

S.D.N.Y.-N.Y.C.
11-cr-907
15-cv-6630
Rakoff, 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 4th day of February, two thousand sixteen.

Present:

Susan L. Carney,
Christopher F. Droney,
*Circuit Judges.**

Rajat K. Gupta,

Petitioner-Appellant,

v.

15-2707 (L),
15-2712 (Con)

United States of America,

Respondent-Appellee.

Appellant, through counsel, moves the Court to reconsider its Order of December 29, 2015, denying his motion for a certificate of appealability, and dismissing this appeal. Upon due consideration, the motion for reconsideration is GRANTED. Further, upon reconsideration, it is hereby ORDERED that the Court's Order of December 29, 2015, is VACATED and Appellant's motion for a certificate of appealability is GRANTED on the issues of: (1) whether his conviction should be vacated because the jury was erroneously instructed; and (2) whether any procedural default of this claim may be excused on the grounds of (i) cause and prejudice, or (ii) actual innocence.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk




*Circuit Judge Raymond J. Lohier, Jr., formerly a member of this panel, recused himself from consideration of the initial motion for a certificate of appealability and, accordingly, is recused from consideration of this motion as well. Pursuant to Second Circuit Internal Operating Procedure E(b), the matter is being decided by the two remaining members of the panel.