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19-7144

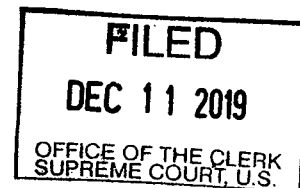
IN THE
SUPREME COURT OF THE UNITED STATES

JAMES STROUSE,
PETITIONER,

vs.

WARDEN-FCC COLEMAN HIGH,
RESPONDENT(S),

ORIGINAL



ON PETITION TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT GRANTING JURISDICTION
TO ENTERTAIN WRIT OF HABEAS CORPUS 28 USC, SECT. 2241

PETITION FOR WRIT OF CERTIORARI

JAMES BRANDON STROUSE
REGISTRATION NUMBER 15976078
P.O. BOX 1034
COLEMAN, FLORIDA
33521-1034

QUESTION(S) PRESENTED

I.

CAN A FEDERAL PRISONER CHALLENGE THEIR SENTENCE
OR CONVICTION UNDER 28 U.S.C. SECT. 2241 MOTION
WHEN THEIR POST SECTION 2255 MOTION IS INADEQUATE
OR INEFFECTIVE

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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Decision from the Eleventh Circuit Court Appeals.

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Decision from the 11th Cir. (Re-hearing).

APPENDIX B:

Decision from the United States District Court for
Middle District of Florida, Ocala Division.

APPENDIX B-1:

Final judgment in Sect. 2241, U.S.D.C. M.D. FLA..

APPENDIX C:

28 USC, Sect. 2255

APPENDIX D:

Persaud v. United States, 571 US 1172, 134 S. Ct.
1023, 188 L. Ed. 2d 117 (1/27/2014).

TABLE OF AUTHORITIES

Anders v. California, 386 US 738 (1967)

Persaud v. United States, 188 L. Ed. 2d 117 (2014)

28 USC, Sect. 2255(e) "Savings Clause"

28 USC, Sect. 2241(c)(3)

Rule 41 of the Fed.R.Crim.P.

Rule 11(c)(1)(C) of the Fed.R.Crim.P.

4th Amendment of the U.S. Constitution

5th Amendment of the U.S. Constitution

6th Amendmnet of the U.S. Constitution

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

The opinion of the United States Court of Appeals for
the Eleventh Circuit appears at Appendix A. to the petition,
and is reported at 18-15051. And is unpublished.

The opinion of the United States District Court
appears at Appendix B. to the petition, and is reported at
5:18-cv-343. And is unpublished.

JURISDICTION

The date on which the United States Court of Appeals
for the Eleventh Circuit decided my case was 9/13/2019.

A timely petition for a rehearing, en banc was denied

by the United States Court of Appeals on the following date 11/7/2019, and a copy of the order denying rehearing, en banc appears at Appendix A..

| |
The jurisdiction of this Court is invoked under 28 USC, Sect. 1254(1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED
Persaud v. United States, 571 U.S. 1172, 134 S. Ct. 1023, 188 L Ed 2d 117 (2014).

Sect. 2255(e).

28 USC, Sect. 2241(c)(3).

Solicitor General, Id., at 188 L Ed 2d 117.

STATEMENT OF THE CASE

Mr. Strouse filed a Sect. 2241 in the U.S.D.C. M.D. Fla. Ocala Division. In re: James Brandon Strouse v. Attorney General William Barr, FCC Coleman High-Warden. No. 5:18-cv-343. Attacking his post sentence/conviction invoking the savings clause Sect. 2255(e) that he has exhausted his remedies in the circuit where he was sentenced.

On 10/24/2018 the district court granted petitioner's¹ Sect. 2241 motion to proceed in forma pauperis. See Appendix B.. DE No. 8, CV 18-343 to the petition.

The district court sua ponte moved that Strouse is not entitled to relief, this case is dismissed, and Mr. Strouse is required to obtain relief from the 11th Cir. seeking authorization for a Sect. 2255 motion, and that the district court lacks jurisdiction to consider the motion.²

¹ Petitioner (James Brandon Strouse) also referred to as Pet., Pet's.

² The district court erred, Mr. Strouse was sentenced in the Fifth Circuit, not the Eleventh Circuit, with respect hereto all parties involved.

The district court entered a judgment in civil case , James Brandon Strouse v. FCC Coleman High, et, al. , 5:18-cv-343, DE No. 9, 10/25/2018. See Appendix B. to the petition, pages 1-2.

On 12/04/2018, Mr. Strouse filed notice of appeal in re: Sect. 2241 U.S.D.C. M.D. Fla., 5:18-cv-343 in the Eleventh Circuit.

Mr. Strouse's notice of appeal was granted for leave to proceed in forma pauperis, No. 18-15051.

On 9/13/2019, the Eleventh Circuit denied/dismissed Mr. Strouse's notice of appeal, and held (therefore, he cannot proceed under the savings clause, and must obtain authorization for a second/successive Sect. 2255 motion. in the circuit where he was sentenced). See Appendix A. to the petition.

On 9/23/2019, Mr. Strouse moved for an en banc, rehearing in a timely matter and was denied 11/7/2019. See Appendix A-1, to the patition. No. 18-15051, In re: James Brandon Strouse v. Fcc Coleman, et, al. (11th Cir. 2019).

Mr. Strouse raised that the panel's decision was in conflict with United States Solicitor General in re: Persaud, 571 US 1172, (188 L Ed 2d 117) that the savings clause permits the pet. Strouse to challenge his conviction.

On 12/6/2010 Mr. Strouse filed a motion under Sect. 2255 raising various claims of ineffective assistance of counsel.³ The case was assigned number 4:10-cv-670. The district court denied the motion, and dismissed the case with prejudice. And denied to issue (COA).⁴

Mr. Strouse requested a (COA) from the 5th Cir. which was denied. See Strouse v. United States, No. 4:14-cv-402 (E.D. Tex. 12/15/2014) (citing United States v. Strouse, No. 12-40464 (5th Cir.3/15/2015)).

On 12/3/2014, Mr. Strouse filed a motion seeking authorization to file a second Sect. 2255 motion. In re: James Brandon Strouse, No. 14-41360 (5th Cir.12/3/2014). The district court denied the motion in an order dated 1/21/2015. In re: James Brandon Strouse, No. 14-41360 (5th Cir.1/21/2015).

Mr. Strouse filed a second motion seeking authorization to file a second Sect. 2255 motion on April 27, 2015. In re: James Brandon Strouse, No. 15-40575. The court denied the motion. In re: James Brandon Strouse, No. 15-40575, (5th Cir.5/29/2015).

³ Hereinafter, (IAC) referred as to Ineffective assistance of counsel.

⁴ (COA) referred to as certificate of appealability.

REASONS GRANTING THE PETITION

I.

RULE 10 GOVERNING THE SUPREME COURT

Rule 10 of the rules governing the Supreme Court of the United States, more specifically, considerations governing on a writ of certiorari states in relevant part:

"Review on a writ of certiorari is not a matter of right, but a judicial discretion. A petition for a writ will be granted for compelling reasons, the following, although neither controlling nor fully meaning the Court's decision indicates the character of the reasons the Court considers".

The United States Court of Appeals for the Eleventh Circuit has entered a decision in conflict with the United States Solicitor General and the Supreme Court of the United States pursuant to *Persaud v. United States*, 188 L. Ed. 2d 117 (2014), Sect. 2241 and Sect. 2255(e) departing from a well established Supreme Court precedent. The petitioner (Mr. Strouse) contends that as a result from the United States Solicitor General. A writ of certioarai should issue to the Eleventh Cir. to proceed under the "Savings Clause" of 28 USC, Sect. 2241(c)(3).

II.

CLAIMS UNDER SECT. 28 USC, SECT. 2241

Mr. Strouse challenges defense/appellate counsel's withheld Exculpatory/Brady Materials, and induced Mr. Strouse to plead guilty without review of Brady Materials.

Mr. Strouse newly asserts that he had been unable to review Brady Materials when he entered a plea of guilty 4/16/2009.

Mr. Strouse asserts a claim of ineffective assistance of appellate counsel for filing an Anders Brief that claims his first direct appeal was frivolous, causing him to waive his ability to later raise certain issues in a Sect. 2255 motion. See Appendix C. to the petition.⁵

(a) Mr. Strouse filed an application seeking authorization in the Fifth Circuit for a second Sect. 2255 motion. The court denied 1/21/2015, No. 14-41360.

(b) Mr. Strouse filed a second application seeking authorization in the Fifth Circuit for a second/successive Sect. 2255 motion. The court denied 5/29/2015, No. 15-40575.

⁵ The government argued in Strouse's Sect. 2255, No. 4:10-cv-670, that Strouse "waived" his right to file an appeal and that his issues were not in his direct appeal,

wherefore the government argued Strouse "waived" his right to raise his issues because they were not brought /raised in his first direct appeal. Appellate counsel waived Strouse's ability to later raise in a Sect. 2255 motion.

Mr. Strouse asserts that he has unsuccessfully exhausted his remedies in the Fifth Circuit. And filing a 3rd application seeking a second or successive Sect 2255 motion would be futile. Wherefore, he asserts to proceed under the "savings clause" with respect hereto.

A. STANDARD

A motion pursuant to 28 USC, Sect. 2241 the presumption means by which a federal prisoner can make a collateral challenge to his conviction or sentence. Davis v. United States, 417 US 333, 343 (1974). Mr. Strouse, however, challenges his sentence/conviction and seeks habeas corpus relief to 28:2241(c)(3). A federal prisoner may use a Sect. 2241(c)(3) petition for a writ of habeas corpus to attack his conviction or sentence only if Sect. 2255 motion is "inadequate or ineffective". Hill v. Werlinger, 695 F.3d 644, 645 (2012), quoting 28 USC, Sect. 2255(e).

This is known as the savings clause of Sect. 2255(e) and it...will permit a federal prisoner to seek habeas corpus only if he had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first Sect. 2255 motion. See *Montana v. Cross*, 829 F.3d 775, 783 (7th Cir.2016), Cert. denied. sub nom. *Montana v. Werlich*, 137 S. Ct. 1813 (2017).

The petitioner bears the burden of coming forward with evidence affirmatively showing the inadequacy or ineffectiveness of the Sect. 2255 remedy. *Smith v. FCC Coleman*, 503 F. Appx. 763, 765 (11th Cir.2013).

B. DISCUSSION

1. INEFFECTIVE ASSISTANCE OF COUNSEL

Mr. Strouse asserts that his appellate counsel provided ineffective assistance of appellate counsel for filing an Anders Brief on his first direct appeal was frivolous. See Appendix C. to the petition.

His appellate counsel's actions allegedly caused him to waive his ability to later raise issues from his direct appeal in a section 2255 motion.

However, Mr. Strouse could have raised a claim of ineffective assistance of appellate counsel in a Sect. 2255 motion and he fails to show how a Sect. 2255 motion

was "inadequate or ineffective" to address this issue. Moreover, Mr. Strouse's direct appeal was not dismissed without consideration of the issues. The Fifth Circuit found potential appellate issues and additional issues raised by Mr. Strouse to be frivolous and dismissed the appeal. *United States v. Strouse*, No. 09-41260, (5th Cir.9/23/2010).

The savings clause does not give Mr. Strouse another opportunity to bring claims that could have been, and in fact were, brought either on direct appeal or through a Sect. 2255 motion. The essential point is that a prisoner is entitled to one unencumbered opportunity to receive a decision on the merits. *Potts v. United States*, 210 F.3d 770 (7th Cir.2000).

Mr. Strouse asserts appellate counsel failed to object to certain issues during pretrial and trial and on direct appeal proceedings. Prior defense counsel (Robert Arrambide) was recused during pretrial for failing to file timely motion to withdraw Strouse's guilty plea, failed to object police misconduct, coerced Strouse to plead guilty without review of Brady Materials that affected Strouse's decision to plead guilty unknowingly!...See Michael (Gen.) Flynn, 9/23/2019). Acquittal granted due to (IAC) Brady Materials withheld upon deciding guilty.

Appellate counsel's (Garland Cardwell) was appointed to represent Mr. Strouse during Pretrial, trial and on direct appeal. Strouse moved to recuse Mr. Cardwell in his direct appeal. There was a conflict of interest between Mr. Strouse and appellate counsel Cardwell, the Fifth Circuit denied, and stated that only counsel's could withdraw, then immediately appellate counsel's moved to file an Anders Brief In re: James Brandon Strouse, No. 09-41260 (5th Cir.2010).

Mr. Strouse asserts a significant conflict of interest arised when appellate counsel's interest in avoiding damage to his own reputation during pretrial and trial proceedings is at odds, that appellate counsel had abandoned Mr. Strouse (his client).

Appellate counsel failed to to raise non-frivolous merits on Strouse's first appeal, and must refere to anything in the record. See Anders v. California, 386 US 738(1967).

Mr. asserts that appellate counsel's failed to raise non-frivolous issues set forth below:

a. Defense counsel/appellate counsel with-held exculpatory/Brady Materials affected Mr. Strouse's LYING to pled guilty unknowing and unintentionally.

b. Counsel's failed to object police misconduct upon initial appearance/contact with dft. Mr. Strouse.

c. Counsel's failed to object police waited 17 days to obtain a search warrant surpassed the 10 day timebarr under rule 41 of the Fed.R.Crim.P..

d. Counsel's failed to object prior to defense counsel's that was recused did not provide Brady Materials to Mr. Strouse for review before he entered a guilty plea had affected his decision unknowing and unintentionally entered a guilty plea was induced/coerced.

e. Counsel's failed to object "evidence" Mr. Strouse attempted to timely withdraw his guilty plea, and he did not wait 4 months to withdraw, including denial access to Brady Materials.

f. Appellate counsel's failed to object to withdraw as appellate counsel when requested to do so by Mr. Strouse due to conflict of interest that appellate counsel's represented Mr. Strouse during pretrial, trial and direct appeal, and filed an frivolous Anders Brief.

g. Counsel's failed to object that the district court violated plea agreement under Rule 11(c)(1)(C) of the Fed.R.Crim.P. denied Mr. Strouse acceptance of responsibility per plea agreement for 2 points deduction from the base offense level.

h. Counsel's failed to object upward variance 2 points obstruction of justice during police misconduct upon initial police contact.

i. Counsel's failed to object police misconduct when continued to question Strouse when he requested a lawyer/attorney.

j. Counsel's failed to object police misconduct when police re-entered his residence without a search warrant and waited 17 days after the 10 day timebarr, without consent of Mr. Strouse.

k. Counsel's failed to object police testified that Mr. Strouse denied them access to his electronics and any search of his residence.

CONCLUSION

FOR THE ABOVE AND FOREGOING REASONS, STROUSE PRAYS THAT A WRIT OF CERTIORARI ISSUE TO THE ELEVENTH CIRCUIT GRANTING JURISDICTION TO THE U.S.D.C. M.D. FLA., ENTERTAIN JURISDICTION UNDER A SECT. 2241 MOTION, (28 USC, SECT. 2241) PURSUANT TO PERSAUD, Id. at 188 L Ed 2d 117.