

23-6915

No. \_\_\_\_\_

FILED

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SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Raynaldo Ray Quiroga — PETITIONER  
(Your Name)

vs.

United states of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Eleventh circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Raynaldo Ray Quiroga / Reg # 56156509  
(Your Name)

Federal correctional complex - USP-1, P.O. Box 1033  
(Address)

Coleman, Florida 33521-1033  
(City, State, Zip Code)

N/A F.B.O.P  
(Phone Number)

## QUESTION(S) PRESENTED

In *Bousley v. United States*, 523 U.S. 614, 623 118 S.Ct 1604, 140 L.Ed 2d 828 (1998), this court held that "Actual Innocence" is more than a mere legal insufficiency, it requires factual Innocence, in which this court had held that the Actual Innocence exception in only the context of a criminal defendant who had been convicted by a Jury and that the Actual Innocence exception ought not be extended to the guilty plea context of the case at hand.

In *Schulp v. Delo*, 513 U.S. 298, 327 (1995), this court held that to establish Actual Innocence a petitioner must show that considering new reliable evidence not presented at trial, it is more likely than not that no reasonable Juror would have him convicted in light of the new evidence and must supply new evidence of his Innocence.

According to this court it made in *Schulp v. Delo*, 513 U.S. 298, 327 (1995), that the Actual Innocence gateway applies if a petitioner is facing execution for a crime he did not commit, In *McQuiggin v. Perkins*, 569, U.S. —, 133 Sct 1924, 185 L.Ed 1019 (2013), that this court extended the exception to include "All" claims of Innocence regardless of the Penalty, In *McQuiggin v. Perkins*, Actual Innocence applies to those actual unique situations where a person alleges he is in prison for a crime he did not commit, a showing of cause and prejudice however is not required if the movant seeks Section 2255 relief based on a constitutional violation that may have resulted in a fundamental miscarriage of Justice, such as the conviction of an Innocent man/person, *McCleskey v. Zant*, 499 U.S. 499 U.S. 467, 493-94 (1991).

This court also held in *Jackson v. Virginia*, 443 U.S. 307 319 (1979), that Habeas relief is possible if a prisoner can show that no rational trier of fact could have found him guilty of all the essential elements of a crime beyond a reasonable doubt Id at 319, concluding that if Someone else has openly admitted to having committed the crime to which the petitioner is currently convicted in

Which also provides unadulterated facts that inculpates them and at the same time exculpates the petitioner, then the petitioner was well within his legal rights to assert this type of claim, hence a (constitutional violation).

1. IF Habeas Corpus Petitioners can challenge a conviction under the Unconstitutional categorical approach "Constitutional violation" in a Section 28 U.S.C. 2255 motion, why then was the petitioner denied relief and certificate of Appealability (COA) in his claim of Actual Innocence.

2. IF a person who is convicted of crime and in Prison for a crime he did not commit can prove his Innocent without a doubt with evidence of another person who is responsible for the conviction he is serving is that not a constitutional violation against his person and rights being punished for a crime he did not commit?

3. Is Actual Innocence cognizable in a section 28.U.S.C. 2255, as Constitutional violation, a miscarriage of Justice?

In *Strickland v. Washington*, 466 U.S. 668 (1984) at 694, this court held that to show prejudice, the petitioner must establish that but for counsel's unprofessional performance, there is a reasonable probability the result of the proceeding would have been different. A reasonable probability sufficient to undermine confidence in the outcome. "Ineffective Assistance" by definition is "conduct-based" on counsel's professional performance, instead of the categorical approach, however, since *Strickland* is a Supreme Court case, it will likely resolve the following questions will be crucial for cases on collateral review

1. IF *Strickland v. Washington* is constitutionally vague and provides adequate-conduct-based-approach into counsel's ineffective Assistance methods, is trial counsel's actions to disregard the petitioner's request to investigate, subpoena and/or call to witness an exculpatory witness, justifiable as adequate representation because defense counsel's erroneous belief that the person/witness is non-existent without proving the witness is or is not non-existent?
2. Was the petitioner denied effective Assistance of Counsel by defense counsel's disregard to investigate, subpoena and/or call to witness who claimed to be the actual suspect?
3. And is Defense Counsel entitled to disregard his duties of assisting his clients due to his erroneous beliefs, even if such beliefs are pure speculation to disregard his duties to his client? and is he justified by his actions as deemed by the affirmation of the Eleventh Circuit Court in the District Court's order and opinion.
4. Is the Eleventh Circuit in error for affirming the District Court's decision?

## 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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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 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 12/06/2023.

☒ 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 \_\_\_\_\_.

☐ 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

Amendment VI U.S.C.

28 U.S.C. 2255. Federal custody; remedies on motion attacking sentence.

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without Jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Federal Rules of Criminal procedure, section 2255 Rules. 3.C. Habeas Corpus 55. (Actual Innocence).

18 U.S.C. 924(c)(1)(A)(ii), Brandishing a firearm in furtherance of a crime of violence.

18 U.S.C. 1951(A), 1951(B), and 2, Interference with Commerce by Robbery - Hobbs Act Robbery

18 U.S.C. 922(j) and 924(A)(2), Aiding and Abetting the Possession of a stolen firearm

18 U.S.C. 922(g)(1) and 924(A)(2), Possession of a firearm by a convicted felon

### STATEMENT OF THE CASE

On December 16, 2021, after a Jury trial, Reynaldo Quiroga ("Petitioner") was found guilty of (Count 1), Interference with Commerce by Robbery - Hobbs Act Robbery, 18 U.S.C. 1951(A), 1951(B) and 2, (Count 2), Brandishing a firearm in furtherance of a crime of violence, 18 U.S.C. 924(C)(1)(A)(ii), (Count 3) Aiding and Abetting the possession of a stolen firearm, 18 U.S.C. 922(j) and 924(A)(2), (Count 4) Possession of a firearm by a convicted felon 18 U.S.C. 922(g)(1) and 924(A)(2).

On March 22, 2022, the Petitioner was sentenced to (480) months imprisonment (40 years). The term consisted of 240 months to Count 1, 120 months on Counts 3 and 4 (to run concurrent with each other but consecutive to Count 1), and 120 months on Count 2, to run consecutively to all counts.

On September 19, 2022, the Eleventh Circuit affirmed Petitioner's convictions and Sentence from direct Appeal, *United States of America v. Reynaldo Ray Quiroga*, United States Court of Appeals no. case 22-10915.

On October 14, 2022, Petitioner filed the initial *Pro/se* 2255 motion to vacate, which was denied on May 11, 2023, the petitioner appealed but was not successful and this writ for certiorari followed suit.

## REASONS FOR GRANTING THE PETITION

I. Whether "Actual Innocence" is in itself (A) (constitutional violation), a severe miscarriage of Justice that is cognizable in a 28 U.S.C. 2255 motion.

This court will resolve whether "Actual Innocence" is in itself a constitutional violation. This court held *Bousley v. United States*, 523 U.S. 614, 623 118 S.Ct. 1604, 140 L.Ed. 2d 828 (1998). That "Actual Innocence" is more than a mere legal insufficiency; it requires (Factual Innocence), in only the context of a criminal defendant who has been convicted by a Jury and that the Actual Innocence exception ought not be extended to the guilty plea context of the case at hand, none the less, the government has argued that the court apply the doctrine of constitutional avoidance, and hold that the Eleventh circuit does not recognize claims of Actual innocence as constitutional violations nor cognizable in a 28 U.S.C. 2255 motion, then goes to argue that the Eleventh circuit precedent forbids granting habeas relief based upon a claim of Actual Innocence in non capital cases, citing *Jordan v. Sec'y, Dept of corrections*, 485 F.3d 1351, 1356 (11th Cir 2007). The same Eleventh circuit and precedent, held that Actual Innocence exception is exceedingly narrow and reserved only for extraordinary cases. See *McHay v. United States*, 657 F.3d 1190, 1198-99 (11th Cir 2011).

This court held under *Bousley* standard; to be credible to support his claims or allegations of constitutional error with reliable evidence whether it be exculpatory, scientific evidence, trust worthy eye witness accounts or critical physical evidence that was not presented at trial.

Notably, the petitioner has made references to the Actual suspect, the exculpatory witness Mr. Sebastian munios Promirez, since Authorities were aware of him since September.

2021, Indeed, the government has conceded in Jordan that Actual Innocence is not recognized as a free standing claim nor qualify as a constitutional violation., a constitutional violation, and or constitutional error is one burden the petitioner has to meet and when considering the petitioner has presented evidence to be presented and tested under the Bousley standard was denied the opportunity to present such evidence that is exculpatory, trust worthy eye witness accounts not presented at trial, (such evidence is still available and was made available before and during trial if not for trial counsels ineffectiveness).

The District Court held upon its order and opinion that Actual Innocence is not in itself an independant constitutional violation. This court held in Schulp v. Delo, 513 U.S. 298, 327 (1995), That Actual Innocence Applies if a petitioner is facing execution for a crime he did not commit, This court also held in McQuiggin v. Perkins, 569 U.S. —, 133 SCT 1924, 185 L.Ed 1019 (2013), that the U.S. Supreme Court Justices extended the exception to include "All" claims of Innocence regardless of the penalty, also in McQuiggin this court held that "Actual Innocence" applies to those Actual unique situations where a person alleges he is in prison for a crime he did not commit.

The petitioner presented "factual Innocence" to his Actual Innocence claim, in the form of the Actual suspect (A) Mr. Sebastian Munier Ramirez, who is a exculpatory witness, who is the Actual suspect who committed the crimes the petitioner is convicted of. Mr. Ramirez who inculpatates himself in the crimes that the petitioner was accused and stood trial for and exculpates the petitioner.

The opposing parties and District court cited cases that did no more than contradict their conclusions and denied an Innocent man relief., non the less since Schulp, McQuiggin, and Bousley are U.S. Supreme court cases that will answer

II. Whether Defense Counsel denied the petitioner his Sixth Amendment Constitutional right of effective assistance of counsel and right to present witnesses in his favor, when defense counsel disregarded Investigating the witness due to the Defense Counsel Erroneous Belief that the witness was a non-existent person.

This Court held in *Strickland v. Washington*, 466 U.S. 668 (1984) at 694) to show prejudice, the petitioner must establish that but for counsel's unprofessional performance there is a reasonable probability that the result of the proceeding would have been different. The Sixth Amendment guarantees security in the right that states the following:

### The Sixth Amendment

In All criminal prosecutions, the Accused shall enjoy the right to a speedy and public trial, by an impartial Jury of the state and District wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to have the assistance of counsel for his defense.

In the Appendices, the United States Attorney response in Opposition to petitioners motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. 2255, and with respect to the district courts opinion and order, both parties condoned and conceded that trial counsel was not deficient by disregarding the letters which were claims made by an exculpatory witness who provided evidence

the petitioner must meet anything otherwise would of been deemed as conclusory and or frivolous, Clark v. comm'r, Ala, Dep't of corr, 988 F.3d 1326, 1331-32 (11th cir 2021).

The court will find that the petitioners right to have compulsory process for obtaining witnesses in his favor and to have the right to have the assistance of counsel for his defense in defending the defendant in a criminal proceeding, was denied him by counsel., defense counsels loyalty is to the defendant and uphold his oath to defend the constitution, not disregard any potential leads that could exonerate and prove the innocence of the petitioner.

Defense counsel had no evidence other than his erroneous beliefs that mr. Ramirez was not a real person, mr. potter defense counsel provided an Affidavit as to why he disregarded mr. Ramirez letter and disregarded calling mr. Ramirez as a witness by issuing a subpoena, he outlined the petitioners prior record and past, citing that was why he believed mr. Ramirez was non-existent, not because he investigated him or had other information that provided basis for mr. Ramirez as non-existent but because he chose not to, and despite his disregard to investigate or subpoena, or call to witness mr. Ramirez, during trial proceedings defense counsel used mr. Ramirez as a defense clearly providing contradicting information into his Justifications and proving his ineffectiveness

Mr. Potter, trial counsel chose to disregard defending the petitioner by disregarding to do his Job by assisting the petitioner as to the Sixth amendment for obtaining witnesses in the petitioners favor. and disregarding investigating a witness who is the actual suspect who inculcated himself for the crimes the petitioner was accused of, counsels presentation rested on his erroneous belief is ineffective assistance of counsel and the petitioner did suffer prejudice by deficient performance of counsel, please

See, Strickland v. Washington, 466 U.S. 668 (1984).

The Question directly presented is did the Eleventh Circuit Court error in affirming the District Court's denial of the petitioner's ineffective assistance of counsel ground (3) claim, by conceding that the petitioner suffered no prejudice by deficient performance by defense counsel or any prejudice stemming from defense counsel's performance or representation.




### CONCLUSION

If the supreme court still holds precedent in constitutional violations, as per Bousley, Schulp, McQuiggin, McClesky and Jackson and Actual Innocence is cognizable in a Section 28 U.S.C 2255 motion, the court should reverse the Eleventh circuit courts decision and denial of the petitioners (COA) and grant the writ with instructions for relief to vacate his sentence. If the court holds in Strickland v. Washington and finds that defense counsel was indeed ineffective, the court should reverse the Eleventh circuit courts decision and denial of the petitioners (COA) and grant the writ with instructions for relief to vacate his sentence and or what ever Justice requires.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Reynaldo Ray Quirós #56156-509-J127

Date: February 15<sup>th</sup> 2024