

19-6210
No.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 16 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Marcus Jackson- PETITIONER

vs.

NOAH NAGY- RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATE COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONER FOR WRIT OF CERTIORARI

MARCUS JACKSON

141 First Street.

Coldwater, Michigan. 49036

QUESTION PRESENTED

WHETHER THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI IN ORDER TO RESOLVE A CONFLICT BETWEEN THE SIXTH, FIFTH AND NINTH CIRCUITS ON WHAT IS THE APPROPRIATE APPLICATION OF RULE 60(B)(6), REASONABLE TIME ANALYSES WHERE THE SIXTH CIRCUIT REVIEW DO NOT REQUIRE A FULL ANALYSIS OF THE FACTUAL CIRCUMSTANCES OF EACH CASE, YET A FULL CASE BY CASE INQUIRY OF THE FACTS OF EACH CASE IS REQUIRED BY THE FIFTH AND NINTH CIRCUITS.

LIST OF PARTIES

Brad H. Beaver
Office of the Attorney General
of Michigan
P.O. Box 30217
Lansing, Michigan. 48116

~~Bernard A. Friedman~~
~~U.S. District Judge~~
~~Lafayette Blvd~~
~~Detroit, Mich. 48226~~

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Sixth Circuit Order of May 21, 2019, denying Rehearing.

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Sixth Circuit Order of April 3, 2019, denying C.O.A

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District Court Order, Denying Petitioner's Motion for Relief of Judgment,
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

The petitioner, Marcus Jackson, respectfully pray that a Writ of Certiorari, issue to review the order of the United States Court of Appeals for the Sixth Circuit entered in this case on May 21, 2019, denying rehearing, affirming the district Court of the Eastern District of Michigan denying Petitioner's Motion for Relief from Judement Pursuant to fed, R. Civ. P. 60(b)(6).

Opinion Below

The June 6, 2019 and May 21, 2019, Opinion of the United States Court of Appeals appears at Appendix A to the petition and has been designated for publication but is not yet reported.

The April 3, 2019, Opinion of the United States Court of Appeals appears at Appendix B to the Petition and has been designated for publication but is not yet reported.

The Opinion of the united States District court appears at Appendix C to the Petition and has been designated for publication but is not yet reported.

JURISDICTION

The Order of the United States Court of Appeals for the Sixth Circuit denying rehearing and rehearing en banc was entered May 21, 2019, and en banc rehearing was denied on June 6, 2019. This Petition is filed within Ninety days of that date. The Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 Untied States Code, Section 2254(a) provides in Pertinent part:

Rule governing Section 2254 cases permits application of Federal Rule of Civil Procedures in habeas cases to the extent that Rule 60(b) like the rest of Rules of Civil.

STATEMENT OF THE CASE

On December 11, 2006, Petitioner Marcus Jackson filed a Petition for Writ of habeas corpus in the United States District Court, Eastern District of Michigan, No.06-CV-15464. Among the issues raised was a claim of Ineffective Assistance of Appellate Counsel.

On November 13, 2009, District Court Judge, Bernard Friedman Issused an order denying habeas petition.

On April 22, 2010, Attorney Sutton Filed a Motion for Certificate of Appealability on Petitioner's behalf in the United States Court of Appeals in the Sixth Circuit. On July 13, 2010, The Sixth Circuit issued an order denying Motion, No.09-2569.

On February 11, 2013, Petitioner Filed a Petition for Writ of Certiorari, where on April 15, 2013, The Supreme Court denied Petition.

On November 9. 2018, The Petitioner Filed a Motion for Relief from Judgment, pursuant to Fed. R. Civ. O. 60(b)(6).

On Nov, 21, 2018, District Court Judge denied 60(b) Motion, case No.06-CV-15464. On April 3, 2019, the Sixth Circuit Court of Appeals issued an Opinion Affirming the denial of the Motion. Petitioner sought rehearing en banc and on May 21, 2019, the Sixth Circuit issued an Order denying rehearing.

REASON FOR GRANTING PETITION

I.

This court should issue a Writ of Certiorari in order to resolve a conflict between the Sixth, Fifth and Ninth Circuit on what is the appropriate application of Rule 60(B)(6), Reasonable time analysis where the Sixth Circuit Review do not require a full analysis of the Factual Circumstances of each case. Yet a full case by case inquiry of the facts of each case is required by the Fifth and Ninth Circuits.

The United States Supreme Court under Gonzales v Crosby, 545 U.S. 524, 538, 125 S.Ct. 2641, 162 LEd2d 480 (2005), limits relief under Fed. R. Civ. P. 60(b). A Petitioner filing a motion under Rule 60(b)(6) must demonstrate that some extroadinary circumstances justifies the re-opening of a final judgment, 545 US 535. The Fed. R. Civ. Procedure do not mandate the specific time by which a rule 60(b)(6) motion must be filed. 545 US 537-538.

The conflict between the Circuits arose after Petitioner filed a Certificate of Appealability in the Sixth Circuit after his Motion for Relief from Judgment filed pursuant to Fed R. Civ. P. 60(b)(6) on the bases that there was an extroadinary circumstance of attorney abandonment issue within his case was denied in the Eastern District Court of Michigan on Nov 21, 2018. No. 06-CV-15464. (see Appendix C).

The court of Appeals for the Sixth Circuit had explained its parameters of a Fed. R. Civ. P. 60(b)(6) motion In Tyler v Anderson, 749 F3d 510 (6th Cir. 2014) stating, a reasonable time for filing a 60(b)(6) motion, "depends on the factual circumstances of each case." "finding ten year delay unreasonable) See also Days Inns Worldwide Inc. v Patel, 445 F3d 899, 906 (6th Cir 2006) ("what constitute a reasonable time depends on the facts of each case.")

However, the Sixth Circuit Court orders demonstrates that the Court's reasonable time analysis ~~don't~~ require the Circuit Courts own independent inquiry surrounding the record of the factual circumstances of the case presented.

In Jackson v Nagy, No. 19-1002 May 21, 2019 denial of Petition for rehearing, The Sixth Circuit stated, "upon careful consideration, the panel concludes that the original deciding Judge did not misapprehend or overlook any point of law or fact in issuing the order and accordingly, declines to rehear the matter. Fer R. App. P. 40 (a). (See Appendix A).

In Jackson v Nagy, No. 19-1002 April 3, 2019, order denying his COA application, the Court stated, In November 2018, Jackson filed a Rule 60(b)(6) motion. The District Court denied Jackson's 60(b)(6) motion after finding that "no lawyer had ever entered an appearance for Petitioner in this matter either in this Court or in the Sixth Circuit." The District Court concluded that Jacksons motion was grossly" untimely because he did not file it within a reasonable amount of time.

Jackson neither explained the reason for the multi year delay nor presented any circumstances compelling equitable relief. Reasonable jurist therefore would not debate the District Courts denial of Jackson's Rule 60(b)(6) motion. Accordingly Jackson COA application is denied." (See appendix B).

The District Courts order, No,06-CV-15464 filed Nov. 21, 2018, the Court stated, on the grounds of attorney abandonment, no lawyer had ever-entered an appearance for Petitioner on this matter, either in this Court or in the Sixth Circuit. The instant motion was filed seven and one half years after lawyer allegedly stopped representing him and nearly nine years after the Court denied his Motion for a Certificate of Appealability. By any definition of "reasonable" Petition allowed more than a "reasonable" amount of time to elapse before filing the instant motion. (see appendixC).

However, the Fifth and Ninth Circuit application of what constitutes a 'reasonable time' analysis is a more in depth inquiry of the factual circumstances of the facts of each case. In United States v Fernandez, (2014 U.S. Dist. Lexis 74752) The court stated, "according to the Fifth Circuit, in Osbourne v Homside Lending inc. 379 F3d 277, 283 (5th Cir. 2004)" Motion under Rule 60(b)(6) must be made within a reasonable time unless good cause for the delay can be shown. (Citing Pryor v U.S. Postal Serv, 769 F2d 281, 186 (5th Cir 1985). In re osbourne, the Fith Circuit explained that this inquiry requires a case by case evalation." What constitutes a reasonable time depends upon the facts of each case, taking into consideration the reason for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon and prejudice to other parties." (quoting Ashford v Steuart, 657 F2d 1053, 1055 (9th Cir, 1981).

In Farnandez, after Petitioner filed a 60(b)(6) motion on basis that the District Court had failed to Rule on claim of Ineffective Assistance of Counsel (Fourteen years prior). The District Court agreed and determined that it failed to previously rule on cliam in his original Petition. The Court concluded that, considering all the facts, including the interest in finality, the reason for the delay, the inability of Fernandez to learn about this procedure rule, and the lack of prejudice to other parties that despite the (fourteen year delay) that Fernandez's rule 60(b)(6) motion was filed within a reasonable time and his 60(b) motion should be granted, Id.

The District Court's ruling was a clear example of an abuse of discretion where in the Court's two page order it simply concluded that "the term of nine years was by any definition of reasonable' more than a reasonable amountof time to elapse before filing the instant motion" where the Court failed to consider the applicable legal standard or the factual circumstances the Petitioner articulated as the reasonable basis for delay.

The Petitioner contends, the Sixth Circuit Court application of Rule 60(b)(6) reasonable time analysis conflicts with the Fifth and Ninth Circuit Courts standard of "what constitutes a reasonable time." where the Six Circuit Courts analysis of the factual circumstances of the case was a full reliance of the District Court's inaccurate assessment of the facts articulated by Petitioner, including the inaccurate depiction of the Sixth Circuit docket entries record submitted as part of the factual record. *Id.*

Conclusion

For the reason set forth herein, Petitioner Marcus Jackson humbly states that bases on the Sixth Circuit failure to properly apply Rule 60(b)(6) reasonable time analysis of the factual circumstances of his case, The Supreme Court should issue a Writ of Certiorari.

Respectfully submitted,

Marcus Jackson
Marcus Jackson 19514
141 First Street
Coldwater, MI 49034

Date: 8-15-19