

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

DAVID E. MACMASTER

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

PETITION FOR *WRIT OF CERTIORARI*
TO THE EIGHTH CIRCUIT COURT OF APPEALS
Case No. 16-4071

David E. McMaster
Reg. #: 11853-059
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Post Office Box 7001
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Petitioner in *Pro Se*

QUESTIONS PRESENTED

1. Whether it was *Lee* error to deny a COA for lack of prejudice despite Petitioner's proof that he would not have pled guilty but for counsel's misadvise on the appealability of his plea-rejected enhancements.

2. Whether a COA should have issued on Petitioner's proof that he pled guilty to a non-criminal "lapping" scheme of paying bank loans at their latest due date.

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Petitioner, David E. McMaster, respectfully requests that a writ of certiorari issue to review denial of a COA by the Eighth Circuit Court of Appeals dated August 22, 2017:

OPINION BELOW

The Eighth's Circuit order denying petition for rehearing is attached as **Appx. 1**. Its judgment denying a COA is attached as **Appx. 2**.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eighth Circuit's decision to be reviewed was issued August 22, 2017. This petition is filed within 90 days of it under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides that --

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the United States Constitution provides that --

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 defence.

STATEMENT OF THE CASE

On a partnership between a bank and mortgage company, BNC¹ and AMS,² respectively, which authorized the latter to pay mortgage loans within 120 days after closing, the government charged and convicted the latter's vice president, Petitioner David E. McMaster, with a non-criminal "lapping" scheme³ for paying those loans at the end of those 120 days. **Appx. 4, ¶¶ 14, 15, & 18.** Believing said conduct criminal, McMaster pled guilty because his counsel promised a 36-49 month sentence and mislead him that the plea enhancements, which quadrupled that promised sentence,⁴ were appealable. *Id.*, ¶¶ 10, 15-17, 21-23, 27, 28, & 33. McMaster unequivocally declared that had he not been so mislead, he would not have plead guilty (*id.*, ¶¶ 29 & 31):

Even [had I known] that I never committed a crime and am thus actually innocent of the charged crimes [declared McMaster under penalty of perjury], and that my maximum trial exposure was 6 months, I still would not have pled guilty had I know [] I was waiving my right to appeal the un-agreed enhancements. I made that very clear to both Mr. Belanger and the Government. Only because Mr. Belanger mislead me that I could appeal my un-agreed enhancements, did I finally agree to plead guilty. Had it not been for it I would not have pled guilty on that basis alone. To be sure, under no circumstances would I have pled

¹
BNC National Bank.

²
American Mortgage Specialists.

³
Appendix 5.

⁴
McMaster was sentenced to 180 months imprisonment.

guilty had I known that I committed no crime, my maximum trial exposure was 6 months imprisonment or was waiving my right to appeal my un-agreed enhancements.” Appx. 4, ¶ 31.

Despite it, the district court ruled that “McMaster [] failed to demonstrate either deficient performance by his attorney or prejudice” (Appx. 3, pg. 15). It also denied McMaster’s actual innocence claim because his declaration in support of it was “self-serving, unpersuasive, and contrary to the acknowledgments he made in open court[]” (*id.*, pg. 9). It further refused to issue a COA on any issue. *Id.*, pg. 20. On June 2, 2017 the Eighth Circuit denied a COA and rehearing August 22, 2017.

REASONS FOR GRANTING THE PETITION

Because under *Lee v. United States*, 582 U.S. ___, 2017 WL 2694701 (2017) 2255 prejudice is established on proof that petitioner would not have pled guilty but for counsel’s error, which McMaster indisputably presented, *certiorati* should be granted or a GVR⁵ order issue.

Also, because it is not a crime to pay loans at the end of their contractual due date which Petitioner did and was convicted of a “lapping” scheme for paying mortgage loans as late as possible, his conviction is void for want of jurisdiction for which *certiorari* should issue.

⁵ (Grant, Vacate, Remand)

CONCLUSION

Petitioner therefore requests that this Court grant this petition or issue a GVR.

Respectfully Submitted,

Dated: November 16, 2017

A handwritten signature in black ink, appearing to read 'David E. McMaster', is written over a horizontal line.

David E. McMaster, Petitioner