

No. _____

18-8539

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

BLAKE SANDIAIN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

JAN 07 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SIX CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

BLAKE SANDIAIN
(Your Name)

P.O. Box 1009
(Address)

Welch, WV 24801
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

DID THE DISTRICT COURT USE "DICTA", OR HOLDING WHEN IT RULED ON THE CASE SAMSON V CALIFORNIA (2006) IN PETITIONER FIRST 2255?

DID PETITIONER USE 60(B) MOTION AS A PROPER MOTION, TO ATTACK THE DEFECT IN THE INTEGRITY OF THE DISTRICT COURT USING A "DICTA" RULING TO DENY A COGNIZABLE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM IN HIS FIRST 2255?

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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Judge: PIERRE N. LEVAL, JUDGING
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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☐ is unpublished.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 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 December 19, 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: January 23, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

SIX Amendment Right
Fourth Amendment Right
Fifth Amendment Right

STATEMENT OF THE CASE

ON August 7, 2015 Petitioner Raised a Cognizable Ineffective assistance of Counsel issue in his 2255. Petitioner clearly showed that his Counsel were ineffective during his suppression hearing, when she challenged That the State of Michigan Made an UNREASONABLE ENTRY into his apartment, but failed to Raise that the State of Michigan Made an UNREASONABLE ENTRY in violation of the Fourth amendment in petitioner locked common area of his apartment building.

The District Court in deciding this issue in appellant 2255 used "Dicta" to deny the issue, and subsequently when petitioner used 60(b) motion to attack the defect in the integrity of the 2255 by the District Court using an UNCONSTITUTIONAL Ruling of "Dicta", the District Court used the ANTITERRORISM EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA) as a back drop, to cover up the fact that petitioner 60(b) motion which attacked the defect in the integrity of the 2255 proceeding were a Second OR successive 2255, and Denied Reopening issue one in petitioner 2255 so that Petitioner could Receive a Constitutional due process hearing on the issue.

REASONS FOR GRANTING THE PETITION

The case that the District Court used "Dicta" from to deny Petitioner Cognizable ineffective assistance of Counsel issue in his 2255, were SAMSON V California, 547 U.S. 843 (2006).

The central holding in SAMSON (2006) were whether a Parole officer or peace officer Warrantless Search Violated a Parolee Fourth amendment Right, where a Prisoner eligible for Release on State Parole agreed in writing to be subjected to Warrantless Searches by Parole or peace officer's at any time of the day or night... with or without Cause. 547 U.S. at 846.

The District Court in deciding whether the State of Michigan Made an UNReasonable entry in Violation of the Fourth amendment by entering Petitioner Constitutional protected locked common area of his apartment building, Ruled that the State of Michigan did not Violate the Fourth amendment when they entered the Constitutional protected area of the Apartment Building, because Central to the holding of SAMSON were that a Parole officer can enter a Constitutional protected area of a Parolee on the basis that a Parolee has a diminished expectation of Privacy alone (The courts citing 547 U.S. at 850-57 for that proposition is "Dicta" of SAMSON (2006)).

PURSUANT to the Supreme Court Rule #10 Considerations Governing Review of CERTIORARI. Petitioner has shown Compelling Reasons for this Court to Grant CERTIORARI from the above facts and lower court orders in the appendix, that the lower district courts has decided an important federal question in a way that conflict with the Relevant decision of this Court. (Continue on Attached page)

(2)

What's more evident of a Compelling Reason for this Court to Grant CERTIORARI. The lower district courts has violated their own COURT Rule 32.1(b); "which states that published panel opinions are binding on later panels".

IN the case of U.S. V TESSIER 814 F.3d 432 (6th Cir 2016), the lower district courts has ruled that in order for a Parole officer entry into a constitutional protected area of a Parolee home to be in compliance with this Supreme Court Ruling, it has to be consistent with consent to search. See U.S. V TESSIER 814 F.3d 432 (6th Cir 2016) (citing SAMSON V. CALIFORNIA, 547 U.S. 843 (2006)). But when Petitioner brought this fact out that the state of Michigan made a entry into a constitutional protected area of his locked common area of his apartment building not in compliance with consent, the courts used "DICTA" from this court and justified the entry on the basis that Parolee's has a diminished expectation of privacy alone.

By the lower district courts using "DICTA" in disguise to look like holding, the courts violated their own COURT Rule 32.1(b) as well as abandoned his responsibility to deliberate and decide the specific questions before the court. See Judge Pierre N. Leval; Judging Under the Constitution, "DICTA" about "DICTA", 81 N.Y.U. L. Rev. 1249, 1250 (2006). If a ruling was declared only in "DICTUM" like in Petitioner case. The question remains undecided, and the courts has a constitutional duty to make the determination of the answer, where constitutional rights and liberty are at stake like in Petitioner case.

(3)

FURTHER, PETITIONER 60 (b) MOTION COMPORT WITH EXTRAORDINARY CIRCUMSTANCES, BECAUSE A CLEARLY ERRONEOUS DECISION WOULD WORK A MANIFEST INJUSTICE. U.S. V MOORED, 38 F.3d 1421 (6th CIR 1994). THE MANIFEST INJUSTICE THAT WOULD OCCUR, IS "DICTA" WOULD BE ALLOWED TO REWRITE THE RULING OF THIS COURT PRECEDENT SAMSON V CALIFORNIA 547 U.S. 843 (2006), AS WELL AS THE SIX CIRCUIT COURT OF APPEALS RULING IN U.S. V TESSIER, 814 F.3d 432 (6th CIR 2015). AND IN TURN PETITIONER WOULD BE DEPRIVED OF HIS SIX AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, AND HIS FOURTH AMENDMENT RIGHT TO PRIVACY IN HIS HOME.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Blake Sandlén

Date: March 7, 2019