No. 23 - 6566

IN THE SUPREME COURT OF THE UNITED STATES

In re: Brandon Robert Trammel

PETITION FOR WRIT OF HABEAS CORPUS

Brandon Robert Trammel, AY0297
Counsel on Record for himself (Pro Se), Petitioner
Mule Creek Infill Complex
D16-C102-2L
4001 State Hwy 104
P.O. Box 409089
Ione, California
95640-9089

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PETITION FOR WRIT OF HABEAS CORPUS

QUESTIONS PRESENTED FOR REVIEW

1.) Did Petitioner, Brandon Robert Trammel meet the criteria to request to file a second or successive federal writ of habeas corpus?

2.) Did the 9th Circuit, U.S. Court of Appeals abuse its discretion when the 9th Circuit ignored petitioner's newly discovered evidence which revealed that Petitioner's constitutional rights were violated and Petitioner did make a prima facie showing under 28 U.S.C.S. § 2244(b)(2)?

3.) Did the Petitioner prove that the facts underlying the new evidence, if proven, did establish that no reasonable fact finder would have found the Petitioner guilty of the underlying offense?

LIST OF PARTIES BELOW IN COURT

1.) Brandon Robert Trammel, Petitioner

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Constitution, Statutes, Regulations, and Rules

CITATIONS OF OPINIONS AND ORDERS IN CASE

The decision of the United States Court of Appeals for the Ninth Circuit on Petitioner's Application to file a Second or Successive Federal Writ under § 2254, is not reported but is set forth at p. 1 of the Appendix.

The decision of the United States District Court for the Eastern District of California on Petitioner's Section 2254 Petition is not reported, but set forth at p. 4, of the Appendix.

JURISDICTIONAL STATEMENT

The judgment or decision denying Petitioner's Application to file a Second or Successive § 2254 federal writ by the U.S. Court of Appeals for the Ninth Circuit was entered on March 15, 2023, Rehearing was not sought. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1), 28 U.S.C. § 1651(A), and Supreme Court Rule 20.

Constitutional Provisions, Statutes, and Regulations Involved

1.) The Fourteenth Amendment to the United States Constitution's Due Process Clause, provides:

> Sec. 1. [Citizens of the United States] All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person with life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2.) Title 28 of the United States Code Service - Section 2244(b)(2) - Finality of Determination, provides:

> (b)(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless -
>
> (A) The applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (B)
> (ii) The facts underlying the claim if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

3.) The statute under which Petitioner sought post conviction relief was 28 USCS § 2254.

STATEMENT OF THE CASE

The facts necessary to place in there setting the questions now raised can be briefly stated:

I.

Course of Proceedings In The Section 2254 Case Now Before This Court

On or about October 4, 2019, petitioner filed his 28 USCS § 2254 federal

writ in the U.S. District Court for the Eastern District of California - Sacramento Division. (See Appendix at pp. 2 - 3).

On or about May 12, 2020, the U.S. District Court for the Eastern District of California - Sacramento Division dismissed petitioner's first federal writ as untimely under the AEDPA (Antiterrorism and Effective Death Penalty Act). (See Appendix at p. 4).

II.

Relevant Facts Concerning Petitioner's Application To File A Second or Successive Federal § 2254 Writ

In or about the year 2022, petitioner submitted his Application to File a Second or Successive Federal Writ of Habeas Corpus, along with a copy of the proposed federal writ of habeas corpus. In the Application, petitioner explained to the Ninth Circuit that the new evidence relied upon was the Department of Justice Report; this Report revealed that third party DNA from the crime scene was mixed in with the victim's blood, not the petitioner's DNA.

Petitioner also explained to the Ninth Circuit, why this report was not previously available, but, the Ninth Circuit ignored petitioner's explanation. This DOJ report was not available to this petitioner because the District Attorney for Trinity County, California, refused to follow Judge Johnson's direct orders to turn over this discovery in or around August 2016, and then on February 8, 2017, when Judge Johnson granted Petitioner's Motion for Discovery pursuant to Cal. Penal Code § 1054.9. (Id. at Appendix at pp. 48-51).

On or about May 15, 2020, Petitioner submitted a second request for discovery because the District Attorney for Trinity County California, refused

to follow Judge Johnson's two previous orders. Then trial counsel for petitioner, never sent the "file" to petitioner's appellate attorney, according to the letter written from Petitioner's appellate counsel on May 19, 2016. (Id. at Appendix, pp. 93-97). Petitioner did not receive the DOJ Report and the Invalid Search Warrant, not until 2021, after Petitioner's first federal writ had already been filed. (Id., at Appendix at pp. 129-138).

On or about March 15, 2023, the 9th Circuit, U.S. Court of Appeals denied Petitioner's application for authorization to file a second or successive 28 USCS § 2254 habeas corpus petition. The 9th Circuit, stipulated that "the applicant had not made a prima facie showing under the 28 USCS § 2244(b)(2)." (Id., at Appendix, p. 1).

III.

Existence of Jurisdiction Below

Petitioner contends that this Court has jurisdiction because no other court can grant relief sought by this Petitioner because the 9th Circuit stipulated that Petitioner did not make a prima facie showing under 28 U.S.C.S. § 2244(b)(2) for the court to grant petitioner's application to file a second or successive federal writ on March 15, 2023.

No other form of relief will be sufficient to protect the rights of petitioner because the 9th Circuit assumed that Petitioner did not make a prima facie showing; when in fact, petitioner did make a prima facie showing because petitioner is factually and actually innocent and his trial was a miscarriage of justice based upon: (1) invalid search warrant; (2) there was third party DNA at the crime scene mixed in with the victim's blood, not petitioner's; (3) petitioner was never at the crime scene; (4) DNA in hair follicles were never tested; (5) prosecutorial misconduct when the District Attorney told the jury: "Mr. Trammel is refusing to testify, this infers

guilt;" (6) Judicial misconduct when the trial judge told the jury: "[T]his is not a death penalty case," and (7) Petitioner was not in the video tapes from the mini mart.

Based on the above, this court does have jurisdiction to hear petitioner's writ.

IV.

The Ninth Circuit, U.S. Court of Appeal Abused Its Discretion In Not Granting Petitioner's Application To File A Second or Successive Federal § 2254 Writ When Petitioner Showed A Prima Facie Case

Petitioner contends that the 9th Circuit, U.S. Court of Appeals abused its discretion when the Court did not grant petitioner's application to file a second or successive 28 U.S.C.S. § 2254 federal writ of habeas corpus on or about March 15, 2023.

ARGUMENT FOR ALLOWANCE OF WRIT

I.

The 9th Circuit, U.S. Court of Appeals Abused Its Discretion When the 9th Circuit Did Not Grant Petitioner's Application to File a Second or Successive 28 USCS § 2254 Federal Writ of Habeas Corpus

Petitioner contends that the 9th Circuit, U.S. Court of Appeals abused its discretion when the court did not grant petitioner's application to file a Second or Successive 28 U.S.C.S. § 2254 federal writ of habeas corpus.

In Petitioner's application to the 9th Circuit to file a second or successive federal writ of habeas corpus, petitioner explained to the Court that he was relying on new evidence and that petitioner was factually and actually innocent based upon new evidence, which was the DOJ (Department of Justice) Report that petitioner received after petitioner had already

submitted his first federal writ of habeas corpus which was ultimately denied by the U.S. District Court for the Eastern District of California - Sacramento Division because it was untimely filed pursuant to the AEDPA (Antiterrorism and Effective Death Penalty Act).

Petitioner also explained to the 9th Circuit that this evidence and the claim could have been brought up in the first federal writ, but, it was not brought up because the District Attorney for Trinity County California, refused to obey and follow Judge Johnson's two court orders; ordering the District Attorney to turn over this new evidence, as well as, the invalid search warrant. The District Attorney refused to cooperate with Judge Johnson's orders.

In Bucks v. Davis, 580 U.S. 100, 137 S.Ct. 759, 197 L.Ed.2d 1, 2017 U.S. LEXIS 1429 (2017), this court held: "[T]he Fifth Circuit exceeded the limited scope of the COA analysis ... jurists of reason could disagree with the district court's resolution of his constitutional claims or ... could conclude the issues presented are adequate to deserve encouragement to proceed further."

Petitioner contends that reasonable jurists could disagree with the Ninth Circuit's decision of not granting Petitioner's Application to file a second or successive federal writ of habeas corpus and they could conclude that the issues presented in the Application deserved to go further. It is petitioner's belief and understanding that the 9th Circuit, U.S. Court of Appeals ignored the facts which petitioner laid out for the court; thus, petitioner contends that the 9th Circuit, U.S. Court of Appeals abused its discretion in not granting petitioner's application to file a second or successive federal writ of habeas corpus.

Then, in McQuiggin v. Perkins, 569 U.S. 383 (2013), provides: "...

2244(b)(2)(B), the State observes, provides that a petitioner whose first federal habeas petition has already been adjudicated when new evidence comes to light may file a second or successive application."

At headnote 8, of McQuiggin v. Perkins, supra, it provides:

> [395] The State further relies on the provisions of AEDPA other than § 2244(d)(1)(D), namely, § 2244(b)(2)(B) and 2254(e)(2), to urge that Congress knew how to incorporate the miscarriage of justice exception when it was so minded. Section 2244(b)(2)(B), the State observes, provides that a petitioner whose first federal habeas petition had already been adjudicated when the new evidence comes to light may file a second or successive petition, when and only when, the facts underlying the new claim would "establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense;" § 2244(b)(2)(B)(ii) and § 2254(e)(2), which generally bars evidentiary hearings in federal habeas proceedings initiated by state prisoners, includes the exception for prisoners who present new evidence of their innocence."

Based on the above, petitioner believes that the Ninth Circuit abused its discretion in not granting petitioner's application because petitioner presented new evidence and petitioner's first federal writ was already filed and it was adjudicated by means of a dismissal as being untimely.

II.

Petitioner Contends That He Met The Criteria And He Has a Prima Facie Case to File a Second or Successive Federal Writ of Habeas Corpus

Petitioner contends that he met the criteria pursuant to Title 28 USCS § 2244(b)(2) when § 2244(b)(2) gives two options. The first option is that an applicant shows that the claim relies on a new rule of constitutional law made retroactive to cases on collateral review. The second option is, the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for the constitutional error, no reasonable factfinder would have found

the applicant guilty of the underlying offense. In section 2244(b)(2), it does not say "and", it says "or," which means that there is a choice which the applicant can explain which one that he/she qualifies under.

It is petitioner's belief that he took option two because he explained to the Ninth Circuit the new evidence, what it was, and the reason why it was not presented in the first federal writ that petitioner submitted to the District Court. Petitioner also explained to the Ninth Circuit that he also received the invalid search warrant as new evidence also because the District Attorney refused to turn the warrant over in petitioner's discovery request. Petitioner received this invalid warrant after petitioner had already submitted his first federal writ. Based on this new evidence and the new evidence reveals that no reasonable factfinder would have found the applicant guilty of the underlying offense.

In the unpublished decision of In re Neely, 223 Fed. Appx. 358, 2007 U.S. App. LEXIS 6435 (5th Cir. 2007), the Court held: "[P]etitioner failed to make a prima facie showing under 28 USCS § 2244 to raise prosecutorial misconduct and claims under the Eighth and Fourteenth Amendments in successive application because [the] evidence relied upon was neither new nor previously undiscoverable and there was no showing that but for constitutional error, petitioner would not have been convicted of capital murder."

However, in petitioner's case, as explained above, petitioner's evidence is new evidence.

III.

Petitioner Contends that He Did Prove That His Facts Underlying The New Evidence Did Establish That No Reasonable Factfinder Would Have Found the Petitioner Guilty of The Underlying Offense

Petitioner did prove that his facts underlying the new evidence did

establish that no reasonable factfinder would have found the petitioner guilty of the underlying offense. The facts to his new evidence was laid out in his application to file a second or successive federal writ of habeas corpus. The facts which Petitioner laid out, was, in the new evidence of the DOJ Report, when there was third party DNA at the crime scene mixed in with the victim's blood but it was not petitioner's DNA; the other facts is that, the search warrant was invalid because it did not have the signature of the officer on his affidavit and the description of petitioner did not match petitioner.

In the following cases: Banister v. Davis, 140 S.Ct. 1698, 207 L.Ed.2d 58, 2020 U.S. LEXIS 3037 (2019, U.S.) and in Halprin v. Davis, 140 S.Ct. 1200 (2020), both cases stipulated that, Section 2244(b)(2)(B) provides in pertinant part:

> [A] claim presented in a second or successive habeas corpus application under Section 2254 that was not presented in a prior application shall be dismissed unless ... (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offenses.

In Petitioner's case, petitioner contends that based on his new evidence and the facts underlying the claim, "no reasonable factfinder would have found the applicant guilty of the underlying offense."

IV.

The Questions Raised In This Extraordinary Writ Are Important and Unresolved

The questions raised in this extraordinary writ are important and unresolved, for the simple fact, that the Ninth Circuit did abuse its discretion in not granting petitioner's application to file a second or

successive writ of habeas corpus. As stipulated above, petitioner did apprise the Ninth Circuit of this new evidence but the Ninth Circuit ignored it; thus, petitioner's contends this court must answer these questions and allow this petitioner to be able to file a second or successive writ based upon petitioner's new evidence.

CONCLUSION

Based on the above, and for the fact that Petitioner did provide new evidence of his innocence, through the DOJ Report, which revealed that there was a third party DNA not Petitioner's DNA mix in with the victim's blood; petitioner believes that according to the Report and had the Report been presented during petitioner's trial, no reasonable factfinder would have found petitioner guilty of the underlying offense. According to McQuiggin, supra, the new evidence which Petitioner presented in his Application to the Ninth Circuit, this Court held, with new evidence, an applicant may file a second or successive application.

Dated: 01/08, 2024

Respectfully submitted:

Brandon Robert Trammel, AY0297
Petitioner Pro Se

VERIFICATION

Petitioner, Brandon Robert Trammel, in the above-entitled cause, hereby, declares under the laws for penalty-of-perjury, that the aforementioned is true and correct upon information and belief. Executed on this 8th day of January, 2024, at MCIC, located in Ione, California.

Brandon Robert Trammel, AY0297
Declarant/Petitioner Pro Se