No. 20-1528

IN THE
SUPREME COURT OF THE UNITED STATES

LAWRENCE DOBY WILSON,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Lawrence Doby Wilson
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Pro Se

QUESTION(S) PRESENTED

1. Whether The Court Of Appeals In A Coram Nobis Proceeding Denies A Criminal Defendant Due Process Under The Fifth Amendment To The United States Constitution By Its Refusal To Use Equitable Tolling To Permit Said Defendant To File For Relief Once It Concludes That Defendant Is "Actually Innocent" Of The Crime Convicted Of?

2. Whether The Delayed Filing Of A Petition For Coram Nobis Relief Is Justified By The Fact That The Court Of Appeals Opinion Showing That The Petitioner Is "Actually Innocent" Of The Crime Was Decided After Petitioner Filed His Initial Petition For Coram Nobis Relief On Grounds Of "Actual Innocence;" And, If So, Does A District Court Abuse Its Discretion By Denying Coram Nobis Relief On Grounds Of Unjustifiable Delay When Petitioner Bases His Second Coram Nobis Petition On Said Circuit Decision Which Shows That He Is "Actually Innocent" Of The Crime?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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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

The Opinion of the United States Court of Appeals appears at Appendix "A" to the petition and is unpublished.

The Opinion of the United States District Court appears at Appendix "B" to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was October 30, 2020.

A timely petition for rehearing was denied by the United States Court of Appeals on February 4, 2021, and a copy of the Order denying rehearing appears at Appendix "C."

The jurisdiction of this Court is invoked under 28, U.S.C., § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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.

AMENDMENT VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy 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.

STATEMENT OF THE CASE

Lawrence Doby Wilson("Petitioner") was convicted in the U.S. District Court of Oregon of interstate transportation of money taken by fraud from the State of Oregon to Pennsylvania in violation of 18, U.S.C., § 2314. Petitioner was involved in a financing scheme related to the purchase of the Aladdin Hotel in Las Vegas, Nevada. As a result, Petitioner was indicted for wire fraud, mail fraud, and taking those fraudulently obtained monies in interstate transportation, in violation of 18, U.S.C., § 2314. Petitioner pled not guilty to all three charges. He was provided court-appointed counsel, Jeffrey Rogers, Esq., to prepare a defense against the charges. Prior to trial, the Government dismissed the wire fraud charge, and the jury acquitted him of the mail fraud charge. Petitioner was sentenced to seven years in federal prison. He appealed. The Court of Appeals affirmed his conviction and sentence; consequently, he served the seven-year prison term to expiration.

From the start, and over the next forty(40) years, Petitioner launched a full-scale attack against what he deemed was an unfair conviction and sentence. Petitioner filed his first motion for habeas relief in 1982, and his second less than a year later. Petitioner raised a variety of issues including complaints about the jury selection process and the application of an unfair sentencing enhancement, along with accusations of ineffective assistance of counsel at the trial level and appellate counsel, and prosecutorial and judicial misconduct. The District Court held one(1) evidentiary hearing, dismissed both petitions and was affirmed on appeal.

In a determined effort to obtain justice, Petitioner filed two more habeas motions over a three-month period in late 1987 and early 1988 See, United States v. Lawrence D. Wilson, 915 F.2d 1582 (9th Cir. 1990). The issues raised in these proceedings were denial of access to grand jury ministerial records to prove irregularity in the jury selection process; ineffective assistance of appellate counsel; denial of the right to review transcripts; and use of perjured testimony of the prosecutor. Appendix "D," at p.1.

On June 9, 1988, the Magistrate recommended dismissal of both petitions. The District Court adopted the Magistrate's findings, dismissed the petitions, and denied Petitioner's motion for summary judgment. Petitioner filed a timely notice of appeal which was denied. The Court of Appeals denied Petitioner's appeal with this caveat:

> Although Wilson actually denominated these claims as claims of outrageous government misconduct and denial of due process, they were, in substance, nothing more than a repeat performance of Wilson's claims in his first two petitions; and
>
> Wilson has shown nothing to indicate that the interest of justice would be served by having us reexamine those issues. Wilson has already had a full opportunity to present his claims to the district court and to this court. No purpose other than harassment can be served by his repeated attempts to obtain a decision more congenial to his way of thinking. If he persists in that course of conduct, we will not hesitate to impose appropriate sanctions upon him. See 28 U.S.C. § 1912; Fed.R.App.P. 38

See, United States v. Lawrence D. Wilson, 915 F.2d 1582 (9th Cir. 1990), at page 2, Footnote 1 and last paragraph. See, Appendix "D."

Three years after that warning, Petitioner filed his fourth habeas motion. That motion was filed predicated upon the Ninth Circuit Court of Appeals precedential holding in united States v. Starr Renee Harris, 724 F.2d 1452 (9th Cir. 1984), wherein, the Court held that:

> Defendant was involved with a co-defendant in a scheme where bearer bonds were stolen from a bank and defendant deposited them into her account, then tried to withdraw the funds. Defendant was initially charged with aiding and abetting the co-defendant in embezzlement. A superseding indictment charged defendant with possession of property known to be stolen from a bank in violation of 18 U.S.C.S. § 2113(c). At the date scheduled for trial on the original charges, the district court dismissed that indictment. The district court denied defendant's motion to set a 30-day trial date on the new indictment under the Speedy Trial Act, 18 U.S.C.S. § 3161 et seq. Defendant was tried and found guilty of violating 18 U.S.C.S. § 2113(c). The court found that the district court erred in denying defendant's motion. Under 18 U.S.C.S. § 3161(c), defendant was entitled to a 30-day minimum trial date on the super seding indictment in order for defendant to prepare a defense. The court reversed defendant's conviction, holding that where defendant was tried immediately after the arraignment on the superseding indictment, her rights under the § 3161(c)(2) were violated.

Petitioner predicated his fourth habeas petition on the Court of Appeals holding because that holding parallels a factual scenario in his case: 1) Petitioner was tried on a superseding indictment which was returned two(2) days before his trial was scheduled to begin, 2) Petitioner was not advised of his Speedy Trial rights by either counsel or the district court, 3) Petitioner did not "waive" his "30-day" indictment to trial right under 18, U.S.C., § 3161(c)(2); and 4) the district court commenced his trial within two(2) days after return of the superseding indictment. The Petitioner focused his habeas strategy on the fact that his speedy trial rights had been violated as opposed to the fact that his Attorney had been ineffective by his failure to make a motion to dismiss due to violation of the Speedy Trial Act. Under the Act, § 3161(c)(2)(Supp. III 1979), "[Wilson] could not be compelled to commence trial in less than 30 days from the date of the second arraignment absent an express waiver." The district court denied relief and in affirming the district court, the Court of Appeals held, "The Speedy Trial Act 'does not require that the 30-day trial preparation period of [18 U.S.C.] be restarted upon the filing of a superseding indictment.'" See, united States v. Lawrence Doby Wilson, 45 F.3d 438 (9th Cir. 1994). [Appendix "E," attached]. That same Court ruled that Petitioner's "2255 challeng[ed] his convictions for wire fraud, mail fraud, and transporting fraudulently obtained money in interstate commerce." Id. Petitioner later discovered that the Court of Appeals had no District Court "record" available to inform it that Petitioner was acquitted of "mail fraud," and the Government moved to dismiss the "wire fraud" charge. The "record" was unavailable because it was allegedly "lost" or "destroyed" enroute to the Federal Archive Center. Thus, Petitioner was deprived of the necessary "record" to dispute his unlawful conviction and sentence. On rehearing, the panel refused to change its judgment as to the facts or governing law in his case. For instance, the panel claimed that, "Wilson fails to show that he asked for a continuance or that prejudice resulted from the filing of the superseding indictment. Thus, bringing him to trial less than 30 days after the filing of the superseding

indictment did not violate the Speedy Trial Act." Id. When Petitioner argued that he was "actually innocent" and that his counsel's "ineffective assistance" explained why objections were not made, the panel refused to hear his claim because he had not made that claim in his section 2255 motion. Id.

In mid-2000, Petitioner filed a motion under Federal Rule of Civil Procedure 60(b) asking for reconsideration of the claims raised in his fourth habeas motion. At that point, Petitioner's trial record had been mysteriously lost in the mail on its way to the Federal Records Center and the Clerk's "Docket Entries" were truncated such that the history of any prior proceedings in Petitioner's case before August 16, 1993 were also "lost or destroyed." The Clerk's Docket Entries begin at Docket Entry #105. Additionally, the names of all Official Players: the Judge, Prosecutors, Lawyers, Deputy Clerks, and Court Reporters prior to August 16, 1993, have, also, been "lost or destroyed" in the case. In light of this development, Petitioner claimed that the destruction created an extraordinary circumstance allowing him to seek relief under Rule 60(b). The District Court found that Petitioner had "procedurally" defaulted his ineffective assistance claim by not raising it in his Fourth habeas petition. The Court of Appeals affirmed the decision of the District Court. See, United States v. Wilson, 27 Fed. Appx. 852, 853 (9th Cir. 2001).

Petitioner filed his first "petition for coram nobis" in July 2003. In his petition, Petitioner alleged fault with his indictment and, also, claimed that, "the jury verdict was inconsistent and cannot be allowed to stand." His argument was that he could not be guilty of transporting "fraudulent money" if the underlying fraud charges were not sustained. The District Court denied his petition ruling that, "he has ... raised similar claims in his prior habeas proceedings and they were rejected ...," and "Wilson failed to identify any'fundamental error.'" Petitioner appealed, but the Court of Appeals affirmed the District Court.

On October 15, 2018, Wilson filed his Second Petition for a Writ of Error Coram Nobis, in part, because in 2009. the Ninth Circuit held in United States v. Lazarenko, 564 F.3d 1026, 1040

(9th Cir. 2009) that a conviction for interstate transportation of fraudulent proceeds cannot be sustained in the absence of fraudulently obtained money. Id., at 1040. In denying his first coram nobis petition, the district court noted that "defendant fails to identify any 'funadamental' error" warranting coram nobis relief. See, Opinion, at page 3. (Appendix "F"). Now, the Ninth Circuit Court of Appeals has identified a "fundamental error warranting coram nobis relief" in Petitioner's case - "actual innocence" of the crime he was convicted of - but the District Court wrote in its Order, "Defendant's claims could have been raised in a prior § 2255 proceeding." Appendix "B," at page 2. Ironically, on Appeal of the District Court's latest Order denying Petitioner coram nobis relief, the Government argued to the Court of Appeals:

> "The crux of his current argument is that the jury's verdict is internally and fatally inconsistent because he could not be guilty of transporting fraudulently obtained funds if he did not obtain those funds by fraud in the first place. He raised this inconsistency issue in his FIRST Coram Nobis Petition." (See, Government Brief, at page 7).

The Government's position amply demonstrates Petitioner's claim that he has been denied his fundamental right to Due Process under the United States Constitution's Fifth Amendment because the District Court routinely initially overlooks Petitioner's "ineffective assistance of counsel" and "actual innocence" claims then the Court of Appeals affirms the District Court. This is a typical case of a criminal defendant who is wrongfully convicted of a crime that he did not commit, the Government and the Courts know he is "actually - factually and legally - innocent," yet the Courts take the position, that, "none of the reasons Wilson proffers adequately justifies his delay in presenting his claims." Appendix "A," at page 2.

REASONS FOR GRANTING THE WRIT

In his latest Coram Nobis proceeding, the Government and the District Court concede that Petitioner is "actually innocent" of having transported "fraudulently" obtained proceeds in interstate commerce, in violation of 18, U.S.C., § 2314. This concession comes because Petitioner cited to a Ninth Circuit "precedential case" decided after he filed his "initial" coram nobis petition, wherein, the Ninth Circuit ruled that, "[a] conviction for interstate transportation of fraudulent proceeds cannot be sustained in the absence of fraudulently obtained money." Id., at 1040. Petitioner proferred that since the Ninth Circuit Court of Appeals reversed the conviction of Lazarenko, supra, at 1040, that he is "actually innocent" of transporting fraudulent proceeds, his conviction should, also, be reversed or vacated. Additionally, the Government concedes that Petitioner raised his "actual innocence" claim in his "initial" coram nobis petition. It denies Petitioner Due Process under the Fifth Amendment to the United States Constitution for the courts below to now hold that, "[Petitioner's] claims could have been raised in a prior § 2255 proceeding." He did, in fact, raise the very same issue of being "actually innocent" but for counsel's "ineffective assistance" in prior § 2255 proceedings. If the "entire record" of this criminal proceeding in the District of Oregon had not been mysteriously lost or destroyed, he could show that counsel did not "timely" move for an acquittal of the "interstate transportation of fraudulently obtained proceeds charge" when the jury acquitted Petitioner of "fraud." Sadly, even the Criminal Docket Sheet for this case has been manipulated such that it cannot testify to counsel's ineffectiveness. Petitioner is not now "actually innocent" because of some statutorial change in the law, or a new court decision declaring Petitioner's conduct as "non-criminal." No, in this case, the Petitioner is and always was "actually innocent" both "factually and legally," of transporting fraudulent proceeds in interstate commerce. The District Court simply refuses to acknowledge that it committed an egregious err in this case. The Court of Appeals, also, acknowledges that Petitioner is "actually innocent" but in affirming the District Court it reasoned as follows:

> "[Petitioner] contends that his 1980 conviction for interstate transportation of fraudulently obtained funds must be vacated because: he is actually innocent of that offense, he received ineffective assistance of counsel, and his due process rights were violated when an inaccurate record was provided to [Court of Appeals] in a prior appeal. To Obtain relief on these claims, [Petitioner] must show, among other requirements that 'valid reasons exist for not attacking the conviction earlier.' ... We agree with the district court that none of the reasons [Petitioner] proffers adequately justifies his delay in presenting his claims."

Appendix "A," at page 2. It appears that the Court of Appeals' has taken a position in this case that even if a miscarriage of justice has occurred, it is excusable because "none of the reasons [Petitioner] proffers adequately justifies his delay in presenting his claims." The United States Supreme Court has recognized, however, that "the cause and prejudice standard will be met in those cases where review of a state prisoner's claim is necessary to correct 'a fundamental **miscarriage of justice**.'" Coleman v. Thompson, 501 U.S. 722 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991)(quoting Engle v. Isaac, 456 U.S. 107, 135, 102 S.Ct. 1558, 1572-73, 71 L.Ed.2d 783 (1982)). "The fundamental miscarriage of justice exception is available 'only where the prisoner supplements his constitutional claim with a colorable showing of **factual innocence**.'" Herrera v. Collins, 506 U.S. 390, 404, 113 S.Ct. 853, 862, 122 L.Ed.2d 203 (1993)(emphasis in original)(quoting Kuhlmann v. Wilson, 477 U.S. 436, 454, 106 S.Ct. 2616, 2627, 91 L.Ed.2d 2364 (1986)). Thus, "'actual innocence' is not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim (ineffective assistance of counsel and denial of due process) considered on the merits." Herrera, 506 U.S. at 404. 113 S.Ct. at 862. Further, in order to demonstrate a fundamental **miscarriage of justice**, a habeas petitioner must "establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense." While this is the manner in which a habeas corpus petition is analyzed, petitions for Writ of Coram Nobis are analyzed in the same manner as Section 2255 habeas corpus petitions, with the major difference being that, in a petition for writ of coram nobis, the petitioner is no longer in custody. Telink, Inc. v. United States, 24 F.3d 42, 45 (9th Cir. 2004).

The Court of Appeals does not specifiy what "reasons" it agrees with the District Court does not justify the delay by Petitioner in seeking relief earlier. However, it is obvious that the courts below are not concerned that Petitioner may have not only been denied due process, but his Sixth Amendment Right to effective assistance of counsel, as well. The fact that Petitioner is "actually innocent" both "factually and legally" should be of paramount importance to either court. What justice does a court of law derive from knowingly convicting an innocent person? In McQuiggin v. Perkins, the United States Supreme Court found that, "**Actual innocence** if proved, held to be gateway through which state prisoner petitioning for federal habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28, U.S.C.S., § 2244(d)(1)'s limitations periods." 569 U.S. 383, 133 S.Ct. 1924. 185 L.Ed.2d 1019 (2013). Before **McQuiggin**, the Supreme Court held in Holland v. Florida, that "equitable tolling" could be a gateway for an "untimely" habeas petitioner "only if he shows: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstances stood in his way and prevented timely filing." 560 U.S. 631, 130 S.Ct. 2549, 177 L.Ed.2d 130 (2010). Here, it is undisputed that Petitioner has been in diligent pursuit of of his rights. What is "extraordinary and prevented Petitioner from more aggressively pursuing his "actual innocence" claim is the fact that the courts below have unfairly denied his past just claims, to wit:

1) He has consistently claimed denial of effective counsel;

2) He has consistently claimed that counsel did not assert his acquittal of the underlying fraud charges; and

3) The District Court has consistently overlooked the fact that there is no underlying "fraud" justifying Petitioner's conviction of interstate transportation of fraudulent proceeds.

Moreover, the reasons petitioner gave to the District Court for not filing his Coram Nobis Petition earlier justified tolling any limitations barring his present petition:

1. Petitioner profferred to the District Court that the Court of Appeals' holding in United States v. Lazarenko, 564 F.3d 1026, 1040 (9th Cir. 2009) clearly demonstrated that its previous decision in 2003 denying Petitioner Coram Nobis relief should be reversed for the following reasons, to wit:

a) Lazarenko emphasized Petitioner's historical pleading that he is "actually innocent" of transporting $30,000 taken by Fraud because he was not convicted of the alleged Fraud Charges;

b) In Lazarenko, the Ninth Circuit held that a conviction for interstate transportation of fraudulent proceeds could not be sustained in the absence of proof of "fraud;"

c) Lazarenko clearly showed that Petitioner's prior claims of "ineffective assistance of counsel" were sustainable because neither trial counsel nor appellate counsel moved for reversal of the conviction on grounds that the Government failed to prove the underlying fraud necessary to sustain a conviction for interstate transportation of fraudulent proceeds, in violation of 18, U.S.C., § 2314;" and

d) Lazarenko showed how Petitioner was prejudiced by denying him a "record" of this criminal proceeding which would have clearly demonstrated that trial counsel did not make a motion for a judgment of acquittal under Rule 29, F.R.Crim.P., which would have resulted in reversal of the interstate transportation of fraudulent money conviction.

2) Lazarenko clearly showed that Petitioner was not only denied "effective assistance of counsel at trial and on appeal," he was denied the kind of "adversarial testing" of the Government's case as requiured by the United States Supreme Court in United States v. Cronic, 466 U.S. 648, 656 (1984) which requires reversal per se when counsel fails to provide the most rudimentary of defenses required in a criminal proceeding.

Given the law and the facts in this case, it is abundantly clear that the Petitioner was denied his constitutional right to a fair trial. Why? Because the failure of counsel to move for an "acquittal" once the jury acquitted him of the remaining "mail fraud" charge is indefensible. Such a move would have immediately exonerated the Petitioner. The Sixth Amendment to the United States Constitution is very clear: **"in all criminal prosecutions"** the accused has a right to the assistance of counsel Here, the accused, the Petitioner, has cried out too long for justice and been denied on minor technicalities. Now, it is front and center that Petitioner's prior claims of "actual innocence" were, in fact, valid. This fact came to light when the Court of Appeals rendered its decision in Lazarenko, Id., at 1040. Clearly, Petitioner did not steal or obtain by "fraud," the alleged $30,000 taken out of state. He violated no law, state or federal, but he paid the price of one guilty of such crime because neither his trial counsel, nor his appellate counsel, provided him the kind of assistance of counsel that the United States Constitution entitled him to have received. The right of an accused to counsel is beyond question a fundamental right. See, e.g., Gideon v. Wainright, 372 U.S. 335, 334, 9 L.Ed.2d 799, 83 S.Ct. 792 (1963)("The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours"). Without counsel the right to a fair trial itself would be of little consequence, see, e.g., United States v. Cronic, 466 U.S. 648, 653, 80 L.Ed.2d 657, 104 S.Ct. 2039 (1984); United States v. Ash, 413 U.S. 300, 307-308, 37 L.Ed.2d 619, 93 S.Ct. 2568 (1973); Argersinger v. Hamlin, 407 U.S. 25, 31-32, 32 L.Ed.2d 530, 92 S.Ct. 2006 (1972); Gideon, supra, at 343-345, 9 L.Ed.2d 799, 83 S.Ct. 792 (1963); Johnson v. Zerbst, 304 U.S. 458, 462-63, 82 L.Ed. 1461 (1938); Powell v. Alabama, 287 U.S. 45, 68-69, 77 L.Ed. 158, 53 S.Ct. 55 (1932), for it is through counsel that the accused secures his other rights. Maine v. Moulton, 474 U.S. 159, 168-170, 88 L.Ed.2d 481, 106 S.Ct. 477 (1985); Cronic, supra, at 653. 80 L.Ed.2d 657, 104 S.Ct. 2039; see also, Schaefer, Federalism and State Criminal Procedure, 70 Harv L.Rev. 1, 8 (1956)("Of all the rights that an accused person has, the right to be represented by

counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have"). The constitutional guarantee of counsel, however, "cannot be satisfied by the mere formal appointment," Avery v. Alabama, 308 U.S. 444, 446, 84 L.Ed. 377, 60 S.Ct. 321 (1940). "An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In other words, the right to counsel is the right to effective assistance of counsel. Evitts v. Lucey, 469 U.S. 387, 395-396, 83 L.Ed.2d 821, 105 S.Ct. 830 (1985); Strickland, supra, at 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984); Cronic, 466 U.S., at 654, 80 L.Ed.2d 657, 104 S.Ct. 2039, Cuyler v. Sullivan, 446 U.S. 335, 344, 64 L.Ed.2d 333, 100 S.Ct. 1708 (1980); McMann v. Richardson, 397 U.S. 759, 771, n.14, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970).

Because collateral review will frequently be the only means through which an accused can effectuate the right to counsel, restricting the litigation of some Sixth Amendment claims to trial and direct review would seriously interfere with an accused's right to effective representation. A layman will ordinarily be unable to recognize counsel's errors and to evaluate counsel's professional performance, cf. Powell v. Alabama, supra, at 69, 77 L.Ed. 158, 53 S.Ct. 55 (1932); consequently a criminal defendant will rarely know that he has not been represented competently until after trial or appeal. usually when he consults another lawyer about his case. Indeed, an accused will often not realize that he has a meritorious ineffectiveness claim until he begins collateral review proceedings particularly if he retained trial counsel on appeal.

Here, the Petitioner has been denied due process in his ability to prosecute his claims of "ineffective assistance of counsel" and "actual innocence." The courts below both acknowledge the "lack of a record" of the District Court proceedings in this case, yet both courts charge Petitioner with having had the tools necessary to charge counsel with being "ineffective" and that he is "actually innocent" of having transported $30,000 obtained by fraud in interstate commerce, in violation of 18, U.S.C., § 2314. The

Government now acknowledges that Petitioner did. in fact, put forth his "actual innocence" claim in his "initial" coram nobis petition. The "lack of a record of this criminal proceeding" and the prior refusal to acknowledge that Petitioner is "actually innocent" of the crime "affected the integrity" of any prior decisions in either the Section 2255 proceedings or the "initial" coram nobis petition proceeding. Due process under the Fifth Amendment to the United States Constitution demands that Petritioner be given at least one hearing to fairly set forth his claims of "ineffective assistance of counsel" and the fact that he is "actually innocent" of having transported in interstate commerce $30,000, in violation of 18, U.S.C., § 2314. The Court of Appeals decision in Lazarenko, supra, at 1040, decided years after Petitioner filed his "initial" coram nobis petition, is proof that Petitioner was not given the kind of equitable consideration he was entitled to receive under the United States Constitution in his prior collateral proceedings.[1]

CONCLUSION

For all of the abovementioned reasons this Honorable Court is respectfully requested to Grant this Petition For Writ of Certiorari to review the decision of the Court of Appeals.

Respectfully submitted,

Lawrence Doby Wilson

DATE: April 10, 2021

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1 The Court of Appeals, in this case, should have considered the fact that its past "judicial actions," in part, greatly contributed to the Petitioner's "delay" in filing his claims sooner: 1) It threatened Petitioner with "sanctions" if he did not cease presenting his claims. See, Appendix D, at page 2, 2) In its "1994" decision denying 2255 relief, it alleged that he was convicted of wire fraud. mail fraud, and transporting fraudulently obtained money in interstate commerce when it knew that the "fraud charges" were not sustained. See, Appendix "E," at page 1; and 3) it reversed Lazarenko's section 2314 conviction because of the Government's failure to prove "fraud receipts," yet it denied Petitioner's "initial" coram nobis petition based on the same grounds. Clearly, the Petitioner has been denied his constitutional right to fair and equitable treatment as guaranteed by U.S. Const. amend. V.