

IN THE
Supreme Court of the United States

JULIUS MURPHY,
Petitioner,

vs.

LORIE DAVIS, DIRECTOR, TDCJ-CID,
Respondent.

On Petition for a Writ of Certiorari to the
Court of Appeals for the Fifth Circuit and on Original Petition
for a Writ of Habeas Corpus

**RESPONDENT'S RESPONSE IN OPPOSITION TO MOTION TO
DIRECT THE CLERK TO FILE A PETITION FOR A WRIT OF
CERTIORARI**

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RESPONSE IN OPPOSITION

Petitioner Julius Murphy has moved to direct the Clerk of this Court to file his petition for a writ of certiorari, which followed the Fifth Circuit's denial of his motion for authorization to file a successive federal habeas petition. *See generally* Mot. For the reasons discussed below, Respondent Lorie Davis, Director of the Correctional Institutions Division of the Texas Department of Criminal Justice, opposes Murphy's motion.

Murphy filed in the Fifth Circuit a motion seeking authorization to file a successive federal habeas petition. The Fifth Circuit denied the motion. *In re Murphy*, 793 F. App'x 226, 229 (5th Cir. Oct. 22, 2019). Murphy then challenged the denial of authorization by submitting to this Court a petition for a writ of certiorari and an original petition for a writ of habeas corpus. Pet., *In re Murphy*, No. 19-932 (Jan. 17, 2020). Murphy states that the Clerk of this Court twice returned his petition for a writ of certiorari because the denial of a motion for authorization by a court of appeals is not appealable through a certiorari petition.¹ Mot. at 3–4; *see* 28 U.S.C. § 2244(b)(3)(E). Murphy argues that the Clerk should be directed to file his petition for a writ of certiorari

¹ The Fifth Circuit entered judgment on October 22, 2019. The ninetieth day following that date was January 20, 2020. Consequently, a petition for a writ of certiorari would now be untimely. *See Missouri v. Jenkins*, 495 U.S. 33, 45 (1990) (stating that this Court's rule requiring a petition for a writ of certiorari to be filed within ninety days of the date the lower court enters judgment is "mandatory and jurisdictional"). Murphy has not requested an extension of the ninety-day deadline or moved for leave to file a certiorari petition out of time. *See* Sup. Ct. R. 13.5.

because his petition does not challenge the Fifth Circuit's denial of his motion for authorization but rather the court's "extra-jurisdictional interpretation of Section 2244(b)(3)(C)'s" prima facie standard. Mot. at 4 (citing *Castro v. United States*, 540 U.S. 375, 379 (2003)). Murphy is incorrect.

As the Director argued in her Brief in Opposition, Murphy's petition for a writ of certiorari is statutorily prohibited and his attempt to avoid that prohibition is plainly meritless. Br. in Opp. at 16–17, 25–27; see 28 U.S.C. § 2244(b)(3)(E); *Felker v. Turpin*, 518 U.S. 651, 661–62 (1996). Moreover, Murphy's motion relies entirely on inapposite precedent. He argues that this Court held in *Castro* that the filing of a petition for a writ of certiorari following a Court of Appeals' denial of a motion for authorization is permissible where the "subject" of the petition is not the grant or denial of the motion for authorization but instead a ruling that only had the effect of denying authorization. Mot. at 4. Murphy asserts that § 2244(b)(3)(E) does not apply here because his petition challenges the Fifth Circuit's "extra-jurisdictional" interpretation of the successiveness bar, which only had the "effect of denying" him authorization. Mot. at 4 (quoting *Castro*, 540 U.S. at 379).

The Court's holding in *Castro* is quite specific and inapplicable here. The Court held that, where a pro se litigant files a motion (e.g., a motion for new trial) that could be characterized as a § 2255 motion, the district court must warn the litigant that it intends to recharacterize his or her filing as such and

that any subsequent § 2255 motions will be subject to the restrictions on successive motions. *Castro*, 540 U.S. at 383. Further, the district court must provide the pro se litigant an opportunity to withdraw or amend the motion. *Id.* In *Castro*, the “subject” of the petitioner’s certiorari petition was not the Court of Appeals’ denial of authorization; rather, it was the *district court’s* refusal to recognize that his § 2255 motion was his first, not his second. *Id.* at 380. Consequently, Castro’s certiorari petition was not barred by § 2244(b)(3)(E). *Id.*

Castro is inapposite. Murphy is not pro se. And unlike *Castro*, Murphy contests neither the district court’s characterization of any pleading nor a ruling that incidentally had only the effect of denying him authorization. Instead, the certiorari petition Murphy submitted directly challenged the Fifth Circuit’s denial on the merits of his motion for authorization. Moreover, there is no dispute here that the petition Murphy sought authorization to file would not have been his first—it would have been his third. *See Order, In re Murphy*, No. 14-41311 (5th Cir. Apr. 29, 2015); *Murphy v. Dretke*, 416 F.3d 427, 429 (5th Cir. 2005). And unlike Murphy, who explicitly asked for and was denied authorization, the petitioner in *Castro* did not even ask the Court of Appeals to grant authorization and the court did not deny authorization.² *Compare*

² Notably, Murphy also filed in the district court a proposed successive federal habeas petition along with a motion requesting the court to transfer his “Subsequent

Castro, 540 U.S. at 380, with *In re Murphy*, 793 F. App'x at 227 (“[Murphy] now seeks authorization to file a successive petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2244(b)(2)(B).”). This Court’s holding in *Castro* simply has no applicability in this case.

Further, Murphy’s disagreement with the Fifth Circuit’s rejection of his motion does not render § 2244(b)(3)(E) inapplicable. Mot. at 4–5. If a petitioner’s arguments that a Court of Appeals erred in its interpretation of §2244(b) and that the court’s decision represents a circuit split were sufficient to render a petition for a writ of certiorari appropriate, the statutory prohibition against such petitions would cease to exist. Such bases for review are the prototypical bases for requests for certiorari review. See Sup Ct. R. 10(a). Yet Congress has prohibited certiorari petitions challenging denials of motions for authorization. Murphy fails to justify his request that the statutory prohibition be effectively nullified.

CONCLUSION

The Motion to Direct the Clerk to File a Petition for a Writ of Certiorari should be denied.

Application for Post-Conviction Writ of Habeas Corpus” to the Fifth Circuit “so that he [could] seek authorization to file his Petition.” Mot. at 7, *Murphy v. Davis*, 5:19-CV-112 (E.D. Tex. Aug. 27, 2019). Consequently, *Castro* is inapplicable not only because Murphy explicitly sought authorization from the Fifth Circuit to file a successive petition but also because his request to the district court to transfer his proposed petition explicitly acknowledged that that was the purpose of his motion for authorization. *Id.*

Respectfully submitted,

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