

1 In The
2 Supreme Court of the United States
3

4 NO - - - -

5 George Bridgette
6 Petitioner
7

8 v

9 Donald A. Hill, warden
10 Attorney General Xavier Becerra

11 Petition for a writ of Certiorari to the
12 United States Court of Appeals
13 for the ninth Circuit
14

15 Petition FOR WRIT OF CERTIORARI
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIVED

MAY 15 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Questions Presented

1. Whether district court failure to appoint substitute counsel to continue to represent Petitioner in the evidentiary hearing after removing the assign counsel from the hearing violate the integrity of habeas corpus proceeding thus causing substantial defect in the habeas proceeding resulting in violation of Petitioner's Constitutional right, right to procedural due process of law, and to have the assistance of counsel for his defense under the fifth and sixth Amendment.

2. Whether or not district court violate 28 U.S.C. 636 when it rejected the credibility findings enter by magistrate judge after the evidentiary hearing and made such a erroneous ruling without the appointment of counsel to represent Petitioner prior to the court ruling. Petitioner was unrepresented and defenseless, and denied the opportunity to file a written objection in response to magistrate judge report and recommendation. Thus did the district court err in failing to conduct de novo Evidentiary hearing deprive Petitioner of the procedural process to which was his due entitlement under federal Constitutional law, fifth and sixth Amendment.

3. Whether or not did district court violate Petitioner Constitutional right when it denied Petitioner motion requesting the appointment of counsel for his defense to represent Petitioner in the habeas corpus proceeding.

4. Whether or not district court violate the procedural requirements set forth in Section 18 U.S.C. 3006 Rule (C) resulted in violation of Petitioner Constitutional right right to counsel, a right to fair and just hearing.

5. Whether reasonable jurist could debate and disagree that the federal district court was unreasonable in determining whether district court violated Petitioner Federal Constitutional right.

1 by its Failure to Appoint Substitute Counsel AS mandated and required under 18 U.S.
2 3006 Procedural Rule (C)

Table of Contents

Question Presented

Table of Authorities

Opinion Below

Constitutional and Statutory Provision Involved

Statement

Reason for Granting the Petition

1. The Ninth Circuit Court reasoning is Flawed
and Contradictory. The reasoning in *Strickland v Washington*
is correct

Conclusion

Table of Authorities:

Cases:

McGriff v Dept of Corr. 338 F.3d 1231, 1235 (11th Cir 2003)

Shepard v U.S., 253 F.3d 585 (11th Cir 2001)

Dillon v US (9th Cir 1962) 307 F.2d 445, 447 due Process

Hall v Haw (9th Cir 2017) Extraordinary Circumstance, Rule 60(b)(6)

Miller-El v Cockell, 537 U.S. 322, 336-37 (2003)

Strickland v Washington, 466 U.S. 668, 104 2052, 80 L.Ed.2d 674 (1984)

Constitutional Provisions

United States Constitution, Fifth And Sixth Amendment

In the
Supreme Court of the United States

No.

George Bridgette
Petitioner

✓

Donald R. Hill, warden

Attorney General Xavier Becerra

Petition for a writ of Certiorari to the
United States Court of Appeals
for the ninth Circuit

Petition FOR WRIT OF CERTIORARI

George Bridgette herein after Petitioner petition for a writ of Certiorari to review the Judgment and decision of the United States Court of Appeals for the ninth Circuit Court render its Judgment Affirming the denial by the district court of his federal Rule of Civil Procedure 60 & (b) motion For Relief, And to Set aside and Vacate the Judgment of the district Court erroneous ruling enter on June 10, 1999; Federal Rule of Civil Procedure 60(b)(6) motion was base on serious defect in the integrity of the habeas corpus Proceeding, which resulted in violation of Petitioner federal Constitutional right under the fifth and Six Amendment. Extraordinary Circumstance warrant the re opening of Petitioner Case:

Jurisdiction

The Judgment of the Court of appeals was entered on March 9, 2018

Constitutional and Statutory Provision involved

United States Constitution, Amendment V

No person shall be deprived of life, liberty,
or property, without due process of law

The Six Amendment to the United States Constitution
Provides in relevant part in all Criminal Prosecution,
the Accuse shall have assistance of Counsel for his
defense

United States Constitution, Amendment Fourteenth

Nor shall any state deprive any person of life,
liberty, or property, without due process of law

Statement of the case.

Federal district Court violated the Prescribe Procedural Rules (C) of the Rules Governing 28 U.S.C. 2254 Proceeding by failing to Appoint Substitute Counsel AS mandated Under 18 USC 3006 (C) and thus violated Petitioner Constitutional right, right to Procedural due Process of law under the fifth and six amendment and to have the assistance of Counsel for his defense.

1. On 9-28-2017 Petitioner submitted to the federal district Court a Federal rule of Civil Procedure rule 60(b)(6) motion for relief and to set Aside and Vacate district Court Judge Keller erroneous Judgment enter on June 10, 1999 Petitioner seek a Certificate of Appealability to Appeal the district Court and the ninth Circuit Court order denying Petitioner federal rule of Civil Procedure rule 60(b)(6) motion without reviewing the merits of Petitioner Issues Presented to the district Court

2. During the critical Stages of the evidentiary hearing district Court Judge violated the integrity of the habeas Corpus Proceeding by removing the Assign habeas Counsel in the midst of the evidentiary hearing without Appointing Substitute Counsel AS mandated and require Under 18 USC 3006 (C)! see Exhibit J. K.

At the time of the Submission of the magistrate Judge Black report and recommendation Petitioner was Unrepresented and defenseless

3. Petitioner was without the assistance of Counsel to Assist in the Preparation of filing a timely written objection in response to the magistrate Judge Report and recommendation

4. The district Court Judge deprived Petitioner of his right of review and the opportunity to Present his written objection due to Unrepresented by Counsel

5. Petitioner request by motion for the Appointment of Substitute Counsel on several different occasions. Petitioner request was denied twice by the district Court Judge.

Extraordinary Circumstances:

Federal Rule 60(b)(6) States in Pertinent Part as follow

or Any other reason that justify relief:

6. mis Application of State Constitutional law by State's Court Failure to adhere to its own state law in conducting a timely evidentiary hearing base on the evidence Presented to state Court at that time resulted in violation of Petitioner State and federal Constitutional right under the fifth and Fourteenth Amendment. See Exhibits A, B, C.

7. The length of time it took to Conduct an evidentiary hearing on Petitioner Jury misconduct claim on Allegation of Jury misconduct nine years after Petitioner Conviction and Sentence Caused Substantial Prejudice to the Petitioner Case and defense. See Exhibits: A, B, C.

8. Extraordinary Circumstances stood in Petitioner way and Prevented timely filing of his federal rule 60(b)(6) motion:

Petitioner is a 71 year old elder who suffer from traumatic brain injury (mental disorder) due to serious PTSD symptoms.

Under Rule 60(b)(6) contain no specific time limitation of a filing such a motion. See Gonzalez v Crosby (2005) Footnotes: See Exhibits D, E, F, G.

9. Petitioner has suffered substantial Prejudice as a result of district Court denial of his Constitutional right, Right to the Appointment of Counsel for his defense.

10. Newly discovered Facts not Known to the Petitioner at the time of the federal evidentiary hearing, due to the passage of time most of the trial records including Evidentiary hearing Record have been destroyed or misplaced thereby preventing petitioner from exercising due diligence in pursuing this legal matter in a timely manner. Petitioner though no fault of his own was unaware at the time of trial and at the time of the federal evidentiary hearing of the existence of such potentially crucial facts that state and federal court had violated petitioner's state and federal constitutional rights under the fifth, sixth, and fourteenth Amendment.

11. On 11-24-2017 petitioner submitted to the federal district court objection to magistrate Judge Rozelle (No. CV 95-04413 WDK RAQ) report and recommendation denying petitioner federal Rule 60(b)(6) motion. To this date and time district court refuses to respond to petitioner written objection.

12. There was a reasonable probability had district court appointed substitute counsel to represent the petitioner in the evidentiary hearing as mandated under 18 USC 3006 rule(c) the result of the district court judgment would have been different in favor of the petitioner.

Reason for Granting the Petition

There is a conflict among the circuits on the exact point involved in this case. Petitioner demonstrates that reasonable jurists would find the district court assessment of the constitutional claim debatable or wrong. Petitioner has made the necessary requisite - substantial showing of the denial of his constitutional right 28 USC 2253 (c) (2) with respect to his constitutional claim. In the opinion of the United States Supreme Court in *Miller-El v. Cockrell*, 537 U.S. 322, 336-37 (2003) stated in pertinent part as follows, our opinion in *Slack* held that a COA does not require a showing that the appeal will succeed. Accordingly, a court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief. The holding in *Slack* would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with 2253 that a COA will issue in some instances where there is no certainty of ultimate relief.

Federal district court judge erred in denying petitioner habeas corpus petition for relief under 2254 without the appointment of substitute counsel to represent petitioner in the evidentiary hearing proceeding, thus causing serious and substantial defect in the integrity of the habeas corpus proceeding, resulting in violation of petitioner's federal constitutional rights under the fifth and sixth amendment. Under the sixth amendment harm occurs when the district court judge violates the integrity of the habeas corpus proceedings by removing the assigned habeas counsel in the midst of the evidentiary hearing without appointing substitute counsel as mandated under 18 USC 3006 (c) and thereby left petitioner unrepresented and defenseless at a very critical stage of the habeas corpus proceeding, at which time the magistrate judge had submitted his report and recommendation to the district court.

For Review!

McGriff v Dept of Corr 338 F.3d 1231, 1235 (11th Cir 2003) Petitioner entitled to new evidentiary hearing and appointment of Counsel because district court failed to appoint Counsel at the first evidentiary hearing. The six amendment right to have assistance of Counsel is considered to be the most important of rights granted to Criminal defendant by the United States Constitution, as it ensure that defendant receive the assistance of Counsel during the critical stages of the legal process, such as evidentiary hearing and the trial itself. Michigan v Jackson 475 U.S. 625, 629, 30 106 S.Ct 1404 08, 89 L.Ed 2d 631 (1986)

Petitioner was Constitutionally entitled to appointment of Counsel under the Sixth amendment to the Constitution, and Federal law requires the appointment of Counsel. Pursuant to 18 USC 3606 (c) rule (c) the statutory right to Counsel created by the Prescribe Procedural Rule (c) is a mandatory right, and the district court was obligated to appoint substitute Counsel to represent the Petitioner at any and every stages of the habeas corpus Proceeding. The Rule (c) Provide that, a Judge shall appoint Counsel. The language used is mandatory. See Shepard v United States, 253 F.3d 585 (11th Cir 2001)

Due to the fact Petitioner was unrepresented without the aid and assistance of Counsel in preparing and filing a written objection in response to magistrate Judge Report and Recommendation deprive Petitioner of his right of review for district Court to consider and examine his written objection in response to the magistrate Judge Report, and thereby deprive Petitioner of the Procedural process to which was his due entitlement under federal-Constitutional law. The six amendment right to Counsel exist, and is needed in order to protect the fundamental right to a fair hearing. Strickland v Washington, 466 U.S. 668, 104 (1984)

Federal Rule of Civil Procedure rule 60(b)(6) motion contain no specific time limitation on filing such a motion; Extraordinary Circumstances exist under federal Rule 60(b)(6) in this instant case; when the district Court Judge violated the integrity of the federal habeas Corpus proceeding by removing the Assign Counsel in the midst of the evidentiary hearing without Appointing a Substitute Counsel to Represent Petitioner, As mandated, and required under 18 USC 3006 Rule (c) Resulted in Violation of Petitioner Constitutional Right, Right to Procedural due Process of law, and to have Assistance of Counsel for his defense at any and every stage of the Corpus Proceeding; Rule 60(b)(6) allows a Party to seek relief from a Final Judgement, and request reopening of his case; Under a limited set of Circumstance. Gonzalez, 545 U.S. Rule 60(b)(6) is a Grand reservoir of equitable power, and it afford Courts the discretion and Power to Vacate Judgement whenever such action is Appropriate to accomplish Justice. See Hall v F.W Haw ninth Circuit Court July 3, 2017 Petitioner convicted of first degree murder successful in reopening his case under federal Rule of Civil Procedure Rule 60(b)(6) and in obtaining habeas relief, Three years After district Court dismiss his initial federal Habeas Corpus Petition.

District Court Judge abuse its discretion by denying and failing to address Petitioner motion requesting Substitute Counsel to continue to Represent Petitioner in the federal evidentiary hearing; Pursuant to federal Constitutional law due Process require the Appointment of Counsel in this case under the fifth Amendment district Court Judge did not exercise Proper discretion; See (Dillon v U.S. 9th Cir 1962) 307 F.2d 445, 447 due Process.

Conclusion

The Petition for writ of Certiorari should be granted

Respectfully submitted,

George Budgett

1 Date May 2, 2018

2 I, declare under Penalty of Perjury that the foregoing is true and
3 Correct

4 Executed on 5-2-2018