

No. _____

Re: District Court No. 2:18-cv-00291-APG-NJK
CA No. 18-15546

**IN THE
SUPREME COURT OF THE UNITED STATES**

Omar Qazi

Petitioner-Appellant.

v.

THE STATE OF NEVADA, ADAM P. LAXALT,

Respondents-Appellees.

On Petition for Certiorari
From the United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Omar Qazi
N.S.D.C.
2190 E. Mesquite Ave.
Pahrump, Nevada
Proper Person

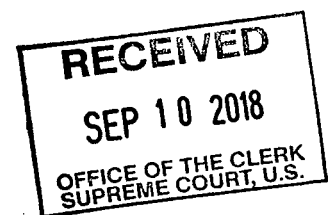


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I.

QUESTIONS PRESENTED FOR REVIEW

(1) Did the Federal District Court of Nevada have the jurisdiction to hear my 2254 Petition?; and (2) Should the certificate of appealability have been issued?

II.

JURISDICTIONAL STATEMENT

Petitioner filed a Petition for Writ of Habeas Corpus on February 04, 2013, and a Supplemental Petition on May 20, 2013, in the Eighth Judicial District Court, Clark County, Nevada (Case No. C273567). On October 19, 2016 the Court of Appeals of the State of Nevada filed an Order of Affirmance (Case No. 69085). On November 29, 2016, the Supreme Court for the State of Nevada filed a Remittitur. On April 06, 2017, Petitioner filed a pleading titled: Motion to Recall the Remittitur and/or Petition for Supreme Court Review and/or Petition for Rehearing (Hereinafter "Motion to Recall the Remittitur"). On July 11, 2017 the Supreme Court of Nevada denied the Motion to Recall the Remittitur.

On March 06, 2018 Petitioner filed an Amended Petition for Writ of Habeas Corpus 28 U.S.C. § 2254 (hereinafter "2254 Petition"), in the United States District Court for the District of Nevada (Case No. 2:18-cv-00291-APG-NJK). A copy of that filing appears at Appendix A; which also contains the Motion to Recall the Remittitur, including all Court Orders mentioned above. On March 09, 2018 the District Court filed an order that the 2254 Petition is dismissed without prejudice for

lack of subject matter jurisdiction, and further ordered that a certificate of appealability is denied. A copy of that Order appears at Appendix A. On June 01, 2018 the Ninth Circuit filed an Order denying the certificate of appealability (CA No. 18-15546). A copy of that Order appears at Appendix A. Petitioner now files this Petition for Writ of Certiorari to this U.S. Supreme Court. The jurisdiction of this Court is invoked under codified statute 28 U.S.C. § 1254(1).

III.

STATEMENT OF THE CASE

Petitioner brings this Writ of Certiorari to this Supreme Court because the judicial branch is fundamentally the critical backstop to defend rights of individuals against the excesses of political branches, See *INS v. Chadha*, 462 U.S. 919, 941 (1983). Particularly, the District Court and the Ninth Circuit had issued decisions in a way that conflicts with decisions of this Supreme Court, which will be shown herein.

Petitioner respectfully requests this pleading to be construed liberally, as I am not a professional lawyer, and as the Court is aware that Pro per pleadings are held to a less stringent standard than those drafted by lawyers. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Lastly, if further briefing or oral argument is ordered by this Court, Petitioner respectfully requests this Court to appoint Assistance of Counsel.

IV.

REASONS FOR GRANTING THE PETITION

A. THE PANEL DECISION CONFLICTS WITH ESTABLISHED DECISIONS

OF THE UNITED STATES SUPREME COURT, AND THE NINTH CIRCUIT
VEERED OFF FROM THE ACCEPTED AND USUAL COURSE OF
JUDICIAL PROCEEDINGS

The Supreme Court of Nevada has recognized that the “district courts have continuing jurisdiction to correct certain types of errors. See *Warden v. Peters*, 83 Nev. 298, 301, 429 P.2d 549, 551 (1967)” *Trujillo v. State*, 310 P.3d 594, 600, 129 Nev. Adv. Rep. 75 (2013). The Supreme Court of Nevada in *Trujillo* also concluded “that an important component of the district court's jurisdiction over a criminal case is to correct mistakes of fact that would have prevented a conviction and for which there is or was no other available legal remedy. This is so even after the defendant has completed serving the sentence imposed and is no longer in custody on the conviction being challenged.” *Id.* at 600.

Thereby, the state's district court has “continuing jurisdiction” even if I am “no longer in custody on the conviction being challenged.” Thus, under Nevada law the habeas that was originally filed was while Petitioner was in custody, and the release from custody does not bar the federal court from hearing the 2254 Petition because there was “no other available legal remedy,” and it would be a grave travesty of justice to ignore the clear violations of the constitution, as argued in the 2254 Petition. Significantly, there were violations of Due Process, the Attorney-Client Privilege, and the Double Jeopardy Clause .

This Supreme Court has held: “We have interpreted the statutory language as requiring that the habeas petitioner be “in custody” under the conviction or sentence

under attack at the time his petition is filed. See *Carafas v LaVallee*, 391 US 234, 238, 20 L Ed 2d 554, 88 S Ct 1556 (1968)." *Maleng v. Cook*, 490 U.S. 488, 490-91, 109 S. Ct. 1923, 104 L. Ed. 2d 540 (1989). This language appears to stand for the proposition that the habeas should be filed while the petitioner is in custody, and I was in custody when the original state habeas was filed. Thus, the federal jurisdiction should continue pursuant to *Carafas v LaVallee*.

Federal jurisdiction should also continue pursuant to the fundamental principles of Due Process. Simply said, it is absolutely unfair to conclude that a person with a sentence for perhaps ten years or more can get justice through the federal courts because he is still in custody, but not for someone with a lower felony sentence (e.g. 2 or 3 year sentence) just because he would complete his sentence by the time the Supreme Court of the State finally rules on the habeas petition.

Moreover, it is common knowledge that a felony sentence affects a person's future, like it is affecting my current federal gun case and sentencing. "[T]he 'in custody' requirement for federal habeas jurisdiction" is satisfied when a pro se petition, liberally construed, "can be read as asserting a challenge to [a current] sentence[], as enhanced by [an] allegedly invalid prior conviction." *Williams v. Edwards*, 195 F.3d 95, 96 (2d Cir. 1999) (quoting *Maleng*, 490 U.S. At 493-94); See also *Lackawanna County Dist. Attorney v. Coss*, 532 U.S. 394, 401, 121 S. Ct. 1567, 149 L. Ed. 2D 608 (2001) ("[B]ecause his § 2254 petition "[could] be read as asserting a challenge to the 1978 sentences, as enhanced by the allegedly invalid prior conviction, . . . respondent . . . satisfied the 'in custody' requirement for federal habeas

jurisdiction.")

Therefore, the current federal gun case is being enhanced by this invalid state conviction. Petitioner has already served over 43 months in federal custody on a gun charge because of this sole felony conviction from the state of Nevada. It is important to note that the federal trial judge (Andrew P. Gordon) who has been overlooking the federal gun case is the same judge who is assigned to this case in the district court. Thus, this judge is highly familiar with my arguments that the invalid state conviction is enhancing my current federal case. See, e.g. *United States v. Qazi*, 2017 U.S. Dist. LEXIS 88455 (D. Nev., June 8, 2017) (explaining the dispute that my "state court conviction is unlawful and a fraud, and if the court uses this conviction for any reason, including facing a finding of dangerousness, "it would only continue the fraud and corruption done by the State of Nevada.")

There should atleast be a limited exception such as in this case where the State of Nevada has evidently overreached their authority on several matters, leaving the Petitioner with no other avenues for correcting the illegal state conviction on the grounds stated in the Motion to Recall the Remittitur and in the 2254 Petition.

Moreover, the original Nevada state case where the state habeas was filed is still pending an appeal on a separate *Petition for Writ of Coram Nobis Based on Newly Discovered Evidence of Actual Innocence and/or to Withdraw Guilty Plea* in the Supreme Court of Nevada (Case No. 75524), regarding unrelated arguments which include a severe *Brady* violation and ineffective assistance of trial counsel. Thereby, the state still retains jurisdiction over the case and the state case is not

completely finalized. "This is so even after the defendant has completed serving the sentence imposed and is no longer in custody on the conviction being challenged."

Trujillo, supra.

B. CERTIFICATE OF APPEALABILITY

The certificate of appealability also should have been granted because Petitioner had made a substantial showing of the denial of constitutional rights. See *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) ("When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.")

V.

CONCLUSION

For the reasons mentioned above, Petitioner respectfully requests that this Supreme Court enter an order granting this Petition for Writ of Certiorari.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this document is executed without the benefit of a notary pursuant to NRS 208.165, as I am a prisoner confined in a private prison within this state of Nevada.

Executed on August 26, 2018.

Respectfully submitted,