

1988

# Jerry Joe Medina v. Gerald L. Cook, Warden, et al. : Petition for Rehearing

Utah Supreme Court

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David L. Wilkinson; Attorney General.

Jerry Joe Medina; Appellant Pro Se.

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## Recommended Citation

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UTAH SUPREME COURT

BRIEF

45.9  
JERRY JOE MEDINA  
APPELLANT-PETITIONER PRO SE  
P.O. Box 250  
DRAPER, UTAH 84020

**FILED**

AUG 10 1989

IN THE SUPREME COURT OF THE STATE OF UTAH Clerk, Supreme Court, Utah

JERRY JOE MEDINA

APPELLANT - PETITIONER

VS.

GERALD L. COOK WARDEN ET AL.,

RESPONDENTS

CASE NO. 880355

PETITION FOR REHEARING AND  
RECONSIDERATION OF APPEAL OR  
POST CONVICTION HABEAS CORPUS

Comes Now JERRY JOE MEDINA in Pro-Se And Respectfully  
Submits THE FOREGOING PETITION FOR REHEARING AND RECONSIDERATION  
PURSUANT TO Rule 35 OF THE UTAH Rules OF CIVIL PROCEDURES

1. PETITIONER IS A LAYMAN AND UNversed IN THE LAW, HOWEVER HE  
VERILY BELIEVES HE HAS A MERITORIOUS CAUSE OF ACTION AND IS ENTITLED TO  
BE AFFORDED CONSIDERATION OF HIS WRIT OF HABEAS CORPUS.

2. THE OPINION OF THE UTAH SUPREME COURT AFFIRMING THE  
JUDGEMENT AND CONVICTION, DISMISSING PETITIONERS APPEAL/WRIT OF  
HABEAS CORPUS FOR THE CRIME OF CRIMINAL HOMICIDE, MURDER IN  
THE SECOND DEGREE WAS FILED AUGUST 1, 1989

3. THE ISSUES RAISED ON APPEAL WERE:

- (A) PETITIONER WAS DENIED A FULL AND FAIR EVIDENTRY HEARING AND REVIEW AND  
ACCESS TO THE COURTS BY THE HABEAS COURTS FAILING TO RENDER ITS  
DECISION IN DENYING RELIEF BASED UPON THE FACTS AND EVIDENCE  
AS PRESENTED TO THE COURT FOR ITS CONSIDERATION.
- (B) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN NOT CONDUCTING  
ADEQUATE INVESTIGATION BOTH FACTUAL AND LEGAL INTO THE LINE OF  
DEFENSE COUNSEL CHOSE TO EMPLOY AT TRIAL AND FURTHER THAT  
FOR THIS COURTS CONSIDERATION THAT COUNSELS FAILURES RESULTED  
IN THE USE OF FALSE EVIDENCE AND TESTIMONY THAT ALSO MADE THE  
SUPPLEMENTAL DYNAMIC ALLEN INSTRUCTION COERCIVE AND COUNSEL  
INEFFECTIVE FOR NOT GIVING THE JURY A LESSER INCLUDED INST.

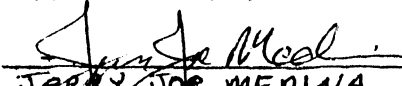
(C) PROSECUTORIAL MISCONDUCT  
(D) INEFFECTIVE APPELLATE COUNSEL

ON PETITION FOR REHEARING AND RECONSIDERATION, THE PETITIONER ASKS THE SUPREME COURT TO DETERMINE IF PETITIONER'S CONVICTION WAS OBTAINED IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO A FAIR TRIAL WITH THE EFFECTIVE AID AND ASSISTANCE OF COUNSEL DURING EACH OF THE CRITICAL STAGES OF THE PROCEEDINGS AS REQUIRED UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, THE SIXTH AMENDMENT CONTEMPLATES THAT COUNSEL LIKE OTHER DEFENSE TOOLS SHOULD BE AN AID TO A WILLING DEFENDANT AND NOT SIMPLY AN ORGAN OF THE STATE, IN THE CASE AT BAR COUNSEL WAS AN ORGAN OF THE STATE IN EACH OF THE CRITICAL STAGES DEPRIVING PETITIONER OF DUE PROCESS FURTHER PETITIONER BELIEVES COUNSEL NOT ONLY FAILED BY THE ABOVE STATED ERRORS, BUT MAY HAVE BEEN IN COLLUSION WITH THE PROSECUTION.

PETITIONER ALSO FEELS THIS COURT'S DECISION IN DENYING RELIEF CONFLICTS AND ALSO IS NOT BASED ON THE FACTS OR EVIDENCE OR ISSUES AS PRESENTED TO THIS COURT FOR ITS DETERMINATION, AND ITS STANDARD OF REVIEW IS NOT BEING EQUALLY OR FAIRLY APPLIED IN PETITIONER'S CASE IN REGARDS AS TO ISSUES ON THE RECORD AND OFF THE RECORD, BEING REVIEWABLE ON DIRECT AND COLLATERAL REVIEW, AND THAT BUNDY VS. DELAND (UTAH 1988) IS INCONSISTENT IN THE PETITIONER'S CASE, BECAUSE IT LEAVES PETITIONER'S ISSUES UNRESOLVED.

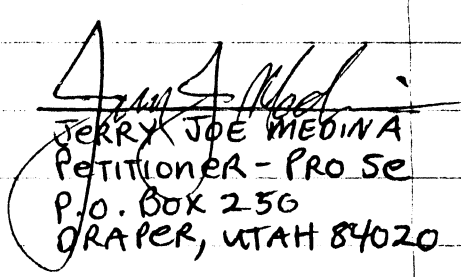
WHEREFORE: PETITIONER / APPELLANT BEING A LAYMAN AND UNVERSED IN THE LAW RESPECTFULLY PRAYS THAT THE SUPREME COURT ON REHEARING, SEARCH THE ENTIRE RECORD UNDER THE AUTHORITY OF ANDERS VS CALIFORNIA TO DETERMINE CONSTITUTIONAL DEFECTS

PETITIONER PRAYS THIS COURT AFFORD HIS CAUSE PLENARY CONSIDERATION

  
JERRY JOE MEDINA  
P.O. BOX 250  
DRAPER, UTAH 84020

CERTIFICATE OF MAILING

I JERRY JOE MEDINA HEREBY UPON MY OATH  
DEPOSE AND SAY THAT I MAILED A TRUE AND CORRECT COPY OF  
THE FOREGOING TO WIT: PETITION FOR REHEARING AND CONSIDERATION  
TO ATTORNEY GENERAL PAUL VAN DAM AT 236 STATE CAPITOL BLDG.  
SLC UT. 84114 AND (5) FIVE TRUE AND CORRECT COPIES  
OF THE SAME TO THE SUPREME COURT IN THE CARE OF THE  
CLERK, GEOFFREY J. BUTLER AT 332 STATE CAPITOL BLDG.  
SLC. UTAH 84114

  
JERRY JOE MEDINA  
PETITIONER - PRO SE  
P.O. BOX 256  
DRAPER, UTAH 84020

DATED THIS 6<sup>TH</sup> DAY of AUGUST 1989