

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARRELL BROWN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO
ELEVENTH CIRCUIT
UNITED STATES COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARRELL BROWN #93572-071
(Your Name)

FEDERAL CORRECTIONAL INSTITUTION
(Address)

PO. BOX. 1032, COLEMAN, FLORIDA 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Supreme Court should grant certiorari in this case whereas the petition creates an important **first impression** of the merits, which will have an effect on the outcome of these proceedings. Specifically, Petitioner was .. denied the protections of the Great Writ in its entirety by the lower court's failure to adjudicate all of his claims - presented in his initial § 2255 motion ?

2. Whether the Eleventh Circuit has so far departed from the accepted and usual course of judicial proceedings, by failing to remand Petitioner's case in light of established Supreme Court precedent Rose v. Lundy, 455 U.S. 509 (1982), and Eleventh Circuit precedent in Clisby v. Jones, 960 F.2d 925 .. (11th Cir. 1992), as to call for an exercise of this Court's supervisory power ?

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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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 is unpublished.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 E 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 is unpublished.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 is unpublished.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 March 29, 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: June 20, 2018, and a copy of the order denying rehearing appears at Appendix A.

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

AMENDMENT 5

Criminal actions-Provisions concerning-Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

Rights of the accused.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Petitioner raised two separate grounds in his initial 28 U.S.C. § 2255 petition; (1) that he was constructively denied counsel at the critical stage of the proceeding at the pre-trial stage, explicitly setting forth 7 individual reasons that the performance of counsel was so inadequate, that, in effect, no assistance of counsel was provided; that counsel failed to actively advocate for his cause which ... resulted in the constructive denial of counsel. In accordance with United States v. Cronic, 466 U.S., 648 654 n. 11, 104 S. Ct. 2039, 80 L. Ed. 2d 657 (1984)(prejudice is presumed in cases which there is actual or constructive denial of ... counsel). (2) Petitioner raised 3 subclaims of ineffective assistance of counsel; - sub (A) counsel was ineffective for failing to object to a constructive amendment of the indictment in the Government's presentation of evidence. sub (B-1), of ground two trial counsel was ineffective for failing to then object to a constructive amendment to the indictment in the U.S. District Court's instructions to the jury pertaining to the identity of the individuals who agreed to the charged - conspiracy; and sub (B-2) trial counsel was ineffective for failing to object to a constructive amendment of the indictment in the district court's instructions to the jury pertaining to the object of the conspiracy.

Attached hereto as Appendix F is Petitioner's exhaustive procedural history exercising diligence in attempt to reach final disposition of the two grounds articulated in his.... **first** federal habeas petition. At each stage of the federal court proceedings, Petitioner's two articulated grounds - never reached final disposition, rather the U.S. Magistrate, U.S. District Court, and the Panel of Eleventh Circuit Judges .. exercised perfunctory review of Petitioner's grounds without adjudicating **all** the claims raised in his first § 2255.

The question presented now is whether the United States Supreme Court must resolve those claims in the first instance as to whether the district court in conjunction with the United States Court of Appeals for the Eleventh ... Circuit misconstrued the claims presented in grounds one and two of Petitioner's 28 U.S.C. § 2255 motion alledgeing ... ineffective assistance of counsel; and whether both the U.S. District Court and the Appellate Court violated Clisby v. Jones, 960 F.2d 925 (11th Cir. 1992)(en banc), by failing to properly address those grounds ?

It is imparitive that Petitioner mention that he presented his claims in clear and simple language such that the district court may not misunderstand those claims. The Eleventh Circuit's only role was to determine whether a district court failed to address a claim[.] The Suprme Court is Petitioner's only remaining opportunity to have ground one and two properly - addessed; now this matter is before the Court on first impression.

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

A P P E N D I X F

I. Procedural History

1. On June 2, 2009, a federal grand jury sitting in Miami, Florida, returned an indictment against the Petitioner and codefendants Oscar Gonzalez and Cory Cortes charging conspiracy to possess with the intent to distribute five (5) kilograms or more of cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A)(ii) in Count 1; and attempted possession with intent to distribute five (5) kilograms or more of cocaine, in violation of 21 U.S.C. §§ 846 and 841(b)(1)(A)(ii) in Count 2.

2. On July 30, 2009, Petitioner, along with his codefendants, was convicted of the conspiracy (Count 1) after a trial by jury but was acquitted of the attempt (Count 2). Thereafter, on October 8, 2009, the district court sentenced

the Petitioner to a minimum mandatory of two-hundred and forty (240) months imprisonment pursuant to 21 U.S.C. § 851(a).

3. Petitioner appealed to the Eleventh Circuit Court of Appeals and on January 24, 2011, that court Oscar Gonzalez, et.al., case no. 09-15258, 414 Fed.Appx. 189 (11th cir. Jan. 24, 2011). Thereafter, Petitioner filed a petition for writ of certiorari with the U.S. Supreme Court, which was denied on October 3, 2011. (Darrell Brown, case no. 10-10939).

4. On October 2, 2012, Petitioner, proceeding pro se, filed a timely motion to vacate pursuant to 28 U.S.C. § 2255 (De#1, case no. 12-cv-23704-PCH). In that motion, Petitioner raised two (2) grounds of ineffective assistance of counsel:

In Ground One of Petitioner's § 2255 motion, Petitioner argued that he was constructively denied counsel at a critical stage. Specifically, Petitioner argued several instances of deficient performance by original counsel, Charles Everett, and substitute counsel, David Pettus, that, individually, prejudiced the Petitioner and warranted relief, but overall, amounted to a constructive denial of counsel at the pretrial stage that, pursuant to United States v. Cronic, 466 U.S. 648, 80 L.Ed.2d 657, 104 S.Ct. 2039 (1984), warrants a presumption of prejudice.

See Motion to Vacate at 5-6, 24 (Cv-De.#1).

In Ground two of the Motion to Vacate (Cv-De.#1), Petitioner argued that counsel, Mr. Pettus, provided ineffective assistance by failing to object to a constructive amendment to the indictment on three (3) separate occurrences. Specifically, in Section 'A' of ground two in the motion to vacate, Petitioner argued that Mr. Pettus failed to object to a constructive amendment to the indictment in the government's presentation

of evidence, and in Section 'B' of ground two, Petitioner argued that Mr. Pettus provided ineffective assistance when he failed to object to two (2) separate constructive amendments to the indictment in the jury instructions. see Motion to Vacate at 25-41 (Cv-De.#1).

5. On October 11, 2012, the district court assigned the § 2255 motion to Magistrate Judge Patrick A. White for a ruling on all non-dispositive matters and a report and recommendation on any dispositive matters. (DE#3, case no. 12-cv-23704-POH).

6. On June 19, 2014, after the one-year limitations period to file his § 2255 motion had expired, but before a new one-year limitation period triggered under § 2255(f)(3) had expired, Petitioner filed a pleading requesting leave to amend his initially filed § 2255 motion to include the additional ground that the sentencing enhancement applied in his case is violative of the Supreme Court's opinion issued on June 20, 2013, in Descamps v. United States, ___, U.S. ___, 133 S.Ct. 2376, 186 L.Ed.2d 438 (2013), under § 2255(f)(3). (DE#24, case no. 12-cv-23704-PCH). Specifically, Petitioner argued that the modified categorical approach was erroneously applied to classify his prior State conviction under Florida Statute § 893.13 as a prior 'felony drug offense' for enhancement under 21 U.S.C. § 851.

7. On June 30, 2014, Magistrate Judge Patrick A. White denied Petitioner's Motion Requesting Leave To Amend and/or Supplement Section 2255 Motion and instead construed the pleading as a supplemental reply to the government's response. (DE#25, case no. 12-cv-23704-PCH).

8. On July 2, 2014, without conducting an evidentiary hearing, Magistrate Judge Patrick A. White entered a Report and Recommendation concluding that Petitioner's § 2255 motion should

be denied. (DE#26, case no. 12-cv-23704-PCH). In that Report and Recommendation, Magistrate Judge White makes no mention of the constructive Denial of Counsel at a Critical Stage of the Proceedings pursuant to Cronic claim. Instead, the Report and Recommendation addressed the instances of deficient performance identified by Petitioner to support the Cronic claim. As for the three(3) separate claims of counsel's ineffectiveness for failing to object to three(3) separate occurrences of constructive amendments to the indictment, the Report and Recommendation merged the three(3) separate claims into one and, by doing so, created a whole new claim that Petitioner did not make. Also, Magistrate Judge White determined Petitioner was not entitled to review on the merits of his supplemented unlawful sentence pursuant to Descamps claim because it was time-barred.

9. On July 24, 2014, Petitioner filed objections to the Report and Recommendation arguing, among other things, that ground one in the § 2255 motion was one(1) claim of constructive denial of counsel at the pretrial stage supported by instances of deficient performance prior to trial identified by Petitioner and the Report and Recommendation failed to address it. Petitioner further objected to the Report and Recommendation construing the three separate claims of ineffective assistance for failure to object to constructive amendments to the indictment raised in ground two as one claim. Petitioner also objected to Magistrate Judge White's failure to conduct an evidentiary hearing and his failure to apply the Teague analysis to the supplemented unlawful sentence pursuant to Descamps claim. (DE#27, case no. 12-cv-23704-PCH).

10. On July 25, 2014, the district court adopted the Report

and Recommendation, overruled Petitioner's objections, and entered judgment denying Petitioner's § 2255 motion. (DE#28, case no. 12-cv-23704-PCH). Notably, the district court construed Petitioner's objection to the Report and Recommendation's failure to address his Constructive Denial of Counsel at the pretrial stage pursuant to Cronic claim as a new cumulative error claim and denied it as such.

11. On November 14, 2014, Petitioner applied to the Eleventh Circuit Court of Appeals for Certificate of Appealability from the district court's order dismissing his § 2255 motion and Certificate of Appealability. (USCA No. 14-14898-A). Among the issues set forth in the certificate of appealability was (1) whether the district court violated Clisby v. Jones, 960 F.2d 925, 936 (11th cir. 1992)(en banc), when it failed to address Petitioner's constructive denial of counsel pursuant to Cronic claim raised in ground one of the § 2255 motion; (2) Whether the district court violated Clisby v. Jones, when it failed to address the three separate claims of ineffective assistance of counsel raised in ground two of the § 2255 motion; and (3) Whether the district court erred when it failed to apply the Teague analysis when deciding the retroactive application of Descamps in this case.

12. On May 21, 2015, in a single judge order, the Eleventh Circuit Court Appeals denied Petitioner's motion for a certificate of appealability. (USCA No. 14-14898-A). In that order, the Eleventh Circuit Court Appeals did not address Petitioner's Clisby violation argument pertaining to the district court's failure to address his constructive denial of counsel pursuant to Cronic claim, nor did it address the issue of whether the district court erred when it failed to apply the

Teague analysis when deciding the retroactive application of Descamps in this case.

13. On July 15, 2015, the Eleventh Circuit Court Appeals denied Petitioner's Motion to Reconsider its denial of Petitioner's application for a certificate of appealability.

14. On August 25, 2015, Petitioner filed a Motion For Relief From Final Judgment, Order, or Proceeding pursuant to Fed.R.Civ.P. 60(b)(6). (DE#38, case no. 12-cv-23704-PCH). In that motion, Petitioner argued that the district court failed to address the constructive denial of counsel at a critical stage of the proceedings pursuant to Cronic claim raised in ground one of the § 2255 motion, a defect in the integrity of the habeas proceedings.

15. On September 2, 2015, Magistrate Judge Patrick A. White issued an order declaring Petitioner's Fed.R.Civ.P. 60 motion was in fact a second and/or successive § 2255 motion and directed the clerk to open a new civil case as to Petitioner's Fed.R.Civ.P. 60 motion pursuant to 28 U.S.C. § 2255. (DE#41, case no. 12-cv-23704-PCH). Thereafter the docket entry listed the new case number as 15-23308-cv-PCH/PAW.

16. On September 04, 2015, the district court issued an order denying Petitioner's Fed.R.Civ.P. 60 motion. (DE#6, case no. 15-23308-cv-PCH/PAW).

17. On November 04, 2016, the Eleventh Circuit Court of Appeals denied Petitioner's Motion to Reconsider its denial of Petitioner's application for a certificate of appealability. (USCA No. 15-15705-E).

18. On August 14, 2017, switching tactics in an effort to salvage what was left of Petitioner's habeas opportunity,

Petitioner filed a second Motion for Relief From Final Judgment, Order or Proceeding pursuant to Fed.R.Civ.P. 60(b)(6). (DE#42, case no. 12-cv-23704-PCH). In that motion, Petitioner argued that the district court (1) failed to address all the claims of ineffective assistance of counsel raised in ground one of the § 2255 motion, specifically, counsel's failure to investigate any defense whatsoever; (2) erroneously failed to conduct a merits review of the unlawful sentence pursuant to Descamps claim sought in Petitioner's pleading requesting leave to amend his initially filed § 2255; and (3) denied Petitioner his right to present evidence in support of his allegations and, subsequently, a fair opportunity to seek habeas relief, when it failed to conduct an evidentiary hearing in this case, all of which amounted to defects in the integrity of the habeas proceedings that warrants the § 2255 petition being reopened.

19. On September 25, 2017, the district court issued an order denying Petitioner's Fed.R.Civ.P. 60 motion. (DE#44, case no. 12-cv-23704-PCH). In that order, the district court asserted that it has previously considered all of Petitioner's ineffectiveness of assistance of counsel arguments and denied them, which denial was affirmed on appeal.

20. On October 12, 2017, Petitioner filed a Motion for Reconsideration pursuant to Fed.R.Civ.P. 59(e). (DE#45, case no. 12-cv-23704-PCH). In that motion, Petitioner argued that the district court made a manifest error of fact by mistaking Petitioner's current Fed.R.Civ.P. 60 motion (DE#42) to be Petitioner's previously filed Fed.R.Civ.P. 60 motion (DE#38) that was considered and denied in case no. 15-cv-23308-PCH/PAW, and erroneously concluded that the claims raised in the current

Fed.R.Civ.P. 60 motion were already considered, denied, and affirmed on appeal.

21. On October 17, 2017, the district court issued an order for the government to respond to Petitioner's Motion for Reconsideration by November 13, 2017. (DE#46, case no. 12-cv-23704-PCH).

22. On November 13, 2017, the government responded to Petitioner's motion for reconsideration. (DE#47, case no. 12-cv-23704-PCH). In that response the government argued that the motion for reconsideration must be rejected because, contrary to Petitioner's assertions, the district court had considered and rejected all of Petitioner's claims during his first § 2255 proceeding.

23. On November 27, 2017, the district court issued an order denying Petitioner's motion for reconsideration. (DE#48, case no. 12-cv-23704-PCH). In that order, the district court found that no grounds for reconsideration were present in this case.

24. On January 16, 2018, Petitioner filed a Notice of Appeal. (DE#50, case no. 12-cv-23704-PCH).

25. On January 25, 2018, the district court sua sponte considered Petitioner's Notice of Appeal as a Certificate of Appealability and denied it as such. (DE#52, case no. 12-cv-23704-PCH).

26. On February 9, 2018, Petitioner applied to the Eleventh Circuit Court of Appeals for the issuance of a certificate of appealability to appeal the district court's order denying his Motion For Relief From Final Judgment, Order, or Proceeding pursuant to Fed.R.Civ.P. 60(b)(6) (Cv-De#44); and it's order

denying Petitioner's Motion for Reconsideration pursuant to Fed.R.Civ.P. 59(e) (Cv-Def#48), on the following issues: (1) Whether the district court made a manifest error of fact when it concluded that it has previously considered the claims raised in Petitioner's Fed.R.Civ.P. 60 motion; (2) Whether the district court failed to address the 'failure to investigate any defense whatsoever' claim raised in Petitioner's § 2255 motion warranting the habeas proceedings being reopened; Whether the district court erroneously time-barred Petitioner's supplemented unlawful sentence claim warranting the habeas proceedings being reopened; and whether the district court violated 28 U.S.C. § 2255(b) and Rule 8 of the Federal Court Rules Governing Section 2255 proceedings when it accepted the government's allegations as fact and conclusive against Petitioner's global plea claim warranting the habeas proceedings being reopened.

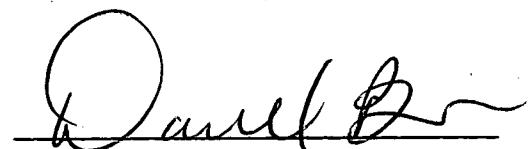
27. On March 29, 2018, the Eleventh Circuit Court of Appeals denied Petitioner's application for a certificate of appealability on the grounds that Petitioner failed to demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong" or that the issues "deserve encouragement to proceed further." See Darrell Brown v. USA, Appeal No. 18-10298-H.

28. On April 18, 2018, Petitioner filed a Motion to Reconsider, Vacate, or Modify it's order denying his application for a certificate of appealability to the Eleventh Circuit Court of Appeals on the grounds that the court applied an incorrect analysis when evaluating petitioner's application for a COA. Darrell Brown v. USA, Appeal No. 18-10298-H.

29. On June 20, 2018, the Eleventh Circuit Court of Appeals denied Petitioner's Motion for Reconsideration on the grounds

that Petitioner offered no meritorious arguments to warrant relief. Darrell Brown v. USA, Appeal No. 18-10298-H.

August 8, 2018



DARRELL BROWN #93572-071

FEDERAL CORRECTIONAL INSTITUTION
PO. BOX. 1032
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REASONS FOR GRANTING THE PETITION

Petitioner moved to reopen the judgement pursuant to Rule 60(b) making a prima facie showing there exist a defect in the integrity of the habeas proceedings after the United States District Court failed to address all of the grounds raised in his first federal habeas proceeding. Petitioner's procedural history demonstrates his diligence in attempting to present the matter clearly before the court for final ... adjudication of those grounds.* However, the District Court misconstrued his reasons demonstrating ineffective assistance of counsel, as grounds and dismissed the habeas petition all together, without adjudicating all the claims presented in .. his first habeas, denying him of the protections of the Great Writ entirely. See Lonchar v. Thomas, 517 U.S. 314 (1996) (" .. dismissal of a first federal habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protection of the Great Writ entirely, risking injury to an important interest in human liberty").

The Eleventh Circuit law holds, under the court's supervisory power, that "the district court's in this Circuit must address all claims presented in a habeas petition

*See App F.

regardless of whether relief is granted or denied"). See Rose v. Lundy, 455 U.S. 509, 102 S. Ct. 1198, 1204, 71 L. Ed. 2d 379 (1982) ("To the extent that the ['total exhaustion'] requirement reduces piecemeal litigation, both the courts and the prisoner should benefit, for as a result the district .. court will be more likely to review all of the prisoner's - claims in a single proceeding, thus providing for a more .. focused and thorough review."); Galatieri v. Wainwright, 582 F.2d 348, 356 (5th Cir. 1978)(en banc). The Clisby court .. held that "[t]he havoc a district court's failure to address all claims in a habeas petition may wreak in the federal and state court systems compels us to require all district courts to address all such claims. Accordingly, this court, from now on, will vacate the district court's judgement without prejudice and remand the case for consideration of all remaining claims whenever the district court has not resolved all such claims."

Id at 960 F.2d 938. Havoc, is the result of the District ... Court's failure to address all of Petitioner's clear and unambiguous claims presented in his first habeas petition. The Petitioner here was compelled to file (2) Rule 60(b) motions in conjunction with a litany of piecemeal litigation that ... began on October 2, 2012, after filing a timely 28 U.S.C. § 2255(f)(1) motion.. Petitioner has yet to reach a final ... decision on ground one and two, respectively. See Catlin v.

United States, 324 U.S. 229-244, 89 L. Ed. 911, 916 (1921)

A "final decision" generally in one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgement. see also Laffey v. Northwest Airlines, Inc., 642 F.2d 578, 584 (D.C. Cir. 1980). An order is final only when the court has resolved all disputed matters before it and need take no further action save to execute the judgement. The 1974 order did not meet this standard of finality because it left unadjudicated the calculations essential to ascertainment of - the amount of back pay NWA owed each employee who was victimized by its Equal Pay Act and Title VII transgression. Id at 642 F.2d at 584. Like Laffey, Petitioner's piecemeal litigation has now spanned nearly 7 years without reaching final disposition. In order to demonstrate the "havoc" for the district court's ... failure to address all of Petitioner's claims, on June 30, 2014, while Petitioner's first § 2255 was pending review, he filed a motion requesting leave to amend or supplement the record .. with a new substantive Supreme Court decision. (Descamps 133 S. Ct. (2013)). The Magistrate denied Petitioner's motion to amend, and instead construed the pleading as a supplemental reply to the government's response. At every turn, the Magistrate, the District Court, in conjunction with the Eleventh Circuit, .. interpolated Petitioner's original claims presented in his first habeas petition, resulting in a "judicially made pretzel" and interred those clearly articulated claims.

The Magistrate's R & R controlled the proceedings whereas the District Court adopted his findings in each instance, and there is no mention on the record of Petitioner's initial two grounds raised. ([constructive denial of counsel/three separate occasions of failing to object to the constructive amendment of the indictment]). The Magistrate, in addition denied Petitioner's amended civil action pursuant to Descamps, as time barred. Upon review, district court judges may accept, reject, or modify an R & R; receive further evidence; or return the matter to the U.S. Magistrate judge with instructions. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). "The district court must review de novo all legal conclusions and those portions of the R & R to which specific objection is made." See Rodriguez v. American K-9 Detection Services, LLC, U.S. Dist. LEXIS 50941 (M.D. Fla. 2016). Absent reversal by the district court, a Magistrate judge's .. determination of such matters constitutes a final order. Id. See ¶9. (Petitioner's exhaustive procedural history):

On July 24, 2014, Petitioner filed objections to the Report and Recommendation arguing, among other things, that Ground one in the § 2255 motion was "claim of constructive denial of counsel at the pre-trial stage supported by instances of defficient performance prior to trial identified by Petitioner, and **the Report and Recommendation failed to — address it.**" (First Rule 60(b) motion).

Thereafter, on August 14, 2017, Petitioner filed his second Rule 60(b) motion, alledging the district court failed to ...

address "all the claims of ineffective assistance of Counsel raised in the § 2255, motion." See App F ¶18. Which - resulted in additional piecemeal litigation through the U.S. District Court and Appellate Court, without any adjudication of the claims presented in the first and timely 2255(f)(1) .. motion. See Banks v. United States, 167 F.3d 1082, 1083 - 84 (7th Cir. 1999)(Fed R. Civ. P. Rule 60(b) motion for relief from judgement in initial post conviction proceedings is appropriate means to bring a claim that conduct of counsel affected the integrity of the post-conviction proceedings). Petitioner complained ad nausium throughout these proceedings, specifically in the Rule 60(b) context that he was deprived counsel/counsel abandonment or constructive disappearance of counsel and his opportunity to be heard. See Harris v. United States, 367 F.3d 74, 82 (2d Cir. 2004)(Motion for relief from judgement pursuant to Rule 60(b)(6) attacking the integrity of a previous habeas proceeding based on ineffective assistance of counsel must be so aggrievous and profound that they amount to the abandonment of the clients case altogether, either through physical disappearance or constructive disappearance and deprived movant of an opportunity to be heard). See also United States v. Cirami, 563 F.2d 26, 34-35 (2d Cir. 1977). The lower courts collectively failed to address Petitioner's .. valid claim of constructive denial of counsel, in addition to

Petitioner's valid claim counsel failed to object on three separate instances of constructive amendment of the .. indictment. Petitioner has no other remedy at law to obtain releif from the grounds presented in his inital § 2255 motion, after nearly 7 years of litigation, other than the Supreme .. Court of the United States. See Metcalf v. Williams, 104. S. Ct. 93, 26 L. Ed 665 (1881) ("When a party has been deprived of his right by fraud, accident or mistake, and has no remedy at law, a court of equity will grant relief. Perhaps, in view of the equitable control over their own judgement's").

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 8-6-2018