

No. _____

In The
Supreme Court of the United States

LUIS RAMOS,

Petitioner;

V.

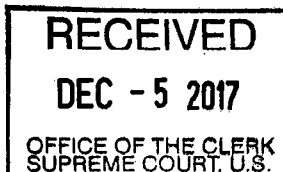
ADMINISTRATOR NEW JERSEY STATE PRISON, ET AL.,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Luis Ramos #597052/347785D
New Jersey State Prison
P.O. Box 861
Trenton, New Jersey 08625



QUESTIONS PRESENTED

- 1.) Whether the district court and the third circuit erred in refusing to issue a certificate of appealability.

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The United States District Court of New Jersey dismissed petitioner's petition for a writ of habeas corpus as untimely in an Order on March 20, 2017. **(See Appendix - Ex - 1)**

The United States District Court of New Jersey dismissed petitioner's petition for a writ of habeas corpus as untimely in an Opinion on March 20, 2017. **(See Appendix - Ex - 2 to 8)**

The United States Court Of Appeals for the Third Circuit filed an order on July 19, 2017, denying the Petitioner's notice of appeal and did not consider the petition for a Certificate of Appealability. **(See Appendix - Ex - 9 to 10)**

The United States Court Of Appeals for the Third Circuit filed an order on August 28, 2017, denying petitioner's petition for a rehearing En Banc. **(See Appendix - Ex 10 to 11)**

JURISDICTION

The Third Circuit entered its order denying the Petitioner's notice of appeal and did not consider the petition for a Certificate of Appealability, which served as the court's judgment, on July 19, 2017. Thereafter, on August 28, 2017, the Third Circuit denied a timely petition for rehearing and rehearing en banc. This Court has jurisdiction under 28 U.S.C. §1254(1) to review the Circuit Court's decision on a writ of certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Amendment 6

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.

STATEMENT OF FACTS

Petitioner Luis Ramos was indicted in Camden County under Indictment No. 07-09-3165. He was charged with knowing or purposeful murder in Count One; attempted murder in Count Two; (2 Counts) of aggravated assault in Counts Three and Four; possession of weapon for an unlawful purpose in Count Five; unlawful possession of a weapon in Count Six; and certain person not to have a weapon in Count Seven. The evidence at petitioner's jury trial included the following. On the early-morning shooting of David Perez and Jose Maldonado on September 3, 2006, as the men sat in a car outside a fast food chicken restaurant on Federal Street in Camden. The State alleged that the shooter was the Petitioner, who, the State claims, had an argument with Perez only a few minutes before the shooting. The State presented Natasha McCormick who initially claimed on the stand that she could not remember the incident, but also testified that what she said to police in a statement to them on September 4, 2006, was true. Thus, the taped statement was played for the jury. In that statement, McCormick said that she went to Crown Fried Chicken at about 1 a.m. and "two drunk girls came in," whereupon one man began to converse with one of them and then another, by the name of Pete or Petey, got into an argument with that man. During that argument, McCormick told police, she heard the man named Pete say to the other man, "I'm hood. I'm from the same place where you're from."

McCormick testified at trial that during the conversation, when Pete approached the one woman and asked, "Hey, what's going

on?" He seemed to be referring to the fact that she was talking to another man. McCormick also told police in her statement that she heard that woman say that Pete was not her boyfriend. Pete was 5'8" or 5'9", wearing a black hoody, and the other man wore a black jacket, white T-shirt and jeans, according to McCormick. "A couple of minutes" after both of those men and the two women left, McCormick was still inside the restaurant when she heard three gunshots from outside. Inside the restaurant, McCormick had never heard either man threaten the other and both men had a "calm" and "low" tone to their voices, although Pete was "a little bit more agitated" than the other man. She had also seen one of the women "hold . . . back" and push apart the two men from one another. When the men and woman left, McCormick never heard any argument or fighting outside before the gunshots. Later, after the shots, McCormick looked outside and saw a man who "didn't look too good" sitting in the passenger side of a car outside the restaurant, and she "kind of had a feeling" it was the man with the black jacket and white shirt from earlier.

Jose Maldonado testified that he and David Perez went to Crown Fried Chicken that night after a night of drinking that had begun at 6 p.m. During that time, Maldonado drank six beers. Perez was "pretty tipsy" and he could "get [] a little feisty" when he was drunk, according to Maldonado, but Perez was not "feisty" that night. Maldonado drove to the restaurant at about 1 a.m., parked right outside and went inside with Perez, but then waited outside the car while Perez remained inside the restaurant for five to seven more minutes. According to Maldonado when

Perez came outside he was arguing with Petitioner "over a girl" that Perez knew. Perez and Petitioner then "started talking" until another woman pulled Petitioner away "toward 24th Street," Maldonado testified. He does not recall Petitioner and Perez "peacing up" (i.e., reaching an accord) before the incident left with that woman. Maldonado also admitted that Petitioner then headed with a "group" into a house where a party was being held and that this entire area was a "busy" one that night with people hanging out in front of the party house as well as people coming in and out of a nearby Chinese restaurant and the chicken place.

After Maldonado and Perez walked to the corner of 24th and Federal to watch Petitioner leave the scene, he testified, he and Perez got back into the car, with Perez in the driver's seat this time, and they waited, with the window down, for their food to be ready. At the time, Perez was explaining a little about the argument he had with Petitioner while Maldonado was "messaging with the radio," and then Maldonado heard multiple gunshots from the passenger side of the vehicle.

Maldonado did not identify the shooter, but he claimed that it seemed like the gunshots were close, "like [a] couple inches away from my face." Maldonado was hit in the left arm and blood was "gushing like sprinklers" out of the wound. He testified that he does not have full control of movement in that arm below the elbow. Maldonado also was wounded in the leg and still had a bullet fragment lodged there. When he looked over at Perez, Maldonado testified, he saw a hole in Perez's neck and "blood coming out of his neck" as Perez gasped for air.

Maldonado first spoke to Investigator Fawn Ackerman, from the Camden County Prosecutor's Office, on September 7, 2006, and, while he gave her some information, he testified, he cut the conversation short because it was "too much pressure" reliving the incident, but he called her up later and told her the man Perez had an argument with was named Pete. Then, on September 9, 2006, Maldonado identified Petitioner from a photo array as that same man.

David Perez died and suffered multiple gunshots wounds, according to the medical examiner, who listed them as follows: a grazing wound to the chin which exposed bone; a wound to the lower rib cage that passed through the abdominal wall but missed vital organs; a wound to the "right flank" that hit the iliac artery and lodged the bullet in the pelvis; a "through and through" wound to each forearm; a superficial graze to the left arm; and a "through and through" wound to the left thigh. The medical examiner testified that the official cause death was "multiple gunshots wounds" and that the "wound that would have been most rapidly fatal" was the one that hit the iliac artery.

Dr. David Fuller, an orthopedic surgeon, testified that Jose Maldonado has damage to the radial nerve from the gunshot wound, and that the loss of that nerve, one of three that run to the hand, prevents Maldonado from fully using his hand and wrist.

Zulma "Jati" Rivera testified that on the night in question she was hanging out drinking brandy and Pepsi with her friend Nitza and they both decided to get dressed up and "go dancing." However, they eventually decided to go to a "house party" at 24th

and Federal Streets and took a cab there, but they never made it to the party because as soon as they exited the cab, they ran into Petitioner, whom Rivera knew as "Pete," and some of his friends. Rivera had previously "socialized" with Petitioner for "like two months straight" before she had gone to live in Florida for a few months, but she denied that their relationship was romantic. She noticed that Petitioner had a gun inside his black hoody because she saw him showing it to a friend as she got out of the cab. She also noted that Petitioner was wearing a long white T-shirt at the time.

According to Rivera, she and Petitioner conversed outside the party house and then she walked down to the Crown Fried Chicken to use the bathroom. Nitza followed her there only a few moment later. Rivera asked to use the bathroom, but was told she could not, and then, she testified, "all this commotion started."

Rivera claimed that David Perez had begun talking to Nitza and that Perez and Rivera also conversed because they had dated in high school a few years earlier. According to Rivera, Petitioner then approached her and said, "I'm watching you," and then he stood there while the others talked, eventually taking offense at something he thought Perez had said to him. Rivera testified that Petitioner "kind of like pushed himself toward" Perez as if "to see if he would flinch," and the two argued briefly while Rivera stepped between them and held back Petitioner.

Rivera testified that she talked to Petitioner and told him to calm down, and Petitioner then stood in a corner of the store while Rivera continued her conversation with Nitza and Perez.

She had herself positioned so she could step between them if anything else happened, and she testified that she did so when Petitioner said that this was "his hood" and "he could do what he wants," to which Perez had responded that it was "hood" as well, and then the two men came closer to one another. When it looked as if Petitioner was going to hit Perez, Rivera grabbed both men by their shirts and separated them, and grabbed Petitioner by his hoody and escorted him out of the restaurant, telling him to calm down because he looked angry.

Perez followed them outside, Rivera testified, and there the men hugged each other and apologized, but Rivera was unsure whether to believe that they were really "peacing it up" or "just doing it for the moment." She was also concerned because of the gun she had seen in Petitioner's possession earlier. Thereafter, Rivera testified, she watched Perez get into his car, and she encouraged Petitioner to return to the party with her, and Petitioner seemed momentarily calm to her, looking "way better than he did when he was inside the store." But then, Rivera claimed, one of Petitioner's friends to whom he had been speaking "asked him where the other gun [was] at and he said his brother had it," and Petitioner did not seem calm anymore. Rivera testified that Petitioner would not answer her when she "kept asking him" what reason that other gun would be needed, and she became concerned because she "knew something was going to happen."

Specifically, Rivera testified that her concern was that Petitioner had gotten his friends in the area "all hyped up"

after the encounter with Perez, and that even if Petitioner did not do anything to Perez, the "hyped" state of his friends might cause one of them to do something. And, according to Rivera, there were a lot of Petitioner's friends in the area, going back and forth in the block between the party house and the chicken restaurant. Rivera testified that Petitioner was "pacing" back and forth at this point with his hands in hoody, and that a crowd had gathered in front of Perez's car where "a whole bunch of people [were] arguing," whereupon "all you heard was the gunshots." Rivera claimed that she was eight to twelve feet from Petitioner as he fired shots into Perez's car, appearing to aim at Perez as he did so. Petitioner backed away as he fired, according to Rivera, and then "ran off" when he was done firing.

On September 8, 2006, Rivera spoke to Investigator Fawn Ackerman from the Prosecutor's Office and identified Petitioner to Ackerman from a single photo that was shown to her.

Jason Nettles was arrested on September 8, 2006, on drug charges, and he was questioned by Investigator Ackerman, who asked him if he was in the area of 24th and Federal at the time of the instant shooting, and he told her that he was at a party there. Nettles testified that, because of the style at the time, eight out of ten people that night wore a hoody with a long T-shirt, and that of the 30 to 40 people on the street that night, "about 20 of us had black hoodies, white T-shirts," including Petitioner. Nettles testified that he saw many people he knows at that party and that one of them was Petitioner.

Nettles also claimed that much of his statement to police was not true, and was a product of a promise by Ackerman to "take care of" his then pending drug charges, for which he was facing as much as 22 years in prison. He claimed he was told by police what to say in the statement. They had told him that if he could "help them out" with the Perez shooting, "they could work something out." Nettles testified that the videotape of his statement, which appears, from the transcript, to begin after Nettles was already talking to police, has portions excised from the conversation that he had with Ackerman, specifically when she promised to help him out of his predicament in the drug case. His "main priority" was reducing his own sentence and, therefore, he told police what he felt they wanted to hear after they showed him a surveillance-camera video of the scene that night. Specifically, he testified, although he never told police that Petitioner was the shooter, he fabricated a story that he saw Petitioner walk down to the chicken place, stay there for 20 minutes and run back from the scene after the gunshot. In fact, Nettles testified, it seemed to him that the State's theory was wrong and that Petitioner could not be the shooter because Nettles was not near the shooting when it happened and Petitioner was in Nettles' peripheral vision at that time, so he could not have been down the street firing the gun at the same time. He also noted that "everybody" was running when the shots rang out.

Nettles noted that he added other untrue details to the statement to police to "ma[k]e it sound good," like a claim that he saw Petitioner the day after the shooting or that Petitioner

told him after the shooting that he had enough money to hire a lawyer to "beat the charge." Nettles also testified that he had eventually tried to come clean and correct his statement to police by writing a letter to the "head prosecutor" to that effect while Nettles were serving time at Southern State Prison.

In that letter Nettles offered to "come in and give a real statement on behalf of the situation." He claimed that he mailed that letter to the prosecutor in August or September 2007, and that he had the "postal remit slip" back in his prison cell, but he had not brought it to court on the day of his testimony because he was not told by guards why he was going to court that day. He denied any pressure by anyone to write that letter and said he has no contact with Petitioner and is not afraid of him.

Nettles noted that he is "not getting nothing out of me telling the truth."

Investigator Ackerman denied promising Nettles anything in exchange for his statement, but eventually admitted that Nettles was correct that she showed him a surveillance video of the scene when getting information from him--a fact she had first denied. Ackerman attempted to explain the reason the tape of Nettles' statement appears not to start at the beginning, but, rather, after it was already taking place. She claimed she had spoken to Nettles for about 30 minutes "to see if what he had to say made any sense," and that only then did another officer turn the tape on from another room.

Miguel Mendez testified that he saw Petitioner, whom he recognized from high school but whose name he did not know,

involved in an argument in Crown Fried Chicken on the night in question, and he told police in his statement that the argument was about "the girl." On September 8, 2006, he identified a photo of Petitioner to Investigator Ackerman.

Investigator William Rumell of the Prosecutor's Office, testified that when he arrived at the scene on the morning of the shooting, David Perez's car was parked ten feet from Crown Fried Chicken. The car was still running and Perez had obviously suffered a wound to his face. There was a bullet exit hole in the driver's door and a blood trail on the sidewalk that went 60 feet. Beer bottles were inside the car in the center console and the passenger side. Four bullet holes were found in total, all with trajectories from the passenger's side to the driver's side and "slightly front to back -- traveling downward." Two bullets were lodged in the door, one in the "pillar" of the door and one appeared to have gone "through and through" the vehicle. No shells casing were found, and two pieces of metal jacketing were discovered in the vehicle in addition to the bullets.

That same night, Investigator Ackerman viewed a videotape from the Crown Fried Chicken that showed David Perez speaking to a female. She also testified that Miguel Mendez had identified Petitioner from a photo and that she had taken two separate statements from Jose Maldonado, one on September 7 and one on September 9, 2006.

Investigator John Denmark testified that as part of his investigation, he downloaded surveillance camera video from the chicken restaurant and two other local businesses. These videos

were shown to the jury but none conclusively identified the shooter except as a likely male wearing clothing similar to that identified as having been worn by Petitioner and many others that night. It was, thus, left to the parties to argue the matter of identification.

Deputy U.S. Marshall Scott McConnell testified that Petitioner was arrested on February 3, 2007, after McConnell saw him and others slouching down in a cab in an area of Camden that authorities has staked out in search of Petitioner, and that Petitioner initially gave a false name when arrested. According to State Trooper Joseph McNally, a records search revealed no gun permit for Petitioner. But no gun was ever recovered.

The Petitioner was acquitted of Count Two, and convicted of all remaining counts. Thereafter on August 22, 2008, Petitioner was sentenced to life with an 85% parole ineligibility.

In September 2016, Petitioner tried to file his petition for a writ a habeas corpus without the necessary paperwork, but was unsuccessful. After receiving his paperwork back from the prison, he filed another petition for a writ of habeas corpus on November 22, 2016. This petition raised four grounds: **GROUND ONE:** A Jury Introduction Should have been Given on Two Different Clearly-Indicated Theories of Aggravated Manslaughter; **GROUND TWO:** A Far Greater Justification for a Particular Murder Sentence must be Given than was Given here, When that Sentence, under the No Early Release Act Violates the Petitioner's Due Process; **GROUND THREE:** The Petitioner Asserts that the Testimony by Jason Nettles, Showed a Motive to Fabricate, was Suggestive, and Inadmissible

Resulting that Petitioner's Right to Due Process and Equal Protection of the Laws as Guaranteed by the Fourteenth Amendment; **GROUND FOUR:** The Petitioner was Exposed to Ineffective Assistance of Trial Counsel.

On March 20, 2017, the district court dismissed the petition for a writ of habeas corpus as untimely. Luis Ramos v. New Jersey State Prison, No. 16-9139 (RBK), slip opinion (March 20, 2017). Petitioner filed a timely notice of appeal and a petition for a certificate of appealability (COA). On July 19, 2017, the Third Circuit denied the petition for a COA. On August 28, 2017, the Third Circuit denied a petition for rehearing and rehearing en banc.

REASONS FOR GRANTING THE WRIT

In the interest of justice this Court should vacate the Third Circuit's denial of a Certificate Appealability for the following reason.

1.) The District Court Erred in Dismissing Petitioner's Petition for a Writ of Habeas Corpus as Untimely and the Third Circuit's Decision to Affirm is Likewise Erroneous.

In order to obtain a certificate of appealability (COA), a petitioner need only demonstrate "a substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2). A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. Slack v. McDaniel, 529 U.S. 478, 120 S.Ct 1595, 146 L.Ed.2d 542 (2000).

Reasonable jurists could therefore disagree with the district court's decision that petitioner's petition was untimely. Holland v. Florida, 130 S.Ct 2549 (2010).

In the present case the Petitioner direct appeal were denied by the Superior Court of New Jersey - Appellate Division on August 2, 2010, and the New Jersey Supreme Court affirmed the denial of the Superior Court of New Jersey - Appellate Division and filed an order of their decision on April 14, 2011. See State v. Ramos, ___ N.J. ___ (20__).

According to the Anti-Terrorism Effective Death Penalty At ("AEDPA") standard, the conviction would have become final 90

days after April 14, 2011, and his one-year period of limitation would have been triggered on July 14, 2011, and without any tolling that limitation would have expired on July 14, 2012.

The Petitioner placed in prison officials hands for mailing his Petition for Post Conviction Relief on December 16, 2011, which should have statutory tolled his 1-year period of limitation.

The following proceedings are associated with Petitioner's case from the conclusion of his direct appeal up until the filing of his petition for a writ of habeas corpus are as follows: On August 2, 2010, the Superior Court of New Jersey Appellate Division affirmed the Petitioner's sentence and conviction. On April 12, 2011, the Supreme Court of New Jersey denied Petitioner's petition for Certification. On December 16, 2011, the Petitioner handed prison officials for mailing his petition for post conviction relief. On January 11, 2012, the Superior Court of New Jersey Law Division-Criminal Action filed the Petitioner's petition for post conviction relief. On March 1, 2013, the Superior Court of New Jersey Law Division-Criminal Action denied the Petitioner's petitioner for post conviction relief. On March 24, 2016, the Supreme Court of New Jersey denied Petitioner's petition for Certification as to his petition for post conviction relief and the Petitioner's AEDPA period of limitation was re-triggered on the same day.

Now, being that 245 days had elapsed since the Petitioner handed his petition for post conviction relief to prison official on December 16, 2011, which means the Petitioner's used 155 days

of the 1-year limitation. During which time all the Petitioner's property was seized and the Petitioner was placed in administrative segregation without any access to the prison's law library.

The Petitioner was not released from administrative segregation until September 12, 2016, at which time he file his petition for a writ of habeas corpus without any of the necessary exhibits, due to the prison officials still had all his property and when he finally received his property he filed an amended petition. Which shows that his petition for a writ of habeas corpus would have been timely filed, because the 1-year period limitation would not have expired until on or about October 14, 2016, and the Petitioner handed to prison officials for mailing on September 13, 2016, one month before the expiration of his 1-year limitation period.

It should also be noted that the district court offered no analysis to support equitable tolling its ultimate conclusion that petitioner petition for a writ of habeas corpus was untimely. The district court simply noted and went with the statutory tolling reasoning.

CONCLUSION

For all of the foregoing reasons, this Honorable Court should grant the petition for a writ of certiorari to determine whether Petitioner's petition for a writ of habeas corpus was filed timely.

Respectfully submitted,



Luis Ramos

DATE: November 24, 2017