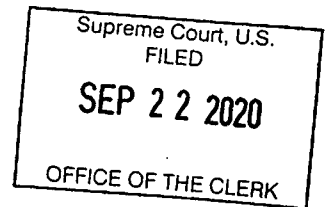


20-5867

No. 19-35796

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



GEROME LEONAR ALBERTO PETITIONER
(Your Name)

vs.

BRYAN DWAIN CLINE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

GEROME LEONAR ALBERTO

(Your Name)

MONROE CORRECTIONAL COMPLEX
P.O. BOX 777

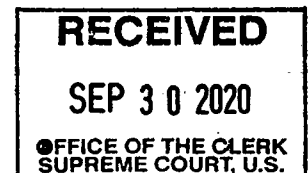
(Address)

MONROE, WA, 98212

(City, State, Zip Code)

N/2

(Phone Number)



QUESTION(S) PRESENTED

1. WHETHER PETITIONER'S COMPLAINT SHOULD HAVE BEEN DISMISSED WITHOUT PREJUDICE.
2. WHETHER THE DISTRICT AND APPELLATE COURT ERRORED IN APPLYING THE STATUTE OF LIMITATIONS UNDER WASHINGTON STATE LAW, BECAUSE DURESS TOLLS THE STATUTE OF LIMITATIONS, STATE EX. REL. BRADFORD V. KING COUNTY, 197 WASH. 393, 400, 85 P.2d 670 (1938); SEE ALSO REVISED CODE OF WASHINGTON (RCW) (ANNOTATED) AT 4.16.190 (CITING STATE EX. REL. BRADFORD V. KING COUNTY, 197 WASH. 393, 85 P.2d 670 (1938)).

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:

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RCW 4.16.190

ii, 5

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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 2 to the petition and is

- ☐ reported at 4/2; 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☒ is unpublished.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 2 to the petition and is

- ☒ reported at ALBERTO V. CLINE,
2019 U.S. DIST. LEXIS 246266; 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 4/2; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the 4/2 court appears at Appendix _____ to the petition and is

- ☐ reported at 4/2; 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 JULY 23, 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 4/2.
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

RULE OF THE SUPREME COURT OF THE UNITED STATES

PART III. JURISDICTION ON WRIT OF CERTIORARI

RULE 10. CONSIDERATIONS GOVERNING REVIEW ON CERTIORARI

REVIEW ON A WRIT OF CERTIORARI IS NOT A MATTER OF RIGHT, BUT OF JUDICIAL DISCRETION. A PETITION FOR A WRIT OF CERTIORARI WILL BE GRANTED ONLY FOR COMPELLING REASONS. THE FOLLOWING, ALTHOUGH NEITHER CONTROLLING NOR FULLY MEASURING THE COURT'S DISCRETION, INDICATE THE CHARACTER OF THE REASONS THE COURT CONSIDERS :

(a) A UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION IN CONFLICT WITH THE DECISION OF ANOTHER UNITED STATES COURT OF APPEALS ON THE SAME IMPORTANT MATTER; HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH A DECISION BY 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 COURT'S SUPERVISORY POWER;

(b) A STATE COURT OF LAST RESORT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT OR OF A UNITED STATES COURT OF APPEALS;

(c) A STATE COURT OR A UNITED STATES COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, OR HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

A PETITION FOR A WRIT OF CERTIORARI IS RARELY GRANTED WHEN THE ASSERTED ERROR CONSISTS OF ERRONEOUS FACTUAL FINDINGS OR THE MISAPPLICATION OF A PROPERLY STATED RULE OF LAW.

STATEMENT OF THE CASE

ON JULY 22, 2019, MAGISTRATE JUDGE THERESA FRICKE RECOMMENDED DISMISSAL WITH PREJUDICE OF PETITIONER'S FEDERAL CLAIMS AGAINST DEFENDANT BRYAN DWAIN CLINE ON GROUNDS THAT STATUTE OF LIMITATION HAD EXPIRED.

ON AUGUST 7, 2019, PETITIONER OBJECTED TO THE MAGISTRATE'S REPORT AND RECOMMENDATIONS ARGUING THAT HE WAS UNDER A LEGITIMATE THREAT MADE BY POLICE TO DO HARM TO HIS LOVE ONES AND HIMSELF PUTTING HIM UNDER DURESS, WHICH WAS THE CAUSE FOR HIS DELAY IN BRINGING THIS ACTION.

ON AUGUST 27, 2019, THE COURT ADOPTED THE MAGISTRATE'S RECOMMENDATIONS. SEE USDC DKE 22.

ON SEPTEMBER 5, 2019, PETITIONER FILED A TWO PAGE MOTION TO RECONSIDER. SEE USDC DKE 24.

THE RECONSIDERATION WAS DENIED ON SEPTEMBER 6, 2019. SEE USDC DKE 25.

ON JULY 23, 2020, THE UNITED STATES COURT OF APPEALS, FOR THE NINTH CIRCUIT ISSUED MEMORANDUM AFFIRMING THE DISTRICT COURT'S DISMISSAL WITH PREJUDICE. MANDATE ISSUED ON AUGUST 14, 2020.

REASONS FOR GRANTING THE PETITION

CERTIORARI IS APPROPRIATE WHEN A U.S. COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER. SUPREME COURT RULE 10 (2).

THE DECISION OF THE NINTH CIRCUIT IN THIS CASE HOLDING THAT PETITIONER IS NOT ENTITLED TO EQUITABLE TOLLING IS SO CLEARLY WRONG BECAUSE WASHINGTON RECOGNIZES DURESS, AND THE APPELLATE COURT FAILED TO ADDRESS THE DURESS ISSUE. SEE STATE EX. REL. BRADFORD V. KING COUNTY, 197 WASH. 393, 400, 85 P.2d 670 (1938); SEE ALSO REVISED CODE OF WASHINGTON (RCW) (ANNOTATED) AT 4.16.190 (CITING STATE EX. REL. BRADFORD V. KING COUNTY, 197 WASH. 393, 85 P.2d 670 (1938)); ALSO SEE AM-PRO PROTECTIVE AGENCY, INC. V. U.S., 281 F.3d 1234, 1238 (FED. CIR. 2002) ("... DURESS, HOWEVER, A PLAUSIBLE ARGUMENT COULD BE MADE FOR EQUITABLE TOLLING...") THEREFORE, REVERSAL IS WARRANTED.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED.

I, JEROME CESAR ZUERTO, PETITIONER, DECLARE UNDER PENALTY OF PERJURY THAT THE FOREMENTIONED IS TRUE TO THE BEST OF MY KNOWLEDGE.

Respectfully submitted,

Jerome Cesar Zuerto

Date: SEPTEMBER 19, 2020