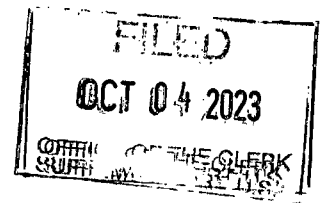


ORIGINAL

No. 23-5811



IN THE
SUPREME COURT OF THE UNITED STATES

Valery LaTouche - PETITIONER

vs.

State of New York - RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

United States Court of Appeals For the Second Circuit
(NAME OF COURT THAT LAST RULE ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Valery LaTouche
(Your Name)

354 Hunter Street
(Address)

Ossining, New York 10562
(City, State, Zip Code)

Not Available
(Phone Number)

QUESTION(S) PRESENTED

WHETHER, TO NEW YORK C.P.L 440.10(2)(C) STATUTES BEING AMENDED PURSUANT RULE 60(b)(5)(6) RECONSIDERATION IS WARRANTED AS TO THE LOWER COURT ERROR IN DENYING THE MOTION TO SUPPRESS ALL OF PETITIONER'S STATEMENT, WHICH WERE INVOLUNTARY RENDERED AND VIOLATED HIS FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION.

WHETHER, THE REPRESENTATION TRIAL AND APPELLATE WAS INEFFECTIVE FOR FAILING TO ARGUE THE PROPER LEGAL AUTHORITY AT THE SUPPRESSION HEARING, WHICH RESULTED IN HIGHLY INCRIMINATING EVIDENCE BEING ADMITTED IN PETITIONER JURY TRIAL IN VIOLATION OF PETITIONER FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS

WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED THE PETITIONER'S RULE 60(B) MOTION. A CHANGE IN NEW YORK STATE STATUE C.P.L 440.10(2)(C) WHICH THE DISTRICT COURT INVOKE DURING PETITIONER HABEAS PETITION, PROCEDURAL BARRING THE ISSUE WHETHER PETITIONER CONFESSION SHOULD HAVE BEEN DISMISSED AS A RESULT OF HIM INVOKING HIS RIGHT TO REMAIN SILENT

WHETHER DISTRICT COURT ABUSED HIS DISCRETION UPON THE "EXCEPTIONAL CIRCUMSTANCES EXISTING TO GRANT PETITIONER RELIEF ON THE GROUNDS RAISED IN HIS THIRD RULE 60(B) MOTION PURSUANT TO THE TEST ISSUED IN SARGENT V COLUMBIA FOREST PRODUCTS, INC 75 F.3D 86 (2D CIR 1996),

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:

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TABLE OF AUTHORITIES CITED

CASES

Boyette v Lefevre, 246 F.3d 76, (2d Cir. 2001)
Buck v. Davis, 137 S. Ct. 759 (2017);
Coleman v. Thompson, 501 U.S. 722, 754 (1999)
Crawford v. Franklin Credit Management, Corp. 2013 WL 2951957 (S.D.N.Y. 2013),
Devino v Duncan, 215 F.Supp.2d 414 (S.D.N.Y.2002)
Dickerson v United States, 530 U.S. 428, (2000),
Ferro, 63 N.Y. 2d 322 at 322; (1984)
Green V Scully, 850 F.894, 2d Cir
Green v. Scully, 850 F.2d 894, (2d Cir. 1988),
Harman v. Pauley, 678 F. 2d 479, 481 (4th Cir. 1982)
Jones v. Barnes, 463 U.S. 745;
Kapprott v. United States, 335 U.S. 601, 614-15 (1949)
Marrero Pichardo v. Ashcroft, 374 F. 3d 46, 55 (2d Cir. 2004)
Martinez v Ryan, 132 S.Ct 130
Michigan v Mosley 423 U.S. 96, (1975),
Miranda v. Arizona, 384 U.S. 436.
Missouri v Seibert, 542 U.S. 600, 142 S.Ct 2601, (2004)
Myle v Felix, 545 U.S. 644, 650 (2005)
Old Republic Ins. Co. v. Pac. Fin. Servs. of Am., Inc., 301 F.3d 54, 59 (2d Cir. 2002)
People v. Stulz, 2 N.Y.3d 277.
Rogers v Richmond, 365 U.S. 534, 81 S.Ct 735 (1961)
Sargent v Columbia Forest Products, Inc 75 F.3d 86 (2d Cir 1996),
Taylor v Lombard, 606 F.2d 371 (C.A. (N.Y.) 1979).
Tharpe v. Sellers, 138 S. Ct. 545 (2018);
Thompson v Keohane, 516 U.S. 99, (1995)
Trevino v. Thaler, 569 U.S. 413 (2013);
U.S. v. Alpine Land & Reservoir Co., 984 F. 2d 1049, 1049 (9th Cir. 1993).

United States v Romaszko, 253 F.3d 757, (2d Cir. 2001)

Vives v. Bennett, 2022 WL 605236 (S.D.N.Y. 2022);

STATUTES AND RULES

28 U.S.C 2254 (d)(2),

28 U.S.C. 2254 (e)(1).

440.10

C.P.L. §440.10 (2)(c)

Fed. R. Civ. P. 60(b)

Federal R. Civ P. 60(c)(1).

Penal Law. 110.00/160.10[1]

Penal Law. 110.00/160.15[2];

Penal Law. 125.25[3]

Penal Law. 160.10[1], 160.15[4].

Penal Law. 265.02[4],

Penal Law. 265.03[2]

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A 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 B 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 D 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 Appellate Division 2nd Dept 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 13th of Sept 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: _____, and a copy of the order denying rehearing appears at Appendix A.

☐ 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 July 27, 2009.
A copy of that decision appears at Appendix D.

☐ 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 right to remain silent

6th Amendment right to counsel

14th Amendment right to due process

STATEMENT OF THE CASE

The hearing, trial and sentencing minutes constitute both “unquestionable documentary proof” and it has been verified by the testimony of Detective Bookstein along with other law enforcement official at the Huntley hearing that confession were secured by methods that violated Mr. LaTouche’s rights under the Fifth and Fourteenth Amendment to the constitution of the United States. He had also showed that he was denied the opportunity to make a free and intelligent choice and that the questioning was pursued until there was admission. Mr. LaTouche further demonstrated his vulnerability and supports that under the circumstances described by Detective Bookstein at the Huntley hearing the statements was not voluntarily made and there was no valid waiver and further he could not comprehends the situation and Miranda warnings under the circumstances described.

The records do not support that the statements was voluntarily given and that Mr. LaTouche waived his rights to counsel and to remain silent on this basis, Trial and appellate counsel was ineffective in failing to present the fact and argue the issues presented in this petition and the suppression judge erred in not suppressing the statements. the Miranda decision made clear, however, that a suspect is never presumed to know his or her rights (Miranda v Arizona, 384 U.S. at 468, “The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warnings as to the availability of the privilege so simple, the court will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given,” there must be a reversal

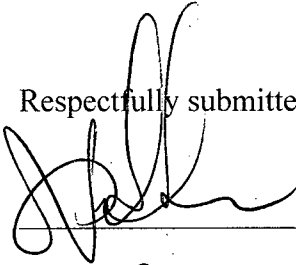
REASONS FOR GRANTING THE PETITION

As a matter of first impression the courts decision is inaccurate and misrepresent the surrounding facts of petitioner's confession which is entitled to presumption of correctness

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a cursive 'M' and a horizontal line.

Date: 9-29-23