

IN THE

Superior Court U.P.
APR 12 1969
OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

HENRY EARL MILLER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

(Your Name)

(Your Name)

Federal Correctional Complex (Low)
(Address) P.O. Box 1000

Petersburg, VA 23804

(City, State, Zip Code)

N/A
(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1.) Does The Fourth Circuit's Widespread Practice Of Issuing Virtually Indistinguishable Production-Line Manufactured Rubber Stamped Opinions Violate Miller's 5th Amendment Constitutional Rights To Procedural Due Process And Equal Protection Under Federal Law?
- 2.) Did The Fourth Circuit Violate Miller's 5th Amendment Constitutional Rights To Procedural Due Process And Equal Protection Under Federal Law When It Overlooked The District Court's Decision To Bypass, Override, Excuse The Government's Deliberate Waiver Of Non-Jurisdictional Arguments, As Explicitly Prohibited By This Court In Wood v. Milyard, 132 S.Ct. 1826 (2012)?
- 3.) Did The Fourth Circuit Violate Miller's 5th Amendment Constitutional Rights To Procedural Due Process And Equal Protection Under Federal Law When It Overlooked The District Court's Failure To Adjudicate Or Resolve All Of Miller's 28 U.S.C. §2255 Habeas Claims, As Required By The Fourth Circuit Itself In Porter v. Zook, 803 F.3d 694 (4th Cir. 2015) And This Court's Ruling In Gelboim v. Bank Of Am. Corp., 135 S.Ct. 897 (2015)?

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[x] 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:

1. A.U.S.A. E. Jean Howard
2. Petitioner Henry Earl Miller
3. The Honorable J. Michelle Childs

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OTHER

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 A 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 B to the petition and is

reported at 2018 U.S. Dist. LEXIS 98040; 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 February 26, 2019.

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: _____, 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. § 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

5th Amendment Constitutional Rights To Procedural Due Process And Equal Protection Under Federal Law.

STATEMENT OF THE CASE

On March 27, 2017, Miller's 28 U.S.C. §2255 Habeas Corpus Petition [Dkt. 819] was filed in the District Court of South Carolina.

On April 11, 2017, the Honorable J. Michelle Childs issued a Show Cause Order [Dkt. 820] directing the Government to file an "Answer" to Miller's §2255 "within 30 days." Id.

On May 11, 2017, the U.S. Government, represented by A.U.S.A. E. Jean Howard complied with the district court's order and filed both a perfunctory one [1] page Response in Opposition to the §2255 [Dkt. 826] and a perfunctory one [1] page Motion to Dismiss Petitioner's §2255 [Dkt. 827].

On May 12, 2017, the district court issued a Roseboro Order [Dkt. 828] informing Miller that he had exactly 31 days, plus an additional 3 days (for mail service) to file a Response to the Government's Motion to Dismiss or risk summary dismissal of his habeas petition.

On May 22, 2017, exactly ten [10] days later, and well within the allotted time by the district court's Roseboro Order, Miller's Motion For Summary Judgment [Dkt. 832] and Traverse to the Government's Response and Motion to Dismiss [Dkt. 883] were filed. In his Traverse, Miller timely invoked Fed.R.Civ.P., Rule 8(c), and raised the counterclaim that all other non-jurisdictional affirmative defenses not raised by the the Government in its Habeas responses were lawfully waived and excluded from the §2255 Habeas proceeding. [See Exhibits 1 & 2].

On June 12, 2018, the district court issued an Order denying Miller's §2255 Habeas Motion. The designated "Order" however, failed to either adjudicate or resolve Miller's timely and substantial claim of a deliberate governmental waiver

On June 26, 2018, Miller filed a Rule 60(b)(4) Motion, and a Motion to Recuse, asserting that the June 12, 2018 Order was void because it ignored and bypassed the Government's deliberate waiver as expressly prohibited by the U.S. Supreme Court in Wood v. Milyard, 132 S.Ct. 1826 (2012).

On September 24, 2018, Miller submitted a Notice of Appeal appealing the district court's June 12, 2018 Order denying the §2255. However, due to the timely filing of the Rule 60(b)(4) Motion this Court was divested of jurisdiction to entertain the appeal until such time as the district court ruled on said motion. See F.R.A.P., Rule 4(a)(4)(A).

On December 6, 2018, the district court denied Miller's Rule 60(b)(4) Motion. Thus, Miller's NOA should legally have been deemed filed as of December 6, 2018, pursuant to F.R.A.P., Rule 4(A0(4)(B)(i). The instant brief followed.

REASONS FOR GRANTING THE PETITION

- 1.) Because the district court's uncontested failure to either adjudicate or resolve all of Miller's §2255 Habeas claims deprived the appellate court of jurisdiction to even entertain Miller's appeal. See Porter v. Zook, 803 F.3d 694, 696-97 (4th Cir. 2015) ("[E]ven if a district court believes it has disposed of an entire case, we lack appellate jurisdiction where the court in fact has failed to enter judgment on all claims.") (emphasis added); Gelboim v. Bank of Am. Corp., 135 S.Ct. 897, 902 (2015) (A "final decision" under 28 U.S.C. §1291 "is one by which a district court disassociates itself from a case" by ruling on all the issues presented before it.).
- 2.) The Fourth Circuit's well-known and widespread propensity to rubber stamp district court's rulings regardless of the legitimacy of said rulings by fiat - i.e., the issuance of vague, evasive and virtually identical production-line manufactured Opinions - violates Miller's Constitutional 5th Amendment Rights to Procedural Due Process and Equal Protection Under Federal Law.
- 3.) The Fourth Circuit's decision to overlook the district court's illegal decision to bypass, override or excuse the Government's 'deliberate waiver' of non-jurisdictional arguments violates this Court's explicit decision in Wood v. Milyard, 566 U.S. 463, 472 (2012), holding that "a federal court does not have carte blanche to depart from the principle of party presentation basic to the adversary system" and is therefore "not at liberty, we have cautioned, to bypass, override,

or excuse [the Government's] deliberate waiver" of non-jurisdictional arguments. 132 S.Ct. 1826, 1830 (emphasis added). It also violates the Fourth Circuit's clear and unambiguous decision in Woodson v. Allstate Ins. Co., 835 F.3d 628, 635 (4th Cir. 2017) (holding that a federal prosecutor's argument or affirmative defense "may be 'waived' by conscious and deliberate conduct indicating the wish not to present the defense or by the conscious and deliberate failure to present the defense, in which case the court's consideration of the defense would be 'an abuse of discretion' ... Such a waiver may be indicated when the [Government] fails to present the defense 'in a manner sufficient to alert the district court' to it.") (quoting Milyard, 132 S.Ct. at 1834-35 (2012)).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Henry Earl Miller

Date: April 12, 2019