

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

GUADALUPE PAOLILLA — PETITIONER
(Your Name)

vs.

LORIE DAVIS — RESPONDENT(S)
(DIRECTOR, T.D.C.J. - C.I.O.)
ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. WESTERN DISTRICT COURT OF TEXAS, AUSTIN DIVISION
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GUADALUPE PADILLA #1088118
(Your Name)
C.T. TERRELL UNIT
1300 FM 655
(Address)

ROSHARON, TX 77583
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

#1 WHETHER U.S. DISTRICT COURT JUDGE HAS AUTHORITY TO ORDER CLERK TO NOT FILE ANY FURTHER PLEADINGS IN HABEAS CORPUS PROCEEDINGS, WHERE ORDER RESULTED IN COURT'S FAILURE TO FILE AND RULE ON PETITIONER'S RULE 60(b) MOTION (F.R.C.V.P.) THAT ATTACKED A DEFECT IN THE INTEGRITY OF FEDERAL HABEAS CORPUS PROCEEDINGS.

Defect:

Here, the U.S. Western District Court referred Petitioner's 28 U.S.C. § 2254 petition to Magistrate under 28 U.S.C. § 636(b)(1)(B), and Local Rules of U.S. Western District Court, and Rule #8 of Habeas Corpus Rules governing 28 U.S.C. § 2254 cases. The Magistrate Ordered Respondent to answer and after answer was filed, but before Magistrate entered Report and Recommendation, and before Petitioner filed objections or request for Certificate of Appealability, the U.S. District Judge intervened and Ordered § 2254 habeas petition be dismissed and that COA be denied, and that Clerk shall not file any further pleadings in this case other than notice of appeal.

Petitioner's Rule 60(b) motion has not been filed or ruled upon, and motion to rule upon Rule 60(b) motion was returned to Petitioner.

LIST OF PARTIES

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

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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APPENDIX A - Order of May 08, 2018, Judge Sam Sparks
(Ordering Clerk shall not file any further pleadings in case)

APPENDIX B - Petitioner's pleadings concerning Rule 60(b) motion
(F.R.Cv.P.), returned to Petitioner by Clerk, date stamped Aug. 06, 2018

APPENDIX C - Dismissal of Notice of Appeal by Fifth Circuit
Court of Appeals, dated Aug. 14, 2018.

APPENDIX D

APPENDIX E

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TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Gonzales v Crosby, 545 U.S. 523, 125 S.Ct. 2641 (2005)

Gonzales v. Quarterman, 507 F.3d. 884 (5th Cir. 2007)

STATUTES AND RULES

28 U.S.C. § 2254

28 U.S.C. § 636 (b)(1)(B)

Rule "f" of Appendix "C", Local Rules of U.S. Western District
Court of Texas, Austin Division

Rule 8 of Rules Governing 28 U.S.C. § 2254 habeas corpus
cases in U.S. District Courts

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix b to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix a to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 14, 2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. __A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 28 U.S.C. § 2254

2. 28 U.S.C. § 636 (b)

STATEMENT OF THE CASE

The issue in this case stems from a habeas corpus action filed under 28 U.S.C. § 2254.

Petitioner's federal writ challenged the dismissal of his State habeas corpus application on procedural grounds - (subsequent writ) - where State habeas writ raised issues of: 1. Actual Innocence - (Brady Claim); 2. Actual Innocence - (New Evidence); 3. Denial of Statutory Right of Appeal.

This case involves a sexual assault conviction, post-conviction DNA testing - (test results that excluded Petitioner's DNA profile), that appears to have failed to meet "exoneration" standard, and State's concession that DNA test results were unreliable based on newer scientific DNA testing technique.

Petitioner has not been permitted to file pleadings that attack defect in habeas corpus proceedings - where U.S. District Court Judge appears to have violated 28 U.S.C. § 636 (b), and closed the doors of the Court to this Petitioner, thus denying inmate access to the Courts.

Facts:

1. On Nov. 06, 2017, Petitioner's federal habeas corpus writ 28 U.S.C.

§ 2254, was filed in U.S. Western District Court of Texas, Austin Division, and was assigned Docket No. 1:17-cv-1042-SS. The case was referred to Magistrate A.W. Austin for a recommendation on the merits.

2. On Dec. 08, 2017, Magistrate Austin ordered Respondent to Answer federal writ, 28 U.S.C. § 2254. FN 1

3. On Mar. 05, 2018, Respondent filed Answer to 28 U.S.C. § 2254.

4. On April 04, 2018, District Judge, of U.S. Western District Court, Sam Sparks, intervened in this case before Magistrate's "recommendation was entered. Judge Sparks ordered habeas petition be dismissed without prejudice, and ordered that certificate of appealability be denied. X

5. On April 07, 2018, before receipt of Judges order of April 06, 2018, Petitioner submitted motion for recusal of Magistrate Austin.

6. On May 08, 2018, Judge Sparks dismissed motion for recusal of Magistrate, and ordered Clerk shall not file any further pleadings in this case other than Notice of Appeal. (Appendix - A).

7. On July 16, 2018, Petitioner submitted Rule 60 (b) Motion (E.R.C.P.) to U.S. Western District Court of Texas, Austin Division, with request for certificate of appealability, relating to Rule 60 (b) motion.

FN 1 - On February, 05, 2018, Petitioner Padilla filed a 42 U.S.C. § 1983 - Prisoners civil rights complaint, in the U.S. Western District Court, Austin Division. Complaint was assigned Docket No. 1:18-cv-099-AP, and was referred to Magistrate A.W. Austin for recommendation on the merits. On March 22, 2018. Magistrate Austin entered Report and Recommendation to 42 U.S.C. § 1983.

8. On Aug. 02, 2018, Petitioner submitted "motion for Court to rule on Rule 60(b) motion (F.R. Cr. P.).
9. On or about Aug. 10, 2018, Petitioner received correspondence from U.S. Western District Court of Texas, Austin Division, which "returned" Petitioner's pleading - (motion to rule on Rule 60(b) motion. Pleading was date stamped by Clerk). Appendix - B
10. On Aug. 14, 2018, the Fifth Circuit Court of Appeals entered judgement dismissing appeal in Case No. 18-50611- (Dist. Ct. No. 1:17-cv-1042-ss)

REASONS FOR GRANTING THE PETITION

Petitioner alleges the Court of Appeals has decided an important question of federal law in a way that conflicts with applicable decisions of the Supreme Court of the United States, and/or misconstrued a statute, rule, regulation or ordinance.

DOES A UNITED STATES DISTRICT COURT JUDGE ABUSE HIS AUTHORITY BY ORDERING CLERK TO NOT FILE ANY FURTHER PLEADINGS OF PETITIONER, IN HABEAS CORPUS PROCEEDINGS, WHERE ORDER RESULTED IN COURT'S FAILURE TO FILE AND RULE ON PETITIONER'S RULE 60(b) MOTION (F.R.C.P.) THAT ATTACKS A DEFECT IN THE INTEGRITY OF FEDERAL HABEAS CORPUS PROCEEDINGS ?

In this instance the District Court Judge's actions conflicts with Federal law 28 U.S.C. § 636 (b)(1)(B), and the U.S. Supreme Court's decision in *Gonzales v. Crosby*, 545 U.S. 528, 125 S.Ct. 2641, 2645 (2005) - held: Rule 60(b) allows a party to seek relief from a final judgement, and request re-opening of his case under a limited set of circumstances, including fraud, mistake and newly discovered evidence. See also *Canales v. Quartermann*, 507 F.3d. 884, 887 (5th Cir. 2007) - held: that district court's have jurisdiction to consider Rule 60(b) motions in habeas proceedings so long as the motion attacks, not the substance of the federal court's resolution of a claim on the merits but some defect in the integrity of the federal habeas corpus proceedings. Citing *Gonzales v. Crosby*, 125 S.Ct. at 2641.

Here, the Respondent Complied with Magistrate's - (A.W.Austin)

REASONS - (cont.)

order to answer § 2254 habeas petition and filed answer on March 05, 2018. The District Court Judge - Sam Sparks, intervened in this case and ordered § 2254 petition be dismissed without prejudice, and ordered certificate of appealability be denied, on April 04, 2018. The District Judge then proceeded to Order the Clerk shall not file any further pleadings in this case other than Notice of Appeal, on May 08, 2018. (Appendix - A).

Petitioner submitted his Rule 60(b) motion under Federal Rules of Civil Procedure on or about July 16, 2018, with a request for the certificate of appealability to attach to Rule 60(b) motion. On August 02, 2018, Petitioner submitted his Motion for the Court to rule on his Rule 60(b) motion. On or about August 10, 2018 Petitioner's pleadings - (Motion to rule on Rule 60(b) motion), were returned to Petitioner with copy of Court Order of May 08, 2018. (Appendix - B).

Petitioner contends that the intervention of Judge Sam Sparks in this federal habeas proceeding violated 28 U.S.C. § 636(b)(1)(B); Local Rules of U.S. Western District Court of Texas - (Rule "f" of Appendix "C", for the assignment of duties to U.S. Magistrate Judges; and Rule 8 of rules governing 28 U.S.C. § 2254 habeas corpus cases in U.S. District Courts.

Petitioner asks the Court, did the result of Judge Sparks action prejudice his § 2254 habeas proceedings by denying Petitioner a Report and Recommendation from the Magistrate

REASONS (cont.)

upon which "Objections" could have been raised and preserved, and the opportunity to file an adequate request for certificate of appealability.

The resulting Order of May 08, 2018, that Clerk shall not file any further pleadings, effectively denied Petitioner the opportunity to have his Rule 60(b) Motion filed, heard and ruled upon, thus denying Petitioner access to the Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Juadelys Padilla, Pro Se

Date: August 11, 2018