

IN THE
Supreme Court of the United States

TIMOTHY RICHARDSON,

Petitioner,

v.

EDWARD THOMAS, Warden, Central Prison,
Raleigh, North Carolina,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

REPLY BRIEF OF PETITIONER

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ARGUMENT

Petitioner Timothy Richardson, through undersigned counsel, submits this Reply to the State's Brief in Opposition to his Petition for Writ of Certiorari, filed on 10 February 2020.

The State argues that this case is a poor vehicle to decide issues raised in the petition, because "Richardson did not raise the issue he seeks to now argue here" (Respondent Brief at 12) in the district court.

The State is wrong both as to its assertion that Richardson did not raise this argument in the District Court, and as to its legal analysis that the Court of Appeals was prohibited from considering this argument even assuming it had not been raised.

Petitioner's "new argument" was that the state court's clarification of its previous interpretation of the state's statutory definition of intellectual disability, allowing for consideration of the standard error of measurement, justified the District Court's grant of Rule 60(b) relief because the subsequent clarification demonstrated a serious flaw affecting the integrity of the original federal habeas corpus proceeding.

This argument was not new, because Richardson repeatedly attempted to raise it in the District Court, as set forth in his Petition for Certiorari at pages 15-17.

Moreover, the State ignores the settled rule that a trial court's ruling should be upheld if there appears any basis in the record in favor of affirmance. *Jennings v.*

Stephens, 574 U.S. 271, 135 S. Ct. 793 (2015). This is particularly true in the context of the State’s interlocutory appeal from the district court’s grant of a Rule 60(b) motion. See 28 U.S.C. §1292(b) (to certify an interlocutory appeal, the court must find that the “order involves a controlling question of law as to which there is substantial ground for difference of opinion. . .”) Finally, the Fourth Circuit reached the merits of the argument, albeit differently from the conclusion drawn by other circuits.

As noted in the Petition for Certiorari, at the time of filing Petitioner’s Application to File a Successive Habeas Petition Pursuant to 28 U.S.C. §2244 was pending. On 11 February 2020 the Fourth Circuit denied his application to file a successive petition for a writ of habeas corpus under 28 U.S.C. §2244. The Fourth Circuit’s unpublished opinion, which is unreviewable pursuant to 28 U.S.C.

§2244(b)(3)(E), is available at <http://www.ca4.uscourts.gov/opinions/177.U.pdf>

As a result of the Fourth Circuit’s most recent ruling, Petitioner is now foreclosed from seeking clearly-warranted relief under FRCP, Rule 60(b) **and** 28 U.S.C. §§ 2244 and 2254, effectively rendering habeas corpus (“The Great Writ”) as a constitutional right without a remedy.

CONCLUSION

For the reasons set forth here and in his Petition for Certiorari, Richardson respectfully requests that the Court grant his Petition for a Writ of Certiorari and review the judgment of the United States Court of Appeals for the Fourth Circuit or, in the alternative, summarily reverse the Fourth Circuit decision and order remand

to the United States District Court for the Eastern District of North Carolina for the purpose of reopening proceedings on the Rule 60(b) Motion for Relief from Judgment.



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