

21-5904

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

SEP 27 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH WOODS — PETITIONER
(Your Name)

vs.

SUPERINTENDENT — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joseph Woods 15a2130

(Your Name)

Wallkill Correctional Facility - Route 208, Box G

(Address)

Wallkill, New York 12589

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- I. Can a court of law in the United States, whether State or Federal Court, render a decision in a court proceeding without first deciding on a question of law and or fact, that the petitioner to that proceeding has asked the court?
- II. Was the inconsistency demonstrated by the detectives later testimony regarding what was know about the drugs petitioner had in his possession at the time of his arrest, a material misrepresentation?
- III. Did the new evidence discovered several month after the petitioner's federal habeas corpus was fully completed, substantiate the petitioner's claims that: (1) petitioner's arrest and search violated his Fourth Amendment right; (2) he was denied the effective assistance of counsel; and (3) the District Attorney committed misconduct by presenting false evidence to the Grand jury?
- IV. Did the District Attorney and the Attorney General knowingly use of this material misrepresentation, and each lower court allowing it to go uncorrected when it appeared, constitute a denial of the petitioner's due process?
- V. Due to the irreparable harm the petitioner has suffered by these aforementioned acts, and the violation of petitioner's right to due process, does this case warrant a reversal, or, at the very least, a hearing be held to investigate the merits of all these above claims?

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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Rule (60B) motion the following:	II
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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 _____ 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 _____ 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 Appellate Division Third department 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 March 11, 2021.

[] 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: April 29, 2021, 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

Appendix D Motion to reconsider Rule (60B) motion pgs. 1-2.

Fourth United States Constitutional Amendment

Fifth United States Constitutional Amendment

Sixth United States Constitutional Amendment

Eighth United States Constitutional Amendment

Thirteenth United States Constitutional Amendment

Fourteenth United States Constitutional Amendment

STATEMENT OF THE CASE

The Petitioner has fully exhausted all claims that he brings this Court. All lower Courts have denied his claims and or affirmed Petitioner's 2015 conviction. The main point the Petitioner will raise is that certain inconsistent testimony from one Albany Police officer, which was discovered in 2020, well after the Petitioner's Federal Habeas Corpus was completed and waiting a decision, constitutes a material representation. A material misrepresentation that influenced the Grand jury to indict the Petitioner, a material misrepresentation that Petitioner's prior counsel failed to investigate, and material misrepresentation that influenced the Petitioner to take a counsel advised plea.

STATEMENT OF FACTS

1. Petitioner was convicted of criminal possession of a controlled substance in the fourth degree, by way of a counsel advised guilty plea, May 14, 2015.
2. Petitioner plead to the aforementioned charge January 29, 2015, to serve 4.5 years and 3 years post release supervision. While Petitioner was out on a \$25,000 bail awaiting sentence, The Petitioner was rearrested on a bench warrant issued January 22, 2015, 7 days before his counsel advised guilty plea.
3. On basis of the arrest the Court adjourned the Petitioner's March 13, 2015, (sentence date for his counsel advised plea), and on that same day the Court had learned that the Petitioner might have been involved in an uncharged crime. The Court waited for the prosecution to charge the Petitioner with the uncharged crime, indictment, another rearrest, (although the Petitioner was already remanded), and than the Court enhanced the Petitioner's agreed upon 4.5 year sentence to 7 years.
4. Petitioner was adamant that he was denied due process in that: his sentence was illegally enhanced and the Court lawfully was required to withdraw his January 29, 2015, counsel advised plea.
5. On or around September 30, 2016, Petitioner submitted a CPL § 440.10 motion to vacate his conviction under constitutional violations. The grounds were: (1) defendant was arrested without probable cause; (2) defendant did not have sufficient counsel; and (3) there are issues that

occurred outside the record. Albany County Supreme Court Justice Roger D, McDonough denied that motion on or around March 16, 2017. The Petitioner timely appealed the decision to the Appellate Division Third Department pursuant to §§ 450.15, & 460.10, which was also denied May 11, 2017.

6. Contemporary to the Petitioner's 2016 CPL § 440.10 motion, Petitioner's direct appeal motion represented by Scott G. Walling Esq, was pending in the Appellate Division Third Department as well. That appeal was based on these grounds: 1) Supreme Court erred as a matter of law in enhancing defendants sentence beyond the agreed-upon 4.5 year determinate prison term without simultaneously permitting defendant to withdraw his guilty plea; 2) Defendant's waiver of appeal was invalid and, as such, of no legal force and effect; and 3) The sentence imposed is harsh and excessive and should be modified by this Court in the interest of justice. The Appellate Division Third Department denied the appeal even though they ruled that the appeal waiver, in fact, was invalid. The judgment was affirmed May 25, 2017.

7. Petitioner sought leave to appeal to the Court of Appeals pursuant to § 460.20, which also affirmed the conviction July 28, 2017.

8. On or around February 20, 2018, Petitioner filed a second and third CPL §§ 440.10 & 440.20 motion contending: 1) Counsel withheld evidence from defendant and misled defendant into pleading guilty; 2) Guilty plea was not knowingly and voluntarily made; and 3) Procurement of conviction. The conviction was based on an indictment supported by false evidence (Please see Appendix F²). The 440.20 motion was consolidated with the 440.10 motion contending that: The Court illegally sentence the defendant as a violent predicate felon. Both aforementioned were denied December 6, 2018. All appeals were denied as well.

²The petitioner's CPL § 440.10 motion, presently pending in the Albany County Supreme Court further substantiates the Petitioner's claims that: 1) Counsel withheld evidence from him; and 2) misled him into taking a guilty plea. This motion is supported by an affidavit from Michael Jurena, (the Petitioner's counsel at the time), also substantiated the newly discovered evidence that the Petitioner received in February 20, 2020, while his Federal Habeas Corpus Petition was awaiting a decision. Please see Appendix B. When the Petitioner raised all his claims in the lower Court, every ruling was that it was not substantiated. As soon as the Petitioner discovered the material misrepresentation, the lower Court that it was record based. How can something that is ruled unsubstantiated and based upon one's own belief, also be on the record once it is discovered?

9. On or around June 18, 2018, Petitioner moved the Appellate Division Third Department by way of a Writ of Error Coram Nobis, contending that: Appellate counsel was ineffective. That motion was denied July 26, 2016. Leave to appeal to NY Court of Appeals was denied as well.

10. On or around April 20, 2020, Petitioner filed a fifth CPL 440.10 motion contending that:

1) The judgment rendered May 14, 2015, was procured by misrepresentation and or fraud on the part of the prosecution or a person acting in behalf of the prosecutor. That motion was denied on November 20, 2020. All appeals were denied as well.

11. Petitioner presently has another CPL 440.10 motion pending a decision from the Albany County Supreme Court. That motion was filed on or around May 4, 2021. In this motion the Petitioner contends that: 1) defense counsel failed to investigate key evidence which may have exonerated defendant of the crime and failed to move to file a motion to suppress evidence, whereby, counsel had information that he never communicated to his client, that the Albany police had alleged that the defendant was involved in a "rip" operation, and allegedly sold crack cocaine to a confidential informant, thereby, justifying a visual body cavity search that Albany police officers conducted on defendants; and 2) Michael Jurena intentionally failed to notify defendant about testifying to Grand jury, thereby, precluding defendant from testifying to the Grand jury that he had not committed a crime, nor was he under any criminal investigation, and there was no warrant for his arrest. The defendant was seized and the Albany police conducted an intrusive search on defendant, without reason. These claims are substantiated by the first affidavit Michael Jurena has ever sent to the Petitioner after years of request. Please see Appendix F.

12. Petitioner sought Federal Habeas Corpus relief pursuant to 28 U.S.C. § 2254. That motion was denied July 6, 2020. Please see Appendix C.

13. Petitioner sought reconsideration of Federal Habeas Corpus relief. That motion was denied August 4, 2020. Please see Appendix C.

14. Petitioner filed a motion to vacate judgment pursuant to Rule 60(b). That motion was denied December 4, 2020. Please see Appendix B.

15. Petitioner sought to reconsider motion to vacate judgment and that motion was denied January and that motion was denied January 20, 2021. Please see Appendix B.

16. Petitioner sought Certificate of Appealability to the United States Court of Appeals Second Circuit. That motion was denied March 11, 2021.
17. Petitioner sought reconsideration of Certificate of Appealability and that motion was also denied April 29, 2021.
18. Presently, Petitioner has a 440.10 motion pending in Albany County Supreme Court based on ineffective assistance of counsel.
19. No other relief pertaining to this case has been sought in this Court.

REASONS FOR GRANTING THE PETITION

This case is grounded in fraud. The prosecution teams knowingly and intentionally material misrepresentation of facts and evidence, impaired all Court proceedings, defrauded the Court, impaired the defense, and from the start, impaired the integrity of the Grand jury! Please Appendix D and compare Exhibits B & C. After a thorough examination of the merits of the Petitioner's claims, the apex of the justice system will see that this petition must be granted.

The United States of America pride ourselves on equal protection of the Law and Due process of the Law. The State Attorney has an ethical responsibility to see to it that the innocent are acquitted and that the guilty are convicted. This ethically responsibility is abandoned when the prosecution team knowingly and intentionally omit and/or misrepresent material facts from the case, and once discovered, acts as if it was already in the Court record when it was not. Many cases Nation Wide have been overturned within the last 20 or more years due the some prosecution tampering with evidence or misrepresenting evidence, acting in bad faith with zeal to achieve a conviction at any cost. Thats not "justice" thats "corruptness"! Due to these aforementioned constitutional violations countless United States citizens have taking pleas to crimes they may not have committed or, went to trial, lose, and sit for decades fighting a tainted conviction.

In the instant case, the Rule (60B) motion was based upon the inconsistent testimony from the arresting officer and an Albany police department visual body cavity search report, that, had never been disclosed until after Petitioner's Federal Habeas was pending a decision. Please see Appendix D & E. The prosecution team knew of the aforementioned allegations all along and when it was discovered they continued to defraud the Court by acting as if the newly discovered evidence was already apart of the record. A conviction must fall under the Fourteenth Amendment when the State, although not soliciting false evidence, allows it to go uncorrected when it appears. U.S.C.A. Const. Amend. 14. See also *Drake v. Portundo*, 553 R.3d 230 (2009). This case must be granted to address what constitutes a material misrepresentation and, what is the remedy for the suppression, omission or misrepresentation for of material evidence.

The lower Court affirmed the Petitioner's conviction yet also stated, "First, it is questionable whether perceived inconsistency demonstrated by the detectives later testimony regarding what was known about the drugs petitioner had in his possession at the time of his arrest - constitutes constitutes a material misrepresentation." Please see Appendix B pg. 8 Document 43.

A known disclosure of evidence is a denial of a citizens due process rights guaranteed by the fourteenth U.S.C.A. In the Giglio Court, the Court granted certiorari to determine whether evidence not disclosed was such as to require a new trial under the due process criteria of Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959), and Brady v. Maryland, 373 U.S. 87, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In the instant case, the newly discovered evidence not only exposes the prosecution teams material misrepresentation, the newly discovered evidence also exposes the fact that the Petitioner's counsel (at pre trial) was ineffective for his failure to investigate, and make himself familiar with his client's case. Nevertheless, the Petitioner, with due diligence discovered the new evidence (material misrepresentation), 6 years after his conviction and after his Federal habeas corpus was completed waiting decision. This material misrepresentation is a fraud upon the Court. "Fraud upon the Court" occurs when it can be demonstrated, clearly and convincingly, that party has sentiently set in motion some unconscionable scheme calculated to interfere with judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense. See McMunn v. Memorial Sloan-Kettering Cancer Center, 191 F. Supp.2d 440 2002WL472023. To state claim for fraudulent misrepresentation under New York Law, Plaintiff must allege a misrepresentation or material omission of fact which was false and by defendant, made for the purpose of inducing Plaintiff to rely upon it, justifiable reliance by Plaintiff on the misrepresentation or material omission, and injury. See United States Bankruptcy Court, E.D.Newyork, 547 B.R.49 2016WL1166142. In the instant case, Petitioner has discovered a material misrepresentation that was known by the prosecution team at the time they presented it, the prosecutor presented it in way that would induced the Grand jury to indict the Petitioner and induced the Petitioner to defend the material how it was presented, the Petitioner relied upon the material misrepresentation because in reality there were drugs inside his boxer shorts. However, it was unknown to him that the prosecution off the record alleged that

he had sold drugs to a confidential informant, thereby, giving Albany police probable cause to search the Petitioner at the police station. Had the Petitioner known about this false statement prior to his counsel advised plea, he would not have taken a plea. Petitioner would have went to trial like he wanted to instead of allowing counsel to talk him into pleading guilty and being incarcerated in prison for several years. A false statement is material if it has a natural tendency to influence, the decision making body which it was addressed. See *Neder v. United States*, 527 U.S. 1, 25, 119 S.Ct. 1827

The very heart of our justice system is due process. Due process encompasses equal protection of Law and other United States Constitutional rights. This Court, respectfully, should address the merits of this Writ and set precedent that a material misrepresentation denies a party due process. Respectfully, this Court should reverse the lower Court decision, order a new trial, or, at the very least, hearing should be held to address the merits of Petitioner's claims.

Lastly, this Court must grant this petition because it will not only send a message to the agents that work for the government, it will send a message to the citizens that are governed by the government. I message that no one is above the law and that everyone in this Country is guaranteed all rights of the United States Constitutional Amendments.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Joseph Worch
Date: September 27, 2021