No._____

In The

Supreme Court Of The United States

October Term, 2018

Noah R. Robinson,
Petitioner,

v.

United States Of America,
Respondent.

On Petition For Writ Of Certiorari To The

United States Court Of Appeals For The Seventh Circuit

Brief For Petitioner Noah R. Robinson, Pro Se

(Including Appendix A,B,C and D)

Submitted by:

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Questions Presented For Review

1). Whether former Circuit Court Chief Judge Richard A. Posner misstated the evidence of record in the **Green** remand opinion, as a means to the end of justifying the reinstatement of the Supreme Court vacated (Judge Posner authored) direct appeal judgements, perhaps motivated by his animosity and disdain against Robinson alone, or Robinson and current Supreme Court Justices?

See, **Appendix A**

2). Whether the Supreme Courts holding in **Williams v. Pennsylvania**, 136 S. Ct. 1899 (2016) is a new, substantive rule of law that narrowed the scope of the criminal recusal statute by interpreting its terms, retroactively applicable on collateral review?

3). Whether a federal judge's refusal to (pretrial and during trial) recuse himself from a federal proceeding involving a man/trial defendant that he as a state law enforcement agent (Chief of State Police) investigated and sought to prosecute a few years earlier, violated due process of law, within the meaning of **Puckett v. U.S.**, 556 U.S. 129, 141 (2009) and **Williams, Supra**? See also **Robinson**, 208 F.3d @ 646-648.

4). **The issue**: Actual Innocence claims

A fact: In **Schlup v. Delo**, 513 U.S. 298, 319 (1995) the Supreme Court reaffirmed the principle that habeas corpus is, at its core, an equitable remedy. This Court has long recognized the duty of a district court to adjudicate (even procedurally defaulted) habeas claims when failure to do would result in a "fundamental miscarriage of justice." Id. @ 320-21.

The question:

Whether the United States Court of Appeals for the Seventh

Circuit erred egregiously (and perhaps maliciously) in refusing to adjudicate, or allow two (2) seperate district courts (in Indiana and Illinois) to adjudicate Robinson habeas corpus petitions, which presented compellingly valid actual innocence claims, by the misuse of perpetual restricted filer orders for over a decade?

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On Petition For Writ Of Certiorari

Petitioner Noah R. Robinson prays that a Grant, Vacate and Remand (GVR) Order issue to review the habeas corpus petition application for leave to file a successive collateral attack pursuant to 28 U.S.C. 2255(h)(1),(2) and 28 U.S.C. 2255(e), filed on April 27, 2018 by the pro se litigant, which the Seventh Circuit Court of Appeals declined to adjudicate, purportedly because of the most recent (perpetual) restricted filer Order issued on February 22, 2018, extended on May 23, 2018 but initated as far back as September 1, 2006, No. 06-3102. Twelve (12) years ago.

These restricted filer Orders were entered in this proceeding by a publicly-declared antagonist of most of the current Justices on this Supreme Court, by former Seventh Circuit Court Judge Richard A. Posner, on behalf of the United States Court of Appeals for the Seventh Circuit.

In the most recent recorded history of Seventh Circuit Court jurisprudence on the subject matter of restricted filer or filing bar orders, 16 of those 17 rulings were authored on behalf of the court by none other than appellate court Judge Richard A. Posner. Posner is the recognized expert on the subject matter.

From the outset regarding restricted filer orders was the "Posner Doctrine" limitation pronouncement, two (2) exceptions— criminal case appeals and applications for habeas corpus relief. Filing bars could never be used to restrict or eliminate habeas corpus petitions and criminal judgement appeals.

Yet, in this instance, with this case, targeting in retaliation petitioner Robinson because he dared challenge Posner's **Green** remand opinion, Posner repeatedly chose to ignore, to disregard, those requirements of federal circuit law, that he authored. As will be documented on pages 6 through 11 in **Appendix C**, Posner fabricated the **Green** opinion as pretextual justification/explanation for reinstating the Supreme Court vacated direct appeal judgement majority that Posner authored. The explanation was woefully embarrassing even to Robinson. Read it and see, pages 6-11.

In one of the first ever restricted filer order opinions issued in the Seventh Circuit, **Support Systems International,Inc. v. Mack**, 45 F.3d 185,186 (7th Cir. 1995), Judge Posner declared, **"Perpetual orders are generally a mistake."**

For the past 12 years and counting, Posner has deliberately and with malice aforethought made that same mistake. The rather obvious objective was to bar adjudication of Robinson's meritorious habeas corpus petition(s). The new (Posner's successor) Chief Judge Diane Woods is apparently following/adopting Posner's tradition in

violation of the Constitution's Suspension Clause— Suspending the Privilege of the Writ of Habeas Corpus. And there is more.

For the past six (6) years Posner has relentlessly attacked and degraded the competence and opinions of the Justices of this Court, for whatever reasons.

A representative sampling of the arrogant, condescending, unwarranted, public, anti-Supreme Court Justices declarations may be found in **Appendix A**.

Copies of a representative sampling of the perpetual restricted filer Orders may be found in **Appendix B.**

Opinion Orders Below And Above

The Seventh Circuit perpetual restricted filer orders commenced twelve (12) years ago in February 2006, reported at **U.S. v. Noah Noah Robinson**, nos. 98-2038, 06-3102 and 06-3363, the direct appeal decision was reported at **U.S. v. Boyd/Robinson**, 208 F.3d 638 (7th Cir. 2000), the Supreme Court's GVR (grant,vacate and remand) order decision was reported at **Boyd/Robinson v. U.S.**, 531 U.S. 1135 (2001) and the Seventh Circuit's remand decision [unpublished, wherein Posner sua sponte reinstated the Solicitor General conceded (case no. 00-6674, January 23, 2001) and Supreme Court vacated erroneus direct appeal judgements] was reported at **U.S. v. Green/ Robinson**, 6 Fed. Appx. 377 (7th Cir. 2001).

Jurisdiction

The decision and judgement of the United States Court of Appeals for the Seventh Circuit was entered on May 23, 2018, case no. 18-1942, in response to petitioner Robinson's Application For Leave To File Successive Collateral Attack, Pursuant To This Court's Order of

February 23, 2018, timely filed on April 27, 2018.

The Court of Appeals for the Seventh Circuit had jurisdiction pursuant to 28 U.S.C. 1291, and the United States District Court for the Northern District of Illinois, Eastern Division, had jurisdiction pursuant to 18 U.S.C. 3231.

This Court's jurisdiction rests on 28 U.S.C. 1254(1).

Constitutional Provisions And Observations

U.S. Constitution, First Amendment

Congress shall make no law...abridging the freedom of speech [and] the right of the people to petition the government for a redress of grievances.

Petitioner Observation: By the calculated misuse of restricted filer orders for the past 12 (2006-2018) years, in direct contravention of circuit law precedent authorities, (former) Judge Richard A. Posner eliminated Robinson's right to redress of grievances, by barring the filing of criminal case judgements appeals and writ of habeas corpus appeals.

U.S. Constitution, Fifth Amendment

No person shall be...deprived of life, liberty, or property, without due process of law.

No person shall be held to answer for...an infamous crime, unless presentment or indictment of a grand jury.

Petitioner Observation: With respect to the most serious (penalty-wise) offense charges of conviction and sentence, i.e., the Rico conspiracy, the Narcotics conspiracy and the Murder for hire conspiracy, Robinson was illegally (and over timely pre-sentencing Rule 32 objections) sentenced to statutory enhanced offenses for which Robinson was never charged (by indictment), nor tried (before a jury),

nor convicted (by trial jury verdict).

As a direct result thereof, Robinson was unlawfully deprived of life (in freedom), liberty (as a free man) and property (living in his own home) without due process of law.

U.S. Constitution, Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a...public trial, before an impartial (judge and) jury. Petitioner Observation: Merriam-Webster's Collegiate Dictionary, Eleventh Edition (2007) defines "impartial" as "not partial or biased."

The Seventh Circuit Court of Appeals merit panel on direct appeal [208 F.3d 638 (7th Cir. 2000)] unanimously held that 1996 retrial Judge James B. Zagel was biased and his impartiality reasonably questionable within the meaning of 28 U.S.C. 455(a), that Judge Zagel's refusal to disqualify himself...was error, Id. @ 645, that the case for disqualification under section 455(a) was more that colorable, and indeed in our judgement was compelling, Id. @ 646 and, "Under the circumstances set forth in detail by the majority here, in any other circuit a new trial would be ordered. Id. @ 649.

Judge Posner, speaking in unison for the entire direct appeal merit panel, publicly conceded far back in the year 2000 that **Judge Zagel's refusal to disqualify himself was error.** The Supreme Court in the year 2009 held that judicial recusal refusal was structural, reversible error. **Puckett v. U.S.**, 556 U.S. 129, 141 (2009). Now, the **Williams** Court, **ante**, in 2016 came to the same conclusion. Id. @ 1909.

It is petitioner Robinson's contention that the Supreme Court's holding in **Williams v. Pennsylvania**, 136 S. Ct. 1899 (2016) was a

substantive change in federal law, was and is retroactively applicable on collateral review, and Judge Zagel's repeated refusals to recuse himself was unconstitutional failure, constituted structural error which is not amenable to harmless error review. Id. @ 1909. The Williams Court held that under the Due Process Clause there is an impermissible risk of actual bias when a judge earlier had significant, personal involvement regarding the defendant's case.

Judge Zagel had that impermissible risk according to Judge Richard Posner, et al. 208 F.3d @646,647.

Statement Of The Case

Petitioner Robinson's petition for Writ of Certiorari, declined by the Seventh Circuit to address and adjudicate on its merits, entitled "Application For Leave To File Successive Collateral Attack, Pursuant To The (Seventh Circuit) Court's Order Of February 22, 2018," may be found in Appendix C. This petition had considerable merits therein, warranting the relief requested.

After this case was remanded to the Seventh Circuit by the Supreme Court on February 20, 2001, Boyd/Robinson v. U.S., 531 U.S. 1135 (2001), in a brief, unpublished, four (4) sentence opinion authored by Circuit Judge Richard A. Posner speaking on behalf of the Circuit Court direct appeal judgement authority on April 3, 2001, Posner et al erroneously and consciously held that the Justice Department (Solicitor General)—conceded, Supreme Court— declared (and appellate court-acknowledged) Apprendi errors, were harmless. There was no dispute that Apprendi was applicable and controlling in this case. That fact was ignored and set aside.

In fact, some thirty (30) years prior to the advent of the Apprendi Rule, this same Supreme Court had held (or said) the exact

same thing as **Apprendi** in **In re Winship**, 397 U.S. 358, 364 (1970), i.e., the Due Process Clause of the Fifth Amendment literally mandates the prosecution to prove beyond a reasonable doubt every element of the crime with which a defendant is charged.

The legal term "element" is material, dispositive and unambiguous, whether representing the narcotics conspiracy element (drug) quantity offense, or representing the murder-for-hire conspiracy element offenses of intent, or (causing) personal injury, or (causing) death.

Surely the district trial court and the trial prosecutors knew, in advance of the 1996 retrial, these legal facts.

Some forty (40) years earlier, the Supreme Court in **In re Murchison**, 349 U.S. 133, 136-39 (1955) declared that due process is violated because a judge could not free himself from influence of personal knowledhe of what occurred previously, accuracy of which could not be tested by cross-examination.

Even further back in time, in **Tumey v. Ohio**, 273 U.S. 510, 522 (1927), this Court held that officers (Judge Zagel was the former head of Illinois State Police, who launched an investigation into SMS and Robinson, seeking to prosecute Robinson in 1985, see, **Boyd/Robinson**, 208 F.3d @ 646-47) as a general rule acting in (1995) a judicial capacity are (to be) disqualified by and for their interest in the controversy (here Robinson's case) to be decided.

In this instance, none of the above occurred in this case.

Instead, Robinson was sentenced for statutorily enhanced elemental offenses for which he was neither charged nor tried nor convicted. Prior to sentencing, Robinson repeatedly called these facts to the sentencing court's attention. The challenges were ignored.

The details of Robinson's claims, which the Seventh Circuit Court of Appeals initially authorized on February 22, 2018, but after receipt and review of same, declined to adjudicate on the merits or order prosecutorial adversarial testing of same, then promptly administratedly closed the case, are contained in Robinson's appellate court-approved April 23 (or 27), 2018 Application For Leave To File Successive Collateral Attack, Pursuant To (that) Court's Order of February 20, 2018 in Appendix C.

Petitioner Robinson's three (3) categories of principal claims, i.e., The Green Remand Opinion, The Judicial Bias And Recusal Refusal Issue and the Actual Innocence (including the Narcotics Conspiracy and Leroy Barber Murder Offenses) claims, itemized in the Table of Contents, are detailed in Appendix D.

This Court is asked to consider and be guided by a long ago established Supreme Court standard (Schlup,ante) for showing Actual Innocence even beyond AEDPA deadlines. Consider also McQuiggin v. Perkins, 133 S. Ct. 1924 (2013) (allowing strong new evidence of one's innocence by one who had waited too long to file an appeal).

The Schlup Actual Innocence Standard

In earlier times there had been very little direction from the courts as to what will, and what will not constitute newly discovered evidence of actual innocence and how this standard should be applied.

In Majoy v. Roe, 296 F.3d 770 (9th Cir. 2002), the Ninth Circuit remanded an untimely filed section 2254 petition back to district court for further review after setting fourth the standard to be used for reviewing claims of actual innocence. That Court held....

"Post-trial developments raise in our view the distinct

possibility that given the opportunity, Majoy may be able to muster a plausible factual case meeting the exacting gateway standard established by the Supreme Court in Schlup v. Delo, 513 U.S. 298 (1995) for overriding a petitioner's clear failure to meet deadlines and requirements for filing a timely petition in federal court.

[Author's Note: Robinson was barred by Judge Posner via his filing bars from 2006 until this day!]

Under Schlup, a petitioner's "otherwise-barred claims [may be] considered on the merits...if his claim of actual innocence is sufficient to bring him within the 'narrow class of cases...implicating a fundamental miscarriage of justice." Carriger v. Stewart, 132 F.3d 463, 477 (9th Cir. 1997) (en banc) (quoting Schlup, 513 U.S. @ 315).

In order to pass through Schlup's gateway, and have an otherwise barred constitutional claim heard on the merits, a petitioner must show that, in light of all the evidence, including evidence not introduced at trial, "it is more likely than not that no reasonable juror would have found petitioner guilty beyond reasonable doubt." Schlup, 513 U.S. @ 327.

A petition need not show that he is "actually innocent" of the crime he was convicted of committing; instead, he must show that "a court cannot have confidence in the outcome of the trial." Carriger, 132 F.3d @ 478 (quoting Schlup, 513 U.S. @ 316).

The competing or disputed evidence in this (the prosecution's) case is the testimony of three (3) cooperating witnesses (the actual perpetrators of the sole murder charge), two (2) of which testified that Robinson solicited from them the murder in his Chicago office after Christmas 1985.

In fact, Robinson was in Arizona and New Mexico continuously

from Christmas day 1985 until January 5, 1986, in business meetings. The perfect, independently verifiable alibi defense.

The cooperating witnesses [three (3) of them] testimony in three (3) trials, in 1989 (January), in 1991 (summer) and 1996 (summer), was the only prosecution evidence presented.

In fact, with post-trial(s) secured credible (3 licensed lawyers plus others affidavits) alibi witnesses sworn affidavit assertions and undisputeable alibi documentary physical evidence (train and car rental, hotel and motel records, ect.), Robinson sought to present (but Judge Posner, et al via restricted filer orders barred adjudication of same) this newly secured exculpatory alibi defense evidence.

There is a subtle **Schlup** distinction here. It is not required that a defendant prove he is actually innocent to pursue an out of time petition, only that the verdict is untrustworthy. **Majoy** re-directed the court's focus away from the defendant's guilt or innocence and places scrutiny where it belongs, on the new evidence.

Copies of the supporting official government documents, undeniable proof of Robinson's claims, may be found in Robinson's Appendix D, confirming the Appendix C assertions of fact and law.

Conclusion

In the case of **Wellons v. Hall**, 558 U.S. 220 (2010), the Supreme Court.....in a per curiam opinion reiterated the standard for granting a "GVR":

"A GVR is appropriate when intervening developments...reveal a reasonable probability that the decision rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears such redetermination may determine

the ultimate outcome of the matter...and in light of the unusual facts of the case, a redetermination may determine the ultimate outcome."

For all of the reasons set forth in the aforementioned Appendices A,B,C and D, the petition for Writ of Certiorari should issue.

Respectfully submitted,

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