

No. 19-6399

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CARMEN A. ZAMMIELLO – PETITIONER

vs.

SECY. FDOC AND ATTY. GEN

STATE OF FLORIDA, et. al. – RESPONDENT(S)

UNITED STATES COURT OF APPEALS (11TH CIR.)

PETITION FOR WRIT OF CERTIORARI

CARMEN A. ZAMMIELLO

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ORLANDO, FL. 32831

N/A

(Phone Number)

QUESTION(S) PRESENTED

WHETHER THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT RENDERED A DECISION IN CONFLICT WITH THE LAW OF THE U.S. SUPREME COURT ANNOUNCED IN COPPEDGE -V- U.S., 369 U.S. 438 (1962); JONES -V- CUNNINGHAM, 371 U.S. 236 (1963); CARAFAS -V- LAVELLEE, 391 U.S. 234 (1968); BAREFOOT -V- ESTELLE, 463 U.S. 880, 893 (1983); SPENCER -V- KEMNA, 523 U.S. 1, 7 (1998); BECKER -V- MONTGOMERY, 532 U.S. 757 (2001); JONES -V- BOCK, 549 U.S. 199, 216 (2007), AND WAS CONTRARY TO 28 U.S.C. Sec. 2253(c) WHEN IT DENIED MY REQUEST FOR A COA FROM THE DISTRICT COURT'S ERRONEOUS DENIAL OF MY 28 U.S.C. Sec. 2254(a) PETITION FOR WRIT OF HABEAS CORPUS BASED SOLELY ON PROCEDURAL GROUNDS AND CONTRARY TO JONES -V- BOCK, SUPRA?

WHETHER THE COURT OF APPEALS FOR THE ELEVENTH CIRCUIT RENDERED A DECISION IN CONFLICT WITH THE LAW OF THE U.S. SUPREME COURT ANNOUNCED IN JONES -V- BOCK, 549 U.S. 199, 216 (2007); BECKER -V- MONTGOMERY, 532 U.S. 757, 767-68 (2001)(SAME) AND WAS CONTRARY TO 28 U.S.C. Sec. 1915(b)(4) WHEN IT ERRONEOUSLY DENIED ME LEAVE TO PROCEED IN FORMA PAUPERIS TO APPEAL THE DISTRICT COURT'S ERRONEOUS DISMISSAL W/OUT PREJUDICE MY 28 U.S.C. Sec. 2254 PETITION FOR WRIT OF HABEAS CORPUS BASED SOLELY ON JURISDICTIONAL GROUNDS CONTRARY TO 28 U.S.C. Sections 2254(a); 2241(d); 1915(b)(4); JONES -V- CUNNINGHAM, SUPRA, Id. (1963); SPENCER -V-

KEMNA, SUPRA, Id. (1998)(SAME); BECKER -V- MONTGOMERY, SUPRA, Id.
(2007)(FACTUALLY THE SAME)?

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 A-1 & 2 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 B 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 14th 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: May 14th 2019, and a copy of the order denying rehearing appears at Appendix A-1.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including Oct. 10th 2019 (date) on June 14th 2019 (date) in Application No. 18A1312.

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 10/22/19. A copy of that decision appears at Appendix B.

☐ A timely petition for rehearing was hereafter 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 constitutional and statutory provisions for habeas corpus and in forma pauperis appeals. See e.g. cf. Barefoot -v- Estelle, 463 U.S. 880, 893 (1983); Coppedge -v- U.S., 369 U.S. 438, 448 (1962); Becker -v- Montgomery, 532 U.S. 757 (2001); Jones -v- Bock, 549 U.S. 199, 216 (2007) and 28 U.S.C. Sections 2241, 2253, 2254(a) and 1915 et. seq.¹

It is clear that a certificate of Appealability should issue under 28 U.S.C. Sec. 2253(c)(2), where the Applicant has made a “substantial showing of a constitutional right.” Id. A court must either issue a certificate of Appealability indicating which issues satisfy the required showing, or state the reasons why such an certificate should not issue and in the absence of a C.O.A., my notice of appeal from the district courts erroneous order will be deemed by a circuit court to be a request for a C.O.A., as amended by AEDPA. See Fed. R. App. P. 22(b).

Consequently, the dismissal of my habeas corpus petition, based solely on procedural grounds does not bar the issuance of a COA because as the U.S. Supreme Court has long ago held that “Lower courts must not ‘depart from the usual practices under the federal rules on the basis of perceived policy concerns.” See Slack v. McDaniel, Supra, Id. 529 U.S. 473, 484-85 (2000). Becker -v- Montgomery, Supra, Id., (2001)(same) and Jones -v- Bock, Supra, Id. 549 U.S. at 212 (2007)(Factually the same (citing 28 U.S.C. sec. 1915)).

¹ See Carafas -v- Lavellee, 391 U.S. 234 (1968); Jones -v- Cunningham, 371 U.S. 236 (1963); Spencer -v- Kemna, 523 U.S. 1, 7 (1998); 28 U.S.C. Sec 2241(d)

STATEMENT OF THE CASE

In the case sub judice, the United States court of appeals for the Eleventh Circuit failed to “state the reasons why such a certificate should not issue and thus departed from the essential requirements of law by requiring the dismissal of all my habeas claims based solely on procedural grounds as required by PLRA for all claims stated because under Jones -v- Bock, Supra, Id. (2007) “Lower courts shall not depart from the usual practices under the federal rules on the basis of perceived policy concerns” and thus the Eleventh Circuit did not comply with Fed. R. App. P. 22(b) or 28 U.S.C. Sec. 1915 See e.g. cf. Jones -v- Bock, Supra, Id. (2007) (citing 28 U.S.C. Sec. 1915)); Becker -v- Montgomery, Supra, Id. (2001)(same).

REASONS FOR GRANTING THE PETITION

This case is important for the issues it raises as to the continued vitality and the validity of the so-called "Great Writ," the writ of habeas corpus created by the founding fathers and embodied into the federal constitution.

The law is well settled that in order for a state prisoner to avail himself to an appeal to the applicable federal circuit court of appeals from a district court's erroneous dismissal/denial of an application for collateral relief from the federal equivalent to the constitutionality -- created writ of habeas corpus -- a petition to vacate under 28 U.S.C. Sec. 2254 -- the prisoner, petitioner, or applicant must first obtain a certificate of Appealability or "COA" from a "circuit justice or judge" See e.g. Federal Practice & Procedure Juris (Wright & Miller Treatise pocket part) (2000).

The standard for the court of appeals consideration of the application is set forth in Fed. R. App. P. 22(b). 28 U.S.C. Sec. 2253(c)(2) is a statutory descendant of standard of a petitioner's requirement to make the "substantial showing of the denial of a federal right" announced long ago by this court and never since overruled in Barefoot v. Estelle, Supra, Id. (1983) when habeas appeals called for the issuance of a certificate of probable cause. The standard laid down by the supreme court made clear that petitioner's need not show that they would prevail on the merits of the appeals sought, but rather, need only demonstrate that "the issues are debatable among jurists of reason, that a court could resolve the issues differently,

or that the questions are adequate to deserve encouragement to proceed further.”

Barefoot, Supra Id. at 893 n. 4.

Moreover, the Supreme Court has further made absolute clear that in determining the standard of whether a habeas appeal is taken in “good faith, must be judged from an objective standard.” Coppedge -v- United States, Supra, Id. (1962). “Good faith is demonstrated in the case at bar where Petitioner seeks appellate review of all my nonfrivolous issues.” Coppedge, Id.²

² See Carafas -v- Lavellee, 391 U.S. 234 (1968); Jones -v- Cunningham, 371 U.S. 236 (1963); Spencer -v- Kemna, 523 U.S. 1, 7 (1998); 28 U.S.C. Sec 2241(d)

CONCLUSION

WHEREFORE, for all the foregoing reasons and because the Eleventh Circuit Court of Appeals entered a decision in conflict with the decisions of this court and other U.S. court of appeals on the same important constitutional matters and failed to comply with and departed from the requirements of Fed. R. App. P. 22(b); 28 U.S. C. Sec. 1915(b)(4) and thus, violated the foregoing constitutional standards, the Petitioner humbly prays this Honorable Court grants the petition for writ of certiorari herein.

It is so prayed, respectfully submitted,

Carmen A. Zamiello

Date: SEPT. 30TH 2019