

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANDY BUXTON — PETITIONER
(Your Name)

VS.
SUPERINTENDANT MERCER; ~~SCI~~ COMMONWEALTH OF PENNSYLVANIA
~~ATTORNEY GENERAL PENNSYLVANIA~~ — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURTS OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDY BUXTON
(Your Name)

#MS-1885 SCI-MERCER 801 BUTLER PIKE
(Address)

MERCER, PA 16137
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. Whether the district court should have granted a COA excusing exhaustion as a result of excusable/inordinate delay?

II. Whether the delay at the hands of the court of common pleas for Allegheny County in the State process in which frustrated petitioner's use of available remedy should have been heard?

III. Based on the obstruction by state officials that prevented pursuit of petitioner's appeal should exhaustion be excused? or if not a hearing to hear abeyance of stay.

IV. Based on petitioner's actual Innocence in order to avoid a fundamental miscarriage of justice. Whether the district court should have granted an evidentiary hearing because of the substantial evidence within the petition would have most certainly have excused exhaustion?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Story v. Kindt 26 F.3d at 504</u>	4
<u>Schlup v. Delo 513 U.S. 298,115 S.Ct.851,130 L.Ed.2d 808(1995)</u>	4
<u>McQuiggin 133 S.Ct. at 1928-1931</u>	4
<u>McCleskey v. Zant, 499 U.S.467,494,111 S.Ct.1454,1470,113 L.Ed.2d 517(1991)</u>	4
<u>Lambert 134 F.3d at 516</u>	5
<u>Lines 208 F.3d 153</u>	5
<u>Litchfield v. Tinsley, 281 F.2d 486,488(10th Cir.1960)</u>	5
<u>State v. Gladden, 240 F.2d 910,911-12(9th Cir.1957)</u>	5

STATUTES AND RULES	
<u>28 U.S.C. §§2254(e)(2)(B)</u>	3,4
<u>28 U.S.C.S. §§2254</u>	3
<u>28 U.S.C.S. §§2254(d)</u>	3
<u>28 U.S.C.S. §§2254(e)(1)</u>	3

OTHER	
<u>14th AMENDMENT RIGHT OF THE CONSTITUTION OF UNITED STATES OF AMERICA</u>	3

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A =UNITED STATES COURT OF APPEALS FOT THIRD CIRCUIT ORDER.....

APPENDIX B =UNITED STATES DISTRICT COURT WESTERN PENNSYLVANIA REPORT & RECOMMENDA-
TION DOC.14,ORDER DOC.18,ORDER DOC.20

APPENDIX C =UNITED STATES COURTS OF APPEALS THIRD CIRCUIT PETITION FOR REHEARING
ORDER

APPENDIX D

APPENDIX E

APPENDIX F

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 Case:17-2312 Doc.003112732082; 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 Case:2:16-cv-01489-DSC-MPK Doc.14,18,20; 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 September 21, 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: October 24, 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

28 U.S.C.S. § 2254, 28 U.S.C.S. § 2254(d), 28 U.S.C.S. § 2254(e)(1), 28 U.S.C.S. §§ 2254(e)-(2)(B). 14th AMENDMENT OF UNITED STATES CONSTITUTION.

STATEMENT OF THE CASE

Plaintiff filed this Habeas Corpus Petition on 9/28/2016. After being found guilty on numerous charges in state court. In which he tried multiple times to retrieve trial transcripts to file post-sentence motion. In which was not turned over delaying him the access to court. On 6/16/2017 the civil case was docketed at No. 2-16-cv-01489 record available on District Court CM/ECF. On 6/29/2017 the Clerk granted appellant in forma pauperis status. Also the Attorney General for Pennsylvania & Superintendant Mercer SCI was requested the appearance form on or before 07/13/2017. Also a motion was filed by plaintiff for Certificate of appealability. Response was due on 07/10/2017. In which in his petition a reasonable jurist would have found the issue very relevant. (Story v. Kindt, 26 F.3d at 405) Especially the substantial evidence of actual innocence contained in the petition. (Schup v. Delo, 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d 808 (1995)) On this matter petitioner meets the threshold requirement because in light of the new evidence, no juror, acting reasonably would have voted to find him guilty beyond a reasonable doubt. With this being said the evidence is so strong that a court cannot have confidence in the outcome of the trial. (McQuiggin, 133 S.Ct. at 1928-1931). In order to avoid this fundamental miscarriage of justice the evidence of petitioner's actual innocence can excuse his failure to fail-ure to exhaust his state court remedies (McCleskey v. Zant, 499 U.S. 467, 494, 111 S.Ct. 1454, 1470, 113 L.Ed.2d 517 (1991)). On 7/12/2017 entry of appearance from Gregory J. Simatic on behalf of Appellee(s) Superintendant Mercer SCI, Commonwealth of Pennsylvania, Attorney General of Pennsylvania. On 9/21/2017 order denying Appellant's application for certificate of appealability, filed. (Panel No.: CLD. Rendell, Authoring Judge. On 10/05/2017 Petition filed by Appellant for rehearing before original panel. On 10/24/2017 Order denying Petition for panel rehearing filed by Appellant filed.

REASONS FOR GRANTING THE PETITION

Unlike the petitioners in the district court & third circuit appeals orders. The petitioner is asserting his actual innocence & facts that would suggest a "miscarriage of justice" in the context of federal habeas jurisprudence again unlike Lambert 134 F.3d at 516 & Lines 208 F.3d 153.

Also several circuits have acknowledged that such "interference" by officials would be a basis for excusing exhaustion of state remedies, (see Litchfield v. Tinsley, 281 F.2d 486, 488 (10th Cir. 1960), State v. Gladden, 240 F.2d 910, 911-12 (9th Cir. 1957)).

On top of the Actual Innocence the district court in this extraordinary case the principles of comity should have allowed it to excuse total exhaustion in the face of a manifestly unjust incarceration. This petition should be granted because petitioner made a substantial showing of the denial of a very important constitutional right & the district court should have issued a certificate of appealability in regards of them claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andy Buxton

Date: 12-1-17