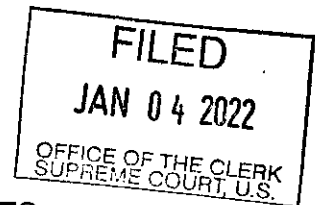


21-6860

No.

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

LANNY JAY LYERLA JR. Pro Se — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LANNY JAY LYERLA JR. #34019-177
(Your Name)
Federal Correctional Institution
P.O. Box 1010
(Address)

Bastrop, Texas 78602-1010
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- ① When an action of the court causes a harmless error to become a plain error, is there due process for the defendant to apply to the court and have this plain error corrected?
- ② Once plain error exists, how long is allowed by law for it to be reviewed and corrected.
- ③ Does equitable tolling start before a plain error exists? Especially when prevented by law (Harmless Error) from filing for correction?
- ④ When can a court refuse to do a plain error review?

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:

RELATED CASES

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- ① LYERLA v. US, No. 4:20-CV-1301-A, NO. 4:05-CR-195-A, U.S. District Court for the Northern District of Texas. Judgement entered Jan. 20, 2021
- ② USA v. LYERLA, NO. 21-10087, USDC No. 4:20-CV-1301, U.S. Court of Appeals for the Fifth Circuit. Judgement entered Oct. 08, 2021

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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☒ is unpublished.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 2021 U.S. Dist. LEXIS 10094 1-20-21; 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 10-08-2021.

☒ 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: _____, 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

- ① Federal Rules of Criminal Procedure 52 (a)
Abbot v. United States and Gould v. United States, 131 S.Ct. 18, 178 L.Ed. 2d 348 (2010)
18 U.S.C. 924(c)
- ② Federal Rules of Criminal Procedure 52 (b)
United States v. DiIano, 507 US 725, 123 L.Ed. 2d 508, 113 S.Ct. 1770.
- ③ Anti-Terrorism and Effective Death Penalty Act (AEDPA) 28 U.S.C. 2255 (f)(4)
Fifth Amendment to the Constitution
- ④ Davis v. United States, 140 S.Ct. 1060, 206 L.Ed. 2d 371 (2020)
Slack v. M^s Daniel, 529 US 473, 146 L.Ed. 2d 542, 120 S.Ct. 1595 (2000)
Fifth Amendment to the Constitution
- ⑤ Slack v. M^s Daniel, 529 US 473, 146 L.Ed. 2d 542, 120 S.Ct. 1595 (2000)
Fifth Amendment to the Constitution.

STATEMENT OF THE CASE

- ① On 08-04-2006 the trial court committed a harmless error in ordering that count three to be served consecutive to the Tarrant County cases that were for the same instant offense and I received more time for in the state.
- ② On 09-17-2020 the trial court amended the sentences and by doing so changed the harmless error into a plain error due to my substantial rights being affected.
- ③ On 01-20-2021 the trial court denied my 2255 motion to correct this error ~~by~~ time-barring me. ^④ The trial court also denied a certificate of appealability with no plain error review.
- ⑤ On 10-08-2021 the appeal court upheld the denial of my certificate of appealability.

Recap

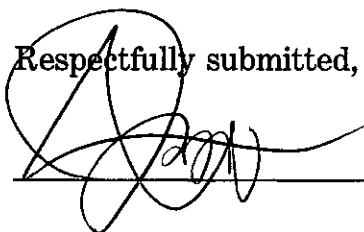
I was sentenced by the Federal district court on 8-4-2006. My 2nd and 5th counts were ran concurrent to the state charges due to the state charges being for the same instant offense. Count three was ran consecutively to the state charges. This was in violation of the "except clause" of 18 U.S.C. 924(c). At the time I was unaware this was a harmless error. This was due to the Probation officer leaving the affirmative findings of a deadly weapon enhancements, from my state cases, out of the presentence report. On 9-17-2020 the Federal district court granted me an amendment 782 2 point reduction in sentencing. At this time my substantial rights were affected changing this harmless error into a plain ~~error~~ error. I was granted a 44 month reduction but only realizing 16 months of reduction due to the stacking error. I filed a 2255 motion to correct my sentence and the trial court time barred me and denied me a certificate of appealability therefore denying me due process under the 5th amendment to the constitution, a one year time limit from the time the plain error could be discovered under AEDPA 28 U.S.C. 2255(f)(4), and the right to have reasonable jurists ~~hear~~ hear my claim under Slack v. McDaniel. I appealed to the 5th circuit court and they also denied me plain error review, and the above errors were ~~are~~ violating my due process under the fifth amendment to the constitution and Davis v. United States.

REASONS FOR GRANTING THE PETITION

- ① To correct an obvious plain error that is denying me 28 months of my liberty. ~~and~~ ~~the~~
- ② To correct an obvious miscarriage of justice by denying me due process to correct my sentence within one year of the error existing.
- ③ To set precedent that other courts can use to make sure that the public and any citizen is afforded due process under the laws of the United States.
- ④ To define for the lower courts that plain error can not be found until it exists and that once it exists, it can be corrected.
- ⑤ To allow me to exercise the due diligence afforded me by the Fifth amendment of the United States Constitution.
- ⑥ To keep the public safe and confident that the laws in place will protect them from unfair incarceration and protect their freedom and liberty from being unfairly taken away from them.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: 01-03-2022