No. 19-5427

IN THE

SUPREME COURT OF THE UNITED STATES

DANNY REAVES — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DANNY REAVES # 17997-047
(Your Name)

FCI PEKIN P.O. BOX 5000
(Address)

Pekin IL 61555
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) When a timely submitted §2255 motion is denied with out relief, and the Court leaves Claims unadjudicated, is that denial a final Order within the meaning of §2253.

2) Did the Court apply an improper standard to deny COA.

LIST OF PARTIES

[X] 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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Sanders v. United states 373 U.S. 1 (1983).

Opinions Below

The Opinion was not reported for the Eighth Circuit, but is attached as Appendix A and C. The district Court opinion was not published but is attached as appendix B.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 6, 2019

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: April 17, 2019, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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).

STATEMENT OF THE CASE

In the Petitioner's timely submitted §2255 motion, Filings 168 and 169 it was argued that law enforcement without a warrant, activated the GPS on the Petitioner's cell phone while he was in the Pinkney St residence, a residence that he had been at since the day before. 168 pg's 8-9. Law enforcement utilizing the information gathered from the GPS, filed for a search warrant for the Pinkney St residence. Id at 9; 169 pg 11. The Petitioner claimed that he informed counsel to file a suppression hearing, because the use of the GPS without a warrant constituted a unreasonable search under the the Fourth Amendment. 168 pg 11 .

It was argued that a motion to suppress meritorious under the theory law enforcement infringed upon the Possessory rights and privacy rights of Reaves by activating the GPS without a warrant that amounted to a search and seizure under U.S. v. Lewis, 621 F.2d 1382 (1980) and Katz v. U.S. 169 Pg's 8-9. It was also argued under the legal ground of U.S. v Karo, 468 U.S. 705, 714, 719 (1984), that the search warrant was invalid therefore there was an illegal search of the residence. 168 pg 9, 169 Pg 11, 170 pg 6, and in the reply to the governments opposition. It was claimed that there is a connection to the illegal search and the acquisition of the Petitioner's DNA, medical information and the money. 168 pg 9, 169 pg 11, to be excluded from the trial. 168 pg

A copy of the search warrant and police reports was submitted for the Court to assess the Karo violation. 169 pg's 27-30, 168 pg 9 (directing the Court to their attention.

The Government opposed the claim arguing that Reaves did not have any possessory rights in the cell phone. No privacy rights in his location because the cell phone was not in his name, and no illegal search of the residence occured because the search warrant was sought after his arrest and that he did not have standing to challenge the search of the residence because the house was not in his name. Filing 181 pg's 27-30.

The Districts Court order Doc. 186 denying the §2255 motion identified the following claims: Failure to Challenge 5(a) violation, Failure to File Motion To Suppress Stackhouse Identification, Failure to File Motion To Suppress The Goggles, Failure to File a Motion to In Limine to Exclude the OPPD Bag, Failure to Call Expert Witness, Failure to Impeach Witnesses, Plea Agreement, Prosecutorial Misconduct, and Failure to File Motion to Suppress Cell Phone.

Reaves in the instant 54(b) motion Doc. 268, identified for the Court that none of the issues it identified, identifies the invalid search warrant claim, and what limited discussion the Court did have about the cell phone, the Court does not acknowledge or evaluate the search warrant affidavit under the standards of United States v. Karo, 468 U.S. 705 (1984). Nor did the Court evaluate whether the exclusion of the DNA, medical information and money would have changed the outcome of the proceedings. Id; Doc. 186 pg's 8-9 stating:

> FAILURE TO FILE A MOTION TO SUPPRESS THE CELL PHONE
>
> Reaves alleges that counsel failed to file a motion to suppress the warrantless seizure of Reaves cell phone. Reaves argues that the police did not have a warrant when they used GPS tracking to determine Reaves location.
>
> ...Counsel is not defecient for raising an argument that may have had merit, but was "a wholly novel claim at the time. Reaves was arrested and went to trial in 2009. In 2009, neither the United States Supreme Court nor the Eighth Circuit had addressed whether GPS tracking ofa cell phone constitutes a search or seizure within the meaning of the Fourth Amendment... In 2012, Fourt justices of the United States Supreme Court noted the availability of cell phones and other forms of technology that provides GPS information "will continue to shape the average persons expectation about the privacy of his or her daily movements," but the Court did not, in that case, have the oppurtunity to consider whether GPS tracking on such technology was a search or seizure...

...Reaves cannot show suppression of the cell phone would reasonably change the outcome of the proceedings.

Based on the above, applying Rule 54(b) that states:

> " When an action presents more than one claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities."

Reaves asked the Court to Rule on the invalid search warrant claim. It was further requested that the Court reconsider the issue " Motion to In Lime the OPPD Bag" on the facts that the Court misunderstood the claim. Doc. 268. The Court after evaluating the motion, granted Reaves permission to amend. Doc 270. After the amendments were sent in, the court denied the amendments as second or successiveand denied entering a final judgement on the invalid search warrant claim. Doc. 274.

Mr. Reaves then filed his notice of appeal. The Eighth Circuit construed it as a request for a COA, and denied without an Opinion. Reaves then filed for a rehearing with suggestion en banc. The Eighth Circuit denied without opinion.

REASONS FOR GRANTING THE PETITION

THE LOWER COURT HAVE DEPARTED SO FAR FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS DATING AS FAR BACK AS COLLINS V. MILLER, 252 U.S. 364 (1920) THAT REQUIRES A HABEAS COURT TO ADJUDICATE ALL THE ISSUES IN A PETITION BEFORE A FINAL ORDER CAN BE ISSUED, AS TO CALL FOR AN EXERCISE OF THE SUPREME COURT POWERS.

It is the duty of the Court of Appeals to satisfy itself as to its jurisdiction to consider an appeal, whether or not the jurisdiction issue is raised by the parties. Such duty applies with respect to attempted appeals in habeas corpus cases. **Collins v. Miller**, 252 U.S. 364, 365, 366 (1920).

In **Collins v. Miller**, supra, the Court holds that a habeas corpus appeal lies only from a final judgment. In that case, the petitioner was being held on three extradition warrants based on three separate affidavits. His detention was challenged in a federal habeas corpus action. The trial judge determined that the petition should be denied as to one of the commitment warrants. As to the other two warrants, the case was remanded to the judge who had ordered the detention for further hearing. The Supreme Court determined that the petition had not been disposed of insofar as it concerned detention on two of the three warrants and hence that the decision was not final. The Court states:

> "A case may not be brought here by appeal or writ of error in fragments. To be appealable the judgment must be not only final, but complete.
>
> * * *
>
> "And the rule requires that the judgment to be appealable should be final not only as to all the parties, but as to the whole subject-matter and as to all the causes of action involved.
>
> * * *
>
> "Only one branch of the case has been finally disposed of below, therefore none of it is ripe for review by this court." 252 U.S. 364, 370, 371, 40 S. Ct. 347, 349, 64 L. Ed. 616.

In Andrews v. United States, 373 U.S. 334, 340, 83 S. Ct. 1236, 10 L. Ed. 2d 383, the Supreme Court cites **Collins v. Miller** and reaffirms the finalty requirement as a prerequisite to a habeas corpus appeal.

Mr. Reaves case presents a simple issue that is dictated by precedent. If the Court did not adjudicate the invalid search warrant claim, then no jurisdiction of the Appellate Court lied.

A decision by this Court would help insure that this Rule of finality does not start down a slippery slope.

UNADJUDICATED CLAIM

The Fourth Circuit described it best, "If it appears from the record that the district court has not adjudicated all of the issues in a case, then there is no final order." **United States v. Darden** 736 Fed. Appx. 420 (4th Cir 2018). In **Darden** did not look to see whether the defendant could first satisfy the requirements to obtain a Certificate of Appealability (COA). That Court first looked to see whether all the claims had been addressed first to ascertain itself that it would have jurisdiction to decide the issues,

> Roberto Antoine Darden seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (2012), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (2012); Fed. R. Civ. P. 54(b); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949). "Ordinarily, a district court order is not final until it has resolved *all* claims as to all parties." ***Porter v. Zook***, 803 F.3d 694, 696 (4th Cir. 2015) (internal quotation marks omitted). "[I]f it appears from the record that the district court has not adjudicated all of the issues in a case, then there is no final order." *Id.* (applying rule to habeas cases).
>
> Upon review of the record, we conclude that the district court did not rule on Darden's claims that counsel provided ineffective assistance by failing to move to suppress the seizure of certain evidence from a plastic tub Darden left at a former residence and by failing to file a motion in limine excluding{**2018 U.S. App. LEXIS 2**} statements from the victim regarding a photo lineup containing Darden. Thus, the order Darden seeks to appeal is neither a final order nor an appealable interlocutory or collateral order. *See id.*
>
> Accordingly, we dismiss the appeal for lack of jurisdiction and remand the case to the district court for the court to consider the ineffective assistance claims on which it did not rule.

That above order is consistant with when this Court determines whether it has jurisdiction to decide an issue, it looks to see whether the case came complete. **Collins Supra**, at 365-66. "The fundamental question whether the judgement sppealed from is a final one within the meaning of the rule has suggested itself to the Court; and it must be answered, although it was not raised by either party...In order to answer the question it is necessary to describe the proceedings before the committing Magistrate as well as those in the district court on the petition for writ of habeas corpus." (Emphasis Added).

Thus, if the proceedings show that (1) the issue was raised that 'counsel was ineffective for failing to file a motion to suppress the invalid search warrant' in the initial § 2255 motion. and (2) the district court did not even acknowledge that it contain an invalid search warrant claim under **United States v. Karo** 468 U.S. 705 (1984), then the Eighth Circuit decision conflicts with what this Court found to be necessary to establish a final order thats appealable.

True, this case does not present a new issue for this Court to decide, but for a pro se litigant, who is trying to get a timely and fairly presented claim heard, he's being met with a stone wall for no apparent reason.

When this Court look at it, practically every court including the Eighth Circuit has taken the position, that allegations that the Court has not adjudicated can claim, has clearly been determined its not a second or successive petition, but a defect in the proceedings. United States v. Longs, 2014 U.S. Dist. Lexis 94938 (D. Minn, July 7, 2015) Citing Peach v United States 468 F. 3d 1269, 1271 (10th Cir 2006) (Contentions of failure to rule on a properly presented claim asserts a defect in the integrity of 2255 proceedings rather rather than a challenge to the merits of a district court's decision); Brown v Luebbers, 371 F. 3d 458, 461 (8th Cir 2004) (en banc) cert denied, 543 U.S. 1189, 125 S. Ct. 1397, 161 L. Ed. 2d 192 (2005) (this circuit looks at what a court has said case by case to determine whether the court addressed the claim); Nims v. Ault, 251 F. 3d 698 704, 05 (8th Cir 2001) (A key factor in

In determining whether a petition should be considered "second or successive" is whether the prior petition has been adjudicated on the merits"); Sanders v. United States, 373 U.S. 1, 15-17 (1983) (no procedural barriers if the same ground was earlier presented but not adjudicated on the merits.) Id at 17. Thus, When you can neither have a second or successive on a unadjudicated timely submitted claim, or a final order to appeal, then the Courts failure to reject jurisdiction or grant COA is clearly erroneous. The court could not even give a standard of why its denying a COA. Or why it can't give an opinion about the unaddressed claim.

CONCLUSION

Mr. Reaves respectfully ask that this Court Grant Vacate and Remand in Summary order. for the Court to address the issue to begin with.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Danny Reaves

Date: July 15, 2019