No. 18-6622

ORIGINAL

IN THE

SUPREME COURT OF THE

UNITED STATES

KEELAND DURALLE WILLIAMS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Appeal from the United States
Court of Appeals for the Fifth Circuit
(No. 16-20815)

PETITION FOR WRIT OF CERTIORARI

Mr. Keeland Duralle Williams
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QUESTION PRESENTED

Whether a court of appeals is required to grant a habeas petitioner a COA when the question presented clearly is debatable by jurist of reason as demonstrated in published opinion.

TABLE OF CONTENTS

INDEX TO APPENDICES

TABLE OF AUTHORITIES

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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The Opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is a published decision, 897 F.3d. 660 (5th Cir. 2018).

The Opinion of the United States District Court for the Southern District of Texas appears at Appendix B to the petition and is an unpublished decision.

JURISDICTION

The date on which the United States Court of Appeals decided my case was July 30, 2018.

No petition for rehearing was filed in this case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V - Due Process Clause

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

United States Code, Section 2253(c)(1) and (2)

Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

the final order in a habeas corpus proceedings under section 2255.

A certificate of apealability may issue under paragraph (1) only if the applicant has made a subtantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

Petitioner filed a motion under 28 U.S.C. §2255 seeking to have Johnson v. United States, 576 U.S. (2015) applied to his conviction and sentence; however, the district court dismissed the §2255 motion as time-barred and also denied relief on the merits.

Petitioner sought a COA in order to appeal the district court's ruling, and the court of appeals subsequently denied petitioner a COA.

Consequently, petitioner sought reconsideration of the court of appeals denied of a COA, and appellate court issued a directive instructing petitioner and the government to discuss if Dimaya was retroactively applicable to cases on collateral review. Although, the government conceded that Dimaya presented a new substantive rule that was retroactively applicable to collateral review cases, it could not be applied to petitioner's §924(c) conviction.

The court of appeals withdrew its previous order denying a COA and substituted it for another order, after granting petitioner's motion for reconsideration.

In the appellate court's decision, it denied petitioner's application for a COA because it found that §924(c)(3)(B) remained valid after this Court's decision in Dimaya, and thus concluding that reasonable jurist would not find the district court ruling debatable.

Therefore, petitioner files this petition for writ of certiorari seeking a COA from this Court.

REASON FOR GRANTING WRIT

Whether a court of appeals is required to grant a habeas petitioner a COA when the question presented clearly is debatable by by jurist of reason as demonstrated in published opinion.

This Court has recently reaffirmed that matter in which an appellate court considering a habeas petitioner's request for a COA should handled. See Buck v. Davis, 580 U.S. ____ (2017); see also, Miller-El v. Cockrell, 537 U.S. 322 (2003).

Specifically, this Court has repeated admonished lower appellate court that they are to conduct a threshold inquiry to determine whether a habeas petitioner is entitled to proceed on appeal after obtaining a COA. Buck,supra (stating "[a]t the COA stage, the only question is whether the applicant has show that 'jurist of reason could disagree with the district court's resolution on his constitutional claims or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further.'")(quoting Miller-El at p. 327). Importantly, "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." Buck, supra (quoting Miller-El, at p. 338).

In this case, petitioner sought to appeal the district court's denial of his §2255 claim that this Court Johnson decision which found that the residual clause in the ACCA was unconstitutionally vague. And, after being denied the opportunity to raise the claim in the district court, petitioner sought a COA in the court of appeals. See United States v. Williams, 897 F.3d. 660 (5th Cir. 2018).

Petitioner's initial request for a COA was denied on March 9, 2018 and he thereafter sought reconsideration of the appellate court's decision. Williams, supra at p. 660. Consequently, the appellat court posed a question to the parties following this Court's decision in Sessions v. Dimaya, 584 U.S. ____ (2018), directing an answer as to whether the decision announced a new rule of substantive law that applied retroactively to collateral review cases.

Significantly, the respondent agreed that Dimaya was retroactive, but that it was not made retroactively applicable to cases on collateral review by this Court and thus was not available to petitioner. Even though that appellate court decision arguably agreed with respondent and denied petitioner a COA, it failed to apply the law correctly as applicable to the question of when a prisoner should be given a COA to appeal in the collateral context. Williams, supra (concluding "that jurist of reason would not find it debatable that the district court was correct in its procedural ruling")(emphasis in original).

The Williams Court found that after this Court had remanded numerous cases instructing lower appellate "courts to reconsider §924(c)(3)(B) cases in light of Dimaya," such instruction did not equate to the statutory provision being unconstitutional. Id. (emphasis in original). Due to this reasoning, the appellate court found "Section 924(c)(3)(B) remains valid" and that without it "actually hav[ing] first be[ing] invalidated" petitioner could not have his §2255 motion considered timely "because it was filed too early, not too late." Id. (citing United States v. Santisteran, 730

Fed. Appx. 691, 692 (10th Cir. 2018).

Even assuming without conceding the correctness of the appellate court reasoning, it still does not warrant denying him a COA See Miller-El v. Cockrell, 537 U.S. 322, 337 (2003)("It is consistent with §2253 that a COA will issue in come instances where there is no certainty of ultimate relief. After all, when a COA is sought the whole premise is that the prisoner 'has already failed in [obtaining relief]").

First of all, the Miller-El Court condemned an appellate court consideration issues directly presented in a case without first granting a COA. Miller-El, supra at pp. 337-38 ("When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction"). This is essentially what the appellate court did in petitioner's cases when it determined the propsed question i.e., whether Dimaya was unconstitutionally vague and retroactively applicable to cases on collateral review—a question that this Court referred to the lower appellate courts to resolve. See Davis v. United States, 2018 U.S. Lexis 3058 (May 14, 2018); Winters v. United States, 2018 U.S. Lexis 2911 (May 14, 2018); and Lin v. United States, 2018 U.S. Lexis 2966 (May 14, 2018).

Equally important, is that several circuits have resolved the question this Court posed long before it was even presented which demonstrates that a reasonable jurist could find the appellate couret 's decision in the instant case is debatable. Cf. United States v. Williams, 897 F.3d. 660 (5th Cir. 2018), with United

States v. Cardena, 842 F.3d. 959, 996 (7th Cir. 2016)(finding that §924(c)(3)(B) unconstitutionally vague); United States v. Salas, 889 F.3d. 681, 687-88 (10th Cir. 2018); United States v. Eshetu, 898 F.3d. 36 (D.C. Cir. 2018)(en banc remand in light of Dimaya). Furthermore, although this Court resolved the question of §16(b) being unconstitutionally vague under Johnson in its Dimaya ruling, the Chief Judge of this Court himself recognized the implications Dimaya had on the statutory provision of §924(c) in question in this case. See Sessions v. Dimaya, 584 U.S. ___ (2018)(Roberts, C.J. dissenting)(stating "[o]f special concern, §16(b) is replicated in the definition of 'crime of violence' applicable to §924(c) which prohibits using or carrying a firearm 'during and in relation to any crime of violence'")

And although the Chief Judge explicitly stated that he "expresse[ed] no view on whether §924(c) can be distinguished from the provisions' in §16(b), he did acknowledge that "the Court's holding calls into question convictions [that] is an 'oft-prosecuted offense.'" Id. (quoting Brief for United States).

These statements of the Chief Judge lend further credence to the law which governs these proceedings i.e., when a COA should be issued by an appellate court such as in a case like the one before the Court. Certainly, the long held historic dictates of granting a COA must be applied in this case, and considering that a reasonable jurist could find whether §924(c)(3)(B) is unconstitutionally vague under Johnson and Dimaya is a debatable question. Thus, even if petitioner would be entitled to no relief, that does not prevent him from obtaining a COA under the circumstances of

this case.

Therefore, this Court should grant petitioner a COA, vacate the appellate court's decision denying a COA and remand the matter to the lower appellate court so that it can properly conform to this Court's decision in Miller-El, which has been recently reaffirmed in Buck v.Davis, 580 U.S. ___ (2017). Especially when, the record aptly shows that the appellate court resolved the essential question of whether §924(c)(3)(B) is unconstitutionally vague under Dimaya, without first granting a COA in contravention of Miller-El.

CONCLUSION

This Court should grant certiorari in this case by issuing a COA and remanding the matter to the lower appellate court.

Respectfully submitted,

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