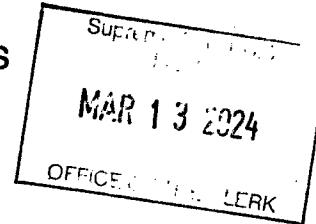


23-7058

No. 23A808

PROVIDED TO TOMOKA
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IN THE
SUPREME COURT OF THE UNITED STATES



James E. Palmer — PETITIONER
(Your Name)

vs.

Secretary, Dept. of Corr. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the 11th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

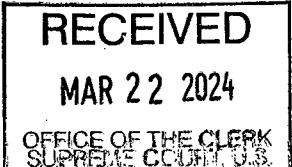
James E. Palmer, D.C. # CO2253
(Your Name)

Tomoka C.I.
(Address)

(City, State, Zip Code)

1/4

(Phone Number)



QUESTIONS PRESENTED

1.) Whether it would be a denial of any state prisoner's constitutional right to the writ of habeas corpus to not permit equitable tolling to apply to the statute of limitation of Rule 60 of the Fed. R. Civ. P., despite record's indication the state prisoner timely and diligently exhausted available state remedies first, before presenting the applicable Rule 60 issue to the federal court?

2.) Whether the court should exercise supervisory power in this case, where the record will show the lower courts, both state and federal, have thus far departed from the accepted and usual course of the judicial process, by making an erroneous finding of fact and misapplying the law, and allowed the miscarriage in justice to continue to go uncorrected, deriving from fraud that was perpetrated on the court by an attorney?

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

N/A

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STATUTES AND RULES

Fed. R. Civ. P. , Rule 60

1-11 (throughout)

OTHER

N/A

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 B to the petition and is

reported at Don't have access to citation; 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 _____.

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 March 1, 2024 (date) on March 13, 2024 (date) in Application No. 23 A 808.

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. 23 A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 1.) The United States Constitutional Right To The Availability to the Writ of Habeas Corpus to All Citizen
- 2.) Antiterrorism and Effective Death Penalty Act of 1996

STATEMENT OF THE CASE

The petitioner was tried by jury in Polk county, Florida, on May 22, 2008. The state charged him with having committed, as an adult, several sexual batteries and a lewd and lascivious act against a person under the age of twelve. At the conclusion of the one day trial, based solely on the child's testimony and his out of court video recorded statement, petitioner was found guilty as charged and sentenced to serve the remainder of his life in prison.

Among the various sexual acts it was alleged the petitioner committed, the jury also heard he subjected the alleged victim to anal intercourse for twice a night for almost a whole year.

In an attempt at discrediting the petitioner's accuser, his trial attorney did elicit the fact the alleged victim was given a medical examination a few months afterwards and no signs of trauma were found. However, without a medical expert to explain why this was not medically possible, The state was able to have a non medical expert witness testify that it was not unusual in cases like this for signs of trauma to not be found.

Petitioner filed a post conviction motion afterwards, claiming he received ineffective assistance of counsel in his trial attorney's failure to present a medical expense in his defense at his trial. The trial court ordered that an evidentiary hearing be held on the claim and appointed counsel. Petitioner then filed a

motion to appoint an expert at state expense as well. This motion was denied. A few months later the petitioner filed a motion to reconsider the requested appointment of a medical expert and the trial court ruled he would reserve ruling on the motion to reconsider pending whether he found trial counsel deficient in the first half of a bifurcated evidentiary hearing.

On April 29, 2016, the first half of the hearing was held and petitioner's trial attorney testified under oath that he initially thought hiring an expert in petitioner's defense was a good idea but decided against it when his research revealed that in order for one to be useful one would have to conduct another examination of the victim and he knew the trial judge would never approve of such a request. This was deemed sound trial strategy and the trial court found petitioner's trial attorney was not ineffective. As a result of this ruling, the trial court went on to deem any further proceedings moot.

After the state post conviction proceedings were of no avail, petitioner then sought relief from the judgment of his conviction by filing a timely petition for writ of habeas corpus (2254 petition) in the United States District Court of the Middle District of Florida, Tampa Division.

In the 2254 petition, petitioner presented the same claim mentioned above. The district court ultimately concluded petitioner procedurally defaulted

on the claim because he did not present it at all levels in the state post conviction proceedings. The district court also found that petitioner can not even overcome the default because he failed to show the substance of what an expert would have opined in his case or demonstrate prejudice as a result.

While awaiting for the United States Court of Appeals for the Eleventh Circuit to grant a certificate of appealability (COA), petitioner eventually acquired expert testimony in a sworn affidavit that proved his trial attorney gave misleading and false testimony against the ineffective assistance of counsel (IAC) claim mentioned above, during the state court post conviction proceedings, and as result, misguided the trial court into denying him post conviction relief.

In this affidavit, Dr. William R. Anderson, a very reputable forensic expert, swore under the penalty of perjury, knowing what petitioner was going to attempt to do with his statement, that it is never necessary nor appropriate to examine an alleged victim of sexual abuse a second time in order to give an opinion in this case.

Immediately upon receiving Dr. Anderson's affidavit into his possession, petitioner filed a motion to stay the 2254 appeal in the United States Court of Appeals of the Eleventh Circuit and filed a subsequent motion for post conviction relief back in the state trial court citing fraud on the court as his basis for requesting that

the qualifications as fraud on the court.
(Appx. B)

Petitioner then filed a timely motion for COA and a notice of appeal in the United States Court of Appeal for the Eleventh Circuit. On November 14, 2023, the circuit denied COA and entered a Judgment and Mandate in the case. (Appx. A) Now petitioner seeks a writ of certiorari in this Court to not only establish a clear rule for these type of fraud cases, but to exercise the supervisory powers of this court to correct a grave miscarriage in justice.

REASONS FOR GRANTING THE PETITION

The court should exercise supervisory power over this case in order to maintain the public's trust in the fairness of the judicial process in not only answering the first question in the affirmative but to correct the erroneous finding of facts and misapplication of the law that govern the just resolution of claims of fraud on the court and a miscarriage in justice.

As it stands now there does not exist any authority establishing whether equitable tolling applies to the statute of limitations of rule 60 of the Fed. R. Civ. P. If left unestablished courts will be free not to apply equitable tolling to Rule 60 motions raising fraud issues, like the lower court did in this case, and this would counter Congresses' exhaustion requirement set forth in the pertinent section of the AEDPA of 1996.

When it comes to the erroneous finding of facts and misapplication of law that govern fraud on the court claims aspect of this petition. This court is obligated to exercise its supervisory power here, if what the petitioner is claiming is accurate.

The affidavit, if not taken out of context, blatantly proves petitioner's trial attorney gave false testimony at his 2016 evidentiary hearing, during state post conviction proceedings, and that is the only reason those proceedings were halted, preventing further evidence to be

submitted to establish prejudice on the pertinent IAC claim.

This set into motion the very basis that were relied on by the district court during Petitioner's 2254 proceedings to deny relief on this IAC claim, so contrary to the district court's ruling against the 60(b) motion. Petitioner effectively demonstrated the integrity of the federal court's resolution of said IAC claim had a major defect that, although happened in the state court, rolled over into the federal court. If this erroneous finding of fact and misapplication go uncorrected. This will set a dangerous precedent that will erode the public's faith in the Justice System.

Accordingly supervisory power, although rarely exercised by this Court, should in these circumstances to prevent a grave miscarriage of justice from going uncorrected. Petitioner is a poorly educated layman in the law, so he leaves it up to the Court to determine a just resolution of this case. Nonetheless, he begs the court to not let the nature of the offenses to ignore the wrong that has thus far been permitted to go unchecked in these proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JEP

Date: 3/13/24