

18-7507

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT, U.S.

IN RE: DWIGHT CARTER,
PETITIONER.

PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §2241

DWIGHT CARTER #86120-004
UNITED STATES PENITENTIARY COLEMAN-2
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QUESTION(S) PRESENTED

- (a) Did the 11th Circuit adopt a "divergent" interpretation of the "gatekeeping standard" contrary to Congress' plain language in 28 U.S.C. §2244(b)(3)(C), which causes a circuit split between the 11th Circuit and "all" other circuits?
- (b) Should the 11th Circuit's adoption of its divergent interpretation of the gatekeeping standard (which is contrary to the plain language in 28 U.S.C. §2244(b)(3)(C)), "forever bar second and successive habeas applications brought where a new rule of law made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable?" such as Johnson; Welch; Miller.
- (c) Does 28 U.S.C. §2255(h)(2) and 28 U.S.C. §2244(b)(2) Gatekeeper determination call for an appellate court to conduct any assessment of the merits of the underlying claim?

LIST OF PARTIES

All parties appear in the "Caption" of the case on the cover page.

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DECISION BEING CHALLENGED

- (a) What are you challenging: The "validity" of an 11th Circuit ruling.
- (b) Name of Court making decision: The 11th Circuit Court of Appeals.
- (c) Decision being challenged originally: Conviction and sentence pursuant to 18 U.S.C. §924(c) and 18 U.S.C. §1951(a).
- (d) Date of decision being challenged: February 13, 2017.

EARLIER CHALLENGE(S) OF DECISION(S)

- (a) First Challenge
 - (i) Direct: Appeal to Eleventh Circuit.
 - (ii) Date of filing: November 2010.
 - (iii) Docket Number: 10-15413-AA.
 - (iv) Results: Affirmed.
 - (v) Date of results: July 24, 2012.
 - (vi) Writ of Certiorari: Denied January 22, 2013.
- (b) Second Challenge
 - (i) Motion To Vacate: 28 U.S.C. §2255.
 - (ii) Date of Filing: 2014
 - (iii) Docket Number: 14-Civ-20093-(JEM)
 - (iv) Results: Motion To Vacate Denied; COA 7/10/15
Certificate of Appealability Denied #15-11743
 - (v) Date of Results: July 10, 2015.
 - (vi) Writ of Certiorari: Denied October 3, 2016.

(c) Third Challenge

(i) Application To File A successive Motion To Vacate
28 U.S.C. §2255(h) and §2244(b)(3)(A)

(ii) Date of Filing: December 22, 2016.

(iii) Docket Number: 16-17761-J.

(iv) Results: Denied.

(v) Date of Results: February 13, 2017.

(vi) Writ of Certiorari: N/A.

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Dwight Carter respectfully prays that a writ of habeas corpus is issued concerning the judgment below.

OPINION BELOW

The ruling of the 11th Circuit Court of Appeals appears at Appendix "A" to this petition; and was not reported or published.

The original opinion of the United States District Court for the Southern District of Florida appears at Appendix "B" to the petition and was not reported or published.

JURISDICTION

The date on which the 11th Circuit ruled on my case was Feb. 13, 2017. Pursuant to 28 U.S.C. §2244(b)(3)(E) a decision on an application for a successive Motion To Vacate is not appealable or subject to petition for rehearing or for a Writ of Certiorari. *Id.* §2244(b)(3)(E).

The jurisdiction of this Court is invoked under 28 U.S.C. §1651, 28 U.S.C. §2241 and Rule 20.4(a), rules of the United States Supreme Court.

CONSTITUTIONAL/STATUTORY PROVISION INVOLVED

As applied to Petitioner Dwight Carter and every similarly situated inmate within the jurisdiction of the Eleventh Circuit Court of the United States.

The Fifth Amendment's right to Due Process as outlined in Johnson v. United States, 135 S.Ct. 2551, 192 L.Ed. 2d 569 (2015); and Welch v. United States, 136 S.Ct. 1257, 194 L.Ed. 2d 387 (2016); and 28 U.S.C. §2255(h); 28 U.S.C. §2244; 18 U.S.C. §924 (e)(2)(B); 18 U.S.C. §16(b) and other similar statutes which have or will announce a "new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable."

STATEMENT OF THE CASE

Petitioner Dwight Carter filed an application to the Eleventh Circuit Court of appeals to allow him to file a second or successive Motion To Vacate his conviction and sentence pursuant to 28 U.S.C. §2255(h) and 28 U.S.C. §2244(b)(3)(A).

The Eleventh Circuit herein reached the merits of Petitioner's underlying Johnson claim rather than "simply" making a determination of whether Petitioner's application had made a 'prima facie' showing that he has satisfied the first hurdle of 28 U.S.C. §2244(b)(3)(C), which is inconsistent with the statutes plain text.

The Eleventh Circuit should have granted Dwight Carter's application to allow the District Court to decide the merits of his Johnson based claim in the first instance.

REASON FOR GRANTING THE WRIT

The Eleventh Circuit's ruling is contrary to rulings in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, 10th, and D.C. Circuits, concerning the Circuit Court's "Gatekeeping" function upon an application pursuant to 28 U.S.C. §2244(b)(3)(A).

REASON FOR NOT SEEKING THE WRIT IN A LOWER COURT

Petitioner has no other readily available or adequate remedy at law, other than this petition, as the 11th Circuit has foreclosed

his argument in its circuit by precedent. See, McCarthan v. Dir. of Goodwill Indust. Suncoast, Inc., 851 F.3d 1076 1092-93 (11th Cir. 2017)(Only conditions of confinement and detention are cognizable in a 28 U.S.C. §2241 petition in the 11th Circuit). No other court or procedural vehicle could provide the relief sought here in this petition. See, 28 U.S.C. §2244(b)(3)(E)(Stating that, "The grant or denial of an authorization by a Court of Appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a Writ of Certiorari.").

The Court should end the Circuit split and provide guidance on this important issue concerning the "Gatekeeping" standard utilized only in the Eleventh Circuit.

Public policy is in favor of fairness as well as the Sixth and Fourteenth Amendments to the United States Constitution.

EXCEPTIONAL CIRCUMSTANCES WARRANT RELIEF

Based on the aforementioned, exceptional circumstances warrants the exercise of this Court's discretionary power to issue the writ. Lest, inmates in Florida, Georgia, and Alabama would forever be barred from getting their cases reviewed on the merits by the District Court that sentenced them.

In the recent past, this Court has decided many cases dealing with a "new rule of constitutional law made retroactive to cases

on collateral review, that was previously unavailable," §2255(h). But because of the Eleventh Circuit's "divergent" interpretation of their "Gatekeeping" role, hundreds of prisoners are prevented from obtaining the review to which they are entitled.

Decision(s) of other inmate's application(s) for leave to file a second or successive §2255 motion, where the Eleventh Circuit went beyond making a "prima facie" determination, are included in Appendix "C".

FELKER v. TURPIN

In light of the Eleventh Circuit's "divergent" views about their "Gatekeeper" role, this Court should exercise its habeas corpus jurisdiction and confront this very important question to settle it once and for all. See, Felker v. Turpin, 518 U.S. 651, 116 S.Ct. 2333, 2340, 135 L.Ed. 2d 827 (1996)(Souter, J. joined by Stevens, J. and Breyer, J., concurring, expressed the views that the question whether the Act exceeded Congress' Exceptions Clause power (1) would be open if it should later turn out that statutory avenues other than appeal or certiorari for reviewing a Court of Appeals' gatekeeping determination were closed, and (2) could arise if the Court of Appeals adopted divergent interpretations of the gatekeeper standard). Id. at 667, 116 S.Ct. at 2342 (Souter, J., concurring).

Indeed, at least three judges on the Eleventh Circuit Court of Appeals have recognized their "divergent" interpretation of the

"prima facie" standard. See, In re: Williams, 898 F.3d 1038 (11th Cir. 2018)(Wilson, J., Martin, J., Jill Pryor, J., concurring, stated that: "In light of the limitation of 28 U.S.C. §2244(b)(3)(E) and the lack of uniformity among federal appeals courts, this issue may be the proper subject for certifying a question to the Supreme Court about the correct application of the "prima facie" standard. Id., (See In re: Williams attached at Appendix "C").

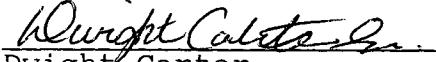
CONCLUSION

Petitioner Dwight Carter respectfully requests that the Court grant the petition, or such relief as is deemed equitable and just.

DECLARATION

Dwight Carter declares under penalty of perjury, under the laws of the United States pursuant to 28 U.S.C. §1746, that the foregoing is true and correct.

Respectfully submitted this 7th day of November, 2018.


Dwight Carter
Pro se Petitioner