

No. 23-5864

IN THE SUPREME COURT OF THE UNITED STATES

ALFRED STARLING,

Petitioner,

V.

CHARLES MIMS, Warden,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO
THE ELEVENTH CIRCUIT COURT OF APPEALS**

MOTION FOR REHEARING

Alfred Starling
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Petitioner Pro Se

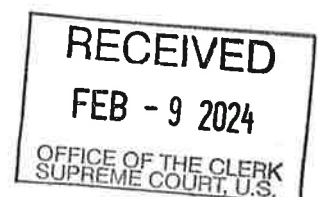


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PETITION FOR REHEARING AND SUGGESTIONS IN SUPPORT

COMES NOW Petitioner, Alfred Starling, Pro Se, and pray this Court to grant Rehearing pursuant to Rule 44, and thereafter, grant him a Writ of Certiorari to review the opinion of the Eleventh Circuit Court of Appeals. In support of petition, Mr. Starling states the following:

STATEMENT OF FACTS

On January 25, 2008, just before 11:00 p.m., a man entered the Country Corner convenience store in Cuthbert Georgia, pointed a gun at the manager, and demanded money. The gunman took money that the manager dropped on the floor and left on foot. The manager could not identify the robber.

On January 30, 2008, G.B.I. Agent, Brian Vessel, questioned Mr. Starling, while in custody of his Probation Officer, about his whereabouts on the night of the robbery. Mr. Vessel failed to provided Mr. Starling with any Miranda warnings, or a wavier of his rights. On July 22, 2008, at Mr. Starling's jury trial his statement was used against him. Mr. Starling's trial counsel objected and moved for a mistrial and the Court overruled.

On January 31, 2008, the Magistrate Judge issued an arrest warrant for Mr. Starling's arrest, on an affidavit, without any facts to support a finding of probable cause (Appendix C, attached hereto). On May 13, 2008, an indictment was (Allegedly) returned by a grand jury charging Mr. Starling on one count of Armed Robbery (Appendix, D). Said indictment lacks certification because it lacks a stamped file, and a signature from the Clerk of Court to prove

that it was actually returned and filed in court. 28 USC § 2249 states that "...the respondent shall promptly file with the court certified copies of the indictment,..."

On July 22, 2008, Mr. Starling had a jury trial and the State argued that Mr. Starling, with the use of a gun, robbed the Country Corner Convenience Store in Cuthbert, GA. The State presented testimony from Ms. Phyllimonia Tamplin, Ms. Ginger Goodson, and Mr. Derricks Smith (the "Witnesses"). Each of the Witnesses stated that they were with Starling during or around the time of the Alleged Crime-however none of the witnesses testified to actually seeing Mr. Starling commit the Alleged Crimes or even having direct personal knowledge as to Starling's participation in the Alleged Crimes.

Federal Rule of Evidence, Rule 602, to which is applicable to all States, states that "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter."

There is no evidence in the States Record to show that said witnesses had personal knowledge of the subject matter. Instead the Witnesses repeatedly stated in open Court that they heard another witness tell a third witness that "Al (the Petitioner) robbed the store". Each time this statement was made it was enveloped in hearsay and should never have been admitted and heard by the Jury. Mr. Starling's trial counsel objected to the admission of said statements and moved for a mistrial but the trial court overruled and the Jury found Mr. Starling guilty and he was sentenced to serve 20 years in prison.

Mr. Starling appealed to the Georgia Court of Appeals arguing that his Trial Counsel was ineffective for failing to exclude the hearsay and speculative testimony from State's Witnesses,

citing the new hearsay law that was controlling at the time. The Court of Appeals issued their decision on October 4, 2017, affirming Mr. Starling's conviction.

The Georgia Statute for Hearsay O.C.G.A. § 24-8-801 states that Hearsay "means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."

The Georgia Court of Appeals denied Mr. Starling's appeal applying the old hearsay law stating that it was not hearsay as long as the declarant showed up to court and testified. Said Court failed to address the other plain errors to which was the objection made by Mr. Starling's trial counsel on the admission of his custodial statement, to which violated his 5th Amendment right to self-incrimination. The Court also failed to address the sufficiency of the evidence that was abducted at Mr. Starlings trial to which there was a lack thereof.

Thereafter, Mr. Starling received his case file from his Appellate Counsel and discovered the GBI Investigative Summary, that had statement's within it from States Witnesses, that would have proved Mr. Starling's innocence and showed that the State lacked probable cause to arrest and charge Mr. Starling with Armed Robbery.

On October 2, 2018, Mr. Starling filed for a Writ of Habeas Corpus in the Superior Court of Mitchell County raising his constitutional violations. Mr. Starling claimed that (1) the Trial Court lacked jurisdiction from failing to take and subscribe an oath of office, (2) the arrest warrant was void because it was issued without any showing of probable cause (Appendix, C), to which was in violation of the 4th Amendment, (3) the indictment was invalid because it was returned solely on hearsay, (4) the trial court denied Mr. Starling a fair trial due to the admission of

hearsay testimony, to which violated Mr. Starling's 6th Amendment right to confrontation, and the admission of his custodial statement, to which violated his 5th Amendment right to self-incrimination, (5) the evidence was insufficient to support his conviction, (6) denied due process and equal protection of the laws within the Georgia Court of Appeals based on the fact that said court failed to apply the new hearsay law to Mr. Starling's appeal, and (7) Ineffective Assistance of counsel from failing to subject the prosecution's case to meaningful adverse testing process.

On February 18, 2019, a hearing was held where Mr. Starling was giving an opportunity to question his Appellate Counsel, Greg Smith. Mr. Smith stated that he was restricted, by the Court of Appeals, to only raise issues that was raised by Mr. Starlings Motion for New Trial Counsel. Mr. Starling was not given an opportunity to question his Motion for New Trial Counsel. At said hearing Mr. Starling tried to admit the G.B.I. Investigative Summary into evidence but the Court stopped him and advised him that the Respondent was going to submit everything into the record. At the end of the hearing the Court advised Mr. Starling that he would be receiving the Court's Record and that he can file a brief and proposed order to said record. Mr. Starling received the Courts record and noticed the G.B.I. Investigative Summary had been omitted from the record. On June 10, 2019, another hearing was held, where Respondent requested for the record to be reopened for further evidence, and the Court allowed it. Mr. Starling thereafter moved for the admission of the G.B.I. investigative Summary, that have been omitted from the States Record, and the Respondent objected on the grounds of authentication. The Court withheld its ruling and gave the Respondent time to check the authenticity of the G.B.I Investigative Summary. On February 19, 2020, another hearing was

held where the Court ruled that it was not going to admit the G.B.I. Investigative Summary into evidence because it was not authentic. The G.B.I. Investigative Summary is Self-Authenticating pursuant to Federal Rules of Evidence Rule 902 because it has a government seal on it alone with G.B.I. Agents signatures. On March 16, 2020, the Court dismissed Mr. Starling's habeas petition without considering the G.B.I. Investigative Summary, that had the Newly Discovered Statement's within it, to which Mr. Starling was trying to submit to show that he was actual innocent from the record evidence. The Court failed to determine the legality of Mr. Starling's detention.

On December 20, 2020, Mr Starling filed his First Federal Habeas, 28 U.S.C. § 2254 petition, arguing the same grounds that he raised in his State Habeas but adding additional grounds claiming that (1) the State Courts denied him a fair opportunity, to have his constitutional violation decided on the merits, to test the legality of his detention, (2) Fraud was committed upon the Court's, and (3) an Actual Innocence Gateway claim. The Respondent filed a motion to dismiss, thereafter, Mr. Starling filed a motion for discovery, requesting the Respondent to produce the G.B.I. Investigative Summary, so that he could prove his actual innocent claim, as well as his constitutional violations.

On August 16, 2022, the Magistrate Judge issued an order denying Mr. Starling's motion for discovery, and issued it's Report and Recommendations to dismiss Mr. Starling's First Federal habeas petition for being untimely, applying the AEDPA 1-year statute of limitations 2244(d).

On September 2, 2022, 17 days later, after the Magistrate Judge denied Mr. Starling's motion for discovery, Mr. Starling filed a motion for summary judgment, submitting portions of the G.B.I. Investigative Summary, to which was the Newly Discovered statement's that was not presented at his trial, that would have proved his innocence. On October 17, 2022, the District Court adopted the Magistrates Report and Recommendations and held Mr. Starling's motion for summary judgment moot without considering the newly discovered statement's, and denied Mr. Starling a Certificate of Appealability.

Under the Federal Rules of Civil Procedure, Rule 56(a)(b) states that "A party may move for summary judgment, identifying each claim...on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'...a party may file a motion for summary judgment at any time until 30 days after the close of all discovery."

On November 17, 2022, Mr. Starling filed a Notice of Appeal in the District Court, and a Certificate of Appealability in the Eleventh Circuit Court of Appeals claiming that (1) the District Court denied him equal protection of the Great Writ of Habeas Corpus, to test the legality of his detention, (2) denied him equitable tolling to correct a fundamental miscarriage of Justice, and (3) denied him his right to be heard on his motion for summary judgment, alone with other issues. The Eleventh Circuit denied Mr. Starling a COA, and motion for Reconsideration. Thereafter Mr. Starling sought a Writ of Certiorari with this Court. Said Court denied the writ on January 8, 2024, now Mr. Starling seeks a Rehearing pursuant to this Court's Rule 44.

REASONS MERITING REHEARING

Under this Court Rule 44. 2. It states that "Any petition for rehearing of a order denying a petition for a Writ of Certiorari...shall be filed within 25 days after the date of the order of denial...,its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

I.

INTERVENING CIRCUMSTANCES

In Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed. 2d 542 (2000), and Barefoot v. Estelle, 463 U.S. 880, 893 (1983), this Court held "If a ground was dismissed by the district court on procedural grounds, a certificate of appealability must be issued if petitioner meets the Barefoot standard as to the procedure question, and shows, at least, that jurists of reason would find it debatable whether the ground of the petition at issue states a valid claim of a constitutional right.

Mr. Starling filed a 2254 petition in the district court raising numerous constitutional violations claiming (1) the Trial Court lacked jurisdiction over the subject matter, and the defendant, (2) the arrest warrant was void because it was issued without any showing of probable cause (3) the indictment is invalid and defected because it lacks a stamp file alone with the Clerk of Court's signature, and was (Allegedly) returned solely on hearsay, (4) denied a fair trial due to the fact that he was denied his 6th amendment right to confront his accuser, and denied his 5th Amendment right to be compelled to be a witness against him self, (5) the

evidence was insufficient to support the jury's verdict, (6) the State Court's denied him a fair adjudication of the legality of his detention, (7) the Court of Appeals denied him equal protection of the law from applying the old hearsay law, (8) raised an Actual Innocent Gateway claim, and (9) fraud upon the court. The district court dismissed Mr. Starling's 2254 petition, holding it time barred, applying the AEDPA 1-year statute of limitation pursuant to 2244(d)(1).

The Eleventh Circuit Court of Appeals and the district court failed to observe statute 28 U.S.C. § 2244(a) (the intervening circumstance) to which states "No Circuit or District judge shall be required to entertain an application for a writ of Habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus except as provided in section 2255." It was never Congress intention for the courts to over look § 2244(a), deny a habeas petitioner his right to have the legality of his detention determine, and apply § 2244(d)(1) AEDPA 1-year statute of limitation.

Mr. Starling presented his constitutional violations to the State Habeas Court and said court dismissed his petition on procedural grounds without determining the merits of his claims. The State procedure rule did not provide Mr. Starling with a fair opportunity to have his Federal claims heard. The procedural rule frustrates (interferes with) the enforcement of Mr. Starling's federal rights, to which makes the State Habeas Court process ineffective and inadequate to test the legality of Mr. Starling's detention.

Under the Federal Habeas Corpus statute 28 U.S.C. § 2254 (a)(b)(1)(B)(ii) (intervening circumstance) it states that "...a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States'. An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted unless it appears that-' circumstances exist that render such process ineffective to protect the rights of the applicant."

"This section is declaratory of existing law as affirmed by this Court. One of its purpose 'is to eliminate, as a ground of Federal jurisdiction to review by habeas corpus judgments of States Courts, the proposition that the state court has denied a prisoner a 'fair adjudication of the legality of his detention under the constitution and laws of the United States...This ground would, of course, always be open to a petitioner to assert in Federal Court after he had exhausted his state remedies or if he had no adequate State remedy." See Exparte Hawk (1944) 321 U.S. 114, 88 L.Ed. 572, 64 S.Ct. 448.

Mr. Starling filed his 2254 petition, raising numerous constitutional violations, and claiming that the State Court's denied him a fair opportunity to have his constitutional violations determined on the merits, and raised an Actual Innocent Gateway claim. The Respondent filed a motion to dismiss. Thereafter, Mr. Starling filed a motion for discovery, requesting the Respondent to produce the G.B.I. Investigative Summary, that was omitted from the States Record, to prove that he was actually innocent, and to prove his constitutional violations. On August 16, 2022, the Magistrate Judge issued an order denying Mr. Starling's

motion for discovery, and issued his Report and Recommendations to dismiss Mr. Starling's 2254 petition for being untimely, applying the AEDPA 1-year statute of limitations 2244(d). On September 2, 2022, Mr. Starling filed for a motion for summary judgment, presenting the (Intervening circumstances) Newly Discovered Statement's, that he discovered in the G.B.I. Investigative Summary, that was not presented at his trial, to which would have proved his innocence. On October 17, 2022, the district court adopted the Magistrate Judge Report and Recommendations and held Mr. Starling's motion for summary judgment moot without considering his Newly Discovered Statement's.

Under the Federal Rules of Civil Procedure, Rule 56 (a)(b) it states that "A party may move for summary judgment, identifying each claim...on which summary judgment is sought. The Court SHALL grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.' ...a party may file a motion for summary judgment at any time until 30 days after the close of all discovery."

There were never any genuine dispute, by Respondent, as to any material fact, Mr. Starling was entitled to a judgment as a matter of law, and Mr. Starling filed his motion for summary judgment within the 30 days after the Magistrate Judge denied his motion for discovery to which closed the discovery process.

The district court denied Mr. Starling due process and equal protection of the laws from failing to allow Mr. Starling to be heard on his motion for summary judgment and to submit the newly discovered statement's to prove his innocence, and his constitutional violations. The District Court erred in its procedural ruling denying Mr. Starling his right to have the legality of

his detention determine, to which made the 2254 habeas inadequate and ineffective to test the legality of his detention.

In McQuiggin v. Perkins, 596 U.S. 383, 133 S. Ct. 1924, 185 L. Ed. 2d 1019 (2013); and Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851, 130 L. Ed. 2d 808 (1995), (the intervening circumstances) this Court granted Certiorari for the determination of the Petitioner's innocence, and held that "Actual innocence, if proved, serves as a gateway through which a petitioner may pass whether the impediment is a procedural bar,...or expiration of the AEDPA statute of limitations.'...A petitioner invoking the miscarriage of justice exception 'must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.'....Under Schlup's demanding standard, the gateway should open only when a petition presents "evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the Court is also satisfied that the trial was free of nonharmless constitutional error." 531 U.S., at 327, 316, 115 S. Ct. 851, 130 L. Ed. 2d 808.

The lower courts failed to determine Mr. Starling's Newly Discovered Statement's, that he submitted within his motion for summary judgment, and his constitutional violations to which was very harmful, denying him a fair trial.

Therefore reasonable jurists would debate whether the district court was wrong in there procedural ruling in dismissing Mr. Starling's First Federal Habeas Corpus applying the AEDPA 1-year statute of limitation, without considering his actual innocence claim and his constitutional violations, denying Mr. Starling his right to have the legality of his detention determined pursuant to § 2244(a).

SUGGESTIONS IN SUPPORT OF REHEARING

To uphold the Eleventh Circuit Court of Appeals decision, in denying Mr. Starling a Certificate of Appealability, from the clearly erroneous decision that the district court made, in denying Mr. Starling Federal review on his First Federal Habeas Corpus, pursuant to 28 USC § 2254, applying the AEDPA 1-year statute of limitation, would be violating the Suspension Clause of the United States Constitution Art. I § 9, the intervening circumstances.

Article I § 9 states that "...The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

The one-year limitations period of the AEDPA may violate the Suspension Clause if it renders the habeas remedy inadequate or ineffective to test the legality of detention. See Molo v. Johnson, 207 F.3d 773 (5th Cir. 2000); See also Miller v. Marr, 141 F.3d 976, 977 (10th Cir. 1998) (quoting Swain v. Pressley, 430 U.S. 372, 381, 51 L. Ed. 2d 411, 97 S. Ct. 1224 (1977)); and United States v. Hayman, 342 U.S. 205, 223, 96 L.Ed 232, 72 S. Ct. 263 (1952). In Triestman v. United States, 124 F.3d 361, 373-380 (2d Cir. 1997), the Court held "There may be circumstances where the limitation period at least raises serious constitutional questions and possibly renders the habeas remedy inadequate and ineffective."

The State Court's failed to determine the legality of Mr. Starling's detention, holding his constitutional violations claims procedurally barred, to which rendered said process inadequate and ineffective to protect his constitutional rights. Mr. Starling filed his First Federal Habeas, 2254 petition, in the district court, raising his constitutional violations and said court dismissed

his petition applying the AEDPA 1-year statute of limitations, to which render said process inadequate and ineffective to test the legality of Mr. Starling's detention.

In Lonchar v. Thomas, 517 U.S. 314, 116 S. Ct. 1293, 134 L.Ed. 2d 440 (1996), the Court disapproved of dismissal of a first federal habeas petition on equitable grounds outside of the statutory rule concerning delayed petitions, Rule 9(a) of the Rules Governing § 2245 cases in the United States District Courts. See 116 S. Ct. at 1303. The Court distinguished between successive petition and first federal habeas petitions: "Dismissal of a first federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Id at 1299.

Allowing the lower courts to apply the AEDPA 1-year statute of limitations, in denying Mr. Starling his right to have the legality of his detention determine, makes 28 USC § 2254, habeas process, inadequate and ineffective, to which violates the Suspension Clause of the United States Constitution art. I § 9.

CONCLUSION

For the reasons stated, the Court Must grant Rehearing of its judgement entered on January 8, 2024, and issue a Writ of Certiorari to hold the Eleventh Circuit Court of Appeals accountable for failing to properly apply the rule of law of this Court and the rules that have been established by Congress and grant Mr. Starling relief where justice is demanding.

This 31st Day of January 2024.

Respectfully submitted

A handwritten signature in cursive script, appearing to read "Alfred Starling", is written over a horizontal line.

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