

13-8882 ORIGINAL

No. \_\_\_\_\_

FILED

APR 10 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
KEVIN L. DONALDSON — PETITIONER  
(Your Name)

vs.

\_\_\_\_\_  
UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

\_\_\_\_\_  
KEVIN L. DONALDSON # 17550-055  
(Your Name)

\_\_\_\_\_  
United States Penicentiary Tucson, P.O.Box 24550  
(Address)

\_\_\_\_\_  
Tucson, AZ 85734-4550  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

### QUESTION(S) PRESENTED

- 1) Did the Second Circuit Court of Appeals abuse its discretion when it denied the Petitioner a Certificate of Appealability?
- 2) Did the Clerk of the U.S. District Court "practice law" when the Clerk chose to arbitrarily not scan approximately  $\frac{1}{2}$  of the instant Petitioner's initial Motion pursuant to 28 U.S.C. §2255 thereby denying the Petitioner the Right to be heard on the merits of the claims the Petitioner timely raised?
- 3) Did the U.S. District Court committ reversable error when it denied the Petitioner the Right to ensure that all of his properly submitted arguments be heard when the Clerk was responsible for omitting the remaining arguments properly raised?
- 4) Was the Clerk of Court's error (intentional or otherwise) in NOT filing the Petitioner's entire brief as submitted a violation of the Petitioner's First Amendment Right to Access to the Courts?
- 5) Are the actions/inactions of the Clerk "chargeable" against the Government in its duty to protect the Rights of the unfortunates?

## 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:

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Miller-El v Cockrell, 534 U.S. 1122	5.

STATUTES AND RULES	
28 U.S.C. §2255	4.

OTHER

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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

~~XXX~~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 January 11, 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: Same, and a copy of the order denying rehearing appears at Appendix R.

☐ 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

First Amendment Access to the Courts  
Sixth Amendment Right to Adversarial Process  
28 U.S.C. 2255 and 2244 and 2253



### STATEMENT OF THE CASE

The instant Petitioner, with assistance from a "jailhouse lawyer", filed a timely Motion Pursuant to 28 U.S.C. §2255 in the proper sentencing court for review. Included with this Motion, the instant Petitioner provided a Memorandum in Support of his §2255. Unbeknownst to the Petitioner, the Clerk of Court arbitrarily chose to only "scan-in" approximately one-half of the pages provided by the instant Petitioner. Somehow the Originally mailed 'hard-copy' that is required to be on file with the Clerk no longer exists. The Petitioner did not receive a stamped COPY back from the Clerk to ensure that the entire document had been filed for review. Until the Petitioner's arguments had been responded to, he did not know the Clerk had made such an egregious error. At the point of discovery, the Petitioner filed multiple times to obtain a copy of what the Clerk did file. He was never provided a copy. A friendly attorney went on pacer and was kind enough to mail the Petitioner a copy. At this point the instant Petitioner became fully aware of exactly how much of his argument was not scanned into the files provided the Government and the Court. At this point, the Petitioner diligently sought to have his case re-heard with the missing information. This was never granted. The Petitioner sought to file an Apepal on this issue of the Clerk not providing the Government and Clerk with the entire Memorandum that the Petitioner originally sent in to be filed. Every attempt to be heard on this issue alone has been ignored by the lower courts. The request for a COA was predicated upon this unexcusable error made by the Clerk. Even this was denied.

## REASONS FOR GRANTING THE PETITION

A pro se Petitioner is at a clear disadvantage in any court setting. When the pro se Petitioner is also incarcerated in a U.S. Penitentiary, his disadvantages are multiplied. Factor in an indigent status, and such a litigant may never have a "fair" hearing nor be able to ensure his documents are filed as mailed.

It seems as if the Clerk, chosing to practice law, made the decision to refuse to scan ALL the documents the Petitioner mailed for consideration in his case. This seems to be a calculated action by the Clerk. The Clerk knew of the indigent/pro se/incarcerated status.

The Clerk knew that there was no physical way for the Petitioner to discover the Clerks choice of "editting" the Petitioner's documents.

When the Petitioner attempted to obtain a copy of what was filed, the Clerk was the person in position to ignore these requests. When Motions were filed to bring light to this issue, it appears as if the lower courts chose to ignore such a blatant abuse of position.

In Aid of this Court's Appellate Powers, and due to the extraordinary circumstances of a Clerk of Court making such an error, coupled with the refusal of the lower courts to even address the actions of the Clerk, this Court must act in doing justice. A certificate of appealability must be issued, as requested originally to the Court of Appeals on this issue of the Clerk's most obvious error.

This Court's Opinion in Miller-El v Cockrell, 534 U.S. 1122 dictates that a COA must issue if the Petitioner makes a prima facie showing of a violation of Right. It cannot be disputed that when the Clerk is negligent in properly submitting/publishing an entire document,

as submitted by an indigent pro se prisoner, that the ends of justice require further review into this matter. The Circuit Court should have, at the very least, issued a COA to have this situation of Clerk misconduct/abuse of discretion/negligence investigated. When the Clerk of Court is the sole "gatekeeper", and refuses/neglects their duties, an incarcerated pro se indigent litigant has zero recourse.

This Court, being the Court of Last Resort, must correct such an obvious and clear misjustice, and REMAND this Case to the Circuit Court for an issuance of COA to explore this issue.

## CONCLUSION

The Petitioner Humbly prays this Honorable Court GRANT this Petition for a Writ of Certiorari to the Petitioner. The Petitioner prays this Court ORDER the Solicitor General to respond as to why the actions/inactions of the Clerk of the District Court should not be reviewed by the Eleventh Circuit Court of Appeals and to how the failure to scan/file the Petitioner's entire Memorandum in Support of his 28 U.S.C. §2255 Motion, would not prejudice the Petitioner's "reliable determination of the facts and events of his conviction and incarceration", and whatever other relief this Court may deem appropriate in this matter.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be "H. D. L.", followed by a long horizontal line.