

Frank Garcia, 09B2727
Attica Correctional Facility
639 Exchange street
Attica, NY 14011-0149

Dec, 27, 2023

Office of Clerk
Supreme Court of the U.S.
U.S. Supreme Court Bldg.
1 First st. N.E.
Washington, DC 20543

RE: Garcia v. Noeth

2nd Cir Docket no: 23-393

C.O.A. denied 8/16, mandate issued 11/3/23

(see: Exhibit A - enclosed herein under separate cover)

2nd Cir - Reconsideration denied 10/27/23

(see: Exhibit B - enclosed herein under separate cover)

NYS (W) District Court Docket no: 19-cv-647

Hab denied on 2/17/23. see: WL 2082703

(see: Exhibit C - enclosed herein under separate cover)

NYS Appellate Division, Fourth Department

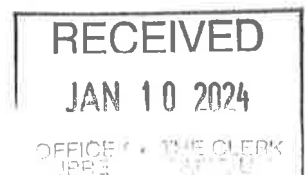
Docket no: KA-10-517

People v Garcia 101 AD.3d 1604 (12/21/12)

(see: Exhibit D - enclosed herein under separate cover)

Dear Clerk:

By this letter and exhibits enclosed - I'm asking permission to file a late application for a Writ of Certiorari in this Court. Considering the everyday life of prison (ei: facility lockdowns, copy copier not working at 100%, emergency bells ringing, law library call out cancellations and etc).. has greatly hindered Garcia's continuation in conducting his leagl reseach. Therefore - I'm respectfully requesting I be allowed permission to file a late application for a Writ of Certiorari in this Court.



Which pertains to one(1) sole issue - that if granted and accepted by this Court, shall set precedent in all Federal and State Courts alike - when it comes to the issue of DNA.

To deny reversals: why are the lower Courts quick to claim Harmless error, to evidence that unrefutably has the sole power, to either:

- a). clear the accused
- b). convict the accused +/or
- c). under a specific State Statutorial post conviction DNA motion - exonerate the imprisoned ?.

(ei: NYS CPL§ 440.10[1](g-1) or NYS (L.2012 Ch.19 §4) effective Oct 1,2012.

or to put it in another term

Can Harmless error be applied to DNA evidence referred to by the People at multiple phases during trial ?.

If this permission sought after is granted and subsequent Writ is accepted by this Court - Petitioner shall illustrate via submitted brief many examples via Richardson v. Capra 2023 WL 1094949 * 23-25 that - it was to the contrary. (not harmless)

The NYS AG Office at 28 Liberty st, 14th floor, New York, NY 10005 has been sent a copy of this permission to file a late Writ application simultaneously, along with Exhibits A thru D - to eradicate any prejudices.

Please assign this request to a Justice in this U. S. Supreme Court for said granture or denial.

I thank you in advance !

cc: file

Garcia
09B2727
Respectfully submitted
Garcia, 09B2727, Petitioner Pro-se.

TO: NYS AG Office
28 Liberty st, 14th floor
New York, NY 10005.

(raised as POINT 3 in application for C.O.A)

EXHIBIT A

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of August, two thousand twenty-three.

Present:

Joseph F. Bianco,
Eunice C. Lee,
Sarah A. L. Merriam,
Circuit Judges.

Frank Garcia,

Petitioner-Appellant,

v.

23-393

Joseph Noeth,

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); see *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe



MANDATE

W.D.N.Y.
19-cv-6047
Siragusa, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of August, two thousand twenty-three.

Present:

Joseph F. Bianco,
Eunice C. Lee,
Sarah A. L. Merriam,
Circuit Judges.

Frank Garcia,

Petitioner-Appellant,

v.

23-393

Joseph Noeth,

Respondent-Appellee.

Appellant, pro se, moves for a certificate of appealability. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because Appellant has not "made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c); see *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe

MANDATE ISSUED ON 11/03/2023

(raised in reconsideration motion on pg. 211)

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 27th day of October, two thousand twenty-three.

Frank Garcia,

Petitioner - Appellant,

v.

Joseph Noeth,

Respondent - Appellee.

ORDER

Docket No: 23-393

Appellant, Frank Garcia, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

Catherine O'Hagan Wolfe



(see decision on DNA - on pgs 811, 1712, and pgs 4413 thru 4512)

EXHIBIT C

Other Orders/Judgments

6:19-cv-06047-CJS Garcia v. Noeth

HABEAS,PS-C,ProSe

U.S. DISTRICT COURT

U.S. District Court, Western District of New York

Notice of Electronic Filing

The following transaction was entered on 2/17/2023 at 11:51 AM EST and filed on 2/17/2023

Case Name: Garcia v. Noeth

Case Number: 6:19-cv-06047-CJS

Filer:

Document Number: 16

Docket Text:

DECISION AND ORDER dismissing [1] Petition for Writ of Habeas Corpus filed by Frank Garcia. The request for a writ of habeas corpus is denied, and the petition, ECF No. 1, is dismissed. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, see 28 U.S.C. § 2253(c)(2), the Court declines to issue a certificate of appealability. The Clerk of Court is directed to close this case. Signed by Hon. Charles J. Siragusa on 2/17/23. (KAP)

This was mailed to: Frank Garcia at Attica.

Clerk to Follow up

6:19-cv-06047-CJS Notice has been electronically mailed to:

James Foster Gibbons james.gibbons@ag.ny.gov, CriminalAppealsHabeas@ag.ny.gov

6:19-cv-06047-CJS Notice has been delivered by other means to:

Frank Garcia
09B2727
ATTICA CORRECTIONAL FACILITY
Box 149
Attica, NY 14011

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1042579058 [Date=2/17/2023] [FileNumber=5366622-0] [a98c0a89055d6c34f666258f49d58050365f62f7c341bd64b72008876ec9bfabdbf50a93da6e07c2eba2d687aca647f7c5c6dd4be6a32c5ad112f980674: 9e53]]

