

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

18-9151

IN THE

SUPREME COURT OF THE UNITED STATES

OF AMERICA

ORIGINAL

BLAKE SANDIAIN

(Your Name)

PETITIONER

FILED

APR 18 2019

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

vs.

United States of America

RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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**

Does the District Court Use of Dicta  
ON a Cognizable ineffective assistance OF  
Counsel claim in a first 2255, makes the 2255  
inadequate OR ineffective and deprives Petiti-  
tioner of due process?

## 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 CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	<u>COURT OF APPEALS COURT ORDER</u>
APPENDIX B	<u>DISTRICT COURT COURT ORDER</u>
APPENDIX C	<u>COURT OF APPEALS COURT ORDER, DENYING WRIT OF AUDITA QUERELA</u>
APPENDIX D	<u>PETITIONER WRIT OF AUDITA QUERELA</u>
APPENDIX E	<u>PETITIONER COURT ORDER DENYING</u>
APPENDIX F	<u>HIS 60(b) MOTION TO CORRECT THE DICTA</u>

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

SAMSON V California, 547 U.S. 843 (2006)	2
Carafas V Lavallee, 391 U.S. 234 (1968)	1
PRIVE V Johnson, 334 U.S. 266 (1948)	1
U.S. V MOORE, 38 F-3d 1421 (6 <sup>th</sup> Cir 1994)	3

STATUTES AND RULES 18 U.S.C. 2255

OTHER (A.E.D.P. Act of 1996)

Judge Pierre N. Leval, Judging Under the  
CONSTITUTION: Dicta About dicta, 81 N.Y.U. U.L.  
Rev. 1249, 1275 (2006)

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☒ is unpublished.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.

1.

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 22, 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**

SIX AMENDMENT RIGHT

FOURTH AMENDMENT RIGHT



## STATEMENT OF THE CASE

ON April 16, 2013 Petitioner was ON Parole from a Michigan Conviction. ON April 28, 2014 Petitioner Parole agent went to his apartment for a Random home visit, which were just to verify that Petitioner were living where he reported he were living. At no time prior to coming to the address did they have any information that Petitioner was engaged in any criminal activity, nor violated any conditions of his Parole.

When they arrived at the apartment building complex, they gained entry into the locked common area of the apartment building as a Resident was exiting the building. As they proceeded up to the third story where the apartment was located, they knocked on the apartment door and received no response but allegedly heard some noise. With those alleged facts, they concluded that evidence of a crime were being destroyed despite the fact they had no information Petitioner were not engaged in any criminal conduct prior to coming to the address, so they executed an exigent entry into the apartment by having the maintenance man of the apartment building open the apartment door with his key which a firearm and controlled substance were seized.

ON July 7, 2014 a motion to suppress evidence was held to suppress the evidence. During the suppression hearing, Counsel were ineffective in assistance of Counsel when she failed to cite precedential Sixth Circuit authority, that prohibited the Parole agent from entering the locked common area of petitioner apartment building.

DUE to Counsel's ineffective assistance of Counsel, in not citing precedent Circuit case law showing that when the Parole officer entering the constitutional protected area of the locked common area of the apartment building in violation of the Fourth Amendment, (CONTINUE)  
(ON ATTACHED)

the courts rendered a decision to deny the motion to suppress on September 16, 2014.

ON August 7, 2015 Petitioner filed a motion under 2255, to address counsel being ineffective in not raising that the parole agent entry into the locked common areas of the apartment building were unreasonable under the fourth amendment, the district court used the dicta statement from *SAMSON V CALIFORNIA* (2006) stating; "Because Petitioner rights as a parolee were lowered, the entry made in the constitutional protected area of the apartment building did not violate Petitioner fourth amendment rights."

Petitioner did not realize that the district court used a dicta ruling to deny his cognizable ineffective assistance of counsel issue until certiorari was denied. Since the district court unconstitutional ruling of dicta, petitioner has diligently been trying to address the issue through post conviction remedy, but the district court has been using the (AEDPA of 1996) to procedurally bar the post conviction remedy and never reach the merits of the issue. (See Appendix of Petitioner pursuing the issue through postconviction remedy, but the courts denying the postconviction remedy procedurally and never reaching the merits).

## REASONS FOR GRANTING THE PETITION

Petitioner assert Pursuant to Supreme Court Rule 10 Sub-Sec (a), (c), Certiorari should be Granted to Resolve a thorny Constitutional Question of Dicta that has been depriving Petitioners due process, as well as depriving Petitioners six amendment Rights to effective assistance of Counsel.

Petitioner assert that he followed the Remedial path the law mapped out for him through (2255 Post Conviction Remedy) to Raise a Cognizable ineffective assistance of Counsel claim, and through circumstances over which Petitioner had no control, the district court used a Dicta Ruling and made the Cognizable ineffective assistance of Counsel issue Uncognizable, and has used the (A. E. D. P. A of 1996) to prevent Petitioner from using any other Post Conviction Remedy to address the Unconstitutional Ruling of Dicta. See Judge Pierre N. Leval, Judging Under the Constitution: Dicta About Dicta, 81 N.Y. U. L. Rev. 1249, 1275 (2006).

The essential function of 2255 is to give a prisoner a Reasonable opportunity to obtain a Reliable Judicial determination of fundamental legality of his conviction and sentence, *Carafas v Lavallee*, 391 U.S. 234 (1968), *Price v Johnson*, 334 U.S. 266 (1948). The denial of a avenue of Judicial Review for a Petitioner who has raised a Cognizable ineffective assistance of Counsel issue in his 2255 Petition, just to have it denied on the basis of Dicta Ruling which has no force or effect of precedent law would work a manifest injustice, *U.S. v Moore* 38 F.3d 1421 (6th Cir 1994). (Continue on attached page).

The Manifest Injustice that would occur, is Dicta would be allowed to Rewrite the Supreme Court Ruling of 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 arbitrarily or capriciously make bad law for other Judges to follow.

To capture the Dicta the District Court used to undermine Petitioner due process to be heard, and to undermine that Petitioner Counsel were ineffective, for failing to raise that the Parole officer unreasonable entry into Petitioner locked common area of his apartment building were in violation of the Fourth Amendment. The District Court cited SAMSON V CALIFORNIA 547 U.S. at 850-51, and stated that the entry in Petitioner locked common area of his apartment building did not violate the Fourth Amendment, because the central holding of SAMSON (2006) held that a Parolee diminished expectation of privacy alone, gave the Parole officer authority to enter Petitioner Constitutional protected locked common area of his apartment building. The District Court citing SAMSON V CALIFORNIA 547 U.S. at 850-51 is Dicta.

Central to this Court Ruling of SAMSON V CALIFORNIA 547 U.S. 843 (2006) that would of gave the Parole officer authority to enter Petitioner Constitutional protected area of his apartment building, where if Petitioner had signed and agreed in writing to a warrantless search condition of Parole, and the Parole condition had been unambiguously aware of it. See SAMSON, 547 U.S. at 852 (The District Court knew from the suppression hearing that I never signed such warrantless search condition, that's why the Dicta Ruling were made in Petitioner case). The District Court continue to use Dicta to get around Fourth Amendment violation, see U.S. V MIGUEL ROBINSON, Middle Dist. of Tennessee #17-6521, Crim No. 3:16-CR-00219-1

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Blake Soudain

Date: APRIL 17, 2019