Supreme Court, U.S.
FILED
NOV 01 2019
OFFICE OF THE CLERK

No. 19-6714

IN THE

SUPREME COURT OF THE UNITED STATES

Keith Goodman — PETITIONER
(Your Name)

vs.

D. Miller, Warden, Haynesville Corr. Center — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Keith D. Goodman
(Your Name)

P.O. Box 129, Haynesville Corr. Center
(Address)

Haynesville, VA 22472
(City, State, Zip Code)

n/a
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Is a federal district court (or a § 2254 petitioner) permitted to disregard or evade Rule 2(e) (of the Rules Governing Section 2254 Cases in the United States District Courts) when a challenge is made to the administrative execution of the aggregate calculation of sentences from more than one court?

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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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

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

The opinion of the United States court of appeals appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 8-20-19.

[ ] 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: 10-8-19, and a copy of the order denying rehearing appears at Appendix E.

[ ] 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

The relevant statutory and rule provisions involved include:

-- Rule 2(e) of the Rules Governing Section 2254 Cases in the United States District Courts ("Habeas Rules")

INTRODUCTION

This case involves a purely procedural/technical error with considerable ramifications. Rule 2(e) of the Rules Governing Section 2254 Cases in the United States District Courts ("Rule 2(e)") reads, "Separate petitions for judgments of separate courts. A petitioner who seeks relief from judgments of more than one state court must file a separate petition covering the judgment or judgments of each court." Nevertheless, the district court in this case has chosen to disregard Rule 2(e), despite the absence of any empowering authority to do so. Petitioner's first habeas thus retains a challenge to multiple state court judgments and as a result, Petitioner is prevented from filing a second separate habeas challenging a second separate conviction/sentence in a second separate state court, as would normally be provided for under that Rule, thereby causing Petitioner's constitutional right to petition for a writ of habeas corpus under Article I, Section 9, Clause 2 of the U.S. Constitution ("Suspension Clause") to be violated.

It is currently a legal impossibility to reconcile a § 2254 challenge to the underlying convictions/sentences of more than one state court with the administrative execution of an aggregate calculation of sentences from more than one state court, while also maintaining compliance with Rule 2(e). Petitioner asks that this Court resolve the issue.

STATEMENT OF THE CASE

1. On 9-30-14, Petitioner filed a § 2254 petition for a writ of habeas corpus in the United States District Court for the Eastern District of Virginia under 28 U.S.C. § 2254 ("first habeas"),[1] challenging the execution of his sentence. Specifically, Petitioner was challenging the method the Virginia Department of Corrections ("VDOC") was using to calculate the aggregate sentence created from Petitioner's two separate convictions/judgments in two separate state courts. On 12-8-15, the District Court denied the first habeas for untimeliness. The Court of Appeals subsequently denied a Certificate of Appealability ("COA") on 8-2-16 and rehearing was denied on 9-13-16.[2]

2. In 2017, Petitioner filed a second-in-time § 2254 petitioner ("second-in-time habeas"),[3] this time challenging his actual underlying judgments/convictions in only one of his state courts[4] (as opposed to the execution of his sentence). The second-in-time habeas was dismissed on 10-20-17 as 'second or successive' under 28 U.S.C. § 2244. The Court of Appeals subsequently denied a COA on 4-23-18 and rehearing was denied on 5-22-18.[5]

3. Petitioner, not fully understanding the 'second or successive' ruling, did research and discovered that he had inadvertently challenged both of his state court judgments in the first habeas [6] in violation of Rule 2(e), because the challenge in his first habeas was to the aggregate calculation of his two state court judgments, so he could not separate out each judgment from such a challenge. As a result, his

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[1] Case No. 1:14cv1335 (GBL/TRJ).

[2] Case No. 16-6426. See Goodman v. Pearson, 667 Fed. Appx. 799 (Aug. 02, 2016).

[3] Case No. 1:17cv279 (CMH/TCB).

[4] Specifically, the 'Suffolk Circuit Court.'

[5] Case No. 17-7634. See Goodman v. Hamilton, 719 Fed. Appx. 295 (Apr. 23, 2018).

[6] To wit: question 1(a) of the § 2254 petition asks: "[n]ame and location of court that entered the judgment of conviction you are challenging." Petitioner, in this section, challenged both of his judgments of conviction; specifically, Petitioner listed the 'Norfolk Circuit Court' and its location, followed by 'Suffolk Circuit Court' and its location.

second habeas challenging only one state court judgment was considered by the district court to be 'second or successive,' and would have been considered as such no matter which state court judgment Petitioner had been challenging in that second petition.[7]

4. To correct the cause of this critical error in the first habeas preventing Petitioer from filing any second-in-time habeas petition challenging either of his underlying convictions (despite his right to do so, one for each state court judgment), Petitioner filed a 'true' 60(b) motion and associated 'Leave to Amend' motion to correct the first habeas petition to reflect only one state court judgment. Upon review of these motions [See Appendix A for the d.ct. order], the district court asserted that it "[cannot] possibly comply" with Rule 2(e), thereby constraining the habeas petition to retain its challenge to multiple underlyign state court judgments in continuing violation of that Rule. The Court of Appeals subsequently denied a COA on 8-20-19 [Appendix C] and rehearing was denied on 10-8-19 [Appendix E].

[7] In this case, Petitioner challenged the 'Suffolk Circuit Court' conviction in his second-in-time habeas.

REASONS FOR GRANTING THE PETITION

Considerations Governing Review on Certiorari

Pursuant to the Rules of the Supreme Court of the United States, Rule 10(a), Petitioner seeks review of this question on a writ of certiorari, as "a United States court of appeals has... sanctioned... a departure [which is 'so far... from the accepted and usual course of judicial proceedings'] by a lower court, [so] as to call for an exercise of this Court's supervisory power."

This case arises in this Court from the denial of a COA. However, this Court has "jurisdiction... to review denials of applications for certificates of appealability by a circuit judge or a panel of a court of appeals," Hohn v. United States, 524 U.S. 236, 253, 118 S.Ct. 1969, 1978, 141 L.Ed.2d 242 (1998).

Moreover, the underlying merits of Petitioner's claim should be considered by this Court, not just a consideration as to whether a COA should have been issued by the lower court. See Buck v. Davis, 137 S.Ct. 759, 774-775 (2017) ("With respect to this [U.S. Supreme] Court's review, § 2253 [COA statute] does not limit the scope of our consideration of the underlying merits").

Reasons Why the Petition Should be Granted

Petitioner's first habeas currently stands in violation of Habeas Rule 2(e), because it 'challenges' two separate state court judgments. Despite this, the district court, when reviewing Petitioner's 60(b) motion to correct this error, refused to adhere to Rule 2(e) because "when challenging the calculation of good time credits, a petitioner... cannot separate out each state court judgment" and thus "petitions challenging the calculation of good time credits could not possibly comply with Rule 2(e)," [Appendix A, p.4]. In other words, according to the district court, Rule 2(e) is inapplicable to petitions challenging the aggregate calculation of a sentence, and all state court judgments that are part of an aggregate-sentence challenge must be, in contradiciton to that Rule, challenged in a single habeas.

The obvious problem with this new exception is presented in the instant case. To wit: if a petitioner files a first habeas challenging the execution of an aggregate sentence and includes all relevant state court judgments in that first habeas, then that same petitioner will be unable to file a second habeas challenging his underlying convictions on either (or any) or his state court judgments, because they were already all challenged in the first habeas. Since separate state court judgments must be challenged in separate habeas petitions, pursuant to Rule 2(e), no reasonable petitioner would include all of his challenges to all of his underlying convictions in that first petition. One state court judgment: yes; two or more: unreasonable and against Rule 2(e). Also, Rule 2(e) exists for good reason: a petitioner's multiple state court judgments will almost certainly have differing statute of limitations periods pursuant to § 2254, other evidentiary rulings based on differing claims, and many other inconsistent issues that Rule 2(e) was created to dodge. It is unworkable to force a petitioner to include all of his state court judgments on one § 2254 petition, even assuming the petitioner could be notified beforehand that Rule 2(e) would not apply to him.

Rule 2(e) is mandatory and binding on the district court because "[t]he Rules Governing Section 2254 Cases were adopted by the United States Supreme Court on April 26, 1976, pursuant to the Rules Enabling Act, 28 U.S.C. § 2072," McGriff v. Dep't of Corr., 338 F.3d 1231, 1234 (C.A.11 (Fla.) 2003). "Congress then expressly approved the [habeas] rules... [which] have the same binding effect as statutes," Ritchie v. Eberhart, 11 F.3d 587, 590 n.1 (C.A.6 (Tenn.) 1993), citing Bank of Nova Scotia v. United States, 487 U.S. 250, 255, 101 L.Ed.2d 228, 108 S.Ct. 2369 (1988).

And this Court has repeatedly made it clear that "[w]hen a situation is covered by one of the Federal Rules... the [federal] court has been instructed to apply the Federal Rule, and can refuse to do so only if the Advisory Committee, this Court, and Congress erred in their prima facie judgment that the Rule in question transgresses neither the terms of the Enabling Act nor constitutional restrictions," Hanna v.

Plumer, 380 U.S. 460, 471, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965). In the district court's decision to flout Rule 2(e) in the instant case, it made no pretense that applying Rule 2(e) would somehow violate the terms of the Rules Enabling Act or some constitutional restriction. Nor did it make any Hanna finding that the Advisory Committee, this Court, and Congress erred in their prima facie judgment. Thus, there is no question that it was clearly obligated to "apply the Federal Rule," Hanna, id.

Instead, the district court found purportedly 'logical' reasons to disregard Rule 2(e); however, in doing so, the district court did not explore the logical reasons Rule 2(e) should have been followed, even if Rule 2(e) was not mandatory. Some applicable questions that arise as a result of the district court's rebuff of Rule 2(e) are:

°° What state court judgments should a habeas petition list when challenging the execution of a sentence (concerning the calculation of an aggregate of multiple state court judgments/sentences), but where Rule 2(e) requires that only one state court judgment be challenged/listed per petition?

°° Collaterally, but wholly relevant to this question, -- if a petitioner necessarily violates Rule 2(e) ('necessarily,' because the calculation challenge being made relies on the aggregate of all of his underlying state court sentences)[8] thereby listing all of his state court judgments in that first petition, should a later/second-in-time petition challenging an underlying conviction concerning any one of those state court judgments be considered 'second or successive' (essentially punishing the petitioner for not having followed Rule 2(e), despite the district court's ex post acknowledgement that petitioner had no choice)?

°° If Petitioner was therefore correct in listing all of his state court judgments in the first habeas petition, as the district court ex post acknowledges was mandatory in this situation despite Rule 2(e), then why is his second petition challenging one of those underlying state court convictions deemed 'second or successive,' since he had no choice in the matter? In this situation, how can a petitioner be forced to list (but not 'actually challenge') all of his state court judgments in the first petition in violation of Rule 2(e), and then not be allowed to file a second petition challenging any of those judgments?

°° If Petitioner was not correct in listing all of his state court judgments in the first habeas, then did the district court err in refusing to correct that Rule 2(e) error pursuant to Petitioner's Rule 60(b) and 'Leave to Amend' motions?

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[8] Note that the Rule 2(e) violation here was sanctioned by the district court in the instant case. Clearly, if the district court believes Petitioner had no choice but to list all of his state court judgments in one petition in violation of Rule 2(e) to cover the challenge to an aggregate sentence calculation, surely the petitioner should not be punished (by not being able to file a second-in-time habeas for either other state court judgment) for having come to the same conclusion previously.

CONCLUSION

"[T]he fundamental purpose of the Federal Rules [is] the provision of uniform and consistent procedure in federal courts," Marek v. Chesny, 87 L.Ed.2d 1, 19, 473 U.S. 1, 24, 105 S.Ct. 3012 (1985) (Brennan, with Marshall and Blackmun dissenting). "If rules of procedure work as they should in an honest and fair judicial system, they not only permit, but should as nearly as possible guarantee that bona fide complaints be carried to an adjudication on the merits," Surowitz v. Hilton Hotels Corp., 15 L.Ed.2d 807, 814, 383 U.S. 363, 373, 86 S.Ct. 1333 (1966).[9] Petitioner only asks that in this case, as in all cases, the district court be required to follow the Federal Rules, specifically Rule 2(e). To allow the district court to not apply Rule 2(e) would work a fundamental injustice to Petitioner and to future petitioners in similar situations. Petitioner also asks that the Court of Appeals's COA denial be reversed, as it is easily debatable that the district court erred by failing to apply mandatory Rule 2(e).

The petition for a writ of certiorari should be granted.

Respectfully Submitted,

Keith Booth

Date: 10-31-19

[9] "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits," Conley v. Gibson, 355 U.S. 41, 48, 2 L.Ed.2d 80, 86, 78 S.Ct. 99 (1957).