

18-8159

IN THE SUPREME COURT OF THE UNITED STATES

PHILLIP CAMILLO-AMISANO  
PETITIONER

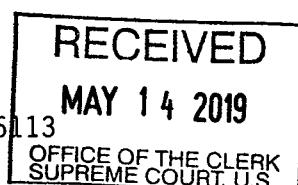
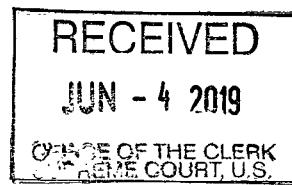
VS.

UNITED STATES OF AMERICA  
RESPONDENT

ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT  
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

  
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MOTION FOR SUSPENSION OF  
ORDER DENYING CERTIORARI

Counsel: Pro Se, Phillip Camillo-Amisano

Relief Sought:

Pursuant to Supreme Court Rule 16.3, Petitioner requests that this Court Suspend the application of its order of denying certiorari in this matter for rehearing under Supreme Court Rule 44.2.

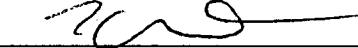
Ground for Relief:

In support of this motion, the Petitioner states:

1. The same issue present by the Petitioner in this manner has been presented to the court in the case of Ayestas v. Davis Dir Tex. Dep't of Crim. Justice, 200 LED 2D 376.
2. In this case presenting the same issue, the petitioner has filed a petition for Certiorari with this court.
3. The petitioner in this case states that:
  - a.) In Ayestas v. Davis the lower court deny a COA and this court concluded that their reason for doing so was flawed, the court may reverse and remand so the correct legal standard maybe applied.
  - b.) The court of Appeals for the Fifth Circuit restricted the Miscarriage of Justice exception, by not following this court decision in McQuiggen v. Perkins.
  - c.) The Court of Appeals and the District Court erred when they side step the Slack v. McDaniels requirement when the courts would not address the underlying Constitutional claim. They would not address the Miller-El v. Cockrell decision over the petitioner argument.
  - d.) The Court Appeals decision not to address the petitioner equitable tolling

was flawed, when they stated they will not consider a claim presented to them for the first time. A violation of due process which presents a miscarriage of justice, when they restrict due process to avoid a claim. By restricting when they will follow htis court decision in Holland v. Florida.

e.) This Court and denial of certiorari should be stayed to permit the court to consider the petition for rehearing that will emphasize that the existence of a second petition for certiorarie on the same issue in a short time illustrate the importance of the issue to prevent a fundamental miscarriage of Justice and the interest of legal community in it.



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IN THE SUPREME COURT OF THE UNITED STATES

I Phillip Camillo-Amisano, request under Rule 44, motion for rehearing to review the error of judgement of the United States Court of Appeal, which was denied. Not to entertain this claim will cause a fundamental miscarriage of justice and cause a constitutional crisis.

The question presented to this court, did the Court of Appeals and District Court decided a Federal Question in a way in Conflict with applicable Decision of this court. On appeal extraordinary circumstances exist when the issue involves is a pure question of law and miscarriage of justice would result from the United States Court of Appeals for the Fifth Circuit failure to address it.

MISCARRIAGE OF JUSTICE

The court of appeals decided to denied the petitioner Certificate of Appealability (COA), deciding the District Court was correct on dening on a procedural default. The courts would not entertain or address the petitioner two tolling claims; Actual innocence and prison censorship of legal mail.

In the court decision, they used a case from 2003, Robert v. Cockrell, 319 F. 3d 690, 695 (5th Cir. 2003),

Robert's equitable tolling argument was raised for the time in COA application to the district court. We generally will not consider a claim raised for the first time in a COA application.

Robert's case is a typical case with no actual innocence raised. This court decision in McQuiggen v. Perkins, 569 U.S. 133 S. Ct. 1924, 185 L. Ed. 1019, 2013 U.S. LEXIS 4068,

Which held actual innocence serves as a gateway through which petitioner may pass whether is procedural bar... first petition for habeas relief the miscarriage of justice exception survived AEDPA's passage intact and unrestricted.

The court of appeals is restricting the use of miscarriage of justice exception which acts against McQuiggen v. Perkins decision. This court has applied the miscarriage of justice exception to overcome various procedural

defaults, in order to seek balance the societal interest in finality and conservation of scarce judicial resources with the individual interest in justice that arises in the extraordinary case.

The court observed in Holland v. Florida, 130 S.Ct. at 2562,

Focusing on the merits of a petitioner's actual-innocence claim and taking account of delay in that context, rather than treating timeliness as threshold inquiry, is tuned to the rational underlying the miscarriage of justice exception ie. ensuring that federal constitutional errors do not result in the incarceration of innocent person.

The First time presented is to be consider a various procedural default, and not entertaining the claim would in fact cause a fundamental miscarriage of justice, denying the petitioner from pursuing his constitutional claim which will prove his innocence. Therefore court of appeals made a highly questionable ruling, dismissing the petitioner COA application by deciding not to entertain the actual innocence claim.

#### PRISON OFFICIALS CENSORSHIP OF LEGAL MAIL

The courts would not address the active interference from prison officials stopping access to the courts, the main cause of the procedural default, the heart of the case. With the court side stepping this claim by using a typical case, is a way to chip away the constitutional protection this court granted with their decisions. In the Roberts v. Cockrell, 319 F.3d. 690, 695 (5th Cir. 2003),

Roberts was not denied the opportunity to argue equitable tolling in the district court...

The courts did not examine this claim, if they did they see the petitioner was denied to argue his equitable tolling. Prison officials violated the petitioner due process rights, by stopping access to the courts, one motion in particular the petitioner 59(c) motion for reconsideration for §2255 motion, was not received. See Cockran v. Kansas, (1941) 316 U.S. 255, 86 L.Ed. 1453,

The constitutional right to access the courts, as enunciated by the Supreme Court of the United States Prison Official violated equal protection clause with their actions.

In Holland v. Florida, 130 S.Ct. at 2562,

In the United Supreme Court addressed the in which a federal habeas petitioner can invoke the doctrine of equitable tolling. Holland held that a habeas petitioner is entitled to equitable tolling only if he shows (1) that he has been pursuing his rights diligently; and (2) that some extraordinary circumstances stood in his way and presented timely filing.

The petitioner fulfills the Holland requirements as a text book example in which this court design the Holland decision. The district court stated this is a simple time limitation default. Everything in this case is not simple if the courts address all the claims.

The courts did not focus on the merits of this case and did not account of the delay in this context, rather they focus on a procedural default without addressing the tolling claims. In Miller-El v. Cockrell, 537 U.S. 322 (2003),

The court referring back to its earlier ruling in Slack v. McDaniel, and reiterat[ing] the limited nature of the burden a habeas corpus petitioner must satisfy at the COA stage, again definitively rejected a circuit court's attempt to construe AEDPA's COA provision in a manner that would unduly limited habeas corpus petitioner's ability to appeal an adverse ruling by the district court.

Simple fact no court entertain the the equitable tolling or the constitutional claims, developing no record in the courts. The petitioner claims have merit and any reasonable jurist would agree and state they claims are debatable and need further examination.

The court is using the statement this is a simple procedural default to abate when to impedit the AEDPA's statute of limitation using the Robert v. Cockrell case to sidestep the issue. If the court of appeals can ignore actual innocence claim and Holland equitable tolling claim would (constitutinually) go unaddressed, the same possibility would exist for any claim clearly establish by Federal Law and this court decisions.

#### CONSTITUTIONAL CLAIM

The lower courts error when they did not entertain the petitioner

constitutional claim, ineffective assistance of counsel, when the courts denied the petitioner §2255 motion on a procedural default. When the courts dismiss a habeas petition on procedural non constitutional grounds, the courts are to employ a two step certificate appeal process, inwhich they did not.

The appeals court did not examine the merits of the case and develop no record, only agree with the decision of the district court. Quoting, Barefoot v. Estelle, 463 U.S. 880, 893 n.3, 77 L. Ed. 2d 1090, 103 S. Ct. 3383 (1983) denied 117 S. Ct. 1114 (1997),

A COA may only be issued if the prisoner has made a substantial showing of the denial of constitutional right 28 U.S.C. §2253(1)(a). A substantial showing requires the applicant to demonstrate that the issues are debatable amongst jurist of reason.

See Slack v. McDaniel, 529 U.S. 473, 484, 120 S. Ct. 1595, 146 L. Ed. 2d 542,

In 200 the court held that when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should be issue (and an appeal of the district court's order maybe taken) if the prisoner shows, at least jurist of reason would find it debatable whether the petitioner states a valid claim of the constitutional rights.

The Magistrate Judge only focus on dening the case on a procedural default and did not address the constitutional claim, the district court did not address anything only follow the Magistrate decision. A court must conduct a general assessment of the merits of the petitioner's claim, and address all the claims. As following the Perkins decision, the petitioner main argument was actual innocence in his ineffective assistance claim. In Miller-El v. Cockrell, 537 U.S. 322, 336 (2003),

When the district court has denied federal habeas relief based upon procedure grounds without analysis of the underlying constitutional claim, a COA "should be issue".

In post-conviction case, the district court must develop a record to facilitate a review of all issues pertinent to post-conviction relief. With the case being dismissed untimely without reaching underlying constitutional claim, the courts did not meet the Slack v. McDaniel requirement of creating

a record that will facilitate a meaningful claim. Their decision to denied the case on procedural default is flawed, when they avoided the underlying constitutional claim and did not grant a COA.

#### CONCLUSION

All statute of limitation and decision must proceed on the idea that petitioner has full opportunity afforded him to try his rights in the Courts, preventing a miscarriage of justice.

The Fifth Circuit made a highly questionable ruling, dismissing the petitioner COA application ignoring the petitioner tolling claims; Actual Innocence and Prison Censorship of Legal Mail. This court states in all their actual innocence cases, they applied the miscarriage of justice exception to Overcome various procedural defaults. The Fifth Circuit use a typical tolling case with no actual innocence present to sidestep miscarriage of justice exception, therefore restricting the use actual innocence as a gateway to pursue post-conviction relief, therefore causing a fundamental miscarriage of justice. This goes against this courts decision in *McQuiggen v. Perkins* decision which claims this exception goes unrestricted, being the first time brought to their attention, is a flaw reason to denied the case.

The Fifth Circuit decision are flaw when they do not examine the reason for the procedural default, by not examining the tolling claim, they allow the unconstitutional acts to continue. This cause a fundamental misacarriage of justice, by preventing the petitioner from accessing the courts. This goes against the heart of this courts decision in *Holland v. Florida*. See *Ayestas v. Davis Dir. Tex Dep't of Justice*, 200 LED 2D 2376,

The U.S. Supreme Court may review the denial of a certificate of appealability (COA) by lower courts when lower courts deny a COA and the courts concludes that their reason for doing so was flawed, the court may reverse and remand so the correct legal standard may be applied.

The courts also did not examine or address the constitutional claim, there is no record over the decision why they did not address the claim, which

goes against this court decision in Slack v. McDaniel. The court error in their decision not to grant COA when the district court did not address the underlying claim, where the claim has merit and any reasonable jurist could debate the claim.

Not to consider all the petitioner claim boils down to a fundamental miscarriage of justice, on the theory that otherwise the petitioner actual-  
innocence claim would unconstitutionally go unanswered is going beyond clearly established Federal Law.

The Fifth Circuit decisions are flawed and inconflict with applicable decision of this court. I pray this court will find for the petitioner and grant a writ and reverse the Fifth Circuit decision. I pray this court will end this fundamental misscarriage of justice and remand the courts to consider the appeal on its merits. Thank You.



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April 24, 2019

DATES

Received Notification of denial On April 6, 2019

Mailed Motion for Extension on April 17, 2019

Received Denial on April 21, 2019

Mailed Motion for rehearing on April 25, 2019

Court Mail letter for Correction May, 17, 2019

Mail Correction on May 28, 2019

## CERTIFICATE OF GOOD FAITH

I Phillip Camillo-Amisano, proceeding pro se, certify that this Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to grounds specified in the Supreme Court Rule 44 of the rules of this court attesting that the petition is "limited" to intervening circumstances of a substantial or controlling effect, or to other substantial grounds not controverted previously presented.



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May 26, 2019

## CERTIFICATE OF COMPLIANCE

As required by the Supreme Court Rule 33.1(h), I certify that the document contains 1207 words, excluding the parts of the document that are exempted by the Supreme Court rule 33.1(d). I declare under pejury that the foregoing is true and correct. Executed on May 26, 2019.



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