

No. 18-8586

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Roderick Black — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED
MAR 19 2019
OFFICE OF THE CLERK

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Roderick Black
(Your Name)

FCI-Fairton, P.O.Box-420, Fairton, NJ 08320
(Address)

(City, State, Zip Code)

n/a
(Phone Number)

TABLE OF AUTHORITIES CITED

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OTHER

QUESTION(S) PRESENTED

WHETHER THE PETITIONER'S SENTENCE SHOULD BE VACATED
IN LIGHT OF HIS TRIAL ATTORNEY NOT BEING DULY LICENSED
TO PRACTICE LAW IN VIOLATION OF HIS SIXTH AMENDMENT
RIGHTS UNDER THE FEDERAL CONSTITUTION?

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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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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 2/27/2019.

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

That, the constitutional and statutory provisions involved in this case are premised upon a violation of petitioner's constitutional and statutory rights.

STATEMENT OF THE CASE

Comes now the appellant Roderick Black, pro-se in the above-captioned cause humbly and respectfully requests this most Honorable Court issue a certificate of appealability on the grounds that the district court abused its discretion in [1] misconstruing his Rule 60[b], as a second or successive § 2255, and [2] because jurist of reason would find the issue debatable.

That, in support, the appellant relies on United States v. Mobley, 678 Fed. Appx. 159 [4th Cir. 2017], which granted a certificate of appealability on the grounds that the district court made an error of law which was reviewed for abuse of discretion under this Circuit's jurisprudence in Conaway v. Polk, 453 F.3d 567, 582 [4th Cir. 2006]. See also, Slack v. McDaniel, 529 U.S. 473, 484 [2000]; and Miller-El v. Cockrell, 537 U.S. 322, 336-38 [2003].

See Reeves v. Fayette SGI, Case No. 17-1043 [3d Cir. 2018].

2. That, the Court in Reeves, held; that 'it was enough that the evidence the petitioner relied on was simply evidence the jury had never seen before, even if it was evidence that the defendant knew about [which in this case he did'nt], but his lawyer knew about it and never presented it.

3. That, the Third Circuit further ruled that, "in a case where the underlying Constitutional violation claim is ineffective assistance of counsel premised on a failure to present evidence, a requirement that the new evidence be unknown to the defense at the time of trial would operate as a roadblock of the actual innocence gateway. To overcome this roadblock, we hold now that when a petitioner asserts ineffective assistance of counsel based on counsel's failure to discover or present the fact-finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constitutes new evidence for purposes of the Schulp, actual innocence gateway.". Id.

4. That, in the Court's August 22, 2018, Order, this most Honorable Court inadvertently stated that, petitioner filed the instant motions [meaning two motions] seeking two avenues of relief. Two under § 3582, and one by Obtaining a successful § 2255 motion.

5. That, petitioner has never sought relief under § 3582[c][2] related to this issue that the prosecutor did not have a North Carolina Law license. See attached 60[b] motion. For some odd reason, the Court juxtaposed the 782 Amendment in place of his Rule 60[b] motion. However, the 782 Amendment is mentioned no where in the body of his Rule 60[b] motion. So its perplexing how this . . .

. . .most Honorable Court came to this conclusion.

6. That, the petitioner was and has always maintained that he was proceeding under Rule 60[b], and that his basis of support was premised upon Satterfield v. DA Phila, 2017 U.S. App. Lexis 18537 [3d Cir. 2017], which held for the first time that a Rule 60 motion can be based on a change in the law provided the change is extraordinary. This ruling was premised upon an earlier ruling by the United States Supreme Court in a case called McQuiggan v. Perkins, 133 S. Ct. 1924 [2013].

7. That, this is the kind of extraordinary case that supports a Rule 60[b] motion, in that, the fact that the prosecutor did not, and has never possessed a Law License to practice law in North Carolina not only violated the state of North Carolina's code of professional responsibility, the prosecutor violated federal law under the "Department of Justice Appropriation Authorization Act ["DOJ Act"], Pub. L. No. 96-132, 93 Stat. 1040, 1044 [1979], which "requires all attorneys in the Department of Justice to be duly licensed and authorized to practice as an attorney under the laws of a state, territory, or the District of Columbia." See Pub. L. No. 96-132, 93 Stat. 1040, 1044 [1979]. The "Act" mandates that, "[a]n attorney working for the DOJ, must], be duly licensed and authorized to practice as an attorney, [and be sworn as] a member of a state bar [and] must of necessity comply with that state's code of professional responsibility. Congress therefore clearly contemplated compliance with state bar ethical standards by attorneys practicing in the Department of Justice." Id. [quoting, United States v. Ferrara, 847 F. Supp. 964 [D.D.C. 1993]].

8. That, the petitioner's argument is premised upon one fact, and one fact only, which is that the government, and the prosecutor on this case, committed fraud by acting as if the prosecutor possessed a North Carolina bar license, when in fact she did not.

9. That, under Haines v. Kerner, and Gonzalez v. Crosby, this most Honorable court was obligated to [1] liberally construe his motion under less stringent standards as those of an attorney, [Haines v. Kerner], and [2] give notice of the court's intent to construe said motion as a second or successive, [Gonzalez v. Crosby].

10. That, subsequent to the petitioner's initial filing, this most Honorable Court first alluded to the fact that it was leaning towards construing petitioner's motion as a second and successive § 2255 motion. However, the petitioner vehemently disagreed with this court's assessment and filed a motion requesting that his motion be filed as a 60[b] motion.

11. That, in turn, this most Honorable Court issued an Order directing the government file a response to petitioner's 60[b] motion within 30 days of the Order. Thirty days have come and gone, and on August 22, 2018, without a response from the government, this most Honorable Court inexplicably rules dispositively, and adds issues [the 3582[c][2]] that were not presented as claims of error or for relief from the outset.

12. That, under Haines v. Kerner, this most Honorable Court had the power and authority to construe the petitioner's motion as one under Rule 60[d][3], fraud upon the Court, instead of Rule 60[b]. See Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 [5th Cir. 1978] [Fraud under Rule 60[d][3] embraces...the species of fraud]. Id.

13. That, Rule 60[d][3] functions as a savings clause: it allows courts to set aside a judgment for fraud on the court without a strict time bar. The standard for 'fraud on the court' is, as a consequence, demanding. "Fraud upon the court requires that there was a material subversion of the legal process such as could have been exposed within the one-year window provided by what is now Rule 60[c]. Apotex Corp. v. Merck & Co., 507 F.3d 1357, 1360 [Fed. Cir. 2007].

14. That, the petitioner's claim of relief is to "move this Honorable Court pursuant to Rule 60[b] or [d][3] to dismiss [Vacate] the conviction and sentence based on fraud and miscarriage of justice it produced.

15. That, the petitioner seeks relief based on the affirmative of evidence supporting his claims and in light of Satterfield v. DA Phila., U.S. App. 18537 [3d Cir. 2017], which is supported by the United States Supreme Court's holding in McQuiggin v. Perkins, 133 S. Ct. 1924, 185 L.Ed 2d 1019 [2013], which held; "a credible claim of actual innocence or miscarriage of justice falls within an exception to the AEPDPA's one year statute of limitation." Id.

16. That, when petitioner filed his initial [first] § 2255 motion, the court denied him based upon the fact that he was "time barred". When Satterfield, was decided in 2017, the Third Circuit stated that if the initial § 2255 had merit and was not heard because of the time bar or for whatever reason, according to Satterfield, 60[b] is the vehicle to use to get petitioner's issue heard.

REASONS FOR GRANTING THE PETITION

That, the reasons why the petitioner could not and did not receive a fair trial is because the prosecutor committed fraud on the court by acting as if she possessed a valid law license for the State of North Carolina but she did not. Thus, the petitioner's entire sentence is void, and the petitioner should be given immediate release.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roderick Black

Roderick Black, Pro-se

Date: 3/16/2019