

23-6864
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
OCT 07 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.
ORIGINAL

In Re Salomon Roberts — PETITIONER
(Your Name)

ON PETITION FOR A WRIT OF HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Salomon Roberts # 066691
(Your Name)

RmC Main unit
P.O. Box 628
(Address)

Lake Butler, Florida 32054
(City, State, Zip Code)

[X]
(Phone Number)

QUESTION(S) PRESENTED

Whether Due Process Required a Hearing on the Alleged Offenses that Form the basis for Violation prior to Probation being Revoked.

Whether Petitioners Federal Protected Right to "Procedural" and "Substantive" Due Process were Violated where Asst. Prosecutor intentionally Altered the Identification Evidence by converting its witness who did not identify me as perpetrator [into] witness that could. And in Contravene of My right to Counsel

Whether the Supremacy Clause 28 U.S.C. § 1343(3) give Force to Federal Action based on the statement Made in Cigliio decision

Whether the Procedural and Substantive Components of the Fifth and Fourteenth Amendments of the Federal Constitution As Supreme Law of the Land binds Every Forum - includes the state of FLORIDA

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

Berger v. United States, 295 U.S. 78 (1935)

Donnelly v. DeChristoforo, 416 U.S. 637 (1974)

Biglio v. United States, 405 U.S. 150 (1972)

Vitek v. Jones, 445 U.S. 480 (1980)

State v. Herrera, 866 So.2d 151 (Fla. 4th Dist 2004)

McLeskey v. Zant 499 U.S. 467, 494 (1991)

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF HABEAS CORPUS

Petitioner respectfully prays that a writ of habeas corpus 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☐ is unpublished.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 _____ 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☐ is unpublished.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 11th Judicial Circuit 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 _____.

☐ 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 _____.

☐ 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). *SEE ALSO*
28 U. S. C. §§ 2241, 2243, *Also* 28 U. S. C. § 1343(3)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Const. Law § 110.5 - Due Process Protections Attach to decisions to REVOKE Probation

Courts § 683 - Federal Courts may Intervene in the state Judicial Process "only" to correct wrongs of Constitutional dimension.

Const. Law - 840 - The Constitutional Requirement of due Process is not Satisfied where a Conviction is obtained by Presentation of testimony known to the Prosecuting Authority to be Perjured

Habeas Corpus §§ 4.5 - Habeas Corpus lies to test Proceedings so fundamentally lawless that Imprisonment Pursuant to them is not merely erroneous but void

Habeas Corpus § 9 if a state withholds An effective Remedy from the Victim of Unconstitutional State Action, the Federal Courts, Under the Habeas Corpus statute (28 U.S.C. § 2241) Have the Power And the duty to provide it

Habeas Corpus lies to enforce the right of Personal Liberty; when that right is denied and a Person is Confined, the Federal Court has the Power to Release Him.

28 U.S.C. § 1343(3) The Supremacy Clause - Congress has created Federal Jurisdiction of Any Civil Action Authorized by law to redress the deprivation under Color of state Law "of Any right, Privilege or Immunity Secured [1] by the Constitution of the United States or [2] by acts of Congress Providing for Equal Rights of Citizens or of All Persons within the Jurisdiction of the United States

**STATEMENT OF THE CASE
& RULE 20.4(A) STATEMENT**

Petitioner in Fact File # 2254 Petition in the District Court For Consideration on defaulted Claims based on a plausible showing of Actual Innocence [sup. ct # 22-7212] [APP. A B] Federal District Judge Failed to Consider And Address grounds For Cause to excuse the Procedural Default Contrary to the intervening Guidance Provided in House 547 U.S. 518 at 536-37

Here, Florida has withheld [Habeas Corpus § 9] An Effective Remedy From Petitioner on Unconstitutional "Restraint" And "State Action." Whereas this Court by Habeas Corpus § 2241 have the power and duty to provide it. See Fay v. Noia 372 U.S. 391, at 440-41 n. 41 (1963) By which the Appellate Jurisdiction by Habeas Corpus extends to All cases of Commitment by the Judicial Authority of the United States see Ex Parte Virginia 100 U.S. 339 at 342 Thus, this Court's Jurisdiction by Habeas Corpus is Properly Conferred by the Allegation and Presentation of the Unconstitutional Restraint. See [Habeas Corpus § 5] Noia, Supra at 426 n. 20

[Habeas Corpus § 4] Habeas Corpus lies to test proceedings so fundamentally lawless that Petitioner's Imprisonment Pursuant thereto is not merely erroneous but void. Id at 423 and n. 16 Citing Frank v. Magnum, 237 U.S. 309 at 327 (1915)

Wherefore, The Power Vested in this Court Under 28 U.S.C. § 2243 to summarily hear the Application and to determine the facts and dispose of the Matter as law and Justice requires is hardly characteristic of An Appellate Jurisdiction. Habeas Corpus Must issue to Enforce the right of Personal Liberty where that right is denied And a Person is Confined As Here the Supreme Court has the power to Release Petitioner [372 U.S. 480-31 And n. 29]

Exceptional Circumstances [sub Judice] warrant the exercise of this Court's discretionary power n. 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

obtained in any other form or from any other court on the defaulted claims.

REASONS FOR GRANTING THE PETITION

It is the duty of this Article III Supreme Court to resolve the Fourteenth Amendment issues when, in light of the intervening guidance provided in Fay v. Noie, 372 U.S. 391 at 400 and n.6 and 423 and n.16 (1963); where society would deem petitioner's restraints [i]ntolerable under these circumstances. This Court must intervene in the state judicial process to correct the wrong of constitutional dimension. Wainwright v. Goode, 111, 464 U.S. 78, 83 (1983)

Although due process protections attaches to decisions to revoke probation. see Vitek v. Jones, 445 U.S. 480 (1980) and FDOC current "mittimus" constitutes deprivation of personal liberty that requires due process protections. see Jones v. United States, 463 U.S. 354, 361 (1983)

Federal Courts are bound by Florida Supreme Court's Lex Loci in Roberts v. Lochran, 140 So. 2d 597 at 598 (1962) which held that the validity of an order revoking probation may be tested in a Habeas Corpus Proceeding.

Florida Supreme Court articulated in Bernhardt v. State, 288 So. 2d 490 (Fla. 1974). That:

"Due Process Requires the Right to a hearing on the alleged violation before one's probation is revoked." Id at 495

The Bernhardt Court further articulated that the evidence introduced during the revocation probation must be of the nature to convince the conscience of the court that a violation of probation has in fact occurred. Ibid.

Here Florida Highest Court view with respect to state law is not only binding in this context but is consistent with this Court's conclusion in Morrissey v. Brewer, 408 U.S. 471, 472 (1972)

NOTE: State Court Transcript of Revocation of Probation Proceeding is Available in this Court in Case No. 22-7212 Appendix B For this Court Inspection per FRE § 201 (b)(2)

Whereas, the Record [Appendix B Attachment] Reflects that State Revocation Proceeding Commenced at Approximately 9:00 a.m. on Nov 16, 1982 Id. at Page 1

Subsequently, Following a Finding of guilt And the Imposition of Sentence the Court set the clock to start Picking the Jury at 1:00 P.M. For the Underlying Offense(s) that Form the basis For Violation of Probation
Id. at Page 48

moreover, the Evidence developed during [VOP] was insufficient to satisfy a reasonable mind, nor the Conscience of the Court that Petitioner Committed the Offense. Thus, Full Faith And Credit "Must" be given to Established Fact [Art. IV §1] not Partial, but Full Credit

In Fact the Evidence developed therein clearly Exonerated Petitioner As Perpetrator of the 1982 Crimes. See 28 U.S.C. § 2254 (e)(2)(B) where the developed Facts Makes a Prima Facie Case of "Prosecutorial Misconduct" where Asst. State Prosecutor, William J. Surdweic distorted the Judicial Fact-Finding Process by (1) Elicitation of Perjured testimony from its witnesses and (2) intentionally Altered identification Evidence, by converting its witness that could not and did not identify Petitioner As culprit [inta] witness who could and did in Violation of Petitioner's due Process Rights. An Extraordinary Case where a Constitutional Violation Probably has Caused the Conviction of one that is Innocent of the Crime. Murray v. Carrier, 477 U.S. 478 at 495-96 and n. 9 (1986)

Material Developed Facts

- (1) Asst. Prosecutor elicited perjured testimony from its witness Irvin Walliek, who testified that the petitioner was the person that robbed and shot him.
Id. at Page 12 Ln. 16 - Pg 13 Ln. 4
- (2) State witness conceded that he did not identify the petitioner in prior photo line-up. Id. Page 17 Ln. 3-7
- (3) Asst Prosecutor stage pretrial bond hearing to alter identification evidence by converting its witness that did not identify petitioner as culprit [into] witness who could and in absence of counsel
Id Page 20-21
- (4) Detective Andrews testified that state witness never identified [petitioner] as the one who committed the crime. Id Page 27 Neither in prior photo line up [Pg 33 Ln 20 - Pg 34 Ln. 4] nor in prior video line up. [Pg 37 Ln. 9-20]
- (5) Following this exposure in open court on record, Asst. Prosecutor Serowick ["Blatantly"] conceded that petitioner was never identified as perpetrator of the crime(s) by none of the victims period
Id. Page 42 Ln. 11, 19 - Pg 43 Ln. 1
- (6) Under Ciglia Materiality the false statement in Paragraph (1) influenced the state judge finding of guilt (inspite of prosecutor's concession on record)
Id. Page 44 Ln. 5-17

Resulting in Judicial bias Under Tumey v. Ohio, 273 U.S. 510 (1927) First, because state witness lacked personal knowledge of identity. Fla. Evid Code § 90.604 And

Second, state Judge Finding is based on an unreasonable determination of the facts in light of the material facts developed under judicial examination see 28 U.S.C. § 2254(d)(2).

This Court retain Authority to issue the writ of Habeas Corpus in this narrow class of cases despite Petitioner procedural default McCleskey v. Zant 499 U.S. 467 494 (1991) whereas the state Revocation Process in its entirety is so fundamentally lawless that the Petitioner's continued Imprisonment pursuant to it is not merely erroneous but void.

There can be no room for doubt that (a) state witness testified falsely (b) prosecutor knew it was false because he influenced it and (c) it influenced the decision of guilt. See State v. Herrera 866 So.2d at 152.

The evidence of innocence in this context is procedural rather than substantive and must be allowed to pass Schlup Gateway 513 U.S. 298, 314-15 (1995) (citing Herrera v. Collins, 506 U.S. 390 at 404 (1993) where the Maj. Op at 17736-37 and n.4 The Honorable Court decided that such a claim would not be subject to procedural default.

It is imperative that this Court resolve the Fourteenth Amendment -

Issue that results in a Fundamentally Unjust Incarceration when, in light of the intervening Guidance provided in Giglio v. United States, 405 U.S. 150 at 153 n.1 (1972); Const. LAW § 840 The Inferior Tribunal's decision in revoking Petitioner's Probation was Contrary to the clearly established Proposition that the Fourteenth Amendment cannot tolerate a state Criminal Conviction based on false evidence. Miller v. Pate, 386 U.S. 1 at 7 n.2 (1967). Including the Unauthorized Action of Inferior Tribunal Revocation Process, in that it exceeded its Jurisdiction in the Imprisonment of Petitioner. See Virginia, 100 U.S. 339 at 342 = Accord Fay v. Kie, 372 U.S. 391 at 430-31 Habeas Corpus § 4

CONCLUSION

Where Petitioner have deaign entitlement to Relief this Court Must Provide Prompt Remedy And Vindication of due Process Habeas Corpus § 1
The petition for a writ of habeas corpus should be granted. Noia 372 U.S. at 400 n. 6

Respectfully submitted,

Solomon Roberts

Date: 2/9/24