

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ERNEST LEE GLOVER JR. — PETITIONER
(Your Name)

VS.

LORIE DAVIS DIRECTOR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

ERNEST LEE GLOVER JR.

(Your Name)

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(Address)

AMARILLO, TEXAS 79107

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Does a court of Appeals violate Due Process and Equal protection of law by applying 28 USC §2244(d)(1) to deny review of C.O.A. Challenging District courts Mandatory use of 28 USC §2254 to block review of a 28 USC §2241(c)(3) challenge to custody not based upon a State conviction.
2. Did the Fifth Circuit court of Appeals so far depart from the Reasonable Jurist standard on C.O.A. as to use the United States Codes, §2244, §2253 and §2254 as a subterfuge or obstacle to prevent petitioner from getting his habeas corpus claim of wrongful custody under §2241(c)(3) before the court for decision on its merits

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Braden v. Cir. Court 410 U.S. 503	8
Buck v. Davis 137 S.Ct. 759	7
Dretke v. Haley 124 S.Ct. 1847, 1854	7
Ex. Parte Dawson 2016 TEX.Crim.App. LEXIS 1440	6, 8
Felkner v. Tuipin 116 S.Ct. 2233	6
Harrington v. Richter 131 S.Ct. 770	5
Kuhlmann v. Wilson 106 S.Ct. 1616, 2626	6
Malong v. Cook 490 U.S. 488, 492	8
Miller-El v. Cockrell 123 S.Ct. 1029	7
Miller v. Stephens No. 2:14-CV-0103(N.D.Amarillo)	6
Stringer v. Williams 161 F.3d 259, 261-262	6
Townsend v. Sain 83 S.Ct. 745	7

STATUTES AND RULES

28 USC 2241(c)(3)
28 USC 2244(d)(1)
28 U.S.C. 2253(c)(1)(A)
28 USC 2254

OTHER

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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 ~~ASB~~ 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☒ is unpublished.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 ~~CSDE~~ 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 12, 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: April 10, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

14th AMENDMENT, UNITED STATES CONSTITUTION

28 USC 2241

28 USC 2244

28 USC 2253

28 USC 2254

STATEMENT OF THE CASE

WHEN A U.S. COURT OF APPEALS DEPARTS FROM THE ACCEPTABLE JUDICIAL STANDARDS FOR REVIEW OF C.O.A., AND SANCTIONS APPLICATION OF THE U.S. CODES BEYOND CONGRESSIONAL INTENT WITHOUT HEARING APPEAL, A MISCARRIAGE OF JUSTICE HAS OCCURRED THAT DEPRIVES LIIGANT OF THE PROTECTION OF THE UNITED STATES CONSTITUTION SUFFICIENT FOR SUPREME COURT REVIEW TO PRESERVE THE RULE OF LAW THIS NATION IS BASED UPON.

REASONS FOR GRANTING THE PETITION

1. Does a court of Appeals violate Due Process and equal protection of law applying 28 USC §2244(d)(1) to deny review of COA challenging a District courts mandatory use of 28 USC §2254 to block review of 28 USC §2241(c)(3) challenge to custody not based upon a State conviction.

This case seeks to vindicate the constitutional right of Due Process and equal pprotection of law in the COA process and correct arbitrary resolution of contested issue of forum by 28 USC §2244(d)(1) without hearing.

March 12, 2018, the 5th circuit court of appeals denied COA review of a District courts automatic application of §2254 to block review of §2241(c)(3) challenge of custody not based on State conviction by applying §2244(d)(1) (successive petition bar) as the reason why a reasonable jurist could not conclude the issue of proper forum would present adequate grounds to deserve encouragement of further proceedings, see APPENDIX A.

In essence, by deciding appeal in favor of District courts mandatory application of §2254 to override §2241(c)(3) challenge custody not based upon a State conviction by application of §2244(d)(1) to avoid adjudication of District courts action; then avoid reconsideration and direct appeal by denial of COA, the court of Appeals violate congressional intent on use of habeas corpus as a vehicle to guard-against extreme malfunction in the State criminal justice system, Id, Harrington v. Richter 131 S.Ct. 770, 786 (2011); and denies petitioner access to court in violation of due process of law.

As this Supreme court ruled in Kuhlmann v. Wilson 477 U.S. 436, 206 S.Ct. 2616, 2626 (1986) "it would be a fundamental miscarriage of justice if a federal court did not review a petition whose state record verifies improper custody", or failed to apply state law as rules of decision requiring by 28 USC §1652.

Here, the 5th circuit court of Appeals ignores state record proving abandonment of state criminal conviction during post habeas corpus review by failure of state Court of Criminal Appeals to remand petitioner to custody of a criminal conviction or order his release in accord with state law. Failure to remand to custody is an acquittal; rendering restraint violative of the 13th amendment of the U.S. Constitution.

To avoid §2241(c)(3) challenge to custody, District court changed forum to §2254, and applied §2244(d)(1) to dispose of the case by denying COA based upon the District courts declared position in Miller v. Stephens No. 2:14-EV-0103, finding of fact and conclusions of law, page 6-9 (N.D. Amarillo 2017) that Falkner v. Tuipin 518 U.S. 556, 116 S.Ct. 2233 (1996) mandates application of §2254 to all state prisoner litigation regardless of subject matter; to allow otherwise means §2241 creates an avenue for a state prisoner to evade §2254; a result the District court does not believe contemplated by congress when drafting the habeas statute, id at page 9, findings/conclusions, Miller v. Stephens supra, and resolved the merits of petitioners claims without issuing show cause to respondent.

Contrary to the circuit courts own ruling in Stringer v. Williams 161 F.3d 259, 261-262(5th cir. 1998) "it must determine whether a petition is properly characterized as a §2241 or as (2254 petition", the circuit summarily dismisses the entire case and COA by applying (2244(d)(1) (successive petition) without hearing in spite Texas court of criminal appeals admitting its resolution of state habeas violates State constitution, in Ex Parte Dawson, 509 SW3d 294, 298 §Tex. Crim.App. 20169.

The 5th Circuits denial of COA has been reversed when the circuit court fails to apply the simple question "whether a claim is reasonably debatable", Buck v. Davis 137 S.Ct. 759 §20179. Denial of COA in petitioners case should be reversed where circuit court abused its authority applying a procedural bar not applicable to question of custody under (2241(c)(3)) as an obstacle to prevent petitioner from an adjudication on the merits of his claim in federal court.

When a federal court fails to adjudicate, for the first time, an issue of wrongful custody after closure of state habeas corpus that prove acquittal of conviction, it is a fundamental miscarriage of justice not to reverse denial of COA, Dretke v. Haley 124 S.Ct. 1847, 1854.

2. DID THE FIFTH CIRCUIT COURT OF APPEALS SO FAR DEPART FROM THE REASONABLE JURIST STANDARD ON COA AS TO USE THE U.S. CODES (2244(d)(1), (2253(c)(1)§19§A9 and (2254 as a subterfuge and Obstacle to prevent petitioner from getting his habeas corpus claim of wrongful custody under (2241(c)(3)) before the court for decision on its merits.

The legal standards for issuing COA stated in Miller-EL v. Cockrell 122 S.Ct. 1029 §20039 requires a federal District court or court of appeals to conduct, at the least, a de novo review whether a petitioner has demonstrated a substantial showing of a denial of a constitutional right; and if COA was dismissed at the District court level by (2244(d)(1)) , to issue a COA to determine adequacy of state adjudicatory process when brought into question as was in this case to insure due process as set by Townsend v. Sain 83 S.Ct. 745 (1963), that a federal court must grant a hearing to a state convict applicant under the following circumstances:

1. The merits of the factual dispute were not resolved in the state hearing;

2. The state factual determination is not supported by the record as a whole;
3. The fact finding employed by the state court was not adequate to afford a full and fair hearing;
4. There is a substantial allegation of newly discovered evidence;
5. The material facts were not adequately developed at the state court hearing; or
6. For any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair hearing.

Here, the 5th circuit applies §2244(d)(1) to deny COA review of a District courts unlawful application of §2254 to override a §2241(c)(3) issue of wrongful custody substantuated by Ex Parte Dawson 2016 TEX.Crim.App. Lexis 1440 (the court of criminal appeals internal rules of procedure violate Tex. Const. requirement the court operate in panels of three and rulings be made by 2 out of three judges) rendered judgment of denial by single justice a nullity and placed petitioner in violation of the 13th amendment as the court of criminal appeals rendered no ruling that remanded petitioner to custody of a conviction, thus equitted petitioner by abandonment of conviction.

In Maleno v. Cook, 490 U.S. 488, 492 (1989); and in Braden v. Circuit court 410 U.S. 503 (1973), the court was explicit, if there is no conviction, the tenets of §2244a(d)(1) and §2254 have no application to question of custody. The 5th circuit and its Satellite District court in Amarillo, Texas demonstrate there preference for application of the U.S. Codes without conducting a hearing into whether or not the codes are even applicable.; and are quick to deny COA on issues of controversy to the point of even ignoring their own circuit rulings and others how COA is to be conducted.

Because the District court failed to conduct a hearing to determine appropriate forum, and decided the merits of custody issue by denying COA contrary to Ex Parte Dawson, supra; and the 5th circuit court denied COA without determining proper forum, instead, using a procedural bar of §2244(d)(2) not applicable to custody not passed on a state conviction, This supreme court should exercise its supervisory powers to prevent the courts from use of the U.S. Codes as an insurmountable bar to due process as has occurred in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Ernest Lee Moore Jr

Date: June 23, 2018