

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL B. WILLIAMS — PETITIONER
(Your Name)

vs.

STEPHEN MAYBERG — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL B. WILLIAMS, 542-1

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QUESTION(S) PRESENTED

THIS COURT HAS LONG RECOGNIZED THAT IN A " NARROW CLASS OF CASES IMPLICATING A FUNDAMENTAL MISCARRIAGE OF JUSTICE," (SCHLUP V. DELO, 513 U.S. 298, 314-15, 115 S.CT. 851, 130 L.ED. 2d 808 (1995), QUOTING (MCCLESKEY V. ZANT, 499 U.S. 467, 494, 111 S.CT. 1454, 113 L.ED. 2d 517 (1991), THAT FEDERAL COURTS MAY HERE THE MERITS OF A HABEAS PETITION DESPITE AN OTHERWISE APPLICABLE PROCEDURAL BAR. THE DISTRICT COURT DISMISSED PETITIONER'S FEDERAL HABEAS PETITION PURSUANT TO 28 U.S.C. SECTION 2244(d), BECAUSE IT WAS FILED WELL OVER A YEAR AFTER HIS MARCH 29, 1991, STATE COURT CONVICTION, AND MORE THAN TEN-YEARS LATER, ON APRIL 19, 2001, PETITIONER WAS EXONERATED BY THE STATE OF THE RAPE IN CONCERT CONVICTIONS OBTAINED BY DNA-EVIDENCE, WHICH HAD EXCLUDED HIM AS THE ACTUAL RAPIST FOR HIM TO NOW DEMONSTRATE THAT HE IS ACTUALLY INNOCENT OF ANY CRIMINAL WRONGDOING IN ORDER FOR HIM TO OVERCOME HIS PROCEDURAL DEFAULT OF HIS FEDERAL CLAIMS CHALLENGING THE CONSTITUTIONALITY OF HIS MARCH 29, 1991, STATE CONVICTIONS FOR RAPE.

UNDER THESE CIRCUMSTANCES, DID THE NINTH CIRCUIT COURT OF APPEALS CORRECTLY DENY PETITIONER REQUEST FOR A CERTIFICATE OF APPEALABILITY PURSUANT TO THE ANALYSIS THAT " PERKINS " PRESCRIBES, (MCQUIGGIN V. PERKINS, 133 S.CT. 1924, 185 L.ED. 2d 1019 (2013), REGARDING THE CREDIBILITY OF PETITIONER'S NEW RELIABLE EXONERATORY SCIENTIFIC EVIDENCE, OR CRITICAL PHYSICAL DNA EVIDENCE THAT WAS NOT PRESENTED AT HIS TRIAL, AND AFTER REJECTING THE STATE PROSECUTION'S APRIL 19, 2001, CONCESSIONS THAT PETITIONER SATISFIED THE DEMANDING STANDARD OF PRODUCING PROOF OF DNA SEMEN EXCLUSION SUFFICIENT TO UNDERMINE A COURT'S CONFIDENCE IN HIS MARCH 29, 1991, STATE COURT RAPE CONVICTION?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at U.S. 9th CIR. CASE NO. 17-17300; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix B to the petition and is

reported at DNA-RT., HELD 4/19/01, S.F. SCN: 137986-02; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was MAY 8, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

TITLE 28 U.S.C. SECTION 2253 (c)(1), OF THE UNITED STATES CODE PROVIDES: " UNLESS A CIRCUIT JUSTICE, OR JUDGE ISSUES A CERTIFICATE OF APPEALABILITY, AN APPEAL MAY NOT BE TAKEN TO THE COURT OF APPEALS FROM (A) THE FINAL ORDER IN A HABEAS CORPUS PROCEEDING IN WHICH THE DETENTION COMPLAINED OF ARISES OUT OF THE PROCESS ISSUED BY A STATE COURT."

STATEMENT OF THE CASE

A.

PRELIMINARY INTRODUCTION

THIS IS PETITIONER'S SECOND APPEARANCE BEFORE THIS HONORABLE COURT REGARDING THE CONSTITUTIONAL ISSUES CONTAINED IN THE INSTEANT FEDERAL HABEAS PETITION, WITH A FEW EXCEPTIONS, THE FIRST PETITION FOR WRIT OF CERTIORARI WAS FILED IN THIS COURT ON APRIL 26, 2005, IN (WILLIAMS V. MAYBERG, U.S. SUPREME COURT CASE NO. 04-10511), WHERE PETITIONER ASSERTED THAT HIS STATE APPOINTED TRIAL COUNSEL WAS INEFFECTIVE BECAUSE HE HAD FAILED TO OBTAINED ADDITIONAL DNA-TESTING OF A SEMEN SAMPLE ON A VAGINAL SWAB OBTAINED FROM THE ALLEGED RAPT VICTIM CORY S. TEN-YEARS LATER IN A STATE COURT HEARING HELD ON APRIL 19, 2001, IN A SAN FRANCISCO COUNTY SUPERIOR COURT, AN ASSISTANT STATE PROSECUTOR PRODUCED A SAN FRANCISCO POLICE DEPARTMENT CRIME-LAB REPORT WHICH EVENTIALLY HAD EXCLUDED PETITIONER AS THE SEMEN DONOR RECOVERED IN THE ORIGINAL JULY 29, 1990, CRIMINAL RAPE MATTER. HOWEVER, PETITIONER WAS A VICTIM OF WHAT HE CALLED "PARALLED CONSTRUCTION", AND WAS UNABLE TO DISCOVER THIS FAVORABLE DNA-EVIDENCE BEFORE HIS MARCH 26, 1991, STATE TRIAL HAD STARTED, BECAUSE THAT EVIDENCE, AND THE INVESTIGATIVE METHODS OF GATHERING THAT NEW EVIDENCE WAS CONCEALED, OR NEVER FORMALLY REPORTED BY THE SAN FRANCISCO STATE PROSECUTION. THEREFORE, THE USE OF THIS "PARALLEL CONSTRUCTION EVIDENCE INTERFERED WITH PETITIONER'S RIGHT TO DNA-EVIDENCE DISCLOSURE, AND HIS RIGHT TO A MARCH 26-29, 1991, FAIR STATE TRIAL, WHICH VIOLATED HIS CONSTITUTIONAL RIGHT TO DUE PROCESS, (BRADY V. MARYLAND, 373 U.S. 83, 83 S.C.T. 1194, 10 L.ED. 2d 215 (1963)).

THE LABORATORY-REPORT INDICATED THAT PETITIONER IS AN ABO TYPE 'A' SECRETOR, HIS CO-DEFENDANT ROY GLENN, IS A TYPE 'B' SECRETOR, AND THE ALLEGED RAPE VICTIM CORY S., IS ALSO A TYPE 'B' SECRETOR. PETITIONER'S COURT APPOINTED ATTORNEY CLAIMED THAT HE HAD RECEIVED THE REPORT BEFORE TRIAL, AND CONCLUDED THAT IT WAS "BASICALLY NON-DISPOSITIVE", (RT: OF PROCEEDINGS, DATED MARCH 14, 1991). NEVERTHELESS, WITHOUT PETITIONER'S

CONSENT, THE PARTIES STIPULATED AT A SIDE-BAR DURING THE TRIAL THAT A CRIMINALIST HAD TESTED THE VAGINAL SWABS, AND THAT THEY INDICATED THE PRESENCE OF SEMEN. SUBSEQUENTLY, THE SEMEN SAMPLES WAS ROUTINELY DESTROYED. THE FEDERAL HABEAS PETITION, ORINIALLY FILED ON NOVEMBER 21, 2003, HAD CHALLENGED THE SAN FRANCISCO SUPERIOR COURT'S FINDINGS THAT PETITIONER HAD FAILED TO SHOW THAT THE SEMEN SAMPLES WAS EXONERATORY SINCE THE LABORATORY REPORT ITSELF ON ITS FACE PURPORTED TO BE INCONCLUSIVE, AND THE SUPERIOR COURT'S CONCLUSION THAT TRIAL COUNSEL'S DECISION NOT TO SEEK FURTHER DNA-TESTING WAS "WELL WITHIN ACCEPTED NORMS", SEE (ORDER DENYING STATE PETITION FOR WRIT OF HABEAS CORPUS, NO. 4308, DATED DECEMBER 11, 2001), SEE (HARRINGTON V. RICHTER, 562 U.S. 86, 131 S.CT. 770, 178 L.ED. 2d 624 (2011)(HELD THAT WHEN A STATE COURT DECISION LACKS REASONING, FEDERAL HABEAS COURTS MUST "DETERMINE WHAT ARGUMENTS, OR THEORIES SUPPORT, OR COULD HAVE SUPPORTED THE STATE COURT'S DECISION", ID. AT 102, 131, S.CT. 770).

REASONS FOR GRANTING THE PETITION

IT WOULD BE AN HONOR FOR PETITIONER TO EXPLAIN TO THIS GREAT COURT HIS REASONS FOR GRANTING THE PETITION. IN THIS CASE, THE PARTIES HAS CHARACTERIZE PETITIONER'S FEDERAL HABEAS PETITION AS FALLING UNDER 28 U.S.C. SECTION 2254. HE CHALLENGES THE LAW UNDER 28 U.S.C. SECTION 2253 (c)(1), OF THE UNITED STATES CODE ON SEVERAL CONSTITUTIONAL GROUNDS. FIRST, HE CLAIMS THAT BECAUSE HE HAS A STRONG LIBERTY INTEREST IN APPEALING THE DISMISSAL OF HIS FEDERAL HABEAS PETITION AFTER THE LIMITATIONS PERIOD EXPIRED, HE HAS SOUGHT AN EXEMPTION FROM THE STATUTE BY ASSERTING HIS ACTUAL INNOCENCE OF RAPE IN CONCERT, SEE (MCQUIGGIN V. PERKINS, 133 S.C.T. 1924, 1928, 185 L.ED. 2d 1019 (2013))(A HABEAS PETITIONER WHO CONVICINGLY DEMONSTRATES THAT HE IS INNOCENT IS ENTITLED TO PRESENT HIS CLAIMS FOR RELIEF IN FEDERAL COURT).

SECOND, PETITIONER CLAIMS THAT THE LAW UNDER 28 U.S.C. SECTION 2253 (c)(1), VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT. HE ARGUES THAT OTHER FEDERAL PRISONERS SIMILARLY SITUATED IN THE NINTH CIRCUIT ARE NOT REQUIRED TO OBTAIN A CERTIFICATE OF APPEALABILITY FROM THE DENIAL OF THEIR 28 U.S.C. SECTION 2241 FEDERAL HABEAS PETITIONS, OR FROM THEIR 28 U.S.C. SECTION 2241 FEDERAL HABEAS DISMISSALS IN THE DISTRICT COURTS, SEE (FORDE V. UNITED STATES PAROLE COMM'N, 114 F. 3d 878 (9th Cir. 1997))(HOLDING THAT A SECTION 2241 PETITIONER IN FEDERAL CUSTODY NEED NOT OBTAIN A CERTIFICATE OF APPEALABILITY AS A PREREQUISITE TO APPEAL), SEE ALSO (UNITED STATES V. KWAN, 407 F. 3d 1005 (9th Cir. 2005)). HOWEVER, OTHER FEDERAL CIRCUITS HAVE HELD THAT SECTION 2241 PETITIONERS IN STATE CUSTODY MUST COMPLY WITH THE CERTIFICATE OF APPEALABILITY REQUIREMENT, SEE (MONTEZ V. MCKIMA, 208 F. 3d 862, 867 (10th Cir. 2000), AND (STRINGER V. WILLIAMS, 161 F. 3d 259, 262 (5th Cir. 1998)). MOREOVER, IN (WHITE V. LAMBERT, 370 F. 3d 1002 (9th Cir. 2004), THE COURT HELD THAT (1) AS A MATTER OF FIRST IMPRESSION, PROPER JURISDICTIONAL BASIS FOR A PETITION WAS FEDERAL HABEAS STATUTE PERTAINING TO PERSONS HELD IN STATE CUSTODY, RATHER THAN THE GENERAL HABEAS STATUTE APPLICABLE TO PERSONS HELD IN CUSTODY IN

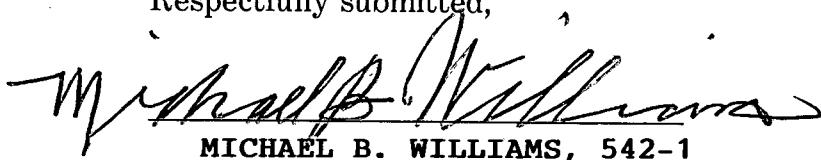
REVIEWED BY [redacted]

VIOLATION OF FEDERAL LAW, AND (2) THAT AS A MATTER OF FIRST IMPRESSION, THE PETITIONER DID NOT NEED A CERTIFICATE OF APPEALABILITY TO APPEAL. FURTHERMORE, PETITIONER ASK THE QUESTION HERE DOES SUCH A PROCEDURE HELD IN WHITE BY THE COURT CONTRADICTS THE NINTH CIRCUIT'S OWN PRECEDENTS? OR WHETHER THIS NINTH CIRCUIT DECISION WOULD APPLY TO PETITIONER'S 28 U.S.C. SECTION 2254 FEDERAL HABEAS SITUATION?

CONCLUSION

The petition for a writ of certiorari should be granted, (**McQUIGGIN, SUPRA, 133 S.C.T. 1924, 185 L.ED. 2d 1019 (2013).**)

Respectfully submitted,



MICHAEL B. WILLIAMS, 542-1

Date: MAY 30, 2018