No. 20-5441

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Craig Saunders — PETITIONER
(Your Name)

vs.

Superintendent Rockview, et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Third Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Craig Saunders (D.O.C. # FS1684)
(Your Name)

S.C.I. Greene; 175 Progress Drive
(Address)

Waynesburg, Penn. 15370
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

1. Whether reasonable jurists could debate that the District Court's limitation on the cross-examination of the prosecutor about objections to the use of his peremptory strikes in other cases with respect to the **Batson** claim was a defect in the integrity of the federal habeas corpus proceedings?

2. Whether reasonable jurists could debate that Petitioner's Motion for Relief From Judgment, pursuant to Federal Rule of Civil Procedure 60(b)(6), was a "true Rule 60(b) motion" and filed in a reasonable time?

3. Whether Petitioner was entitled to the appointment of counsel, pursuant to 18 U.S.C. Section 3006A, under the specific circumstances of this case?

LIST OF PARTIES

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

[X] 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:

Philadelphia District of Attorney's Office;

Commonwealth of Pennsylvania;

Superintendent Rockview SCI, Respondents.

Craig Saunders, Petitioner.

RELATED CASES

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TABLE OF AUTHORITIES CITED

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

[X] 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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 29, 2020.

[X] 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

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

UNITED STATES CONSTITUTION, Amendment VI

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 law which shall abridge the privileges or immunities 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 to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION, Amendment XIV, Section 1

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:

* * *

(6) any other reason that justifies relief.

Federal Rule of Civil Procedure 60(b)(6)

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from-

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(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.

28 U.S.C. § 2253(c)

STATEMENT OF THE CASE

A. Trial court Proceedings

Saunders was convicted of one count of conspiracy to commit escape in Philadelphia, Pennsylvania. He was tried before Judge Renee Cardwell Hughes. During jury selection, the Commonwealth and the defense each had nine peremptory strikes. Out of the initial forty-person venire, fifteen were stricken for cause. Thirteen out of the remaining twenty-five potential jurors were African-American women. The prosecutor used the first eight of his nine peremptory strikes to remove African-American women. Defense counsel objected, pursuant to **Batson v. Kentucky**, 476 U.S. 79, 106 S.Ct. 1712 (1986). There is substantial uncertainty regarding what occurred after the objection. The transcripts states "(off the record)." N.T. 9/9/2004, p. 162.

Once back on record, Judge Hughes reviewed the race and gender of the jurors that had been accepted and each stricken juror. At this point, ten jurors had been selected: four African-American women, three white women, two African-American men, and one white man. The defendants had struck one white female, one African-American female, and five white males. The prosecutor had used every one his strikes thus far to strike African-American women. N.T. 9/9/2004, pp. 164-65. Judge Hughes said she observed "what appeared to be patterns by both the defense and the Commonwealth" regarding the racial composition of the jurors struck. Judge Hughes then told defense counsel "let me know how you wish to proceed." Id. at 165. Defense counsel then restated his objection, noting that "[a]ll of the Commonwealth's strikes have been Black females." Id. The following then occurred on the record:

> COURT: [Y]ou do understand that you cannot make out a Batson [challenge] if there are four African American women on the panel. And that is the dominant racial demographic on the

panel....

DEFENSE: We can't conclude by the utilization of all the strikes against Black females that the Commonwealth is engaging in neutral methodology[?]

COURT: I think that you cannot conclude that, counsel. If there was no African American females seated on this panel, you can rightfully say the Commonwealth has stricken a particular class. But given that there have been four African American females that the Commonwealth has agreed to place on the panel, and at least one other African American female the Commonwealth desires who was stricken by the Defense.

Accordingly, this panel is [in]sufficient only as it relates to the Caucasian males, and [those] strikes have been exercised by the defense. So at this point, I cannot deem that you have made out a Batson claim. **The Commonwealth is not required to respond, but your objection is noted for the record.**

And the statistics are preserved, ... given that a Batson challenge has been made. These sheets - my sheets, which are the controlling sheets, will not be destroyed. They will in fact be an exhibit in the quarter sessions file and sealed.... they will be sealed for subsequent appellate review, should that be necessary. We're all clear gentlemen?

MR. BERADINELLI: Yes.

MR. SERVER: Yes.

MR. HARRISON: Yes.

MR. NICHOLSON: Yes.

COURT: Anybody else need me to say anything to preserve the record?

MR. SERVER: We all join.

COURT: I but this issue is preserved for the future (sic).
N.T. 9/9/2004, pp. 166-168 (emphasis added).

The prosecutor never stated the basis for his strikes on the record. Defense counsel did not request any further rulings on the **Batson** claim.

B. Direct Review

Saunders appealed to the Superior Court of Pennsylvania, raising the **Batson** claim. Judge Hughes issued an opinion, pursuant to Pa.R.App.P. 1925(a), stating her rationale for rejecting the claim. Judge Hughes stated:

> The Commonwealth did strike eight (8) African American females during the voir dire process and provided a race neutral basis for each strike. The Commonwealth's position was further supported by the fact that of the ten jurors, four (4) were African American females. These four were the dominant race and gender of the panel. Given that African American females comprised the majority group on the panel and each strike exercised by the Commonwealth was race neutral, the appellant has no viable claim of purposeful discrimination. **Appellant's Batson challenge fails as he cannot make out a prima facie case showing that the circumstances created an inference that the prosecutor struck one or more prospective jurors on the basis of race.**

Commonwealth v. Saunders, 946 A.2d 776, 783-784 (Pa. Super. 2008) (emphasis added).

The Superior Court affirmed the conviction and ignored the fact that it is prohibited from considering facts that do not appear in the record. **Commonwealth v. Saunders**, 782-784. The Superior Court never stated which of the three steps of the **Batson** analysis the trial court reached. Id. at 782-784. Saunders filed a petition for allowance of appeal to the Pennsylvania Supreme Court, which was denied. See **Commonwealth v. Saunders**, 958 A.2d 1047 (Pa. 2008).

C. Habeas Corpus Proceedings

On May 4, 2009, Saunders filed a Federal Habeas Corpus Petition, in which the **Batson** claim was raised again. The Magistrate Judge appointed counsel and held an evidentiary hearing to develop a record regarding that claim. The prosecutor, James Beradinelli, was the only person to testify at the hearing. Pursuant to 28 U.S.C. § 2245, Judge Hughes submitted a certificate setting forth her version, or recollection, of the facts leading to her decision on the **Batson** claim. After the evidentiary hearing, the Magistrate Judge issued a Report and Recommendation ('R&R'). He concluded that Judge Hughes had given inconsistent reasons for rejecting the **Batson** claim and rejected the § 2245 Certificate. The Magistrate Judge also concluded that the state court decisions were contrary to clearly established Supreme

Court precedent, pursuant to 28 U.S.C. § 2254(d)(1). Conducting de novo review of the **Batson** claim, the Magistrate Judge determined that there was no evidence in the record that the prosecutor engaged in race- or gender-based discrimination with his peremptory strikes.

The District Judge rejected the conclusion that the § 2245 Certificate should be rejected. Reviewing the **Batson** claim de novo, and also giving credit to the § 2245 Certificate, the District Judge, held that the prosecutor did not discriminate with his peremptory strikes. The District Court granted a certificate of appealability ('COA') on the **Batson** claim to address the questions of how much deference was owed to the trial judge's § 2245 Certificate and whether the prosecutor exercised his strikes in a discriminatory manner. See APPENDIX C.

On appeal to the Third Circuit Court of Appeals, the judgment of the District Court was affirmed. The Third Circuit did not resolve the underlying questions regarding the § 2245 Certificate and the inconsistencies in the record because they were held not to be "outcome-determinative." It was held that Saunders failed to satisfy the burden of showing purposeful discrimination. See APPENDIX D.

On October 9, 2019, Saunders filed a Motion for Relief From Judgment, pursuant to Federal Rule of Civil Procedure 60(b)(6) ('Rule 60(b) Motion'). Saunders also requested the Court to appointment counsel. On December 4, 2019, the District Court denied the Rule 60(b) Motion. Saunders never received a copy of the December 4, 2019 Order. Despite several requests for a copy of the Order, Saunders has been unable to obtain a copy of it. See APPENDIX A.

Saunders filed an application for a COA in Third Circuit and he filed motion for appointment of counsel. On April 29, 2020, the

application for a COA and the motion for appointment of counsel were denied. The Court held that:

> To the extent that Appellant's motion was a true Rule 60(b) motion attacking a defect in his proceedings, ... it was not filed within a "reasonable time[.]" ... To the extent that Appellant sought to relitigate the District Court's previous resolution of his Batson claim, the motion was an unauthorized second or successive habeas petition that the District Court lacked jurisdiction to entertain.... Additionally, Appellant's request for appointment of counsel is denied....

April 29, 2020 Order. See APPENDIX B.

Saunders files this Petition for Writ of Certiorari requesting that the Order of the Third Circuit Court of Appeals be vacated and the case remanded.

REASONS FOR GRANTING THE PETITION

A. REASONABLE JURISTS COULD DEBATE WHETHER THE DISTRICT COURT'S LIMITATION ON THE CROSS-EXAMINATION OF THE PROSECUTOR ABOUT OBJECTIONS TO THE USE OF HIS PEREMPTORY STRIKES IN OTHER CASES WITH RESPECT TO THE **BATSON** CLAIM WAS A DEFECT IN THE INTEGRITY OF THE FEDERAL HABEAS CORPUS PROCEEDINGS

Saunders filed a Motion for Relief From Judgment, pursuant to Fed.R.Civ.P. 60(b)(6). He sought relief from the Order of the United States District Court's limiting the cross-examination of the prosecutor during an evidentiary hearing on the merits of the Batson claim. Saunders asserted that the limitation on the cross-examination was a "defect in the integrity of the federal habeas proceedings." **Gonzalez v. Crosby**, 545 U.S. 524, 125 S.Ct. 2641, 2649 (2005). Saunders had made a "substantial showing of the denial of a constitutional right[,]" with respect to the underlying Batson claim. 28 U.S.C. § 2253(c). It is worthy of consideration in this regard that Saunders had previously been granted a COA on the merits of the Batson claim during the initial Habeas Corpus proceeding. See APPENDIX C: **Saunders v. Tennis, et al.**, 2011 U.S. Dist. LEXIS 57328*67-68. Reasonable jurists could debate whether the District Court's limitation on the cross-examination of the prosecutor about objections to the use of his peremptory strikes in other cases to discriminate on the basis of race, or gender, was a defect in the integrity of the federal habeas corpus proceedings. **Miller-El v. Cockrell**, 537 U.S. 322, 123 S.Ct. 1029, 1039 (2003). The Third Circuit Court of Appeals denied the Application for a COA.

Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate is accomplish justice." **Klapprott v. United States**, 335 U.S. 601, 614-615, 69 S.Ct.

384 (1949). Rule 60(b) cannot be used to circumvent AEDPA's restrictions against second or successive habeas corpus petitions. See **Gonzalez v. Crosby**, at 2646. "[W]hen a Rule 60(b) motion attacks, not the substance but some defect in the integrity of the federal habeas proceedings[,]" it is not considered a second or successive habeas corpus petition and a court may consider whether relief under Rule 60(b) is due. **Id.** at 2648. "Rule 60(b) has an unquestionably valid role to play in habeas cases." **Id.** at 2649. The Third Circuit has "long employed a flexible, multifactor approach to Rule 60(b)(6) motions ... that takes into account all the particulars of a movant's case." **Cox v. Horn**, 757 F.3d 113, 122 (3d Cir. 2014). "The fundamental point of 60(b) is that it provides a grand reservoir of equitable power to do justice in a particular case." **Id.** While Rule 60(b)(6) "is not subject to an explicit time limit, ... a claimant must establish exceptional circumstances justifying the delay for filing under Rule 60(b)(6)." **In re Diet Drugs Prod. Liab. Litig.**, 383 Fed. Appx. 242, 246 (3d Cir. 2010) (citation omitted).

Saunders was convicted of one count of conspiracy to commit escape in Philadelphia, Pennsylvania. Saunders was tried before a jury, along with two codefendants. During jury selection, the Commonwealth and the defense each had nine peremptory strikes. Out of the initial forty-person venire, fifteen were stricken for cause. Thirteen out of the remaining twenty-five potential jurors were African-American women. The prosecutor used eight consecutive peremptory strikes to remove African-American women. Defense counsel objected, pursuant to **Batson v. Kentucky**, 476 U.S. 79, 106 S.Ct. 1712 (1986). The trial court held that the defense could not "make out" a **Batson** challenge. The Superior Court of Pennsylvania upheld the

judgment of the trial court. The Supreme Court of Pennsylvania denied Saunders's petition for allowance of appeal.

On May 4, 2009, Saunders filed a Federal Habeas Corpus Petition, in which the **Batson** claim was raised again. Magistrate Judge Timothy Rice granted Saunders's request for an evidentiary hearing and appointed counsel. Pursuant to 28 U.S.C. § 2245, the trial judge Renee Cardwell Hughes submitted a certificate setting forth her version, or recollection, of the facts leading to her decision on the **Batson** claim. The prosecutor, James Beradinelli, was the only person to testify at the hearing.

During the September 8, 2010 evidentiary hearing, Magistrate Judge Rice limited the scope of cross-examination of Beradinelli. Saunders's attorney had asked Beradinelli had often he had been the subject of a **Batson** challenge. The Commonwealth objected and counsel explained the line of questioning was relevant to (1) test the credibility of Beradinelli, and (2) as evidence of Beradinelli's state of mind. The Magistrate Judge sustained the objection on grounds of relevance, noting the general understanding amongst "everyone in the room ... that Batson challenges frequently are raised at trial." See **APPENDIX C: Saunders v. Tennis, et al.,** 2011 U.S. Dist. LEXIS 57328*57-57.

Saunders asserts that this ruling was "clearly erroneous or is contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a). The Magistrate Judge was essentially questioning the legitimacy of **Batson** claims raised by attorneys simply because they were "frequently" raised. This presumption that attorneys will frequently raise baseless **Batson** claims is itself baseless -- it was not supported by any evidence. As explained below, prosecutors in Philadelphia have a

history of engaging in racial discrimination during jury selection. Therefore, the frequent **Batson** challenges were not without good cause.

Secondly, and most importantly, the Magistrate Judge's ruling is contrary to **Batson** and its progeny. Historical evidence of a prosecutor engaging in racial, or gender, discrimination with peremptory strikes is relevant. As this Court recently noted: "Our precedents allow criminal defendants raising Batson challenges to present a variety of evidence to support a claim that a prosecutor's peremptory strikes were made on the basis of race." **Flowers v. Mississippi**, 588 U.S. ___, 139 S.Ct. 2228, slip. op. at 16 (2019). This Court explained that in **Swain v. Alabama**, 380 U.S. 202 (1965), it held that:

> a defendant may prove racial discrimination by establishing a historical pattern of racial exclusion of jurors in the jurisdiction in question. Indeed, under Swain, that was the only way that a defendant could make out a claim that the State discriminated on the basis of race in the use of peremptory challenges.... [H]owever, Batson did not preclude defendants from still using the same kinds of historical evidence that Swain had allowed defendants to use to support a claim of racial discrimination.... Most importantly for present purposes, after Batson, the trial judge may still consider historical evidence of the State's discriminatory peremptory strikes from past trials in the jurisdiction, just as Swain had allowed. After Batson, the defendant may still cast Swain's "wide net" to gather "'relevant'" evidence.... A defendant may rely on "all relevant circumstances." Batson, 476 U.S., at 96-97.

Flowers v. Mississippi, at 19-20 (citation omitted).

Thus, whether Beradinelli had been the subject of **Batson** challenges in the past was relevant. Counsel should have been permitted to present historical evidence of Beradinelli's discriminatory peremptory strikes in past trials. Counsel's questioning was designed to cast a "wide net" to gather such relevant evidence. However, the Magistrate Judge limited the cross-examination apparently because he questioned the legitimacy of frequent **Batson**

claims. Despite the "substantial discretion" given to trial judges to exclude evidence pursuant to Fed.R.Evid. 403, the Magistrate Judge's limitation of counsel's cross-examination was "clearly erroneous" and "contrary to law." 28 U.S.C. § 636(b)(1)(A); Fed.R.Civ.P. 72(a).

In light of **Flowers v. Mississippi**, not only was Beradinelli's history of being subject to **Batson** challenges relevant, a historical analysis of Philadelphia's record of racial discrimination during jury selection was relevant. The jurisdiction has a long history of racial discrimination:

> In 1997, [A.D.A.] Jack McMahon ... won the Republican nomination to challenge incumbent District Attorney Lynne Abraham. On March 31, 1997, eleven days after the primary election, Abraham released a videotape from the late 1980s which showed McMahon giving a training session on jury selection to other prosecutors in the District Attorney's Office. In the tape, McMahon makes a number of highly inflammatory comments implying that he regularly seeks to keep qualified African-Americans from serving on juries.

Wilson v. Beard, 426 F.3d 653, 656 (3d Cir. 2005)

McMahon explained to the prosecutors in the training session that it was "ridiculous" to believe that the purpose of jury selection was to get a "competent, fair, and impartial jury." **Id.** He went on to "discuss certain categories of people that he believed did not make good jurors[,]" which included social workers. **Id.** at 657. McMahon also said that "Older black women, ... when you have like a black defendant who's a young boy and they can identify as his, you know --motherly type thing," would not make good jurors. **Id.** McMahon also said to avoid young, black women, explaining:

> ... young black women, are very bad. There's an antagonism. I guess maybe because they're downtrodden on two respects, they got two minorities, they're women and they're and blacks, so they're downtrodden in two areas.... And so younger black women are difficult, I've found.

Id.

While the record does not establish that Beradinelli was applying

McMahon's ideas about picking a jury, it certainly bears a remarkable similarity. Beradinelli struck eight Black women and was against having social workers on the jury. See **Saunders v. Tennis, et al.**, 2011 U.S. Dist. LEXIS 57328*21. This jury selection strategy was utilized in a trial in which three, relatively young, Black men were on trial.

Furthermore, the practice of racial discrimination did not begin or end with McMahon. McMahon was an assistant district attorney under Lynne Abraham. The practice was articulated in other training sessions as well, during the time that Abraham was District Attorney. As was reported at the time, Abraham

> knew full well that McMahon had actually articulated a rather tame version of what has long been the practice of her office. That very week, two of her prosecutors used every one of their peremptory challenges to strike African-Americans from juries. Although she sought to portray McMahon as a "rogue" whose sweeping generalizations about black people are "invidiously discriminating," some of her top aides have expressed strikingly similar thoughts about jury selection. The chief of her economic crimes unit, for example, told a training session in 1990 that the ideal jury consists of 12 "Archie Bunkers." But most of all, Abraham knew that she herself is on record as a trial judge treating the U.S. Supreme Court's Batson ruling ... with utter disdain. She has also employed racial stereotypes far more sweeping and invidious than anything McMahon said.

Loren Feldman, "I, the Jury," **Philadelphia Magazine**, p. 21 (June 1997)

Abraham was the District Attorney of Philadelphia in 2004 when Saunders went to trial and such practices would have influenced Beradinelli. However, counsel was denied the opportunity to elicit any evidence about such historical patterns of discrimination. The Magistrate Judge's ruling was contrary to Supreme Court precedent that holds that historical patterns of discrimination are admissible, which was made abundantly clear in **Flowers v. Mississippi**, supra. A historical pattern of racial discrimination does exist in Philadelphia, such evidence was relevant, and was admissible.

In this regard, the evidentiary hearing and factual record upon which the Magistrate Judge, District Court, and Court of Appeals based their decisions was defective and insufficient. Because of the error in limiting the evidence at the evidentiary hearing, this claim amounts to an attack, "not on the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings." **Gonzalez v. Crosby**, at 2648. As this Court has made clear:

> Discrimination on the basis of race, odious in all aspects, is especially pernicious in the administration of justice.... It thus injures not just the defendant, but the law as an institution, ... the community at large, and ... the democractic ideal reflected in the processes of our courts.... Such concerns are precisely among those we have identified as supporting relief under Rule 60(b)(6).

Buck v. Davis, 580 U.S. ___, 137 S.Ct. 759, 778 (2017) (citations & internal quotations omitted).

Saunders asserts that reasonable jurists could debate whether "the issues presented were adequate to deserve encouragement to proceed further." **Miller-El v. Cockrell**, at 1039.

> The COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits.... This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact the state forbids it. When a court of appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

Id. (citations & internal quotations omitted).

The dismissal of a Rule 60(b) motion is reviewed for abuse of discretion. See **Cox v. Horn**, 757 F.3d 113, 118 (3d Cir. 2014); **Buck v. Davis**, at 777. Therefore, the COA question is "whether a reasonable jurist could conclude that the District Court abused its discretion in declining to reopen the judgment." **Buck v. Davis**, supra. Saunders asserts that reasonable jurists could conclude that the District Court

abused its discretion in failing to reopen the judgment. As previously noted, Saunders had previously been granted a COA on the merits of this claim. Considering that Saunders was attacking a "defect in the integrity" of the evidentiary hearing, and he already made a "substantial showing of the denial of a constitutional right[,]" reasonable jurists could conclude the District Court abused its discretion.

B. REASONABLE JURISTS COULD DEBATE THAT PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT, PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(6), WAS A "TRUE RULE 60(b) MOTION" AND FILED IN A REASONABLE TIME

As previously noted, "Rule 60(b) has an unquestionably valid role to play in habeas cases." **Gonzalez v. Crosby**, at 2649. This Court has made clear that Rule 60(b)(6) "vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." **Klapprott v. United State**, supra. "[W]hen a Rule 60(b) motion attacks, not the substance of the federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings[,]" it is not considered a second or successive habeas corpus petition and a court may consider whether relief under Rule 60(b) is due. **Gonzalez v. Crosby**, at 2068. While Rule 60(b)(6) "is not subject to an explicit time limit, ... a claimant must establish exceptional circumstances justifying the delay for filing under Rule 60(b)(6)." **In re Diet Drugs Prod. Liab. Litig.**, supra.

Without explicitly stating its holding, it appears that the Third Circuit held that Saunders Rule 60(b) Motion was not a "true Rule 60(b) motion." The Court stated that:

> To the extent that Appellant's motion was a true Rule 60(b) motion attacking a defect in the his proceedings, ... it was not filed within a "reasonable time[.]" ... To the extent that Appellant sought to relitigate the District Court's previous resolution of his Batson claim, the motion was an unauthorized second or successive habeas petition that the District Court lacked jurisdiction to enterain.

APPENDIX B.

Saunders asserts that this Court set the standard for what constitutes a "true Rule 60(b) motion" in **Gonzalez v. Crosby**, in which it held that "a Rule 60(b) motion attacks, not the substance of the

federal court's resolution of a claim on the merits, but some defect in the integrity of the federal habeas proceedings." Id. at 2648. Saunders's Rule 60(b) Motion attacked a defect in the integrity of the federal habeas corpus proceedings; specifically, the evidence admitted during the evidentiary hearing. The only relief Saunders would have obtained had the judgment been reopened would have been an opportunity to present additional evidence in support of his claim, such as a historical pattern of discrimination by the prosecutor and in Philadelphia. This was not an attack on the District Court's "resolution of a claim on the merits[.]" Id.

The Third Circuit Court of Appeals held that Saunders was wrong for seeking to "relitigate the District Court's previous resolution of his Batson claim, the motion was an unauthorized second or successive habeas petition that the District Court lacked jurisdiction to entertain." APPENDIX B. However, Saunders was expressly prohibited from filing a second or successive habeas corpus application to seek review of a claim presented in his initial habeas corpus petition. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application **shall be dismissed.**" 28 U.S.C. § 2244(b)(1) (emphasis added).

In this sense, Saunders's Rule 60(b) Motion was indeed a "true Rule 60(b) motion." At the least, reasonable jurists could debate whether the Rule 60(b) Motion was a "true Rule 60(b) motion."

Saunders filed his Rule 60(b) Motion on October 9, 2019; it was deposited in the prison mailbox on October 4, 2019. The Motion was filed 110 days after the decision in **Flowers v. Mississippi** was published. In **Cox v. Horn**, a petitioner filed a Rule 60(b)(6) motion based on a new decision of this Court. Id. at 115-116. The Third

Circuit noted that

> one of the critical factors in the equitable and case-dependent nature of the 60(b)(6) analysis on which we now embark is whether the 60(b)(6) motion under review was brought within a reasonable time of the [Supreme Court] decision. See Fed.R.Civ.P. 60(c)(1). It is not disputed that the timing of the 60(b)(6) motion before us - filed, as it was, roughly ninety days after [the Supreme Court decision] - is close enough to the decision to be deemed reasonable.

Id.

Saunders asserts that if ninety days was deemed a "reasonable time" for filing a 60(b)(6) motion, reasonable jurists could, at least, debate whether 110 days was a reasonable time in this case, pursuant to Fed.R.Civ.P. 60(b)(6).

Finally, it is debatable whether Saunders needed a COA to appeal the denial of his Rule 60(b) Motion. See **Buck v. Davis**, at 772 n. *. After all, the denial of a Rule 60(b) motion does not "arise out of process issued by a State court[.]" 28 U.S.C. § 2253.

C. PETITIONER WAS ENTITLED TO THE APPOINTMENT OF COUNSEL, PURSUANT TO 18 U.S.C. SECTION 3006A, UNDER THE SPECIFIC CIRCUMSTANCES OF THIS CASE

In Saunders's initial Rule 60(b) Motion, he requested the District Court to appoint counsel. Saunders explained that he was in custody in the Pennsylvania Department of Correction ('PADOC'), with limited space in a prison cell. The PADOC has a policy limiting the amount of property prisoners are allowed to maintain in the cell. Therefore, since these proceedings had been closed for several years, Saunders had sent all of the transcripts and other records home. Furthermore, the PADOC had enacted new mail policies that made it impossible for Saunders to have the voluminous records mailed back into the prison.

Under the circumstances, Saunders prepared his Rule 60(b) Motion based on his memory and the published opinions available on the computers in the prison law library. Saunders requested that the District Court appoint counsel to assist him in developing the facts in support of his claims for relief, including the historical evidence of racial discrimination in Philadelphia. Because Saunders has been unable to obtain a copy of the District Court's Order, he does not know the rationale for denying his request for the appointment of counsel. See APPENDIX A.

Before filing an Application for a COA in the Third Circuit Court of Appeals, Saunders filed an Application for the Appointment of Counsel, pursuant to 18 U.S.C. § 3006A. Saunders again explained that due to the limitation on the amount of property prisoners are allowed to maintain in the cell and the inability to have the documents mailed back into the prison, he did not have access to the transcripts and other records of this case. The Application for the Appointment of

Counsel was deferred to the panel that would rule on the Application for a COA.

Saunders requested that the Third Circuit appoint counsel to represent him in the proceeding. In the alternative, Saunders requested that the Court appoint counsel only to obtain the necessary documents and provide them to Saunders. Only a licensed attorney would have been able to obtain such documents and mail them to the prison.

The Third Circuit denied the request for appointment of counsel, pursuant to **Tabron v. Grace**, 6 F.3d 147, 155 (3d Cir. 1993). See APPENDIX B. Saunders asserts that the District Court's and the Third Circuit's decision to deny the appointment of counsel was erroneous and an abuse of discretion.

First, the Third Circuit opinion in **Tabron v. Grace** is construing 28 U.S.C. § 1915(d) in a § 1983 civil suit. See **Id.** at 154-156. Saunders requested counsel pursuant to 18 U.S.C. § 3006A in relation to federal habeas corpus proceedings.

However, even under the "criteria for ascertaining the "special circumstances" under which counsel may be appointed for an indigent litigant in a civil case[,]" Saunders would have been entitled to the appointment of counsel. **Id.** at 155. The first consideration is whether the claims have merit. Saunders asserts that the arguments set forth in the proceeding two sections demonstrate that the claims have "some merit in fact and law." **Id.** (citation & internal quotation omitted). The Third Circuit held that the "plaintiff's ability to present his or her case is, of course, a significant factor that must be considered in determining whether to appoint to counsel." **Id.** This is precisely the grounds on which Saunders based his request for the appointment of counsel. Saunders did not have access to records and transcripts to

prepare his Rule 60(b)(6) Motion and he did not have the ability to access evidence to prove that an historical pattern of discrimination existed in Philadelphia. The Third Circuit went on to hold that if "it appears that an indigent plaintiff with a claim of arguable merit is incapable of presenting his or her case, serious consideration should be given to appointing counsel, ... and if such a plaintiff's claim is truly substantial, counsel should ordinarily be appointed." **Id.** at 156.

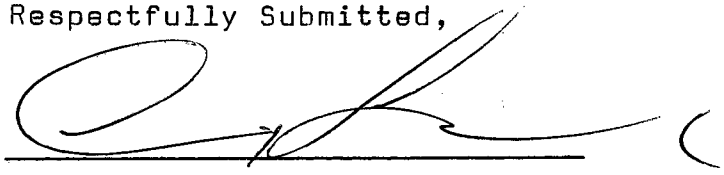
The District Court and Third Circuit failed to give his request for the appointment of counsel "serious consideration."

CONCLUSION

For all of the foregoing reasons of law and fact, Petitioner request that this Court GRANT this Petition for a Writ of Certiorari, VACATE the Order of the Third Circuit Court of Appeals, and REMAND the Case for further proceedings.

Date: July 24, 2020

Respectfully Submitted,



Craig Saunders
D.O.C. # FS1684
S.C.I. Greene
175 Progress Drive
Waynesburg, Penn. 15370