

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

Lewis Waters — PETITIONER  
(Your Name)

vs.

Charles Lockett — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - D.C. Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lewis Waters #38699-007  
(Your Name)

USP Coleman II      P.O. Box 1034  
(Address)

Coleman, FL. 33521  
(City, State, Zip Code)

N/A  
(Phone Number)

### QUESTION(S) PRESENTED

Where the Fifth Amendment guarantees that no person shall be held to answer for a crime unless upon presentment of a Grand Jury's indictment, does the U.S. Court of Appeals violate this Constitutional safe guard when it uses an unindicted crime to deny the appeal of a petitioner's Habeas petition?

Also, when the U.S. Court of Appeals is notified, by Petitioner, that the District Court's denial of said petition involved the use of an unindicted crime, should the Court of Appeals then investigate the claim so as to not incorporate the same unindicted crime in its own decision?

Does the U.S. Court of Appeals have the jurisdiction to review a D.C. Court of Appeals' decision if that decision renders an opinion contrary to Supreme Court precedent and \_\_\_\_\_ cannot be separated from the facts that the U.S. Court of Appeals must consider in order to hear the actual case before it.

## 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:

---

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3-4
STATEMENT OF THE CASE .....	5-6
REASONS FOR GRANTING THE WRIT.....	7-8
CONCLUSION.....	9

## INDEX TO APPENDICES

APPENDIX A U.S. Court of Appeals' decision

APPENDIX B D.C. District Court's decision

APPENDIX C D.C. Court of Appeals' decision

APPENDIX D

APPENDIX E

APPENDIX F

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

<u>Stirone v. U.S.</u> , 361 U.S. 212.....	5-7
<u>Cole v. Arkansas</u> , 333 U.S. 196.....	6
<u>Pinkerton v. U.S.</u> , 328 U.S. 640.....	7
<u>Waters v. Lockett</u> , 896 F.3d 559.....	1
<u>Waters v. Lockett</u> , 956 F. Supp. 2d 109.....	1
<u>Randolph v. U.S.</u> , 12 A.3d 1173.....	1
<u>Williams v. Martinez</u> , 586 F.3d 995.....	8

### STATUTES AND RULES

28 U.S.C. §2254(d)(1).....	4,5,8
D.C. Code §23-110(a).....	3,8
D.C. Code 23-11(g).....	3,8

### OTHER

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

**[x] 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 Waters v. Lockett, 896 F.3d 559; 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 Waters v. Lockett, 956 F. Supp. 2d, or,<sup>109</sup>  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

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

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

reported at Randolph v. U.S., 12 A.3d 1173; or,  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

The opinion of the N/A 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 24, 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**: N/A

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### Fifth Amendment of the United States Constitution:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury."

---

### Fourteenth Amendment of the United States Constitution:

"No State shall make or enforce any law which shall abridge the privileges or immunities or citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### D.C. Code 23-110(a):

(a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside or correct the sentence.

### D.C. Code 23-110(g):

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

### 28 U.S.C. §2254(d)(1):

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.

## STATEMENT OF THE CASE

The Petitioner in this case, Lewis Waters, was convicted of roughly two dozen charges in the District of Columbia arising out of events that occurred in 2005. Waters challenged his convictions in the D.C. Court of Appeals which affirmed his sentence. ~~However, without addressing one of his issues concerning the trial court using an unindicted robbery offense as the object of its Pinkerton liability instruction, thus constructively amending his indictment. Instead the DCCA misconstrued Petitioner's issue and stated that a Pinkerton issue does not amend indictment absent a formal charge of conspiracy in the indictment - an issue Petitioner had not even raised.~~

As a result, the DCCA's denial created case law that validates the use of Pinkerton co-conspirator liability as a means of introducing unindicted conduct by making the unindicted conduct the object of the conspiracy.

Next Waters petitioned the District Court to issue a writ of habeas corpus under 28 U.S.C. §2254. Waters argued that his appellate counsel before the DCCA provided ineffective assistance, but more importantly that the DCCA gave a decision contrary to Supreme Court precedent where it acknowledged the fact that Waters was not charged with the robbery that served as the basis of his conviction yet affirmed his conviction without reversing his conviction and dismissing his indictment in conformity to the Supreme Court's decision in Stirone v. United States, 361 U.S. 212, a case directing lower courts on what to do when a trial court amends an indictment.

Subsequently, the District Court denied Waters' habeas petition, and instead of correcting the DCCA's error which contradicted Supreme Court's ruling in Stirone v. United States, the District Court stated that it did not have the jurisdiction to address decisions made by the DCCA and then went on to legitimize the unindicted crime by incorporating it into its Statement of Facts and using it as one of the rationales for denying Waters' habeas petition. Waters filed a Notice of Appeal with the U.S. Court of Appeals and was granted a Certificate of Appealability on the question of whether the appellate counsel was ineffective, but not on the constructive amendment issue.

Waters prepared his Brief on the granted question, but also informed the Court that because the District Court used facts of an unindicted crime as a means of denying his petition the legitimacy of his hearing in the U.S. Court of Appeals would become tainted and contrary to the Supreme Court's ruling in Cole v. Arkansas, 333 U.S. 196, as well as Stirone, because the Court of Appeals would be relying on the same unindicted facts as did the District Court and the D.C. Court and the trial court below it.

In the end, the U.S. Court of Appeals refused to correct the District Court's error of considering and incorporating an unindicted conspiracy to rob Mr. Hargrove into its decision by stating it lacked jurisdiction and instead considered and relied upon the unindicted robbery conspiracy all throughout its opinion by constantly referring to Waters and his "co-conspirators" when providing rationale for its denial.

## REASONS FOR GRANTING THE PETITION

Petitioner respectfully asks this Honorable Court to grant the instant petition because the U.S. Court of Appeals' reliance on facts of an unindicted crime in order to decide Petitioner's case has sanctioned a departure by the lower court so anti-constitutional that it would set illegal precedent and create a loop hole that a lesset court or prosecutor could use to circumvent the grand jury's power to indict crimes as it so chooses.

By upholding the D.C. Court's decision to make an unindicted crime the object of its Pinkerton co-conspirator liability instruction the U.S. Court of Appeals' ruling essentially destroys the Fifth Amendment's grand jury clause by bolstering the notion that because a theory of co-conspirator liability under Pinkerton v. United States, 328 U.S. 640 does not have to be charged in the indictment then the object of the conspiracy instruction does not have to be charged as well.

This is an issue of national impotence where it can be certain citizens, not to mention those better versed in the law, would be outraged if the federal courts suddenly decided, by fiat, to start conducting trials without first having a grand jury consider the government's evidence. To embark on such a course would gravely threaten the very legitimacy of the federal tribunals.

Also, the U.S. Court of Appeals' refusal to review the D.C. Court's disregard of the Supreme Court decision in Stirone v. U.S. on the basis of jurisdiction caused the same disregard of

## REASONS FOR GRANTING THE PETITION

the Supreme Court to be transferred to its own opinion. The U.S. Court of Appeals' statement that it nor the District Court had any jurisdiction to review the ruling by the DCCA is in conflict Court's decision in Williams v. Martinez, 586 F.3d 995 which states that the District Court has jurisdiction to review a DCCA decision if the decision falls under §2254(d)(1) and the local remedy under D.C. Code 23-110(a) and D.C. Code 23-110(g) is inadequate and ineffective. The conflict between the District Court and the U.S. Court of Appeals needs to be resolved.

---

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lewis Waters

Date: 10-17-18