

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

RONALD RAYMOND FOWLKES - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- I.) PURSUANT TO USCS RULE 10(a) AND (c), HAS THE EIGHTH CIRCUIT COURT OF APPEALS ENTERED A DECISION WHICH CONFLICTS WITH THIS COURT'S DECISION IN DAY v. McDONOUGH, 547 U.S. 198, 210, 126 S.Ct. 1675, 164 L.Ed. 2d 376 (2006) AS WELL AS THE DECISION OF THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA IN HUDSON v. HARDY, 412 F.2d 1091 (DC 1968), WHEN IT FAILED TO FIND THAT APPELLEE'S RIGHTS WERE VIOLATED BY DENYING HIM FAIR NOTICE AND AN OPPORTUNITY TO RESPOND TO THE DISTRICT COURT'S DENIAL OF HIS MOTION TO AMEND HIS HABEAS PETITION ON THE BASIS THAT THE MOTION WAS PROCEDURALLY FLAWED.
- II.) PURSUANT TO USCS RULE 10(a), HAS THE EIGHTH CIRCUIT COURT OF APPEALS ENTERED A DECISION WHICH CONFLICTS WITH THE HOLDING OF THE SEVENTH CIRCUIT COURT OF APPEALS IN UNITED STATES v. HARDEN, 758 F.3d 886, 888-91 (7th Cir. 2014) AS WELL AS THE FIRST CIRCUIT COURT OF APPEALS HOLDING IN UNITED STATES v. DAVILA-RUIZ, 790 F.3d 246, 252-53 (1st Cir. 2015) WHEN IT FOUND THAT THE DISTRICT COURT GAVE ITS CONSENT FOR A MAGISTRATE JUDGE TO ACCEPT THE APPELLEE'S PLEA IN A FELONY CASE IN DISREGARD FOR THE LANGUAGE OF THE FEDERAL MAGISTRATES ACT (28 USC § 636).

## **LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

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**OPINIONS BELOW**

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is also unpublished.

## **JURISDICTION**

Pursuant to 28 U.S.C. § 1254(1), this Court shall have jurisdiction over the decision by the United States Court of Appeals for the Eighth Circuit in the matter of RONALD RAYMOND FOWLKES v. UNITED STATES, No. 17-2641 (8th Cir. Dec. 12, 2017)(unpub), a copy of which appears at Appendix A.

A timely filed petition for rehearing was denied on February 8, 2018, a copy of which appears at Appendix B, and a Mandate was issued on February 15, 2018, a copy of which appears at Appendix C.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

With respect to Question 1 -

Pursuant to the Fifth Amendment to the Constitution of the United States; "No person shall be deprived of life, liberty or property without due process of law,.". The decision of the Eighth Circuit Court of Appeals fails to recognize the violation of the Fifth Amendment right of the Petitioner's when the district court failed to provide Petitioner fair notice of his procedural error.

With respect to Question 2 -

The Federal Magistrates Act (FMA) as set forth in 28 USC § 536, a copy of which is attached as Appendix B did not allow for a magistrate judge to take Petitioner's plea in the felony case for which he is incarcerated.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

With respect to Question 1 - The Fifth Amendment to the Constitution of the United States provides; "No person shall be deprived of life, liberty or property without due process of law, ". The decision by the Eighth Circuit Court of Appeals failed to recognize the violation of Petitioner's Fifth Amendment right to due process when the district court failed to provide fair notice of his procedural error.

With respect to Question 2 - The Federal Magistrates Act as set forth in 28 U.S.C. § 535, ("FMA" or "Magistrates Act"), a copy of which appears at Appendix E, does not allow for a magistrate judge to take a defendant's plea in a felony case. Petitioner's plea of guilty was taken by a magistrate judge who then recommended petitioner's plea to the district court judge. There exists a circuit split as to exactly what 28 U.S.C. § 636 does or does not dictate when it comes to this matter.

## STATEMENT OF THE CASE

Pursuant to Supreme Court Rule 14.1(g), the following is a concise statement of the case being considered. As review of a judgement of the United States Court of Appeals for the Eighth Circuit is being sought, in accordance with Rule 14.1(g)(ii), the basis for federal jurisdiction in the court of first instance is this case stems from violations of federal criminal statutes.

On November 3, 2014, in the Northern District of Iowa, Cedar Rapids Division, Petitioner appeared before a magistrate judge to enter his plea of guilty pursuant to Federal Rules of Criminal Procedure 11(b).

On March 5, 2015, based on the recommendations of the magistrate judge, the Honorable Linda R. Reade, U.S. District Court for the Northern District of Iowa sentenced Petitioner to a term of 87-months imprisonment. There was no appeal taken.

On November 3, 2015, Petitioner timely filed a pro se motion pursuant to 28 U.S.C. § 2255 (see Case No. 1:15-cv-120-LRR)(N.D. IA). On September 22, 2016, pursuant to Federal Rules of Civil Procedure 15(c), Petitioner filed a motion for leave to amend his original § 2255 petition. There was no response to this motion from the district court until, over six months later, on June 15, 2017, when the court issued its Order denying both Petitioner's § 2255 motion as well as his motion for leave to amend. (App. B)

Petitioner timely filed a notice of appeal on or about July 19, 2017, (CA8 No.17-2641), stating four issues for the appellate court's review, chief among them are the two issues presented herein.

On December 12, 2017, the Eighth Circuit Court of Appeals issued its Order denying Petitioner's COA. (App. A) The appellate court offered no

opinion in its decision. Immediately thereafter, Petitioner filed a motion for rehearing en banc which was denied on February 8, 2018. (App. C) A Mandate issued on February 15, 2018. (App. D)

Pursuant to Supreme Court Rules 13.1, this petition for writ of certiorari timely follows.

## REASONS FOR GRANTING THE PETITION

Petitioner respectfully contends that the United States Court of Appeals for the Eighth Circuit has rendered a decision which conflicts with the decision of this Court in DAY v. MCDONOUGH, 547 U.S. 198, 126 S.Ct. 1675, 164 L.Ed. 2d 376 (2006) as well as the holdings in several other circuits, chief among them, the United States Court of Appeals for the District of Columbia in HUDSON v. HARDY, 412 F.2d 1091 (D.C. Cir. 1968). This violates Rules 10(a) and (c) of this Court. (USCS 10(a), (c)).

Specifically, the Eighth Circuit failed to recognize the violation of Petitioner's due process protections when the district court failed to afford him fair notice of his alleged procedural error in his habeas proceeding.

Only recently, in SESSIONS v. DIMAYA, 584 U.S. \_\_\_\_ (No. 15-1498), Justice Gorsuch wrote in his concurring opinion; "Perhaps the most basic of due process's customary protections is the demand of fair notice." Id. at 3. It is axiomatic that due process requires fair notice of prohibited conduct before a sanction can be imposed. In DAY v. MCDONOUGH, *supra*, the Court found; "Of course, before acting on its own initiative, a court must accord the parties fair notice and an opportunity to present their positions. Further, the court must assure itself that the petitioner is not significantly prejudiced by the delayed focus on the limitation issue and determine whether the interests of justice would be better served by addressing the merits or by dismissing the petition as time barred." DAY v. MCDONOUGH, 547 U.S. 198, 126 S.Ct. 1675, 164 L.Ed. 2d 376, 388 (2006)(emphasis added).

In the instant matter, Petitioner filed his habeas corpus petition pursuant 28 U.S.C. § 2255 on November 3, 2015. On November 23, 2016, Petitioner filed a motion to amend his original petition in accordance with MAYLE v. FELIX,

545 U.S. 644, 125 S.Ct. 2562, 162 L.Ed. 2d 582 (2005) where the Court held that regardless of the § 2255 one-year deadline, a § 2255 motion may be amended if the new claims relate back to the "common core of operative facts" of the previous claim pursuant to Rule 15(c) of the Federal Rules of Civil Procedure; however, an amendment asserting "a new ground for relief supported by facts that differ in both time and type" does not "relate back" and thus does not escape the one-year time limit of § 2255. On June 14, 2017, nearly two-years after filing his § 2255 motion, the district court issued its Order denying both the original petition as well as the motion to amend. The district court provided no explanation as to why it denied the latter motion.

Originating in the District of Columbia Circuit nearly fifty-years ago in HUDSON v. HARDY, 412 F.2d 1091, 134 U.S. App. D.C. (D.C. Cir. 1968) (per curiam), the "fair notice requirement" took into consideration the disabilities of incarcerated individuals who are unschooled in the intricacies of civil procedure by following the policy of liberal construction in favor of pro se litigants who have a right to self-representation in civil matters. By dismissing Petitioner's habeas motion without affording him the opportunity to correct his error, the Eighth Circuit has ignored Petitioner's right to fair notice.

In SUROWITZ v. HILTON HOTELS CORP., 383 U.S. 363, 373 (1966) this Court held the the purpose of the Federal Rules of Civil Procedure, promulgated in 1938, was to eliminate "procedural booby traps" which could prevent "unsophisticated litigants from ever having their day in court". Id. Such is the case with the Petitioner's § 2255 motion. He was never given fair notice of his procedural error, nor was he ever afforded the opportunity to either defend his position or correct the mistake. The decision of the

Eighth Circuit flies in the face of not only this Court's holdings but also those of several other circuits throughout this country.

For these reasons, this petition should be granted.

Question Two involves a circuit split over the scope of the Federal Magistrates Act, 28 U.S.C. § 636, ("FMA" or "Magistrates Act"). Specifically, the issue deals with whether the language of the FMA allows a magistrate to accept a defendant's guilty plea whether or not the defendant has given his consent.

In UNITED STATES v. HARDEN, 758 F.3d 886, 888-89 (7th Cir. 2014) the Court of Appeals, relying on this Court's holding in PERETZ v. UNITED STATES, 501 U.S. 923, 931-33, 111 S.Ct. 2661, 115 L.Ed. 2d 808 (1991), found that the acceptance of a guilty plea in a felony case by a magistrate judge is not authorized by statute, even when the defendant consents.

While, on the other hand, the First, Fourth, Tenth and Eleventh Circuits allow magistrate judges to accept guilty pleas in felony cases, but only with the defendant's consent. (see e.g.: UNITED STATES v. BENTON, 523 F.3d 424, 431-33 (4th Cir. 2008); UNITED STATES v. DAVILA-RUIZ, 790 F.3d 249, 252-53 (1st Cir. 2015)).

In the Petitioner's case, the Eighth Circuit refused to address this issue in Petitioner's appeal. It is Petitioner's belief that, with or without his consent, the district court overstepped its authority as set forth in 28 U.S.C. § 636, by allowing the magistrate judge to accept his guilty plea.

"A guilty plea is a waiver of important constitutional rights designed to protect the fairness of a trial." JOHNSON v. OHIO, 419 U.S. 924, 95 S.Ct. 200, 42 L.Ed. 2d 158 (1974) (as cited in HARDEN, *supra* at 888). A district court judge conducting a Rule 11(b) colloquy is required to

carry on a "long, searching colloquy" Id. as set forth in Rule 11(b) to ensure that the defendant's waivers of his rights are truly voluntary. As anyone who has witnessed such a hearing, the answers given by a defendant can be as differently interpreted as the ear that is hearing them, so what a magistrate judge may have heard may not be taken the same way had the answer been heard by the district court judge.

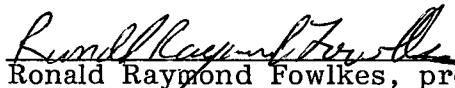
More to the point, as the Court held in HARDEN, "The acceptance of a guilty plea in a felony case is not a described power or duty" set forth in the FMA. As a result, "we must interpret the additional duties clause of the statute to determine whether the Act permits magistrate judges to discharge that function, even with the consent of the defendant and the government." Based on the statute and the Supreme Court decisions limning the limits of federal magistrates' authority, we determine that magistrates are not permitted to accept guilty pleas in felony cases and adjudge a defendant guilty." Id.

Because both the district court as well as the Eighth Circuit were silent in addressing this matter in Petitioner's case, and there exists a split between the aforementioned circuits elsewhere, Petitioner respectfully requests this Petition be granted.

#### CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

  
Ronald Raymond Fowlkes, pro se

Dated this 8 day of May, 2018