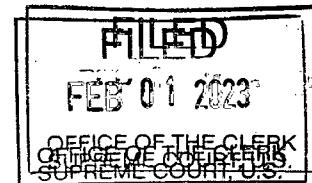


22-6786

No. _____

ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Cleveland Leroy Coaxum JR — PETITIONER
(Your Name) Pro Se

vs.

Philip A. White — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court Of Appeals For The Fourth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Cleveland Leroy Coaxum JR (1753212)
(Your Name)

VADOC Centralized Mail Distribution Center, 3521 Woods Way
(Address)

State Farm, VA 23160
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the courts make an error on Ruling Petitioner's Habeas Corpus, as un-timely filed petition despite it being filed on time in the lower courts?
2. Did petitioner have Ineffective Assistance of counsel in State Trial trial?
3. Did Court failed to uphold or; and recognize the prosecutorial misconduct and violations of petitioner's constitutional rights and due process?
4. Did the court unjustly denied petitioner's appealability?
5. Why was the Truth Affidavit not properly addressed according to procedural rules?
6. Did the courts unjustly with prejudice, dismissed petitioner's claims and petitions due to the nature of his crime?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Hevera v. Collins, 506 U.S. 390, 400, 401 (1993)	6
Danner v. Kestuck, 525 U.S. 1010 (1998)	6
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 170 (1951)	6
Jackson v. Virginia, 443 U.S. 307, 314, 324 (1979)	(2, APP. H) .6
United States v. McIntosh, 612 F.2d (4th Cir. 1979)	(2, APP H)
United States v. Harvey, 781 F.2d 294 (4th Cir. 1986)	(2, APP H)
Hartman v. Blankenship, 825 F.2d 26 (4th Cir. 1987)	(2, APP H)
Suhai v. Larce, 332 U.S. 174, 182 (1947)	(3, APP H)
Roseboro v. Garrison, 528 F.2d 308 (4th Cir. 1975)	(4, APP H)
Adikas v. Kress & Co, 398 U.S. 144, 158-59 90 S. Ct. 1598, 1609 26 L.Ed (1970)	(2, APP J)
United States v. Asrar, 116 F.2d 1268 (9th Cir. 1997)	(2, APP J) .9
Barefoot v. Estelle, 463 U.S. 880, 893, 1035, Ct. 3383, 77 L.Ed. 2d. 1090 (1983)	(2, APP J) 13, .5
Gardner v. Pogue, 558 F.2d 548 (9th Cir. 1977)	(2, APP J) 13, .5
Pirtle v. Marjory Nos. 01-99012, 01-99013 (Consolidated), Slip op. at 113, 2002 U.S. App. LEXIS 2608 at 20-21 (9th Cir., Dec. 19, 2002)	(5, APP J) 13, .5

STATUTES AND RULES (9th Cir., Dec. 19, 2002)

§ 2.5. The relevance of Innocence. "What we have to deal with is not the Petitioners innocence or guilt but solely the question whether their Constitutional Rights have preserved." Apparent guilt should not cut off or diminish, the scrutiny of the, "procedures" by which he was convicted and sentenced.

Affidavit not rebutted stands as Truth pursuant to Federal Rules of Civil procedure Rule 8(c). An Affidavit not rebutted after 30 days, becomes the judgement as a matter of law pursuant to the Federal Rules of Civil procedure. A Truth Affidavit, under laws of the United States, can only be satisfied: b) Truth Affidavit rebuttal, b) payment, b) agreement, b) resolution of, common law rules or b) jury.

OTHER

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APPENDIX B Decision of United States Court of Appeals for The Fourth Circuit Court Denying
Rehearing

APPENDIX C Decision of U.S District court For The Western District of Virginia Roanoke Division

APPENDIX D Decision of U.S. District Court For The Eastern District of Virginia/Transferred
Civil Docket For Case #: 7:21-cv-00305-JPJ-PMS

APPENDIX E Decision of State Supreme Court Denying Review Habeas

APPENDIX F Decision of State Supreme Court Denying Rehearing

Appendix G Copy of State Habeas

Appendix H Copy of Truth Affidavit

APPENDIX I Copy of Circuit Court of Bedford County Order For Continuance

Appendix J Copy Petition for Appealability to Western District

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 _____; 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 C to the petition and is

[] reported at _____; 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 E 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 Bedford County Circuit court appears at Appendix G 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 11-22-22.

[] 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: 12-28-22, and a copy of the order denying rehearing appears at Appendix H.

[] 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 2-18-20. A copy of that decision appears at Appendix E.

[] A timely petition for rehearing was thereafter denied on the following date: 5-14-20, and a copy of the order denying rehearing appears at Appendix F.

[] 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

LEGAL STANDARDS FOR CERTIFICATE OF APPEALABILITY:

Under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), a habeas petitioner cannot appeal from a district court judgment unless he obtains a certificate of appealability. See 28 U.S.C. § 2253. This is similar to the former requirement of a certificate of probable cause. As before, the petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(1)(A)(2). Unlike the certificate of probable cause, however, the certificate of appealability must specify which claim or claims meet the "substantial showing" standard. The request for a certificate should be addressed first by the district court. *United States v. Asmar*, 116 F.3d 1268 (9th Cir. 1997).

To make a substantial showing, "obviously the petitioner need not show that he should prevail on the merits. He has already failed in the end deavor." *Barefoot v. Estelle*, 463 U.S. 880, 893, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983). Rather, the petitioner need only show that the petition contains an issue (1) that is "debatable among jurists of reason"; (2) that a court could resolve in a different manner"; (3) that is "adequate to deserve encouragement to proceed further"; or (4) that is not "squarely foreclosed by statute, rule, or authoritative court decision, or .. [that is not] lacking any factual basis in the record." *Id.* at 893 n. 4 and 894 (internal quotations and citations omitted). See also, *Gardner v. Pogue*, 558 F.2d 548 (9th Cir. 1977). Coaxum's claims meet all of those standards.

STATEMENT OF THE CASE

1. Error on Ruling of un-timely filed petition: Petitioner was last represented by hired lawyer Melvin Hill at the Supreme Court of Appeals on June 19, 2018. According to the rules and statutes, petitioner has one year to submit a Habeas Corpus to the lower courts or Supreme Court. Petitioner elected to submit it to the Sentencing court (Bedford County Circuit Court) on 3/14/19 (See Copy of Habeas). It was denied on 9/19/19. Then petitioner filed an appeal to the denied Habeas Corpus to the Supreme Court on 10/15/19, which the court proceeded to state that "the court is of the opinion that the petition was not timely filed. It is therefore ordered that the petition be dismissed. The district court proceeded to agree with them and the Fourth Circuit refused to disagree with the latter courts as well despite the facts clearly showing that petitioner filed his Habeas Corpus two and half months early and proceeded to file all other filings in a reasonable time. The Amended petition was originally filed with the Eastern District Court on 2/11/21 only because the court ordered petitioner to do so on 1/14/21 (see U.S. District Court Western District of Virginia (Roanoke) Civil Document); petitioner filed with the District Court (Eastern) on 7/6/20 and they elected to transfer petitioner's petition to Western District of Virginia (Roanoke) 5/17/21. So both previous stated courts made an error when stating the petitioner's filing was untimely. This is a fact and can be addressed in a court to be resolved in a different manner. This should not be squarely foreclosed by statute, rule, or authoritative court decision, and it is not lacking any factual basis in the record.
2. The previous courts failed to even address or make any type of response or rebuttal towards petitioner's claims that were in the Truth Affidavits. Petitioner raised these claims in the alternative to his arguments against procedural default. Even when a claim is defaulted, ineffective assistance of counsel on appeal can provide "cause" for the federal court to consider it. Claims that need to be addressed due to debatable records in Petitioner's court records, which the law says that the "Court Records speak for itself", which is adequate to deserve encouragement to proceed further; or that is not "squarely foreclosed by statute, rule, or authoritative court decision.

(Gardener v. Pogue, 558 F.2d 548 (9th Cir. 1977). See Appendix J, H

3. The merits of these claims are discussed above. This court declined to consider them because it found them procedurally defaulted under the same relitigation rule. The Pirtle decision requires the issuance of a certificate of appealability. The Ninth Circuit ruled that "Washington's relitigation rule does not serve as a bar to habeas review." Pirtle v. Morgan, Nos. 01-99012, 01-99013 (consolidated), slip op. at 17, 2002 U.S. App. LEXIS 26208 at 20-21 (9th Cir., Dec. 19, 2002). Thus, the procedural default question is not merely "debatable". Obviously, a certificate of appealability must be issued under such circumstances.

4. The previous courts failed to address and rebut Petitioner's Truth Affidavit despite the statute and rules that is laid out in the United States by laws or guidelines. Affidavit not rebutted stands as Truth pursuant to Federal Rules of civil procedure Rule 8(d). An Affidavit not rebutted after 30 days, becomes the judgement as a matter of law pursuant to the Federal Rules of civil procedure. A Truth Affidavit, under laws of the United States, can only be satisfied: by Truth Affidavit rebuttal, by payment, by agreement, by resolution, by common law rules, or by jury.

5. Based on the previous statements of facts, one must conclude that the only reason an seasoned government official would overlook the rights of petitioner is because of personal bias, due the nature of his crime and; or because the official is being racist (which petitioner would like to believe its not the latter).

REASONS FOR GRANTING THE PETITION

The reason(s) why this Honorable Court should grant Certiorari on behalf of the Petitioner is because his due process and constitutional rights were violated not only in the lower court(Bedford County Circuit court) but also in all of the Appealate courts that petitioner attempted to reach out to,so that he could get back the Justice that was denied him from the very beginning.This is ~~impartive~~ because this error or; and blatantly conspired to violate petitioner's rights and; or due process.According to §2.5 The Relevance of Innocence under Federal Habeas Corpus practice and Procedure;In Justice Holmes words," what we ~~h~~ave to deal with is not the petitioner's innocence or guilt but solely the question whether their consituational rights been preserved."It is in fact arguable that a habeas corpus petitioner's apparent guilt should heighten,not cut off or diminish, the scrutiny of the "procedures" by which he was convicted and sentenced.See. Hevera v. Collins,506 U.S.340,400,401(1993)6th Amendment confrontation right.See Danner v. Kentuck,525 U.S.1010(1998)"Must practice fairness".Joint Anti Fascist Refugee committe v. McGrath,341.U.S.123, 170(1951).See.Jackson v. Virginia,443 U.S.307,314,324(1979)"Proof of due process right beyound a reasonable doubt."This type of injustice is not ~~only~~ being done to petitioner but to countless amount of petitioners in the state of virginia;with no one holding them to be accountable;to stand by the statues,laws, and constitutional rights of others; guilty or non-guilty.Petitioner's constitution rights and lack of due process have been over looked despite the evidence given to the courts(See.Appendix.G.H.I.J).According to the consitution,petitioner have the right at the very least for a re-hearing due to his constitution being violated rather there was a procedural violation or not; which there wasn't.See 28U.S.C. §2253,This is similar to the former requirement of a certificate of probable cause.As before, the petitioner must make a "substantial showing of the denial of a constitutional right."§2253(c)(1)(A)(2)(See Appendix.J).Petitioner's due process and constitution was violated when the courts failed to make proper rebuttal towards petitioner's claims that were in his Truth Affidavits(signed and dated)See Appendix H.According to the statue,

rules and laws of an Truth Affidavits,petitoner stated facts and un-datable truths that Respondents could not refute without being un-factual.Petitioner's due process was violated when Counsel and Commonwealth Attorney,acting Judge as well all conspired to agree to a continuance of Coaxum's case in Bedford County Circuit Court;without his consent or prenecce in the court("Court records speaks for its self").They failed to get Mr.Coaxum's signature as proof of understanding and awareness of what proceeding was transpired during the court date 3/11/16,while doing so they wavied Mr.Coaxum's Rights to a Speedy Trial,again no paperwork giving to Mr.Coaxum to sign due to him not being in court during this procedure.The laws states that its imparative for the petitioner/defendant at the time of trial to be in the court room when any "significant"and/or making a decisive order that will affect the Petitioner/defendant.Once again the court's record speaks for its self and its screaming"Due process and constitutional rights has been violated!"This alone by law is considered "fruit of the posinous tree" and petitioner should be given at the very least a new court date,time barred or not;not to mention according to Rights to Speedy Trial law,everything in that,in the court's proceedings is suppose to be thrown out and erased from petitioners record due the violation and lost of time to take petitioner to trial.(See Appendix.I,H)Counsel failed and gaved petitioner an in-valid plea agreement,by lacking all the necessary information(no Parole)in order for Mr.Coaxum to make a clear and sound judgement before signing and agreeing to anything. This missing information(no parole) is the same information that would have to be givin to a jury before sentencing.(See Appendix. G,H)All of this that was stated above shows a violation of due process;which was ignored by the appealing courts when pointed out in Habeas Corpus,when all mentioned courts choosed to time bar petitioner despite the evidence show that petitioner was never late in any filings and despite that procedural rule, petitioner should have been still giving a new court date due to the constitutional rights being violated.This is why this Honorable court should grant Certirari, and give back the justice that was taken or not given;

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-1-23

