

No. 18-5309

IN THE

Supreme Court of the United States

MAURICE MCLAIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit**

**PETITION FOR REHEARING OF
ORDER DENYING
PETITION FOR WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

I. Whether the Fourth Circuit Court of Appeals' opinion conflicts with this Court's decisions in *Rutledge v. United States*, 517 U.S. 292 (1996), *Currier v. Virginia*, 585 U.S. ____ (2018), and *Santobello v. New York*, 404 U.S. 257, 262 (1971), because the court of appeals ruled that petitioner Maurice McLain could be prosecuted a second time in this federal RICO case for a nonfatal shooting for which he was already serving a ten-year federal imprisonment sentence, in violation of the *Double Jeopardy Clause* and his plea agreement with the United States.

II. Whether the Fourth Circuit Court of Appeals' opinion conflicts with this Court's decision in *Tibbs v. Florida*, 457 U.S. 31, 42-43 (1982), and, inferentially, with *Wong Sun v. United States*, 371 U.S. 471, 488-489 (1962), because the court of appeals upheld a jury verdict that conflicts with the physical and forensic evidence in this case and that was substantially predicated upon a single cooperator's testimony whose sentence was greatly reduced by the government and the district court in consideration of his testimony. If a defendant's uncorroborated confession is insufficient to sustain a conviction, how much less sustainable is a conviction based on a single cooperator's "testimony" that conflicts with the undisputed physical and forensic evidence?

III. Whether the Fourth Circuit Court of Appeals' opinion overlooks and inferentially conflicts with this Court's decision in *Richardson v. United States*, 526 U.S. 838 (1999), because the opinion sustains the RICO conviction here where the verdict form failed to require the jury to agree unanimously regarding the acts of racketeering activity to which petitioner Maurice McLain consented.

REASONS FOR GRANTING REHEARING

Petitioner Maurice McLain filed his petition for writ of certiorari on July 18, 2018. On October 1, 2018, the then eight Justices of the United States Supreme Court denied his petition. Counsel for petitioner has been unable to determine the number of Justices who voted for, and against, granting the writ. On October 6, 2018, D.C. Circuit Court Judge Brett Kavanaugh was confirmed by the United States Senate to this Supreme Court, and Judge Kavanaugh was sworn in as an Associate Justice of this Court then and on October 8, 2018. Since four Justices of the Supreme Court must concur to grant a petition for writ of certiorari, Justice Kavanaugh may now provide the fourth vote if three other Justices had voted to grant McLain's petition for writ of certiorari. Thus, petitioner asks this Court to rehear its order denying his petition for writ of certiorari.

Further, on October 10, 2018, this Court set argument in *Gamble v. United States*, No. 17-646, for December 5, 2018, when the Court will consider the "separate sovereigns" exception to the *Double Jeopardy Clause*. While petitioner McLain was not prosecuted twice for the same offense by two sovereigns, he was prosecuted and punished twice by the same sovereign United States for the same offense—the nonfatal shooting of Alex Turner (Petition for Writ of Certiorari at 15-17). Thus, the Court's decision in *Gamble* could impact the Court's view of McLain's petition and warrants rehearing.

CONCLUSION

As shown in his petition for writ of certiorari, petitioner McLain was prosecuted and punished twice for the same offense and was repeatedly denied *due process*. His conviction and sentence are unjust and unconstitutional. As seen *supra*, intervening circumstances of a substantial and controlling effect justify rehearing the order denying McLain's petition. His petition for a writ of certiorari should be granted.

Respectfully submitted,

MAURICE MCLAIN
PETITIONER

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