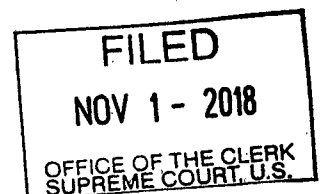


1 SUPREME COURT OF THE UNITED STATES

2  
3 IN RE: EARNEST CASSELL WOODS II  
4 NO. 17-9480

NO. 17-9480  
MOTION FOR RECON-  
SIDERATION

5 Petitioner contends that the Court order  
6 dated October 1, 2018 violates his First Amendment  
7 right to petition the government for a redress of  
8 grievances, Bill Johnson Rests. v NLRB, 461 U.S. 731.  
9 He argues that he has shown the loss of a "non-  
10 frivolous" or "arguable" underlying claims that  
11 official acts frustrated his litigation, Phillips v Hust  
12 477 F.3d 1070 AND Christopher v Harbury, 536 U.S.  
13 403. He argues that he "has repeatedly abused this  
14 Court's process" because he has been pursuing his  
15 rights diligently, that the California Judicial System  
16 stood in his way AND prevented timely filing, he is  
17 entitled to equitable tolling, Holland v Florida, 560  
18 U.S. 631 because he is "actually innocent," which  
19 allows him to pursue his habeas petition as if it had  
20 been filed on time, Mc Quiggin v Perkins, 133 S. Ct. 1924.  
21 He asks the Court to apply the miscarriage of justice  
22 exception to overcome various procedural defaults,  
23 including "successive" petitions asserting previously  
24 rejected claims, Kulman v Wilson, 477 U.S. 436, "abusive"  
25 petitions asserting previously or in a second petition  
26 claims that could have been raised in a first petition,  
27 Mc Cleskey v Zant, 499 U.S. 467.



1 Petitioner contends that he cannot comply with  
2 Rule 33.1 because prison officials has repeatedly  
3 destroyed his typewriter in retaliation to his filing  
4 prison grievances and pursuing civil litigation in the  
5 courts, Rhodes v Robinson, 408 F.3d 559.

6 He argues that he cannot comply with Rule 38(a)  
7 because he has sent every penny from his V.A.  
8 compensation to his sick, elderly mother, Mildred  
9 McKinney, who is also taking care of my sister,  
10 Margaret Woods based on her medical disabilities.  
11 (see V.A. documents)

12 Petitioner reasserts that California's second  
13 degree felony murder rule is unconstitutionally  
14 vague under the U.S. Supreme Court's precedent  
15 in Johnson v U.S., 135 S.Ct. 2551. He argues that  
16 he has standing to enforce his "personal right not to  
17 be convicted under a constitutionally invalid law".  
18 Band v U.S., 564 U.S. 211 and he has made a prima  
19 facie showing for his facial challenge, that he  
20 may file his second or successive petition, Woratz-  
21 zeck v Stewart, 118 F.3d 648 cited in Henry v Spearman  
22 2018 DJDAR 7756,

23 The adjudication of People v Woods, D006442 was  
24 erroneous, contrary to People v Chun and Chun v  
25 Lopez, 652 Fed. Appx. 500, both cases and Johnson  
26 rely on a new and retroactively applicable rules.  
27 The adjudication was based on California's harmless

1 error decision set forth in People v Watson, 46 Cal.  
2 2d 818 and Chapman v Cal, 386 U.S. 18 "does not  
3 apply to trial errors," Brecht v Abrahamson, 507  
4 U.S. at 437, and the decision was objectively  
5 unreasonable within the meaning of the writ of  
6 habeas corpus, Davis v Avala, 135 S.Ct. 2187.

7 The Court should move to set aside the  
8 judgment of conviction and dismiss the indict-  
9 ment with prejudice based on the "failure to  
10 disclose material evidence that impeaches the  
11 prosecution's theory of the case," Brady v Maryland  
12 373 U.S. 83.

13 The Southern District Court's original view of  
14 the case in Woods v Borg, CV-91-1175 H was  
15 erroneous, contrary to Chun v Lopez and Brecht.  
16 The Ninth Circuit never heard the case on the  
17 merits, Woods v Borg, CV-92-56175, the denial of  
18 the "Notice of Appeal was not timely filed" on 10/5/  
19 92 was a procedural default, Slack v McDaniel,  
20 529 U.S. 473 based on a cell/prison transfer.

21 Petitioner contends that the dissent in Sessions  
22 v Dimaya, 138 S.Ct. 1204 supports his position. He  
23 argues that he is being denied to enforce his  
24 "personal right not to be convicted under a consti-  
25 tutionally invalid law," Band v U.S. He is being depriv-  
26 ed the Equal Protection of the law.

27

**Additional material  
from this filing is  
available in the  
Clerk's Office.**