

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Eric Johnson — PETITIONER
(Your Name)

vs.

Secretary of Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court - Eastern District - Fresno, CA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eric Johnson
(Your Name)

RRSP - ASU - 145 P.O. Box 7500
(Address)

Crescent City, CA 95532
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether the U.S. Court of Appeals, 9th Circuit knowingly denied a criminal defendant, a Constitutional right to appeal an unlawful criminal conviction, on a petition for a writ of habeas corpus.

Whether the U.S. District Court - Eastern District - Fresno knowingly denied petitioner an evidentiary hearing, requiring the attorney general to produce (rebuttal) evidence in support of the prosecutor's filing of the charges.

Whether the U.S. Court of Appeals, 9th Circuit, and the U.S. District Court knowingly violated the requirements of the Anti-Terrorism and Effective Death Penalty Act.

Federal courts are required to review a state prisoner's habeas corpus petition under (amended) section 2254, to determine if the state court rulings were based upon clearly established U.S. Supreme Court precedent.

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 _____; 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 is unpublished.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 B 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 is unpublished.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 _____ to the petition and is

[] reported at _____; 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[] is unpublished.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 July 17, 2018 ~~petitioner never received a ruling on the appeal~~.

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

The Supremacy Clause Article 6, section 2, clause 2, clearly indicates, "the Constitution, Laws, or Treaties of the United States, which shall be made, in pursuance thereof, shall be the Supreme Law of the Land. And the (Judges) in every state shall be bound thereby. And anything in the Constitution or Laws of any State to the contrary, notwithstanding." The Supremacy Clause was enacted as a (safeguard) to prohibit state judges from (defeating) the administration of justice in state courts, and to prevent arbitrary and capricious actions on the part of biased and partial trial judges.

Article 1 section 9, clause 2, clearly indicates, "The petition for a writ of habeas corpus shall not be suspended." And has its roots deep in English Common Law. The writ of habeas corpus has been the (ultimate) means for challenging the (legality) of unlawful imprisonment for centuries.

28 U.S.C. 1281 provides a criminal defendant a right to file an appeal, 28 U.S.C. 2254(e)(2) provides a habeas petitioner the right to an evidentiary hearing.

First Amendment of the United States Constitution's right to seek redress of grievances.

Fifth Amendment of the United States Constitution's right of (due process) of the laws.

STATEMENT OF THE CASE

Petitioner filed a petition for a writ of habeas corpus in the U.S. District Court - Eastern District - Fresno, CA, attacking the legality of an unlawful state criminal conviction for false indecent exposure charges. Neither of the prosecutors cited the (controlling) case where it was ever ruled by a judge, that a maximum-security prison is a (public) place. Then all of the trial judge's knowingly (disregarded) all of the legal authorities that petitioner cited in support of his defense, including the state courts of appeal, and the California Supreme Court. The California Supreme Court has (never) ruled that a (prison) is a public place, (so that is not settled law in this state). The U.S. Supreme Court has (never) ruled that a prison is a (public) place, (so the state court rulings violates the Supremacy Clause of the United States Constitution). The U.S. Magistrate Judge knowingly (disregarded) all of the Constitution violations, and instead of granting petitioner an (evidentiary) hearing pursuant to 28 U.S.C. § 2254(e)(2), knowingly (mischaracterized) petitioner's habeas corpus petition, as being a second or successive petition. A second or successive petition means (amending and resubmitting) a previously dismissed petition. Rose v. Lundy, 455 U.S. 509 (1982).

Petitioner filed a federal habeas corpus from his conviction (and direct) appeal in state court. Then filed state habeas corpus attacking the unlawful convictions. Then filed the (next) federal habeas corpus as a result of state habeas proceedings.

Petitioner then filed a motion for reconsideration, which was arbitrarily denied. Petitioner promptly filed a motion in the U.S. Court of Appeals, 9th Circuit to file a second or successive petition, which was also arbitrarily denied. Then petitioner promptly filed a notice of appeal. For some unknown reason the clerk indicated that petitioner filed a writ of habeas corpus, see enclosed docket number. After not receiving a ruling after May 8, 2018 petitioner forwarded a letter to the clerk requesting to know what was the status of the appeal. As of this writing petitioner has not received a reply from the clerk. So, it appears that the U.S. Court of Appeals, 9th Circuit is (knowingly) denying a criminal defendant the Constitutional right to appeal an unlawful state criminal conviction, in direct violation of 28 U.S.C. § 1291.

→ 2254(d)(1) requires state court rulings to be based upon clearly established United States Supreme Court precedent. Presumption of correctness is mandated by statute and cannot be waived by a court. 28 U.S.C. § 2254(e)(1). Petitioner's claims are governed under 2254(e)(2)(b)'s actual innocence. The U.S. Court of Appeals, 9th Circuit knowingly violated its own (dicta) as rendered in *In re McLinn*, 739 F.2d 1395 (9th Circuit 1984) and cases cited. All of petitioner's constitutional violations are clearly supported by the trial court's record and the state court of appeals record. Because neither the California Supreme Court, nor the U.S. Supreme Court, has (never) ruled that a prison is a public place, this case presents a legal issue of first impression. Petitioner received the court order on July 23, 2018. The notice of appeal was filed February 12, 2018. Petitioner clearly requested En Banc review. The three Judge panel knowingly denied petitioner En Banc review because of some ulterior motive, by subverting the appeal process.

REASONS FOR GRANTING THE PETITION

The U.S. Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory powers, and the importance to the public of the issue, not only to petitioner, but to (other) prisoners similarly situated.

Also, a motion filed in the U.S. District Court to (alter or amend) a judgment, tolls the time to file an appeal. A writ of habeas corpus is an (original) proceeding, and should not require the filing of an appeal, which is the sole purpose of granting a habeas petitioner an evidentiary hearing.

The purpose of an appeal is for an appellate court to (review) the trial proceedings, to see if they were conducted (legally), and to determine if the defendant received a (fair) trial or hearing, of which (correct) legal rulings on law and procedure were made.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eric Johnson

Date: July 23, 2018