

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Vincent Michael Marino — PETITIONER
(Your Name)

vs.

Bart Masters — RESPONDENT(S)
April 8th, 2018.

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fourth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vincent Michael Marino

Vincent Michael Marino

(Your Name)

14431-038 FCI Fort Dix
P.O. Box 2000, Joint Base MDL

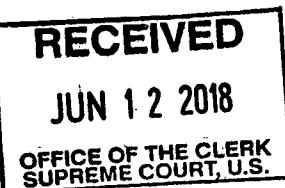
(Address)

Fort Dix, New Jersey 08640

(City, State, Zip Code)

N/A

(Phone Number)



QUESTION(S) PRESENTED

[1]

Ground One

The District Court, Appeals Court for the Second Circuit and the Second Circuit Court of Appeals sitting En Banc, committed reversible legal error, for failing to use Supreme Courts Precedence Buck v. Davis, 580 U.S. (2017) held: "Prisoner (Marino) need not show success on his merits of his claim to receive either a COA/2241 or Fed.R.Civ.P. Rule 60(b) inquiry was NOT coextensive with a merits analysis and that the only question is whether the applicant: Marino has shown that a "Jurist of reason could disagree with the District Court's resolution of his above constitutional claims or that jurist could conclude the issues presented supra are adequate to deserve encouragement to proceed further."

[2]

Ground Two

The District Court, Appeals Court for the Second Circuit and the Second Circuit Court of Appeals sitting En Banc committed reversible legal error for failing to use Supreme Courts Precedence cases: Martinez v. Illinois, 134 S.Ct. 2070; 188 L.Ed.2d 1112; 2014 U.S. LEXIS 3613; 82 U.S.L.W. 4414; 24 Fla.L.Weekly Fed. S 777 No. 13-5967 Decided May 27, 2014; and Crist v. Bretz, 437 U.S. 28, 35, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978); which held in relevant part that once the Jury is empaneled & sworn all dismissed charges (Marino's Act-B/Count 30) is dismissed with prejudice and jeopardy attaches, Serfass v. United States, 420 U.S. 377, 394, 95 S.Ct. 1055, 43 L.Ed.2d 265 (1975), "[g]enerally, in cases of a jury trial, jeopardy attaches when a jury is empaneled and sworn, as that is the point when the Defendant (Marino) is put to trial before the trier of the facts." Crist, 437 U.S. at 35, 98 S.Ct. 2156, 57 L.Ed.2d 24; see also USA v. Martin Linen Supply Co., 430 U.S. 564, 569, 97 S.Ct. 1349, 51 L.Ed.2d 642 (1977); Serfass, supra, at 388, 95 S.Ct. 1055, 43 L.Ed.2d 265; 6 W.LaFave, J. Israel, N.King, & O. Kerr, Criminal Procedure §25.1(d)(3rd ed.2007)

On the first day of Marino's trial Sept.28, 1998, the Government moved to dismiss Count 30/Act-B cocaine conspiracy against Marino, after the Marino jury was empaneled--& sworn, Document: 581, (97-cr-40009-NMG. (D.Mass); thereafter the District Court ALLOWED government's Document: 581 Motion to dismiss Count 30/Act-B cocaine conspiracy against Marino on Oct.22, 1998, see Document Date: Oct.22, 1998 via: #97-cr-40009-NMG. (D.Mass) thereafter the government committed reversible legal error by placing the Dismissed Count 30/Act-B Cocaine Conspiracy back on the December 22, 1999 Jury Verdict Form against Marino in Marino's second Jury Trial. See "Marino II, Dec.22,1999 jury trial Verdict form, Document: 1079 in support herein, which the jury marked Proven in both Counts 1 & 2;

See Exhibits A1-A16.

[3]

Ground Three

The District Court, Appeals Court for the Second Circuit and the Second Circuit Court of Appeals sitting En banc committed reversible legal error, for failing to use the logic depicted in United States v. Wheeler, F.3d , 2018 WL 1514418 (4th Cir.2018), which allows the Courts jurisdiction under the New Savings Clause Test under 28 U.S.C. §2255(e), which would allow Marino's 28 U.S.C. §2241 to proceed forward into the merits determination, as seen in Grounds One & Two *supra*;

[4]

LIST OF PARTIES

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

[5]

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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.

[10]

OPINIONS BELOW

For cases from **federal courts**:

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

reported at Marino v. Masters, USCA5# 17-6420; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished. (Not sure)

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

reported at Marino v. Masters, #13-cv-32690 (SDW); or, (Bluefield)
[] has been designated for publication but is not yet reported; or,
[] is unpublished. (Not sure)

[11] [] For cases from **state courts**:

N/A

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.

[14] CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[15] Fifth Amendment of the United States Constitution
(Judicial precedent repeatedly states the bright-line rule
that jeopardy attaches when the (Marino Jury), jury is empaneled
and sworn on September 28, 1998 (Document: 581, via: 97-cr-40009-NMG.
(D.Mass));

[16] Sixth Amendment of the United States Constitution
(Jury Trial Right);

STATEMENT OF THE CASE

The District Court & Appeals Court for the Second Circuit committed reversible legal--error, for failing to apply Supreme Court precedence **Buck v. Davis**, 580 U.S. ____ (2017) held:

"Prisoner (Marino) need not show success on his merits of his claim to receive either a COA or Fed.R.Civ.P. Rule 60(b)(6) inquiry was NOT coextensive with a merits analysis and that the only question is whether the applicant: Marino has shown that a "Jurist of reason could disagree with the District Court's resolution of his above constitutional claims or that jurist could conclude the issues presented *supra* are adequate to deserve encouragement to proceed further."

The District Court, Appeals Court for the Second Circuit committed reversible legal error for failing to apply Supreme Court's precedence cases: **Martinez v. Illinois**, 134 S.Ct. 2070; 188 L.Ed.2d 1112; 2014 U.S. LEXIS 3613; 82 U.S.L.W. 4414; 24 Fla.L.Weekly Fed. S 777 No. 13-5967 Decided May 27, 2014; and **Crist v. Bretz**, 437 U.S. 28, 35, 98 S.Ct. 2156, 57 L.Ed.2d 24 (1978); which held in relevant part that once the Jury is empaneled & sworn all dismissed charges are deemed dismissed with prejudice (Marino's dismissed Count 30/Act-B Cocaine Conspiracy) is dismissed with prejudice and jeopardy attaches, **Serfass v. United States**, 420 U.S. 377, 394, 95 S.Ct. 1055, 43 L.Ed.2d 265 (1975), "[generally], in cases of a jury trial, jeopardy attaches when a jury is empaneled and sworn, as that is the point when the Defendant (Marino) is put to trial before the trier of the facts."

Crist, 437 U.S. at 35, 98 S.Ct. 2156-57 L.Ed.2d 24; see also **USA v. Martin Linen Supply Co.**, 430 U.S. 564, 569, 97 S.Ct. 1349, 51 L.Ed.2d 642 (1977); **Serfass**, *supra*, at 388, 95 S.Ct. 1055, 43 L.Ed.2d 265; 6 W.Lafave, J. Isreal, N.King, & O. Kerr, Criminal Procedure §25.1(d) 3rd ed.2007).

[18] On the first day of Marino's Jury Trial September 28, 1998 the government moved to dismiss Count 30/Act-B Cocaine Conspiracy against Marino, after the Marino jury was empaneled & sworn, Document: 581, via: #97-cr-400009-NMG. (D.Mass). Thereafter the Government committed reversible legal error by placing the Dismissed Count 30/Act-B cocaine conspiracy back of the December 22, 1999 Jury Verdict Form against Marino in Marino's Second Jury Trial. See "Marino II, Dec.22,1999 Jury trial verdict form, Document: 1079, in support herein, which the jury marked Proven in both Count 1 & 2.

[19] The District Court & Appeals Court for the Second Circuit committed reversible legal error, for failing to use the logic-depicted in United States v. Wheeler, __F.3d__, 2018, WL 1514418 (4th Cir., 2018), which allows the Courts Jurisdiction under the New Savings Clause Test under 28 U.S.C. §2255(e), which would allow Marino's 28 U.S.C. §2241 to proceed forward into the merits determination, as seen in Grounds One & Two supra, which proves Marino's Actual, Factual and Legal innocence of Count One RICO & Count Two RICO conspiracy & committing two or more predicate racketeering acts in furtherance of Count One RICO & Count Two: Rico conspiracy in furtherance of the Criminal Enterprise as required under 18 U.S.C. §1961(5). Because with the preclusion of the Dismissed Count 30/Act-B cocaine conspiracy from Count One: RICO & Count Two RICO conspiracy would invalidate both Count One & Count Two convictions & sentences because 18 U.S.C. §1961(5), requires to convict on RICO & RICO conspiracy the Jury must find proven two or more predicate racketeering acts.

See USA v. Marino, 277 F.3d 11, 18-19 (1st Cir.2002) see also USA v. Dhinsa, 243 F.3d 635, 670 (2d Cir.2001) and USA v. Paccione, 949 F.2d 1183, 1197-98 (2d Cir.1991). See Exhibits A1-A16.

Specifying that a pattern of racketeering-- activity requires only **two or more predicate acts committed** within 10 years of each other. See also generally United States v. Dhinsa, 243 F.3d 635, 670 (2d Cir.2001) (noting that "the jury findings of two predicate acts, lawfully constituting a RICO pattern, and of the other elements of a RICO offense, will permit affirmance of a RICO conviction notwithstanding the invalidation of other predicate acts," (in Marino the invalidation of predicate Act-B/Count 30 cocaine conspiracy depicted in both Counts One: RICO & Count Two RICO conspiracy did "dominate" this prosecution, "eclipsing all else" (internal quotations omitted)); United States v. Paccione, 949 F.3d 1183, 1197-98 (2d Cir.1991)(finding that a "deficiency" with one predicate act did require reversal (of Marino's RICO & RICO conspiracy convictions & sentences) because the remaining ONE predicate act: Conspiracy to Murder Act A1, suffered defects", because of the dismissed during Marino's live jury trial of predicate Act-B/Count 30 cocaine conspiracy is defected & should be precluded from both Counts One & Two, *supra*.

[21] While Marino's jury are presumed to follow a Judge's instructions, they cannot be presumed to have ignored or disregarded the VERDICT FORM itself

Penry v. Johnson, 532 U.S. 782, 799 (2001).

[22] If a Verdict Form/Document: 1079 via: 97-cr-40009-NMG. (D.Mass), Exhibit: 3, can be understood by a jury in alternative ways, & one of those ways does not satisfy the elements of the crime charged, then the verdict cannot stand

Mills v. Maryland, 486 U.S. 367, 375-376 (1988), because there is discord between the instructions and the Verdict Form, and the Jury did not answer the question of whether Marino committed or used two or more predicate racketeering acts to be convicted of RICO & RICO conspiracy with the preclusion of Act-B cocaine conspiracy from

Counts One RICO & Count Two RICO conspiracy against Marino in connection with the offenses.

[23] Dismissed Count 30 and Act-B Cocaine Conspiracy are the same charges against Marino See Exhibits: 1, 2, 3, 4, 6, 7, 12, 13, 15 & 16 in support herein

- (a) the same statutes: 21 U.S.C. §§841(a)(1) & 846;
- (b) similar victims;
- (c) same locations District of Massachusetts;
- (d) same modus operandi;
- (e) same time frame, "from in or before summer, 1993 through in or after December, 1994, in the District of Massachusetts and elsewhere the Defendants: Romano, Ciampi, Ponzo, Patti, Arciero, Marino, Scarpa & Decologero,

Did knowingly, willfully and intentionally combine, conspire, confederate and agree with each other and with persons known and unknown to the Grand Jury, knowingly and intentionally to possess with intent to distribute and to distribute a quantity of a mixture or substance containing cocaine, a Schedule II Controlled Substance, in violations of Title 21 United States Code, Section 841(a)(1) in violations of Title 21, United States Code, Section 846.

See United States v. Boulanger, 444 F.3d 76 (1st Cir.2006); USA v. Edgar, 82 F.3d 499 (1st Cir.1996).

[24] The question here in Marino is whether we can say that the Jury was NOT misled by the mistake in the Verdict Form, Document: 1079, Exhibit: 3

Via: USA v. Marino, 97-cr-40009-NMG. (D.Mass), on December 22, 1999, when the Jury marked Proven on Dismissed Count 30/Act-B cocaine conspiracy depicted in Count One: RICO & Count Two: RICO conspiracy.

See Exhibits, 1-5, 8, 11-13, 15-16. See Gibraltar Sav. v. LD Brinkman Corp., 860 F.2d 1275, 1299 (5th Cir.1988).

[25] Marino is actually, factually & legally innocent of agreeing to commit or in-fact committing two or more predicate racketeering offenses in furtherance of Count One: RICO, Count Two: RICO conspiracy with the preclusion of the dismissed Count 30/Act-B cocaine conspiracy depicted in Counts One: RICO & Count Two: RICO conspiracy against Marino

REASONS FOR GRANTING THE PETITION

Because all of the above specifically stated reasons, Marino most respectfully requests the following relief from this Honorable United States Supreme Court:

Deem, Marino's instant request for a "Writ of Certiorari as meritorious;

Reverse, Vacate & Remand, this case back to the United States Court of Appeals For The Fourth Circuit, ordering the Appeals Court to Order the District Court to conduct a meaningful evidentiary hearing with Marino present to determine the authenticity of Marino's presented **Exhibits: A1-A16** and if it is determined that Marino's **Exhibits: A1-A16** are in-fact genuine, then resentence Marino, precluding Count One: RICO & Count Two: RICO conspiracy convictions & sentences, thereby dismissing Count One & Count Two with prejudice and resentence Marino to Count Three, consistent with USA v. Marino, 97-cr-40009-NMG. (D.Mass) in support herein;

Order, that Marino's 28 U.S.C. §2241 is to be categorized under 28 U.S.C. §2255(e) "Savings Clause" and that Marino is **Deemed**, actually, factually & legally innocent of conducting two or more predicate racketeering Acts in furtherance of both Count One: RICO & Count Two RICO conspiracy 18 U.S.C. §1962(c) & 18 U.S.C. §1962(d), thus requiring both Counts One & Two to be dismissed with prejudice.

Grant, Marino's requested "Writ of Certiorari".

See Exhibits A1-A16

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Vincent Michael Marino 14431-038 FCI Fort Dix, P.O. Box 20000
Joint Base MDL Fort Dix, N.J. 08640

Date: April 8, 2018.