IN THE
SUPREME COURT OF THE UNITED STATES

Docket No. 03-10697

RAFAEL ALMEYDA,

Petitioner,

-against-

SUSANN SCHULTZ,
Superintendent of Mid-Orange
Correctional Facility,

Respondent.

Supreme Court, U.S.
FILED
MAY 28 2004
OFFICE OF THE CLERK

PETITION FOR A WRIT OF HABEAS CORPUS

Dated: May 11, 2004

RAFAEL ALMEYDA, Petitioner
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Jurisdiction is based on the Court's original jurisdiction. The facts of the case will show that extraordinary circumstances exist, warranting exercise of the Court's discretionary powers under 28 U.S.C. §1651-(a), as adequate relief cannot be obtained in any other court.

Statement of Facts

Petitioner was arrested June 24, 1977 in New York City and indicted on two counts of 2nd degree murder ("intentional and recklessness"), charged with "repeatedly battering the head of Ruben Ray Almeyda, an infant, against a hard object and thereby caused the death of Ruben."

In a police interview conducted by Assistant District Attorney Jay Stein ("Stein"), Petitioner maintained his innocence, stating that his girlfriend Lourdes Delgado ("Delgado") "told me she had dropped [Ruben]." Petitioner stated further that even during times of frustration or play, he handled Ruben "very lightly. Not hard enough to hurt him, [he] never came out of my hands." At the conclusion of said interview, Stein stated that he would subsequently "decide whether you should be charged with the death or having a part in it."

Although Delgado candidly incriminated herself at that juncture by corroborating the said dropping incident, Stein declined to file charges after finding that doing so would implicate a judge who recently reversed a decision by State administrators relieving her of custody of Ruben on charges that she had abused him. The court

punishment based on rehabilitation" (Almeyda v. New York State Div. of Parole, 455 N.Y.S.2d 302, aff'd, 58 N.Y.2d 690; 290 A.D.2d 505 (2d Dept. 2002); ___ F.Supp. ___, (S.D.N.Y.)(00 CIV 5248) July 17, 2000 (challenge against the Board employing Stein's fraudulent misrepresentations condemned as an improper strike at the validity of conviction), aff'd, ___ F.2d ___ (2d Cir.)(00-2494), Dec. 8, 2000).

In July 1998, Petitioner filed a motion in Supreme Court, County of New York, to vacate judgment of conviction complaining that the State Court of Appeals failed to consider his direct appeal. Denial of that motion occurred September 27, 1998, and was affirmed by the Appellate Division February 18, 1999.

Petitioner next filed a habeas corpus action in United States District Court (S.D.N.Y. 00-Civ. 4733), complaining that trial evidence was insufficient to sustain conviction. Petitioner failed to exhaust state court remedies, resulting in dismissal of that petition February 27, 2001 as time-barred, and no appeal followed.

Instead, on June 6, 2002, Petitioner filed a timely motion in Supreme Court, County of New York, setting forth five Constitutional claims ("the Constitutional claims"), to wit: 1) evidence at trial was insufficient to sustain conviction, 2) weight of exculpatory evidence

plainly negated conviction, 3) prosecutorial misconduct, 4) clear and undeniable evidence of ineffective assistance of trial and appellate counsel, and 5) excessive sentence as regulated by New York's Executive Law, §259-i (2)(c). On October 15, 2002, despite the absence of rebuttal from the State concerning the Constitutional claims, the court denied Petitioner's motion without opinion. On February 13, 2003, the Appellate Division affirmed, and on May 1, 2003, the Court of Appeals denied further review.

On July 16, 2003, Petitioner raised the Constitutional claims in United States District Court (S.D.N.Y. 03 CV 6320). The court transferred the habeas corpus petition to the Court of Appeals, Second Circuit, allowing it to determine whether the petition was successive. On January 21, 2004, the court held that said petition was successive on the erroneous ground that it "previously adjudicated petitioner's §2254 petition." On March 16, 2004, the court denied Petitioner's motion for rehearing en banc. On April 5, 2004, the United States Supreme Court denied Petitioner's petition for a writ of certiorari on the ground that it was without authorization to review said denial.

The instant habeas corpus action follows, invoking original jurisdiction of the United States Supreme Court.