

No. 20-6476

IN THE
SUPREME COURT OF THE UNITED STATES

DERRICK M. ALLEN SR. — PETITIONER
(Your Name)

vs.
UNITED STATES OF AMERICA — RESPONDENT(S)

PETITION FOR REHEARING

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

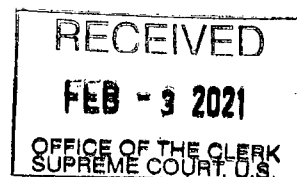
PETITION FOR REHEARING

DERRICK M. ALLEN SR.
(Your Name)

110 N. GOLEY ST. UNIT H
(Address)

DURHAM, N.C. 27701
(City, State, Zip Code)

984-888-1387
(Phone Number)



QUESTION(S) PRESENTED

WHETHER THE SUPREME COURT OF THE UNITED STATES ERR IN DENYING PETITIONER MOTION TO PROCEED IN FORMA PAUPERIS, AND HIS PETITION FOR A WRIT OF CERTIORARI IN RE ~~AN~~ CERTIFICATE OF INNOCENCE; AND WHETHER THE ELEMENTS FOR ESTABLISHING ~~AN~~ PRIMA FACIE CASE OF UNJUST CONVICTION AND IMPRISONMENT HAS BEEN MET?

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR REHEARING

Petitioner respectfully prays that REHEARING 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 NO. 20-6493; 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☒ is unpublished.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 B to the petition and is

☒ reported at 1:17-CR-157-1; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

UNITED STATES V. MICHAEL ALAN CROOKER 608 F.3d 94, 96
(1ST CIRCUIT 2010); MICHAEL ALAN CROOKER, 1:10-CV-00546
Pg. 20.
REHAIF V. UNITED STATES OF AMERICA 588 U.S. ____ (2019).
WOOD V. UNITED STATES 91 Fed. Cl. 569, 577 (2009).
BOLDUC V. UNITED STATES 248 F. App'x 162, 164 (Fed. Cir. 2007).
ROBERSON V. UNITED STATES, 129 Ct. Cl. 581, 603 (1954).
OSBORN V. UNITED STATES, 322 F.2d 835, 839 (5TH CIR. 1963).
MCCLEON V. UNITED STATES, 73 F. Supp. 775, 778 (W.D.S.C.
1947).

STATUTES AND RULES

TITLE 28 U.S.C. 2513(A)(1)(2)
TITLE 28 U.S.C. 1495
28 U.S.C. 2513(C); 28 U.S.C. 2513(d)
18 U.S.C. 3585
18 U.S.C. 922(A)(6); 18 USC 922(g)(8)
RULE 40 OF THE SUPREME COURT, RULES OF APPELLATE
PROCEDURE.

OTHER

ARTICLE III OF THE UNITED STATE CONSTITUTION.
VACATE: TO ANNUL, TO SET ASIDE; TO CANCEL
OR RESCIND.

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

REHAIF V. UNITED STATES, 588 U.S. _____ (2019).

MARSH V. UNITED STATES, 48 F.R.D. 315 (1969).

VELTMANN V. UNITED STATES, CIVIL ACTION NO.

3:18-1320 MBS

YOUNG V. UNITED STATES, 60 FED. CL. 418, 423-24 (2004).

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was SEPTEMBER 10, 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: OCTOBER 16, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 _____.
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

ARTICLE III SECTION ONE, THE JUDICIAL POWERS OF THE UNITED STATES VESTED IN ONE SUPREME COURT.

THE FIFTH AND FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION PROVIDES IN RELEVANT PART: "NO PERSON SHALL... BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS".

THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION PROVIDES: "NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF LAWS".

THE EIGHTH AMENDMENT INSOFAR AS CRUEL AND UNUSUAL PUNISHMENT IS CONCERNED.

THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION PROVIDES IN PART: THE RIGHT OF THE PEOPLE TO PETITION THE GOVERNMENT FOR AN REDRESS OF GRIEVANCE(S).

STATEMENT OF THE CASE

- April 4, 2017 I (DERRICK M. ALLEN SR) ARRESTED BY DURHAM POLICE WHILE AT DURHAM TECH COMMUNITY COLLEGE IN RE WARRANT FOR ALLEGEDLY VIOLATING 18 U.S.C. 922(A)(6) AND 18 U.S.C. 922(g)(8).
- JUNE 20, 2017 TRIAL COMMENCED.
- JUNE 22, 2017 DEFENDANT ALLEN FOUND NOT GUILTY OF COUNT ONE (18 USC 922(a)(6)) AND FOUND GUILTY ON COUNT TWO (18 U.S.C. 922(g)(8)).
- 11/28/2017, DEFENDANT SENTENCED TO 24 MONTHS IMPRISONMENT AND THREE YEARS SUPERVISED PROBATION IN RE 18 U.S.C. 922(g)(8).
- 11/30/2017, PREMATURE NOTICE OF APPEAL GIVEN.
- 12/11/2017, NOTICE OF APPEAL BY ATTORNEY JAMES QUANDER.
- 12/13/2017 USCA ORDER, APPOINTED KEARNS DAVIS TO REPRESENT APPELLANT ON APPEAL [17-4762].
- AUGUST 8, 2018 UNITED STATE COURT OF APPEALS FOR FOURTH CIRCUIT AFFIRMED THE JUDGMENT RENDERED BY THE DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA.
- 09/18/2018, PETITION FOR REHEARING ENBANC DENIED.
- 12/20/2018 - IN RE 18-7123, PETITION FOR WRIT OF CERTIORARI FILED.
- 06/28/2019 - THE MOTION OF PETITIONER FOR LEAVE TO PROCEED INFORMA PAUPERIS AND THE PETITION FOR WRIT OF

STATEMENT OF CASE

- CERTIORARI GRANTED BY SUPREME COURT OF THE UNITED STATES. JUDGMENT VACATED AND REMAND TO U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT TO CONSIDER IN LIGHT OF REHAIF V. UNITED STATES, 588 U.S. ____ (2019).
- 01/10/2020 - JUDGMENT OF UNITED STATES COURT OF APPEALS AS TO DERRICK M. ALLEN SR. --- JUDGMENT OF DISTRICT COURT IS VACATED. CASE REMANDED TO THE DISTRICT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THE COURT'S DECISION.
- JANUARY 29, 2020 --- CRIMINAL ORDER OF DISMISSAL IN RE 1:17-CR-157-1, SIGNED BY JUDGE LORETTA C. BIGGS.
- 02/12/2020, MOTION FOR AN CERTIFICATE OF INNOCENCE PURSUANT TO 28 U.S.C. 2513, FILED.
- 04/10/2020, MOTION FOR AN CERTIFICATE OF INNOCENCE DENIED BY JUDGE LORETTA C. BIGGS.
- NOTICE OF DOCKETING RECORD ON APPEAL FROM CASE NO. 20-6493.

REASONS FOR GRANTING THE PETITION

PURSUANT TO RULE 40 OF THE SUPREME COURT RULES OF APPELLATE PROCEDURE; PETITION FOR REHEARING... THE PETITIONER MUST STATE WITH PARTICULARITY THE POINTS OF LAW OR FACT(S) OVERLOOKED AND MISAPPREHENDED...

POINTS OF LAW OR FACTS OVERLOOKED OR MISAPPREHENDED

ND : IN UNITED STATES OF AMERICA VS. MICHAEL ALON CROOK K. THE DEFENDANT, MR. CROOK, APPEALED HIS CONVICTION. ARGUING THAT THE JURY INSTRUCTIONS(S) MISCHARACTERIZED THE LAW. THE UNITED STATE COURT OF APPEALS FOR THE FIRST CIRCUIT AGREED. A CERTIFICATE OF INNOCENCE WERE ISSUED.

INsofar AS UNITED STATES OF AMERICA VS. DERRICK MICHAEL ALLEN SR. in RE 1:17-CR-157-1; 17-4762 and, 18-7123. I THE DEFENDANT WENT TO TRIAL FOR ALLEGEDLY VIOLATING TITLE 18 USC 922(A)(6) AND TITLE 18 U.S.C. 922(g)(8). DEFENDANT WAS FOUND NOT GUILTY OF 18:922(a)(6) and guilty of Count TWO.

THE COURT OF APPEALS FOR THE FOURTH CIRCUIT AFFIRMED THE DISTRICT COURT'S RULING. COUNSELOR FOR PETITIONER APPEALED TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA [18-7123].

JUNE 28, 2019 -- THE MOTION OF PETITIONER FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND THE PETITION FOR WRIT OF CERTIORARI WERE GRANTED.

(1) *** TURN OVER ***

THE JUDGMENT(S) WERE VACATED (VACATED MEANS, TO ANNUL; TO SET ASIDE) AND THE CASE REMANDED TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT FOR FURTHER CONSIDERATION IN LIGHT OF REHAIF V. UNITED STATES, 588 U.S. _____ (2019). THE U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT REMANDED THE CASE TO THE DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA RESULTING IN DISMISSAL OF THE INDICTMENT IN FILE NUMBER 1:17-CR-157-1 IN RE 18:922(G)(8).

HERE PETITIONER ESTABLISHES THE POINTS OF LAWS OR FACTS OVERLOOKED WERE -- PETITIONER WAS FOUND NOT GUILTY OF 18:922(a)(6) IN WHICH THE INDICTMENT IN THE MATTER OF 18:922(G)(8) WAS DISMISSED UPON REMAND OF THE SUPREME COURT OF THE UNITED STATES. MOREOVER, IN ORDER TO ESTABLISH A PRIMA FACIE CASE OF UNJUST CONVICTION AND IMPRISONMENT, A PARTY ONLY NEEDS TO ALLEGE THAT (1) HIS CONVICTION(S) HAS BEEN REVERSED OR SET ASIDE ON THE GROUNDS THAT HE IS NOT GUILTY OF THE OFFENSE OF WHICH HE WAS CONVICTED..... AS APPEARS FROM THE RECORDS OR THAT HE WAS PARDONED FOR THE OFFENSE UPON THE STATED GROUNDS OF INNOCENCE AND UNJUST CONVICTION; AND (2) HE DID NOT COMMIT ANY OF THE ACT(S) CHARGED, AND HE ALSO DID NOT BY MISCONDUCT OR NEGLECT CAUSE OR BRING ABOUT HIS OWN PROSECUTION -- SEE, BOLDUC V. UNITED STATES, 248 F. APP'X 162, 164 (FED. CIR. 2007). THEREFORE, ARTICLE III SECTION ONE, THE JUDICIAL POWERS OF THE UNITED STATES IS VESTED (2) IN ONE SUPREME COURT.

THE UNJUST CONVICTION STATUTE IS CLEARLY REMEDIAL IN NATURE. OSBORN V. UNITED STATES, 322 F.2d 835, 839 (5TH CIRCUIT, 1963) (QUOTING MCCLEAN V. UNITED STATES, 73 F. Supp. 775, 778 W.D.S.C., 1947) (UNJUST CONVICTION STATUTE IS REMEDIAL ACT DESIGNED BY A FAIR-MINDED GOVERNMENT AS A MEANS OF AT LEAST PARTIALLY RIGHTING AN IRREPARABLE WRONG DONE TO ONE OF ITS CITIZEN(S). ROBERTSON V. UNITED STATES, 124 F. Supp. 857, 860 (Ct. Cl. 1954). MOREOVER, IN WOODS V. UNITED STATES, 91 Fed. Cl. 569, 577 (2009), THE PRODUCTION OF AN CERTIFICATE OF INNOCENCE IS AN PREREQUISITE TO THE JURISDICTION OF THE COURT OF FEDERAL CLAIMS.

CONCLUSION

PURSUANT TO 28 U.S.C. 2513 (d)... THE COURT MAY PERMIT THE PLAINTIFF TO PROSECUTE SUCH ACTION IN FORMA PAUPERIS.

The petition for a REHEARING should be granted.

Respectfully submitted,

Derrick M. Allen Sr.

Date: January 15, 2021