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Supreme Court, U.S.
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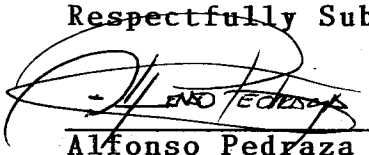
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM OF 2003

In re ALFONSO PEDRAZA

PETITION FOR AN EXTRAORDINARY WRIT OF HABEAS CORPUS PURSUANT TO § 2241

Respectfully Submitted,



Alfonso Pedraza pro se
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QUESTIONS PRESENTED

I

WHETHER A COLLATERAL ESTOPPEL ERROR IMPLICATING A DOUBLE JEOPARDY VIOLATION CONSTITUTES AN ACTUAL INNOCENCE CLAIM TO DISCOUNT THE NEWLY DISCOVERED EVIDENCE REQUIREMENT FOR A SECOND OR SUCCESSIVE §2255 MOTION TO BE CERTIFIED UNDER §2244 (b)(3)(C).

II

WHETHER AN ACT OF CONGRESS WHICH INCLUDES A SPECIFIC PROVISION BARRING PETITIONS FOR REHEARING AND PETITIONS FOR WRIT OF CERTIORARI-TO REVIEW THE DENIAL OF AN APPLICATION TO FILE A SECOND OR SUCCESSIVE §2255 MOTION WHICH MAKES A THRESHOLD SHOWING OF ACTUAL INNOCENCE VIOLATES DUE PROCESS CONCERNS AND CONSTITUTES A VIOLATION OF THE SEPARATION OF POWER PRINCIPLES. NOTABLY THIS PARTICULAR ISSUE DEALS WITH THE QUESTION POSED BY THIS COURT IN THE **CASTRO** CASE IN WHICH CERTIORARI WAS GRANTED ON JANUARY 27, 2003

III

WHETHER ON THE NARROW FACTS OF THIS CASE THE TANGIBLE DIFFERENCES BETWEEN THE CERTIFICATION REQUIREMENTS FOR A SECOND OR SUCCESSIVE §2255 MOTION FOR A FEDERAL PRISONER AND THOSE REQUIREMENTS FOR A SECOND OR SUCCESSIVE §2254 MOTIONS FOR STATE PRISONERS VIOLATES THE PRINCIPLES OF EQUAL PROTECTION UNDER THE LAW

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Supreme Court Rule 20, pursuant to 28 U.S.C. §1651.

PRELIMINARY STATEMENT

Petitioner, Alfonso Pedraza, respectfully urges this Honorable Court to issue the extraordinary writ in his case, to review the double jeopardy violation that has caused his conviction in the District Court for the District of New Mexico on November 15, 1991.

In the context of the foregoing, it is specifically significant to note, that in its session on Janrary 27, the Court granted review in **Castro v. United states,** Case No. 02-6683. Interestingly, the second question brought forth in this petition deals directly on point with the jurisdictional question the **Castro** parties were directed to brief. In line with the **Castro** review and analysis, petitioner moves the Court to hold his petition in abeyance pending the resolution of the jurisdictional question in the **Castro** case. In the alternative for the Court to consolidate petitioner's pleadings with the **Casto** case.

This extraordinary writ accentuated by a double jeopardy claim should be entertain, inasmuch as this Court's guidance is imperative to resolved grave questions of constitutional magnitude, which implicate established notions, that habeas corpus relief must be granted where a constitutional violation has probably resulted in the conviction of an innocent person. The questions presented are of exceptional importance to the development of federal habeas review, and will be of aid to the Court's appellate jurisdiction, where the questions set forth have not been addressed by the full Court after the AEDPA.

In addition, the exceptional circumstances underlying the Double Jeopardy violation warrant the exercise of the Court's discretionary powers because petitioner has no other means of obtaining relief in any other form or from any other court.

CONSTITUTIONAL PROVISIONS

1. Article I, Section 1 of the United States Constitution provides in pertinent part:

> All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of representatives.

Article II, Section 1 of the United States Constitution provides in pertinent part:

> The executive power shall be vested in a president of the United States of America.

Article III, Section 1 of the United States Constitution provides in pertinent part:

> The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

2. The Fifth Amendment of the United States Constitution provides in pertinent part:

> ...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...

3. The Fourteenth Amendment of the United States Constitution provides in pertinent part:

> ...nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On July 11, 1990, the grand jury indicted petitioner along with Enrique Pedraza, Nelson Pedraza, peter Irelan, Jairo Salazar, and

Edward Mitchell, for conspiracy to possess with intent to distribute in excess of 5 kilograms of cocaine in count I; and for possession with intent to distribute in excess of 5 kilograms of cocaine. Jairo Salazar and Nelson Pedraza entered plea agreement, and testified for the government. The charges against Edward Mitchell were dismissed. The remaining defendants opted to go to trial, which began on October 15, 1991. At the close of the government 's presentation, the Court granted judgment of acquittal on count II, as to petitiner and Peter Irelan.

On November 15, 1991, the jury found all three defendants guilty of the conspiracy charged in count I. Codefendant Enrique Pedraza was also found guilty of the possession charged in count II. The Court sentenced petitioner to a 30-year term of imprisonment. The Tenth Circuit Court of Appeals affirmed the convictions on June 30, 1994. See **United States v. Pedraza,** 27 F3d 1515 (10th Cir. 1994).

On May 29, 1996, petitioner moved to vacate or correct his sentence pursuant to 28 U.S.C. §2255, asserting fifteen claims of ineffective assistance of counsel. On December 26, 1996, petitioner was appointed counsel to represent petitioner at an evidentiary hearing.

On May 5, 1998, the evidentiary hearing was held on petitioner's §2255 motion. On August 11, 1998, the Magistrate judge filed his proposed findings recommending that the motion be denied. On September 17, 1998, the District Court adopted the magistrate's recommendation, and denied relief. On October 16, 1998, the District Court issued a COA authorizing appellate review of all ineffective claims

dealing with the evidence sent to the jury during deliberations.

On May 26, 200, the Tenth Circuit affirmed the judgment of the District Court for the District of New Mexico. On June 19, 2000, petitioner filed a pro se motion for leave to file a belated petition for rehearing. On June 23, 2000, the Panel ordered counsel to respond to petitioner's emergency motion within five days of the Court's order. On July 10, 2000, the panel denied petitioner's request. On July 21, 2000, petitioner filed a second emergency motion seeking to stay or recall the mandate, however, that motion was returned unfiled.

On July 31, 2002, petitioner filed a motion for leave to file a second or successive motion to vacate, set aside the conviction, or correct the sentence pursuant to 28 U.S.C. §2244(b)(3)(c), setting forth a colorable showing that a constitutional violation had resulted in the conviction of one who was actually innocent. On August 13, 2002, the clerk directed the United States to respond to petitioner's §2244 motion. On September 11, 2002, the Tenth Circuit denied petitioner's application, reasoning that he had failed to make a prima facie showing to satisfy the AEDPA newly discovered evidence criteria.

On September 30, 2002, petitioner filed a suggestion for rehearing en banc, reiterating his assertions of actual innocence. On October 7, 2002, the clerk informed petitioner that pursuant to 28 U.S.C. §2244(b)(3)(E), the September 11, 2002, order was not subject to a petition for rehearing. On October 21, 2002, petitioner filed an emergency motion to compel the clerk to file the pro se suggestion for rehearing in banc. On November 19, 2002, the motion to compel to be stricken from the record, under 28 U.S.C. §2244(b)(3)(E).

Thereafter, on December 9, 2002, petitioner filed a petition for writ of certiorari. On December 19, 2002, the petition was returned citing 28 U.S.C. §2244(b)(3)(E), and stating the denial of authorization by a court of appeals to file a second or successive petition for writ of habeas corpus may not be reviewed on certiorari.

On January 7, 2003, pursuant to Rule 21 of the Supreme Court Rules, and invoking the Court's original jurisdiction under Article III, Section 1, of the United States Constitution, petitioner sought to challenged the constitutionality of §2244(b)(3)(E). On January 22, 2003, the motion was returned for the same reasons set forth in the December 19, 2002, rejection letter from the clerk.

On January 30, 2003, invoking Supreme Court Rules 20, 21 and 22 and also the **Haines v. Kerner,** 30 L.Ed.2d 652 (1972), rule, petitioner once again filed his constitutional challenged to §2244(b)(3)(E). On February 11, 2003, realizing that the Court had granted certiorari on case No. 02-6683 **"Castro v. United States"**, wrote the clerk asking for his petition to be held in abeyance pending the Court's resolution of the jurisdictional question posed in the Castro case. However, by the time petitioner's letter was on the way to the clerk, petitioner had already received the returned petition from the clerk.

STATEMENT OF THE FACTS

For purpose of the Double Jeopardy, on Ocober 17, 1991, a petit jury was impaneled and sworn. To prove its theory of liability the government relied on the testimony of eight witnesses, including co-defendants' Nelson Pedraza, and Jairo Salazar, and also introduced in evidence some 180 government exhibits. Notable, the bulk of the physical evidence admitted was aimed at establishing that the accused

had possessed with intent to distribute the 707 kilograms of cocaine viewed at the FBI building in Albuquerque, NM. Notwithstanding, the extensive month long presentation, on November 13, 1991, the Court directed a judgment of acquittal in petitioner's favor, and dismissed the possession count of the indictment as to him. The Court concluded as follows:

> "In any event, I'll go ahead and rule on the motions to dismiss count II as against Mr. Irelan and Mr. [Alfonso] Pedraza. I'm going to dismiss count II, posession as to both defendants Irelan and Alphonso (sic) Pedraza. I don't feel that in the context of this case, the environment presented in this case, that anything that anybody has testified that Irelan did or that Alphonso (sic) Pedraza could be--that the jury could find on that testimony either possession, constructive or actual, or aiding and abetting the possession of Enrique Pedraza in possession (sic). So count II will be dismissed as to those two defendants."

See trial Rec. Vol. XVII at 2243-44. Exhibit B.

ARGUMENT FOR ALLOWANCE OF THE WRIT

The nature of the argument for allowance of the writ is directed at (1) the notion that there is no higher duty of a court under our constitutional system of justice, than that of correcting a fundamentally unjust incarceration, and (2) at the individual interest retained by a prisoner in obtaining his freedom if he is innocent of the charges for which he is incarcerated. Exactly 15-months before the enactment of the Antiterrorism Effective Death Penalty Act of 1996 this Court decided **Schlup v. Delo,** 513 U.S. 298, 115 S.Ct. 851, 130 L.Ed.2d. 808 (1995), observing that when a federal habeas corpus petitioner, who has been convicted...raises a claim of actual innocence of the crime to avoid a procedural bar to the consideration of the merits of the petitioner's constitutional claim, the petitioner must show that a constitutional violation has probably resulted in the con-

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ALFONSO PEDRAZA, Petitioner, v. UNITED STATES OF AMERICA, Respondent.	No. 02-2205

ORDER

Filed September 11, 2002

Before **EBEL, LUCERO,** and **MURPHY,** Circuit Judges.

This case is before the court based on a motion by Alfonso Pedraza under the Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2244(b)(3)(A), for leave to file a second or successive 28 U.S.C. § 2255 motion in the district court, a response by the United States of America, and a reply.

At the close of the Government's criminal case, the district court granted Mr. Pedraza's motion for judgment of acquittal on the charge of possession with intent to distribute cocaine. He subsequently was convicted by a jury of conspiracy to possess with intent to distribute cocaine. On appeal, this court affirmed. *See United States v. Pedraza*,

27 F.3d 1515 (10th Cir.), *cert. denied*, 513 U.S. 941 (1994). In his motion for leave, Mr. Pedraza claims that his drug conspiracy conviction is unconstitutional, arguing that after acquittal on the possession count, he should have been acquitted on the conspiracy count.

The court concludes that Mr. Pedraza has failed to make a prima facie showing to satisfy the AEDPA criteria. *See* 28 U.S.C. § 2244(b)(3)(C); *Bennett v. United States*, 119 F.3d 468, 469-70 (7th Cir. 1997). Mr. Pedraza fails to establish that his claim is based on newly discovered evidence, *see* § 2255(1). This claim was available to him when he filed his direct appeal.

Accordingly, the court DENIES the motion for leave to file a second or successive § 2255.

Pursuant to 28 U.S.C. § 2244(b)(3)(E), this order is not subject to a petition for rehearing or a petition for writ of certiorari.

Entered for the Court,
Patrick Fisher, Clerk

Supreme Court, U.S.
FILED
MAR 29 2003
OFFICE OF THE CLERK

No. 02-10011

IN THE

SUPREME COURT OF THE UNITED STATES

In re;

Alfred Lee Mauldin — PETITIONER
(Your Name)

vs.

Warden, W.F. Dalius, Jr. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

PETITION FOR WRIT OF HABEAS CORPUS

Supreme Court of North Carolina, Fourth Circuit Court of Appeals, And The Sixth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PETITION FOR WRIT OF HABEAS CORPUS

Alfred Lee Mauldin, Sui-Juris
(Your Name)

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(City, State, Zip Code)

(Phone Number)