

No. 20-7715

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE RICHARD DECARO - Petitioner

ORIGINAL EXTRAORDINARY WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §1651(A) OF THE ALL WRITS ACT

PETITION FOR REHEARING

Richard DeCaro, 24317-044
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Post Office Box 6000
Florence, Colorado 81226

IN THE
SUPREME COURT OF THE UNITED STATES
ORIGINAL EXTRAORDINARY WRIT OF HABEAS CORPUS
PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, Petitioner Richard DeCaro respectfully petitions for rehearing of the denial for leave to proceed in forma pauperis and the dismissal of his petition for an original extraordinary writ of habeas corpus issued on May 3, 2021. Mr. DeCaro moves this Honorable Court to grant this petition for rehearing and consider the merits of his case.

Petitioner will prove that (1) The original petition is a criminal matter and not frivolous or malicious; the claims are rooted in the Constitution and this Court's jurisprudence. (2) The original petition is one of Actual Innocence because my sentence was imposed in violation of the Constitution and laws of the United States, and the sentencing court was without jurisdiction to impose such sentence.

Pursuant to Supreme Court Rule 44.1, this petition for rehearing is filed within 25 days of this Court's decision.

REASONS FOR GRANTING THIS PETITION

(1) Petitioner would like to make clear that his case is a criminal matter. Unlike the 45 noncriminal cases cited in Martin v. District of Columbia Court of Appeals, 506 U.S. 1 (1992)(per curiam), I have only filed two pro se petitions in this Court in 29 years. The first challenged the constitutionality of the conviction; it was filed July 17, 2018, sorry it was malicious. The second, this petition, challenges only the constitutionality of the sentence, as I am actually innocent of the sentence because the sentence was imposed in violation of the Constitution and laws of the United States and the sentencing court was without jurisdiction to impose such sentence. The original petition establishes by clear and convincing evidence that, but for

the constitutional errors, no reasonable fact finder would have found Mr. DeCaro guilty of the underlying offense of first degree murder. The claims are rooted in the Constitution and this Court's jurisprudence, so they cannot possibly be construed as frivolous or malicious.

(2) The original petition asks this Court to resolve two Constitutional violations of first impression:

First, Mr. DeCaro's sentence violates the Ex Post Facto Clause because he was sentenced to the amended statute, first degree murder, mandatory life, rather than the statute in effect at the time of the alleged offense, second degree murder, any term of years or for life.

This Court made clear that "any term of years or for life" is in fact second degree murder and the Court also made clear that the Guideline range for a person with no criminal history, such as petitioner, is 168-210 months; I have served 372 months to date with good time.

The sentencing court was without jurisdiction to impose a sentence of first degree murder, mandatory life; leaving petitioner actually innocent of the enhanced sentence. Id. Original Petition No. 20-7715 at page 4, 1.

Second, Mr. DeCaro's enhanced sentence of first of degree murder violates the Double Jeopardy Clause because the federal statute requires as an essential element of the offense a "violation of the laws of any state." This caused the district court to instruct the federal jury to re-adjudicate the identical state law I was found not guilty of violating by the state jury, violating the Double Jeopardy Clause.

This Court said that the sentencing enhancing factors of serious bodily injury and death are "elements of separate offenses that must be charged in the indictment, submitted to a jury, and proven beyond a reasonable doubt."

Mr. DeCaro's indictment did not charge murder, but the jury was instructed of the elements of the Missouri statute of first degree murder

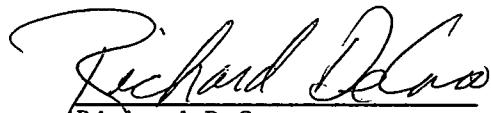
causing a variant in his indictment.

Because Mr. DeCaro was not indicted for the sentencing enhancing factors of serious bodily injury or death and was found not guilty of first degree murder, second degree murder (both included murder for hire), aiding and encouraging, and aiding and encouraging a burglary that caused death by the state jury, the federal jury is barred by the Constitution of re-adjudicating the same Missouri laws; leaving Mr. DeCaro actually innocent of the enhanced sentence. *Id.* Original Petition No. 20-7715 at page 6, 2.

CONCLUSION

Mr. DeCaro respectfully prays this Court grant this petition for rehearing and make a ruling on the merits of this case granting him relief.

Respectfully submitted on May 6, 2021.


Richard DeCaro, pro se

CERTIFICATE OF COUNSEL

I, Richard DeCaro, pro se, hereby certify that I am unrepresented by counsel and this petition for rehearing is presented in good faith and not for delay.


Richard DeCaro, pro se