

DOCKET NO: _____

IN THE
UNITED STATES SUPREME COURT

JAMES J. ZARYCHTA, JR.,
PETITIONER,

VS.

LORIE DAVIS,
RESPONDENT.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION FOR REVIEW

- 1) DID THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT ERROR BY HOLDING THAT A 28 U.S.C. § 2241 HABEAS PETITION FILED BY A STATE INMATE MUST BE DISMISSED AS A SECOND OR SUCCESSIVE 28 U.S.C. § 2254 HABEAS PETITION EVEN THOUGH THE STATE INMATE DID NOT CHALLENGE HIS STATE COURT CRIMINAL CONVICTION; BUT RATHER, THAT §§ 2244 & 2254 WERE INADEQUATE AND/OR INEFFECTIVE FOR HIM TO TEST THE LEGALITY OF HIS DETENTION?

IDENTITY OF PARTIES AND COUNSEL

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The dispositive opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the United states Court of Appeals decided this case was DECEMBER 4, 2017. No petition for rehearing was timely filed in this case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2241(C)(3)

(C) The writ of habeas corpus shall not be extended to a person unless —

(3) He is in custody in violation of the Constitution or laws or Treaties of the United States; or

28 U.S.C. § 2244(b)(1)

A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

28 U.S.C. § 2244(b)(2)

A claim presented in a second or successive habeas application under section 2254 that was not presented in a prior application shall be dismissed unless —

(A) The applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) The factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) The facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder

would have found the applicant guilty of the underlying offense.

28 U.S.C. § 2244(d)(1)

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 —

- (A) The date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.
- (B) The date on which the impediment to filing an application created by State action, in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such action;
- (C) The date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) The date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

ARTICLE I, SECTION 9, CL. 2 —SUSPENSION CLAUSE—U.S. CONST.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless where in Cases of Rebellion or Invasion the public Safety may require it.

FIFTH AMENDMENT—U.S. CONST.

...nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; ... nor be denied of life, liberty, or property, without due process of law; ...

EIGHTH AMENDMENT—U.S. CONST.

... nor cruel and unusual punishments inflicted.

FOURTEENTH AMENDMENT—U.S. CONST.

No state shall deprive any person of life, liberty, or property, without due process or law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. Basis for the district court's jurisdiction.

The district court's jurisdiction over this habeas case was 28 U.S.C. § 2241.

2. Background.

The U.S. District Court and the U.S. Court of Appeals has constantly held that under §§ 2244 and 2254, in order for Petitioner ("Zarychta") to establish his innocence, Zarychta must present "NEW EVIDENCE." Zarychta has argued that he does not have "NEW EVIDENCE" to support his "Double Jeopardy Claim;" but instead, his innocence can be proven based upon the trial court records of both his first and second trial. In the instant § 2241 habeas petition, Zarychta did not challenge his state court criminal conviction; but rather, Zarychta argued that §§ 2244 and 2254 were inadequate and/or ineffective for him to test the legality of his detention. In short, §§ 2244 and 2254 provides an avenue for federal habeas review of a claim of innocence based on "NEW EVIDENCE" but does not provide an avenue for federal habeas review on a claim of innocence that is based on the trial record, such as is the case here.

REASONS FOR GRANTING THE PETITION

1. BY MAKING ITS OWN INDEPENDENT FACTUAL DETERMINATION THAT ZARYCHTA'S 28 U.S.C. § 2241 HABEAS PETITION MUST BE CONSTRUED AS A SECOND OR SUCCESSIVE 28 U.S.C. § 2254 HABEAS PETITION, WHEN ZARYCHTA DID NOT CHALLENGE HIS STATE COURT CRIMINAL CONVICTION, THE FIFTH CIRCUIT COURT OF APPEALS HAS SO DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO CALL FOR AN EXERCISE OF THIS COURT'S JURISDICTION.

In Triestman v. United States, 124 F.3d 361, 380(2nd Cir. 1997) the Court of Appeals held that "[S]ince Triestman cannot bring his claim to preclude all collateral review under the newly-amended § 2255, and since any attempt by congress to preclude all collateral review in a situation like this would raise serious questions as to the constitutional validity of AEDPA's amendments to § 2255, we find that § 2255 is inadequate and ineffective to test the legality of Triestman's detention. We therefore hold that Triestman is entitled to bring a petition for writ of habeas corpus in the district court pursuant to § 2244(c)(3)."

Triestman argued that if § 2255 forcloses all judicial review in "a case in which a federal prisoner claims that, on the record, he is innocent of the crime of which he stands convicted — in circumstances in which that claim could not have been presented earlier," it is unconstitutional to that extent.

The only difference between Triestman and the instant case, Triestman was a federal prisoner arguing against § 2255, while Zarychta is a state prisoner arguing against §§ 2244 and 2254.

In support of Zarychta's claim that the U.S. District Court has jurisdiction to entertain his § 2241 habeas petition, this Honorable Court in Felker v. Turpin, 116 S.Ct. 2333(1996) held:

Section 14 of the Judiciary Act of 1789 authorizes all federal courts, including the Supreme Court, to grant the writ of habeas corpus when prisoners were, 'in custody, under or by colour of the authority of the United States, or [were] committed for trial before some court of the same.' Act of Sept. 24, 1789, Ch. 20, § 14, 1 Stat. 82.

Section 14 is the direct ancestor of 28 U.S.C § 2241, subsection (a) of which now states in pertinent part: "writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction."

Congress greatly expanded the scope of federal habeas corpus in 1867, authorizing federal courts to grant the writ, 'in addition to the authority already conferred by law,' 'in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any Treaty or law of the United States.' Act of Feb. 5,

This language from 1867 Act is the direct ancestor of § 2241(c)(3), which states: 'The writ of habeas corpus shall not extend to a prisoner unless ... [h]e is in custody in violation of the Constitution or laws or Treaties of the United States.'

The Felker Court went on to state that "[N]o provision of Title I mentions Court [Supreme Court] authority to entertain original habeas petitions; in contrast, § 103 amends the Federal Rules of Appellate Procedure to bar considerations of original habeas petitions in the Court of Appeals." Section 103 reads in part:

Section 103 of the Act amends Federal Rules of Appellate Procedure 22(a) to read: "An application for a writ of habeas corpus shall be made to the appropriate district court."

Like Felker, Zarychta is a state prisoner who is claiming he is actual innocence; however, Zarychta's claim of innocence is based on a violation of the fifth Amendment's Double Jeopardy Clause and can only be proven by the trial court records of both his first and second trial -- not "newly discovered evidence" or a "new rule of constitutional law." Zarychta has consistently been denied federal review because he does not meet and cannot meet the statutory restrictions of 28 U.S.C. § 2244 or § 2254. Therefore, Zarychta's current § 2241 habeas petition did not challenge his state court criminal conviction; but instead, Zarychta argued, similar to Felker, that §§ 2244 and 2254 were inadequate and/or ineffective for him [Zarychta] to test the legality of his detention.

Zarychta argues that to deny him federal habeas review when he can prove that he is "innocent" for the crime for which he is confined, is a grave miscarriage of justice resulting in the denial of his Constitutional rights under the Fifth, Eighth, and Fourteenth Amendment to the United States Constitution. Zarychta also argues that to deny any and all federal habeas review is a violation of the Suspension Clause, Art. I, § 9, Cl. 2, to the United States Constitution. 28 U.S.C. § 2241 is Zarychta's only avenue for federal habeas review if §§ 2244 and 2254 does not provide an avenue for review of his claim of innocence which is based on a violation of the United States Constitution.

CONCLUSION

This Petition for Writ of Certiotari should be GRANTED.

Respectfully submitted,


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