

19-5377 ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA,

PLAINTIFF-APPELLEE,

v.

FILED  
MAY 23 2019  
OFFICE OF THE CLERK  
SUPREME COURT, U.S.

FAIRLY W. EARLS,

DEFENDANT-APPELLANT.

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"On Petition for Writ of Certiorari to the United  
States Court of Appeals for the Seventh Circuit"

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PETITION FOR WRIT OF CERTIORARI

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Date: 05-22-2019

Fairly W. Earls,  
Columbia Correctional  
P.O. Box 900  
Portage, WI. 53901

QUESTION PRESENTED

Fairly W. Earls completed satisfaction of his criminal judgment case raises a pressing issuance of National Importance: Whether and to what extent the Criminal Justice System does not allow Federal Rules of Civil Procedure Rules in Habeas Corpus Cases. Specifically, did the United States Court of Appeals for the Seventh Circuit impose an improper and unduly burdensome review Standard that Contrvenes with this Court's precedent and deepens circuit splits when it Denied Mr. Earls Rule 60(b)(6) Motion by deciding that Federal Rules of Civil Procedures are not allowed in Criminal cases, thereby denying Mr. Earls his Constitutional Right to be Free from continued restraints when his judgment has been satisfied.

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### OPINIONS

The Opinions of the United States Court of Appeals for the Seventh Circuit Order denying Rehearing (App. C), Seventh Circuit Court Order deciding Federal Rules of Civil Procedure 60(b)(6) can not be used in Criminal Cases (App. D), United States District Court Order deciding Federal Rules of Civil Procedure 60(b)(6) is not proper in Criminal Cases (App. E), United States District Court Order on Judgment of Conviction (App. F), State of Wisconsin Judgment of Conviction Consecutive to Federal Sentence (App. G).

### JURISDICTION

The Judgment of the Court of Appeals was Entered 03-13-2019 and the Petition for Rehearing was denied on 04-04-2019, the issuance of Mandate was entered 04-12-2019. The Petition for Writ of Certiorari to this Court was filed on 05-22-2019. The Jurisdiction of the petition for this Court is invoked pursuant to 28 U.S.C. § 1254 and the United States Constitution Article III §2. The Petition is timely filed pursuant to 28 U.S.C. § 2101(c) and the Supreme Court Rule 13. The time to file a Petition for Writ of Certiorari is 90 days for all parties and run's from the date of the denial of rehearing or, the subsequent entry of judgment.

### CONSTITUTIONAL AND STATUTORY

The Fifth Amendment to the Constitution of the United States of America provides, "nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor be deprived of life, liberty or property without due process of law!"

The Sixth Amendment to the Constitution of the United States of America provides; "in all criminal prosecutions, the accused shall enjoy the right to have assistance of counsel for his defense".

The Fourteenth Amendment to the Constitution of the United States of America provides; "no state shall make or enforce any law which shall abridge the privileges 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 it's jurisdiction the equal protection of the laws."

Other statutory provisions, 28 U.S.C. §§ 2253, 2255.

### STATEMENT OF THE CASE

The petitioner Fairly W. Earls was sentenced to 60 Months imprisonment on October 5th, 2011 by the United States District Court of Indiana. The petitioner was taken into Federal Custody on 08-26-2010 and was given sentencing credit for time spent in custody (13 months 10 days) leading up to his imposed conviction and sentence on October 5th, 2011, leaving an estimated 46 months of time to serve with no other convictions to serve time on.

When the petitioner was sentenced by the Federal Court on October 5th, 2011 the District Court was aware that the petitioner had no other sentences or convictions as of the October 5th, 2011 Federal sentence. The District Court was also aware that the petitioner had a pending case that was reversed in the State of Wisconsin but no conviction or sentence was imposed.

A short time after the Federal Sentence the Petitioner was sent to the State of Wisconsin for a trial on the State charges. The District Court never determined where the petitioner was to serve his federal sentence.

On October 9, 2012 the petitioner was given a State Sentence to be served consecutive to the Federal Sentence already imposed by the Federal District Court. After the State imposed the State Sentence on October 9, 2012 the State Court made it a point in the Court Order that the State Sentence is to be served Consecutive to the already imposed Federal Sentence.

The State failed to comply with it's own Order and elected to not transfer the petitioner back to finish serving his Federal sentence that was imposed before the State Sentence. Therefore electing to leave the petitioner in a non-federal institution as the place of confinement to serve his Federal Sentence.

The B.O.P., U.S. Marshals and the Asst. Attorney General all were aware that the petitioner was sentenced by the State Court, and that the now imposed State Sentence was to be served consecutive to the Federal Sentence. The B.O.P., U.S. Marshals and the Asst. Attorney General all knowingly and willingly elected to leave the petitioner in a non-federal institution as the place of confinement to serve his Federal Sentence.

On or about January 30th, 2015 the Petitioner wrote to the United States Bureau of Prisons at U.S. Armed Forces Reserve Complex, 346 Marine Forces Drive Grand Prairie, Texas 75051 informing the B.O.P. that the Petitioners imposed Federal Sentence with 85% served was satisfactory completed in a non-federal institution as the place of confinement by and of there choosing. On or about the same date the Petitioner notified the U.S. Marshals at 711 U.S. Courthouse and Federal Bldg. 517 E. Wisconsin Ave. Milwaukee, WI. 53202 addressing the same subject.

On 10-17-2017 the defendant filed a Motion to proceed in forma pauperis status and a Motion pursuant to Federal Rules of Civil Procedure 60(b)(6) in the United States District Court of Indiana requesting a Satisfaction Judgment because he has satisfied that Courts Order of Conviction.

On 03-05-2018 the defendant had to file a Motion in the District Court pursuant to Federal Rule of Civil Procedure Rule 12(c) requesting the Court to enter a Order on the Rule 60(b)(6) Motion.

On 06-11-2018 the defendant filed a Writ of Mandamus Petition in the United States Court of Appeals for the Seventh Circuit asking the Circuit Court to enjoin parallel litigation pursuant to section 28 U.S.C. § 1651(a).

On 06-22-2018 the United States District Court of Indiana issued a Order denying petitioners Federal Rule of Civil Procedure 60(b)(6) Motion by deciding that the Federal Rules of Civil Procedure "do not apply in criminal cases". The Notice of Appeal followed on 06-29-2018.

On 07-03-2018 the case was opened in the United States Court of Appeals for the Seventh Circuit. On 07-09-2018 the defendant filed a Motion for certificate of appealability, a docketing statement and transcript information. The Briefing was suspended per Court Order on 07-18-2018.

On 08-13-2018 the Circuit Court issues a Briefing Schedule requiring the Appellant to file his Brief by 09-10-2018. The Appellee Brief was due by 10-10-2018, the Appellant filed his Brief on 09-03-2018. However the Appellee failed to file a Brief, thereby conceding to Appellants argument.

On 03-13-2019 the Seventh Circuit Court of Appeals issued a Order denying the defendants Federal Rule of Civil Procedure 60(b)(6) Motion by deciding that Federal Rules of Civil Procedure Rule 60(b)(6) does not apply in criminal cases. On April 4th, 2019 the Court of Appeals denied the petition for rehearing and on April 15th, 2019 issued the Mandate.

REASON FOR GRANTING THE PETITION

This is the Rare Habeas Case for which under Federal Rule of Civil Procedure 60(b)(6) is Appropriate. The defendant's Federal Judgment of Five years was entered on October 5th, 2011 and has been satisfied, the continuing Restraint is improper and unnecessary.

The United States Court of Appeals for the Seventh Circuit decided that Federal Rules of Civil Procedure 60(b)(6) Motions are not allowed in Criminal cases which contravenes this Courts precedents. This Court has held that if neither the Rule 60(b) Motion, nor the Federal Judgment from which the Motion seeks relief, substantively, addresses Federal grounds for setting aside the movant's conviction, then allowing the Motion to proceed as denominated creates no inconsistency with the Federal Habeas Corpus Statutes or Rules, see Gonzalez v. Crosby, 545 U.S. 524 (2005).

This Court decided that the Civil Rule like the one relied upon by Earls can be used in Criminal Cases. In a Federal Habeas Corpus Case under 28 U.S.C. § 2255 a prisoner invoking Rule 60(b) of the Federal Rules of Civil Procedure for relief from a judgment, is not to be treated as a second or successive Federal Habeas Petition--which would be subject to the restrictions on such petitions in 28 U.S.C. § 2241 or 28 U.S.C. § 2244(b), as amended by the Antiterrorism and Death Penalty Act of 1996 (AEDPA)--if the Motion does not assert or reassert, claims of error in the movant's State Conviction, as for such purposes: (quoting)

- (1) The Policy consideration of Finality, standing alone, is unpersuasive in the interpretation of Rule 60(b), whose whole purpose is to make an Exception to Finality.
- (2) When No "Claim" is presented within the meaning of § 2244(b), there is no basis for contending that a Rule 60(b) Motion should be treated like a Habeas Corpus Petition.

(3) If Neither a Rule 60(b) Motion, nor the Federal Judgment from which the Motion seeks relief, substantively addresses Federal grounds for setting aside the Movant's State Conviction, then allowing the Motion to proceed as denominated creates no inconsistency with the federal Habeas Corpus statutes or Rules.

(4) Rule 60(b) has a Valid Role to play in Federal Habeas Corpus Cases.

(5) Several Characteristics of Rule 60(b) Motion limit the friction between Rule 60(b) and the successive-petition prohibitions of AEDPA, and thus the harmonization of Rule 60(b) and AEDPA will not expose Federal Courts to an avalanche of frivious post judgment motions, (Scalia J., Joined by Rehnquist, CH.J., and O'Conner, Kennedy, Thomas, Ginsburg and Breyer, JJ.). See Gonzalez v. Crosby, 545 U.S. 524, 480-484 (2005), cited by this Court in Tharpe v. Sellers, 138 S.CT. 545 (2018), Buck v. Davis, 137 S.CT. 759 (2017).

The Federal Rules of Civil Procedure may be applied to proceedings under these Rules, see Smith v. Barry, 502 U.S. 244 (1992); United States v. Morales, 807 F.3d 717 (5th Cir.2015); Sullivan v. United States, 198 F.Supp. 624 (S.D.N.Y. 1961), also the United States Congress in Rule 12 of section § 2255 proceedings. This Court in Tharpe v. Sellers, 138 S.CT. 545 (2018) allowed Tharpe to invoke Civil Rule 60(b) in a Criminal Case. quoting, "in June 2017 Tharpe moved to reopen his Federal Habeas proceedings under Federal Rule of Civil Procedure 60(b), Id. at [\*\*\*11] 138 S.CT. at 549.

This Court decided that Federal Rules of Civil procedures, especially Rule 60(b) Motions have unquestionable Valid Roles to play in Criminal Habeas Corpus Cases. see Horne v. Flores, 557 U.S. 433, 447 (2009).

Pursuant to the Federal Rules of Civil Procedure, the Rule 60(b)(6) allows the Court to Grant relief from a Judgment or Order when the Judgment has been satisfied. see Horne v. Flores, 557 U.S. 433,447 (2009); Gonzalez v. Crosby, 545 U.S. 524 (2005); Tharpe v. Sellers, 138 S.CT. 545 (2018).

In Horne *supra*, this Court decided that the Federal Rules of Civil Procedure Rule 60(b)(6) permits a party to obtain relief from a judgment or Order if, among other things, "applying the judgment or order prospectively is no longer equitable". The rule does provide a means by which a party can ask a Court to modify or vacate a judgment or order when "a significant change either in factual conditions or in Law" renders continued enforcement detrimental to the public interest, Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384 (1992).

Rule 60(b)(6) also allows the Court to Grant relief from a judgment when it "has been satisfied, released or discharged; or applying it prospectively is no longer equitable". This part of Rule 60(b)(6) appears to serve as defendants remedy when the holder of the judgment refuses to acknowledge that it has been satisfied. When the judgment has been completely satisfied, there is no need for it to continue, Kleven v. Mrozinski, 489 B.R. 818 (2013).

The defendant is the party seeking the relief and bears the burden of establishing that the changed circumstances, namely the satisfaction of his Federal Judgment does warrant a change in circumstances to warrant relief, see *Rufo*, *Id.* at 383, also see Matter of Canopy financial Inc., 708 F.3d 934 (7th Cir. 2013).

The defendant did not challenge or address claims of error in his Federal Judgment or the setting aside of that conviction. The defendant did in his Rule 60(b)(6) Motion ask the Court to issue an Order of Satisfaction on the Judgment, in part because the District Court refused to issue the request based on the change in circumstances. Thereby the challenge of the defendants is on the district court denial of his rule 60(b) Motion and now the denial of the Seventh Circuit on his Rule 60(b)(6) Motion.

Earls did properly file his Rule 60(b) Motion in the Court that Sentenced

him, then the Seventh Circuit insistence that Earls file a § 2241 motion in the judicial district (Wisconsin) that contains the prisoner is in conflict with what the United States Congress decided in Section § 2241(d) the proper venue is (quoting) "the District Court for the District within which the Federal Court was held, which convicted and sentenced him".

The District Court was fully aware that the defendant had no other sentences to serve and the District Court at the sentencing stage hearing made the statement on the record "whatever facility" that the defendant was to serve his sentence, see (Appendix G). The District Court was fully aware that the defendant could be facing a state sentence and the District Court at sentencing did not care what facility the defendant served his sentence. The Attorney for the United States did not care if the defendant spent his Federal sentence in a state Facility because if he had he could of disputed the Judges Order of "whatever facility". The Government did not contest the Order and in essence conceded to a State facility if the defendant was convicted.

A year after the Federal Sentence was Ordered by the District Court, the defendant was given a state Sentence on October 11, 2012, see (appendix H). The State Sentence was Ordered by the State Court for the defendant's State Sentence to be Consecutive to any other sentences. This meant that the State Sentence was Consecutive to the Federal Sentence.

The Seventh Circuit decision that § 2241 is the only avenue for this type of relief that Earls wants, Id. ¶6,page 3 of the Order is in conflict with this Courts decisions on Rule 60(b) Motions.

A Court has wide discretion in deciding Motions under Federal Rule of Civil Procedure 60(b), and the moving party bears the burden of proving that the Court should grant relief, see Matter of Canopy Financial Inc., 708 F.3d 931 (7th Cir. 2013), citing Horne v. Flores, 557 U.S. 433, 447 (2009). The

defendant has met his burden with the evidence in the Appendices and in his Rule 60(b)(6) Motion proving that his relief should be granted because his Federal Sentence was served prior to the State Sentence beginning to commence therefore his Federal sentence has been satisfied.

This Court decided that "once a defendant has satisfied a criminal judgment entered against him, the defendant is no longer bound by that judgment and is no longer a defendant in that action". This Court arrived at that conclusion and also held that a petitioner is entitled to present a petition for redress on an action and the petitioner should not be held to the Prison Litigation Reform Act (PLRA) standard. see Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 384 (1992).

The defendant's federal sentence was for five years of imprisonment entered by the United States District Court on October 5th, 2011. The sentence by the District Court could not of been consecutive because the defendant had no other state or federal sentences at the time of the order.

This Court has held that once a party carries his burden that changed circumstances do warrant relief, "a Court abuses it's discretion when it refuses to modify an injunction or consent decree in light of such changes, see Horne v. Flores, 557 U.S. 433, 447 (2003), quoting Agostini v. Felton, 521 U.S. 203, 215 (1997).

The continuing injunction of the District Court "exceeds appropriate" limits and a durable remedy achieving the objective of the judgment was implemented. The continued enforcement of the Order is not necessary, but also improper. The violation of the Federal Law has been satisfied, see Horne v. Flores, 557 U.S. 433, 450 (2009), Tharpe v. Sellers, 138 S.C.T. 545 (2018).

This Court's precedent is clear, Federal Rules of Civil Procedures have a Valid Role to play in Habeas Corpus Criminal cases, Horne v. Flores, 557 U.S. 433, 447 (2009).

The panel disregarded this Court's precedent establishing that Rule 60(b), "which provides courts with authority 'adequate to enable them to vacate judgments whenever such action is appropriate to accomplish Justice". Liljeberg v. Health Serv. Acquisition Corp, 486 U.S. 847, 863-64 (1988) (quoting Klaproth v. United States, 335 U.S. 601, 614-15 (1949)). As with any Standard where the touchstone is accomplishing Justice, a Court must "examine all of the circumstances to determine whether collectively [they establish] extraordinary circumstances for purposes of Rule 60(b)(6)". Ramirez v. United States, 799 F. 3d 845, 851 (7th Cir. 2015); see Klaproth, 335 U.S. at 615 (analyzing circumstances collectively in concluding that reopening the judgment was appropriate under Rule 60(b)).

#### CONCLUSION

For all of the Foregoing reasons, Mr. Earls' case is extraordinary. Certiorari should be granted because reasonable jurists could unquestionably debate the extraordinariness of the circumstances by Mr. Earls that the Federal Rules of Civil Procedure applies to his case and in criminal cases.

This Court's review is warranted to maintain public confidence that Federal Courts will conform to and allow Civil Rules in all criminal cases to accomplish Justice.

Dated: 05-22-2019

Respectfully Submitted,

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