

No. 17-7565

IN THE

SUPREME COURT OF THE UNITED STATES

JERRY LESTER JACKSON

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent,

PETITION FOR RE HEARING

(SUPREME COURT RULE 44)

Jerry Lester Jackson

Petitioner, Pro se

P.O. Box 15330

Fort Worth, Tx, 76119

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GROUNDS FOR REHEARING

A. THE INTEREST OF JUSTICE CALLS FOR REHEARING OF THE DECISION IN THIS CASE.

Rehearing of the decision in this case would serve the interest of Justice by avoiding a miscarriage of Justice where Constitutional errors tainted the trial and resulted in an unconstitutional Conviction of a crime in which Petitioner did not commit. See

(The untainted administration of Justice is one of the most cherished aspect of our institutions)

1. THE FIFTH CIRCUIT'S DENIAL OF COA WAS IMPROPER UNDER § 2253 THRESHOLD COA ANALYSIS.

The COA statute sets forth a two-step Process: An initial determinating whether a claim is reasonable debatable, and if so, an appeal in the normal course. 28 U.S.C. § 2253.

The court is only required to conduct a threshold inquiry into the merits of the claims *Miller-El v. Cokerell*, 537 U.S. 322, 336 (2003).

A COA is a threshold question that should be decided without full consideration of the factual or legal basis advanced in support of the claims *Buck v. Davis*, 137 S.ct 759 (2017)

PETITIONER'S PROCEDURALLY BARRED CLAIMS ARE

EXCUSABLE UNDER KUHLMANN V. WILSON

The fundamental miscarriage of justice exception applies where the petitioner supplements his Constitutional claim with a Colorable showing of factual innocence. See Kuhlman v. Wilson, 477 U.S. 436, 454 (1986)

To satisfy the factual innocence standard, a Petitioner must establish that in light of all the evidence the trier of fact would have entertained a reasonable doubt as to the Petitioners guilt. Bousley v. United States, 523 U.S. 614, 623 (1998)

In this case Petitioner Supplements his Constitutional claims with a claim of his being factually innocent of the charged drug conspiracy and points to proffered new evidence regarding numerous allegations of trial errors that prejudiced the Jury against him. See (Petition for Certiorari.)

Accordingly constitutional errors at trial along with the proffered new evidence of his factual innocence undermined his conviction. To begin with the record clearly shows that there was no evidence presented showing that two or more person agreed to commit the offense alleged in count 1 of the indictment at issue, let alone that Petitioner had knowledge of or participated in such Conspiracy. As it relates to the specific Count charged in the instant Indictment (4:09-cr-136) there were no facts offered that satisfied the elements need to convict petitioner of the Conspiracy charge. There simply was no evidence presented of a planned or actual drug transaction as it related to the charged Conspiracy. What the record does show was that two or more persons agreed to commit the offenses charged in two other separate indictments. However it is well settled that the government must prove that two or more persons agreed to commit the offenses charged in each of the indictments. In this case however,

according to the evidence advanced in the trial record proof of the agreements offered at trial merely provided evidence of an agreement between two or more persons to commit the offenses charged in the Alvarez and Johnson Indictments (6:08-cr-011) and (4:08-cr-118).

There was no evidence or testimony presented that established an agreement between two or more persons to commit the offense charged in the indictment in which Petitioner was charged.

(4:09-cr-136). Furthermore, Petitioner Contends that the new proffered evidence regarding these allegations demonstrates his factual innocence as these allegations undermine the other evidence presented at trial and thus given the lack of other evidence Presented at trial proving the existence of the charged Conspiracy and of Petitioner's involvement in such Conspiracy these allegations if placed before the Jury would have lead to his acquittal. Reasonable Jurist could debate that under Kuhlmann, Petitioner has satisfied the miscarriage of justice exception.

Therefore in the interest of justice Petition for Certiorari should be granted and remand back for the Fifth Circuit to review Petitioner's claims on appeal.

B. THRESHOLD INQUIRY OF PETITIONER'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS REQUIRES REVIEW

Reasonable Jurist could debate whether Petitioner's Counsel was ineffective.

Therefore the lower Court's application of the threshold COA analysis was improper as required under § 2253 where Petitioner clearly showed that the issues in his Petition for Certiorari were debatable.

1. FAILURE TO OBJECT TO PREJUDICIAL TESTIMONY.

Therefore as a result of trial counsel's failure to object to the introduction of such highly prejudicial testimony based on its relevance being far outweighed by its potential prejudicial impact upon the jurors' deliberations, Petitioner was denied constitution effective assistance. See *Grunewald v. United States*, 353 U.S. 391, 420 (1957) (When the probative value of the evidence through relevant is outweighed by the prejudice to the accused the use of such evidence violates due process and fundamental fairness).

2. FAILURE TO OBJECT ON CONFRONTATIONAL GROUNDS

3. FAILURE TO OBJECT ON THE GROUNDS OF GRAND JURY VIOLATION

4. FAILURE TO REQUEST ACQUITTAL BASED ON LACK OF PROOF OF AN AGREEMENT

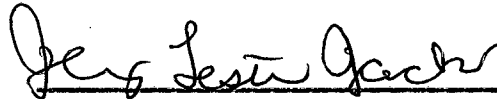
5. FAILURE TO OBJECT TO THE MISCONDUCT OF THE PROSECUTORS

Under these circumstances reasonable Jurist could debate petitioner's ineffective assistance of counsel claims. Therefore in the interest of Justice at a minimum this court should grant Certiorari and remand back to the lower courts to review these issues on appeal.

CONCLUSION

For the reasons stated above, this Court should grant petitioner's petition for rehearing on the decision in this matter.

Respectfully Submitted



Jerry Lester Jackson, Pro Se

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Federal Medical Center

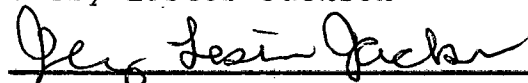
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PROOF OF SERVICE

I Jerry Lester Jackson, hereby declare that on this 23rd day of March, a true and correct copy of a petition for rehearing was placed in the institutional mailing system and another to the Solicitor General of the United States of America.

Jerry Lester Jackson



Petitioner Pro se