

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

NICHOLAS DeANGELIS — PETITIONER
(Your Name)

vs.

N. VASQUEZ, - Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NICHOLAS DeANGELIS
(Your Name) Reg. No. 71691-004
Federal Correctional Institution
P.O. Box 9
(Address)

Mendota, California 93640
(City, State, Zip Code)

N/A
(Phone Number)

16 2018
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QUESTION(S) PRESENTED

- #1. The criteria in 28 U.S.C.S. §2244(d)(1) is identical to 28 U.S.C.S. §2255(f). The former per this courts holding in *McQuiggin v. Perkins*, 569 U.S. 383, 133 S.Ct. 1924; 185 L.Ed.2d 1019 (2013), gives State Prisoners Federal Habeas relief under "actual innocence" by providing a gateway to overcome procedural bar(s) or expirations limits. Is it a denial of due process for Federal Prisoners not to be afforded the same gateway for "actual innocence" under §2255(f) to overcome the same procedural bar(s) and expiration limits for Federal habeas relief?
- #2. Does a Circuit Court of Appeals inflict cruel and unusual punishment in violation of the Eighth Amendment by denying a 28 U.S.C.S. §2241 Appeal of "actual innocence" based upon nonexistent offenses due to a SCOTUS decision that was retroactive to appellee which made his 240 month sentence illegal?

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:

FOR N. VASQUEZ, Solicitor General of the United States
 Department of Justice - Room 5614
 950 Pennsylvania Ave., N.W.
 Washington, D.C. 20530-0001

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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 is unpublished.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 2017 U.S. Dist. LEXIS 42765; 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 _____ April 6, 2018

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

CONSTITUTION OF THE UNITED STATES OF AMERICA

AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C.S. §2244(d)(1) Applicable to State Prisoners §2254 Habeas

§2244(d)(1), A 1-year period of limitations shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgement of a State court. The limitation period shall run from the latest of-

- (A) the date on which the judgement became final by the conclusion of direct review or the expiration of the time seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgement or claim is pending shall not be counted toward any period of limitations under this subsection.

28 U.S.C.S. §2255(f) Applicable to Federal Prisoners §2255 Motion

§2255(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

- (1) the date on which the judgement of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONT.)

(4) collateral review; or
(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

McQUIGGIN v. PERKINS
569 U.S. 383; 133 S.Ct. 1924; 185 L.Ed.2d 1019
May 26, 2013 Decided

DECISION

Actual innocence, if proved, held to be gateway through which State prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28 U.S.C.S. §2244(d)(1)'s limitations period.

UNITED STATES v. SANTOS
553 U.S. 507, 128 S.Ct. 2020, 170 L.Ed.2d 912
June 02, 2008 Decided

DECISION

In federal criminal case involving alleged illegal gambling business, term "proceeds" in money-laundering provision (18 U.S.C.S §1956(a)(1) held-by majority result without majority opinion-not to mean "receipts" or "gross receipts."

CONSTITUTION OF THE UNITED STATES OF AMERICA
AMENDMENT 8

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

STATEMENT OF THE CASE

In a Second Superseding indictment Petitioner Nicholas DeAngelis was indicted for fifty-one (51) various offenses on October 22, 2003.

At trial Petitioner was convicted on all fifty-one (51) counts, and on February 5, 2005 Petitioner was sentenced to a total of three hundred (300) months applicable in the following terms; Counts 1 through 17, 18 through 21, 41 through 46, and 47 through 50 were allotted terms of 54 months each to be served concurrently. On counts 22 through 40, the court imposed concurrent terms totaling 240 months to be served consecutively to the 54 month term(s), and a term of six (6) months for count 51 to be served consecutively.

For the purpose of this Petition only counts 22 through 40 with a term of 240 months are applicable to the consideration of this court.

Count 22 was a conviction under 18 USC §1956(h), "Conspiracy to committ money laundering"; Counts 23-30 were convictions under 18 USC §1956(a)(1)(A), "Money laundering promotion"; and Counts 31-40 were convictions under 18 USC §1956(a)(1)(B), "Money laundering concealment".

On June 2, 2008 this court handed down it's decision in *United States v. Santos*, 553 US 507, 128 S.Ct. 2020, 170 L.Ed.2d 912.

This courts holding in *U.S. v. Santos*, made Santos retroactive to Petitioners 2005 convictions on counts 22-40, which now pursuant to Santos were convictions for nonexistent offense(s)!

In February-March 2014 Petitioner became aware of *United States v. Santos*, and this courts holding in said case which made his convictions under counts 22-40 nonexistent offense(s).

In April 2014 Petitioner filed a 28 USC §2241 habeas corpus for immediate release under the Santos decision to the United States District Court for the Eastern District of Texas in the District in which he was incarcerated.

Petitioner's convictions became final on March 19, 2007. Petitioner had until March 20, 2008 to file his "first 28 USC §2255 Motion". *United States v Santos*, 553 US 507, was not decided until June 2, 2008. Well over two (2) months after Petitioners deadline to file a "First §2255 Motion".

Therefore, under the holdings in, *Reyes-Requena v. United States*, 243 F.3d 893 (5th Cir. 2001), 28 USC §2241 was applicable because the Circuit Court found 28 USC §2255 incorporated §2244(b)(3)(C) and §2244(b)(4).

STATEMENT OF CASE (CONT.)

As brought to the courts attention, Petitioners case is analogous to *Garland v. Roy*, 615 F.3d 391 (5th Cir. 2010), where the Appeals Court reversed the dismissal of Garland's §2241 by the District Court on the issue of Garland's convictions being nonexistent convictions due to this courts decision in *U.S. v. Santos*, 553 US 507.

Under the guidance of *Reyes-Requena*, 243 F.3d 893, Petitioner also setforth that "actual innocence" could be brought forth at anytime per *McQuiggin v. Perkins*, 569 U.S. 383, 133 S.Ct. 1924; 185 L.Ed.2d 1019 (2013), pursuant to his reading that 28 USC §2255 incorporated 28 USC §2244(d)(1); since the Fifth Circuit Court had found in *Reyes-Requena v. U.S.*, 243 F.3d 893, that §2255 incorporated §§2244(b)(3) (C) and 2244 (b)(4), and therefore should afford Petitioner relief under *McQuiggin v. Perkins* of his "actual innocence" for a non-criminal nonexistence crime under *Santos*.

The District Court for the Eastern District of Texas Dismissed Petitioner's §2241 Writ of Habeas Corpus by stating he should have filed a §2255 Motion.

On Appeal to the Fifth Circuit Court of Appeals the Fifth Circuit AFFIRMED the District Courts Dismissal and stated in their ORDER that *McQuiggins v. Perkins*, 569 U.S. 383, 386 is UNAVAILING.

REASONS FOR GRANTING THE PETITION

By GRANTING this Petition it would afford this Honorable Court the opportunity to correct an injustice and disparity in all Eleven Circuits throughout the United States. Which is creating a SPLIT in Federal Courts relief on "actual innocence" for State Prisoners verse Federal Prisoners for Federal Habeas Relief.

Where State Prisoners proving "actual innocence" are afforded Federal Habeas relief regardless of any impediment procedural bar or expiration of limitation periods setforth in 28 U.S.C.S. §2244(d)(1).

Federal Prisoners have no way to overcome 28 U.S.C.S. §2255(f) which is the Federal version of the State Prisoners 28 U.S.C.S. §2244(d)(1) and identical to §2255(f).

However, this court in *McQuiggin v. Perkins*, 569 U.S. 383, afforded State Prisoners a "Gateway" to overcome the procedural bar(s) or expiration of limitations, under an "actual innocence" claim if proven, setforth by §2244(d)(1).

All Eleven Circuits and all the Federal Courts allow State Prisoners this "gateway" to overcome the limits and boundries of 28 USC §2241(d)(1) per *McQuiggin v. Perkins*, 569 U.S. 383 for "actual innocence" if proven.

However, these same Federal District Courts are not allowed currently to afford Federal Prisoners an analogus "gateway" under 28 USC §2255(f) for actual innocence if proven due to §2255(f) procedural bar(s) or expiration of limitation periods.

Whereby this court would be Honorable in taking the opportunity in addressing this disparity and the implications of the Fifth Amendments Due Process between how State Prisoners can get a Federal Habeas granted under "actual innocence" due to this courts holding in *McQuiggin v. Perkins* providing a "gateway" under 28 U.S.C.S. §2244(d)(1), and Federal Prisoners are denied Habeas in Federal Courts on "actual innocence" because Federal Prisoners do not have a "gateway" for 28 U.S.C.S. §2255(f), to get around §2255(f)'s boundaries and limitation periods like State Prisoners have for 28 U.S.C.S. §2244(d)(1) due to *McQuiggin v. Perkins*.

To also set precedent that reviewing courts actions can violate the Eighth Amendment of Cruel and Unusual Punishment by affording no relief to a Petitioner who has clearly proven they are imprisoned on "nonexistent offense(s)" and are being illegally deprived of their life and liberty in violation of the Fifth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: May 9th, 2018

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