

79-829
No. _____

Supreme Court, U.S.
FILED

APR 10 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Willis John Yazzie Sr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Willis John Yazzie Sr. 54228051
(Your Name)

Federal Correctional Institution
1900 Simler Avenue

(Address)

Big Spring, Texas 79720-7789
(City, State, Zip Code)

(Phone Number)

RECEIVED

APR 16 2020

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the court of appeals disregarded this Court's decision in **Buck v. Davis** to a pro-se litigant about the COA procedure by deciding the merits of the case before denying a COA.

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE WRIT.....	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A Opening Brief for COA with A to V Appendices

APPENDIX B Order Denying COA

APPENDIX C Issue on 18 U.S.C. § 3501

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
Buck v. Davis, 197 L. Ed. 2d 1(2017)	5
Dunaway v. New York, 442 U.S. 200(1979)	5
Stewart v. Martinez-Villareal, 523 U.S. 637(1998)	5,6

STATUTES AND RULES

18 U.S.C. § 3501	5
28 U.S.C. § 2255	5,6

OTHER

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 _____ to the petition and is

reported at 2020 U.S. App. LEXIS 2857; 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[] is unpublished.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 _____ 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[] is unpublished.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 _____ 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 January 29, 2020.

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: _____, 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. § 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

Amendment V

"...nor be deprived of life, liberty, or property, without due process of law;..."

STATEMENT OF THE CASE

Petitioner had refiled his § 2255 motion on March 1, 2018 and was dismissed on January 23, 2019. Petitioner then sought a Motion for COA on February 7, 2019, and the Assistance United States Attorney filed an Opposition on February 13, 2019, and petitioner responded back on February 26, 2019.

On October 3, 2019 the district court entered an Order denying the COA.

In December of 2019 petitioner appealed to the Court of Appeals for the Tenth Circuit for an COA. On January 29, 2019 the court of appeals denied the COA.

REASONS FOR GRANTING THE PETITION

THE PETITION SHOULD BE GRANTED TO RESOLVE THE ISSUES FOR PRO-SE LITIGANT THAT APPLY FOR COA TO THE COURT OF APPEALS THAT DISREGARD BUCK V. DAVIS

The question for the Tenth Circuit was if it was debatable that the district court's procedural ruling was wrong that petitioner's refiled § 2255 was a second or successive § 2255. Appendix A

The court of appeals disregarded **Buck v. Davis**, 197 L.Ed.2d 1, 17(2017) where the court of appeals based its adjudication on the actual merits by saying: "But Yazzie does not have a claim that was previously dismissed as premature that is now ripe for adjudication, as was the case in **Stewart**." the court of appeals also said that my disagreement, where the district court did not adequately deny his first motion and for that ruling does not entitle him to relitigate the same claims.

The court of appeals should have granted the COA by saying the district court did not specifically provide clear and detailed reasons supported by facts and law explaining why the files and records of the case conclusively show that the petitioner is entitled to no relief.

The district court denied the initial § 2255 by saying that petitioner did not demonstrate ineffective assistance of counsel and that two attorneys' agreed that petitioner's statement could not be suppressed and nothing more. The attorneys' agreement was not about this court's decision in **Dunaway v. New York**, 442 U.S. 200(1979), but the agreement was about 18 U.S.C. § 3501(c). Appendix A and C

For these reasons the court of appeals decided the merits of petitioner's claim about a claim that was previously not dismissed as premature. The claim was to decide if the district court's ruling was debatable if petitioner's § 2255 was a second or successive § 2255 and not into the underlying merit. The court of appeals could have granted the COA and send the case back to the district court by saying there are no detailed reasons of what the attorneys' agreed on that petitioner could not suppressed his statement. Appendix B

For these reasons it was debatable that petitioner's § 2255 was not Second or successive § 2255 pursuant to **Stewart v. Martinez-Villareal**, 523 U.S. 637(1998).

The discretion of the court of appeals was not appropriate and this court should grant certiorari to reach a determination for pro-se litigant's that file for COA to issue, because it is hard for a pro-se petitioner to be granted COA from all court of appeals, and for these reasons the pro-se petitioners' get denied due process of law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William John Yazzie Jr.

Date: March 30, 2020