

No. 18-8071

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Supreme Court, U.S.
FILED
FEB 06 2019
OFFICE OF THE CLERK

Stephen G. Thomas — PETITIONER
(Your Name)

Lorie Davis Director ^{VS.} — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 5th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Stephen G. Thomas
(Your Name)

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(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Does "Improper designation" of a claim by a Court, and denying the claim because of the "Improper designation" constitute an abuse of discretion by the court. Is this error Harmless?

Does this error constitute a denial of Due Process of the law, equal Protection of the law?

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:

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<i>Martinez vs Johnson</i>	117 F.3d 1417
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<i>Newby vs Johnson</i>	81 F.3d 567-569
<i>Blaw vs United States</i>	564 F.2d 522-527-28

STATUTES AND RULES

A Federal Habeas Complaint brought by a Petitioner who is in State Custody should be reviewed under 28 USC 2254

The Statutory Scheme of 2241 and 2254 has been clarified by this Court: The Eleventh Circuit's opinion in *Shedberry v. Crosby*, 351 F.3d 1049 (11th Cir. 2003).

Further 2254 applies to Petitioner's Petition in addition to 2241

OTHER

The Supreme Court has expressly held that habeas relief under 2254 is the exclusive remedy where a State prisoner is challenging the very fact and duration of his physical imprisonment and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment.

Section 2254 also extends to challenges to Prison Revolutions Where petitions challenging revocation of Prison for State Convictions. A Habeas petition challenging a State Prison Revocation must be brought under 28 USC 2254

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

Stephen Thomas
[] reported at Circuit Number 17-10180 *Levie Davis Director*; 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

Stephen Thomas
[☒] reported at USDA 2:14-cv-25 *Levie Davis Director*; 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 10-16-2018.

☐ 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: 11-28-2018, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

The Petitioner cites the United States Constitutional rights and provisions provided throughout the "Due Process and equal protection of the law to fair and impartial proceedings. Namely: the 6th Amendment to the U.S. Const. "the right to Confront his Accusers."

Due process of the law grants the Petitioner the right to have his case presented, and heard before the court. Equal Protection of the law provides that he the Petitioner be granted equal fairness from impartial and abuse of discretion rendered by a Judge or Court per se.

13th Amendment from Cruel and Unusual punishment Namely: That Petitioner arguments before Court never being properly presented or heard and ruled upon pertaining to the merits of which (He) the Petitioner presented to his claims for relief.

The Petitioner believes that through the merits of his original claim of which he presented in Federal District Court under 28 use 2254, before re-designation by the Judge to 28 use 2241, would show demonstrated that his new sentence of which he is being illegally restrained is a wrongful imprisonment that deprives him of liberties and freedom.

Petitioner contends that he properly presented his claims under the Statutory Provisions of 28 use 2254.

That the Judge improperly construed his claim as one under the provisions of 28 use 2241. And presented error by denying the Petitioner claim under the re-designated 28 use 2241, other that at which his original claim was brought before the re-designation. Denying the Petitioner Due Process of the law, Equal protection of the law to fair and impartial proceedings. Petitioner is unable to Confront his claims and present them as presented under the 6th Amendment, U.S. Constitution.

STATEMENT OF THE CASE

These proceedings were presented before the United States Court of Appeals, petitioning the Appellate Court for a "Certificate of Appealability," Case Number 17-10180

The Court of Appeals request the District Court and the State of Texas to respond to the question as to whether the District Court had "improperly" construed the Petitioner's claim as one that should be presented under 28 USC 2241 rather than 28 USC 2254 and whether this claim was an unauthorized petition of which the District Court lacked jurisdiction over.

The State of Texas Attorney General's office responded in the form of letter-briefing. The Attorney General representing the Respondent, Leslie Davis Director of the Texas Department of Criminal Justice, Correctional Institution Argument Standard of Review. In Acknowledgement, the District Court Improperly Construed this matter as a 28 USC 2241 petition. See: Court-Ordered Letter Brief Response - Appellee

See: Brief Response Attorney General

Page 10 ROA, 13-15 "Thomas Claims were brought in a petition filed under 28 USC 2254, and the lower Court's construction of Thomas' claim and review Thomas petition under 2241 was error.

On October 14th 2018 the United States Court of Appeals Fifth Circuit under Case Numbered 1710180, USDA # 2:14cv25 denied the Petitioner "Certificate of Appealability." Stating the error committed by the District Magistrate & Judge was a "Harmless Error" that Petitioner's claim was heard.

Statement of these proceedings "The merits of Petitioner Original Claims have never been heard or determined by the Courts. The petition was improperly designated under 28 USC 2241, then the Magistrate and District Judge denied hearing the claim stating they were improperly presented under 2241 rather than 2254.

See: the Judgment of the Court, that did adopt the findings Recommendations of the Magistrate Judge

The Petitioner's Merits of his claims, has never been heard neither has they reached a facts & finding conclusions to these alleged Merits of this Petitioner.

REASONS FOR GRANTING THE PETITION

Petitioner believes the Magistrate Judge committed error by Improperly redesignating his Petitioner as one under the provisions of 38 USC 2241 other than Petitioner's original presentation under 38 USC 2254.

Petitioner believes the Magistrate Judge abused his discretion by redesignating his Petitioner, there when he did so and then denied the Petitioner claims under the discretions of his Improper designation of Petitioner claim. Imphors added the same Magistrate Judge had opportunity to review the Petition before exercising his authority to redesignate the claim. The Magistrate Judge knew which Statutory provisions of 2254 or 2241 were the proper avenues in which Petitioner claims should be presented. Magistrate Judge did make sound judgement when he wrote his Denial Recommendations that the Petitioner's claim were improperly presented under 2241 and Denied such.

District Judge in reviewing the Magistrate's Recommendation abused her Discretion by not reversing the Recommendation knowing the Petition had be Improperly designated under 2241. Rather the District Judge adopts the Recommendation of the Magistrate Judge.

Of greater Importance, The Fifth Circuit Court of Review along with the confirmation of the Attorney General office that the District Court made error by Improperly constraining the matter as a claim to be presented under 38 USC 2241.

However, the Fifth Circuit Judge acknowledges this as a "Harmless Error" See the opinion rendered 10-16-2018

This Petition should be granted because the Petitioner is being denied "Due Process of the Law, Equal Protection of the Law. Petitioner has not been allowed to Contest the claims presented in his petition. Resulting in Cruel and an Unusual Punishment against Petitioner by the Courts.

The Petitioner believes he is Wrongfully convicted.
what to demonstrate the necessary essential elements
to validate his claim of Wrongful Imprisonment.

It is pertinent that his claim be presented, and
heard by the Courts and the Judicial system.

Petitioner has a Constitutional right to confront
the issue of his claim and Due Process of the law
that the Courts hears his arguments against such
accusations made against him. Equal Protection of the
law ensures that he has fair and Impartial proceeding.
Because the Petitioner has been refused these Constitutional
Rights. Petitioner believes this Petition should be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Stephen A. Jones #317322

Date: Feb 1, 2019