

NO. **22-6370**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT, U.S.

ADAM LIMBRICK,

PETITIONER,

v.

RAYMOND MADDEN, WARDEN,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER THE COURT OF APPEALS FOR THE NINTH CIRCUIT
RENDERED A DECISION IN CONFLICT WITH CONTROLLING
PRECEDENT OF THE UNITED STATES SUPREME COURT
ANNOUNCED IN MILLER-EL V. COCKRELL, 537 U.S. 322, 336-37
(2003); COPPEDGE V. UNITED STATES, 369 U.S. 438, 435(1962),
AND CONTRARY TO 28 U.S.C. § 2253(c)(2) WHEN IT DENIED
PETITIONER'S REQUEST FOR A CERTIFICATE OF APPEALABILITY
FROM THE DISTRICT COURT'S DENIAL OF PETITIONER'S ACTUAL
INNOCENCE HABEAS CORPUS CLAIM ?

PARTIES

THE PETITIONER IS ADAM LIMBRICK, IN THIS ACTION AND PROCEEDING
PRO-SE.
THE RESPONDENT IS RAYMOND MADDEN, WARDEN.

TABLE OF AUTHORITIES CITED

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CASES

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1 DECISIONS BELOW

2 THE DECISION FROM THE UNITED STATES COURT OF APPEALS FOR THE
3 NINTH CIRCUIT UNREPORTED AND A COPY IS ATTACHED HERETO AS APPENDIX-A.
4 THE ORDER FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
5 OF CALIFORNIA IS NOT REPORTED AND A COPY IS ATTACHED HERETO AS APPENDIX-B.

6
7 JURISDICTION

8 THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH
9 CIRCUIT WAS ENTERED ON SEPTEMBER 29, 2022. PLUS, THE UNITED STATES COURT
10 OF APPEALS FOR THE NINTH CIRCUIT "HAS DECIDED AN IMPORTANT FEDERAL
11 QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT,"
12 (SUPREME COURT RULE 10(c)); THE JURISDICTION OF THIS COURT IS INVOKED UNDER
13 28 U.S.C. § 1254(1).

14 CONSTITUTIONAL AND STATUTORY
15 PROVISIONS INVOLVED

16 THIS CASE INVOLVES CONSTITUTIONAL AND STATUTORY PROVISIONS FOR
17 HABEAS CORPUS APPEALS. SEE, E.G., MILLER-EL V. COCKRELL, 537 U.S. 322, 336-37
18 (2003) (THE QUESTION PRESENTED IN COA IS "ADEQUATE TO DESERVE ENCOURAGE-
19 MENT TO PROCEED FURTHER"); COPPEIDGE V. UNITED STATES, 369 U.S. 438, 445 (1962)
20 (IN DETERMINING THE STANDARD OF WHETHER A HABEAS APPEAL IS TAKEN IN
21 "GOOD FAITH" "MUST BE JUDGED FROM AN OBJECTIVE STANDARD" WHERE A
22 PETITIONER "SEEKS APPELLATE REVIEW OF ANY ISSUE NOT FRIVOLUS"); NAPUE V.
23 ILLINOIS, 360 U.S. 264, 268-269 (1959) ("IT IS ESTABLISHED THAT A CONVICTION OBTAINED
24 THROUGH USE OF FALSE EVIDENCE, KNOWN TO BE SUCH BY REPRESENTATIVES OF THE STATE,
25 MUST FALL UNDER THE FOURTEENTH AMENDMENT," AND "THE SAME RESULT OBTAINS WHEN
26 THE STATE, ALTHOUGH NOT SOLICITING FALSE EVIDENCE, ALLOWS IT TO GO UNCORRECTED
27 WHEN IT APPEARS." "INCLUDING FALSE TESTIMONY, TO OBTAIN A TAINTED CONVICTION,
28 IMPLICIT IN ANY CONCEPT OF ORDERED LIBERTY, DOES NOT CEASE TO APPLY MERELY BECAUSE

1 THE FALSE TESTIMONY GOES ONLY TO THE CREDIBILITY OF THE WITNESS"/ CITATIONS
2 AND INTERNAL CITATIONS OMITTED.)); UNITED STATES V. AGURS, 427 U.S. 97, 103 (1976)
3 /CONVICTION MUST BE SET ASIDE IF THERE IS ANY REASONABLE LIKELIHOOD THAT THE
4 FALSE TESTIMONY COULD HAVE AFFECTED THE JUDGMENT OF THE JURY),

5 A CERTIFICATE OF APPEALABILITY SHOULD ISSUE UNDER 28 U.S.C.
6 § 2253(c)(2) WHERE THE APPLICANT HAS MADE A " SUBSTANTIAL SHOWING OF
7 THE DENIAL OF A CONSTITUTIONAL RIGHT." (Id.). 28 U.S.C. § 2244(B)(3)(2) / THE
8 GATEKEEPER PROVISION); SUPREME COURT RULE 10(c) / " HAS DECIDED AN IMPORTANT
9 FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS
10 COURT").

11 FINALLY, SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000) (" A VALID CLAIM
12 OF THE DENIAL OF A CONSTITUTIONAL RIGHT "); MURRY V. CARRIER, 477 U.S. 478,
13 496 (1986) (" A CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE
14 CONVICTION OF ONE WHO IS ACTUALLY INNOCENT "); SCHULP V. DELO, 513 U.S.
15 298, 327 (1995) / HELD THAT A PETITIONER COULD DEMONSTRATE ACTUAL INNOCENCE
16 BY SHOWING " THAT IT IS MORE LIKELY THAN NOT NO REASONABLE JUROR WOULD
17 HAVE CONVICTED HIM IN THE LIGHT OF THE NEW EVIDENCE ")

18 STATEMENT OF THE CASE

19 IN THIS INSTANT ACTION, PETITIONER ASSERTS ACTUAL INNOCENCE
20 AND FACTUALLY INNOCENT DUE TO THE MATERIAL PERJURED TESTIMONY FROM
21 A HOSTILE WITNESS WHOM LATER RECANTED, BUT HIS FALSE TESTIMONY HAS YET
22 TO BE CORRECTED. AND, PETITIONER HAS MADE A SHOWING OF A CONSTITUTIONAL
23 RIGHT UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES
24 CONSTITUTION REGARDING THE FALSE TESTIMONY. PETITIONER ERRED BY NOT
25 FIRST REQUESTING AUTHORIZATION FROM THE COURT OF APPEAL (9TH CIR.) WHICH
26 THE DISTRICT COURT HAD PROCEDURALLY BARRED THE ACTION WITHOUT PREJUDICE,
27 AND THE NINTH CIRCUIT HAD ADOPTED.

28 ///

ARGUMENT IN SUPPORT OF
GRANTING CERTIORARI

THIS CASE IS IMPORTANT FOR THE ISSUE IT RAISES AS FOR STATE PRISONER'S WHO CLAIM ACTUAL AND FACTUAL INNOCENCE AND SHOWN A CONSTITUTIONAL RIGHT VIOLATION.

A DISTRICT OR CIRCUIT JUDGE MAY ISSUE A COA ONLY IF THE PETITIONER HAS MADE A "SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT." 28 U.S.C. § 2253(c)(2).

HERE, THE NINTH CIRCUIT DECISION PROCEDURALLY BARRED PETITIONER'S COA PURSUANT TO THE GATEKEEPER PROVISION 28 U.S.C. § 2244 (B)(3)(A). (APPENDIX-A). IN THE ORDER, THE NINTH CIRCUIT JUDGES STATED PETITION DID NOT STATE "A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT." SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000). THE SUPREME COURT HAD MADE IT CLEAR THAT PETITIONER'S NEED NOT SHOW THAT THEY WOULD PREVAIL ON THE MERITS OF THE APPEALS SOUGHT, BUT RATHER, NEED ONLY DEMONSTRATE THAT THE QUESTIONS ARE "ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER." MILLER-EL, 537 U.S. AT 327. MOREOVER, THE SUPREME COURT HAS FURTHER MADE ABSOLUTE THAT IN DETERMINING THE STANDARD OF WHETHER A HABEAS APPEAL IS TAKEN IN "GOOD FAITH" "MUST BE JUDGED FROM AN OBJECTIVE STANDARD." COPPEDGE V. UNITED STATES, 369 U.S. 438, 445 (1962). "GOOD FAITH" IS DEMONSTRATED IN THE CASE AT BAR WHERE PETITIONER "SEEKS APPELLATE REVIEW OF ANY ISSUE NOT FRIVOLOUS" (Id.).

FURTHERMORE, WITH THAT STATED, PETITIONER'S CONVICTION IS A RESULT OF MATERIAL FALSE TESTIMONY, AND THE STATE REPRESENTATIVES FAILED TO MAKE CORRECTIONS AFTER BEING ALERTED TO THE RECAPITATION. SEE, E.G., NAPUE V. ILLINOIS, 360 U.S. 264, 268-270 (1959); SEE Id., AT 268 ("(A) CONVICTION OBTAINED THROUGH USE OF FALSE EVIDENCE, KNOWN TO BE SUCH BY REPRESENTATIVES OF THE STATE, MUST FALL UNDER THE FOURTEENTH

1 AMENDMENT (CITATIONS OMITTED.)). "THE SAME RESULT OBTAINS WHEN
2 THE STATE ALTHOUGH NOT SOLICITING FALSE EVIDENCE ALLOWS IT TO GO
3 UNCORRECTED WHEN IT APPEARS" (Id. (CITATIONS OMITTED.)); UNITED
4 STATES V. AGURS, 427 U.S. 97, 103 (1976) (CONVICTION MUST BE SET ASIDE IF
5 THERE IS ANY REASONABLE LIKELIHOOD THAT THE FALSE TESTIMONY COULD HAVE
6 AFFECTED THE JUDGMENT OF THE JURY).

7 HENCE, PETITIONER'S PERJURY CLAIM IS "ADEQUATE TO DESERVE
8 ENCOURAGEMENT TO PROCEED FURTHER". MILLER-EL V. COCKRELL, 537 U.S. 322,
9 327. BECAUSE PETITIONER IS CONTENDING ACTUAL AND FACTUAL INNOCENCE,
10 PETITIONER CAN OVERCOME THE PROCEDURAL BAR ONLY BY SHOWING "A
11 CONSTITUTIONAL VIOLATION HAS PROBABLY RESULTED IN THE CONVICTION OF
12 ONE WHO IS ACTUALLY INNOCENT". MURRY V. CARRIER, 477 U.S. 478, 496 (1986).
13 THE PROCEDURAL DEFAULT WOULD BE EXCUSED, EVEN IN THE ABSENCE OF
14 CAUSE. (Id.). THE SCHULP V. DELU, 513 U.S. 298 (1995); THE UNITED STATES
15 SUPREME COURT HELD THAT A PETITIONER COULD DEMONSTRATE ACTUAL INNOCENCE
16 BY SHOWING "THAT IT IS MORE LIKELY THAN NOT NO REASONABLE JUROR WOULD
17 HAVE CONVICTED HIM IN THE LIGHT OF THE NEW EVIDENCE" (Id., AT 327.)
18 WITHOUT ALL THE PERJURY FROM THE HOSTILE WITNESS (MR. R'MON ANDERSON)
19 THE RESULT OF THE CRIMINAL PROCEEDING WOULD OF BEEN A DIFFERENT
20 OUTCOME.

21 FINALLY, PETITIONER HAD SHOWN IN THE COA A CONSTITUTIONAL
22 RIGHT VIOLATION OF THE FOURTEENTH AMENDMENT. SEE 28 U.S.C. § 2253 (c)(2).
23 ALSO, SHOWN IN THE COA IS THAT THE QUESTION PRESENTED IS "ADEQUATE
24 TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER". MILLER-EL, 537 U.S.,
25 AT 327. AND, PETITIONER DID OVERCOME THE PROCEDURAL BAR BY SHOWING IN
26 THE COA HOW THE FALSE TESTIMONY — 14TH AMENDMENT VIOLATION — IS THE
27 RESULT OF PETITIONER'S CONVICTION, AND THAT IN LIGHT OF THE NEW EVIDENCE
28 NO JUROR WOULD OF FOUND PETITIONER GUILTY OF THE CRIME. SEE MURRY, 477 U.S.,

1 AT 496; SCHULP, 513 U.S., AT 327. THEREFORE, THE COURT OF APPEALS FOR THE
2 NINTH CIRCUIT DECISION "CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT,"
3 (SUP. CT. R. 10(c)), THAT THE COURT OF APPEAL RULING IS OBJECTIVELY UNREASONABLE.

4 CONCLUSION

5 FOR ALL STATED, THE COURT OF APPEAL DECISION IS IN CONFLICT WITH
6 CONTROLLING PRECEDENT, AND THUS VIOLATED PETITIONER'S CONSTITUTIONAL
7 RIGHT AS A RESULT. FOR THOSE REASONS CERTIORARI SHOULD BE GRANTED.

8
9 I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE IS TRUE AND CORRECT,
10 AND THAT THE LAWS CITED ARE CORRECT AS CONTROLLING.

11 DATED: 11/22/22

12 RESPECTFULLY SUBMITTED,

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