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No. USA 11 No: 24-10112

ORIGINAL

24-10112

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

AUG 12 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Alex H Gomez

— PETITIONER

(Your Name)

vs.

SECRETARY DEPARTMENT OF
CORRECTIONS, et al

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals 11th Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alex H Gomez DC# 428086

(Your Name)

Santarosa Correctional Institution Annex
5850 East Milton Road

(Address)

Milton, FL 32583

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1) In an appeal of a denial of a 28 USC 2254 petition for Habeas Corpus, for a Certificate of Appealability to issue, is a review of the record on Appeal necessary to establish "a threshold inquiry into the underlying merits of the claims" to see if there has been a substantial showing of a denial of a Constitutional right, and is construing the "Notice of Appeal" as a request for "Certificate of Appealability" appropriate without examining the record on appeal to determine a substantial showing of a denial of a Constitutional right.

28 USC 2253(c)(2), wherein the Supreme Court nor Congress has mandated a policy of construing the Notice of Appeal as a "request for Certificate of Appealability", and if the "Notice of Appeal" is construed as a request for Certificate of Appealability, should the US Court of Appeals [Circuit Judge] still look to the record to see if there has been a substantial showing of a denial of Constitutional right, and if the District Courts decision was debatable.

2) Does the state fail to establish all of the elements of Constructive Possession, when in trial it does not establish ownership, dominion or control over the item, or the intent to exercise dominion or control.

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:

Alex H Gomez
Ricky Dixon, Secretary Florida Department of Corrections
Attorney General State of Florida

RELATED CASES

- Alex H GOMEZ V Secretary Department of Corrections
US Court of APPEALS ELEVENTH CIRCUIT 24-10112-E
Judgment Entered on 5.16.2024
Petition for Rehearing dismissed on July 9, 2024
- Alex H GOMEZ V Secretary Department of Corrections
US District Court Middle District of Florida 8-21-CV-00406
- Alex H GOMEZ V STATE OF FLORIDA
Circuit Court in Sarasota County, Florida 2014 CF-1404
Judgment Entered on Oct 8, 2015
- Alex H GOMEZ V STATE OF FLORIDA
Second District Court of Appeal 2D15-4987
Judgment Entered on June 13, 2018
- Alex H GOMEZ V STATE OF FLORIDA
Second District Court of Appeal 2D19-0365
Judgment Entered on Dec 27, 2019

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APPENDIX B	Copy of letter to clerk dated May 23, 2024
APPENDIX C	Clerks response to letter dated May 23, 2024
APPENDIX D	Deficiency Notice dated June 24, 2024
APPENDIX E	Petition for Rehearing En Banc June 17, 2024
APPENDIX F	Petition for Rehearing En Banc July 1, 2024 (Resubmitted)
Appendix G	Deficiency Notice dated July 9, 2024
Appendix H	Deficiency Notice dated July 12, 2024

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Beckles 565 F.3d 832, 841 (11th Cir. 2009)	11.
Edwards 166 F.3d 1367, 1364 (11th Cir. 1999)	11.
Miller ET v. Cockrell 537 U.S. 322, 336-37, 123 Sct. 1029, 154 L.E.J. 2d. 931 (2003)	Appendix E. Page 1, 2, 3, 4.
Rodriguez de Quijas v. Shearson /AM Express Inc. 490 U.S. 471, 484, 109 Sct. 1917, 104 L.ed 2d. 526	Appendix E. Page 3.
Santiago v. State, 991 So.2d 439 (Fla. 2nd DCA 2008)	10.
Slack v. McDaniel 529 U.S. 473, 484 (2000)	Appendix A. Page 1.
Wagner v. State, 950 So. 2d 511 (Fla. 2nd DCA 2007)	10.

STATUTES AND RULES

28 USC 2254, 28 U.S.C. 2253 (c)(2)	2, 9
Fed. R. APP. P. Rule 40.	Appendix G Page 1.
Fed. R. APP. P. Rule 35.	Appendix G. Page 1.
11th Cir. R. 40-3 F.R.A.P.-40	Appendix G. Page 1.
statute. 893.135 (b)(1)(c), (1)(b).	11.

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 6 U.S. Constitution : Rights of the accused.

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 witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment 14 U.S. Constitution : 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 of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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.

STATEMENT OF THE CASE

On 5-16-2024 the Appellant received a denial of his pro se 28 U.S.C. § 2254 petition as moot. In response the appellant addressed the Clerk of U.S. Court of Appeal for the Eleventh Circuit that no copy of Order denying of motion of Certificate of Appealability was included in the legal mail sent on 5-16-2024. The appellant on 6-17-2024 sent the 11th circuit a Petition for Rehearing En. Banc. The 11th Circuit Court of Appeal replied on 6-24-24 with an Court Order of No Action / Deficiency Notice. Again the appellant on 7-1-24 presented the 11th Circuit Court of Appeal another Petition for Rehearing En. Banc.. In response the United States Court of Appeal 11th Circuit sent the appellant on No Action / Deficiency Notice on 7-09-2024 and on 7-12-2024.

REASONS FOR GRANTING THE PETITION

Appellant is humbly requesting this Court to use the capacity within to instruct and rule on appellant, Alex Gomez's appeal.

The facts are as follows, the appellant was not in actual possession of any cocaine the State has used to charge and convict him of. It was premised on his constructive possession of the cocaine found in the Rayfield Drive residence instead. The State must show beyond a reasonable doubt that the knowledge of the presence of the drugs had the ability, to exercise dominion and control over it was known to the accused. See *Santiago v. State*, 991 So. 2d 439 (Fla. 2nd DCA 2008), and *Wagner v. State*, 950 So 2d 511 (Fla. 2nd DCA 2007).

Constructive Possession, The Eleventh Circuit informs the Florida Supreme Court that, under federal law, possession includes both actual and constructive possession. The former occurs when a person has direct physical control over the item in question. By contrast, dominion or control, is when the accused exercises ownership and or has the power and intent to exercise control over the item. In which the appellant has shown that he did not have control or dominion over the cocaine in question.

Another Eleventh Circuit precedent says that an accused has constructive possession of a substance when he has some form of control other than direct physical control.

For example, an accused has constructive possession of a substance if it is being held by an agent of the accused. *United States v. Beckles* 565 F.3d 832, 841 (11th Cir. 2009) and, *United States v. Edwards* 166 F.3d 1362, 1364 (11th Cir. 1999). The appellant had no control or dominion let alone possession of the drugs to obtain the said charges the State has imposed. Title XLVI chap 839, statute 893.135 (b)(1)(c) is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory min. term of imprisonment of 15 yrs.

CONCLUSION

Appellant is asking for a rehearing or a lesser sentence of a 15 year sentence under statute 893.135 as evidence proves as fact.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dung, P

Date: 8-12-2024