NO. 20-5324

ORIGINAL

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: JEREMIAH YBARRA - Petitioner

vs.

UNITED STATES - Respondent(s)

ON PETITION FOR WRIT OF MANDAMUS TO
FIFTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF MANDAMUS

Jeremiah Ybarra #55024-280
FTC Oklahoma P.O. Box 898801
Oklahoma City, O.K. 73189-8801

QUESTION(S) PRESENTED

IS PETITIONER INNOCENT OF THE AllEGED OFFENSE?

WAS THE JUDICIAL PROCESS ABUSED, WHEN FALSE STATEMENTS WERE USED TO APPLY FOR AN ARREST WARRANT?

WAS FALSE TESTIMONY USED TO GAIN THE INDICTMENT?

WAS FALSE EVIDENCE USED IN THE PRESENTMENT OF THE CASE TO THE GRAND JURY?

WHY DOES THE COURT CONTINUE TO DENY DISCOVERY?

WAS PETITIONER AFFORDED A FAIR TRIAL, WHEN OTHERS INVOlVED AND IDENTIFIED BY THE POlICE REPORT, WERE NOT THERE TO TESTIFY ABOUT WHAT HAPPENED ON THE DAY OF THE AllEGED OFFENSE?

WAS THE INDICTMENT SUFFICIENT TO GIVE PROPER NOTICE TO PETITIONER OF WHAT ALLEGATION TO DEFEND TO?

LIST OF PARTIES

[X] 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:

RELATED CASES

UNITED STATES v. JEREMIAH Ybarra, NO. 4:19-CV-6-DC, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS. Judgement entered on September 8, 2017.

UNITED STATES v. JEREMIAH YBARRA, NO. 17-50788, U.S. Court OF APPEALS for the FIFth Circuit, Judgement entered on September of 2018.

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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

[X] For cases from **federal courts:**

The opinion of the United States court of appeals 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[ ] is unpublished.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 United States district 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[ ] is unpublished.

[ ] 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.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTION UNDER THE FIFTH AMENDMENT PROVIDES THAT "NO PERSON SHAll BE HELD TO ANSWER FOR A CAPITOL, OR OTHERWISE INFAMOUS CRIME, UNlESS ON AN... INDICTMENT OF A GRAND JURY."

COMPUlSORY CLAUSE OF THE SIXTH AMENDMENT THE CONSTITUTION GUARANTEES CRIMINAL DEFENDANTS A MEANINGFUl OPPORTUNITY TO PRESENT A COMPLETE DEFENSE. FURTHER, "[T]HE CONSTITUTION GUARANTEES A CRIMINAL DEFENDANT A MEANINGFUl OPPORTUNITY TO INTRODUCE REIEVANT EVIDENCE ON HIS BEHAIF."

STATEMENT OF THE CASE

On November 15, 2016, Petitioner was arrested on a Criminal Complaint stating that on July 29, 2016 a U.C. succesfully purchased 45.2 grams of a controlled substance to wit methamphetamine. At the initial appearance the agent who made the complaint did not testify. Another agent testified that it was not 45.2 grams but 14.0 grams.

Throughout the pre-trial proceedings, petitioner asked for discovery of the agents phone records to prove that he had testified about things that were not true. The police report stated that other's were identified that were also involved. In the indictment he was charged with 841(a)(1)(b) and Aiding and Abetting, more than 5 grams less than 50. On May 31, 2017, petitioner went to trial. At trial, the trial Judge stated that the petitioner did not have to submitt any evidence rather the government had to prove the case beyond a reasonable doubt. Petitioner requested the others involved to be witnesses on his behalf, but were not subpeonaed or called. There was also evidence that the government presented that was a total Suprize due to never seeing it or examaning it before trial. There was a recording that was heard that he never heard. There was also the Lab report that was never examined. (Note) (Before going to trial, petitioner asked to see the lab report. The prosecutor MONTY Kimball Stated at trial that he did not recieve the Lab report until around March or April so how could the indicment charge the controlled Substance as pure?) The pictures of the supposed Controlled substance were inconsistant. There was also the fact that it was not in a heat sealed bag with the initials of the person who took the evidence. Subsequently, petitioner was found guilty and Sentenced to a Mandatory 10 years. The 851 enhancement was filed after petitioner exercised his right to go to trial.

REASONS FOR GRANTING THE PETITION FOR MANDAMUS

Petitioner was prejudiced and was not given a fair trial. He has continued to plea his innocence and ask for a chance to be heard. He is currently on a 2255 MOTION in the DISTRICT Court. Petitioner filed a Rule 6 motion asking for his discovery and has been denied. He submitted a WRIT of Mandamus with the Court of Appeals and was also Denied.

Petitioner is being harmed by the Miscarriage of Justice.

Petitioner has submitted a Rule 7 motion to expand the record which was also denied. In this Rule 7 motion, petitioner shows text messages where a cooperating officer that was a government witness, who was also the arresting officer, threatened the others involved, that petitioner had requested to be at his trial. There is also evidence where the evidence was fabricated. This Honorable Court has explained that "[t]he gateway should open only when a petition presents evidence of innocence so (2019 U.S. App. Lexis 8) 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 Constiutional

Error." Perkins, 569 U.S. at 401 (quoting Schlup, 513 U.S. 316). Petitioner has Submitted a Writ of Mandamus asking for discovery of certain documents and evidence that are in his case. Both the district Court and the Court of Appeals have denied these requests. Petitioner does not know why he Cannot gain copy's of documents of the Lab Report, the pictures that were used and a copy of the Chain of Custody. The Supreme Court's 1969 decision in Harris v. Nelson, led to the adoption several years later of Habeas Rule 6 and, indeed, of the Habeas Rules as a whole. In Harris, the Court addressed the question whether a federal habeas corpus petitioner could require the respondent to answer a set of written interogatories propounded pursuant to Federal Rule of Civil Procedure 33.

Although Harris held that the 1938 Federal Rules of Civil Procedure did not apply as a matter of course in Habeas Corpus proceedings, it concluded that the fair and efficient conduct of such proceedings demands flexible methods for securing information, including discovery in some cases. Under the authority of the All Writs Act, therefore, the Court authorized Federal District Courts to grant Discovery proceedures when "necessary... in order that a fair and meaningful evidentiary hearing may be held." "Where Specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief." The Court concluded, the discresion to grant discovery may rise to the level of a "duty". Petitioner feels that he was illegally arrested, due to the false statement

That was given on the Criminal Complaint. The reason petitioner has asked for permission to examine Grand Jury transcripts, was to examine what was said and shown for them to indict. on the indictment, there were no essential elements of the knowledge or intent. It simply Stated what the Criminal Complaint stated. A Criminal Complaint that was not accompanied by an affidavit. Petitioner's trial is concluded and the witnesses Grand Jury testimony is discoverable upon request. Pursuant to 18 U.S.C. § 3500(b), After a witness Called by the United States has testified on direct examination, the Court shall, on the motion of the defendant, order the United States to produce any Statement of the witness in possession of the United States which relates to the subject matter as to which the witness testified to. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the Court Shall order it to be delivered directly to the defendant for his examination and use. Petitioner has requested this Several times. Petitioner feels that the Grand Jury materials may contain exculpatory information, and the Government is obligated to provide Said materials under Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). Giglio v. United States. 405 U.S. 150, 92 S.Ct 763, 31 L.Ed. 2d 104 (1972). Petitioner feels that the indictment was erroneous. Petitioner has requested the QUORUM to his indictment. There is a possibility that the Grand Jury did not act indipendently of the prosecution. The Grand Jury must be both independent and informed: Indipendent of the prosecutor and the Court, and informed of the evidence. "The Grand Jury is a CONSTITUTIONAL fixture in it's own right, belonging to neither the executive nor the judicial branch." United States v. Udziela, 671 F.2d 995, 999 (7th Cir. 1982). It's indipendence is essential if it is to protect innocent persons against hasty or misguided prosecutions. The indictment stated "possession with intent to distribute". The government in its Addendum States Constructive possession when even that was not proven. The affidavits are very confusing. The government states that at trial, attorney Smith elicited from the undercover agent Javier Bustamante, admitted that the woman in the car was the one who would recieve the money and was the Supplier for the drug transaction. Then the government goes and States that the petitioner is liable under the constructive possession theory, but that is not what he was charged with. On the affidavit from Prosecutor MONTY Kimball, he States that there was not enough evidence to arrest the others involved. That does not make any sense. On the affidavit from Ellen Smith She States that Monty Kimball testified as expert witness at the Grand Jury presentation about the supposed

Controlled Substance? How? If he stated he did not recieve the lab report until after the indictment. Monty Kimball States that the others were identified in regards to having Knowledge about the incident. Yet. they were never questioned about what happened?

There is a Grave Miscarriage of Justice in this case. The prosecutor testified at the Grand Jury, then presented the case to the trial jury? Then how or why would petitioner be the only one indicted when the police report Stated the others involved by name. All this Honorable Court would have to do is read the police report to understand why petitioner is requesting discovery for his §2255 motion.

HOW THE WRIT WILL BE IN THE AID OF THE COURTS APPEllATE JURISDICTION

There is a grave miscarriage of Justice in this case. The CONSTITUTION Was violated in the worst way in this case. Should an innocent be punished for the guilt of another? Should evidence be falsified or tainted to gain a conviction? The appellate Court Affirmed the conviction on only the history of the petitioner. The petitioner was not allowed the discovery he needed to prove innocence.

WHAT EXCEPTIONAL CIRCUMSTANCES WARRANT THE EXERCISE OF THE COURTS DISCRETIONARY POWERS

The exceptional circumstance is the innocence that is being punished and how the CONSTITUTION was not applyed in this case. Petitioner is being hindered by the lower courts in not allowing any discovery in his civil case attacking the criminal case. Petitioner was not offered a fair trial and also lacked effective assistance of counsel. There was an abuse of discresion and prosecutorial misconduct. There is a public interest in this case.

WHY ADEQUATE RELIEF CANNOT BE OBTAINED IN ANY OTHER FORM OR FROM ANY OTHER COURT

Since the begining of this case. Mr. Ybarra has not given away or waived any right's that are afforded under the CONSTITUTION. That includes, a right to a fair trial and total discovery in the case. Mr. Ybarra has requested discovery in the district court and the court of appeals, through way of motion for discovery and also by way of Mandamus. Since being denied in both Court's. Mr. Ybarra comes before this Honorable Court to ask itself why would any Court deny discovery in a case?

CONCLUSION

Wherefore premisses considered. petitioner is requesting for this Honorable Court to Consider the circumstances in this case and Grant this Petition For MANDAMUS and Order the District Court to produce all requested discovery to petitioner.

Respectfully Submitted.

Jeremiah Ybarra
Reg #55024-280

Date: 7-16-20