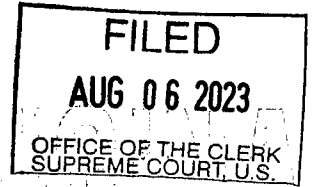


23-5728

No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Daniel Eric Salley — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Seventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Daniel Eric Salley
(Your Name)

P.O. Box 3000 - McCreary
(Address)

Pine Knot, KY. 42635
(City, State, Zip Code)

N/A
(Phone Number)

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:

RELATED CASES

~~Daniel E. Salley, No. 21-cv-6246~~

~~Daniel E. Salley v. United States of America, No. 21-cv-6246.~~

Daniel E. Salley v. United States of America, U.S. District Court for the Northern District of Illinois Eastern Division (Chicago). Judgment Entered April 18, 2022.

Daniel E. Salley v. United States of America, ~~U.S. District Court~~ U.S. Court of Appeals for the Seventh Circuit, Nos. 22-2477, 22-2663 & 22-3385. Judgment Entered May 8, 2023.

QUESTION(S) PRESENTED

- 1) Whether the district court can deny as time barred a Motion To Vacate under 28 U.S.C. § 2255 that argued that the court did not have subject-matter jurisdiction to hold a trial if the court in fact did not have subject-matter jurisdiction although for reasons other than those argued in the petition and whether an appeals court may affirm such a denial?
- 2) Whether the government withheld evidence in Mr. Salley's § 2255 proceeding in violation of the due process rights that created a defect in the collateral review process causing the court to time bar the § 2255 petition.
- 3) Whether the district court failed to give the mandated liberal construction, set out by the Supreme Court, to Mr. Salley's § 2255 petition.

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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 _____ 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 B to the petition and is

☒ reported at Lexis 70989 (U.S. Dist. Ct. 2023); 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 May 8, 2023 March 10, 2023

☐ 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: May 8, 2023, 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

5th Amendment

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6th Amendment

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STATEMENT OF THE CASE

On March 21, 2002, a federal grand jury returned a fifteen count superseding indictment charging Mr. Salley with multiple counts of attempted murder, bank robbery, and weapons offenses. See Criminal Docket Entry (CDE) #22. Mr. Salley entered not guilty pleas as to all counts. Shortly thereafter, the government filed a motion for Mr. Salley to have a psychology and psychiatric evaluation after Mr. Salley insisted that he proceed pro se. CDE# 26-27, 29, 46, 50, (Entry on 6-24-02 and 6-27-02) 51, 55, 58-65. The district court entered a finding on January 31, 2003 that Mr. Salley was suffering from a mental district disease or defect (delusional disorder) and could not assist in his defense or his trial. CDE# 66. Mr. Salley was committed to the custody of the Attorney General for forced medication. Id. In making this ruling the district court committed several structural errors.

First, the court put upon Mr. Salley the unconstitutional burden of proving that he was competent to stand trial. CDE# 60 at 4. see also U.S. v. Bilyew, 686 F.2d 1238, 1244-47 (7th Cir. 1982). Thus, the trial court's use of an unconstitutional burden of proof cannot be deemed harmless error. U.S. ex rel. Sec. v. Billingsley, 766 F.2d 1015, 1023 (2nd Cir. 1985).

Second, the court violated Mr. Salley's Fifth Amendment right to due process by not allowing him to testify, present evidence, nor to cross-examine witnesses, etc., during the competency proceedings. Id. at 74-75, thus violating the clear mandate of 18 U.S.C. § 4241-47(d). Third, the court allowed a plea agreement of 'guilty' of all the charges to be entered into the record without Mr. Salley's knowledge, presence, nor consent. CDE# 188, etc. In allowing this third structural error, the court violated Fed. R. Crim. P. 11(b)(1)-(3) and the constitutional rule that a guilty plea must be knowing and voluntary. *McCarthy v. United States*, 394 U.S. 465, 467, 89 S.Ct. 1166, 22 L.Ed.2d 418 (1969); *United States v. Olson*, 890 F.3d 873 (7th Cir. 2018). The Confrontation Clause of the Sixth Amendment provides defendants the right to be present at all critical stages of the criminal proceedings and Mr. Salley was not present during the change of plea and was unaware of the plea for over 19 years. *Illinois v. Allen*, 347 U.S. 337, 338, 25 L.Ed.2d 353, 90 S.Ct. 1057 (1970); *Ellsworth v. Levenhagen*, 248 F.3d 634, 640 (7th Cir. 2001). Also, the Sixth Amendment right to the effective assistance of counsel clause was violated (Chronic Violation) because Mr. Salley's counsel stopped being an advocate for Mr. Salley in arguing against Mr. Salley's express desires to be found competent to stand trial. CDE# 66. Fourth, the court held a provisional trial without Mr. Salley's knowledge nor approval or consent. This was recommended by Dr. Park Dietz & Associates, Inc. CDE# 73(3) at 11-12.

A "provisional" trial cannot be or lead to a final judgment within itself. The word "provisional" means: "temporary or conditional; of or relating to, or involving an extraordinary proceeding to protect a litigant before final judgment." Black's Law Dictionary, Fifth Pocket Edition. The conviction and sentence from this provisional trial is not a final judgment and commitment, trial transcripts, nor sentencing transcripts. CDE# 152, 155-156, 160-162, 168-169, 171-177, 189. Therefore, Mr. Salley is being held without legal authority and now moves this court to remand this case with instructions to grant his § 2255 motion and all the issues therein (Return of the equivalent of property and freedom, etc.).

The government withheld all this and other evidence in the § 2255 proceeding by arguing for a time bar but a void judgment cannot be time barred. *Carter v. Fenner*, 136 F.3d 1060, 1066 (5th Cir. 1998). See also Civ. Doc. #16 at 2. The Court did not give the mandated "Liberal Construction." *Estelle v. Gamble*, 97 S.Ct. 285, 50 L.Ed.2d 251, 429 U.S. 97, 106 (1976).

REASONS FOR GRANTING THE PETITION

In addition to the structural errors set out in Mr. Salley's Statement of The Case requiring automatic reversal, the unconstitutional burden of proof, the violation of Mr. Salley's due process rights and effective assistance of counsel rights, the court allowing a plea agreement to be entered without Mr. Salley's knowledge nor him being present and the provisional trial that does not have an authenticated, certified final judgment and sentence implicates the fairness, integrity, and public reputation of judicial proceedings, *Hicks v. United States*, 582 U.S. 924, 925, 137 S. Ct. 2000, 198 L. Ed. 2d 718 (2017); *United States v. Olson*, 980 F.3d 873, 879 (7th Cir. 2018).

If the Court allows individuals to linger longer in prison than the law requires only because it was unwilling to correct its own mistakes, the public would hold a rightly diminished view of the courts, *Hicks*, 582 U.S. at 925.

Therefore, this Court should grant this petition, in addition because the government withheld all of this information in the § 2255 proceeding by arguing for and receiving a time bar of Mr. Salley's § 2255 motion and again, in the appeals process. See Civ. Doc. # 16 at 2; See also Appeals # 22-2477, 2663 & 22-3305.

A judgment that is void cannot be time barred. *Garcia Fin. Group, Inc. v. Accelerators Corp.*, 3 Fed. App'x. 86, 89 (Fn 3) (4th Cir. 1979); See also *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010).

A withholding by the prosecution of exculpatory evidence is a violation of the due process rights to a fair trial. *Jean v. Collins*, 221 F.3d 656, 659 (4th Cir. 2000) (Quoting *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)).

The district court nor the Seventh Circuit Court of Appeals gave the mandated liberal construction pursuant *Cruz v. Beto*, 405 U.S. 319, 31 L. Ed. 2d 263, 92 S. Ct. 1079 (1972) and *Hains v. Kerner*, 404 U.S. 519, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972) which require liberal construction and exploration of disputed issues of facts central to constitutionally recognized claims. Liberal construction also means "active interpretation" to encompass any allegation stating federal relief. *White v. Wyrick*, 530 F.2d 818, 819 (8th Cir. 1976).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Daniel E. Salley

Date: 8-4-2023