

21-6664

No.

ORIGINAL

Supreme Court, U.S.
FILED

NOV - 5 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Robert Breest — PETITIONER

(Your Name)

vs.

Everett Perrin — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

First Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Robert Breest

(Your Name)

MCI Shirley, Medium, P.O. Box 1218

(Address)

Shirley, MA 01464-1218

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

In light of this Court's holding in Sullivan v. Louisiana, 508 U.S. 275 (1993); and, Massaro v. United States, 123 S.Ct. 1690 (2003; as well as United States v. Cofske, 157 F.3d 1 C.A.1, (1998), did the First Circuit err most recently in denying Robert Breest relief from judgment pertaining to the First Circuit's 1981 holding in Breest v. Perrin, 655 F.2d 1 (1981), in Breest v. Formella, 1st Cir. No. 20-1406.

In Breest v. Perrin, 655 F.2d 1 (1981) the First Circuit determined that the reasonable doubt jury instruction was constitutionally infirm, just as they had declared in Dunn v. Perrin, 570 F.2d 21 (1978), in that it called on the defendant to prove innocence rather than the government to prove guilt, but denied relief because defense counsel had failed to object and Robert Breest could not establish cause for that failure, however, the First Circuit did hold and rule that the jury charge for reasonable doubt was constitutionally infirm.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

Everett Perrin, former warden, New Hampshire State Prison.

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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 & B 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☒ is unpublished.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 _____ 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 August 27, 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: October 14, 2021, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. _____.

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, United States Constitution, jury determination

Fifth Amendment, United States Constitution, due process

Article Three, United States Consitution, jury trial

STATEMENT OF THE CASE

In 1973, Robert Breest was convicted of First Degree Murder in Merrimack County Superior Court in Concord, New Hampshire.

On appeal to the New Hampshire Supreme Court, the appeal was denied.

Several applications for writ of habeas corpus were filed, and the District Court denied relief Breest v. Perrin, 495 F.Supp 287 (1979), holding that Robert Breest had failed to show cause for counsel's failure to object to the jury charge defining reasonable doubt.

In Breest v. Perrin, 655 F.2d 1 (1981), the First Circuit recognized that the reasonable doubt jury charge was the exact same jury charge they had determined unconstitutional in Dunn v. Perrin, 570 F.2d 21 (1978), but denied relief because defense counsel had not objected and Robert Breest failed to show cause for the failure to object.

In 1993, this court ruled in Sullivan v. Louisiana, 508 U.S. 275 (1993), and held, inter alia, that an unconstitutional jury charge defining reasonable doubt was a structural error requiring revresal of the conviction because an incorrectly instructed jury is tantamount to no jury verdict.

In 2003, this court ruled in Massaro v. United States, 123 S.Ct. 1690 (2003), and held that on an issue of ineffective assistance of counsel, no objection is required.

On July 14, 2021, Robert Breest filed a motion in the First Circuit Court of Appeals seeking Relief From Judgment Pursuant to Federal Rule of Civil Procedure 60(b)(6). In that pleading, Robert Breest submitted that pursuant to Sullivan, supra, there was an unconstitutional jury charge defining reasonable doubt, and pursuant to Massaro, supra, an objection was not required because of defense counsel's ineffectiveness in failing to object to the unconstitutional jury charge defining reasonable doubt.

On August 27, 2021, the First Circuit denied the motion stating "[w]hether treated as a motion to recall the mandate in Breest v. Formella, Appeal No. 20-1406, or in Breest v. Perrin, Appeal No. 80-1635, the motion is denied."

On September 6, 2021, Robert Breest filed a Motion for Reconsideration and Motion for Reconsideration Pursuant to Rule 59.

On October 14, 2021, the First Circuit denied the motion with the notation that the clerk's office was instructed not to accept any more filings in this case and that the case is closed.

REASONS FOR GRANTING THE PETITION

Robert Breest moves this court to grant certiorari in this matter because the First Circuit had already ruled that Robert Breest had an unconstitutional jury charge defining reasonable doubt, Breest v. Perrin, supra, and the error is structural as noted in Sullivan, supra.

The ground the First Circuit used to deny relief is that Robert Breest could not show cause for defense counsel's failure to object to the reasonable doubt jury instruction.

Subsequent to the holding by the First Circuit, the First Circuit ruled in United States v. Cofske, 157 F.3d 1 (1998) that objections to ineffective assistance of counsel are not required, and this court in Massaro, supra noted that in the Massasro holding.

Robert Breest submits that he had an unconstitutional jury instruction defining reasonable doubt and it is a structural error and that is confirmed by this court's holding in Sullivan, supra.

Subsequent to Massaro, this court now mandates that an objection to an ineffective assistance of counsel claim does not need an objection, and in the instant case, the lower courts have noted that Robert Breest had an unconstitutional jury instruction pertaining to reasonable doubt, but in 1980, the First Circuit held that Robert Breest was denied because he failed to show cause why counsel failed to object to the reasonable doubt jury instruction.

Pursuant to Massaro, supra, an objection to ineffective assistance of counsel is not required. In the instant case, when Robert Breest brought this claim to the First Circuit, relying upon Sullivan, supra, and Massaro, supra, the First Circuit denied relief.

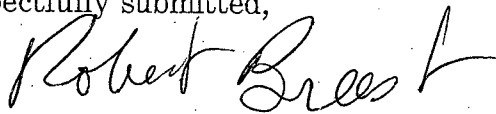
The holdings of the First Circuit is contrary to this court's holding in Massaro, supra, as well as ten of the other circuit courts of appeals as noted in Massaro, supra, and as such, Robert Breest moves this court for summary disposition of this matter in the form of an order directed to the First Circuit reversing their holding, and ordering them to grant and issue the writ of habeas corpus. And, for them to order a new trial in the issuance of the writ of habeas corpus.

The Fifth, Sixth, and Fourteenth Amendments protect these rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 29, 2021