

NO. 18A994

IN THE
SUPREME COURT OF THE UNITED STATES

William Windsor - PETITIONER

VS.

DANA METZGER - RESPONDENT(S)

PETITION FOR REHEARING

William Windsor

DELAWARE CORRECTIONAL CENTER

1181 PADDOCK ROAD

SMYRNA, DE. 19977

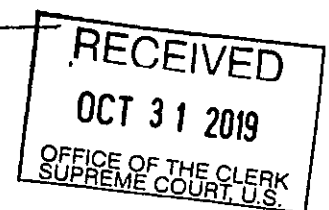


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SUMMARY OF ARGUMENT

Whether the Lower Courts committed constitutional error when it denied the Petitioner's postconviction motion presenting newly discovered evidence and a new rule of constitutional law when it deemed he was ineligible because did not go to trial but took a plea.

ARGUMENT

The Petitioner argues that under 28 U.S.C.A. 2254, that the lower courts committed constitutional error when it denied his motion to withdrawal of plea. The Petitioner presented the lower courts with newly discovered evidence and a claim that a new rule of constitutional law made retroactive in his case.

The lower courts denied Petitioner's application because it ruled that according to its rule, the consideration of newly discovered evidence or newly rule of constitutional law only applied to a defendant that was convicted at trial not a defendant that took a plea. This restriction cannot stand as it violates the 5th Amendment's Due Process Clause made applicable to the states through the 14th Amendment and Equal Protection Clause of the 14th Amendment.

In Griffith v. Kentucky, 479 U.S. 314, 93 L. Ed. 2d 688, 107 S.Ct. (1987) "failure to apply a newly declared constitutional rule to criminal cases pending in direct review violates basic norms of constitutional adjudication." Two principles guide this decision. First, the problem not applying new rules to cases pending and direct review is the actual inequity that results when the courts chooses which of many similarly situated defendants should be the chance beneficiary, of a new rule. Second, "that a new rule for the conduct of criminal prosecution is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a 'clear break' with the past." Thus, the courts' new rule is applied to the present cases, future cases, and any case pending at trial, and direct review on a appeal or yet not final." The new rule even applies to cases where the same claims was already rejected by a lower court based on prior precedent, but still subject to direct review in the Supreme Court.

Delaware Courts denied the Petitioner's motion, which violates his 5th Amendment

ARGUMENT

right for newly discovered evidence, which are the affidavits: SEE (exhibit A).

This Courts has ruled in the same facts in Class v. U.S., 138 S.Ct. 798, 200 L.Ed. 37 (2018) "A factual predicate that could not have been previously discovered through the diligence, and the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

The lower Courts also violated Petitioner's 6th Amendment right, in which the Supreme Court ruled in Lee v. U.S., 137 S.Ct. 1958, 198 L.Ed. 2d 476 (2017). The adoption of the pro-se rule.

This Court allows a Petitioner to motion for withdrawal of plea, whether he went to trial or on a plea. The lower should have to follow this same rule.

Most importantly the controlling effect of federal law under 28 U.S.C.A. 2244 (b) (2) (b), which allows collateral attack with no limitation when a Petitioner takes a plea, was violated when the state Courts failed to follow this federal law. As such, this Petitioner requests a rehearing because of the controlling effect of federal law not followed by the state Courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted, _____

William Windsor _____

Date: October 24, 2019 _____

CERTIFICATION OF COUNSEL

I, WILLIAM WINDSOR, Pro-se, the petitioner presents this motion for rehearing in good faith and not for delay because this motion is restricted to the grounds specified in the U.S. Supreme Court Rule 44, paragraph 2, specifically because of the Controlling effect of Federal law.

Dated, October 24, 2019.

William Windsor

**Additional material
from this filing is
available in the
Clerk's Office.**