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Supreme Court, U.S.
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UNITED STATES SUPREME COURT

OCTOBER TERM, 2000

ROBERT ELIAS LOERA,)
)
PETITIONER,)
)
ON HABEAS CORPUS.)

CASE NO._____

WRIT OF HABEAS CORPUS (28 U.S.C. § 2254)

WITH BRIEF IN SUPPORT AND

MEMORANDUM OF POINTS AND AUTHORITIES

BY A PERSON IN STATE CUSTODY

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ROBERT ELIAS LOERA, #E-49950
FSP/BB-2-16
P.PO.BOX 715071
REPRESA, CALIFORNIA,
95671-5071

IN PROPRIA PERSONA.

UNITED STATES SUPREME COURT

OCTOBER TERM, 2000

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PETITIONER,) CASE NO._____
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ON HABEAS CORPUS.)

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BY A PERSON IN STATE CUSTODY

QUESTION PRESENTED, U.S. SUPREME COURT RULE 21.1 (a); Does the statute of limitations as dictated in the 1996 Act supercede the Petitioner's constitutional rights as guarantee by the United States Constitution to him.

PARTIES TO THE PROCEEDINGS, U.S. SUPREME COURT RULE 21.1 (b); The parties included within this instant petition are as follow, the Petitioner is Robert Elias Loera, who is a citizen of the State of California and currently domiciles at the Folsom State Prison/P.O. Box 715071, Represa, California, 95671-5071. The Respondent in the instant case is Warden G.A. Mueller and represented by Attorney General of California who has his office at the following address, 300 South Spring Street, Los Angeles, California, 90013.

No._____

SUPREME COURT OF THE UNITED STATES

October Term, 2000

ROBERT ELIAS LOERA,)
)
PETITIONER,)
)
ON HABEAS CORPUS.)

PETITION FOR WRIT OF HABEAS CORPUS TO THE
UNITED STATES COURT OF APPEALS FOR THE 9th. CIRCUIT

Petitioner, Robert Elias Loera, respectfully prays that writ of habeas corpus be issue to review the United States Court of Appeal for the Ninth Circuit decsion to deny this Petitioner entry into the Courts by way of successive petition which carry the very same arguments presented in original petition presented previously and denied because of the statute of limitations pursuant to the 1996 Act, and that was never rule on the merits of the claims within the petition itself that are colorful and have merits concerning the Petitioner's constitutional rights. (U.S. Supreme

OPINION BELOW, U.S. SUPREME COURT RULE 21.1(d); The citation of the opinionwhich review is sought in the Honorable Court is the United Sates Court's of Appeal for the Ninth Circuit Order No. 00-70450, filed on May 30, 2000.

JURISDICTION, U.S. SUPREME COURT RULE 21.1(e); Petitioner envokes the jurisdiction of this Honorable Court under 28 U.S.C. § 2241(a), on the grounds that his constitutional rights under Fifth, Sixth and Fourteenth Amendments to the United States

Constitution were violated.

The United States Court of Appeals for the Ninth Circuit entered its order rejecting this Petitioner's Fifth, Sixth and Fourteenth Amendment claim on May 30, 2000.

CONSTITUTIONAL PROVISIONS, TREATIES, AND STATUTES, U.S. SUPREME COURT RULE 21.1 (f); The constitutional amendments involved within this petition are the (Fifth Amendment "due process") (Sixth Amendment "ineffective assistance of counsel"), (Fourteenth Amendment "due process").

STATEMENT OF THE CASE, U.S. COURT RULE 21.1 (h); Petitioner filed a Writ of Habeas Corpus with the Superior Court of Los Angeles County and was denied application on June 3, 1997. Petitioner's application contained the following issues; (1). Trial court failed to sue sponte instruct the jury with CALJIC 3.02 and 4.21; (2). The Petitioner was denied the effective assistance of trial counsel.

Regarding those very same claims, this Petitioner then filed an application with the California Court of Appeal, (90DA1619), and was denied application on July 8, 1997.

Petitioner then proceeded with the same issues to the California Supreme Court and there he was denied on November 22, 1998.

Then on April 7, 1998, this Petitioner filed an application with the United Sates District Court for the Central District of California. On April 22, 1998, the Honorable United Sates Magistrate Judge Ann I. Jones, issued an order to Show Cause for the application upon the Respondent, (CV-98-2552 WDK "AIJ").

Respondent then filed a motion to dismiss the Petitioner's application contending that the one-year statute of limitation as set forth in 28 U.S.C. § 2244(d) barred the application.

On September 21, 1998, Magistrate Judge Ann I. Jones issued her Report and Recommendation, said report declared that the Petitioner's application should be dismissed with prejudice. Thereafter, the Petitioner's petition was dismissed with prejudice by the presiding judge, Honorable William D. Keller, on October 22, 1998.

Petitioner filed an Notice of Appeal on November 24, 1998, from the judgment in the Central District of California.With the Notice of Appeal this Petitioner additionally filed a request for the Issuance of a Certificate of Appealibility. On December 18, 1998, the District Court for the Central District of California denied the Petitioner's request for said certificate.

Petitioner then filed for his Certificate of Appealibility with the United Sates Court of Appeals for the Ninth Circuit, (99-55030) and was also denied of his request on April 1, 1999.

Petitioner filed for a Petition of Certiorary in the United States Supreme Court and was denied on October 4, 1999. On October 12, 1999, Petitioner filed a Motion to reconsider, set aside or vacate the judgment and/or order dismissing his petition.

On February 8, 2000, the District Court entered a judgment which denied the Petitioner's Rule 60 Motion.

Petitioner filed for permission to file a second or successive petition in the United States Court of Appeals for the

Ninth Circuit and was denied on May 30, 2000.

WHY NO ADEQUATE RELIED CANNOT BE OBTAIN IN THE LOWER COURT OR ANY OTHER FORM, Rule 20.1; No other form of relief can obtained in the lower court for the reason that 28 U.S.C. 2244 statute of limitations as ruled in this Petitioner's case is not appalable, by this action taken by the lower courts, this Petitioner believes that he was unjustly denied his due process insofar that the violations that occurred at the trial level which were of constitutional dimensions where set aside and overloked, overtaken without consideration due to the matter the court where willing and did dismissed the application by simply applying a procedural default and not ruling on the merits of this Petitioner's claims of his constitutional violations. Therefore, this Petitioner asks this Honorable Court to make a final decision on the very important question and decision insofar to determine if the statute of limitations procedures for the great writ as written by congress supercede this Petitioner's constitutional rights as guarantee by the United States Constitution.

REASON FOR NOT MAKING APPLICATION INTO THE DISTRICT, U.S. SUPREME COURT RULE 20.1(a); The Petitioner application in the instant matter at hand involves the decision of the District Court which dismissed the application and Rule 60 Motion. Such application as presented to the District Court involved this Petitioner's complaint that his constitutional right where violated by the trial court failure to instruct properly the jury and by his counsel being ineffective, yet this court

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
MAY 30 2000
CATHY A. CATTERSON, CLERK
U. S. COURT OF APPEALS

ROBERT ELIAS LOERA,

Petitioner,

v.

ERNEST C. ROE, Warden,

Respondent.

No. 00-70450

ORDER

Before: PREGERSON, FERNANDEZ and WARDLAW, Circuit Judges

The petition for authorization to file a second or successive 28 U.S.C. § 2254 habeas corpus petition in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2244(b)(2) that:

(A) the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for

constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

The motion for leave to proceed in forma pauperis is denied as moot.

No petition for rehearing shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).