NO: 18-7260

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: VERNON SHAWN DANIELS, JR.
[Incarcerated]

On Petition for Rehearing of an Order Denying
Petition for a Writ of
HABEAS CORPUS

PETITION FOR REHEARING ON PETITION FOR A WRIT OF HABEAS CORPUS

Submitted by and for:

Vernon Daniels 3/18/2019

Vernon Shawn Daniels, Jr., Pro se
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FCC Coleman Low
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QUESTION PRESENTED FOR REVIEW

(1) Does the limited circumstances to which the Eleventh Circuit has narrowed the saving clause qualify as a suspension of the Writ of Habeas Corpus for prisoners wishing to (a) present freestanding claims of actual innocence as a basis for relief or; (b) raise constitutional challenges questioning whether procedural rules set by congress in §2255(f)and(h) bar indigent & poorly educated prisoners access to the court?

(2) Does §2255(h)'s specific language, enacted 48 years after the Saving Clause, limit the reach of the saving clause?

(3) Does this Court's Felker ruling - regarding §2244(b)(2) constitutionality for state prisoners under the suspension clause - extend to federal prisoner if §2255(h) limits the reach of the saving clause?

(4) If correct, does the Eleventh Circuit's Saving Clause precedence, which conflicts with all but the Tenth Circuit, render §2255 unconstitutional?

(5)What is the proper date for measuring the scope of the Writ of Habeas Corpus that is protected form suspension?

(6) Can congress, as the Eleventh circuit suggest, enact legislation that completely abolishes habeas corpus so long as it preserves the Original Writ as a means to substitute the common law writ?

LIST OF PARTIES

All parties appear to the case on the cover page. Mr. Daniels is the petitioner filing in pro se.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, Vernon Shawn Daniels Jr., makes the following disclosure:

1) Mr. Daniels is not a subsidiary or affiliate of a publicly owned corporation.

2) Mr. Daniels declares that there is not a publicly owned corporation, nor a party to the proceeding that has a financial interest in the outcome.

Vernon Daniels

Vernon Shawn Daniels Jr.

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PETITION FOR REHEARING OF AN ORDER DENYING PETITION FOR A WRIT OF HABEAS CORPUS

Vernon Shawn Daniels Jr. respectfully petitions this court for rehearing on the order denying his petition for a Writ of Habeas Corpus so that (1) his freestanding claim of actual innocence and (2) his challenge to the impediments procedural rules set by congress imposes on his access to the court may be given a meaningful opportunity for review.

JURISDICTION

The Supreme Court appellate jurisdiction are split on the interpretation of the Saving Clause. This Court has exclusive authority to aid the appellate jurisdiction in resolving this conflict. The Eleventh Circuit has interpreted the saving clause in a manner that, **(1)** if correct could renders §2255 unconstitutional and; (2) implies that congress could abolish the Writ of habeas corpus so long as it preserves the Original Writ as a substitute for the common law writ. "Because the Constitution does not require congress to create inferior courts... it makes no sense to assert that a remedy within the original jurisdiction of the Supreme Court is insufficient to satisfy the suspension clause." "The specific language of section 2255(h).... limits the reach of the saving clause." "A motion to vacate is inadequate or ineffective to test the legality of a prisoner's detention only when it cannot remedy a particular claim..." "When a prisoner attacks aspects of his detention in ways that do not challenge the validity of his sentence, then the Saving Clause may provide him access to a different remedy." McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017) (en banc). This Court's jurisdiction over the matter is established in the Rules of the Supreme Court of the United States, Rule 20; 28 U.S.C. §1651, §2241(c)(3), and 2242.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Mr. Daniels Constitutional challenges are premised upon violations of the Fifth and Sixth Amendments to the Constitution of the United States. The Fifth Amendment provides that no criminal defendant may be "deprived of life, liberty, or property, without due process of law." The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right... to... trial... by an impartial jury..."

Mr. Daniels seeks relief from his confinement because his conviction represents a manifest miscarriage of justice, that is not cognizable under 28 U.S.C. § 2255. Mr. Daniels shows that he is challenging the Eleventh Circuit McCarthan, Id. decision, under 28 U.S.C. §2241, as an unauthorized suspension of the writ. see U.S. Constitution Article one, Section Nine, Clause Two. "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the Public safety may require it."

STATEMENT OF THE CASE

After a jury trial Mr. Daniels was convicted of conspiracy to commit a Hobbs Act Robbery, two drug trafficking crimes under 21 U.S.C. 841(a)(1)&(b)(1)(A), 846, and 18 U.S.C. §2, and two firearm charges under 18 U.S.C. §924(c)(1)(A) and (2) and 924(o). Mr. Daniels and Geary Lynch were approached by a Government Confidential informant (CI), Timothy Hylton, who got them high and tried to convince them to do a robbery. Mr. Daniels continuously refused Timothy Hylton's offers. But on December 28th, 2007 Mr. Daniels was arrested with a bag that contained Mr. Hylton's Marijuana, and Mr. Hylton gave Geary Lynch $100.00 to help post Mr. Daniels' bond. Upon Mr. Daniels release Timothy Hylton began to harass Mr. Daniels about money owed to him (Mr. Hylton) for drugs he (Mr. Daniels) had gotten arrested with as well as the $100.00 given to Mr. Lynch for Mr. Daniels's bond. Mr. Hylton's harassment reached the point of forcing Marijuana and ecstasy on Mr. Daniels so he could sell it to clear his debt. Mr. Daniels did not like the conditions under which Mr. Hylton was offering the marijuana and ecstasy so he tried to refused the offer. After attempting to refuse Mr. Hylton Mr. Daniels then told him to count the bond money and the weed confiscated in Daniels' arrest as a loss. Mr. Hylton then threatened Mr. Daniels by brandishing a firearm and stating that he doesn't take losses. After threatening Mr. Daniels, Mr. Hylton than gave Mr. Daniels an ultimatum: Mr. Daniels could sell the drugs or do the robbery he had refused to do on several occasion. This lead to Mr. Daniels' January 16, 2008 arrest where the weed and ecstasy that Mr. Hylton forced on him was found and placed back on his person.

On January 16, 2008 Mr. Daniels was 19 year old and under the drinking age when he was given an alcoholic beverage by the ATF case Agent, Michael Conners, in his case. After giving Mr. Daniels an alcoholic beverage Agent Conners

proceeded to discuss doing the robbery in this case. After being arrested Mr. Daniels was searched for weapons and later place in the back of a police unit with Geary Lynch. Officers warned Mr. Daniels and Mr. Lynch that the car had been searched and that any drugs found would belong to them (Daniels & Lynch). After being left in the police car Mr. Daniels discovered that the 3 bags of Marijuana laced with ecstasy that he brought were still on his person. These drugs were from the stash that Timothy Hylton had forced on him. Mr. Daniels was a drug user who liked to lace his marijuana with ecstasy as opposed to taking the pill and he had brought the three bags of marijuana laced with ecstasy to smoke. Through the help of Geary Lynch Mr. Daniels, with the officers warning in mind, swallowed these drugs so that they would not be found later. Mr. Daniels was taken to ATF headquarters shortly after where he gave statements to ATF while under the influence of alcohol given to him by the case agent and drugs received from the Government's informant.

None of this evidence was presented at Mr. Daniels' trial where he was convicted and sentenced to 180 months under criminal case No. 08-cr-60024-WPD. A timely notice of appeal was filed and subsequently denied under case no. 08-14801. So Mr. Daniels had to present the above facts on §2255 in an ineffective assistance of counsel claim. At which point Mr. Daniels was given an evidentiary hearing where the government conceded that Mr. Daniels ingested drugs before he was questioned. The government did this where it conceded to the accuracy of the transcripts from an enhanced version of the tape recording from the police car where Mr. Daniels ingested drugs. Mr. Daniels Motion for relief and Certificate of Appealability (COA) was denied in the district court on March 30, 2012 under Civil case No: 0:11-cv-62563-WPD. Mr. Daniels sought a COA from the Eleventh Circuit Appeals Court and was subsequently denied. Mr. Daniels also

sought Certiorari review from the Eleventh Circuit's denial of a COA and was subsequently denied.

After two unsuccessful 60(b)'s Mr. Daniels sought to file a writ of Habeas Corpus but learned that he was barred by the Eleventh Circuit's Appeal Court's ruling in McCarthan. Hence, he filed for an Extraordinary Writ under this Court's jurisdiction which was recently denied. Now he files for rehearing pursuant to Supreme Court Rule 44.2.

REASON FOR FILING IN THE SUPREME COURT

Mr. Daniels is detained in violation of the Fifth, Sixth, and Thirteenth Amendment of the United States Constitution. This Court determined that "a prisoner otherwise subject to defense of abusive or successive use of the Writ [of habeas corpus] may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence." McQuiggen v. Perkins, 569 U.S. 383, 392, 133 S. Ct. 1924; 185 L. Ed. 2d. 1019. This court has "not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence" Id., at 392, (citing Herrera v. Collins, 506 U.S. 390, 404-405(1993)).

Mr. Daniels' sentence stems from a conviction that resulted from a miscarriage of justice that is not cognizable under 28 U.S.C. §2255. The government through its informant threatened, coerced, and intoxicated Mr. Daniels in order to get him to join into a conspiracy he refused to join on several occasions. The conduct of the government informant was never presented to the Jury who convicted Mr. Daniels. Mr. Daniels is actually innocent and he wishes to present a freestanding claim of actual innocence to develop precedence that determines if such claims is a basis for relief. Mr. Daniels also wished to attack the constitutionality of procedural rules in §2255(f)and(h) that bars his access to the court by not giving him enough time to overcome the educational barrier that prevented him from articulating and developing facts for his claims in a timely manner. None of these claims are cognizable under §2255. Therefore, Mr. Daniels' only opportunity for relief was 28 U.S.C. §2241 via the Saving Clause of §2255(e).

Under the Saving Clause of §2255(e), a prisoner may bring a habeas petition under §2241 if the "remedy by [§2255] motion is inadequate or ineffective to test the legality of his detention." 28 U.S.C. §2255(e). In McCarthan v.

Director of Goodwill Industries - Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017) (en banc), the Eleventh Circuit of the United States determined that 2255(h) "limits the reach of the saving clause" to only 3 circumstances under which federal prisoners can proceed under §2241. These circumstances are as follows:

(1) "challenging the execution of his sentence, such as deprivation of good time credits or parole determinations"; (2) "the sentencing court was unavailable"; (3) practical considerations (such as multiple sentencing courts) might prevent a petitioner from filing a motion to vacate" Id. at 1092-93.

The Eleventh Circuit is the only court outside of the Tenth that has interpreted the Saving Clause this narrowly. Thus, Mr. Daniels cannot raise his claims in the district he housed because Circuit precedents prevents him. The Eleventh Circuit has created a broad split among the court's appellate jurisdiction and ignored this courts guidance in the matter. See Boumediene v. Bush, 553 U.S. 723, 779(2008) Habeas Corpus is "above all, an adaptable remedy," and it's "precise application and scope changes depending upon the circumstances." Id. 779 "Felker, Swain, and Hayman stand for the proposition that the Suspension Clause does not resist innovation in the field of habeas corpus."Id. at 795. "habeas is not a static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose." Id. at 780.

The Eleventh Circuit has also ignored the separation of powers and limited government doctrines that drives the underlying principles of habeas corpus. This Court has explained that Suspension Clause "protects the rights of the detained by a means consistent with the essential design of the Constitution... to maintain the 'delicate balance of governance' that it is itself the surest safegaurd of liberty." Id. at 745. Thus the Separation-of-Powers and the principle of limited government powers "must inform the reach and purpose of the Suspension Clause." Id. at 746

The Eleventh Circuits decision to narrow the reach of the saving clause requires Mr. Daniels to bring his claim before this court as a substitute for the common law writ as suggested by the Eleventh Circuit. see McCarthan at 1094 "Our interpretation of the Saving Clause cannot suspend the writ because the Original Writ in the Supreme Court remains available.. " It is out of Mr. Daniels control to be transferred to a Circuit whose Saving Clause precedence is most favorable to his claim. That makes this Court the only court in which Mr. Daniels can bring his claims. Therefore, this Court should use it's Discretionary power to settle the split among the circuits of it's Appellate jurisdiction. Thus, aiding them in a National and uniform standard by which the Saving Clause should be interpreted.

REASON FOR GRANTING THE WRIT

This Court should exercise its Discretionary powers in Mr. Daniels' case to establish a National Standard concerning Saving Clause interpretation. Mr. Daniels is currently serving a sentence for conduct that, due to circumstances in his case, does not constitute a crime.

Mr. Daniels previously filed for relief pursuant to 28 U.S.C. §2255 under which his actual innocence claim is not cognizable. Thus, Mr. Daniels' claim is left unresolved and he his barred from filing for habeas relief in Florida because of the Eleventh Circuit current Saving Clause precedence. This Court has previously stressed, "judges must be vigilant and independent in reviewing petitions for the Writ, a commitment that entails substantial judicial resources." Harrington v. Richter, 562 U.S. 86, 91(2011). Reviewing capital cases which are a matter of life and death, this Court has repeatedly demonstrated what a vigilant and independent review entails. See, e.g., Buck v. Davis, 137 S.Ct. 759 (2017), quoting Trevino v. Thaler, 569 U.S. , 133 S.Ct. 1911.

This Court should grant the Writ for three reasons; One) It would set a national and uniform standard for Saving Clause interpretation. Thus, settling the split among the Court's appellate jurisdiction; and Two) It would clarify whether use of the Original Writ under this Court's jurisdiction is an adequate substitute for the common law writ that the Eleventh Circuit has effectively suspended; and Three) Correct the manifest miscarriage of justice that imprisons an innocent man in violation of the Thirteenth Amendment.

CONCLUSION

Mr. Daniels petitions this Honorable Court to reconsider its order of denial and issue the Writ in the interest of justice. This Court's decision in this case will provide all federal appellate courts around the nation a uniform standard by which the Saving Clause should be interpreted. It is because Mr. Daniels is a first time offender serving a sentence for a crime that he is actually innocent of that he is due relief. Had the Federal Bureau of Prisons designated Mr. Daniels to a prison in one of the nine circuit's whose precedence is more favorable to his claim, then he would be eligible for relief under 28 U.S.C. §2241. This Court is needed to resolve such a circuit split in it's appelate jurisdiction.

Respectfully Submitted by and for:

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CERTIFICATION OF VERNON SHAWN DANIELS JR.

Mr. Daniels certifies, pursuant to Supreme Court Rule 44.2, that (1) the grounds in this Petition for Rehearing of the Order Denying Petition for Writ of Habeas Corpus is limited to "... other substantial grounds not previously presented" and; (2) that this petition for rehearing "is presented in good faith and not for delay".

Submitted by and for:

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PROOF OF SERVICE

I, Vernon Shawn Daniels Jr., do declare that on, March 18, 2019, as required by Supreme Court rule 29 I have served the enclosed PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF HABEAS CORPUS on the Clerk of this Honorable Court, by depositing and envelope containing the above documents in the United States Mail, properly addressed, and with first class postage pre-paid.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on March 18, 2019

Vernon Daniels

Vernon Shawn Daniels Jr., Pro se
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