

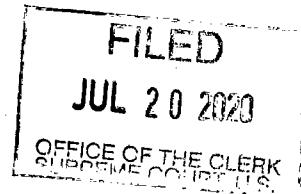
20-5415 ORIGINAL

Supreme Court of the United States

Gillman Roddy Long
Petitioner

v.

United States of America
Respondent



on petition for Writ of Certiorari
To the United States Court of Appeals
for the eighth circuit

Petition for writ of Certiorari

date: 7-20-2020

Pro-se Gillman Roddy Long
BOP # 10527-273

U.S. Penitentiary Tucson
PO Box 24550
Tucson AZ 85734

Questions Presented

1. Does an objection to the government's argument that a defendant, "had not denied the accusations against him," violate the fifth Amendment?
2. Does the Lower Court error, when it dismissed petitioner's C.O.A. of a true 60(b)(4), void judgement that;
 - A). Raised a defect in the integrity of the habeas proceedings, and
 - B). Seemed the Court of appeals to examine whether the district Court committed error when it adjudicated petitioner's fifth Amendment claim by improperly applying Sixth amendment criteria?
3. Does an objection at trial preserve a claim of error for appeal review?

Parties to the Proceedings

Pro-se petitioner, Gillman Roddy long and the United States of America, Respondant, are the only two parties from the proceedings in the United States Court of appeals for the eighth circuit.

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II. Does the Lower Court error when it dismissed petitioner's C.O.A. of a true 60 (b)(4) void judgement that;

- A. raised a defect in the integrity of the habeas proceedings, and
- B. Seeked the Court of appeals to examine whether the district Court committed error when it adjudicated petitioner's fifth-Amendment claim by improperly applying Sixth-Amendment Criteria? P.12

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IV. Petitioner pleads this Court, the Supreme Court of the United States of America, to exercise its power of Supervision, S. Ct. rule 10(a). in light of 28 USC § 2253(c)(2). also in light of Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L Ed 2d 542 (2000) P.19

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- D. Courts order doc 53. Appendix D.
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- F. Motion to reconsider doc 55. Appendix F.
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- I. Motion for new trial, 4-9-12. Appendix I.
- J. Direct Appeal 12-1959. Appendix J.
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Petition for Writ of Certiorari

Petitioner Gillman Roddy Long, Respectfully petitions this Court for Writ of Certiorari, to review the Judgement of the eighth circuit Court of appeals, entered 5-20-2020

Opinions Below

- A. Fed. R. Civ. P. 60(b)(4) void judgement doc 48. Appendix A.
- B. Opposition motion by U.S.A. doc 49. Appendix B.
- C. Reply brief by Long. doc 51. Appendix C.
- D. Courts order doc 53. Appendix D.
- E. Courts Judgement, doc 54. Appendix E.
- F. Motion to reconsider doc 55. Appendix F.
- G. Motion for C.O.A. Appeals Court. Appendix G.
- H. Judgement Court of Appeals. Appendix H.
- I. Motion for new trial 4-9-12. Appendix I.
- J. Direct Appeal 12-1959. Appendix J.
- K. 14-Civ-05022 KES, 28 USC § 2255. Appendix K.
- L. 16-Civ-2820 Appeals Court. Appendix L.
- M. District Court Judgement 4-20-12. Appendix M.
- N. Supreme Court opinion 2013, 2018. Appendix N.

Statement of Jurisdiction.

The judgement of the Court of appeals was entered on 5-20-2020. the Jurisdiction of this Court is invoked Pursuant to 28 U.S.C. § 1254 (1).

RE: 20-1298 Gillmon Long v. United States,

Constitutional Provisions

A. The fifth-Amendment of the U.S. Const. provides in relevant Part:

NO Person Shall... be Compelled in a Criminal Case to be a witness against himself, nor be deprived of life, or property Without Due Process of LAW... Id

B. Bill of Rights, 1791 U.S. Const.;

The United States bill of rights provides some of a criminal defendants protections against the federal government in a federal criminal case. Protections consist of two types; 1. Rights the defendant can exercise, and 2. Prohibitions and requirements of the government toward the defendant. The due process clause of the fourteenth amendment of the U.S. Const. applies these protections to a criminal defendant.

C. Fourteenth-Amendment: (Section 1) All persons born or naturalized in the United States, and subjects to the jurisdictions 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 jurisdictions the equal protections of the law.

Statutes and Rules

18 U.S.C. § 1153

18 U.S.C. § 2241(c)

18 U.S.C. § 2246(2)

28 U.S.C. § 2253(c)(2)

28 U.S.C. § 2254(1)

28 U.S.C. § 2255

Fed. R. Civ. P. 60(b)(4). Void Judgement

Fed. R. of Evidence

Rule 103. (a)(1)(A)(B). Ruling on evidence.

Rule 103. (b) Ruling on evidence.

"Certificate of Appealability."

A Certificate may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

"Substantial showing" is one that demonstrates a reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000).

Other Authorities

J. Liebman and R. Hertz, Federal habeas Corpus Practice and procedures, § 35.1 (3rd Ed 1998) Volume 2, Page 1402. "Finality in Fed. R. Civ. P. 60(b).

Statement of the Case

1. IN the Direct Appeal, 12-1959.

A. Long's Statement, "I don't want to incriminate myself, I would like to stop talking now," was raised under the Fifth Amendment, the pre-arrest, pre-Miranda warnings invocation of the privilege against self-incrimination while being questioned by law enforcement.

Appeals Court opinion: "Because there was no objection by trial counsel and was not properly preserved," it held plain error standard of review.

B. The government's comment that defendant did not testify at trial, which Long exercised.

Appeals Court opinion: "Because there was no objection by trial counsel," it held plain error standard of review.

C. The government's closing argument that Long, "had not denied the accusations against him."

Appeals Court opinion: the Court of Appeals did not address this third issue that was raised under the Fifth Amendment, "And had not denied the accusations against him." See Appendix J.

2). 28 U.S.C. § 2255, Civ-14-502AKES, 4-1-14.

After exhausting the Direct Appeal, Long filed habeas corpus 28 U.S.C. § 2255, the grounds for relief in the §.2255 can be found on page two, number eleven, of document one, (it states) Grounds for Relief: See Memorandum of law that follows.

MEMORANDUM of LAW (page 3 doc one).

The government violated petitioner's fifth Amendment privilege against self-incrimination by presenting during its case-in-chief his prearrest, pre-Miranda Warnings invocation of the privilege while being questioned by law enforcement, and by commenting during its closing argument that petitioner did not testify at trial and had not denied the accusations against him. (the rest of the Memorandum of law lies under the Sixth amendment, and is not being issued in the petitioner's true 60 (b) (4) void judgement.)

The district court relied on the court of appeals opinion for the Direct Appeal;

A). the prearrest, preMiranda Warnings invocation of the privilege while being questioned by law enforcement.

its opinion stated: the Court of appeals found that the district Court did not plainly error by failing to Sua Sponte strike agent Rice's testimony or the reference to Long's Statement in the governments closing arguments. (2016 U.S. Dist. Lexis 65801 p.3).

B). The Comment on not testifying at trial, its opinion stated: the Court of appeals found that the district Court did not error by failing to Sua Sponte, strike the comment. (then stated) the Court found that the government "Made the Comment to contrast the prohibition on Considering Long's decision not to testify with the consideration of his statement to Agent Rice."

The District Court did not address the third issue raised under the fifth Amendment, "and had not denied the accusations against him". (Long v. United States, Civ-14-5022KES 2016 U.S. Dist. Lexis 65801 p.9). see Appendix K.

Long appealed the dismissed 28 U.S.C §2255, on 10-19-17 the Court of appeals held oral arguments in Saint Paul Mn, then on 11-9-17 the Court of appeals declined the §2255.

its opinion stated: "Gillman Roddy Long asks us to..."

... find his trial Counsel ineffective for failing to venture into uncharted territory... territory that this Court and the Supreme Court have still yet to traverse, we decline to do so.¹ See Appendix L.

After a review of the records, petitioner filed Fed. R. C.V. R. 60 (b)(4), void judgement. Appendix A.

Gillman Roddy Long, demonstrates to this Court that it should Grant Petition of writ of Certiorari and hear the following Constitutional questions;

1. Does an objection to the government's closing argument to the jury that a defendant, "had not denied the accusations against him," violate the fifth-Amendment?

2- Does the Lower Court error when it dismissed petitioner's C.O.A. of a true 60 (b)(4), that;

A. Raised a defect in the integrity of the habeas proceedings, and

B. Seeked the Court of Appeals to examine whether the district Court committed error when it adjudicated petitioner's fifth-Amendment claim by improperly applying Sixth-Amendment criteria?

3. Does an objection at trial preserve a claim of error for appeal review?

Reasons for Granting the Writ

Petitioner Gillman Roddy Long Pleads this Court to grant the petition for Writ of Certiorari, it is well Settled Law that a Petitioner is entitled to due process of Law in the litigating a habeas corpus petition. Machibroda v. United States, 368 U.S. 487; 82 S. Ct. 510; 7 L. Ed. 2d 473 (1962). as to call for an exercise of this Court's power of Supervision. Supreme Court rule 10 (a). Id. Petitioner has raised a true b0 (b)(4), void judgement, under the Fifth Amendment that has not been adjudicated by the Lower Court.

Petitioner is not raising a new claim or relitigating an old claim, but a defect in the integrity of the habeas proceedings.

Supreme Court rule 10 (a).

(a). a United States Court of Appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a State Court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or Sanctioned Such a departure by a Lower Court, as to call for an exercise of this Courts Power of Supervision.. Id

1. Does an objection to the government's closing argument to the jury that a defendant, "had not denied the accusations against him," violate the Fifth Amendment?

Government attorney: But he chose to speak to her, and when he did that, that gives you the ability to scrutinize what he said. He blames A.P. a couple different times: he blames her saying, "Yeah she came up behind me," you know what he didn't say?, he sure didn't say I didn't do it.

Trial Counsel: I am going to object your Honor, he did.

Trial Judge: Ladies and Gentlemen, you need to rely on what you believe the evidence is, and what you find the evidence is.

Government attorney: (Continued) ... and there was a couple different things I am going to rely --, ask you to rely on your memory as well that defense counsel said that were certainly not correct either. But, if you will go back and listen and look at your notes, at no point did Gillman Long say, I didn't do this... (argument continued)

the government's argument tainted the Fifth-Amendment, which Mr. Long exercised. See Doe v. United States, 487 U.S. 201, 207, 108 S.Ct. 2341, 2345, 101 L.Ed.2d 184 (1988); also, Griffin v. California, 380 U.S. 609, 615, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965).

The Lower Court did not adjudicate issue three, "and had not denied the accusations against him," that was raised under the Fifth-Amendment in the 28 U.S.C. § 2255, nor did it consider the Fifth-Amendment in the true 60(b)(4) Motion, but applied Sixth-Amendment criteria and dismissed. See Appendix D. p.4-5.

Petitioner Gillman Roddy Long, Pleads this Court, the Supreme Court, to exercise its power of Supervision, S.Ct. Rule 10(a). Grant Writ of Certiorari, Vacate Judgement, Remand in light of petitioner has made a Substantial showing of the denial of a Constitutional right. 28 U.S.C. § 2253 (c)(2). A Substantial showing is one that demonstrates reasonable Jurist would find the district Court's assessment of the Constitutional Claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

II. Does the Lower Court error when it dismissed Petitioner's C.O.A. of a true 60(b)(4), that;

A). Raised a defect in the integrity of the habeas proceedings, and

B). Seeked the Court of appeals to examine whether the district Court committed error when it adjudicated Petitioner's fifth-Amendment claim by improperly applying Sixth-Amendment criteria?

Petitioner submitted Motion for C.O.A. dated 1-30-2020, Sent Certified Mail, "7019 1120 0000 7414 8445"
(see following Pages 13, 14)

CERTIFICATE OF APPEALABILITY

Petitioner filed a true 60(b)(4) void judgement on in the district court on 7-31-19 doc 48, the issue in the 60(b)(4) motion, is the 28usc§2255 filed 4-1-14 civ 14-05022KES, is the court failed to adjudicate one issue that was raised, on page two of document one, number eleven it states, (11. grounds for Relief; see MEMORANDUM OF LAW that follows.) on page three,

MEMORANDUM OF LAW

The Government violated petitioner's Fifth Amendment privilege against self-incrimination by presenting during its case-in-chief his pre arrest, pre miranda warnings invocation of the privilege while being questioned by law enforcement, and by commenting during its closing arguement that petitioner did not testify at trial and had not denied the accusations against him. (the rest of the grounds for relief is under the sixth amendment and is not being raised in the true 60(b)(4) void judgement.)

The district court had addressed the first two issues 1) the invocation of the privilege while being questioned by law enforcement, and 2) the comment on not testifying at trial. But did not address the third issue that was raised under the FIFTH AMENDMENT, " and had not denied the accusations against him."

The district court misconstrude my petition as being reargued under the sixth amendment with ineffective assistance of counsel. Which is not the case, the issue is under the FIFTH AMENDMENT, and has been properly preserved by trial counsel.

With an OBJECTION at trial, the government stopped its arguement, The COURT issued a jury instruction, The government then continued its arguement, that I " had not denied the accusations against him." This is properly preserved with an objection at trial, I am not reargueing a claim or presenting a new claim. It is the integrity of the habeas proceeding that is brought to the courts attention.

Under RULES OF EVIDENCE, Rule 103.(a)(1)(A)(B), and Rule 103.(B). under these rules 103(a) Preserving a Claim of Error. and Rule 103(b) Not needing to renew an Objection or Offer of Proof.

The third issue under the FIFTH AMENDMENT "and had not denied the accusations against him." has been properly preserved for the courts.

The district court states that i have a claim that is considered a successive §2255.The petitioners true 60(b)(4) void judgement is not a successive issue.It is a defect in the original §.2255 filed 4-1-14, the court did not address the this properly preserved issue" and had not denied the accusations against him."

IN Petitioner's Motion for C.O.A.;

" Petitioner therefore seeks a certificate of appealability from this Court to examine whether the district court committed error when it adjudicated petitioner's fifth-Amendment claim by improperly applying Sixth-Amendment criteria." See Appendix G p. 10.

the eighth circuit court of appeals, dismissed C.O.A. on 5-20-2020, no: 20-1298 Long v. USA, 5:14-cv-05022 KES.

Petitioner Gillman Roddy Long, pleads this court to exercise its power of supervision, S.Ct. rule 10(a). Grant Writ of Certiorari, Vacate judgement, Remand in light of, Petitioner has made a "Substantial showing" of the denial of a Constitutional right. 28 U.S.C. § 2253(c)(2). A Substantial showing is one that demonstrates "reasonable Jurist" would find the district court's assessment of the Constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L Ed 2d 542 (2000).

III. Does an objection at trial preserve a claim of error for appeal review?

Government Attorney: "you know what he didn't say? he sure didn't say I didn't do it."

Trial Counsel: I am going to object your Honor, he did.

Trial Court: Ladies and Gentlemen, you need to rely on what you believe the evidence is, and what you find the evidence is.

Government Attorney: ... And there was a couple different things I am going to rely ... ask you to rely on your memory as well that defense Counsel said were certainly not correct either. But, if you will go back and listen and look at your notes, ... at no point did Gillman Long say, I didn't do this. Tr. tran. 442-443.

The eighth circuit has case law that supports Long's position, see Freeman v. Class, 95 F.3d 639 (8th cir 1996); also Burns v. Gammon, 268 F.3d 892 (8th cir 2001).

Rule 103. (a) (1)(A)(B). Ruling on evidence.

Rule 103 (a). Preserving a claim of error. A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party, and:

(1). if the ruling admits evidence, a party on the record:

(A). timely objects or moves to strike; and

(B). states the specific ground, unless it was apparent from the context.

Rule 103. (b). Ruling on evidence.

(b). Not needing to renew an objection or offer of proof. Once the Court rules definitively on the record, either before trial or at trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

History: Jan 2, 1975; P.L. 93-595 § 1, 88 Stat 1929; April 17, 2000 eff Dec 1, 2000; April 26, 2011, effective Dec 1, 2011.

This Misconduct by the governments argument was preserved by trial Counsel's objection. See rule 103(a)(1)(A)(B), and rule 103 (b).

The [A.E.D.P.A.], in sum, directs federal Courts to attend to every State Court judgement with utmost care, but it does not require them to defer to the opinion of every reasonable State Court Judge on the Content of Federal Law. If, after Carefully weighing all the reasons for accepting a State Court's judgement, a federal Court is Convinced that a prisoner's Custody -(or as in Long's Case his life Sentence), Violates the Constitution, that independant judgement should prevail. otherwise the federal Law as determined by the Supreme Court of the United States Might be applied by federal Courts one way in Virginia and another way in California. See Williams v. Taylor, 529 U.S. 362, 146 L.Ed.2d 389, 120 S.Ct. 1495, (2000) Page 1511.

Petitioner Hillmon Roddy Long, Pleads this Court, to exercise it power of Supervision, S.Ct. rule 10(a). Grant writ of Certiorari, Vacate judgement, Remand in light of, 28 U.S.C. § 2253 (c)(2). A Substantial Showing is one that demonstrates "reasonable Jurist" would find the district Court's assessment of the Constitutional Claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

IV. petitioner pleads this Court, the Supreme Court of the United States of America, to exercise its power of Supervision, S.Ct. rule 10(a), in light of 28 U.S.C. § 2253(c)(2). also in light of Slack v. McDaniel, 529 U.S. 473, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).

" Determining what constitutes a final order in a habeas corpus proceeding occasionally presents difficulties a simple case is presented by orders denying some of the claims in the petition but not ruling on the remaining claims, even if such a ruling is styled as a denial of a writ of habeas corpus. it is neither a final judgement nor appealable."

It is well settled law that a petitioner is entitled to due process of law in litigating a habeas petition. Machibroda v. United States, 368 U.S. 487, 82 S.Ct. 510, 7 L.Ed.2d 473 (1962); Cambell v. Henman, 931 F.2d 1212, 1991 U.S. App. Lexis 8998 (11th Cir 1991); Caison v. Sec'y Dept. of Corr., 2019 U.S. App. Lexis 7487 (11th Cir 2019).

Fed. R.Civ.P. 60(b)(4), "A judgement can be set aside for voidness where the court lacked jurisdiction or where the movant was denied due process." Caison v. Sec'y Dept of Corr, 2019 U.S. App. Lexis 7487 (11th Cir 2019); Watts v. Pickney, 752 F.2d 406, 1985 U.S. App. Lexis 28685 (9th Cir 1985).

under the U.S. Const. Amendment V., in Long's Direct Appeal, the issues presented for review was;

A. Whether during its Case-in-chief the government may present to the jury as a confession the defendants pre arrest, pre-Miranda warnings, invocation of the privilege against self-incrimination while being questioned by the F.B.I.

(Cases c.ted).

1. Coppola v. Powell, 878 F.2d 1562 (1st Cir 1989).
2. Kastigar v. U.S., 406 U.S. 441, 92 S.Ct. 1653, 32 L.Ed.2d 212 (1972).
3. Mitchell v. U.S., 526 U.S. 314, 119 S.Ct. 1387, 143 L.Ed.2d 224 (1999).
4. Ullman v. U.S., 350 U.S. 422, 75 S.Ct. 497, 100 L.Ed. 511 (1956).

Appeals Court opinion: "Long acknowledges that he did not preserve this issue through a proper objection or a motion for new trial, and therefore our review is for plain error."

B. Whether during its closing argument the government may comment upon the fact that a defendant did not testify at trial, and then argue that he had not denied the accusations against him.

(cases c.ted).

1. Griffin v. California, 380 U.S. 609, 85 S.Ct. 1229, 14 L.Ed.2d 106 (1965).

2. Herrin v. U.S., 349 F.3d 544 (8th Cir 2003).

3. Robinson v. Crist, 278 F.3d 862 (8th Cir 2002).

Appeals Court Opinion: "Long's second argument on appeal is that the government improperly called the jury's attention to Long's election not to testify at trial. Long maintains that the prejudicial impact of this error was enhanced by the government's coupled reference to his "incriminate myself" statement. Because Long's counsel failed to object to this reference on the constitutional grounds now being argued, our review is for plain error."

"Here, our decision to affirm Long's conviction is based largely on the plain error standard of review. We employed this standard of review because the defense failed to object to the relevant portions of the trial... the incriminate myself statement during Agent Rice's testimony, and the government's closing argument reference to Long's decision not to testify." Appendix J.

The Court did not address; "and had not denied the accusations against him," issue three, Direct Appeal.

28 U.S.C. § 2255, Civ-14-05022 KES. the issues presented in the habeas corpus, on page two of document one, number eleven. it states; Grounds for Relief: See Memorandum of Law that follows.

MEMORANDUM of LAW (page 3).

the government violated petitioner's fifth-amendment privilege against self-incrimination by presenting during its case-in-chief his pre-arrest, pre-miranda warnings, invocation of the privilege while being questioned by law enforcement, and by commenting during its closing argument that petitioner did not testify at trial, and had not denied the accusations against him... (the rest of the memorandum of law lies under the sixth-amendment and is not being issued in petitioner's true 60(b)(4) motion.)

The district Courts opinion: for the prearrest, pre-miranda warnings invocation of the privilege while being questioned by law enforcement.

"While there is a circuit split in the court of appeals as to whether the government may use the defendants post-arrest, pre-miranda silence, in its case-in-chief, the eighth circuit court of appeals has found that such evidence is admissible..."

... See United States v. Osuna-Zepeda, 416 F.3d 838 (8th Cir 2005); United States v. Frazier, 408 F.3d 1102 (8th Cir 2005). These cases guide the Courts analysis of the governments use of the prearrest, pre-Miranda statement.¹

2016 U.S. Dist. Lexis 65801 p.5

"for these reasons, the Court finds Frazier and Osuna-Zepeda persuasive as to the rationale and conclusions that the appropriate inquiry is whether Long was under a compulsion to speak when he made his statement." 2016 U.S. Dist. Lexis 65801 p.6

The District Courts Opinion; (for the governments comment during its closing argument that the defendant did not testify at trial, and had not denied the accusations against him.)

"the comment was an accurate statement of the law: Ladies and Gentleman, you can never use against somebody when they invoke their right to remain silent, you can't use that Mr. Long didn't testify in this trial... you can't use that against him." CR Docket 270 at 442-443, 2016 U.S. Dist. Lexis 65801 p.8. The district court did not address "and had not denied the accusations against him."

The United States District Court then dismissed Long's 28 U.S.C. § 2255, Civ-14-05022 KES, 2016 U.S. Dist. Lexis 65801 5-19-16. Appendix K.

Long appealed to the Court of Appeals, Civ-16-2820 875 F.3d 411, 2017 U.S. App. Lexis 22444. Oral arguments held on 10-19-17, then on 11-9-17, the appeals court stated;

"Gillman Roddy Long asks us to find his trial counsel ineffective for failing to venture into uncharted territory... territory that this Court and the Supreme Court have still yet to traverse, we decline to do so." 11-9-17.

Petitioned for Writ of Cert. 17-8558 denied 10-9-18.

Fed. R. Civ. P. 60(b)(4); the district court has jurisdiction to consider Fed. R. Civ. P. 60(b)(4) motion, only if it was a true 60(b)(4) motion and not an attempt to circumvent the requirements for filing a New §. 2255. See Robinson v. Johnson, 313 F.3d 128, 139-40, (3rd Cir 2002). This question is governed by Gonzalez v. Crosby, 545 U.S. 524, 125 S.Ct. 2641, 162 L.Ed. 2d 480 (2005). In that case, the Supreme Court held that jurisdiction is proper over a rule 60 motion that attacks "some defect in the integrity" of a prior habeas proceeding. Id. at 532, 125 S.Ct. 2641; . (See following Tr. Trans. p. 442-443.)

1 you take all the fairness that you have to both sides and
2 you judge this and you return a verdict of not guilty.
3 Thank you.

4 THE COURT: Thank you, Ms. Colbath.

5 Ms. Collins.

6 MS. COLLINS: Thank you.

7 "I don't want to incriminate myself." That was
8 what Gillman Long said to Agent Sherry Rice when she asked
9 him about sexual contact between him and xxxxx. And it's
10 xxxxxx," not xxxxxx." What was his response? "I don't
11 want to incriminate myself."

12 Ladies and gentlemen, you can never use against
13 somebody when they invoke their right to remain silent.
14 You can't use that Mr. Long didn't testify in this trial;
15 you cannot use that against him. The law says he has an
16 absolute right to remain silent and he had the right not to
17 talk to Agent Sherry Rice either time she spoke to him, but
18 he chose to speak to her. And when he did that, that gives
19 you the ability to scrutinize what he said. He blames
20 xxxxx a couple different times; he blamed her saying,
21 "Yeah, she came up behind me." You know what he didn't
22 say? He sure didn't say, "I didn't do it."

23 MS. COLBATH: I am going to object, Your Honor.
24 He did.

25 THE COURT: Ladies and gentlemen, you need to

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1 rely on what you believe the evidence is and what you find
2 the evidence is.

3 MS. COLLINS: And there was a couple different
4 things I am going to rely -- ask you to rely on your memory
5 as well that defense counsel said were certainly not
6 correct either. But if you will go back and listen and
7 look at your notes, at no point did Gillman Long say, "I
8 didn't do this," when he was confronted with these
9 accusations. He says, xxxxxxx came up behind me at the
10 computer and put her arms around me, pressing her breasts
11 up against my back." And then he ended the interview by
12 saying, "I don't want to incriminate myself."

13 We are asking you not to leave your common sense
14 at the door. If somebody doesn't want to incriminate
15 themselves, it means any sort of statement as to that topic
16 that they are being asked for would get them in trouble.

17 As far as the witnesses in this case go, I want
18 you to ask yourselves why would witnesses have
19 imperfections? Why might not they say exactly what the
20 lawyers want them to say? Ladies and gentlemen, we get
21 our witnesses as we get them. We tell them to tell the
22 truth. What you had were a couple of younger adults as
23 well as some adults, but I want you to specifically focus
24 on xxxxxx and why she might not have been as perfect as Ms.
25 Colbath is demanding she be.

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It is in this argument that petitioner's true 60(b)(4) void judgement lies.

Petitioner is not rearguing a claim or presenting a new claim, but asserts a defect in the integrity of the habeas corpus proceeding. the defect lies not in the district court's resolution of the merits of the claim (since it never reached those merits), but in its failure to make any ruling on a claim that was properly presented in the Petitioner's habeas petition. see Spitznas v. Boone, 464 F.3d 1213, 1215-19, (10th Cir 2006).

This argument was objected by trial counsel, the government stopped its argument, the district court stated an instruction to the jury, and allowed the government to continue its argument.

This issue three, "and had not denied the accusations against him," was properly preserved. See rule 103.(a)(1) (A)(B), and rule 103 (b). ruling on evidence, "preserving a claim of error for appeal."

This argument was based on trial testimony that was given to the jury during the government's closing argument. This is also not part of the F.R.I. 302, or part of agent rice's statements, and in violation of the right to a fair trial.

the Jury could not lawfully make a determination of the facts because the government made a specific assertion to the Jury that Long never told the FBI Agent Rice, "I didn't do it," or "at no point did he say, I didn't do it," or "he sure didn't say, I d.dnt do this". The government's claim was hearsay and thus inadmissible.

Admission of hearsay statements is violative of the petitioner's Due Process Rights, only if the Court's error in admitting the evidence was so obvious that it fatally infected the trial and rendered it fundamentally unfair. See Oliver v. Wood, 96 F.3d 1106, 1107 (8th Cir 1996). In this event the Court was required to strike the comment from the record and issue a curative instruction to the Jury to disregard the government's argument and inform the Jury that the statement by the government could not be weighed in making a determination of Long's guilt or innocence, by failing in its duty to shield Long from the harmful effects of the government's argument, Long was denied a fair trial in violation of his due process rights.

Conclusions

this improper argument was properly preserved by an objection by trial counsel. Ruling on evidence, Rule 103.(a)(1)(A)(B), also Rule 103.(b), preserving a claim of error for appeal review.

The fourteenth Amendment guarantees equal protections against the federal government in a federal criminal case; (1). Rights that a defendant can exercise, and

(a). Prohibitions and Requirements of the government toward the defendant.

the Due Process clause of the fourteenth Amendment of the U.S. Const. applies these protections to a criminal defendant.

Petitioner respectfully pleads this Court, the Supreme Court of the United States of America, to exercise its power of Supervision, S. Ct. rule 10 (a). Grant Writ of Certiorari, Vacate judgement, Remand back to the Court of appeals in light of;

Petitioner has made a "Substantial Showing" of the denial of a Constitutional right. 28 U.S.C. §. 2253(c)(2).

A Substantial Showing is one that demonstrates "reasonable Jurist would find the district Court's assessment of the Constitutional Claims debatable or wrong. Slack v. McDoniel, 529 U.S. 473, 120 S. Ct. 1595, 146 L.Ed 2d 542 (2000).

Respectfully,

date: 7.20.2028



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