

22-6103

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

OCT 27 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

SERDAR TATAR[— PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SERDAR TATAR, 61287-066 (pro-se)
(Your Name)

1101 JOHN A. DENIE RD.
(Address)

MEMPHIS TN 39134
(City, State, Zip Code)

na
(Phone Number)

QUESTIONS PRESENTED

I. Whether or not the district court's denial of Mr. Tatar's Motion for relief under Rule 60(d)(3), (b)(3), and (b)(6), for "fraud, and or fraud upon the court, or any other reason that justify relief", was and abuse of discretion, because, the court failed to consider the merits of Mr. Tatar's Brady claims, denying evidentiary hearing, nor performing analysis, and whether the courts decision was based on erroneous conclusion of the law, erroneous fact finding, and the improper application of the law to fact?

II. Whether or not; McQuiggin v. Perkins, 569 U.S. 383 (2013); This Court's Ruling, still good law and whether or not the Appellant's Claim of Actual Innocence Should have been redressed under the Standard[s] relying on Third Circuit's own precedence recognizing PERKINS, supra,?

III. Whether the district court's denial of Mr. Tatar's motion under 18 U.S.C. §3582(c)(1)(A), for reduction of sentence was an abuse of discretion, because the district court legally erred by misunderstanding the breadth of it's authority to grant Mr. Tatar's motion and based it's decision on a clearly erroneous assessment of the evidence?

IV. FINALLY, Whether or not, the PANEL of Judges of the Third Circuit Court of Appeals erred in light of Concepcion v. United States, No. 20-1650?

LIST OF PARTIES

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

[x] 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:

Shain Duka

Eljvir Duka

Dritan Duka

Muhammad Shenewer

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(3rd. Cir. June 6, 2022)(EN BANC DENIED AND MANDATE ISSUED ON 9/7/2022)

APPENDIX B: United States v. Serdar Tatar, 2020 U.S. Dist. LEXIS 205659
(U.S. Dist. Of New Jersey, Crim. No. 07-459[RBK], Nov. 2, 2020).

APPENDIX C: U.S. COURT OF APPEALS ORDER DENYING MR. Tatar's EN BANC
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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

☒ For cases from **federal courts**:

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

☒ reported at 2022 U.S. LEXIS 19568; 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 B to the petition and is

☒ reported at 2020 U.S. LEXIS 205659; 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**:

The date on which the United States Court of Appeals decided my case was 6/6/2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 8/9/2022, and a copy of the order denying rehearing appears at Appendix c.

☐ 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. § 1254(1).

☐ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THE OVERT CONSTITUTIONAL CLAIM'S INCLUDES BUT NOT LIMITED TO THE
FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION;

FIFTH AMENMENT OF THE UNITED STATES CONSTITUTION;

SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION;

EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION;

FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION;

18 U.S.C. § 3582(c)(1)(A)(i),

FEDERAL RULES OF CIVIL PROCEDURE, RULE 60(b).

U.S.S.G. §1B1.13 COMMENTARY NOTE[S].

FIRST STEP ACT OF 2018,, Pub. L. No. 115-391, 132 Stat. 5194. Sec(b)(1).

STATEMENT OF THE CASE

a. Original Proceedings:

Mr. Tatar was arrested on May 7, 2007 on an information/complaint charging him with 'Conspiracy to Murder Members of the United States Military Personell. 18 U.S.C. §§1114-1117. After two and one half months of a trial, a guilty verdict was returned by the anonymous jury as to Count One "Conspiracy" and [NOT GUILTY] verdict as to the Second Count. Other Counts were not directly relevant to the Petitioner however, may have directly affected him in the jury's verdict on finding guilt, and certainly affected him in his sentencing.

The district court sentenced Mr. Tatar to 396 months of imprisonment ; a LIFE SENTENCE OF SUPERVISION, and \$125,000.00 Dollars of restitution. Mr. Tatar also separately faces Deportation charges for when he is finished serving his 396 Months of incarceration.

On the Direct Appeal, the Third Circuit Court of Appeals, AFFIRMED the district court's judgement, cited and published as UNITED STATES v. DUKA, 671 F.3d 329 (3rd Cir. 2011). On June 11, 2012, the Third Circuit denied Writ of Certiorary. Mr. Tatar then filed a petition of Writ of Habeas Corpus, pursuant to 28 U.S.C. 2255, on July 25, 2013 and the district court denied his 2255 motion on Feb. 11, 2016. Mr. Tatar filed a motion for Compassionate Release, filed pursuant to 18 U.S.C. §3582 (e)(1)(A) on or about July 21, 2020 (dist. doc. 489-490), and Order and an opinion of the district court filed denying Tatar's motion on November 2, 2020.

Appellant filed a notice of appeal on December 11, 2020 (dist. doc. 500), for which the court of appeals originally required a filing fee. The court then, permitted Mr. Tatar to proceed in an IFP status. Mr. Tatar, because representing himself pro se, was under the impression that he withdrew his appeal due to lack of ability to pay filing fees, instead filed a reconsideration motion to the district court, for compassionate release and another motion under Rule-60(d)(3), (b)(3), (b)(6). (dist. doc. 502 and 503). Filed on 1-12-2021.

STATEMENT OF THE CASE CONTINUED (2)

b. Mr. Tatar's pro-se Motion for Relief under Rule 60 of the Fed. R. Civ. P.

Appellant filed a pro-se motion for relief under Fed. R. Civ. P., Rule 60(d)(3); (b)(3); and (b)(6). In his Motion he argued that the government acted in bad faith committing a Brady Violation, and an 'Outrageous Government Conduct' claim, relying on PERKINS v. MCOUGGIN, 133 S.Ct. at 1931, because the U.S. Attorney's committed fraud upon the court, denied defendant's right to a fair trial, and Due Process in violation of the United States Constitution under 5th., 6th., and 14th. Amendments.

The agent[s], amongst others, Jay Rycek and Sean Brennan, committed violation of Appellant's rights by omitting, withholding, destroying their rough notes of their interview/interrogation of the Appellant on 12/7/2006. The agent[s] either destroyed these rough notes in [bad faith], failed to preserve or turn over all written recordings of the said date above, and the events leading up to that date. The Appellant was a suspect during this period, and he was "being investigated" by the authorities. The two agents named above, interrogated defendant without an attorney present, without warning against self incrimination, and Mr. Tatar witnessed the agents taking notes, from which, a final FBI 302 Report[s] were later generated. The prosecutors denied the existence of these 'Rough Notes' even though Agent Rycek testified affirming the existence of the notes by his testimony while on a cross-examination. (Tatar's Trial Transc. see pg's 4743-4759)

Defendant, Serdar Tatar's attorney of record at trial, refused to represent his version of the events, failed to impeach agent's about the rough notes, and presented no evidence on Mr. Tatar's behalf, and prevented Mr. Tatar from testifying on his own behalf in the most critical stages of the trial. The government knew or should have known rough notes contained exculpatory evidence, crucial to the defendant's trial defense, the very reason the government is accused of Outrageous Conduct.

Mr. Serdar Tatar argued that the rough notes contained evidence which proved his actual innocence, asked that the notes be disclosed, and he
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STATEMENT OF THE CASE CONTINUED (3)

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reviewd by the district court and order for new trial.

c. Mr. Tatar's motion for Compassionate Release under 18 U.S.C. § 3582 (c)(1)(A)

Mr. Tatar argued in his appeal that the district court abused it's discretion in two ways when it denied his motion for compassionate release. First, the court misunderstood the breadth of its authority to grant Mr. Tatar's motion by restricting it self to analyzing the motion by mirroring deference to U.S.S.G. 1B1.13, and its application notes even though that policy statement has yet to be updated to reflect statutory revisions. Specifically, Mr. Tatar argued the court should follow the Second Circuit's holding, that district court has discretion to "consider full slate of extraordinary and compelling reasons that an imprisoned person may bring". United States v. Brooker, 976 F.3d 228,237 (2d Cir. 2020). Furthermore, he argued that the district court abused it's discretion by basing it's decision on a clearly erroneous assessment of the evidence. (Def. Appl. Brief p.16, 41-42) Particulary, the court clearly erred in finding that COVID 19 did not create a higher risk for severe illness or death, and that Mr. Tatar did not face a higher risk for severe illness because of his health conditions. That is, TB+, TB medication (immune suppressants), lung damage, untreated obstructive sleep apnea, and clearly erred by manufacturing connections of evidence that did not exist or irrationally provided distorted version of the facts of Mr. Tatar's record. (Def. Appl. Brief p.16, 41-42)..

REASONS FOR GRANTING THE PETITION

This petition for a Writ of Certiorari should be granted because, the issues being raised involves matters that effects individuals nationwide in a way that honesty and integrity of the Justice Department and our Judicial Branch is in question. Our society is increasingly losing trust in the structure of the our governace, especially concerning the imbalance of the higher rates of prosecutions which takes place due to systemically discriminatory, and politically motivated investigative powers, namely the FBI, JTIF, and others.

This case involves an individual, Serdar Tatar, who in an effort to assist lawenforcement in stopping an act of terrorism, contacted the Philadelphia Police, Sean Dendridge, and reported a suspicious individual, Mahmoud Onar, in the name of National Security. Mr. Dendridge then contacted the FBI, and instructed Mr. Tatar to continue to communicate with Mr. Onar to get more information concerning a possible act of terrorism. The FBI/JTIF showed up after three weeks of Mr. Tatar having kept contact with Mr. Onar only to interrogate Mr. Tatar, because little that he knew, Tatar was under an investigation himself, and the individual whom he reported was nothing other than an FBI Informant (Mahmoud Onar\CW+1). Mr. Tatar, informed the two agents, namely agents Jay Rycek and Sean Brennan, about the events between him and Onar, and also informed them of another individual named Muhammad Shnewer, and provided his telephone number to them and Mr. Tatar watched agent Sean Brennan write it down. Tatar provided Mr. Shnewer's information because he believed that he was involved with Onar.

Mr. Tatar was arrested 5 months later on May 7, 2007. He, during the course of pre-trial detention, informed and instructed his trial attorney Richard Sparaco concerning the "Rough Notes" and that this information was intentionally omitted from the records. Mr. Spraco failed to provide assistance to Mr. Tatar by impeaching the agent's concerning the rough notes, failed and prevented Mr. Tatar from taking the stand on his own defense, despite his ardent desire to do so, by way of coercion. The prosecutors knew or should have known, and very likely intentionally omitted the crucial exculpatory evidence of Mr. Tatar providing Mr. Shnewers name and contact information to Agent's Brennan and Rycek on 12/7.2006, because the government facelessly lied to the members of the jury, relied on purjured testimony of only one of the two agent's. But for all of these obvious MISCARRAGE OF JUSTICE, and GOVENMENT'S OUTRAGEOUS MISCONDUCT, and INEFFECTIVE ASSISTANCE OF DEFENSE COUNSEL, the outcome of the proceedings could have had a different outcome.

REASONS FOR GRANTING THE PETITION

In UNITED STATES v. KEMP, 2022 U.S. LEXIS 2835 (2022), Supreme Court Justice, Honorable Sotomayor issued a secondary Concurring opinion pointing out two areas. In relevant part ("I join the Court's opinion holding that the term 'mistake' in Federal Rules Of Civil Procedure 60(b)(1) encompasses a judges mistake of law... First, [nothing in it casts doubt on the availability of rule 60(b)(6) (to reopen] a judgement in extraordinary circumstances], including changes in controlling law"). Mr. Tatar's petition fits squarely with this extraordinary circumstances because, he presented clear evidence from the record, that the agent's rough notes existed, that the ~~notes were~~ exculpatory nature of the specific evidence was withheld, the government relied on a false testimony of an agent, and argued to the members of the jury in the entire trial that Tatar did not provide his 'accomplices' information in the so called conspiracy. Based on MCQUIGGIN v. PERKINS, 569 U.S. 383 (2013); SCHLUP v DELO, 513 U.S. 298 (1995); and the case precedents in the Third Circuit Court of Appeals i.e. REEVES v. SCI, 897 F.3d 154 (3d Cir. 2018), and all of its heirs and progeny have clearly concluded that Brady, violation claims in showing colorable case of "ACTUAL INNOCENCE" is sufficient extraordinary circumstance to provide tolling and overcome deficiencies in a petition filed by a pro-se litigant. (because we have concluded that Reeves has identified evidence that may show actual innocence that was [not] presented to the jury], we will vacate and remand for further proceedings"). Mr. Tatar's trial lawyer could not [have provided effective assistance with the most crucial defense evidence is intentionally withheld by the government, nevertheless, Mr. Richard Sparaco prevented his client from testifying on his own behalf, presented no evidence, and refused to represent Tatar's version of the events, all of which resulted in the unjust conviction of Mr. Tatar.

Not granting Mr. Tatar's petition based on the forgoing would continue to perpetuate the clear "Miscarriage of Justice", and it would be granting the lower courts to not even provide a required 'standard of review' to individuals whose Brady violation claims go without review of the merits. For these reasons it would be appropriate to grant Mr. Tatar's petition for Writ of Certiorary when it comes to his Rule 60(b) motion.

REASON FOR GRANTING THE PETITION WHEN IT COMES TO

TATAR'S REQUEST FOR COMPASSIONATE RELEASE UNDER 18 U.S.C. §3582(c)(1)(A)

Finally, Tatar respectfully requests that his petition be granted because, his petition

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REASONS FOR GRANTING THE PETITION CONTINUED(PAGE3)

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for Compassionate Release was denied by the district court in abuse of his discretion. The district judge relied on and deferred to the advisory U.S. Sentencing Guidelines §1B1.13 and its application notes in limit to his own authority that which many court's around the nation, including but not limited to all Federal Circuit courts, with the exception of the Eleventh Circuit, have held that the U.S.S.G. 1B1.13 and or its application notes did not apply to motions filed by inmates. Because the passage of the First Step Act of 2018, modified the statute in which the BOP was removed from the gatekeeper position due to their failure to properly manage the 'Compassionate Release Program'.

The district Court's denial of Mr. Tatar's motion for compassionate release was denied based on the misunderstanding and misapplication of the law, and Third Circuit Court of Appeals erred by not applying the correct law and remanding back to the district court for further proceedings.

The question unanswered remains, [w]hether or not the district court abused it's discretion because the court legally erred by misunderstanding the breadth of its own authority to grant Mr. Tatar's motion and based its decision on a clearly erroneous assessment of the evidence? The court of appeals have failed to answer the question in it's denial of Tatar's appeal, and failed to apply the precedential standards in its respective Circuit decisions that establish the basis of Mr. Tatar's claims.

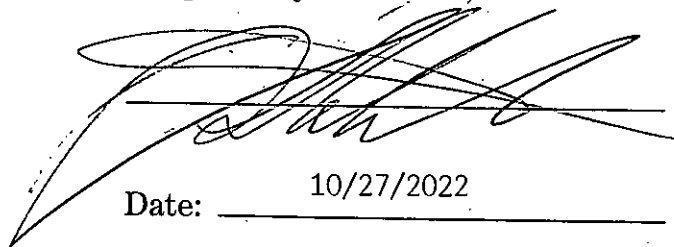
Mr. Tatar have suffered the COVID-19 infection and was near deathly ill in his prison cell only about two weeks after the denial of his compassionate release motion. He faces the remainder of his sentence, a 125.000 Dollars in restitution, a life time of supervised release, and ironically faces deportation charges pending upon the completion of his 396 months of sentence. When it comes to the application of [SUFFICIENT BUT NOT GREATER THAN NECESSARY] under 18 U.S.C. 3553(a), the above sentence in Tatar's case was absolutely excessive beyond what is normal, and there exists large gap of sentencing disparities, which in and of it self should have caused the court of appeals to remand in the case of Tatar.

For all the forging reasons, Mr. Tatar, respectfully requests that his petition be granted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "P. H. H.", written over a horizontal line.

Date: 10/27/2022