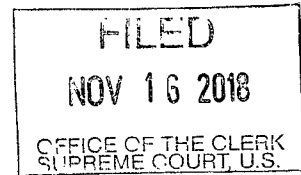


No. **18-7688**

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

VINCENT JOHNSON- Plaintiff

VS.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT- Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

VINCENT JOHNSON688-089
CHILLICOTHE CORRECTION
P.O. BOX 5500 45601
Chillicothe Ohio

QUESTION OF FEDERAL LAW FOR REVIEW

Whether a R. 60 (b) motion can be first presented at the Federal Appeals level to attack a defect in the integrity of the COA process of the appeal proceedings.

RELIEF SOUGHT

To allow movant's R. 60(b) motion to be adjudicated on the merits.

LIST OF PARTIES

All parties in the caption of the case on cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Sixth Cir. Court of Appeals denying initial
Mandamus at Appendix A

The opinion of the Sixth Cir. Court of Appeals denying en banc hearing
at Appendix B

JURISDICTION

The Sixth Cir. rendered it's decision to deny petitioner's
Mandamus on July 16, 2018. Mr. Johnson then filed a timely petition
for a Rehearing Enbanc which was denied on Sept. 5, 2018. This court
has jurisdiction under 28 U.S.C.A. section 1254(1) to review the
Cir. court's decision to deny Mandamus.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTIONAL PROVISIONS

BILL OF RIGHTS

United states Constitution, Bill of Right

Amendment XIV

Section 1. All person born or naturalized in the United States and subject to the jurisdiction thereto, are citizens of the United States and of the wherein they reside. No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of laws.

JURISDICTION

The Supreme court has jurisdiction pursuant to 28 U.S.C. 1254

STATUTES

Federal Rule of Civil Procedure

60(b) , On motion and just terms, the court may relieve a party or its legal representative from a final judgement, order, or proceeding.

Federal Rule of Appellate Procedure

25(a)1, Filing with the clerk, A paper required or permitted to be filed in a court of appeals must be filed with the clerk.

25(a)4, Refusal of documents, The clerk must not refuse for filing any papper presented for that purpose solely because it is not presented in proper form as required by the rules or local rules of practice.

45,2 Clerk duties, (2) When the court is open the court of appeals is always open for filing any paper issuing and returning process, making and entering and order.

STATEMENT OF THE CASE

On March 11, 2013 , the Petitioner, Vincent M. Johnson, was indicted by the Franklin County Grand Jury of two counts of rape one count of attempted rape, two counts of kidnapping, one count of robbery , one count of abduction, and one count of domestic violence in connection with alleged assault of Ms. Frances Call, the mother of his child and girlfriend at the time of incident.

The case came on trial on July 22, 2013, in the Franklin County Court of Common Pleas, befor Hon. Judge Michel J. Holbrook. On July 26, 2013 the jury returned a verdict of not guilty on one kidnapping and one robbery count, but guilty verdict on the remaining counts. The matter came befor the trial court for sentencing on August 19 2013. The court imposed the following sentence: eleven years on each rape count and eight years on the attempted rape count, and ordered that they be served consecutively to each other; the court futher imposed an additional consecutive term of nine years on the R.V.O. specification, as to the first rape count for a total aggregate term of 39 years. An appeal was taken all the way to the United States Supreme Court which the court denied jurisdiction on Nov. 27, 2017.

FACTS NECESSARY TO UNDERSTAND THE ISSUE PRESENTED

On Nov. 27, 2017 the United States Supreme Court denied Mr. Johnson petition for Writ of Ceriorari case No. 17-6045 arguing among other things the improper denial of his COA by the Sixth Circuit. Mr. Johnson then filed a 60(b)(6) motion to the Sixth Circuit asking the court to reopen his case, case No. 16-4076. In response to Mr. Johnson's attempt to submit his 60(b) motion a letter was sent by the clerk on Dec. 18 2017 stating, petitioner's 60(b) motion will not be filed do to the reason of the case being closed, see Appendix C. Mr. Johnson resubmitted his 60(b) motion which was also sent back unfiled for the same reason, see Appendix D. In a third attempt to get a understanding of why the clerk was refusing to file the motion a letter was written to both the clerk for the Sixth Cir. and to Chief Justice Cole. The letter to Chief Justice Cole was forwarded to the Chief Deputy clerk Susan Rogers inwhich she replied the motion was returned because an Appellate court doese not review R. 60(b) motions. A Writ of Mandamus was submitted to the Sixth Cir. to compell the clerk to file movant's R. 60(b) motion. It was denied on July 16, 2018. In response to the court's ruling Mr. Johnson petitioned the court for an En Banc hearing. The petition was denied on Sept. 5 2018, see Appendix B. This timely Writ of Certiorari has been submitted to resolve these issues.

REASONS WHY THIS HONORABLE SUPREME COURT SHOULD TAKE JURISDICTION.

A. INTRODUCTION

In the interest of maintaining a healthy legal system this court's discretion is needed. The principle of substantial equality and fair procedure should guide this court's discretion on whether to take jurisdiction. Petitioner humbly request for the court to take into consideration the origins of this claim which began at the Cir. court level. Thus any real chance petitioner may have of showing that this appeal has merit will be deprived if the court refuses jurisdiction. This case is not simply one of whether the Appeals court was correct in denying Mandamus relief. This case also deals with a question of Federal law which challenges the normal procedure that the merits of a R. 60(b) motion be first addressed by the Dist. Court. Subject matter jurisdiction, because it involves a court's power to hear a case can never be forfeited or waived, United States v. Cotton, 535 U.S. 630 moreover, courts including this Supreme court have an independent obligation to determine whether subject matter exist even in the absence of a challenge from any party, Ruhrgas AG v. Marathon Oil Co. 526 U.S. 574. To prevent the Sixth Cir. court of Appeals from discharging it's duties in a lawless manner and to insure this appeal will be resolved in way that is related to the merits, petitioner respectfully ask this honorable court to accept jurisdiction.

B. QUESTION OF FEDERAL LAW.

This case calls for an exercise of this court's supervisory powers. The Sixth Cir. in denying petitioner's Writ for the issuance of Mandamus inadvertently determined an important question of federal law that has not been, but should be settled by this court. This Writ of Certiorari seeks resolution of a question concerning inter alia whether a federal R. 60(b) can be first addressed at the Cir. court level to attack a defect in the integrity of the appeals proceedings after COA has been denied. This case is unique in the fact that an issue concerning the COA process must be addressed at the Cir. court level. However correct procedure requires that the merits of the R. 60 motion be addressed in the first instance by the Dist. court, Abur Rahman 537 U.S. at 97.

Rule 60(b) allows a party to seek relief from a final judgement or order and request reopening of his case when movant shows reason justifying relief from the operation of the judgement, Gonzales v. Crosby 545 U.S. 524. The 60(b)(6) motion which was submitted to the Sixth Cir. in this case was attacking a defect in the COA process of the appeal proceedings denying petitioner's request for COA in light of this Supreme court's ruling in Buck v. Davis 137 S. Ct. 759. See Appendix H. In Davis, this court determined when a court of appeals side steps the COA process by first deciding the merits of an appeal and then justifying it's denial of COA based on it's adjudication of the actual merits it is in essence deciding an appeal without jurisdiction, Id at 336-337. 123 S. Ct. 1029. Jurisdiction is the cornerstone to both the question of federal law that is before this court and the reason why this particular argument under R.60(b) was presented to the Sixth Cir. and can only be raised at the federal appeals level. An argument

of jurisdiction concerning COA review would be moot at the Dist. court level as the Dist. court has jurisdiction at the time of a petitioner's request for COA. The matter of jurisdiction for review of a claim is only an issue at the Circuit court level 28 U.S.C. 2253(c)(1), see Slack v. McDaniel 529 U.S. 473.

This raises question to the Sixth Circuit ruling that movant's rule 60(b) was being submitted in his Habeas proceedings. This determination by the Sixth Cir. is at odds with the argument being presented in the 60(b)(6) motion and it's purpose. The motion seeks relief from the final order denying petitioner's request for COA. It was not filed in or as part of the petitioner's Habeas proceedings. Neither the motion itself nor the federal judgement from which it sought relief substantively addressed federal grounds for setting aside the movant's state conviction as denominated it created no inconsistency with Habeas statute or rules, see Gonzales v. Crosby 545 U.S. 524. The ruling by the Sixth Cir. denies a movant the benefit of rule 60(b) to challenge a defect in the integrity of his appeal proceedings when all other avenues have been exhausted. Therefore intervention by this court is needed to settle this question of law in order to maintain judicial integrity.

C. THE SIXTH CIR. DECISION GOES BEYOND THE SCOPE OF WHAT IS NECESSARY TO SECURE THE ISSUANCE OF A MANDAMUS.

The Writ of Mandamus is one of the most potent weapons in the judicial arsenal, Will v. United States 389 U.S. 90. There are three conditions that must be satisfied before mandamus may be issued, Kerr v. United States Dist. Court for the Northern Dist. of Cal. 426 U.S. 347. 1. The party seeking issuance of the Writ must have no other adequate means to attain relief. 2. Petitioner must satisfy the burden of showing that the right to the issuance of the writ is clear and indisputable.

3. Even if the first two prerequisites have been met the issuing court in the exercise of it's authority has absolute discretion on whether Mandamus will be granted. In the case before this court a Mandamus was submitted to compel the clerk for the Sixth Cir. to file movant's 60(b)(6) motion. In denying petitioner's writ for the issuance of Mandamus the Appeals court ruled the clerk's decision not to file movant's 60(b)(6) motion proper. Petitioner asserts it is egregious for the Sixth Cir. to make a determination into the clerk's action. The court's assessment goes beyond the standard requirements necessary to attain Mandamus relief. The question that were properly before the court were,

1. Did movant have a clear right to have the 60(b) motion filed.
2. Is there a plainly defined peremptory duty on part of the clerk to file the 60(b)(6) motion.
3. Did movant have any other remedy available.

Federal Rules of Appellate Procedures 25(a)(1) filing with the clerk states **A paper required or permitted to be filed in a court of Appeals must be filed with the clerk.** 45(2) clerk duties states, **When the court is open the court of Appeals is always open for filing any paper and returning process making and entering orders.**

A review of Federal Rules of Appellate Procedures 25(a)(1) and 45(2) clearly shows the clerk had a responsibility to file the motion, however the Sixth Cir. decision does not reflect this fact, see Appendix A.

An examination of the court's ruling reveals the court is making an illogical determination into the clerk's actions. In paragraph two on the first page of the court's order the Sixth Cir stated, **"In his Habeas proceedings the clerk of the court refused to file Johnson R. 60(b)(6) motion for an entirely proper reason the case was closed."**

Petitioner argues if the Habeas proceedings were closed how could it be determined that the motion was being filed in petitioner's Habeas proceedings.

The court's reasoning dose not follow a logical path to a just ruling. Because the 60(b) was never filed, the court lacked jurisdiction to ascertain the nature of the motion as part of movant's Hebeas proceedings and based on that determination rule the clerk's actions proper. A court,s decision must be rooted in reason, logic, and fundamental fairness, the Sixth Cir. ruling in this case demonstrates none of these attribues. Mr. Johnson as an American citizen had a right under R. 60(b) to have his motion filed and addressed by a Justice of the Appeals Court.60(b) provides the courts with authority adequate to enable them to vacate a judgement whenever such action is appropriate to accomplish justice. Lilieberg v. Health Service Aquistion Corp. 486 U.S. 847 (1988) quating Kalapprott v. United States 335 U.S. 601. To deny a movant the chance to seek justice by way of R. 60(b) would be upsetting to the principles of equality and fair procedures.

CONCLUSION

The clerk's action along with the Sixth Cir. decision in this case has undermined and circumvented the precedent set by this Supreme court in Buck v. Davis 137 S. Ct. 759. This question of federal law if left unsettled will compromise the integrity of the judicial process. As the origins of these issues began at the Cir. court level, it has left no other means to attain relief except by way of this Writ of Certiorari. There being sound reasons existing to except jurisdiction, petitioner humbly request in this court's wisdom and discrestion that it will do so.

A handwritten signature in cursive script, reading "Vincent Johnson", written over a horizontal line.

VINCENT JOHNSON 688-089