

22-5152

SUPREME COURT OF THE UNITED STATES

ORIGINAL

C/N.

JERRY NEIL ALFRED,
Petitioner,

v.

RICKY DIXON,
Respondent.

Supreme Court, U.S.
FILED

MAY 17 2022

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PETITION FOR WRIT OF HABEAS CORPUS

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Milton, FL 32583

*As a LAYPERSON, the Petitioner is not subject to
technical niceties. See Haines v. Kerner, 404 U.S. 519
(1972)

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QUESTION PRESENTED FOR REVIEW

WHETHER A TEMPORAL EXCEPTION EXISTS TO THE UNITED STATES SUPREME COURT'S NAPOLE HOLDING THAT A CRIMINAL CONVICTION SECURED THROUGH THE STATE'S KNOWING USE OF FALSE EVIDENCE "MUST FALL" UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

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 <u>STATUTORY AUTHORITY:</u>	
28 U.S.C. § 2241(c)	v

STATEMENT OF THE BASIS FOR JURISDICTION

Under 28 U.S.C. § 2241(a), ASSOCIATE JUSTICE SONIA SOTOMAYOR is empowered to consider and confer a petition for writ of habeas corpus. See Felker v. Turpin, 518 U.S. 651 (1996).

CONSTITUTIONAL PROVISIONS

RIGHTS TO FAIR TRIAL AND EFFECTIVE
COUNSEL CLAUSES OF THE SIXTH A-
MENDMENT TO THE UNITED STATES
CONSTITUTION

RIGHTS TO DUE PROCESS AND EQUAL
PROTECTION CLAUSES OF THE FOUR-
TEENTH AMENDMENT TO THE UNITED
STATES CONSTITUTION

EXCEPTIONAL CIRCUMSTANCES

The Petitioner possesses incontrovertible documentary evidence that conclusively establishes that in order to obtain his criminal conviction the State violated a ban of the United States Supreme Court's precedents that it "may not knowingly use false evidence, including false testimony, to obtain a limited conviction" yet the lower courts have steadfastly refused to adjudicate his prosecutorial fraud claim on the merits because of procedural and/or bars in spite of the doctrine of equitable estoppel which holds that when the Government engages in "affirmative misconduct" the courts are no longer bound by the prescriptions of the normally applicable laws that govern limitation periods and/or other conditions for obtaining legal redress.

REASONS FOR BYPASSING DISTRICT COURT

The district court lacks jurisdiction to entertain a habeas corpus petition raising the prosecutorial fraud claim at issue under the Anti-Terrorism and Effective Death Penalty Act since it would be being raised in a second habeas corpus petition and the Eleventh Circuit Court of Appeals has repeatedly denied the Petitioner's applications for leave despite a stunning concession that his first such application was erroneously denied. See Ex. 1.

STATEMENT OF THE CASE

Five months after a key witness named Carmen Rivera made a sworn statement to the City of Miami Police Dept. investigators that was memorialized on audio cassette, a Miami-Dade County State Attorney Office transcriptionist (Lanette R. Love) produced her initial transcription (see Ex. 2) of it. In Mrs. Rivera's responses to police investigators' questions whether the sole alleged eyewitness implicated anyone in general or the Petitioner in particular in the shooting of her boyfriend, the transcriptionist memorialized her responding in the negative. See Ex. 2, Pg. 8, Lines 16 and 18.

Twenty-one months later, Mrs. Rivera appeared for deposition which the lead prosecutor on the case attended. See Ex. 3. When asked, "How many shots did you hear?" she responded "I heard five" before adding "... Tina was running behind me. Carmen, they killed him. They killed him... Jerry just killed Peter." See Ex. 3, Pg. 11 and 12, Lines 24 and 25, Lines 5 to 7. Neither the Petitioner's court-appointed defense attorney nor did the lead prosecutor confront Mrs. Rivera with the contrary statement regarding what Tina (i.e., the sole alleged eyewitness) told her memorialized by the transcriptionist in her initial transcription of the audio cassette. Cf. Ex. 2, Pg. 8, Lines 15 to 18 to Ex. 3, Pg. 12, Lines 5 to 7.

Two months following Mrs. Rivera's deposition,

the transcriptionist (Lanette R. Love) re-transcribed the audio cassette of her sworn statement. See Ex. 4. The amended transcription that she produced is nearly identical to her initial transcription with the consequential exception of what the sole alleged eyewitness told Ms. Rivera immediately after the shooting. Cf. Ex. 2, Pg. 8, Lines 16 and 18 to Ex. 4, Pg. 8, Lines 16 and 18. Whereas Transcriptionist Lanette R. Love memorialized Ms. Rivera responding in the negative to the two questions regarding whether the sole alleged eyewitness implicate anyone in general or the Petitioner by his alleged alias in particular in the shooting of her boyfriend in her initial transcription, she memorialized her responding in the affirmative to the same two questions in her amended transcription.

Shortly thereafter, the Petitioner's case proceeded to trial by jury. During a side bar in his first trial (incidentally, it culminated in a hung jury), the issue of the conflicting transcriptions was brought to the trial court's attention. See Ex. 5. Both the lead prosecutor and the Petitioner's court-appointed defense attorney told the trial judge that they had listened to the audio cassette of Ms. Rivera's sworn statement. See Ex. 5, Pp. 165 and 166, Lines 24 and 3. Each of them stated that the amended transcription reflected its contents rather than the initial transcription. See Ex. 5, Pp. 165 and 166, Lines 24 and 25 and 6. Consequent-

In, the trial court forewent an independent review of the audio cassette.

As a result, the original transcription was effectively ruled inadmissible by the trial court. Because this ruling carried over to the Petitioner's second trial, he was precluded from utilizing it to impeach Mrs. Rivera's critical testimony that the sole alleged eyewitness implicated him by an alleged alias within minutes of the offense. See Ex. 6. The lead prosecutor later underscored her highly inflammatory testimony during his rebuttal summation to the jury to persuade it to disregard crucial testimony from a City of Miami Police Dept. homicide investigator that raised substantial doubt in the credibility of the sole alleged eyewitness on the central issue in dispute. See Ex. 7.

Approximately a decade after the jury found the Petitioner guilty and nearly four years after the resolution of his initial federal habeas corpus petition, he obtained a copy of the audio cassette of Mrs. Rivera's sworn statement. He promptly forwarded it to his former appellate attorney to review. In a short while later, he received a reply and another correspondence addressed "To Whom It May Concern" wherein he related that his review of "[t]he audio recording clearly establishes that Mrs. Rivera was not told by Mrs. Cruise [i.e., Tina] that Mr. Alfred was the perpetrator," which

meant that, contrary to what the two court officers told the trial judge the initial transcription was truly accurate. See Ex. 8. Further, the veracity of that representation was recently confirmed by a forensic report detailing the results of an analysis performed on the audio cassette. See Ex. 9.

In the decade since the Petitioner's discovery that the prosecutor and his court-appointed defense attorney affirmatively misled the trial court regarding the contents of the audio cassette of Ms. Rivera's sworn statement, his pro se efforts in both the state and federal courts to obtain legal redress of the egregious fraud perpetrated in his case have been entirely unsuccessful despite conclusive documentary evidence. Indeed, the state courts have restricted the Petitioner's ability to access the courts pro se based on his repeated attempts to have them redress the egregious fraud whereas the Eleventh Circuit Court of Appeals has persistently refused to grant him leave to file a second habeas corpus petition (but see Ex. 1) because the audio cassette, which his court-appointed defense attorney affirmatively misrepresented the contents of to him, existed at the time of the filing of the first petition.

Accordingly, the Petitioner now files

This petition for writ of habeas corpus to the
HONORABLE JUSTICE SONIA SOTOMAYOR, seeking
the vindication of his constitutional rights
to justice in the prosecution of his criminal
case.

REASONS FOR GRANTING THE WRIT

The reason why the writ should be granted is to reaffirm and vindicate United States Supreme Court's precedents that unequivocally hold that the State is absolutely prohibited from knowingly using false evidence to obtain a criminal conviction.

Criminal prosecutions must be conducted in accordance with due process. See Mooney v. Holohan, 294 U.S. 103 (1935). Under due process, prosecutors are legally authorized to "strike hard blows ... not ... foul ones" in their pursuit of a criminal conviction. See Berger v. United States, 295 U.S. 78 (1935). Thus, where a prosecutor "strikes a foul blow" by knowingly presenting false evidence, she or he violates due process which dictates the vacation of the unconstitutionally-tainted criminal conviction. See Nasipue v. Illinois, 360 U.S. 264 (1959) (observing "[I]t is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment").

The validity of this longstanding basic principle of law is placed in serious doubt in the present case. For, although documentary evidence conclusively establishes that the Petitioner's criminal conviction is the product of prosecutorial fraud, the nation's judiciary at the fe-

deral and state levels has completely failed to address much less redress this miscarriage of justice for over the past decade despite numerous opportunities over the course of that time.

In failing to address the conclusive proof of the prosecutorial fraud, judges in federal and state courts have justified summary disposition on the bases of either the expiration of time limitations or the commission of procedural errors. While for the run-of-the-mill judicial error either basis would be legally availing, the same is not true in a situation where the judicial error at issue is the State purposely falsified evidence, deliberately deceived the trial judge regarding the veracity of the falsified evidence, and knowingly presented false testimony to the jury. See Heckler v. Community Health Services, 467 U.S. 51 (1984) (observing that equitable estoppel might be appropriate when the "public interest in ensuring that the Government can enforce the law free from estoppel [is] outweighed by the countervailing interest of citizens in some minimum standard of decency, honor, and reliability in their dealings with their Government"). As the illegal acts committed by prosecutors in the Petitioner's case violated the "minimum standard of decency, honor, and reliability" that the State of Florida owed him in the prosecution of his criminal charges as set by the United States Supreme Court, lower federal and state courts were

required to apply equitable estoppel to enable the adjudication of his prosecutorial fraud claim on the merits. Because no judge at the federal or state level has done so up to this point, each has effectively receded from the previously cited United States Supreme Court's precedents that govern the conduct of criminal prosecution in accordance with applicable provisions of the United States Constitution. See Mooney, supra; Berger, supra; and Napue, supra. Thus, demonstrating the urgent need to reaffirm and vindicate the aforementioned longstanding fundamental principle of law in this case as guidance for the nation's courts.

CONCLUSION

WHEREFORE, the Petitioner, JERRY NEIL ALFRED, fervently prays that the HONORABLE JUSTICE SONIA SOTOMAYOR confer his petition.

Respectfully submitted,
s/Jerry N. Alfred
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CERTIFICATE OF SERVICE

I hereby certify that I placed a true and correct copy of the foregoing document in the hands of a prison official on July 11, 2022 to mail to Ashley Brooke Moody, Florida Attorney General, P.O. The Capitol, Tallahassee, FL 32399 via U.S. Postal Service.

s/ Jerry N. Alfred
Jerry N. Alfred - 412748