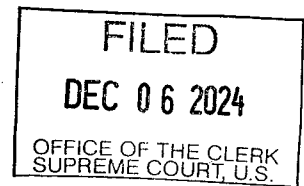


No. 24-6529



IN THE
SUPREME COURT OF THE UNITED STATES

Tarun Kumar Vyas — PETITIONER
(Your Name)

vs.

Hutchenson et. al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tarun Kumar Vyas #2038877
(Your Name)
VADOC Centralized Mail Distribution Center,
3521 Woods Way,
(Address)

State Farm, VA, 23160
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

- ① Does bad faith on the part of the state combined with legal and factual innocence, establish unique, compelling and extraordinary circumstances to render a petitioner in custody under 28 U.S.C. § 2254, for an expired state sentence?

It should, in accordance with the congressional intent regarding the liberal interpretation of "custody" under 28 U.S.C. § 2254, the rule of lenity and the court's opinion in cases such as "Carafas VS LaVallee, 391 U.S. 238 (1968)".

- ② Does bad faith on the part of the state combined with legal and factual innocence establish unusual, compelling and extraordinary circumstances to establish jurisdiction in federal court for a writ of coram nobis, when the petitioner raises meritorious federal claims and the state sentence is expired?

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:

- ① Sheriff Bryan Hutcheson
- ② Jason Miyares, Attorney General of Virginia
- ③ Chadwick Dotson, Director of Virginia Department of Corrections

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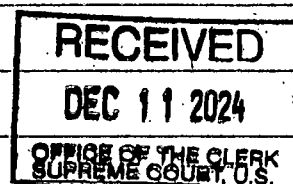


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Judgement entered on
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APPENDIX D

$\Rightarrow$ Please see the
attachments for the
copies of the above
three orders.

TABLE OF AUTHORITIES

Dr. Vyas respectfully requests that he be excused from providing a proper table of authorities and states the following in support thereof :-

- ① It was impossible to compile a proper table of authorities due to factors beyond my control.
- ② The petition had to be mailed along with certain filings filed previously by me in other courts.
- ③ To accomplish that, the petition had to be mailed to someone outside the prison, so that copies of those filings could be attached prior to being mailed to the court.
- ④ I did not have copies with me at the prison.

⑤ The lack of a table of authorities does not prejudice the respondents in any form or fashion.

Therefore, I respectfully request that the lack of a table of authorities not be held against me.

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 Vyas vs Hutcherson, 2024 U.S. App. LEXIS 21662, 2024 WL 3949274; 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 Vyas vs Hutcherson, 2024 U.S. Dist. LEXIS 53112, 2024 WL 1261212; 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 August 27, 2024.

☐ 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: September 24, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ 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).

JURISDICTION

The United States Court of Appeals for the Fourth Circuit denied the timely filed petition for a rehearing en banc on September 24, 2024. Therefore, this petition is timely filed and the court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Dr. Vyas respectfully states that the following constitutional and statutory provisions are involved :-

- ① Vth amendment's "due process" clause.
- ② XIVth amendment's "due process" clause.
- ③ IVth amendment's "unreasonable seizure" clause.
- ④ VIIIth amendment's "cruel and unusual punishment" clause.
- ⑤ The All Writs Act [28 U.S.C. § 1651 (a)].
- ⑥ VIth amendment's "impartial jury" and "assistance of counsel" clauses.

STATEMENT OF THE
CASE

Dr. Vyas respectfully states that the following proceedings took place in the lower courts :-

I filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the federal district court for the western district of Virginia, on 12/30/2022. That case no. is 7:22 - CV - 00744 - EKD - JCH. It was dismissed without prejudice on March 25, 2024 (Vyas VS Hutchenson, 2024 U.S. Dist. LEXIS 53112, 2024 WL 1261212).

I then filed a timely notice of appeal on April 3, 2024, followed by the appeal (24-6303).

The appeal was dismissed on August 27, 2024. Please see 'Vyas VS Hutcherson, 2024 U.S. App LEXIS 21662, 2024 WL 3949274.'

I then filed a timely petition for a rehearing en banc, which was denied on September 24, 2024. Please see 'Vyas VS Hutcherson, 2024 U.S. App LEXIS 24265.'

(Dr. Vyas sincerely apologizes for leaving the rest of the page blank.)

Dr. Vyas respectfully states the following facts that are material to the consideration of the questions :-

- ① I am factually and legally innocent of the charge, when considering the record as a whole.
- ② The state court of last resort (hereby referred to synonymously with the state of Virginia and all the state actors involved in the prosecution) denied the state habeas petition without considering the merits of any claims.

Since then, no court has ever considered the merits. If any court did, it will be found that a fundamental miscarriage of justice has occurred.

③ The state maliciously and intentionally ended my probation while the direct appeal was pending. There was also no statutory or constitutional speedy trial violation, which would allow filing a state habeas during the pretrial phase. Therefore, I was unable to file the state habeas petition during the pendency of either the incarceration or probation, due to no fault of my own.

④ The conviction was unconstitutionally used to undermine my credibility at a subsequent criminal trial, despite being inadmissible, [redacted] irrelevant and unfairly prejudicial.

⑤ The conviction was also used to enhance my current period of incarceration and the sentencing guidelines, in a subsequent criminal proceeding.

- ⑥ The conviction also establishes many direct consequences with respect to immigration, custody of my children, professional licence, credit, banking, social stigma, mental and emotional anguish, and many more.
- ⑦ I have been pursuing my rights diligently.
- ⑧ All the evidence presented by the state at the criminal trial was inadmissible and unfairly prejudicial.
- ⑨ The testimony of the state's sole witness was unbelievable as a matter of law, because by her own admission, she waited more than fourteen months to go to the police despite being allegedly scared of her life, on the basis of a couple of text messages.

- ⑩ The text messages that the state used to secure the conviction, went from being a couple of weeks, to over fourteen months old by its own admission, after the grand jury had certified the indictments.

Had the state provided the real and correct dates for the text messages, no grand jury would have certified the charges.

- ⑪ Due to these (and other — please see the attachments) unusual, extraordinary and compelling circumstances, it should be determined that I was in custody, when I filed the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 on 12/30/2022. That petition was timely filed under 28 U.S.C. § 2244 (d)(1).

(12) Alternatively, the district court should have ruled on the merits of the habeas claims by construing the petition as a writ of error coram nobis, because I raised many federal claims — just like a federal petitioner would, when challenging a federal conviction or sentence, when he is procedurally barred from filing a motion pursuant to § 2255.

(13) The court should rule that I was in custody pursuant to 28 U.S.C. § 2254 also because, the Congress has specifically stated that the interpretation of "custody" should not be limited; the definition of "custody" should be liberally construed.

Hence, to rule otherwise would be the equivalent of subverting

(13) The will of the Congress.

(14) The petition should be granted because it will address the lack of the corrective process in the state.

(15) This is a unique case where the state has maliciously and blatantly committed many errors of constitutional magnitude, right from the arrest, such as :

(i) Violation of Miranda VS Arizona, 384 U.S. 436 (1966),

(ii) Violation of Edwards VS Arizona, 451 U.S. 477 (1981),

(iii) Violation of Franks VS Delaware, 438 U.S. 154 (1978),

(iv) Violation of USA VS Bagley, 473 U.S. 667 (1985),

(15)

(v)

Violation of Kyles VS Whitley,
514 U.S. 419 (1995),

(vi)

Violation of Brady VS
Maryland, 373 U.S. 83 (1963),

(vii)

Violation of Smith VS Cain,
565 U.S. 73 (2012),

(viii)

Evidence being inadmissible under
USA VS Leon, 468 U.S. 897 (1984),

(ix)

The statute being unconstitutional
under the Ist, Vth and Xth
amendments both facially and
as - applied,

(x)

Even the tainted evidence
being insufficient,

and many more...

(16) The lower court's rulings violate my IVth, Vth, VIth, VIIIth and XIVth amendment rights.

(17) The fact that the prior felony was admitted to undermine my credibility at a subsequent trial without having conducted a Va. S. Ct. R. 2:609 balancing test, created a substantial likelihood of unfair prejudice, that outweighed the minimal impeachment value.

This also helps affirm the "direct" consequence of the expired conviction with regards to my current conviction and sentence.

(Rule 609 is the most controversial rule of evidence. Va. S. Ct. R. 609 is identical to its federal counterpart. Please see USA vs Gillard 2024 U.S. Dist. LEXIS 11427, E.D. Pa. 1/22/2024.)

- (18) The rule of lenity supports granting the petition.
- (19) Ineffective assistance of trial and appellate counsel under 'Strickland' and 'Cronic' also supports granting the petition, since I have been denied a forum in which to raise those meritorious claims.
- (20) The following cases also support granting the petition:
- (i) Alaska VS Wright, 593 U.S. 154 (2021) — § 2254 (a)'s "in custody" requirement satisfied if the second conviction is for a state crime.
 - (ii) I satisfy the exception enumerated in 'Lackawanna County District Attorney VS Coss, 432 U.S. 394, 401 - 402 (2001).'
- (21) Granting the petition will also address the absence of the corrective remedy.

REASONS FOR GRANTING THE PETITION

Dr. Vyas respectfully states that the following compelling reasons exist for the court to exercise its discretionary jurisdiction :-

- ① The U.S. court of appeals for the fourth circuit has decided an important question of federal law that has not been, but should be, settled by this court.
- ② The U.S. court of appeals for the fourth circuit has decided an important question of federal law in a way that conflicts with the relevant decisions of this court.

- ③ The decision of the lower court subverts and antagonizes the congressional intent regarding the determination of "custody" under 28 U.S.C. § 2254.
- ④ The decision of the lower court fails to address and remedy the absence of the relevant corrective process in the state.
- ⑤ The questions presented are very important and recurring.
- ⑥ The lower court has wrongly decided both the very important legal questions.
- ⑦ The lower court has overstepped its authority.
- ⑧ A nationwide answer to the

- ⑧ federal questions is necessary.
- ⑨ The lower court's ruling has produced a genuine, direct and outcome determinative conflict with many clearly established federal laws by this court, as well as with the intention and will of the Congress.
- ⑩ The lower court's ruling violates my IVth, Vth, VIth, VIIIth and XIVth amendment rights.
- ⑪ The issues are extremely important over which this court and all the federal circuits, are openly and intractably divided with the supreme court of Virginia.

In addition to all the legal arguments, factual arguments and authorities previously presented to lower courts (please see the attachments), Dr. Vyas respectfully states the following in support thereof :-

- ① Stare decisis is not a rigid inevitability but a prudent governor on the pace of legal change [State VS Jordan, 303 Kan. 1017, 1021, 370 P.3d 417 (2016)]. Stare decisis is not absolute :
 - ① 'Obergefell VS Hodges, 2015' overruled 'Baker VS Nelson',
 - ② 'Brown VS Board of Education, 1954' overruled 'Plessey VS Ferguson' and
 - ③ 'West Coast Hotel Co. VS Parrish, 1937' overruled 'Adkins VS Children's Hospital of D.C.' and in turn 'Lochner VS New York'.

- ② It has been opined in 'Custis VS USA, 114 S.Ct. 1732 (1994)' and 'Daniels VS USA, 121 S.Ct. 1578 (2001)', that there may be additional exceptions to the rule that currently establish "custody" under 28 U.S.C. § 2254, such as when the failure to challenge the prior conviction was not the fault of the petitioner, ☐ when there was some state impediment to filing or when there is compelling new evidence that the petitioner was innocent of the crime.

The copies of my previous filings mailed along with this petition, prove that all the three prongs have been met.

③ The petition is not moot and the proceeding may continue, if the petitioner can demonstrate the existence of some collateral consequences flowing from the conviction or custody, as spined in the following:

① Lackawanna County District Attorney VS Coss, 532 U.S. 394, 401 - 402 (2001),

② Spencer VS Kemna, 118 S.Ct. 978 (1998),

③ Erits VS Lucey, 105 S.Ct. 830 (1985),

④ Carajas VS LaVallee, 88 S.Ct. 1556 (1968),

⑤ Jackson VS Coalter, 337 F.3d 74, 78 - 79 (1st circuit, 2003) ⇒ challenge to the second indictment still had double

(3)

(v)

jeopardy implications even after guilty plea.

(vi)

Nowakowski VS New York, 835 F.3d 210, 225 (2nd circuit, 2016) ⇒ petitioner must identify some continuing collateral consequences possible from his criminal conviction — even if merely hypothetical and speculative

(vii)

Brown VS Andrews, 180 F.3d 403, 406 n. 2 (2nd circuit, 1999) ⇒ conviction involves unidentified 'significant negative consequences'.

(viii)

Nakell VS Atty Gen. of North Carolina, 15 F.3d 319, 322 (4th circuit, 1994) ⇒ possible return of fine is a significant adverse consequence.

(ix)

Abela VS Martin, 380 F.3d 915, 921 (6th circuit, 2004) ⇒ some

(3)

(ix)

collateral consequences flow from all wrongful convictions.

(x)

White VS Indiana Parole Board, 266 F.3d 759, 762 - 763 (7th circuit, 2001) $\Rightarrow$ collateral consequences existed as the outcome would affect length of remaining parole term.

(xi)

Park VS California, 202 F.3d 1146, 1148 (9th circuit, 2000) $\Rightarrow$ the petitioner faced deportation.

(xii)

Ayeon VS Lytle, 196 F.3d 1174, 1176 - 1177 n. 2 (10th circuit, 1999) $\Rightarrow$ the recalculation of good time would affect the length of the parole term.

(xiii)

White VS Butternorth, 70 F.3d 573, 574 (11th circuit, 1996) $\Rightarrow$ petition not moot if the relief so as to the expired sentence

③
Xiii

would hasten the release from the present sentence.

All the above support granting the petition, as I was "in custody" when I filed the § 2254 petition.

④

The congressional intent about liberally construing the meaning of "custody" under 28 USC § 2254, thereby "not limiting" the range of possible interpretations, also supports granting the petition.

⑤

28 U.S.C. § 2254 (a) ☐ is satisfied on the basis of all the unique, unusual and extraordinary circumstances.

- ⑥ The rule of lenity supports granting the petition.
- ⑦ Ineffective assistance of trial and appellate counsel under 'Strickland' and 'Cronic' also supports granting the petition, as I have been denied a forum in which to raise those meritorious claims.
- ⑧ The facts of the following are inapposite and non-sequitur when compared to my case (please see the attachments mailed along with for elaboration):
 - ① Maleng VS Cook, 490 U.S. 488 (1989),
 - ② Wilson VS Flaherty, 689 F.3d 332 (4th circuit, 2012),
and more...
- ⑨ Granting the petition will also address the absence of a corrective process.

CONCLUSION

Thus, I pray that the court grant the petition for a writ of certiorari.

Respectfully submitted,

Tarun

Tarun Kumar Vyas # 2038877
3521 Woods Way
State Farm
VA — 23160

Date : 11/10/2024