

In The
Supreme Court of the United States

Adelbert H. Warner, II,
Petitioner,

v.

K. Zook, Warden,
FCI Seagoville,
Respondent.

Case No. 22-5756

PETITION FOR REHEARING

I, Adelbert H. Warner, II, an innocent man who has essentially been sentenced by this Court to death for crimes I did not commit, acting pro se, herewith petitions this Court under Supreme Court Rule 22(2) for rehearing, reconsideration, of its choosing to deny my petition for a writ of certiorari for an order ordering the Fifth Circuit Court of Appeals to start honoring and following this Court's Schlup v Delo, 513 US 298 (1995), actual innocence exception to bars on successive habeas corpus application/petitions.

As reasons for reconsideration of the Court's denying me the redress I sought from this Court, I provide the following:

I. THIS COURT HAS, IN EFFECT, SENTENCED ME TO DEATH.

This Court has, in effect, sentenced me to death by denying my petition for a writ of certiorari and the redress I sought with it. That occurs because this Court's denying my petition for a writ of certiorari serves to deny me relief in what my research has taught me is my last option (avenue) to relief through the legal system for being, as I prove in the copy of my application for habeas relief included with my petition to this Court, an innocent man falsely convicted with provably fabricated evidence produced by a police officer who is provably corrupt, and the string of violations of the Constitu-

tion and laws of the United States that the fabricated evidence led to, and, therefore, this Court has made ending my life my only remaining, viable option to get relief from an unconstitutional, illegal criminal sentence, a purposeless and needless imposition of pain and suffering because I cannot get relief from the courts of the U.S. judiciary that I have sought it from, which makes it necessary for me to have to resort to that option to bring an end to punishments (psychological tortures) which I cannot endure much longer — living in the prisons I have been in, which are a little safer than most, but still not totally safe, has been very difficult for me, becoming harder, and harder for me to endure.

I would prefer to live, and be reunited with my family, but having to live in the horrible living situation that is inherent in imprisonment, and being kept from my family is, to me, torture, and makes my life not worth living. Ending my life to bring an end to the torture I have been put through for over 14½ years for crimes I did not commit, and would have to continue to endure for about 11 more years otherwise¹ is, to me, a rational means to bring an end to torture by the Government if no court will grant me the relief from imprisonment I need and am entitled to.

No mental health professional, nor any other person, not even my family who care about me, want me home with them, and prefer for me to live, have been able to convince me that my "give me liberty, or give me death" belief is irrational, or that it is more rational, and better, to let the Government continue to torture me and keep me away from my family for about 11 more years for crimes I did not commit, and live thereafter as a "convicted sex offender"

1 That time is for a 30-year prison sentence, minus projected statutory good conduct time, and is set to be followed by lifetime supervised release, sex offender registration and restrictions on living, working, and activities. I was also subjected to an \$11,580 fine I pay monthly while in prison.

than it is to end my life to end the torture.

Recently, Federal Bureau of Prisons psychologists at FCI Seagoville, Texas who know of my preference to end my life for relief from prison have told me that my extreme difficulties enduring prison, and my preference to die if I cannot get habeas corpus relief from the U.S. judiciary is due to irrational thinking brought on by my Borderline Personality Disorder (BPD), a mental illness that is, in part, defined by a willingness of the sufferer to commit suicide to bring an end to situations he/she finds intolerable, which is how I feel about being imprisoned for crimes I did not commit, and being kept from my family, my "guardians" and psychological support network.

BORDERLINE PERSONALITY DISORDER

Having Borderline Personality Disorder does not make me stupid. In fact, I am fairly intelligent, but BPD does result in thoughts, behaviors, perceptions, and actions that "normal" people believe are irrational, such as suicide, but can be learned to be managed by the sufferer in most situations — extreme stress, like is found constantly in a prison environment, can lead to failures to manage the irrational thoughts, behaviors, perceptions, and actions.

As such, I do understand that I have a right to relief from my imprisonment; that the Schlup v Delo, 513 US 298, case permits and encourages granting me relief; and that being denied relief is a cruelty inflicted by the U.S. judiciary; a cruelty that is, along with the daily tortures I experience, driving me to suicide for relief therefrom.

Borderline Personality Disorder (BPD) is a mental illness that severely impacts a person's ability to regulate their emotions. This loss of emotion control can increase impulsivity, affect how a person thinks, and feels about

themselves, and negatively impact their relationships with others. Effective treatments are available to manage the symptoms of BPD.

Exhibits with Appendix H with my Petition For A Writ Of Certiorari, for §VI(A)(3) of Appendix H, prove that I have been diagnosed with BPD, and that I have, and do resort to suicide for relief from situations I find intolerable.

For BPD sufferers, suicide is an impulse that can occur during loss of emotional control, or control of rational thinking. For people like me with BPD, the need to escape, get relief from intolerable situations becomes so overwhelming that no thinking or planning happens. BPD sufferers attempt suicide the way crack addicts do crack, habitually and impulsively, using death to alleviate that compulsion and pain.

I used to be chronically suicidal. Always straddling the line. Thanks to Cognitive and dialectical behavior therapies, suicide is now like a cyanide capsule for me, in my pocket just in case I cannot tolerate a situation any more, and suicide is the only means I can think of for relief. I have, for about 11 years been able to manage my thoughts enough to endure prison as long as I had hope that I would get judicial relief from it with proving that I have been falsely, wrongly convicted with fabricated evidence and a string of constitutional violations; that my guilty plea conviction is a sham, a fraud on the United States perpetrated by a court appointed defense attorney who became guilty of subornation of perjury when he successfully coerced me, and coached me in open court to falsely plead guilty to crimes I did not commit; crimes framed by fabricated evidence.

But, if this Court will not grant me relief in this case, then I have run out of hope as I have run out of options for judicial relief from imprisonment, and therefore must take the cyanide pill for relief.

I almost ended my life when I got this Court's order saying only that my petition for a writ of certiorari was denied, reflecting that this Court chose to be deliberately indifferent to the injustice of incarcerating an innocent, mentally disordered man and the Government's subjecting him to what is to him torture.

II. THIS COURT'S DENYING MY PETITION CONFLICTS WITH STANDARDS CREATED BY JUSTICES OF THIS COURT.

I am an innocent, psychologically impaired 52-year-old man who was a productive contributing member of society before I was falsely convicted of offenses I did not commit. And this Court's denying my last avenue and hope for judicial relief treats my right to habeas corpus relief, my right to release from illegal custody, see, e.g., Preiser v Rodriguez, 411 US 475, 484, 485 (1973)², as if it is a gift that can be withheld or bestowed at the discretion of the courts. The lower courts have done that as well, and each courts' doing that conflicts with Eighth Amendment standards set by justices of this Court.

In Florida v Hall, 188 LEd2d 1007, 1016 (2014), it was decided that the Eighth Amendment's prohibiting "cruel and unusual punishments," "protecting even those convicted of heinous crimes,... reaffirms the duty of the government to respect the dignity of all persons." And "[t]o enforce the Constitution's protection of human dignity, this Court looks to the 'evolving standards of decency that mark the progress of a maturing society'" (citation omitted).

2 "The essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and the traditional function of the writ is to secure release from illegal custody." Habeas corpus is "available to effect discharge from any confinement contrary to the Constitution of fundamental law."

Realistically, denying an innocent, psychologically impaired (mentally disordered) man relief from unconstitutional, illegal, purposeless imprisonment, and keeping him in that situation, a situation of government inflicted torture, disrespects his human dignity, and does not reflect any evolving standards of decency that mark the progress of a maturing society. In fact, it seems to reflect devolving standards of decency of an immaturing society that considers its citizens disposable.

In Appendix H with my Petition For A Writ Of Certiorari I proved that due to BPD, I was easily coerced into providing a false confession, and providing a false guilty plea to fabricated evidence. That parallels this Court's recognition in Florida v Hall, 188 LEd2d, at 1017, that persons with "intellectual disabilities," which should include those with "psychological disabilities," "face 'a special risk of wrongful [conviction]' because they are more likely to give false confessions, are often poor witnesses, and are less able to give meaningful assistance to their counsel." (citation omitted).

Yet, it appears that despite that recognition, this Court, and all of the lower courts that I have applied to for habeas corpus relief, have chosen to deny me relief, and keep an innocent, mentally disordered man in a situation that he should not be kept in.

Cf. that to what was said in the dissent in Gilbert v United States, 640 F3d 1293, 1337 (11th Cir 2011), when the Eleventh Circuit Court of Appeals reversed a decision to give a man relief:

"The government's suggestion, at en banc, that an application for clemency by Gilbert might be favorably received by the government mocks our constitutional guarantees by implying that they are gifts that may be bestowed or withheld at the whim of the [government].

I recognize that without finality there can be no justice. But it is equally true that, without justice, finality is nothing more

than a beureaucratic achievement. Case closed. Move on to the next. Finality with justice is achieved only when the imprisoned has had a meaningful opportunity for a reliable judicial determination of his claim.

A judicial system that values finality over justice is morally bankrupt."

III. MY ILLEGAL IMPRISONMENT IS TORTURE.

My illegal imprisonment is, to me, torture because:

- 1.) I know that I am innocent, and should not, therefore, be imprisoned;
- 2.) Being imprisoned keeps me from being with my family who want and need me home, as is expressed in letters they provided that were included with my Petition For A Writ Of Certiorari to this Court. My parents are in their 70s (my father will be 75 Jan 9, 2023, and my mother is 72 and suffereing from congestive heart failure and osteoperosis — if I do not get out of prison soon, rather than having to stay in, unjustly, for another 11 years, I will probably never get to spend any of their remaing time with them before they die.)
- 3.) Being imprisoned forces me to live in a very crowded environment. I live in a 5 man room in a 286 man unit. There are numerous inmates in that housing unit, and the others at FCI Seagoville, Texas that are self-centered inconsiderate jerks; bullies; loud and obstreperous; and believe that violence is the appropriate and mandatory response to every disagreement, being "disrespected" as they view it, and to get what they want. I have been assaulted numerous times (8 times during my 2½ years at FCI Elkton, Ohio); had some of my property stolen. Being incarcerated as a "sex offender," I am harassed frequently by non-sex offenders I have to live with. I am harassed by them also for being a homosexual. I am teased and bullied

due to my Borderline Personality Disorder, and my losses of control of my emotions when the prison stresses get to me. FBOP Program Statement 5310.16 recognizes that "Personality Disorders" are "classified as serious mental illnesses, especially if the condition is sufficiently severe, persistent, and disabling." The program statement also provides that "[d]ue to their potential vulnerability in a correctional setting, inmates with mental illness may require special accommodations in areas such as housing, discipline, work, education, designations, transfers, and reentry to ensure their optimal functioning. The Bureau uses a team approach to ensure the needs of inmates with mental illness are identified and addressed.... The [] team identifies potential concerns affecting inmates with mental illness in a correctional environment, such as housing problems [and] bullying or abuse by other inmates." However, despite that recognition, FCI Seagoville, the prison I am at, does NOT follow the purposes of that recognition, which is to "identif[y] strategies and supports to mitigate potentially negative interactions between inmates with mental illness and the correctional environment, such as: housing accomodations [and] meaningful ways to spend time (work, supported employment, recreation, ...)." As for the second part of that, FBOP staff have recently increased my "Financial Responsibility Program" payments in a manner that takes away a Hobby Craft activity from me that helps me occupy my time and manage my BPD symptoms, telling me that collecting the fine I owe is more important to the FBOP than my mental health is. When I received \$100.00 from my sister to order yarn to engage in the Hobby Craft crocheting program, my unit manager increased my Financial Responsibility Program payments to take that money from me, preventing my using it to order yarn. As for the first part, "housing accomodations;" FCI Seagoville does not set up its housing unit populations

to prevent potentially negative interactions between inmates because, as I agree, it is not actually possible to do that because some of the negative interactions are due to the mental illnesses of other mentally ill inmates.

4.) I am beginning to have health issues that the FBOP does not want to treat because they are not "bad enough," such as an inguinal hernia, and digestive issues that cause me much discomfort and require me to have to take Omeproazole daily to make the discomforts bearable. The fact that such is happening to me is supported by facts in the "civil contempt" ruling of Judge Roy B. Dalton of the U.S. Dist. Ct. for the Middle Dist. of Florida in United States v Bardell, 2022 US Dist Lexis 181785 (MD Fl Oct. 4, 2022), regarding his granting compassionate release to Bardell because the FBOP was refusing to treat his colon cancer, and its doing so resulting in him dying nine days after he was returned to his parents.

5.) I am very tired of the horrible diet and food that I am served by FCI Seagoville, which was made worse when the increase of my Financial Responsibility Program payment deprives my being able to get better, replacement food from the prison commissary.

6.) I cannot take the staffs' psychological abuses any more; being treated as if I am garbage; as if I am not worthy of any dignity and fairness. Not all of the staff are like that, but, many of them are at FCI Seagoville; acting as if their jobs include the duty to subject us to psychologocial abuses for our crimes, especially those convicted of sex offenses; abuses that include taking personal property we are allowed to have; stopping us at random to harass us in a variety of ways — I have been harassed for just trying to report to my job when I was told to — and subjecting us to group punishments for the infractions of a few just because the staff

do not want to deal with the process of punishing the individuals, or when the staff are unable to identify the individual(s) guilty of the offense, e.g. turing off the T.V.s because some inmates would not obey an order, or when contraband is found in a "common area."

7.) I am tired of the physical discomforts of prison: uncomfortable beds; environmental controls that do not work correctly, as such it is rarely comfortable in the housing units and indoor recreation areas, either being too hot or too cold (my housing unit is very cold in the winter months, and as I type this, I am sitting in an unheated law library that is, due to the cold weather at this time, about 50°F); being sick frequently due to the ease of which germs and viruses are spread, despite my precautions of frequent hand washing, and doing my best to avoid being near others; the frequent breakdowns of our facilities, e.g. toilets, urinals, and showers that are frequently clogged, the roof of my housing unit leaking water when it rains, flooding floors in the common areas, and having to wait in line to use the restroom facility; and having to live with the abundant smoking in my housing unit that is illegal and permitted by the staff — I have asthma and Chronic Obstructive Pulmonary Disease, so the smoking affects me badly, causing a lot of problems with my asthma and COPD. I am also tired of having to live with the other criminal activity that the staff do not even try to do anything about, such as the cell phone useage; the dealing and use of a variety of illegal drugs; and the making and consumption of homemade alcoholic beverages, which often makes violent inmates more violent.

I need for the tortures I am experiencing to end, and if this Court will not reconsider its decision to choose to simply not want to deal with my case, then it has, through its inaction, sentenced me to death; made it necessary

for an innocent, mentally disordered man to have to resort to suicide to get the relief from imprisonment that he needs, is entitled to, and does deserve. Unless, of course, convicting innocent, mentally ill people with fabricated evidence and a string of violations of their constitutional and legal rights then ignoring that when it is presented in the courts is now permissible in the United States, as if such people were never entitled to the Constitution's guarantees meant to protect them, and/or provide redress for such.

Respectfully submitted on November 20, 2022, by



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CERTIFICATIONS

I, Adelbert H. Warner, II, the undersigned pro se litigant, do hereby certify that the included Petition For Rehearing is, in accordance with Supreme Court Rule 44(2), limited to grounds of intervening circumstances of a substantial or controlling effect and/or to other substantial grounds not previously presented, and that my petition for rehearing is presented in good faith and not for delay.

I, Adelbert H. Warner, II, the undersigned, do hereby certify that I served via postage prepaid first class mail a copy of my petition for rehearing upon The Solicitor General of the United States
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001
on November 20, 2022 by depositing it in the inmate mail depository in my housing unit in FCI Seagoville, Texas on that date.

Executed on November 20, 2022 by

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