

No. 21-8166

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IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

JUN 06 2022

OFFICE OF THE CLERK

**Ricky Vincent Pendleton, - PETITIONER**

vs.

**United States of America, - RESPONDENT**

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**PETITION FOR WRIT OF CERTIORARI**

Filed by:

Ricky Pendleton  
c/o: #3572914-One Mountainside Way  
Mount Olive Correctional Complex and Jail  
Mount Olive, WV 25185  
*Petitioner (pro se)*  
May 8, 2022

## **QUESTION(S) PRESENTED**

- I. A federal ex-prisoner, has the right to present a "*fundamental error*" byway of a writ of coram nobis, involving newly discovered evidence, pursuing with diligence; a prosecutor, who, presenting gruesome photographs to each grand juror against the dangers of unfair prejudice. Did the presentation thereby violates the Fifth and Fourteenth Amendment(s)?
- II. Under the Fifth and Sixth Amendent(s), did an ex-federal prisoner, have the right to challenge an issue involving newly discovered evidence, pursuing with diligence; a preserved Fatal Variance claim that trial counsel fails to proceed under a direct review, when the federal sentence is completed?

## LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page. However, they are also briefly denoted below:

**Petitioner:** **Ricky Vincent Pendleton**

**Ricky Pendleton**  
**c/o: #3572914-One Mountainside Way**  
**Mount Olive Correctional Complex and Jail**  
**Mount Olive, WV 25185**  
***Petitioner (pro se)***  
**May 8, 2022**

**Respondent:** **United States of America**

**Solicitor General of the United States**  
**Room 5616**  
**Department of Justice**  
**950 Pennsylvania Avenue, N. W.**  
**Washington, DC 20530-0001**  
***Counsel for Respondent***

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays and meditates that a writ of certiorari is issued to review the judgment below.

**OPINION BELOW**

Opinion of the the United States Court of Appeals appears at Appendix F to the Petition of Appeal and has been designated for publication but is not yet reported;

Opinion of the United States District Court for the Northern Division appears at Appendix B to the Petition for writ of coram nobis and has been designated for publication but is not yet reported;

Opinion of the United States District Court for the Northern Division appears at Appendix D to the Petition for Reconsideration and has been designated for publication but is not yet reported;

**JURISDICTION**

The date on which the United State Court of Appeals decided my case was filed on March 29<sup>th</sup> 2022.

The Jurisdiction of this Court is invoked under **28 U.S.C. §1254(1)**.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

### **[Amendment V.] [Rights of Accused in Criminal Proceedings.]**

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury,...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..."

### **[Amendment VI.] [Right to Speedy Trial, Witnesses, Etc.]**

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

### **Amendment XIV. [Due Process — Equal Protection.]**

**Section 1.** "...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

### **Statutory Provisions**

A writ of error coram nobis pursuant to **28 U.S.C. § 1651(a)** (2012): The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Federal Rule of Criminal Procedures Rule 52(b): Plain Error that affects substantial rights may be considered even though it was not brought to the court's attention.

### **Statement of the Case**

On January 3, 1996, Petitioner was indicted in the United States District Court for the Northern District of West Virginia for motor vehicle theft (carjacking) in violation of 18 U.S.C. § 2119 and aiding and abetting in violation of 18 U.S.C. § 2, in 3:96-CR-1. The petitioner was sentenced to 151 months imprisonment, five years of supervised release, a \$50.00 special assessment, and \$52,506.96 restitution. The petitioner filed an appeal. The United States Court of Appeals for the Fourth Circuit affirmed the petitioner's conviction and sentence on December 12, 1997. On January 15, 1999, the petitioner filed a petition for post-conviction habeas corpus relief. The motion was denied on November 1, 1999.

Petitioner had file other petitions and motions to no avail. However, the five year supervised release had expired in 2012. On July 1, 2021 Petitioner had filed an Expedited Writ of Error Coram Nobis pursuant to [Doc 190] 28 U.S.C. § 1651(a) **[Appendix A]** which was denied. Then he filed a reconsideration Motion refer at **[Appendix C]** also was denied. Petitioner filed a Notice of Appeal and Informal Brief refer to **[Appendix E]**. Where he challenges:

**(1).** An issue involving newly discovered evidence, pursuing with diligence, of a Prosecutorial Misconduct of a prosecutor who had presented gruesome photos of the victim in the case, Ryan Frankenberg laying in a hospital bed with his face swollen and bloody wearing a neckbrace to each of the grand juror without explaining to the grand jurors, that Mr. Frankenberg had eyewitnessed only David Wayne Gibson, aka, "D" attacking and beating him throughout with in great detail. Where probable cause would be not against Petitioner as the 'Principal' in the first degree of carjacking. Did the presentation thereby violates the Fifth and Fourteenth Amendments?

**(2).** Under the 5<sup>th</sup> and 6<sup>th</sup> amendments did Petitioner have the right to challenge an issue

involving newly discovered evidence, pursuing with diligence, a preserved Fatal Variance Claim that trial counsel had failed to raise in direct review, when the federal sentence is completed?

Petitioner is filing a last resort writ of error coram nobis, remedy that is available "only where an error is 'of the most fundamental character' and there exists no other available remedy." *United States v. Akinsade*, 686 F.3d 248, 252 (4th Cir. 2012) (quoting *United States v. Mandel*, 862 F.2d 1067, 1075 (4th Cir. 1988)). In a *prima facie* showing, Petitioner is presenting that: (1) a more usual remedy is not available; (2) valid reasons exist for not attacking the conviction earlier; (3) adverse consequences exist from the conviction sufficient to satisfy the case or controversy requirement of Article III; and (4) the error is of the most fundamental character." *Id.* (citing *Hirabayashi v. United States*, 828 F.2d 591, 604 (9th Cir. 1987)).

### **Reasons for Granting the Petition**

The United States court of appeals for the fourth circuit has decided an important federal question in a way that conflicts with relevant decisions of this Court. Has entered a decision affirming the district court's denial of Petitioner's Expedited Writ of Error Coram Nobis along with a reconsideration. Where the compelling reasons exist for the exercise of the Court's discretionary jurisdiction. Petitioner does have the right to file a writ of coram nobis when his federal sentence is completed, consistant with *United States v. Akinsade*, to challenge for fundamental errors. Thus, presenting newly discovered evidence by pursuing diligence of a constitutional violation. This is a national importance of having the Supreme Court decide the question involved. This is important not only for Petitioner on this matter, but to others similarly situated. The ways of the district court's decision in this case was erroneous.

## Conclusion

The authority of a federal court to grant a writ of coram nobis is conferred by the All Writs Act, which permits 'courts established by Act of Congress' to issue 'all writs necessary or appropriate in aid of their respective jurisdictions.'" *United States v. Denedo*, 556 U.S. 904, 911, 129 S. Ct. 2213, 173 L. Ed. 2d 1235 (2009) (quoting the All Writs Act, 28 U.S.C. § 1651). A writ of error coram nobis is available to petitioners who are no longer "in custody" and cannot seek relief under § 2255 or § 2241. This case at hand, is an "extraordinary" case presenting circumstances compelling its use 'to achieve justice'" (quoting *United States v. Morgan*, 346 U.S. at 511, n. 4, 74 S. Ct. 247, 98 L. Ed.248 (1954)).

Based on the foregoing reasons, Petitioner requests this Honorable Court grants him a way that is very challenging, Writ of Certiorari, and any other relief deemed just and proper.

Respectfully Submitted,

Ricky Vincent Pendleton,

Petitioner,

Ricky Pendleton

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