

No. _____

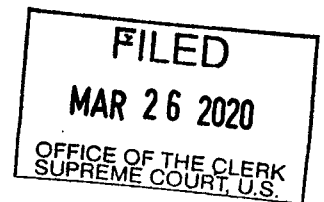
19-8536

IN THE
SUPREME COURT OF THE UNITED STATES

In re Robert Peter Russell,
Petitioner.

ORIGINAL

PETITION FOR A WRIT OF HABEAS CORPUS



Robert Peter Russell
Reg. No. 17281-083
United States Penitentiary Allenwood
P.O.Box 3000
White Deer, PA 17887

Petitioner, *pro-se*

QUESTION PRESENTED FOR REVIEW

Whether Petitioner Robert Peter Russell ("Russell"), convicted of first degree murder under 18 U.S.C. Section 1111, retains a federal constitutional right -- a liberty interests -- to be released from federal prison upon existing record of uncontroverted proof that the purported murder victim is alive ergo no federal crime of murder was committed.

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<p>Mr. Russell cannot obtain adequate relief in any other form or from any other federal court. The reason Russell did not petition for a writ of habeas corpus in the district court that has jurisdiction over his custodian is that Third Circuit precedent will not allow it. Its precedent absolutely precludes access to 28 U.S.C. Section 2241 except "only" when there is a change in statutory case law that applies retroactively in cases on collateral review. <i>Bruce v. Warden Lewisburg USP</i>, 868 F.3d 170 (3d Cir. 2017). Moreover, statute and precedent will "not" allow Fourth Circuit (or any other circuit court) to consider the merits of his habeas claim on a successive section 2255 motion. 28 U.S.C. Section 2255(h)(1) & (h)(2), <i>In re Vassell</i>, 751 F.3d 267, 270-71 (4th Cir. 2014), respectively. Russell's instant claim is not premised on a change in statutory case law that applies retroactively on collateral review. Absent the exercise of this Court's discretionary powers might result in the continued federal imprisonment of Russell who had not committed a federal crime.</p>	
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TABLE OF AUTHORITIES CASES

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STATUTES

28 U.S.C. Section 2241	passim
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28 U.S.C. Section 2255	i, 3

RULES

United States Supreme Court Rule 20 1

United States Supreme Court Rule 29.4 1

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. Section 2241 and Supreme Court Rule 20.

NOTIFICATION OF THE SOLICITOR GENERAL

Pursuant to Supreme Court Rule 29, service of this petition for a writ of habeas corpus has been made upon the Solicitor General of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of 28 U.S.C. Sections' 2241, 2243 and the Fifth Amendment of the United States Constitution are set out in the Appendix ("App.") at 1a - 4a.

STATEMENT OF THE CASE

In all stages of Russell's prosecution and subsequent appellate and habeas litigation, he has always proclaimed that he is innocent because Shirley Gibbs Russell ("Gibbs") is not deceased. Therefore, no federal crime of murder was committed.

In 1991, Russell was convicted in the United States District Court for the Eastern District of Virginia, Alexandria Division, of first degree murder. He was sentenced to a term of life imprisonment and is confined at the Allenwood United States Penitentiary in White Deer,

Pennsylvania ("USP Allenwood"). His direct appeal was unsuccessful. Russell has since filed dozens of motions, petitions and civil actions in numerous courts seeking relief from his conviction to no avail. No evidentiary hearing(s) ever took place. As relevant here and for the first time, Russell is not challenging his conviction or sentence. Rather, he is challenging the fact of his continued imprisonment premised on an independent constitutional claim absent an independent constitutional violation. In the interest of justice, the merits of this claim should be considered and the relief requested should be granted.

REASONS FOR GRANTING THE WRIT

The instant petition for writ of habeas corpus is submitted based on the existing record of uncontroverted reliable and probative evidence the jury never heard. This existing record of evidence conclusively and definitively proves beyond any scintilla of doubt that the purported murder victim Gibbs is alive ergo not murdered ergo no federal crime of her murder was committed by Russell. App. 5a - 7a, the existing record of evidence. This Court should take judicial notice that this evidence has been submitted to the various courts that have been part of this litigation over the past 28 years and is part of the record. App. 5a, n.1.

At the present time, there continues to be no credible evidence whatsoever that supports Gibbs is not alive. There is no credible evidence of Gibbs's death, there is no certificate of her death and Gibbs's social security number remains on the "active" social security rolls. There is no crime scene, there is no physical evidence of her death, there is no forensic evidence of her death and there are no witnesses as to her death. And, there is no murder weapon. App. 8a, AIRTEL to Director, FBI, dated 9/9/91.

No matter how much circumstantial evidence the prosecution could amass against

Russell to forge a link to Gibbs alleged death and alleged murder, the federal government had no federal case against Russell unless it could FIRST prove that Gibbs was deceased on a federal reservation at noon, Saturday, March 4, 1989. *Rivas v. Fischer*, 780 F.3d 529, 539, 549 (2d Cir. 2014)(no matter how much circumstantial evidence the prosecution could amass tending to link *Rivas* to the crime, however, it had no case unless it could prove Hill died on Friday night...the case therefore turned on rebutting the prosecution's theory as to time of death).

The Court should take judicial notice that the circumstantial evidence relied on by the twice hung jury and Fourth Circuit Court of Appeals in affirming Russell's conviction (*United States v. Russell*, 971 F.2d 1098, 1101-04, nn. 1-14 (4th Cir. 1992)) was subsequently impeached and discredited by the trial court during Russell's initial section 2255 motion. See *United States v. Russell*, 93-1036-AM, E.D. Va., Alexandria Division, doc. 120, Memorandum Opinion at pp. 12-19. *Orabi v. Att'y Gen. of the United States*, 738 F.3d 535, 537 n.1 (3d Cir. 2014)(A Court may take judicial notice of the contents of another court's docket).

In retrospect, during jury deliberations, the jury asked the Court for a definition of reasonable doubt and the Court gave them one. And for the second time, the jury could not arrive at a verdict on the government's theory of prosecution that Gibbs was deceased at noon, Saturday, March 4, 1989. After three days of deliberations, the twice deadlocked jury couldn't convict Russell on the government's theory of prosecution until after the Court administered the 19th century pure Allen "dynamite" charge. *Allen v. United States*, 164 U.S. 492 (1896).

Absent the coercive Allen charge, if the twice hung jury could not find Russell guilty at trial, then, when this uncontroverted existing record of evidence is evaluated against the

unprecedented backdrop of this unique case, no juror, acting reasonably, would have voted to find Russell guilty of first degree murder beyond a reasonable doubt.

Accordingly, the uncontroverted existing record of evidence demonstrates exceptional circumstances warranting the exercise of the Court's discretionary powers to issue an extraordinary writ "the continued federal imprisonment of Russell, who had not committed a federal crime, provides adequate justification."

CONCLUSION

For the foregoing reasons, this Court should accept section 2241 jurisdiction and order Mr. Russell's immediate release from federal imprisonment, or, in the alternative, appoint counsel, transfer this petition for an original writ to the United States District Court for the Middle District of Pennsylvania with instructions to conduct a full evidentiary hearing to consider the merits of his independent constitutional claim.

Respectfully submitted,

Dated: April 22, 2020



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