No.

# IN THE SUPREME COURT OF THE UNITED STATES

KENNETH ALFRED LINVILLE, JR., - PETITIONER,

vs.

ROBERT JACKSON (SUPT.) - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, No. 25-2066, FILED ON 03/24/2025.

## PETITION FOR WRIT OF CERTIORARI

Kenneth Alfred Linville, Jr.
Washington State Penitentiary
1313 N. 13TH Avenue
Walla Walla, WA 99362

No.

IN THE SUPREME COURT OF THE UNITED STATES

# I. QUESTIONS PRESENTED FOR REVIEW

A. Did the state/federal courts decide Mr. Linville's newly discovered evidence claim on the merits?

B. Are the state/federal courts analysis of Mr. Linville's newly discovered evidence claim reasonable?

## II. LIST OF PARTIES

All parties do not appear in the caption of the case of 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:

Respondents - 1. Robert Jackson (Supt.), 2. United States District Court Western District of Washington, and 3. State of Washington.

There is no parent or publicly held company owning 10% or more of the corporation's stock. A statement has been included in a document filed earlier in the case, of Mr. Linville's disclosure statement (form 34), on 03/31/2025, from the United States Court of Appeals for the Ninth Circuit, indicating "this case involves review of state court proceedings pursuant to Ninth Circuit Rule 26-1.1.

Here's a list of all proceedings in state and federal courts, that, are directly related to this case as follows:

1. Superior Court - Petitioner was convicted on 07/11/2015,

after jury trial, in the Superior Court for Thurston County, No. 14-1-00296-7. The Honorable Carol J. Murphy sentenced Petitioner on 08/26/2015, entering guilty verdict findings on 137 of the 138 counts, that, led to 914 months prison term to serve.

2. Court of Appeals (Direct Appeal), No. 47916-8-II;
The lower court (COAS), held, that Petitioner received ineffective assistance of trial counsel by counsel's failure to object to the improper joinder of several charges with the prosecution of the charge for leading organized crime, in violation of RCW 9A.82.085, the court reverses the judgment and remands the case for further proceedings, of the Part Published Opinion filed on 06/27/2017. Fifty-two charges of the 138 counts were not statutorily enumerated predicate offenses for establishing the "pattern of criminal profiteering activity" element of leading organized crime. See Appendix F attached.

3. Court of Appeals (Direct Appeal), No. 47916-8-II;
The Washington Supreme Court overturned the Court of Appeals (lower court's) ruling, held, that the "joinder bar" rule of RCW 9A.82.085 precluded the State from charging in the same information that charged the offense of leading organized crime those offenses that were not statutorily enumerated predicate offenses for establishing the "pattern of criminal profiteering activity" element of leading organized crime, but that

The record was insufficient to hold that trial counsel rendered ineffective assistance by failing to object to the joinder of charges, the court reverses the decision of the Court of Appeals and remands the case to the Court of Appeals for further proceedings, of the Part Unpublished Opinion filed on 04/21/2020. See Appendix F attached.

4. Linville filed a supplemental brief, No but the Washington Supreme Court denied the brief, then Linville filed his Petition for Review, No. 98582-1 and the court denied the Petition on 09/09/2020. See Petition for Review, State of Washington v. Linville, No. 985-82-1; Order Terminating Review, No. 98582-1. The Court of Appeals issued its mandate on 09/28/2020, State v. Linville, COA No. 47916-8-II See Appendix F attached.

5. Linville filed his first state-court personal restraint petition (PRP #1), in the Court of Appeals Division Two on 06/04/2021. State v. Linville, No. 55853-0-II. In addition to one other claim, Petitioner argued his trial counsel rendered ineffective assistance by failing to object to the joinder of charges. The Court of Appeals dismissed Linville's PRP on procedural grounds as "frivolous" See Order Dismissing PRP, No. 55853-0-II.

6. Linville filed his second PRP in the State Court of Appeals, Division Two on 05/26/2023. State v. Linville, No. 58898-6-II. Linville presented a sole ground for relief under newly discovered evidence arguing "whether evidence presented from outside the trial record is newly discovered evidence." See Opening Brf. of Petitioner, page 6 lines 1-3, No. 58898-6-II. Division Two, of the Court of Appeals dismissed Linville's PRP on procedural grounds as "untimely." See Order Dismissing PRP, No. 58898-6-II. Petitioner then filed a motion for discretionary review, No. 102659-5 in the Washington Supreme Court and the Deputy Commissioner affirmed the Court of Appeals ruling. See Ruling Denying Review, No. 102659-5. See Appendix B attached.

7. On 05/10/2024 Petitioner filed his "First" Petition under 28 U.S.C. § 2254 for a writ of habeas corpus for relief from a conviction or sentence by a person in state custody in the United States District Court Western District of Washington, No. 3:24-cv-05357-KKE-DWC. On 09/03/2024 the United States District Court dismissed Linville's "First" petition as "successive" and, therefore, the court "lacks jurisdiction to hear this case" See

Order Dismissing Habeas, No. 3:24-cv-05357-KKE-DWC, Document 8, See Report and Recommendation filed on 06/18/2024 Dkt No. 4-[1], Order for Judgment in a Civil Case filed on 09/03/2024, No. 3:24-cv-05357-KKE-DWC. See Appendix B attached.

8. On 09/16/2024, Petitioner filed his Rule 60 (b) motion in the United States Court of Appeals for the Ninth Circuit. Petitioner also filed his request for certificate of probable cause, No. 25-2066, on 04/18/2025 (since the United States District Court Western District of Washington claims it "lacks jurisdiction to hear this case." See Judgment in a Civil Case filed on 09/03/2024, No. 3:24-cv-05357-KKE-DWC), hence, Linville's reason, why, the request for certificate of probable cause was submitted to the United States Court of Appeals for the Ninth Circuit, opposed to, submitting a "certificate of appealability" the district court misconstrues See Appendix C, which would be intended for the United States District Court Western District of Washington, jurisdictionally, not the Ninth Circuit. Linville reminds the court the Ninth Circuit did not require issuance of a certificate of probable cause after the district court denied Linville's Rule 60(b) motion by denying "certificate of appealability". See Appendix C attached.

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RULE

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APPENDIX B – Order Dismissing PRP, No. 58898-6-II; Ruling Denying Review, No. 102659-5; Order Denying Motion to Modify, No 102659-5; Certificate of Finality, No. 58898-6-II; Report and Recommendation dismissing habeas petition, No. 3:24-cv-05357-KKE; Order Adopting Report and Recommendation, No. 3:24-CV-5357-KKE-DWC; Order Judgment in a Civil Case, No. 3:24-CV-5357-KKE-DWC; 7 documents total.

APPENDIX C – United States District Court for the Western District of Washington order denying Petitioner's "certificate of appealability" of his notice to appeal to the Ninth Circuit based on the Court's Report and Recommendation (from the U.S. District Court Western District of Washington) filed on 6/18/2024.

APPENDIX D – Order denying Petitioner's request for "Certificate of appealability" by the United States

Court of Appeals for the Ninth Circuit, after the United States District Court Western District of Washington denied petitioner's request for the certificate of probable cause.

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APPENDIX F - Petitioner's 2015 Judgment and Sentence No. 14-1-00296-7; Petitioner's (Direct Appeal) Parts Published Opinion filed on 06/27/2017 in the Court of Appeals Division Two and Unpublished Opinion filed on 04/20/2021 in the Washington Supreme Court.

## III. DISCLOSURE STATEMENT

There is no parent or publicly held company owning 10% or more of the corporation's stock. Petitioner filed a Disclosure Statement (Form 34) within 14 days of filing his case in the United States Court of Appeals for the Ninth Circuit, where, Petitioner disclosed in the disclosure statement his case, No. 25-2066, "involves review of state court proceedings. See Ninth Circuit Rule 26-1.1.

## IV. A. OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

For cases from federal courts:

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

The opinion of the United States District Court appears at Appendix C to the petition and is unpublished.

For cases from state courts:

No state court has reviewed Petitioner's newly discovered evidence claim on the merits. All state court proceeding have been dismissed on procedural grounds and is unpublished. See Appendix B

B. JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was April 18, 2025.

No petition for rehearing was timely filed in my case.

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 September 3, 2024.
A copy of that decision appears at Appendix B.

The jurisdiction of this Court is invoked under
28 U.S.C. § 1257(a)

The United States District Court Western District of Washington had jurisdiction over Linville's Rule 60(b), No. 25-2066 motion, despite, the district court's claim it "lacked jurisdiction". See Order Judgment in a Civil case, No. 3:24-cv-5357-KKE-DWC, its clearly evident in Appendices C and D upon review. The Ninth Circuit made its ruling, after, the district court decided this case. Linville is entitled to relief based on the prejudicial effect, here, to be denied access to the courts, in violation of his Fourteenth Amendment right to due process and equal protection under the law. U.S. CONST. amend. XIV; Wash. Const. art I § 10, 12.

## V. STATEMENT OF THE CASE

### A. Linville's Charges and Convictions

Linville is currently in custody pursuant to a State Court Judgment and Sentence entered by the Thurston County Superior Court after a jury found Linville guilty of 137 separate charges. The trial court sentenced Linville to an exceptional sentence of 914 months of total confinement. See State v. Linville, Cause No. 14-1-00296-7.

In 2013, Thurston County experienced an increase of residential burglaries. These crimes went unsolved for a period of time. Eventually, law enforcement pinpointed Linville as a suspect of a "burglary ring." The Thurston County Prosecutor's office used the narrative that Linville was the leader of the burglary ring and that he was responsible for a major portion of the burglaries. During the investigation, law enforcement recovered items of stolen property from Teya Harris' home — the same home where Linville's, then girlfriend, Jessica Hargrave resided and where Linville frequented often prior to his arrest. Teya Harris, Jessica Hargrave, and Jennifer Krenik (along with a number of other codefendants) were all arrested. Law enforcement eventually caught up with Linville. All of Linville's codefendants received little to no jail time for their cooperation with the prosecutor's office.

The State charged Linville with (1) count of leading organized crime, (35) counts of residential burglaries, (1) count of attempted residential burglary, (4) counts of first degree burglary, (3) counts of second degree burglary, (39) counts of trafficking in stolen property, (17) counts of first degree theft, (18) counts of second degree theft, (1) count of attempted second degree theft, (3) counts of third degree theft, (5) counts of theft of a firearm, (5) counts of identity theft, (4) counts of unlawful possession of a firearm, (1) count of possession of stolen property — for a total of 178 charges with numerous deadly weapon enhancements. The State alleged that Linville was armed with a firearm during the commission of the four first degree burglaries,

During trial, the State did not present a single shred of evidence through any testimony presented of eyewitnesses personally seeing Linville and/or any accomplices commit any of the 137 charges the State alleged, nor did the State produce any video surveillance footage that would implicate Linville and/or any accomplices in the act of committing any of the State's alleged charges in Linville's charging document. The jury erroneously found Linville guilty of 137 offenses without any direct evidence or testimony to corroborate the alleged crimes and Linville was sentenced to 914 months in prison - which included 240 months for four firearm enhancements. See Part Published Opinion, State v. Linville, COA No. 47916-8-II,

# VI. REASONS FOR GRANTING THE PETITION

A certificate of probable cause requires a petitioner to make a substantial showing of the denial of a federal right. Barefoot v. Estelle, 463 U.S. 880, 893, 77 L.Ed. 2d 1090, 103 S. Ct. 3383 (1983) (quoting Stewart v. Beto, 454 F.2d 268, 270, n.2 (CA5 1971), cert. denied, 406 U.S. 925, 32 L.Ed. 2d 126, 92 S.Ct. 1796 (1972)). We also quoted with approval Gordon v. Willis, 516 F. Supp. 911, 913 (ND Ga. 1980) (citing United States ex rel. Jones v. Richmond, 245 F.2d 234 [****5] (CA2), cert. denied, 355 U.S. 846, 2 L.Ed. 2d 56, 78 S.Ct. 71 [**862] (1957)), which explained that in order to make a substantial showing of the denial of a federal right a petitioner who has been denied relief in a district court "must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner]; or that the questions are "adequate to deserve encouragement to proceed further."" 463 U.S. at 893, n.4.

First Congress established the requirement that a prisoner obtain a certificate of probable cause to appeal in order to prevent frivolous appeals from delaying the State's ability to impose sentences. The primary means of separating meritorious from frivolous appeals should be the decision to grant or without a certificate of probable cause. It is generally agreed that "probable cause requires something more than the absence of frivolity and that the standard is a higher one than the 'good faith' requirement of § 1915." *Blackburn, Allowance of In Forma Pauperis Appeals in § 2255 and Habeas Corpus Cases*, 43 F.R.D. 343, 352 (1967).

The district court was incorrect in its procedural ruling to dismiss Linville's habeas petition § 2254 as "successive", by treating the petition, which, was filed, after, the initial First Petition regarding the State-court's ruling on Linville's ineffective assistance of counsel claim that was procedurally defaulted for Linville's failure to exhaust State remedies. However, the Second Petition filed in the District court, No. 3:24-cv-05357-KKE-DWC, which, is actually the First Petition, due to the fact, Linville's initial First Petition on ineffective assistance was dismissed and not considered via of procedural default (No. 3:22-cv-5291-JCC), And so, Linville's habea § 2254 petition under cause no. 3:24-cv-05357-KKE-DWC, regarding the state court's ruling on

Linville's claim of newly discovered evidence was dismissed without adjudication on the merits concludes that the district court erred in denying the certificate of probable cause because the court "lacks jurisdiction" and Linville made a substantial showing that he was denied his Fourteenth Amendment right to due process, the right of access to the courts and Sixth Amendment right to a fair trial. U.S. CONST. amend XIV, VI; Wash. Const. art. I, §§ 10, 12.

In a habeas corpus proceeding, where an appeal possesses sufficient merit to warrant a certificate, the appellant must be afforded adequate opportunity to address the merits, and if a summary procedure is adopted the appellant must be informed, by rule or otherwise, that his opportunity will be may be limited. Garrison v. Patterson, 391 U.S. 464, 466, 88 S. Ct. 1687, 20 L. Ed. 2d 744 (1968).

The Court should recognize the Ninth Circuit Court of Appeals should have 1). reviewed Linville's certificate of probable cause and 2). granted the certificate of probable cause that was recently submitted to the district court, who, entered the transaction on 03/28/2025 at

1:16 PM PDT and Filed on 03/24/2025 Notice of Appeal to Ninth Circuit re [7] Order on Report and Recommendation, by Petitioner Kenneth Alfred Linville's Jr. Certificate of Appealability Denied. Filing Fee/Not Paid/Received, No. 3:24-cv-05357-KKE, Case Closed on 09/03/2024. Petitioner also raises issue of the recent order filed, after, submitting his certificate of probable cause, particularly, the validity of the district court's frivolous ruling that lacks merit. For starters, the district court lacks jurisdiction to review Linville's certificate of probable cause, or atleast, to deny the certificate of probable cause Linville, recently, submitted to district court, meaning, the district court, at a minimum, should have granted the certificate for Linville's Rule 60(b) motion, to appeal in forma pauperis, due to the fact, Linville made the requisite showing of poverty to explain the recent order, Appendix F attached, why, "filing fee not paid/received." See Order, Appendix F attached DKT. No. 9, See Also.

28 U.S.C. § 2253 provides that an appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding by a state prisoner,

unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.

Neither the district court nor the Ninth Circuit has addressed whether section 2253 requires a state habeas petitioner to obtain a certificate of probable cause to appeal from the denial by the district court of a Rule 60(b) Motion, the district court (of the U.S. of the Western District of Washington) denied "Certificate of appealability", after, Linville submitted his request for certificate of probable cause to the U.S. Court of Appeals to the Ninth Circuit, due to the fact, the U.S. District Court Western District of Washington claimed it "lacks jurisdiction" See Judgment in a Civil case, No. 3:24-cv-05357-KKE, Appendix B attached.

Because the denial of a motion under Fed. R. Civ. P. 60(b) is reviewable only for an abuse of discretion and a certificate of probable cause should issue only when a habeas petitioner has made a substantial showing of the denial of a prisoner's Rule 60(b) motion should issue only if the prisoner has made a substantial showing that the district court abused its discretion by denying the Rule 60(b) motion. Lynch v. Blodgett, 999 F.2d 401, 402, 1993 U.S. App.

LEXIS 77713, 93 Cal. Daily Op. Service 5315, 93 Daily Journal DAR 8990.

Title 28 U.S.C. § 2253 establishes the issuance of a certificate of probable cause as a jurisdictional prerequisite to appellate review from "the final order" in a federal habeas proceeding by a state prisoner. See Gardner v. Pogue, 558 F.2d 548, 549 (9th Cir. 1977). The denial of a Rule 60(b) motion is a final, appealable order. See Wages v. I.R.S., 915 F.2d 1230, 1234 (9th Cir. 1990).

Once a notice of appeal is filed by a state habeas petitioner, a request for a certificate of probable cause must be heard in the first instance by the district court. Fed. R. App. P. 22(b); Gardner, 558 F.2d at 550-51.

Petitioner had to obtain a certificate of probable cause, to allow the habeas appeal to proceed from a denial of a Rule 60(b) motion without issuing a certificate of probable cause, that, circumvented the obvious purpose of 28 U.S.C. § 2253, which was the creation of discretionary appellate review for habeas petitions filed by state prisoners. By not requiring the issuance of a certificate of probable cause after the denial of a Rule 60(b) motion, Laville would have been effectively granted a right of appeal. U.S. CONST. amend XIV; Wash. Const. art. I § 10.

A state prisoner may not file a second or successive habeas corpus petition without precertification by the court of appeals that the petition meets certain stringent criteria. 28 U.S.C. § 2244(b).

Laville met his burden of proof to satisfy all five factors to the newly discovered exceptions, applicable here. 28 U.S.C. § 2244(b)(2)(i). See Pet's Writ of Habeas Corpus § 2254 Petition at 5 lines 5-22 through at 6 lines 1-7, No. 3:24-cv-5357-KKE-DWC; Rule 60(b) Motion at 4 lines 9-22 through at 8 lines 1-17, No. 25-2066; Opening Brf. of Petitioner at 13 lines 23-26 through at 20 lines 1-16, No. 58898-6-II.

Fed. R. Civ. P. 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence. Laville seeks relief from a final judgment under newly discovered evidence. See Rule 60(b) Motion at 4 lines 9-22 through at 8 lines 1-17, No. 25-2066.

Fed. R. Civ. P. 60(b)(2), provides, in part, relief based on newly discovered evidence which by due diligence could Not have been discovered in time to move for a new trial under Rule 59(b).

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) does not expressly circumscribe the operation of Fed. R. Civ. P. 60(b). The new habeas restrictions introduced by AEDPA are made indirectly relevant, however, by the fact that Rule 60(b), like the rest of the Rules of Civil Procedure, applies in habeas corpus proceedings under 28 U.S.C. § 2254 only to the extent that it is not inconsistent with applicable federal statutory provisions and rules. R. Governing § 2254 Cases U.S. Dist. Cts. 11; Fed. R. Civ. P. 81(a)(2).

The relevant provisions of the AEDPA-amended habeas statutes, 28 U.S.C. §§ 2244(b)(1)-(3), impose three requirements on second or successive habeas petitions: First, any claim that has already been adjudicated in a previous petition must be dismissed. § 2244(b)(1). Second, any claim that has not already been adjudicated must be dismissed unless it relies on either a new or retroactive rule of constitutional law or new facts showing a high probability of actual innocence. § 2244(b)(2).

Third, before the district court may accept a successive petition for filing, the Court of appeals must determine that it presents a claim not previously raised that is sufficient to meet § 2244 (b)(2)'s new-rule or actual innocence provisions. § 2244(b)(3).

Under 28 U.S.C. § 2244(b), the first step of analysis is to determine whether a claim presented in a second or successive habeas corpus application was also presented in a prior application. If so, the claim must be dismissed; if not, the analysis proceeds to whether the claim satisfies one or two narrow exceptions. In either event, it is clear that for purposes of § 2244(b) an "application" for habeas relief is a filing that contains one or more "claims." That definition is consistent with the use of the term "application" in the other habeas statutes in chapter 153 of title 28. These statutes, and United States Supreme Court decisions, make clear that a "claim" as used in § 2244(b) is an asserted federal basis for relief from a state court judgment of conviction. See, e.g., Woodford v. Garceau, 538 U.S. 202, 207, 155 L. Ed. 2d 363, 123 S. Ct. 1398 (2003)(for purposes of §

2254(d), an application for habeas corpus relief is a filing that seeks "an adjudication on the merits of the petitioner's claims"). In some instances, a Rule 60(b) motion will contain one or more "claims." For example, it might straightforwardly assert that owing to "excusable neglect," Fed. Rule Civ. Proc. 60(b)(1), the movant's habeas petition had omitted a claim of constitutional error, and seek to leave to present that claim. Cf. Harris v. United States, 367 F.3d 74, 80-81 (CA2 2004) (petitioner's Rule 60(b) motion sought relief from judgment because habeas counsel had failed to raise a Sixth Amendment claim). Similarly, a motion might seek leave to present "newly discovered evidence," Fed. Rule Civ. Proc. 60(b)(2), in support of a claim previously denied. E.g., Rodwell v. Pepe, 324 F.3d 66, 69 (CA1 2003). Or a motion might contend that a subsequent change in substantial law is a "reason justifying relief," Fed. Rule Civ. Proc. 60(b)(6), from the previous denial of a claim. E.g., Dunlap v. Litscher, 301 F.3d 873, 876 (CA7 2002). Virtually every Court of Appeals to consider the question has held that such a pleading, although labeled a Rule 60(b) motion, is in substance a successive habeas petition and should be treated accordingly. E.g., Rodwell, supra, 71-72; Dunlap, supra, at 876. The United States Supreme Court thinks those holdings are correct. A habeas petitioner's filing that seeks vindication of such a claim is, if not in substance a "habeas corpus application," at least similar enough that failing to subject it to the same requirements would be "inconsistent with" the statute. R. Governing § 2254 Cases U.S. Dist Cts. 11.

Using Fed. R. Civ. P. 60(b) to present new claims for relief from a state court's judgment of conviction -- even claims couched in the language of a true Rule 60(b) motion -- circumvents the Antiterrorism and Effective Death Penalty Act of 1996's requirement that new claims be dismissed unless it relies on either a new rule of constitutional law or newly discovered facts. 28 U.S.C. § 2244(b)(2) The same is true of a Fed. R. Civ. P. 60(b)(2) motion presenting new evidence in support of a claim already litigated: even assuming that reliance on a new factual predicate causes the motion to escape 28 U.S.C. § 2244(b)(1)'s prohibition of claims "presented in a prior application," § 2244(b)(2)(B) requires a more convincing factual showing than does Fed. R. Civ. P. 60(b). Likewise, a Rule 60(b) motion based on a purported

... Change in the substantive law governing the claim could be used to circumvent 28 U.S.C. § 2244(b)(2)(A)'s dictate that the only new law on which a successive petition may rely is a new rule of constitutional law, made retroactive to cases on collateral review by the United States Supreme Court, that was previously unavailable.

District Court was not divested of jurisdiction to deny Rule 60(b) motion because of fortuitous docketing of appeal. Long v. Bureau of Economic Analysis, 646 F.2d 1310, 48 A.F.T.R 2d (RIA) 5106, 31 Fed. R. Serv. 2d (Callaghan) 1674, 1981-1 U.S. Tax Cas. (CCH) ¶ 9435, 81-1 U.S. Tax Cas. (CCH) ¶ 9435, 1981 U.S. App. LEXIS 13645 (9th Cir.), vacated, remanded, 454 U.S. 934, 102 S. Ct. 468, 70 L. Ed. 2d 242, 49 A.F.T.R. 2d (RIA) 424, 1981-2 U.S. Tax Cas. (CCH) ¶ 9713, 1981 U.S. LEXIS 4067 (1981).

Linville asserts the state-court proceedings deprived him of liberty interests without due process, particularly, his right to collaterally attack the newly discovered evidence claim. Federal due process challenges to state adjudications of state substantive rights are generally cognizable.

Swarthout v. Cooke, 562 U.S. 216, 221, 131 S. Ct. 859, 178 L.Ed. 2d 732 (2011); Gutierrez v. Griggs, 695 F. 2d 1195, 1197-98 (9th Cir. 1983). Linville emphasizes the prejudicial effect, in this case an absolute atrocity as previously argued on direct appeal, where, Linville not only suffers a due process violation, but also a Sixth Amendment violation of his right to a fair trial, a manifest injustice. U.S. CONST. amend VI; See Br. of Appellant at 19-21, No. 47916-8-II.

In 2005, Fed. R. App. P. 3(d) required a district clerk to "promptly send a copy of the "notice to appeal" to the appellate clerk.

The district court was not in compliance, here, in this case, as well.

The Ninth Circuit has the power to recall a mandate of a final decision in order to prevent injustice. Thompson v. Calderon, 120 F.3d 1045 (CA 9 1997). The Ninth Circuit was also in compliance by not preventing the injustice of the district court's ruling.

Fed. R. Civ. P. 60(b) permits a district court to vacate and reenter judgment to restore the right to appeal in limited circumstances. This evidence is consistent with 28 U.S.C § 2107, Fed. R. App. P. 4(a) and case law from the United States Supreme Court, the Ninth Circuit, and the Sixth and Seventh Circuit.

Several Circuit courts, including the Ninth Circuit, have recognized that the ability to vacate and reenter judgment pursuant to Fed. R. Civ. P. 60(b) is consistent with the jurisdictional nature of Fed. R. App. P. 4(a) is deadlines. See Washington v. Ryan, 833 F.3d 1087 (2016).

Based, on the record, the United States District Court Eastern District of Washington, did not, comply with this rule because Linville filed his Rule 60(b) motion on 09/03/2024, No. 25-2066, and did not submit his request for certificate of probable cause, until, six months later, on 03/20/2025, to the United States Court of Appeals for the Ninth Circuit, exceedingly past the 30-day deadline the district court is required by law to file Linville's notice to appeal to the Ninth Circuit pursuant to Fed. R. App. P. 4(a), instead, the district court erred when it denied Linville's motion to vacate denying the 28 U.S.C. § 2254 habeas petition, No. 3:24-cv-05357-KKE.

DWC. Clearly, there are grounds, here, for the district court's lack of notice (to appeal to the Ninth Circuit) supported by and through the record, that, warrants, immediate restoration of his right to appeal the newly discovered evidence claim under Rule 60(b)(2).

To date, its been 10 years since Linville was erroneously convicted out of the Thurston County Superior Court on 137 charges, without, the State presenting a single shred of evidence to corroborate all of the charges in Linville's charging document, Reason Number 2, the State's imposed improper joinder of Linville's non-predicate offenses, 56, to be exact, including the four firearm enhancements attached to each of the four first degree burglary counts (# 26, 62, 105 and 126), still, in effect, currently has Linville under an unlawful restraint, because reason number 3 RCW 9A.82.085 prohibits the joinder of offenses that are not part of the pattern for criminal profiteering against the charge of leading organized crime, is manifestly unfair, which, deprives Linville of due process in violation of the Fourteenth Amendment. Br. of Appellant at 17; U.S. CONST. amend. XIV, while the State's improper joinder of Linville's non-predicate offenses deprives his Sixth Amendment right to a fair trial. U.S. CONST. amend. VI.

Linville's newly discovered evidence claim is neither "successive" nor "untimely" and the email correspondence exchanges between Linville's trial defense and appellate defense counsel (A.K.A. newly discovered evidence) See Appendix attached, clearly is newly discovered evidence and is not debateable among jurists of reason for the reasons stated previously and in this Writ for petition of Certiorari. See also Pet's Writ of Habeas, No. 3:24-CV-05357-KKE-DWC, Rule 60(b), No. 25-2066 The district court erred in denying the certificate of probable cause due to lack of "jurisdiction" See Judgment in a Civil Case, No. 3:24-CV-5357-KKE, Appendix E, and Linville has made substantial showings of constitutional errors that not only requires but mandates adjudication of his newly discovered evidence claim on the merits.

## VII. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

x [illegible]

Date: 06/29/2025