proximate causation. *See id.* Meany, 2024 U.S. Dist. LEXIS 25 (“In criminal law, if A intentionally stabs B, inflicting a mortal wound while at the same moment, X intentionally shoots B in the head, also inflicting a mortal wound, and B dies from the combined effects of the wounds, A is guilty of murder. Yet, one cannot say that but for A's conduct B would not have died.....in such concurrent cause cases, courts have modified the traditional but-for test and asked whether A's conduct was a substantial factor in, or contributed to, bringing about B's death...Burrage v. United States precludes such a finding, however.”[emphasis added]); *see also U.S. v. Davis*, 2019 U.S. Dist. LEXIS 5609 (“The Court in *Burrage* specifically declined to address the issue of proximate cause.”)

The *Meany* court provides an intricate elaboration on the distinction between actual and proximate causes in arriving at their conclusion of whether or not Meany's and Janyne's acts of setting in motion the events that unfortunately ended in the death of Ms. Taylor was the proximate cause of her death—the exact methodology of review the Petitioner was seeking on habeas corpus regarding whether TCCA determination was objectively unreasonable by determining that trial evidence did not warrant the instruction.

Therefore, in this petition for Rehearing, Brown argues that this Court should not only rehear his writ but also Stay the writ pending the finality of *Meany*. The United States filed Superseding Indictments against Meany and Jaynes, and the last action taken in this case was as recent as February 28, 2025. *see* J.A.(A)(ii) and (iii), U.S. v. Kyle Meany, et al., 3:22-cr-00085-CRS.

V. COURT CLERK'S CLERICAL OVERSIGHT OF RULE 14.5 HAD A CONTROLLING EFFECT ON REVIEW.

Brown unsuccessfully attempted to supplement the Joint Appendix of his initial certiorari brief prior to denial, pursuant to Rules 21 and 15.8, by adding 1) the recently obtained trial record of Final Jury Charge that was submitted to the jury at the conclusion of the state's and the defense's evidence in chief, and 2) The challenged omitted jury instruction on proximate cause of death pursuant to TN Pattern Jury Instructions, §42.14. However this Court denied the addendum, and shortly thereafter denied certiorari.

This court declined Brown's supplemental addendum with a cover letter from the court clerk that stated "once a certiorari petition has been submitted, it generally cannot be amended unless supplemented under the limited and strict requirements falling under Rule 15.8²." The entire filing was returned attached onto the cover letter. *See J.A.(F)(i)*. This substantially conflicted with the clerk's duty pursuant to Rule 14.5, thus having a substantial controlling effect on this court's consideration of Brown's petition for certiorari.

CONCLUSION

WHEREFORE, Petitioner prays this honorable court Grant Brown's Petition to Rehear based on the foregoing grounds. The intervening opinion in *Meany*, coupled with the dual Supreme Court rule[14.5] and authority [Estelle v. McGuire] infractions that could [and should] have been resolved under Rule 14.5, instead of ultimate denial of certiorari, clearly had a substantial and controlling effect on Brown's review. Brown's claims are substantial because his state court conviction is wroth with landmines of severe constitutional violations—or egregious errors that call into question the constitutionality of

² Although the petitioner introduced his motion under Rule 21, he also cited his motion under Rule 15.8. *See J.A.(F)(ii)*. A matter of form and the distinction between the words "motion" and "petition" should be reasonably construed because they are synonymous in action. Also, the motion did not exceed the word limit required to "format a brief." Rule 14.1(c)

Brown's state conviction. Therefore, a rehearing should be granted to review the lower courts judgment denying Brown habeas relief. (§2254(d) reflects the view that habeas corpus is a "guard against extreme malfunctions in the state criminal justice systems." *see Jackson v. Virginia*, 443 U.S. 307, 332)

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