No. 19-5395

IN THE SUPREME COURT OF THE UNITED STATES

George Cleveland III, Petitioner,

v.

Director Jerry B. Adger, of the South Carolina Department of Probation, Parole & Pardon Services (SCPPPS); The State of South Carolina, Respondents

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

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

Whether *Slack v. McDaniel, 529 U.S. 473 (2000)* requires the Court of Appeals to determine with specificity, if a Habeas Corpus Petitioner's Appeal "states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

Does the "case and controversy" clause under Art. III § 2 of the U.S. Const. bar the District Court from deciding a case and controversy without arguments on the merits from both parties first?

Does the privilege of the Writ of Habeas Corpus' suspension clause under Art. I § 9 of the U.S. Const. bar a 1-year period of limitation under 28 § 2244 (d)(1)(2) to apply for it in the District Court?

I

RELATED PROCEEDINGS

United States District Court (D.S.C.)

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS); The State of South Carolina, No. 4:17-cv-03269 (Dec. 06, 2017) (Proper Form Order)

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS); The State of South Carolina, No. 4:17-cv-03269 (January 02, 2018) (Order authorizing service of process by clerk, directing respondent not to answer)

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS); The State of South Carolina, No. 4:17-cv-03269 (February 12, 2018) (Report and Recommendation to dismiss § 2254 Petition with prejudice)

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS); The State of South Carolina, No. 4:17-cv-03269 (May 22, 2018) (Order adopting the Report and Recommendation that dismissed the § 2254 Petition with prejudice, and without requiring the State of South Carolina to respond)

United States Court of Appeals (4th Cir.):

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS), No. 18-6704 (Dec 26, 2018) (Order dismissing § 2254 Petition)

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS); No. 18-6704 (Feb 12, 2019) (Order denying petition for rehearing)

Supreme Court of the United States:

George Cleveland III v. Director Jerry B. Adger, of the South Carolina Department of Probation, Parole, and Pardon Services (SCPPPS); petition for cert pending; No. _____; filed on July 12, 2019

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George Cleveland III, Habeas Corpus Petitioner proceeding pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the fourth circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the fourth circuit (App., *infra 1-2)* is reported at 740 Fed Appx 356 (Mem). The Report and Recommendation from the Magistrate of the District Court of South Carolina form *infra 11-18*) is not reported in the Federal Supplement, but available at 2018 WL 3120677. The opinion of the District Court for the District of South Carolina adopting the Report and Recommendation dismissing §2254 Petition with prejudice (App., *infra 3-10*) is not reported in the Federal Supplement, but available at 2018 WL 2323597.

JURISDICTION

The judgment of the court of appeals was entered on December 26, 2018. A petition for rehearing was denied on February 12, 2019. This court granted my motion to extend the deadline to file certiorari petition to and including July 12, 2019 (App., *infra 32*). The jurisdiction of this court is invoked under 28 U.S.C. §1251 (1).

STATUTORY & CONSTITUTIONAL PROVISIONS INVOLVED

Article 1 § 9 of the U.S. Const. Describes the only reasons the Habeas Corpus application can be suspended by the District Court or Court of Appeals, and that's "in cases of rebellion or invasion." App., *infra,* 24.

Article III § 2 of the U.S. Const. Describes the "Judicial Power" of the Federal District Courts can only "extend" to "Cases" and "Controversies" between "a State, or the "citizens thereof" or "citizens or subjects." App., *infra,* 26.

Section 2244 (d)(1)(2) of Title 28 of the United States Code defines the a "1-year period of limitation" to file a petition for a writ of habeas corpus after a properly filed "application for [a] State post-conviction" relief claim, §2244 (d) (1) (2) does not mention "suspension", but a total bar after 1-year period of limitation for a initial habeas petition. App., *infra 22.*

STATEMENT

This case involves *Pro se* Petitioner's Application for a Writ of Habeas Corpus from State convictions on the grounds that the Supremacy Clause under Art. V of the U.S. Const. Barred the Greenville County (S.C.) General Sessions (Criminal Court) from imposing sentence because the vehicles I was convicted on, were reported stolen from Georgia, and possessed by me in South Carolina violating my due process right (liberty) interest under the U.S. Const, and barred my criminal convictions, because the Greenville County S.C. grand jury could not have possibly Indicted over 400 criminal defendants in just nine (9) hours, violating my due process right (liberty interest) under the U.S. Const.

1. This Court reasoned in *Slack v. McDaniel, 529 U.S. 473, 478 (2000)* that if a Habeas Corpus Application is dismissed on "procedural grounds" the District Court Judge, or Circuit Judge must consider if the applicant has "state[d] a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Justice Kennedy of this Court wrote: "The Writ of habeas corpus plays a vital role in protecting constitutional rights.", *id at 483.* The Magistrate Judge did not agree with Justice Kennedy's reasoning, *Id.* In particular, the Magistrate Judge honed in on the one-year statute of limitations under *AEDPA* by

concluding that "the petition is clearly untimely under the one-year limitations provision of the AEDPA, 28 U.S.C. §2244(d)." App.18. The Magistrate Judge did not even cite Slack or apply the elements under Slack. App. 11-18.

The District Judge adopted the one-year limitations under *AEDPA, 28 U.S.C. §2244(d)(1)(2)* reasoning of the Magistrate that the petition is "untimely." App. 7-8. The District Court cited *Slack, 529 U.S. at 484-85* by reasoning that "In this case, the Court concludes that Petitioner has failed to make the requisite showing of 'the denial of a constitutional right...' ", but the District Court failed to apply to its conclusion with my denial of constitutional rights in my filed Petition for a Writ of Habeas Corpus. App. 8. In my Petition filed on August 04, 2017, (App. 7) well before the District Court's Order dismissing my Petition with prejudice on May 22, 2018, (App. 10). I argued: the Supremacy Clause under Art. V of the U.S. Const. Barred the Greenville County (S.C.) General Sessions (Criminal Court) from imposing sentence because the vehicles I was convicted on were from reported stolen from Georgia, and possessed by me in South Carolina, the Due Process Clause (liberty) interest under the U.S. Const. Bars my criminal convictions, because the Greenville County S.C. Grand Jury could not have possibly Indicted over 400 criminal defendants in just nine (9) hours.

The Court of Appeals for the Fourth Circuit AFFIRMED, and DISMISSED my Appeal, and did not even determine whether a certificate of appealability should issue under *Slack v. McDaniel, 529 U.S. 473, 478 (2000)* (a Circuit Court Judge must determine if [I] "state[d] a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling"). In particular, the Court of Appeals simply cited *Slack*, and the relevant quotes without even connecting the elements of *Slack, 529 U.S. at 484-485* (if the district court denies relief on "procedural grounds" and that the "denial of a constitutional right") to my specific constitutional 1 "underlying constitutional claim[s]", *Slack, 529 U.S. at 478:* "We [4th circuit panel] have independently reviewed the record and conclude that Cleveland has not made the requisite showing."[2] App. 2.

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[2] The 4th Circuit has a pattern of using the same language in Habeas Corpus Appeals that is not coonecting Slack's elements with the underling Constitutional claims, see Brown v. Warden of Perry Correctional Institution, 2019 WL 2577464; Evans v. Warden Lieber Correctional Institution, 2019 WL 2443144; Lee v. Warden Perry Correctional Institution; Givens v. Clarke, 770 Fed Appx. 157 (Mem) (2019); Portee v. Stevenson, 671 Fed Appx. 100 (2016).

2. The United States Constitution put limits on "judicial power" for federal district courts. In particular, Art. III §2 of the U.S. Const. States that "judicial power shall [only] extend in Law and Equity, arising under this Constitution, the Laws of the United States... to controversies between ... a state, or the citizens or subjects." This Court reasoned under *Muskrat v. United States, 219 U.S. 346, 347 (1911):* "under the constitution of the United States, the exercise of judicial power is limited to cases and controversies." The District Court relied solely on the Magistrate Judge's Report and Recommendation to dismiss my habeas corpus petition with prejudice on the grounds that the petition is "untimely" under §2244 (d)(1)(2). App.18. The Magistrate or District Judge are not parties of my case and controversies, the State of South Carolina is the party in my case.

The Court of Appeals for the Fourth Circuit again AFFIRMED, and DISMISSED my Appeal, and did not even connect the *Slack* elements to my Constitutional claims. *Ibid.*

3. This Court reasoned in *Preiser v. Rodrigues, 41 U.S. 475, 500 (1973)* that: "When a state prisoner is challenging the very fact... of his physical imprisonment, and the Relief he seeks is a determination that he is entitled to immediate release from that imprisonment, his sole federal remedy is a writ of habeas corpus." The District Court again did not even consider my argument that the one-year limitation to file my habeas corpus in federal court under §2244(d)(1)(a) (2) is barred by Art. I §9 (suspension of the habeas corpus can only be allowed "in cases of rebellion or invasion"). App. 8.

B. **The Questions Presented Warrants Review**

The Judgment below conflicts with case-law from this court, regarding the requirements for a certificate of appealability. Specifically, *Slack v. McDaniel, 529 U.S. 473, 478 (2000)* which this court held that a Circuit Court Judge must determine if (I) "state[d] a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

The Judgment below is also a threat to my liberty, and the rule of law, along with and many other habeas petitioners because the Court of Appeals is simply Affirming, and Dismissing Orders by rubber-stamping them because "our system knows no authority beyond or above the law, see *Ex parte Milligan 71 U.S. (4 Wall) 2, 130-31 (1866)* which again, conflicts with *Slack 529 U.S. at 478,* and the fourth circuit has abandoned its core responsibility to make sure the District Court of South Carolina is deciding habeas petition based on the requirements under *Slack, id.*

The Judgment below conflicts with this court's habeas corpus holding under Slack v. McDaniel, 529 U.S. 473, 478 (2000) which this court held that a Circuit Court Judge must determine if I "state[d] a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." is not applying the law with the facts from the Petitioner (me) which is contrary to the very meaning of habeas corpus, i.e. to demand for immediate release. Specifically, Slack's holdings, *id* conflicts with the Court of Appeals for the Fourth Circuit's judgment in my case because it's vague, and non-specific conclusion of:

"We have independently reviewed the record and conclude that Cleveland has not made the requisite showing." App. 2. The 4th Circuit has a pattern of using the same vague and non-specific language in Habeas Corpus Appeals within its own Circuit by not connecting Slack's, *id.*, elements with the underling Constitutional claims, and the determining procedural analysis from the District Court, see, e.g., Brown v. Warden of Perry Correctional Institution, 2019 WL 2577464; Evans v. Warden Lieber Correctional Institution, 2019 WL 2443144; Lee v. Warden Perry Correctional Institution; Givens v. Clarke, 770 Fed Appx. 157 (Mem) (2019); Portee v. Stevenson, 671 Fed Appx. 100 (2016). App. The conflict by the Court of Appeals for the Fourth Circuit will deepen without this Court granting Certiorari in this case. There are hundreds of other habeas corpus Petitions I can provide to this Court if requested that shows the same pattern-laced-vague-non-specific-judgment without explaining how the Court of Appeals for the Fourth Circuit came to its conclusion, see, e.g.,: "We have independently reviewed the record and conclude that Cleveland has not made the requisite showing." The Court of Appeals for the Fourth Circuit did not explain what portion of the "record" the court "reviewed, so there can be no conclusion without a determination of my arguments, and a logical connection to the legal basis the Court of Appeals for the Fourth Circuit relied on. App. 2. My specific arguments in my filed Brief with the Court of Appeals for the Fourth Circuit are: Art III, §2 Judicial Power claim (that a District Court Magistrate, or District Judge cannot decide the merits of my habeas corpus petition because Art. III §2 of the U.S. Const. (that restricts its "Judicial Power" to cases, and controversies from the parties involved.) Art. I,§9 Habeas Corpus Suspension Claim, (that U.S.C. §2244 ((d))(2)) bars the one-year limitation on filing a habeas corpus petition), and the requirements under *Slack v. McDaniel, 529 U.S. 473, 478 (2000)* (that a Circuit Court Judge must determine if I "state[d] a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling."). The Fourth Circuit did not even mention my Constitutional claims,

CONCLUSION

The petition for a writ of certiorari should be granted. Or at the very least, I ask respectfully request that this court summarily remand this case back to the Fourth Circuit Court of Appeals with instructions to specifically address my Constitutional arguments[3]. And whether they are valid, and that the procedural ruling is debatable.

Respectfully Submitted,

s/_____

George Cleveland III

Pro se

Dated: July 12, 2019

[3] and they are: Art III, §2 Judicial Power claim (that a District Court Magistrate, or District Judge cannot decide the merits of my habeas corpus petition because Art. III §2 of the U.S. Const. (that restricts its "Judicial Power" to cases, and controversies from the parties involved.) Art. I,§9 Habeas Corpus Suspension Claim, (that U.S.C. §2244 ((d))(2)) bars the one-year limitation on filing a habeas corpus petition), and the requirements under *Slack v. McDaniel, 529 U.S. 473, 478 (2000)* (that a Circuit Court Judge must determine if I "state[d] a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.").