

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Carlton J Blount — PETITIONER
(Your Name)

vs.

United States, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United State Court of appeals for the District of Columbia
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Carlton J Blount
(Your Name)
United States Penitentiary at water
P.O Box 09001
(Address)

Atwater California 95301
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Please see attached
writ of Certiorari, page 4

- (1) Can an United States Court of appeals Override the Certificate of appealability Standard
- (2) Does a Jurist of REASON HAVE to grant a certificate of appealability request Before an appeal may be taken?
- (3) Did the Court below invert the statutory order of operation in the case at hand in their COA analysis?
- (4) Can a State Court of appeals use it's "Inherent Judicial Power" to REVIEW an Intervening change in law (Wilson by 903 A.2d 818) (which is considered an exceptional circumstance) and Reopen a closed direct appeal because which it does resets AEDPA's ONE YEAR clock under a 28 U.S.C. § 2244(d)(1)(A) Analysis in a federal Habeas Corpus Court proceeding?
- (5) Can a Circuit Court of appeals introduce for the first time an argument waived by the government relating to statute of limitations applied to Sept 2011 habeas petition upon an application for COA in another case?

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:

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CASES	PAGE NUMBER
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Haines v. Kerner	404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652
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Miller v. Cockrell	537 U.S. 322, 123 S.Ct. 1029, 154 L.Ed.2d 931
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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 860 F.3d 732; 2017 NO 15-5056; 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 69 F. Supp 3d 242, 2014 U.S. Dist. LEXIS 135964; 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 27, 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: November 14, 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 October 11, 2012.
A copy of that decision appears at Appendix Do not have access to order(s)

☐ 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

- (1) Antiterrorism and Effective Death Penalty act (AEDPA)
- (2) Certificate of Appealability statute 28 U.S.C. § 2253
- (3) federal habeas Corpus statute 28 U.S.C. 2254

STATEMENT OF THE CASE

PLEASE SEE ATTACHED WRIT OF CERTIORARI

REASONS FOR GRANTING THE PETITION

PLEASE SEE attached writ of Certiorari and according to rule 10(a), The United States Court of appeals for the District of Columbia has entered a decision that's in conflict with the decision of another United States Court of appeals on the same important matter, Specifically see appendix A and compare The United States Court of appeals decision for the 9th circuit in Thompson v. IFA (2012). The United States Court of appeals for the District of Columbia decision conflicts with the United States Court of appeals for the Ninth circuit decision of Thompson v. IFA 2012 decision. See Thompson v. IFA 681 F.3d 1093. Further under Rule 12(7) of this court's rules petitioner has cited in his writ of Certiorari to the state court orders of the United States court of appeals for the District of Columbia decision that petitioner does not have access to, petitioner would humbly ask can this court please transmitt the record so petitioner points will be accurate and clear to this court and have a sufficient understanding of petitioner's point of view. see following pages

United States Supreme Court

Case Numbers

D.C. Court of appeals: 01-CF 974

D.C. Superior Court: F-983-00

D.C. Federal Court: 15-5056

CARLTON J. BLOUNT, PETITIONER

V.

United States of America and The District of Columbia, appellees "et al"

Petition for Writ of Certiorari

Comes now, CARLTON J. Blount herein after as Petitioner, Pro se, Humbly ask this Highest Honorable Court in the land to be; please grant petitioner the great writ of Certiorari due to the following circumstances and facts of law petitioner points out to this court. Petitioner will humbly ask this honorable court to please hold petitioner to lesser standards than pleadings drafted by lawyers in accordance with the law of, Haines v. Kerner 404 U.S. 514, 520-521, 92 S. Ct. 594, 30 L. Ed 2d 652 (1972). AND PLEASE GRANT PETITIONER ANY OTHER RELIEF IN THE POWER OF THIS HONORABLE COURT, this court deems appropriate.

Introduction

On February 23, 2001 petitioner was convicted of a double Homocide in the district of Columbia Superior Court (State Court) case number F-982-00. Petitioner was sentenced on June 29, 2001. Petitioner received a sentence of 64 years to life in prison. Petitioner appealed his convictions and the district of Columbia Court of appeals affirmed the convictions on June 29, 2004 case number 01-CF-974. On November 15, 2005 Petitioner filed a D.C. Code 23-110 motion in the Superior Court. In August of 2008 the Superior Court denied the 23-110 motion. Petitioner appealed the 23-110 motion to the district of Columbia Court of appeals, the Court of appeals denied/affirmed the 23-110 motion in 2009. Petitioner appealed the affirmance to the Supreme Court of the United States of America and the Supreme Court denied a writ of Certiorari on October 14, 2010. Petitioner filed a 2241 in the United States District Court for the district of Columbia in 2011, the district court denied the petition for Habeas Corpus under 2241 on the same day in 2011. Petitioner requested a COA from the district court and the district court declined to issue one. Petitioner appealed the district court's decision to the United States Court of appeals for the district of Columbia, the Court of appeals affirmed the district's court denial of the 2241 petition in 2011. Petitioner requested a COA from the United States Court of appeals for the district of Columbia from the affirmance of the 2241 petition, the Court of appeals declined to issue a certificate of appealability. Upon the denial of the district court and United States Court of appeals denial and affirmance of petitioner's petition for Habeas Corpus under 2241 for not exhausting his state court remedy for ineffective assistance of appellant counsel for not raising the constitutionality of the

UNCONSTITUTIONAL aiding and abetting instruction in a motion to recall the direct appeal in petitioner's direct appeal. On October 28, 2011 petitioner filed a motion to recall the mandate in the state appellant court (district of Columbia court of appeals) raising the issue of ineffective assistance of appellant counsel do to the failure of appellant counsel not raising the issue of the unconstitutional aiding and abetting instruction that eliminated the essential elements of first and second degree murder in petitioner's murder trial. On October 11, 2012 the state appellant court denied Petitioner's motion to recall the mandate. On September 23, 2013 Petitioner filed in the United States district court for the district of Columbia a petition for habeas corpus under 2254 raising the issue of ineffective assistance of appellant counsel do to the failure of appellant counsel not raising the objection to and preserved issue of the unconstitutional aiding and abetting instruction that eliminated the essential elements of first and second degree murder in petitioner's murder trial, case number 13-1938. On September 23, 2014 the district court denied the 2254 petition, stating the petition is procedurally time barred. Petitioner requested a certificate of appealability from the district court, the district court declined to issue a COA. Petitioner appealed the district court's decision and requested a certificate of appealability from the United States Court of appeals for the District of Columbia, after appointing amicus curiae and having oral arguments the court of appeals denied the COA request. Now petitioner is petitioning this court for a writ of Certiorari.

Question(s) Presented

- (1) Can an United States Court of appeals override the Certificate of appealability Standard?
- (2) Does a Jurist of Reason have to grant a certificate of appealability request before an appeal may be taken?
- (3) Did the Court below invert the statutory order of operations in the case at hand in their COA analysis?
- (4) Can a State Court of appeals use it's "Inherent Judicial Power" to Review an intervening change in law (Wilson-bey 903 A.2d 818) (which is considered an exceptional circumstance) and Reopen a closed direct appeal because which it does resets AEDPA's one year clock under a 28 U.S.C. 2244(d)(1)(A) analysis in a Federal Habeas Corpus Court proceeding?
- (5) Can a Circuit Court of Appeals introduce for the first time an argument waived by the government relating to statute of limitations as applied to sept 2011 habeas petition upon an application for COA in another case?

ISSUE 1

The lower Court (United States Court of Appeals for The District of Columbia)
Committed a "Fundamental" Error

In the case at hand petitioner asked the United States Court of Appeals for the District of Columbia for a Certificate of Appealability (COA) see Appendix A. After Initial Review of the Request the Court appointed amicus curiae and ordered oral argument as hearing an appeal. Once the Court got briefed and heard from both parties the Court went on and decided the appeal based on the merits the Court was briefed and argued about in the case at hand. The Court totally disregarded statute and this Court's precedence in deciding the appeal. see Appendix A

By Statute in order for an appeals court to hear an appeal from a habeas petition, a habeas petitioner must make a sufficient initial showing to a judge or circuit justice 28 U.S.C.S 2253(c)(1)-(2). In petitioner's case petitioner had to make a substantial showing of a constitutional right. Which mean petitioner had to demonstrate that a reasonable jurist could debate whether the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further. Beings though the district court denied the habeas petition in petitioner's case on procedural grounds without reaching the underlying constitutional claim. Petitioner must show that jurists of reason would find debatable not only whether the petition states a valid claim of the denial of a constitutional right, but also whether the district court

WAS CORRECT IN IT'S PROCEDURAL RULING 28 U.S.C.S 2253(c)(2).

The district court's denial of petitioner's COA application WAS INCORRECT, the procedural ruling as to petitioner's HABEAS petition as being time-barred should be REVERSE.

UNDER AEDPA'S ONE-YEAR limitations period petitioner had ONE YEAR FROM THE DATE HIS JUDGMENT OF CONVICTION "BECAME FINAL BY CONCLUSION OF DIRECT REVIEW OR THE EXPIRATION OF THE TIME FOR SEEKING SUCH REVIEW. 2244(d)(1)(A). ON OCTOBER 28, 2011 PETITIONER FILED AN OUT OF TIME MOTION TO RECALL THE MANDATE. BECAUSE OF THE STATE RULE OF A PETITIONER HAS TO SHOW "GOOD CAUSE" TO FILE THE MOTION OUT OF TIME, PETITIONER ASK THE STATE APPEALS COURT TO USE IT'S "INHERENT JUDICIAL POWER" TO RECALL THE MANDATE DO TO THE EXCEPTIONAL CIRCUMSTANCE OF AN INTERVENING CHANGE IN LAW (WILSON-BEG 903 A.2d 818). SEE MOTION TO RECALL THE MANDATE AFTER INITIAL REVIEW OF THE MOTION BY THE SAME THREE JUDGE PANEL THAT HEARD THE ORIGINAL DIRECT APPEAL. THE THREE JUDGE PANEL GRANTED REVIEW BY GIVING AN ORDER ON AUGUST 29, 2012 THE ORDER STATES: "ON CONSIDERATION OF APPELLANT'S MOTION TO RECALL THE MANDATE IT APPEARS THE JURY MAY HAVE RELIED UPON THE AIDING AND ABETTING INSTRUCTION THIS COURT HELD TO BE UNCONSTITUTIONAL. SEE WILSON-BEG 903 A.2d 818. IT ALSO APPEARS THAT TRIAL COUNSEL RAISED SPECIFIC OBJECTIONS TO THE WORDING OF THE INSTRUCTION AND APPELLANT COUNSEL FAILED TO RAISE THE ISSUE ON APPEAL.

IT IS ORDERED SUO SPONTE THAT THE CLERK SHALL FILE THE LODGE SUPPLEMENT TO THE MOTION TO RECALL THE MANDATE

Further Ordered: that the government shall file response to the issues raised in the motion to recall the mandate within 30 days of this order. We also note in case number appellant's first 23-110 we did not address whether appellant counsel performance was deficient. The government shall respond to whether even if the issue was raised whether the issue would have been harmless beyond a reasonable doubt."

It is also ordered that the motion to recall the mandate is held in abeyance until further order of the court. SEE August 29, 2012 order

Petitioner points out ONCE the court granted review of the motion to recall the mandate and then held the motion in abeyance, which makes the motion to recall the mandate inactive, the court reopened the direct appeal to adjudicate the Wilson-bey claim and simultaneously reviewed the Strickland claim, then after the government responded to the court's initial order the court issued a post order stating:

"On consideration of appellant's motion to recall the mandate it is DENIED... appellant challenges that the mens rea was eliminated in his murder trial. Based upon the entire record, any error was harmless due to the overwhelming evidence presented at trial and the government's theory of appellant was the sole shooter (Watson v United States 536 A.2d 1056, 60-61)"
SEE October 11, 2012 ORDER

After the state court of appeals denied petitioner's motion to recall the mandate on October 11, 2012, Petitioner filed

a Petition for Habeas Corpus 28 U.S.C 2254 on September 18, 2013 in the United States District Court for the District of Columbia. In the issue(s) raised in the petition, petitioner raise ineffective assistance of appellant Counsel due to the fact of appellant Counsel didn't raise the unconstitutional aiding and abetting instruction that was raised and objected to in petitioner's trial, which is a valid constitution claim.

This Court has stated "when a state court ~~reopens~~ reopens direct review of the conviction, a conviction is no longer final for purposes of 2244(d)(1)(A)." JIMENEZ V. QUARTERMAN, 555 U.S. 113, 129 S.Ct. 681, 172 L.Ed 2d 475

Petitioner argues when the state court of appeals reopened petitioner's direct appeal by giving the orders on August 29, 2012 and October 11, 2012 petitioner conviction was no longer final for purposes of 2244(d)(1)(A) and petitioner had a one year time limit to file his 28, U.S.C 2254 petition in the United State district Court for the district of Columbia. Specifically, petitioner had until October 11, 2012 given the 90 day window to petition this Court, he had until January 9, 2013 to January 9, 2014

The district court's procedural ruling was wrong and incorrect by denying petitioner's habeas petition for the reason of being time-barred.

There is no question that the Petition for Habeas Corpus that

WAS FILED ON SEPTEMBER 18, 2013 CONTAINS A CONSTITUTIONAL RIGHT (claim) WHICH HAS BEEN DENIED. SEE Blount v. U.S.D.C. 860 F.3d 732 at 743-744. FURTHER, PETITIONER ARGUES THAT SENIOR CIRCUIT JUDGE WILLIAMS HAS BEEN CONSIDERED A "REASONABLE JURIST" WHO BELIEVES THAT THE APPELLANT COURT SHOULD HAVE RESOLVED THIS CASE MUCH DIFFERENTLY THAN IT HAS. SEE Blount v. U.S.D.C. 860 F.3d 732 at 743-51. THEREFORE, PETITIONER HAS MADE A SUFFICIENT SHOWING "THAT REASONABLE JURIST COULD DEBATE WHETHER THE PETITION SHOULD HAVE BEEN RESOLVED IN A DIFFERENT MANNER OR THAT THE ISSUES PRESENTED WERE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER. Slack v. McDaniel 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542. FURTHERMORE, WHEN A REVIEWING COURT (LIKE THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA HERE) INVERTS THE STATUTORY ORDER OF OPERATIONS AND FIRST DECIDES THE MERITS OF AN APPEAL, THEN JUSTIFIES ITS DENIAL OF A COA BASED ON ITS ADJUDICATION OF THE MERITS. THIS COURT HAS MANDATED ITS NOT SUPPOSE TO BE DONE. Buck v. Davis, 137 S.Ct. 759, 773, 197 L.Ed.2d 1 (2017). THE UNITED STATES COURT OF APPEALS HEARD THE MERITS OF THIS CASE THROUGH BRIEFS AND ORAL ARGUMENT AND THEN DENIED THE COA. BY STATUTE IN 28 U.S.C. § 2253(c)(1)-(2) A JUDGE OR CIRCUIT JUDGE MUST ISSUE A CERTIFICATE OF APPEALABILITY BEFORE THE UNITED STATES COURT OF APPEALS COULD DO WHAT THEY DID ON PETITIONER'S COA APPLICATION REQUEST. THE COURT'S ACTION WAS COMPLETELY WRONG AND ABUSED THE COURT'S DISCRETION.

CONCLUSION

PETITIONER ARGUES THE LOWER COURT HAS MADE A FUNDAMENTAL ERROR. Miller El v. Cockrell, 537 U.S. 322, 342, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003).

and he has satisfied the requirements in obtaining a certificate of appealability and the lower courts should have had issued one. Petitioner will humbly and with great appreciation ask this honorable court to please grant certiorari review in petitioner's case.

ISSUE 2

The lower court abused its discretion by raising an equitable tolling argument for the government and then using that argument to deny petitioner's certificate of appealability request.

Petitioner argues petitioner has made a sufficient showing that the tolling of the statute of limitations should have begun at the time his first petition was filed, and dismissed without prejudice. According to the appellate court, petitioner's statute of limitations for filing his first petition expired on January 27, 2010. Petitioner's first habeas petition was not filed until early 2011, but the government did not object to the late filing and the district court accepted the petition and made rulings without ever addressing the delay brought up by the appellate court on an application for COA in an entirely different case. In that case, the government conceded that the first habeas petition was timely, and the district court did not make any rulings holding otherwise. See May. Op. No. 15-5056, at 16. The appellate court erred and abused its discretion in advancing an argument on behalf of the government that the government obviously waived, and then used that

improper argument to rule that petitioner's valid constitutional challenge in petitioner's habeas petition to say it was time-barred.

Any failure to timely file the first habeas petition was excused by the district court on April 19, 2011. Petitioner contends that the first habeas petition should not have been dismissed, but stayed, pending proper exhaustion of the ineffective of appellate counsel claim in order to properly raise the unquestionable valid constitutional claim related to the struck down unconstitutional jury instruction as in *Willson-Bey* and petitioner's state court proceedings. Furthermore, the district court erred by summarily dismissing the second (2254) petition habeas petition on the procedural ground that it was time-barred.

Petitioner argues that senior circuit judge Williams has been considered a "Reasonable Jurist" who believes the appellate court should have resolved this case much differently than it has. See *Blount*, 860 F.3d at 743-51 - appendix A (Dissenting opinion). Therefore, petitioner has made a sufficient showing "that reasonable jurists could debate whether the petition should have been resolved in a different manner or that the issue presented were adequate to deserve encouragement to proceed further." *Slack v McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). Petitioner has thus met the certificate of appealability requirements of the appellate court's inquiry, herein (which Petitioner challenges as being improper as well).

Overall Conclusion

Petitioner states that the district court and the appellate court dispositions of petitioner's COA application was wrong and incorrect and a certificate of appealability was suppose to have issued in both courts. Petitioner would be highly grateful and very appreciative if this court will reverse both courts determination and grant petitioner a certificate of appealability and grant Certiorari Review in petitioner's case.

Humbly and Respectfully Submitted
Carlton J. Blount
~~Carlton J. Blount~~

Certificate of Service

I, Carlton J Blount, has fixed a certified and return form with first class postage to The United States Supreme Court, 1 first Street Northeast, Washington DC 20543 on This 9 day of January by delivering it by hand to the legal priority person in the shu at United States Penitentiary atwater to be put in the mail to be delivered to the court, an original Petition for writ of Certiorari

Submitted,
Carlton J Blount

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carlton J. Blount

Date: January 24, 2018