No. 21-6834

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE: HOSEA JACKSON,

Petitioner.

PETITION FOR WRIT OF HABEAS CORPUS

HOSEA JACKSON, pro-se
Reg. #13702-052
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QUESTIONS PRESENTED FOR REVIEW

1. Whether judicial precedent concerning double jeopardy defines an acquittal to encompass any ruling that the prosecutions proof is insufficient to establish criminal liability for an offense once jeopardy has attached.

2. Whether because the Federal District Judge instructed the petit jury to disregard the preliminary jury instructions regarding count one and count two's "aiding and abetting" theory for Hobbs Act robbery, count one, and carry, use, or possession of a firearm in futherance of the crime in count one, count two, because there was no evidence that the defendant-petitioner merely aided Andre Decker and Antonio Castro and thus deleted "aiding and abetting," 18 U.S.C. § 2(a) violates double jeopardy under the Fifth Amendment for conviction for aiding and abetting, count one and count two.

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus issue to review the judgments below.

LOWER COURT DECISIONS

There was one summary order, United States v. Hosea Jackson, 2013 U.S. App. LEXIS 4371 (2d Cir., March 4, 2013), and two decisions, United States v. Jackson, 749 F.Supp.2d 19 (N.D.N.Y 2010); United States v. Jackson, 41 F.Supp.3d 156, 2014 U.S. Dist. LEXIS 123789 (N.D.N.Y. 2014), David N. Hurd, U.S.D.J. Additionally, an order and decision from the U.S. Court of Appeals for the Second Circuit, No. 19-4273 dated September 1, 2020; a Transfer Order from the Southern District of New York to the Northern District of New, case no. 21-CV-3163 (LTS) (Jackson v. Pliler) dated April 19, 2021; and an order and decision from the U.S. Court of Appeals for the Second Circuit (Jackson v. Pliler, et al.), case no. 21-968 dated July 23, 2021.

I. PRAYER FOR RELIEF

Petitioner requests that this Court grant his petition for writ of habeas corpus and declare his conviction unconstitutional and void "ab initio." Case law simply did not apply a functional approach to the determination of when jeopardy attached. In petitioners case, the jury had been empaneled and sworn, the evidence had been presented and the parties had rested when the trial court informed the jury that the government did not present any evidence that the defendent-petitioner merely aided and abetted Antonio Castro and Andre Decker in the the robbery of, or aided and abetted them in the use, carry, or possession of firearms. As the District Court noted, he (petitioner) was either directly involved or not. The District Court therefore instructed the jury to disregard the preliminary charge earlier instituted for the crime of aiding and abetting in count one and two, deleting 18 U.S.C. § 2(a) from count one and two of the federal grand jury indictment.

The District Court modified jury instructions for count one and count two and modified the jury verdict sheet also for count one and count two. No jury instruction was given to the jury for "aiding and abetting" Hobbs Act robbery, count one, or "aiding and abetting" the use, carry, or possession of a firearm in furtherance of a crime of violence committed in count one, count two.

The Federal District which rendered judgment and ordered committment of the petitioner, under Section 3231, lacked jurisdiction and therefore, petitioner's judgment and committment order is unconstitutional and void. "Ab initio." To imprison and detain petitioner under void judgment and committment orders is unconstitutional and unlawful. As such, petitioner must be discharged from his present illegal incarceration immediately.

To The Honorable Chief Justice John Roberts and Associate Justices of the United States Supreme Court:

Hosea Jackson, herein "petitioner," a federal prisoner serving 270 months and 60 months supervised release, respectfully requests that a Writ of Habeas Corpus issue to review and vacate the judgment and decision of the United States Court of Appeals for the Second Circuit affirming petitioners criminal conviction by judgment of the Northern District of New York.

Petitioner is an incarcerated, pro-se litigant and prays this Honorable Court liberally construe his pleading (See e.g., Erickson v. Pardus, 551 U.S. 89, 92 (2007)).

II. Jurisdiction of This Court to Issue Original Writ

"Federal court habeas jurisdiction is conferred by allegation of an unconstitutional restraint" for which "The jurisdictional prerequisite is ... detention simpliciter." (Fay v. Noia, 372 U.S. 391, 426, 430 (1963)). The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it (Art. I § 9, Cl.2 U.S. Const., which "necessarily implies jurisdiction" [Fay supra, quoting Ex parte Yerger, 75 U.S. (8 Wall.) 85, 98-99 (1868)]. When this clause "was written into the Federal Constitution it was settled that the writ lay to test any restraint contrary to fundamental law ... embodied in the written constitution." (Fay, 372 U.S. at 405, 406 ("at the time ... habeas was available to remedy any kind of governmental restraint contrary to fundamental law."). At the absolute minimum, the Suspension Clause protects the writ as it existed in 1789 (INS v. St. CYR, 533 U.S. 289, 301 (2001) quoting Feckner v. Turpin, 518 U.S. 651, 663, 664 (1996)) "which encompassed detentions based on errors of law, including the erroneous application or interpretation of statutes" and was available to "answer pure questions of law" like those raised herein (533 U.S. at 303, 305; also, Martinez v. Illinois, 572 U.S. 833 (2014), "judicial precedent does not apply a functional approach to the determination of when jeopardy has attached). Jeopardy attaches when a defendant is put to trial, and in a jury trial, that is when a jury is empaneled and sworn. Judicial precedent concerning double jeopardy emphasizes that what constitutes an acquittal is not to be controlled by the form of the judges' action. "It turns on whether the ruling of the judge, whatever the label, actually represents a resolution of some or all of the factual elements of the offense charged.

This Court has explicit jurisdiction to entertain and grant writs of habeas corpus to address unconstitutional custody and restraint. 28 U.S.C. § 2241(a) (writs of habeas corpus may be granted by the Supreme Court...); See also, 28 U.S.C. § 1651(a) (The Supreme Court ... may issue all writs necessary or appropriate in aid of [its jurisdiction] and agreeable to the usages and principles of law).

This Court recognizes "28 U.S.C. § 1651(a)" issues from the All Writs Act as part of its appellate jurisdiction. Thus, this petitioner is properly before this Court to address the illegal restraints raised herein.

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment Five
United States Constitution, Amendment Six
18 U.S.C. § 2
18 U.S.C. § 924(c)
18 U.S.C. § 1951(a)

U.S. Constitution, Amend. V:

No person shall be held to answer for a capitol or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of liberty, life or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Constitution, Amend. VI:

(Language in the Indictment) Sixth Amendment right to be appraised of the nature and cause of the criminal charges against a defendant.

Title 18 U.S.C. § 2(a), Principles:

Whovever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principle.

Title 18 U.S.C. § 1951(a), Interference With Commerce By Threats or Violence:

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery, or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years or both.

(b) As used in this section

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of any one in his company at the time of the taking or obtaining.

STATEMENT OF THE FACTS

1. The history and basis of this case begins on July 31, 2003 with the grand jury indictment of Antonio Castro (No. 03-cr-313), alleging a single count in violation of both 18 U.S.C. § 1951 and 18 U.S.C. § 2. The basis of the indictment stems from a robbery that Castro claims to have participated in on December 20, 2002 involving a Sunoco gas station located in Columbia County, New York.

2. Through the allegations of Castro the government gained indictments in January 2006 against Andre Decker and this petitioner, Hosea Jackson.

3. The indictment against the petitioner was superseded on March 23, 2006 (No. 06-cr-025 DNH) and alleged two (2) counts. Count one of the indictment alleged violation of 18 U.S.C. § 1951(a) and 18 U.S.C. § 2, while Count two alleged violation of 18 U.S.C. § 924(c)(1)(A)(ii) and (iii) as well as 18 U.S.C. § 2.

4. The petitioner was first implicated in the robbery after Castro pled guilty on September 1, 2004, with both Andre Decker and the petitioner being indicted for essentially aiding and abetting one another.

5. A series of continuances were stipulated and agreed to by James E. Long, Esq., CJA attorney for the petitioner. The petitioner moved to dismiss the superseded indictment pursuant to the Speedy Trial Act (18 U.S.C. §§ 3161 and 3174) on February 9, 2009. The 2006 superseded indictment was subsequently dismissed without prejudice for violation of the Speedy Trial Act.

6. On July 30, 2009 the government filed a new indictment (No. 09-cr-407 DNH) charging the petitioner with two counts being in violation of: Count one - 18 U.S.C. § 1951; and Count two - 18 U.S.C. § 924(c)(1)(A)(ii) and (iii) and 18 U.S.C. § 2.

A. COUNT ONE: that on or about December 20, 2002 in Columbia County, in the State and Northern District of New York Hosea Jackson, aiding and abetting and being aided and abetted by Andre Decker and Antonio Castro, did unlawfully obstruct, delay and effect commerce as that term is defined in Title 18 U.S.C. § 1951, and the movement of articles and commodities in such commerce by robbery in that the defendants did unlawfully take and obtain personal property.

i. In essence Count one reads that the petitioner in concert with with co-defendants aided and abetted a Hobbs Act Robbery.

B. COUNT TWO: that on or about the 20th day of December, 2002, in Columbia County, in the State and Northern District of New York, Hosea Jackson

aiding and abetting and being aided and abetted by Andre Decker and Antonio Castro, did knowingly use and carry firearms during and in relation to, and did possess firearms in furtherance of a crime of violence for which they may be prosecuted in a court of the United States. To wit: the defendants brandished and discharged firearms during the robbery described within count one, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii)(iii) and 2.

i. In essence Count two reads that the petitioner in concert with his co-defendants aided and abetted a § 924(c) firearms crime.

7. Antonio Castro was never charged by any Federal Grand Jury with a violation of 18 U.S.C. § 924(c), or any subsection thereof, as Count two of the 2009 indictment alleges. The § 924(c) violation did not relate back to either Castro's 2003 indictment or the dismissed 2006 indictment.

A. The grand jury never charged Antonio Castro with any § 924(c) firearms violation in indicted case no. 03-cr-313 DNH. Neither was Castro charged nor named as a defendant in the dismissed case no. 06-cr-00025 DNH.

8. With the inclusion of the petitioner aiding and abetting and being aided and abetted by Antonio Castro in the 2009 indictment, an indictment filed some 6 years later (i.e. July 2003 - July 2009), the indictment did broaden the charge outside of the five (5) year time limitation. A material broadening accusing the petitioner of aiding and abetting Antonio Castro in a § 924(c)(1)(A)(ii) and (iii) firearms violation; an offense for which Castro was never charged.

A. This self-same point was alluded to and highlighted by District Court Judge Hurd during a November 9, 2010 proceeding in which he made direct commentary that "If the 2009 indictment does not relate back to the 2006 superseded indictment, the 2009 indictment must be dismissed in its entirety because it was returned beyond the 5 year statute of limitations [which expired on December 20, 2007].

B. This is paramount to the petitioner's allegation of Judge Hurd's misconduct as in so doing Judge Hurd decides unfairly that Castro's alleged notice of presumption in regards to the 2006 indictment served to put the petitioner on notice that Castro aided and abetted and was aided and abetted by him in relation to a March 23, 2006 grand jury indictment for the violation of 18 U.S.C. § 924(c)(1)(A)(ii) and (iii).

9. In accepting Antonio Castro's guilty plea for a single count indicted accusation for a violation of 18 U.S.C. § 1951(a) [Hobbs Act Robbery], and thereby sentencing him in February of 2009, the hearing court ignored the clear reading

of the grand jury's 2003 indictment of Antonio Castro (No. 02-cr-313 DNH).

A. The District Court later conceded that the addition that the petitioner also aided and abetted Castro in the 2009 indictment does broaden the petitioner's liability as he contends. The facts did not remain the same as do the violations because Castro was never charged any § 924(c) firearms offense under § 924(c)(1)(A)(ii) and (iii) by the grand jury in 2003 as the exhibited indictment shows forth.

10. The District Court during the start of the jury trial confronted the jury in regards to the charges during the preliminary stage of the jury proceeding, see United States v. Jackson v2 (Feb. 18, 2011) as exhibited; also United States v. Jackson v5 (Feb. 24, 2011) as exhibited [Jury Trial transcripts pp. 538-544, 627-634, and 638-642, Appendix F]*; see also, V4 as exhibited in Appendix, pp. 501-503**.

11. The District Court without objection removed the aiding and abetting elements (18 U.S.C. § 2) from the deliberations of the jury based upon the merits of the argument that the accomplice theory did not provide sufficient evidence for the jury. Once the jury had been instructed to disregard the "aiding and abetting" offense on July 30, 2009 - on the basis that the material evidence of the government was insufficient to support such a claim - and thereby jeopardy as an element had clearly attached to the "aiding and abetting" (18 U.S.C. § 2) offense.

A. The jury was clearly instructed that the evidence against the petitioner necessary to support an aiding and abetting crime associated with the robbery was insufficient on the basis that the government did not possess sufficient substantive or material grounds.

*Note Vol. 5 where court-appointed CJA counsel conferenced with the trial court, unknown to the defendant-petitioner (at 538, 1-25).

**Note Vol.4, pages 501-503, lines 1-25 the trial court denied defendant-petitioners motion for acquittal after government rested based on insufficient evidence. The District Court clearly stated in its denied order with regards to the petitioner's elements not being proven, with regards to the elements to the crime, the only real issue for the jury was "whether or not Mr. Jackson participated with Mr. Decker and Mr. Castro in performing of that robbery at the Sunoco station. The other elements are all met. Whether he was a part of it is definitely an issue for the jury."

V. REASON FOR GRANTING THE WRIT

1. The miscarriage of justice exception. This standard is altogether consistent ... with AEDPA's central concern that the merits of concluded criminal proceedings not be revisited in the strong showing of actual innocence. In Bousley v. United States, 523 U.S. 614, 622, 118 S.Ct. 1604 (1998), we held, in the context of § 2255, that actual innocence may overcome a prisoners failure to raise a constitutional objection on direct review. The district court decided that petitioner's argument, that aiding and abetting conviction in count one and count two could not be sustained was simply without merit and that this issue should have been brought on direct appeal. The district court further stated defendant defaulted this issue and further refused a certificate of appealability. The circuit court of appeals for the Second Circuit denied petitioner's request for certificate of appealability claiming that no constitutional issue was raised.

In McQuiggin v. Perkins, 569 U.S. 383, 133 S.Ct. 1924 (2013) we held that a habeas petitioners actual innocence if proven serves as a gateway through which the petitioner may pass whether the impediment is a procedural bar. The Second Circuit's review and affirmed decidion in United States v. Jackson, post conviction relief, no. 11-3735-CR conviction 18 U.S.C. § 2, 1951(a) and § 924(c)(1)(A) direct appeal review. Post conviction collateral review, United States v. Jackson, 41 F.Supp.3d 156, August 27, 2014, Northern District of New York, U.S. District Judge David N. Hurd, 2255 decision held substanitive claims that should have been, and were not, raised on direct appeal. The District Court held that the failure to raise a claim on direct appeal is itself a default of normal appellate procedure which a defendant can overcome only by showing cause and prejudice. The defendant has shown neither cause nor prejudice for failing to raise these claims on direct appeal.

The appellate court's summary order was in error because the Court erred upon its review for allowing an advanced knowledge doctrine when the district court had in fact modified count one and count two aiding and abetting charges by resolving proof of that theory dismissing the essential elements from the indictment's charge and the jury deliberation after the evidence had been heard and the parties rested.

The jury verdict was based on substantive criminal offense as was the jury polling.

The writ would aid the Court's appellate jurisdiction by pointing out a dismissal is a dismissal once a resolved decision by a trier of fact is placed

in effect and once essential essential element of intent are removed because of insufficient evidence. Because the appellate court refused to recognize this factor in this instant matter petitioner's only option for relief due to his actual innocence, because aiding and abetting essential elements are subsets of the principle essential elements, once the district court dismissed that indictment's accusation aiding and abetting, liability is collaterlly estopped from re-entering as an adjudication of guilt by a jury in count one 1951(a) Hobbs Act Robbery or 924(c) firearms (ii)(iii) use or possession in furtherance of.

As for petitioner's ability to challenge this issue or make the constitutional argument in the district in which he is confined (via § 2241), these efforts have already proven futile. Petitioner has attempted to do so in the Southern District of New York. See case #21-cv-3163. The district judge there stated "the proper jurisdictional basis for the relief Movant seeks is 28 U.S.C. § 2255, not 28 U.S.C. § 2241." The District Court where petitioner was sentenced was then transferred the request as a subsequent § 2255 where it was dismissed for jurisdictional reasons, as was petitioner's attempt at seeking approval to file a subsequent 2255.

Despite cognizable constitutional arguments present in this matter that are clearly evident, all attempts at pursuing petitioner's claims have met with continous error on the parts of the district courts and Second Circuit, leaving this petition as the only legal option to pursue in the interests of justice.

V. REASON FOR GRANTING THE WRIT

2. The fifth Amendment to the Constitution provides that no person shall be required to answer for a capitol or otherwise infamous offense unless an indictment or presentment of a grand jury except in military cases; that no person will suffer double jeopardy' that no person will be compelled to be a witness against himself; that no person shall be deprived of life, liberty or property without due process of law; and that private property will not be taken for public use without just compensation.

The instant matter challenges the District Court's jurisdiction to adjudicate this petitioner guilty for criminal offenses of "aiding and abetting" Hobbs Act Robbery, count one; and "aiding and abetting" the use, carry and possession of a firearm in furtherance of a crime of violence in count two. Essential elements that the District Court before the jury resolved on insufficient evidence removing them from the jury after jeopardy had attached. By so doing the District Court ignored well-established principles regarding double jeopardy, essentially referring to its action as a "dismissal" rather than an acquittal on February 24, 2011 during petitioner's jury trial after both parties rested and before sending the same counts to the jury under a substantive principle theory for their deliberation.

This presents two issues. First, did jeopardy attach that implied or otherwise invoked collateral estoppel protections where during petitioner's jury trial the Trial Court made a resolution that there was no evidence of this petitioner merely aiding and abetting Castro or Decker as to either count one or two, that a partial verdict by the court as trier of fact should have estopped the jury from receiving the exact counts ultimately decided.

This leads to the remaining question and issue which is whether the jeopardy ended in such a manner on the essential elements for "aiding and abetting" in both counts one and two that a judgment and committment order adjudicating a jury found this petitioner guilty under 18 U.S.C. § 1951(a) and 18 U.S.C. § 924 (c)(1)(A)(ii)(iii), essential elements that a jury did not deliberate on thereby violating the Constitution, putting this petitioner twice in jeopardy (See, United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977); also see, Evans v. Michigan, 568 U.S. 313, 318 (2013), holding our cases have defined an acquittal to encompass any ruling that the prosecutors proof is insufficient to establish criminal liability for an offense). The District Court clearly made such a ruling here (See Transcript 627, lines 14-25):

In the preliminary charge I instructed you on the elements of the crime

of aiding and abetting [grand jury indictment counts one and two]. Because those charges were part of the indictment. However, now that the parties have rested and the evidence has come to a close, there has been no evidence that the defendant, Hosea Jackson, merely aided and abetted Antonio Castro and Andre Decker in the robbery of or aided and abetted them in the use, carry or possession of firearms. He was either directly involved or not. I therefore instruct you to disregard the prior instruction I gave you regarding the crime of aiding and abetting.

A fundamental error was caused when the District Court gave an impartial verdict.

Supreme Court caselaw has repeatadly stated the bright line rule that jeopardy attaches when the jury is empaneled and sworn (See, Crist v. Bretz, 437 U.S. 28, 35 98 S.Ct. 2156 (1978). There is no doubt this petitioner was subjected to jeopardy under "aiding and abetting," 18 U.S.C. § 2(a) and that the trial court instructed the jury on essential elements in count one and count two during the preliminary stage of the petitioner's trial.

Petitioner contends that when the District Court exclaimed to the jury its instructions on the elements of the crime of aiding and abetting because those elements were part of count one and count two of the indictment during his preliminary charge. The District Court made a resolution that the government did not prove that the petitioner aided and abetted the crime of robbery in count one, or that the petitioner aided and abetted the crime in the use, carry, or possession of the firearms in count two. The trial court dismissed aiding and abetting elements of notice charged by the grand jury in the sole two counts of the indictment.

Actual innocence claim is the exception to the rule in the case at bar.

Based on Supreme Court precedent, double jeopardy bars a conviction for aiding and abetting Hobbs Act robbery and aiding and abetting firearms in counts one and two of this case (See, e.g., Downum v. United States, 372 U.S. 734 83 S.Ct. 1033 (1963), necessarily pinpointing the stage in a jury trial when jeopardy attaches; also, Estebau Martinez v. Illinois, 572 U.S. 833, 134 S.Ct. 2070 (2014); also United States v. Martin Linen Supply Co., 430 U.S. 564, 569 97 S.Ct. 1349 (1977); also, In re: Winship v. United States, 391 U.S. 359, 364, 90 S.Ct. 1068 (1970)).

The essential elements for aiding and abetting were set out before the petit jury. The trial Court itself resolved those elements before the jury on an insufficieny determination because the government showed no evidence that this petitioner "aided and abetted." (See also, Serfass v. United States, 420 U.S. 377, 394, 95 S.Ct. 1055 (1975): Generally in cases of jury trial, jeopardy attaches when a jury is empaneled and sworn, 'as that is the point when the

defendant is put to trial before the trier of facts.'

2. The Writ should be granted because the proceeding ended in such a manner that the double jeopardy clause bars the petitioner's conviction for aiding and abetting Hobbs Act robbery and aiding and abetting possession of a firearm in furtherance of a crime of violence.

The District Court addressed this petitioner's argument deciding United States v. Jackson, 749 F.Supp.2d 19 (N.D.N.Y. 2010) that petitioner's notice in the supplemented 2009 indictment that he aided and abetted Antonio Castro related back to the superseded indictment presuming that the unnamed third person was Antonio Castro, therefore the addition of him being in Count one and Count two that the petitioner aided and abetted Castro, that notice did meet the time limitations period and thus the indictment would not be dismissed. Then the trial court should have let the petit jury deliberate whether or not this petitioner aided and abetted Decker and Castro. The errors are structural and no prejudice need be proved. The Judgment and Committment signed by Judge David Hurd, U.S.D.J. September 8, 2011 alleges a jury found petitioner guilty on the exact essential elements he dismissed before the jury based on the government not proving aiding and abetting as the transcript read and cooberate court's exhibits #3 and #4 dated February 24, 2011 that show petitioner's actual innocence, after the District Court made its modifications unobjected to by court-appointed CJA counsel. The petitioner did not receive a fair day in court and claims he was acquitted for aiding and abetting on both counts one and two as jeopardy attached at the time the jury was empaneled and sworn in. Judicial precedent explicitly rejects a functional approach to the question whether jeopardy has attached. The aiding and abetting judgment of conviction as to Counts one and two should be vacated forthwith. Petitioner has spent over a decade in incarceration because of this fundamental error when the petitioner is actually innocent. See, United Brotherhood v. United States, 330 U.S. 395 (1947) holding a failure to charge correctly in a prosecution for conspiring to restrain interstate commerce is not harmless where the verdict of guilty may have resulted from the incorrect instruction, and the error is aggravated by failure to give the correct charge upon request. Thus, the same results should apply in this instant prayer for relief pursuant to actual innocence. The district court did not set out correctly the limited liability for aiding and abetting, 18 U.S.C. § 2(a). That court dismissed participation element of liability only to resubmit it after the jury was excused thus creating a very serious fundamental error of law and miscarriage of justice because the trial court dismissed that limited liability

under § 2(a) before the jury deliberations started after jeopardy had attached.

CONCLUSION

This petition for a writ of habeas corpus should be granted for two reasons that revolve around "actual innocence." First, the trial court decided in United States v. Jackson, 749 F.Supp.2d 19 (N.D.N.Y. 2010) the petitioner's notice for aiding and abetting Antonio Castro in the superseded indictment 18 U.S.C. § 3288 did broaden his liability but it did not change his punishment alerting the petitioner that his notice for aiding and abetting would be what he was on trial for.

Second, petitioner's affirmed conviction for aiding and abetting Hobbs Act robbery on count one and aiding and abetting a 924(c)(1)(A)(iii) firearms offense violates the Constitution's Fifth Amendment right against double jeopardy under 18 U.S.C. § 2.

For these reasons, petitioner Hosea Jackson prays that the said extra-ordianry writ of Habeas Corpus issue and that the petitioner be immediately discharged from his unlawful imprisonment.

Petitioner Hosea Jackson declares under penalty of prejury that the facts stated or alleged herein are true and correct pursuant to 28 U.S.C. § 1746.

Executed this 4th day of January, 2022.

Respectfully submitted,

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