

Appendix C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 15-51196

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JUAN L. GARCIA, also known as Juan Garcia,

Defendant - Appellant

Appeal from the United States District Court
for the Western District of Texas

ON PETITION FOR REHEARING EN BANC

(Opinion 5/30/18, 5 Cir., _____, _____ F.3d _____)

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:

(X) Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

() Treating the Petition for Rehearing En Banc as a Petition for Panel Rehearing, the Petition for Panel Rehearing is DENIED. The court

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having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED. R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

Charles Dennis Fay
UNITED STATES CIRCUIT JUDGE

Appendix B

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-51196
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 30, 2018

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JUAN L. GARCIA, also known as Juan Garcia,

Defendant-Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:14-CV-843
USDC No. 5:10-CR-708-2

Before KING, ELROD, and HIGGINSON, Circuit Judges.

PER CURIAM:*

A jury found Juan L. Garcia, federal prisoner # 64893-280, guilty of conspiring to possess intending to distribute heroin, possessing heroin intending to distribute it, and possessing a firearm in furtherance of a drug trafficking crime, and he ultimately received a total prison sentence of 181 months. In his 28 U.S.C. § 2255 motion attacking that conviction and

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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sentence, Garcia argued, among other things, that in light of the Supreme Court's holding in *Riley v. California*, 134 S. Ct. 2473 (2014), which was decided after Garcia's conviction became final, the warrantless search of his cell phone violated the Fourth Amendment. The district court denied relief, but observing that we have not yet determined whether *Riley* applies retroactively to cases on collateral review, it granted Garcia a certificate of appealability on the issue whether he "has been denied his constitutional right to be free from unreasonable searches pursuant to the Fourth Amendment."

We review the district court's factual findings for clear error and its conclusions of law de novo. *United States v. Redd*, 562 F.3d 309, 311 (5th Cir. 2009). We may affirm the denial of § 2255 relief on any basis supported by the record. *Scott v. Johnson*, 227 F.3d 260, 262 (5th Cir. 2000); *Aeby v. United States*, 409 F.2d 1, 2 (5th Cir. 1969). Because Garcia "had a full and fair opportunity to litigate his Fourth Amendment claim in pre-trial proceedings and on direct appeal," *Stone v. Powell*, 428 U.S. 465, 494-95 and n.37 (1976), bars collateral review of that claim. *United States v. Ishmael*, 343 F.3d 741, 742 (5th Cir. 2003). Any relevant change in the law brought about by *Riley* is of no moment because "a change in the law does not, by itself, render proceedings any less 'full and fair' for purposes of *Stone*." *Id.*

AFFIRMED.

*Appendix A*IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

JUAN L. GARCIA	S
	S
Petitioner	S
	S
v.	S
	S
UNITED STATES OF AMERICA	S
	S
Respondent	S
	S

No. SA-14-CA-843
SA-10-CR-708 (2)

ORDER REGARDING MOTION FOR CERTIFICATE OF APPEALABILITY

On November 30, 2015, the Court entered a judgment denying the motion to vacate sentence filed by Petitioner Juan L. Garcia pursuant to 28 U.S.C. § 2255. On December 10, 2015, the Petitioner filed a motion for a certificate of appealability. In order to obtain a certificate of appealability, the Petitioner is required to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

In his motion to vacate sentence, the Petitioner contended that he is entitled to a new trial because the San Antonio Police Officers who stopped his vehicle seized his cellular telephone, and proceeded to conduct a digital search without obtaining a warrant. In June 2014, after the judgment in Petitioner's criminal case had become final, the United States Supreme Court held in *Riley v. California*, ___ U.S. ___, 134 S.Ct. 2473 (2014) that a warrant was required to authorize law enforcement officers to conduct such a search. The Petitioner contends that the holding in *Riley* should be applied retroactively in his case.

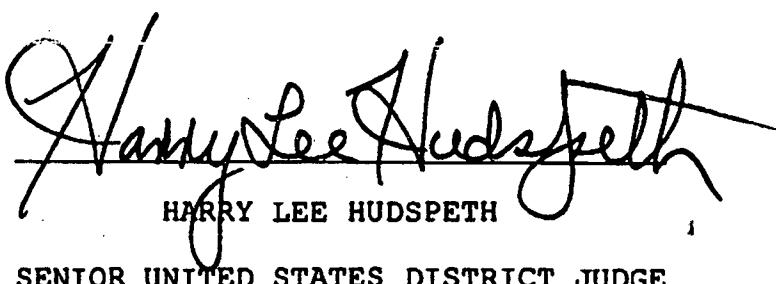
Appendix A

The Court of Appeals for the Fifth Circuit has not ruled on whether the holding in **Riley** should be applied retroactively to cases which were not on direct appeal at the time of the **Riley** decision. Accordingly, reasonable judicial minds could differ as to whether the Petitioner has succeeded in making a substantial showing that he has been denied his constitutional right to be free from unreasonable searches pursuant to the Fourth Amendment. Therefore, his motion for a certificate of appealability should be granted.

It is therefore ORDERED that the motion of Petitioner Juan Garcia for a certificate of appealability be, and it is hereby, GRANTED.

It is further ORDERED that a certificate of appealability be, and it is hereby, issued in this case authorizing the Petitioner to pursue an appeal to the United States Court of Appeals for the Fifth Circuit.

SIGNED AND ENTERED this 16th day of December, 2015.



HARRY LEE HUDSPETH
SENIOR UNITED STATES DISTRICT JUDGE