

No.

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SUPREME COURT, U.S.

IN THE
SUPREME COURT FOR THE UNITED STATES

IN RE: CLIFFORD WINKLES,

ON PETITION FOR A WRIT OF MANDAMUS
AND/OR A WRIT OF PROHIBITION.

TO THE ELEVENTH CIRCUIT COURT OF APPEALS AND
UNITED STATES DISTRICT COURT FOR THE MIDDLE
DISTRICT OF FLORIDA.

Clifford Winkles

CLIFFORD WINKLES 1794D-112

FCC COLEMAN, USPII

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DATED: [REDACTED], 2018.

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I. ISSUES AND QUESTIONS PRESENTED:

WHETHER FEDERAL RULES OF APPELLATE PROCEDURE
22 IS APPLICABLE TO FEDERAL PRISONERS WHO
ARE PROCEEDING UNDER STATUTES 28 U.S.C. §2241
AND 28 U.S.C. §1651.

WHETHER FEDERAL RULES OF APPELLATE PROCEDURE
22 IS AMBIGUOUS AS TO WHO IT PROHIBITS
FOR PETITIONING A CIRCUIT JUDGE FOR RELIEF
UNDER 28 U.S.C. §2241.

II. LIST OF PARTIES:

CLIFFORD WINKLES.

ELEVENTH CIRCUIT, CIRCUIT JUDGE BEVERLY B. MARTIN.

ELEVENTH CIRCUIT, CIRCUIT JUDGE JILL PRYOR.

U.S. DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA.

U.S. COURT OF APPEALS, ELEVENTH CIRCUIT.

III. STATEMENT OF THE FACTS:

THE PETITIONER, Clifford Winkles (hereinafter referred to
as "Winkles"), in pro se, and hereby alleges the following:

Over the past two decades Winkles has been imprisoned,

in part, for federal offenses that he can now demonstrate he is innocent of violating. During that span, Winkles has attempted to challenge his unlawful detention by nearly every remedial mechanism permitted by law. However, for one reason or another -- call it bad luck or simply unfortunate circumstances -- Winkles has never been afforded a "meaningful" post-conviction proceeding. Unlike every other federal prisoner, Winkles was not afforded one full and fair round of meaningful post-conviction relief under section 2255. Winkles's opportunity at relief under §2255 was impeded upon by extraordinary circumstances that were beyond his control. This impediment was government-created, and it hindered Winkles's ability to take an appeal from the erroneous denial of his motion under 28 U.S.C. §2255. Because Winkles was prevented from taking an appeal, his post-conviction proceeding ended at the front door with an erroneous ruling; a ruling that can be demonstrated to be erroneous.

To explain, on November 18, 2005, the District Court rendered its judgment on Winkles's motion under 28 U.S.C. §2255. However, Winkles did not receive the district court's order in a timely fashion. Winkles did not receive a copy of the district court's order until nearly two years after it issued. This event has been verified

and conceded to by the government in a proceeding before the Ninth Circuit.^① In that proceeding, the government conceded that Winkles's motion under Fed. R. Civ. P. 60(b) was, in fact and law, a legitimate and timely motion, and that the issue raised was true. Id.

In a published opinion by the Ninth Circuit, the Court determined that Rule 60(b) could not be used to reopen the time to make a timely notice of appeal because the Fed. R. App. P. 4(a) discussed "lack of notice" and that the Rule 4(a) was jurisdictional and mandatory, and therefore not subject to equitable exceptions. See UNITED STATES v. WINKLES 795 F.3d 1134 (9th Cir. 2015). This holding appears to leave Winkles with no judicial forum in the Sentencing District Court to correct the inadequacy and/or ineffectiveness of his §2255 proceeding. (If there is some sort of remedial vehicle for Winkles to use, Winkles is left pro se to bounce around invoking one

FOOTNOTE(S)

① UNITED STATES v. WINKLES, 795 F.3d 1134 (9th Cir. 2015).

② Since Winkles's case was decided the Ninth Circuit sitting en banc has overruled the key determination made in Winkles. The Ninth Circuit has determined that Fed. R. App. P. 4(a) is subject to equitable exceptions. See WASHINGTON v. RYAN 833 F.3d 1087 (9th Cir. 2016) (en banc).

jurisdictional vehicle after another until he's eventually barred or is guided by a caring judge to the appropriate one; regardless, an unfair event and a waste of judicial time and resources.)

Following the Ninth Circuit's ruling, Winkles sought relief under the "saving clause" of §2255(e) by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2241(c)(3). See WINKLES v. WARDEN, Case No. 15-00560-WTH-PRL. In Winkles's petition he alternatively invoked the district court's jurisdiction under 28 U.S.C. §1651, Fed.R.Civ.P 60(b), and Fed.R.Civ.P 60(d). Id.

After nearly two years of litigation — litigation Winkles contends was insufficient because the substance of his jurisdictional grounds were not addressed by the Respondent or Court.^③ — the district court dismissed the action without prejudice for lack of subject matter jurisdiction, citing the Eleventh Circuit's most-recent en banc ruling of McARTHAN v. DIRECTOR OF GOODWILL INDUSTRIES-SUNCOAST, INC., 851 F.3d 1076 (11th Cir. 2017). Winkles timely filed an appeal notice and a motion for in forma pauperis status on appeal. The district court denied Winkles request for in forma pauperis status on appeal.

FOOTNOTE:

③ Winkles filed multiple motions asking for additional briefing on jurisdiction. His requests were denied. The district court alleged it would consider all arguments made, however, it did not when it rendered its decision.

Next, Winkles filed a motion for in forma pauperis status in the Court of Appeals for the Eleventh Circuit. See USCA Case No. 17-13501-B. A single judge, Honorable Frank Hull reviewed the motion, and based upon a frivolity determination analysis held that Winkles's appeal would fail on the merits, and therefore in forma pauperis status was inappropriate. *Id.* However, noteworthy, in judge Hull's order denying in forma pauperis status, he acknowledged that the district court arguably committed a CLISBY⁽⁴⁾ error by failing to consider Winkles's alternative jurisdictional arguments. See USCA Case No. 17-13501-B at 7-8. In judge Hull's opinion he determined Winkles's alternative jurisdictional arguments would have failed on the merits had they been addressed by the district court, and therefore the district court did not commit error in dismissing Winkles's habeas corpus application. [REDACTED]

After filing a motion for reconsideration, which was denied, Winkles filed a motion with both the court of appeals and district court, asking for an order directing a payment schedule as described in 28 U.S.C. §1915(b) because Winkles did not have the funds or assets to cover the filing and docketing fees. Winkles invoked §1915(b)(4), arguing that he could not be denied an opportunity to appeal simply because he is poor and unable to immediately pay the fees. The courts construed this motion as another request

FOOTNOTES:

(4) CLISBY v. JONES, 960 F.2d 925 (11th Cir. 1992) (en banc)

(5) Winkles disagrees with judge Hull's merits determination, and therefore that's why an appeal should have taken place. Winkles's alternative arguments are arguable on the merits as to facts and law.

for in forma pauperis status, and upon that construction denied Winkles's request. Id. Winkles was then notified by the Court Clerk that if he did not pay the fees his appeal would be dismissed without further notice. Unable to locate the large amount of funds from his family and friends, Winkles attempted to submit another request for relief under 28 U.S.C. § 1915(b)(4) or more time to find the funds to pay the filing and docketing fees. No action was taken on Winkles's request, and instead the court clerk dismissed the appeal for lack of prosecution.

Winkles's primary arguments on appeal would have been: 1) that his case was distinguishable from that of McARTHAN, 2) that the remedy by motion under 28 U.S.C. § 2255 was inadequate and ineffective because his ability and opportunity to take an appeal from the erroneous denial of his § 2255 motion was impeded upon by extraordinary circumstance that were created by government action - or lack thereof; (3) that the remedy by motion under 28 U.S.C. § 2255 was inadequate and ineffective because during the proceeding Winkles experienced extreme hardships, i.e., physical assaults, lengthy periods of solitary confinement for safety purposes, loss of legal material, destruction of incoming and outgoing mail by correctional officers, including legal mail, and bouts of mental health problems, i.e., Winkles was diagnosed with "psychosis" and "major depression" at that time; and 4) that Winkles's 5th and 8th Amendments to the United States Constitution would be violated if the court did not reach the merits of Winkles's freestanding claims of actual innocence. All the above arguments were raised by Winkles in his habeas corpus application and motion for in forma pauperis status on appeal, however, a review of the opinions handed down in denying Winkles's actions would not reflect that. His

issues were not determined on the facts of his case, but were determined on the decision of McCartan; a case distinguishable from Winkles's.

Accordingly, upon the revelation that Winkles was not going to receive a fair hearing before the particular judges processing his case, Winkles prepared another habeas corpus petition, and realizing there existed valid reasons to by-pass seeking relief at the district court level, Winkles submitted his application to the Eleventh Circuit Court of Appeals, specifically requesting it be heard by either Honorable Judge Beverly B. Martin or alternatively Honorable Judge Jill Pryor. Winkles cited Federal Rules of Appellate Procedure 27(c) as basis of jurisdiction, contemporaneously with 28 U.S.C. § 2241(a). The Clerk of the Court declined to file the application in its court, and instead transferred the application to the district court for the Middle District of Florida. A new habeas corpus case was initiated. See USDC CASE No. 18-cv-00054-WTH-PRL. The transfer was based on the Clerk's interpretation of Fed. R. App. P 22, which instructs that a writ of habeas corpus application made to the court of appeals must be transferred to the appropriate district court having jurisdiction to entertain the application. See F.R.A.P 22. This interpretation of Rule 22 and transfer of Winkles's habeas corpus application is the reasoning for this present action before this Court. The Clerk's interpretation is incorrect and Winkles's application should not have been transferred. Winkles has a statutory right to petition a particular judge within the Eleventh Circuit, and therefore the Clerk should be directed to file Winkles's application.

As the following demonstrates, Fed. R. App. P 22 does not apply to federal prisoners proceeding under 28 U.S.C. § 2241(a):

IV. LAW AND ARGUMENTS:

A. FEDERAL RULES OF APPELLATE PROCEDURE 22:

The Clerk of this Court of Appeals construed Rule 22 of the Fed. R. App. P.'s to require it to transfer the application submitted by Winkles from this Court to the District Court for the Middle District of Florida. The Clerk's reading is misplaced. An accurate reading of Fed. R. App. P. 22 raises a valid argument as to facts and law relevant to the Clerk's interpretation. While it may be true that many, if not all, circuit court clerks have been reading Rule 22 to require such a transfer for so long that the process is considered appropriate and common, that factor does not change the fact that their reading of the Rule is incorrect. Something that may be considered "accepted-practice" does not make it correct.

In order to adequately explain why the Clerk's reading of Rule 22 is incorrect this Court must take into consideration three separate factors:

First, 28 U.S.C. §2241 reads in pertinent part as follows:

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had."

See 28 U.S.C. §2241 Section 2241 authorizes Winkles to petition a "circuit judge" for relief under it. The reading of §2241 is unambiguous. A circuit judge is authorized to hear a complaint brought by a prisoner proceeding under §2241. In support of this reading, a

review of § 2242 mandates if a prisoner petitions anyone other than the district court, the prisoner must state the reason for not making the application to the district court of the district in which the applicant is held, See **28 U.S.C. § 2242**, and therefore supports the same. Additionally, 28 U.S.C. § 2243 also speaks of a circuit judge granting relief. See **28 U.S.C. § 2243**. These three statutes combined make clear that a prisoner such as Winkles is authorized, as a matter of statutory right, to petition a specific circuit judge for relief pursuant to § 2241(c)(3).

However, at first blush, it appears that Rule 22 of the Appellate Procedures restricts a circuit court clerk from processing  application for a writ of habeas corpus, and requires the Clerk to transfer the application made to its court to the district court having appropriate jurisdiction. But as argued, this reading is incorrect;

Second, Federal Rules of Appellate Procedures 22 reads in pertinent part as follows:

"If made to a circuit judge, the application must be transferred to the appropriate district court. If the district court denies [the] application [] transferred to it [t]he applicant may, under 28 U.S.C. § 2253, appeal to the court of appeals from the district court's order denying the application."

See **FEDERAL RULES OF APPELLATE PROCEDURE 22**. (Underline added for emphasis) The above underlined emphasis is  and why the Clerk's reading of the rule is incorrect. The mentioning of the applicant being able to appeal under "28 U.S.C. § 2253" is where things don't add up correctly. This is because, as Winkles sees it, § 2253 has no applicability

to his case at all. A federal prisoner, like Winkles, who is proceeding under 28 U.S.C. § 2241, is not required to seek and obtain a certificate of appealability (COA) before appealing the denial of his writ of habeas corpus petition. A federal prisoner is not bound by the strictures set out in § 2253. Instead, a federal prisoner's habeas corpus petition is appealed under 28 U.S.C. § 1291. See *MURPHY v. UNITED STATES*, 199 F.3d 599, 601 n.2 (2d Cir. 1999); *UNITED STATES v. CEPERO*, 224 F3d 256, 264-65 (3d Cir. 2000) (en banc); *UNITED STATES v. McRAE*, 793 F3d 392, 400 (4th Cir. 2015); *MONTANO v. TEX*, 867 F3d 540 (5th Cir. 2017) (holding that because Montano was correctly proceeding under 28 U.S.C. § 2241, a COA was not required to appeal) (citing *OJO v. T.N.S.*, 106 F.3d 680, 681 (5th Cir. 1997); *WITHAM v. UNITED STATES*, 355 F.3d 501, 504 (6th Cir. 2004); *BEHR v. RAMSEY*, 230 F3d 268, 270 (7th Cir. 2000); *LANGELLA v. ANDERSON*, 612 F3d 938 (8th Cir. 2010); *WHITE v. LAMBERT* 370 F3d 1002 (9th Cir. 2003); *BLEDSoE v. UNITED STATES*, 384 F3d 1232 (10th Cir. 2004); *SUGARMAN v. PITZER*, 335 U.S. App. D.C. 213, 170 F.3d 1145 (D.C. Cir. 1999) (per curiam) (federal prisoner challenging the dismissal of a § 2241 petition need not obtain a COA). Therefore, when reading the rule in its entirety it is arguable with valid merit that the rule can't be applied to a federal prisoner proceeding under § 2241. To apply such a rule would put the language of the rule on its head. The reference to the applicant appealing the denial of his transferred application under § 2253 cannot mean what it says if applied to federal prisoners.

Moreover, as Winkles argues, never before has a "rule" taken precedent over an "Act of Congress." Here, Congress authorized Winkles to petition a Circuit Judge of his choosing, the judiciary cannot then create a rule to trump that Act.

THIRD, Federal Rules of Appellate Procedure 2 reads in pertinent part as follows:

"On its own or a party's motion, a court of appeals may — ☐ expedite its decision or for other good cause — suspend any provision of these rules in a particular case and order proceedings as it directs, except as otherwise provided in Rule 26(b)."

See **FEDERAL RULES OF APPELLATE PROCEDURE 2**. And thus there exists "good cause" in the case at bar. To suspend Rule 22 in order to avoid having to answer whether the rule is unconstitutional in light that it bars a statutory right mandated by Congress related to habeas corpus — for which the U.S. Constitution speaks of never suspending except for in a time of war or rebellion, it would be beneficial to the Court. It saves judicial time and resources, and avoids answering unnecessary questions that could have larger implications if ruled upon in favor of Winkles.

Lastly, Federal Rules of Appellate Procedure 1, reads in pertinent part as follows:

"(b) Rules Do Not Affect Jurisdiction. These rules do not extend or limit the jurisdiction of the court of appeals."

See **FEDERAL RULES OF APPELLATE PROCEDURE 1**. To Winkles it would appear arguable that Rule 22 is affecting jurisdiction. The rule, as interpreted by the Clerk of the Court, limits the circuit court from entertaining a petition it clearly has jurisdiction to entertain. Compare 28 U.S.C. §2241-43 with Fed. R. App. P. 22.

Accordingly, because Rule 22 is ambiguous as to who it applies to, and because the rule speaks of §2253 which does not apply to federal prisoners proceeding under §2241, this

Court should find that Winkles is authorized to proceed with his §2241 petition in this Court of Appeals before the Honorable Circuit Judge Beverly B. Martin or alternatively Honorable Circuit Judge Jill Pryor, by way of Fed. R. App. P 27(c) and 28 U.S.C. § 2241.

CONCLUSION:

Because the district court has taken jurisdiction over Winkles petition filed under 28 U.S.C. § 2241 following the transfer of the petition, this Honorable Court should order the district court to transfer the petition back to the Court of Appeals, and order the Eleventh Circuit Court of Appeals to file the petition in its court and hold hearings and dispositions as law and justice so requires.

Winkles invoked the Court of Appeals jurisdiction not the district court's. Therefore the district court is usurping jurisdiction where it shouldn't be. Accordingly, a writ of prohibition is appropriate, though a writ of Mandamus can cure the problem in this matter.

C. Winkles
CLIFFORD WINKLES

CERTIFICATE OF SERVICE:

I, Clifford Winkles, hereby certify I sent a true and correct copy of this petition to the United States Solicitor General's Office by first class postage prepaid, on this 28th day of June, 2018. \$1746

C. Winkles
CLIFFORD WINKLES

**Additional material
from this filing is
available in the
Clerk's Office.**