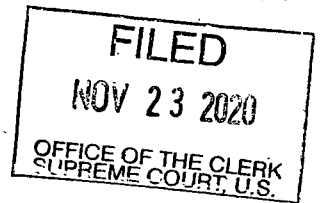


20-1393 ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

William Henry Keehn, II — 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 Eleventh Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

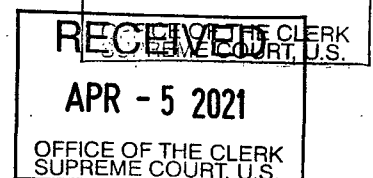
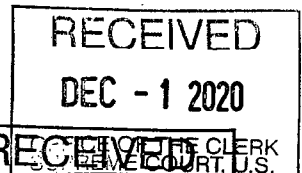
PETITION FOR WRIT OF CERTIORARI

William Henry Keehn, II # 62041-018
(Your Name)

Federal Correctional Institution, P.O. Box 420
(Address)

Farmton, NJ 08320
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Does a district court have legal authority to recharacterize a Fed. R. Civ. P. (60) (b) (4) motion when it challenges a district court's subject matter jurisdiction?

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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 2020 US App. Lexis 27746; 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☐ is unpublished.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 B to the petition and is

☒ reported at 2020 US Dist. Lexis 3095; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 September 1, 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).

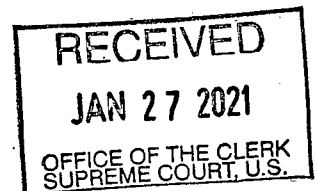
☐ For cases from state courts:

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

United States Constitution: Bill of Rights

Amendment V... nor be deprived of life, liberty or property, without due process of law...

Amendment XIV... nor deny to any person within its jurisdiction the equal protection of the laws.

28 USC 2255: Federal Custody; remedies on motion attacking sentence.

(h) A second or successive motion must be certified as provided in section 2244 [28 USC 2244] by a panel of the appropriate court of appeals to contain:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense.

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Fed. R. Civ. P. 60: Relief from a judgment or order

(b) Grounds for Relief from a Final Judgment,

order or proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons.

(4) the Judgment is Void

STATEMENT OF THE CASE

It is unconstitutional to recharacterize a motion that challenges a district court's subject matter jurisdiction without proving it has jurisdiction because not only would the recharacterization be a legal nullity if the court does not have jurisdiction, the petition to be used as a result of that recharacterization cannot be used to challenge subject matter jurisdiction.

ARGUMENT

In this case a Motion to Vacate Judgment under Rule 60(b)(4) was brought challenging the district court's subject matter jurisdiction. The said motion was recharacterized as a second or successive 28 U.S.C. 2255 motion. On appeal, the appeals court affirmed the district court's decision without the standard abuse of discretion review, and likely without jurisdiction.

Under Rule 60(b) a federal inmate has the right, by motion, to challenge the district court's "final judgment, order or proceeding" for among other reasons "the judgment is void." Fed. R. Civ. P. 60(b)(4). This rule was intended for use as a replacement for various writs that were available prior to their abolishment in 1946 ("amend the rules to permit... the granting of various kinds of relief from judgments which were permitted in federal courts prior to the adoption of these rules"). *Id.* This Court understands the importance of this rule; "[t]he rule also preserves parties'

opportunity to obtain vacatur of a judgement that is void for lack of Subject matter jurisdiction - a consideration just as valid in habeas cases as in any other, since the absence of jurisdiction altogether deprives a federal court of the power to adjudicate the rights of the parties." Gonzalez v. Crosby, 545 U.S. 524 (2005)

Petitioner contends that a district court's jurisdiction, if questioned, must be proven. If a jurisdictional claim is presented prior to the final judgement, the court is required to prove it has jurisdiction before it can proceed because that proof of jurisdiction is what allows the court to legally continue. This proof of jurisdiction, if questioned at any time, by any means available, must be proven and not just assumed. Without this proof a court would lack the same legal authority to proceed with recharacterization as it lacked to make a final judgement.

Rule 60 (b) (4) was intended to be used to challenge the legality of the judgement for lack of subject matter jurisdiction, and is likely the

only means available, Post Anti-terrorism Effective Death Penalty Act (AEDPA), in most instances to a federal prisoner.

In most instances a federal prisoner who brings a motion under Rule 60(b) has the motion recharacterized as either a 2255, or a Second or Successive 2255 depending upon whether or not a 2255 was filed. A jurisdictional challenge is available for the first 2255 within a year, but after that time the motion will likely be timebarred. However, a Second or Successive cannot, by its language, support a jurisdictional claim. (This in and of itself questions equal protection.)

Section 2255 (h) deals with Second or Successive petitions. Post AEDPA, Congress narrowly tailored the Section to allow a Second or Successive petition only if the applicant satisfies one of the two specific requirements. Neither of which was intended to allow a jurisdictional claim.

Section 2255 (h) (1) requires that newly discovered evidence be presented, that when viewed in light of the evidence as a whole, if proven, no reasonable factfinder would have the movant guilty of the offense. 28 USC 2255 (h)(1). In light of a jurisdictional claim, this requirement cannot sustain it.

First, a jurisdictional challenge is not a challenge of guilt or innocence per-se, but a challenge to the courts legal authority to determine guilt. If evidence is presented as to the courts lack of jurisdiction, it is not a matter or not a reasonable factfinder "would" have found guilt, but if it could have found guilt.

Second, to challenge the district courts jurisdiction in a second or successive would create a procedural anomaly. If evidence was presented that proved the court lacked jurisdiction and a second or successive petition was granted, the appeals court could not authorize the district court to hear it for lack of jurisdiction, and as such the court would lack jurisdiction to consider the merits and grant relief.

Section 2255 (h) (2) requires a retroactive application of a new constitutional law. 28 USC 2255 (h) (2). Subject matter jurisdiction may not necessarily rely upon a new rule of constitutional law, however, if it does, it is likely recharacterization would not be challenged because a new rule of constitutional law challenge cannot be presented under Rule 60 (b).

Furthermore, it is likely that until the jurisdiction of the district court is proven a court of appeals would not have jurisdiction to authorize a second or successive 2255 petition.

CONCLUSION

Petitioner requests this court address the application of Rule 60 (b) in reference to a federal prisoners second or successive petitions.

Petitioner requests this court address the recharacterization power of the lower courts in reference to a federal prisoners use of Rule 60 (b) pertaining to a second or successive 2255, and remand this case to the district court to decide the merits of the Rule 60 (b) (4) and prove it has jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Henry Keeler, II
William Henry Keeler, II

Date: 11-23-2020