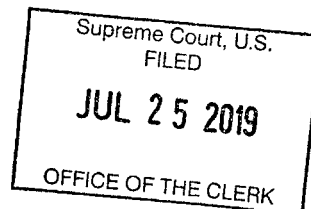


No. 19-5418

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES



WALTER LEE BROWN — PETITIONER  
(Your Name)

vs.

UNKNOWN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WALTER LEE BROWN  
(Your Name)

G.P., 300 1<sup>ST</sup> AVENUE SOUTH  
(Address)

Redsville, Georgia 30453  
(City, State, Zip Code)

N/A  
(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE COURT OF APPEALS ERRED  
IN ITS DECISION DENYING PETITIONER'S MOTION  
FOR A CERTIFICATE OF APPEALABILITY WHICH  
IS IN CONFLICT WITH PRIOR DECISIONS OF THE  
COURT, ANOTHER COURT OF APPEALS DECISION,  
AND IN SUBSTANTIVE CONFLICT WITH THE  
AEDPS STANDARDS OF SECTION 2253(C)?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

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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☐ is unpublished.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 \_\_\_\_\_; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 MAY 07, 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: JUNE 21, 2019, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

THIS CASE INVOLVES 28 U.S.C. § 2253(c) OF THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 (AEDPA) GOVERNING THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY (COA) BY A CIRCUIT COURT JUSTICE OR JUDGE REGARDING THE DENIAL OF A RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT DENYING A STATE PRISONER'S FIRST FEDERAL PETITION FOR WRIT OF HABEAS CORPUS FILED PURSUANT TO 28 U.S.C. § 2254 (WEST 1977):

"(1) UNLESS A CIRCUIT JUSTICE OR JUDGE ISSUES A CERTIFICATE OF APPEALABILITY, AN APPEAL MAY NOT BE TAKEN TO THE COURT OF APPEALS...

....

"(2) A CERTIFICATE OF APPEALABILITY MAY ISSUE UNDER PARAGRAPH (1) ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT.

"(3) THE CERTIFICATE OF APPEALABILITY UNDER PARAGRAPH (1) SHALL INDICATE WHICH SPECIFIC ISSUE OR ISSUES SATISFY THE SHOWING REQUIRED BY PARAGRAPH (2)".

28 U.S.C. § 2253(c)(1)(2)(3).

2

RULE 60. RELIEF FROM JUDGMENT OR ORDER. FEDERAL RULE OF CIVIL PROCEDURE PERMITS A LITIGANT TO MOVE FOR RELIEF FROM AN OTHERWISE FINAL JUDGMENT FOR A NUMBER OF REASONS, INCLUDING "FRAUD (...), MISREPRESENTATION, OR MISCONDUCT BY AN OPPOSING PARTY." FED. R. CIV. P. 60(b)(3). SUCH MOTIONS ARE SUBJECT TO A ONE-YEAR STATUTE OF LIMITATION. FED. R. CIV. P. 60(c)(1). UNDER RULE 60(d), NO LIMITATION DIMINISHES "A COURT'S POWER TO: (1) ENTERTAIN AN INDEPENDENT ACTION TO RELIEVE A PARTY FROM A JUDGMENT, ORDER, OR PROCEEDING; OR ... (3) SET ASIDE A JUDGMENT FOR FRAUD ON THE COURT". FED. R. CIV. P. 60(d)(3).

3.

28 U.S.C. § 2254 GOVERNS FEDERAL HABEAS CORPUS PROCEEDINGS INSTITUTED BY PERSONS IN CUSTODY PURSUANT TO THE JUDGMENT OF A STATE COURT. UNDER § 2254(D) IN SUCH PROCEEDINGS, A STATE COURT DETERMINATION OF A "FACTUAL ISSUE" - "SHALL BE PRESUMED CORRECT" ABSENT ONE OF THE EXCEPTIONS ENUMERATED THEREIN. FEDERAL COURTS ARE REQUIRED TO CONDUCT AN EVIDENTIARY HEARING WHEN A "FULL AND FAIR HEARING" HAS NOT BEEN CONDUCTED BY THE STATE COURTS.

4.

28 U.S.C. § 2253 REQUIRES A FEDERAL COURT TO DEAL WITH HABEAS PETITIONS "AS LAW AND JUSTICE REQUIRES".

## STATEMENT OF THE CASE

IN 1992 PETITIONER BROWN WAS FOUND GUILTY BY A MACON COUNTY JURY FOR THE OFFENSES OF MALICE MURDER, AGGRAVATED ASSAULT, AND SIMPLE ASSAULT RESULTING FROM AN ARMED BANK ROBBERY COMMITTED AT THE FIRST SOUTH BANK IN OGLETHORPE, GEORGIA ON AUGUST 6, 1990. THE STATE OF GEORGIA V. BROWN, INDICTMENT NO. 90-CR-2775. NO MOTION FOR A NEW TRIAL WAS FILED SUBSEQUENT TO CONVICTION. Id. A PRO SE DIRECT APPEAL WAS FILED IN THE SUPREME COURT OF GEORGIA AND AFFIRMED BY THAT COURT ON FEBRUARY 12, 1993. BROWN V. STATE OF GEORGIA, 262 Ga. 728 (1993), CERT. DENIED, 510 U.S. 998 (1993). STATE AND FEDERAL HABEAS CORPUS PETITIONS WERE THEN FILED FOR COLLATERAL REVIEW OF PETITIONER'S STATE COURT CONVICTION, PRO SE.

ON FEBRUARY 29, 1996, PETITIONER'S FIRST HABEAS CORPUS PETITION WAS FILED IN THE UNITED STATES MIDDLE DISTRICT COURT PURSUANT TO 28 U.S.C. § 2254 (WEST 1977) CHALLENGING HIS STATE COURT CONVICTION ENUMERATING 11 GROUNDS FOR REVIEW INCLUSIVE OF FOUR (4)

FOURTH AMENDMENT CLAIMS PREVIOUSLY RAISED AND RULED UPON IN THE STATE TRIAL AND APPELLATE COURTS. BROWN V. WARDEN, CVA #5: 96-CV-58-1(HL) (U.D. GA. 1996); (DOC. ENTRY 4). A motion for an evidentiary hearing relative to the fourth amendment claims was filed subsequent thereto, Id.; (DOC. ENTRY 6), and denied by the Magistrate Judge on June 3, 1996, (DOC. ENTRY 23), precluding federal review of the claims. Id.

ON OCTOBER 31, 1997, THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION (R&R) WAS FILED WITH THE DISTRICT COURT RECOMMENDING THE DENIAL OF PETITIONER'S HABEAS PETITION WHEREIN THE FOURTH AMENDMENT CLAIMS WERE UNLAWFULLY FORECLOSED FROM FEDERAL REVIEW BASED ON "FRAGILE MISREPRESENTATIONS" OF STATE COURT RECORD FACTS AND "THE WITHHOLDING AND CONCEALMENT OF DISCOVERY INFORMATION" - ORDERED TO BE PRODUCED BY THE MAGISTRATE JUDGE, Id.; (DOC. ENTRY 29). HABEAS RELIEF WAS DENIED BY THE DISTRICT COURT JUDGE ON DECEMBER 15, 1997, ADOPTING THE MAGISTRATE'S R&R. Id.; (DOC. ENTRY 31). BROWN'S MOTION FOR A CERTIFICATE OF APPEALABILITY (COA) WAS DENIED BY THE DISTRICT COURT ON JANUARY

15, 1998 (Doc. Entry 37), and a COA was DENIED BY THE ELEVENTH CIRCUIT COURT OF APPEALS ON APRIL 21, 1998. BROWN V. WARDEN, Case No. 98-8040 (11th Cir 1998). SEVERAL RULE 60(b) MOTIONS (5 IN ALL) WERE THEN FILED WITH THE DISTRICT COURT SEEKING OF THE COURT TO SET ITS JUDGMENT ASIDE. BROWN V. SIKES, WARDEN, CIV # 5:96-CV-58 (CAR); (Doc. Entry NOS. 39, 59, 69, 82, 107).

FOLLOWING THE DENIAL OF FOUR (4) OF THE RULE 60(b) MOTIONS ASSERTING GROUNDS UNDER SUBSECTIONS (b)(3) AND (b)(4) OF THE FEDERAL RULES OF CIVIL PROCEDURE (FED. R. CIV. P.) (Doc. Entry NOS. 43, 61, 72, 86), AND THE DENIAL OF FOUR (4) MOTIONS FOR A COA FILED WITH THE ELEVENTH CIRCUIT COURT OF APPEALS IN REGARDS TO THE DISTRICT COURT'S DENIAL OF THOSE (b)(b) MOTIONS (Dist. Ct. Doc. Entry NOS. 49, 68, 80, 102), PETITIONER'S FIFTH RULE 60(b) MOTION (Doc. Entry 107) ASSERTING THE (SAME CLAIMS) AS THOSE IN THE PREVIOUS MOTIONS ~~WERE~~ <sup>WAS</sup> FILED WITH THE DISTRICT COURT. NONE OF THE MOTIONS FOR A COA FILED WITH THE ELEVENTH CIRCUIT COURT OF APPEALS RELATIVE TO THE DISTRICT COURT'S DENIAL OF THE RULE 60(b) MOTIONS WERE GRANTED

-6-

FOR THE PURPOSE OF DECIDING THE "QUESTIONS OF LAW" PRESENTED IN A PRIOR APPEAL BY THE CIRCUIT COURT.

ON JUNE 08, 2018, PETITIONER'S FIFTH RULE 60(b) MOTION TO REOPEN THE DISTRICT COURT'S JUDGMENT DENYING THE HABEAS PETITION WAS FILED WITH THE DISTRICT COURT AGAIN RELYING ON SUBSECTIONS (b) (3) AND (4) OF THE FED. R. CIV. P.. THE ISSUES ASSERTED WERE THAT: 1) THE STATE OF GEORGIA, THROUGH THE ATTORNEY FOR THE WARDEN RESPONDENT, COMMITTED FRAUD UPON THE COURT ..., AND 2) THE COURT'S JUDGMENT IS VOID. (DOC. ENTRY 107). (SEE APPENDIX E ANNEXED HERETO).

ON OCTOBER 25, 2018, RELYING ON RULE 60(c)(1) OF THE FED. R. CIV. P. THE DISTRICT COURT MAGISTRATE JUDGE RECOMMENDED THAT PETITIONER'S RULE 60(b) MOTION SHOULD BE REJECTED AS UN-TIMELY FILED CONTRARY TO WELL-ESTABLISHED STATUTORY AND FEDERAL CASE LAW PRECEDENTS WHICH GOVERNS AND CONTROLS THE FILING AND JUDICIAL CONSIDERATION AND DETERMINATION OF RULE 60(b) MOTION CLAIMS SEEKING TO REOPEN THE DISTRICT COURT'S JUDGMENT.

(DOC. ENTRY 110). (SEE APPENDIX C ANNEXED HERETO).

IN OPPOSITION TO THE MAGISTRATE'S R&R  
PETITIONER'S "SPECIFIC OBJECTIONS" RESPONSE  
WAS FILED WITH THE DISTRICT COURT PURSUANT  
TO 28 U.S.C. § 636(b)(1) URGING THE DISTRICT  
COURT JUDGE TO REJECT THE MAGISTRATE'S FIND-  
ING AND CONCLUSION AND CONDUCT HIS OWN DE  
NOVO REVIEW, SUBSTANTIALLY ESTABLISHING THAT HIS  
RULE 60(d) MOTION ASSERTING CLAIMS UNDER  
CLAUSES (b)(3) AND (4) OF THE FED. R. CIV. P.  
WAS NOT GOVERNED BY RULE 60(d)'S TIME LIMIT-  
ATION REQUIREMENT FOR THE FILING OF HIS  
CLAIMS WITHIN 1-YEAR OF THE ENTRY OF THE  
COURT'S JUDGMENT. (SEE DOC. ENTRY NOS. 112, 113,  
PETITIONER'S OBJECTIONS WERE TOTALLY DISREGARDED  
BY THE DISTRICT COURT JUDGE.

ON DECEMBER 19, 2018, THE DISTRICT COURT  
JUDGE ADOPTED WITHOUT LIMITATION THE  
MAGISTRATE'S R&R, (SEE APPENDIX B ap-  
PENDED HERETO), WHEN THE MAGISTRATE  
JUDGE HAD NOT, AS FEDERAL LAW REQUIRES,  
CONSIDERED WHETHER PETITIONER'S FRAUD

UPON THE COURT CLAIM "FELL WITHIN THE SAVINGS CLAUSE OF RULE 60(D) OF THE FED. R. CIV. P. WHICH LACKS A TIME LIMIT," AND, ERRONEOUSLY APPLIED RULE 60(D)'S TIME LIMITATION REQUIREMENT TO PETITIONER'S VOID JUDGMENT CLAIM. RULE 60(D)'S TIME LIMITATION REQUIREMENT DOES NOT LIMIT THE FILING OF CLAIMS ASSERTED IN PETITIONER'S 60(D) MOTION.

ON MARCH 14, 2019, PETITIONER'S MOTION FOR A COA WITH ATTACHED EXHIBITS A, B, AND C, MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS (IFP), AND CERTIFICATE OF INTERESTED PERSONS (CIP) WERE FILED WITH THE ELEVENTH CIRCUIT COURT OF APPEALS SEEKING OF THE COURT TO ISSUE A COA FOR APPEAL REVIEW OF THE DISTRICT COURT'S ORDER DENYING HIS FIFTH RULE 60(D) MOTION AS UNTIMELY. BROWN V. WARDEN, CASE No. 19-1025F (11th Cir. 2019). A CLEAR AND SUBSTANTIAL

Showing was made by PETITIONER ESTABLISHING THAT THE DISTRICT COURT ERRED IN DENYING THE RULE 60(b) MOTION AS UNTIMELY FILED AND THAT THE COURT'S PROCEDURAL RULING IS IN CORRECT. Id.

ON MAY 07, 2019, WITHOUT CONDUCTING A THRESHOLD INQUIRY INTO WHETHER THE COURT OF APPEALS MAY ENTERTAIN THE APPEAL AS § 2253(c) OF AEDPA REQUIRES, THE CIRCUIT COURT JUDGE ASSIGNED TO CONSIDER WHETHER A COA SHOULD ISSUE DENIED PETITIONER'S COA MOTION BY "FINDING" THAT THE MOTION WAS UNTIMELY FILED "CONCLUDING" THAT REASONABLE JURISTS WOULD NOT DEBATE WHETHER THE DISTRICT COURT'S DENIAL OF THE MOTION WAS UNTIMELY. Id. (SEE APPENDIX A APPENDED HERETO).

ON OR ABOUT MAY 23, 2019, PETITIONER'S MOTION FOR RECONSIDERATION OF ORDER WAS

FILED WITH THE CIRCUIT COURT SEEKING  
REHEARING OF THE COURT'S ORDER ARGUING  
THAT: 1) THE CIRCUIT COURT JUDGE MISAPPRE-  
HENDED (i.e., MISINTERPRETED) RULE 60(d)'S  
TIME LIMITATION REQUIREMENT, 2) OVER-  
LOOKED (i.e., DISREGARDED) § 2253(c) OF AED-  
PA WHICH REQUIRES THE APPELLATE COURT  
TO CONDUCT AN OVERVIEW OF THE CLAIMS,  
AND A GENERAL ASSESSMENT OF THEIR MERITS  
TO DETERMINE WHETHER A COA SHOULD ISSUE,  
AND 3) THE COURT'S DECISION DENYING THE  
COA MOTION IS IN CONFLICT WITH THE COURT'S  
PRIOR DECISIONS AND ANOTHER COURT OF AP-  
PEALS DECISION AND SUBSTANTIVE CONFLICT  
WITH THE AEDPA STANDARDS GOVERNING THE  
CONSIDERATION AND ISSUANCE OF A COA. (SEE  
PETITIONER'S MOTION FOR RECONSIDERATION OF  
ORDER NOW ON FILE WITH THE COURT OF APPEALS).

ON JUNE 21, 2019, PETITIONER BROWN'S MOTION FOR  
RECONSIDERATION OF ORDER WAS DENIED BY CIRCUIT

Court Judges Wilson and Till rely upon a "bare statement" without the Court of Appeals considering whether the Circuit Court Judge who denied petitioner's motion for a COA on May 07, 2019, had abused the Court's discretion in the manner described by the factual and legal assertions argued in his "motion for reconsideration of order" as stated in the above latter paragraph. A motion for reconsideration of order, pursuant to Rule 40(a)(2) of the Federal Rules of Appellate Procedure (Fed. R. Civ. P.), is analogous to a motion for rehearing en banc which requires the court considering such motion to properly address the contentions asserted which sufficiently establishes that the court's ruling order is incorrect. Here, however, the Circuit Court Judges simply ignored petitioner's contenting arguments finding that he did not put forth any new evidence. (SEE Appendix D attached hereto with a general docket sheet of the Court of Appeals).

THE INSTANT PETITION FOR WRIT OF HABEAS CORPUS NOW FOLLOWS:

## REASONS FOR GRANTING THE PETITION

THIS CASE IS IMPORTANT FOR THE ISSUE IT RAISES AS TO THE UNCONSTITUTIONAL DENIAL OF A MOTION FOR A CERTIFICATE OF APPEALABILITY (COA) FILED PURSUANT TO 28 U.S.C. § 2253(c) OF AEDPA, SEEKING APPEAL REVIEW OF A DISTRICT COURT'S ORDER DENYING A RULE 60(b) MOTION FOR RELIEF FROM JUDGMENT DENYING A STATE PRISONER'S FIRST SECTION 2254 HABEAS PETITION - RESULTING FROM PREJUD PERPETRATED UPON THE DISTRICT COURT BY THE STATE OF GEORGIA, THROUGH THE ATTORNEY FOR THE WARDEN RESPONDENT, WHICH RENDERED THE DISTRICT COURT'S JUDGMENT WITHOUT JURISDICTION AND VOID. THE DECISION OF THE COURT OF APPEALS IS IN CONFLICT WITH ITS OWN PRIOR DECISIONS, ANOTHER COURT OF APPEALS DECISION INVOLVING A SIMILAR MATTER, AND IN SUBSTANTIVE CONFLICT WITH THE AEDPA STANDARDS IMPLEMENTED BY CONGRESS.

AS ESTABLISHED BY CONGRESS, A COA MAY "ISSUE ONLY IF THE APPLICANT HAS MADE

a SUBSTANTIAL showing of a DENIAL of  
a CONSTITUTIONAL RIGHT. 28 U.S.C. § 2253(c)(2),  
SEE SHOCK V. McDANIEL, 529 U.S. 484, (120  
S. CT. 1595), 146 L. ED. 2D 542 (2000). ACC.  
MILNER-EL V. COCKRELL, 537 U.S. 302, (123  
S. CT. 1029), 154 L. ED. 2D 931 (2003). A PETI-  
TIONER MUST "SHOW THAT REASONABLE JURISTS  
COULD DEBATE WHETHER (...) THE PETITION SHOULD  
HAVE BEEN RESOLVED IN A DIFFERENT MANNER  
OR THAT THE ISSUES PRESENTED WERE ADEQUATE  
TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER."  
SHOCK V. McDANIEL, SUPRA (QUOTING BAREFOOT V.  
ESTELLE, 463 U.S. 880, 893 N. 4, (103 S. CT.  
2383), 77 L. ED. 2D 1098 (1983)). WHERE, AS IN  
THE INSTANT CASE, THE DISTRICT COURT DENIES  
RELIEF ON A PROCEDURAL GROUND, THE PETITIONER  
SEEKING A COA MUST SHOW BOTH "THAT REASONA-  
BLE JURISTS OF REASON WOULD FIND IT DEBATA-  
BLE WHETHER THE PETITIONER STATES A VALID  
CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT  
AND THAT JURISTS OF REASON WOULD FIND IT DEBATA-  
BLE WHETHER THE DISTRICT COURT WAS CORRECT

IN ITS PROCEDURAL RULING." SLACK, SUPP., AT 484. SEE GONZALEZ V. THALER, 120 S. CT 641 (2012). A COA WILL ISSUE ONLY IF THE REQUIREMENTS OF § 2253(C) HAVE BEEN SATISFIED. MILLER-EL V. CACKRELL, 537 U.S., AT 336 (EMPHASIS ADDED).

IN THIS CASE, PETITIONER BROWN CLEARLY ESTABLISHED THAT HE WAS ENTITLED TO THE ISSUANCE OF A COA UPON A "SUBSTANTIAL SHOWING" THAT HE WAS DENIED A CONSTITUTIONAL RIGHT AND THAT THE DISTRICT COURT'S "PROCEDURAL RULING" DENYING HIS RULE 60(C) MOTION AS UNTIMELY IS INCORRECT. (SEE PETITIONER'S MOTION FOR A COA FILED WITH THE COURT OF APPEALS ON MARCH 14, 2019, AT PP. 15-23). SO RELYING ON DAY V. BENTON, 346 F.E.D. APPX. 470 (11TH CIR. 2009); CASTOLO V. UNITED STATES, 394 F.E.D. APPX. 670 (11TH CIR. 2010), AND BULLOCK V. UNITED STATES, 763 F.2D 1115, 1124 (10TH CIR. 1985), PETITIONER SUFFICIENTLY PROVED THAT THE FRAUD UPON THE COURT AND VOID JUDGMENT CLAIMS ASSERTED UNDER

SUBSECTIONS (b)(3) and (4) of THE FED. R. CIV. P. WERE NOT LIMITED TO FILING WITHIN RULE 60(b)'S "TIME LIMITATION REQUIREMENT" AS FOUND BY THE CIRCUIT COURT JUDGE. (SEE PETITIONER'S MOTION FOR A COA, AT PP. 10-11). IN DENYING PETITIONER'S COA MOTION, THE CIRCUIT COURT JUDGE DID NOT FOLLOW THE AEDPA STANDARD PUT INTO EFFECT BY CONGRESS TO DETERMINE WHETHER A COA SHOULD BE ISSUED, OR DENIED. THEREFORE, "MANIFEST ERROR" EXISTS.

28 U.S.C. § 2253(c) REQUIRES FEDERAL COURTS TO CONDUCT A THRESHOLD INQUIRY INTO WHETHER THE COURT MAY ENTERTAIN AN APPEAL. . . . ID. SEE MILLER-EL V. COCKRELL, 537 U.S. AT 366 (CITING SLACK V. MCDANIEL, 529 U.S. AT 482, 120 S. CT. 1595; HAHN V. UNITED STATES, 524 U.S. 236, 248, 118 S. CT. 1969, 141 L. ED. 2d 242 (1998)). HERE, WITHOUT CONDUCTING A "THRESHOLD INQUIRY" AS § 2253(c) REQUIRES, THE CIRCUIT COURT JUDGE DENIED BROWN'S MOTION FOR A COA BY RELYING UPON RULE 60(c)(1) OF THE FED. R. CIV. P.

AND BUC INT'L CORP. V. INT'L YACHT COUNCIL CORP. LTD., 517 F.3d 1271, 1275 (11th Cir. 2008), "FINDING" THAT THE RULE 60(d) MOTION WAS UNTIMELY FILED; "CONCLUDING" THAT "REASONABLE JURISTS WOULD NOT DEBATE WHETHER THE DISTRICT COURT'S DENIAL OF MR. BROWN'S FIFTH RULE 60(d) MOTION IS UNTIMELY." (SEE APPENDIX A ANNEXED HERETO, AT P. 3). THE "COA DETERMINATION", HOWEVER, IS NOT SUPPORTED BY THE FACTS IN THIS CASE, ESPECIALLY WHEN THE CIRCUIT COURT JUDGE DID NOT PERFORM AN OVERVIEW OF THE ISSUES IN THE RULE 60(d) MOTION AND A GENERAL ASSESSMENT OF THEIR MERITS AS REQUIRED BY § 2253(C) PRIOR TO RENDERING THE COURT'S DECISION. AS MANDATED BY CONGRESS, THE COA DETERMINATION REQUIRES "AN OVERVIEW OF THE CLAIMS IN THE HABEAS PETITION AND A GENERAL ASSESSMENT OF THEIR MERITS." ID. SEE MILLER-EL V. COCKRELL, 537 U.S., AT 336. ACC. GONZALEZ V. SEC'y FOR THE DEPT. OF CORR., 366 F.3d 1253 (11th Cir. 2004). WHERE AN APPELLATE COURT DELIBERATELY DISREGARD THIS LEGAL PRINCIPLE

OF LOW "MANIFEST ERROR" IS APPARENT.

THE JUDICIAL DECISION RENDERED BY THE CIRCUIT COURT JUDGE CONFLICTS WITH THE TWO(2) PRIOR DECISIONS OF THE COURT OF APPEALS INVOLVING SIMILAR CASES WHICH ~~ASSERTED~~ FRAUD UPON THE COURT CLAIMS: 1) DAY V. BENTON, SUPRA; 2) BALOTOLA V. UNITED STATES, SUPRA; THE COURT'S DECISION ALSO CONFLICTS WITH ANOTHER COURT OF APPEALS DECISION INVOLVING A SIMILAR MATTER, BULLOCK V. UNITED STATES, SUPRA. AS HELD BY BOTH CIRCUIT COURTS IN THEIR RULING DECISIONS, THERE IS NO TIME LIMITATION PERIOD FOR THE FILING OF "FRAUD UPON THE COURT" CLAIMS PURSUANT TO RULE 60(d) OF THE FED. R. CIV. P. THE FRAUD UPON THE COURT CLAIM IS PRESERVED BY THE "SAVINGS CLAUSE" PROVISION OF RULE 60(d)(3). RULE 60(d)(3), SEE HERRING V. UNITED STATES OF AMERICA, 424 F.3d 384 (3<sup>rd</sup> CIR. 2005). THE COURT OF APPEALS, THEREFORE, ERRED IN DENYING THE MOTION FOR A COA FINDING THAT PETITIONER'S RULE 60(d) MOTION IS UNTIMELY.

THE ORDERED DECISION ENTERED BY THE

ELEVENTH CIRCUIT COURT of APPEALS is CON  
TRARY TO THE GENERAL PRINCIPLES WHICH  
CONGRESS AND THE UNITED STATES ESTABLISHED  
FOR CONSIDERATION AND DETERMINATION AS TO  
"WHETHER A CIRCUIT COURT OF APPEALS MAY  
ENTERTAIN AN APPEAL". FAILING TO COMPLY WITH  
THE PROVISIONAL MANDATE OF AEDDA (§2253<sup>(1)</sup>)  
THE COURT of APPEALS "DEPARTED FROM THE  
USUAL COURSE OF JUDICIAL PROCEEDINGS TO DE-  
TERMINE WHETHER A COA SHOULD ISSUE; THERE-  
FORE, THIS HONORABLE COURT SHOULD EXERCISE  
ITS SUPERVISORY POWERS TO REMEDY THE  
"ERROR" COMMITTED BY THE ELEVENTH CIR-  
CUIT COURT of APPEALS.

GIVEN THE SUBSTANCE OF PETITIONER'S RULE  
60(b) MOTION, THE DISTRICT COURT AND THE  
ELEVENTH CIRCUIT COURT of APPEALS BOTH  
ERRED IN FINDING THAT PETITIONER'S RULE 60(b)  
MOTION WAS UNTIMELY WARRANTING REJECTION  
UNDER RULE 60(c)(1) OF THE FED. R. CIV. P. THIS  
HONORABLE COURT SHOULD VACATE THE COURT of  
APPEALS ORDER DENYING THE MOTION FOR A COA

AND REDRAW THE CASE TO THE CIRCUIT COURT  
FOR THE COURT TO ISSUE THE COA FOR  
APPEAL REVIEW OF THE DISTRICT COURT'S ORDER  
DENYING THE RULE 60(b) MOTION. BOTH COURTS  
ARE "COMPLACENTLY TOLERATING A FRAUD WHICH  
IS AGAINST THE good ORDER of SOCIETY by  
DISTORTING (JUSTICE) OR DENYING to JUSTICE.  
THE PUBLIC WELFARE DEMANDS FOR BETTER

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Walter L. Brown  
PRO SE PETITIONER

Date: July 17, 2019

LB

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