

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

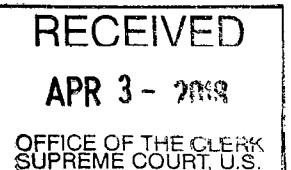
GUY BOUDREAUX, JR.--PETITIONER

VS.

STATE OF LOUISIANA--RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATE FIFTH CIRCUIT COURT OF APPEAL
PETITION FOR WRIT OF CERTIORARI

GUY BOUDREAUX, JR., *PRO SE*
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QUESTIONS PRESENTED

Is our system of justice truly just when it requires an attorney to attend six years of college prior to being permitted to practice law, but requires an uneducated man, who can not read nor write, to learn everything and practice law in a *pro se* manner in one year?

Are *pro se* litigants denied access to the justice system where a prisoner's right of access to the courts remain somewhat obscure since this Honorable Supreme Court has not extended this right to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a court. *Brewer v. Wilkinson*, 3 F.3d at 821; *Lewis*, 518 U.S. at 351, 116 S. Ct. at 2179-81; *Norton v. Dimazana*, 122 F.3d at 290; *Eason v. Thaler*, 73 F.3d 1322, 1329 (5th Cir.1996). Isn't this the same right given by the United States Postal Service?

When a defendant is charged with a sex offense and hires an attorney to assist him, why are these attorneys not held accountable by the courts for not following the laws, rules and/or procedures when their client becomes procedurally barred due directly to their actions? (See *Martinez v. Ryan*, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272, and *Trevino v. Thaler*, 569 U.S. 413, 133 S. Ct. 1911, 185 L. Ed. 2D 1044)

Does a procedural error made by an untrained *pro se* litigant who is ignorant of the law supersede the unquestionable violations of his rights as numerated by the United States Constitution and referenced by over 100 submitted legal authorities?

In the same vein of offenders committed to a life sentence of incarceration is a petitioner convicted of a sex crime offense who is or may be a party to life long offender registration given more leeway when having navigating the stringent rules relegating timelessness of various applications for post-conviction relief (including Habeas Corpus under 28 USC § 2254 and state post-conviction regulations), especially if the applicant is a *pro se* litigant?

And specifically concerning the Circuit Court's ruling on my Rule 60(b) motion, does an incarcerated petitioner, in accordance with 28 USC § 636 (b)(1) and Fed. R. Civ. P. 72 (b), have 14 days to file objections to a United States Magistrate Judge's Report and Recommendation from the date that the report was signed by the Magistrate Judge or 14 days from the receipt of that report when considering the processes of a prison's legal mail system?

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:

For the Custodian, Timothy Hooper, Warden
the Honorable Warren Montgomery,
District Attorney in and for the
Twenty Second Judicial District Court
Justice Center, 701 N. Columbia St.
Covington, Louisiana 70434

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR JUDICIAL REVIEW

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 _____ to the petition and is
[] reported at _____; or,
[] has been designated for publication but has yet to be reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is
 reported at 2017 U.S. Dist. LEXIS 5840 _____; or,
[] has been designated for publication but has yet to be reported; or,
[] is unpublished.

For case 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 has yet to be reported; or,
 is unpublished.

The opinion of the La. First Circuit Court of Appeals _____ court appears at Appendix _____ to the petition and is
 reported at 2011 La. App Unpub. LEXIS 832 _____; or,
[] has been designated for publication but has yet to be reported; or,
[] is unpublished.

JURISDICTION

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was Oct. 26, 2017.

No petition for rehearing was 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 writ of certiorari was granted to the including _____ (date) on _____ (date) in Application No. ____ A ____.

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

[X] For cases from **state courts:**

The date on which the highest state court decided my case was 10/26/17.
A copy of that petition 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 writ of certiorari was granted to the 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

"The Supreme Court has long held that 'prisoners have a constitutional right of access to the courts.'" *Al-Amin v. Smith*, 511 F.3d 1317, 1325 (11th Cir. 2008) (quoting *Bounds v. Smith*, 430 U.S. 817, 821, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977)). However, a prisoner's "contentions of deprivations of access to courts must show actual injury as a 'constitutional prerequisite.'" *Wilson v. Blankenship*, 163 F.3d 1284, 1290 (11th Cir. 1998) (quoting *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)).

STATEMENT OF THE CASE

On February 21, 2008, Guy Boudreax, Jr., was arrested for suspicion of violating La. R.S. 14:81.1 A(3), possession of pornography involving juveniles, and subsequently charged by bill of information with (51) fifty-one counts of the same on July 21, 2008. At a pretrial hearing on July 30, 2008, petitioner, accompanied by counsel – Mr. Ernie Barrow, III – entered a plea of not guilty to all counts. On August 16, 2010, after many pretrial hearings and no progression in the case, Petitioner, filed a motion for admission pro hac vice for counsel, Lt. Col Guy Womack, USMC Ret. The matter was continued until September 27, 2010 for the production of pertinent documentation. On September 27, 2010 after the court approved Lt. Col. Womack as defense counsel, the case was set for trial in early November, 2010.

On November 8, 2010, petitioner was present at trial with the representation of Lt. Col. Womack and Mr. Barrow. On November 11, 2010, he was found guilty, as charged, to (47) forty-seven of the counts and guilty of attempted possession as to the remaining (4) four counts. After numerous belays requested by Ms. Julie Knight, the ADA, sentencing was finally held on January 31, 2011. At this time the Court sentenced Mr. Boudreax to ten years, on each of the (47) forty-seven counts and (5) five years as to each of the (4) four counts. These sentences were imposed to be served concurrently and without the benefit of probation, parole, or suspension of sentence. All post trial motions were denied.

With the assistance of appointed appellate counsel – Ms. Mary Roper – Mr. Boudreax filed an appeal to the Louisiana First Circuit Court of Appeal. That Court subsequently denied all assignments of error on November 9, 2011¹ and affirmed the convictions and sentences.

¹ 2011-KA-0833, 2011 La. App. Unpub. LEXIS 832

Mr. Boudreux then filed a timely *pro se* writ of certiorari into the Louisiana Supreme Court. The Louisiana Supreme Court denied certiorari on August 22, 2012.²

Mr. Boudreux then prepared and filed an Application for Post Conviction Relief. Newly retained attorneys Mr. Robert Garrity and Mr. Vincent Wynne were to prepare a supplemental Application for Post Conviction Relief. After two years of waiting and questioning them as to when they were going to get something done, Mr. Boudreux filed supplements to his Application for Post Conviction Relief, both *pro se* and through newly retained counsel Mr. Overton Thomas Harrington.

On May 29, 2015 the trial court denied the Application. Mr. Harrington then filed writs to the Louisiana First Circuit Court of Appeal. On November 5, 2015, petitioner sought the status of the pending matter from the Appellate Court. On November 16, 2015 the Louisiana First Circuit Court of Appeal sent the petitioner a denial but it was dated for August 21, 2015.³ Mr. Boudreux then sought permission from the Louisiana Supreme Court to file an out-of-time application for certiorari. The Court GRANTED the motion and on December 31, 2015 Mr. Boudreux filed the Application for Certiorari. On March 14, 2016⁴ the La. Supreme Court held that the application would not be considered because it was untimely. Petitioner then filed for a rehearing due to the fact that the time lapse was through no fault of his own and the Court had given him permission to seek the Application. On May 2, 2016⁵ the La. Supreme Court denied rehearing.

On May 16, 2016 Mr. Boudreux filed into the United States District Court, Eastern

2 2011-KH-2805, 97 So. 3d. 352, 2012 La. LEXIS 2147

3 2015-KW-1091, 2015 La. App. LEXIS 1604

4 2015-KH-2168, 186 So. 3d. 645, 2016 La. LEXIS 571

5 2015-KH-2168, 206 So. 3d. 876, 2016 La. LEXIS 1071

REASONS FOR GRANTING THE PETITION

Mr. Guy Boudreux. Petitioner herein, comes before this Honorable Court with full knowledge that the law is against his argument. Mr. Boudreux simply prays that his argument will give this Honorable Court pause to consider the position presented.

Mr. Boudreux has been through every Court along the way attempting to present his claims. Mr. Boudreux was convicted of possession of child pornography and due to his incompetence in the practice of law, he has been denied at every step of the procedure. Mr. Boudreux argues that the system of justice is simply not fair when it comes to *pro se* petitioners. He understands that some finality must be put in place to assure that the system does not get overwhelmed and he understands that there are some *pro se* petitioners that simply have to be stopped from filing frivolous claims into the Courts, but, Mr. Boudreux argues that this plainly cannot be a one rule fits all type of policy. Mr. Boudreux has been denied the opportunity to present the following claims due to his being an unlearned *pro se* petitioner.

- 1) My rights to due process and fundamental fairness were violated prior to and during trial by now former Assistance District Attorney, Julie M. Knight, who admitted to manipulating and falsifying State's evidence after the lead investigator, Special Agent Calvin Williams completed his investigation for Immigration and Customs Enforcement.
- 2) My rights under the Fourth Amendment were disregarded as a "no-knock" raid and "initial informal interview" were performed on February 21, 2008 even though it was admitted to, on record, by Special Agent Calvin Williams and St. Tammany Parish Detective Rachel Smith, that a search warrant was not applied for until February 22, 2008, the day after the raid and interview took place.

- 3) I was not read my rights under *Miranda v. Arizona*,⁹ until I was escorted away from my home and after the “no-knock” raid and “initial informal interview” took place, and I was not presented with 2 copies of a form to sign acknowledging my rights until being secretly video taped during a second interrogation at the local investigator's office which occurred some two hours after the “no-knock” raid and “initial informal interview”.
- 4) I was forced, unprepared to defend myself against untimely, unverified, and un-reviewed technical evidence of presumed (Federal Rule and State Rule 403) other acts, crimes, or wrongs which was taken from a second, unrelated computer's cashe file when I had no knowledge of the existence or function of a computer's cache memory.
- 5) My Sixth Amendment right to effective assistance of counsel was violated when my initial attorney, Ernie Barrow, III, rendered ineffective assistance for almost three years prior to trial, during trial, and at sentencing; in so, fundamentally rendering the efforts of a second counsel, Lt.Col. Guy Womack, U.S.M.C. Ret., who was hired in the waning moments prior to trial and forced to trial unprepared, also ineffective when considering *Strickland v. Washington*.¹⁰

Clearly these types of issues warrant review by the courts and support that pro se petitioners access to the Courts should constitute more than simply an assurance that it will be mailed.

“It has long been recognized that prisoners generally enjoy the constitutional right of access to the court.” *Jones v. Greninger*, 188 F.3d 322, 325 (5th Cir. 1999); *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977); *Lewis v. Casey*, 518 U.S. 343, 351, 116

⁹ 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966)

¹⁰ 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)

S. Ct. 2174, 135 L. Ed. 2D 606 (1996). Mr. Boudreux understands that this Honorable Court has probably heard every conceivable argument under the sun when it comes to this issue but, he also understands that the law is not being fairly applied and that is a constitutional violation. Access to the Courts should not mean that the mail will deliver the filing. Access to the Courts should mean that someone will actually look at your issue and not make every attempt to find a procedural reason to deny *pro se* petitioners access.

Mr. Boudreux is a simple man with limited knowledge of the law yet, he is being held to the same standard as a person who has completed, at least six (6) years of college, interned for law firms a few years, and in practice for many years before being qualified to stand before this Honorable Court. Mr. Boudreux has no formal training and has been left at the mercy of several attorneys that have misled him and caused him to be denied access due to their failures resulting in the application of procedural bars¹¹.

Mr. Boudreux attempted to gain legal assistance through the Legal Programs Department here at Elayn Hunt Correctional Center but there was not an actual system in place for him to gain this assistance. What he found were unqualified, improperly trained Offender Counsels who had no idea how to assist him.¹² He went as far as to obtain a job in the prison's law library so that he could try to help himself. He quickly learned that it was not the Offender Counsels fault, as it was the sources of law and research materials that were seriously outdated.

Mr. Boudreux has always been a law abiding citizen and had faith that our system of justice was the greatest in the world. Since his incarceration he has found that he has a lot to

11 Martinez v. Ryan, 566 U.S. 1, 132 S. Ct. 1309, 182 L. Ed. 2d 272, and Trevino v. Thaler, 569 U.S. 413, 133 S. Ct. 1911, 185 L. Ed. 2d 1044,

12 The prison has made great strides in the improvement of the Law Library since that time as far as training of the Offender Counsels but, continue to have outdated law and research materials.

learn. During his time assigned in the prison's law library he learned that he has a constitutional right of access to the courts. "While the precise contours of a prisoner's right of access to the courts remain somewhat obscure, the Supreme Court has not extended this right to encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a court." *Brewer v. Wilkinson*, 3 F.3d at 821; Lewis, 518 U.S. at 351, 116 S. Ct. at 2179-81; *Norton v. Dimazana*, 122 F.3d at 290; *Eason v. Thaler*, 73 F.3d 1322, 1329 (5th Cir.1996). Mr. Boudreux is seeking for this Court to set some reasonable guidelines to the definition of "access to the Courts". Currently this simply means that *pro se* petitioners have the right to prepare and transmit a necessary legal document to a court. This is the same right as given by the U.S. Mail. Mr. Boudreux argues that his right should encompass more than the ability of an inmate to prepare and transmit a necessary legal document to a court.

It has been said that before an inmate can prevail on a claim that his constitutional right of access to the courts was violated, he must demonstrate that he suffered "actual injury", that is, that the denial of access "hindered his efforts to pursue a legal claim." *Lewis*, 518 U.S. at 351; *McDonald v. Steward*, 132 F.3d 225, 231 (5th Cir. 1998); *Ruiz v. United States*, 160 F.3d 273, 275 (5th Cir. 1998); *Chriceol v. Phillips*, 169 F.3d 313, 317 (5th Cir. 1999). It is clear that Mr. Boudreux can show that due to the ineffectiveness of his counsels, he has been procedurally barred from access to the courts.

Mr. Boudreux argues that access to the courts should mean more than simply delivering the filing to the Clerk, somebody should be required to review the argument presented in his filings. No one has reviewed the actual argument presented because of the application of procedural bars attributed to Mr. Boudreux by the ineffective assistance of retained counsel.

Mr. Boudreax would also argue that he should not be held to the same standard as an attorney. Oh he is aware that there are several holdings that say he is not held to the same standard but, this is simply not true. Uneducated *pro se* petitioners are sometimes held to a higher standard than very well educated attorneys. Mr. Boudreax has seen, through his own experience, that there are times when the attorney could send something to the Courts that cited no authority, or was not formatted properly, and the court would grant relief. A *pro se* petitioner could send something, to the same court, that is backed with the law in every way and get denied on a technical violation because of the wrong typeface or something similar. This is an exaggeration but, not really that far from the truth.

A prisoner plaintiff alleging a violation of his right of access to the courts must show actual injury in the pursuit of specific types of non-frivolous cases: direct or collateral attacks on sentences and challenges to conditions of confinement. This essential standing requirement means that prison officials' actions . . . must have impeded the inmate's pursuit of a non-frivolous, post-conviction claim or civil rights action. To prevail, a plaintiff must provide evidence of such deterrence, such as a denial or dismissal of a direct appeal, habeas petition, or civil rights case that results from actions of prison officials. The plaintiff must be able to demonstrate that the officials' actions hindered his efforts to proceed with his legal claim.

Mr. Boudreax has been denied his constitutional right to bring his challenges before the courts; thus, when any inmate—even an illiterate or non-English-speaking inmate shows that an actionable claim of this nature which the inmate desired to bring has been lost or rejected, or that the presentation of such a claim is currently being prevented, because the capability of filing suit has not been provided, the inmate demonstrates that the state has failed to furnish

adequate law libraries or adequate assistance from persons trained in the law; impairment of any other litigating capacity is one of the incidental, and constitutional, consequences of conviction and incarceration. *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 135 L. Ed. 2d 606 (1996)

CONCLUSION

Mr. Boudreax has been falsely convicted of a crime, and due to the nature of the alleged crime, he cannot get a proper review of the issues. Mr. Boudreax simply seeks for this Honorable Court to grant him certiorari so that he may fully present his claim of the denial of Due Process and ineffective assistance of counsel. USCA 6 and 14.

The petition for writ of certiorari should be granted.

Respectfully submitted,



Date: 26 MAR 18