

19-8726

No. _____

Supreme Court, U.S.
FILED

MAY 27 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TERRANCE D. GOODMAN — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TERRANCE D. GOODMAN # 23203-017
(Your Name)

JESUP, F.S.L., 2680 U.S. Hwy 301 S.
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SUPREME COURT, U.S.

Questions Presented

- 1.) HAS THE ELEVENTH CIRCUIT OVERTURNED ITS OWN PRECEDENT OF HOLMES V. UNITED STATES, 876 F.2d 1545 (11th CIR 1989) BY ISSUING AN ORDER THAT CONFLICTS WITH THE DECISION OF HOLMES.
- 2.) DID THE ELEVENTH CIRCUIT ERR BY ISSUING A BLANKET DENIAL THAT IS IN DIRECT CONFLICT WITH CASE LAW BY WHICH THE COURT WAS BOUND, IN LIGHT OF GAINES V. HOPPER, 575 F.2d 1147 (5th CIR. 1978)
- 3.) WHETHER THE ELEVENTH CIRCUIT HAS THE AUTHORITY TO OVERRULE OR IGNORE ALL OF THE STANDARDS SET FORTH IN SUPREME COURT CASE OF SLACK V. MCDANIEL 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed 542 (2000), WHICH ARE THE STANDARDS THAT A PETITIONER MUST MEET IN ORDER TO OBTAIN A CERTIFICATE OF APPEALABILITY.

List of Parties

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

Disclosure of Corporate Affiliations and Financial Interest

Pursuant to Supreme Court rule 29.6, Terrance D. Goodman makes the following disclosure:

1.) Mr. Goodman is not a subsidiary or affiliate of a publicly owned corporation.

2.) There is no publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome of this case.

Related Cases

- 1.) ON 3-16-2018 filed 2255, U.S. District Court, Northern District of Florida 3:18-cv-428 TKW/EMT, judgment entered on 8-30-2019.
- 2.) ON 5-30-2019 filed petition for writ of Mandamus, 11th Circuit Court of Appeals, # 19-12070-J, on July 2, 2019 order issued giving District Court 60 days to issue a ruling.
- 3.) ON 9-20-2019 filed 59(e) motion, U.S. District Court, Northern District of Florida, 3:18-cv-428 TKW/EMT, judgment on 9-24-2019.
- 4.) ON 11-20-2019 filed motion for Certificate of Appealability, 11th Circuit Court of Appeals, # 19-14240-J, judgment on 2-25-2020.
- 5.) ON 3-9-2020 filed motion for reconsideration, 11th Circuit Court of Appeals, # 19-14240-J, judgment entered denying motion but the order does not contain a date (see App-B)
- 6.) Petition for writ of Certiorari filed on 5-25-2020, Supreme Court of the United States.

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TABLE OF AUTHORITIES CITED

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STATUTES AND RULES

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 A 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 United States district court appears at Appendix C 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 2-25-2020.

☐ 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: UNKNOWN, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

28 U.S.C. § 1651, which states: "(9) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of these respective jurisdictions and agreeable to the usage and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 2255 (9): "A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence."

28 U.S.C. § 2255 (b): "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence was not authorized by law or otherwise open to collateral attack, or that there has been such a

DENIAL OR INFRINGEMENT OF THE CONSTITUTIONAL RIGHTS OF OF THE PRISONER AS TO RENDER THE JUDGMENT VULNERABLE TO COLLATERAL ATTACK, THE COURT SHALL DISCHARGE THE PRISONER OR RESENTENCE HIM OR GRANT A NEW TRIAL OR CORRECT SENTENCE AS MAY APPEAR APPROPRIATE."

28 U.S.C § 2253 (C)(1)(B): "(1) UNLESS A CIRCUIT JUDGE OR JUSTICE ISSUES A CERTIFICATE OF APPEALABILITY, AN APPEAL MAY NOT BE TAKEN TO THE COURT OF APPEALS FROM (B) THE FINAL ORDER IN A PROCEEDING UNDER SECTION 2255. (28 U.S.C § 2255)."

28 U.S.C § 2253 (C)(2): "(2)" A CERTIFICATE OF APPEALABILITY MAY ISSUE UNDER PARAGRAPH (1) ONLY IF THE APPLICANT HAS MADE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT."

The Fifth Amendment: NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

STATEMENT OF THE CASE

On or about 3-16-2018, the Petitioner filed A §2255 motion in United States District Court for the Northern District of Florida. The motion made multiple claims of Ineffective Assistance of Counsel, based on Counsel's conduct and advice used to convince the Petitioner to plead guilty.

After approx. 14 months with no ruling from the District Court on 5-30-2019, the Petitioner filed A writ of mandamus to the Eleventh Circuit Court of Appeals seeking A writ to Compell the District Court to issue A ruling.

On July 2, 2019 the Eleventh circuit issued AN ORDER giving the District Court 60 days to rule on the §2255.

On 8/9/2019, the Magistrate Judge issued A Report and Recommendation that the §2255 be denied. (App-E)

On 8-30-2019, the District Court Judge issued AN ORDER adopting the R & R and denied the §2255. (App-C).

On 9-20-2019, the Petitioner filed A Rule 59(e) motion in the District Court.

On 9-24-2019, the District Court issued AN ORDER denying the Rule 59(e) motion. (App-D)

On 11-22-2019, the Petitioner filed A motion to the Eleventh Circuit Court of Appeals seeking A Certificate of Appealability.

On 2-25-2020, the Eleventh Circuit issued AN ORDER denying the C.O.A. (App-A)

On 3-9-2020, the Petitioner filed A motion for RE-consideration.

ON or About 3-28-2020, the ELEVENTH CIRCUIT ISSUED AN ORDER TO DENY the motion for RECONSIDERATION. (APP-B)

ON 5-25-2020, the PETITIONER filed the INSTANT petition for A WRIT OF CERTIORARI in the SUPREME COURT.

REASONS FOR GRANTING the Petition

(Question 1) HAS the ELEVENTH CIRCUIT OVERTURNED ITS OWN PRECEDENT of Holmes v. United States 876 F.2d 1545 (11th Cir. 1989) by issuing AN ORDER that conflicts with the decision of HOLMES.

IN the above cited case of HOLMES, the ELEVENTH CIRCUIT REVERSED AND REMANDED the case, ruling that defense COUNSEL had been INEFFECTIVE for misadvising his client which led to AN INVOLUNTARY guilty plea.

THE PETITIONER avers that the facts and circumstances of his case AND those of HOLMES ARE IDENTICAL, yet the ELEVENTH CIRCUIT denied him A CERTIFICATE of APPEALABILITY.

BOTH CASES RAISED the claim of INEFFECTIVE ASSISTANCE of COUNSEL based on COUNSEL'S misadvice. BOTH CASES RESULTED IN AN INVOLUNTARY guilty plea. AND in both cases, documentary EVIDENCE (letter from defense counsel confirming that he had indeed misadvised his client) was presented to the court. ALSO, in both instances the case was DENIED by the district court.

HOLMES is ELEVENTH CIRCUIT PRECEDENT AND THE PETITIONER CITED the case OVER AND OVER throughout the proceedings

to support his claim. Throughout these proceedings, the district court and the Eleventh Circuit have both failed to demonstrate how the 2 cases are distinguishable from one another, but instead used a blanket denial to avoid the subject altogether.

The petitioner strongly contends that this is a case where the Supreme Court should exercise its supervising authority to ensure that consistency and uniformity is maintained throughout the United States Courts of Appeal.

These 2 cases are identical with the only difference being the outcome. If this were allowed to stand, the integrity and reliability of the great judicial system would be called into question. The impact that this would have on pending cases and future cases would be substantial, therefore, the petitioner prays that this honorable court grant this petition to correct this injustice.

(Question 2) Did the Eleventh Circuit Err by issuing a blanket denial that is in direct conflict with case law by which the court was bound, in light of GAINES v. HOPPER 575 F.2d 1147 (5th Cir 1978)

In GAINES, the petitioner raised the claim of ineffective assistance of counsel due to counsel's failure to investigate his client's case before advising him to plead guilty. The former 5th circuit court of appeals reversed and remanded the case, finding that counsel had indeed been ineffective by violating his constitutional duty to

investigate his clients case. In his §2255, the petitioner here raised the exact same claim. In fact, the facts and circumstances of his case are indential to those of GAINES. In both cases, the defendant advised his attorney that there were witnesses that could contradict the governments theory of the case. In both cases counsel failed to contact and interview those witnesses. In both cases, the defendants attached sworn affidavits from those same witnesses to his §2255. However, GAINES' case was reversed, while the petitioners got denied.

GAINES' case was decided by the 5th circuit in 1978 and therefore is binding upon the Eleventh circuit. The petitioner has constantly cited this case law to support his claim and neither the district court nor the Eleventh circuit has ever demonstrated how the 2 cases are distinguishable from one another. Which raises the question presented to the Supreme Court in this petition.

The petitioner prays and respectfully asks that the honorable court to exercise its discretion and grant this petition to ensure that consistency and uniformity is maintained throughout the United States Courts of Appeal. To allow this injustice to stand would have a tremendous impact on pending cases as well as future cases where defendants are similarly situated and would eviscerate the very purpose for which case law was designed.

(QUESTION 3) WHETHER THE ELEVENTH CIRCUIT HAS THE AUTHORITY TO OVERRULE OR IGNORE ALL OF THE STANDARDS SET FORTH IN SUPREME COURT CASE OF SLACK V. MCDANIEL 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L. Ed 542 (2000), WHICH ARE STANDARDS THAT A PETITIONER MUST MEET IN ORDER TO OBTAIN A CERTIFICATE OF APPEALABILITY.

IN ITS ORDER DENYING THE PETITIONER A CERTIFICATE OF APPEALABILITY, THE ELEVENTH CIRCUIT ISSUED A BLANKET DENIAL BY SIMPLY STATING THAT THE PETITIONER HAD FAILED TO MAKE A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT, WITHOUT ADDRESSING ANY OF THE CLAIMS INDIVIDUALLY.

ACCORDING TO THE STANDARDS SET FORTH IN THE ABOVE CITED SUPREME COURT CASE OF SLACK, THIS WAS AN ERROR BY THE ELEVENTH CIRCUIT, WHICH IS THE BASIS FOR THE QUESTION PRESENTED HERE.

IN SLACK, THE SUPREME COURT RULED THAT IN ORDER FOR A PETITIONER TO MAKE SUCH A SUBSTANTIAL SHOWING, THE PETITIONER MUST DEMONSTRATE THAT A "REASONABLE SURVIVOR WOULD FIND THE DISTRICT COURT'S ASSESSMENT OF THE CONSTITUTIONAL CLAIM DEBATABLE OR WRONG," OR THAT THE ISSUES "DESERVE ENCOURAGEMENT TO PROCEED FURTHER."

HERE, THE PETITIONER STRONGLY CONTENTS THAT HE MET THOSE STANDARDS. IN HIS §2255, THE PETITIONER CITED AN AMPLE AMOUNT OF BOTH SUPREME COURT AND ELEVENTH CIRCUIT CASE LAW TO SUPPORT EVERY CLAIM HE RAISED. IN EVERY CASE CITED BY PETITIONER, THE CASE WAS REVERSED. NEITHER THE

district court nor the Eleventh Circuit has ever demonstrated how any case that the Petitioner cited was distinguishable from his own case. That is simply because they couldn't. The case cited were either identical to the facts and circumstances of the Petitioner's case or very close. With that being said and the fact that every case the Petitioner cited was reversed on appeal, the only conclusion that can be reached is that the district court's denial of the Petitioner's \$2255 has to be debatable or wrong. Those are the standards set forth by the Supreme Court, and unless the Eleventh Circuit has the authority to overrule the Supreme Court the Eleventh Circuit has committed an egregious error.

The Petitioner prays this honorable court will exercise its discretion to correct this error. It would be a terrible injustice if defendants that were in the same situation as the Petitioner were granted and the Petitioner be denied. That would go against everything that justice and equality stands for and would have a national impact on pending cases and future cases to come.

CONCLUSION

In the foregoing petition, the Petitioner demonstrated how the Eleventh Circuit made egregious errors in the denial of his motion for a Certificate of Appealability.

The Petitioner strongly contends that due to the questions presented herein, this honorable court should

RULE IN FAVOR OF THE PETITION FOR A WRIT OF CERTIORARI AND EXERCISE ITS DISCRETION TO CORRECT THE AFOREMENTIONED ERRORS BY THE ELEVENTH CIRCUIT. THE SUPERVISORY AUTHORITY OF THE SUPREME COURT WAS DESIGNED TO ENSURE THAT CONSISTENCY AND UNIFORMITY IS MAINTAINED IN THE UNITED STATES COURTS OF APPEAL FOR THE ELEVENTH CIRCUIT AND ALL SISTER CIRCUITS.

WHEREFORE NOW, BASED ON ALL OF THE FACTS CONTAINED HEREIN, THE PETITIONER PRAYS THAT THIS HONORABLE COURT GRANT THIS PETITION.

DONE this 25th day of MAY, 2020.

Respectfully Submitted,



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