No. 19-5058

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

In Re: Artur Tchibassa
(Your Name) PETITIONER

vs.

United States of America
RESPONDENT(S)

ON PETITION FOR A WRIT OF PROHIBITION PURSUANT TO THE ALL WRITS ACT 28 U.S.C. 1651(a) DIRECTED TO ASSOCIATE JUSTICE WITH SUPERVISORY CONTROL OVER THE FIFTH CIRCUIT UNDER SUPREME COURT RULE 22-1

U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON THE MERITS OF YOUR CASE

PETITIONER FOR A WRIT OF PROHIBITION

ARTUR TCHIBASSA
(Your Name)

FEDERAL CORRECTIONAL INSTITUTION
(Address)

P.O. BOX 3000, ANTHONY NM/TX 88021
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

WHETHER THE LOWER COURTS ABUSED THEIR DISCRETION BY REFUSIONG TO EPAND THE REYES-REQUENA CITATIONS OMITTED) SAVINGS CVLAUSE JURISPRUDENCE.

LIST OF PARTIES

IN RE: ARTUR TCHIBASSA

-V-

UNITED STATES OF AMERICA

THE NAMES OF ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE. THERE ARE NO ADDITIONAL PARTIES.

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STATEMENT OF JURISDICTION

The Supreme Court of the United States has original jurisdiction over three categories of cases. First, the Supreme Court can exercise original jurisdiction over "actions proceedings to which ambassadors, other public ministers, consuls, or vice consuls of foreign states are parties." See, Maryland v. Louisiana, 451 U.S. 725, 737 (1981). Second, the Supreme Court also possesses original jurisdiction for "(all) controversies between the United States and a State." 28 U.S.C. Section 1251 (b)(2). Finally, Section 1251 provides for original jurisdiction in the Supreme Court, for "all actions or proceedings by a state against the citizens of another state or against aliens." See, e.g. Oregon v. Mitchell, 400 U.S. 112 (1970); United States v. Louisiana, 339 U.S. 699 (1951); United States v. California, 332 U.S. 19 (1947).

The statutes defining the Supreme Court's jurisdiction between "appeals" and "certiorari" as vehicles for appellate review of the decisions of state and lower federal courts. Where the statute provides for "appeal" to the Supreme Court, the Court is obligated to take and decide the case when appellate review is requested. Where the state provides for review by "writ of certiorari," the Court has complete discretion to hear the matter.

The Court takes the case if there are four votes to grant certiorari. Effective September 25, 1988, the distinction between appeal and certiorari as a vehicle for Supreme Court review virtually eliminated. Now almost all cases come to the Supreme Court by writ of certiorari. Pub. L. No. 100-352, 102 Stat., 662 (1988).

WRIT OF PROHIBITION PURSUANT TO 28 U.S.C. SECTION 1651(a) IN AID OF THE SUPREME COURT'S JURISDICTION.

(A) The Supreme Court and all courts established in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(B) An alternative writ or rule may be issued by a justice (Chief Justice Roberts) to whom an application to a writ of Prohibition is submitted may refer to the Court for determination.

STATEMENT OF CASE & PROCEDURAL POSTURE

Artur Tchibassa was tried, convicted and sentenced in the District of Columbia (D.C.) after being extradited from the Republic of Congo.

He is currently incarcerated at the FCI - La Tuna, Texas where he filed his Section 2241 Petition for Habeas Corpus. The Petition was denied and the Fifth Circuit Court of Appeals affirmed the decision.

CONSTITUTIONAL AND STATUTORY PROVISIONS

LAW RELATED TO STRUCTURAL ERRORS IN JUDICIAL PROCEEDINGS

conducting harmless error analysis of constitutional violations, including direct appeals and especially habeas generally, The ıpreme Court repeatedly has reaffirmed that "(s)ome constitutional violations ...by their very nature cast so much doubt on the irness of the trial process that, as a matter of law, they can never be considered harmless. Safferwhite v. Texas, 486 U.S. 9, 256 (1988); accord Neder v. United States, 527 U.S. 1, 7 (1999)("W)e have recognized a limited class of fundamental ınstitutional errors that defy analysis by "harmless error:" standards.'...Errors of this type are so intrinsically harmful as to quire automatic reversal (i.e. 'affect substantial rights') without regard to their effect on the outcome.").

ıllivan v. Louisiana, 508 U.S. 275, 279 (1993)("Although most constitutional errors have been held to harmless-error analysis, ıme will always invalidate the conviction "(citations omitted); id at 283 (Rehnquist, C.J., concurring); United states v. Olano,)7 U.S. 725, 735 (1993); Rose v. Clark, 478 U.S. 570. 577-78 (1986)("some constitutional errors require reversal without gard to the evidence in the particular case ...(because they) render a trial fundamentally unfair"), Vasquez v. Hillary, 474 U.S. ;4, 283-264 (1986); Chapman v. California, 386 U.S. 18, 23 (1967)("there are some constitutional rights so basic to a fair trial at their infraction can never be treated as harmless error").

JUDICIAL NOTICE/STATEMENT OF ADJUDICATIVE FACTS PURSUANT TO RULE 201 OF THE FEDERAL RULES OF /IDENCE.

ıe Right to Effective Assistance of Counsel. See, Kyles v.. Whitley, 514 U.S. at 435-436; United States v. Cronic, 466 U.S. 8, 654-57 (1984); Hill v. Lockhart, 28 F.2d 832, 839 (8th Cir. 1994)("It is unnecessary to add a separate layer of harmless-ror analysis to bar evaluation of whether a petitioner has presented a constitutionally significant claim for ineffective sistance of counsel").

\W RELATED TO STRUCTURAL ERROR OR MANIPULATION OF EVIDENCE

ɔluded in the rights granted by the U.S. Constitution, is the protection against prosecutorial suppression or manipulation of culpatory evidence and other prosecutorial and judicial failures that amount to fraud upon the court. Failure to make available defendant's counsel, information that could well lead to the assertion of an affirmative defense is material, when 'materiality' defined as at least a "reasonable probability that had the evidence been disclosed tot he defense, the result of the judicial ɔceedings would have been different. Kyles v. Whitley, 514 U.S. at 435 (quoting United States v. Bagley, 473 U.S. 667, 682)85)(plurality opinion); id at 685 (White, J,. concurring in judgment)).

addition to Bagley, which addresses claims of prosecutorial suppression of evidence, the decisions listed below-all arising in hat might be loosely be called the area of constitutionally guaranteed access to evidence," Arizona v. Youngblood, 488 U.S. , 55 (1988)(quoting United states v. Valenzuela-Bernal, 458 U.S. 856, 867 (1982) or require proof of "materiality" or ejudice.

ıe standard of materiality adopted in each case is not always clear, but if that standard requires at least a "reasonable ɔbability" of a different outcome, its satisfaction also automatically satisfies the Brecht harmless error rule. See, e.g. Arizona Youngblood, supra at 55 (recognizing the due process violation based on state's loss ort destruction before trial go material idence); Pennsylvania v. Richie, 480 U.S. 39, 57-58 (1987)(recognizing due process violation based on state agency's usal to turn over material social services records; "information is Material" if it "probably would have changed the outcome of ; trial "citing United States v. Bagley, supra at 685 (White, J,. concurring in judgment)).

:e v. Oklahoma, 470 U.S. 68, 83 (1985) (denial of access by indigent defendant to expert psychiatrist violates Due Process ause when defendant's mental condition is "significant factor" at guilt-innocence or capital sentencing phase of trial); ılifornia v. Trombetta, 467 U.S. 479, 489-90 (1984)(destruction of blood samples might violate Due Process Clause, if there :re more than slim chance that evidence would affect outcome of trail and if there were no alternative means of demonstrating ıocence).

REASONS FOR GRANTING

Simply stated Artur Tchibassa requests the Associate Justice with supervisory control of the fifth circuit to issue a writ of habeas corpus. Artur Tchibassa went to trial in the district court in the D.C. Circuit. But he is now incarcerated at FCI, La Tuna which is under the Fifth Circuit. In his petition for the Writ of habeas Corpus, the district court abused its discretion by violating the letter and spirit of the principles that undergird federalism and comity. The district court flatly refused to expand the Fifth circuit's Reyes-Requena savings clause case, maintaining by its denial the fat that Reyes - Requena v. United states (citations omitted) is the only cognizable way of showing that the 2255(e) savings clause is the only of demonstrating the 'inadequate and ineffective' that opens the portal for 2241 habeas relief.

Unfortunately, the fifth circuit court of Appeals rubberstamped the district court's 'one track minded' decision in the face of judicial precedent and 2255(e) jurisprudence from Eight other Federal Circuits.

STANDARD OF REVIEW

When aids to construction are available, there certainly can be no "rule of law" which forbids its use. However clear the words may appear on superficial examination: United States v. Culberr, 435 U.S. 371, 374 n.4, 55 L.Ed.2d 349, 98 S.Ct. 1112 (1978) quoting United states v. American Trucking Ass'ns, Inc., 310 U.S. 534, 543-44, 84 L.Ed 1345, 60 S.Ct. 1059 (1940). A case ion point to support Tchibassa's argument is Cox v., krueger, No. 1:17-Cv-01099-JES (CDIL) where the seventh Circuit Court of Appeals was asked to expand the Circuit's Davenport test as not only to show that the "savings clause" in adequate or ineffective., The petitioner asked, as Tchibassa is asking for the Fifth Circuit's Reyes-Requena savings clause jurisprudence to e expanded in the case of Cox v. Krueger, the petitioner in that case got it.

DISCUSSION

Only a handful of circuits have adopted a test for determining when section 2255 is considered "inadequate or ineffective." riestman v. united States, 124 F.3d 361, 377 (2nd Cir. 1997)(section 2255 inadequate or ineffective where "the failure to allow or collateral review would raise constitutional questions").

oindexter v. Nash, 333 F.3d 372, 378 (2nd Cir. 2003)(the court allows as actual innocence claim under the savings clause. In Dorsainvil, 119 F.3d 245, 251-52 (3rd Cir. 1997)(same); In re Jones, 226 F.3d 328, 334-34 (4th Cir. 2000)(same).,Reyes-equena v. United States, 243 F.3d 893, 903-04 (5th Cir. 2001)(same); United States v. Peterman, 249 F.3d 458, 462 (6th Cir. 001)(same); Brown v. Caraway, 719 F.3d 583, 586-87)7th Cir. 2013)(same); Marrrero v. Ives, 682 F.3d 1190, 1194-95 (9th ir. 2012); In re Smith, 285 F.3d 6, 8 (D.C. Cir. 2002)(same).

o buttress his arguments on this issue, Tchibassa reiterates the following circuits, a question the District Court has the pportunity to refute in his denial of Tchibassa's Rule 59(e) motion but chose not to. Poindexter v. Nash, 333 F.3d 372, 378 nd. Cir. 2003)(the court limits the reach of the savings clause to actual innocence claim, and not type of sentencing claims istifies savings clause relief. Reyes-Requena, 243 F.3d 893, 903-04 (5th Cir. 2001)(same); United States v. Poole, 531 F.3d 63, 267 n.7 (4th Cir. 2008)(same).

n re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000)(section 2255 inadequate or ineffective "when (1) at the time of conviction, ettled law of this circuit or the Supreme Court established the legality of the conviction; (2) subsequent to the direct appeal and ie first Section 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted deemed ot to be criminal, and (3) the prisoner cannot satisfy the gate keeping provisions of Section 2255 because the new rule bot one f constitutional law").

n re Davenport, 147 F.3d 605, 611 (7th Cir. 1998)(a federal prisoner should be permitted to seek habeas corpus only if he had o reasonable opportunity to obtain earlier juridical correction of a fundamental defect in his conviction or sentence because the w, changed his first Section 2255 motion").

rost v. Anderson, 636 F.3d 578, 584 (10th Cir. 2011)(the court has rejected the possibility of savings clause relief for both ctual-innocence claims regardless of whether the petitioner's claim was foreclosed by circuit precedent at the time of his first 255 motion.").

Williams v., Warden, 713 F.3d 1332, 1337-40 (11th Cir. 2013)(the savings clause is jurisdictional, and limits a district court's subject matter jurisdiction to entertain a section 2241 petition even when the government waives the savings clause to allow the section 2241 petitioner's claim).

Bryant v. Warden, 738 F.3d 1253, 1263 (11th Cir. 2013)(section 2255(e) by its own terms applies regardless of whether a federal [prisoner has filed to apply for section 2255 relief or whether the sentencing court has denied him section 2255 relief. rather, the touchstone of the savings clause is whether a section 2255 motion would have been inadequate to test the legality of the prisoner's detention.).

The equitable relief Petitioner Artur Tchibassa seeks from the Associate Justice with supervisory control over the Fifth circuit is against the fraudulent judgment of the District court and the Court of Appeals' endorsement of it. This relief is not of statutory creation, but it is a judicially devised remedy fashioned to r relieve hardships which from time to time arises from a hard and fast adherence to the court made rule that judgments should not be disturbed after the term of their entry has expired.

Artur Tchibassa invokes United States v. Throckmorton, 98 U.S. 61, 25 L.Ed 93, Marshall v. Holmes, 141 U.S. 589, 35 L.Ed 870, for the proposition that the Supreme Court has both the duty and the power to protect its appellate jurisdiction from fraud practiced on it. See, also Richmond v. Tayleur, 1 P. Wms. 734, 24 Eng. Reprint 591; Brookes v. Mostyn, 33 Bear, 457, 55 Eng. Reprint 455, 2 De G.J. & 5, 2 De G.J. & 5, 373, 46 Eng. r4eprint, 419; The Alfred Noble, 14 Asp. Mar. L. Cas (Eng) 366; Art Metal Works v. Abraham & Strauss, (CCA 2d) 107 F.2d 940, cert. denied, 308 U.S. 621, 84 L.Ed 518, reh. denied, 309 U.S. 696, 84 L.Ed 1036, 60 S.Ct. 611, 612.

At common law, "the term of court was decisive in determining whether or not the district court had power over its final judgments and decrees. "Note. History). During the term, a court "had full power to vacate or revise its judgment. "Commentary, Effect of Rule 60(b) on other Methods of Relief from judgment. 4 Fed. Rules Serv. 942, (1941). After the term, a party could obtain relief from a judgment only through four types of "remedial devices";

'(1) one of the ancient writs, i.e. "audita querela, coram nobis, coram vobis, bill(s) of review, and bill(s) in t he nature of bills of r eview."

'2) an "independent action for relief, based on extrinsic fraud, mistake and accident."

'3) the "inherent power of the court to modify judgments" and

'4) the "power of the court) to disregard void judgment." Note Federal Rule 60(b); Relief from civil judgments, 61 Yale L.J. 14, 76n.3 (1952).

CONCLUSION

WHEREFORE, Premises considered, Petitioner Artur Tchibassa, respectfully moves the Associate Justice with Supervisory Control over the Fifth Circuit Court of Appeals to grant his request for a Writ of Habeas Corpus.

Date: April 29, 2019.

Respectfully Submitted,

Artur Tchibassa

ARTHUR TCHIBASSA
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FEDERAL CORRECTIONAL
INSTITUTION - LA TUNA
P.O. BOX 3000
ANTHONY, NM/TX 88021

OFFICE OF THE CLERK
UNITED STATES SUPREME COURT

IN Re Tchibassa
Petitioner.

Appeal No:

CORRECTION OF DEFICIENCY PURSUANT TO THE CLERK OF THE SUPREME COURT'S LETTER OF JUNE 5, 2019.

Pursuant to the above referenced cause, Petitioner Tchibassa respectfully seeks leave of the Clerk of the Supreme Court to entertain the above referenced cause. The petition was returned for the following reasons:

> "The petition does not show the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1"
>
> Additionally, please date your affidavit or declaration of indigency."

The deficiencies highlighted above and incorporated in the Clerk's letter have been duly corrected, and conformed copies have been sent to all relevant parties, including the Solicitor General of the United States of America.

The changes are addressed hereunder;

(1) The sworn affidavit has been dated per the Clerk's instructions.

(2) The invocation of 28 U.S.C. 1651(a) will be in aid of the honorable Court's appellate jurisdiction, and why adequate relief cannot be on=obtained in any other form or from any other court. Rule 201 is also further discussed below.

DISCUSSION

Petitioner Tchibassa avers that the Supreme Court has original jurisdiction of a Writ of prohibition, pursuant to the All Writs Act 28 U.S.C. 1651. An extraordinary writ under 28 U.S.C. may be appropriate to prevent trial court and the Court of Appeals for the Fifth circuit from making discretionary decisions where the statute effectively removes form the realm discretion. In re Estelle

(1975, CA5) 516 F.2d 480).

The petition for a Writ of Prohibition pursuant to All Writs Act 28 U.S.C. 1651 is an extraordinary remedy. The remedy for which there is not relief from the lower courts, within an appellate jurisdiction, because ordinary remedies are inadequate and there are present, exceptional and extraordinary circumstances which require the issuance of the extraordinary writ, issuance of the writ is warranted, among other reasons, in order to ensure the proper application of the federal Rules of criminal Procedure. "United States v. Igor, 331 F.2d 766, 768 (7th Cir. 1964).

Petitioner avers in the case at bar, a Writ of Prohibition may not properly issue unless three elements co-exist;

(10 A clear right in the petitioner to the relief sought.

(2) A clear duty on the part of the respondent to the act in question.

(3) No other adequate remedy is available.

Viewed from the prism of the above, the factors are evident which determines, in the case at bar, the appropriateness of granting the writ of prohibition warranting the writ being in the aid of the Supreme Court's appellate jurisdiction.
The degree to which the lower courts' actions can be legally questioned, the damage to the petitioner not correctable on appeal, and the ability to correct the lower courts' actions by appeal.

Date: June 19, 2019.

Respectfully Submitted,

Artur Tchibassa.