

No. 24-7063

IN THE SUPREME COURT OF THE UNITED STATES

RANDY W. DUCK,  
Petitioner

v.

DEXTER PAYNE, DIRECTOR;  
ARKANSAS DIVISION OF CORRECTION;  
STATE OF ARKANSAS,  
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO  
THE EIGHTH CIRCUIT COURT OF APPEALS

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PETITION FOR REHEARING

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RANDY W. DUCK, Pro Se  
ADC# 162229  
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Wrightsville, AR 72183

Counsel for Petitioner

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**PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT**

COMES NOW Petitioner, Randy W. Duck, Pro Se, and prays this Court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Eighth Circuit Court of Appeals. In support of petition, Mr. Duck states the following.

**STATEMENT OF FACTS**

At trial, Randy W. Duck was convicted in the Circuit Court of Union County of Rape and sentenced to fifteen (15) years. A Direct Appeal was filed to the Arkansas Court of Appeals on the denial of a direct verdict motion for insufficient evidence to support his conviction. The appeal was affirmed by the Union County Circuit Court and opinion was delivered.

The Petitioner, Randy W. Duck, then filed for a Post-Conviction Relief under Ark. R. Crim. P. 37.1. This petition was filed on the behalf of ineffective assistance of counsel. To which the trial counsel failed to dismiss petit jurors for cause to raise objection of the chain of custody of direct evidence and indirect evidence, that the trial counsel failed to fully and adequately challenge to the sufficiency of the evidence. The trial court denied this petition without an Evidentiary Hearing for the petitioner Post-Conviction Relief pursuant to Rule 37.

The Petitioner, Randy W. Duck, filed a Appeal to the Arkansas Court of Appeals from the order entered in this case on denying his Post-Conviction Relief under Ark. R. Crim. P. 37.1. Mr. Duck then filed an Appeal Brief bringing forth the same points as the Rule 37.1. The Arkansas Court of Appeals placed a procedural default on this case. The State of Arkansas said such a claim is a direct attack on the verdict and not cognizable claim in a Petition for Rule 37.1 Relief. The bar imposed by the Arkansas Court of Appeals does not

appear to be firmly established or regularly followed in the Arkansas cases, and so it is inadequate to support a defense of procedural default, and opinion was delivered.

The Petitioner, Randy W. Duck, filed a Petition for Review to the Arkansas Supreme Court. The Arkansas Supreme Court denied his Petition for Review for a rule violation.

The Petitioner, Randy W. Duck, filed a Petition for Habeas Corpus Relief under 28 U.S.C. §2254. This Petition for Habeas Corpus Relief under 28 U.S.C. §2254 has been brought pursuant to the one year statute of limitations. Mr. Duck claims that he received ineffective assistance of trial counsel and ineffective assistance of Post-Conviction counsel. Mr. Duck claims he was tried by a impartial jury and counsel was ineffective for failing to object to the introduction of the State's exhibits 2 and 3 on the grounds that the State of Arkansas failed to establish a proper chain of evidence, and Petitioner counsel failed to interview or call any witnesses on Mr. Duck's behalf, and failed to investigate to present a complete defense, for not doing a proper Voir Dire, a Recommend Disposition was filed. Mr. Duck then filed a timely objection to the Recommended Disposition. To which his Habeas Corpus Relief under 28 U.S.C. §2254 was dismissed.

The Petitioner, Randy W. Duck, filed a Notice of Appeal. Application for Certificate of Appealability and Motion to Proceed on Appeal In Forma Pauperis was dismissed.

The Petitioner, Randy W. Duck, filed for Rehearing. It was also denied.

The Petitioner, Randy W. Duck, filed an Application for an Extension of Time and was granted to the Petitioner to file a Petition for Writ of Certiorari to which was denied.

The Petitioner, Randy W. Duck, now files for a Petition For Rehearing and Suggestions In Support.

## REASONS MERITING REHEARING

Petitioner trial lawyer was ineffective for not doing an adequate Vior Dire. *Morgan v. Illinois*, 504 U.S. 719, 729 112 S.Ct. 2222 119 L.Ed.2d 492 (1992). Denial of a defendant's right to a twelve-person jury is fundamental error that may be raised for the first time in Rule 37 proceedings. *Collins v. State*, 324 Ark. 322, 920 S.W.2d 846 (1996). Prospective jurors who state that they can lay aside prior impressions or opinions and render a verdict based upon the evidence presented at trial, however, are qualified to serve as jurors. *Wainwright v. State*, 302 Ark. 371, 790 S.W.2d 420 (1990); see also *Linnell v. State*, 283 Ark. 162, 671 S.W.2d 741 (1984) (noting the distinction between implied and actual bias of jurors). A prospective juror may be challenged for implied bias that arises by implication of law. See *Owens v. State*, 354 Ark. 644, 128 S.W.3d 445 (2003). As for claims of actual bias, it has been repeatedly held that an appellant must do more than allege prejudice; he or she must actually demonstrate it. Hope Bean gave clear statements as to her inability to be an impartial juror when she stated in open court that she could not be impartial. That she would lean towards the state and job at the Prosecuting Attorney's office would make it difficult for her to sit on the case. *Strickland v. Washington*, 466 U.S. 668 (1984) emphasizing that in determining Strickland prejudice also see *Smith v. Phillips*, 455 U.S. 209, 102 S.Ct. 940, 71 L.Ed. 2d 78 (1992). This meets the prejudice prong Hope Bean should never have been on Petitioner's jury let alone been allowed to serve as a jury fore person. "The seating of any juror who should have been dismissed for cause.... requires reversal" see *United States v. Martinez-Salazar*, 528 U.S. 304, 316, 120 S.Ct. 774, 145 L.Ed. 792 (2000). The deficient performance prong was met here. It is clear by the direct and indirect evidence contained in the record that petitioner trial counsel was ineffective during Vior Dire. Petitioner's Sixth Amendment and

Fourteenth Amendment Rights have been violated, Petitioner did not receive a fair and impartial jury. The trial court in the Rule 37.1 went on to say, “The Court should not label counsel ineffective merely because of possibly bad tactics or trial strategy in selecting the jury.” This further proves under the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

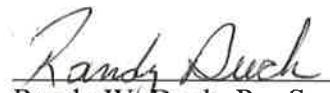
## **SUGGESTIONS IN SUPPORT OF REHEARING**

1. The Eighth Circuit’s decision is clearly in conflict with *Strickland v. Washington*, 466 U.S. 668 (1984); and *Williams v. Taylor*, 429 U.S. 362 (2000), emphasizing that in determining Strickland prejudice, the Court must examine both the trial testimony and the post-conviction evidence to determine whether, had the omitted evidence been presented, there is a reasonable probability of a different outcome, in that the Eighth Circuit merely examined the opinions of the Arkansas Court of Appeals which stated the facts in the light most favorable to the jury’s verdict and all contrary evidence ignored.
2. The Eighth Circuit decision is in conflict with *Smith v. Phillips*, 455 U.S. 209, 102 S. Ct. 940, 71 L.Ed.2d 78. Justice O’Connor gave an opinion on how to handle such a case like this one; the concurring opinion states “while each case must turn on its own facts, there are some extreme situations that would justify a finding of implied bias. Some examples might include a revelation that the juror is an actual employee of the prosecution agency. Whether or not the State proceeding result in a finding of “no bias”, the Sixth Amendment right to an impartial jury should not allow a verdict to stand under such circumstance.”

## CONCLUSION

For the reasons stated, this Court must grant Rehearing of its judgment entered June 6, 2025 and issue a Writ of Certiorari. He further prays for any other and further relief which this Court may deem just and proper under the circumstances. Petitioner only asks for a fair trial not a perfect one.

Respectfully Submitted,

  
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Randy W. Duck, Pro Se  
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P.O. Box 1010  
Wrightsville, AR 72183

Petitioner

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document is printed in 12 point proportionally spaced type (Times New Roman), that it was prepared with AbiWord 2009, Version 2.8.6 software and according to this software the document contains 1,383 words.

07-17-, 2025  
Date

  
\_\_\_\_\_  
RANDY W. DUCK, Pro Se  
ADC #162229

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed, postage paid, this 19<sup>th</sup> day of July, 2025 to: Supreme Court of the United States, 1 First Street, N.E., Washington, D.C. 20543. Clerk of the Court.

*Randy Duck 162229*  
Petitioner, Pro Se

### **NOTARY**

STATE OF ARKANSAS )  
 )  
COUNTY OF Faulkner ) SS  
 )

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 19  
day of July, 2025.

*Brittany Hipp*  
Notary Public

My Commission Expires:

3/15/2033



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**CERTIFICATE OF GOOD FAITH**

COMES Now Petitioner, Randy W. Duck, and makes certification that his petition for rehearing is presented to this Court in good faith pursuant to Rule 44. Mr. Duck further states the following:

This Court entered its judgment denying Petitioner a Writ of Certiorari on June 6, 2025. Petitioner believes that he presents this Court with Direct Evidence, Indirect Evidence and adequate grounds to grant a rehearing in this case and said petition is brought in good faith and not for delay. Furthermore, petitioner believes that based upon the law of this Court and facts of this case, Mr. Duck is entitled to relief which has been unjustly denied to him. He further believes that if the Eighth Circuit Court of Appeals is continually allowed to apply the Strickland Standard improperly, a number of people will be denied their Constitutional Right to due process.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 15<sup>th</sup> day of July, 2025

Randy Duck  
162229