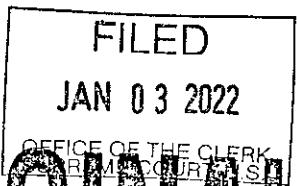


22-5256

No. _____



In the Honorable
SUPREME COURT OF THE UNITED STATES

ORIGINAL

X _____ X

Daniel Patrick Sheehan - PETITIONER

vs

Warden-LSCI Allenwood-Low-

X _____ X

ON PETITION FOR A WRIT OF HABEAS CORPUS 2241

Second Circuit District Court - EDNY
(Last, and only Court that ruled on Merits of case)

PETITION FOR A WRIT OF HABEAS CORPUS 2241

IN RE: Daniel Patrick Sheehan, 81730-053, Pro-se

LSCI Allenwood -Low, PO Box 1000

White Deer, PA 17887

No Phone #, (incarcerated status)

QUESTION(S) PRESENTED

Q: Will the Honorable Supreme Court let this complete miscarriage of Justice Continue?

The petitioner is incarcerated despite Structural Error, Violated Autonomy, Insufficient Evidence to support Conviction, AKA: Actual Innocence, Ineffectual Counsel, Multiple Constitutional-Due process violations via Abuses of Discretion. The Supreme Court is the Defender of the Constitution and the Overseeing body to the lower Courts abuses of discretion, misapplication of Constitutional Rights or Failure apply them at all.

This is all post 2255, multiple 2241's and 60(b) submissions: Due to the Custody Court and the Sentencing Court's refusal to adhere to Supreme Court rulings or accept jurisdiction via Statute Criteria. AKA: Suppression of Writ.

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:

Senior Judge Hurley, 2nd Circuit Eastern District of New York (Sentencing Court).

Chief Judge Conner, 3rd Circuit Middle District of Pennsylvania, (Custody Court).

RELATED CASES

The petitioner could find no other cases with this many abuses of discretion, violations of Constitutional rights and Rulings in direct contradiction to established Federal Law, outside of China, Russia or N. Korea.



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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

2241 Writ of Habeas Corpus

1651(a)

Qualifying Predicate offense, Due Process

Autonomy

Insufficient Evidence to Support Conviction, Due Process

Ineffectual Counsel

Structural Error

1651(b)(2)

§24(c)

Violated Right to a Writ of Habeas Corpus, Due Process

Violated Right to have Constitutional claims adjudicated in a judicial forum.

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI HABEAS CORPVS, 2241

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**: Petitioner blocked from Appellate Ct by Dist. Ct.

The opinion of the United States court of appeals appears at Appendix n/a to the petition and is

reported at n/a; 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 n/a to the petition and is

reported at n/a; 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**: *IN submission PAGE 1*

The date on which the United States Court of Appeals decided my case was NOT APPLICABLE - 2241.

No petition for rehearing was timely filed in my case. N/A

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

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

2241 (and) 1651(a)

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).

2

STATEMENT OF THE CASE

Sheehan was incarcerated due to his C.J.A. pleading guilty to 1951 Extortion, without Sheehan's Consent, Which is a violation of Sheehan's Autonomy as per the SCt in McCoy V Louisiana.

Sheehan did not commit 1951 Extortion as he abandoned his crime prior to "obtaining property", the obtaining of property is a 1951 Statute requirement, necessary for conviction as per "Qualifying Predicate Offense" a due process right and the Sct in Schiedler V N.O.W. (On page 4).

A missing Statute Requirement is protected against conviction in Sct. Jackson V Virginia (Pg. 5). Actual innocence AKA: Insufficient evidence to support conviction.

Multiple Abuses of discretion by the sentencing Court along with openly defying the rulings, supra, in the adjudication of Sheehan's 2255, violating his right to Habeas Review. Sheehan's Criminal complaint and plea offer was for "attempted extortion", no explanation for the up charge.

This case is offensive to the Constitution and Conscience shocking to oath driven letter of the law believers in Justice.

THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

-----X
DANIEL PATRICK SHEEHAN,
Petitioner,
-AGAINST-
WARDEN LSCI ALLENWOOD,
Respondent.
-----X

In re: Daniel Patrick Sheehan
RE: SUBMISSION OF 2241

--PETITION FOR THE HONORABLE SUPREME COURT TO ADJUDICATE THIS 2241 SUBMISSION--
COMES NOW THE PETITIONER, Daniel Patrick Sheehan, Pro-se, in support of the above
captioned, avers under penalties of perjury, the foregoing is true and accurate to the record.

JURISDICTION and 2242 CRITERIA:

The petitioner respectfully submits this 2241 Writ of Habeas Corpus with the Honorable U.S. Supreme Court, and believe it should be granted for the clear and cogent reason that the petitioner is a U.S. Citizen, incarcerated in violation of Law and the Constitution with no other adequate means to obtain Habeas review or relief, as per 2241 statute and 1651(a).

Although the petitioner understands a 2241 is not a "Right", humbly avers, the instant case does have Constitution Importance. Part of the Exceptional circumstance is due to the fact that the only two Courts Sheehan has access to, will not "fairly adjudicate his Constitutional claims in a judicial forum", as per Sheehan's due process right. *INTER ALIA.*

AS PER RULE 20.1: In the aid of the Honorable Court's Appellate jurisdiction.

The petitioner is incarcerated in violation of law and the Constitution, yet is unable to achieve Habeas review that adheres to legal parameters, AKA Suppression of Writ. Combined with multiple abuses of discretion, leaving Sheehan incarcerated despite Violated autonomy, Structural error, ineffectual counsel, Actual innocence and/or Insufficient evidence to support conviction and Constitutional violations, (fully supported within submission, infra).

These are Constitutional rights being squashed by a lesser court in which the Supreme Court is the ultimate overseer and defender the Constitution. Without your oath driven inter-

vention, our justice system would be no better than China's, the Constitution would just be an old piece of paper and the law would be applied unequally by a chosen few.

The petitioner reads that the "Constitution protects against...", but in cannot on it's own.

AS PER RULE 20.1: "Adequate relief cannot be obtained in any other form by any other Court.

REASON: The only Courts the petitioner has access to will not adjudicate Constitutional claims "fairly in a judicial forum", for Sheehan, as per Due process.

EXAMPLES:

1) Sentencing Court, 2nd Circuit EDNY repeatedly abused their discretion and openly defied Supreme Court rulings, Law and their own Direct binding case law in order to deny relief via: Post conviction motion to suppress, 2255, and 60(b)'s. Then denied COA's to block review of abuses, even when Appellate review was required De novo by the Mandate rule they themselves invoked.

2) 2nd Circuit Court of Appeals denied Writ of Mandamus by ruling Exceptional Circumstance did not justify relief requested. Never adjudicated merit.

AS PER RULE 20.4: "Why not petition Custody Court?"

3) The 3rd Circuit's, Middle District of Pennsylvania dismissed the petitioner's 2241 twice for "lack of jurisdiction", defying the statute and their own Circuit precedent in re: Okereke. The 3rd Circuit has shrunken the 2241 gateway to an impassable size via: their rulings in Dorsainvil, Bruce, Cradle, and Okereke, which I believe is "Suppression of Writ" as alteration to statute is strictly Legislative.

"The statute's language is plain, the sole function of the court is to enforce it according to it's terms." US V Ron Pair Ent. 489 US 235, 271, 109 Sct 1026, 1031 103 Led 290 (1989) Quoting Caminetti

The 2nd time, dismissal ruling directly defied 3rd Circuit precedent, in re Okereke. infra.

-----2241 DISMISSAL DEFYING LAW AND THEIR OWN DICTUM-----

The bottom of Page 5 to the top of page 6 of the dismissal memorandum states: "In seeking to overcome these 2241 barriers, Sheehan contends that a 2255 motion is inadequate or ineffective to test the legality of his detention based on the sentencing court's failure to follow the law, failure to address all of his claims...", "[S]heehan's arguments do not fall within the savings clause..."

This ruling conflicts with Okereke, which states: "The 2255 remedy is inadequate or ineffective only when some 'limitation of scope or procedure' precludes consideration of a claim." (printout infra).

---Case Law Printed out from Lexis Law to assure accuracy---

The § 2255 remedy is inadequate or ineffective only when some "limitation of scope or procedure" precludes consideration of a claim. Okereke, 307 F.3d at 120. (2002)

Reaffirmed by the 3rd Circuit Court of Appeals when quoted in Russel V Warden Allenwood FCI (2016). as per Rule 32.1(a)(i) and 32.1(a)(i)(ii) Citing Judicial Dispositions.

The District Court's ruling conflicting with 3rd Circuit precedent calls into question the integrity of the District Court's entire habeas procedure, especially when the Memorandum alters and restates ,

- 4) The 3rd Circuit Appeals Court altered Sheehan's claim of U.S. V Scripps, to instead have been U.S. V Sessions, allowing them to affirm the district Court's ruling, and ignore the procedural error in Scripps, and did not address Merit.

The 2nd time, claimed they never received the Informa paupris and time barred me, despite the petitioner using the Prison's Legal Mail system. (This is the 1st time in over 9 years that the mail didn't arrive).

Mr. Justice *Black* delivered the opinion of the Court.

A United States District Court has jurisdiction under 28 USC § 2241 to grant a writ of habeas corpus "to a prisoner ... in custody in violation of the Constitution ... of the United States."

What courts may do is dependent on statutes,¹ save as their jurisdiction is defined by the Constitution. What federal judges may do, however, is a distinct question. Authority to protect constitutional rights of individuals is inherent in the authority of a federal judge, conformably with Acts of Congress. The mandate in Art I, § 9, that "The Privilege of the Writ ... shall not be suspended" must mean that its issuance, in a proper case or controversy, is an implied power of any federal judge.

The Exceptional Circumstances in totality, are the inability to achieve fair adjudication of Constitutional issues (A Due process right) and by the fact that Sheehan is post 2255 and 2241, yet incarcerated with:

- 1) VIOLATED AUTONOMY resulting in STRUCTURAL ERROR: Cja pled guilty to 1951 Extortion without consent. EDNY 2255 denial debunked by Sct. in McCoy v Louisiana. Pg ANN - 1.
- 2) ACTUAL INNOCENCE and/or INSUFFICIENT EVIDENCE to support conviction: Sheehan never obtained property, which is a statute requirement of 1951 Extortion. Details Pg ANN - 1.
- 3) INEFFECTUAL COUNSEL: Supported by (2) Direct binding Circuit precedents. EDNY denied by improperly invoking the mandate rule, then blocking required review. Pg ANN - 2 - 3.

4) JOHNSON 924(c) issue: not addressed due to abuses of discretion. Details on Pg ANN 4.

The above due to EDNY Abuses of Discretion to deny relief:

- 1) Applying as a fact, opinion completely unsupported by the record.
- 2) Misapplying the Mandate rule, defying required appellate review.
- 3) Not addressing valid 2255 claim.
- 4) Defying his duty as a judge by Deferring a miscarriage of justice to the Jury.
- 5) Usurping the order of Traverse, arguing for the Gov. Negating rebuttal. Defying Core Duties.
-----Detail of 1-5 ,supra, on Page ANN 1-4.

and defying well established core Duties of a Judge as described by Justice Kavanaugh, infra.

Supreme Court nominee Brett Kavanaugh: "Sees the role of a Judge as that of an Umpire".
Bloomberg Law-Criminal Law Reporter-Vol. 15- July 18th, 2018, Page 389

The defendant avers that an "umpire" should not "make the out" for either side, simply rule fairly.

INARGUABLE CHAIN OF STRUCTURAL ERROR:

Sheehan's CJA plead him guilty to 1951 Extortion without consent, yet Sheehan never obtained property. (undisputed fact).

The "obtaining of property is a 1951 statute requirement necessary for conviction. See Sct. in Scheidler V Now, INFRA.

This Court again reversed. Scheidler v. National Organization for Women, Inc., 537 U.S. 393, 123 S. Ct. 1057, 154 L. Ed. 2d 991 (2003) (NOW II). We noted that the Hobbs Act defines "extortion" as necessarily including the improper "obtaining of property from another." Id., at 400, 123 S. Ct. 1057, 154 L. Ed. 2d 991 (quoting § 1951(b)(2)).

Accordingly, we held that "because they did not 'obtain' property from respondents," petitioners "did not commit extortion" as defined by the Hobbs Act. Id., at 397, 123 S. Ct. 1057, 154 L. Ed. 2d 991.

[Sheehan] "did not obtain property" thus [Sheehan] "did not commit extortion".

It is inarguable that [Sheehan] being incarcerated for a crime he did not commit is an erroneous conviction, thus a miscarriage of Justice.

"An error is structural if it is not designed to protect defendants from erroneous conviction," Weaver, 582 U.S., at ___, 137 S. Ct. 1899, 198 L. Ed. 2d 420 (citing Faretta, 422 U.S., at 834, 95 S. Ct. 2525, 45 L. Ed. 2d 562)

Sheehan's CJA pleading guilt did not avoid an erroneous conviction, it resulted in one, thus "structural error".

It is inarguable that a U.S.Citizen in prison for a charged crime he did not commit and with Structural Error is a complete miscarriage of Justice, and post 2255 denial.

Out of the utmost respect and appreciation that I have for the Court, I have cut this submission to the bone, yet believe that I have exemplified enough to show that relief in this case is long overdue. (Based on the facts in the petition and your rulings infra and throughout).

If I have glossed over anything too quickly, and the Honorable Court requires more, I have annexed optional material to better detail assertions, if it please the Court.

"The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscalcarriages of justice within its reach are surfaced and corrected." Harris v Nelson, 394 US 286, 291, 22 L Ed 2d 281, 89 S Ct 1082 (1969).

"In order for a criminal conviction to be constitutionally sound, every element of the charged crime must be proven beyond a reasonable doubt." Jackson V Virginia, 443 US 307, 315, 99 Sct 2781, 61 Ed 2d 560 (1979) Referenced in Brown V Conway, Lexis 130858 2009. Did not "Obtain Property".

WITH ALL PREMISE CONSIDERED, the petitioner humbly requests the granting of this Writ of Habeas Corpus, over turning Sheehan's convictions and immediate release from custody as is required by the Constitution of an "Unsound Conviction".

Thank you for your time and consideration,
Very Respectfully Submitted By:



Daniel Sheehan, 81730-053 Pro-se
LSCI Allenwood -Low-
PO Box 1000
White Deer PA 17887

Dated JUNE 2nd, 2022
As per Prison mailbox rule

2241 SHEEHAN -V- WARDEN ALLENWOOD, PAGE 5 OF 5

SUPPORT OF ASSERTIONS, FROM PAGE THREE:

1) VIOLATED AUTONOMY, Sheehan raised the 2255 ineffectual claim that his C.J.A. pleading him guilty to 1951 Extortion, when Sheehan never "obtained property," which is a 1951 requirement, necessary for conviction, Authority infra,

Criminal Law & Procedure > Criminal Offenses > Racketeering > Hobbs Act > Elements

An act of extortion requires the interference or attempted interference with commerce by the obtaining of property from another, with his consent, induced by the wrongful use of actual or threatened force, violence, or fear, or under color of official right. 18 U.S.C.S. § 1951(b)(2).

QUALIFYING PREDICATE OFFENSE: "The due process clause protects an accused against conviction except under proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged".

The government argued and the Judge ruled that this conscience shocking action was "Sound trial strategy." However the Supreme Court ruled in McCoy V Louisiana, that the pleading of guilt was "not a strategic choice" but was the "sole autonomy of [Sheehan]", thus structural ~~ERROR~~ that is not subject to Strickland review.

Sheehan raised this in a 60(b) years later, by clearly stating that the "Sound trial strategy" 2255 denial could not be reconciled with the Supreme Court ruling in McCoy V Louisiana, which ruled "the pleading of guilt was not a strategic choice, but was the sole autonomy of [Sheehan], thus, structural error that is not subject to Strickland review.

The Judge misconstrued this clearly stated claim, instead to be arguing the original trial and that Sheehan was not vociferous enough in his not wanting to plead guilty, quoting a 2nd Circuit case of Nixon V.

The petitioner does not believe the comparison of Sheehan to McCoy or Nixon to be relevant, but for the sake of arguendo, the case Nixon, actually states the exact opposite of this ruling, infra. EDNY applied authority that does not exist, misapplied it to Sheehan, apparently to deny relief, then denied C.O.A. (The non nefarious motives for these actions are unclear).

Criminal Law § 59 - guilty plea - silence - voluntariness

4. A criminal defendant's guilty plea cannot be inferred from silence; it must be based on express affirmations made intelligently and voluntarily.

2d 618, 625 (2000) (Nixon II). Corin's concession, according to the Florida Supreme Court, was the "functional equivalent of a guilty plea" in that it allowed the prosecution's guilt-phase case to proceed essentially without opposition. Id., at 622-624. Under Boykin v Alabama, 395 US 238, 242-243, 23 L Ed 2d 274, 89 S Ct 1709 (1969), a guilty plea cannot be inferred from silence; it must be based on express affirmations made intelligently and voluntarily. Similarly, the Florida Supreme Court stated, a concession of guilt at trial requires a defendant's "affirmative, explicit acceptance," without which counsel's performance is presumptively inadequate. Nixon II, [543 US 186] 758 So 2d, at 624. The court acknowledged that Nixon was "very

2) ACTUAL INNOCENCE and/or INSUFFICIENT EVIDENCE TO... : Addressed in #1, Supra, Did not obtain property."

3) INEFFECTUAL COUNSEL: Sheehan's CJA did not raise the 4th Amendment issue, Sheehan raised it as a Post Conviction Motion to Suppress, Which was promptly denied twice defying the SCt In Haines V Kerner, then again Illinois V Rodriguez and every relevant case since Zerbst (1938).

This 4th Amendment issue was raised again in the 2255 as Ineffectual Counsel, supported by Direct binding case law, (Precedent) of Jackson V Leonardo, infra:

Jackson V Leonardo, Binding case law, "Counsel was ineffective for failing to raise 4th amendment issue." 162 F.3d 81,84-87 (2nd Cir. 1998).

This issue went unaddressed by the Government in their reply, which according to Bland V California, Infra, "essentially admits claim".

"When the state's return fails to dispute the factual allegations contained in the petition and traverse, it essentially admits those allegations!" U.S. Court of Appeals, 9th Circuit 20 F3d 469: Bland V California Dept. of Corrections. March 9, 1994

EDNY usurped the order of traverse and argued this claim for the government, negating Sheehan's ability to rebuttal, defying Bland V Cal, ruling Sheehan's motion would have failed so his CJA missed nothing. However, this is completely unsupported by the record, thus erroneous, to support his abuse of discretion, quoted case law from 2017 to support the 2014 motion would have failed, futuristic district case law cannot possibly apply, nor overrule SCt. Authority.

To date, neither Sheehan's 4th amendment violation nor this claim of ineffectual counsel due to CJA Failure to raise 4th amendment issue has been adjudicated within legal parameters.

SECOND SHOCKING 2255 DENIAL: Sheehan's CJA did not object, *inter alia*, to improper jury instructions, again supported by direct binding case law, in re: Cox V Donnelly, *infra*.

Cox V Donnelly, "Counsel's repeated failure to object to erroneous jury instruction constitutes ineffective counsel". 432 F.3d 388, 390 (2nd Cir.2005).

The government did not argue, again essentially admitting via Bland V Calif. (cited, *supra*).

The judge denied this claim by improperly invoking the Mandate rule, which "requires appellate review *De Novo*", yet denied Sheehan's request for a C.O.A., blocking the required review. The non-nefarious reasons for these actions eludes me.

-----UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW-----

"Barred by the Mandate rule". The defendant believes this "Barring" to be in error. The Honorable Appellate Court ruled on the Content of these mis-statements, and if they affected the fairness of Sheehan's trial and their affect on the jury. The "performance" of Sheehan's attorney evident by the lack of objections or the statements themselves being deemed unworthy of requiring objection was never considered by the Appeals Court, nor did they imply the point of the current complaint. In fact, the Judges stated on the record essentially that Sheehan endured harm from the non-objections.

THE HONORABLE CIRCUIT JUDGES Winter, Wesley and Lynch stated in Sheehan's Appeal Denial memorandum.

Page 15 "Sheehan did not object to any statements made during the Government's summation!"

Page 38 "because Sheehan did not object to jury instructions, we review for plain error!"

Page 41 " As Sheehan did not raise this at trial, we will not reverse absent "flagrant abuse" .

THIRD SHOCKING 2255 ACTION: Sheehan's Counsel was ineffectual based on the Government's assessment stated to the jury, at trial, on the record: "[Sheehan's Attorney] has a fundamental misunderstanding of the evidence" (Trial Tr 712)- AND- "Some irrelevant stuff went on here..." (Trial TR 708-709).

The petitioner respectfully avers that an attorney who does not understand what he is supposed to defend against, and speaks of irrelevant stuff, cannot possibly achieve a level of representation that is above any acceptable standard.

The government did not address this issue, again admitting via Bland V Cal, and the Judge did not address this issue. To date, this valid argument of Sheehan's counsel being ineffectual, a constitutional right, has not been "fairly adjudicated in a legal forum," another due process right, compounding the miscarriage of justice.

FOURTH SHOCKING 2255 ACTION: Sheehan raised his Johnson 924(c) issue, the Government did not address, again admitting via Bland V Cal. The judge held the issue in abeyance and gave it back to the Government to respond, defying the order of traverse, defying Bland V, giving the Government a 2nd bite of the apple. Believing that justice did not exist for Sheehan at EDNY, retracted claim in order to appeal, COA denied by EDNY, despite the fact that is was required by rule.

2241 SHEEHAN -V- WARDEN ALLENWOOD, OPTIONAL ANNEXED MATERIAL, PAGE 4 OF 4

REASONS FOR GRANTING THE PETITION

The petitioner is incarcerated despite Structural Error, Violated Autonomy, Insufficient Evidence to support Conviction, AKA: Actual Innocence, Ineffectual Counsel, Multiple Constitutional-Due process violations via Abuses of Discretion. The Supreme Court is the Defender of the Constitution and the Overseeing body to the lower Courts abuses of discretion, misapplications of Constitutional Rights or Failure apply them at all.

This is all post 2255, multiple 2241's and 60(b) submissions: Due to the Custody Court and the Sentencing Court's refusal to adhere to Supreme Court rulings or accept jurisdiction via Statute Criteria. AKA: Suppression of Writ.

CONCLUSION

**This case is a complete miscarriage of Justice and continued confinement
offends the Constitution and the Integrity of the Federal Justice System.**

The petition for an extraordinary writ of habeas corpus should be granted.

Respectfully submitted,

Date: _____