

No. 18-8252

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED  
JAN 07 2019  
OFFICE OF THE CLERK

FREDDIE TAYLOR

— PETITIONER  
(Your Name)

vs.  
UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FREDDIE TAYLOR #15179-047

(Your Name)  
U.S.P. VICTORVILLE  
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(City, State, Zip Code)  
NONE AVAILABLE

(Phone Number)

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## **QUESTION(S) PRESENTED**

Whether The United States District Court And The Ninth Circuit Court Of Appeals Denied The Petitioner Relief Pursuant To The Issues Raised In A Petition Filed Under The Provisions Of A Habeas Corpus Under Title 28 U.S.C. 2241 --- A Petition Seeking To Challenge An Illegal Conviction That Was Imposed Illegally And Unconstitutionally.

Questions Presented:

- ( 1 )- Newly Discovered Evidence Of Actual Innocence Of Conviction.
- ( 2 )- Structural Error By The Trial Courts Failure To Give Jury Instruction Of Lesser Included Offense To A Deadlocked Jury.
- ( 3 )- Ineffective Assistance Of Counsel --- Failure To Object To Structural Error By The Trial Court And Request A Mistrial As Requested By Petitioner.

## **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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## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Bousley V. U.S., 523 U.S. 614, 623, 118 S.ct 1606 L.ed (1998)	
Davis V. U.S., 417 U.S. 333, 346 , 94 S.ct, 2298 L.ed 2d (1974)	
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Stephens V. Herrera, 464 F.3d 895, 898 (9th Cir. 2008)	
Reyes-Requena V. U.S., 243 f.3d 893, 904 (5th Cir. 2001)	
Taylor V. U.S. 541 U.S. 939, 124 S.ct 1653, 158 L.ed 2d (2004)	
U.S. V. Taylor, 322 F.3d 1209, 1211 (9th Cir. 2003)	
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## STATUTES AND RULES

Title 18 U.S.C. 1512(a)(1)(A)  
Title 28 U.S.C. 2241  
Title 28 U.S.C. 1254(1)  
Title 28 U.S.C. 2255  
Title 28 U.S.C. 2255(e)

## FEDERAL RULE OF CRIM. PRO.

Rule 59 --- Judgement Of Acquittal.

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## OTHER

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**

**XXXX For cases from federal courts:**

The opinion of the United States court of appeals appears at Appendix (B) to the petition and is

N/A

reported at \_\_\_\_\_; or,

has been designated for publication but is not yet reported; or,

XXXX is unpublished.

The opinion of the United States district court appears at Appendix C&D to the petition and is

N/A

reported at \_\_\_\_\_; or,

has been designated for publication but is not yet reported; or,

XXXX is unpublished.

**[ ] For cases from state courts:**

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

Does Not Apply

reported at \_\_\_\_\_; or,

has been designated for publication but is not yet reported; or,

is unpublished.

N/A

The opinion of the \_\_\_\_\_ court appears at Appendix N/A to the petition and is

N/A

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 May 30, 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: NONE FILED, 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 N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

"YES"

For cases from state courts:

The date on which the highest state court decided my case was N/A. A copy of that decision appears at Appendix       .

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

DOES NOT APPLY HERE.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A federal prisoner may file a Habeas Corpus petition pursuant to Title 28 U.S.C. 2241, if the remedy provided by the 28 U.S.C. 2255, is inadequate or is ineffective to test the legality of his detention.

To challenge a sentence and or conviction that was imposed in violation of the constitution or laws of The United States Of America --- A defendant may move a court which imposed the sentence to vacate, set aside or correct the sentence or conviction pursuant to 28 U.S.C. 2255. But a defendant prisoner may appeal the denial of a 2255 motion when a court issues a Certificate Of Appealability. When that fails and a petitioner can meet the local savings clause then he qualifies for the escape hatch of the 2255.

A defendant / petitioner meets that criteria when the petitioner:

- ( 1 )- Makes a claim of actual innocence,
- ( 2 )- Has not had an obstructed procedural chance at presenting that claim.

The petitioner had not one but two hung juries and should have been issued a judgement of acquittal --- The jury was clearly uncertain --- The petitioners conviction is a miscarriage of justice.

## STATEMENT OF THE CASE

The record states that sometimes in 2001 that the petitioner Freddie Taylor was convicted in The United States District Court For The District of Arizona after a jury trial for Conspiracy to the murder of a confidential informant in violation of Title 18 U.S.C. 1111, 1114, 1117, aiding and abetting the murder of a federal confidential informant in violation of 1111, 1114, and accessory after the fact in violation of Title 18 U.S.C. 3, and witness tampering in violation of Title 18 U.S.C. 1512(a)(1)(A). The petitioner was found guilty and ultimately sentenced to life in federal prison as to Counts (1),(2) and (4) and 180-Months as to Count (3), to run concurrently to all other counts.

The petitioner appealed to The Ninth Circuit Court Of Appeals and the Circuit Court vacated the conviction for his Accessory after the fact in United States V. Taylor, 322 F.3d 1209, 1211 (9th Cir. 2003). Vacating on the accessory allegation but affirmed on all other counts of the indictment in United States V. Taylor, 59 App'x. 960, 962 (9th Cir. 2003).

On the date of March 22, 2004, The United States Supreme Court denied the petitioner a Writ Of Certiorari in Taylor V. United States, 541 U.S. 939, 124 S.ct 1653, 158 L.ed 2d 362 (2004).

Then the petitioner sought relief pursuant to the filing on a motion to vacate and correct an illegal conviction under the provisions of Title 28 U.S.C. 2255, see Taylor No: 4:99-cr-00315-JMR-1(D.Ariz) --- The court denied the petition as being filed

STATEMENT OF THE CASE

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untimely so on August 11, 2005, the petitioner sought a Certificate Of appealability from the Ninth Circuit Court Of Appeals and the request was denied on June 22, 2006.

Then the petitioner sought relief pursuant to Title 28 U.S.C. 2241, Habeas Corpus on the date of April 4, 2018, and the court denied the petitioner claims because it stated that it did not have the jurisdiction under the 2241 Habeas Corpus Statute.

The court went on to explain ambiguously as to why it did not have the jurisdiction and the courts decision is not only wrong but is an abuse of discretion by the court.

The original claims stated by the petitioner in the filed Habeas Corpus, 2241 are the following:

- (1)- Newly discovered evidence of actual innocence of conviction.
- (2)- Structural Error by the trial courts failure to give jury instructions of lesser included offense to a deadlocked jury.
- (3)- Ineffective assistance of counsels failure to object to structural error by trial court and request a mistrial as requested by the petitioner.

Appendix's (C) and (D), shows the granting of the extension of time to file the request for a Certificate Of Appealability and then the courts denial.

The Ninth Circuit Court Of Appeals had the jurisdiction to hear the petitioners claims on the merits and here the petitioner ask the simple question as to Whether the lower court had the juris-

STATEMENT OF THE CASE

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-diction to hear the petitioners claims on the merits in a Title 28 U.S.C. 2241, Habeas Corpus petition ?

If the court decided that the Circuit Court did have the jurisdiction then the petitioner ask that the United States Supreme Court issue an order of remand and ask that the lower make a decision of the petitioners claims on the merits of the illegal conviction and sentence and or to order a new trial so that a jury of fact finders can decide guilt or innocence in a conviction that violated the United States Constitution.

## REASONS FOR GRANTING THE PETITION

The United States Supreme Court is the highest court in the United States and it has the duty and the judicial powers to have the lower courts to fall in line when it makes decisions that themselves are unconstitutional and violates the rights of it's citizens. Here The Ninth Circuit Court Of Appeals has denied relief to this petitioner Freddie Taylor, simply on the grounds that it felt that it did'nt have the jurisdiction to grant the relief requested by the movant and that decision is an abuse of discretion by the court because it does have the jurisdiction under Title 28 U.S.C. 2241, Habeas Corpus, to decide the petitioners claims on the merits.

In denying relief the Ninth Circuit has also violated it's very own prior rulings and must be vacated and ordered to adjudicate it's jurisdiction and decide on the petitioners claims and in support the petitioner Freddie Taylor, so states the following. Under the rules set by The United States Supreme Court those rules in applying for a Writ Of Certiorari and clearly established. The Ninth Circuit Court Of Appeals denied the petitioner relief simply on the grounds that it felt that it did'nt have jurisdiction to entertain the 2241 filed by the petitioner --- So pursuant to Supreme Court rules the petitioner seeks a Writ Of Certiorari so that the court can answer the question as to whether or not The

REASON FOR GRANTING THE PETITION

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Ninth Circuit Court Of Appeals has the jurisdiction to decide the petitioners claims for relief in a Habeas Corpus under the 2241.

( A )--- There is no doubt that The Ninth Circuit Court Of Appeals and it's lower District Courts has the jurisdiction to hear claims filed under the provisions of the 2241, Habeas Corpus. Under the law mandated by Congress and enacted into federal law --- A federal prisoner may file a Habeas Corpus under 28 U.S.C. 2241, if the remedy provided by 28 U.S.C. 2255, is inadequate or is ineffective to test the legality of his detention. Under 2255(e), this is called the Savings Clause of the 2255. A petition meets the Savings Clause when (1)-The petitioner makes a claim of Actual Innocence, and (2)-The movant has not had an unobstructed procedural opportunity at presenting that claim.

In either case the petitioner Freddie Taylor, has not had an unobstructed opportunity because he was previously barred from seeking relief in a Title 28 U.S.C. 2255, under time barment grounds under Anti-Effective Death Penalty Act so his claims from which he has alleged actual innocence has never been heard by the courts.

( B )--- To establish Actual Innocence for the purposes of the Habeas Corpus in the 2241, a petitioner must demonstrate that, In light of the evidence that it is more likely than not that no reasonable juror would have convicted

REASON FOR GRANTING THE PETITION

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him. A petitioner is actually innocent when he was convicted for conduct not prohibited by law.

There can be no doubt that Freddie Taylor, has a good argument under the Actual Innocence provisions of the statute. This is especially prevailing because at the petitioners previous trials the jury originally could'nt make a determination of guilt or innocence because there were two hung juries --- On the face of judicial discretion the court should have order a judgement of acquittal after the second hung jury and released the petitioner so the claim of actual innocence within itself gives the court jurisdiction and it gives the petitioner a gateway to review under the Savings Clause and or Escape Hatch.

( C )--In making a determination of whether a Habeas petitioner had a valid claim that was previously unavailable to him during prior proceedings and his first 2255 motion, the court must consider (1)- Whether the legal basis for the petitioners claim did not arise after he had exhausted his direct appeal and first 2255 motion, and (2)-Whether the law changed in any way relevant to the petitioners claims after the first 2255 motion --- Yes, an intervening court decision must effect a material change in the applicable laws to establish unavailability.

REASON FOR GRANTING THE PETITION

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Again the petitioner has established actual innocence and must be given an opportunity to seek relief. The petitioner never was given an opportunity under Title 28 U.S.C. 2255. One of his most critical arguments had he been able to proceed would have been the fact that counsel had been ineffective --- He was forclosed from arguing or presenting an ineffective assistance claim during the direct appeal process --- Under United States Supreme Court prior precedents --- In that precedents the court stated in *Massaro V. United States*, 538 U.S. 500, 123 S.ct 1690, 155, L.ed 2d 120 (2003), that a defendant in Freddie Taylor's same position could not seek relief on direct appeal on ineffective assistance of counsel grounds because the record had not been fully developed through the appeals process and could not be brought until the petitioner got to Title 28 U.S.C. 2255 --- The court stated that it wanted ineffective assistance of counsel issues to wait until the 2255 and not on direct appeal --- But when this petitioner got to the 2255 stage he was barred so he had no unobstructed opportunity to seek habeas relief --- That unavailability allows him to seek challenge under the 2241, when actual innocence is alleged and to hear that issue the Ninth Circuit Court had the required jurisdiction to hear and to review those claims.

DISCUSSIONS OF FACT:

At the threshold here for Freddie Taylor, the United States Supreme Court should grant a Writ Of Certiorari to establish the lower

REASON FOR GRANTING THE PETITION

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courts jurisdiction so that it can make a decision of his claims on their merits of law --- Because the statute is clear that a federal prisoner may file a Habeas Corpus petition under the 2241, when the 2255 is unavailable or is inadequate --- Please see and review Circuit decision in Harrison V. Ollison, 519, F.3d 952, 956 (9th Cir. 2008), where the decision discusse's the savings clause where a movant meets the standard when he is (1)-Actually Innocent, or has not had an unobstructed procedural opportunity to present his claims, see also Stephens V. Herrera, 464 F.3d 895, 898 (9th Cir. 2006).

Please note that a valid 2241 Habeas Corpus can be considered even absent a Certificate Of Appealability --- Because the court always retains that jurisdiction to determine lower courts jurisdiction. Freddie Taylor, has established actual innocence for the purpose of the Habeas Corpus relief because he has shown that reasonable jurist would not have convicted him if it had been presented with every fact, Stephens, 464 F.3d at 898(Quoting) Bousley V. United States, 523 U.S. 614, 623, 118 S.ct, 1604, 140 L.ed 2d 828 (1998), see also Reyes-Requena V. United States, 243 F.3d, 893, 904 (5th Cir. 2001), which summarizes the test employed by the circuit courts to assist in determining actual innocence claims.

The mere possibility that the Ninth Circuit would overrule it's own previous holdings does not make Freddie Taylors, actual innocence claim now unavailable to him for the purposes of the 2241. If it

REASON FOR GRANTING THE PETITION

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did then there would be no legal basis for any actual innocence claims that are currently ~~forclosed by binding Ninth Circuit law~~ because there is always the ~~infinitesimally~~ small possibility of sudden en banc reversal --- So requiring a petitioner to raise all theoretically possible actual innocence claims in the first direct appeal or the 2255 motion would put an unreasonable burden on petitioners and the courts themselves --- It would clog the judicial process to require defendants to attempt to include challenges to settled law in their brief on appeal and in Post Conviction motion, see Davenport, 147 F.3d at 610.

The Ninth Circuit's denial of Freddie Taylor's 2241 petition does not bar him from relief because he does not fall within the Abuse Of The Doctrine so failure to entertain the claim would surely constitute a miscarriage of justice.

The United States Supreme Court has made it clear that federal courts must be mindful of the ends of justice before dismissing a petitioners 2241, see Kuhlmann V. Wilson, 477 U.S. 436, 451, 106 S.ct 2616, 91 L.ed 2d 364 (1986) --- Taylor, alleges that he is actually innocent so there can be no room for doubt that such a circumstance inherently results in a complete miscarriage of justice under Bousley, 523 U.S. at 626(Quoting) Davis V. United States, 417 U.S. 333, 346-347, 94 S.ct 2298, 41 L.ed 2d 109, (1974)(Quoting) Engle V. Isaac, 456 U.S. 107, 135, 102 S.ct 1558, 71 L.ed 2d, 783 (1982) --- Cases stating that the principle of ~~comity~~ and finality must yield to the imperative of correcting

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a fundamental unjust incarceration --- So The United States Circuit Court Of Appeals For The Ninth Circuit has the jurisdiction to review the 2241 Habeas Corpus petitioner filed by Freddie Taylor, and denied by them.

Under this standard the Circuit Court has the jurisdiction of making determination concerning the facts --- Facts Of:

- ( 1 )- Newly Discovered Evidence Of Actual Innocence Of Conviction.
- ( 2 )- Structural Error By The Trial Courts Failure To Give Jury Instruction Of Lesser Included Offense To A Deadlocked Jury.
- ( 3 )- Ineffective Assistance Of Counsels Failure To Object To Structural Error By The Trial Counsel And request A mistrial As Requested By Petitioner.

The sole role of this petition is for The United States Supreme Court is to decide whether the Ninth Circuit abused it's discretion on the issue of jurisdiction in it's denial of the petitioners issues raised in the 2241, attached in Appendix (A), here for the courts consideration.

The petitioner so states that the court did have jurisdiction within the Savings Clause because of the Actual Innocence Argument and the fact that the petitioner never had an unobstructive opportunity to allege those facts previously.

The petitioner Freddie Taylor, ask the court to grant Certiorari and order The Ninth Circuit to impose it's jurisdiction and make a determination of the petitioners claims on the merits.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Freddie Taylor

Date: 1/3/2019