

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Richard A. Sales — PETITIONER
(Your Name)

vs.

Jay Cassady, Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Richard A. Sales

(Your Name)
Jefferson City Correctional Center
8200 No More Victims Road

(Address)

Jefferson City, Missouri. 65101-4539
(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Does a guilty plea foreclose a post-conviction claim of actual innocence if the defendant can show that evidence withheld from him by his attorney prior to his guilty plea, shows the crime charged did not occur?

2. Does a defendant have to prove due diligence in order to be allowed federal habeas corpus relief or review under a gateway claim of actual innocence?

3. Can a federal district court use evidence of an uncharged crime to determine if a defendant is actually innocent of the crime charged?

4. Is evidence considered new, if it is evidence that defense counsel had before a guilty plea, but withheld it from the defendant in order to get the defendant to plead guilty, and defendant did not learn of the evidence until years later?

5. Can an appellate court carefully review a complete file of the district court and then base its denial of a certificate of appealability on that review or is this deciding an appeal without jurisdiction?

And is it prohibited by Judicial precedent?

6. Is it proper for a district court to ignore the statutory definitions of a crime when deciding if a habeas corpus petitioner is actually innocent of the crime which he was charged?

7. Can a district court when determining actual innocence use an uncharged or dismissed charge of a crime to determine if a petitioner is actually innocent of the crime that he is charged with and is challenging?

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:

TABLE OF CONTENTS

OPINION BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4, 5
REASONS FOR GRANTING THE WRIT.....	6, 9
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A	Decision of Eighth Circuit Court of Appeals.....	1
APPENDIX B	Decision of United States District Court.....	1, 4
APPENDIX C	Denial of motion for rehearing in Eighth Circuit Court of Appeals.....	1
APPENDIX D		
APPENDIX E		
APPENDIX F		

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>McQuiggin v. Perkins</u> , 133 S.Ct. 1924 (2013),.....	7
<u>Buck v. Davis</u> , 137 S.Ct. 759 (2017).....	8
<u>Slack v. McDaniels</u> , 529 U.S. 473 (2000).....	8

STATUTES AND RULES

28 U.S.C.S. § 2244 (d)(1)(D).....	3, 7
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OTHER

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 _____; 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 June 23, 2017.

☐ 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 05, 2017, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C.S. § 2244 (d)(1)(D)

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -- the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT OF THE CASE

Petitioner pleaded guilty to the crime of sodomy and stated he touched the victims vagina. But this was only because his attorney which was appointed by the state told him he had to say he did this in order for the court to accept his plea, and if he didn't say this he would have to go to trial and he would spend the rest of his life in prison.

His appointed counsel never told him that she had statements that showed he did not do this crime. She acted as a second prosecutor instead of counsel for the defense.

Petitioner asked for a copy of the case file from his attorney, yet she refused to send it to him.

After years of trying to get this, he was finally able to get it from the state archives.

He then filed State habeas corpus petition in the state courts, then he filed a habeas corpus petition in the Western District Court in Missouri.

The district court denied the petition stating it was untimely and that he is not entitled to have his petition decided on the merits under the actual innocence exception.

The district court in its denial stated that it was not new evidence because counsel had it in their possession prior to the guilty plea. And that petitioner did not show when he became aware of this evidence or that the evidence could have been discovered earlier through the exercise of due diligence for purposes of §2244(d)(1)(D). See (Exhibit B pg. 3).

The court said that "a review of the plaintiff's pleadings

and supporting exhibits fail to establish that the evidence set forth therein rises to the high bar of establishing that it is more likely than not that no reasonable juror would have convicted him. Although Petitioner's exhibits establish conflicting statements on behalf of the victims, the exhibits also present statements on which a reasonable juror could have found petitioner guilty. For instance a victim stated that petitioner "touched [her] on [her] panties" but added "He was only looking at my dress and that's all".

Another victim reported to her mother that petitioner "put his hand into her pants" but later would not speak to police officer. The inculpatory statements set forth in the investigation reports and depositions, along with petitioner's inculpatory statements at his guilty plea hearing, prevent a finding that petitioner is entitled to have the present petition decided on the merits under the actual innocence exception." See (Exhibit B pg. 3 and 4).

The district court then went on to deny a certificate of appealability in its denial of the petition for habeas corpus. See (Exhibit B pg. 4)

Petitioner then filed a motion for certificate of appealability with the 8th Circuit Court of appeals.

The 8th Circuit Court of appeals stated "The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. See (Exhibit A)

Petitioner then timely filed a motion for rehearing which was denied. See (Exhibit C).

REASONS FOR GRANTING THE PETITION

It is important that this Honorable Court grant this petition because there are people all across the United States that have been coerced into pleading guilty to crimes they didn't commit.

And they should be allowed to be able to challenge their cases under actual innocence when they can produce either new evidence or evidence that was withheld from them by either to prosecution side or by their attorney as happened in this case.

Petitioner's counsel used fear in order to get him to plead guilty to not only a crime he did not commit, but to a crime his counsel knew he did not commit.

In petitioner's habeas corpus it is clear that the district court closed the door to him getting a review of his claims because he had pleaded guilty and the district court felt this foreclosed a post-conviction claim of actual innocence. See (Exhibit B pg. 2 and 3).

This court needs to decide if and under what circumstances a person who pleads guilty is entitled to the an actual innocence exception.

Also this court should grant this petition because in this case the district court used the wrong standard in deciding that petitioner was untimely.

The district court said that petitioner must prove due diligence. See (Exhibit B pg. 2 and 3)

This Honorable court has already determined that a showing of due diligence is not required if a person can show that they

are actually innocent. McQuiggin v. Perkins, 133 S.Ct. 1924 (2013) "Actual innocence, if proved, held to be gateway through which state prisoner petitioning for habeas corpus relief might pass, regardless of whether impeded by procedural bar or expiration of 28 U.S.C.S. § 2244 (d) (1)'s limitation period".

"28 U.S.C.S. § 2244 (d)(1)(D) requires a habeas petitioner to file a claim within one year of the time in which new evidence could have been discovered through the exercise of due diligence.

It would be bizarre to hold that a habeas petitioner who asserts a convincing claim of actual innocence may overcome the statutory time bar § 2244 (d)(1)(D) erects, yet simultaneously encounter a court - fashioned diligence barrier to pursuit of her petition."

Therefore the district court in the instant case used a standard in deciding petitioner's case that conflicts with relevant decisions of this court and it will continue to do so unless this court intervenes.

This court also needs to grant this petition because it needs to define what is considered new evidence.

Is it merely evidence that wasn't used at trial, or evidence that came up only after trial or can it be evidence that appointed counsel had but did not share it with the defendant in order to get him to plead guilty?

The lower courts need direction in this matter because a lot of the lower courts decide this issue differently.

This court needs to grant this petition because in this case and several other cases, the Eighth Circuit Court of appeals

first reviewed the entire file then denied a certificate of appealability based upon that review.

This is in conflict with the relevant decision of this court in Buck v. Davis, 137 S.Ct. 759 (2017). When a court of appeals sidesteps the COA process by first deciding the merits of an appeal, and then justifying it's denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction. A court of appeals should limit its examination at the certificate of appealability stage to a threshold inquiry into the underlying merits of the claims and ask only if the district court's decision was debatable. Other courts do the same thing.

In petitioner's case, the district court denied a review based on timeliness which is a procedural ground, so all the court of appeals should have decided on was, if the district courts procedural ruling was debatable among jurists of reason. See Slack v. McDaniel, 529 U.S. 473, (2000)

The district court also ignored the statutory definition of sodomy in its determination that petitioner did not prove his actual innocence.

The court said an inculpatory statement was when the alleged victim stated that petitioner "touch [her] on [her] panties" but added. "He was only looking at my dress and that's all".

If the district court would have looked at the statutory definition of the charge of sodomy it would have seen that this statement was not an inculpatory statement but an exculpatory statement.

It show also that what he said he did in order to get the state court to accept the guilty plea did not happen.

The district court erred as what was alleged to have happened was not sodomy. Therefore petitioner should have been allowed to have his habeas corpus petition review as timely under this gateway claim of actual innocence.

This Honorable Court should grant this petition in order to give the lower court's direction in what is properly used to determine if a person is actually innocence.

In petitioner's case the court in it's determination of petitioner's actual innocence use statements that were not only hearsay but were about a crime that the charges were dismissed. See (Exhibit B pg. 3).

Actual innocence should be determined on facts and evidence that is about the crime that petitioner is charged with and is challenging.

This Honorable Court's intervention is needed not only because the problems petitioner has in his case but the questions presented need to be answered so that the lower courts can come into accord with what is right and proper.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Richard D. Dale", is written over a horizontal line.

Date: NOVEMBER 22, 2017