No. 20-5306

In the

Supreme Court of the United States

Phillip L. Horrell — Petitioner
vs.
David Gomez — Respondent

On a petition for a writ of certiorari to

Seventh Circuit Court of Appeals.

Petition for writ of certiorari.

Phillip Lee Horrell

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Kankakee, IL

60901

ID# 200184

pro se litigant

Questions Presented

1. Whether petitioners constitutional/14th Amendment claims pled for a COA, i.e., Ake v. Oklahoma, 470 U.S. 68 (1985); and involuntary, unintelligent plea deprivations, for the requirement of Section 2253(c)(2), were not given the correct standard of review, under Miller-El v. Cockrell; and Buck v. Davis; and do satisfy the threshold criteria for issuance of a COA (see Miller-El v. Cockrell, 537 U.S. 322 (2003); Buck v Davis, 137 S.Ct. 759, 765 (2017)); so that the denial order (based on that ground) is in error; and should be reversed for further proceedings; or other relief.

2. Whether those two constitutional 14th Amendment, Due Process grounds pled are so plainly meritorious, in combination with this petitioners very inordinate and unjustified over 6 year, 4 month delay in the state court — and being unable to have his U.S. constitutional claims (and state law/constitutional claims) heard in state courts — as argued in his amended Habeas Corpus petition; Rule 60(b)(6) motion and Addendum; and Motion for a COA; presents an "extraordinary circumstance" under the meaning prescribed in Gonzalez v. Crosby, 545 U.S. 524, 536-38 (2005) — rendering the denial order on the Rule 60(b)(6) motion, and the 7th circuits denial order on June 24th, 2020, a plain error, or miscarriage of Justice; warranting reversal of said denial order.

3. Whether the Seventh Circuit panel that denied petitioners request for a CoA pursuant to Section 2253(c)(2) did so in error, as the Rule 60(b)(6) motion, and addendum (with attached exhibits), was not fully addressed in the District Courts denial order (i.e., Judge Sue Myerscough); as pled in the first part of the motion for a CoA in the 7th Circuit — and on equitable, and fundamental fairness grounds, a CoA should have issued; to address the aspects of the §455(a); and § 2254(b)(1)(B)(i) + (ii) arguments; which formed the basis of the Rule 60(b)(6) motion; and were never addressed.

4. Whether the denial pursuant to Section 2253(c)(2), by the Seventh Circuit panel, was unfair, in light of "extraordinary circumstances" (as cited on pg 1 of the Rule 60(b)(6) motion) attending the Rule 60(b)(6) motion, on the facts, law, and attached documentary evidence — which should have allowed for a CoA to issue per the Seventh Circuits policy of issuing a CoA when "not so utterly without merit," so that the case should be closed (Jefferson, 222 F.3d at 289).

List of Parties

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

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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 judgement below.

Opinions Below

The opinion/order of the United States Court of Appeals appears at APPENDIX A and is: unpublished.

The opinion/order of the United States District Court appears at APPENDIX A and is: unpublished.

Jurisdiction

The date on which the United States Court of Appeals decided my case was: June 24th, 2020

No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Constitutional and Statutory Provisions Involved

Amendment XIV, §1 (Due Process clause): All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any laws which shall abridge the priveleges or immunaities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 455(a): Any Justice, Judge, or Magistrate Judge of the United States shall disqualify himself in any proceeding in which his impartiality may reasonably be questioned.

28 U.S.C. §2254(a): The Supreme Court, a Justice thereof, a circuit Judge, or a District Court shall entertain an application for a writ of Habeas Corpus in behalf of a person in custody pursuant to the judgement of a State Court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. §2254(b)(1)(B)(i)-(ii): (1). An application for a writ of habeas corpus on behalf of a person in custody pursuant to the Judgement of a State court shall not be granted unless it appears that—

(B)(i) there is an absence of available state corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

28 U.S.C. §2253(c)(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.

Statement of the Case

This is a Section 2254 Habeas Corpus Act case, seeking review by certiorari of a denial order, on §2253(c)(2) grounds, by the Seventh Circuit panel that denied this petitioner of an appeal of the District Court's denial order of his Rule 60(b)(6) motion. There are a great many things involved which make this Habeas case unique, and worthy of review by the high court. Those specific issues are delineated in the Appendices— especially APPENDIX C, D, F, and H; and the attachments to those motions which were before the Seventh Circuit, and filed in Case No 20-1417 (seeking review of). This State case began on 10-13-2012, when petitioner was arrested after surgery to his self-inflicted knife injury (suicide attempt at the scene of the incident) to his throat, the day before, when the incident occurred; at the residence of Mr. and Mrs. Goldenstein in Kankakee Illinois. This (then) severely mentally ill man, after having been released from an IDOC psychiatric facility two days prior, had went off his meds (please read APPENDIX F, and I, for all of the facts and circumstances (+ evidence)); and was admitted into the residence by Mrs Goldenstein at about 5:45 A.M. — and for some reason, which was never established, this petitioner acted out violently with a steak knife that he had in his pocket, injuring Mrs. Goldenstein, and causing the death of Mr. Goldenstein — a retired OB-GYN, in Kankakee, at Riverside Hospital. After the violent act, the petitioner proceeded to go to the kitchen, drink soda + water, smoke a cigarette, and cut his throat in a bathroom, deeply enough to warrant a surgery with anesthesia. Evidence that was never brought forth was discovered by petitioner in 2017–2020 (on remand for post-sentencing proceedings — see APPENDIX G, attached EXHIBIT #5); was that he was let inside, i.e., no "entry without authority," as is required for count #3 he pled GBMI to — and that he was "looking for a gun" (see APPENDIX F — actual innocence claim). Petitioner searched for a gun to kill himself, while in a manic episode, and bled drops of his blood (from neck injury, above) onto some jewelry boxes from a dresser drawer that was removed. The home wasn't ransacked. Nothing was stolen, despite ample (total) opportunity to. Instead, petitioner called for help, and gave the address while in the residence — and again at a family video parking lot, a few minutes later. At the start of the case, in November 2012, the two appointed APD's moved for a two-day fitness evaluation at the Isaac Ray Forensic Group, L.L.C., in Chicago. The record shows no consultation about it occurred — and they opined "fit" — as did a court's examiner (see report of Isaac Ray attached to affidavit, in APPENDIX H — conducted by two women psychologists, Dr. Rogers, and Dr. Goldstein). On August 21st, 2013, the 1st chair APD, Mr. Larry Beaumont, introduced a fabricated sanity "report", and it was utilized on the 8-25-13, + 10-30-13 visits; and at the 11-1-13 plea hearing to obtain this Petitioners GBMI plea, by the knowing use of false evidence (see APPENDIX C, D, F, and H — all before the District and/or Circuit court); and I also. This Petitioner was mislead by all parties, at the 11-1-13 plea hearing (on-record); that he was "examined for fitness + sanity," "by Dr. Orest Wasyliw, PhD", "at Isaac Ray" at the start of the case — pursuant to a wholly fabricated/false "report", that was never given to Petitioner until Feb-2017. Pursuant to that fraud, Petitioner conceded guilt to felony-murder predicated on residential burglary (ct. #3) — a charge he knew nothing about (indeed, the "constitutional prerequisite" of a valid plea of guilty, per Bradshaw v. Stumpf, 545 U.S. at 183; is not met by the plea record); and on-record, was told he had no defense to. Please read the affidavit attached to APPENDIX H, which was filed on 3-18-2020, in Kankakee County Case No. 12CF541 — it spells out the fraud, pre-plea; and how the petitioner discovered it, etcetera. To date, there has been no merits-based review, or rulings, on any of these issues — despite the issues succinctly pled, and before the District, and Seventh Circuit — in this Rule 60(b)(6) (denial) proceeding. It appears no court will squarely confront, and deal with this petitioner's U.S. Constitutional claims, for fear of colleagues (e.g., Mr Lawrence S. Beaumont is a former AUSA in the Central, + Northern Districts of IL; and a public defender now — and a man who introduced + utilized a fabricated so-called "sanity report," to wrongly convict his own client, by involuntary GBMI [redacted] plea) being disciplined, apparently. No

State or federal judge, or justice, has been willing to address the issues — not even in the context of the Section 455(a) violation, which Judge Myerscough ruled on, whilst completely overlooking the most germane facts, and circumstances, as pled by this Petitioner. It comes on the heels of the reprimand by the Judicial Council, of Judge Colin S. Bruce (the District Court Judge who I've alleged a §455(a) violation on, in the Rule 60(b)(6) motion, and Addendum); and it appears that the Seventh Circuit, as well as Judge Myerscough, are fine with denying any adjudication of the Rule 60(b)(6) issues — but that works an injustice to the plaintiff, when here the issues are substantial, and clear. The Central District, in 2018 (at the same time the improper communications between Judge Bruce, and "former colleagues" out of his old AUSA office — which Larry Beaumont was also); turned 7th Circuit precedent on its head (i.e., Lane v. Richards, 957 F.2d 363, 365 (7th Cir 1992)), to deny petitioner of the delay exception, via §2254(d)(1)(B)(ii) — which shows a violation via Reiser v. Residential Funding Corp., 380 F.3d 1027, 1029 (7th cir 2004); citing two U.S. Supreme Court cases, and United States v. Ramsey, 785 F.2d 184 (7th cir 1986); which instructs District courts to follow the decisions of Circuit courts regardless of whether they agree. In Judge Bruce's 10-16-18 dismissal order (see APPENDIX B), there are several Seventh circuit cases (i.e., **Lane v. Richards**; Stroman Realty, Inc v. Martinez; Monegain v. Carlton; etcetera) he (incorrectly) used to defeat petitioners legitimate, and well-pled exception to exhaustion (b)(1)(B) claims — and that evidences a Liteky v. United States, 510 U.S. 540, 550 (1994), violation ("opinion is somehow wrongful or inappropriate"...); as Petitioner alleged in the Rule 60(b)(6) motions and request for a COA (see APPENDIX C + D). Those legal issues demonstrate that the four "questions presented" are substantial — and this Habeas Corpus case, which began in December 2017 (directly after receiving the Dr. Wacyliw emails — see attached EXH #5-8 to APPENDIX D) — has been adjudicated wrongly; if at all. This petitioner has been sentenced to natural life, + 60 years, for a crime he is not guilty of, and a crime (see Due Process w/the plea section, in

the back of APPENDIX D) he didn't even enter a guilty plea to (i.e., count 5 — see APPENDIX C, and D) — which is an arbitrary deprivation of liberty, in violation of the Due Process Clause of the 14th Amendment. How could that well-pled issue possibly [redacted] not satisfy the "threshold," under Miller-El, and Buck? I submit to you that the denial order by the Seventh Circuit panel, dated June 24th, 2020, is incredibly incorrect. I suggest that it is motivated by a desire to simply make this state court Habeas Corpus petitioner go-away; as the issues involved with the alleged §455(a) violation are very serious (potential) problems for both Mr. Beaumont and Judge Bruce — but it compounds a manifest injustice to do so, for this petitioner. It **thwarts** the very justice that Section 2254(a); 2254(b)(1)(B)(i) + (ii); and Section 455(a); was enacted to ensure, to a wrongly convicted (by plea) state Habeas Corpus petitioner, like myself. Also Rule 60(b). One single read through the APPENDICES, and I can assure this highest court, that will be evident.

Petitioners plea did not satisfy Due Process under the 14th Amendment — and had a wholly insufficient factual basis for count 3 — and no factual basis for count 5. After sentencing, on 4-16-2020, the "1st chair" APD, Mrs Beaumont, failed to consult with petitioner for purposes of Supreme Court Rule 604(d) (see "facts of the case" section of the filed/pending Section 2-1401(f) petition, in **APPENDIX I**, for all of the relevant facts involved); but did file a timely post-sentencing "motion for reconsideration of sentence" (per Rule 604(d)); which was denied on April 30th, 2014. The Appellate Court (upon motions of appellate public defender, Santiago A. Durango, of the OSAD — Third Judicial District; who did excellent work on petitioners behalf), entered a remand order/mandate, on 11-6-15 (see attached as EXHIBIT #5, to **APPENDIX G**) — and the remand for Supreme Court Rule 604(d) "compliance" is ongoing, now over 6 years, and 4 months later (since sentencing). It is an inordinate and unjustified delay, that was over 3 years and 7 months at the time of the (initial) filing of the Habeas Corpus Petition (on 12-8-2017; in the Central Dist. of Illinois, at Urbana). This petitioner has hired two retained Counsels since Jan. 2018, and despite my best efforts (see Appendix G, and H (affidavit)); my U.S. Constitutional claims have not been addressed.

Reasons for Granting the Petition

In essence, this petition's legal claims, or issues, involve: ① §2254(a); ② §2254(b)(1)(B); ③ §455(a); §2253(c)(2); and ④ Rule 60(b)(6). The issues that comprise each of those four statutory provisions, and Rule, are very, very meritorious, and worthwhile. And once the state court case (underlying) violations are looked at — it is a very compelling case for any honest jurist — as a clear injustice, that should be remedied. Again, this petitioner's state court post-sentencing, remand/Rule 604(d) proceedings, are ongoing, now over six years, & four months beyond sentencing — with no review of the U.S. Constitutional (or other) violations, as possible. Thus, petitioner has not "failed to exhaust" his claims in state court. It has not been available, at the trial, or Appellate court level; due solely to attorney misconduct (please read APPENDIX H (affidavit); and I). This petitioner's guilt was concocted by the deciet of the APD'S, and the State, and by the "knowing use of false evidence" (see, e.g., EXH'S #4 & 5 attached to APPENDIX D). This petitioner has worked hard in federal courts, to receive a remedy. The doors have been just shut to this petitioner, in error. That is evident here by the facts pled, evidence in support, and legal arguments (cited as authority in the APPENDICES C—H); before the lower federal District, and circuit courts. Sections 455(a); 2254(b)(1)(B); and Rule 60(b)(6); was narrowly construed by the lower courts, applying the relevant precedent incorrectly (and also omitting the relevant facts pled by this 2254 petitioner); to deny any adjudication of the claims primary factual basises, in the District Court — or allowing no adjudication at all, in the Circuit Court (see APPENDIX I). The caselaw authority for Section 455(a) (see, e.g., Liljeberg v Health Services Acquisition Corp., 486 U.S. 847, 864 (1988)), states (in relevant part) "we must continually bear in mind that, 'to perform its high function in the best way justice must satisfy the appearance of justice'" (citation). The lower federal courts failed to apply the Liljeberg factors correctly; and failed to apply Section 455(a) correctly, as "the goal of section 455(a) is to avoid even the appearance of impropriety" (see Aguinda v. Texaco, 241 F.3d 194, 200 (2nd cir 2001) (citing/quoting Health Services Acquisition Corp v Liljeberg, 796 F.2d 796, 802 (5th cir 1986)). The "extraordinary circumstances" required under Gonzalez v. Crosby, 545 U.S. 524, 536-38 (2005); are clearly present here, for reopening under Rule 60(b)(6).

These meritorious issues, presented to the District, and Circuit courts; are worthy of certiorari because of the need to remedy the erroneous denial of (federal Habeas Corpus Act) review, and remedy — and because it is involving important matters of aforementioned federal Habeas Corpus law, that this honorable Court has established, to proscribe the very misapplication of that law (e.g., section 455(a); and Rule 60(b)(6) caselaw); that is present, and evident, in this state court petitioners Habeas Corpus case. One read of the Appendices (primarily Appendix **C**, **D**, and **F**), makes clear — with consideration of the attached supporting documents — that the District and Circuit courts denial orders, (see APPENDIX A), are in error; and that the two constitutional **claims** advanced in the motion for a CoA, [redacted] from the Seventh Circuit (see APPENDIX D), are substantial, to warrant a COA on the face of the pleadings. This Habeas Corpus (Section 2254) case is a case that delineates a plainly incorrect dismissal order on exhaustion grounds (see the 10-16-2018 order, in APPENDIX B); which has erroneously been allowed to stand, despite the diligent efforts of a state Habeas petitioner with an over 6 yrs, 5 month, ongoing, unjustified delay.

Please consider the attached filed Appendices that were before the Seventh Circuit; and the void judgement petition presently before the Kankakee County circuit court, in APPENDIX I. The facts are uncontested; and well-pled. This is a well-founded, of-record injustice, of the highest order — and no federal, or state court, wants to address the issues pled by petitioner, because they do involve serious attorney misconduct (e.g., Rules 8.3 + 8.4 (b),(c), + (d); of the Rules of Professional [redacted] conduct) — which is clearly spelled out in the Rule 60(b)(6) motion, and addendum; and motion for a COA (as well as the affidavit attached to Appendix H). Section 2254(b)(1)(B)(ii) is designed specifically for a state court (Section 2254) petitioner exactly as this petitioner; which allows for unexhausted U.S. Constitutional claims to be allowed an adjudication of — and here, having had no ability (in almost 6½ years) to be given adjudication of same, in state courts — it is much more equitable to afford relief and adjudication for these "unexhausted" claims (i.e., via Rule 60(b); and Section 2253(c)(2); and 2254(b)(1)(B)(ii)); than to excuse "procedurally defaulted" claims; where a defendant failed to properly advance them (I did not). Please allow certiorari.

Thank You

Conclusion

The petition for writ of certiorari should be granted.

Respectfully Submitted,

s/Phillip L. Horrell

date/July 26th, 2020