

22-5742
No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
SEP 20 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

REGGIE D. CASWELL,

Petitioner.

-VS-

STEVEN RACETTI,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI

ON PETITION FOR A WRIT OF CERTIOTARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
(Denying C.O.A./Rehearing)

PETITION FOR WRIT OF CERTIORARI

REGGIE D. CASWELL #06B1117
COXSACKIE CORRECTIONAL FACILITY
11260 ROUTE 9W
COXSACKIE, NEW YORK 12051-0999

The question presented herein respectfully request that this Honorable Court Grant Certiorari in that:

1) Petitioner request that this Honorable Court revisit it's holding in Martinez v Court of Appeal of California Fourth Department 528 U.S. 152 (2000) only to the extent that: For States that do permit for pro se criminal appeals, a complete and sufficient pro se appeal record must be provided in accordance with the Due Process and Equal Protection Clauses. In the case at bar, Petitioner was deprived of copies of the Respondent vital trial and sentencing exhibits with catastrophic consequences..... 7

2) Was the Habeas Corpus proceedings defective when the District Court denied habeas corpus relief without ever seeing Respondent Trial Exhibits #9 and #22 (DVDS) and Sentencing Exhibits #4--#7 demonstrating Petitioner's "Actual Innocence" and that the sentences imposed were/are Unconstitutional..... 13

3) Did Petitioner demonstrate with "clear and convincing evidence" pursuant to the 28 U.S.C. § 2254(e)(1) that the state courts decisions affirming the judgment of conviction and sentence was not support by the record..... 20

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

Related Cases

- 1) People v Caswell 56 A.D.3d 1300 (4 Dept. 2008) lv. denied 11 N.Y.3d 923 (2009) cert. denied Caswell v New York 556 U.S. 1286 (2009).
- 2) Caswell v Racetti 2012WL1029457 (W.D.N.Y. 2012) cert. denied sub nom. Caswell v LaValley 568 U.S. 985 (2012).
- 3) Caswell v Green 424 Fed. Appx. 44 (2 Cir. 2011)(42 U.S.C. § 1983 complaint seeking injunction to obtained copies of the Respondent trial and sentencing exhibits).
- 4) Caswell v Racetti 2014WL1278942 (W.D.N.Y.)(denying motion to vacate pursuant to Fed. R. Civ. P. 60(b)).
- 5) People v Caswell A.D.#KA-07-1165 (4 Dept. 2007) citing People v Gibson 266 A.D.2d 837 (4 Dept. 1999), lv. denied 9 N.Y.3d 960 (2007).
- 6) Caswell v Racetti 2 Cir. 2014 Remand of denial of motion to vacate.
- 7) People v Caswell 171 A.D.3d 1572 (4 Dept. 2019) (Writ of Error Coram Nobis) lv. denied 33 N.Y.3d 1103 (2019) cert. denied 140 S.Ct. 528 (2019).
- 8) People v Caswell 189 A.D.3d 2153 (2020)(resentence appeal) lv. dis. 36 N.Y.3d 1096 (2021).

TABLE OF CONTENTS

	PG.
QUESTIONS PRESENTED.....	i
LIST OF PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINIONS BELOW.....	1
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR THE GRANTING THE WRIT.....	7
CONCLUSION.....	22

INDEX TO APPENDICES

APPENDIX A: U.S. Court of Appeals Second Circuit denying C.O.A.
decision dated: May 4, 2022

APPENDIX B: U.S.D.C. Western District of New York denying Habeas
Corpus relief and Fed. R. Civ. P. 60(b) motion dated:
December 6, 2021.

APPENDIX C: U.S. Court of Appeals Second Circuit denying motion for
Rehearing en banc dated: June 24, 2022.

APPENDIX D: District Court decision denying motion for
Discovery/Hearing dated; September 9, 2021.

APPENDIX E: Petition for Rehearing/En banc in U.S. Court of Appeals
Second Circuit dated: May 14, 2022.

APPENDIX F: U.S. Court of Appeals Second Circuit C.O.A. dated:
January 8, 2022.

APPENDIX G: Pro se Reply Affirmation with Exhibits A-D in Support
of Fed. R. Civ. P. 60(b) motion and request to lift
order in the District Court dated;: July 27, 2021.

TABLE OF AUTHORITIES

PAGE

U.S. SUPREME COURT CASES:

Martinez v Court of Appeal of California Fourth Appellate Dist. 528 U.S. 152 (2000).....	10,13
Penson v Ohio 488 U.S. 75 (1988).....	9
Gideon v Wainwright 372 U.S. 335 (1963).....	9
Griffin v Illinois 351 U.S. 52 (1956).....	13
Draper v Washington 372 U.S. 487 (1963).....	13
Mayer v City of Chicago 404 U.S. 189 (1971)	13
Lackawanna v Coss 522 U.S. 394 (2001).....	9,19
Bracy v Gramley 520 U.S. 899 (1997)	16,18
Keeney v Tamayo-Reyes 504 U.S. 1 (1992)	22
Williams v Taylor 529 U.S. 420 (2000)	22
Summer v Mate 455 U.S. 591 (1992).....	22
Parker v Dugger 498 U.S. 309 (1991)	22
Schlup v Delo 503 U.S. 298 (1995)	16,18
Christopher v Harbury 538 U.S. 403 (2002)	22
Buck v Davis 137 S.Ct. 759 (2017).....	17

U.S. Circuit Cases:

Caswell v Green et. al. 424 Fed. Appx. 44 (2 Cir. 2011).....	
.....	(5,2)
Caswell v Racetti U.S. Sec. Cir. decision Doc.#14-1211 (2014).....	17

U.S. District Court Cases:

Caswell v Racetti 2012WL1029457 (WDNY).....	5, 12, 16
Caswell v Racetti 2014WL1278942 (WDNY).....	5, 12, 16
Caswell v Racetti 2021WL5782103 (WDNY).....	5, 12, 16
Dockery v Lee 2021WL3667943 (SDNY).....	5, 12, 16

New York State Cases:

People v Samms 95 N.Y.2d 52 (2000)	4,8,9,10
People v Muniz 74 N.Y.2d 464 (1989)	4,8,9,10
People v Caswell 56 A.D.3d 1300 (4 Dept. 2008).....	4,8,9,10

People v Caswell #AD-KA-07-1165 (4 Degt. 2007) citing People v Gibson 266 A.D.2d 837 (4 Dept. 1999).....	8, 9, 10
People v Caswell 189 A.D.3d 2153 (4 Dept. 2020).....	8, 9, 10
People v Smith 79 N.Y.2d 309 (1992).....	8, 9, 10
People v Pagan 81 A.D.3d 86 (1 Dept. 2010).....	8, 9, 10
People v Johnson 187 A.D.2d 990 (4 Dept. 1992).....	8, 9, 10
People v Donnelly 23 A.D.3d 921 (3 Dept. 2005).....	8, 9, 10
People v Wilson 231 A.D.2d 912 (4 Dept. 1996).....	8, 9, 10
People v Roberts 111 A.D.3d 1308 (4 Dept. 2013).....	8, 9, 10
People v Loughlin 66 N.Y. 2d 633 (1985).....	8, 9, 10
People v Cuadrado 9 N.Y.3d 362 (2007).....	8, 9, 10

Other State Cases:

State v Simmons 162 Wash. App. 1010 (2011).....	10
People v Strickland 154 Ill.2d 489 (1992).....	10
People v Banks 75 Ill. 2d 383 (1975).....	10
People v Jordan 303 Ill 316 (1922).....	10
Parte v Scudder 798 So. 2d 837 (2001).....	10
Coleman v Johnsen 235 Ariz. 185 (2014).....	10
Marriweather v Chatman 285 Ga. 765 (2009).....	10
Commonwealth v Staton 608 Pa. 404 (2010).....	10
State v Rafay 167 Wash. 2d 644 (2009).....	10

Federal Statutes:

Federal Rule of Civ. Pro. 60(b).....	6, 15, 17
28 U.S.C. § 2254.....	20, 21
28 U.S.C. § 2254(e)(1).....	20, 21

State Statutes:

C.P.L. 400.15(8).....	17
C.P.L. § 400.21(8).....	17
C.P.L. § 440.20(2).....	17

State Constitution:

N.Y. Const. 1 § 6.....	7, 13, 26
N.Y.S. Const. 1 § 11.....	7, 13, 26

U.S. Constitution:

U.S.C. 1st..... 7, 13, 20
U.S.C. 5th..... 7, 13, 20
U.S.C. 6th..... 7, 13, 20
U.S.C. 14th..... 7, 13, 20

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

Federal Courts:

The opinion of the United States court of appeals appears at Appendix A and E to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B and D to the petition and is reported at Caswell v Racetti 2021WL5782103 (W.D.N.Y.).

JURISDICTION

Federal Courts:

The date on which the United States court of appeals Second Circuit decided my case was on May 4, 2022.

A timely petition for rehearing was denied by the United States Court of Appeals on the following dated: June 24, 2022, and a copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVEDU.S. Constitution:

U.S.C. 5th.....	7, 13, 20
U.S.C. 14th.....	7, 13, 20

Federal Statutes:

28 U.S.C. § 2254.....	7, 13, 20
28 U.S.C. § 2254(e)(1).....	7, 13, 20
Fed. R. Civ. P. § 60(b).....	7, 13, 20
42 U.S.C. § 1983.....	7, 13, 20

New York Constitution:

N.Y.S. Const. 1 § 6.....	7, 13, 20
N.Y.S. Conts. 1 § 11.....	7, 13, 20

New York State Statutes:

C.P.L. § 400.21(7)(b).....	7, 13, 20
C.P.L. § 400.21(8).....	7, 13, 20
C.P.L. § 400.15(8).....	7, 13, 20
C.P.L. § 400.16.....	7, 13, 20
C.P.L. § 440.20(2).....	7, 13, 20

STATEMENT OF THE CASE

The central issue in this case is that the New York State Supreme Court Appellate Division Fourth Department granted Petitioner the state right to appeal his criminal conviction as a poor person and pro se on May 9, 2006. The appellate court order also ordered that Petitioner be provided a copy of the appeal record free of charge.

Petitioner, having proceed pro se in the trial court and did in fact receive copies of the Respondent trial and sentencing exhibits in the trial court. However, Respondent trial exhibits #9 and #22 (DVDS) were the evidence-in-chief for both the defense and the prosecution were confiscated by the Monroe County Jail as "contraband" while Petitioner was standing trial.

Respondent sentencing exhibits #4--#7 were lost by the N.Y.S. Department of Corrections shortly after Petitioner's imprisonment and transfer to a different prison. These events all took place prior to the Appellate Division order granting poor person status and request to proceed pro se.

Thereafter, the Monroe County Clerks Office provided Petitioner with a copy of the transcripts. Omitted from those documents were copies of the Respondent trial and sentencing exhibits (*supra*). Petitioner promptly moved the trial court (as required by N.Y.S. Law) in order to obtained copies of said exhibits asserting the above mention and further asserting that the DVDS demonstrate Petitioner's "Actual Innocence" and that Respondent sentencing exhibits demonstrated that said sentence was in fact Unconstitutional.

Respondent opposed the motion and refused to provide said exhibits. Thereafter, the trial court denied the motion. Petitioner's appeal of that decision to the appellate division was

denied, see, People v Caswell A.D.KA#-07-1165 (4 Dept. 2007)(citing People v. Gibson 266 A.D.2d 837 [4 Dept. 1999] holding that there is no statutory right to appeal the decision). Petitioner's appeal of that decision to the New York State Court of Appeals was also dismissed, see, People v Caswell 9 N.Y.3d 960 (2007).

That from 2006-2008, Petitioner filed repeated motions in the state courts seeking copies of the Respondent trial and sentencing exhibits. Respondent opposed each motion and refused to provide a single document/exhibit, see, Petition for Rehearing pg. 8, attached hereto as Appendix E.

Needless to say, without copies of the Respondent trial and sentencing exhibits, Petitioner's pro se appeal of the judgment of conviction and sentence was affirmed, see, People v Caswell 56 A.D.3d 1300 (4 Dept. 2008) lv. denied 11 N.Y.3d 923 (2009) cert. denied Caswell v New York 556 U.S. 1286 (2009).

Collateral Proceedings:

That after exhaustion of Petitioner's pro se direct appeal, Petitioner submitted a C.P.L. §§ 440.10 and 440.20 motion asserting deprivation of a complete pro se direct appeal record and that all four indeterminate life sentences imposed were/are illegal.

The trial court denied the C.P.L. § 440.10 motion with no mention of the deprivation of a complete appeal record. The trial court denied in part said C.P.L. § 440.20 motion citing C.P.L. § 440.20(2).

42 U.S.C. § 1983 Complaint:

Petitioner immediately filed a 42 U.S.C. § 1983 complaint in the U.S.D.C. Western District of New York against the Monroe County D.A.'s Office seeking injunction relief in order to obtain copies of the Respondent trial and sentencing exhibits (*supra*).

Federal R. Civ. P. § 60(b) motion:

That Petitioner promptly moved the District Court pursuant to the Fed. R. Civ. P. § 60(b) requesting a hearing to review the DVDS (maintained at the Correctional Facility) and further attached copies of the Respondent Sentencing Exhibits to the motion demonstrating that all four sentencing imposed were indeed illegal and Unconstitutional.

Petitioner further asserted that the habeas corpus proceedings were defective based upon an insufficient record and that no de novo determination was made by the District Judge on Petitioner's written objection to the Magistrate decision denying Discovery and Hearing.

Nevertheless, the District Court denied the motion citing it's prior decision denying habeas corpus relief.

Federal R. Civ. P. § 60(b) Remand:

That by decision dated: September 29, 2014, the Second Circuit remanded the matter back to the District Court for reconsideration of Petitioner's insufficient pro se direct appeal record and further noting Petitioner's pending state court appeal of the resentence on the fourth count of the indictment.

Decision after remand:

That by decision dated: December 6, 2021, a different District Court Judge denied Petitioner relief and declined to review the DVDS and further denied Petitioner's motion for a Hearing citing the decision denying habeas corpus relief in the first instant, see, Decision attached hereto as Appendix B.

Thereafter, Petitioner's C.O.A. and Rehearing Petition was denied by the Second Circuit, see, Decisions attached hereto as Appendix A and C respectively.

REASONS FOR GRANTING WRIT

POINT I

WAS PETITIONER DEPRIVED OF A COMPLETE AND SUFFICIENT PRO SE APPEAL RECORD IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION 5th. 14th?

The following facts are undisputed with prejudice clearly demonstrated:

ARGUMENT:

1) Petitioner proceeded to trial pro se relying in large part upon the original DVD (Resp. Tr. Ex. #9) taken from the store in support of his Actual Innocence to all charges.

a) Respondent Trial Exhibit #22 (DVD) was an edited version of the original DVD (Ex. #9) and was played for the jury. That exhibit, only showed a small portion of the event in question. The original DVD (Ex. #9) was never played for the jury over Petitioner's pro se objections.

2) That after Petitioner's conviction, Respondent sought to sentence Petitioner as a Persistent Violent Felony Offender on all four counts of the indictment. Specifically, Respondent sought to use two alleged prior convictions. A 1988 Burglary conviction from Onondaga County New York and a 1993 Robbery conviction in Illinois State.

a) Respondent obtained documents from Onondage County and admitted the same into evidence over objection as Peoples Sentencing Exhibit #4. Respondent also obtained documents from the State of Illinois regarding the alleged robbery conviction and admitted same into evidence over objection as Peoples Sentencing Exhibit #7.

3) That after Petitioner's conviction and sentence. The New York State Supreme Court Appellate Division Fourth Department granted permission to appeal pro se.

4) Shortly after the appellate court's order (*supra*), Appellant was transferred to a different prison at which time the N.Y.S.D.O.C.C.S. had lost Appellant's property containing copies of the Respondent Sentencing Exhibits #4-#7. Respondent Trial Exhibits #9 and #22 (DVDS) were confiscated as "contraband" while Appellant was being held in the county jail.

5) That on October 3, 2006, the Monroe County Clerks Office provided Appellant with a copy of the transcripts ad pleadings. Omitted from those pleadings were copies of the Respondents Trial/Sentencing Exhibits maintained by them.

6) That on January 23, 2007, after Respondent opposed the motion, the trial court refused to order the Respondent to provide Appellant with copies of their Trial Exhibits #9 and #22 and Sentencing Exhibits #4-#7.

7) That on June 19, 2007, after the Respondent opposed Appellant's appeal of the trial court's decision, the Appellate Division Fourth Department denied the appeal, see, People v Caswell A.D.# KA-07-1165 (4th Dept.) citing People v Gibson 266 A.D.2d 837 (4 Dept. 1999).

8) That on October 18, 2007, after the Respondent opposed Appellant's appeal of that decision, the New York State Court of Appeals dismissed the appeal, see, People v Caswell 9 N.Y.3d 960 (2007).

9) That on February 25, 2008, after Respondent opposed Appellant's second motion submitted to the trial court stressing the need to be provided with copies of said exhibits. The trial court denied the motion for a second time.

10) That on April 16, 2008, after Respondent opposed Appellant's subpeona duces tecum application submitted to the Appellate Division Fourth Department seeking said copies of said exhibits. The Appellate Division denied the motion without opinion.

PREJUDICE

As a direct result of the deprivation of a complete and sufficient pro se direct appeal record, the judgment of conviction was affirmed (in 2008) and Petitioner was unable to demonstrate the following points:

1) That without copies of Respondent Trial Exhibits #9 and #22 (DVDS) Petitioner could ~~NOT SHOW~~ his pro se appeal that he is "Actually Innocence" or that there was insufficient evidence to support the conviction or that the same was against the weight of the evidence, see, People v Caswell 56 A.D.3d 1300 (4 Dept. 2008), also see, C.P.L. § 470.15(2)(a), C.P.L. §470.15(a)(b), C.P.L. § 470.15(3)(c), C.P.L. § 470.15(5), Jackson v Virginia 443 U.S. 307 (1979), Tibbs v Florida 457 U.S. 31 (1982).

2) That without copies of Respondent Sentencing Exhibits #4--#7 Petitioner could not demonstrate that all four sentences imposed were/are illegal and Unconstitutional in that:

a) That without a copy of the 1988 Onondaga County Plea/Sentencing Transcripts (Ex. #4) Petitioner could not demonstrate that said conviction meets the exception requirements of this Honorable Court's holding in Lackawanna v Coss 532 U.S. 394, 404 (2001), Penson v Ohio 488 U.S. 75 (1988) citing Gideon v Wainwright 372 U.S. 335 (1963). Moreover, given the fact that Petitioner never waived indictment in "open court" as mandated by New York State law, said conviction could not be used to enhance Petitioner sentence, see, People v Johnson 187 A.D.2d 990 (4 Dept. 1999), People v Donnelly 23 A.D.3d 921 (3 Dept. 2005), also cf. Burgett v Texas 389 U.S. 109 (1967).

b) That without a copy of the 1993 Illinois State Bill of Indictment (Ex. #7) Petitioner could not demonstrate a per se reversal error under New York Law, see, People v Muniz 74 N.Y.2d 464 (1989)(submission into evidence of out of state indictment mandates automatic reversible error). Moreover, the alleged

conviction does not "have all the essential elements of a crime in New York," quoting People v Ramos 19 N.Y.3d 417 (2012), also cf. People v Banks 75 Ill.2d 383 (1975)(crime is a "general offense"), People v Jordan 303 Ill. 316 (1922 ("after thought offense") compare to People v Smith 79 N.Y.2d 309 (1992)("mens rea element"), People v Pagan 81 A.D.3d 86 (1 Dept. 2010) ("specific intent") aff'd 19 N.Y.3d 417 (2012).

3) To add insult to injury, under New York State Law, all vital sentencing exhibits must be included in the appeal record, see, People v Samms 95 N.Y.2d 52, 57 (2000). The failure to do so will bar further review, see, C.P.L. § 440.20(2), C.P.L. § 400.15(8).

Legal Analysis:

In Martinez v Court of Appeal of California, Fourth App. Dist. 528 U.S. 152 (2000), this Honorable Court ruled that there is no federal right to appeal a criminal conviction pro se. However, the Court noted that states can permit for a pro se appeal under state law "keeping the best interest of the prisoner and government in mind" id. at 163.

In the States that do permit for a pro se criminal appeal, those States ensure that the pro se appellant has a complete and sufficient appeal record, see, Ex Parte Scudder 798 So. 2d 837 (2001)(Alabama Supreme Court), Coleman v Johnsen 235 Ariz. 195 (Arizona Supreme Court), Merriweather v Chatman 285 Ga. 765 (2009)(Georgia Supreme Court), Commonwealth v Staton 608 Pa. 404 (2010) Pennsylvania Supreme Court), State v Rafay 167 Wash. 2d 644 (2009)(Washington Supreme Court).

HOWEVER, IN N.Y.S. PRO SE APPELLANTS
HAVE NO STATE JUDICIAL REMEDY TO OBTAIN

COPIES OF THE RESPONDENT TRIAL
AND SENTENCING EXHIBITS VITAL TO
THE OUTCOME OF THE APPEAL AND
HABEAS CORPUS PROCEEDINGS.

HERE IT SHOULD BE NOTED THAT
PRIOR TO FILING SAID HABEAS CORPUS
PETITION, PETITIONER FILED A 42 U.S.C.
§ 1983 COMPLAINT AGAINST RESPONDENT
SEEKING COPIES OF SAID EXHIBITS
WHICH THE DISTRICT COURT DIS-
MISSED. SEE CASWELL v GREEN et. al.
10-cv-0166 (MAT)(LGF)(WDNY).

THEREAFTER, THE DISTRICT
COURT DENIED PETITIONER'S MOTIONS
-11-

FOR DISCOVERY AND HEARING AS WELL
AS HABEAS CORPUS RELIEF WITHOUT
EVER SEEING THE EVIDENCE HELD
HOSTAGE BY RESPONDENT, ~~etc.~~,
CASWELL v RACETTI 2012WL1029457
(W.D.N.Y.).

Accordingly, PETITIONER
REQUEST THAT THIS HONORABLE COURT
GRANT CERTIORARI TO CLARIFY IT'S
HOLDING IN MARTINEZ v COURT OF APP.
528 U.S. 152, 163 (2000) THAT STATES
THAT DO PERMIT PRO ~~SE~~ CRIMINAL
APPEALS, MUST ALSO PROVIDE
THE PRO ~~SE~~ APPELLANT WITH A
COMPLETE APPEAL RECORD PURSUANT

TO THE DUE PROCESS AND EQUAL
PROTECTION CLAUSES, Cf. ~~GRIMM~~ v.
ILLINOIS 351 U.S. 12 (1956), DRAPER
v. WASHINGTON 372 U.S. 487 (1963),
MAYER v. CITY OF CHICAGO 404
U.S. 189 (1971).

Clearly, THIS would BE "KEEPING
THE BEST INTEREST OF BOTH THE PRISONER
AND GOVERNMENT IN MIND" QUOTING
MARTINEZ (SUPRA) AT 163, ALSO
SEE, PETITION FOR REHEARING EN BANC,
ATTACHED HERETO AS APPENDIX E.

POINT II

WAS THE HABEAS CORPUS PROCEEDINGS
DEFECTIVE WHEN RELIEF WAS DENIED
WITHOUT EVER SEEING ACTUAL
INNOCENCE EVIDENCE AND
SENTENCING EXHIBITS

AS NOTED ABOVE, PRIOR TO FILING
SAID HABEAS CORPUS PETITION, YOUR
PETITIONER FILED A 42 U.S.C. § 1983
COMPLAINT AGAINST RESPONDENT
SEEKING COPIES OF TWO DVDs, "PEO.
TR. EXS. #9 AND #22" (DEMONSTRATING
ACTUAL INNOCENCE) AND "PEOPLES SALT.
EXS. #4-#7" (DEMONSTRATING THAT
ALL SENTENCES WERE / ARE UNCONSTITU-
TIONAL) WHICH THE DISTRICT COURT
DISMISSED, see, Caswell v. Green
et. al. #10-cv-0166 (MAT)(LFG).

After HABEAS CORPUS RELIEF
WAS DENIED, THE SECOND CIRCUIT

REVERSED THE DECISION AT WHICH TIME PETITIONER WAS FINALLY PROVIDED WITH COPIES OF SAID EXHIBITS, SEE, CASWELL v. GREEN et. al. 424 FED. APPX. 44 (2 CIR 2011).

ACCORDINGLY, PETITIONER FILED A FED. R. CIV. P. § 60(b) MOTION ASSERTING:

1) NO DE NOVO DETERMINATION WAS MADE ON PETITIONER'S WRITTEN OBJECTION TO THE DENIAL OF SAID DISCOVERY/HEARING MOTION IN VIOLATION OF FED. R. CIV. P. § 72(a), 28 U.S.C. § 636(a)(b)(1)(c), U.S. v. HADDATZ 447 U.S. 667 (1980).

2) THE DISTRICT COURT ERRED
IN CLAIMING THAT PETITIONER'S
"APPELLATE COUNSEL ATTACHED ALL
SENTEENCING EXHIBITS AT R-333-
60", SEE Caswell v Racetti 2012
WL1029457 (WONY) NOTE 5.

a) PETITIONER DID NOT
HAVE "APPELLATE" COUNSEL ON THE
PRO SE APPEAL, SEE People v Caswell
56 AD3d 1300 (4 DEPT. 2008).

3) THAT PETITIONER FURTHER
REQUESTED A HEARING IN ORDER
TO VIEW THE DVDS IN OPEN COURT
PURSUANT TO BRACEY v GRAMLEY
520 U.S. 899 (1997), SCHLUPI v DELA
503 U.S. 298 (1995).

NEVERTHELESS, THE DISTRICT
COURT DENIED RELIEF, SEE,
Caswell v Racetti 2014 WL1278942
(WONY)

Appeal of 60(b) Motion:

THAT BASED UPON THE ABOVE
MENTIONED, PETITIONER APPEALED THE
DENIAL OF THE 60(b) MOTION CITING
U.S. v. RADDATZ 447 U.S. 667 (1980),
GONZALEZ v. CROSBY 545 U.S. 524
(2005), BUCK v. DAVIS 137 S. Ct. 759
(2017).

REMAND:

THAT ON Sept. 29, 2014, THE SECOND
CIRCUIT REMANDED THE 60(b) MOTION
HOLDING IN RELEVANT PART THAT:

"THE DEFECTIVE APPELLATE COURT
RECORD BE REVIEWED AGAIN."

Accordingly, after exhaustion
of a state court appeal, ~~see~~
People v Caswell 189 AD3d 2153
(4 Dept. 2020), the district court
again denied relief ruling that:
1) The DVDs, "Pe. Exs. #9, #22"
were irrelevant to Petitioner's
claims of innocence. The decision
was made without ever seeing
the DVDs in clear violation of
Brady v Gramley 520 US 899 (1997),
Schlup v Delo 503 US 298 (1998)

IN REGARD TO THE FOUR
UNCONSTITUTIONAL SENTENCES,
THE DISTRICT COURT RULED THAT
SAID ISSUES ARE "NOT COGNIZABLE"
REGARDLESS OF THIS HON. COURT'S
HOLDING IN LACKAWANNA v COSS
522 U.S. 394 (2001).

REGARDING THE DEPRIVATION
OF A COMPLETE APPEAL RECORD,
THE COURT HELD THAT SINCE YOUR
PETITIONER RECEIVED COPIES OF
ALL EXHIBITS DURING THE TRIAL,
THAT THE RESPONDENTS WERE NOT

REQUIRED TO PROVIDE COPIES
OF SAID EXHIBITS FOR THE
PRO ~~BE~~ APPEAL REGARDLESS
OF APPELLATE COURT ORDER, OR
THE FACT THAT SAID EXHIBITS
WERE LOST/CONFISCATED PRIOR
TO THE APPEAL, SEE POINT I,
(SUPRA).

POINT III

DID PETITIONER DEMONSTRATE
WITH CLEAR AND CONVINCING
EVIDENCE THAT THE JUDGMENT
OF CONVICTION AND SENTENCE
WAS NOT SUPPORTED BY THE
RECORD PURSUANT TO THE 28
U.S.C. § 2254(e)(1).

PETITIONER ATTACHED COPIES
OF ALL RESPONDENTS SENTENCING
EXHIBITS (OBTAINED PURSUANT
TO CASWELL v GREEN et al. 424 FED.
APPX. 44) ALONG WITH A COPY
OF SAID PRO SE APPEAL RECORD
R-333-60 DEMONSTRATING PURSUANT
TO THE 28 U.S.C. § 2254(e)(1) THAT:

1) THAT STATE COURTS
DECISIONS WAS NOT SUPPORTED
BY THE RECORD.

2) THAT ALL SENTENCES
IMPOSED WERE ILLEGAL AND

UNCONSTITUTIONAL, SEE, People
AFFIRMATION ATTACHED HERETO
AS APPENDIX G.

NEVERTHELESS, RELIEF WAS
DENIED IN CLEAR VIOLATION OF
THIS HON. COURT'S HOLDINGS,
SEE, KEELEY v TAMAYO-REYES
504 U.S. 1 (1992), SUMMER v
MATE 455 U.S. 591 (1982),
CHRISTOPHER v HARBURG 538
U.S. 403 (2002)

Conclusion

FOR ALL THE REASONS STATED
HEREIN, AS WELL AS THOSE

REFLECTED IN THE ATTACHED
PLEADINGS, PETITIONER PRAYS
THAT CERTIORARI BE GRANTED
AND FOR THE GRANTING OF ANY
FURTHER RELIEF JUST AND PROPER

DATED: Sept. 20, 2022

Reggie Caswell
28 USE 81746
REGGIE CASWELL
#06B1117
COXSACKIE C.F.
11260 Route 9W
COXSACKIE, NY 12051-0999