

No. _____

19-8173

IN THE

SUPREME COURT OF THE UNITED STATES

ERVIN STCLAIRE SR. PETITIONER

(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

FEB 05 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

ERVIN STCLAIRE #13402-059

(Your Name)

USP-TUCSON. P.O. Box #24550

(Address)

Tucson, AZ. 85734

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

I

WHETHER the Eighth Circuit Erred in Circumventing the two step inquiry mandated by Buck v. Davis 137 S.Ct. 759, (2017), based upon Tolling Provisions,

II

WHETHER the Eighth Circuit Erred in allowing the District court to Time bar Jurisdictional claims

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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OTHER

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 _____; 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☒ is unpublished.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 _____ to the petition and is

☐ reported at NA _____; 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☐ is unpublished.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 NA _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the NA _____ 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☐ is unpublished.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 11-8-2019.

☒ 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 2, 2020, and a copy of the order denying rehearing appears at Appendix B. (Mandate only)

☐ 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 NA.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: NA, 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 NA (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

1254(a)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. - 5. (Due Process). - - - - -

STATEMENT OF THE CASE

Petitioner, Ervin St. Claire, Sr., was initially indicted with two (2) counts of aggravated sexual abuse of a child under the age of 12, and one (1) count of abusive sexual contact, and one (1) count of abusive sexual contact of a minor. Each count alleged St. Claire was an Indian and the offenses were committed in Indian Country.

On May 6, 2015, a superseding indictment added another count of Aggravated Sexual Abuse of a Child under twelve (12) and another count of abusive sexual contact. 18 USC §§ 153(a); 2241(c); 2244(a)(5). All six counts alleged St. Claire an Indian and that the crimes occurred in Indian Country.

The Government, "USA", introduced uncharged "prior acts" of child sexual abuse pursuant to 413, 414 Fed. R. Evid. over objection. [Ex. Doc. 36] which Mr. St. Claire had never been convicted.

On July 1st, 2015 St. Claire was found Guilty on all six counts, and was sentenced on November 13th, 2015 to concurrent life terms of imprisonment on counts -1, 2, 3, 5 and 6, and a concurrent two year sentence on count-4, with Lifetime of supervised release, and a \$600 special assessment.

On November 18, 2015, St. Claire appealed his sentence and conviction to the Eighth Circuit. U.S. v. St. Claire, 831 F.3d 1039 (8th Cir. 2016)

which was denied, Affirmed on August 5th, 2016.
[USCA8 NO. 15-3665].

St. Claire Petitioned the Eighth Circuit, pro se, for rehearing, which the Eighth Circuit denied without merit determination on November 1st, 2016.

St. Claire Petitioned the Supreme Court, pro se, for Writ of Certiorari which was denied on April 17th, 2017, without merit determination, St. Claire v. U.S., 137 S. Ct. 1604 (2017).

St. Claire sought rehearing in the Supreme Court, pro se, which was denied without merit determination, on April 17th 2017.

On July 10th, 2018, St. Claire filed a 28 USC § 2255 motion in the District Court, pro se, Challenging Appellate decision utilizing the wrong precedent for abuse of discretion, and rehearing App. issue of Jurisdiction, inclusive of Ineffective Counsels, and Perjured Testimonies.

On April 23rd 2018, the District Court denied St. Claire's §2255 in majority part, without merits determination as untimely from the dates of denial of Supreme Courts Rehearing regardless of "tolling provisions" due "diligence" of St. Claire, etc. St. Claire's, May 16th, 2019 Rule 59(e) Motion for Reconsideration was denied without merits determination on July 9th, 2019.

On October 10th, 2019, St. Claire submitted his application for certification of Appealability pursuant to 28 USC § 2253 to the Eighth Circuit, which was simply denied by the Eighth Circuit without any threshold inquiry nor merits determination at all, on November 8th, 2019, [USCA8 No. 19-2222] On December 17th 2019 St. Claire moved the Eighth Circuit for rehearing and reconsideration of its vague judgment and lack of analysis of St. Claire's COA. [USCA8 No. 19-2261] with no answer thereto as of the below signed date. However, the Eighth Circuit issued mandate as to [USCA8 No. 19-22761] on January 2nd 2020, leaving St. Claire's deadline due on or before February 6th, 2020.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit erred in denying Mr. St. Clives

certification of appealability without conducting the two step process of (1) an initial determination whether the claims are reasonably debatable, and (2) an appeal in the normal course if so found, as the Supreme Court reasoned in Back v. Davis, 137 S.Ct. 759, 2017 U.S. LEXIS 27 (2017).

Mr. St. Clives 28:2253 COA, demonstrates

that the Tolling Provision was permissible in Mr. St. Clives be half, in light of Holland v. Florida, 560 U.S. 631, 649 (2010), and Gonzalez v. Crosby, 162 Fed2d 480, 545 (2005) holding petitioners

petition for rehearing to the Supreme Court

as proof of diligence to pursue the issues in a liberal sense, especially considering

the Supreme Court in Sexton v. Bequaereaux, 201 LE2d 786, 788 (2018) favors that st.

claims issues are never before raised nor

adjudicated on their merits, and that the

AEDPA statute of limitations is not a juris-

directional bar. Holland, supra, id, 560 as 649?

For the Fifth Circuit to deny without

opinion, passes the buck to the Supreme

Court, as the Fifth Circuit's order

Literally Circumvents the Supreme Courts reasoning in Buck, supra that a Appeals Court should Limit its examination at the COA stage to a threshold inquiry into the underlying merits of the claim's" and ask "Only if the district courts decision was debatable". Id., 197 L.Ed.2d LEDHR 6, citing Miller v. Cockrell, 537 US 322, 327, 348 (2003)

Thus, the Eighth Circuit has departed from the accepted and usual course of Judicial proceedings as to call for an exercise of this Courts Supervisory power, to Appeal to this Court all issues raised, or order this cause remanded for further proceeding's pursuant to Buck, supra, or Massaro v. United States, 155 L.Ed.2d 714 (2003) in the district court.

II

The Eighth Circuit Denial of COA, is in Error when it allowed the District Court to go uncorrected to place a Time Bar on Jurisdictional issues which can be raised at any time, and failure to distinguish whether Jurisdictional elements had been satisfied pursuant to the requirements of 18 USC § 153(a). In re Winship, 397 US. 358 (1970), Jackson v. Virginia, 442 US 307, 313 (1979), reasoning an otherwise violation of due process.

Thus, the Eighth Circuit Court of Appeals, has refused to determine question of law and fact as to whether the United States, or the State of North Dakota has Subject matter and personal Jurisdiction over Mr. St. Claire and his alleged offenses, and whether Jurisdiction was obtained via the Extradition ordinances, Acts and Treaty: herefore, circumventing the accepted and usual course of Judicial proceedings as to call for exercise of this Courts supervisory Power to appeal to this Court. all Jurisdictional issues raised, or order this cause remanded back for further proceedings pursuant to Back, supra, or Massaro v. United States, 155 LE2d 20 714 (2003) in the district court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ermi L St Claire 3-9-20
13402-059

Date: 2-4-2020

Re submitted on 3-9-20, via
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