No. 20-5575

ORIGINAL

Supreme Court, U.S.
FILED
AUG 21 2020
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re Van Lawson Williams — PETITIONER
(Your Name)

vs.

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Van Lawson Williams #99839-004
(Your Name)

Coleman Complex P.O. Box 1033- Coleman I
(Address)

Coleman, FL, 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether an appeals court has discretion to implement a "clear and convincing" standard of proof in a second or successive proceeding?

LIST OF PARTIES

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

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

U.S. District Court Southern District of Florida (Ft. Lauderdale)
1-9-2013 United States of America v. Williams: 0:12-cr-60116-DTKH-1

United States Court of Appeals Eleventh Circuit
6-13-2014 United States of America v. Williams: #13-10308-D

United States Supreme Court
10-9-2014 United States of America v. Williams: #13-10308-DD

United States District Court Southern District of Florida
12-8-2016 → Williams v. United States of America: #15-CV-61351-DTKH

United States District Court Southern District of Florida
Williams v. United States of America: #19-CV-61346-KMW
9-18-2019

United States Court of Appeals Eleventh Circuit
5-24-2017 Williams v. United States of America: #15-CV-61351
17-10179-D

United States Supreme Court
9-27-2017 Williams v. United States of America: #15-CV-61351

Related Cases

United States Court Of Appeals For The Eleventh Circuit
In re: Van Williams #20-10284-C
February 6, 2020

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TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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

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

The date on which the United States Court of Appeals decided my case was 2-6-2020.

[X] 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)~~. Mandamus or either Prohibition or both in the alternative 1651(a)

[ ] 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

28 U.S.C. §2255(h) - A second or successive motion must be certified as provided in section 2244 [28 U.S.C. §2244] by a panel of the appropriate court of appeals to contain — 1) New discovered evidence that, if proven and viewed in the light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense;

28 U.S.C. §2244(b)(3)(A) - Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

§2244(b)(3)(B) - A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three judge panel of the court of appeals.

§2244(b)(3)(C) - The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

§2244(b)(4) - A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

1st, 5th, 6th, 8th, 10th, 13th, 14th Amendments of the Constitution Appendix G

Federal Rules of Evidence Appendix G
Rules of Civil Procedures Appendix G
Rules of Criminal Procedures Appendix G

STATEMENT OF THE CASE

Title 28 U.S.C. §2255(h) states: "A second or successive motion 'must' be certified as provided in section 2244[28 U.S.C. §2244] by a panel of the appropriate court of appeals to contain — 1) Newly discovered evidence that, if proven and viewed in the light of the evidence as a whole would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense...." See Appeals Court Order (Order) at 1; see also 28 U.S.C. §2255(h)(1).

The verb "must" means: "Required by law, custom, or moral conscience to." Merriam-Webster's Collegiate Dictionary, Eleventh Edition. The verb "provided" means: "Stipulated in a will, statute, etc." and the synonyms are: "laid down, required, demanded etc." The Oxford New Desk Dictionary and Thesaurus Third Edition. "Stipulated" means: "Demanded or specified as part of an agreement." Id. And the synonyms are: "required, covenanted, prescribed, etc." Id

It is clear that a court of appeals is required by law to certify or attest to a second or successive motion, as laid down or commanded by section 2244 "to contain newly discovered evidence" if there is in fact newly discovered evidence. See 28 U.S.C. §2255(h)(1). That is a non-discretionary, ministerial duty of an appeals court in a second or successive proceeding. It is the only duty of an appeals court in a second or successive proceeding. Id.

The conjunction "if" that is used with two past tense verbs "proven and viewed" implies that the conditions are not yet fulfilled. The Oxford New Desk Dictionary and Thesaurus Third Edition. They could only be fulfilled "in light of the evidence as a whole." §2255(h)(1). That can only happen when the case is sent back to the district court who has the complete case files of what took place at pre-trial and trial and combined with the Petitioner's newly discovered evidence certified by the appeals court create the whole evidence that would presumably be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense." Id.

Title 28 U.S.C. §2244(b)(3)(B) states: "A motion in the court of appeals for an order authorizing the district court to consider a second or successive 'shall be determined' by a three judge panel of the court of appeals." Again, that determination is non-discretionary.

Section 2244(b)(3)(C) states: "The court of appeals 'may' authorize the filing of a second or successive application 'only if it determines' that the application makes a 'prima facie showing' that the application satisfies the requirements of this subsection."

The auxiliary verb "may" means: "Permissive, optional or discretional." Black's Law Dictionary Abridged Sixth Edition. However, courts do not infrequently construe "may" as "shall" or "must" to the end "that justice may not be a slave of grammar" "but context in which the word appears must be controlling." Id.

In this statute "may" is not discretionary, it is mandatory because the context is mandatory. This statute is indelibly connected to §2255(h), which, as noted above, requires that a second or successive motion be certified as commanded in §2244 by a panel of the court of appeals and §2244(b)(3)(B) says that the application is commanded to be determined by a three judge panel and subsection (b)(3)(C) commands the panel to authorize the filing of a second or successive application only (exclusively) if it determines, meaning if it "finds out or establishes precisely" (The Oxford New Desk Dictionary and Thesaurus Third Edition) "that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

"Prima facie" comes from Latin and means: "At first sight; on the first appearence; on the face of it; 'a fact presumed to be true.'" Black's Law Dictionary Abridged Sixth Edition.

"Presume", also from Latin means: "To assume (adopt) beforehand" and "Assumed Facts" means: "Facts concerning which no evidence has been introduced... and hence no rulings of law... are required." Id. respectively. In fact, rulings of law concerning the "presumed" or "assumed" facts are forbidden to be made by the appeals court at the initial stage of a second or successive proceeding as the Eleventh Circuit has conceded. See In re Mcleod, 2019 U.S. App. Lex. Lexis 17316 at Lexis 12, 19. Rulings on the merits of facts can only be done by the district court after the appeals court has complied with §2255(h) and §2244(b)(3)(B)-(C) and authorized the filing of a second or successive motion. See §2244(b)(4).

That is not what happened in Petitioner's case. Eleventh Circuit judges Martin, Grant, and Lagoa went outside of their prescribed statutory jurisdiction and used the "clear and convincing" standard of proof instead of accepting Petitioner's documentary submission (two affidavits: One from one of the alleged victims giving proof positive that she and two others of the alleged five victims were forced by federal and state officials to testify to lies against the defendant while they were children and another affidavit from a paralegal who interviewed another alleged victim corroborating that she too was coerced by threats and violence by federal and state officials to give false testimony against the defendant while she was a child, unearthed state and federal investigative reports clearing the defendant of all charges and other documents proving a conspiracy against the defendant by four defense attorneys working in conjunction with at least two Assistant United States Attorneys, etc.) as prima facie evidence and accepting his submissions and request for judicial notice and claims as true in determining each issue in the application. See Application to file a Second or successive motion (App.) in Appendix That violated §2255(h) and §2244(b)(3)(B)-(C)'s command to the appeals court judges to accept as true the allegations and any, especially, official documentation that is presented.

Petitioner, as noted above, presented affidavits, official state and federal reports, official transcripts unearthed through the Freedom Of Information Act requests and a Florida Bar Complaint and other official documents discovered through research and effort. The ~~three~~ judge panel did not say that these allegations and documentation were incredible or otherwise delusional. In fact, the panel conceded that the Petitioner did present new evidence for all four claims. See Eleventh Circuit Court Order (Order) at 2-4. However, the court stated: "We find that Williams' application does not present newly discovered evidence that would be sufficient to establish, by clear and convincing evidence,' that no reasonable fact-finder would have found him guilty. See 28 U.S.C. §2255(h)(1)." See Order at 3-4. That statement and the procedure that the court used was beyond the court's prescribed statutory jurisdiction. Steel Co. V. Citizens For Better Environment, 523 U.S. at 94-95(1997).

The appeals court for the Eleventh Circuit has made a mistake of procedural law. Newly discovered evidence does not have to be established as, nor does it have to establish anything by clear and convicing evidence at the appellate level at the initial stage of a second or successive proceeding. The clear and convincing standard of proof does not come into play until the case is authorized to be filed and then actually filed in the distric court. See 28 U.S.C. §2244(b)(4). See also §2255(h).

Petitioner would also like to note that the appeals court also made a mistake of fact concerning the third claim. The court stated: "Third, Williams argues that Doakes committed fraud on the court when she indicated that he refused to attend a scheduled detention hearing. Williams argues that Doakes and the government conspired to have him transferred to state court for a misdemeanor' so that he would miss his appearance in federal court where the court ordered a $250,000 bond and that Doakes and the government conspired to do this because the Florida State Attorney's Office had found some Fort Lauderdale police reports to be false. Williams contends that he did not learn he could post bond until after trial, which deprived him of additional 'access' outside of prison for his defense. In support, Williams attached newspaper articles to his petition regarding police officers being fired from the Fort Lauderdale Police Department for scheming to shake down drug addicts and drug dealers for their money." Order at 3.

First, the newspaper articles were attached to the first claim and clearly labled to show a conflict-of-interest because Petitioner's attorney at that time, Howard Greitzer's name was in the newspaper as representing Fort Lauderdale Police at the same time he was representing Petitioner. The Ft. Lauderdale Police, F.B.I., and the U.S. Attorney's Office in South Florida were prosecuting Petitioner. This conflict-of-interest adversely affected counsel's performance, as documented in Petitioner's 60(d)(3) motion that was attached to Petitioner's second or successive motion, and was a Sixth Amendment violation and warranted a presumption of prejudice. Strickland v. Washington, 466 U.S. 668, 692, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984); See also Cuyler v. Sullivan, 446 U.S. 335, 348, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

Second, the articles Petitioner attached to the third claim were copies of three official court documents. One was a copy of the federal court minutes where Doakes lied by writing in the minutes: "... D(for Defendant) refused to come to court...." See Docket Entry (DE) #12. This phrase was recorded on the docket and gave the false impression that Petitioner bucked, resisted or opposed the court detention hearing. A copy of this part of the docket was submitted and/or either referred to in the application. In addition, Doakes wrote in the minutes: "If D(for Defendant) wants a bond hearing, it will be set." Id. That was also fraudulant because Doakes never told that to Petitioner. In fact, Petitioner did not find out about the detention hearing until about seven (7) years later after filing a Florida Bar complaint and several Freedom Of Information Act requests. Also, the $250,000 bond was a 'recognizance' bond. Id. See Exhibits R, 1-2 (state & Federal court minutes attached to the second or successive motion).

The Eleventh Circuit further went outside of it's prescribed jurisdiction usurping authority by making merit based rulings upon the prima facie evidence of all four claims presented. The Court stated about Claim One: "Williams's evidence regarding his attorney also representing Fort Lauderdale Police Officers in a separate criminal case does not meet the above standard [clear and convincing], as it does not relate to the facts of his case." Order at 4. That was impossible for the court to know because it did not have the full record from the lower court. There was a conflict-of-interest on the face of the claim and evidence that required the district court, by rule, to investigate. This conflict is shown more fully in Petitioner's 60(d)(3) motion in Appendix F. This finding of fact was also a procedural violation of §2255(h) and §2244(b) and that was on top of using the wrong standard of proof (clear and convincing). Order at 4.

As to Claims Two and Three the court stated: "In addition, Williams claims regarding his attorney invoking his right to silence and counsel and stating that he refused to appear for his detention hearing also fail because neither argument addressed his guilt or innocence." Id.

The court's rulings on these two claims are gross errors of facts and a contradiction of its earlier recitation of the two claims. The court stated: "Williams argues that the invocation was catastrophic to his defense because it stopped 'his voice from being heard' throughout the proceedings." Id. at 2. This was a partial quote from Petitioner's Application to file a second or successive motion wherein Petitioner stated more accurately: "This motion was catastrophic to the defense and the defendant.... No reasonable factfinder would have convicted the defendant if they knew of this motion and knew that it was designed 'to force the conviction of a factually innocent citizen.' If they knew that this motion was designed and did stop his voice from being heard throughout pre-trial, trial, direct appeal and collateral proceedings (§2255), they would not have convicted Mr. Williams...." See App. at 11-12. That was Claim Two.

As to Claim Three the court stated: "Williams argues that Doakes and the government conspired to have him transferred to state court for a misdemeanor so that he would miss his appearance in federal court where the court ordered a $250,000 [recognizance] bond and that Doakes and the government conspired to do this because Florida's State Attorney's Office had found some Fort Lauderdale police reports to be false." Order at 3. That was a misleading statement by the court.

What the Petitioner actually said, and the court carefully left out was: "... the government did not want Mr. Williams out on bond.... The government was forced to offer a signature bond especially since 'the Florida State Attorney's Office actually exonerated Mr. Williams of sex trafficking' and 'found the FL Police Reports [not some but all] to be false'.... Her intent was to keep the Petitioner falsely imprisoned among other corrupt intent." See App. at 12-13.

As to the last Claim #4 the court stated: "Finally, Williams argues that Raven Thurston, a witness that testified against him at trial, was coerced to lie by the government. As new evidence Williams attached an affidavit completed by Thurston. In her affidavit, Thurston explains that she originally met Williams when he broke up a fight between her and other individuals in his front yard and that Williams eventually became [one of] her foster parent[s]. Thurston also alleges that she stole Williams credit card and gave it to her biological mother to use, which resulted in Williams sending her to live with her mother. Thurston explains that she convinced her mother to make false charges against Williams because she was angry at him for sending her back to live with her mother.

[In her state files, she made false allegations of sexual abuse before, against another]. Thurston claims that state and federal authorities coerced her and others to testify against Williams and that she lied when she testified that she worked as a prostitute for Williams and had sex with him.

We find that Williams's application does not present newly discovered evidence that would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty. See 28 U.S.C. §2255(h)(1)... Williams presents Thurston's affidavit claiming that she falsely testified [as a child] at Williams's trial as 'new evidence', this new evidence would not prevent a reasonable juror from determining that Thurston's current version of events is false, believing her prior testimony under oath, and finding Williams guilty. See Schlup v. Delo, 513 U.S. 298, 329 (1995) ("Thus, a petitioner does not meet the threshold requirements unless he 'persuades the district court' that in light of the new evidence no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt."). Therefore, Williams arguments fail because none of them establish, by clear and convincing evidence, that no reasonable factfinder would have found him guilty." Order at 3-4.

This ruling on the prima facie evidence conflicts with at least two circuit cases and at least two Supreme Court cases as well as the two statutes in question.

In Clark v. Nagy, Warden (No. 18-1885)(6th Cir. August 12, 2019) Clark was found guilty of murder in 2003. The case against him hinged on the preliminary testimony of a single eye-witness who during the trial, refused to verify her incriminating statements. She since recanted. The motion for habeas relief was premised on an exculpatory affidavit from another purported eyewitness to the crime one who states that her father, a city police detective, told her not to report what she had seen. Clark was granted permission to file a second or successive habeas petition, in light of the alleged suppression of evidence in violation of Brady v. Maryland, 373 U.S. 83 (1963). The district court considered the claim and, without holding an evidentiary hearing, granted a conditional writ of habeas corpus. The Court therefore reversed the district court's decision and remanded for further proceedings consistent with this opinion.

Comparably, Raven Thurston gave a sworn statement to F.B.I. Special Agent (S.A.) Chavez on 3-12-2012, some seven months before Mr. Williams trial, that "... she never worked as a prostitute for Williams." See App. at 19-20 (Pointing to Exhibit #3 which was her sworn statement in F.B.I. Report #31E-MM-105338 dated 3-12-2012 at 1) in Appendix F. Raven also testified that she changed her version of events from her sworn statement to the F.B.I. because of the constant pressure and threats by the same S.A. and Asistant United States Attorney Steinberg etc. and after they forced her out of her Foster Parent's home and put her in a locked facility (imprisonment) until she agreed to change her statement. Id. at 19-23. Raven signed an affidavit as she was twenty one years old. Id. at 20.

In the second case the Ninth Circuit held that if a prisoner can make the required showing of prima facie evidence for at least one claim in a second or successive petition, the Court of Appeals will certify the entire petition for consideration by the district court. see Cooper v. Woodford, 358 F.3d 1117, 1123 (9th Cir. 2004).

The conflict with these three cases, Clark, Brady, and Cooper, is in addition to the Eleventh Circuit violation the two statutes of Title 28 §§ 2255(h) and 2244(b) set out above.

All this is on top of the panel contradicting itself and actually conceding when it quoted Schlup v. Delo, supra, that the Petitioner is supposed to be allowed an opportunity to persuade "the district court that in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt."

Finally, in the last two paragraphs of the court's ruling on the merits of the Prima facie evidence, the court basically ruled that because the Petitioner failed to establish his case by clear and convincing standard of proof he did not make a prima facie showing. See Order at 3-4. The court using the wrong standard of proof and ruling on the merits in a second or successive proceeding was blatantly wrong

The court denied the Petitioner reasoning that because he did not established his case by the higher standard of proof (clear and convincing) than he did not establish it at the lower standard of proof (prima facie, which is two levels lower). Thats illogical and departs from this Court's accepted and usual course of judicial reasoning and judicial conduct and calls for the exercise of this Court's supervisor powers, other no indigent petitioner will get a fair shake in the second or successive proceedings in the Eleventh and Seventh circuits.

REASONS FOR GRANTING THE PETITION

This is a request for a Writ of Mandamus or in the alternative a Writ of Prohibition.

Mandamus is the name of a writ (formally a high prerogative writ) which issues from a court of superior jurisdiction, and directed to, among others, an inferior court commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty or directing the restoration of the complainant to rights or privileges of which he has been illegally deprived. Black's Law Dictionary Abridged Sixth Edition. Ministerial duties are mandatory and imposed by law. Id.

Prohibition is that process by which a superior court prevents an inferior court or tribunal possessing judicial or quasi-judicial powers from exceeding its jurisdiction in matters over which it has cognizance or usurping matters not within its jurisdiction to hear or determine. Id.

The Supreme Court may issue a writ of mandamus or prohibition in aid of their appellate jurisdiction that might otherwise be defeated by the unauthorized action of the court below. Id.

Writs of mandamus and prohibition are drastic remedies reserved for extraordinary situations. See Allied Chemical Corp. v. Daiflon, 449 U.S. 33, 35, 101 S.Ct. 188, 190 L.Ed. 2d 193 (1980). It is appropriate only to remedy a clear usurpation of power or abuse of discretion and when no other adequate means of obtaining relief is available. Id. In particular, a writ of mandamus or prohibition may issue only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise it's authority when it is it's duty to do so. Id. See also Ex Parte Peru, 318 U.S. 578, 583, 63 S.Ct. 793, 87 L.Ed. 1014 (1943).

Reason For Granting The Petition

The Eleventh Circuit Court of Appeals has entered a decision in a second or successive proceeding in this case that is in conflict with the decision of several other United States Courts of Appeals on the same important matter and has so far departed from the accepted, usual, and prescribed standard of proof as to call for an exercise of this Court's supervisory powers. Their decision was not only erroneous, but also has national importance because of the implication of at least one other circuit both involving hundreds of indigent petitioners.

Wrong Standard of Proof

As the Petitioner has noted in his Statement of the Case, supra, the Eleventh Circuit Panel ruled that "Williams's arguments fail because none of them establish, by clear and convincing evidence, that no reasonable fact finder would have found him guilty." Order at 4. That is in conflict with the following circuit cases:

In re Lott, 366 F.3d 431, 433 (6th circuit 2004) (explaining for the new-evidence claim that "[P]rima facie in this context means simply sufficient allegation of fact together with some documentation that would warrant a fuller exploration in the district court." (Quotations omitted)); Haouar v. United States, 510 F.3d 350, 353-54 (2nd Cir. 2007) (concluding that a new-evidence claim premised on an unsworn, conclusory, and uncorroborated later by a witness recanting his prior testimony failed to satisfy the applicant's prima facie burden of showing "a sufficient likelihood of satisfying [the statutory criteria for successive §2255 motions] to warrant a fuller exploration by the district court") (Quotations omitted); Reyes-Requena v. United States, 243 F.3d 893, 899 (5th cir. 2001) ("[I]f from the application and its supporting documents, it appears reasonably likely that the application satisfys the stringent requirements for the filing of a second or successive petition, the application shall be granted.") (Quoting Bennett v. United States, 119 F.3d 468, 469-70 (7th cir. 1997)) (emphasis added); Quezada v. Smith, 624 F.3d 514, 521 (2nd cir. 2010) (holding that the prima facie standard contained in §2244(b)(3)(C) means "that the application's allegations are to be accepted as true for purposes of gate-keeping, unless those allegations are fanciful or otherwise demonstrably implausible").

As to the clear and convincing standard of proof that the Eleventh Circuit used in the Petitioner's second or successive proceeding the court said: "We've applied this analysis many times in this Circuit..." See In re McLeod, 2019 U.S. App. Lexis 17316 at Lexis 8. This is not the only circuit to have applied the wrong analysis or standard of proof in opposition to the aforementioned circuits.

In In re Holladay, 331 F.3d 1169, 1173 (11th cir. 2003), The Eleventh Circuit adopted the clear and convincing standard of proof, to be applied in a second or successive proceeding, set forth in Bennett v. United States, 119 F.3d 468, 469 (7th cir. 1997) wherein the Bennett stated ("[The Petitioner] has to show, albeit only prima facie, that the newly discovered evidence would have established by clear and convincing evidence that no reasonable factfinder could have failed to find that [the petitioner] had established his insanity by clear and convincing evidence.").

The Eleventh Circuit has used the clear and convincing standard of proof in second or successive proceedings, albeit the wrong standard for some seventeen years and the Seventh Circuit has used it since 1997, some twenty three years. Hundreds if not thousands of petitioners have been negatively affected by at least these two circuits and have been shut out of court who may have had meritorious issues as Mr. Williams, that were not heard because these two circuits used the wrong standard of proof favoring harshness. There may be other circuits using the clear and convincing standard of proof in second or successive proceedings however, the Petitioner could not research this because of the covid-19 lock-down of the prison.

The Petitioner submits that because the right to mandamus/prohibition must be clear and indisputable a district court's actions, or in this case, an an appeals court's actions must be blatantly wrong to justify mandamus/prohibition relief. Allied Chemical Corp. v. Daiflon, 449 U.S. 33, 35, 101 S.Ct. 188, 190, 66 L.Ed.2d 193 (1980); see also Central Microfilm Service Corp. v. Basic/Four Corp. 688 F.2d 1206, 1212 (8th Cir. 1982). The Eleventh Circuit's use of a clear and convincing standard of proof instead of accepting Petitioner's claims and documentation as prima facie evidence was flagrantly in error and has resulted in the unlawful sustaining of the conviction of one who is actually and factually innocent as he proved beyond a reasonable doubt in his Fed. R. Civ. P. 60(d)(3) motion that was mistakenly filed in the district court but after voluntary withdrawal submitted with the application to file a second or successive as an exhibit because of it's extensive research and documentation and now appended to this request in Appendix F.

This technique of using the higher standard of proof in second or successive proceedings appears to be a method designed to close the legal doors of the courthouse to poor defendants most of whom are least educated to challenge such craftsmanship and who linger in prison an inordinate amount of time sometimes for life as a result. That violates Equity and calls for this Court to exercise it's supervisory powers pursuant to the All Writs Act of 28 U.S.C. § 1651(a).

"Equity" comes from the Latin root "equal, fair" and means: "A system of law originating in [and even before] the English chancery and comprising a settled and formal body of legal and procedural rules and doctrines that supplement, aid, or override common and statutory law and are designed to protect rights and enforce duties fixed by substantive law; it is justice according to natural law or right. Merriam-Webster's Collegiate Dictionary Eleventh Edition.

The goodness of the law, which is what Equity represents, supersede the harshness of the law and this fact is self-evident.

When the Eleventh Circuit disregarded all of the documented and unimpeachable facts and acted in derogation of two statutes namely 28 U.S.C. §2255(h) and §2244(b) and disregarded several Supreme Court and other circuit presedents, the three judge panel dishonored the goodness of the law or Equity. In other words, the panel by their actions in this case and others since 2003 brought shame and disgrace to the law and the judiciary. By the court of appeals sanctioning the injustice that took place in the district court, it has undermined the public's confidence in the judicial process. Buck v. Davis, 137 S. Ct. 759, 778, 197 L. Ed. 2d 1 (2017) (Quoting Liljeberg, v. Health Services Acquisition Corp., 486 U.S. 847, 863-64, 108 S. Ct. 2194, 100 L. Ed. 2d 855 (1988). That calls for this Court to enact the power of Equity to override not only the Elevent Circuit but also the Seventh Circuit and any other circuit who may be guilty of using the wrong standard of proof in second or successive proceedings to deprive indigent litigants of procedural rights.

And beside all this, I request Judicial Notice of all of the Constitutional violations and statutory violations noted in the Request For Judicial Notice in Appendix G

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 4/13/2020