

No. 19-5659

ORIGINAL

Supreme Court, U.S.
FILED

JUL 29 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Anthony L. Viola — 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 Third Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Anthony L. Viola # 32238-160
(Your Name)

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Bradford, PA 16701

(City, State, Zip Code)

(814) 362-8900 (institution main number)

(Phone Number)

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QUESTIONS PRESENTED

A federally funded, multi-jurisdictional Mortgage Fraud Task Force (Bureau of Justice Assistance Grant # 2009-SC-B9-0080) prosecuted 1,000 citizens, including the Petitioner, who was tried in both state and federal court on identical charges by the same prosecution team. The Petitioner was convicted in federal court and sentenced to 150 months in prison, USA v. Viola, 08-cr-506, N.D. Ohio. Two months later, using evidence not provided before the first trial, Petitioner was acquitted on the exact same charges, Ohio v. Viola, # 536877.

No evidentiary hearing has ever been granted and Petitioner has not been permitted to present the same proof of his innocence in federal court that he used at his second trial. Petitioner's § 2241 Petition seeking an evidentiary hearing was denied and this appeal follows, raising the following questions:

- (1) In its previous term, the Court held that successive prosecutions in both state and federal court were permitted, but this case involves simultaneous prosecutions in both state and federal court by a joint task force. Is the government allowed to use a joint task force and the same prosecution team to prosecute a citizen in state and federal court at the same time?
- (2) The Supreme Court has yet to decide whether a prisoner can obtain habeas relief based upon a freestanding claim of actual innocence, House v. Bell, 547 U.S. 518 (2006). Do the facts in the petitioner's case warrant the Court's examination of this issue?
- (3) Petitioner's case contains multiple fundamental defects on the record, including the results of the second trial, but the Circuits are split concerning the limited circumstances when prisoners can use a § 2241 petition to challenge a conviction, Roundtree v. Krueger, 910 F.3d 312, 313 (7th Cir., 2018)(collecting cases). Circuits are also split over whether § 2241 is available to state prisoners, compare Cook v. N.Y. State, 321 F.3d 274, 278 (2d Cir. 2003) with Rittenberry v. Morgan, 468 F.3d 331, 336 (6th Cir. 2006). Does the Court wish to resolve these circuit splits?

OPINIONS BELOW

Petitioner respectfully requests that a Writ of Certiorari issue to review the February 15, 2019 ruling by the United States Court of Appeals for the Third Circuit.

PARTIES AND JURISDICTION

All parties are identified on the cover page of this Petition.

This Court has Jurisdiction to review the ruling by the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE HEREIN

This Petition concerns the 5th Amendment's guarantee of due process of law, as well as that Amendment's prohibition against being prosecuted twice for the same offense. This Petition also concerns the rights of prisoners to submit habeas petitions pursuant to 28 U.S.C. § 2241.

INDEX TO APPENDICES

APPENDIX A	U.S. Court of Appeals Decision
APPENDIX B	District Court Ruling
APPENDIX C	Magistrate's Report
APPENDIX D	Denial of Petition for Rehearing

ATTACHMENTS IN SUPPORT OF PETITION:

ATTACHMENT # 1	Second Trial Establishes Innocence
ATTACHMENT # 2	Government Filing: Conflicts
ATTACHMENT # 3	Government Filing: Perjury at Trial

RELATED PROCEEDINGS

The § 2241 Petition followed a criminal conviction in USA v. Viola, 08-cr-506, N.D. Ohio, denial of a direct appeal, 12-3112, 6th Circuit, as well as a denial of a § 2255 Petition as well as a Motion for New Trial, case # 08-cr-506, N.D. Ohio.

STATEMENT OF THE CASE and REASONS FOR GRANTING THE PETITION

The use of a federally funded, multi-jurisdictional task force to simultaneously prosecute an individual in both state and federal court constitutes a unified prosecution in different venues and may be unconstitutional -- or the Court may wish to provide some guidance or limitation to the government's ability to use "dual sovereignty" to prosecute cases at the same time, with the same prosecutors.

The Court may also wish to clarify the rights of prisoners to raise actual innocence claims and their ability to use § 2241 petitions to alert the judiciary of fundamental defects in criminal cases so that innocent Americans do not remain in jail. Kindly consider these obvious unconstitutional aspects of the Petitioner's incarceration:

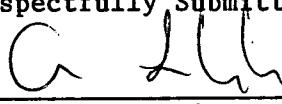
(1) Following the federal conviction, the joint Task Force's Office Manager, Dawn Pasela, provided the Petitioner with evidence not produced by the government before the first trial, which the Petitioner used to establish his innocence at the second trial. Nonetheless, the Petitioner remains imprisoned, without a hearing or any inquiry, contrary to Bousley v. United States, 523 U.S. 614, 623 (1998)(Petitioner's second trial confirms "no reasonable juror [did] vote to convict him.") Please see Attachment # 1.

(2) Despite timely objections to conflicts from joint defense and simultaneous representation of government witnesses and defendants who proceeded to trial, without a waiver or conflict inquiry, the Petitioner remains in jail, contrary to Holloway v. Arkansas, 435 U.S. 475, 489-92 (1978). Please see Attachment # 2.

(3) Justice Department filings say the lead witness against the Petitioner at trial "lied" but the government has never withdrawn false testimony, contrary to Napue v. Illinois, 360 U.S. 264 (1959). Please see Attachment # 3.

Petitioner sincerely hopes it is unconstitutional to imprison someone who has proven their innocence at trial and respectfully requests the court grant this Petition for a writ of certiorari.

Respectfully Submitted,



Anthony L. Viola

July 29, 2019

CERTIFICATE OF COMPLIANCE

Petitioner respectfully states that the foregoing petition complies with the word limit and other requirements set forth in the Rules of the Supreme Court available on the prison law computer.

Pursuant to Rule 32(2), this petition does not contain a Table of Contents or Table of Authorities since it does not exceed 5 pages or 1,500 words.

Pursuant to 28 U.S.C. § 1746, the petitioner respectfully states that all statements made herein are truthful and accurate, to the best of the Petitioner's knowledge.

Respectfully Submitted,



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