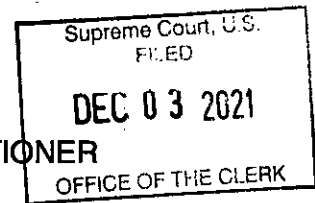


No. 21-6869

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

EDWARD D. OBERWISE — PETITIONER
(Your Name)



vs.

SECRETARY, Fla. DEPT of Cor., et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT, COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

EDWARD D. OBERWISE
(Your Name)

SUMTER CORRECTIONAL INSTITUTION, 9544 CR 476 B
(Address)

BUSHNELL, FLORIDA 33513
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Should this Court use its power to grant certiorari to a non-capital state court Defendant who has no other available forum to raise a compelling claim of actual innocence?
2. Whether the Court of Appeals determination of the Rule 60(b) motion was in fact an impermissibly second or successive 28 U.S.C. § 2254 habeas corpus petition
3. Whether the Court of Appeals rejection of the Rule 60(b) motion was contrary to the interpretation of Gonzalez v. Crosby, 545 U.S. 524, 532 n.4 (2005)

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:

Petitioner Edward D. Oberwise is a Florida prisoner in custody of acting Secretary Dixon of the Florida Department of Corrections. The State of Florida and the Attorney General Office of Tampa, Florida are also parties in this case.

RELATED CASES

Oberwise v. Secretary, Department of Corrections et al., No. : 8:11-cv-01124-MSS-TGW, U.S. District Court for the Middle District of Tampa, Florida. Judgment entered December 3rd, 2020

Oberwise v. Secretary, Department of Corrections et al., No. : 21-11631-C, Eleventh Circuit Court of Appeals, Judgment entered September 30th, 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 C 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 September 30th, 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: November 18th, 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. ____ 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

Sixth Amendment to the U.S. Constitution that entitles the accused in a criminal trial the right to a speedy trial by an impartial jury to be informed of the charges against him or to be confronted with witnesses against him and to have compulsory process for obtaining witnesses in his favor, and to have effective assistance of counsel. Each of these rights have been applied to the states under the due process clause of the Fourteenth Amendment.

Fourteenth Amendment to the U.S. Constitution protects all persons from state laws that attempt to deprive them of life, liberty, or property without due process of law or attempt to deny them equal protection of the laws. While these rights form the foundation of the accused's right to a fair trial, the accused has been accorded additional rights such as the right to conduct his own defense as necessary to a fair trial under the due process clause.

Federal Rule of Civil Procedure 60(b)(1)-(6) a court may relieve a party in civil litigation from a final judgment if the party can show:

- 1.) mistake, inadvertence, surprise or excusable neglect;
- 2.) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- 3.) fraud (whether previously called intrinsic or extrinsic), misrepresentation or misconduct by an opposing party;
- 4.) the judgment is void;
- 5.) the judgment has been satisfied, released, or discharged; it is based on the earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- 6.) any other reason that justifies relief.

STATEMENT OF THE CASE

The state's sole evidence against the petitioner consisted of four controlled phone calls and their transcripts inbetween its key witness and petitioner that had been introduced into evidence during his August 27th, 2009 bench trial. The arresting detectives had testified to the recording of four controlled phone calls and the defense testified that the transcripts were an accurate description of the phone calls. When one of four recorded calls were played in open court, the judge said "so far I haven't heard anything thats on these transcripts. In chambers, the state claimed to have the other phone calls. The omissions of the witness prior testimony were never disclosed to the defense. Nor had the transcript been discussed or litigated at trial. Had the state's key witness been questioned about her prior testimony. Her trial testimony then would have been corroborated with expert testimony and trial evidence to show nothing sexual had occurred inbetween the witness and petitioner.

The district court denied Rule 60(b)(2) relief claiming the petitioner should have known about the exculpatory omissions at trial. The petitioner also argued that his procedural default in his first § 2254 petition should have been excused based on a fundamental miscarriage of justice where he had been convicted without the witness testimony. The Eleventh Circuit denied "COA" without reviewing whether or not the district court's assessment of the petitioner's claim had been truly a second or successive 28 U.S.C. § 2254 habeas corpus petition. Petitioner had been foreclosed federal habeas corpus relief and relief from a final judgment under Rule 60(b)(6).

REASONS FOR GRANTING THE PETITION

In this Certiorari the specification of errors made by the District Court as well as the Appellate Court are reasons for granting the writ. This case presents a question of statutory interpretation of Fed. R. Civ. P. 60 (b) which has generated divergence from the binding precedent of *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

Under Rule 60 (b) (2) a court may provide relief based on newly discovered evidence. The District Court denied relief because the defendant should have known about the omissions in the transcript as he was privy to the pre-text call. The court also believed that the transcript would have been available prior to the state court conviction. The District Court did not follow this court's precedent under *Sanchez-Blanes v. Oregon*, 548 U.S. 331, 359 (2006) where this court has held that in a *Brady* case it is impossible for the defendant to know as a factual matter that a violation has occurred before the exculpatory evidence is disclosed.

The Appellate court denied relief because the district court had concluded that the petitioner was attempting to raise a successive claim. Under *Gonzalez v. Crosby*, 545 U.S. 524, 532 n.4 (2005) this court had excused procedural defaults in attacking new claims of innocence on the merits.

In light of these facts and standards governing the exercise of this court's discretionary powers of review upon writ of Certiorari is to determine the petitioner's actual innocence claims despite a procedural default and to restore uniformity under federal law. Furthermore, by granting the petition will assure criminal defendants a complete review of federal claims of innocence on the merits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Edwards / D. O.

Date: January 4th, 2022