

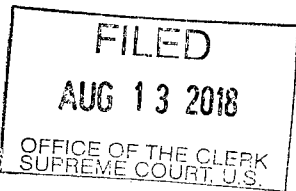
18-6639

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Stuart Dizak

— PETITIONER

(Your Name)

VS.

Brandon Smith, Superintendent

— RESPONDENT(S)

REPRESENTED BY LISA E. FLEISCHMAN, ANG

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court, Second Circuit

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

PETITION FOR WRIT OF CERTIORARI

Stuart Dizak, 09B3893

(Your Name)

Mid-State Correctional Facility

P.O. Box 2500

(Address)

Marcy, NY 13403

(City, State, Zip Code)

315 768 8581

(Phone Number)

August 13, 2018

QUESTION(S) PRESENTED

1. The state court failed to return defendant to the courtroom upon receipt of two substantive jury notes; the second note requesting the definition of conspiracy, of special concern as the actual charge, conspiracy, had been converted to a non-existent kidnapping throughout the trial. The first note, requesting all permissible exhibits was complied with, but concealed from defendant, counsel, transcript and court record.
2. The actual charge, conspiracy, was converted to a far more heinous and non-existent crime, kidnapping, without correction by the court or defense counsel.
3. An inaudible wire recording (CD) and replacement testimony by a jailhouse informant. That inmate had been exposed committing perjury after testifying that he was not receiving anything in return for his testimony. After my conviction his six open charges, disappeared from his record.
4. Actual Innocence; I was convicted of a fabricated and non-existent crime. I was also convicted of solicitation, even though that charge had never been addressed at any time during the trial. If there was never any crime committed, I have to be innocent.

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 |
| STATEMENT OF THE CASE | 4 |
| REASONS FOR GRANTING THE WRIT | 5 |
| CONCLUSION..... | 6 |

INDEX TO APPENDICES

| | |
|------------|---|
| APPENDIX A | October 18, 2017, motion for COA dismissed by 2nd Ciec |
| APPENDIX B | May 11, 2017, Denial by Western District, NY |
| APPENDIX C | January 3, 2018, denial of motion to submit exhibits with motion for reconsoderation en banc |
| APPENDIX D | March 16, 2018, denial of motion fro reconsideration en banc |
| APPENDIX E | |
| APPENDIX F | |

OPINIONS BELOW

TABLE OF AUTHORITIES CITED

| CASES | Previously provided to Case Analyst and Lisa E. Fleischmann, AAG | Malissa Blalock PAGE NUMBER |
|-------|---|--------------------------------|
|-------|---|--------------------------------|

| STATUTES AND RULES | Previously Provided to Case analyst and Lisa E. Fleischmann, AAG, NY |
|--------------------|---|
|--------------------|---|

| OTHER | Court Reporter's Timeline/comparison against transcript and relevant trial transcript pages; jury notes #1 and #2, failure to return defendant to courtroom. Provided to Case analyst and Lisa E. Fleischmann, AAG |
|-------|---|
|-------|---|

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. WL 6032458

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

☒ reported at 2017 WL 1953136; 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 OCTOBER 18, 2017

☐ 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: MARCH 16, 2018, and a copy of the order denying rehearing appears at Appendix B.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including AUGUST 13, 2018 (date) on JULY 27, 2018 (date) in Application No. 17A 1420

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

See documents previously provided to case analyst , Melissa Blalock:
Violation of the 5th, 6th, and 14th amendments, right of presence
Cr. Pr. Rule 43a

Actual Innocence

Actual Crime charges, conspiracy, replaced with a non-existent kidnapping

Inaudible wire CD along with replacement testimony, ^{admitted into evidence} by jailhouse informant who had been exposed committing perjury in that he was not receiving anything in return for his testimony. (After my trial his six open charges, including three felonies, "disappeared" from his record.)

STATEMENT OF THE CASE

On October 20-23, 2009 I went on trial accused of two counts of conspiracy to commit murder and two counts of soliciation. I was found guilty of all charges. This even though the actual charge, conspiracy, had been replaced throughout the trial with a non-existent kidnapping and soliciation never addressed at all.

During deliberations, the jury sent out two notes, the first, requesting the exhibits, complied with, but concealed from defendant, counsel, transcript, and court record. The second, unresponded to, requesting the definition of conspiracy (Possibly because that charge had never been addressed at any time during the trial) I was not recalled to the courtroom for either jury note.

Actual Innocence; The actual charge, conspiracy, had been replaced with a non-existent kidnapping. There was not a shred of legitimate evidence; replacement testimony as to the alleged "murder for hire" plot as the wire CD became inaudible. This from a jailhouse informant who had been exposed committing perjury after he testified twice over, that he was not getting anything in return for his testimony. After my conviction his six open charges, including three felonies, "disappeared" from his record.

My ex-wife testified that she could recognize my handwriting on five of the prosecutor's primary exhibits as a result of the many, many letters I had sent her. The prosecutor was unable to provide copies of those letters to the defense as directed by the court. The reason being I had never sent a single letter to her, before, during or after our marriage. The only purpose of either of the above was as an illicit means to an illicit end.

I can supply this court with clear and convincing proof that my trial was the result of a personal vendetta by two individuals, one an ex-girlfriend, the other a now ex-judge..

REASONS FOR GRANTING THE PETITION

1. Failure to return defendant to the Courtroom upon receipt of two substantive jury notes, the first concealed from defendant, counsel, transcript , and court record, a violation of the 5th, 6th and 14th amendments.

I have provided proof of intentional concealment by the trial judge. I understand that may be a violation of federal law.

2. Actual Innocence; be it conspiracy or kidnapping, no such crime ever existed. There was not a shred of legitimate evidence, nor any chain of evidence with regard to the inaudible wire CD or two altered maps introduced and accepted into evidence after my ex-wife testified that they were in my handwriting. Withouther testimony, and the inaudible CD being accepted into evidence, along with replacement testimony, the prosecutor had absoluely no case.

If the charge I was convicted of, be it conspiract or the conversion to kidnapping, were non-existant, by default I have to be innocent.

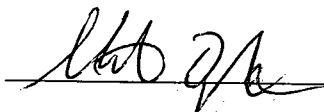
Actual innocence, over nine years in prison for a non-existant crime; most certainly of national interest.

3. In Dizak V. McAuliffe, the court's decision not only conflicts with other court's decisions, it conflicts with its own prior decisions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

 _____

Date: 8/13/18