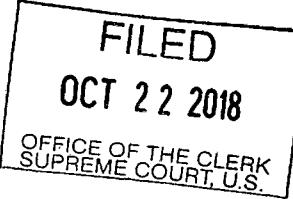


NO. 18-5224

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018



FRANK COSTELON,
Petitioner,

vs.

STATE OF NEW MEXICO et. al.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR REHEARING

FRANK COSTELON (PRO SE)

REG. NO. 79711-280

F.C.I. FLORENCE

P.O. BOX 6000

FLORENCE, CO 81226

PETITION FOR REHEARING

(SUP. CT. R. 44.2)

Appellant-Petitioner respectfully presents this foregoing Petition for a Rehearing of the above entitled cause, and in support thereof will show as follows:

GROUND FOR REHEARING

A Rehearing of the decision in this matter is in the interest of justice not only regarding Appellant-Petitioners' matter but to all similar situated Petitioners seeking to challenge an unconstitutional prior conviction that enhanced a current sentence, but have no avenue. This blunder has been caused by many U.S. District and Appeal Court from all Circuits. This Plight has been going on for the passed 17 years since this Honorable Supreme Court decided **LACKAWANNA COUNTY DIST. ATTORNEY v. COSS**, 532 U.S. 394, 149 L. Ed. 2d 608 121 S. Ct. 1567 (2001). This Case has stood as the Law of the Land with guidance to lower court on how to find a Petitioner "IN CUSTODY" for the Subject matter jurisdiction thresh hold inquiry. Inasmuch several lower Court have MISS-APPLIED your Holdings in **LACKAWANNA SUPRA**. Thus, misconstruing the standards of review contrary to **LACKAWANNA EXCEPTION**. Hence, this has caused an illusion of a high bar , as an un-surmountable Mt. Everest. However only one U.S. Court of Appeals has GRANTED relief in the sole case across the nation in light of **LACKAWANNA SUPRA**. See, **DUBRIN v. DAVERY** 2017 U.S. Dist. LEXIS 161339 (9th Cir August 8, 2017), and **DUBRIN v. PEOPLE OF THE STATE OF CALIFORNIA**, 720 F. 3d 1095 (9th Cir. 2013). In sum, there is a deeply divided Circuit split conflicting amongst the Federal Court of Appeals. See. **LYONS v. LEE**, 316 F. 3d 528 (4th Cir. 2002)

- See Also, BOWLING v. WHITE, 694 FED. APPX. 1008 (6TH CIR. 2017) DISSENT.

1. On or around October 1, 2018, this Honorable Supreme Court DENIED the Petition for Writ of Certiorari.

2. A Rehearing in this matter tightly and squarely focused on the similarity and distinction between this foregoing case and LACKAWANNA Supracase, and whether this distinction merits a different rule of law, and/or EXPANDING the LACKAWANNA PLURALITY OPINION. and once and for all address and give the lower Court Guidance regarding the LACKAWANNA GENERAL RULE/EXCEPTION.

3. This Forgoing Petition for Rehearing is presented in a good faith and not for delay.

4. Appellant-Petitioner attest that the Petition for Rehearing is "limited to intervening circumstances of substantial or controlling effect or to OTHER substantial grounds NOT PREVIOUSLY presented.

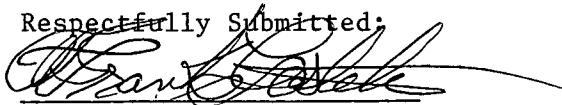
WHEREFORE, this is a matter of fundamental fairness to Petitioner and would NOT unduly burden the Honorable Just Court to Please Grant this Petition for Rehearing, and further GRANT Petition for Certiorari for all who have an unconstitutional Prior Conviction that Enhanced a current sentence but there is no legal forum to have a Court pass the IN CUSTODY Subject matter jurisdiction thresh hold inquiry in order to address the merits. See, WILSON v. FLAHERTY 689 F.3d 332 (4th Cir. 2012) DISSENT BY WYNN.

CONCLUSION

For the reasons just stated Appellant-Petitioner Frank Costelon urges that this Petition for Rehearing be GRANTED, and that, on further consideration the Petition for Certiorari be granted.

October 13, 2018

Respectfully Submitted:



Frank Costelon (PRO SE)

Reg. No. 79711-280

F.C.I. Florence

P.O. BOX 6000

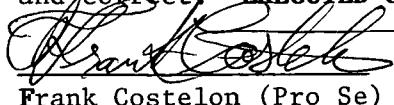
Florence, CO 81226

CERTIFICATE OF GOOD FAITH PRO SE

I, Frank Costelon via Pro Se, certify that this Petition for Rehearing is presented in good faith and not for delay and that it is restricted to the grounds specified in the Supreme Court Rule 44 of the Rules of this Court.

CERTIFICATE OF COMPLIANCE WITH WORD LIMITS

As required by S. Ct. R. 33.1(h) I certify that the document contains 800 words, excluding the parts of the document that are exempted by S. Ct. R. 33.1(d). I declare under penalty of perjury that the foregoing is true and correct, EXECUTED ON OCTOBER 15th, 2018.



Frank Costelon (Pro Se)