

9114-9012-3080-1329-5938-91
(11-30-18)

No: _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: DENNIS ROGER BOLZE
[Incarcerated]

On Petition for a Writ of
HABEAS CORPUS
[From a Manifest Miscarriage of Justice]

PETITION FOR WRIT OF HABEAS CORPUS

Prepared by and/or for
DENNIS ROGER BOLZE
Pro Se
FCC Coleman Low, Unit A-1
P.O. Box 1031
Coleman, FL 33521-1031

QUESTIONS PRESENTED FOR REVIEW

On June 2, 2008, the Supreme Court changed the law in United States v. Santos, 553 U.S. 507, 509 (2008). On May 20, 2009, Congress amended the Federal money-laundering statute to define the proceeds as being gross receipts effectively overriding Santos. (see; 18 U.S.C. §1956(c)(9)).

Almost immediately, after the Santos decision The United States District Court for the Eastern District of Tennessee (the same court that Bolze was convicted in months later) issued a Memorandum and Order in United States v. Thompson. The Court recognized the law changed under Santos. The Court believed that since the Sixth Circuit, at that time, had not spoken on Santos, the proper course of action was for the government to bare its burden at trial. Thompson went to trial and was found innocence of violating the money laundering statute under Santos. (See Attached Exhibit A, Doc. 95 PageID 202.

Across the heartland, other defendants also sought relief under Santos. Defendants in the Third, Fifth, Seventh, and Ninth Circuit were successful.⁻¹⁻ Their success created a framework of favorable cases for other defendants to consider in reaching informed strategic choices, including Bolze.

Bolze was arrested arrested and at arraignment, counsel was appointed to represent Bolze. Counsel immediately advised Bolze

FOOTNOTE 1: United States v. Shelburne, 563 F. Supp. 2d 601, 2008 U.S. Dist. LEXIS 86387 (W.D. Va., July 1, 2008); United States v. Herlund, 2008 U.S. Dist. LEXIS 98371 (N.D. Cal., Sept. 9, 2008); United States v. Achobe, 560 F. 3d 274 (5th Cir. Dec. 18, 2008); United States v. Lee, 558 F. 3d 638, 650 (7th Cir. Mar. 11, 2009); United States v. Smith, 622 F. Supp. 2d 693; 2009 U.S. Dist LEXIS 35222 (W.D. Va., Apr. 27, 2009).

to draft a plea. Bolze, a layman, was a Federal detainee at the Blount County Detention Center and was not permitted to visit or allowed to conduct any legal research. (See; Bolze v. U.S., 3:12-cv-473 (E.D. Tenn 2012) Doc. 110-2, Affidavits).

Bolze was indict on July 21, 2009 for operating a Ponzi scheme from "April 2002 through in or about December 2008," (see U.S. v. Bolze, 3:09-cr-0093 (E.D. Tenn 2009) Doc. 23, Indict; Doc. 43, Plea; and PSR).

Bolze had drafted a hand-written plea, pleading guilty to One-Count of money laundering (based on the Complaint) without any counsel's input or legal advice. Counsel's performance fell below an objective standard of reasonableness by failing to investigate Santos or even attempt any adversarial testing of the government's charges, before simply submitting the unknowing plea to the Government. When counsel submitted the initial plea, he began the "critical stage" of plea negotiations. After further negotiations, the Government on August 27, 2009, offered its version to counsel. The government's version also contained One-Count of Money-Laundering.

On September 2, 2009, the Sixth Circuit Court of Appeals rendered a decision in United States v. Kratt, 579 F. 3d 558, 566 (6th Cir. 2009).

Bolze would ultimately be convicted of all three Counts of money laundering pursuant to an unknowing plea. Bolze sentencing guidelines was enhanced under U.S.S.G. §2S1.1(b)(1)(A) based on the conviction under §1957. (See PSR).

The District Court sentenced Bolze to the high-end of the

resulting Guidelines range to 240 months imprisonment for the wire fraud charges and 87 months months (consecutive) for the conviction of the money laundering charges.

Bolze filed a timely 28 U.S.C. § 2255 seeking relief from counsel's egregiously deficient conduct. Bolze claimed that he was factually innocent of committing a violation of § 1957 under Santos in his petition.

Although the Court recognized this claim, the Court then determined that three Sixth Circuit decisions rendered after counsel's challenged deficient acts or omissions foreclosed any relief under Santos. (Doc. 145, Denial, PageID 2956).

The Court did not provide any analysis of Strickland's two prongs for ineffective assistance of counsel claims. The Court also did not provide analysis under Padilla, Lafler, or Frye where the claim involved an unknowing plea.

The habeas proceeding did not allow discovery, or submission of affidavits from trial counsel, or an evidentiary hearing in the reaching of the merits of the determination to deny relief.

The habeas proceeding committed a defect in the judicial proceeding by it mis-applied the law at the time of claim - a true ex post facto violation of due process. (see U.S. Const. art 1, § 10, cl 1).

Mr. Bolze went on to unsuccessfully appeal for a Certificate of Appealability and became barred from asserting actual innocence. His only opportunity is in a Writ of Habeas Corpus which has been suspended in the Court of Appeals for the Eleventh Circuit.

Mr. Bolze is deprived of the right to file a Writ of Habeas Corpus, based on a miscarriage of justice, only because he is now incarcerated in the State of Florida. On March 24th, 2017, the Eleventh Circuit of the United States Court of Appeals decided McMarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F. 3d 1076 (11th Cir. 2017)(en banc), where the Eleventh Circuit effectively suspended the Writ of Habeas Corpus to those with an actual innocence claims in three of the fifty States in the United States of America. Thus, Mr. Bolze presents for resolution, the questions that follow:

QUESTION ONE: Has the Eleventh Circuit of the United States Court of Appeals effectively suspended the Writ of Habeas Corpus, without Authoriztion, where the Court has overruled its entire line of Saving Clause precedents to narrow the circumstances under which a federal prisoner can proceed under 28 U.S.C. §2241?

QUESTION TWO: Does the difference between the Fourth and Eleventh Circuit decisions, concerning the Saving Clause interpretations, call for the exercise of this Court's Supervisory power, to the end that it may secure the equal protection of law?

QUESTION THREE: Has the Eleventh Circuit established a procedural framework, by reason of its design and operation, that made it highly unlikely in a typical case that a prisoner, with an actual innocence claim, would have a meaningful opportunity to challenge his conviction as a manifest miscarriage of justice?

LIST OF PARTIES

All Parties appear on the caption to the case on the cover page. The Petitioner, Mr. Dennis R. Bolze, is filing in a pro se capacity.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to United States Supreme Court Rule 29.6, Mr. DENNIS ROGER BOLZE, makes the following disclosure:

1). Mr. Bolze is not a subsidiary or affiliate of a publicly owned corporation; and

2). Mr. Bolze declares that there is not a public owned corporation, nor a party to the proceeding, that has a financial interest in the outcome.

By: Dennis Roger Bolze, pro se

TABLE OF CONTENTS

| | |
|---------------------------------------------------|------|
| Question Presented..... | ii |
| List of Parties..... | vi |
| Table of Contents..... | vii |
| Table of Authorities..... | viii |
| Statement of Jurisdiction..... | 1 |
| Constitutional Provisions..... | 2 |
| Statement of Case..... | 3 |
| Reasons for Filing in the U.S. Supreme Court..... | 4 |
| Reason to Grant the Writ..... | 7 |
| Conclusion..... | 9 |
| Proof of Service..... | 10 |

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES:

| | |
|----------------------------------------------------------------|----|
| Buck v. Davis, 137 U.S. 759, 773 (2017)..... | 6 |
| McQuiggin v. Perkins, 569 U.S. 383, (2013)..... | 7 |
| <u>United States v. Santos</u> , 553 U.S. 507, 509 (2008)..... | ii |

UNITED STATES COURT OF APPEALS:

| | |
|-----------------------------------------------------------------------------------------------------------|---|
| McCarthan v. Director of Goodwill Industries v. Suncoast 851 F. 3d 1076 (11th Cir. 2017)(en banc)..... | 6 |
| United States v. Wheeler, _____ F. 3d _____ (4th Cir. 2018).... | 7 |

UNITED STATES CODE:

| | |
|-------------------------|----------------|
| 18 U.S.C. §1343..... | ii, 3 |
| 18 U.S.C. §1957..... | ii, 3 |
| 28 U.S.C. §1651..... | 1 |
| 18 U.S.C. §2241..... | iv, 1, 4, 5, 7 |
| 28 U.S.C. §2242..... | 1 |
| 28 U.S.C. §2255..... | iv, 1, 4, 5, 7 |
| 28 U.S.C. §2244(e)..... | 7 |

RULES GOVERNING §2255:

| | |
|-----------------------------|---|
| 28 U.S.C. §2255 Rule 4..... | 7 |
|-----------------------------|---|

PETITION FOR A WRIT OF HABEAS CORPUS

Dennis Roger Bolze respectfully petitions for a Writ of Habeas Corpus so that he may be relieved of his un-constitutional sentence.

JURISDICTION

The United States Supreme Court has exclusive jurisdiction over this case for two reasons: (1) only this Court has the authority to resolve a conflict in Circuit Court's interpretation of the Saving Clause which has effectively suspended the Writ of Habeas Corpus; and (2) the Eleventh Circuit Court of Appeals has determined that 28 U.S.C. §2241 is unavailable to prisoners serving sentences that are un-constitutional regardless of their ability to satisfy the Second Successive Clause of 28 U.S.C. §2255.

Thus, the United States Supreme Court is the only court in which a prisoner so situated may seek relief. This Court's jurisdiction is established in the Rules of the Supreme Court of the United States under its Rule 20 for 28 U.S.C. §§1651, 2241, and 2242.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Mr. Bolze's Constitutional challenges are premised upon violations of the Fifth and Sixth Amendments to the Constitution of the United States. The Fifth Amendment provides that no criminal defendant maybe "[d]eprived of life, liberty, or property, without due process of law." The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to ... trial ... by an impartial jury..."

Mr. Bolze seeks relief from his detention because his conviction represents a manifest miscarriage of justice, that is not now cognizable under 28 U.S.C. §2255. Mr. Bolze shows that he is challenging the Eleventh Circuit's McCarthan decision under 28 U.S.C. §2241, as an unauthorized suspension of the Writ; (See; United States Constitution, Article One, Section Nine, Clause Two). "[T]he Privilege of the Writ of Habeas Corpus shall not be suspended unless when in cases of rebellion or invasion the Public safety may require it."

STATEMENT OF THE CASE

On July 21st 2009, a Federal Grand Jury in the Eastern District of Tennessee returned a Six-Count Indictment in Criminal Case Number 3:09-CR-0093.

The Indictment charged Mr. Bolze with Three-Counts of Wire Fraud in violation of 18 U.S.C. §1343 and Three-Counts of Money Laundering in violation of 18 U.S.C. §1957.

Mr. Bolze was found guilty pursuant to a plea agreement on November 9th 2009 without the benefit of any pre-trial discovery of the seized CAM business records, without any suppression motions or hearing(s) to test the Government's case of intent to commit a criminal act.

On August 26, 2010, Mr. Bolze was sentenced to 240 months imprisonment for the wire fraud conviction (Counts 1-3) and 107 months imprisonment for the money laundering conviction (Counts 4-6) for a total of 327 months followed by three-years supervised release.

Mr. Bolze filed a timely Notice of Appeal. His sentence was affirmed by the Sixth Circuit under Case Number 10-6243 on January 9, 2012. Petitioner also sought a certiorari in the United States Supreme Court. The High Court issued its denial on May 12th 2012 under Case No. 11-9767.

Mr. Bolze pursued collateral relief in a timely 28 U.S.C. § 2255 petition filed with the United States District Court for the Eastern District of Tennessee on September 10, 2012 under Case No. 3:-12-GV-00473.

Over three-years after the § 2255 was filed, on November

19th 2017, the habeas proceeding denied the §2255. The habeas proceeding's defect in reaching the merits of the determination of an actual innocence claim was caused by:

- 1). Not applying the correct legal standard, at the time, (July/August, 2009) and instead applied a standard that was reached after counsel's challenged conduct;
- 2). Not providing analysis of counsel's deficient performance surrounding the Santos claim;
- 3). Not providing analysis of whether counsel's acts or omissions prejudice Bolze;
- 4). Not providing analysis of whether counsel's acts or affected the outcome of the plea negotiations and the resulting plea;
- 5). Not providing analysis of whether Bolze did or did not enter into a knowing plea;
- 6). Not seeking a declaration from trial counsel to make a proper findings of fact;
- 7). Not allowing limited discovery in order for Bolze to prove his claims;
- 8). Not allowing the forum to prove his claim in the form of an evidentiary hearing to prove his innocence; and
- 9). Not assessing the law, at the time, of counsel's acts or omissions during plea negotiations through the exclusion of Padilla, Frye, and Lafler to reach the merits of the determination.

The habeas proceedings cabined its unreliable review on a limited examination of the record and its own knowledge or recollection of the prior proceedings. The events brought in the §2255 did not contradict the record of the files of the case and were all

occurrences that happened between trial counsel and Bolze, which were outside the courtroom and beyond the knowledge of the habeas review.

Finally, although Bolze did not seek a Certificate of Appealability in his §2255 petition, the District Court denied the Certificate of Appealability when it denied the §2255 petition.

Bolze filed a timely Application for a Certificate of Appealability in the Sixth Circuit under Case Number 15-6298 on August 10, 2016. It was denied.

Bolze filed a petition for an en banc rehearing on September 26, 2016, which was denied on January 5th 2017.

On March 9th 2017, a Writ of Certiorari was filed with this Court in Case No. 16-8401. The certiorari for a COA was denied on April 17, 2017 without comment.

On May 8th 2017, a Motion to Recall the Mandate was filed with the Sixth Circuit based on its denial of a COA to bring his claim of actual innocence to the Court's attention. The Clerk of the Court of Appeals would not file the motion stating "[i]n this case, it is closed."

Mr. Bolze was transferred to Florida in March of 2017 as the Eleventh Circuit Court of Appeals decided McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F. 3d 1076 (11th Cir. 2017)(en banc) that changed the law for habest corpus.

REASONS FOR GRANTING THE WRIT

This High Court should exercise its supervisory authority in Mr. Bolze's case to establish a National Standard concerning the application of the Saving Clause interpretation. Mr. Bolze is currently serving a sentence for conduct he did not commit, in violation of the Thirteenth Amendment.

Mr. Bolze previously filed for relief under 28 U.S.C. §2255. This claim is not now cognizable in 28 U.S.C. §2255, thus has now be left unresolved, due to the fact, that he is barred from filing for Habeas relief in Florida because of recent changes in Eleventh Circuit's Saving Clause interpretation. This Court has previously stressed, "[j]udges must be vigilant and independent in reviewing petitions for the Writ, a commitment that entails substantial judicial resources." (See; Harrington v. Richter, 562 U.S. 86, 91 (2011)). Reviewing capital cases which are a matter of life and death, this court has repeatedly demonstrated what a vigilant and independent review details. (See; e.g., Buck v. Davis, 137 U.S. 759 (2017) quoting Trevino v. Thaler, 569 U.S. ----, 133 S.Ct. 1911.

This Court should grant the Writ for two reasons; (1) it would set a National Standard for Saving Clause interpretation. Thus, settling the Circuit Courts split between the Eleventh and the Fourth Circuit, and (2) correct the manifest miscarriage of justice that imprisons an innocent man in violation of the Thirteenth Amendment.

REASON FOR FILING IN THE SUPREME COURT

Bolze is detained in violation of the Fifth, Sixth, and Thirteenth Amendment of the United States Constitution. This Court determined that "[a] prisoner otherwise subject to defenses of abusive or successive use of the Writ [of Habeas Corpus] may have his federal constitutional claim considered on the merits, if he makes a proper showing of actual innocence." (See; McQuiggin v. Perkins, 569, U.S. 383, 133 S.Ct. 1924, 185 L Ed 2d 1019 (2013)).

Bolze's detention stems from a conviction that resulted from a miscarriage of justice, an ex post facto violation, that is not now cognizable under 28 U.S.C. §2255.

Bolze, asserts, at the time, his lawyer submitted the plea drafted by Bolze - without an legal analysis - to make sure that Bolze was either innocence of or guilty of committing a violation of the money laundering statute, his employment fell below an objective standard of reasonableness under prevailing professional norms. Had counsel properly advised Bolze, he would have insisted on immediately advancing an adversarial testing of the money laundering charges as Thompson had in the very same court only months earlier.

When two defendants stand before the same court with the same issue (Santos) as Thompson and Bolze had, the Constitution guarantees taht both will have equal justice and protection under the law. If equal justice and protection is denied to one defendant because of counsel's deficient performance that result in additional prison time, while the other retains his innocence and has the ability to enjoy his liberty because of competent counsel - then this error

or clear defect in the judicial proceeding to reach the merits of the determination, affects the fairness, integrity, and public reputation of the habeas process.

This claim is not cognizable under 28 U.S.C. §2255. Therefore, Bolze's only opportunity for relief is under the 28 U.S.C. §2241 via the saving clause of §2255(e).

Under the Saving Clause of §2255(e), a prisoner may bring a habeas petition under §2241 if "[t]he remedy of [§2255] is inadequate or ineffective to test the legality of his detention." (28 U.S.C. §2255(e)). In McCarthy v. Director of Goodwill Industries - Suncoast, Inc., 851 F. 3d 1076 (11th Cir. 2017)(en banc), the Eleventh Circuit of the United States Court of Appeals overruled its entire line of Saving Clause precedent to hold that Federal prisoners can proceed under §2241 only when:

- (1) "[c]hallenging the execution of in sentence, such as deprivation of good time credits or parole determinations;"
- (2) "[t]he sentencing court was unavailable;" or
- (3) "[p]ractical considerations (such as multiple sentencing courts) might prevent a petitioner from filing a Motion to Vacate."

(Id., at 1092-93).

Mr. Bolze was incarcerated in the Fourth Circuit and ended up being transferred to Florida where the Eleventh Circuit resides. In the Fourth Circuit, under United States v. Wheeler, 2018 WL 107086 (4th Cir. 3/28/2018), the Court held that a prisoner may seek relief under a provision that applies when normal habeas law is "[in]adequate or ineffective to test the legality" of a conviction

or a sentence.

Notwithstanding, this Court's authority over matter of law that put the Fourth Circuit at odds with the Eleventh Circuit, the decision to narrow the reach of the Federal Habeas statute in the Eleventh Circuit leaves this Court as the only court which Mr. Bolze may seek relief from his [un]constitutional detention.

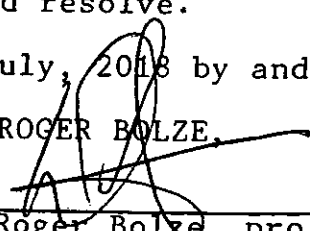
CONCLUSION

Mr. Bolze moves this Honorable Court to issue the Writ in the interest of justice. This Court's decision in this case will provide all courts around the nation a uniform standard by which the Saving Clause should be interpreted. It is because Mr. Bolze is being detained for a crime for which he is actually innocent based on the law and he is due relief thereof. Had the Federal Bureau of Prisons allowed Mr. Bolze to remain at FCI Williamsburg in South Carolina, rather than moving him to FCC Coleman in Florida, he would be eligible for relief under 28 U.S.C. §2241. This is a Circuit split that this High Court should review and resolve.

Submitted on this the 21st day of July, 2018 by and for

DENNIS ROGER BOLZE.

Signature:


Dennis Roger Bolze, pro se
Reg. No. 14825-067
FCC Coleman Low
P.O. Box 1031
Coleman, FL 33521-1031