

19-5170

IN THE UNITED STATES SUPREME COURT

Phillip Rosenblum
Petitioner

vs.

The State of California
Respondent

Case #:

ORIGINAL

FILED

JUL 01 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR WRIT OF CERTIORARI TO
THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Phillip Rosenblum BF-0331

Corcoran State Prison

P.O. Box 3461

Corcoran CA. 93217

Phil F. Rose

QUESTIONS PRESENTED

1. SHOULD AN "ACTUAL INNOCENCE" CLAIM BE BARRED FROM REVIEW AND TREATED AS A SUCCESSIVE PETITION IF THAT CLAIM HAS NOT BEEN ADJUDICATED BY THE FEDERAL DISTRICT COURT
2. WHETHER AN "ACTUAL INNOCENCE" CLAIM BEING BARRED FROM REVIEW AS A SUCCESSIVE PETITION IS THAT IN VIOLATION OF THE U.S. CONSTITUTION IF THAT CLAIM HAS NOT BEEN ADJUDICATED BY THE FEDERAL DISTRICT COURT AND IS RESULTING IN THE CONVICTION OF ONE WHO IS "ACTUALLY INNOCENT"
3. WHETHER IT SHOULD BE DEEMED A VIOLATION OF THE U.S. CONSTITUTION WHEN A PETITIONER CANNOT SATISFY THE PROVISIONS OF 28 U.S.C. 2244(b)(1) BUT HE HAS AN "ACTUAL INNOCENCE" CLAIM FOUND IN A SUCCESSIVE PETITION THAT HAS NOT BEEN ADJUDICATED BY THE FEDERAL DISTRICT COURT AND IS RESULTING IN THE CONVICTION OF ONE WHO IS INNOCENT

LIST OF PARTIES TO ACTION.

1. Phillip Rosenblum BF-0331

Corcoran State Prison, P.O. Box 3461, Corcoran Co. 93217

2. Magistrate Judge Eick, District Court Judge Seina, United States

District Court, 255 East Temple St. Los Angeles CA. 90012

3. Judges Silverman and Callahan, Ninth Circuit Court of Appeals

P.O. Box 193939, San Francisco CA. 94119-3939

4. San Bernardino Superior Court, San Bernardino County,

California

5. San Bernardino County District Attorney Office, San

Bernardino County California

6. Attorney General Office, 600 West Broadway Ste 1800

San Diego CA. 92101

7. Solicitor General of The United States, Room 5614.

Department of Justice 950 Pennsylvania Ave N.W.

Washington D.C. 20530-0001

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TABLE OF AUTHORITIES

Cases

Ayestas vs. Davis 138 S. Ct 1080 October 2017

Mcquiggin vs. Perkins 133 S. Ct 1924, 185 L. Ed 2d 1019 (2013)

Miller vs. Cockrell 537 U.S. 322, 123 S. Ct. 1029, 154 L. Ed 2d 931 (2003)

Phillip Rosenblum vs. Roseanne Campbell 370 F. Appx 782/

D.C. # CV-06-01156 JVS, certiorari denied 131 S. Ct. 465, 178 L. Ed 2d 296

Statutes

28 U.S.C. 2244 (b)(1)

Constitutional

5th, 6th, 14th Amendments

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays the court issue relief as follows:

1. Issue a writ of certiorari;
2. grant any other further relief or issue advisories as deemed appropriate by the court.

Date. June 25, 2019

Philip J. Rose
Philip P. Rosenblum

OPINIONS AND ORDERS BELOW

Exhibit A District Court's ruling

Exhibit B Ninth Circuit Court of
Appeals ruling denying
Certificate of Appealability

JURISDICTION

The Ninth circuit court of Appeals entered judgment on Apr. 2, 2019. A copy of that appears in the opinions and orders section as exhibit B

The instant writ of certiorari is filed within 90 days of that order.

Petitioner invokes the Jurisdiction of this Court ~~under~~ under 28 U.S.C. § 1257 on the grounds that his rights under the 5th, 6th, and 14th Amendment of the U.S. Constitution were violated

STATEMENT OF THE CASE

1. Dating back to Nov. 26, 2002, petitioner was accused of "stripping out of handcuffs" to attack a prison guard while he was housed in a maximum security section of China State Prison. Petitioner was charged with one count of Battery on a peace officer (California Penal Code 4501.5), by the San Bernardino County (California) District Attorney Office. At jury trial petitioner was convicted on Sept. 23, 2003, and sentenced on Jan. 23, 2004 to 8 years in state prison (petitioner ended up serving the full 8 years in state prison), pursuant to the three strikes law. Four years doubled up to 8 years, due a prior strike conviction for Residential burglary (dating back to May of 2000) petitioner has on record.

2. Petitioner subsequent to his conviction in the trial court filed a criminal appeal. And ascended an ineffective assistance of trial counsel claim, prevailing he was "Actually Innocent," of the crime he was convicted of. In his petition this "Actual Innocence" claim detailed evidence meeting the applicable legal standard that had had this evidence been presented at his trial, no reasonable judge or juror would have convicted him. Petitioner's direct appeal raised other grounds that were denied by the Fourth Appellate District, Division Two.

Statement of the case

3. Sometime in the year of 2006, petitioner flopped a 250 page approximate, brick sized petition on the desk of this District Court, announcing his "Actual Innocence," to the conviction, ~~murder~~ (see United States District Court, Central District of California, case name Phillip Rosenblum vs. Roseanne Campbell, case # ~~06~~ D.C. CV-06-01156 JVS). Petitioner due multiple reasons told to the Court-sought a stay of his petition under the Rhines vs. Weber stay procedure. Petitioner had to seek a stay on his petition, since he was unable to meet A.E.D.P.A.'s one year deadline for filing the petition in Federal court, and since he hadn't exhausted his "Actual Innocence," claim through the state court process yet. The "Actual Innocence," claim was required to be exhausted through the state court process before filing it in the Federal District court

4. In a second motion for stay petitioner filed with this court back in 2006, he told the court he was "Actually Innocent," of the crime he was convicted of which should justify cause for his procedural default in his expected late filing, that needed to be exhausted in the state court process, in which he wasn't able to meet A.E.D.P.A.'s one year filing deadline. The District court denied Petitioner's "Actual Innocence," justification (found in this second stay motion), to excuse his procedural default scenario for his late filing unto the A.E.D.P.A. one year Statement of the case

2.

filing deadline. However the court completely ignored and disregarded the "Actual Innocence" motion as grounds for a stay and ~~justification~~ justification for a procedural default scenario exemption. This ~~is~~ was so as they never addressed the merits of the claim or the claim at all for that matter, and simply denied the motion for the same reason's as the first stay motion was denied (which ~~was~~ never addressed the ~~any~~ ~~and~~ "Actual Innocence" exception either) by incorporating it by reference in it's paragraph denial (see same case Phillip Rosentblum vs. Roseanne Campbell, case # D.C. CV-06-01156 JVS). Next the 9th Circuit disregarded this "Actual Innocence" exemption and stay grounds, when it told petitioner he couldn't file his own pro se Brief ~~raising~~ ~~these~~ ~~grounds~~ and his appointed attorney failed to do so (see Ninth circuit court of Appeals, case name Phillip Rosentblum vs. Roseanne Campbell, case # 370 F. Appx 782, rejecting petitioner's Actual Innocence brief as grounds for a stay, since he wasn't allowed to file a brief in pro se). The United State Supreme Court last time ~~declined~~ ^{declined} to review this matter, (see 131 S.Ct. 465, 178 L.Ed. 2d 296, U.S. Supreme court denying certiorari).

5. Since that case was closed, the United States Supreme Court has changed it's mind and decided
Statement of the case

"Actual Innocence," claims can survive A.E.D.P.A's one year deadline for Filing, even if filed late, as announced in *McQuiggin vs. Perkins*, 133 S. Ct 1924, 185 L. Ed 2d 1019 (2013).

6. Thus had petitioner's "Actual Innocence" claim been filed back in 2006/2007 under *McQuiggin vs. Perkins*, 133 S. Ct 1924, 185 L. Ed 2d 1019 (2013), [the present legal standard], even though it was late under A.E.D.P.A (however then exhausted through the state process), it still the Actual Innocence claim would have been allowed to proceed in Federal District Court for an adjudication.

7. And now, Petitioner's "Actual Innocence," claim is still being blocked by the district court, who denied the present petition, proclaiming this is a successive petition therefore the court lacks jurisdiction to adjudicate the petition (see exhibit A, district court's ruling denying the present petition as a successive petition). And the 9th circuit refused to grant a certificate of Appealability over this matter (see exhibit B, Ninth circuit court of Appeals denial of certificate of Appealability). However this matter now ascends constitutional questions to the United States Supreme Court, that invoke
Statement of the case

Serious principles of justice being prohibited, where a successive petition is not being adjudicated and can prove one's innocence. Considering this claim was not previously adjudicated and would have been but for A.E.P.A.'s one year time to file a motion, and his "Actual Innocence," stay ~~motion~~ motion being denied, now raises constitutional concerns of one who is "actually innocent," never being allowed to have his claim adjudicated in Federal court. Thus should an "Actual Innocence" claim be treated as a successive petition who cannot satisfy the provisions of 28 U.S.C. 2244 (b)(1) for successive petition ~~adjudications~~ adjudications is this constitutionally acceptable.

8. Petitioner has briefed this petition to the District Court (see Appendix, document A,) and to the Ninth Circuit (see Appendix, document B).

I declare under penalty of perjury that the foregoing is true and correct. Executed at Corcoran, California on June 25, 2019

Phil & Rose
Phillip Rosenblum

REASONS FOR GRANTING THE WRIT

Ayestas vs. Davis 138 S.Ct 1080 October 2017

"We may review the denial of a COA by the lower courts. See e.g. Miller v. Cockell, 537 U.S. 322, 123 S.Ct 1029, 154 L.Ed 2d 931 (2003) when the lower courts deny a COA and we conclude that their reason for doing so was flawed, we may reverse and remand so that the correct legal standard may be applied. See Slack v. McDaniel, 529 U.S. 473, 485. We take that course here. As we will explain, the correctness of the rule applied by the District Court in denying the ~~motion~~ request was not only debatable; it was erroneous."

Here in this present case, the Ninth Circuit Court of Appeals denied erroneously Petitioner's Certificate of Appealability since it ~~was not~~ apparently has not yet been determined whether an "Actual Innocence" petition not yet adjudicated by the District Court should be treated as a successive petition, where that second petition cannot meet the requirements of 28 U.S.C. 2244 (b)(1).

This court should invoke its judicial power to determine whether this scenario violates the Fifth, Sixth, and 14th Amendments of the U.S. Constitution. In that a wrongful conviction is being upheld, even in the face of "Actual Innocence," evidence, that

Reason's for Granting The writ |

is being barred from adjudication as being treated as a successive petition, even though that claim was never ruled upon by the district court.

Respectfully Submitted

Dated: June 25, 2019

Phil & Rose

Reasons for Granting The writ 2.

APPENDIX

Document A

Petition For writ
of Habeas ~~corpus~~ corpus
to District Court

Document B

Request For
Certificate of Appropriateness