

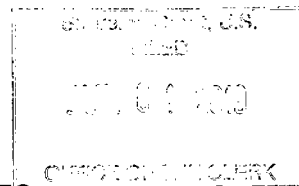
19-6961

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Hernan Navarro — 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

Hernan Navarro
(Your Name)

KMCC P.O. BOX 860
(Address)

Oakwood, VA 24631
(City, State, Zip Code)

(Phone Number)

Question Presented

Question One; Did the District Court of The Virgin Islands commit A fundamental error of equitable jurisprudence by evaluating the petitioners claims under an erroneous standard of review, thereby resulting in ~~said~~ said claims being unfairly rejected?;

Question Two; Did the District Court of The Virgin Islands contravene binding Supreme Court precedents, holdings of their sister Circuits and controlling statutory provisions, when they failed to permit evidentiary proceedings that were essential to the development of the factual predicate comprising the claims presented;

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:

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APPENDIX A: Decision of united states Court of Appeals For the third Circuit.

APPENDIX B: Decision of united states District court of the Virgin Island and the findings and Recommendations of the Magistrate Judge.

APPENDIX C: Decision of the united states of Appeals For the third Circuit denying a timely re-hearing

PLEASE NOTE

That the material under appendix D-E-F- and H is material that was not shown to the lower ~~court~~ Court, because my early request for the factual materials was not answered or granted for unknown reasons. Nevertheless this material within appendix D through H is relevant and essential to understanding this Petition Rule 14,1(9)(vi)

APPENDIX D: It shows the actual fraudulent words that the Prosecutor used to the Grand Jury in order to get Counts 20-21 added on to the indictment. Because of the lie told to the Grand Jury the District court was able to gain jurisdiction over Counts 20-21 (see at 6 the underline)

APPENDIX E: IS what the victims testified to. which is a total different wording from what the prosecutor claim to the Grand Jury (see at 6 the underline)

~~Writ~~

APPENDIX F: IS my Complete Ineffective assistance of Counsel Claim

APPENDIX G: IS showing one of my motions (many motions) that was denied by the District Court. I was asking for material that was relevant for showing and proven my actual innocent claim (see Dkt. No. 339)

APPENDIX H: IS showing of the indictment on Counts 20-21 and the words the prosecutor used to get Counts 20-21 added on to the indictment (see at 9 the underline)

My Prosecutorial misconduct claim has two separate complaints 1) under appendix D and 2) under appendix H.

I have explain myself under Reasons For Granting the Writ Page 5-19.

TABLE OF AUTHORITIES CITED

CASES

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Lafuente v. U.S. 617 F.3d 944 (7th Cir 2000) Page 7

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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 A to the petition and is

[] reported at 18-2832 / 271 F.3d 472; 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 B to the petition and is

[] reported at 1:99-cr-00016-3 / 1:11-cv-00112; 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: April 1, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Const. Amendment [V] No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law nor shall private property be taken for public use, without just compensation.

Const. Amendment [VI] In all criminal prosecutions, the accused shall enjoy the right to a speedy ~~trial~~ and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense

Const. Amendment [XIV] section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

STATEMENT OF THE CASE

I Submitted a Motion to Vacate under 28 U.S.C. § 2255 dated Dec. 13, 2011 (DKT. No. 254) In Magistrate Judge Cannons R3R he recommended that my § 2255 motion be dismissed as untimely because the filings exceeded the one-year statute of limitations imposed by the A.E.D.P.A codified at 28 U.S.C. § 2255(f) (DKT. No. 317) Then Chief Judge Lewis adopted the R3R and the Third Circuit Court of Appeals followed behind. (See No. 18-2832) and (DKT. No. 338)

On the late hours of Sep 22, 1998 and into the early morning on Sep 23, 1998 Three masked men invaded Three separate homes. There were Three Concern Citizens who reported what they saw to the police. On Sep 28, 1998 The victims of #388 Mt. Pleasant was threatened and they reported the incident. On the 10-17-98 I was arrested for threatening the witness in which on this same date 10-17-98 I admitted and confessed to my actions of threatening the witnesses.

I was first charged with two threatening the witness charges (Counts 20-21) Then a week or Two later I was charged with Counts that I did not Commit (Counts 1-19) I went to trial, In August 1999 following a jury trial (I was convicted on crimes that I did not commit) I was convicted of Burglary, Robbery, Carjacking, Murder, Assault, unlawful possession of a firearm, and threatening a witness (See DK. No. 13) I was Sentence in May 2000 to life without Parole. My Sentence was affirmed Oct, 2001 by the Third Circuit Court (See U.S. V. Lopez, 271 F.3d 473 (3rd Cir 2001) on March 25, 2002 I was denied by the U. S. Supreme Court (See Navarro V. U.S. 535 U.S. 962 (2002))

Reasons For Granting The Petition

I.) They are two main reasons why I am requesting for the Supreme Court to review for error the lower courts decision regarding my \$2255 motion (see Dkt. NO. 254)

(A) The District Court wrongfully applied the equitable tolling doctrine to analyze my actual innocent claim (see Dkt. NO. 317 at 5 - appendix B). I made two separate arguments as to why my \$2255 motion (Dkt NO. 254) should not have been time barred. My first argument was pertaining to my actual innocent claim, and the actual innocent doctrine should have been properly applied for the analysis of my claim, and it was not; I also argued for equitable tolling for other reasons that I have explained, that is separate from my actual innocent claim. Instead the District Court misconstrued my arguments and applied the equitable tolling doctrine to my actual innocent claim.

(B) Also the District Court denied my motions for a Counsel, for my trial transcripts, for discovery, and for a hearing. I was denied, so not only, did I not receive legal help on the heavily complicated matters that is before you, but also I was not given the chance to show the facts as to why the actual innocent doctrine should apply to my case. Because the chance to fact-find was totally closed to me. If I was granted an hearing. I would have been able to put on the table material facts that would have proven my allegations to be true. The truth has been buried and an hearing would have unburied the truth. A Counsel would have argued my claims correctly and clearly; My actual innocent claim remains undeveloped and incomplete and because of this effect. The District Court misconstrued my argument and applied the equitable tolling doctrine (Dkt. NO. 317 at 5)

The actual innocent doctrine involves a substantial claim that constitutional error has caused the conviction of an innocent person. "How could I show and prove that a constitutional error has caused the conviction of an innocent person, when I was not given the opportunity to do so?" [Dkt. No. 338

at 19-22]; The doctrine of stare decisis is the bedrock principle of equitable jurisprudence and society has a vested interest in the conformity of the court to binding precedential holdings and governing statutory provision. Its equally vital to the uniformity of federal court decisions that those controlling authorities are adhered to on a regular basis as to ensure consistency in their judgment.

This discussion involves two separate issues that are critical to the fundamental fairness of federal habeas jurisprudence and since they are so interrelated in the petitioners case, they can be presented together in one cohesive and comprehensive argument. The central component of the petitioners claims pertain to the district courts failure to recognize or apply the governing legal standard of review to the claims presented therein and their prejudicial refusal to abide by supreme court precedents concerning when fact-finding proceedings are required.

1. There is no dispute that the federal habeas petition filed on 12-20-11 was predicated upon an admission by co-defendant Josiah that was ascertained on 7-15-2011. This newly discovered evidence pertained to an affidavit that was drafted by him and subsequently turned over to the possession of attorney Lydia Moolenaar. The petitioner was only briefly apprised of the breadth of the exculpatory declarations made by Mr. Josiah in said affidavit, yet I determined that it was sufficient to comprise the factual predicate necessary to establish a viable claim that was cognizable upon a writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2255.

Under 28 U.S.C. § 2255(f)(4) is one of the events that commence the running of the limitations period, which should have been relevant to my case. In my case Mr. Josiah made an affidavit, and I found out on 7-15-2011. The District Court acknowledged that the affidavit was new evidence. So, my one year should have started on the 7-15-2011, and on 12-20-11 I filed my petition.

PAGE: (5)(B)

The petitioners case was ~~was~~ referred to magistrate Judge Cannon for adjudication pursuant to 28 U.S.C. § 636 and it was ultimately decided that my petition was time barred pursuant to the one year limitation period set by the A.E.D.P.A due to the final judgment of the petitioners criminal case being established as 3-25-03. The court applied the standard of review for analyzing claims of actual innocence and for determining if the equitable tolling doctrine is appropriate to assist in the denial of the petitioners claim. The District court for the Virgin Islands adopted the report and recommendations and the 3rd circuit court of appeals subsequently concurred therewith. The petitioner argues that the lower courts decision is in direct conflict with 28 U.S.C. § 2244 (d)(1)(b) similar provisions of 28 U.S.C. § 2255 and numerous federal court decisions on a materially indistinguishable question of law that is vitally important to the administration of justice, specifically under the applicable authorities. The one year period has several different starting points and directly relevant to the petitioners case is the date upon which the factual predicate of the claims is discovered through the exercise of due diligence, or the date upon which the new evidence is discovered. In the present case, that date is unequivocally established as 7-15-11, the date upon which I discovered that Mr. Josiah had made a written confession and memorialized in writing what transpired on the night at issue in the criminal proceedings. This fact makes it evident that my writ of Habeas corpus was timely filed within the one year limitations period and the lower courts application of the standards of review for a petition filed beyond the statutory period of limitations was clearly wrong especially since the magistrate Judge found that the evidence is new and unavailable at trial and the evidence is arguably reliable (see Dkt. NO. 317 at 6)

The petitioner adamantly argues that my petition was timely filed within the one year period of limitations and therefore the lower courts utilization of the aforementioned standards to deny my petition was a contravention of established ~~the~~ statutory laws and precedential holdings pertaining to when said one year period is initiated. This alone is sufficient to justify the granting of the requested certiorari due to the significance of this issue to the uniformity of federal ~~the~~ court decisions on this essential matter and to ensure that the decision under review is not permitted to create a rift in the circuits. (see *McQuiggin v. Perkins* 133 S.C. 1924, 1931 (2013))

2). This argument has another vital component in relation to the second question presented and directly involves the lower courts blatant deprivation of this courts binding precedents concerning when fact finding proceedings are necessary, as well as countless other federal court decisions on this important question. The criteria for determining when an evidentiary hearing is required, has been well established by this court and codified under controlling statutory provisions and its vital to the rudimentary demands of fundamental fairness that the federal courts comply with the governing standard on a routine basis.

pursuant to 28 USC § 2255 (b) an evidentiary hearing is required for all motions brought under this section and a court abuses its discretion by denying a petition without affording the claimant an opportunity to develop the relevant factual predicate. See *Lafuente v. U.S.* 617 F.3d 944 (7th Cir 2000) and *Machibroda v. U.S.* 368 US 487 (1962). See also *Stauffer v. Reynolds*, 168 F.3d 1155 (10th Cir 1999).

This court has ~~been~~ even enumerated the criteria for the lower courts to follow when determining when to schedule an evidentiary hearing or allow discovery. See *Townsend v. Sain* 372 U.S. 293 (1963)

The petitioners claims were predicated upon the newly discovered information that pertained to an affidavit recently drafted by Mr. Josiah who admitted to committing the murder that transpired during the events for which the petitioner was charged. The petitioner has always maintain my innocence and Mr. Josiahs memorialization of those events would inherently exclude the petitioners participation therein because I was never at the crime scene. "I AM INNOCENT!"

The petitioner attempted to attain a copy of this affidavit by contacting attorney moolenaar and requesting it, yet I was advised that it would only be released via court order. The petitioner moved the court for an evidentiary hearing or other fact finding proceedings permitted by special rules 6, 7 and 8, yet my properly filed and legally sufficient motion was arbitrarily denied. I made specific factual assertions that, if true, would entitle me to relief and I provided the court with attorney Lydia moolenaars contact information as well as the identification of the evidence at issue and the court should have granted the motion due to the significance of this evidence and the courts uncertainty of the totality of the content thereof. (Many sister circuit courts have scheduled fact findings proceedings to develop the record in similar situations. See *Pham v. U.S.* 317 F.3d 178 (2d Cir 2003) *Bruce v. U.S.* 256 F.3d 592 (7th Cir 2001) and *U.S. v. Briggs*, 939 F.3d 222 (5th Cir 1991)) See Dkt. No. 338 at 17 under appendix B

The lower court evaluated the timeliness of my petition under the standard of review discussed in *Murray v. Carrier* 477 U.S. 478 (1986) and *Schlup v. Delo*, 513 U.S. 298 (1995) which mandated a review of the newly discovered evidence to determine if it satisfied the criteria necessary to invoke the miscarriage of Justice or Gateway exception of those authorities. The court found the evidence new, reliable, unavailable at trial based on the petitioners description of the contents of the affidavit, however limited yet, then determined it did not suffice to establish innocence without obtaining the affidavit to ascertain the entirety of the confession or questioning Mr. Josiah during a hearing.

The newly discovered evidence was a vital component of the analysis to determine if reasonable jurists would debate about petitioners guilt in light of that evidence, yet the lower court failed to permit the evidentiary (hearing) gathering proceedings that were necessary to obtain said evidence thereby violated the holdings in *Townsend v. Sain*, *supra*, *Blockledge v. Allen* 431 U.S. 63 (1977) and numerous other federal courts holdings on this particular issue. Its objectively unreasonable for the lower court to deny my 2255 petition on the basis that the newly discovered and reliable evidence did not establish my innocence on the aiding and abetting offense without perusing that affidavit in its entirety to determine the content or without holding a hearing to question the affiant (or to read the complete affidavit.)

The petitioners claims of constitutional right infringement were ~~not~~ not frivolous, nor patently false and if true would entitle me to the relief sought in the lower court.

I had a right, and the court had a duty under the applicable Controlling authorities to afford me sufficient fact-development Procedures to ensure that their decision represented an equitable resolution of the complaint that was rendered with a full understanding and comprehension of the facts relevant to the governing standard of review.

The lower court rendered their judgment on an incomplete record and that undermines society interests in their reliance on the case law and statutes pertaining to the requirement of satisfactory factual development. My case meet all the required elements for the court to permit, discovery or evidentiary hearing, yet they decided to deny those required judiciary process and premise their judgment on their uncertainty of the evidence at issue; Despite finding it reliable and then not even obtaining it to clarify their lack of certainty (see Dkt. NO. 338 at 17 at appendix B)

The lower courts decision cannot be relied upon to have been in compliance with this Courts holdings, nor is it conformity with other federal Courts decision on materially indistinguishable circumstances. The content of the evidence at issue as well as the testimony of the affiant directly supported the petitioners claims of constitutional right deprivations and it was essential to the lower courts analysis of an actual innocence or fundamental miscarriage of Justice claim for excusing procedural default. (If the Court still thinks that my claims is late) So there failure to grant the petitioners motion for evidentiary hearing or discovery to obtain that vital evidence is an issue that mandates granting of the requested Certiorari. (This petitioner argues is contrary to, or involves an unreasonable determination of the facts, and an unreasonable application of clearly established United States Supreme Court Law) All the District court did was say that I did not show any facts to back my claims. My Question is "How Could I Show, if I was not allowed to show ~~my~~ my innocence?" (see Dkt. NO. 317 at 7 and Dkt. NO. 338 at 19) Also see (Dkt. NO. 338 at 17) and (Dkt. NO. 338 at 3) (see Dkt. NO. 339)

Even if the Supreme Court finds that I was late in filing my \$2255 motion. The decision of the District Court maybe erroneous because the lower court did not apply properly The actual innocent or the miscarriage of Justice doctrine to my claims of Constitutional error. The exceptions of actual innocence and miscarriage of justice should have been applied by the lower court when reviewing my claims, and it was clearly not. The District Court acknowledged that the evidence was new and unavailable at trial but did not but did not apply the proper exception when reviewing my claims of Constitutional violations. (see Dkt. No. 317 at 5-appendix B). The lower court wrongfully applied the equitable tolling doctrine to my actual innocent claims for excusing procedural default. It is well known that the equitable tolling and the actual innocent doctrine are two different doctrines that require different arguments, because of the different elements. Based on the Constitutional error issues within my arguments, of prosecutorial misconduct based on subject matter jurisdiction and ineffective assistance of Counsel. The exceptions of actual innocence and miscarriage of justice falls in place that such review was very much appropriate and the right analysis of my actual innocent claim. Instead the lower court applied the wrong review of equitable tolling to my actual innocent claim.

[See Dkt. No. 338 at 19-22] Then see [Dkt. No. 293, 294, 302, 323, 325] Then see [Dkt. No. 339]

I motioned to the District Court for my trial transcripts [Dkt. No. 307] For a Counsel [Dkt. No. 304] For Discovery [Dkt. No. 293, 294, 302, 323, 325] For a hearing [Dkt. No. 292, 331] and I was denied [Dkt. No. 339] The denial curtailed my ability to present a complete healthy, and fully developed claim of Constitutional error that has lead to my conviction of life in prison. The District Court did not allow for any true light to shine through on my claims. By creating Gray stormy clouds with the denial of my motions. For reasons out of my Control. I could not get the facts necessary to show my innocence. Such actions by the lower court is in conflict with what Chief Justice Warren explained in *Townsend V. Sain*. Also see *Machibroda V. U.S.* 368 US 487 (1962).

Also please take into consideration that I have been hampered with two major situations that, has bombarded my constitutional error arguments with such force that the impact caused the birth of my claims to be born with disabilities

1) I am an Virgin Island contract inmate who was sent to Virginia prison system through a correctional service contract between the VIDOJ and the VDOJ. I am very far away from home. So when I send legal work home from Virginia, there is a possibility that my legal work would get lost in the mail. Two huge hurricanes Irma and Maria was the main cause of some of my legal work not making it to the V.I. Court. One of my motions to amend to my incomplete and undeveloped Constitutional error claims did not make it to the court. So it went unnoticed. Such as two due process violations claims and a jurisdiction subject matter claim, based on prosecutorial misconduct & ineffective assistance of Counsel [Dkt. No. 254]

The prosecutorial misconduct based on Subject matter jurisdiction Claim went unnoticed, Because the same time that Judge Cannon executed his R&R [Dkt. NO. 317] regarding my \$2255 motion [Dkt. NO. 254] Two hurricanes had, had its turn bashing the islands of Puerto Rico and the Virgin Islands up real bad. I received magistrate Judge Cannons R&R around the 8-31-17 and my objections was due on the 9-18-17. I requested to the Court for extra time and I did not received an answer from the District Court. So I panicked and I rushed my Pro-Se legal work, and I mailed out my work to the Court.

(In my original objections I did argue that the District Court did not have jurisdiction over Counts 20 - 21 and that the Court obtain jurisdiction over the two Counts via fraudulent acts done by the prosecutor, and this prosecutorial misconduct claim is still and continues to be a time barred Constitutional violation claim on my original \$2255 motion to vacate) (see Dkt. NO. 254)

My original objections did not make it to the District Court because my legal mail got lost. (The mailing system was down in Puerto Rico and all mail directed to the U.S. Virgin Islands stops at Puerto Rico first) So I sent my copies that I keep for my self and my copies also did not make its destination. So I drafted a hurry up new objections which resulted in I leaving out important issues showing why I am innocent, and why I did not received a fair trial, and that Constitutional error has caused my conviction.

I have made and argued enough of subject matter jurisdiction, but it went over the Judges at the District Courts head, and my prosecutorial misconduct / Jurisdiction claim was not adjudicated on the merits of my claims, that if proven to be true I will be entitle to relief. The two hurricanes, and my lost legal work, was not my fault. The hurricanes was an act of God. I could not control my legal work getting lost in the process. I could not have stop it.

A.) My prosecutorial misconduct / subject matter jurisdiction claim should not have been procedurally defaulted at all. Because the doctrine of procedural default does not apply to Jurisdiction error claims at all. My claim should not have been time barred. So as I explained and.....

Furthermore, what can not go unnoticed is that one of my claims within my 28 U.S.C. § 2255 motion to vacate [see Dkt. No. 252, 254] was not adjudicated on the merits. This claim in which I am speaking of is prosecutorial misconduct and this claim has issues of subject matter jurisdiction within the argument.

Issues dealing with jurisdiction could be brought up at anytime.... Challenges to a District Courts subject matter jurisdiction may be brought up or raised at anytime, including in a § 2255 motion for collateral review of a federal conviction see U.S.V. Cuch 79, F.3d, 987-990 (10th Cir 1996).... and I did brought up this "issue/claim" under prosecutorial misconduct, and no one has ever adjudicate upon the merits of my claim, because I have been always procedurally defaulted from my claims of constitutional violations. I have asserted and explain enough of my subject matter jurisdiction claim were this claim and my argument should have been adjudicated on the merits.

As explained..... The Threatening the witness counts 20 and 21 on the indictment. Was added on to the indictment through fraudulent acts committed by the prosecutor. The District court did not obtain jurisdiction over the two local offenses of threatening the witnesses via statutory authority. The federal prosecutor committed and act of fraud when he presented the false evidence/misinformation to the Grand Jury. [appendix D at 6]

The prosecutor told the Grand Jury "That the victims at #388 Mount Pleasant Has identified Mr. Navarro as one of the gunmen who who robbed them at gun point." (see under appendix D at 6)

This jurisdictional error is especially egregious because of the prejudicial effect that it had on the other federal and local offenses on the indictment. The judgment in relation to those two charges (counts 20-21) should be considered 'void ab initio' and my case should be ~~overturned~~ over turned... I did not receive a fair trial.

(If I am given a fair opportunity to get my trial transcripts and a part of the Bill of Particular concerning only counts 20-21. I will be able to show and shine light on the lie created by the prosecutor) (see under appendix D at 6).... The prosecutors false statement placed me on the crime scene, while the crimes was in progress. The prosecutors false statement gaved the Grand Jury the impression of an idea that was not true. When in fact the prosecutor knew that the same two victims, had stated prior, to the untrue statement made by the prosecutor. That they could not have identify anyone of the three masked men who robbed them

at gun point. Also the truth was exposed, at trial, when the two victims of # 388 Mount Pleasant was asked by the prosecutor. "If they could identify anyone in Court today as one of the gunmen who robbed them?" ~~and~~ one victim said "No" and the other one said that "He only thought it was me." (see under appendix E at 7) It is clear..

((We MUST keep in mind that directly after the robbery. The same two victims at # 388 Estate Mount Pleasant, Confirmed during questioning. By Homicide Detectives, When asked if they could've identify "any one" of the three gunmen. They Swore that they could not have. (See; Trial Transcripts) ~~and~~ This statement was entered into evidence, at trial, and the Sworn Statement was made before, I had threatened them.)) (see trial transcripts)

The witnesses, victims of # 388 Mt. Pleasant, Sworn Statement and Testimony, derails the prosecutors false remarks made about me ~~to~~ the Grand Jury. The prosecutors remarks "that the victims of #388 Mt. Pleasant Has identified me to be one of the gunmen who robbed them at gun point." So biased the Grand Jurys vote to indict counts 20-21 to the indictment was based on that bias. The false remark did influenced the Grand Jurors decision to join (add-on) counts 20-21 to the indictment. This reckless disregard of the truth or falsity was done with the intent to deceive the Grand Jury into thinking that the two victims could identify me because they saw my face (or something) and that I actually was involved in the crimes. The prosecutor false statement placed me on the crime scene, while the crimes was in progress.

Also, I was prejudiced by the joinder of counts 20-21 because the improper joinder created a fundamental unfairness that violated my fourteenth amendment right to due process, and the error resulted in an unfair trial for me. Because the improper joinder of counts 20-21 effectively relieved the government of its fourteenth amendment burden of proving every element that I aided and abetted, at trial, to first degree murder beyond a reasonable doubt had a substantial and injurious effect because counts 20-21 had big time influence in determining the jurys verdict. The Jury could not separate counts 20-21 from the other counts because counts 1 through 21 was all under the pinkerton doctrine. The jury was no doubt inclined after hearing the evidence as to counts 20-21 to find me guilty on all the other charges, as well.

The actual prejudiced factor still remains because the improper joinder of counts 20-21 was used as evidence. Not only to prove that I committed a crime, but while counts 20-21 remain under the pinkerton doctrine in the eyes and mind of the jury, if I am involved in criminal activity in one of the counts under pinkerton, then I have to be guilty on all of the other counts under pinkerton.

To be clear, I am not saying that the pinkerton doctrine should not have been applied to counts 1-19. What I am explaining is simple, and that is. That the actual prejudice factor of joining counts 20-21 with the other counts deprived me from the right to a fair trial, because the improper joinder uplifted the governments of its fourteenth amendment burden of proving every element that I aided and abetted, in trial, to first degree murder beyond a reasonable doubt.

Counts 20-21 was added to the indictment and placed under the pinkerton doctrine because the prosecutor committed a act of fraud to the Grand Jury by manipulating the Grand Jury into thinking that. (The victims at #388 Estate Mt. Pleasant can and has identify me to be one of the three gunmen who robbed them.) If the prosecutor has not given a false statement to the Grand Jury. Counts 20-21 would not have been added to the indictment. Because under Fed. R. Crim. P. Rule 8(a) and 14(a) The joinder would not have been permitted, because of the prejudicial dangers. If you take away the error, I would not have been found guilty to aiding and abetting to first degree murder.

Its an axiomatic principle of law that a court must have jurisdiction over the parties and subject matter at issue (which is counts 20-21) otherwise, the resulting judgment will have no legal force and will be considered 'void ab initio'. Its equally established that a void judgment can be challenged at anytime, and in any manner, and in any court. Therefore this court, or the District court has the full legal authority to adjudicate upon the merits of my prosecutorial misconduct claim in my §2255 motion [see Dkt. No. 254] and grant relief.

My issue was and still is, that the District Court did not have jurisdiction over the criminal counts 20-21 in the indictment, and that the District Court gained jurisdiction of those counts through fraudulent acts committed by the prosecutor... Furthermore this prosecutorial misconduct claim is a claim that was not adjudicated on the merits because my §2255 motion was ruled time barred.

(B)... Furthermore, if you look at counts 20-21 (see under appendix H) on the indictment. You will see that the prosecutor at the Grand Jury counts 20-21 charged me and my co-defendants as principal, aiders and abettors and under the pinkerton liability. The prosecutor must prove the three essential elements beyond beyond a reasonable doubt that my co-defendants helped or commanded me to threaten the two witness/victims of #388 Mt. Pleasant. [see appendix E at 9]

Once again the prosecutor made up a false story and asserted false information to the Grand Jury. The prosecutor did not have any evidence when he declared to the Grand Jury that

"On or about Sep 28, 1998 the Defendants did knowingly use force, threat, and intimidation against the victims of #388 Estate Mt. Pleasant with the intent to influence or prevent any testimony." (See under appendix H)

The First thing, that should be noticed is that I was not a defendant when I committed the crime of threatening the witnesses. I was not even a suspect in the crimes committed on Sep 22-23, 1998.

Secondly, my Co-defendants, Josiah, Crispin, and Lopez did not knowingly use force, threat, and intimidation against Mr. Sorhaindo or Mr. Ferrell (who are the victims of #388 Estate Mount Pleasant) at trial the jurors verdict proves they didn't. The prosecutors goal, by any means, was to get counts 20-21 added on to the indictment and under the pinkerton doctrine. So they had to make up a false assertions to the Grand Juror. .. Furthermore The Jury, at trial, saw that the government did not meet their burden, by proving every element of the pinkerton doctrine that my Co-defendants did knowingly used force, threat, and intimidation against the witnesses with the intent to influence or prevent any testimony and Voted to acquit my Co-defendants on Counts 20-21.

It is my argument that it was erroneous and fraudulent for the government to assert to the Grand Jury that the other defendants was involve in, or had anything to do with my involvement and decision in committing the crime of counts 20-21, without evidence to prove the allegations, to be true.

Even if my intent was to help my friends by threatening two witnesses from testifying against my friends, does not justify that the District Court having jurisdiction over counts 20-21. Counts 20-21 should not have been apart of the indictment, and placed under the pinkerton doctrine. Counts 20-21 should have stayed in its original jurisdiction at the Territorial Court of the U.S. Virgin Island (St. Croix)

It is clear that the District Court obtained jurisdiction over counts 20-21 through extrinsic fraud committed by the government. This fraud was committed when the government declared or asserted to the Grand Jury "that the Defendants did knowingly used force, threat, and intimidation against the witness with intent to influence or prevent any testimony!" The prosecutors prejudicial remarks so biased the Grand Jurors vote was based on that bias. This form of trickery was done for the sole purpose that the Grand Juror would indict counts 20-21 to the indictment under the pinkerton doctrine. My Claim of Subject matter jurisdiction went unnoticed because of the same explanation that I explained on page (11) of this analysis of the questions presented.
Page (11 last par.)

Overall the District Court denied me, the chance to fact-find and fact-develop, this denial created gray clouds over my head and I could not shine any light (truth) on my arguments, of actual innocence. Such action is in conflict with what Chief Justice Warren held in Townsend V. Gain. Chief Justice Warren made crystal clear and identified a strong federal policy favoring hearings or at least equally sufficient fact-development and fact-resolution procedures because detention Obtained [in violation of the Constitution] is not intolerable and because the opportunity for redress which presupposes the opportunity to be heard to argue and present evidence must never be totally foreclose. (See McQuiggin V. Perkins 133 S.C. 1924, 1931 (2013))

First off the actual innocent (claim) doctrine involves a substantial claim that Constitutional error has caused the conviction of an innocent person. The District Court has acknowledge that the evidence that I presented was new evidence but then denied me the opportunity to prove and show that Constitutional error has caused the conviction of an innocent person by denying my motions for my trial transcripts, for discovery and for an evidentiary hearing. (see Above what chief Justice Warren made clear)

My incomplete and undeveloped claim of prosecutorial misconduct (Const. Amen. 14 Violation) and ineffective assistance of Counsel (Const. Amend. 6 and 14 Violation) remains incomplete. (see United States V. Jones 172 F.3d 381, 384-85 (5th Cir 1999))

Also, it will be a total miscarriage of Justice to not review my Complaint for the damaging impact that the improper joinder of Counts 20-21 had on my trial. The District Court gained jurisdiction of Counts 20-21 through fraudulent acts committed by the government. (see McQuiggin V. Perkins, 133 S.C. 1924, 1931 (2013))

Honorable Justice Judges of the Supreme Court (who are the Guardians of the American Constitution). What I will explain to you ^{Now} ~~What~~ is for the purpose to help clear the air in hope that my objections of the lower courts proceedings and rulings is understood, and clear to you all ABOVE.

The District Court of the Virgin Islands and the Third Circuit Court of Appeals Concluded that the new evidence in which I presented does not undermine my conviction, which was based on a theory of pinkerton liability. (See under Appendix A and B)

the lower courts made its ruling, because I just did not have the factual material ~~to prove~~ and show that constitutional error has caused the conviction of an innocent person, (obtaining the facts was beyond my control) and why I am entitle to relief.

The lower courts stated "the new evidence did not undermine my conviction which was based on a theory of pinkerton liability"... This is the problem, Your Honor. The pinkerton liability should not have been applied to counts 20-21. Because the District Court should not have had jurisdiction over counts 20-21. (The issue that was by passed by the government was to analyse counts 20-21 for the improper joinder, and for prosecutorial misconduct) also (for subject matter jurisdiction)... Counts 20-21 was wrongfully placed under the pinkerton liability. The District court obtained jurisdiction of counts 20-21 through fraudulent acts committed by the government, and also the two counts was used as evidence against me, which uplifted the governments fourteenth amendment burden to prove every element of aiding & abetting, in trial, to first degree murder, beyond a reasonable doubt, which violated my due process rights to fair pre-trial proceedings and a fair trial. (on pg 13-17 I have explained the full Complaint).

My Complaint is clear. The government made up false evidence against me when they alleged to the Grand Jury "That the Victims at #388 Mt. Pleasant has identified me to be one of the three gunmen who robbed them." (see appendix D at 6) and also when they falsely stated "That the Defendants did knowingly use force, threat and intimidation against the two victims of #388 Mt. Pleasant who is witness in connection with judicial proceedings relating to the felonies set out in counts 1-4 with the intent to prevent any testimony"

These two statements was ~~not~~ ^{not} the truth and I could have proven that the allegations is false, if I was given some kind of fact-development or fact-resolution. I was denied Discovery, a hearing, my trial transcripts, and a Counsels help (See Dkt. NO. 389)

The two major complaints that was not adjudicated on the merits was 1) that my prosecutorial misconduct claim is based on subject matter jurisdiction, and subject matter jurisdiction claims could be brought up at anytime. There is no time limitations on such claims. So the prosecutorial misconduct claim should have been reviewed for error by the lower courts and it was not. 2) Secondly my actual innocent claim ~~was~~ for excusing procedural default was handle wrong by the lower courts, because the District Court applied the equitable-tolling doctrine to review my actual innocent claim. To overcome the actual innocent doctrine for excusing procedural default one must show that Constitutional error has caused the conviction of an innocent person. (See House v. Bell 547 U.S. 518, 538 (2006))

My prosecutorial misconduct and My ineffective assistance of Counsel claims is and remains undeveloped and incomplete, because I was not given any kind of fact-development or fact-resolution so that I could submit and argue a healthy claim of constitutional deprivation. The showing of constitutional error is one of the principle needed to overcome the actual innocent and miscarriage of justice doctrines.

For the reasons above I ask and pray to Jehovah-jireh-Elapha that the Supreme Court remands my criminal case back to the District Court to see if my prosecutorial misconduct/Jurisdiction claim could warrant relief Coleman v. Hardy 628 F.3d 314, 320, 322-23 (7th Cir 2000) and Henderson v. Sargeant 926 F.2d 706, 713-14 (8th Cir 1991) Also to grant me a evidentiary hearing so that I could put on the table all the relevant facts that would prove that the Constitutional error has caused the conviction of one who is innocent and that the District Court gained jurisdiction over counts 20-21 via ~~fraudulent~~ fraudulent acts by the government. I ask the Supreme Court to use its powers because the lower courts has wrongfully drifted away from its regular course of judicial proceedings as to call for an exercise of this courts GOD on earth powers... I will close my presentation with the words of the wise, Chief Justice Kennedy "our law must not become so caught up in procedural niceties that it fails to short out simple instances of right from wrong and give redress for the latter"

THANK YOU For your Time

(19)(A)

"Jehovah-Shammah-nissi"

JAH BLESS (S) Heaven

The material behind Appendix F is material that I believed is essential to understand the petition.

First See under appendix B, Dkt. NO. 338 at 19-22.

The actual innocent exception involves a substantial claim that Constitutional error has caused the conviction of an innocent person.

See Dkt. NO. 338 19-22. The District Court made their decision on an undeveloped and incomplete record, or claim. See Dkt. NO. 339 I was denied the opportunity to fact-find, to fact-develop and fact-resolute which is essential in proving that I am actually innocent. Fact-development and fact-resolution is essential to proving ones claims of Constitutional error.

Behind appendix F is my full argument of Constitutional error that caused the conviction of an innocent person (me) and still I needed my trial transcripts, and a copy of the smeared up partial print to test my theory of the events that happen before the crimes went into progress. So that I could prove that I am innocent.

My trial Counsel never hired or requested the Court to hire me an expert for my defense, and the Complete Record Shows that (see Dkt. NO. 1-339) I never got the fair opportunity to have my own expert study (test) the only evidence against me (left thumb smeared up partial print). So I requested to the Court after I submitted my \$2255 motion for a copy of the left thumb print so that I could get it tested and I was denied that opportunity, the chance to fact-develop and find the truth (see Dkt. NO. 339)

So when you view Dkt. NO. 338 at 19-22, and you see all of the confusion by the Court trying to understand my arguments, you could conclude that an hearing would have been fair, so that my actual innocent argument would not be misunderstood.

See Appendix F

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Hernan Navarro

Date: 9-28-19