

No. 19-6299

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAR 07 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Victor Lopez

— PETITIONER

(Your Name)

vs.

Attorney General Colorado

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States 10TH Circuit

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

PETITION FOR WRIT OF CERTIORARI

Victor Lopez

.(Your Name)

Po Box 6000

(Address)

Sterling Co 80751

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether Mr Lopez should be in prison on a case that the 10TH Circuit found substantial Innocence on and the Trial Court Dismissing 3 cases that were used to enhance 99CR4527. See Lopez v Trani 628 F3d 1228 10TH Circuit 2010.

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:

The State Trial Court Judgment
The State Court of Appeals Order

REASONS FOR GRANTING THE PETITION

To protect Defendants who are [INNOCENT] from prosecutorial misconduct, Ineffective assistance of Counsel, and Judge Misconduct.

Mr Lopez is in prison on a case where the [Plaintiff] confessed during trial she lied [Under Oath] pertaining to trial testimony the assault charge and sent the Trial Court a Notarized Affidavit stating Mr Lopez was Innocent after the Trial.

The State used 3 charges as Habitual counts to enhance the sentence the cases were dismissed on Jan 7, 1997 this case was tried May 15, 2000.

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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 C 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☒ is unpublished.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 A 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☒ is unpublished.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.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 13, 2018.

☐ 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: January 15, 2019, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

5TH and 14TH Amendments Due Process of Law

8TH Amendments Equal Protection under the Law

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Schlup v Delo 111 sct 2052
Lopez v Trani 628 F3d 1228 10TH Cir

3,4
3

STATUTES AND RULES

5TH and 14TH Amendments Due Process of Law
8TH Amendments Equal Protection

OTHER

STATEMENT OF THE CASE

JURISDICTION

Justice Sotomayor is The Justice for The Honorable 10TH Circuit in which I filed this Petition to review.

On Dec 11,2018 The 10TH Circuit Denied Habeas Relief for the 2nd time On Jan 15,2019 rehearing was Denied the Court also Denied to Appoint Counsel on Dec 27,2018.

ISSUES PRESENTED

Whether The 10TH Circuit Violated Mr Lopez's Constitutional rights under The Colorado and United States 5TH,6TH,8TH,14TH Amendments when they failed to hear Mr Lopez's 2nd Habeas Petition Violating Supreme Court Precedent in[Schlup v Delo]also Precedent in[Lopez v Trani]on Successive Petitions and Hearings reaching 2 different Conclusions on the same case 99CR4527.

STATEMENT OF FACTS

On 99CR4527 The 10TH Circuit found[Substantial Innocence]a[Miscarriage of Justice]and[Recantation]Mr Lopez remains in prison,2nd Habeas Petition I recieved the[Minute Orders on April 2,2015]clear ifing Judge Theresa Cisneros dismissed the cases 88CR2849,89CR2015.

The Attorney General Mr Johnathan Seidel filed a 40 page brief to reverse the 1st Habeas Petition that found[Substantial Innocence]and[No Time Bar]also[No Procedural Barriers]. Mr Siedel[Never Petitioned The Supreme Court]because they know Mr Lopez is Innocent and The District Attorney removed key Trial Testimony off the Trial Transcripts to destroy my[Appeal Process]and Succeeded I lost all Appeals filed and my Habeas Petitions also the state[Time Barred]me Contrary to The 10TH Circuit stating there is[No Time Barr]to Innocent Petitions in the Statue of Limitations.

Trial Transcripts

Trial transcripts will be refused to in this motion as [T.T]

Statement Of The Case

On Monday May 15,2000 to Thursday May 18,2000 Mr Lopez went to knowing he was innocent in front of 12 white jurors during an interracial trial on 2 felony counts of assault on his white girl friend

Mr Lopez defense is Ms Bergman lied about being assaulted because she was angry when she called Angela Sanchez residence and Mr Lopez answered the phone Angela is Mr Lopez ex girl friend on that same night December 3,1999 Ms Bergman forced Mr Lopez by phone to pick her up at Rachel Trainors residence and (gave) directions after picking her up and driving to his mother Antonia residence same area Ms Bergman told Mr Lopez he needs to (Marry her)he said no he also went on to refuse (her sexual advances)but she (forced him)to have sex with her.Ms Bergman took off her own clothing and laid on her back with her legs in the air after having sex Mr Lopez took her back to Rachel residence and was soon arrested at his ex girl friend Angela residence.

See police reports 99-39011 statements by Ms Bergman and Rachel 2 years after trial Mr Lopez recieved the police reports and learned that before he meet Ms Bergman that night Ms Bergman family threw her out the house Dec 3rd for seeing Mr Lopez the same night he got arrested,Rachel also told Ms Bergman she cannot see Mr Lopez while at Rachels residence,Soon after Ms Bergman snuck out the residence and took the phone off the hook.When Ms Bergman returned back her and Rachel fist fought out side in the snow because Rachel locked Ms Bergman out the residence after learning Ms Bergman left and was probably with Mr Lopez,after the fist fight over Ms Bergman seeing Mr Lopez Rachel then called the police and stated Mr Lopez assaulted Ms Bergman,Ms Bergman hung the phone up then was forced to call the police by Rachel,Rachel went further and lied again telling the police that Mr Lopez is knownin for assaults and even assaulted her other sister in law and was arrested before,the police learned this was false,also the trial judge knew Rachel prior to this case and told Mr Lopez at court Rachel was a multiple liar and would not be allowed to testify,

Ms Bergman told the police that on the night in question she slept with her 14 year old boy friend 2 hours before contacting Mr Lopez then stated she was assaulted now and before but refused to go to the hospital and went against her will,later that night at the hospital was seen by nurse Valerie Seivers,before release Dr Kimble analized Ms Bergmans alleged injuries and released her from the hospital that night(against Ms Sievers recommendation)to keep her over night Dr Kimble never gave Ms Bergman any medical treatment no surgery,no stiches no nothing during examination there must be a medical report from Dr Kimble in discovery stating his findings of no injury,

2 months later Mr Lopez learned that the district attorney amended the charges to include 2nd degree a class 4 felony but Mr Lopez never ingaged in a relationship with Ms Bergman until May 16,1998.

The next day Dec 4, 1999 (12 hours latter) Ms Bergman went to see Dr Sharon, who examined her right before a medical procedure to remove a cyst from her vagina, Dr Sharon was not called to testify Mr Lopez learned that Dr Sharon never observed any injury or documented any injury,

During trial Dr Okeefe who testified also examined Ms Bergman weeks before and after Dec 3rd and stated threw his records there was no injury to Ms Bergman,

Ms Sievers who testified mislead the court and jury into believing Ms Bergman did suffer numerous injury to her vagina the district attorney Ms Melanie Douglas knew or should have known the evidence was false the district attorney had to had read Dr Kimble finding in his report and Dr Sharons as well there the doctors involved.

During trial Ms Bergman on May 18, 2000 admitted she lied during trial that testimony is no longer on the trial transcripts, 7 years after trial Ms Bergman admitted in an affidavit to the trial court that she lied during trial and (did not receive any injuries) that Mr Lopez is innocent and apologized to the court,

Trial attorney Mr Todd Johnson did not let Mr Lopez testify in his own defense, also did not call any witnesses or expert witness for Mr Lopez defense and rendered ineffective assistance during pre trial investigations, trial, recantations and failure to investigate the witnesses involved.

Trial attorney admitted to Mr Lopez numerous errors with the case and filed motion for new trial Dec 31, 2007, Mr Johnson-719(475-1235).

Appeal attorney Mark G Walta told Mr Lopez there is substantial trial error between the case and evidence filed for new trial due to prosecutorial misconduct, -303(953-5999).

35C Attorney Barbara Zollars told Mr Lopez that new trial is needed due to the evidence and letters of recantation, -719(852-0627).

35C Appeal Attorney J Alberto Garcia was shocked by the errors and evidence in the case and filed for new trial under substantial innocence evidence and recantation, -303(521-3996)

Mr Lopez received (ZERO EVIDENTIARY HEARINGS AFTER TRIAL)

Finally The District Attorney used cases 88CR2849, 89CR2015 to enhance the sentence those cases were dismissed on Jan 7, 1997 and reaffirmed dismissed on April 28, 1997 by Judge Cisneros and could not be used to enhance 99CR4527. on July 17, 2000 sentencing hearing. See Attachments C-D-E-F in this Petition.

Issue 1

The Court of Appeals abused its discretion when they agreed with the District Court that The Habeas Petition is Dismissed for lack of Jurisdiction for failure to get Permission from The 10TH Circuit to file a second Petition also erred when they failed to rule on the merits of the case also erred when they failed to transfer the matter to the 10TH Circuit also erred when they failed to Grant a Certificate of Appeal ability violating Supreme Court Precedent violating 5TH and 14TH Amendments Due Process of Law and 8TH Amendments Equal Protection of Law under The Colorado and United States Constitution.

The 10TH Circuit committed Constitutional error violating Mr Lopez rights agreeing with the District Court that I needed permission from The 10TH Circuit to file a second Habeas Petition. Also erred when it failed to rule on the merits on the Issue's raised in the second Petition. Violating Supreme Court Precedent in Schlup v Delo 111SCT2052[HN 9-11] Successive petitions, exceptions in 1966 Miscarriage of Justice exceptions allows Successive claims to be heard.

A prisoner retains an overriding interest in obtaining his release from CUSTODY if he is In fact INNOCENT of the charge for which he was incarcerated for. See Lopez v Trani 628 F3d 1228 10TH Circuit Precedent this is the first Habeas Petition.

In the first petition Mr Lopez stated the District Attorney Melanie Douglas removed testimony off the T.T. to destroy my appeal process and she succeeded I lost every appeal even though I was INNOCENT of an assault on my girl friend, See Mr Lopez's first Habeas Petition, which included All-White Jury-prosecutorial Misconduct-Ineffective Assistance of Counsel-false evidence by prosecutor's witness-recantation by witness.

The 10TH Circuit found Substantial INNOCENCE and Recantation that there is no time-bar also successive petitions are fair gain because Mr Lopez is INNOCENT.

There for the 10TH Circuit erred when it failed to here the 2nd Petition and Rule on the Merits of the case. See Mr Lopez's 10TH Circuit Petitions Opening Brief and Reconsider the 10TH Circuit Order this is a Miscarriage of Justice and needs to be Corrected and Remanded to the Lower Courts or This Judge may Rule on the Dismissed cases that were used to enhance the sentence.

Mr Lopez been in prison since March 20,2000 on a crime he never committed and the cases to enhance the sentence were dismissed cases Mr Lopez incarceration Violates The 5TH and 14TH Amendments Due Process of Law I ask The Honorable Judge Sotomayor to Appoint Counsel to investigate the Merits and to file Vacate the convictions in the first and second Habeas Petition Colorado 99CR4527,88CR2849 89CR2015,On 99CR4527 the 10TH Circuit found Substantial Innocence and exception to [PROCEDURAL BARRIERS]for bringing Constitutional claims,The Attorney General refused to petition The Supreme Court after loosing the INNOCENCE argument pertaining to the Time Bar.

Because the evidence shows Mr Lopez's case has Constitutional ERROR and he is In fact INNOCENT 3-0 Decision.See Atachment A-B.

88CR2849,89CR2015 were all dismissed during a plea agreement in 96CR3544 see District Court Petition filed by Victor Lopez.The Honorable Judge Theresa Cisneros who is a Good Honest Judge was the Judge who dismissed 88CR2849,89CR2015,she has been retired for an long time approximately 10 years and was not on the bench until after I got the Minute Orders in 20015 to file for relief.

This petition is due on March 11,2019 and I am currently filing Motion to Judge Cisneros simutameously with this Petition.The Attor ney General of Colorado Phil Weiser may Intervæene and file Motion given his position on this dismissed cases.

The District Court also erred when it failed to transfer the case to the 10TH Circuit so the 10TH Circuit could have ruled on the Merits of the case,contrary to 1st Petition Lopez at 1231.

The District Court also erred when it stated it Lack Juris diction when it knew Mr Lopez was Innocent and the cases at Issue were dismissed cases and could not be used to enhance the case in first Habeas Petition case no 99CR4527.Schlup supra,Lopez Supra. Please see the Minute Orders in second Habeas Petition stating 88CR2849 case to be Dismissed pursuant to[Plea Agreement]in 96CR3544. 89CR2015 case to be Dismissed pursuant to[Plea Agreement]in 96CR3544.

The 10TH Circuit violated Supreme Court Law in Schlup v Delo which allows Innocent Petitioners to file successive Petitions for release from Custody.The Opinion is Contrary to the Innocence in the 1st Habeas Opinion and cant reach [2] different out comes.

See Attachment B in this Petition stating a sufficiently supported claim of actual Innocence creates an exception to procedural barriers for bringing a Constitutional claim, regardless of whether the Mr Lopez demonstrated cause for the failure to bring the claims earlier. See Attachment D and F dated April 2, 2015 that's the day I finally received the Minute Orders from a Judge that believed I need the documents. Therefore the Courts committed error when it Ordered that it lacked Jurisdiction to hear the [Merits] of the 2nd Petition also erred when it failed to Issue a Certificate of Appealability when the Issue is debatable that Mr Lopez can file a 2nd Habeas Petition under *Schlup* violating his 5TH and 14TH Amendments Due Process of Law. The 10TH Circuit should have heard the [Merits of the case] and Ordered the case can be heard under *Schlup v Delo*.

The 10TH Circuit erred when it states in page 2 Motion to Reconsider that I didn't argue that I was in custody pertaining to the dismissed cases. When I stated 99CR4527 is the controlling case and 88CR2849, 89CR2015 were used to enhance 99CR4527, I'm in prison. The District Court and 10TH Circuit both violated Mr Lopez's Constitutional rights under 14TH Amendments Due Process for not Granting a hearing and not Granting Relief also not Granting an Attorney after the 10TH Circuit found Substantial Innocence and I presented Minute Orders stating the cases to enhance were previously dismissed in case no 96CR3544.

As it sits now Mr Lopez is in Prison on a case he never committed an assault on Natasha Bergman and has an enhanced sentence using 2 cases that were dismissed prior to 99CR4527. Mr Lopez now ask The Honorable Justice To Appoint Counsel and follow *Schlup* verbatim and Lopez to follow Mr Lopez Motions verbatim that Judge Cisneros stated verbatim that the cases were dismissed Attachment [C-F].

CONCLUSION

The Courts need to correct the Miscarriage of Justice on this case Mr Lopez been in prison since March 20, 2000 with no parole until Jan 5, 2062 and cannot receive a Pardon due to being on probation. This Violates the 8TH Amendments Equal Protection under the Law Mr Lopez is in prison on a case where 10TH Circuit Substantial Innocence and Judge Cisneros Dismissed 2 cases used to enhance the Innocence case.

To Order that The District Court and Court of Appeals for The 10TH Circuit[ERRED]by not Issueing A Certificate of Appeali bility,and should have corrected this procedural ruling,

Also[ERRED]when they ruled Mr Lopez did not show a deniel of a Constitutional right.

Also[ERRED] when it Ordered it lack Jurisdiction when the 10 Th Circuit previously found Substantial Innocence and a Miscarr iage of Justice.

Also[ERRED]when it failed to Order that Mr Lopez proved the Trial Judge dismissed the 2 cases verbatim Minute Orders.

The cases should be remanded to the lower courts for New Sentencing with out enhancement due to dismissed cases Or the Honorable Justice Sotomayer can Vacate 99CR4527 Due to Innocence and Vacate 88CR2849,89CR2015 due to being Dismissed on Jan 7,1997 by Judge Cisneros.Also due to The 10TH Circuits 1st Habeas findings of[SUBSTANTIAL INNOCENCE EVIDENCE].Or any other[RELIEF]the Judge see's fit to restore Mr Lopez rights 5TH,8TH,14TH Amendment,Thanks be to God and my family.

CERTIFICATE OF MAILING

Victor Lopez
May 7, 2019

On March 7, 2019 I sent a copy of this relief to'

~~Judge Theresa M Cisneros~~
~~120 E Vermijo~~
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~~80903~~

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Supreme Court Justice Sotomayor
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Victor Lopez
May 7, 2019

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Victor Lopez

Date: Oct 4, 2019