No. _____

IN THE

Supreme Court of the United States

MICHAEL DEONTRAY WILLIAMS,

Petitioner,

v.

J. SOTO, WARDEN,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The only question in deciding whether to grant a Certificate of Appealability ("COA") is whether reasonable jurists could disagree with the district court's resolution of the claims. The Justices of this Court have long disagreed whether a claim of actual innocence is cognizable in federal habeas. Yet the Ninth Circuit denied a COA on Petitioner's actual innocence claim, finding it foreclosed by this Court's precedent. Did the Ninth Circuit's denial of a COA contravene this Court's ruling regarding the standard for granting a COA?

This Court noted in *Herrera v. Collins,* 506 U.S. 390, 417 (1993) that it is "scarcely logical" to interpret the Constitution as prohibiting the execution of innocent people while condoning life sentences for the innocent. The district court here found that substantive claims of innocence, if viable, would only apply in the capital context. Did the Ninth Circuit's silent adoption of the district court's finding contravene *Herrera*?

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PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Michael Deontray Williams ("Williams") petitions this Court for a writ of certiorari to review the order of the United States Court of Appeals for the Ninth Circuit denying a Certificate of Appealability ("COA") in his case.

OPINIONS BELOW

Williams attaches the Ninth Circuit's COA Order as Appendix A (App. at 1); the district court's judgment and denial of a COA as Appendix B (App. at 2); the district court's order adopting the magistrate judge's report and recommendation to dismiss the petition as Appendix C (App. at 3); and the magistrate judge's report and recommendation as Appendix D (App. at 4-77). The California Supreme Court summarily denied Williams's petition claiming actual innocence. (App. E at 78.)

JURISDICTION

Williams is in state custody at the California State Prison in Sacramento, California. Williams filed an application for leave to file a second or successive petition in the Ninth Circuit, which the court granted. Williams then filed a habeas corpus petition under 28 U.S.C. § 2254 challenging the constitutionality of his conviction and sentence in district court. The district court denied the petition with prejudice on the merits and denied a COA. (App. B at 2.) The Ninth Circuit also

denied a COA. (App. A at 1.) This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is filed within 90 days after the entry of judgment pursuant to Supreme Court Rule 13.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No state shall make or enforce any law which shall abridge the privileges or immunities of 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."

The Eighth Amendment to the United States Constitution provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

STATEMENT OF THE CASE

At Williams's 1997 trial, Kimberly Donson, the manager of the Northpointe Apartment complex, testified that while walking from the rental office of the complex to her apartment, she saw a Black man toss a gun into a bush. (1 RT 53-54.) Donson identified Williams as the gun-tosser. (1 RT 131.) The defense presented one witness, Catrina Cay Moore. She testified that while she was in the parking lot, she never observed Williams with a gun. (1 RT 181.) The jury found Williams guilty of being an ex-felon in possession of a firearm and the court sentenced him to 25 years to life in prison. (CT 121, 144.)

Fifteen years after his trial, while incarcerated at the California State Prison in Los Angeles, Williams obtained a declaration from James Dale admitting that he

tossed the gun into the bush in the Northpointe Apartments the night of Williams's arrest. Shortly thereafter, Williams obtained a declaration from witness Royce Houston, who corroborated Dale's declaration. (Ex. 7, R. Houston Decl.) By then, Williams had sought and failed to obtain habeas relief in federal court once. He filed a 28 U.S.C. § 2244(b)(3) application to file a second or successive petition based on a claim of actual innocence, which the Ninth Circuit granted.

The district court held an evidentiary hearing on whether Williams could satisfy the two prongs of § 2244(b)(2), which require a showing of clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense, and diligence in discovering that evidence. § 2244(b)(2)(B)(i), (ii); (Dist. Ct. Case No. 5:12-cv-00625-MWF-FFM, Docket (Dkt.) No. 41.) At the hearing, Williams himself, along with witnesses James Dale, Royce Houston, Elijah Gilmore, and Nathan McCullough testified for Williams. (Dist. Ct. Case No. 5:12-cv-00625-MWF-FFM, Dkt. No. 84). Dale and Houston testified that Dale tossed the gun into the bush. (1 EH 79, 167.) Williams, Gilmore, and Houston testified that Williams arrived in the parking lot shortly before his arrest. (2 EH 14.) Williams remained close to the car he arrived in and didn't go anywhere near the area where the gun had been tossed. (1 EH 10-14, 1 EH 131-36.) The testimony established that Williams never admitted to committing the offense and that he continually asserted his innocence. (1 EH 22-40.) Respondent presented no witnesses.

THIS COURT SHOULD GRANT THE WRIT

This Court should grant the writ because the Ninth Circuit's refusal to grant a COA "conflicts with relevant decisions of this Court." Supreme Court Rule 10(c). Here, the Ninth Circuit, in refusing to grant a COA, found that jurists of reason would not find it debatable whether Williams's petition, which, in part, sought relief on a claim of actual innocence, did not "state a valid claim of the denial of a constitutional right." (App. A at 1.) The Ninth Circuit's order conflicts with relevant decisions of this Court regarding the standard for granting a COA.

The Ninth Circuit also refused to review a finding by the district court that to the extent substantive actual innocence claims are cognizable, it would "be applicable only in capital cases." (App. D at 46.) The order thus conflicts with the majority opinion in *Herrera v. Collins,* 506 U.S. 390 (1993), noting that to the extent substantive innocence claims are cognizable, they are cognizable in both the capital and noncapital case context. For these reasons, this Court should grant the writ.

A. The Ninth Circuit's refusal to grant a COA contravenes this Court's rulings regarding the standard for granting a COA.

1. The COA standard requires only a showing that jurists of reason could disagree with the issues presented

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") requires federal habeas petitioners to seek and obtain a COA to appeal a district court's denial of a petition. *Miller-El v. Cockrell,* 537 U.S. 322, 327 (2003); 28 U.S.C. § 2253(c)(2). "At the COA stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are

adequate to deserve encouragement to proceed further." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017) (citing *Miller-El*, 537 U.S. at 327.) The COA inquiry "is not coextensive with a merits analysis." *Id.* The threshold question should be decided "without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Id.* Therefore, a petitioner need not show "that the appeal will succeed" and the "court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief." *Miller-El*, 537 U.S. at 337. In some instances, "a COA will issue . . . where there is no certainty of ultimate relief." *Id.*

2. Jurists of reason do disagree whether substantive claims of innocence are cognizable in federal habeas.

In *Herrera v. Collins*, this Court analyzed whether actual innocence is a freestanding constitutional claim. 506 U.S. at 417. A majority of Justices concluded without deciding that "a truly persuasive demonstration of 'actual innocence'" would render the execution of a defendant unconstitutional and warrant federal habeas relief. *Id.* But the majority denied relief because petitioner Herrera's showing of innocence fell "far short" of the theoretical standard. *Id.* at 418-19. A different majority of Justices would have explicitly held that executing an innocent person would violate the Constitution. *Herrera*, 506 U.S. at 419 (O'Connor, J., joined by Kennedy, J., concurring) ("[E]xecuting the innocent is inconsistent with the Constitution"); *id.* at 429 (White, J., concurring) ("I assume that a persuasive showing of 'actual innocence' . . . would render unconstitutional the execution of petitioner in this case"); *id.* at 430 (Blackmun, J., joined by Stevens, J. and Souter,

J., dissenting) ("Nothing could be more contrary to contemporary standards of decency . . . than to execute a man who is actually innocent.").

Herrera did not foreclose the possibility that substantive claims of innocence could warrant relief. In 2006 and, again, in 2013, this Court reiterated that it had not resolved whether a prisoner is entitled to relief based on actual innocence. *House v. Bell*, 547 U.S. 518, 554-55 (2006); *McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013). In 2009, petitioner Troy Davis filed a petition for writ of habeas corpus based on actual innocence. *In re Davis*, 130 S. Ct. 1, 1 (2009). This Court transferred the petition, which it treated as an original petition filed pursuant to Rule 20 of the Rules of the Supreme Court of the United States, to district court and ordered the court to "receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes petitioner's innocence." *Id.*

In the only dissent, Justice Scalia, joined by Justice Thomas, argued that AEDPA prohibited federal courts from reversing lower courts absent a violation of clearly established federal law. *Id.* at 3. The dissent argued that the order for an evidentiary hearing sent the district court on a "fool's errand," given that the Supreme Court "has not once accepted as valid" a freestanding claim of innocence. *Id.* In his concurrence joined by Justice Ginsburg and Justice Breyer, Justice Stevens posed three theories to rebut the dissent. First, the concurrence argued that the district court could find that Congress did not intend for AEDPA's limitations on relief to be imposed so rigidly in cases raising compelling claims of actual innocence.

Id. at 1. The concurrence further argued that even if AEDPA did apply, AEDPA itself would "arguably [be] unconstitutional to the extent it bars relief for a death row inmate who has established his innocence." *Id.* Finally, the concurrence argued that clearly established federal law did support a substantive innocence claim. *Id.* at 1-2.

The myriad positions articulated in the majority, dissenting, and concurring opinions in *Herrera*, and the arguments set forth in the concurring and dissenting opinions in *Davis* demonstrate that jurists of reason do, in fact, disagree whether substantive claims of actual innocence are cognizable in federal habeas. Because there is disagreement, the Ninth Circuit erred in failing to grant a COA in Williams's case. Though the Ninth Circuit may have "phrased its determination in proper terms"—that jurists of reason would not debate whether the petition states a valid claim—it reached its decision "only after essentially deciding the case on the merits." *Buck*, 137 S. Ct. at 773. Because the Ninth Circuit's order conflicts with relevant decisions of this Court, the Court should grant a writ of certiorari.

B. Assuming that substantive innocence claims are cognizable, both capital and non-capital petitioners can raise them.

The district court found that even assuming a claim of actual innocence is cognizable, the claim "would be applicable only in capital cases." (App. D at 46.) Williams argued in his Motion for COA that actual innocence claims are cognizable in noncapital habeas cases. The Ninth Circuit did not reject the district court's finding; it simply found that Williams failed to state "a valid claim of the denial of a

constitutional right." (App. A at 1.) To the extent the Ninth Circuit affirmed the district court's finding, it erred.

The majority opinion in *Herrera* noted that this Court has "refused to hold that the fact that a death sentence has been imposed requires a different standard of review on federal habeas corpus." 506 U.S. at 405 (citing *Murray v. Giarratano*, 492 U.S. 1, 9 (1989) (plurality opinion)). It also found "scarcely logical" the idea that the Constitution could prohibit the execution of an innocent person while condoning life sentences for them. *Id.* Thus, as the Ninth Circuit observed, *Herrera* "suggest[s] equal treatment" between noncapital and capital cases. *Osbourne v. Dist. Attorney's Office for the Third Judicial Dist.*, 521 F.3d 1118, 1130 (9th Cir. 2009), *rev'd on other grounds, Dist. Attorney's Office v. Osbourne*, 557 U.S. 52 (2009). The Ninth Circuit's refusal to address the district court's erroneous finding that noncapital petitioners cannot assert freestanding claims of innocence thus conflicts with relevant decisions of this Court and this Court should grant a writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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