

20-5127

No. 19-1449
(D.C. No 1:19-cv-01624-LTB-GPG)
(D-Colo.)

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Thomas Eric Espinoza — PETITIONER
(Your Name)

FILED
MAY 07 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

~~THE PEOPLE OF THE STATE OF COLORADO;~~
~~MR. JACQUES WARDER, THE ATTORNEY~~ — RESPONDENT(S)
~~GENERAL OF THE STATE OF COLORADO.~~
ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Thomas Eric Espinoza
(Your Name)

49030 Hwy. 71
(Address)

Limon, Colorado 80826
(City, State, Zip Code)

N-A-
(Phone Number)

QUESTION(S) PRESENTED

Fundamental/Miscarriage of Justice Exception

I. Petitioner will respectfully attempt to establish a "fundamental Miscarriage of Justice" by demonstrating that he is "actually innocent" of the crime of (murdering this woman). He will prove this if the whole record is reviewed and the letter of the law is followed. A credible showing of actual innocence provides a gateway to consideration of an otherwise untimely claim of constitutional error as an equitable exception to the one-year limitation period. See *McQuiggin v. Perkins*, 569 U.S. 383, 386 (2013) (In considering a claim of actual innocence in context of the one-year limitation period in 28 U.S.C. § 2244(d). To be credible a claim of actual innocence requires a petitioner "to support his allegations of constitutional error with new reliable evidence" - whether it be exculpatory, or scientific evidence, trustworthy eyewitness accounts, or critical physical evidence - that was not presented at trial "see *Schlup v. Delo*, 513 U.S. 298, 324 (1995). The gateway should be opened only when a petition presents evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the Court is also satisfied that the trial was free of nonharmless constitutional error." *Perkins*, 569 U.S. at 401

QUESTION(S) PRESENTED Page 2.

(Citation Omitted). Did the trial court deny Mr. Espinoza before trial his right to counsel, due process, confrontation and to present a defense that would include the right to have his experts examine and test the D.N.A evidence please see Mr Masters case # 98CR1149 Motion For Release of Evidence For Forensic Testing (24). Exhibit B. If the trial court would have permitted these rights would there have been reliable evidence of Actual Innocence? Did the trial court violate Mr Espinoza rights by not testing 17 teen Not Analyzed items? Along with all the items tested for D.N.A by D A's office if Mr. Espinoza had his own defense experts would the tests have been different in results? please see Trial transcripes Exhibit C. 2 pages. Did the trial court violate Mr. Espinoza rights by forcing pre-trial court appointed defense Counsel that failed to investigate his actual innocence, creating a Ultra Vires Act in every thing they did for petitioner please see People's CAR 21 Exhibit H. (And noting take in complete context and should be argued by a real defense lawyer). In Mr. Master's case only after his D.N.A Evidence was tested by forcing the state of Colorado to do so was he proven innocent. If this Honorable Court would grant the right to appeal this conviction and to test "all" DNA evidence petitioner believes the result of both cases would be the same.... Thank you

QUESTION(S) PRESENTED Page 3,

II. Did the State District Court Violate Petitioner's due process and speedy trial rights by failing to bring him to trial on the stated date in the peoples C.A.R.21? Did the trial Court lose Jurisdiction when it set the matter for trial beyond January 16, 2007? Please see Petition For Rule To show Cause Pursuant to C.A.R.21 Exhibit H. Did the District Court violate speedy trial rights and due process of Mr. Espinoza on the issues concerning CTR. for Legal Advocacy V. Bicha, Civil Action No. 11-CV-2285-BNB United States Dis. Court of Colorado, 2012. The same issues described in this civil Action happened to Mr. Espinoza.

III. Did all past defense counsel and direct Appeals counsel violate Mr. Espinoza rights to effective assistance of Counsel? please see Strickland V. Washington, 466.668 (1984) - Cronin, 466 U.S. at 654. Petitioner respectfully requests this Honorable Court look at the complete record regarding the ineffective assistance Counsel? Direct Appeals Counsel Mr. Alberto J. Garcia C.A.R.#34618 and his past ineffective assistance of Counsel on other people. He failed to argue CTR. for Legal Advocacy V. Bicha, Civil Action and my issues concerning this action but only briefly mentioned it please See the Motion For Enlargement of Time to Amend Reply Brief.

IV. Did the District Court Violate Petitioner due-Process of his Miranda rights by forcing or coercing a confession out of him? please see Brown V. Mississippi; 297 U.S. 278. Petitioner had injuries at the time of his arrest that police said were the result of his crime. The brutal police tactics used in the Brown

QUESTION(S) PRESENTED Page 4.

Case were well documented in this day. Did the Englewood police Department use these tactics as well? At Mr Espinoza trial a remastered version of Mr. Espinoza confession was played for the trial jury. After the detective made his introduction on the tape nothing but "static" was heard on this tape. Did the Englewood police Department and trial Court cover up a forced or coerced confession by put static on the tape and then using a remastered version to prove their case? In the 1996 murder of Ms. Angie Dodge in Idaho Falls, Idaho Mr. Chris Tapp was coerced into a confession by police and was exonerated 20 years latter by the D.N.A testing of Mr. Brian L. Dripp and his confession to that crime. please see unpublished Federal case of either People v. Tapp or People v. Dripp. If the Federal Courts had not intervened in both People v. Moses EL, 2001 Appeals # 00CA0674 & The Master's case # 98CR1149 would the pattern of the state of Colorado refusing to test D.N.A evidence, manufacturing evidence and refusing to let people have their due process of law? If the record and facts of Mr. Espinoza case would the same be true, would it not be in the interest of Justice to have his DNA tested and the same outcome be given to Him?

V. Did the District Court violate petitioners due process rights by forcing him to go to trial with an all white Jury? This would also include denying him an impartial an fair jury composed of a fair-cross section of the

QUESTIONS PRESENTED Page 5.

community? Please see *Batson v. Kentucky*, 476 U.S. 79 (1986); *Pena-Rodriguez v. People*, 2015 CO. 31.

VI. Did the state District Court violate Mr. Espinoza right by the multiple and enumeration of Constitutional errors? please see *People v. Vialpando*, 809 P.2d 1682. This would include due process violations, illegal sentence, loss of Jurisdiction by trial court and many other violations recorded in the record? Please see People's C.A.R. 21.

VII. Did the state District Court Violate Petitioners due process rights at trial for Trial Judges rejection of all mental health doctors testimonies, Ineffective Assistance of all defense counsel? With their failure to investigate petitioner's claims of actual innocence and their failure to test his D.N.A or to present a defense in this manner, the forced confession, the all white Jury and the four year speedy trial violations? Did the state District Court abuse its authority by allowing petitioner to represent himself after losing Jurisdiction on his case?

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A ...	<i>Order of the District Court adopting the Magistrate Judge recommendation.</i>
APPENDIX B. ...	<i>Order of the recommendation of the U.S. Magistrate Judge.</i>
APPENDIX C... ..	<i>Order of the Tenth Circuit Court of Appeals.</i>
APPENDIX D	<i>Exhibit C. 2 pages "From trial" The DNA profiles developed from items. Not Analyzed items.</i>
APPENDIX E	<i>Motion For JUDICIAL PREJUDICE AND RACIAL BIAS.. 3 pages</i>
APPENDIX F	<i>Motion For Appointment of Counsel Liberal Interpretation Requested 3 pages</i>

TABLE OF AUTHORITIES CITED

All caselaw comes from Questions Presented Pages 1-5

CASES

PAGE NUMBER

1. McQuiggin v. Perkins, 569 U.S. 383, 386 (2013) pg. 1, pg. 0.
2. Schlup v. Delo, 513 U.S. 298, 324 (1995). pg. 1, pg. 0.
3. U.S. v. Maravilla, 566 Fed. Appx 704, 708 (10th Cir 2014).
Unpublished pg. 0
4. Strickland v. Washington 466 U.S. 668 (1984). pg. 0.3.
5. Cronin, 466 U.S. at 654. pg. 0.3.
6. Brown v. Mississippi, 297 U.S. 278. pg. 5.
7. People v. EL, 2001 Colo. App. Lexis 1841 Court of App. # 00CA0674 pg. 0.4.
8. Batson v. Kentucky, 476 U.S. 79 (1986). pg. 0.5.
9. Pena v. Rodriguez v. People, 2015 CO. 31. pg. 0.5
10. Unpublished Federal case either People v. Tapp or People v. Drupp of the Murder of Ms. Angie Dodge. (1996). Pg 4.
11. People v. Vidal Pando, 809 P.2d 1082. pg 5

STATUTES AND RULES

1. Petition for rule to show cause Pursuant to C.A.R 21, pg. 2;
Pg. pg. 4 pg. 7. Exhibit (H).
2. Motion For Enlargement of time to Amend Reply brief. pg 4.
3. Trial transcripts Exhibit C. 2 pages D. N.A. Uncontested evidence. pg 2.
4. Exhibit (I) Handwritten letter to Mr. Garcia June 10, 2009
5. Exhibit G. Handwritten letter to Mr. Mark J. Ivandick date July 22, 2012 Reg # 27041
6. Exhibit G. Mark J. Ivandick responding letter to Mr. Espinoza

OTHER

1. Mr. Timothy Master's case # 98CR1149 Motion For release of Evidence Forensic Testing (24). Exhibit B.
2. CTR for Legal Advocacy v. Bicha, Civil Action No. 11-cv-2285 BNB. U.S. Dist. Court of Colo, 2012, pg. 0.3

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&B 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 January 7, 2020.

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: _____, 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. § 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

- I. Did the State District Court Violate Appellants U.S. Const. Amends 5th, 6th and 14th § 1 right to Due process for failing to conduct the statutory allowed D.N.A Testing resulting in Judicial and prosecutorial Misconduct?
- II. Did the state District Court Violate Appellants U.S. Const. Amends 5th, 6th and 14th § 1 right to Due process and speedy Trial?
- III. Did the state District Court Violate Appellants U.S. Const. Amends 5th, 6th and 14th § 1 right to Due process and Effective Assistance of Defense counsel at trial? Along with the Ultra Vires Act of all Defense counsel. This would also include Direct Appeals Counsel for his Ineffective Assistance of counsel against Appellant.
- IV. Did the District Court Violate Appellants U.S. Const. Amends 5th 6th and 14th § 1 right to Due process of Miranda Rights and Forced or Coerced confession by the Appellant.
- V. Did the District Court Violate Appellants U.S. Const. Amends 5th, 6th and 14th § 1 right to Due process for failing to provide an Impartial and fair Jury, by denying him the opportunity for a jury composed of a fair cross-section of the Community. Leaving him to be tried by an all white jury and denying him his right of people of Color at trial!
- VI. Is the enumeration of Violations of Appellants U.S. Const. Amends 5th, 6th and 14th § 1 Due Process Right constitutes an Illegal sentence.
- VII. Did the District Court Violate Appellants U.S. Const. Amends 5th, 6th and 14th § 1 right to Due process in regard's to his Mental Impairment.

STATEMENT OF THE CASE

NOW COMES Pro-se Petitioner respectfully stating that in April of 2008 Mr. Espinoza was convicted of first-degree Murder after deliberation, felony murder and Kidnapping. He was sentenced to life in prison without the possibility of parole. Mr. Espinoza believes and the record will reflect he was forced to represent himself in this trial against his will! He believes he is innocent of these charges and that his state and Federal Constitutional rights have been violated on a regular basis by the trial and all lower appeals court! Petitioner has repeatedly requested legal representation because of the complex and complicated nature of his case. He has been denied on every request of legal representation this now includes this Honorable Court. Mr. Espinoza believes without a fair & competent legal representation he stands no real chance of a fair and real appeal to these charges! Petitioner believes this is by design by all that are involved and that he is out of his league in this appeals process, and only when his U.S. constitutionally protected rights are protected will petitioner be able to correctly and securely appeal his case.

REASONS FOR GRANTING THE PETITION

Reason one. petitioner believes his rights to due process were violated because of state District court refusal to conduct the statutory allowed D.N.A testing resulting in Judicial and Prosecutorial misconduct.

Reason two. petitioner believes state District court violated his speedy trial rights every six months for 4 years a total of eight times.

Reason three. petitioner believes state District court violated his rights providing incompetent and ineffective assistance of Counsel that was completely controlled by the state.

Reason four. petitioner believes state District Court violated his rights to Miranda by allowing a forced or Coerced confession at trial.

Reason five petitioner believes the state District Court violated his rights to due process for failing to provide a fair and impartial jury by sending him to trial with an all white jury.

Reason six. Because of the enumerations and multiple of constitutional error at trial and trial courts losing Jurisdiction to try case amounts to illegal sentence.

Reason seven petitioners believes state District Court violated his rights to due process by forcing on him all the state controlled defense counsel that with specific intent were sent to Sabotage and destroy any real meaningful defense leaving Mr. Espinoza no other choice but to represent himself in this trial!

Trial Court and D.A.s office did not follow the law in petitioner trial, they violated his Colorado and U.S. constitutional rights and convicted him of a murder he did not commit! The D.A.'s office of Arapahoe County Colorado under Mr. Georgett. Brauchler currently has a Conviction Review Process, if a petitioner can prove "actual innocent" of their crime. Their case would be considered to be reviewed. Petitioner is terrified at the thought of this office touching his D.N.A. evidence because of all the past corruption from their office and trial court! I am asking this court to intervene? Thank you

CONCLUSION

Grant certificate of Appealability to petitioner. Assign special Prosecutor to investigate Arapahoe County, Co.? Assign Counsel to petitioner?

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas Espinoza

Date: ~~July 12, 2020~~ ^{TE} July 12, 2020