

No. 25-7430

IN THE
Supreme Court of the United States

TONY VON CARRUTHERS,

Applicant,

— v. —

STATE OF TENNESSEE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TENNESSEE SUPREME COURT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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PETITIONER'S REPLY BRIEF

Respondent continues to evade the bottom line of this case: that Mr. Carruthers is going to be executed after being arbitrarily denied access to Tennessee's statutory procedures DNA testing of available and probative biological evidence that could demonstrate his innocence and/or undermine the reliability of his death sentences.

I. This Court has jurisdiction because Mr. Carruthers duly raised the issue below.

Respondent claims that this Court lacks jurisdiction to hear Mr. Carruthers' due process claim because Mr. Carruthers did not present his due process claims he presents in his petition in the state courts. BIO 12-14. Respondent is wrong.

At the outset, Respondent concedes that Mr. Carruthers raised a due process claim challenging the refusal of the state to permit comparison of a DNA profile recovered from a piece of cloth at the crime scene to that of a known alternative suspect, Ronnie "Eyeball" Irving. BIO 12 n. 3. This due process claim, in fact, stands among the claims Mr. Carruthers has raised in this Court. Pet. 10, 14-24.

Moreover, Respondent is simply incorrect that Mr. Carruthers did not raise a due process challenge to the denial of his request for testing under the DNA Act in the state courts. His brief to the Tennessee Supreme Court, contained in Respondent's Appendix, plainly states that the "Criminal Court's Orders were premature, unsupported, and violated Mr. Carruthers' right to due process." Resp. App. 3. Later, he argued that he "has been diligently seeking DNA testing for nearly five weeks now, being bounced around between the Tennessee courts in search of

his statutory rights and answers.” Resp. App. 43 (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429-30 (1982) (“[T]he Fourteenth Amendment’s Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, when such an action would be ‘the equivalent of denying them an opportunity to be heard upon their claimed right[s].’” (quoting *Boddie v. Connecticut*, 401 U.S. 371, 380 (1971)))).

And, contrary to Respondent’s contention, BIO 14, the fact that the court below failed to address these arguments poses no barrier to review here. *See, e.g., Rogers v. Alabama*, 192 U.S. 226, 230 (1904) (Holmes, J.). Stated otherwise, when “a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary.” *Harrington v. Richter*, 562 U.S. 86, 99 (2011). If anything, the state court’s failure to address these arguments further demonstrates the error at issue in this Petition.

II. Mr. Carruthers’ did not delay seeking testing under the DNA Act.

The State’s Brief in Opposition spends a lot of energy trying to convince this Court that Mr. Carruthers delayed filing his DNA claim – categorizing it as a “last-ditch effort,” an “eleventh-hour trump card,” and twice calling it an “eleventh-hour petition.” BIO 8, 17, 18, 19. Mr. Carruthers set out the accurate procedural history for this Court, demonstrating that for years he has sought, sometimes *pro se*, DNA testing—being denied at every turn. Pet. 6, 8-9. The State is right; we are in the “eleventh hour,” and that is why this Court should grant the Petition to avoid Mr.

Carruthers' irreversible execution without correcting Tennessee's unconstitutional deprivation of DNA testing.

Notably, the State fails to dispute that the requested testing could have been completed in two weeks—before the Tennessee Supreme Court even dismissed his original Rule 12 DNA motion. The requested testing could have been completed again before the Criminal Court denied his second DNA Motion. And finally, the requested testing could have been completed a third time during the appeal and subsequent petition to this Court. Since Mr. Carruthers filed his April 9 motion, the testing could have been completed *three times*. Any delay lies solely with the State of Tennessee and its courts—not Mr. Carruthers.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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