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No. 20-6350

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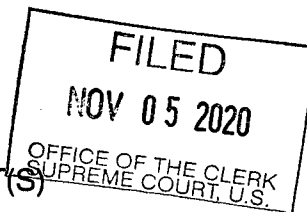
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Esau Dozier — PETITIONER
(Your Name)

vs.

Dwight Neven, et al — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

The Nevada Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ESAU DOZIER
(Your Name)

L.C.C. - 1200 Prison Rd.
(Address)

Love Lock, Nevada 89419
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

(1) Under The U.S. Constitution, should Petitioner be Subject To Discovery and Evidentiary Pursuant To [Kyle J. Rodney V. Filson] 916 F.3d 1254; (2019)? & [Buck V. Davis], 137 S.Ct. 759; 197 L.Ed.2d 1; 2017 (U.S.)?

(2) Whether Petitioner's Sentence is grossly disproportionate in violation of the 8th Amend. and 14th Amendment of the United States Const.

(3) Is Petitioner's Sentence on the Crime of Robbery Illegal as to the term of 6 to 15, which should have been A(2) to (15) Years according to NRS 193.165(1)

(4) Whether Reasonable Jurist could debate whether Insufficient evidence existed to support Dozier's Convictions.

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:

PETITIONER; OFFICE OF THE ATTORNEY -

ESAU DOZIER. -GENERAL-AARIN FORD et al

AMELIA L. BIZZARO;

ASSISTANT FEDERAL PUBLIC-

(DEFENDER) (RESPONDENTS)

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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,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B1+B2 to the petition and is 8-C

☐ 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☒ is unpublished.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 May/15/2020.

☐ 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: Aug/07/2020, 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 5/29/2020 (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).

1 CONSTITUTIONAL AND STATUTORY PROVISIONS
2 INVOLVED
3

4 (1) Applicant's/Petitioner's (6th) amendment
5 rights to the effective assistance of Trial
6 and Post Conviction Counsel was denied
7

8 (2) Applicant's/Petitioner's (14th) amendment
9 right to due process of law, equal, fair treat-
10 ment and Protection was denied equating a
11 violation see: Slack, 529 U.S. at 484, quoting
12 Barefoot v. Estelle, 463 U.S. 880, 893 & fn. 4
13 (1983)
14

15 (3) The Court should have resolved doubts about
16 the propriety of a COA in the Petitioner's favor
17 see: Jennings v. Woodford, 290 F.3d 1006, 1010
18 (9th Cir. 2002)
19

20 (4) Petitioner made A Substantial Showing
21 of the denial of a Constitutional right -
22 Per 28 U.S.C. § 2253(c)(2).
23

24 (5) Petitioners need only to show "that reasonable
25 Jurists could debate whether (or for that matter,
26 agree that) the petition should have been
27 resolved in a different manner. Slack, 529 U.S.
28 at 484, quoting Barefoot v. Estelle, 463 U.S. 880, 893

CONTINUED

→ Constitutional And Statutory Provision
1 & Fn. 4 (1983) - Due Process Clause Protects
2 the accused against Conviction except
3 upon Proof Beyond a reasonable doubt of EVERY-
4 FACT necessary to constitute the CRIME
5 with which he is being and OR is charged.
6 In re Winship, 397 U.S. And Pursuant To The
7 Nevada Evidence Law/Statutes 47.180,
8 47.190, 47.210 and 47.220 Petitioner is
9 also subject To The Buck V Davis Case,
10 Supreme Court Of The United States, 137 S.
11 Ct. 759; 197 L. Ed. 2d 1; 2017 U.S. Lexis 1429; 85
12 U.S. L.W. 4037; 26 Fla. So. also Kyle J. Palmer
13 V. Timothy Filson 917 F.3d 1254; 2019, AS
14 Petitioner was not provided with Post
15 Conviction Counsel, and Trial was
16 ineffective. The above Constitution,
17 Statutes and laws supports the facts
18 that Petitioner's Constitutions were
19 indeed violated, and the Prosecution
20 Proved Nothing beyond a reasonable doubt.
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STATEMENT OF THE CASE

The alleged facts surrounding Petitioner's Case arrives from May/25/2002, at 10:15 P.M., a man with a Gun gather/entered De missie- Kelemework and Mulunesh Gutema hotel room at El Ray Motel in Reno, Nevada through the door, which Kelemework and Gutema had not completely. The gunman allegedly ordered the two individuals to be quiet and give him whatever they had. They gave the man their Fanny Pack, each containing several hundred dollars. The man also took a small gift bag that belong to a black female friend of theirs from Pleasanton California. The man placed everything he was taking in a red traveling bag with a black strap. Kelemework described the man as a 30 to 40 years old black male, well shaven, and dressed in nice clothes. Gutema described the man as a black male with clean shaven head. [Neither Woman could identify Dozier, in fact, when police showed them a picture lineup, which included Dozier, neither woman identified him.]

SHOULD PETITIONER BE ENTITLED TO
DISCOVERY & OR AN EVIDENTIARY
HEARING

Petitioner is entitled to an Evidentiary -

1 Pursuant To This Court's Rulings in
2 Duane EDWARD BUCK, Petitioner V. LORIE DAVIS,
3 Director, Texas Department of Criminal Justice,
4 Correctional Institutions Division - SUPREME C-
5 COURT OF THE UNITED STATES, 137 S. Ct. 759; 197
6 L. Ed. 2d 1; 2017 U.S. LEXIS 1429; 85 U.S.W. 4037;
7 26 Fla L-Week 14 Fed.S. This Court held that,
8 Because a reviewing Court inverted the
9 statutory order of operations by deciding the
10 merits of an appeal and then denying the COA
11 based on adjudication of the actual merits,
12 it placed too heavy a burden on the prisoner at
13 the COA stage. And Plaintiff/Petitioner is/should be-
14 entitled to a COA Pursuant to Kyle J. Rodney
15 V. Timothy Filson; Attorney General For the State
16 of Nevada - UNITED STATES COURT OF APPEALS FOR
17 The NINTH Circuit 916 F.3d 1254; 2019.
18 "Further," it states in this Court's rulings
19 A COA may issue only if the applicant
20 has made a substantial showing of the
21 denial of a Constitutional right. 28 U.S.C.-
22 § 2253 (C)(2) Additionally this Court's
23 rulings in Buck has established that,
24 until the Prisoner secures a COA, the Court
25 of Appeals may not rule on the merits of
26 his case. The Two Alleged Victims
27 never, and could not identify Dorier nor
28 Pick Dorier out of A line UP. It was later-

1 discovered that Dozier's ex-girlfriend had
2 falsely collaborated with the district
3 attorney because she was simply upset
4 about her car being used by Dozier and her
5 not knowing his location. Petitioner should
6 at least be entitled to a C.A.A. and discovery
7 and an evidentiary hearing due to the clear
8 facts that Petitioner participated in a lineup
9 by police and was not positively identified by
10 either one of the alleged victims and the alleged
11 testimony extracted from Steward was
12 impermissible to prove Petitioner was
13 the perpetrator. Counsel was ineffective for
14 failing to present a defense that someone
15 else committed the crime. Due process includes
16 a right to a meaningful opportunity to present
17 a complete defense. Crane v. Kentucky, 476
18 U.S. 683, 690, 106 S.Ct. 2142 (1984). The Constitutional
19 right is violated by the exclusion of probative
20 admissible evidence that another person may
21 have committed the crime. See (MoPId 33530).
22 The state and/or government never proved
23 all the elements necessary for the jury to
24 find that Petitioner was guilty beyond a
25 reasonable doubt. U.S. v. Corona Garcia, 210 F.3d
26 973 (CA 9 2000). At the close of the government's
27 argument Corona Garcia moved for judgment -
28 of acquittal under Rule 29 in support of motion.

1 despite Petitioner's ex-girlfriend's testimony
2 and OR Statement to the Police, The Government
3 still didn't prove all the elements necessary
4 for the alleged crime by Petitioner. Opfer V. United-
5 States 348 U.S. 84, 89, 93, 75 S.Ct. 158, 99 L.Ed. 101 -
6 (1954) See also United States V. Lopez Alvarez 970
7 F.2d 583, 590 (9th Cir. 1992). like Corona Garcia-
8 Petitioner request relief and OR acquittal.

9
10 (2) Petitioner's Sentence is grossly
11 disproportionate in violation of the (8th)
12 amendment, and (14th) Amendment of the United
13 States Constitution, and Counsel was
14 "ineffective assistance," in violation of my
15 (6th) amendment rights - Reasonable Jurists
16 could debate whether the State Court's im-
17 position of a Sentence for a deadly weapon
18 enhancement violated Petitioner's rights to
19 be free from cruel and unusual punishment
20 as guaranteed by the Eighth Amendment of
21 the United States Constitution. A sentence -
22 violates the 8th Amendment's prohibition against
23 cruel and unusual punishment if it is grossly
24 disproportionate to the crime. See: Lockyer V.
25 Andrade, 538 U.S. 63, 72 (2003), also Harmelin V.
26 Michigan, 501 U.S. 987, 1001 1991; and Solem V.
27 Helm, 463 U.S. 277, 296-97 (1983). In assessing
28 an 8th Amendment disproportionality claim, the -
X,

1 Court considers the severity of the -
2 sentence, the gravity of the offense, and
3 the Criminal history of the defendant.

4 See: Taylor V. Lewis, 460 F.3d 1093, 1098, 1101 -
5 (9th Cir 2006); see also Gonzales V. Duncan -
6 551 F.3d 875 9th Cir. 2008). (The Supreme Court -

7 mandates that the evaluation of whether
8 a sentence constitutes cruel and unusual
9 Punishment under the eighth Amendment is case
10 specific. See, e.g., Solem, 463 U.S. at 303
11 finding the Eighth Amendment requires the -
12 Court to examine Petitioner's Sentence &
13 determine if it's proportionate to his crime).

14 The Court sentenced Petitioner to four
15 consecutive Prison Terms of 72 to 180 months
16 and one concurrent term of 72 to 180 months

17 this means Petitioner is serving a total of 288 -
18 months = (24 years to 72 month = (60 years). Petitioner -

19 was (48) years old at the time of Sentencing,
20 making his [24 to 60] years) Sentence nothing
21 short of a (life Sentence). Yet life Sentences

22 are meant for violent offenders who severely
23 injure or kill someone. The Petitioner's sentence

24 is objectively measured in light of his alleged
25 actions, his sentence structure reasonably debated

26 among Jurist of reason can be found to be
27 grossly disproportionate in violation of the

28 Eighth Amendment. Not only is Petitioner's -

1 Sentence unconstitutional under the (8th)
2 Amendment as grossly disproportionate,
3 but it's also in violation of the District Court's
4 sentence, standard of review - under (U.S.S.G.)
5 and Federal. Gall v. U.S., 352 U.S. 38, 169 L.Ed.
6 2d 445, 128 S.Ct. 586 (2007) - see also United States-
7 v. Booker, 543 U.S. 220, 125 S.Ct. 738, 160 L.Ed.-
8 2d 621 and an abuse of-discretion standard
9 applies to appellate review of sentencing decisions
10 Petitioner's sentence should be deemed
11 unconstitutional.

12
13
14 (3) Petitioner sentence on the crime
15 of alleged robbery should be illegal
16 as to the term of 6 to 15, and should
17 have been subject to a term of (2 to 15)
18 years pursuant to NRS 193.165(1)

19
20 The district court abused its discretion by
21 sentencing petitioner to an illegal sentence
22 of (6) to (15) and should have used NRS 193.165(1)-
23 U.S. v. Carter, 564 F.3d 325 (CA 4 2009). in re-
24 viewing any sentence, whether inside, just-
25 outside, or significantly outside the guidelines
26 range, this court applies a deferential abuse of-
27 discretion standard. Gall v. United States, 552 U.S.
28 38, 128 S.Ct. 586, 591, 169 L.Ed. 2d 445 (2007) - This-

1 Court went on to state, We must first ensure
2 that the district court committed no significant
3 procedural error. *Id.* at 597. If and only if, we
4 find the sentence procedurally reasonable
5 can we consider the substantive reasonable-
6 ness of the sentence imposed under an abuse-
7 of discretion standard. "see also United States v.
8 Stephens 549 F.3d 459, 465 (6th Cir. 2008).
9 Procedural errors including failing to -
10 calculate (or improperly calculating) the guideline
11 range. Petitioner should be granted relief.

12 INSUFFICIENCY OF EVIDENCE & INNOCENCE

13 (4). As previously demonstrated, reasonable
14 jurists could disagree about how the lower
15 court decided petitioner's claims. Especially
16 due to the fact that neither alleged victim
17 identified petitioner as the perpetrator.
18 A credible claim of actual innocence involves
19 the petitioner's supporting his constitutional
20 ~~claims~~ with new reliable evidence - whether it be
21 exculpatory scientific evidence, trustworthy,
22 eyewitness accounts, or critical physical -
23 evidence that was not presented at trial. *Id.*
24 The court is not bound by the rules of -
25 admissibility that would govern at trial. And
26 should consider the probative force of relevant
27 evidence that was either excluded or unavailable
28 at trial. Insufficiency of evidence raises, -

1 a Constitutional issue, which is cognizable
2 on Collateral review. Buggs v. U.S. 153 F3d 439 -
3 (7th Cir. 1998) As stated throughout the record,"
4 The alleged Victims Never Identified Petitioner,"
5 not even in the line up. Please see Exhibit S D, Da,
6 Db, DC, Dd, De and Df relevant To The Application
7 for Certificate of Appealability Filed on (01/28/2020)
8 starting at Section B. heading [Reasonable Jurists]
9 Could debate whether insufficient evidence
10 existed to Support Dozier's Convictions.]
11 One Court ruled that where the evidence was
12 insufficient to Support Conviction For Second-
13 degree Murder-habeas Corpus relief Was granted
14 Please See: Quatano v. Hunsmaier, 28 F.3d Supp.
15 2d 749 E.D.N.Y. (1998). See also: Whaley v. Thompson,
16 22 F.Supp.2d 1146 (D.Or. 1998)
17 Petitioner pleads for Relief.

18 19 CONCLUSIONS

20 As demonstrated here, reasonable Jurists could
21 disagree about how the lower Court decided
22 Petitioner's claims. Accordingly, Petitioner Request
23 and Pray that The United States Supreme Court
24 Issue A Certificate of Appealability and Permit
25 Petitioner To appeal The Denial of habeas relief.
26 Dated: This 4th day of NOV 2020
27 Signature Esau Dozier #84891
28

REASONS FOR GRANTING THE PETITION

All Citizens of The United States are Protected Under the Fourteenth Amendment right to due Process of Law, Equal, Fair treatment. The Moment Competent Courts of appropriate Jurisdiction Start being allowed to blatantly Violate A Persons Constitutional rights eg., the (4th) Amendment of the U.S. Const. This shows and raises a concern ~~that~~ not only Violates American Citizens due Process rights, it's a National Importance. All Citizens and or tourist that visits the United State are entitled to due Process of law, Equal protection, treatment that's Fair and Just. As stated throughout the record and demonstrated that the alleged Victims Could not Identify Petitioner, in a line up in court, not anywhere, and only after the State found Petitioner's girlfriend and implanted fear of threats into her mind (VIA) coercion and extreme Manipulations did Petitioner's girlfriend (lie) on him. Furthermore She was angry with Petitioner for using and keeping her car longer ~~than~~ than was required. and also Violating the eighth Amendment under the U.S. Constitution, on grossly and disproportionate sentences. If illegal actions such as this is allowed, it could discourage citizens

1 and tourist From entering the United-
2 States. I blatant violations of these constitutions
3 are allowed, This renders the Judicial System
4 unreliable and A Political Fraud.

5

6

CONCLUSION

7

The Petition for a writ of Certiorari should
8 be granted.

8

9

Respectfully Submitted,

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11

Esau Dizon

12

Esau Dizon #84891

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Date: 11/04/2020

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