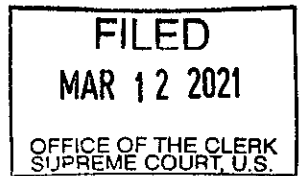


20-7572
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Jim Bass Holden PRO SE — PETITIONER
(Your Name)

vs.

State of Nevada Attorney General — 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

Jim Bass Holden #87999 (SDCC)
(Your Name)

20825 Cold Creek Road
(Address)

Indian Springs NV 89070
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. Whether or not a violation of Mr. Holden's Sixth Amendment right to counsel as defined by Massiah occurred when the State used the government/inmate informant Steven Hall?
2. Whether or not there is the existence of conflict between the decision of which review is sought that also has a national impact?

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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TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

Brooks v Kincheloe 848 F.2d 940, 945. 5
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Massiah v. United States 377 U.S. 201. 5-6
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United States v Birbal 113 F.3d 342, 6
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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 "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☒ is unpublished.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 B to the petition and is

☐ 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☒ is unpublished.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 December 14 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 _____.
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

Sixth Amendment right to the assistance of counsel.

STATEMENT OF THE CASE

On March 24, 2004 informant Steven Hall signed a proffer agreement with the U.S. District Attornies office. On March 30 2004, Jim Holden was arrested, attorney Bret Whipple was appointed as counsel and shortly after Mr Holden was moved into the cell of Steven Hall.

As the attached evidence, (that of the Proffer Agreement) will prove, inmate-informant Steven Hall is an arm of the law/government agent. Holden's Sixth Amendment right to assistance of counsel as defined by Massiah was violated from that day forward. Holden has always claimed this as a Sixth Amendment violation. The States illegal use of information provided by Steven Hall was highly prejudicial. Cases identical to Holden's have been featured on TV shows like 60 minutes, covering the nation wide State and Federal prosecutors illegal use of paid informants to gain convictions in violation of Constitutional rights. Holden has evidence that most of those cases did not, the signed and dated proffer agreement (see attached) (Appendix C).

In the lower courts order dated March 7, 2019 the court ruled "Ground 17(B) relates back to this ineffective assistance of counsel claim that Holden raised in his original petition" (Appendix B). Which argues that State prosecutors violated Holden's Sixth Amendment right to counsel through thier use of inmate-informant

Steven Hall. Then the lower courts order dated June 29, 2020 contradicts its own prior order dismissing ground 17 (the court did not say A or B) as not relating back and procedurally barred. Ground 17(B) is clearly a Sixth Amendment violation of Holden's right to effective assistance of counsel. A ~~defendant~~ defendant is denied the basic protection of the Sixth Amendment, guaranteeing the defendant's right to the assistance of counsel, where there is used against him at trial evidence of his own incriminating words, which Federal agents had deliberately elicited from him after he had been indicted and in the absence of his counsel; such rule applies to indirect and surreptitious interrogations, which elicit incriminating statements without the defendant's knowledge and which are conducted while the defendant is free on bail, as well as to interrogations conducted in the jailhouse. *Massiah v. United States*, 377 U.S. 201, 84 S. Ct. 1199, 1200 (1964).

To establish a *Massiah* violation a defendant must demonstrate both that the informant was acting as a government agent and that the informant deliberately elicited incriminating statements. Hall also received a significant downward departure for the information he provided. *United States v. Henry*, 447 U.S. 264, 270, 100 S. Ct. 2183, 65 L. Ed. 2d 115 (1980). The *Massiah* rule applies only when the informant has actually become a government agent (established by Hall's signed proffer agreement) *Brooks v. Kincheloe*,

848 F.2d 940, 945 (9th Cir. 1988) see also United States v Birbal, 113, F.3d 342, 346. (2nd Cir 1997).

As to the second prong, that of deliberate elicitation, actual interrogation by an informant is not required in order to satisfy this element." United States v Henry U.S. 264, 270-273 (1980). Some courts have held that "Where a fellow inmate acting pursuant to a prearrangement with the government, 'stimulate' conversation with defendant relating to the charged offense or actively engages the defendant in such conversation, the defendants right to the assistance of counsel, as defined by Massiah is violated. In Holden's case it is a clearly established Sixth Amendment violation. What is not understood is why the lower court would contradict its own prior ruling unless it was an honest mistake. The granting of Ground 17(B) was one sentence in the middle of Ground 17(A). Ground 17(A) was dismissed as not relating back and procedurally barred. Holden believes the lower court made an error and only quoted the ruling of ground 17(A) in the courts order dated June 29 2020.

There is an obvious existence of conflict between well established law and even in the lower courts own contradicting rulings listed above. There is also the national impact of prosecutors knowingly and illegally using paid informants to gain convictions violating the Constitutional Rights of defendants nation wide as

seen on the TV show 60 minutes titled "Snitches". The nation wide prosecutorial abuse of Constitutional Rights with no repercussions is deplorable, waisting millions in taxpayer money and putting people in prison that might have not been sentenced to prison without the violation of thier Constitutional Rights by prosecutors.

As this Court will see in a review of this case, if the highly prejudicial information provided by government informant Steven Hall had not been presented to the jury, a more favorable outcome would be extremly likely, and the lower courts mistake prevented the correction of a Constitutional violation, and not correcting this violation will cost Mr Holden his life due to a simple and honest mistake that this Court can correct. Petitioner Holden begs this Court to correct the Constitutional violation, errors, and put him back on the path to save his life because he was sentenced to two lifes without the possibility of parole.

REASONS FOR GRANTING THE PETITION

To put this bluntly. A documented Constitutional violation of a Sixth Amendment right like this should have never happened. Now due to mistakes it has continued and now without this courts help an honest mistake by a judge that overlooked the granting of a ground that would have reversed this case for a new trial, may now cost Mr Holden his life. Mr. Holden begs this court to intercede or at least order the lower court to grant oral arguments. If violating a Constitutionally Guaranteed Sixth Amendment right to the assistance of counsel can be excepted because of a judge or lawyers mistake/error then what does the Constitution stand for in not to protect "We The People"?

I thank you for your time and ask this court forgive any mistakes in the preperation of this writ being I am not an attorney.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jim D. Holden

Date: February 12th 2021