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22-7222
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

In Re Solomon Roberts — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF MANDAMUS

PETITION FOR WRIT OF MANDAMUS

Solomon Roberts # 066691
(Your Name)

Martin LI

1150 SW Allapattah Road
(Address)

Indiantown, Florida 34956
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether District Court Engaged in Illegitimate And Unconstitutional Practices by Failing to Prosecute § 2254 Petition Asserting Plausible Claim of Actual Innocence - Pre-AEDPA; For Failing to Pay the \$5.00. Filing Fee Within a Four Day Period?

Whether this Action Concerned the Application And Adherence To Fed. Rule of Civil Procedure?

Whether District Court Exceeded its discretion in not considering the "ends of Justice" or "equitable discretion" grounded in the Miscarriage of Justice exception before Dismissing § 2254 Petition

Whether District Court Exceeded its discretion when it dismissed § 2254 based on Sua Sponte Statute of limitation Defense without Requiring a Response from the State of Florida And Whether Such Action was Prejudicial in Relieving Party in Opposition of its burden to Respond to § 2254 Petition

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:

The 11th Judicial Circuit Court Miami Dade County
Florida Attorney General Ashley Moody

RELATED CASES

Jones V. Henderson, 809 F.2d 946, 947 (2nd Cir. 1987)

Hubbard V. Pinchak, 378 F.3d 333, 338 (3rd Cir. 2004)

Arnold V. Dittman, 901 F.3d 830, 842 (7th Cir. 2018)

Morris V. Yust, 447 F.3d 735 744 (9th Cir. 2006)

SPENCER V. PETERS, 857 F.3d 789, 798 (9th Cir 2017)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals 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☐ is unpublished.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 United States district court appears at Appendix A. 1 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 _____ 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 Eleventh Judicial Circuit court appears at Appendix B to the petition and is

- ☒ reported at Attachment thereto; 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 District Ct. decided my case was Sept 6, 2022.

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

☒ A timely petition for rehearing was denied by the United States Dist. Court on the following date: Sept 20, 2022, 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. § 1254(1). Supreme Court Rule 20.3 And 28 U.S.C. § 1651(a)

☒ For cases from **state courts**: Transcript of VDP Attached to App. B

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

Mandamus § 19 - Inferior Court

1. The Peremptory writ of Mandamus has traditionally been used in the Federal Court only to confine an Inferior Court to a lawful exercise of its prescribed Jurisdiction or to compel it to exercise its Authority when it is its duty to do so.

Mandamus § 2.15 - Extraordinary Remedy

2. Only Extraordinary Circumstances Amounting to a Judicial usurpation of Power will justify the invocation of the Extraordinary remedy of Mandamus Against a lower Court

Constitutional law § - Due Process - Conviction obtained by Perjured testimony

1. The Constitutional Requirement of due Process is not satisfied where a Conviction is obtained by Presentation of testimony known to the Prosecuting Authorities to be Perjured

Annotation Reference 98 ALR 411

1. Unfairness or Corruption of Officers in Performance of Administrative Function in Civil or Criminal Cases in State Court As in Violation of the Fourteenth Amendment.

STATEMENT OF THE CASE

On Sept 2, 2022 Petitioner Filed 32254 Petition Asserting Actual Innocence PRE-AEDPA

SEE APP. B

On Sept 7, 2022 District Court dismissed Petition

SEE APP. A

On Sept 15, 2022 Petitioner Filed Petition For Reconsideration by a different Judge For Judicial Bias

SEE APP. D

On Sept 20, 2022 Honorable Bloom Denied Reconsideration

SEE APP. C

On Sept 21, 2022 Petitioner File FRCP Rule 59(e) to Amend or Vacate order denying Evidentiary hearing

SEE APP. F

On Sept 27, 2022 District Court denied Rule 59(e) Pleading

SEE APP. E

REASONS FOR GRANTING THE PETITION

THIS CASE INVOLVES A STATE INMATE WHO FILED A PETITION UNDER 28 U.S.C. § 2254(a) FOR WRIT OF HABEAS CORPUS THAT APPEARS TO BE BARRED BY THE STATUTE OF LIMITATION. SEE 28 U.S.C. § 2244. IT THUS PRESENTS A QUESTION OF WHETHER IN THIS CIRCUMSTANCES A DISTRICT COURT MAY ON ITS OWN INITIATIVE AND WITHOUT HEARING FROM THE STATE, DECIDE NOT TO PROSECUTE THE PETITION FOR FAILURE TO PAY THE \$5.00 FILING FEE WITHIN A FOUR (4) DAY PERIOD AND THAT THE STATUTE OF LIMITATION BARS THE PETITION. THE DISTRICT COURT DID JUST THAT AND DISMISSED THE PETITION WITHOUT ORDERING A RESPONSE FROM THE STATE [or] SECRETARY OF FDOC. SEE PAEZ V. SEC'y OF DOC., 931 F.3d 1304, 1305 (11th Cir. 2019) SEE APP. A

"When a Section 2254 Petition states a legally sufficient claim for relief, a district court must order the state to respond, even if the petition appears untimely"

IN THIS INSTANCE, SECTION 2254 PETITION [APP. B] IS PETITIONER'S FIRST HABEAS PETITION SEEKING CONSIDERATION OF DEFAULTED CLAIMS BASED ON A COLORABLE SHOWING OF FACTUAL INNOCENCE; UNDER McQuiggin V. PERKINS 569 U.S. 383, 392 (2013); SMITH V. BALDWIN, 466 F.3d 805, 813 (9th Cir. 2006); ARNOLD V. DITTMAN, 901 F.3d 830, 842 (7th Cir. 2018).

THIS CASE PRESENTS TWO DISTINCT ISSUES. THE FIRST IS WHETHER DISTRICT COURT'S REFUSAL TO PROSECUTE S. 2254 PETITION FOR FAILING TO PAY \$5.00 FILING FEE; THE SECOND IS WHETHER IT WAS ERROR TO DISMISS THE PETITION WITHOUT ORDERING THE STATE TO RESPOND AND APPLYING 28 U.S.C. 2244(b) IN AN ILLOGICAL FASHION BASED ON THE "ENDS-OF-JUSTICE" EXCEPTION ARTICULATED IN KUHLMANN.

HERE, these issues concerns the "Construction" And "Application" of Federal Rules of Civil Procedures Rule 8(a) General Rules of Pleading. See Schlagenhauf v. Holder, 379 U.S. 104 (1967) SEE ALSO Fed. R. Civ. P. Title I Rule 1 And Title II Rule 3

I

District Court Abused its discretion because it lacked Authority Under its Local Rule To dismiss § 2254 Petition For Failing to pay the Filing Fee

HERE, a Prejudicial Error Occurred because District Court's [App. A] dismissal For Failing to pay the \$ 5.00 Filing Fee Without determining if [I] Petitioner had the Funds in My Prison Account As Required by U.S. Dist. Ct., S.D. Fla. Gen Rule. See Williams v. Bryant, 157 Fed Appx. 240 at 241 (11th Cir. 2005); Cf. Butz v. Mendoza-Powers, 474 F.3d 1193 (9th Cir. 2007)

Petitioner reasonably believes that the Action constitutes An intentional distortion of the fact-finding process that requires Judicial intervention by this High Court. Considering the Butz Court provided sufficient opportunities for Petitioner to pay the Fee, Id 474 F.3d at 1194. HERE Honorable Bloom never Attempt to Alert ME of the Unpaid Fee nor to determine if I had \$5.00 in My inmate Account

Moreover, whether caused by carelessness or design Honorable Bloom displays a continued pattern of disregard For Procedure whether its local Rules, Fed. R. Civ. Proc., or This High Court Controlling Precedents. which justify the Invocation of writ of Mandamus. See Cheney v. U.S. Dist. Ct. 542 U.S. 367 at 380 (2004) Accord Schlagenhauf, *Supra*, 379 U.S. at 110 And n. 4

II

District Court Unreasonably Employed
Rule 4 Constitutes Usurpation of
Judicial Power which resulted in a
Fundamental Miscarriage of Justice

In this Instance, District Court was required by Rule 4 of
the Rules governing § 2254 Proceedings in the District Courts
And by this High Court holding in Day v. McDonough, 547 U.S.
198 at 210 And n. [5a] (2006). See Perez, 931 F.3d 1304 at 1308

In this Circumstances, Petitioner has a Plausible Claim of
"Actual Innocence" Entitling him to A Federal Evidentiary
hearing see Arnold v. Dittman 901 F.3d 830 at 842; McQuiggin,
Supra, 569 U.S. 383 at 396

Petitioner's Habeas Petition Clearly Survived Rule 4 Review
because [App. B] the MEMORANDUM OF LAW And its Attached
Exhibit Entitle Petitioner to Relief.

While District Court had discretion Under Fed. R. Evid § 201(b)
to take notice of the Judicially Noticeable Facts that:

- (1) Asst. Prosecutor Elicited False testimony from it witness
that Solomon Roberts was the man who Robbed And shot him
in violation of Giulia SEE App. B Attach Pg 12 Ln 11 - Pg 13 Ln 6
- (2) Asst. Prosecutor staged Pretrial bond hearing for the sole pur-
pose of intentionally Altering the identification evidence by
converting witness that did not identify Petitioner As one
who Perpetrated crime into witness that identified the
Petitioner As one who perpetrated crime And in the Absence
of Counsel. See State v. Herrera, 866 So.2d 151, 152 Citing
Arizona v. Youngblood, 488 U.S. 51, 56 (1988)).
SEE App. B Attach Pg 20 Ln 3-7 And Pg 21 Ln 8-18

(3) State witness conceded that he did not (previously) identify ME in photo and video lineup [Pg 17 Ln. 3-14] And Detective testified that no identification was made of Petitioner [Pg 27 Ln. 11-18]

(4) Asst Prosecutor conceded that Solomon Roberts was never identified as one that perpetrated the alleged crimes. [Pg 42 Ln 11 - Pg 43 Ln. 1]

Because these facts obviously fit within subsections of both Federal and state Rules of Evidence which are not subject to dispute.

District Court Abused its discretion by failing to afford consideration to these relevant factors that were due significant weight. See United States v. Irey, 612 F.3d 1160 at 1189 (11th Cir. 2010)

District Court failed to consider the "ends of justice" or "equitable discretion" grounded in the miscarriage of justice exception articulated in Kuhlmann v. Wilson. Id. Because a freestanding "Actual Innocence" claim is the type of claim that constitutes an exception to the procedural default provision. See Smith 466 F.3d at 812-13 citing House v. Bell 126 S.Ct. 2064 at 2078 (2006) which expressly articulate that "the AEDPA standard of review is inapplicable to first habeas petition seeking consideration of defaulted claims based on a colorable showing of factual innocence. See McAuliffe, supra 569 U.S. at 396 Accord Herrera v. Collins, 506 U.S. 390 at 404 and n.8. Under these circumstances District Court Applied

28 U.S.C. § 2244(b) in an illogical fashion based on this Court's decisions in McQuiggin and Kuhlmann. Where a fundamental miscarriage of justice resulted from District Court's failure to hold a Federal Evidentiary hearing in this circumstance. As state prosecutor clearly violated petitioner's Federal protected right guaranteed him by the Fourteenth Amendment. See Miller v. Pate, 386 U.S. 1, 7, 17 L.Ed. 2d 690 (1967) (holding that "the Fourteenth Amendment cannot tolerate a state criminal conviction obtained by the use of false evidence"). [569 U.S. 396]

Thus, Petitioner's § 2254 Petition Asserting Actual Innocence Pre-AEDPA should have survived Rule 4 Review because it set forth facts that clearly establish a constitutional violation entitling petitioner to relief. See Paez, 431 F.3d 1304 at 1308 citing Day, 547 U.S. at 210 n. [5a]

Thus, Prosecutorial Misconduct cause the state court to render a judgment not resting on truth. This Honorable Article III Supreme Court must intervene to correct this error of constitutional dimension. See Smith v. Phillips, 455 U.S. 209 at 221 and n. 4 (1982).

[A] Fundamental Miscarriage of Justice Resulted where an inferior court abdicated its constitutional responsibility to remove any procedural hurdles and conduct Federal Evidentiary hearing; As articulated in McQuiggin, *supra*, 569 U.S. 383 at 393 and 396

The writ of Mandamus is appropriately issued, however, when there is usurpation of judicial power or a clear

Abuse of discretion. Id. Schlagenhauf, Supra 379 U.S. at 110 and n.4 District Court Abused its discretion by Failing to to prosecute § 2254 Petition For Failing to Pay \$ 5.00 within a Four days period And employed An incorrect legal standard of Failure to obtain Authorization From Court of Appeals, Contrary to this Court's House decision. [126 S.Ct. 2078] District Court's decision [APP. A] Contradicts a Rule of law Establish by this High Court And Amounts to Usurpation of Judicial power because the Act is Extrajudicial in nature being outside of the Inferior Court's Jurisdiction to Contradict relevant Supreme Court Conclusion in Day v. McDonough on Materially indistinguishable facts, which concerns the Construction and Application of both U.S. Dist. Ct. S.D. Fla Gen. Rule And Fed. Rule of Civ. P. Rule 8(a); Title 1 Rule 1 And Title 11 Rule 3.

It is Appropriate For this Court to determine the Merits the Issues Presented And to Formulate the Necessary Guidelines in this Area.

Thus, the Subject concerns the Enforcement of the... Rules [4] of the Rules governing § 2254 Proceedings in the District Courts And this Court holding in Day v. McDonough 547 U.S. 198 at 210 n. [5a]; Including Fed. R. Civ. Proc. which by law it is the duty of this Court to Formulate And put in Force.... This Honorable Court May deal directly with the District Court. Schlagenhauf, Supra, 379 U.S. at 112

The Writ of Mandamus will be in Aid of this Court's Appellate Jurisdiction to Confine An inferior Court to a Lawful Exercise of its Prescribed Jurisdiction

Grounded in the Fundamental Miscarriage of Justice Exception. See Mandamus § 34 Particularly where there is no room for doubt that Petitioner have established by Clear And Convincing Evidence that but for the Constitutional errors, no reasonable fact-finder would have found [him] guilty of the underlying offenses. 28 U.S.C. § 2254 (e)(2)(B)

Under the exceptional circumstances Pro Hac Vice Petitioner must be Accord Federal Habeas Review of His procedurally defaulted claim which is necessary to correct a Fundamental Miscarriage of Justice Based on the Judicially Noticeable Facts that demonstrate that a Constitutional violation has probably resulted in a conviction of one who is Actually Innocent. See Cartagena v. U.S. of America, 2017 U.S. Dist. LEXIS 80465 At *9 (U.S. Dist. S. D. Fla. 2017)

The Petition for a writ of Mandamus should be granted in this exceptional circumstance amounting to usurpation of power and a clear abuse of discretion. See Cheney v. U.S. District Ct., 542 U.S. 367 at 380 (2004) Requiring District Court to reinstate Habeas Corpus, Proceed to try And Adjudicate on the Merits of Constitutional claims before a different Judge because it was its prescribed duty from the onset. McClelland v. Carland, 217 U.S. 268 at 280.

Respectfully Submitted

Salomon Roberts

DATE: March 28, 2023