

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael K. Henley, pro-se-Petitioner

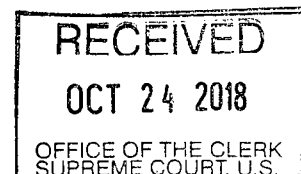
Vs.

United States of America-Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI
TO THE EIGHTH CIRCUIT UNITED STATES
COURT OF APPEAL.

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

- 1). Whether, the United States Appeal Court and District Court incorrectly decide the facts? (YES)

What Facts?

- (a). Whether the U.S Appeal Court and District Court incorrectly decide Mr.Henley, as being timed barred?
- (b). Whether the U.S Appeal Court and District Court over-look the plain error Rule 52(b) to Mr.Henley?
- (c). Whether the U.S Appeal Court and District Court over-look the petitioner showing of multiple Constitution Violations?
- (d). Whether the U.S Appeal Court and District Court Erred by denying Mr.Henley, application for a C O A ?
- (e). Whether the U.S Appeal Court and District Court decision conflict with the petitioner's supporting case laws?
- (f). Whether the U.S Appeal Court and District Court over-look the fraudulent plea agreement and illegal conviction of Mr. Henley, for a non-existing offense?
- (g). Whether the U.S Appeal Court and District Court over-look the Denial of Effective Assistance of Counsel, that resulted into Miscarriage of Justice to Mr.Henley?

(i)

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [x] 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:

United States District Judge Karen E. Schreier, 8th cir.

United States Magistrate Judge Veronica L. Duffy, 8th cir.

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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☒ is unpublished.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, C to the petition and is

☐ reported at _____; 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 August 8, 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

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STATEMENT OF THE CASE

Come's now, Mr. ~~Michael~~ K. Henley, pro-se litigant, in pursuance of a Writ of Certiorari, from the denial of his Application Requesting for a Certificate of Appealability, on or about August 8, 2018, under Appeal No. #18-1878, from the dismissal of his 28 U.S.C 2255 Motion, to vacate illegal conviction, and the denial of an Certificate of Appealability, in the United States District Court of South Dakota, (Western Division), under Civil Docket Sheet, case No. #5:18-cv-05005-KES, ib. Doc. Text(s). No. # 1 and 21. Both The United States District Court and Appeal Court, over-looked the Constitution Violations, forced upon Mr. Henley, that has resulted into a Eighth Amendment Violation and others (Cruel and Unusual Punishment), for the reasons that follows.....

ISSUE'S: SIXTH AMENDMENT VIOLATION(S)

LEGAL CLAIM

In Part: "In all criminal prosecution, the accused shall enjoy the right to a Speedy Trial, by an impartial jury of the State and District shall have previously ascertained by law and to have Effective Assistance of Counsel for his defense". etc.....

The U.S. District Court and Appeal Court, erred by concluding Mr. Henley, as time barred; see Appendix(s) A, B and C. Also see: Timeless of Motion; supporting case laws to Mr. Henley, claims.....

- (1). **TIMELESS OF MOTION: REVIEWABLE UNDER RULE 52(b) PLAIN ERROR (DE-NOVO)**
 - (a). 2255 precludes any possible "Time Bar" to a motion brought under it, in **Heflin v. United States**, 358 U.S. 415 (1959), the concurring opinion noted: The Statute 28 U.S.C 2255, further provides; "A motion maybe made at anytime," this simply means that as i Habeas Corpus, there is no Statute of Limitations, no res judicata and that the Doctrine of laches is inapplicable.

- (b). **Mckinney V. United States, 208 f2d 296, 298(D.C. cir.1953)**, reversed the District Court's, dismissal of a 2255 Motion, for being too late:

Mckinney's, present application for relief comes late in the day: he has served some fifteenth years in prison, but tardiness is irrelevant where Constitutional(issue's) is raised and where the prisoner is still confined, Mr. Henley, is confined and fundamental Constitutional Rights, has been Violated(Due-Process), which is guaranteed to Mr. Henley, by the 14th Amendment; see 29 months violations : **Barker V. Wingo, U.S. 514 92 s. ct 2182, 33 L.E.D 2d 101(1972)**. see; Mr. Henley, 6th Amendment Violations, undue delay under (Criminal case. No. #5:07-cr-50106-K# ES-1, et seq...

The U.S. District Court and Appeal Court over-looked, Mr. Henley, substantial showing of his 5th Amendment and 6th Amendment Constitution Rights Violated, mentioned in the following section(s) of this petition.....

(2). ADJUDICATIVE FACTS: JUDICIAL NOTICE REVIEWABLE.

- (a). On or about October 24, 2007, Mr. Henley, was purported indicted under case. No. #5: 07-cr-50106-KES-1, in re: (Criminal Docket Sheet), ib. Doc. Text. No. #1 (No-Initial Appearance Applied the following day), under Fed. R. Crim. P. 5(a) and 5(c).
- (b). On or about June 28, 2010, Mr. Henley, under case. No. #5:07-cr-50106-KES-1, ib. Doc. Text. No. 84 (Initial Appearance, nearly two and half years and about, violates petitioner 6th Amendment Right Speedy Trial, under Title 18 U.S.C 3161, in which, the court can take a Judicial Notice at anytime under Fed. R. Evid. 201.

(3). DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL: BY (CJA) MR. RENSCH, Deficient Performance, resulting into prejudice; STRICKLAND V. WASHINGTON, 416 U.S. 668, "Apply".

The U.S. District Court and Appeal Court, erred by Adopted the Report and Recommendation, prepared by U.S. Magistrate Judge, at Appendixs (b), (c), when Mr. Henley, has demonstrated Plain error 52 (b), denying him his right to life and liberty; see the following.....

- (a) On or about 6-28-2010, the appointment of (CJA) Mr. Rensch, under Criminal case No. #5:07-cr-50106-KES-1, ib. Doc. Text. No. #83.
- (b) On or about 12-10-2010, under Criminal case No. #5:07-cr-50106-KES-1, ib. Doc. Text. No. #115, (CJA) Mr. Rensch, et al. negotiated then advised Mr. Henley to sign a Fraudulent Plea Agreement for a purported felony offense, that is actually a misdemeanor in the State of South Dakota, penal code, a 6th Amendment and 8th Amendment Violation (Cruel and Unusual Punishment), to Mr. Henley, that can be seen within his 2255 Motion/Memorandum of Law/Evidence Exhibits, under (Civil Docket Sheet, case No. #5:18-cv-05005-KES, ib. Doc. Text(s). No. 1 and 2.
- (c) On or about 3-18-2011, under Criminal case No. #5:07-cr-50106-KES-1, ib. Doc. Text. No. #126, Mr. Henley, was illegally sentenced and convicted, by the United States District Court of South Dakota without first obtaining Personal Jurisdiction, to a sentence of 117 months imprisonment, clearly constitute a Miscarriage of Justice, to him and he has demonstrated a substantial showing of his constitutional rights violated, in which, meets the requirements for a (COA) that the U.S. Appeal Court and District Court, deprived Mr. Henley, of; see **Miller-El v. Cockrell**, 537 U.S. 322, 336. 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003).

CONCLUSION

Therefore, both the U.S. Magistrate Judge Veronica L. Duffy, Report and Recommendation, Appendix (b) and the denial Judgment Adopting the Report and Recommendation, by U.S. District Judge Karen E. Schrier, Appendix (c), incorrectly-

decided the facts to Mr.Henley,Constitutional claims/injuries,that can be seen within his 2255 Motion/Memorandum of law/Exhibits,under(Civil Docket Sheet,case.No.#5:18-cv-05005-KES,ib.Doc.Text(s).No.#1 and 2.

Mr.Henley,application requesting for a(COA),in the 8th cir.Appeal Court,under,Appeal.No.#18-1878,was incorrectly decided,based on the Substantial showing of his Constitution Rights Violated,that was over-looked by the U.S District Court and Appeal Court,Inwhich this Honorable Supreme Court,should grant Mr.Henley,petition for Writ of Certiorari,that would enable him to proceed on the merits of his Constitutional claims,to exercise his Constitutional Rights,such as his 5th Amendment and 6th Amendment Rights,which is guaranteed to him by the 14th Amendment(Equal Protection)Due-Process.

These violations of Constitutional Rights/issue's,shows a Denial of Effective Assistance of counsel,see **Strickland V. Washington** 466 U.S 668,which led to the (petitioner)"Speedy Trial Violation" on or about October 24,2007,in re:(Criminal Docket Sheet,under,case.No.#5:07-cr-50106-KES-1,ib.Doc.Text.#1,until Mr.Henley,"Initial Appearance",June 28,2010,ib.Doc.Text.No.#84.

Furthermore,the negotiation of a Fraudulent ~~Plea Agreement~~,**ib.Doc.Text.No.#115, Padilla V. Kentucky**,559 U.S 356,130 s.ct.1473(2010),by (CJA)Mr.Rensch,et al. which violated Mr.Henley,8th Amendment Right"Cruel and unusual Punishment"forced upon him.The United States Appeal Court and District Court,failed to address Mr.Henley,injuries and if continued to be left unattended deprives him of Life and Liberty, which amounts to a Miscarriage of Justice, **Boyer V. United States**,55 f.2d 296,298(7th cir.1995).

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mr. Michael K. Henley

Date: 10-16-2018

CERTIFICATE OF COMPLIANCE

No.

Michael K. Henley- Petitioner

V.

United States of America- Respondent's

As required by Supreme Court Rule 33.1(h),
I certify that the petition for a writ of
certiorari contains less than 9,000 words,
excluding the parts of the petition that
are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that fo-
regoing is true and correct.

Executed on 10-16, 2018

s/
s/ Michael K. Henley