

No. 19-7498

SUPREME COURT OF THE UNITED STATES

James Earvin Sanders,

PETITIONER,

vs.

United States,

RESPONDENT(S).

On Petition for the Rehearing of
the Order Denying the Petition for
a Writ of Certiorari to
the United States Court of Appeals
for the Fifth Circuit

PETITION FOR REHEARING

Pro se Petitioner:

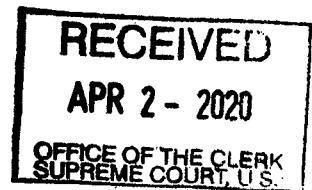
James Earvin Sanders

#1579328

2101 FM 369N

Iowa Park, Texas 76367

Allred Unit



I. Questions Presented

In situations where the court of appeals commits an abuse of discretion by not fulfilling its duties as described in Supreme Court Rule 10(a)&(c), thus denying relief unjustly, Who is responsible for righting that wrong as to avoid exacerbating such deprivations?

If the ~~authoritative~~ party in question is this Court, why is the Court shirking its duty by not addressing and correcting these shortcomings in order to minimize possible deprivations of constitutional rights in accordance with the 'checks and balances' system?

II. Table of Contents

I.	Questions Presented.....	i
II.	Table of Contents.....	ii
III.	Table of Authorities.....	iii
IV.	Statement of the Petition for Rehearing.....	1
V.	Reasons for Granting the Writ.....	7
VI.	Conclusion.....	7

III. Table of Authorities

Cases

<u>Davis v. Alabama</u> , 596 F.2d 1214, 1218 (5th Cir.1979).....	4
<u>Davis v. Johnson</u> , 158 F.3d 806, 811 (5th Cir.1998).....	3
<u>Dretke v. Haley</u> , 124 S.Ct. 1847 (2004).....	6
(quoting <u>Engle v. Issac</u> , 456 U.S. 107, 126)	
<u>Lonchar v. Thomas</u> , 517 U.S. 314 (1996).....	2
<u>Loyd v. Whitley</u> , 977 F.2d 149 (5th Cir.1992).....	5
<u>McCarthy v. United States</u> , 394 U.S. 459, 466 (1969).....	3
<u>Powell v. Alabama</u> , 287 U.S. 45 (1932).....	4
<u>United States v. Edwards</u> , 488 F.2d 1154 (5th Cir.1974).....	5

Statutes

28 U.S.C. §2244(d)(1)(D).....	5
28 U.S.C. §2255.....	5
Supreme Court Rule 10(a)&(c).....	1

Constitutional Provisions

United States Constitution, Amendment I.....	2
United States Constitution, Amendment VI.....	2, 4
United States Constitution, Amendment XIV.....	4

STATEMENT OF THE PETITION

The Petitioner fully understands that the Court would prefer to limit its caseload to those high-profile, precedent-setting cases that make headlines and rewrite history, but the discretion of this Court's jurisdiction far exceeds such a limited outlook. This stance--which the Court has limited itself to--is allowing the federal courts of appeals and their lower courts to abuse their discretion by denying COA and habeas corpus relief contrary to the laws, statutes, precedents, and The Constitution.

Supreme Court Rule 10 specifically states in two places that the Court has the authority to, and should intervene when the courts of appeals are not abiding by the rules.

Rule 10(a) says:

a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter;...or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

and Rule 10(c) says:

[a] United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

The lower courts are aware of the fact that the Supreme Court is only dealing with those high-profile, precedent-setting cases, and they're taking advantage of the opportunity to deny habeas relief unjustly.

When the courts of appeals and their district courts abuse their discretion, whose duty is to correct that mistake?

Who polices the federal courts when they make mistakes in judg-

ment, or blatantly abuse their discretion?

Obviously, that is one of this Court's primary duties, is it not? If this Court does not perform this duty, then constitutional violations that occurred during the criminal proceeding are exacerbated, habeas relief is denied, and more constitutional violations occur.

Because the underlying question is of a constitutional magnitude: Were this petitioner's constitutional rights violated in the course of convicting him?

Evidence of this abounds throughout the Petitioner's case, but the federal district's erroneous understanding of 2244(d)(1)'s tolling provisions, and an unwavering refusal to truly examine their interpretation of the statute versus what the statute actually says, thus denied relief.

How do we remedy these type of mistakes? Where can a petitioner go to seek habeas corpus relief, if not via "The Great Writ," which is supposedly protected by the constitution?

"Dismissal of a first habeas petition is a particularly serious matter, for that dismissal denies the petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." Lonchar v. Thomas, 517 U.S. 314 (1996).

A violation of one's constitutional rights in order to convict them is the express reason why our forefathers created the Sixth Amendment. We are supposed to have the right to make a defense.

The First Amendment provides us with the right to seek redress for grievances, and so on and so forth. The violation of those rights is not supposed to occur, but when it does in the course of convicting someone, that conviction should not stand as it is un-

constitutional.

"Because such a waiver is valid only if made intelligently and voluntarily, an accused who has not received reasonably effective assistance in deciding to plead guilty cannot be bound by his plea."

McCarthy v. United States, 394 U.S. 459, 466 (1969)

The point is, whether a precedent is set in the courts of appeals, or in this Court, they're irrelevant if the courts of appeals and the district courts are not going to follow those established precedents when handling habeas corpus actions. Not to sound melodramatic, but congressional intent has been thwarted because 2244(d)(1) is not being applied as intended.

Judicial precedents have been usurped and made obsolete because the courts are not respecting those rulings--which should govern how the courts of appeals and district courts rule--and in many cases these courts don't respect their own rulings.

There is supposed to be consistency that should be in line with the statute and case law and precedent, but it does not exist.

Otherwise, how can the Fifth Circuit say:

"In addition, the [AEDPA] limitation period does not establish an absolute outside limit within which suits must be filed,"

Davis v. Johnson, 158 F.3d 806, 811 (5th Cir. 1998)

and then turn around and deny COA due to an imaginary outside limit that does not exist within the statute?

True, this issue is not glamorous. It's not going to grab headlines, or cement anyone's legacy, but it needs to be addressed. Few people, if any, care about the violation of a prisoner's constitutional rights until it directly pertains to them, a family member, or a friend. Yet, the fact of the matter is that the violation of these rights, in the course of convicting someone, is

as un-American as communism.

So why is it being permitted to happen?

It is sickening to know that the accused's rights are being violated by shysters, and the federal courts are allowing these convictions and unjust court proceedings to stand.

The Sixth and Fourteenth Amendments are supposed to safeguard the right to effective assistance of counsel, even if the accused cannot afford it. Yet during the course of my proceedings, the insanity defense was my only viable defense, credible evidence supported said defense, but my attorney made no attempt to develop that defense.

Moreover, I had three lawyers for cases in three jurisdictions, and none of them made an effort to develop my only viable defense. They all lied about the existence of mitigating psychiatric evidence, and duped me into plea bargains and guilty pleas. They withheld, from my defense, the very evidence that established my only defense.

In Powell v. Alabama, 287 U.S. 45 (1932), the Supreme Court said:

"It is not enough to assume that defense counsel thus precipitated into the case thought there was no defense, and exercised their best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thorough-going investigation might disclose as to the facts. No attempt was made to investigate."

Likewise, the Fifth Circuit echoed this position in Davis v. Alabama, 596 F. 2d 1214, 1218 (5th Cir. (1979), saying:

"Not only did defense attorneys know that insanity was a possible defense; they apparently knew it was Davis's only possible defense. Thus their failure to investigate cannot be excused by saying that it did not seem to be a very strong defense. In deciding not to develop the insanity defense Davis's attorneys effectively decided to put

on no defense at all. We cannot say that such an approach amounts to adequate representation."

The Fifth Circuit has two more quotes that I would like to point out.

"This court has long recognized a particularly critical inter-relation between expert psychiatric assistance and minimally effective representation of counsel." United States v. Edwards, 488 F. 2d 1154 (5th Cir. 1974).

And

"The crucial distinction between strategic judgment calls and plain omissions has echoed in the judgments of this court." Loyd v. Whitley, 977 F.2d 149 (5th Cir. 1992).

All of these cited cases depict situations that occurred in my case, or should have been taken into account in the handling of my case, but apparently, they were not. I honestly believe that my attorney(s) did a subpar job representing me was because I could not afford to pay them, and they were not going to invest the necessary time and effort into a pro bono insanity defense.

Documentary evidence in discovery supports this assertion. Nonetheless, even with the fact that my attorney withheld the discovery from me throughout the proceedings, and did not give it to me until four years after my conviction, I was not allowed to file my §2255 under 28 U.S.C. §2244(d)(1)(D).

The question remains: Who polices the courts of appeals and the district courts if they fail to properly apply the laws and statutes? Who ensures that our constitutional rights are not abused?

That is the Supreme Court's duty, and no matter how unheralded

and unpopular a prisoner's rights might be, it is the Court's duty to right the wrong when the lower courts fail to address such a problem. No one's constitutional rights should be violated in the course of being convicted of a crime. That is a central theme throughout the constitutional amendments and the Bill of Rights. Our founding fathers were adamant about this never happening.

How many times does it have to happen before this Court says enough is enough? Or is it acceptable because it's only happening to the poor and indigent and the minorities?

This Court is the only authority that can set an example for the Fifth Circuit and its lower courts by making them abide by the laws, statutes, and precedents in its habeas corpus rulings. Otherwise, this will continue: Habeas relief will continue to be denied.

I do not wish to take up more of the Court's time than is necessary, so I will not beat a dead horse.

The Fifth Circuit and its lower courts are unjustly denying habeas relief contrary to laws, statutes, and precedents. Supreme Court Rule 10 authorizes this Court as the only authority that can address this issue.

Dretke v. Haley, 124 S. Ct 1847 (2004) says:

"[t]he Court has lost sight of the basic reason why the 'writ of habeas corpus indisputably holds an honored position in our jurisprudence.' Habeas corpus is, and has for centuries been, a 'bulwark against convictions that violate fundamental fairness.'"

(quoting Engle v. Issac, 456 U.S. 107, 126).

"The law must serve the cause of justice." Id.

REASONS FOR GRANTING THE WRIT

An infringement of the constitutional rights of American citizens is going unchecked by the Fifth Circuit and her lower courts, and it needs to be addressed and remedied. The American judicial system, like our system of government, was created with 'checks and balances' in order to avoid this type of abuse of discretion.

Everything that makes America great begins and ends with The Constitution of these United States. The words of that document are powerful, but only if they are upheld and revered and enforced.

If any aspect of our judiciary system runs amok, there is another area that can reel it in and set it straight. But only if the checks and balances demand accountability.

It is this Court's job to do this when the courts of appeals are not handling appeals according to "the accepted and usual course of judicial proceedings." See Supreme Court Rule 10(a).

Otherwise, how is justice served, and, more importantly, how are the values of The Constitution exalted, because in the end, that is what separates us from other countries. We truly value our citizens' constitutional rights, while countries like China claim to, correct?

CONCLUSION

For the foregoing reasons, Petitioner Sanders respectfully prays that the will grant this petition for rehearing, and allow me the opportunity to present the facts that support this claim.

SIGNED, DATED and PLACED in the unit mailing system on
this 25th day of March, 2020.

Respectfully submitted,



James Earvin Sanders

Petitioner